

Regulatory burden statement



About Ofqual

We are the independent qualifications regulator for England. We regulate GCSEs, AS and A levels and other general qualifications, National Curriculum assessments, and vocational and technical qualifications. We also have a role as one of the external quality assurance options for Trailblazer Apprenticeships. We take a flexible risk-based approach to regulation targeting the issues of greatest concern to the sustained provision of sufficiently valid qualifications. We regulate 155¹ awarding organisations.

Our objectives and duties

Our statutory objectives and duties influence the way we regulate. We take this into account when reaching decisions about the sufficient validity of qualifications.

We have five statutory objectives, set out in the Apprenticeships, Skills, Children and Learning Act 2009. In brief, they are:

- to secure qualifications standards;
- to promote National Assessment standards;
- to promote public confidence in regulated qualifications and National Assessment arrangements;
- to promote awareness of the range and benefits of regulated qualifications; and
- to secure that regulated qualifications are provided efficiently.

We have a range of other duties and publish separate documents addressing some of these including those under the Equality Act 2010.

Our regulatory context

We follow good regulatory practice, in particular the Better Regulation Executive's five principles of good regulation² and the six Penalties Principles and seven characteristics set out in the Macrory report *Regulatory Justice: Making Sanctions Effective*³. We aim to address burden in a proportionate way and balance the

¹ This number may change

² Legislative and Regulatory Reform Act 2006 Part 2, paragraph 21 (2)

³ Regulatory Justice: Making Sanctions Effective (November 2006)

requirements of regulation against any resulting burden. Some burden is a necessary and proper part of regulation.

Under section 170 of the Apprenticeships, Skills, Children and Learning Act 2009, we are required to publish a statement on how we plan to review our regulatory functions and how we plan to secure that they do not impose or maintain unnecessary burdens. The statement looks back at what we have done, as well as looking forward over the next twelve months as to what we will do to meet our duty.

A regulatory function is anything requiring an awarding organisation to do something or not to do something, such as, when we set criteria⁴ that awarding organisations must meet to enter the regulated qualifications market. We also set out the ongoing requirements that all awarding organisations must meet in the *General Conditions of Recognition*⁵. A regulatory function also includes anything that guides an awarding organisation in a particular direction, including statutory guidance and enforcement action.

We use the definition of burden from the Legislative and Regulatory Reform Act 2006, which is:

- a financial cost;
- an administrative inconvenience; and
- an obstacle to efficiency, productivity or profitability, or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

We view burden as a requirement placed directly on an awarding organisation. We also consider, where appropriate, how our requirements impact more widely, such as how schools, colleges, and Learners will be affected.

Our regulation requires awarding organisations to put in place systems, processes and controls necessary to develop, deliver and award sufficiently valid qualifications. Similarly, awarding organisations must set some requirements of schools, colleges and training providers offering their qualifications, necessary to secure that validity.

The way we regulate has evolved over time as we have developed our risk-based approach to regulation. This has enabled us to regulate more effectively and target intervention where it is needed most. As a result awarding organisations may experience more regulation than previously. We believe the burden we now impose to be proportionate to secure our objectives and duties.

⁴ <https://www.gov.uk/government/publications/accreditation-criterion>

⁵ <https://www.gov.uk/government/publications/general-conditions-of-recognition>

Review of regulatory functions and managing regulatory burden 2015-2017

Our regulatory framework sets out the rules and guidance needed to ensure that our regulatory functions produce qualifications that remain sufficiently valid over time. We keep the framework under review to ensure that it remains up to date and where possible we remove or reduce unnecessary burden. We recognise that when reducing unnecessary burden, we may cause awarding organisations one-off costs, for example, when they need to familiarise staff with new rules.

Since March 2015, in keeping our regulatory functions under review, and to secure that they did not impose or maintain unnecessary burdens, we:

- consulted with awarding organisations and other key stakeholders to develop part of our IT system. We launched the awarding organisation portal in June 2016, providing a gateway for our interactions and communications with awarding organisations. We post up-to-date news items and information on current developments. The portal gives awarding organisations the ability to create and edit their qualification data, providing a more efficient way for awarding organisations to manage the information for their qualifications on our Register. It is less burdensome as awarding organisations provide us with only necessary information regarding their qualifications. The portal enables more self-service functionality;
- updated supporting information for organisations on our website when applying for recognition by Ofqual. We had positive survey feedback from applicant organisations saying this made it easier to understand how to meet our recognition criteria;
- improved our process for accrediting qualifications after listening to feedback from awarding organisations as part of the annual review of GCSE, AS and A level reform. Accreditation enables us to gain additional assurance that a qualification is likely to be sufficiently valid before it is first awarded. We reduced the average amount of time we took to complete our review of each submission for accreditation. We believe the accreditation process remains proportionate, efficient and minimises the burden of this very significant qualification development programme;
- removed the rules relating to GCSEs, AS and A levels from the *GCSE, GCE Principal Learning and Project Code of Practice* (the Code), so we no longer duplicate rules in the Code that are covered elsewhere in the *General Conditions of Recognition*;
- amended and added to our *Guidance to the General Conditions of Recognition*. This document supports awarding organisations as it helps them to understand

how to comply with our requirements. For example in July 2016, we produced new guidance for eleven of our conditions of recognition;

- carried out regulatory impact assessments alongside our consultations, when developing our new regulatory requirements. These consider the impact of the changes we propose on awarding organisations as well as schools, colleges and other stakeholders. Responses to consultations help us to make decisions to implement changes that are needed and proportionate. For example, we responded to consultation feedback and simplified our approach to describing the size of regulated qualifications following responses to our *After the QCF: a new qualifications framework* consultation. We now describe the size of qualifications in terms of total qualification time and guided learning hours rather than the four components originally proposed in the consultation;
- removed the *Criteria for Entry-level Qualifications* as they presented an unnecessary regulatory burden. They duplicated many of the requirements in our other regulations, could stop awarding organisations designing valid qualifications, and the rules imposed could lead to unnecessary costs for awarding organisations; and
- took account of feedback from exam boards when introducing new rules for reviews of marking, reviews of moderation and appeals in GCSE, AS and A levels. Exam boards told us that implementing some of our proposals would be burdensome on them, such as, making the system changes needed to implement them within the timeframe we proposed. As a result, we amended our requirements to phase the introduction of some of our new rules over a number of years. This reduced the burden on exam boards by not requiring them to meet such immediate deadlines, while not preventing those that could make changes more quickly from doing so.

Our future approach to reviewing our regulatory functions and managing regulatory burden 2017-2018

In the next twelve months, we will:

- continue to keep our regulatory functions under review and will not, where possible, impose or maintain unnecessary burdens. We will undertake a review of our regulatory framework to identify whether any of the rules or guidance it contains need to be updated, amended or withdrawn in order to keep the framework fit for purpose.
- ensure that where we have evidence our requirements are not being met any Enforcement action taken is necessary and proportionate.

- undertake a review to make sure our requests for data do not create unnecessary burden. We routinely collect a wide range of data about regulated qualifications, from which we produce official and national statistics reports. We also make one-off requests for data to help us regulate more effectively. We will review the number and timings of our data requests to awarding organisations and look to rationalise our requirements; and
- pilot a new digital handbook in summer 2017. This work is intended to reduce burden on awarding organisations by simplifying the presentation of our regulatory framework of rules and guidance by bringing related documents together, making them easier to use, navigate and understand.

Our approach will also be informed by the government's better regulation agenda to cut red-tape and boost UK productivity. This includes fulfilling specific legislative obligations as follows:

- **Business Impact Target (BIT):** The Enterprise Act 2016 has brought us (along with other statutory regulators) within scope of the BIT. We will publish BIT assessments for our qualifying regulatory activities, which measure the cost implications of our regulatory activity, as well as measuring their economic impact. This cost assessment is calculated in line with a specific formula defined by the Department for Business, Energy and Industrial Strategy and submitted to the Regulatory Policy Committee for verification.
- **Growth Duty:** As required by the Deregulation Act 2015 we will have regard to the desirability of promoting economic growth when exercising our regulatory functions. We will consider the impact of our proposals on awarding organisations and the business environments in which they operate. For example, we will continue to increase our understanding of the potential impacts of our proposals by carrying out regulatory impact assessments and receiving feedback to our consultations from awarding organisations and other stakeholders. These will help inform our regulatory approach.

We will liaise with Qualifications Wales (QW) and the Council for the Curriculum, Examinations and Assessment (CCEA), as the other regulators who regulate many of the awarding organisations that we do, to ensure any burden created because of our policy development is kept to a minimum.

Our support for innovation and growth

We welcome and do not seek to stand in the way of innovation to achieve valid qualifications that offer value for money.

Awarding organisations respond to innovations in different sectors by developing new qualifications to meet employers' needs. New qualifications that are regulated by us include such areas as green technologies, digital marketing and games, animation

and visual effects. The necessary regulatory framework is in place, but it is balanced in such a way as to not hinder awarding organisations introducing new ways of doing business so long as valid qualifications are achieved.

The regulatory framework allows awarding organisations to offer assessment in forms other than the traditional paper-based examination. We have also seen an increase in the use of on-line assessment of students' portfolios of evidence such as uploading assessment evidence of students who are in the work place. This means that the assessor can see the evidence without the need to visit their work place. Benefits to moving to an on-line environment include reduced costs and improved security. We also saw an increase in the use of assistive technology, such as speech-recognition software, which enables disabled students to take part in assessments that their disability would otherwise prevent them from doing.

The government is preparing for a major reform of the post-16 education market. Currently, we expect the creation of fifteen new technical education pathways. A single awarding body or consortium, following an open competition, will award each qualification at levels 2 and 3, rather than the current approach, which is market led. There will be one qualification for each occupation (or cluster of related occupations). There will be changes to apprenticeship provision as employer groups develop Trailblazer standards to meet specific job roles, many taking innovative approaches to the training and assessment of their employees. Additionally, we will consult on our regulatory approach to reformed Functional Skills qualifications.

These major changes introduced by Department for Education will bring changes into the vocational and technical market. We will ensure that our regulatory framework does not stifle innovation and growth in this area. We will keep our framework under review as necessary, responding to any representations from awarding organisations, and engage with stakeholders who represent awarding organisations operating in the vocational and technical market.

We welcome feedback from awarding organisations where they feel that our regulatory approach prevents them from innovating so that we can consider this when reviewing our regulatory framework. Feedback can be provided via Contact Ofqual using our awarding organisation portal.