

Regulating for confidence in standards

Consultation on the regulation of
qualifications, examinations and
assessments

www.ofqual.gov.uk/consultation



Date: December 2009

Product code: Ofqual/09/4676

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 2009¹ 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.

¹ http://www.opsi.gov.uk/acts/acts2009/pdf/ukpga_20090022_en.pdf

Foreword

Kathleen Tattersall, Chair of Ofqual

As Chief Regulator, I am delighted to announce the launch of the consultation into how Ofqual should meet its objectives and exercise its duties and powers. Ofqual is the new independent regulator of qualifications, examinations and assessments. Ofqual's remit in England covers regulated qualifications and assessments taken by learners of all ages, ranging from assessments of pre-school children to qualifications taken by retired people looking to widen their skills. In Northern Ireland our remit covers vocational qualifications. Ofqual aims to ensure that these qualifications and assessments are reliable, fit for purpose and will retain their worth. We want to support and safeguard qualifications which learners, parents, carers, employers and universities can rely on as a true indicator of achievement. As someone who believes in the power of qualifications to change lives, this subject is close to my heart and I understand the value of working closely with our stakeholders to ensure we have the best regulatory model in place.

Ofqual was created in interim form in April 2008. Before this, regulation of qualifications was carried out by the Qualifications and Curriculum Authority (QCA). The Apprenticeships, Skills, Children and Learning (ASCL) Act, which will make Ofqual an independent body, has now passed through Parliament. We expect that Ofqual will be established as a statutory independent body in April 2010.

Initially we will use transitional and interim measures to enable us to carry forward established approaches to regulation, while we complete our consultations and introduce our new regulatory model in a managed way.

The Act sets out five clear objectives for Ofqual – to secure the standards of regulated qualifications; to promote standards of regulated assessments; to promote public confidence in qualifications and assessment arrangements; to promote awareness and understanding of regulated qualifications and to secure efficiency and value for money in qualifications. Overall, learners are at the heart of all Ofqual does.

To help ensure we meet the objectives set out in the ASCL Act and provide the best service possible, we are now carrying out a full consultation with our stakeholders. We value your views, which we will use to shape the future of Ofqual and the regulation of the qualifications and assessment systems.

What we are consulting on

We would like your feedback on how we should meet our objectives, fulfil our duties and use our powers. The themes of our consultation are set out in this document. Areas covered include our approach to recognising awarding organisations; how we will monitor awarding organisations and the regulated qualifications they offer; the steps we will take when we identify problems and how we will keep all aspects of statutory national curriculum and early years foundation stage (EYFS) assessment arrangements under review.

Consultation period

The consultation period will last from 11 December 2009 to 8 March 2010. During this time we will be speaking to as many stakeholder groups as possible. Ofqual's aim is to build up strong relationships with our stakeholders which will last after this consultation has ended.

Next steps

After the close of this consultation we will reflect carefully on the responses we receive. As our initial proposals are developed and refined we will undertake further consultations where appropriate.

Giving your feedback

You can give us your feedback in a number of ways. We would prefer you to respond using the online form www.ofqual.gov.uk/consultation.

We will also accept responses by email sent to: consultationresponses@ofqual.gov.uk or by post to:

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

The last date for responses is 8 March 2010.

I do hope to hear from as many of you as possible and would welcome comments on any part of our proposals. I hope together we can support and maintain qualifications and assessments of which we can all be proud.

Kathleen Tattersall

Contents

A guide to reading the document

1. Executive summary 6

Part 1 – Overview 19

2. Background to the consultation 19

3. Ofqual’s statutory objectives 22

4. Ofqual’s governance, accountability, working with others, funding and success criteria 24

5. Understanding the terms we use 32

6. The main differences between the current and the new arrangements 36

7. When will the new arrangements be introduced? 38

8. Our approach to regulation and meeting our general duties 39

Part 2 – Regulating qualifications 45

9. Securing the standards of regulated qualifications 45

10. Regulating awarding organisations 47

11. Recognising awarding organisations 49

12. Conditions of recognition 58

13. Qualifications subject to an accreditation requirement 75

14.	Piloting new qualifications	80
15.	The Qualifications and Credit Framework and the National Qualifications Frameworks	83
16.	Monitoring awarding organisations and regulated qualifications	84
17.	Guidance for awarding organisations	91
18.	Enforcement and sanctions	92
19.	Entry and inspection condition	104
20.	Economic regulation	110
21.	Promoting awareness of the benefits of regulated qualifications and promoting confidence in regulated qualifications and assessment arrangements	120
Part 3 – Regulation of statutory national curriculum and EYFS Assessments		124
22.	Regulation of national curriculum and EYFS assessments	124
Part 4 – Responding to the consultation		
23.	How to respond	139
Annexe A		
	Summary of questions	140
Annexe B		
	The five common assessment criteria	148

A guide to reading the document

The part	Why should you read this part?	What do the questions raised in this part cover?
Part 1	<p>To gain an overview of:</p> <p>Ofqual's statutory powers and duties</p> <p>The differences between the current and the new regulatory approach</p> <p>How Ofqual will work</p> <p>The terms used</p> <p>When the new arrangements will be introduced</p>	<p>How Ofqual should measure its performance</p> <p>How Ofqual should fulfil its general duties</p> <p>Steps that Ofqual should take to promote equality and eliminate discrimination in qualifications and assessments</p>
Part 2	<p>To understand proposals for the regulation of general and vocational qualifications in England and of vocational qualifications in Northern Ireland</p>	<p>Securing standards of regulated qualifications</p> <p>Recognition criteria</p> <p>General conditions of recognition</p> <p>Piloting qualifications</p> <p>Monitoring awarding organisations</p> <p>Enforcement and sanctions</p> <p>Promoting efficiency</p> <p>Promoting the benefits of and confidence in regulated qualifications</p>

Part 3	To understand proposals for the regulation of national curriculum and EYFS assessments in England	The assessment criteria Our regulatory priorities risk factor
Part 4	To gain information on how to respond to the consultation	
Annexes	For a summary of the questions asked and the five common assessment criteria	

Regulating for confidence in standards

1. Executive summary

- 1.1 The Apprenticeships, Skills, Children and Learning Act 2009 (the Act) establishes a new, independent regulator of qualifications and national curriculum and EYFS assessments in England and of vocational qualifications in Northern Ireland. The Office of Qualifications and Examinations Regulation, Ofqual, will be independent of Ministers, of national organisations which advise on or develop qualifications and of the organisations which award qualifications. Ofqual will report directly to the UK Parliament and the Northern Ireland Assembly.
- 1.2 The Government plans to make provision to commence the legislation establishing Ofqual from 1 April 2010. Since April 2008, however, Ofqual has been in operation in an interim form, as a distinct part of the Qualifications and Curriculum Authority (QCA).
- 1.3 The new legislation marks a step-change in the way that qualifications and assessments are regulated. It sets out a structure within which Ofqual, as the independent regulator, will maintain standards and public confidence largely by making sure that the organisations which award regulated qualifications have the right systems in place to control the quality of their qualifications. Ofqual will have specific powers to intervene, where necessary, but such interventions will need to be justified by risk.
- 1.4 This document sets out, at a high level, how Ofqual intends to regulate under the new legislation, and how we intend to move from the old regulatory world to the new. We are inviting views on these proposals from all who have an interest in high quality qualifications and assessments. After we have considered the responses to this consultation, Ofqual will consult further on the detailed processes, criteria and frameworks that the Act requires us to develop. In the meantime, we shall seek to paint as clear a picture as possible of the direction of travel as we move towards the approach to regulation envisaged by the Act.

Statutory objectives

1.5 Ofqual will have five statutory objectives. The first two are directly focused on maintaining standards:

The qualifications standards objective is to secure that regulated qualifications:

- a) give a reliable indication of knowledge, skills and understanding, and*
- b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications.*

The assessment standards objective is to promote the development and implementation of regulated assessment arrangements which:

- a) give a reliable indication of achievement, and*
- b) indicate a consistent level of attainment (including over time) between comparable assessments.*

1.6 A further two objectives are directed towards public confidence in regulated qualifications and assessments and public understanding of the benefits of regulated qualifications:

The public confidence objective is to promote public confidence in regulated qualifications and regulated assessment arrangements.

The awareness objective is to promote awareness and understanding of:

- a) the range of regulated qualifications,*
- b) the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and*
- c) the benefits of recognition to bodies awarding or authenticating qualifications.*

1.7 The final objective is concerned with economic regulation:

The efficiency objective is to secure that regulated qualifications are provided efficiently and in particular that any relevant sums payable to a body awarding or authenticating a qualification in respect of which the body is recognised represent value for money.

- 1.8 This document describes what success will look like against each of these objectives. Only awarding organisations which have the appropriate resources, expertise and systems to deliver high quality qualifications will be recognised. Recognised awarding organisations will make sure that the knowledge, skills and understanding required by qualifications are fit for purpose and that valid and reliable assessment methods are used. Ofqual will make sure that the standards of comparable qualifications are maintained between awarding organisations and over time. The public and users of qualifications (including higher education institutions and employers) will therefore be confident in the standards of regulated qualifications. Regulated qualifications will provide value for money. And above all, the legitimate interests of learners will be protected.
- 1.9 Ofqual will report annually to Parliament and the Northern Ireland Assembly on its activities in the previous year against the priorities in its business plan and against the success criteria related to the statutory objectives.

The scope of regulation

- 1.10 We will be able to regulate all qualifications (other than degrees) in England and all vocational qualifications (other than degrees) in Northern Ireland. An organisation will be able to apply to be recognised to award certain regulated qualifications or descriptions of qualifications. If its application is successful, against the criteria we will publish, we will regulate the organisation on an on-going basis.
- 1.11 The legislation does not limit regulation to 'external qualifications', that is, to qualifications that are awarded by an organisation that does not also teach the candidates. This changes the current position. Employers, training providers and colleges, for example, will be able to apply to be recognised to award regulated qualifications to their own learners.
- 1.12 The Secretary of State for Children, Schools and Families is responsible for statutory national curriculum and EYFS assessments. We will keep under review all aspects of these assessment arrangements, publish guidance on the arrangements to which those responsible for the arrangements must have regard, and report to the Secretary of State and to relevant responsible bodies any significant failings. The legislation gives us a new and distinct responsibility for promoting the development and implementation of assessments which maintain standards, and to promote public confidence in assessments. We are seeking views on how we should fulfil this role.

The benefits of regulation

1.13 If you are a learner, regulation by Ofqual will mean that you can be assured that your qualification or assessment outcome will be respected and that the assessments you undertake will be monitored to make sure that they are fair and rigorous. Schools, colleges and independent training providers will have the assurance that the regulated qualifications taken by their students are subject to the highest level of quality assurance and professionalism. Awarding organisations will be able to cite recognition by Ofqual as a 'quality mark' indicating the quality of their qualifications to centres, learners and the wider public. Employers can be confident that a qualification accurately reflects the knowledge, skills and/or competence of the holder and is a fair basis for selecting candidates for appointment. All will have recourse to Ofqual if they have complaints or concerns about the regulated system. The wider public will be able to trust what the independent regulator says about standards in qualifications because they will know that the regulator will always base its conclusions on evidence and report them transparently, whether they are favourable or critical.

Our approach to regulation

1.14 The principles of good regulation will underpin our approach to the regulation of qualifications and assessments. We will strive to regulate in a way that is proportionate, consistent, transparent, targeted and accountable and we invite those who respond to the consultation to evaluate our proposals against these characteristics.

1.15 We will work cooperatively with the qualifications regulators in Northern Ireland (for school qualifications), Wales and Scotland whenever it is appropriate to do so. We currently work particularly closely with the regulators in Northern Ireland and Wales. They are in broad agreement with the proposed direction for future regulation set out in the document. The interests of learners and our duty to minimise the burden of regulation will underpin our efforts to work in this way. Similarly, we will work with other public bodies, where possible, to reduce or streamline our regulatory interventions and minimise bureaucracy.

Securing standards of regulated qualifications

1.16 One of our key duties will be to ensure that standards are maintained in qualifications. We need to make sure that standards are consistent between comparable qualifications. We need to make sure there is comparability both at a given point in time and over time, where appropriate.

- 1.17 We will achieve this by setting regulatory requirements, monitoring qualifications and undertaking comparability studies. This will help us to evaluate the extent to which the assessments associated with qualifications are valid, reliable, comparable, manageable and have minimal bias. We will intervene if we have concerns about standards. Our interest in qualifications standards will include their fitness for purpose. For example, does a vocational qualification meet the needs of the sector for which it is designed and are the knowledge and skills/competence being assessed appropriate? We will have regard to the advice of Sector Skills Councils (SSCs) when we make these judgements.
- 1.18 We will regulate the awarding organisations that offer regulated qualifications. We must regulate so that only an organisation that is capable of, and committed to, maintaining standards and offering an appropriate service to learners and providers, is allowed to offer regulated qualifications. We will need evidence that this capability and commitment is demonstrated and maintained. We will require an awarding organisation to take any action necessary to maintain standards where there is evidence that this is needed. We will have powers to make sure an organisation takes steps to do something, or to stop doing something, where standards or learners are at risk.
- 1.19 Our success in securing the standards of regulated qualifications will be determined by the effectiveness with which awarding organisations operate and with which we regulate them. Much of the consultation document is, therefore, concerned with our proposed approach to regulating awarding organisations.

Regulating awarding organisations

- 1.20 The legislation marks a shift in the focus of regulation from individual qualifications to the organisations that award or authenticate them. We will recognise awarding organisations to develop and offer regulated qualifications. An awarding organisation will be responsible for the quality and standard of its qualifications.
- 1.21 We must make sure the organisations we recognise perform consistently in a way that protects standards and learners, secures public confidence and delivers a high quality of service. An organisation that performs in this way will be subject to a lower level of regulatory intervention than an organisation in which we have less confidence.

- 1.22 We need to design and apply recognition criteria. We will use these criteria when we judge whether an organisation is fit to offer regulated qualifications. We propose that all organisations seeking recognition should be judged against the same generic recognition criteria, regardless of the types of qualifications they wish to offer and the sort of organisation they are. We believe this will promote public understanding of the role and responsibilities of awarding organisations, avoid unnecessary complexities and promote fairness within the qualifications market.
- 1.23 We are consulting on proposed recognition criteria which would enable us to consider, among other things, an awarding organisation's governance, financial viability, quality assurance arrangements, expertise and resources. We are seeking views on the draft criteria and on any other measures we should use to judge whether an organisation is fit to be recognised as an awarding organisation.
- 1.24 Once an organisation is recognised it will be subject to on-going conditions of recognition. An awarding organisation will be required to comply with these conditions. Some of the conditions will be general and will apply to all awarding organisations, or to all organisations offering a particular qualification or description of qualifications. Other conditions may be applied to a particular awarding organisation.
- 1.25 We are seeking views on the conditions that we should set. We propose a set of general conditions that would apply to all awarding organisations. We have indicated when additional conditions might be appropriate. The draft conditions cover areas such as governance, resources and expertise, qualification development and design, assessment, awarding and grading, the provision of information and quality assurance. Awarding organisations would also need to comply with general conditions that apply to the qualifications they offer.

1.26 Some qualifications, or qualifications offered by a particular awarding organisation, will be subject to an accreditation requirement before they may be made available to learners. This means we will check them to decide whether they are fit for purpose and meet the appropriate criteria. We propose a number of circumstances in which it might be appropriate to check qualifications before they are made available, namely:

- when we recognise an organisation that has no track record of awarding regulated qualifications
- when an awarding organisation is recognised to offer a new type of qualification which would require new ways of working, or approaches to qualification design or assessment
- when a new type of qualification is introduced that will be taken by large numbers of learners
- when there are concerns about qualifications offered by a particular awarding organisation

1.27 From time to time other circumstances may arise when an accreditation requirement will be appropriate.

1.28 This approach would ensure that we target most attention to organisations and to qualifications that present a higher risk to learners and to standards. It will allow us to decide, if appropriate, to make some qualifications for young people (for example, GCSEs, A levels and Diplomas) subject to the accreditation requirement, at least in the initial period after Ofqual starts operating. However, where we decide to impose the accreditation requirement, we shall need to consult as necessary and be able to justify that requirement against our criteria.

Monitoring and enforcement

1.29 It is in an awarding organisation's own interests to act reasonably and sensibly. It otherwise risks damaging its reputation and, therefore, its success. However, if an awarding organisation does not act in this way we will have the power to act robustly to protect learners and maintain confidence in the system.

- 1.30 We must put in place a ‘qualifications regulatory framework’. This framework will describe how we will monitor awarding organisations, give them guidance on their compliance with conditions and with regard to specific qualifications and set out what we will do when we find that an awarding organisation is not complying with its conditions of recognition. We propose an approach to monitoring that is risk-based, targeted and proportionate. In this context we propose that we should develop a risk profile of each awarding organisation. In the interests of transparency we propose that an awarding organisation should know the level of risk that we believe it presents to learners, to standards and to public confidence.
- 1.31 We propose that we should make use of a range of tools and techniques to monitor an awarding organisation’s compliance with its recognition conditions. These include desk-based analysis of evidence of compliance, meetings with representatives of the awarding organisation, review of the effectiveness of an awarding organisation’s own quality assurance arrangements and scrutiny of samples of an awarding organisation’s qualifications.
- 1.32 An awarding organisation will be expected to cooperate with our monitoring activities. This expectation is reflected in the draft recognition criteria and conditions. The Act will enable us to impose an entry and inspection condition on an awarding organisation, if this is necessary to enable us to be satisfied that standards are being maintained or to determine whether a fee-capping condition should be applied, and, if so, what the condition should be. We set out and seek views on our proposed approach to the exercise of this power.
- 1.33 We will be able to impose sanctions on an awarding organisation when it is necessary to do so. The seriousness of the non compliance and the urgency with which it needs to be corrected will determine which sanction should be used.
- 1.34 We propose that, where appropriate, an awarding organisation should be required to address an issue of non-compliance by a specific date. We would then check that it had done so. Under the Act we will be able to give a direction to an awarding organisation that has failed to comply with a condition and which results in prejudice to the proper award of a qualification or to learners. The direction may require an awarding organisation to take or refrain from taking specific steps to achieve compliance. Such a direction will be enforceable through the courts, if necessary.

1.35 We will also be able to withdraw recognition from an awarding organisation, so that it is no longer able to offer some or all of its qualifications as regulated qualifications. The Act requires us to give notice to an awarding organisation if we intend to withdraw recognition. The awarding organisation will be able to make representations to us and, if we decide to withdraw recognition, request a review of that decision. We are seeking views on the procedures we should put in place to give notice, consider representations and to review decisions.

The efficiency of the qualifications markets

1.36 We will embed in our approach to regulation our objective to secure efficiency in qualifications markets. We propose that the recognition criteria and conditions of recognition should promote the availability of information on costs and fees and enhance economic transparency within the markets. We address both demand and supply side issues in our proposed approach. We have a duty to make sure that our own demands do not create an undue burden or have a disproportionate impact on costs.

1.37 If we have concerns about the efficiency of an aspect of a market we propose a staged approach to the investigation of our concerns. We will monitor the competitiveness of the qualifications market and, where necessary, undertake market studies. If a study confirms that there is cause for concern as to how the market is operating we will seek to implement the least intrusive regulatory mechanism to address the concern identified.

1.38 If other actions are ineffective and we are satisfied that a limit is necessary in order to secure value for money, we will make use of the fee-capping power in the Act. This consultation seeks views on the procedures we should put in place to ensure a decision to cap fees is properly made and, where requested, reviewed. We shall prepare the procedures in detail in the light of the views which we receive, and may consult on them again.

Regulating national curriculum and EYFS assessments

1.39 We will keep under review all aspects of the statutory assessment of the national curriculum and the EYFS in England. As we develop our approach to regulating these assessments we will take into account the findings included in Lord Sutherland's report on the delivery of the national curriculum assessments in 2008 and the Secretary of State's Expert Group on Assessment. (<http://publications.dcsf.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-00532-2009>). Our regulatory approach will need to cover all statutory assessments, including tests and teacher assessment.

- 1.40 In our proposed model for monitoring regulated assessments, the degree to which we will scrutinise the development, delivery, marking and level setting of tests will be determined by risk. In this document we also set out a model for reviewing statutory teacher assessment. We recognise the need to take into account the roles played by parents and carers and professionals in the quality assurance and conduct of the assessments.
- 1.41 We will notify the Secretary of State and the bodies responsible for the assessments of any significant failings. We seek views on the indicators of significant failings.

How we propose to measure our performance and efficiency and effectiveness

- 1.42 We propose to measure how successful we are in achieving our objectives. We include proposals on the factors that we should take into account and we seek views on the best ways to measure our performance.
- 1.43 We propose also to measure the efficiency and effectiveness of our ways of working and the level of awareness that exists about our role. We will measure the confidence stakeholders have in our performance.

Developing and introducing the new approach to regulation

- 1.44 This consultation will assist the new Ofqual Board, when it takes office on 1 April 2010, in deciding how it should aim to fulfil its statutory objectives. We will develop detailed ways of working once we have considered the responses to the consultation. We will seek further input from stakeholders where appropriate.
- 1.45 Some of the duties and powers set out in the legislation are new. Others have featured in previous statutory frameworks in either the same or a similar form. We plan to introduce change in a managed way, starting by ensuring that the current regulatory system is translated into the vocabulary of the new system and that decisions made before vesting day are still valid afterwards. From that base, we shall steadily move forward to implement the approach to regulation made possible by the new legislation.

1.46 This consultation document does not cover all aspects of our work. In due course we will consult separately on the arrangements we propose to put in place to consider complaints about regulated qualifications and assessments. We will also consult at a later date on functions which will not be commenced immediately: our role in reviewing any system for allocating values to qualifications for the purpose of performance management and our role in the setting of guided learning hours for qualifications for the purpose of the duty on 16 and 17 year olds to participate in education and training. The Equality Bill, currently being considered by Parliament, sets out for us additional responsibilities concerning access to qualifications. We will consult separately on the exercise of these duties as and when that legislation has been passed.

Consultation

1.47 Ofqual welcomes the new legislation as an opportunity to move forward to a new level of regulation which will benefit learners, users and the wider public. We want the qualifications we regulate to be valued and trusted by them. We hope that as many people as possible will take the opportunity to comment on some or all of these proposals.

1.48 We look forward to receiving your feedback. The deadline for responses is 8 March 2010. Responses may be published unless they have been explicitly provided in confidence.

PART 1 – Overview

2. Background to the consultation

2.1 We are seeking views on how we should meet our objectives and duties and exercise our powers as the independent regulator of qualifications, examinations and assessments.

Context

2.2 The Apprenticeship, Skills, Children and Learning Act 2009 (the Act), which establishes Ofqual, sets out the legal framework within which we must work. We will be a non-ministerial government department, independent of Ministers and accountable to Parliament and the Northern Ireland Assembly.

2.3 Our aim is to regulate so that qualifications, examinations and assessments are valued and trusted by learners, users and the wider public. We must have particular regard to the needs of learners, employers and higher education and to the efficiency of the qualifications market.

2.4 We will set out clearly how we will work. The purpose of this consultation is to seek views from a wide range of people and organisations who are interested in what we do or who might be affected by our approach to regulation. We will take these views into account as we develop our ways of working.

Background

2.5 The proposal to create an independent regulator of qualifications, examinations and assessments in England was announced by the Government in 2007. The proposal reflected a view that a regulatory body that was independent – both of Ministers and of the agency responsible for specifying qualifications – would best be able to command public trust as a source of truly independent assurances of the quality and standard of qualifications and assessments. The Government consulted on the proposal in 2007².

² Confidence in standards – Regulating and developing qualifications and assessment (2007, DCSF, DIUS)

- 2.6 There was a separate consultation in 2008 in Northern Ireland on the proposal that the new organisation should regulate vocational qualifications in Northern Ireland³.
- 2.7 There was general support for the creation of an independent regulator. Since April 2008, and pending legislation, Ofqual has operated as a distinct part of the Qualifications and Curriculum Authority (QCA), exercising QCA's regulatory functions conferred by the Education Act 1997, as amended.
- 2.8 The Act will establish Ofqual and rename the QCA as the Qualifications and Curriculum Development Agency (QCDA). The QCDA's role will be to develop the curriculum in England, improve and deliver assessments and review and reform qualifications, its previous regulatory functions having moved to Ofqual. QCDA will not operate in Northern Ireland, where these roles will be carried out by the Council for the Curriculum, Examinations and Assessments (CCEA), and, in due course, by the Education and Skills Authority.

This consultation

- 2.9 We are seeking views about the way we should regulate. If you have an interest in qualifications, assessments and tests we will be interested to know your views on their regulation. You can respond using an online questionnaire on our website www.ofqual.gov.uk/consultation. If you prefer, you can send your comments to us by post or email to:

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

consultationresponses@ofqual.gov.uk

- 2.10 We will follow the principles of good consultation whenever we undertake public consultation⁴. Responses to this consultation will be analysed by an independent body and we will publish a report on the responses. However policy decisions will be taken by Ofqual, in light of the responses received and following the appointment of the Board and vesting in April 2010.

³ New regulatory arrangements for vocational qualifications in Northern Ireland, DELNI

⁴ Code of Practice on Consultation, Department for Business Innovations and Skills
<http://www.berr.gov.uk/files/file47158.pdf>

- 2.11 This paper describes at a high level how we propose to regulate under the new Act. We want to move to the new style of regulation as quickly as we can. Informed by comments we receive, we shall develop more detailed proposals for various processes, criteria and regulatory frameworks that we are required to put in place. Where necessary we will consult further on aspects of the proposals after 1 April 2010.
- 2.12 In due course we will consult on the responsibilities which will be conferred on Ofqual by the Equality Bill that is currently being considered by Parliament.

3. Ofqual's statutory objectives

3.1 The Act gives us five objectives. They are:

The qualifications standards objective

3.2 The qualifications standards objective is to secure that regulated qualifications:

- (a) give a reliable indication of knowledge, skills and understanding, and
- (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications.

3.3 We intend, when pursuing the standards objective, to apply to regulated qualifications the same range of principles that we will apply to national curriculum assessments:

- validity
- reliability
- comparability
- manageability
- minimising bias.

These terms are defined in Annexe B.

The assessment standards objective

3.4 The assessment standards objective is to promote the development and implementation of regulated assessment arrangements⁵ which –

- (a) give a reliable indication of achievement, and
- (b) indicate a consistent level of attainment (including over time) between comparable assessments.

The public confidence objective

3.5 The public confidence objective is to promote public confidence in regulated qualifications and regulated assessment arrangements.

⁵ This relates to statutory national curriculum and EYFS assessments

The awareness objective

3.6 The awareness objective is to promote awareness and understanding of:

- (a) the range of regulated qualifications available,
- (b) the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and
- (c) the benefits of recognition to bodies awarding or authenticating qualifications.

The efficiency objective

3.7 The efficiency objective is to secure that regulated qualifications are provided efficiently and in particular that any relevant sums payable to a body awarding or authenticating a qualification in respect of which the body is recognised represent value for money.

4. Ofqual's governance, accountability, working with others, funding and success criteria

Governance and accountability

- 4.1 The Secretary of State will appoint the members of Ofqual (which we will refer to as our Board) following consultation with the Chair, who is appointed by the Crown. One of the members must be appointed following consultation with the Department for Employment and Learning in Northern Ireland. The Chair will be known as the Chief Regulator of Qualifications and Examinations.
- 4.2 We have to report annually to Parliament and to the Northern Ireland Assembly. We expect our work will be scrutinised by the relevant select committees. We will also publish an annual business plan. The Act stipulates that Ofqual's Annual Report must include:
- i. a statement of what Ofqual has done in performing its functions in the reporting period
 - ii. an assessment of the extent to which Ofqual has met its objectives in that period
 - iii. details of any information obtained by Ofqual in that period on the levels of attainment in school qualifications.

We shall report to the Northern Ireland Assembly on Ofqual's regulation of vocational qualifications in Northern Ireland.

Since Ofqual was established in 2008 the Chair, Kathleen Tattersall, has published an annual Chief Regulator's Report, setting out her vision of issues of principle concerning the future maintenance of standards in regulated qualifications. At present, we see this as serving a different function from that of the Annual Report, and we plan to issue the Chief Regulator's Report separately. However, we shall continue to seek views from stakeholders – and from Parliament – on our arrangements for reporting in public and the focus and appropriateness of the content of future reports.

Working with others

4.3 We will work with other public bodies when it is appropriate for us to do so. Cooperative working may enhance the efficiency and effectiveness of our performance and reduce any burden on those that we regulate. The regulators in Wales and Northern Ireland have indicated their broad support for our proposed approach to the regulation of qualifications and their wish to continue to regulate cooperatively with both us and each other in the future.

4.4 Such cooperative working will include:

- interacting with the statutory functions of the QCDA, including their development of qualification criteria
- sharing information with Ofsted or the qualification funding bodies so as to reduce the need on those that we regulate to provide duplicate evidence or data
- aligning our monitoring of awarding organisations with the regulators in Wales and Northern Ireland
- seeking the advice of Sector Skills Councils and Standards Setting Bodies on the fitness for purpose of qualifications
- working with government departments to understand educational policy objectives.

This list is not exhaustive.

Funding

4.5 Our funding will come from the taxpayer. Funding will be agreed within the context of the overall education family of organisations, coordinated by the Department for Children, Schools and Families. The Act does not permit us to charge for our main regulatory activities.

Measuring our performance

4.6 In this consultation, we set out and seek views on how we propose to achieve each of these objectives.

4.7 The statutory objectives provide the framework within which we will measure our performance and report on what we have achieved. In the following tables we set out for comment each objective from the Act with proposals as to the outcomes we need to achieve, the actions we would take and the measures and indicators of success.

Question A:

- (i) What are your views on how we should measure our performance?**
- (ii) What matters do you think Ofqual should cover in its Annual Report (over and above those required by the Act)?**

Examples of success criteria against Ofqual's objectives

STATUTORY OBJECTIVES	OUTCOMES	ACTIONS	CRITERIA	INDICATORS
<p>The qualifications standards objective</p> <p>To secure that regulated qualifications:</p> <p>a. give a reliable indication of knowledge, skills and understanding, and</p> <p>b. indicate a consistent level of attainment (including over time) between comparable</p>	<p>Only awarding organisations that have the appropriate resources, expertise and systems to deliver high quality qualifications are recognised.</p> <p>Awarding organisations ensure the content of qualifications ie knowledge, skills and understanding is fit for purpose and valid and reliable assessment techniques are used.</p> <p>Appropriate standards are set and maintained for each qualification.</p> <p>The standards of comparable qualifications are maintained between awarding organisations and over time.</p>	<p>What Ofqual will do to achieve these outcomes</p> <p>Recognise organisations that meet the recognition criteria and refuse to recognise those that do not.</p> <p>Scrutinise a range of individual qualifications and require awarding organisations to make changes where necessary.</p> <p>Require awarding organisations regularly to review their performance and the standard and comparability of their awards</p> <p>Monitor awarding organisations and regulated qualifications in line with the qualifications regulatory framework, taking enforcement action where necessary</p> <p>Review standards of qualifications over time, requiring action e.g. by giving a direction to address any instances where standards are not being maintained.</p> <p>Review comparability of qualifications and require actions by awarding organisations where necessary.</p> <p>Promote use of accepted assessment principles</p> <p>Publicly report the actions we take to address any problems with standards of qualifications or with the performance of awarding organisations.</p>	<p>How Ofqual will judge the success of the actions it has taken</p> <ul style="list-style-type: none"> recognition criteria and conditions are considered valid by stakeholders. Only organisations demonstrating compliance are recognised. accreditation criteria are considered valid by stakeholders. where issues are identified the steps taken to protect learners. are effective. where issues are identified the steps taken to protect standards are effective. the standards of a range of qualifications are reviewed across awarding organisations and over time and are found to be comparable. Reports are readily accessible to all stakeholders. 	<p>How Ofqual will measure the success of the outcomes in meeting the objectives</p> <ol style="list-style-type: none"> Research shows standards are maintained over time and between comparable qualifications Surveys show that teachers, HE, and employers have positive views about awarding organisations and regulated qualifications.

STATUTORY OBJECTIVES	OUTCOMES	ACTIONS	CRITERIA	INDICATORS
<p>The assessments standard objective</p> <p>To promote the development of regulated assessments which:</p> <p>a. Give a reliable indication of achievement, and</p> <p>b. Indicate a consistent level of attainment (including over time) between comparable assessments.</p>	<p>The public and users are confident that national curriculum and EYFS responsible bodies can be trusted to develop and deliver high quality assessment arrangements.</p> <p>National curriculum and EYFS responsible bodies deliver high quality assessment arrangements.</p> <p>The content of assessments ie knowledge, skills and understanding is fit for purpose and valid and reliable assessment techniques are used.</p> <p>Appropriate levels are set and maintained for the assessment arrangements.</p>	<p>What Ofqual will do to achieve these outcomes</p> <p>Scrutinise and comment on the development and use of assessment techniques, including teacher assessments.</p> <p>Monitor national curriculum/EYFS responsible bodies and assessment arrangements in line with the national curriculum/EYFS assessment regulatory frameworks.</p> <p>Request appropriate information from national curriculum/EYFS responsible bodies and others involved in the development and delivery of assessment arrangements, including the Secretary of State.</p> <p>Review levels set over time, taking action where necessary.</p> <p>Publicly report on the actions we have taken.</p>	<p>How Ofqual will judge the success of the actions it has taken</p> <ul style="list-style-type: none"> ▪ appropriate content is covered and assessment techniques are valid and reliable. ▪ risks of any significant failings are identified and reported in a timely way and action plans are put in place to address any concerns. ▪ risks are identified, responsible bodies concerned are informed and action plans put in place to address concerns. ▪ required information is provided by responsible bodies in an appropriate format and timely manner ▪ the levels of attainment are reviewed over time and are consistent between comparable assessments. 	<p>How Ofqual will know if it has been successful</p> <p>3. Research shows that statutory assessments are high quality, meet the specified purposes and that levels of attainment between comparable qualifications are consistent.</p> <p>4. Surveys show that teachers and other users are confident that statutory assessments indicate achievement accurately.</p>

The standards objective

STATUTORY OBJECTIVES	OUTCOMES	ACTIONS	CRITERIA	INDICATORS
<p>The public confidence objective</p> <p>To promote public confidence in regulated qualifications and assessments arrangements.</p>	<p>The public and other users understand and have confidence in the regulatory arrangements for qualifications and assessments and know that Ofqual will act robustly and transparently to address any problems</p> <p>The public, higher education, employers and other users are confident that regulated qualifications and assessment arrangements are high quality. Specifically they believe that regulated qualifications and assessments:</p> <ul style="list-style-type: none"> ▪ cover appropriate knowledge, skills and understanding; ▪ use valid and reliable assessment techniques ▪ apply and maintain appropriate standards 	<p>What Ofqual will do to achieve these outcomes</p> <ul style="list-style-type: none"> ▪ survey opinions ▪ establish panels to ensure views of stakeholders can be collected and monitored ▪ respond to feedback. <p>Present the requirements on those involved in the development and delivery of regulated qualifications and assessments so they can be understood by lay readers.</p> <p>The actions that Ofqual will take when things are not as expected can be understood by all.</p> <p>Publish reports (including to Parliament) about the type and range of monitoring activities undertaken every year.</p> <p>Publish reports (including to Parliament) on the outcomes of monitoring, setting out issues, actions taken to address the issues and any sanctions applied.</p>	<p>How Ofqual will judge the success of the actions it has taken</p> <ul style="list-style-type: none"> ▪ feedback from stakeholders, including learner panels, inform decisions and actions. ▪ regulatory frameworks set out clear expectations of the regulator and any sanctions that will be applied ▪ the regulatory frameworks are considered valid and helpful by stakeholders. ▪ documents set out in plain English how regulation works. <p>Parliament and stakeholders support the programme of work undertaken.</p> <ul style="list-style-type: none"> ▪ stakeholders believe that Ofqual's reports are clear, honest and hard hitting. 	<p>How Ofqual will know if it has been successful</p> <p>5. Public debate about the standards of regulated qualifications and assessments is well informed.</p> <p>6. Surveys show that the public have confidence in regulated qualifications and assessment arrangements.</p> <p>7. Surveys of users show that Ofqual's website and publications are seen as primary reference points for easily accessible and accurate information about regulated qualifications.</p>

STATUTORY OBJECTIVES	OUTCOMES	ACTIONS	CRITERIA	INDICATORS
<p>The awareness objective</p> <p>To promote awareness and understanding of:</p> <p>a. the range of regulated qualifications available</p> <p>b. the benefits of regulated qualifications to learners, employers and HE</p> <p>c. the benefits of recognition to awarding organisations.</p>	<p>The public and other users know where to get information about awarding organisations and the qualifications they offer.</p> <p>The public and other users (including HE and employers) know that some qualifications are regulated and what that means.</p> <p>Organisations understand what regulation means and how it can impact positively on their business.</p> <p>Employers with an interest in developing the skills of the workforce give serious and informed consideration to seeking recognition to award their own qualifications.</p>	<p>What Ofqual will do to achieve these outcomes</p> <p>Publish clear and accessible information about recognised awarding organisations and their qualifications.</p> <p>Publish documents explaining what users can expect from the regulated system and those involved in it.</p> <p>Publish guidance to awarding organisations on how regulation works and how it might impact on their business.</p> <p>Promote and explain the benefits of regulation, working with employers and SSCs</p>	<p>How Ofqual will judge the success of the actions it has taken</p> <ul style="list-style-type: none"> information is presented in a clear and accessible format. awarding organisations provide links to Ofqual's website from their websites to facilitate access to information about their provision. stakeholders' views on the content and presentation of information are sought documents set out clearly how regulation works and what this means for users. awarding organisations understand what regulation means. awarding organisations understand the regulated system and what is expected of them. there is informed interest on the part of employers about regulated qualifications and regulation. 	<p>How Ofqual will know if it has been successful</p> <p>8. Surveys show that learners, providers, HE, employers, the public and other users understand regulation and the difference between regulated and unregulated qualifications.</p> <p>9. Awarding organisations understand what it means to be regulated and the benefits for them.</p>

STATUTORY OBJECTIVES	OUTCOMES	ACTIONS	CRITERIA	INDICATORS
<p>The efficiency objective</p> <p>To secure that regulated qualifications are provided efficiently and in particular that any relevant sums payable to a recognised organisation awarding or authenticating a regulated qualification represent value for money.</p>	<p>Qualifications are delivered as efficiently as possible.</p> <p>Fees charged by awarding organisations are value for money.</p> <p>Genuine choice is available to learners and centres.</p> <p>Fees charged are known and understood by the public and users, and informed choices are made.</p>	<p>What Ofqual will do to achieve these outcomes</p> <p>Evaluate relevant and available indicators of competition.</p> <p>Monitor awarding organisations' accounts.</p> <p>Study qualifications markets to identify any inappropriate barriers and act against anti-competitive practices.</p> <p>Where it is proportionate, require awarding organisations to provide information about fee structures and costs incurred for analysis.</p>	<p>How Ofqual will judge the success of the actions it has taken</p> <p>Where possible, qualifications are offered in competitive markets.</p> <p>Fees changes represent value for money.</p> <p>Regulation is proportionate and does not drive up costs.</p> <p>Government is aware of the costs of its policy decisions around qualifications and as far as possible, policy decisions promote value for money</p>	<p>How Ofqual will know if it has been successful</p> <p>10. Studies show the fees paid represent value for money.</p> <p>11. Purchasers of qualifications tell us through surveys that they have access to the information they need to make decisions on content, quality of service and price and that they have confidence in the efficiency of qualifications.</p> <p>12. Well informed regulatory impact assessments are used to inform policy and regulatory decisions and actions.</p>

5. Understanding the terms we use⁶

5.1 There are a number of key terms that we use in this document. Some of these terms come from legislation. Some of the terms might be familiar but are used in a new way. Key terms are explained below.

Accreditation criteria

5.2 We must publish accreditation criteria for qualifications that are subject to an accreditation requirement. We must first consult on these criteria. We must accredit a form of a qualification if it meets the criteria in full.

Awarding organisation

5.3 We use this term to describe an organisation that is recognised to offer regulated qualifications. An organisation will need to apply to be recognised to do so, against the criteria we will publish. In the interests of brevity we use the term 'awarding organisation' to mean 'recognised awarding organisation'. The legislation uses the term 'awarding body', but we have chosen to use the term 'awarding organisation' because a wide range of organisations may be recognised to offer regulated qualifications, including many whose prime function is not awarding.

Centre

5.4 Centres are typically educational institutions, training providers or employers where assessment is undertaken. A centre is accountable to an awarding organisation for the assessment arrangements adopted.

⁶ See also Annexe B for explanations of the terms validity, reliability, consistency, manageability and minimising bias

Conditions of recognition or recognition conditions

5.5 Once it is recognised, an awarding organisation will be subject to certain conditions. It will be required to comply with these conditions while it is recognised. If it does not it may be subject to sanctions. Conditions are divided into 'general conditions', which apply to all awarding organisations or all those offering a particular qualification or type of qualification, and 'other conditions', which apply to specific awarding organisations, for example to impose a fee-cap.

Credit

5.6 Credit is awarded to a learner to indicate the achievement of the designated learning outcomes of a unit of a qualification.

EYFS

5.7 This is the structure of learning, development and care for children from birth to five years old, which all schools and early years providers have to follow. The EYFS profile, which is part of the regulated assessment arrangements which Ofqual must keep under review, is intended to provide year 1 teachers and parents with reliable and accurate information about each child's level of development as they reach the end of the EYFS.

Form of a qualification

5.8 The Act makes a distinction between a qualification (for example GCSE biology) and a form of a qualification (which is a particular awarding organisation's version of that qualification). The Act also uses the term 'descriptions of qualification' which could cover, for example, GCSEs in all subjects.

National curriculum assessments

5.9 These are assessments, both test-based and teacher assessments, undertaken by pupils at the end of the key stages of the national curriculum. The Secretary of State is responsible for determining the assessment arrangements which should apply.

National Qualifications Framework (NQF)

5.10 The National Qualifications Framework provides a structure within which the level of a qualification (its difficulty) can be identified. This framework is used in England, Northern Ireland and Wales.

Qualifications and Credit Framework (QCF)

5.11 The Qualifications and Credit Framework provides a structure within which learners' achievements can be represented and recorded. It provides for a common approach to identifying not only levels, as in the NQF, but also volumes of learner achievement, allowing for the transferability of credit. This framework is used in England, Northern Ireland and Wales.

Qualifications Regulatory Framework

5.12 The qualifications regulatory framework is a term used within the legislation. We will have to publish a framework to describe how we will undertake our monitoring and enforcement functions and the guidance we will give to awarding organisations. An awarding organisation must have regard to guidance that forms part of the framework.

Qualifications subject to an accreditation requirement

5.13 We will require that some qualifications are checked by us before they can be made available to learners. Such qualifications will be subject to an accreditation requirement. An accreditation requirement can apply to all qualifications or a particular description of qualifications or to qualifications offered by a particular awarding organisation. We will decide, as appropriate following consultation, which qualifications will be subject to an accreditation requirement. In the future we will not refer to 'accredited qualifications' as a general description of the qualifications we regulate. Qualifications that are subject to an accreditation requirement will simply be known as regulated qualifications, along with those that are not subject to an accreditation requirement.

Recognition criteria

5.14 The legislation requires us to publish, following consultation, the criteria which an organisation must meet before it can be recognised to offer particular qualifications or descriptions of qualifications. Different criteria can be set for different descriptions of awarding organisation, in respect of different qualifications or descriptions of qualifications or for components of qualifications.

Register of awarding organisations

5.15 The legislation requires us to maintain and publish a register that includes information about awarding organisations and the regulated qualifications they offer.

Regulated assessments

5.16 Regulated assessment arrangements mean statutory national curriculum and EYFS assessment arrangements. National curriculum assessment arrangements are made under the provisions of the Education Act 2002. They are the arrangements for assessing pupils in England in respect of each key stage for the specified purposes.

5.17 EYFS assessment arrangements are made under the provisions of the Children Act 2006 for assessing children in England for the specified purposes.

Regulated qualifications

5.18 Regulated qualifications are qualifications offered by an awarding organisation within the terms of its recognition. Regulated qualifications will appear on the register that we will maintain and publish. Unregulated qualifications are qualifications which are awarded by a body that is not recognised or by an awarding organisation outside the terms of its recognition. Any qualification that is not a degree may be regulated by us in England as may any vocational qualification (that is not a degree) in Northern Ireland.

Responsible body

5.19 This term describes organisations and individuals who perform defined functions in relation to the development, implementation or monitoring of national curriculum or EYFS assessments.

5.20 An **EYFS responsible body** means a person who under or by virtue of an order made under section 39(1)(a) of the Children Act 2006 (c.21) has functions in relation to the development, implementation or monitoring of EYFS assessment arrangements, eg QCDA.

5.21 **National curriculum responsible body** means a person who under or by virtue of an order made under section 87(3)(c) of the Education Act 2002 (c.32) has functions in relation to the development, implementation or monitoring of national curriculum assessments, eg local authorities.

Unit

5.22 A unit is a component of qualification that has a coherent and explicit set of learning outcomes and assessment criteria.

6. The main differences between the current and the new arrangements

- 6.1 Under the new arrangements qualifications, examinations and assessments will be regulated by a body (Ofqual) that is independent of Ministers and not responsible for specifying the content of qualifications. Regulation has previously been undertaken by a non departmental public body (QCA) which reported to Ministers. The new arrangements provide for an independent regulator to protect the interests of learners, secure standards and promote confidence in those standards.
- 6.2 Qualifications that are offered by organisations that also teach and train learners can now be regulated. Regulation was previously limited to 'external' qualifications awarded or authenticated by an organisation other than the organisation providing the training for the qualification. Under the new arrangements a wider range of regulated qualifications should be available to learners.
- 6.3 The focus of regulation will be on the awarding organisation, rather than the qualification. An awarding organisation must satisfy the regulator that it is fit to control the quality and standards of its qualifications. Awarding organisations which are recognised by Ofqual as meeting the regulatory requirements should be able to be trusted to assure the quality and standards of their qualifications and enter them into the regulated system. However, Ofqual may impose an 'accreditation requirement' that means that a particular qualification or description of qualifications will have to be accredited by Ofqual before they can be part of the regulated system. This more strategic organisation-focused approach to regulation should enable awarding organisations to be more responsive to learners' and employers' needs and to opportunities for innovation. It will allow regulatory resources to be targeted at areas of highest risk and in the interests of learners.
- 6.4 Where Ofqual makes a qualification subject to an accreditation requirement we will set out criteria that must be met by an accredited qualification and will judge whether a specification for a form of that qualification submitted by an awarding organisation meets those criteria. That is similar to what happens now. However, in the past, a qualification that did not meet all of the requirements when it was put forward for accreditation could be accredited with conditions, allowing an awarding organisation more time to address any problems that the regulator had identified. The Act requires that the accreditation criteria must be met in full, and does not provide for accreditation conditions.

- 6.5 Ofqual will be able to regulate all qualifications (other than degrees) in England and all vocational qualifications (except degrees) in Northern Ireland. Currently, qualifications in Northern Ireland, other than National Vocational Qualifications (NVQs), are regulated by the Council for the Curriculum, Examinations and Assessment (CCEA).
- 6.6 Ofqual will keep under review all aspects of statutory national curriculum and EYFS assessments in England. We will have to report any significant failings to the Secretary of State and to any responsible body involved. Ofqual will have the power to require the provision of information relevant to its duty to review from the Secretary of State or responsible bodies. In the past only end-of-stage national curriculum tests have been regulated and then only on a non-statutory basis by QCA. The new approach will ensure there is independent oversight of all aspects of the statutory assessment arrangements and that any significant shortcomings are reported.
- 6.7 The qualifications market will be reviewed with the aim of securing the efficiency of the qualifications market and value for money from awarding organisations in respect of their regulated qualifications. Ofqual will have a power to cap the fees charged by an awarding organisation, but only if we are satisfied that this is necessary to secure value for money. A fee capping power has existed in the past, although it has not been used. The wider efficiency and value for money provisions are new. The arrangements should lead to greater transparency about the operation of the market.
- 6.8 There is a new explicit statutory objective to promote public confidence in regulated qualifications and assessments.
- 6.9 There is a new explicit statutory objective to promote public awareness and understanding of the range and benefits of regulated qualifications.
- 6.10 The duties and powers of the regulator are explicitly detailed in legislation, for example concerning withdrawing recognition from an awarding organisation. Previous legislation has been less detailed. Regulation of awarding organisations will take place within a more clearly defined legislative and regulatory framework.

7. When will the new arrangements be introduced?

- 7.1 This consultation will inform early decisions by the new Ofqual Board to drive forward the changes envisaged in the Act swiftly and resolutely.
- 7.2 The transitional arrangements, published separately, will provide continuity between our current regulatory activities before and after the new provisions come into force, on 1 April 2010. These transitional arrangements will provide a platform to build on, as we introduce the new approach to regulation.
- 7.3 We want to realise the benefits of the new style of regulation as soon as possible. Our intention is to introduce each element of the regulatory approach as soon as we are in a position to do so, taking account of interdependencies. We expect to have made significant progress by September 2010. Where necessary we will consult further - for example on:
- the qualifications regulatory framework
 - the assessments regulatory framework
 - which qualifications should be subject to the accreditation requirement.
- 7.4 Some of the features of the new approaches will need to be introduced sequentially. For example, we will need to make sure that an awarding organisation is meeting the new conditions of recognition before we lift the requirement to accredit all qualifications.
- 7.5 We will consult on our approach to the assignment of guided learning hours for the purposes of the 2008 Education Act and our review of the system for allocating values to qualifications, in readiness for the commencement of those provisions.
- 7.6 We will also consult on proposed arrangements to consider complaints and appeals, both for qualifications and assessments. In the meantime the Examinations Appeals Board will continue with its current remit.
- 7.7 Once the Equality Bill has completed its passage through Parliament we will consult on the exercise of our duties under that legislation.

8. Our approach to regulation and meeting our general duties

8.1 We are committed to meeting the government's principles of good regulation. These principles, which will guide how we act as a regulator, are:

- **proportionality:** policy solutions should be appropriate for the perceived problem or risk
- **accountability:** regulators and policy officials must be able to justify the decisions they make and should expect to be open to public scrutiny
- **consistency:** rules and standards must be joined up and implemented fairly and consistently
- **transparency:** regulations should be open, simple and user friendly. Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all stakeholders
- **targeted:** regulation should be focused on the problem. Regulators should aim to minimise side-effects and ensure that no unintended consequences will result from the regulation being implemented.

8.2 We propose to work openly with all our stakeholders, as we believe that this is the best way to achieve our common objective of ensuring the provision of high quality regulated qualifications and assessment arrangements.

We will:

- hold those responsible for qualifications and assessments accountable for their actions
- avoid the imposition of unnecessary burdens and work to reduce bureaucracy where possible
- make evidence-based and transparent decisions
- regulate in the interest of learners
- take enforcement action where necessary and
- act to eliminate discrimination and promote equality.

Our general duties under the Act will require us to have regard to:

- the need to ensure the number of regulated qualifications available is appropriate, such that there is reasonable choice for learners but the number of different regulated qualifications in similar subjects or serving similar functions is not excessive
- the reasonable requirements of children, pupils and learners, including those who have learning difficulties
- the reasonable requirements of industry, commerce, finance, the professions and other employers regarding education and training (including required standards of practical competence)
- the reasonable requirements of institutions within the higher education sector
- the desirability of facilitating innovation in connection with the provision of regulated qualifications
- the specified purposes of regulated assessment arrangements
- such aspects of government policy as the Secretary of State may direct.

The number of qualifications

8.3 We must have regard to the number of regulated qualifications available, such that there is reasonable choice for learners but the number of different regulated qualifications in similar subjects or serving similar functions is not excessive. We propose that conditions placed on awarding organisations will require them to consider and record the rationale and justification for a new qualification and to work with appropriate bodies representing the needs and interests of any sector for which a new qualification is being developed.

8.4 We propose to impose conditions on awarding organisations that address the format and content of qualification titles.

8.5 In meeting this duty, we will not seek to inhibit competition between awarding organisations as we believe a competitive market will promote efficiency in the provision of regulated qualifications and help improve choices for learners. However, we will seek to avoiding a confusing proliferation of qualifications.

Equality and diversity

- 8.6 In addition to the specific requirements on us to consider the reasonable needs of all learners, including those with a disability, we will be subject to the duties placed on all public authorities to eliminate discrimination and promote equality of opportunity, in current legislation and in the Equality Bill currently before Parliament.
- 8.7 As we develop the policies and procedures that we will use in the future, we will consider whether they might have an adverse impact on any particular groups of people. Where any possible adverse impact is identified we will undertake equality impact assessments.
- 8.8 The proposals we have set out in this consultation paper reflect both our duties and our commitment to promote equality and eliminate discrimination in the context of regulated qualifications, examinations and assessments.
- 8.9 For example, we have built into our draft criteria for recognising awarding organisations a requirement on them to demonstrate that their approach to qualification development and delivery will promote equality and diversity. Similarly, our draft conditions of recognition would require an awarding organisation to collect and analyse data to enable it to identify and address factors in its qualifications or assessment arrangements that might disadvantage particular groups of candidates.
- 8.10 We will be consulting separately on new duties set out for us in the Equality Bill, subject to the passage of that Bill. That consultation will address, in particular, the reasonable adjustments to be made available to disabled learners in relation to general qualifications. The Equality Bill would impose duties on us as a public body and set out requirements in relation to vocational qualifications.

The reasonable requirements of industry, commerce, finance, the professions and other employers regarding education and training

- 8.11 We plan to survey these stakeholder groups, notably Sector Skills Councils (SSCs), to inform our understanding of their sectors' needs and the extent to which they are being met. We will also seek their views on how we should engage with them on an on-going basis.
- 8.12 The proposed conditions on awarding organisations to work with appropriate sector bodies when developing qualifications and to ensure qualifications meet relevant sectors' needs, as set out by SSCs, will embed consideration of their requirements within the qualifications system.

The reasonable requirements of institutions within the higher education sector

- 8.13 We will also take steps to inform our understanding of the requirements of the higher education sector, for example through surveys.
- 8.14 Where appropriate we will work with national representative bodies and with agencies such as the Higher Education Statistics Agency (HESA), Universities UK and UCAS.

The desirability of facilitating innovation in connection with the provision of regulated qualifications

- 8.15 The use of electronic assessment (e-assessment) is of particular interest to us but innovation in the provision of regulated qualifications need not only be technology-based. We are concerned that approaches to assessment reflect, where appropriate, learners' experiences as they develop their knowledge, skills and understanding. Increasing use of technology enabled learning should be taken into account as qualifications are designed and assessed.
- 8.16 We intend that the published regulatory principles on e-assessment should be reviewed and refined if necessary. Our recent publication on *Principles and Practice of On-demand Testing* and a Consensus statement on technical issues in the early stages of using e-assessment in UK general qualifications will inform our future work as we consider innovation in regulated qualifications.
- 8.17 We expect that the responsiveness and investment encouraged by a competitive market should promote innovation, but we will keep this under review. In particular we will evaluate our regulatory requirements to consider whether they are acting as a block or a driver to innovation and whether there is more we should do to drive innovation.
- 8.18 We plan to undertake or commission further research into the take-up and success of innovative features of qualifications and disseminate our findings.

The specified purposes of regulated assessment arrangements

8.19 Part 3 of this document addresses our proposed approach to regulating national curriculum and EYFS assessments. The specified purposes of the arrangements will underpin our work in this area.

Regulatory Impact

8.20 A regulatory impact assessment was undertaken when the decision was made to establish Ofqual as an independent regulator.

8.21 We have considered the impact of the main proposals on which we are consulting. We have considered in particular the costs on organisations seeking recognition and the impact on them of complying with the proposed generic recognition conditions. We have also considered the impact of a risk-based approach to monitoring and accreditation. We will need to keep these under review on an on-going basis in order to fulfil our statutory duty not to impose or maintain unnecessary burdens.

8.22 Generally we consider that a well managed awarding organisation that is acting in a way that secures standards and protects learners should be meeting the proposed conditions already. As such, our proposed requirements should not impose significant additional costs. Although there might be costs incurred in gathering together the information to satisfy a recognition application or to inform a monitoring exercise, we would normally expect the information to be at hand. When we consider the costs of regulation we also need to consider the costs that might be incurred if regulation is ineffective. Ineffective regulation could place learners, standards and confidence at risk. It is difficult to place a monetary value on this.

8.23 Specific reference is made in a later section to our investigations into the potential impact of increased information requirements necessary to enable us to fulfil our efficiency objective.

Question:

B. What are your views on:

- i) our proposed approach to regulation**
- ii) how we should fulfil our general duties**
- iii) any steps we should take to promote equality and eliminate discrimination in our approach to the regulation of qualifications, assessments and tests?**

PART 2 – Regulating Qualifications

9. Securing the standards of regulated qualifications

- 9.1 The standard of a qualification is the level of knowledge, understanding, skills and/or competence that someone would be required to demonstrate in order to obtain the qualification. Everyone who shows the same level of attainment should receive the same result. We will need to make certain that the level of attainment for a qualification remains consistent, including, where appropriate, the level of attainment for a particular grade. Standards of comparable qualifications should be consistent both across awarding organisations and from year to year.
- 9.2 Learners' interests and public confidence in regulated qualifications will be strengthened if we can demonstrate that standards of comparable qualifications are consistent. We will need to promote public understanding of some difficult and sometimes technical concepts. Where appropriate we will challenge misunderstandings or misinformation about qualification standards. Where problems with qualifications standards are found we will report on these. In the short-term this might have a negative impact on public confidence, but our ability to uncover and address, and our willingness to report on, concerns about standards should enhance our credibility as a regulator and the public's confidence in qualification standards in the longer term.
- 9.3 We must regulate so that we can be confident all recognised awarding organisations are maintaining standards in a consistent way, and we must intervene if there is evidence that this is not the case. We will use the accreditation requirement where this will help secure standards, particularly when qualifications are changed.
- 9.4 We will publish general conditions which awarding organisations must follow, when these are necessary to protect the comparability and consistency of standards in particular qualifications. We will monitor compliance with these conditions and, where necessary, we will take enforcement action. That could include directing an awarding organisation to follow a particular approach to maintaining standards. We will also monitor qualifications and undertake studies to help us evaluate the extent to which the assessments associated with qualifications are valid, reliable, comparable and manageable and have minimal bias.

- 9.5 The type of activity we might undertake will vary between the types of qualifications, but typically might include checking that examiners and assessors are trained to apply mark schemes consistently; checking that those who are marking work are properly prepared and their approach standardised, and reviewing data from awarding organisations.
- 9.6 Our approach to the maintenance of standards will vary according to the qualification under review. With general qualifications, that is non-vocational qualifications generally taken by learners between the ages of 14–19 years, we will consider both statistical information relating to the candidature across years and the quality of work produced in each assessment series to inform our judgements.

Question

C. Do you have any comments on our proposed approach to securing the standards of regulated qualifications?

10. Regulating awarding organisations

Summary

- 10.1 There are four main aspects to the way we will regulate an awarding organisation. These are dealt with in more detail in the subsequent sections.
- 10.2 First, an organisation must apply to be recognised to award particular qualifications or descriptions of qualifications. We will judge its application against the published recognition criteria for the qualification(s) it wants to award. The criteria should not prevent new organisations entering the qualifications market. The recognition process will make sure that the only organisations that will be able to offer regulated qualification will be those that are committed and have the capacity to develop, offer and assess qualifications in a way that will protect learners and standards. We will judge an organisation's capacity to offer the range of qualifications for which it is seeking recognition and limit the scope of the recognition appropriately. If an organisation wishes to seek recognition to offer other qualifications, it will need to demonstrate that it has the capacity and capability to do so.
- 10.3 Second, once recognised, an organisation will be bound to comply with recognition conditions, both general and other. We consult below on a draft set of general conditions. We propose that the general conditions should require an awarding organisation to build into its own quality assurance arrangements provision to monitor its compliance with these conditions. We propose that an awarding organisation should ensure its qualifications meet the needs of learners, employers and others, that the quality of the service it provides is acceptable and that the standards of its qualifications are secure and comparable with others.
- 10.4 Third, we will monitor an awarding organisation's compliance with the conditions, including its approach to safeguarding standards, and require it to take action if there is evidence of non-compliance. We will be able to give directions to an awarding organisation if it fails to comply with conditions and if that failure would prejudice the proper award of a qualification or learners. We will be able to withdraw recognition in the event of a serious risk to learners or standards that the organisation fails to address.
- 10.5 Finally, where appropriate, we may limit an awarding organisation's ability to offer regulated qualifications. We will be able to do this through the application of conditions specific to the awarding organisation (other conditions) and the use of an accreditation requirement.

10.6 We are seeking views on our proposed approach to recognition, to recognition conditions, to monitoring and enforcement and to the limitations that should be placed on an organisation's freedom to offer qualifications.

11. Recognising awarding organisations

What the legislation says

Ofqual must recognise an awarding organisation to offer a particular qualification or description of qualifications if it meets the relevant recognition criteria.

If Ofqual refuses an application for recognition, it must set out the reasons for its decision.

Ofqual cannot charge an organisation in respect of recognition.

Ofqual must set and publish the criteria for recognition which an organisation must meet in order to be recognised to offer particular qualifications. Different criteria may be set for different descriptions of awarding organisation, different qualifications and in respect of credits of components of qualifications.

Ofqual must consult relevant persons before setting or revising these criteria.

If an awarding organisation wishes to surrender recognition it must notify Ofqual. In such instances, Ofqual must indicate the date on which recognition ceases; this date may be varied by giving further notice to the awarding organisation.

Ofqual may make transitional arrangements to ensure that changes to the status of an awarding organisation do not impact negatively on learners expecting to obtain any qualifications which it awards.

What it will mean to be a recognised awarding organisation

- 11.1 A recognised awarding organisation will be able to offer regulated qualifications within the scope of its recognition. An awarding organisation will be responsible for its qualifications and awards.
- 11.2 We will have to maintain a published register of awarding organisations and of their regulated qualifications.

Becoming recognised

- 11.3 We will publish recognition criteria which we will use to judge whether we can be confident that an organisation seeking recognition will be able to undertake the functions and fulfil the responsibilities of a recognised awarding organisation, given the qualifications it wishes to award.
- 11.4 An organisation seeking to be recognised will need to demonstrate that it meets the recognition criteria.
- 11.5 Our decision to grant or refuse an application will be made with reference to the criteria. It is our intention that an organisation that is refused recognition should be able to request a review of that decision.
- 11.6 We have considered what an awarding organisation needs to do to fulfil the role effectively.
- 11.7 We propose that all awarding organisations must:
- accept that they are responsible for the standard of their qualifications and for the quality of the service they provide and that this should be reflected in their governance and quality assurance arrangements
 - develop and offer only qualifications that will give a reliable indication of the knowledge, skills and understanding demonstrated by a person who holds that qualification
 - ensure assessments are valid, reliable, manageable, comparable, minimise bias and are managed in a way that is secure and protects the integrity of the assessment
 - maintain the standards and comparability of qualifications
 - recognise the diverse needs of learners and protect their interests, including learners with disabilities
 - be financially viable, so as to protect the interests of learners who are working towards a qualification
 - deliver value for money, when charges are being made and
 - promote public confidence in regulated qualifications.
- 11.8 The size of the organisation and the number and range of qualifications it offers will affect the way it works and the skills, expertise and capacity it will need to have in place. Nevertheless, we consider it is reasonable and appropriate that all awarding organisations should be able to demonstrate that they meet these requirements.
- 11.9 An awarding organisation will be recognised to offer certain qualifications or descriptions of qualifications.

Draft recognition criteria

11.10 Although recognition will be in respect of particular qualifications or descriptions of qualifications, we propose that there should be generic recognition criteria which all awarding organisations should meet whatever qualifications they want to offer. Draft generic recognition criteria, on which we are seeking comments, are set out below. In addition we indicate what we would expect of an awarding organisation and illustrate the type of evidence that might be submitted by an organisation in support of its application. We would welcome views on whether it would be helpful to develop and publish such indicators and examples of evidence. We recognise that the evidence submitted by an organisation will reflect its particular size, structure and arrangements and that, in terms of evidence, one size will not fit all.

Draft generic recognition criteria:

Criteria ⁷	Indicators that an organisation meets the criteria ⁸	Typical evidence ⁹
<p>1.The organisation:</p> <ul style="list-style-type: none"> – is formally established – is governed, organised and behaves in a way that will promote its stability and support the integrity of the awarding function – provides for accountability at the highest level for the awarding function – identifies and manages any real or potential conflicts of interest between its awarding and other functions 	<ul style="list-style-type: none"> ▪ Clear lines of accountability for general management and governance and a specific line of accountability to the board or governing body for the awarding function. ▪ Adherence to established principles of good governance and risk management. ▪ A track record of successful operations. ▪ Other activities undertaken by the organisation do not conflict with the awarding function or undermine public confidence in regulated qualifications. ▪ Strong and effective governance. ▪ Due diligence tests provide evidence of the organisation’s reliability, stability and appropriate behaviour. 	<ul style="list-style-type: none"> ▪ An organisational structure chart. ▪ Job descriptions for key officers. ▪ Articles of association (or equivalent). ▪ Audit reports. ▪ Business plan. ▪ Business continuity plan. ▪ A risk management strategy. ▪ Policies and procedures for identifying and managing conflicts of interest. ▪ Information about other activities undertaken by the organisation. ▪ Details of key contacts and of their roles. ▪ Details of a Board (or equivalent) level contact and of their role. ▪ Registration with appropriate authorities such as the Charity Commission, Companies House or their equivalents.

⁷ What an organisation will need to demonstrate before it is recognised

⁸ The characteristics of an organisation likely to fulfil the criteria

⁹ Examples of the types of evidence an organisation might provide to demonstrate that it meets the criteria

NB the evidence provided will vary according to the nature of the organisation, its size and its maturity at the time of the application; the examples given are not prescriptive or exhaustive

Criteria ⁷	Indicators that an organisation meets the criteria ⁸	Typical evidence ⁹
<p>2.The organisation has the resources, including the expertise, necessary to develop, assess and quality assure the qualifications it is intending to offer</p>	<ul style="list-style-type: none"> ▪ An information technology system that will support the organisation’s awarding function. ▪ Access to people with current knowledge and understanding of the qualifications market and assessment methodologies appropriate to the qualifications the organisation offers or is planning to offer. ▪ An understanding of the demand for its (planned) qualifications and of the qualification development and delivery cycle and of the peaks and troughs in activities. ▪ Secure business premises. 	<ul style="list-style-type: none"> ▪ Its information technology strategy. ▪ Its human resources strategy. ▪ Structure chart. ▪ A recent skills audit. ▪ Sample key job descriptions and person specifications. ▪ Sample CVs for key roles. ▪ Sample job advertisements for key roles.

Criteria ⁷	Indicators that an organisation meets the criteria ⁸	Typical evidence ⁹
<p>3.The organisation’s operational approach to qualifications development, assessment and awarding will ensure that qualifications and assessments are valid, reliable, manageable and secure, reflect the needs of diverse learners and that standards are maintained between comparable qualifications including over time</p>	<ul style="list-style-type: none"> ▪ Qualification development is informed by an understanding of good practice and the needs of learners, employers and higher education, as appropriate. ▪ Qualification development complies with any specific external requirements, eg of the regulator, a professional body or a sector. ▪ The demand for, and supply of, qualifications is investigated and taken into account at an early stage of the qualification development process. ▪ Assessment is managed by people with appropriate expertise. ▪ Qualification and assessment design are informed by an understanding of statutory requirements to make qualifications and assessments accessible and by good practice on accessibility. ▪ Comparability exercises are undertaken routinely, with other awarding organisations where appropriate. ▪ Where the organisation is offering or planning to offer vocational qualifications, effective interaction with the relevant Sector Skills Council(s) and/or other standards setting or employer based bodies 	<ul style="list-style-type: none"> ▪ Policies and procedures on qualification development and assessment. ▪ The outputs from internal review/approval processes ▪ Sample qualification specifications and assessments. ▪ Surveys of learners, employers and higher education (if available). ▪ Impact assessments used to identify any barriers to access to the qualification. ▪ Policies and practices on considering requests for reasonable adjustments.

Criteria ⁷	Indicators that an organisation meets the criteria ⁸	Typical evidence ⁹
<p>4. The organisation's approach to quality assurance is robust and systematically applied and external input provides assurances about quality and the comparability of standards</p>	<ul style="list-style-type: none"> ▪ The quality and standard of qualifications and assessments are regularly and systematically reviewed. ▪ Feedback from users, including learners, centres and employers is routinely sought and used to inform the reviews. ▪ Performance against published service standards is reviewed and the outcome published. ▪ External experts input into the quality assurance arrangements. ▪ Action is taken to enhance the quality and secure the standards of qualifications and awards. 	<ul style="list-style-type: none"> ▪ Quality assurance policies/handbook. ▪ The outputs of recent internal or external quality reviews. ▪ Examples of the mechanisms used to collect feedback. ▪ Self-evaluation reports ▪ The organisation, nature and influence of external advisers in the quality assurance arrangements.
<p>5. The organisation is financially viable and will deliver value for money for learners in relation to fees charged for regulated qualifications</p>	<ul style="list-style-type: none"> ▪ The actual and projected income and expenditure attributable to qualification development, assessment and award are clearly recorded and scrutinised by the board or equivalent authority. ▪ The charges to learners and centres are clearly explained and itemise the services to be provided. 	<ul style="list-style-type: none"> ▪ Statement by directors of financial adequacy. ▪ Business accounts. ▪ Business plan. ▪ Information on fees, charges and costs by qualification. ▪ Pricing policies.

Criteria ⁷	Indicators that an organisation meets the criteria ⁸	Typical evidence ⁹
<p>6. The organisation is committed to, and has the capacity to, meet the general conditions of recognition</p>	<ul style="list-style-type: none"> ▪ An evaluation of the organisation's capacity to comply with the conditions has been undertaken and reviewed at the highest level within the organisation. ▪ Compliance with the conditions has been built into the organisation's policies and procedures. 	<ul style="list-style-type: none"> ▪ Confirmation from the chair of the Board or equivalent authority that the application for recognition has the support of the Board, that the information supplied to support the recognition application is accurate, current and complete and that the organisation will comply with the recognition conditions. ▪ A self-evaluation by the organisation of its capacity to comply with the conditions, an action plan that sets out any actions it needs to take to ensure compliance and an account of the actions taken to date.

11.11 In addition to these generic recognition criteria, an awarding organisation may need to meet specific requirements relating to the qualifications it wishes to award. An organisation seeking recognition will be required to demonstrate that it can meet the recognition criteria in the context of the number, range and nature of the qualifications it wants to be recognised to offer. The organisation would need to demonstrate, for example, that, for the qualifications it wishes to offer, it has access to the necessary expertise, that its IT systems are adequate and that it has put in place arrangements to enable it to assure the comparability of the qualifications.

11.12 An awarding organisation that wants to be recognised to offer new specific or descriptions of qualifications would need to seek recognition against the relevant criteria, and demonstrate to us that it met the generic recognition criteria in the context of those qualifications.

11.13 An awarding organisation will need to comply with recognition conditions. We propose that these conditions will require that an awarding organisation complies with any published qualification specific requirements, whether or not they are set as accreditation criteria.

Questions:

D. To what extent do you agree with the proposed approach to recognition?

To a large extent	To a certain extent	Neither agree nor disagree	To a limited extent	Not at all
1	2	3	4	5

Please comment in particular on:

i) the draft generic recognition criteria

ii) the advantages and disadvantages of applying a generic set of criteria to all organisations seeking recognition.

12. Conditions of recognition

What the legislation says

Ofqual must set the conditions which an awarding organisation, once recognised, must meet if it is to continue to be recognised to offer particular qualifications.

Ofqual can set three types of conditions:

- general conditions that apply to all awarding organisations (different conditions may be set for different descriptions of awarding organisations, different qualifications and in respect of credits or components of qualifications)
- an accreditation condition, ie that a particular qualification or description of qualification or specified qualifications offered by a particular awarding organisation must be accredited before they can be offered
- other conditions (those applying to a specific awarding organisation) including fee capping and entry and inspection conditions, (which are explained later in the consultation document).

Conditions may be set at the time of recognition or later.

Before setting or revising the general conditions Ofqual must consult relevant persons

Summary

12.1 All awarding organisations must comply with the relevant general conditions at all times while they are recognised as awarding organisations. We will monitor compliance with the conditions on an on-going basis and take appropriate steps to ensure compliance, where this is necessary.

12.2 We propose that the general conditions should promote:

- public confidence in awarding organisations and the qualifications they offer
- the comparability of qualification standards where appropriate
- the design of qualifications that meet the needs of learners, employers and other users of qualification
- efficiency and value for money in the qualifications market
- fair and equal access to qualifications for a diverse range of learners
- any specific requirements of particular qualifications or types of qualifications.

Draft general conditions of recognition

Background

12.3 We would welcome comments on the draft set of general conditions. The draft is largely based on existing requirements on awarding organisations and on a project undertaken jointly by Ofqual and the regulators in Northern Ireland, Scotland and Wales. We propose to continue to work with our fellow regulators with a view to ensuring that we apply common requirements where possible. This will make it easier for awarding organisations to understand how they need to work in each country and minimise any burden placed on them from different requirements.

Governance, management and quality assurance

The draft conditions proposed in this section address the on-going requirements for an awarding organisation to take responsibility for, manage and quality assure the qualification development and awarding role in a way that protects the interests of learners, safeguards standards and promotes public confidence in regulated qualifications.

An awarding organisation must:

- 1) take all reasonable steps to ensure it acts in a way that is fair and equitable for the diverse needs of learners
- 2) fulfil its awarding functions efficiently and offer regulated qualifications that represent value for money
- 3) have a nominated single point of accountability for the quality of its regulated qualifications
- 4) identify and manage risks that could impact on its regulated functions
- 5) have in place contingency plans to maintain business continuity in the event of systems failures, breaches of security and other unexpected or unplanned events
- 6) use its quality assurance arrangements systematically to review, monitor and improve its qualifications or units, ensure compliance with regulatory requirements and have due regard to the requirements of the qualifications regulatory framework
- 7) identify, manage and minimise any potential conflicts of interest which may arise from any of its operating practices, and from activities undertaken by employees and others who contribute to the awarding function
- 8) minimise the administrative burden it places on others
- 9) operate from non-residential premises¹⁰.

Resources and expertise

The following proposed conditions address an awarding organisation's capacity to offer the qualifications for which it is recognised.

¹⁰ We propose to include this condition because we will not be able to use an entry and inspection condition where an organisation operates from a private dwelling.

An awarding organisation must:

- 10) have the relevant expertise, technological, financial, human and physical resources to carry out its regulated functions during the life of the qualifications and units it offers
- 11) provide an annual statement to that effect signed by a director, if a company, or similar representative if a differently constituted body
- 12) offer only those qualifications and units for which it has the necessary skills, resources, expertise and capacity.

Responsibilities to Ofqual

The proposed conditions in this section address how we might expect an awarding organisation to work and cooperate with us.

An awarding organisation must:

- 13) deal with Ofqual in an open, cooperative way, and must disclose to Ofqual any information or issues of which a regulator would reasonably expect to be aware
- 14) notify Ofqual of any new regulated qualifications it is proposing to offer, where these are not subject to an accreditation requirement, in order that these can be added to the register, and confirm that the qualifications have been developed and will be offered in accordance with regulatory requirements and conditions
- 15) cooperate with arrangements set up by Ofqual to investigate complaints and appeals
- 16) make available to Ofqual on request published accounts and data on achievements, fees and other charges
- 17) provide any other information that Ofqual reasonably considers necessary for the discharge of its functions and achievement of its objectives.

Communication and customer service

The interests of learners and public confidence in regulated qualifications will, we believe, be enhanced if an awarding organisation provides a good quality of service. Effective feedback from, and communication with, users of qualifications should support an awarding organisation's quality assurance arrangements. Clear and timely information about fees and associated charges should enhance the efficiency of the market. The following proposed conditions address these requirements.

An awarding organisation must:

- 18) publish clear information on its products, services and associated charges and fees in reasonable time and in a format to inform learner and centre choice

- 19) provide clear, accurate and timely information in response to reasonable enquiries it receives from customers

- 20) provide opportunities for feedback from learners, centres, employers and higher education and give due consideration, including in their quality assurance arrangements, to comments received.

Information and data management

An awarding organisation may need to collect, analyse and retain information and data for many reasons. In the following draft conditions we propose a minimum set of information and data that should be collected by an awarding organisation and shared with Ofqual as required. The information and data it is proposed should be collected would inform an awarding organisation's quality assurance arrangements and provide assurances about the comparability of standards over time. We will need to understand if unjustifiable barriers are preventing some learners from gaining qualifications. Data will therefore need to be collected by awarding organisations so they can assure themselves, Ofqual and others that they are identifying and addressing potentially unjustifiable barriers in their qualifications and assessments. Compliance with data protection legislation will be necessary.

An awarding organisation must:

21) collate and retain management information and data, to inform and improve the quality of regulated activities including on:

- a. the nature and number of complaints it has received and responded to
- b. the number of enquiries about results and appeals it has received and dealt with

22) retain under secure conditions sufficient evidence of learner achievement to support awarding outcomes, decisions, enquiries and appeals and monitoring across qualifications and centres, including over time, including relevant data for monitoring access to qualifications for different groups of learners¹¹

23) record details of how the effect of any barriers to assessment will be mitigated, including the use of reasonable adjustments.

Qualification development

We must have regard to the needs of employers, including as expressed through bodies such as Sector Skills Councils and Standards Setting Bodies, and users of qualifications, such as employers and higher education institutions. Learners and employers need to be able to identify qualifications that are relevant for them and be confident that the qualifications offered are fit for purpose. The following proposed conditions address these needs.

An awarding organisation must:

24) ensure that qualifications and units are developed with a clear purpose and target audience, that they consider and record the rationale and justification for the qualification being needed and work cooperatively with appropriate bodies representing the needs and interests of any sector for which a qualification is being developed

¹¹ For the avoidance of doubt an awarding organisation will need to collect and analyse data about the gender, age, ethnicity and any reported disability of individual learners to enable it to identify and address any aspects of its qualifications that unjustifiably discriminate against particular learners.

- 25) be able to demonstrate that their qualifications have appropriate support from the employment or education sector for which a qualification is being developed
- 26) clearly state when a qualification meets the requirements for a particular sector or profession.

Qualification design

Good qualification design is clearly at the heart of an awarding organisation's awarding role. The following draft conditions reflect this. Specific requirements about designing inclusive qualifications are also covered in the draft conditions.

An awarding organisation must ensure that:

- 27) the design of qualifications and units meets the purpose of the qualification
- 28) the subject areas and areas of knowledge, understanding, skills and competence are clearly defined and set out for each qualification
- 29) progression or outcome opportunities for learners are clearly identified in terms of qualification pathways or employment opportunities
- 30) requirements of the qualifications and/or credit framework to which the qualification is to be referenced are met
- 31) where it uses units and rules of combination developed by bodies other than itself, for the award of a qualification, those units and rules are subject to Ofqual's requirements.

32) the design of the qualification provides for assessment methods that:

- a. allow the generation of evidence that is relevant and which can be authenticated
- b. enable learners to demonstrate their abilities against the full range of qualification requirements
- c. clearly define centre requirements for controlled conditions
- d. use language and terminology that is appropriate for the target group
- e. are appropriate to the particular qualification.

33) there are no unnecessary barriers to the assessment of the qualifications it designs and/or offers for different groups of learners and that there is consultation with appropriate groups about potential barriers

34) any unavoidable barriers are identified and their inclusion is justified only and explicitly in terms of the integrity of the qualification and in line with relevant equality legislation.

Qualification title

Learners and other users of qualifications need information about qualifications that enable them to make informed choices and comparisons. Clear and consistent use of qualification titles facilitates this. The following proposed conditions reflect this need.

An awarding organisation must:

35) ensure that qualification and unit titles are:

- a. clear, meaningful and consistent
- b. specify the relevant subject area
- c. include the accredited level of the qualification where relevant
- d. comply with the requirements of the qualifications/credit framework to which the qualification is referenced.

Centre requirements¹²

The Education Act 1997 required that regulated qualifications needed to be external, that is, not awarded and taught or otherwise delivered by the same organisation. This is not a feature of the new legislation. Nevertheless, it is expected that many awarding organisations will continue to offer their qualifications through external centres. The relationship between an awarding organisation and the centres it uses is key to the successful and secure award of qualifications. The following draft conditions propose minimum requirements for all awarding organisations to build into their centre arrangements.

¹² This condition applies only where an awarding organisation uses centres in the course of its qualifications delivery or assessment arrangements

An awarding organisation must:

36) require centres and centre partnerships to:

- a. have in place the relevant expertise, quality assurance procedures and technological, financial and human resources for the qualifications and/or units they offer
- b. ensure that learners are uniquely identified¹³
- c. identify clear points of accountability for the quality assurance of qualifications
- d. collate and retain information and data to inform and support quality improvement
- e. keep records of, and respond to, complaints and cases of malpractice and maladministration.

37) require centres and centre partnerships to:

- a. maintain the security of assessments
- b. provide right of access to the qualifications regulators and awarding organisations for monitoring activities and investigations of appeals and malpractice where relevant

¹³ In England, Wales and Northern Ireland, the Unique Learner Number (ULN) is increasingly used to identify learners.

38) require centres to collate and retain information and data, under secure conditions where appropriate, in order to:

- a. inform and improve the quality of regulated activities including information on the nature and number of complaints received about the qualification or about the service received from the centre or the awarding organisation
- b. support awarding outcomes, decisions, enquiries and appeals
- c. support monitoring across qualifications, centres and over time, including relevant data for monitoring access to qualifications for different groups of learners.

Assessment arrangements

The standards of regulated qualifications will only be protected if assessments are properly designed, delivered and marked. Standards and public confidence may be undermined if arrangements for the delivery of assessments and are not robust or secure. Responsibilities for the different aspects of assessment need to be clearly defined. These draft conditions set out a minimum set of requirements that an awarding organisation should follow.

An awarding organisation must:

39) ensure that assessments are accessible and produce results which are valid, reliable, comparable, manageable and minimise bias by:

- a. producing evidence and results that demonstrate the maintenance of appropriate standards and coverage of the qualification specification, and provide comparability of standards between centres, and over time
- b. ensuring that internal and external assessment decisions are robust, meet defined standards and are supported by standardisation of marking and moderation and/or verification
- c. defining roles and responsibilities and points of accountability to ensure that assessment methods are subject to the necessary scrutiny and testing
- d. using clear procedures for the sampling of marking unless marking is automated
- e. ensuring that those responsible for assessments have appropriate skills and experience
- f. where appropriate, working with awarding organisations offering the same qualification or type of qualification to ensure that comparable standards are maintained, and having regard to requirements specified by Ofqual as to processes that must be followed for the maintenance of standards.

Awarding and grading

Clear and consistent approaches to awarding and (in relation to qualifications where it applies) grading are important so that learners are treated fairly, and so that users can have confidence in qualifications. These proposed conditions set out the basic requirements an awarding organisation will need to have in place. We will publish general conditions relating to particular qualifications and types of qualifications, which will need to be additionally met by awarding organisations recognised to and offering those qualifications.

40) An awarding organisation must:

- a. ensure that learners receive accurate and timely awards
- b. make clear how pass marks and any grade boundaries are determined, and specify explicitly the grading scale and the criteria against which learners' performance will be differentiated¹⁴
- c. clearly state the form in which the qualification and/or unit results will be reported.

Certification

Certificates are important to learners and users of qualifications. Certificates need to be clear and facilitate understanding and comparability of learners' achievements. The careless or fraudulent issue of certificates can undermine confidence in, and mislead those who value, qualifications. The following proposed conditions address the need for clarity, consistency and care when certificates are designed and issued.

An awarding organisation must:

- 41) ensure that certificates meet the minimum design requirements specified by Ofqual
- 42) ensure that certificates reflect learner achievement, are only issued on the basis of a valid claim and within a reasonable and clearly communicated timescale
- 43) take reasonable measures in the design and issuing of their certificates to protect against the fraudulent use of those certificates including by:
 - a. implementing safeguards to prevent fraudulent or mistaken claims for certificates
 - b. ensuring that replacement certificates are labelled as such, and are only issued after steps have been taken to authenticate the claims.

¹⁴ Specific regulatory criteria will be set for some qualifications.

Complaints

An awarding organisation will receive complaints from time to time. People must know how to complain and complaints should be taken seriously. Complaints can inform an organisation's quality assurance arrangements. These proposed conditions set out minimum requirements for complaints handling and investigation.

An awarding organisation must:

- 44) deal with complaints on a fair and equitable basis, in line with its published procedures and timescales. Where a complaint is upheld it must take appropriate, corrective and/or preventative action for all learners affected

- 45) make statistics on complaints available to Ofqual in a specified form.

Enquiries and appeals

Awarding organisations will put in place arrangements for dealing with enquiries and considering appeals about results or other assessment outcomes. The following draft conditions propose minimum requirements for such policies and procedures.

An awarding organisation must:

- 46) have clear, fair and equitable published procedures and timelines for dealing with enquiries about results and appeals

- 47) keep statistics on the number and nature of enquiries about results and appeals it has received and dealt with and make information available to Ofqual

- 48) ensure that the resolution of appeals includes independent consideration and that appropriate records are kept

- 49) cooperate with any external complaints and appeal arrangements put in place by Ofqual.

Malpractice and maladministration¹⁵

Incidents of malpractice and maladministration can compromise the integrity of a qualification, disadvantage learners and undermine public confidence in regulated qualifications. The proposed conditions set out below would require an awarding organisation to guard against such incidents and notify us of any incidents where certificates may have been invalidated, and prevent reoccurrence.

An awarding organisation must:

- 50) ensure that reasonable steps are taken to prevent malpractice and maladministration and demonstrate that such steps are included in any policies, procedures, instructions, plans or protocols, as appropriate

- 51) investigate suspected malpractice and maladministration. Where malpractice or maladministration is identified that has resulted in a certificate being invalidated, the awarding organisation must inform Ofqual, ensure appropriate steps are taken to protect the interests of past, current and prospective learners and, where appropriate, develop and implement corrective action plans to prevent further occurrence

Connected activities

The legislation gives us the power to keep under review any 'connected activities' of an awarding organisation. The following draft conditions would require an awarding organisation to consider whether any of its connected activities might compromise its responsibilities as an awarding organisation, to address any concerns identified and to cooperate with any investigations we undertook into connected activities.

¹⁵ Malpractice is a *deliberate* activity, neglect, default or other practice that compromises the integrity of the assessment process, and/or the validity of certificates. Maladministration is any activity, neglect, default or other practice that results in the centre or the regulated organisation not complying with the specified requirements for delivery of the qualifications and as set out in the relevant codes of practice.

An awarding organisation must:

- 52) take reasonable steps to prevent and monitor the occurrence of any incidents and activities, including those undertaken outside of the UK, that could bring regulated qualifications into disrepute, or otherwise undermine public confidence in regulated qualifications. It must take corrective actions and report any such incidents and activities to Ofqual

- 53) evaluate whether any of its activities could, or could be perceived to, compromise the integrity of its awarding function or damage public confidence in regulated qualifications and take steps to address any concerns about connected activities identified by themselves or others

- 54) cooperate with any reasonable investigation Ofqual undertakes using this power

- 55) cooperate with any reasonable investigation Ofqual undertakes using the connected activities power.

Surrender of recognition

An awarding organisation that wishes to surrender its recognition will be required to take steps to protect learners' interests. There is otherwise a risk that learners who have invested time and money preparing for a qualification will be unable to complete it.

An awarding organisation wishing to surrender recognition in respect of the award of a specified qualification or a description of qualifications must:

- 56) give reasonable notice to Ofqual of its intention to surrender recognition in respect of specific qualifications or descriptions of qualifications and provide information about the steps it will take to protect learners' interests

- 57) take all reasonable steps to protect the interests of learners

- 58) provide information about the learners who will be affected by its decision

- 59) continue to make the qualification(s) available until the date on which Ofqual specifies that the awarding organisation's surrender of recognition will take effect

60) amend its plans as reasonably required by Ofqual.

Questions

E. To what extent do the draft conditions reflect the performance of a good awarding organisation?

To a full extent	To a certain extent	Unsure	To a limited extent	Not at all
1	2	3	4	5

Please comment on:

- i) any additional conditions you think should be imposed**
- ii) any draft conditions that you consider to be unnecessary or unreasonable**
- iii) whether the draft conditions would support the fulfilment of Ofqual's objectives and general duties**

13. Qualifications subject to an accreditation requirement

What the legislation says

Ofqual may determine that particular qualifications or descriptions of qualifications are subject to an accreditation requirement. Accreditation may be required for all purposes or for the award of a qualification by a specified awarding organisation.

Before making any such determinations with regard to particular qualifications or descriptions of qualifications Ofqual must consult relevant persons.

Ofqual must set and publish the criteria for accreditation for those qualifications or descriptions of qualifications subject to the accreditation requirement. Different criteria may be set for different qualifications or descriptions of qualifications.

Before setting or revising the criteria Ofqual must consult relevant persons.

If Ofqual refuses an application for accreditation it must provide the awarding organisation with a statement setting out the reasons for its decision.

Ofqual cannot charge for accreditation.

Where criteria are revised, accreditation under previous criteria ceases to have effect at a date specified by Ofqual unless it determines otherwise.

Ofqual may make transitional arrangements in connection with changes to the accreditation status of qualifications.

What is the accreditation requirement?

- 13.1 We will be able to determine that certain qualifications or descriptions of qualifications are subject to an accreditation requirement, which would mean that the forms of qualifications could not be offered as regulated qualifications unless we had accredited them. For example, we could make all GCSEs or all 14–19 Diplomas subject to an accreditation requirement. This means that an awarding organisation recognised to award the qualification could not offer the qualification to learners unless it had been accredited, that is accepted by Ofqual, following a check against the published criteria.
- 13.2 If all the criteria are met the qualification that was subject to an accreditation requirement will be a regulated qualification, like any other regulated qualification. A qualification will not have a particular status, compared with other accredited qualifications, because it has been subject to an accreditation requirement and it should not, therefore, be described as an ‘accredited qualification’.
- 13.3 We will also be able to make subject to an accreditation requirement all or some of the qualifications that a particular awarding organisation wants to offer, if deemed appropriate.

Why will only some qualifications be subject to an accreditation requirement?

- 13.4 The new legislation puts an emphasis on regulating awarding organisations and on their responsibility for the qualifications they develop and offer. By contrast, the previous legislation required that every qualification that was regulated was individually accredited.
- 13.5 The new legislation is more explicitly in line with the principles of good regulation in this regard as it will enable us to target our resources and to focus on qualifications that might pose a higher level of risk to learners, to standards and to public confidence, including where a qualification is particularly complex. Where we have confidence that an awarding organisation can develop and award a qualification successfully, we will no longer need to check the qualification before it is made available as a regulated qualification, though the awarding organisation will still need to meet the conditions of recognition and any specific requirements for the qualification - and we will monitor that it does.
- 13.6 We propose that an accreditation requirement would be used in the following contexts:

For new qualifications that are high volume and high stakes

- 13.7 We propose that an accreditation requirement should be used when a new qualification is introduced for use within a so-called 'national suite' of qualifications, and where we judge that the accreditation requirement is necessary to ensure comparability of standards, for example because there are complex grading structures and content requirements. These qualifications are typically taken by large numbers of learners and the outcome can be particularly significant for learners and their future options.
- 13.8 We might be able to lift the accreditation requirement as it applies to a specific qualification or description of qualifications, once there is sufficient evidence that awarding organisations are consistently interpreting and applying the qualification standard and meeting the content and assessment requirements. However, there might be qualifications or descriptions of qualifications for which an accreditation requirement will continue to be appropriate even after the qualification is established.
- 13.9 Where a new qualification of this type is being developed, we might require it to be piloted (see section 14 on piloting new qualifications).

When an awarding organisation wants to offer qualifications that require new or additional resources and/or expertise

- 13.10 We propose that an accreditation requirement should be used when an awarding organisation has been recognised to offer qualifications that will require significant new or additional resources and/or expertise. The accreditation requirement would allow us to check whether the proposed qualifications were of sufficiently good quality.
- 13.11 In judging whether a particular awarding organisation's qualifications should be subject to an accreditation requirement in relation to the new qualifications, we would take into account the nature and range of the organisation's existing portfolio of qualifications, the confidence that can be placed in the organisation's capacity to recognise the limits of its expertise and capacity, and its track record.

When an awarding organisation with limited experience is recognised

13.12 We propose that an accreditation requirement should apply to all the qualifications developed by an awarding organisation which has little or no relevant experience of developing and managing some or all of the qualifications for which it is recognised – and when recognising an organisation we may do so on the assumption that we will initially impose an accreditation requirement on all its qualifications. Once the awarding organisation had demonstrated that it is able consistently to develop and offer the relevant qualifications to a high quality and appropriate standard the accreditation requirement would be lifted.

When there are concerns about the quality or standards of an awarding organisation's qualifications

13.13 We propose that we should apply an accreditation condition to an awarding organisation if there are concerns about the quality or standard of its qualifications. Concerns might be raised as a result of our monitoring, the volume of appeals or complaints, or concerns might be raised directly by users. Where appropriate, we would address concerns about those existing qualifications through our enforcement powers. However, we propose that an awarding organisation should not be free to offer further qualifications without accreditation if there was evidence of qualifications within its existing portfolio being deficient. The accreditation requirement could be applied to a particular qualification or to all descriptions of qualifications for which it was recognised. The accreditation requirement would remain in place until confidence in the awarding organisation's ability to deliver qualifications of an appropriate quality and standard was restored, or recognition was surrendered or withdrawn.

Questions

F What are your views on:

i) when an accreditation requirement should be used?

ii) whether certain qualifications should always be subject to an accreditation requirement?

iii) which qualifications or descriptions of qualifications should be subject to the accreditation requirement?

14. Piloting new qualifications

14.1 New and revised qualifications will be introduced from time to time. Some proposed new qualifications may include much that is familiar, tried and tested and can be introduced with little significant risk to standards, to public confidence or to learners. Other qualification proposals, particularly if they include new approaches to assessment or are intended to be taken by large numbers of candidates, may present more of a risk.

14.2 In May 2009 we published draft principles for piloting new or changed national qualifications¹⁶. We would welcome more feedback on the principles, which are set out below.

When should qualifications be piloted?

14.3 We propose that we should consider the need for piloting when:

- a national qualification (or group of qualifications) has a radically different structure or an innovative approach to assessment and/or subject content and/or
- the qualification is eventually expected to be taken by large numbers of candidates and/or
- the qualification is part of a national suite (such as GCSE), but is on a different timeline from the rest of the suite, and one or both of the other indicators are present.

Who decides when qualifications should be piloted?

14.4 We propose that an awarding organisation, the government, or QCDA should make proposals to Ofqual for the introduction of a new qualification and that we should consider whether piloting is appropriate before adopting the criteria or agreeing that the qualification should be regulated.

¹⁶ The first report of the Chief Regulator of Qualifications and Examinations, May 2009
<http://www.ofqual.gov.uk/files/2009-chief-regulators-report.pdf>

If a pilot is to be launched, what principles should govern it?

14.5 We propose that the following principles should govern any piloting arrangements:

- learners taking a pilot qualification should not be advantaged or disadvantaged by the fact that they are participating in a pilot
- there must be a clear purpose for the pilot
- pilot qualifications should be explained to the public, to promote public confidence and support
- the size of the pilot and the arrangements made should be decided to strike an appropriate balance across the following considerations:
 - the number of candidates and centres participating in pilots must be limited, so that those involved can be safeguarded should problems be identified
 - the number of examiners should be sufficient to assess and review all candidates' work to ensure that consistent and appropriate standards are applied
 - the sample of candidates should, as far as possible, be representative of the range of centres, their geographical location and the diversity and ability range of candidates ultimately expected to take the qualification
 - the evaluation of a pilot should include an evaluation of the value for money of the qualification.

When can a piloted qualification be offered nationally?

14.6 We propose that all pilots should run for sufficient time to allow a thorough testing of the aspects being piloted; normally this will take two years (plus the time required for evaluation). We propose that all pilots must be evaluated against their stated purpose.

14.7 The evaluation would be conducted independently of QCDA or the awarding organisation and be reported to Ofqual. Evaluations of pilot national qualifications should be published.

14.8 If QCDA or the awarding organisation decide, on the basis of the evaluation, that they wish to roll the qualification out, Ofqual would need to be satisfied that this was appropriate on the basis of the evidence from the evaluation.

Questions:

G. How effective would the draft principles for piloting new qualifications be as a basis for facilitating innovation in qualifications while also safeguarding standards?

Very Effective	Effective	Neither effective nor ineffective	Ineffective	Very ineffective
1	2	3	4	5

We would particularly welcome your views on:

- i) any additional or alternative safeguards that could be used when new qualifications are being introduced**
- ii) steps that could be taken to facilitate innovation.**

15. The Qualifications and Credit Framework (QCF) and the National Qualifications Framework (NQF)

- 15.1 Regulated qualifications will be referenced to either the QCF or the NQF. These frameworks help describe the characteristics of qualifications and aid comparability. We will continue to use the frameworks in the future. Conditions of recognition and, where appropriate, the criteria for accreditation will require awarding organisations to design qualifications so that they can be clearly referenced to one of the frameworks.
- 15.2 The QCF makes use of features designed to value learner achievements and to facilitate employer involvement in the design of qualifications. We are currently undertaking a two year evaluation of the regulation of the QCF. The transitional arrangements will make sure that implementation of the QCF is not destabilised by the introduction of the new regulatory approach.
- 15.3 In due course we will consider the desirability and sustainability of the two separate frameworks. We will also consider the relationship between the frameworks and the European Qualifications Framework.
- 15.4 We would consult before making changes to the framework arrangements.

16. Monitoring awarding organisations and regulated qualifications

What the legislation says

Ofqual may keep under review all aspects of qualifications.

Ofqual must publish a document, the 'qualifications regulatory framework', which:

- states how it will perform its monitoring and enforcement functions and
- provides guidance to awarding organisations in relation to the award of qualifications.

Guidance to awarding organisations must help to determine whether or not behaviour complies with the general conditions to which recognition is subject. This guidance may specify:

- descriptions of compliant behaviour
- descriptions of non-compliant behaviour
- factors Ofqual will take into account when determining whether behaviour is compliant.

Before publishing or revising this document Ofqual must consult relevant persons.

Recognised awarding organisations must have regard to the guidance published by Ofqual as part of the framework.

Summary

- 16.1 Awarding organisations will be responsible for the quality and standards of their own qualifications. They will be required to have their own quality assurance arrangements and will have to check their own compliance with the regulatory requirements.
- 16.2 We will undertake our own monitoring activities. We will check the consistency of standards of comparable qualifications and compliance with the conditions of recognition.

Monitoring compliance with the conditions of recognition

- 16.3 We propose that the following principles should underpin our approach to monitoring compliance with the recognition requirements:
- we will target our monitoring on the quality and probity in the work of awarding organisations, on the standard of the qualifications they award, and on the effectiveness of their quality assurance arrangements. However we will monitor compliance with all the conditions of recognition from time to time
 - the frequency and intensity of our monitoring will be determined on the basis of a transparent assessment of risk
 - arrangements will be clear, fair, rigorous, objective, efficient and effective and we will:
 - publish information on our monitoring processes and procedures
 - review and, where necessary, improve our approach
 - review and report publicly on our own performance
 - base reported outcomes on verifiable evidence
 - we will make fair and evidence-based judgements
 - individuals undertaking monitoring visits will be trained, follow established procedures and adhere to a code of conduct
 - awarding organisations will be informed of the outcomes of the monitoring activity
 - enforcement action may be taken where it is needed to ensure that an awarding organisation complies with the relevant conditions, including conditions to comply with qualification specific requirements, and to protect the interests of learners
 - awarding organisations will be required to rectify non-compliance within a specified period of time
 - we will report publicly on the outcomes of our monitoring work in order to promote public confidence and continuous improvement in the qualifications system through transparency and accountability

- the outcomes of monitoring will be used to inform decisions about continued recognition and whether to impose accreditation or other conditions
- we will have a procedure for an awarding organisation to make a complaint where it considers that monitoring processes and procedures may not have been properly followed
- we will publish a procedure for dealing with complaints from the public about an awarding organisation and/or regulated qualification and information from complaints and their investigation will be used to inform our monitoring priorities.

Monitoring compliance with specific conditions and qualification requirements

- 16.4 We will also monitor qualification standards. Our approach will vary according to the nature of the qualification under scrutiny. We will monitor compliance with any conditions set.
- 16.5 One focus of our qualification standards monitoring will, it is proposed, be on comparing the demands on candidates who are following the same or comparable qualifications, both at a point in time and over time, that is, over the years for which the qualification has been available. We will review the measures taken by an awarding organisation to ensure the standards of its qualifications are equivalent to comparable qualifications offered by other awarding organisations. We will use our enforcement powers to intervene when necessary to ensure comparability and to secure standards.

A risk based approach to monitoring

16.6 We propose to take a risk-based approach to monitoring. We will determine the frequency and intensity with which we monitor an awarding organisation according to our judgement of the level of confidence we have in the organisation's arrangements to protect the interests of learners, standards and public confidence and the size and complexity of its awarding role. We propose that our judgement should be based on the following:

- the extent of the awarding organisation's activity: numbers and types of qualifications offered, subjects/sectors of operation, licence to practise qualifications and certificates awarded
- the awarding organisation's stability and financial viability
- the robustness of the awarding organisation's processes and procedures as identified through the recognition process, self evaluation and previous monitoring
- the effectiveness of the awarding organisation's self evaluation, that is, the degree to which an awarding organisation proactively identifies and resolves problems itself
- significant changes in levels of activity by an awarding organisation, both overall and within specific qualifications
- the need to ensure consistency and standards within and across qualifications, particularly when new qualifications or specifications are introduced
- the awarding organisation's compliance with actions specified as a result of previous monitoring activity and through self evaluation
- the number of substantiated complaints received about the awarding organisation, a qualification, a subject and/or a specification
- the outcomes of any compliance investigations into malpractice or maladministration
- issues identified at the point of recognition, and accreditation, if this requirement is applied
- concerns based on relevant and objective information raised by other inspection or regulatory bodies or by SSCs or QCDA.

16.7 We plan to pilot the development and use of a risk profile for each awarding organisation. We believe this would promote transparency and consistency in our approach. The profile will also support a targeted and proportionate approach to regulation. We will share the profile with the awarding organisation concerned.

16.8 Our general approach to monitoring will be risk-based but we will reserve the right to undertake monitoring activities at any time to test and verify the accuracy of the profile or in response to an incident, intelligence or complaint.

Monitoring activities

16.9 We propose to use a range of tools when we monitor, depending on the focus of the monitoring activity. When we are monitoring an awarding organisation's process and procedures these would include:

- reviewing the outcome of an awarding organisation's self-evaluation
- desk-based evaluation of an organisation's procedures or data
- visits to and meetings with the awarding organisation
- systems audits including investigations into specific systems such as quality assurance, assessment, customer service and IT systems
- observing training and Question Paper Evaluation Committee (QPEC), standardisation, moderation and awarding meetings
- visits to centres to test systems.

16.10 The tools we will use to scrutinise qualifications may include:

- targeted investigations that are used in response to risks identified in relation to standards comparability between subjects within a qualification, or between qualifications, as a whole or in part
- a long term programme of standards comparability investigations informed by new qualifications development
- a rolling programme of standards-over-time reviews including maintenance of a national archive of particular qualification specification and scripts.

16.11 In addition we will undertake investigations into particular qualifications, specifications or groups of qualifications and look at the fitness for purpose of question papers, mark schemes and other assessment instruments. We may undertake thematic monitoring across a number of awarding organisations and undertake comparability studies.

Responding to findings

16.12 Awarding organisations will be required through conditions to address any deficiencies that are found during monitoring. A timescale for action will be confirmed and evidence will be required that the awarding organisation had taken appropriate action. We will be able to direct an awarding organisation that had failed to meet a condition, and was consequently prejudicing the proper award of a qualification or learners, to take specific steps to correct a concern or to refrain from doing certain things. For example, we could give a direction to an awarding organisation that had failed to comply with a condition to ensure that the standards of its qualifications were comparable with those set by other awarding organisations.

Reporting the outcomes of monitoring

16.13 We propose to publish the outcomes of our monitoring work. Where an awarding organisation has been required to take action as a result of our findings, we will also publish the organisation's response and action plan.

Question:

H. How appropriate is our proposed risk-based approach to monitoring?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

We would be particularly interested in your views on:

- (i) the factors we should take into account when deciding on the focus, scope and frequency of our monitoring**

- (ii) the use of a risk profile for each awarding organisation.**

17. Guidance for awarding organisations

- 17.1 We will prepare and publish guidance to awarding organisations in relation to the award of qualifications for which they have been recognised. We will use this guidance to help us determine whether or not an awarding organisation is complying with the general conditions. The guidance will form part of the qualifications regulatory framework. The Act requires awarding organisations to have regard to the guidance in relation to the award of qualifications in respect of which they are recognised. Where necessary, specific guidance will also be published – for example, about the requirements for the QCF.
- 17.2 We propose that, where appropriate, this guidance should take the form of a set of generic operating rules that will apply to all qualifications and will set out the expected behaviours in respect of meeting the general conditions.
- 17.3 We propose that, on the whole, such guidance should focus on the outcomes that an awarding organisation must achieve rather than on processes and procedures an awarding organisation should follow. However, the Act also provides for us to specify descriptions of behaviours that we would consider complies or does not comply with the general conditions for recognition.

Question:

- I. We would welcome in particular your views on:**
- i) the proposal to develop of a set of generic operating requirements**
 - ii) any alternative approaches to guidance you would favour**
 - iii) the types of behaviour that should be covered in the guidance.**

18. Enforcement and sanctions

What the legislation says

Ofqual may direct an awarding organisation to comply with a condition if it appears that the awarding organisation has failed, or is likely to fail, to comply with a condition and that this is likely to prejudice:

- the proper award of the qualification or
- persons seeking to obtain a qualification awarded by the organisation.

Ofqual must give notice to an awarding organisation of its intention to issue a direction, including its reasons for doing so, and must take account of representations from the awarding organisation.

An awarding organisation must comply with a direction, which is enforceable through the courts.

If an awarding organisation has failed to comply with a condition and this is likely to prejudice:

- the proper award of the qualification or
- persons seeking to obtain a qualification awarded by the organisation

Ofqual may withdraw recognition in respect of the award of a specified qualification or description of a qualification.

Before withdrawing recognition from an awarding organisation, Ofqual must give notice of its intention to do so and set out:

- its reasons for proposing to withdraw recognition and
- how and when the awarding organisation can make representations about the proposal to withdraw recognition.

Ofqual must have regard to any representation made by an awarding organisation.

Ofqual may vary the date when withdrawal has effect by giving further notice to the awarding organisation.

Ofqual must set in place arrangements for the review of a decision to withdraw recognition, at the request of a recognised awarding organisation.

Summary

18.1 We will act if it appears that an awarding organisation is not complying with a condition. We will act proportionately, in line with the principles of good regulation. There are a number of actions we could take. Our approach would be determined by the seriousness of the non compliance and the urgency of the matter. Our priority will be to protect learners, standards and public confidence in regulated qualifications as per our objectives.

Our approach to enforcement

18.2 We intend that our approach to enforcement and sanctions should be guided by good practice in this area. In particular, that we will have regard to the principles and characteristics for regulatory non compliance set out in *Regulatory Justice: Making Sanctions Effective, November 2006*. Namely:

A sanction should:

- 1) aim to change the behaviour of the offender
- 2) aim to eliminate any financial gain or benefit from non-compliance
- 3) be responsive and consider what is appropriate for the particular offender and regulatory issue
- 4) be proportionate to the nature of the offence and the harm caused
- 5) aim to restore the harm caused by the regulatory non-compliance, where appropriate
- 6) aim to deter future non-compliance.

The regulator should:

- 1) publish an enforcement policy
- 2) measure outcomes not just outputs
- 3) justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament
- 4) follow-up enforcement actions where appropriate
- 5) enforce in a transparent manner
- 6) be transparent in the way in which it applies and determines administrative penalties
- 7) avoid perverse incentives that might influence the choice of sanctioning response.

Proposed approach to enforcement

18.3 We expect that most awarding organisations will meet the conditions placed on them: they will recognise the value of regulation and want to act within it. Their own quality assurance arrangements should make sure that they do not inadvertently fail to meet the conditions. However from time to time we might identify instances of non-compliance. This might arise from, for example, our monitoring, standards or comparability activities, or as a result of a complaint. An awarding organisation might also bring a problem to our attention.

18.4 The type of action we will take will depend on the impact and risks associated with the problem. We will consider, for example:

- the impact of the breach of a condition on learners and on public confidence in regulated qualifications
- whether the breach applies to just one qualification or if it affects a range of the awarding organisation's qualifications
- whether the awarding organisation had itself identified the problem and has taken steps to address it
- whether there is a history of non-compliance.

18.5 The following table illustrates the approaches we propose to take in response to incidents of non compliance.

Enforcement action	Examples of incidents when this type of action might be appropriate¹⁷	Follow up action
Require an awarding organisation to prepare an action plan setting out how it will address an incidence of non compliance within a timescale	<p>The awarding organisation:</p> <ul style="list-style-type: none"> – is not complying with the condition to minimise the administrative burden it places on others – does not have an up to date business continuity plan – has not given us complaints information when required 	We will seek evidence that the awarding organisation has taken the actions set out in its action plan by the due date. If it fails to do so we will consider whether a condition or a direction would be an appropriate and proportionate response
Impose an 'other' condition of recognition, requiring the awarding organisation to comply with the condition by a given date.	<p>The awarding organisation:</p> <ul style="list-style-type: none"> – has offered qualifications that do not comply with the qualification design or assessment delivery conditions – has not published appropriate information about its fees and other charges 	We will seek evidence of compliance with the condition by the given date. If the awarding organisation does not comply we will consider whether a direction would be an appropriate and proportionate response. Alternatively we might consider whether withdrawal of recognition would be an appropriate and proportionate response.

¹⁷ The examples are illustrative only and they are not mutually exclusive. The examples included are not exhaustive. Reference is made in some of the examples to proposed conditions of recognition. The draft conditions of recognition are the subject of consultation and therefore subject to revision. Specific conditions may also be imposed on an individual awarding organisation's recognition at the time of recognition or subsequently.

<p>Direct the awarding organisation to take specific steps or refrain from doing certain things</p>	<p>The awarding organisation:</p> <ul style="list-style-type: none"> – has refused to comply with qualification specific requirements in place to promote consistency of standards between awarding organisations – continues to publish learner support materials that undermine the integrity of its qualifications, despite being asked to refrain from doing so – has refused to consider requests for reasonable adjustments from learners 	<p>We will seek evidence that the direction has been followed. If the organisation does not follow the direction we could seek a court order to ensure compliance.</p>
<p>Withdraw recognition in respect of some or all of the awarding organisation’s qualifications</p>	<p>The awarding organisation:</p> <ul style="list-style-type: none"> – has failed to comply with a direction and there is a high risk to learners, standards or public confidence – has promoted malpractice that has seriously compromised the integrity of the assessment process 	<p>We will take steps to protect the interests of learners if recognition is withdrawn</p>

18.6 In addition, we may publicly criticise the behaviour of an awarding organisation, where appropriate. The credibility of its qualifications, and therefore of the awarding organisation, depend on its reputation, so public criticism by the regulatory is a potentially significant sanction.

Making a direction

18.7 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.

We will first give notice of our intention to give a direction.

18.8 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 account the nature of the steps required and the risks to the qualification/learners.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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

18.14 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 if 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.

We will first need to give notice of our intention to do so.

18.15 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 to 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.

18.16 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.

18.17 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.

18.18 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.

18.19 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

18.20 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.

18.21 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.

18.22 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.

18.23 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.

18.24 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.

Questions:

J. To what extent is the proposed approach to enforcement fair, reasonable and proportionate?

To a full extent	To a certain extent	Unsure	To a small extent	Not at all
1	2	3	4	5

We would be particularly interested in your views on:

- i) the circumstances in which we should make use of the power to give directions or withdraw recognition**
- ii) steps we should take to protect learners, particularly if recognition is surrendered by an awarding organisation or withdrawn from an awarding organisation.**

K. To what extent are the draft procedures for directing an awarding organisation and withdrawing recognition fair and reasonable?

To a full extent	To a great extent	Unsure	To a small extent	Not at all
1	2	3	4	5

Please explain your answer.

19. Entry and inspection conditions

What the legislation says

The legislation will also allow Ofqual to impose an entry and inspection condition requiring permission to enter an awarding organisation's premises to inspect and copy documents if Ofqual deems it necessary in order to:

- satisfy itself that appropriate standards are being maintained in the award of a qualification or
- determine whether or not to impose a fee capping condition.

However, permission need only be granted by the awarding organisation if:

- the premises are not used as a private dwelling
- entry is by an authorised person
- reasonable notice has been given to the awarding organisation and
- entry is at a reasonable time.

19. Entry and inspection

- 19.1 Cooperation from awarding organisations is normally expected; it is proposed that all awarding organisations should be subject to a general condition to cooperate with Ofqual. However, the Act allows us to set an entry and inspection condition to enable us to enter premises to inspect and copy documents when cooperation is not otherwise forthcoming. Such a condition may be used to allow us to seek assurances that standards are being maintained or to secure information that will help us determine whether a fee capping condition should be imposed, and, if so, what that condition should be.
- 19.2 The legislation places certain limits on the situations in which an awarding organisation would be required to permit entry under an entry and inspection condition. These include:
- the premises must be used by an awarding organisation and not be used as a private dwelling
 - entry must be by an authorised person
 - reasonable notice has been given to the awarding organisation
 - entry must be at a reasonable time.

Situations when an entry and inspection condition may be set

- 19.3 We would normally expect to obtain the information we need with the agreement of the awarding organisation and without having to impose an entry and inspection condition. We would aim to give awarding organisations sufficient notice and details of the information that we require, and ensure our monitoring activities are planned with awarding organisations being notified in advance. Where we need to visit premises, for example to observe a meeting, view learners' work or inspect documents, this would normally be arranged in agreement with the awarding organisation.

19.4 Where agreement cannot be reached, and entry and inspection is needed for specific purposes, it may be necessary for us to impose an entry and inspection condition. Potential situations may include those where:

- a. we have grounds to believe that an awarding organisation has been involved in malpractice or maladministration in relation to the award or authentication of a regulated qualification and it is important for us to preserve the integrity of evidence
- b. we need to inspect or copy documents which have previously been requested but the awarding organisation has been unable or has refused to supply¹⁸
- c. we have not otherwise been able to obtain information needed to inform a decision to impose a fee-capping condition
- d. we are responding to incidents, for example security breaches with live question papers, which could affect the maintenance of standards and undermine public confidence. We may wish to visit at short notice to inspect an awarding organisation's arrangements for the storage of live question papers
- e. we need to gain access to computer records that are key to the maintenance of standards of a regulated qualification and that can only be accessed at the awarding organisation's premises.

Arrangements for approving the setting of an entry and inspection condition

19.5 We propose to put in place a process for approving the setting of an entry and inspection condition on an awarding organisation. A decision to set an entry and inspection condition will only be taken:

- where there are reasonable grounds to believe there is an on-going risk to the maintenance of standards in relation to the award or authentication of a qualification and in connection with the potential need to cap fees and
- after reasonable attempts to gather the information voluntarily have been exhausted.

¹⁸ An awarding organisation would be able to exclude from inspection any documents that were subject to legal privilege, that is, communications with its lawyers.

- 19.6 We propose that a decision to impose an entry and inspection condition should be made by a member of our staff who is authorised by the Chair of Ofqual's Board to impose such a condition. That person would consider the information being sought, a justification as to why the setting of an entry and inspection condition is necessary, details of any previous attempts to obtain the information by agreement and the amount of notice that is proposed to be given to the awarding organisation.
- 19.7 If it is agreed that an entry and inspection condition would be appropriate, a copy of the signed permission would be sent to the awarding organisation in advance of the entry and inspection condition being imposed. The method of delivery of the notice will be determined by the urgency of visit and the notice that is therefore being given. The notice will set out the reasons for entry and the information/documentation/process which we wish to inspect. If entry is required in order to access computer systems, notice of the need to provide suitably trained personnel to enable us to access records will be given.
- 19.8 We would expect to have access to any premises where an awarding organisation conducts its business but not to a private dwelling house.

Access to centres

- 19.9 The purpose of the entry and inspection condition is to enable us to inspect and copy documents held by the awarding organisation. Where the information/documents which we require are held by a centre or a third party contracted by the awarding organisation to support the delivery of qualifications, we would expect the awarding organisation to cooperate and obtain the necessary information/documents from these parties.
- 19.10 To enable us to carry out our normal monitoring and enforcement functions, an awarding organisation will need to ensure that each centre agrees to provide both it and us with access to premises, people and records, and to cooperate with the awarding organisation's own monitoring activities and ours. We propose that this should be covered by a general recognition condition.
- 19.11 As we will not have the authority to access private dwellings it is proposed that it should be a condition of recognition that awarding organisations must operate out of business, that is, non residential premises.

Authorised persons

- 19.12 Entry to premises must be by an authorised person. An 'authorised person' is defined as being a member of Ofqual's staff who is authorised (generally or specifically) for this purpose.

19.13 We will maintain a record of all staff who are authorised to enter awarding organisations' premises. Authorisation will normally be restricted to staff who are routinely engaged in monitoring or complaint investigation activities. All staff visiting an awarding organisation will have information on the purpose of the visit. The awarding organisation should be able to contact us for confirmation that the member of staff is authorised by Ofqual to enter premises under an entry and inspection condition.

Reasonable notice

19.14 The amount of notice that we would give an awarding organisation may depend on the nature and potential impact of the issue. In giving an awarding organisation notice that we wish to enter its premises, we would have to balance the requirement to act reasonably with the need to preserve the integrity of the information/evidence being sought and the urgency of any remedial action. This will be particularly important in cases where we may have grounds to believe an awarding organisation has been involved in malpractice in relation to the award of a regulated qualification.

19.15 We would normally ensure the awarding organisation is given a minimum of five working days' notice of the arrangements for the visit, but this may need to be reduced if there is an urgent need to access information in order to ensure the maintenance of standards or public confidence in the qualification arrangements.

19.16 The period of notice that entry will be required that we will consider reasonable will depend on, and be relative to, the urgency of gaining entry to carry out an inspection. In instances where we need to enter premises at short notice, for example in response to allegations of serious malpractice, we propose that a minimum of 24 hours' notice will normally be given.

Reasonable hours

19.17 We would normally expect to be permitted to have access whenever an awarding organisation is conducting its business. We would expect to have access during office hours, but would also expect access when an organisation is holding meetings or undertaking other activities later in the day or at the weekend.

L. To what extent are the proposed entry and inspection conditions fair and reasonable?

To a full extent	To a great extent	Unsure	To a small extent	Not at all
1	2	3	4	5

Please explain your answer.

20. Economic regulation

What the legislation says

One of Ofqual's objectives is to secure the efficient provision of regulated qualifications and in particular that payments to awarding organisations for awarding or authenticating qualifications represent value for money.

The legislation allows Ofqual to impose a fee capping condition on an awarding organisation. It can only do so if it is satisfied this is necessary to secure value for money. A fee-cap can limit the amount of a fee chargeable by an awarding organisation in respect of:

- the award of a qualification it is recognised to offer and
- the provision of any service in connection with such a qualification.

Before imposing such a condition Ofqual must give an awarding organisation notice setting out:

- its reasons for proposing to impose such a condition
- how and when the organisation can make representations.

Ofqual must have regard to the representations made by the awarding organisation.

An awarding organisation can request a review of a decision to impose a fee-cap. Ofqual must arrange for such a review to be undertaken by an independent person who has appropriate skills to do so.

In performing its functions in relation to fee capping Ofqual must have regard to any guidance published by the Secretary of State.

Introduction

20.1 We propose that the steps we take to fulfil the efficiency objective should be informed by an understanding of:

- how choices are made between regulated qualifications
- how efficient purchasing and funding decisions can be encouraged
- the impact on awarding organisations' costs of our own activities and the decisions of policy makers; and
- the competitiveness of the qualifications markets.

20.2 A fee-capping condition will be used only where we are satisfied this is necessary to ensure value for money. Such a decision would be evidence based.

Promoting efficient purchasing decisions

20.3 We propose that centres and employers should have ready access to information on the costs they would incur and the services they would receive in respect of a qualification awarded by a particular awarding organisation. We have commissioned a study on the costs and benefits of requiring awarding organisations to provide information on prices and services in a specified format and to a specified timetable. If the benefits of awarding organisations providing transparent information on fees and other charges outweigh the costs we propose that we should make this a general condition of the recognition of an awarding organisation. We will publish the report of this study.

The impact of regulatory requirements and policy decisions

20.4 The requirements we place on an awarding organisation could have an impact on its costs. Where our requirements could significantly change an awarding organisation's costs we propose that a regulatory impact assessment should be undertaken.

20.5 Similarly, we propose that we should explore and comment on the impact of Government policy decisions on the efficiency of the qualifications market.

Monitoring the market for signs of a lack of competition

- 20.6 Recent guidance¹⁹ from the Office of Fair Trading sets out the principle that effective competition in properly regulated markets can deliver lower prices, better quality goods and services and greater choice for consumers. We start from the presumption that a competitive market is more likely to be efficient and one in which fees and other charges are fair and reasonable. We will therefore monitor the market for signs of a lack of competition.
- 20.7 We will use a range of information to inform this monitoring, including publicly available information, complaints and expressions of concerns. We will consider other information where we are satisfied that the costs of providing the information will not outweigh the benefits of collecting it.
- 20.8 We propose to monitor the market shares of individual awarding organisations, as this is an important factor in assessing dominance. Data that will inform this monitoring is already being collected by us. In order to work out market shares it is first necessary to define the market. This is not a simple matter. We have engaged consultants to investigate the definition of the qualifications market and hope to use their work in our future market reports and calculations of market shares.
- 20.9 The level of fees and charges might be an indicator of an uncompetitive market, for example if fees or charges increased markedly or if they changed up or down in response to entry into or exit from the market. We will therefore monitor fees and charges and how they change.
- 20.10 High profits sustained over a lengthy period might also signal a lack of competition. Many awarding organisations do not seek to maximise their profits. It does not necessarily follow that they will be offering value for money, as they might not be operating efficiently and their costs might therefore be high. We propose to review awarding organisations' published accounts or the published accounts of the entities of which an awarding organisation is part. These accounts might not always reveal the costs or profitability of providing qualifications. Where this is the case for a large or potentially dominant organisation we may require the provision of disaggregated accounting data.
- 20.11 We have commissioned a study into the costs and benefits of the provision of disaggregated accounting data. This study will be published and will inform our decision about the information we require awarding organisations to provide.

¹⁹ *Government in markets: Why competition matters – a guide for policy makers* September 2009.

20.12 The behaviour of those who are deciding which qualifications to purchase might also affect the degree of competition. Compared with many other markets, purchasers of qualifications may be less price sensitive and more concerned about perceived and actual quality. This may be partly because the choice of qualification may be taken by a person who is not directly linked to the purchasing organisation's system of financial control. The competitiveness of a market might also be affected by the costs of switching awarding organisations, for example because of the need to buy new teaching and learning resources.

Further analysis of the market

20.13 If we have concerns about the operation of the market we propose that we should undertake a detailed economic analysis, or market study. We would either undertake the study ourselves or appoint an external and appropriately qualified body to do so.

20.14 Before deciding to undertake a market study we would consider:

- the likely costs of doing so, to awarding organisations, ourselves and others
- the possible benefits that we might obtain
- the extent to which the outcome of the study might promote our ability to achieve the efficiency objective.

20.15 We propose that any awarding organisation that would be affected by a decision to undertake a market study should be notified of our intention to do so. We propose that we would publish our reasons. Any representations made would be considered before a final decision was taken.

20.16 We would give notice to the awarding organisation of the information we would need and the timetable for its provision. This would be backed up by conditions if necessary.

20.17 The market study would involve an evidence-based investigation to determine whether there was sufficient competition in the market and whether the fees and other charges in question were fair and reasonable. Fees and charges would be judged to be fair and reasonable if they enabled the awarding organisation(s) to recover the efficiently incurred costs of providing the qualifications, including the cost of capital.

20.18 We propose that market study reports should be published.

Promoting competition

20.19 If we found evidence of a lack of competition within the market we would seek to implement the least intrusive regulatory mechanism to achieve our objectives.

20.20 We could attempt to promote competition; this could take a number of forms. We could make efforts to make purchasers more aware of the options open to them and highlight the benefits of encouraging those responsible for purchasing decisions to be more responsive to costs. Associated with this would be the improvements we could require to enhance the quality and accessibility of information available to centres and training providers.

20.21 Barriers to entry to the market could be assessed and, where possible, removed. This may involve consideration of issues such as the cost of regulation, the impact of cross subsidy or the existence of anti-competitive practices.

20.22 A dominant organisation could be restricted by further conditions which would limit its actions or place on it new obligations. For example, Ofqual could require it to provide more detailed accounting information or financially to ring-fence its awarding activities, or a sub-set of them, in areas in which it was dominant. We could also refer it to the Office of Fair Trading, if appropriate.

Fee-capping

20.23 A fee-cap condition can only be used if we are satisfied this is necessary to secure value for money. We propose that we should consider the use of a fee-cap condition if we have evidence that an awarding organisation's fees are not 'fair and reasonable' for the service provided. The power to cap fees is the type of power other regulators have in markets where there is a potential for market failure.

20.24 We will take into account:

- the competitiveness of the market
- the trend in fee levels over time
- an assessment of the efficient costs of providing the qualification on offer, including the cost of capital
- how the awarding organisation allocates its common costs to its range of qualifications
- the models an awarding organisation might adopt for recovering costs across a range of subjects.

20.25 We propose that if we were concerned that an awarding organisation was not delivering value for money we would conduct an investigation to inform a decision on the level, form and term of the fee-cap(s) to be applied. The investigation would consider, for example:

- whether fees should be capped for individual qualifications or components of qualifications
- whether there should be a cap on the rate of increase (or decrease) in a weighted basket of fees for qualifications or components of qualifications
- for what period fees should be capped
- other approaches on the form of the fee-cap to the extent permitted under the legislation.

20.26 We would also consider the time for which the cap would apply.

The proposed process for fee-capping

20.27 Where our market studies suggest that a fee-cap is the appropriate remedy to address a concern about value for money we must comply with the provisions of the Act which require us to:

- give notice to an awarding organisation of our proposals and explain our reasons
- allow a period for representations from the awarding organisation
- have regard to those representations
- arrange for the review of the decision by an independent and suitably skilled person, should the awarding organisation request one; and
- have regard to any guidance published by the Secretary of State.

20.28 A detailed timetable would be given to the awarding organisation when notice was given. A decision to impose a fee-cap could not take effect until the expiry of the period in which a review could be requested and any review had been undertaken.

Independent review of a decision to apply a fee-capping decision

20.29 If an awarding organisation requests a review of a decision to impose a fee capping condition we must appoint an independent person, who has the appropriate skills, to undertake the review.

20.30 It is proposed that the independent reviewer should 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.

20.31 We propose that a request for a review would have to be submitted in writing no more than 30 working days after receipt of the decision to impose a fee-capping condition. The review of the decision would normally be completed within 60 working days of receipt from the awarding organisation of a request for a review of the decision.

20.32 We propose that the independent reviewer would consider whether:

- the process used to make the original decision to impose a fee-cap was fair and reasonable
- the decision was unreasonable in light of the information available at the time the decision was taken.

20.33 We propose that the independent reviewer should be able to:

- confirm that the process by which the original decisions 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.

Next steps

20.34 We are building on previous work undertaken by the QCA to develop our understanding of the qualifications market(s). This preparatory work will enable the Ofqual Board to give early consideration to the efficiency of the market(s) and whether there is a need to take regulatory action to secure value for money.

Questions:

M. How likely is it that advance publication of information on fees and other charges would promote efficient purchasing decisions?

Very likely	Likely	Unsure	Unlikely	Very unlikely
1	2	3	4	5

Please explain your answer.

N. How reasonable would it be for Ofqual to require awarding organisations to provide it with financial information that was not in their published accounts?

Very reasonable	Reasonable	Neither reasonable nor unreasonable	Unreasonable	Very unreasonable
1	2	3	4	5

Please explain your answer.

O. How appropriate would it be to judge fees and other charges as ‘fair and reasonable’ if they enabled an awarding organisation to recover the efficiently incurred costs of providing qualifications, including the cost of capital?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

Please explain your answer.

P. To what extent do you support the proposal that specific conditions could be placed on organisations that are dominant in the qualifications market?

To a full extent	To a great extent	Unsure	To a small extent	Not at all
1	2	3	4	5

Please explain your answer.

Q. How appropriate is the proposed fee-capping procedure?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

Please explain your answer.

21. Promoting awareness of the benefits of regulated qualifications and public confidence in regulated qualifications and assessment arrangements

What the legislation says

It is Ofqual's objective to promote awareness and understanding of:

- the range of regulated qualifications available
- the benefits of regulated qualifications
- the benefits of recognition to awarding organisations.

It is Ofqual's objective to promote public confidence in regulated qualifications and regulated assessment arrangements.

Ofqual will be required to publish:

- a register of recognised awarding organisations and the qualifications they offer
- a qualifications regulatory framework setting out how it will perform its monitoring and enforcement duties
- an annual report setting out how it has performed its functions that year.

21.1 Effective and transparent regulation of qualifications and assessments will underpin our efforts to promote understanding of the benefits of, and confidence in, regulated qualifications and assessments. Learners and those who make use of regulated qualifications should be confident that an awarding organisation has been judged to be fit to offer trustworthy qualifications.

- 21.2 We will build on the work we have already undertaken to explain the structure and regulation of certain qualifications, to open up discussions about standards and reliability and to learn more about learners' concerns and interests.²⁰ We will target information through a communication strategy. Our use of media such as Youtube and Twitter will be developed further. We will continue to undertake research and surveys into levels of understanding and public confidence in regulated qualifications and assessments and respond accordingly.
- 21.3 We propose that we should use surveys of, among others, learners, parents, carers, teachers, employers and higher education institutions to help us measure our success in achieving our objectives. We will refine the approaches we have taken in response to the findings from such studies. We will continue to learn from panels of representative groups who have views on regulated qualifications and assessments. We will develop a plan for spreading awareness amongst employers of the benefits of regulation, including the opportunities provided by recognition as an awarding organisation within the QCF.

²⁰ See for example, our guides to qualifications, our animation on our reliability project and videos of meetings with learner panels. www.ofqual.gov.uk/

The register of awarding organisations

21.4 We will publish a register of recognised awarding organisations. For each organisation this will include:

- the qualifications in respect of which it is recognised
- the forms of those qualifications which are being awarded
- where appropriate, the number of guided learning hours attached to those qualifications.

21.5 We may include other information on the register and we seek views on this.

21.6 We intend that the register should be maintained online, be readily accessible to learners and the public, and be capable of interrogation by users so that they can find the information that they require. The register should provide links to awarding organisations so that individuals are able to find out more information about a qualification in which they are interested. It could include search facilities and tools to allow comparisons.

Questions:

R. What are your views on:

i) the steps we should take to promote understanding of the benefits of regulated qualifications and confidence in regulated qualifications and assessments

ii) the information that should appear on the register?

Part 3

22. – Regulation of national curriculum and EYFS assessments

What the legislation says

Ofqual's objective is to promote the development and implementation of regulated assessments which give a reliable indication of achievement and indicate a consistent level of attainment (including over time) between comparable assessments. We must also promote public confidence in regulated assessment arrangements.

Ofqual must keep under review all aspects of statutory national curriculum and EYFS assessment arrangements.

Ofqual has the power to require, at any time, information which it considers necessary for the performance of its functions from specified persons, including the Secretary of State for Children, Schools and Families and national curriculum / EYFS responsible bodies²¹.

Ofqual has a duty to notify the Secretary of State and national curriculum and EYFS responsible bodies, where appropriate, if it appears that there is or is likely to be significant failings in the assessment arrangements.

Ofqual must produce assessment regulatory frameworks relating to national curriculum and EYFS assessment arrangements and responsible bodies must have regard to these frameworks when performing their functions.

²¹ 'NC responsible body' means a person who under or by virtue of an order made under section 87(3)(c) of the Education Act 2002 has functions in relation to the development, implementation or monitoring of NC assessment arrangements. 'EYFS responsible body' means a person who under or by virtue of an order made under section 39(1)(a) of the Childcare Act 2006 has functions in relation to the development, implementation or monitoring of EYFS assessment arrangements.

Roles and responsibilities in relation to national curriculum Assessments

- 22.1 There are a number of bodies who have a role in national curriculum and EYFS assessments. These are set out below.
- 22.2 **Local authorities** have a statutory duty to monitor the administration of national curriculum assessments in their schools in line with the statutory requirements, and moderate teacher assessments at key stage 1.
- 22.3 **Head teachers and governing bodies** are responsible for ensuring that the statutory national curriculum assessments are administered to all eligible pupils. Head teachers are responsible for ensuring that the tests are administered according to the published statutory assessment arrangements.
- 22.4 **QCDA** will be responsible, under a remit given to it by the Department for Children, Schools and Families, for producing national curriculum assessments and for setting in place procedures to ensure that the standards defined by QCDA are maintained in each core subject assessment, across key stages and from year to year. QCDA is also required to ensure that schools receive timely information and materials to administer the national curriculum assessments.
- 22.5 **Department for Children, Schools and Families** sets arrangements for assessment and testing. It also receives data from QCDA on how the national cohort of pupils has performed in the national curriculum assessments at the end of each key stage, and uses this for the publication of Achievement and Attainment tables.
- 22.6 **Ofsted** uses the aggregated attainment and progress data which is generated by end of key stage tests and teacher assessment as a key evidence base for its inspection judgements.

Roles and responsibilities in relation to the EYFS

22.7 **Local authorities** are responsible for ensuring their schools and private, voluntary and independent settings (PVI settings) administer the statutory framework and reporting arrangements appropriately. They must ensure their schools and PVI settings understand and follow the requirements. Local authorities have a statutory responsibility for moderating EYFS profile judgements to secure consistent standards in the assessment.

22.8 **Head teachers** and heads of EYFS settings must make sure that their schools comply with all aspects of the EYFS. All foundation schools and PVI settings must provide parents/guardians with a written summary of a child's progress against the early learning goals and assessment scales.

22.9 **Practitioners** have the responsibility of ensuring the consistency and accuracy of their EYFS profile assessments through:

- participating in internal moderation with practitioners in their own school/setting
- attendance at implementation and moderation training where appropriate
- attendance at moderation events at least annually.

22.10 **QCDA** is responsible for monitoring the local authorities' moderation process and providing local authorities with guidance and examples of good practice.

22.11 **Ofsted** inspects the quality of the delivery of the EYFS and how well providers are meeting the welfare, learning and development requirements. Ofsted also checks that arrangements are in hand for completion of the EYFS profile for children in the final year of EYFS.

22.12 **The Children's Workforce Development Council (CWDC)** is responsible for defining qualifications and training requirements acceptable for registration as an early years practitioner and for regulatory purposes.

22.13 **The Department for Children, Schools and Families** is responsible for determining the nature and extent of the assessment arrangements and collects EYFS profile achievement. These data are used to gain an overview of improvements in young children's achievements to meet national targets and how children are performing against the early learning goals.

Promoting the development and implementation of regulated assessment arrangements which maintain standards

- 22.14 The Secretary of State for Children, Schools and Families is responsible for specifying in statutory regulations the arrangements for pupil assessments in relation to each of the key stages of the national curriculum, and the arrangements required for assessing the achievements of children in relation to the learning and development requirements of the EYFS.
- 22.15 We are required to keep under review all aspects of the national curriculum and EYFS assessment arrangements that have been specified by the Secretary of State in statutory orders²².
- 22.16 We have a statutory objective to *promote* the development and implementation of assessment arrangements which give a reliable indication of achievement, and indicate a consistent level of attainment (including over time) between comparable assessments. We will achieve this by adopting a regulatory approach in line with the principles of good regulation.
- 22.17 We will work closely with stakeholders who share our agenda to ensure the development and implementation of high quality assessments. We will share and promote the good practice that we identify.

The changing assessment landscape

- 22.18 The regulation of assessment arrangements has previously focused on the end of key stage statutory national curriculum tests. However, with the ending of all national tests at key stage 3 and science tests at key stage 2, coupled with the move towards facilitating reliable formative and summative teacher assessments, the assessment landscape has changed markedly in recent years.

²² The assessment arrangements that fall within Ofqual's scope are those which are specified by or by virtue of section 87 of the Education Act 2002 and sections 39 to 42 of the Childcare Act 2006.

22.19 Although the Secretary of State is responsible for specifying the assessment arrangements, reflecting his/her policy objectives, he/she must now consult Ofqual before making any changes to them. When responding to such consultation requests, we will evaluate the proposed changes in terms of whether they are likely to allow for assessments which are valid, reliable, comparable, manageable and minimise bias. Our responses will be evidence-based, informed by our monitoring and stakeholder engagement activities.

Expert Group on Assessment

22.20 We have a duty to have regard to the specified purposes of regulated assessment arrangements when we review the arrangements. Formally, there is only one purpose for national curriculum assessment, which is to ascertain what pupils have achieved in relation to attainment targets for the relevant key stage. Under the Act, the Secretary of State may specify additional purposes. However, we note that the Secretary of State's Expert Group on Assessment report <http://publications.dcsf.gov.uk/eOrderingDownload/Expert-Group-Report.pdf>, published in May 2009, identified the purposes of national curriculum assessments as being:

- to optimise the effectiveness of pupils' learning and teachers' teaching
- to hold individual schools accountable for their performance
- to provide parents with information about the child's progress
- to provide reliable information about national standards over time.

22.21 The focus of the Expert Group's recommendations is on bringing about reliable and consistent assessments which support learning and can command public confidence. To achieve this objective, a wide range of summative and formative assessment is proposed. We will need to consider carefully, given resources available to us, which aspects of statutory assessment we should focus on.

Assessment regulatory frameworks

22.22 The Act requires us to develop and publish regulatory frameworks for national curriculum and EYFS assessments which:

- describe how Ofqual intends to keep under review all aspects of national curriculum and EYFS assessment arrangements and
- provide guidance to those bodies that have responsibility for the development, implementation and monitoring of national curriculum and EYFS on how to perform their functions; those bodies are required to have regard to the frameworks.

22.23 To meet our assessments standards objective, our approach needs to secure that:

- assessment approaches used are valid, reliable and manageable
- assessments are designed and delivered in a way that is capable of delivering the statutory purposes of assessments
- the content of assessments (knowledge, skills and understanding) accurately reflect the subject criteria which are set for each statutory assessment by Ofqual and agreed with QCDA
- surveys indicate that teachers, parents, pupils, local authorities and other stakeholders have confidence in the outcomes of national curriculum and EYFS assessments
- there is comparability in the assessment outcomes between institutions and year-on-year
- no pupil working at the level of the assessment is disadvantaged or excluded because of their social background, culture, race, gender, ability or disability.

Criteria for national curriculum and EYFS assessments

22.24 To ensure our approach is consistent and transparent, we will apply the following criteria when reviewing the development, delivery, marking and reporting of externally assessed tests, internally assessed tasks, and the moderation of teacher assessment and EYFS profile judgements where these are statutory all aspects of national curriculum and EYFS assessment arrangements:

- **Validity** – the assessments must generate results that provide a valid measure of pupils’ knowledge, skills and understanding as defined by the national curriculum and subject criteria.
- **Reliability** – the assessments must generate results that provide a reliable measure of pupils’ performance.
- **Comparability** – the assessments must generate results that provide comparability of standards.
- **Manageability** – the assessment system must be manageable.
- **Minimise bias** – the assessments must generate outcomes that minimise bias differentiating on the basis of pupils’ ability to meet the requirements.

A fuller explanation of the criteria is included in Annexe B of this document.

Subject criteria

22.25 Ofqual will review the subject criteria for each statutory assessment, including:

- the structure of the assessment
- how achievement will be recognised within the assessment
- curriculum coverage and balance across the programme of study
- question or task types and contexts
- permitted equipment and information.

We will expect assessments to meet both the common and subject criteria.

Keeping national curriculum and EYFS assessment arrangements under review

22.26 We will adopt an approach to keeping assessment arrangements under review whereby we consider:

- the development and implementation of assessment arrangements against our criteria of validity, reliability, comparability, manageability and minimising bias
- the objectives of the assessment arrangement
- the role that parents, practitioners, teaching assistants and other bodies play in the conduct and quality assurance of the assessment arrangements
- how the outcomes of the assessments are used
- how the sharing of good practice which encourages high quality assessment can be promoted
- how regulation can add value and avoid regulatory burden.

Monitoring

22.27 We will undertake specific monitoring activities based on those areas where our risk assessment indicates there is most concern. The risk assessment would be used to determine the nature, scope and frequency of our review activities and will be informed by consideration of the following factors:

- changes to how the assessment arrangements are conducted
- changes to the processes and systems in relation to the assessment arrangement
- the issue of new national guidance and support material, which is designed to ensure assessments are reliable and consistent
- analysis of assessment outcomes data and how data is used
- outcomes of self assessment exercises undertaken by responsible bodies and our previous monitoring
- complaints we have received concerning the assessment arrangements and feedback from Ofsted and other relevant bodies
- the need to ensure our monitoring activities are appropriately targeted and add value
- feedback from parents and practitioners.

Monitoring activities

22.28 Informed by our risk assessment we would undertake one or more of the following monitoring activities:

Systems audit

- reviewing the fitness for purpose of the systems and processes that are intended to ensure the implementation of assessment arrangements which are valid, reliable, comparable, manageable and minimise bias.

Guidance and training materials

- evaluating the quality of national guidance and training materials intended to help practitioners and teachers make reliable and consistent assessments
- reviewing materials against our common criteria
- providing feedback to responsible bodies.

Moderation

- evaluating the effectiveness of arrangements for monitoring local authority assessment moderation arrangements
- observing the local authority moderation process in a sample of areas in order to validate the effectiveness of the moderation model
- evaluating the effectiveness of the delivery of moderation training to practitioners, for example, review of the training in a variety of EYFS settings including private, voluntary, independent and school-based settings
- consulting on improvements to existing processes.

Assessment outcomes data

Analysing nationally collected data to:

- establish whether assessment outcomes are being used in a way which meets the intended purposes of the assessment arrangements
- understand how the use of assessment outcomes data by local authorities, heads of settings, practitioners, DCSF and Ofsted impacts on assessment practice, and the validity and reliability of the assessment arrangements.

22.29 We will publish our annual programme of monitoring. Over time this programme will cover all the stages of the assessment process including the development and delivery of the assessment, suppliers' delivery systems, teacher and practitioner assessment and moderation

22.30 We may re-focus our published programme of monitoring if risks have been identified that threaten the quality or delivery of assessments, or if issues have arisen during a review or health check of a responsible body, its suppliers or their systems.

Guidance for national curriculum and EYFS responsible bodies

22.31 We will produce guidance which reflects the purpose of the assessment arrangements and how they are implemented. We will have due regard to the guidance which is produced by other bodies. We will work in partnership with responsible bodies and public authorities to ensure the guidance we produce is consistent and that we do not create an unnecessary burden by, for example, duplicating existing guidance.

22.32 The guidance we produce will be designed to allow flexibility in approach to ensure it does not become out of date too quickly, for example by failing to facilitate the transition between bodies that have responsibility for developing or delivering national curriculum tests. The guidance will define the roles and responsibilities of all those involved in the assessment arrangements and the outcomes expected, rather than prescribing a particular process.

Information requirements

22.33 To enable us to carry out our role effectively we have the power to require the Secretary of State, national curriculum and EYFS responsible bodies and Ofsted to provide specific information.

22.34 When we request information we require we will:

- provide a clear rationale for the information being requested
- provide reasonable notice/timetable to the body from which the information is being requested
- avoid creating unnecessary burden by duplicating information that is already requested or collected by other bodies
- work with responsible bodies to establish effective ways of sharing information
- have due regard to the quality of data and the organisation's data collection process
- have due regard to the views of teachers, practitioners and other stakeholders when evaluating nationally collected information.

Notification of significant failings

22.35 One of the recommendations in Lord Sutherland's inquiry report²³ into the problems with the delivery of national curriculum tests in 2008 was that Ofqual should have a duty to inform the DCSF if it had concerns about the delivery and quality of national curriculum tests. Reflecting this recommendation, the Act requires us to notify the Secretary of State, and the responsible bodies, of a significant failing in the assessment arrangements when we judge there is sufficient evidence to indicate there is, or is likely to be, a failure to achieve one or more of the specified purposes of the assessment arrangements. We will, of course, provide feedback and information to the Secretary of State even when there is not a significant failing, as appropriate.

²³ Lord Sutherland (2008), *The Sutherland Inquiry: An independent report into the delivery of national curriculum tests in 2008*, London: The Stationary Office

22.36 We propose to consider the following when we assess the likelihood of a significant failing occurring:

- 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 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 Act
- evidence from stakeholder engagement activities indicates the purposes of the assessment arrangements are not being met
- any significant changes to the assessment model and associated quality assurance/moderation arrangements
- substantiated complaints received
- concerns based on relevant and objective information provided by Ofsted.

22.37 Examples of circumstances in which we might notify the Secretary of State and the responsible body of a significant failing in relation to national curriculum assessments include:

- if it became evident to us that there was a risk that significant numbers of test results would be delayed, and that the results would not therefore provide pupils, schools or the government with timely information about the attainment and progress of pupils, where the provision of this information is one of the specified purposes of the assessment; or
- if a new type of national curriculum assessment was being developed which we judged would not provide a reliable assessment of a pupil's level of attainment.

22.38 Examples of circumstances in which we might notify the Secretary of State and the responsible body of a significant failing in EYFS assessments include:

- moderation arrangements do not ensure EYFS assessments give a reliable indication of achievement
- there are shortcomings in the guidance and materials provided to settings which could result in significant variances in the way assessment arrangements are implemented between local authorities, and in turn call into question the consistency of assessments
- stakeholder feedback indicates a lack of confidence in the validity and reliability of assessment outcomes.

Involving stakeholders

22.39 The successful delivery of national curriculum and EYFS assessments depends on the involvement of a range of organisations and individuals. Good regulation depends on putting those who are involved in developing, implementing and receiving the outcomes of the assessment process at the centre of the regulatory process. This approach involves working closely with stakeholders to help identify the focus of our monitoring activities, as well as facilitating the promotion of assessments that meet our criteria.

22.40 We propose to have regular contact with stakeholders (such as QCDA, DCSF, local authorities, Children's Workforce Development Council, Ofsted, teacher associations, Chartered Institute of Educational Assessors) to:

- gather evidence and feedback on the development and implementation of national curriculum and EYFS assessment arrangements. We would evaluate this evidence against the common criteria of validity, reliability, comparability, manageability and minimising bias, and use it to inform the focus of our monitoring activities
- encourage responsible bodies to develop effective self-assessment mechanisms
- review how the assessment arrangements work in practice against our common criteria and achieve their intended purposes and outcomes
- identify where improvements to existing assessment arrangements could be made
- provide feedback on the outcome of our regulatory activities and share good practice
- identify areas to focus our monitoring for future years.

Parental engagement

22.41 One of the key purposes of assessment identified by the Secretary of State's Expert Group on Assessment is to provide parents with information about their child's progress. The views and experiences of parents/guardians/carers will therefore be important to us when we make judgements about the validity and reliability of national curriculum and EYFS assessment arrangements. We will:

- engage with parents through a suitable range of mechanisms (focus groups, questionnaires etc) to generate evidence concerning their experience of the implementation of national curriculum and EYFS assessment arrangements
- seek opinions of practitioners and teachers
- evaluate the extent of parental understanding and engagement with the outcomes of the assessments
- evaluate the level of public confidence in the assessment arrangements and their outcomes.

22.42 We will also establish a network of specialists which will be used to:

- inform and validate the focus of our monitoring activities and approach
- provide a link to practitioner and teacher networks
- review and validate the outcomes of our regulatory activities prior to dissemination.

Developing our proposals

22.43 The assessment regulatory framework will be finalised in light of responses to both this consultation and further more specific consultations we will undertake. We will also need to consult on our role in relation to complaints and appeals about assessments.

Questions:

S. What should be Ofqual's priorities as it promotes the development and implementation of assessment arrangements which give a reliable indication of achievement, and indicate a consistent level of attainment between comparable assessments?

T. How helpful are the principles of validity, consistency, reliability, manageability and minimising bias as a basis for the regulation of national curriculum and early years' foundation stage assessments?

Very helpful	Helpful	Neither helpful nor unhelpful	Unhelpful	Very unhelpful
1	2	3	4	5

Please explain your answer.

U. How appropriate are the proposed risk factors for determining the nature, scope and frequency of our monitoring activities?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

Please explain your answer.

23. PART 4 – Responding to the consultation and summary of questions

How to respond

23.1 We would prefer you to respond using the online form:
www.ofqual.gov.uk/consultation.

We will also accept responses by email sent to:
consultationresponses@ofqual.gov.uk or by post to Regulatory Policy Team,
Spring Place, Coventry Business Park, Herald Avenue, Coventry, CV5 6UB.

The last date for responses is 8 March 2010.

23.2 We do not expect everyone who responds to answer every question. You are welcome to respond only to those questions that are most relevant to your interests.

What happens next

23.3 The responses will be analysed by an independent body. The report on the responses will be published.

23.4 Our Board, which is due to be appointed as from 1 April 2010, will consider the responses and decide how to proceed with the introduction of our new ways of working.

Confidentiality

23.5 If you do not wish your response to be published you must indicate clearly that you are submitting your response on a confidential basis. All responses will, however, be made available to the external organisation appointed to analyse the responses.

Annexe A

Summary of questions

Questions

Question A:

- (i) What are your views on how we should measure our performance?**
- (ii) What matters do you think Ofqual should cover in its Annual Report (over and above those required by the Act)?**

B. What are your views on:

- i) our proposed approach to regulation?**
- ii) how we should fulfil our general duties?**
- iii) any steps we should take to promote equality and eliminate discrimination in our approach to the regulation of qualifications, assessments and tests?**

C. Do you have any comment on our proposed approach to securing the standards of regulated qualifications?

D. To what extent do you agree with the proposed approach to recognition?

To a large extent	To a certain extent	Neither agree nor disagree	To a limited extent	Not at all
1	2	3	4	5

Please comment in particular on:

- i) the draft recognition criteria**
- ii) the advantages and disadvantages of applying a common set of criteria to all organisations seeking recognition.**

E. To what extent do the draft conditions reflect the performance of a good awarding organisation?

To a full extent	To a certain extent	Unsure	To a limited extent	Not at all
1	2	3	4	5

Please comment on:

- i) any additional conditions you think should be imposed**
- ii) any draft conditions that you consider to be unnecessary or unreasonable**
- iii) whether the draft conditions would support the fulfilment of Ofqual's objectives and general duties.**

F. What are your views on:

- i) when an accreditation requirement should be used?**
- ii) whether certain qualifications should always be subject to an accreditation requirement?**
- iii) which qualifications or descriptions of qualifications should be subject to the accreditation requirement?**

G. How effective would the draft principles for piloting new qualifications be as a basis for facilitating innovation in qualifications while also safeguarding standards?

Very Effective	Effective	Neither effective nor ineffective	Ineffective	Very ineffective
1	2	3	4	5

We would particularly welcome your views on:

- i) any additional or alternative safeguards that could be used when new qualifications are being introduced**
- ii) steps that could be taken to facilitate innovation.**

H. How appropriate is our proposed risk-based approach to monitoring?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

We would be particularly interested in your views on:

- i) the factors we should take into account when deciding on the focus, scope and frequency of our monitoring**
- ii) the use of a risk profile for each awarding organisation.**

I. We would welcome in particular your views on:

- i) the proposal to develop of a set of generic operating requirements**
- ii) any alternative approaches to guidance you would favour**
- iii) the type of behaviour that should be covered in the guidance.**

J. To what extent is the proposed approach to enforcement fair, reasonable and proportionate?

To a full extent	To a certain extent	Unsure	To a small extent	Not at all
1	2	3	4	5

We would be particularly interested in your views on:

- i) the circumstances in which we should make use of the power to give directions or withdraw recognition**
- ii) steps we should take to protect learners, particularly if recognition is surrendered by an awarding organisation or withdrawn from an awarding organisation.**

K. To what extent are the draft procedures for directing an awarding organisation and withdrawing recognition fair and reasonable?

To a full extent	To a great extent	Unsure	To a small extent	Not at all
1	2	3	4	5

Please explain your answer.

L. To what extent are the proposed entry and inspection conditions fair and reasonable?

To a full extent	To a great extent	Unsure	To a small extent	Not at all
1	2	3	4	5

Please explain your answer.

M. How likely is it that advance publication of information on fees and other charges would promote efficient purchasing decisions?

Very likely	Likely	Unsure	Unlikely	Very unlikely
1	2	3	4	5

Please explain your answer.

N. How reasonable would it be for Ofqual to require awarding organisations to provide it with financial information that was not in their published accounts?

Very reasonable	Reasonable	Neither reasonable nor unreasonable	Unreasonable	Very unreasonable
1	2	3	4	5

Please explain your answer.

O. How appropriate would it be to judge fees and other charges as ‘fair and reasonable’ if they enabled an awarding organisation to recover the efficiently incurred costs of providing qualifications, including the cost of capital?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

Please explain your answer.

P. To what extent do you support the proposal that specific conditions could be placed on organisations that are dominant in the qualifications market?

To a full extent	To a great extent	Unsure	To a small extent	Not at all
1	2	3	4	5

Please explain your answer.

Q. How appropriate is the proposed fee-capping procedure?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

Please explain your answer..

R. What are your views on:

- i) the steps we should take to promote understanding of the benefits of regulated qualifications and confidence in regulated qualifications and assessments**
- ii) the information that should appear on the register?**

S. What should be Ofqual’s priorities as it promotes of the development and implementation of assessment arrangements which give a reliable indication of achievement, and indicate a consistent level of attainment between comparable assessments?

T. How helpful are the principles of validity, consistency, reliability, manageability and minimising bias as a basis for the regulation of national curriculum and early years’ foundation stage assessments?

Very helpful	Helpful	Neither helpful nor unhelpful	Unhelpful	Very unhelpful
1	2	3	4	5

Please explain your answer.

U. How appropriate are the proposed risk factors for determining the nature, scope and frequency of our monitoring activities?

Very appropriate	Appropriate	Neither appropriate nor inappropriate	Inappropriate	Very inappropriate
1	2	3	4	5

Please explain your answer.

Annexe B

The five common assessment criteria

Quality of assessment outcomes

We have developed the following definitions of five criteria that allow stakeholders and Ofqual to evaluate assessments. The definitions have been debated widely and we will refine them again in light of suggestion we receive during the consultation.

Validity

Validity is the central concept in evaluating the quality of assessment outcomes. It is the overarching concept and subsumes the other concepts. Validity is a multi-faceted, but unitary concept – other concepts such as reliability, comparability and minimising bias are aspects of validity, but validity remains one whole, indivisible concept. However, aspects of validity can be in conflict; for instance, to make more reliable test scores, one might make a test longer, but this would tend to make the test less manageable.

Validity pertains to the arguments or interpretations placed on assessment outcomes, results or scores. It does not relate to the test or other assessment procedure itself, nor to the scores generated by that assessment. So, in evaluating validity, one would be evaluating arguments such as the following.

- 'The results of this assessment provide a sound basis for selecting students to enter university.'
- 'The results of this assessment provide useful information for teachers in succeeding years to understand pupils' strengths and weaknesses.'

The evaluation of validity will amount to working out whether the outcomes of the assessment procedure (grades, profile of the child and so on) provide adequate information to sustain the argument being made. One needs to evaluate validity separately for each interpretation that is made.

Validity will rarely be an absolute condition; for example, one would be more likely to decide that 'the outcomes from this assessment are *sufficiently* valid' rather than saying they are valid in absolute terms.

Reliability

Reliability relates to the propensity of an assessment procedure to generate consistent outcomes. If an assessment procedure tends to give the same result when repeated, then it will tend to be reliable. Reliability is a property of the assessment outcomes (such as scores, grades and levels), not of the test itself.

Reliability is a necessary condition for validity; if an assessment procedure is not measuring consistently, in effect it is not measuring at all. Achieving this with teacher assessment is dependent on the quality of criteria, moderation processes and exemplification and guidance, for example.²⁴

Comparability

Comparability relates to the extent to which several (different) assessment procedures generate consistent outcomes. For example, one might consider comparability between:

- years (was this year's test easier or harder than last year's?)
- subjects/ areas of learning (is the standard in key stage 2 Maths higher or lower than in key stage 2 Science?).

Like reliability, comparability relates to assessment outcomes such as scores or grades rather than the test or assessment itself. Like validity, aspects of comparability can be conflict: for example, one may have to choose whether to retain comparability between years or seek to improve the moderation of assessments. One may not be able to guarantee both.

Manageability

An assessment can be deemed manageable if it is possible to carry it out, given known practical constraints such as: time, budget or numbers of pupils. Unlike validity, reliability and comparability, manageability *does* relate to the assessment procedure itself; for example, one could have a very long test that produced very reliable results, yet was not sufficiently manageable.

²⁴ The word 'reliable' is used in the Act in Ofqual's qualifications and assessment standards objectives, but the use of the word there should not be interpreted in a technical sense.

Minimisation of bias

An assessment can be said to minimise bias in so far as it does not produce unreasonably adverse outcomes for a group of learners with given social characteristics (for example, gender, age, disability, sexuality, ethnic origin, socio-economic status and so on). Minimising bias as a characteristic of assessment is closely related to statutory equality duties.

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

First published by The Office of Qualifications and Examinations Regulation 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.

The Office of Qualifications and Examinations Regulation	
Spring Place	2 nd Floor
Coventry Business Park	Glendinning House
Herald Avenue	6 Murray Street
Coventry CV5 6UB	Belfast BT1 6DN

Telephone 0300 303 3344

Textphone 0300 303 3345

Helpline 0300 303 3346

www.ofqual.gov.uk

978-1-84962-313-1