

Regulating national assessments

Consultation on changes to Ofqual's regulatory framework for national assessments



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Ofqual/17/6295

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Summary of our proposals

Ofqual's [Regulatory framework for national assessments](#) was published in 2011. It sets out our role and responsibilities in relation to national assessments and our expectations of bodies responsible for designing, delivering and monitoring the assessments (responsible bodies).

We have reviewed our framework and are proposing to update it to make sure that it continues to allow us to regulate effectively to meet our statutory objectives, which are to promote standards and public confidence in national assessments.

This consultation asks for your views about the proposed new framework.

We intend to keep many elements of the existing framework. In particular, we propose to continue to focus our regulatory activity on areas of greatest risk and to use validity as our primary criterion for considering assessment quality. We propose to continue to regulate in accordance with the principles of good regulation.

The main changes we are proposing to the framework are:

- to bring the framework up-to-date by reflecting changes to the bodies responsible for developing and delivering national assessments (Part 1)
- to provide greater transparency and clarity about how we regulate, including by introducing a section explaining in more detail our regulatory approach, regulatory tools and our focus on the validity of national assessments (Part 2)
- making sure our expectations of responsible bodies focus on outcomes such as validity, rather than prescribing certain administrative approaches. As part of this, we propose to make more explicit our expectations relating to assessment purpose and to strengthen our expectations about risks that should be escalated to us by responsible bodies (Part 3)

This consultation is open until Wednesday 20 December 2017.

Information about how to respond is in the *Responding to this consultation* section.

Introduction

What this consultation is about

This consultation is about Ofqual's *Regulatory framework for national assessments*¹ (the framework). We would like your views on the proposed new framework.

Our framework sets out how we regulate both statutory national curriculum assessments and statutory early years foundation stage profile (EYFSP) assessments, which together we refer to as 'national assessments'. More information about what national assessments are is on page 4 of the framework. Our framework meets the statutory requirement² for us to prepare and publish a document which:

- contains a description of how we intend to perform our functions in relation to national assessment arrangements; and
- gives guidance to national curriculum and EYFS responsible bodies about the performance of their functions in relation to these assessments.

Why are we consulting

Our proposed framework is intended to help us meet our statutory objectives to promote standards and confidence in national assessments and we are required by statute to consult on revisions to it. We recognise that our national assessments responsibilities are not always well understood, as evidenced, for example, in the Education Select Committee's recent report on primary assessment.³ We want our revised framework to provide greater clarity about Ofqual's role and expectations, both to those involved in designing, delivering or monitoring national assessments, and to anyone else with an interest in national assessments. To help make sure our proposed framework does these things, we would like to hear views about it from people and organisations with an interest.

What happens next

This consultation is open until Wednesday 20 December 2017.

We will carefully review all responses we receive to our consultation. In light of those responses, we will consider whether we should make any changes to our proposals. We would like to publish our revised framework in spring 2018 alongside our decisions and an analysis of consultation responses.

¹ <https://www.gov.uk/government/publications/regulatory-framework-for-national-assessments>

² In sections 164 and 165 of the Apprenticeships, Skills, Children and Learning Act 2009

³ Paragraphs 16-19 of *Primary Assessment*, House of Commons Education Select Committee, 1 May 2017, available at: www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/inquiries/parliament-2015/primary-assessment-16-17/

Proposals

In this section, we explain the key changes we are proposing to our *Regulatory framework for national assessments*.

We do not intend to make fundamental changes in our approach to regulating national assessments. We propose to continue to focus on validity as our primary criterion for considering assessment quality. We also propose to continue to regulate in accordance with the principles of good regulation: transparency, accountability, proportionality, consistency and targeting. And we propose to continue to take a risk-based approach to regulation. Our legal powers, duties and objectives in relation to national assessments have not changed. These things are set out and explained in Part 2 of our proposed framework.

Many of the changes that we are proposing to make to our framework are intended to provide greater transparency and clarity about our regulatory role and activity. For example, we propose to introduce a section setting out what regulation of national assessments looks like in practice, including a list of the key regulatory tools we may use. We also propose to more clearly articulate what we mean by validity. We aim to structure the document more clearly and use simpler language where possible, to make it easier to understand the, sometimes technical, nature of our regulation.

Other changes we propose aim to make sure that our framework focuses on outcomes, in particular, on the validity of national assessments, rather than prescribing a certain administrative approach that responsible bodies should take. As part of this we propose to make more explicit our expectations relating to assessment purpose and to strengthen our expectations about risks that should be escalated to us by responsible bodies. We also propose to remove a small number of expectations of responsible bodies that, since 2011, we have found do not help achieve our statutory objectives and/or may impose unnecessary regulatory burden on responsible bodies.

We also propose changes to bring our framework up-to-date. We propose to reflect changes to the bodies responsible for developing and delivering national assessments – which in late 2011 moved from the Qualifications and Curriculum Development Agency to the Department for Education and the newly established Standards and Testing Agency.

There are a number of other minor changes which we also propose to make, such as changes to wording and layout. We do not intend these to change our approach, but to improve the structure and clarity of the framework. We have provided the full text of our proposed framework for readers to consider and would encourage comments or suggestions on any aspect of our proposed framework (see question 10 below).

Bringing our framework up-to-date

We propose to update our framework to reflect changes in the government bodies involved in developing and delivering national assessments (set out briefly below). Roles and responsibilities of the key bodies involved in national assessments are set out in **Part 1** of our proposed framework, alongside an explanation of what national assessments are.

In 2011 the Qualifications and Curriculum Development Agency (QCDA), an 'arms-length' non-departmental public body, was responsible for all elements of national assessment development and delivery. Following its closure later that year, the majority of its national assessment responsibilities were transferred to a new agency established within the Department for Education (DfE), the Standards and Testing Agency (STA). Responsibility for the early years foundation stage profile was transferred to a team in the DfE itself. Other teams within the DfE also become involved in national assessments from time to time, for example, they may play a role in providing advice to Ministers about assessment policy.

Question 1: Do you have any comments on Part 1 of our proposed framework (National assessments and responsible bodies)?

Providing greater transparency and clarity about our role

We want our framework to set out clearly our regulatory role in relation to national assessments and what this means and looks like in practice. It is important that all those with an interest in national assessments, including responsible bodies, understand how we fulfil our statutory objectives and duties, how we use our powers and what we are and are not responsible for.

To help people understand how we regulate, **Part 2** of our proposed framework explains Ofqual's role and what this means in practice. **Section A** explains our scope, as set out in legislation. **Section B** sets out our approach, including our commitment to risk-based regulation and the principles of good regulation. Within this section we set out our focus on validity in more detail than our existing framework. On page 10 of the proposed framework, we also provide a newly articulated definition of validity and explain the four technical concepts subsumed within it (reliability, comparability, manageability and minimising bias) in slightly more practical terms than in the existing framework. None of these changes is intended to make a substantive difference to what we mean by validity or the concepts within it. Instead we aim to define validity more precisely and make it more practically useful: for example, the reference to 'assessment arrangements' in our definition helps to emphasise that it is the processes implemented by responsible bodies which can make sure accurate and useful results each time an assessment is taken by a pupil.

Section C explains what regulation looks like in practice, by setting out the regulatory 'tools' that we may use to help meet our statutory objectives. These tools are not new, but this section sets them out more clearly than our existing framework. In particular, we explain that we may scrutinise particular aspects of validity via research and that we may publish reports into aspects of validity. Our tools are set out on pages 13-16 of the proposed framework. In brief they are:

- observing processes related to validity;
- gathering and evaluation information to inform our view or risks to validity;
- scrutiny of aspects of validity (eg research);
- providing feedback and engaging with responsible bodies;
- publishing reports;
- providing an expert view to the Secretary of State on proposed assessment changes; and
- notifying the Secretary of State in relation to a potential or actual significant failing.

In accordance with our focus on outcomes, set out in more detail below, the proposed framework no longer includes a reference to Ofqual publishing a 'review programme', however it continues to commit us to setting out in advance the key areas that our regulation will focus on in each year (page 13), which achieves a similar outcome. We propose to remove some of the prescriptive requirements in the current framework related to that annual review programme, such as setting out each year in advance the type of evidence that we expect responsible bodies to produce. These types of prescriptions can limit our ability as a regulator to respond appropriately to events as they develop. While our proposed approach still indicates our key areas of focus in advance to responsible bodies and others, it allows us to be flexible and respond more effectively to events. Our proposed framework continues to commit us to engaging with responsible bodies prior to, during and following regulatory activity. In particular, we continue to commit to sharing relevant details of proposed work with responsible bodies and providing feedback on any findings of our work to responsible bodies as appropriate.

Question 2: Do you have any comments on our approach to regulating national assessments as set out in Part 2, Sections B and C of our proposed framework?

Question 3: Do you have any comments on our proposed approach to setting out in advance our key areas of focus each year?

Question 4: Do you have any other comments on Part 2 of our proposed framework (Ofqual's role)?

Focusing on outcomes

Our framework should clearly set out Ofqual's expectations of bodies responsible for developing, delivering and monitoring national assessments so that responsible bodies, stakeholders and the wider public can understand them. **Part 3** of our proposed framework sets out those expectations, divided into two parts: expectations that relate directly to the validity of national assessments (**Section D**); and expectations about the responsible body itself, for example, its resources and expertise and how it should engage with regulation (**Section E**).

In accordance with the principles of good regulation (set out on page 9 of our proposed framework), our regulation should be proportionate and targeted. The expectations set out in our framework should focus on the outcomes that should be achieved by responsible bodies, in particular, on validity. We should not prescribe a particular approach where this could limit a responsible body's ability to achieve good outcomes or where this imposes unnecessary regulatory burden. The majority of our expectations are not changing as they are already focused on outcomes, but we are making a number of small changes in some areas and the main changes are listed below.

The first change we are proposing is to make more explicit our expectation that each national assessment should have a clear purpose or purposes (page 17).

Assessment purpose is inextricably linked to any evaluation of validity (which relates to the extent to which an assessment meets its particular purposes). In line with our focus on outcomes, we no longer expect that each assessment should have a 'specification' (although it may), but we still expect responsible bodies to produce, for each assessment, the information that was previously required within a specification. We now make it clear that we expect that the following information should be published:

- the assessment's purpose(s) and how the assessment is expected to meet its purpose(s) (including any specified statutory purposes);
- the form of the assessment;
- how relevant programmes of study will be covered;
- what results are intended to signify and how they are expected to be used;
- any specimen assessments or other materials to exemplify the standards⁴; and
- how STA and other responsible bodies will fulfil their roles.

⁴ Our existing framework expects exemplification materials to be produced, but not within a specification. It does not expect them to be published.

Secondly, we propose to remove the expectation that each responsible body should identify an accountable officer. The requirement for a named officer accountable for national assessments is likely to be unduly burdensome for some responsible bodies such as local authorities, schools and early years providers. In addition, since the establishment of the Standards and Testing Agency (STA), it is clear that its Chief Executive is accountable for the validity of assessments that STA develops and delivers⁵. It is more important that responsible bodies have appropriate governance in place and engage effectively with regulation, and our proposed framework sets out our expectations about both of these things (pages 19 and 20). For a head teacher or local authority, engagement with regulation is likely to be limited, for example, if a school or local authority were included in a particular Ofqual research project. However, for an organisation such as STA, there is likely to be regular and ongoing engagement with Ofqual on a wide variety of regulatory matters, involving a number of STA staff.

Thirdly, we propose to remove expectations in the current framework about how responsible bodies' should run their procurement processes. Such requirements are not necessary in order for us to regulate effectively and may present additional burden to responsible bodies. There are already government guidelines relating to procurement processes and creating additional expectations in our framework is unlikely to add value to those set centrally. However, our proposed framework still expects that responsible bodies should keep Ofqual informed of procurement relating to the development and delivery of national assessments. It continues to expect that responsible bodies should ensure appropriate governance, including of resource procured or provided by third parties. And it continues to expect that a responsible body should effectively manage, and escalate to us where appropriate, risks and issues including those relating to procurement and suppliers.

Finally, in line with our focus on outcomes and on areas of greatest risk to validity and public confidence, we propose to strengthen our expectations about the risks and issues that responsible bodies should escalate to Ofqual. We provide more detail about what should be escalated to us (see 'Notifiable events' on page 20). And we introduce a new expectation that a responsible body should keep us informed about how it is managing a risk or issue it has escalated to us. We believe this approach is proportionate as it allows us to focus on areas of greatest risk to validity.

Question 5: Do you have any comments on our proposed approach to remove prescriptive requirements from our framework and instead focus more on outcomes?

⁵ In early 2011, when our existing framework was published, developing and delivering national assessments was a small part of the remit of the Qualifications and Curriculum Development Agency.

Question 6: Do you have any comments on any aspect of the changes described above?

Question 7: Do you have any other comments on Part 3 of our proposed framework (Expectations of responsible bodies)?

Regulatory framework as a whole

We have provided the full text of our proposed framework. We would welcome your views on any aspect of this framework, including whether you think the document is written and structured clearly enough.

We have included line numbers to make it easier to refer to in your responses. These line numbers will not appear in the final published version.

We are aiming to publish a revised framework in spring 2018. We propose that the revised framework (including any changes made to it as a result of this consultation) should take effect from the date that it is published.

Question 8: Do you have any comments about the clarity, language or structure of the proposed new regulatory framework for national assessments?

Question 9: Do you have any comments on our proposal that the new regulatory framework for national assessments should take effect from the date it is published, anticipated in Spring 2018?

Question 10: Do you have any other comments on any aspect of our proposed new regulatory framework for national assessments?

For specific comments, please refer to the relevant line numbers.

Regulatory impact

We have considered the regulatory impact of our proposals and believe that on balance, these proposals will have limited impact on the regulatory burden that we place on responsible bodies

We are not proposing fundamental changes in our approach. Our proposals bring our existing framework up to date and to make it clearer and easier to follow. Where we have added additional detail, this is intended to better explain our role and that of responsible bodies in relation to national assessments. While any new material will have some impact on responsible bodies as they will have to read and understand it, we believe this is balanced by the greater clarity it brings which should make our framework easier to understand and follow.

While we are introducing a small number of expectations relating to qualification purpose, notifiable events and publishing information, we are also removing a small number of expectations relating to producing specifications, identifying an accountable officer and prescriptive expectations relating to procurement. We believe that the proposals better support our statutory objectives by focusing more effectively on validity and removing unnecessary expectations which do not contribute to achieving our objectives and may impose unnecessary burden on responsible bodies.

We have not identified any other additional regulatory burden as a result of our proposals.

Question 11: We have not identified any ways in which the proposed framework will unduly increase the regulatory impact of our proposals. Do you have any comments on this assessment?

Question 12: Are there any additional steps we could take to reduce the regulatory impact of our proposals?

Question 13: Are there any costs or benefits associated with our proposals which we have not identified?

Equality impact

We have considered the likely impact of our proposals on people who share certain characteristics protected under equalities law, including pupils, teachers, those in responsible bodies and members of the public.⁶ The changes we are proposing do not relate directly to people who share protected characteristics; they are designed to bring our framework up-to-date, make our role clearer and ensure our expectations focus on outcomes, in particular on assessment validity.

Our proposed framework continues to set out our expectations that responsible bodies should comply with equalities legislation. It continues to expect that the assessments of responsible bodies should minimise bias in order to provide valid assessments of what pupils know and can do. It also sets out Ofqual's duties in relation to meeting equalities legislation, including our duty to promote equality.

Overall, our view is that our proposals will have neither a positive nor a negative impact for any particular group of people who share a protected characteristic.

Question 14: We have not identified any ways in our proposed changes to the framework would impact (positively or negatively) on people who share a protected characteristic. Are there any potential impacts we have not identified?

Question 15: Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on people who share a protected characteristic?

Question 16: Do you have any other comments on the impacts of the proposals on people who share a protected characteristic?

⁶ 'Protected characteristic' is defined in the Equality Act 2010. Here, it means disability, racial group, age, religion or belief, pregnancy or maternity, sex, sexual orientation and gender reassignment.

Responding to this consultation

How to respond

The closing date for responses to this consultation is **20 December 2017 at 23:45**.

You can answer as many of the consultation questions as you like. You do not have to answer all of the questions, unless you wish to do so.

Please respond to this consultation in one of three ways:

- complete the online response (click 'Respond online' on the [consultation homepage](#)).
- complete the response form, [available on the consultation homepage](#), and email your response to consultations@ofqual.gov.uk. Please include the consultation title (Regulating national assessments) in the subject line of the email and make clear who you are and in what capacity you are responding.
- Post your response to: Regulating national assessments, Ofqual, Spring Place, Herald Avenue, Coventry, CV5 6UB, making clear who you are and in what capacity you are responding.
- **We can only consider your response if you fill in the 'About you' section at the end of the document.**

How we will use your response

- Your response will be used to help us shape our policies and regulatory activity.
- After the consultation ends, we will publish a summary of responses received.
- We will not include your personal details in any published list of respondents, although we may quote from your response anonymously.

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Any enquiries regarding this publication should be sent to us at:

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

Telephone 0300 303 3344
Textphone 0300 303 3345
Helpline 0300 303 3346