

Ensuring regulatory continuity

Proposed transitional and transitory regulatory arrangements for regulated qualifications and assessment arrangements from 1 April 2010



Date: December 2009
Product code: Ofqual/09/4690
ISBN: 978-1-84962-323-0

About Ofqual

Ofqual is the regulator of qualifications, examinations and assessments in England. Ofqual will regulate vocational qualifications in Northern Ireland. Ofqual aims to ensure that children, young people and adult learners get the results their work deserves, that standards are maintained and that the qualifications learners receive count now and in the future.

Ofqual's legal status

The Qualifications and Curriculum Authority (QCA) is currently operating its regulatory functions under the name Office of the Qualifications and Examinations Regulator (Ofqual). The legal entity remains QCA, established under the Education Act 1997. QCA is an exempt charity under the Charities Act 1993.

The Apprenticeships, Skills, Children and Learning Act 2009 will establish Ofqual (The Office of Qualifications and Examinations Regulation) as a separate statutory body and, upon commencement, scheduled for 1 April 2010, Ofqual will become the independent regulator of qualifications, examinations and assessments in England and of vocational qualifications in Northern Ireland.

Publication of this document marks the start of a consultation process commenced by QCA, in the name of Ofqual, at the direction of the Secretary of State.

Contents

Introduction.....	4
Executive summary.....	7
Context.....	9
Cooperation with other UK qualifications regulators.....	10
Developing and implementing transitional arrangements.....	10
The continuity of the regulated system.....	10
The timeline for the transitional arrangements.....	12
The proposed transitional arrangements.....	14
Part 1: The regulation of qualifications.....	14
Recognition of awarding organisations.....	14
Recognition criteria.....	16
Submitting components and rules of combination for use in the QCF.....	22
General conditions of recognition.....	23
Other conditions of recognition.....	24
Accreditation of qualifications.....	24
Qualifications subject to the accreditation requirement.....	24
Accreditation criteria.....	25
Register.....	26
Investigation of complaints.....	27
Power to give directions and to withdraw recognition.....	28
The qualifications regulatory framework.....	29
Part 2: The regulation of assessment arrangements.....	31
The assessment arrangements regulatory frameworks.....	31
Regulating assessment arrangements.....	31
Guidance for responsible bodies.....	32

Comments on the proposals.....34

The way forward34

Annex A: The purpose of these procedures35

Annex B: Codes of practice and operational rules.....41

Introduction

The Apprenticeships, Skills, Children and Learning Act 2009 (the 2009 Act) will establish the Office of Qualifications and Examinations Regulation (Ofqual) as an independent regulator of qualifications, examinations and assessments in England and of vocational qualifications in Northern Ireland. The legislation sets out a new framework for the regulation of qualifications and statutory national curriculum assessments and the early years foundation stage (EYFS) profile. It is planned that the provisions establishing Ofqual will be commenced on 1 April 2010, along with most of its functions.

For Ofqual to be able to fulfil its statutory functions under the 2009 Act from 1 April 2010, the Secretary of State for Children, Schools and Families (the Secretary of State) has asked the Qualifications and Curriculum Authority (QCA), which is currently operating its regulatory functions under the name Ofqual, to advise him on the arrangements that should be made. It is proposed that the transitional and transitory¹ arrangements (transitional arrangements) will provide for the relevant existing regulatory arrangements under the Education Act 1997 (the 1997 Act) to be treated as arrangements under the 2009 Act until such time as Ofqual makes other provision. The intention is that these transitional arrangements should result in the minimum necessary disruption to learners and burdens on recognised awarding organisations and national curriculum and EYFS responsible bodies (responsible bodies)² consistent with being able to regulate effectively and pending the introduction of the new regulatory regime, making use of the powers under the 2009 Act.

The purpose of this document is to explain and to seek views on the transitional arrangements that we propose to recommend to the Secretary of State. Two sets of provisions in the 2009 Act will not be commenced immediately, namely:

- our responsibilities in relation to the assignment of guided learning hours to qualifications for the purposes of the raising the participation age provisions in the Education and Skills Act 2008

¹ Transitional and transitory arrangements are provisions that will have effect until Ofqual makes its own arrangements in relation to its functions under the 2009 Act.

² Responsible bodies are those with functions that relate to the development, implementation or monitoring of assessment arrangements. For national curriculum assessments these comprise QCDA, local authorities and head teachers of maintained schools. For the EYFS profile these comprise QCDA, EYFS providers on the Early Years Register maintained by Ofsted, local authorities and the Chief Inspector of Education, Children's Services and Skills.

- for reviewing the system for allocating values to qualifications in relation to the measurement of school performance

These areas are therefore not addressed in this document. In advance of these outstanding provisions being commenced the views of relevant stakeholders will be sought. This document also does not cover any transitional arrangements in relation to qualifications in Northern Ireland that are not currently regulated by interim Ofqual; we will discuss any issues there with relevant stakeholders.

Views from awarding organisations and responsible bodies on these proposals will be particularly welcome. In order to inform the advice we must give to the Secretary of State by the end of February 2010, we need feedback by 25 January 2010. Our intention is to publish our advice on the transitional arrangements by early March 2010. The Secretary of State will then be able to draw on or cross-refer to this advice in the commencement order that will be made before 1 April 2010.

The proposed transitional arrangements largely replicate the status quo, whilst reflecting the provisions of the 2009 Act. These transitional arrangements do not represent how Ofqual might regulate in the longer term, which is the subject of a separate consultation. However they represent what we think is a sensible starting point under the 2009 Act. We hope that awarding organisations and responsible bodies will agree that the proposed arrangements represent the best way of safeguarding standards and protecting learners.

The proposed transitional arrangements will cover all regulated qualifications. Ofqual will be able to regulate all academic and vocational qualifications, other than degrees, awarded in England; and vocational qualifications (again other than degrees) awarded in Northern Ireland.³

Recognised awarding organisations in particular need to understand these transitional arrangements. Specifically, they need to understand:

- what will happen to existing recognitions and accreditations
- the general conditions of recognition that will apply initially
- the recognition and accreditation criteria that will apply initially
- the intention, initially, to continue to require that all qualifications be subject to the accreditation requirement.

³ The Secretary of State has pursuant to relevant provisions of the 1997 Act – requested advice about the arrangements for regulating National Vocational Qualifications in Northern Ireland.

Under our proposals, awarding organisations with accredited qualifications under the 1997 Act would be automatically recognised under the 2009 Act to award those specific qualifications, which will also continue to be accredited qualifications under the 2009 Act. Transitional recognition criteria will be in place to allow Ofqual to recognise any awarding organisation to award a new qualification. The transitional recognition criteria will apply until Ofqual adopts its own criteria. Any new qualifications will need to be accredited against the relevant transitional accreditation criteria. The requirement for accreditation will only be removed once we have redesigned the recognition criteria and conditions in a way that will allow us to have confidence that awarding organisations can award high-quality regulated qualifications and maintain standards without the need for all such qualifications to be accredited. We will aim to move to the position where we can start removing the accreditation requirement for some qualifications by September 2010, subject to views on the consultation on the longer term arrangements. We also set out below the general conditions of recognition that we propose should apply initially. We will monitor compliance with these conditions and, where necessary, use our enforcement powers under the 2009 Act.

Executive summary

In this document we:

1. Explain the context for these proposals in the light of the changes resulting from the 2009 Act that will establish us as an independent regulator.
2. Explain our recommendation as to how the transitional arrangements should be used to minimise the disruption to the system of regulated qualifications and assessment arrangements whilst maintaining effective regulation.
3. Set out why transitional arrangements are required to allow:
 - Ofqual to exercise its functions under the 2009 Act in a way that is consistent with its objectives
 - Ofqual to protect learners and maintain standards
 - existing recognised awarding organisations to continue to be recognised
 - new organisations to seek recognition
 - existing accredited qualifications to continue to be awarded
 - new qualifications to be submitted for accreditation
 - while the new Ofqual Board develops and implements longer term changes to the regulatory arrangements.
4. Set out the proposed transitional arrangements for:
 - regulated qualifications, covering:
 - transitioning recognitions of existing awarding organisations
 - recognition criteria
 - general and other conditions of recognition
 - transitioning existing accreditation of forms of qualifications
 - the accreditation requirement
 - accreditation criteria
 - the register of recognised awarding organisations and regulated qualifications

- investigation of complaints
 - the power to direct and to withdraw recognition
 - regulated assessment arrangements, covering:
 - aspects of the national curriculum assessment arrangements regulatory frameworks.
5. Set out the proposed timeline for the development and publication of the agreed transitional arrangements so that awarding organisations and responsible bodies understand the regulatory arrangements that will be in place from 1 April 2010.
 6. Seek the views of awarding organisations, appropriate responsible bodies and others on these proposals.

Context

1. Ofqual is the regulator of qualifications, examinations and assessments in England. We will also regulate vocational qualifications in Northern Ireland. QCA is currently operating its regulatory functions under the name of the Office of the Qualifications and Examinations Regulator (Ofqual). The legal entity remains QCA, established under the Education Act 1997 (the 1997 Act). QCA is an exempt charity under the Charities Act 1993.
2. The 2009 Act will establish Ofqual as a separate statutory body (a non-ministerial government department reporting to Parliament and the Northern Ireland Assembly) and a legal entity in its own right. The Secretary of State intends to commence the provisions establishing Ofqual and its functions on 1 April 2010. Ofqual's members (the Board) are being appointed by the Secretary of State, and the Chair of Ofqual (the Chief Regulator) has been appointed by the Crown.
3. To avoid confusion, we do not distinguish in this document between interim Ofqual and Ofqual in its new statutory form. We simply refer to Ofqual.
4. Part 7, at sections 127 to 174, of the 2009 Act provides the statutory framework within which we will regulate. A copy of the 2009 Act can be found at <http://www.opsi.gov.uk/acts/acts2009a>. The *Explanatory notes* for the 2009 Act (http://www.opsi.gov.uk/acts/acts2009/en/ukpgaen_20090022_en_1) will also be useful in helping to understand the provisions. The 2009 Act establishes Ofqual and sets out our objectives, general duties and functions. These build on, and in some cases enhance, the functions currently exercised by QCA and set out the requirements for regulating:
 - awarding organisations and the qualifications they award
 - responsible bodies and the assessment arrangements they develop and deliver.
5. We are currently conducting a separate consultation on how Ofqual should fulfil its new statutory functions as set out by the 2009 Act in the longer term. The outcome of that consultation will help the new Ofqual Board to determine how to implement any changes it thinks are necessary to carry out the new functions in a way that will best achieve the statutory objectives.
6. If you are interested in participating in that consultation, visit <http://comment.ofqual.gov.uk/regulating-for-confidence-in-standards/>. The deadline for responses to that consultation is 8 March 2010. Details about how to respond are included on this web page.

Cooperation with other UK qualifications regulators

7. Historically, we have worked closely with our fellow regulators in Northern Ireland, Wales and Scotland to ensure that coherent and consistent regulatory arrangements are put in place. Many of the criteria and other documents specified in this document were prepared on this basis. Cooperating with our fellow qualifications regulators has allowed us to develop consistent regulatory regimes and facilitate the maintenance of consistent standards in qualifications offered throughout the UK. This has helped to provide learners, higher education institutions and employers with confidence in the qualifications that we regulate. The 2009 Act will allow us to continue to work with our fellow regulators and we propose to do so.

Developing and implementing transitional arrangements

The continuity of the regulated system

8. As soon as Ofqual is established on 1 April 2010 we will need to move from one regulatory regime, which will apply until 31 March 2010, to the one that will operate from 1 April 2010. One of the first tasks of the new Ofqual Board will be to consider the responses to our separate consultation on how we should fulfil our new statutory functions as set out by the 2009 Act with a view to the early development and introduction of the new regulatory regime. Developing the new regulatory regime will involve setting revised criteria, general conditions, frameworks and policies and so on (or deciding to retain the transitional ones for the longer term), and may require further consultation. These revised criteria, conditions, frameworks and policies and so on will not all need to be introduced at the same time, so there will not necessarily be a single point at which the transitional arrangements are replaced.
9. The Secretary of State intends to use powers in the 2009 Act to make transitional provisions so that the change on 1 April 2010 can be conducted as smoothly as possible. The Secretary of State has therefore asked Ofqual, through the QCA, to advise him on the detailed transitional arrangements that should be put in place from 1 April 2010 in order that:
- learners' interests are protected and standards are maintained
 - recognised awarding organisations can continue to be recognised
 - the scope of recognition for each existing awarding organisation can be identified
 - ongoing applications for recognition can continue

- organisations can seek recognition in respect of specified qualifications
- accredited qualifications can continue to be accredited
- qualifications can be submitted for accreditation
- ongoing applications for accreditation can continue
- general conditions on recognition can be identified
- any existing recognition or accreditation condition can continue to have effect
- aspects of the qualifications regulatory framework can be identified, as appropriate
- ongoing investigations of complaints can continue
- ongoing enforcement action can continue
- aspects of the assessment arrangements regulatory frameworks can be identified, as appropriate
- any other arrangements can be made
- so that Ofqual's Board can develop and implement longer term changes to the arrangements for regulating qualifications and assessment arrangements in a managed way.

10. We intend that the minimum possible burden, which is consistent with the protection of learners, the provision of high-quality qualifications, examinations and assessments and the maintenance of standards, should be imposed upon awarding organisations and responsible bodies by these transitional arrangements. This is in line with the requirement in the 2009 Act that we must not impose or maintain unnecessary burdens on those we will regulate. Similarly, we propose to adhere to the principles of good regulation, set out by the Better Regulation Executive, which is part of the Department for Business, Innovation and Skills, when developing and acting in accordance with the transitional arrangements. These principles state that good regulation should be:

- Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistent: Government rules and standards must be joined up and implemented fairly.

- Transparent: Regulators should be open, and keep regulations simple and user friendly.
 - Targeted: Regulation should be focused on the problem, and minimise side effects.
11. We will continue to engage with our stakeholders in order to develop and implement the longer term changes that we think are necessary and appropriate for the regulation of qualifications and assessment arrangements.
12. Once the Board has considered the outcomes of the separate consultation on longer term operation of the new statutory functions consistent with our objectives, undertaken any further consultation that is necessary and determined any changes that should be made to the transitional arrangements, Ofqual will:
- notify awarding organisations of the following:
 - the changes that are to be made to the arrangements for regulating qualifications and when those changes will be implemented
 - what steps, if any, recognised organisations will need to take in order to demonstrate compliance with the new criteria and/or conditions, including any further evidence or information they will need to provide
 - the deadline by which recognised organisations must demonstrate compliance with the new criteria and/or conditions
 - the consequences of failing to demonstrate compliance by the deadline given
 - notify responsible bodies of the changes that are to be made to the arrangements for regulating assessment arrangements and when those changes will be implemented.

The timeline for the transitional arrangements

13. The proposed timeline for the development and implementation of the transitional arrangements is as follows:

December 2009/January 2010	Opportunities for awarding organisations and responsible bodies to seek clarification on any points.
25 January 2010	Comments on the proposed transitional arrangements must be returned to us.

<p>February 2010</p>	<p>We will analyse the responses to the proposals and provide draft advice to the Secretary of State on the transitional arrangements that we believe should be put in place.</p>
<p>March 2010</p>	<p>Following a response from the Secretary of State on the draft advice, we will publish a document setting out our advice on the transitional arrangements.</p> <p>The Secretary of State will make an order commencing most of the provisions of Part 7 of the 2009 Act from 1 April 2010. That order will include provisions that establish the transitional arrangements and that take account of our advice.</p> <p>We will notify awarding organisations and appropriate responsible bodies of the transitional arrangements that will be in place from 1 April 2010.</p>

The proposed transitional arrangements

Part 1: The regulation of qualifications

14. Awarding organisations will need to understand the proposed transitional arrangements and the implications of how they will operate. The proposed arrangements are designed to replicate the status quo as far as possible, whilst reflecting the provisions of the 2009 Act. In particular, awarding organisations need to understand:

- how recognition and accreditation will operate from 1 April 2010 until Ofqual develops its own arrangements
- the general conditions that will apply from 1 April 2010 until Ofqual adopts its own conditions
- the intention initially to continue to require that all qualifications be subject to the accreditation requirement.

Recognition of awarding organisations

15. The 2009 Act will require us to recognise organisations to award specific qualifications or descriptions of qualifications⁴. We propose that recognition of awarding organisations should continue without any interruption. The proposed arrangements would allow awarding organisations to be recognised to continue to award as regulated qualifications those specific qualifications that are accredited and for organisations to seek recognition to award specific regulated qualifications for which they are not currently recognised. An awarding organisation wishing to award new specific qualifications will need to seek recognition to award those qualifications against the relevant recognition criteria set out below. We think that this is in the best interests of learners.

16. To allow for this continuity it is proposed that the following arrangements would apply:

- An awarding organisation will be recognised to award those qualifications from 1 April 2010, forms⁵ of which are accredited immediately prior to 1 April 2010.

⁴ A description of a qualification could be a type of qualification, for example GCSE or GCE.

⁵ In the 2009 Act a form of a qualification is a specific qualification awarded by a particular recognised awarding organisation, for example XYZ Awarding Organisation's GCSE mathematics specification A or specification B.

- An awarding organisation that has already been recognised under the 1997 Act but that has not had a particular form of qualification accredited (either because an accreditation application has yet to be received or because a decision on an application is pending) will also be recognised from 1 April 2010. Such recognition will be in respect of that form of qualification it has notified us that it intends to submit, or has submitted, for accreditation (as approved by us and included in its plan of provision) previously. We will need to advise the Secretary of State by the end of February of any organisations in this position. We will therefore review over the next few weeks whether there are likely to be any organisations in this position.
 - An organisation that has applied for but not been granted recognition under the 1997 Act (in respect of awarding qualifications and/or credits in respect of different components of qualifications) immediately prior to 1 April 2010 will have its application considered against the recognition criteria set out below for recognition under the 2009 Act, without the need to make a new application.
 - An organisation seeking recognition to award specific qualifications or credits in respect of different components of qualifications after 1 April 2010 will need to meet the relevant recognition criteria set out below.
 - A QCF awarding organisation will be recognised to award those credits in respect of different components of qualifications from 1 April 2010 in respect of which it is recognised immediately prior to 1 April 2010.
17. In addition, as explained below in paragraph 31, all forms of qualifications that have been accredited under the 1997 Act would be treated from 1 April 2010 as if accredited under the 2009 Act. Initially, all qualifications will continue to be subject to the accreditation requirement. Thus, until Ofqual decides otherwise, as well as seeking recognition against the relevant recognition criteria for any new qualifications it wished to award, an awarding organisation would also be required to submit forms of those qualifications for accreditation against the relevant accreditation criteria specified in this document.
18. The default position set out in the 2009 Act is that accreditation will not be required for every qualification. We expect to move to a position where for many specified qualifications or descriptions of qualifications the recognition criteria, conditions and monitoring arrangements will allow us to be confident that a recognised awarding organisation will be able to develop, deliver and award high-quality regulated qualifications and to maintain standards without being subject to the accreditation requirement. We would hope to be able to move to this position by September 2010, subject to the responses to our consultation.

Recognition criteria

19. The recognition criteria that we propose to use initially are set out below. In due course these criteria may be amended. Even if we choose to adopt and/or amend some of these criteria in the period after vesting, we will not move to a position where accreditation is no longer needed until we are ready to do so. We therefore propose that any consultation on new or revised criteria conducted prior to 1 April 2010 should be regarded as consultation under the 2009 Act to inform the preparation and publication of new or revised criteria from 1 April 2010.
20. The 2009 Act will remove the requirement in the 1997 Act that regulated qualifications should be awarded by an outside organisation that is one that has not been involved in delivering or teaching those qualifications. This means that from 1 April 2010 organisations that deliver and teach qualifications will also be able to apply to be recognised as awarding organisations. Consequently, the requirements for externality that are embedded in the current regulatory arrangements will need to change. From 1 April 2010 all awarding organisations will need to show how they are managing potential conflicts of interest. An awarding organisation that is awarding a qualification it has taught will need, in particular, to show how it is separating functions to avoid conflicts of interest in order to avoid undermining confidence in the qualifications it awards. Criterion 5(d) in *The statutory regulation of external qualifications in England, Wales and Northern Ireland, 2004* (the 2004 regulatory arrangements) requires awarding organisations to make a clear distinction between their awarding function and other functions within or across organisations and to manage any potential for conflict of interest or restrictive practices. We will require an awarding organisation seeking recognition to demonstrate how it meets this criterion. In addition, in paragraph 28 we have proposed a general condition of recognition setting out how conflicts of interest must be managed. This approach has been informed by our experience of working with employers who wish to award qualifications to their staff for training that they have provided.
21. *Recognition criteria to award qualifications in the National Qualifications Framework (NQF):*

For awarding organisations wishing to award qualifications in the NQF we propose to use the criteria set out in the 2004 regulatory arrangements, including:

- the common criteria for all qualifications set out on pages 17 to 23
- the certificate design requirements set out in appendix 5 on pages 41 to 42 (this document can be found at [http://www.ofqual.gov.uk/files/6944_regulatory_criteria_04\(1\).pdf](http://www.ofqual.gov.uk/files/6944_regulatory_criteria_04(1).pdf))

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications (for example functional skills or GCSE) and specific sector/subject areas (for example engineering or mathematics).

a. Recognition criteria to award other general qualifications, occupational qualifications, vocationally related qualifications (VRQs) and free-standing mathematics qualifications (FSMQs)

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 45 to 62 set out on pages 17 to 23 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

b. Recognition criteria to award Entry level qualifications:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 68 to 70 set out on pages 24 to 25 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

c. Recognition criteria to award adult literacy and numeracy qualifications:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 71 to 75 set out on page 25 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

d. Recognition criteria to award English for speakers of other languages (ESOL) qualifications:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criterion 76 set out on page 25 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

e. Recognition criteria to award key skills qualifications:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 77 to 80 set out on page 26 of the 2004

regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

f. Recognition criteria to award GCSEs:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in the GCSE qualification criteria published in June 2008, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications. You can find these criteria at http://www.ofqual.gov.uk/files/qca-07-3469_gcse_qualification_criteria.pdf

g. Recognition criteria to award GCEs:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in the GCE AS and A level qualification criteria published in February 2007, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications. You can find these criteria at http://www.ofqual.gov.uk/files/GCE_AS_and_A_level_qualification_criteria_Feb_07_final_version_2_.pdf

h. Recognition criteria to award Advanced Extension Awards:

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 90 to 93 set out on pages 30 and 31 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

i. Recognition criteria to award National Vocational Qualifications (NVQs):

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 94 to 100 set out on pages 31 and 32 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

j. Recognition criteria to award qualifications at level 4 and above (higher levels):

For awarding organisations wishing to award these qualifications we propose to use the criteria for awarding organisations' procedures, criteria 1 to 42 set out on pages 9 to 16 of the 2004 regulatory arrangements.

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award each of the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both specific descriptions of qualifications and specific sector/subject areas. We therefore propose to develop into transitional recognition criteria the procedural requirements embedded in criteria 101 to 103 set out on page 32 of the 2004 regulatory arrangements, so that we can ensure that organisations have the necessary resources and expertise to award these qualifications.

k. Recognition criteria to award principal learning, project and Diploma qualifications:

For awarding organisations wishing to award Diploma qualifications we propose to use the following criteria from the *Regulatory arrangements for component and Diploma awarding bodies: recognition criteria and operating rules*, version 2, 2008:

- recognition criteria for component awarding organisations set out on pages 3 to 19
- recognition criteria for all Diploma awarding organisations set out on pages 20 to 22.

You can find the current version of this document at http://www.ofqual.gov.uk/files/Ofqual_Operating_Rules_web.pdf. An updated version of this document is due to be published in May 2010, following consultation with relevant awarding organisations. As stated in paragraph 19 and elsewhere, any consultation started prior to 1 April 2010 will continue. We also propose that any consultation for these purposes conducted under the 1997 Act should be regarded as consultation under the 2009 Act.

1. Recognition criteria to award functional skills qualifications:

For awarding organisations wishing to award functional skills qualifications we propose to use the procedural requirements embedded in the functional skills qualifications criteria. You can find these criteria at <http://www.ofqual.gov.uk/files/2009-11-functional-skills-qualifications-criteria.pdf>.

22. *Recognition criteria to award qualifications and credits in respect of different components of qualifications in the Qualifications and Credit Framework (QCF):*

For awarding organisations wishing to award qualifications and credits in respect of different components of qualifications⁶ in the QCF we propose to use the following requirements from the *Regulatory arrangements for the QCF*, 2008 (the QCF regulatory arrangements):

- general requirements for all organisations recognised to operate in the QCF set out on pages 19 to 21

⁶ QCF awarding organisations are responsible for developing assessment arrangements for components and qualifications and submitting qualifications for accreditation. Awarding organisations are also responsible for awarding credits to learners for the achievement of components, awarding qualifications and recording learners' achievements. Organisations may also choose to develop and submit components for use by awarding organisations as part of accredited qualifications within the QCF.

- requirements for awarding organisations set out on pages 26 to 33
- the design requirements for credit certificates and qualification certificates set out in annexes C and D of the regulatory arrangements on pages 44 and 45.

You can find this document at

http://www.ofqual.gov.uk/files/Regulatory_arrangements_QCF_August08.pdf

We will require awarding organisations to demonstrate that they have the necessary resources and expertise to award the specific qualifications for which they are seeking recognition. This means that an awarding organisation will have to show that it has the resources and expertise to offer both QCF qualifications and specific sector/subject areas (for example engineering or music).

Submitting components and rules of combination for use in the QCF

23. Organisations may develop components⁷ and rules of combination for use in QCF qualifications. These roles can be undertaken by an awarding organisation awarding qualifications and credits in respect of different components of qualifications or as stand-alone activities by other organisations.
24. We propose that any organisation that has met the requirements for submitting components and rules of combination for use in the QCF immediately prior to 1 April 2010 should be able to continue to submit components and rules of combination from 1 April 2010. We also propose that any organisation whose application to meet these requirements has not been completed immediately prior to 1 April 2010 should continue to be considered against the relevant requirements set out below from 1 April 2010.
25. We propose that any organisation wishing to develop and submit components and rules of combination after 1 April 2010 would have to meet the following requirements from the QCF regulatory arrangements (see paragraph 22), whether or not they also award qualifications or credits in respect of different components of qualifications:
 - general requirements for all organisations operating in the QCF set out on pages 19 to 21
 - requirements for organisations developing and submitting components to form part of accredited (in future regulated) qualifications set out on pages 22 to 23; and/or (as applicable) requirements for organisations developing rules

⁷ Components are also known as units in the QCF.

of combination for accredited (in future regulated) qualifications set out on pages 24 to 25.

You can find the QCF regulatory arrangements at http://www.ofqual.gov.uk/files/Regulatory_arrangements_QCF_August08.pdf

26. We propose that any QCF awarding organisation wishing to award qualifications or credits in respect of different components of qualifications should only use components and rules of combination that have been developed by organisations meeting the requirements set out above. We therefore propose to include a general condition to this effect; please see paragraph 28 below.

General conditions of recognition

27. The 2009 Act will require us to set and publish general conditions of recognition that awarding organisations will be required to meet. Enforcement action can be taken if the conditions are not met. In the past we have had a general expectation that awarding organisations should continue to meet the criteria against which they are recognised, and that required awarding organisations to meet requirements such as following codes of practice. Initially, we therefore propose to set in place some clear and simple general conditions that will:

- allow us to meet our statutory obligations
- ensure that awarding organisations continue to meet the regulatory requirements expected of them
- avoid imposing unnecessary burdens on awarding organisations.

28. We therefore propose to apply the following general conditions of recognition from 1 April 2010.

An awarding organisation must:

- continue to meet the relevant recognition criteria for the qualifications or credits in respect of different components of a qualification that it has been recognised to award
- continue to comply with the accreditation criteria, any regulatory arrangements and any codes of practice specifically applying to the regulated qualifications or components that it is awarding as set out at Annex B
- only award QCF qualifications that comprise components or rules of combination that have met the relevant requirements and been developed by organisations that have also met the relevant requirements

- inform Ofqual if it intends not to award a specific qualification for which it is recognised
- ensure that all conflicts of interest that might impact on the credibility of the regulated system, including those arising from the provision of education and/or training and the award of the resulting qualification, are managed appropriately
- deal with Ofqual in an open, cooperative way and disclose to Ofqual any information or issues of which a regulator would reasonably expect to be aware
- provide any other information that Ofqual reasonably considers necessary for the discharge of its functions and achievement of its objectives
- inform Ofqual of any qualifications and components that they award.

29. In due course these general conditions may be amended.

Other conditions of recognition

30. The 2009 Act will allow us to apply other conditions of recognition (that is conditions that are not general and apply to a specific body) at the time of recognition or later. We propose that any recognition or accreditation terms⁸ or conditions imposed under the 1997 Act, which remain applicable immediately before 1 April 2010, should become conditions of recognition under the 2009 Act from 1 April 2010.

Accreditation of qualifications

31. We want to ensure that from 1 April 2010 all currently accredited forms of qualifications can continue to be awarded to learners and that new high-quality qualifications can be made available to learners. Therefore we propose that all forms of qualifications that are accredited immediately before 1 April 2010 should be treated as accredited under the 2009 Act. Any conditions on accreditations still applicable immediately before 1 April 2010 will become specific recognition conditions under the 2009 Act, with the same effect.

Qualifications subject to the accreditation requirement

32. Unlike the 1997 Act, the 2009 Act will not require every regulated qualification awarded by a recognised awarding organisation to be individually accredited in

⁸ The terms and conditions to which each awarding organisation is subject, as imposed at the time of recognition, accreditation or otherwise.

order to be a regulated qualification; instead, only those qualifications or awarding organisations that we specifically determine shall be subject to the accreditation requirement. In the longer term we expect to move to a position in which the requirement for accreditation is based on a risk assessment of recognised awarding organisations and the regulated qualifications they award. Any specific requirements relating to particular qualifications that were not subject to the accreditation requirement would be imposed through general recognition conditions. However this position will only be reached following further consultation and engagement with stakeholders. We therefore propose that from 1 April 2010, until we are ready to change the position, all qualifications will continue to be subject to the accreditation requirement.

33. The 2009 Act stipulates that we may not accredit forms of qualifications if the submission does not meet the applicable accreditation criteria. Any reference in any of the various criteria, terms and conditions or codes of practice that are proposed for use under the transitional arrangements to conditional accreditation⁹ should be read in light of this change.
34. We propose that any applications for accreditation that have not been completed immediately prior to 1 April 2010 should continue to be considered against the relevant accreditation criteria set out below from 1 April 2010.

Accreditation criteria

35. We therefore propose that, initially, the existing accreditation criteria should continue to apply as follows. Even if we choose to amend some of these criteria in the period after vesting, we will not move to a position where accreditation is no longer needed until we are ready to do so. We will aim to move to the position where we can start removing the accreditation requirement for some qualifications by September 2010, subject to views on the consultation on the longer term arrangements. We therefore propose that any consultation on new or revised criteria conducted prior to 1 April 2010 should be regarded as consultation under the 2009 Act to inform the preparation and publication of new or revised criteria from 1 April 2010.
36. For NQF qualifications we propose to apply the following qualification specific criteria.

⁹ Under the 1997 Act Ofqual was able to impose accreditation conditions on qualifications that had been submitted for application, where some aspect of the accreditation criteria had not been met in full. The conditions required the awarding organisation to meet that part of the criteria in full by a specified date. Where such conditions were imposed accreditation was conditional on those conditions being met within the specific timeframe. There is no power under the 2009 Act to impose such conditions in future.

- GCSEs and GCEs: You can find subject criteria at <http://www.ofqual.gov.uk/743.aspx> and <http://www.ofqual.gov.uk/471.aspx>
- Diploma qualifications: We propose to use the Criteria for the accreditation of Foundation, Higher and Advanced Diploma qualifications, 2009, which you can find at http://www.ofqual.gov.uk/files/OAC_diplomas_v2.pdf and the relevant current line of learning criteria, which you can find at <http://www.ofqual.gov.uk/788.aspx>. Updated versions of the phase 1 and 2 Diploma lines of learning criteria are due to be published in January 2010. An updated version of the Criteria for the accreditation of Foundation, Higher and Advanced Diploma qualifications is due to be published in March 2010. As stated in paragraph 35 and elsewhere any consultation started prior to 1 April 2010 will continue. We also propose that any consultation for these purposes conducted under the 1997 Act should be regarded as consultation for the purposes of the 2009 Act.
- Functional skills qualifications: We propose to use the criteria for functional skills qualifications and the criteria for functional skills qualifications in English, mathematics and ICT. You can find these at <http://www.ofqual.gov.uk/2578.aspx>

37. Initially, we propose to use the following criteria for QCF qualifications:

- QCF qualifications: We propose to use the qualification requirements set out on pages 34 and 35 of the regulatory arrangements, which you can find at http://www.ofqual.gov.uk/files/Regulatory_arrangements_QCF_August08.pdf

Register

38. The 2009 Act will require us to publish a register of recognised awarding organisations and the regulated qualifications that they award and those they are recognised to award.

39. We therefore propose to:

- publish a list of all the organisations that we have recognised to award qualifications on the National Database of Accredited Qualifications (NDAQ) (the list is currently available at <http://www.accreditedqualifications.org.uk/awarding-body/awarding+body+directory.seo.aspx> and sets out all recognised awarding organisations that have accredited qualifications; we will keep this list under review to ensure that it is up to date)
- make available the database of regulated qualifications, which you can find at <http://www.accreditedqualifications.org.uk>

- make available, for each recognised awarding organisation that had not had forms of qualifications accredited (either because an application has yet to be received or because a decision on an application is pending) a list of those qualifications that it has notified us it intends to submit, or has submitted, for accreditation (as approved by us and included in its plan of provision) immediately prior to 1 April 2010.
40. Taken together, these lists will allow learners and other stakeholders to identify recognised awarding organisations and the regulated qualifications and components that are available to them. The arrangements outlined above will allow us to publish most of the information required by the 2009 Act, albeit not in a single register. We therefore propose to use these arrangements initially until we are able to develop and introduce a single register, and will recommend that transitional provisions be made accordingly. This information will be published in cooperation with fellow qualifications regulators in Wales and Northern Ireland and will therefore cover recognised awarding organisations and the regulated qualifications they are recognised to award in England, Wales and Northern Ireland.
41. Those provisions of the 2009 Act relating to the assignment of guided learning hours (GLHs) to qualifications for the purposes of the Education and Skills Act 2008 (that is relating to raising the participation age) will not be commenced immediately. Information about GLHs will not therefore be made available. However once these provisions are to be commenced we will take appropriate steps to notify stakeholders and to include information about GLHs in the register.
42. We will take account of responses to the separate consultation on the future exercise of our new statutory functions and develop and introduce a consolidated register in due course. We will work closely with awarding organisations and other stakeholders to develop a register that is fit for purpose for longer term use.

Investigation of complaints

43. The 2009 Act will give us the power to investigate, or make arrangements for the investigation of, complaints in relation to the award of qualifications.
44. We currently undertake the investigation of complaints in respect of a variety of matters relating to the award of qualifications. Certain complaints are investigated by the Examinations Appeals Board (EAB).
45. We propose that all complaints with which we are dealing and that are outstanding immediately before 1 April 2010 should remain under investigation either by us or under arrangements made by us.

46. The 2009 Act also gives us the power to arrange for the investigation of complaints by an independent party. We propose, in this connection, that for at least the initial period the EAB should continue to operate in its current form, within the same remit, from 1 April 2010 and that complaints already under investigation by the EAB should continue to be investigated by it but on our behalf. We plan to appoint the EAB as an independent party for investigating complaints under section 150(2) of the Act.
47. We propose to conduct a joint consultation with regulators in Wales and Northern Ireland about the arrangements for investigating complaints that should be put in place in the longer term, both in relation to those matters currently investigated by Ofqual itself and those currently investigated by the EAB.

Power to give directions and to withdraw recognition

48. Under the 1997 Act we are able to direct an awarding organisation to comply with an accreditation condition where it has failed or is likely to fail to comply with such a condition and that failure prejudices or is likely to prejudice the proper award of the qualification or any person who might be expected to seek to obtain the qualification. To the extent that an awarding organisation has breached an accreditation condition or any of the terms or conditions to which recognition or accreditation are subject prior to 1 April 2010, it will be treated as a breach of a specific condition of recognition, as set out in paragraph 30.
49. Under the 2009 Act directions must relate to compliance with conditions of recognition, as opposed to conditions on accreditation, which we propose, as set out in paragraph 30, will be specific conditions to recognition from 1 April 2010.
50. We propose that, to the extent that any directions have been made in respect of accreditation immediately prior to 1 April 2010, they should continue in place from 1 April 2010 as directions made against the corresponding specific recognition condition (see paragraph 30).
51. Similarly, we propose that any enforcement action taken before 1 April 2010 in a case in which no direction has been made under the 1997 Act should be treated on and after that date as if the action had been taken under the 2009 Act.
52. The Act also gives us the power to withdraw recognition if an awarding organisation has failed to comply with a condition of recognition. We have indicated the general conditions that we propose to apply generally from 1 April 2010 and the Act also allows us to impose other conditions of recognition at the time of recognition or later. Those that we propose should apply to recognition as at 1 April 2010 are explained in paragraphs 27 to 30.

53. Following vesting we will monitor compliance with both general and other conditions of recognition. If we identify any instances of non-compliance we will take appropriate action, which could include issuing a direction to ensure compliance where non-compliance prejudices or is likely to prejudice the proper award of a qualification or persons seeking or expected to seek that qualification. Where a direction would be inappropriate or an awarding organisation is unable to comply we would consider withdrawing recognition for some or all of the regulated qualifications that the awarding organisation awards.
54. Initially, we propose to use the procedures set out in Annex A for issuing a direction and withdrawing recognition, including the independent review of a decision to withdraw recognition. The procedures are part of our separate consultation on fulfilling our new statutory functions in the longer term. However we believe that they provide a suitable starting point for the arrangements under the new regulatory regime.
55. To the extent that we are in the process of withdrawing recognition or accreditation immediately prior to 1 April 2010, that process will continue from 1 April 2010 and we will, as appropriate, propose that transitional provisions be made for these purposes. In relation to the detail over withdrawal of accreditation, we propose that any steps taken prior to 1 April 2010 would be treated as steps taken to withdraw recognition in respect of a specified qualification or qualifications from 1 April 2010.

The qualifications regulatory framework

56. The 2009 Act will require us to publish a document setting out how we will regulate and our expectations of recognised awarding organisations. As with recognition and accreditation criteria wherever possible we would propose to maintain the status quo. Therefore until Ofqual determines the longer term arrangements it wishes to put in place we expect to continue to regulate in line with *Regulatory monitoring and reporting, 2007*, which sets how we monitor awarding organisations and accredited qualifications, and report the outcomes of our monitoring activities, and we expect awarding organisations to refer to the guidance in the *Recognition and accreditation handbook for awarding organisations*. You can find these documents at http://www.ofqual.gov.uk/files/gca-07-3024_regulatory_monitoring_reporting.pdf and <http://www.ofqual.gov.uk/files/2009-08-recognition-and-accreditation-handbook.pdf>
57. In the period following 1 April 2010 we propose to prepare and publish a regulatory framework that covers regulated qualifications. This document will be developed through consultation with relevant stakeholders. We will notify awarding organisations when this document will come into effect. In the

meantime we do not propose to publish a qualifications regulatory framework for regulated qualifications.

Part 2: The regulation of assessment arrangements

58. We propose to put in place the following arrangements for regulated assessment arrangements, and will propose to the Secretary of State transitional arrangements to implement them where necessary.

The assessment arrangements regulatory frameworks

Regulating assessment arrangements

59. The 2009 Act will require us to keep all aspects of statutory national curriculum and EYFS assessment arrangements under review. We propose initially to focus our review activities on:
- facilitating the successful delivery of national curriculum tests in summer 2010 through monitoring
 - collecting information and data about other statutory national curriculum assessments in order to develop a regulatory approach, including the preparation and publication of the national curriculum regulatory framework to be put in place in the longer term
 - collecting information and data about statutory EYFS assessments in order to develop our regulatory approach, including the preparation and publication of the EYFS regulatory framework to be put in place in the longer term.
60. We will work closely with the Secretary of State and responsible bodies to agree an appropriate approach that will allow us to collect relevant information and to develop procedures for notifying any significant failings. We propose to use the following risk factors to assess whether further monitoring is necessary and, where appropriate, to inform any decision to notify the Secretary of State and relevant responsible bodies of a significant failing:
- the potential impact on pupils and public confidence in the assessment arrangements
 - evidence that responsible bodies are unable to demonstrate that the requirements of the relevant regulatory framework are being satisfactorily met
 - any failure of a responsible body to provide information requested by Ofqual in line with the provisions of the 2009 Act
 - evidence from stakeholder engagement activities that indicates the statutory purposes of the assessment arrangements are not being met
 - the publication of new guidance and support materials

- potential impact of failure on pupils and public confidence in the assessment arrangements
 - substantiated complaints received
 - concerns based on relevant and objective information provided by Ofsted.
61. There are some additional factors that would lead us to conclude that particular assessment arrangements need particularly close monitoring, including:
- outcomes of self-assessment exercises undertaken by responsible bodies
 - significant changes to the assessment model and associated quality assurance or moderation arrangements
 - the publication of new guidance and support materials.

These risk factors are taken from our separate consultation but we believe that they provide an appropriate approach for the period immediately after vesting.

Guidance for responsible bodies

62. From 1 April 2010 our regulatory focus will be on the safe delivery of national curriculum assessments, in particular the statutory tests. We therefore propose that initially the guidance for national curriculum responsible bodies included in the regulatory framework should comprise the *National curriculum assessments: regulatory framework, 2010* and the *National curriculum assessments: code of practice, 2010*.
63. *National curriculum assessments: regulatory framework, 2010* will provide the criteria and identify the processes that we will apply to the regulation of statutory national curriculum assessments. You can find the current version of this document at <http://www.ofqual.gov.uk/files/2009-02-nc-assessments-rf.pdf> . An updated version is due to be published in January 2010.
64. *National curriculum assessments: code of practice, 2010* will provide the criteria and identify the processes that we will apply to the regulation of national curriculum assessments and ensure that the assessments reflect the requirements of the national curriculum and that the results are a true reflection of pupils' level of achievement. You can find the current version of this document at <http://www.ofqual.gov.uk/files/2009-02-nc-assessments-code-of-practice.pdf> . An updated version is due to be published in January 2010.
65. In the early months following vesting we propose to finalise preparation of a regulatory framework that covers national curriculum and EYFS assessment arrangements. This document will be developed through consultation with

relevant stakeholders and we anticipate that it will be published by October 2010. We will notify relevant responsible bodies when this document will come into effect. In the meantime we do not propose to publish a regulatory framework for EYFS assessment arrangements.

Comments on the proposals

66. We are keen to ensure that awarding organisations and responsible bodies understand the proposed transitional arrangements. We would therefore welcome comments and suggestions on the proposed arrangements. We would also be happy to respond to requests for clarification on any of the proposed arrangements. Awarding organisations and responsible bodies can comment on the proposals by emailing transitionals@ofqual.gov.uk. Alternatively, they can send written comments, or a request for clarification, to:

Regulatory Policy Team, Ofqual, Spring Place, Coventry Business Park, Herald Avenue, Coventry, CV5 6UB.

67. The deadline for comments is noon on 25 January 2010.

The way forward

68. We will consider comments on the proposed transitional arrangements and, where necessary and appropriate, whether any changes should be made to the proposed transitional arrangements before they are finalised. We need to provide initial advice to the Secretary of State by the end of February 2010 on the transitional arrangements that should be put in place.
69. We plan to publish our advice on transitional arrangements by mid-March 2010. The Secretary of State will be able to draw on or cross-refer to our advice in his commencement order. We will then notify awarding organisations and appropriate responsible bodies to inform them of the transitional arrangements that will be put in place from 1 April 2010 and set out any action they need to take.
70. Following our initial consultation and subsequent consultations with stakeholders we will publish an implementation timetable for the longer term changes we propose to introduce.

Annex A: The purpose of these procedures

The following text is taken from our separate consultation on how we should fulfil our new statutory functions as set out in the 2009 Act. The procedures are included here to provide awarding organisations with clarity about how we would direct them or go about withdrawing recognition following vesting on 1 April 2010, but before Ofqual has had an opportunity to implement its own longer term procedures.

Proposed procedures for directing an awarding organisation and withdrawing recognition (including an independent review)

Making a direction

1. We may direct an awarding organisation to take or refrain from taking specified steps if it fails or is likely to fail to comply with any condition to which recognition is subject, and if that failure prejudices or is likely to prejudice:
 - the proper award or authentication by the organisation of any qualification in respect of which the organisation is recognised or
 - learners who might reasonably be expected to seek to obtain such a qualification.
2. We will first give notice of our intention to give a direction.
3. A decision to give notice of our intention to make a direction will be taken by a member of Ofqual's staff authorised by the Chair of Ofqual's Board to take such a decision. The decision may be taken in consultation with colleagues from Ofqual or from the regulators in other parts of the UK, Ofqual's Chair, and other experts including members of Ofqual's Board. Such a decision will be informed by consideration of the following:
 - evidence that a recognition condition(s) has been breached
 - whether the breach has or is likely to prejudice:
 - the proper award or authentication by the organisation of any qualification in respect of which the organisation is recognised or
 - learners who might reasonably be expected to seek to obtain such a qualification
 - whether the awarding organisation accepts that the condition(s) has been breached

- actions already taken to encourage the awarding organisation to comply with the condition(s)
 - actions taken by the awarding organisation to comply with the condition
 - whether any steps proposed by the awarding organisation will secure compliance with the condition(s), and
 - whether the timescale proposed for compliance is reasonable, taking into the account the nature of the steps required and the risks to the qualification/learners.
4. A record will be kept of the evidence considered. If we decide to give a direction the awarding organisation's accountable officer will be sent:
- formal notice of the reasons why it is proposed that a direction should be given, the nature of the proposed direction and of the period during which representations about the proposed direction may be made by the awarding organisation
 - information about the procedure to be followed to make representations
 - information about the steps that will be taken to enforce the direction, if it is given.
5. Notice will be sent by email and by post and it will be assumed that the notice was received on the date the email was sent, unless there is evidence to the contrary. Representations will need to be made in writing to Ofqual and submitted by email and by post to the designated officer named in the notice. Representations will normally need to be received by us within 30 working days of receipt of the notice. This period may be reduced where there is an urgent need to bring about action in order to protect the interests of learners or secure that standards are maintained. The representations should address the reasons for the proposed direction included in the notice, the reasonableness of the proposed direction(s) and the timescale given for compliance.
6. Any representation received from an awarding organisation will be considered by the person who made the decision to issue the notice, in consultation with the Chair of Ofqual's Board, other experts, including board members, colleagues from Ofqual or from regulators in other parts of the UK.
7. It may be decided that:
- the proposed direction should be given or
 - an amended direction should be given, without further notice or

- no direction should be given or
 - further information should be requested from the awarding organisation, within a given time period, to support its representations, following consideration of which a decision will be taken to give the proposed or an alternative direction
 - the decision to give a direction should be substituted with a decision to give notice of an intention to withdraw recognition.
8. Where we exercise our power to direct an awarding organisation to take or refrain from certain action, and the organisation fails to do so in accordance with the direction, we may apply to the court for an order stating that it must comply. A failure to comply with a court order compelling the awarding organisation to do as directed may result in contempt of court.

Giving notice of intention to withdraw recognition from an awarding organisation

9. We may withdraw recognition from the awarding organisation, in full or in respect of specified qualifications or a description of qualifications, if an awarding organisation has failed to comply with any condition to which recognition is subject and that failure prejudices or is likely to prejudice:
- the proper award or authentication by the awarding organisation of any qualification in respect of which it is recognised or
 - learners who might reasonably be expected to seek to obtain such a qualification.
10. We will first need to give notice of our intention to do so.
11. A decision to give notice of our intention to withdraw recognition will be taken by a member of Ofqual's staff authorised by the Chair of Ofqual's Board to take such a decision. The decision may be taken in consultation with colleagues from Ofqual or from the regulators in other parts of the UK, the Chair of Ofqual's Board, and other experts including members of Ofqual's Board. The following will be considered before any decision is taken:
- the evidence that a recognition condition(s) has been breached
 - whether the breach has or is likely to prejudice:
 - the proper award or authentication by the awarding organisation of any qualification in respect of which the awarding organisation is recognised or

- learners who might reasonably be expected to seek to obtain such a qualification
 - whether the awarding organisation accepts that the condition(s) has been breached
 - actions taken to encourage the awarding organisation to comply with the condition(s), including whether a direction has been given and, if so, actions taken to ensure compliance
 - what steps have been taken by the awarding organisation to ensure compliance with the condition(s)
 - the impact withdrawal of recognition would have on learners
 - the nature of any saving or transitional provisions to be made to protect the interests of learners or for any other reason.
12. A record will be kept of the evidence considered. If a decision is taken to withdraw recognition, notice of this decision will be sent to the awarding organisation's chair (or equivalent) and to its accountable officer. This will provide:
- formal notice of the reasons why it is proposed that recognition should be withdrawn, the date of the proposed withdrawal, whether the proposed withdrawal is in respect of all or particular qualifications or types of qualification only, and the period during which representations about the proposal may be made by the awarding organisation
 - any saving or transitional provisions that we intend to make to protect the interests of learners or otherwise
 - information about the procedure to be followed to make representations.
13. Notice will be sent by email and by post and it will be assumed that the notice was received on the date the email was sent, unless there is evidence to the contrary. Representations will need to be made in writing to Ofqual and submitted by email and by post to the designated officer named in the notice. Representations must normally be made within 30 working days of receipt of the notice. This may be reduced if it is considered that there is an urgent need, in the interests of learners or the security of standards of regulated qualifications, to expedite the timetable for a final decision to be made. The representations should address the reasons for the proposed withdrawal of recognition included in the notice.

14. Any representation received from an awarding organisation will be considered by the person who made the decision to issue the notice, in consultation with the Chair of Ofqual's Board, other experts, including board members, colleagues from Ofqual or from regulators in other parts of the UK.
15. The following decisions may be made:
 - the withdrawal should proceed as proposed in the notice
 - the withdrawal should proceed subject to an amendment to the timing of the withdrawal and/or the scope of the withdrawal
 - the notice should be rescinded and replaced with a notice of an intention to give a direction
 - further efforts should be made to ensure compliance with a direction previously given
 - the notice should be rescinded
 - that further information to support its representations should be sought from the awarding organisation, within a given time period, following consideration of which the post holder will decide which of the actions above should be taken.

Independent review of a decision to withdraw recognition

16. An awarding organisation may request a review of a decision to withdraw recognition. If such a request is made, we are required under the Act to appoint an independent person to undertake the review.
17. The independent reviewer will consider the evidence that informed the original decision and any representations made by the awarding organisation. The independent reviewer may also seek advice from experts, but the decision would be taken by the reviewer alone.
18. A request for a review must be submitted by the awarding organisation in writing no more than 30 working days after receipt of the confirmed decision to withdraw recognition. The review of the decision would normally be completed within 60 working days of the receipt from the awarding organisation of a request for a review of the decision.
19. The independent reviewer will consider whether:
 - the process used to make the original decision to withdraw recognition was fair and reasonable

- the decision was unreasonable in light of the information available at the time the decision was taken.

20. The independent reviewer may:

- confirm the process by which the original decision was taken was fair and reasonable
- direct that the matter be reconsidered by Ofqual and make any specific directions to Ofqual to consider particular evidence or remedy any defects in its process.

Annex B: Codes of practice and operational rules

As proposed in paragraph 28 compliance with these codes of practice will be a general condition of recognition under the 2009 Act.

- The GCSE, GCE and Advanced Extension Award code of practice. You can find the 2009 edition, which is currently being revised, at <http://www.ofqual.gov.uk/files/2009-04-14-code-of-practice.pdf>

A revised version is due to be published in April 2010 and will cover Diploma project qualifications and principal learning qualifications. We propose to apply this version once it is published. We also propose that any consultation for these purposes conducted under the 1997 Act should be treated as consultation for the purposes of the 2009 Act.

- The NVQ code of practice, 2006, which you can find at http://www.ofqual.gov.uk/files/gca-06-2888_nvq_code_of_practice_r06.pdf
- For Diploma qualifications the following operating rules set out in the *Regulatory arrangements for component and Diploma awarding bodies: recognition criteria and operating rules*, version 2, 2008 will apply
 - operating rules for additional specialist learning component awarding bodies
 - operating rules for principal learning and project component awarding bodies
 - operating rules for Diploma awarding bodies.

You can find this document at http://www.ofqual.gov.uk/files/Ofqual_Operating_Rules_web.pdf. An updated version of this document is due to be published in May 2010, following consultation with relevant awarding organisations. We propose to apply this version once it is published. We also propose that any consultation for these purposes conducted under the 1997 Act should be treated as consultation for the purposes of the 2009 Act.

Ofqual wishes to make its publications widely accessible. Please contact us if you have any specific accessibility requirements.

First published by The Office of the Qualifications and Examinations Regulator in 2009.

© Qualifications and Curriculum Authority 2009

Ofqual is part of the Qualifications and Curriculum Authority (QCA). QCA is an exempt charity under Schedule 2 of the Charities Act 1993.

Reproduction, storage or translation, in any form or by any means, of this publication is prohibited without prior written permission of the publisher, unless within the terms of the Copyright Licensing Agency. Excerpts may be reproduced for the purpose of research, private study, criticism or review, or by educational institutions solely for education purposes, without permission, provided full acknowledgement is given.

Office of the Qualifications and Examinations Regulator
Spring Place
Coventry Business Park
Herald Avenue
Coventry CV5 6UB

Telephone 0300 303 3344

Textphone 0300 303 3345

Helpline 0300 303 3346

www.ofqual.gov.uk