

Implementing Functional Skills reform

Consultation on rules and guidance for new
Functional Skills qualifications in English and
mathematics



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1. Introduction

- 1.1 Functional Skills Qualifications (FSQs) in English and mathematics are being reformed. New FSQs in English and mathematics will be introduced for first teaching in September 2019.
- 1.2 Between September and November 2017, the Department for Education consulted on draft subject content that will apply to the new FSQs. The Department for Education has recently published the final subject content for English¹ and mathematics.²
- 1.3 We consulted on our proposed approach to regulating reformed FSQs alongside the Department for Education's consultation on subject content. We have now confirmed our approach³ to regulating new FSQs in English and mathematics.

About this consultation

- 1.4 We set out in our initial consultation the purposes of the reformed FSQs and confirmed that through our regulatory approach we are looking to increase the comparability between qualifications offered by different awarding organisations and over time, and to ensure there is greater control of standards.
- 1.5 This consultation builds on the decisions we have made:
 - In Part 1 we explain our detailed proposals for regulating reformed FSQs in English and mathematics.
 - In Part 2 we consult on the draft rules and guidance we are proposing to put in place to regulate new FSQs in English and mathematics. These rules will sit alongside [our existing rules and guidance for all qualifications](#).
- 1.6 We want your views on our detailed proposals and draft rules and guidance.

¹ www.gov.uk/government/publications/functional-skills-subject-content-english

² www.gov.uk/government/publications/functional-skills-subject-content-mathematics

³ www.gov.uk/government/consultations/reforming-functional-skills-qualifications-in-english-and-maths

Overview of the proposals set out in this document

Set out below is an overview of the different sections and proposals that are covered in this consultation.

Part 1 - Proposals for regulating reformed FSQs in English and mathematics

- Assuring the approach to assessment
 - [Assessment strategies](#)
 - [Technical evaluation](#)
- Design rules – all new functional skills qualifications
 - [Subject content](#)
 - [Assessment time requirements](#)
 - [Setting, contextualising and marking assessments](#)
 - [Assessment availability](#)
 - [Grading](#)
- Subject-specific features – English
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- Subject-specific features – mathematics
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 - [Weightings for calculator- and non-calculator based mathematics](#)
 - [Weightings for underpinning skills and problem solving](#)
- Setting and maintaining standards
 - [Evidence used in setting specified levels of attainment](#)
 - [Maintaining standards](#)
- [Transitional arrangements](#)

Part 2 – Our proposed rules and guidance

- [Structure of our proposed rules and guidance](#)

[Regulatory impact assessment](#)

[Equality analysis](#)

Part 1 – Proposals for regulating reformed FSQs in English and mathematics

2. Assuring the approach to assessment

Assessment strategies

Our decisions so far:

- All awarding organisations will produce an assessment strategy document that explains their overall approach to assessment for new FSQs.
- We will set rules around what assessment strategies must include.

2.1 We are proposing to set rules which require awarding organisations to:

- establish and maintain an assessment strategy for each new FSQ they offer
- ensure their assessment strategy sets out how they will comply – on an ongoing basis – with all of the rules that apply to new FSQs
- design, set, deliver and mark all assessments for new FSQs in line with their assessment strategy
- keep their assessment strategies under review, and notify us of any changes to them
- review their assessment strategy when we ask them to, and make any changes we request
- if we ask them to, show how they have complied with their assessment strategy (or explain why not), and follow any instructions we give them about complying with their assessment strategy

2.2 We are proposing to require assessment strategies for new FSQs to include information and evidence covering the awarding organisation's approach to assessment design and approach; assessment development and delivery; centre assessment and moderation; and standard setting and maintenance.

2.3 For full details of the requirements we are setting, we recommend that you read the detailed requirements set out in the annexes to this consultation.

Question 1

To what extent do you agree or disagree with our proposed approach to setting rules for assessment strategy documents?

Technical evaluation

- 2.4 We confirmed in our earlier consultation that we will conduct a technical evaluation of new FSQs before they are made available to learners. This will involve reviewing materials which are likely to include, among other things, assessment strategies and sample assessment materials. To carry out our review, we intend to require awarding organisations to provide us with certain materials. We will then review the materials and consider the extent to which the qualification is likely to be able to comply with our rules.
- 2.5 If we identify issues with new FSQs through our evaluation, we may require the awarding organisation to take certain actions to rectify the issues. If an awarding organisation does not take the necessary action, we may take regulatory action.
- 2.6 To ensure our requirements for this process are set out clearly, we propose to put in place rules which require awarding organisations to do the following:
- notify us at an early stage that they intend to make the qualification available
 - provide us with any information we request to support our evaluation of the qualification
 - wait for us to communicate the outcome of our evaluation before making the new FSQs available
 - make any changes we require to their assessment approach – we could require these changes to be made either before the new FSQs are made available, or, depending on the exact nature of the changes required, we may decide to allow an awarding organisation to make the qualification available before they have made the changes we require

Question 2

To what extent do you agree or disagree with our proposed rules around the technical evaluation process?

3. Design rules – all new functional skills qualifications

Subject content

Our decision so far:

All new FSQs must follow the subject content published by the Department for Education.

Compliance with subject content

3.1 The Department for Education has published the final subject content for new FSQs in [English](#) and [mathematics](#).

3.2 We are proposing to introduce rules for new FSQs which:

- require awarding organisations to comply with the requirements (and have regard to any recommendations or guidelines) set out in the subject content;
- enable us to set rules or guidance which govern how awarding organisations should interpret the subject content.

3.3 This is in order to ensure that the new FSQs are developed in line with the curriculum intentions set by the Department for Education, and is one of the ways in which we seek to ensure that the new FSQs will be comparable.

Interpreting the subject content

3.4 We are not proposing to set any rules for interpreting the subject content at this time. However, we believe some limited guidance would be helpful to explain our expectations around how awarding organisations should approach the interpretation of the subject content in relation to certain issues. We are proposing to set:

- guidance which sets out our general expectation that content statements should be assessed in a way that reflects the level of the qualification, and therefore that expectations of learners will be different at each level, even when content statements are similar
- English-specific guidance which clarifies:
 - how awarding organisations should approach the terms ‘for example’ and ‘including’ where these are used in the subject content

- how the ‘scope of study’ statements in the subject content should be reflected in assessments
- mathematics-specific guidance which clarifies:
 - how awarding organisations should approach problem solving
 - where a question or task assessing underpinning skills is presented in a context, an awarding organisation should ensure that the context does not undermine the targeting of relevant skills. This is because it is a learner’s underpinning skills that is being assessed, rather than their comprehension of the context

3.5 We think it is necessary to set guidance around these issues, as we have particular expectations around the approach awarding organisations should take when interpreting these elements of subject content. We think that unless we set this guidance, awarding organisations could take different approaches to interpreting the subject content requirements, recommendations and guidelines in these areas. This would lead to less comparable qualifications or to us raising issues during our technical evaluation process.

Question 3

To what extent do you agree or disagree with our proposed approach to interpreting the subject content requirements for new FSQs in English?

Question 4

To what extent do you agree or disagree with our proposed approach to interpreting the subject content requirements for new FSQs in mathematics?

Assessment time requirements

Our decision so far:

We will specify both minimum and maximum overall assessment times.

3.6 In considering what the minimum and maximum overall assessment times should be for new FSQs in English and mathematics, we started by considering the minimum and maximum overall assessment times that are in place for the current qualifications. We then considered the impact of the Department for Education’s changes to the subject content, in particular:

- the greater level of detail included in the subject content requirements,

- the expectation of assessing learners’ underpinning skills in both subjects, which includes:
 - the introduction of specific reading and spelling expectations in entry level English
 - non-calculator based assessment in mathematics

3.7 Our view is that the changes to the subject content warrant, in general, a modest increase in overall assessment times. The one exception to this is at Levels 1 and 2 in English, where we think existing overall assessment times remain sufficient.

3.8 We set out in Table 1 our proposed minimum and maximum overall assessment times, and how these compare to the requirements that are in place for current qualifications.

Table 1: Current and proposed minimum and maximum overall assessment times

	Current times		Proposed times	
	Minimum	Maximum	Minimum	Maximum
English – Levels 1 and 2	2 hrs	3 hrs	2 hrs	3 hrs
English – Entry levels	1 hr	2 hrs	1hr 30 mins	2 hrs
Mathematics – Levels 1 and 2	1 hr 30 mins	2 hrs	1hr 45mins	2 hrs 30 mins
Mathematics – Entry levels	1 hr	1 hr 30 mins	1hr 15mins	1 hr 45 mins

Question 5

To what extent do you agree with our proposed minimum and maximum overall assessment time requirements in English?

Question 6

To what extent do you agree with our proposed minimum and maximum overall assessment time requirements in mathematics?

Setting, contextualising and marking assessments

Our decisions so far:

- At **Levels 1 and 2** all assessments in mathematics, and the Reading and Writing assessments in English must be set and marked by awarding organisations.
- At the **Entry levels** all assessments in mathematics, and the Reading and Writing assessments in English:
 - must be set by awarding organisations,
 - may be contextualised by centres
 - may be marked either by the awarding organisation, or by the centre, or through a combination of the two.
- For **Speaking, listening and communicating** at all levels, the assessments may be set and marked by the awarding organisation or by the centre, or through a combination of the two; but where a centre sets any assessment, the awarding organisation must have specified parameters for the assessment that ensure the assessment is fit for purpose and meets all the requirements specified.

3.9 We will set rules that reflect the decisions we have taken around the setting, contextualising and marking of assessments in new FSQs.

Centre adaptation of assessments

3.10 We think it is necessary to make clear what is permitted in terms of contextualising the Reading and Writing assessments in English and the mathematics assessments at the Entry levels. This is because while we recognise the importance of centres being able to tailor assessments for their learners, we think that awarding organisations should retain an appropriate level of control over them.

3.11 We therefore propose to introduce rules that set out that where an awarding organisation permits a centre to adapt questions or tasks, this must only relate to the context of the question or task, and the awarding organisation must not permit a centre to amend:

- the knowledge, skills or understanding that the question is targeting
- the level of demand of the question or task
- any of the conditions under which the assessment must be taken (for example the time within which the assessment must be completed)

3.12 We recognise that the different approaches each awarding organisation takes to setting, contextualising and marking assessments will give rise to different risks. We therefore think it is appropriate for awarding organisations to explain

the approach they are taking, and how they propose to manage those risks in their assessment strategies. We will consider the approach each awarding organisation is taking as part of our technical evaluation process.

Question 7

To what extent do you agree or disagree with our proposed approach to setting rules around the contextualisation of the Reading and Writing assessments at the Entry levels?

Guidance to centres

3.13 We are proposing to introduce a rule that requires an awarding organisation to provide centres with effective guidance in respect of any setting, adaptation, delivery or marking of FSQ assessments that they undertake.

Question 8

To what extent do you agree or disagree with our proposal to set a rule on awarding organisations to provide guidance to centres around any setting, adaptation, delivery or marking of assessments that they undertake?

Assessment availability

Our decision so far:

We will not put in place any explicit restrictions on assessment availability.

- 3.14 In taking the above decision we recognised that different approaches to the availability of assessment would give rise to different risks in relation to the maintenance of standards, comparability and the avoidance of predictability.
- 3.15 In our previous consultation we set out that we were considering requiring each awarding organisation to explain in their assessment strategy how the approach they were taking to assessment design would manage or mitigate these risks. We would then consider the approaches they were taking to assessment availability and the management of related risks as part of our technical evaluation of the new FSQs.
- 3.16 To support this position, we are proposing to put in place some guidance on assessment availability which will apply to new FSQs in both English and mathematics.

Question 9

To what extent do you agree or disagree with our proposal to put in place guidance on assessment availability?

Grading**Our decision so far:**

All new FSQs must use a Pass/Fail grading model.

- 3.17 In line with our decision above, we will set rules for new FSQs in English and mathematics which require the use of a single grade – ‘Pass’.
- 3.18 Learners who do not achieve a Pass must still receive results, and we think it is important that those results are reported consistently across all new FSQs. For example, it could be confusing for learners (and other qualification users) if one awarding organisation issued a result of ‘Fail’, and another issued a result of ‘Not Classified’, when both are intended to mean the same thing.
- 3.19 We think the best approach is to require awarding organisations to issue a result of ‘Fail’ to all learners that do not achieve a Pass. In part, this is because alternative ways of describing results such as ‘Not Classified’ could be misunderstood as implying a multi-grade scale for the qualification. We also understand that this reflects current practice, making it the least burdensome approach.

Question 10

To what extent do you agree or disagree with our proposal to mandate a common approach to issuing results, so that all learners who do not meet the required standard receive a result of ‘Fail’?

4. Subject-specific features – English

Qualification structure

Our decisions so far:

- Learners must continue to pass all three content areas (Reading; Writing; and Speaking, listening and communicating) to achieve an overall ‘Pass’ in the qualification.
- We shall set rules around the number of assessments in new FSQs in English.

4.1 In line with the decisions set out above we will set rules which require:

- all new FSQs to use three separate components which specifically assess the parts of the subject content that relate to Reading; Writing; and Speaking, listening and communicating
- learners to pass all three components to achieve an overall ‘Pass’ grade

4.2 We think this approach recognises that there are three distinct domains within the subject as a whole, which users value individually. We also think that it is important in order to ensure learners have a consistent assessment experience across all awarding organisations, which will help with overall comparability.

4.3 As such, we are also proposing set rules around the number of different assessments that will make up each component.

Reading

4.4 We think that subject content requirements at each level are capable of being assessed within a single assessment. Therefore, for the Reading component, our view is that we should require there to be a single assessment.

Writing

4.5 In the Writing component at Levels 1 and 2, we think the subject content requirements are capable of being assessed within a single assessment. We are therefore proposing we should require there to be a single assessment.

4.6 However, at the Entry levels, in addition to the written composition, the subject content also requires learners to be assessed on their ability to spell specific words. While we could require the spelling of specific words to be included within a single assessment together with the written composition, we think that it could also make sense for it to appear as a standalone assessment. We are therefore proposing to permit both approaches. In order to ensure comparability across awarding organisations, we are proposing to put in place a rule that requires only a single grade boundary to be set at component level. This

means that the impact of the decision to separate out the spelling of specific words from the written composition will be minimised, as the marks from the two separate elements of the Writing component will be combined.

Speaking, listening and communicating

- 4.7 In the Speaking, listening and communicating component, learners will need to demonstrate a wide range of skills in order to meet the requirements of the subject content. We think learners will need to complete more than one task in order to have sufficient opportunities to demonstrate the required skills. We are therefore proposing to require that the Speaking, listening and communicating component should be made up of a minimum of two tasks. This provides awarding organisations with the flexibility to require more than two Speaking, listening and communicating tasks if they felt this was required to allow learners to demonstrate the necessary skills.
- 4.8 We think it is important to allow flexibility around how the different speaking, listening and communicating tasks are combined into assessments. Some learners may prefer to take the tasks one after the other, whereas others will prefer to take them at different times. We therefore do not propose to put in place any rules that would prevent either approach.

Question 11

To what extent do you agree or disagree with our proposed approach to setting rules around the number of assessments and tasks in the Reading; Writing and Speaking, listening and communicating components?

Assessing reading and spelling at Entry level

Our decision so far:

At the Entry levels we shall set rules and guidance around the assessment of the reading and spelling of words and types of words as set out in the subject content.

- 4.9 At Entry level 1, 2 and 3, the subject content includes detailed expectations around words and types of words that learners are expected to be able to read and spell.

Reading

- 4.10 In relation to the reading expectations, we think the best approach is to assess a sample of the words and types of words set out in the content document implicitly, by including them as part of the texts learners must read and respond to in the Reading assessment. Alternative approaches, such as assessing the

comprehension of individual words, or requiring learners to read aloud, create significant challenges for validity and manageability.

4.11 We think that it is important that each awarding organisation ensures appropriate coverage of the subject content through the assessments that they set. We are therefore proposing to set rules that require:

- each Reading assessment to cover a representative sample of the words and types of words
- all words and types of words to be assessed over as few versions of the Reading assessment as possible
- awarding organisations to take all reasonable steps to ensure that the approach they take to coverage of the reading expectations leads to assessments that are comparable and not predictable

4.12 We will require awarding organisations to explain the approach they are taking in their assessment strategies, and we will consider this as part of our technical evaluation process.

Question 12

To what extent do you agree or disagree with our proposed approach to the assessment of the reading expectations?

Spelling

4.13 We think that the spelling expectations need to be assessed explicitly within the Writing component. This is because awarding organisations will not be able to design a written composition assessment that would ensure learners will use specific words in their composition, which would mean their assessments would not fulfil the detailed requirements of the subject content.

4.14 We are therefore proposing that assessments at the Entry levels should include a dedicated spelling test – either as a separate assessment or as a dedicated section of the writing assessment – which tests a learner’s ability to spell a sample of the words and types of words included within the subject content.

4.15 To ensure a comparable approach is taken across the different awarding organisations, we propose to set a rule which sets a specific number of words that each awarding organisation must cover within the spelling test. The subject content that applies to the Writing component is much wider than just the spelling of specific words, and so in setting this rule, we are looking to ensure that the number of words assessed leads to meaningful assessment of the spelling expectations, but does not place an undue emphasis on this particular

skill. We are therefore proposing to require that the spelling task covers the spelling of 10 words and types of words drawn from the relevant Entry level list.

4.16 We are proposing that the same number of words should be assessed across the different Entry levels, as the spelling expectations have no more or less of a focus at any of the levels, and differentiation will come from the complexity (rather than number) of words expected.

4.17 We propose to set additional rules that require:

- all words and types of words to be assessed over as few versions of the spelling task as possible
- awarding organisations to take all reasonable steps to ensure that the approach they take to coverage of the spelling expectations leads to assessments that are comparable and not predictable

4.18 We will require awarding organisations to explain the approach they are taking in their assessment strategies, and we will consider this as part of our technical evaluation process.

4.19 At the Entry levels (as with Levels 1 and 2), a learner's ability to spell will also be assessed through the written composition.

Question 13

To what extent do you agree or disagree with our proposed approach to the assessment of the spelling expectations?

Use of language and stimulus materials

4.20 We also think awarding organisations should take account of the reading expectations when designing their assessments; in particular, rubrics, instructions and any stimulus materials should not use language that is beyond what is expected of learners at a given level. We propose to set guidance which clarifies this expectation.

Question 14

To what extent do you agree or disagree with our proposed approach to setting guidance around the use of language and stimulus materials that is in line with the reading and spelling expectations set for each entry level?

Spelling, punctuation and grammar

Our decisions so far:

- There will be no access to spelling and grammar checks in the Writing component; and
- We will set weighting ranges for spelling, punctuation and grammar within the Writing component;

4.21 We will set rules in line with the decisions above.

4.22 In determining the weighting ranges we are proposing to set for the new FSQs in English, we first considered the weighting ranges that are in place for the current FSQs. Currently, we only assign weightings to spelling, punctuation and grammar (SPaG) at Levels 1 and 2; the weighting range specified is 40-45%.

4.23 We also think the weighting ranges we set need to take account of two important changes being made to new FSQs:

- learners will no longer be able to use dictionaries or spelling/grammar checks in the writing component
- assessments at the Entry levels will now include a dedicated spelling test that covers specific spelling expectations in the subject content

4.24 We think the removal of spelling/grammar checks will make it more difficult for learners to achieve the marks allocated for SPaG. To avoid materially altering the overall difficulty of the qualification, we are proposing to reduce the weighting for SPaG at Levels 1 and 2.

4.25 At the Entry levels, given that the marks for the dedicated spelling test will also be included within the weighting for SPaG; the weighting will be higher at the Entry levels than at Levels 1 and 2.

4.26 We are therefore proposing to set the following weighting ranges:

- at Levels 1 and 2, 30-35%
- at the Entry levels, 40-45%

4.27 To avoid placing undue emphasis on the spelling test at the Entry levels (at the expense of wider SPaG expectations), we also think we should limit the marks for the spelling test to half of the total marks available for SPaG. As we set out above, learners at the Entry levels will be assessed on their spelling within the written composition element of the Writing component as well as within the separate spelling task.

Question 15

To what extent do you agree or disagree with our proposed weighting ranges for spelling, punctuation and grammar at both Levels 1 and 2 and at the Entry levels?

Assessment of Speaking, listening and communicating**Assessment criteria for Speaking, listening and communicating****Our decision so far:**

We will set level-based common criteria for assessing Speaking, listening and communicating.

4.28 In setting the common assessment criteria for the Speaking, listening and communicating component, we are conscious that the subject content sets out detailed expectations of learners for each level, and we should not act to supplant them. Instead, our focus is on how assessors should determine whether or not a learner has met the required expectations. Consequently, our proposed assessment criteria (see Table 2 below) focus on how reliably and consistently the learner demonstrates the required expectations.

4.29 Our view is that it would be inappropriate to credit a learner for a skill they can only demonstrate inconsistently. At the same time, it would be unreasonable to expect a learner to demonstrate every skill perfectly in every assessment. We think our proposed assessment criteria strike the right balance between these two extremes, by allowing for a degree of compensation within each of the different content expectations.

Table 2: Proposed assessment criteria for speaking, listening and communication

	Performance descriptor
Pass	<ul style="list-style-type: none"> ■ Learners generally demonstrate the requirements for the level: <ul style="list-style-type: none"> □ consistently, □ effectively, and □ to an appropriate degree for that level. ■ Overall performance across the requirements for the level is secure; any insufficient demonstration of individual content statements is balanced by appropriate demonstration of those same content statements elsewhere.

4.30 In order to support assessors in applying the common assessment criteria, we are proposing to require awarding organisations to produce exemplar materials

which illustrate the difference between the standard expected of learners whose performances would meet the criteria for a pass, and those whose performances would not.

Question 16

To what extent do you agree or disagree with our proposed common assessment criteria?

Question 17

To what extent do you agree or disagree with our proposal to require awarding organisations to produce exemplar materials to support assessor judgements in relation to the Speaking, listening and communicating component?

Monitoring the speaking, listening and communicating assessment

Our decision so far:

We will set detailed monitoring requirements around the Speaking, listening and communicating component.

- 4.31 Our General Conditions of Recognition require awarding organisations to carry out moderation of any assessments that are marked by a centre.
- 4.32 The ephemeral nature of evidence in the Speaking, listening and communicating component means that moderation can only take place if all assessments are recorded, as otherwise there is no evidence available of a learner's performance that an awarding organisation could use to conduct their moderation activities. We take the view that requiring the recording of all assessments would be unduly burdensome for both awarding organisations and centres, could negatively impact on learners' performance, and would be inappropriate for some learners.
- 4.33 When we reformed GCSEs in English language, we took the unusual step of lifting our moderation rule for the spoken language assessment, and introduced a bespoke monitoring regime instead. We think similar concerns apply to the speaking, listening and communicating assessment in new Functional Skills qualifications, and are therefore proposing to take a similar approach: lifting our general requirement for moderation, and instead introducing bespoke monitoring arrangements.
- 4.34 The monitoring arrangements we put in place need to ensure that assessments for Speaking, listening and communicating are robust, and are being carried out appropriately in all centres. As a result, we are proposing to require

awarding organisations to visit each centre at least once a year, and to carry out the following activities during those visits:

- observation of at least one assessment
- observation of the marking of at least one assessment
- a review of how the centre standardises marking
- interviews with key centre staff responsible for the delivery and marking of assessment

4.35 We also propose to publish guidance that highlights some of the situations (for example, new centres, or where previous monitoring has highlighted concerns) where additional monitoring visits are likely to be appropriate.

4.36 We will require awarding organisations to explain the approach they will be taking to conducting monitoring activities with centres in their assessment strategies. We will consider the approach each awarding organisation is taking as part of our technical evaluation process.

Question 18

To what extent do you agree or disagree with our proposal to disapply our General Condition of Recognition H2 (moderation where an assessment is marked by a centre) in respect of the Speaking, listening and communicating component?

Question 19

To what extent do you agree or disagree with the monitoring arrangements we are proposing to put in place for the Speaking, listening and communicating component?

Use of sign language

4.37 We set out in our previous consultation that because new FSQs in English will assess communication skills generally, rather than communication specifically in English, learners taking FSQs in English can demonstrate their communication skills using sign language such as British Sign Language or sign-supported English.

4.38 Our Specifications in relation to the reasonable adjustment of general qualifications,⁴ which will apply to new FSQs will allow sign language to be used in relation to new FSQs in English. We recognise the importance of awarding organisations not misinterpreting these provisions, and we therefore propose to produce some guidance to clarify that the use of sign language is permitted as a reasonable adjustment in new FSQs in English.

Question 20

To what extent do you agree or disagree with our proposal to produce guidance to clarify that the use of sign language is permitted as a reasonable adjustment in new FSQs in English?

⁴ www.gov.uk/government/publications/specifications-in-relation-to-the-reasonable-adjustment-of-general-qualifications

5. Subject-specific features – mathematics

Number of assessments

Our decision so far:

We shall set rules around the number of assessments in new FSQs in mathematics.

- 5.1 In line with our decision to set requirements around the number of assessments, we considered whether mathematics should be formed of a single assessment (as it is now), or whether there should be separate assessments structured by one or more of the following elements:
- the different content areas (number and the number system; common measures, shape and space; and handling information and data)
 - calculator- and non-calculator based mathematics
 - underpinning skills and problem solving
- 5.2 Unlike English, the content areas here do not test separate domains, and we therefore did not see the merit in separating out the assessment in this way. This left the option of separating out either the assessment of underpinning skills and problem-solving and calculator- and non-calculator based mathematics, as it would not make sense to separate both.
- 5.3 We think the most practical approach is to separate the assessment of calculator- and non-calculator based mathematics given that awarding organisations would need to restrict access to calculators for certain portions of the assessment.
- 5.4 There are two approaches awarding organisations could take to the separate assessment of calculator- and non-calculator based mathematics within the single mathematics component:
- there could be two separate assessments, one which allows the use of calculators, and one which does not
 - there could be a single assessment which has separate calculator and non-calculator sections
- 5.5 We think both of these approaches are legitimate, and do not think we should prevent either of them. However, this flexibility could lead to awarding organisations taking different approaches to aggregating marks for the calculator and non-calculator assessments. They could choose to:

- set separate pass marks for the calculator and non-calculator assessments
- set a single pass mark that is applied to the total marks achieved

5.6 These two approaches are not equivalent. Setting separate pass marks for the two assessments is less reliable overall, because a learner who falls just below the pass mark on only one assessment can perform significantly better overall than a learner who gets a better result by just passing both assessments.

5.7 We do not think we should permit the introduction of non-calculator based assessment to become a hurdle to passing the qualification, and we are therefore proposing to require all new Functional Skills qualifications to use a single component, and a single pass mark set at component level.

Question 21

To what extent do you agree or disagree with our proposed approach to the number of assessments in new FSQs in mathematics?

Coverage of subject content

Our decisions so far:

We will set rules (but not weightings) around the coverage of subject content.

5.8 Unlike in English where it will be possible for awarding organisations to cover all of the subject content in each set of assessments, in mathematics awarding organisations will need to sample the subject content. To ensure that awarding organisations approach this in a comparable way, we are proposing to set rules around the coverage of subject content. We are proposing that these rules should set out that:

- assessments should sample as much of the subject content as practicable and cover all of the content in as few iterations as possible;
- assessments should contain a reasonable balance across the three content areas (number and the number system; common measures, shape and space; and handling information and data);
- the approach taken around the coverage of subject content should ensure that assessments are comparable and not predictable.

5.9 We think it is important for us to require that the content is sampled and covered in assessments in line with the above rules in order to promote teaching of the whole curriculum.

5.10 We will require awarding organisations to explain the approach they will be taking to the coverage of subject content in mathematics in their assessment strategies. We will consider the approach each awarding organisation is taking as part of our technical evaluation process.

Question 22

To what extent do you agree or disagree with our proposed approach to the coverage of subject content in new FSQs in mathematics?

Weightings for calculator- and non-calculator based mathematics

Our decision so far:

We will introduce weightings for calculator- and non-calculator based assessment.

5.11 In reaching our proposals here we consider that the weighting we set for non-calculator based mathematics should be high enough to have a material weight in the assessments as a whole, but should not give it undue prominence within the assessment. We consider that for the majority of the assessment learners should have access to a calculator. On this basis we propose to set the following rules:

- 25 per cent of the total marks available should be allocated to questions or tasks that do not allow the use of a calculator; and
- 75 per cent of the total marks available should be allocated to questions or tasks that allow the use of a calculator.

5.12 As set out above, we think that the logistical implications of providing and restricting access to calculators mean we should set rules that require calculator- and non-calculator based to form either two separate assessments, or sections of assessment. As a result of setting common rules around there being we think that the weightings we set for calculator- and non-calculator based mathematics should be fixed weightings. We think this approach will increase the comparability of the qualifications between the different awarding organisations.

Question 23

To what extent do you agree or disagree with our proposed approach to the weightings for calculator- and non-calculator based assessment?

Weightings for underpinning skills and problem solving

Our decisions so far:

- We will introduce weightings for the assessment of underpinning skills and problem solving.
- The weightings we set will place a greater emphasis on problem solving in assessments than on underpinning skills.

5.13 In reaching our proposals we consider that the weighting we set for the assessment of underpinning skills (i.e. questions that do not target problem solving) should be high enough to have a material weight in the assessments as a whole, but the majority of the assessment should focus on problem solving. On this basis we propose to set the following rules:

- 25 per cent of the total marks available should be allocated to questions or tasks which assess underpinning skills
- 75 per cent of the total marks available should be allocated to questions or tasks which assess problem solving

5.14 We are not proposing that underpinning skills and problem solving should form a structural element of the new FSQs, as it does for calculator- and non-calculator based mathematics. We think allowing limited tolerance to apply to the weighting would be appropriate, and would give awarding organisations some flexibility to design their assessments appropriately.

5.15 The subject content requires learners to demonstrate underpinning knowledge and skills 'both with and without a calculator'. We therefore propose to require awarding organisations to achieve a reasonable balance between 'underpinning skills' and 'problem solving' in both the calculator and non-calculator assessments (or sections of assessment). We think this is important to ensure learners have a consistent assessment experience across all awarding organisations, which will help with overall comparability.

Question 24

To what extent do you agree or disagree with our proposed approach to the weightings for underpinning skills and problem solving?

6. Setting and maintaining standards

Evidence used in setting specified levels of attainment

Our decision so far:

We will require decisions on setting specified levels of attainment in new Functional Skills qualifications to be based on an appropriate range of qualitative and quantitative evidence.

- 6.1 For reformed GCSEs, AS and A levels, and later for Project qualifications, we introduced rules that required awarding organisations to base decisions on setting specified levels of attainment on an appropriate range of qualitative and quantitative evidence. These rules also indicated what broadly this evidence must comprise.
- 6.2 We think that – in principle – awards for new FSQs should largely take account of the same broad types of evidence. This is because these types of evidence would be applicable and assist in setting standards for any qualification. For example, in order to ensure standards are set appropriately and consistently, each new FSQ award will need to consider the demand of each assessment. Typically this would involve a combination of expert professional judgement about the assessment requirements and evidence of how learners have actually performed. It would also involve considering previous learners' attainment on the same or similar assessments, and where possible, would take account of evidence regarding the prior attainment of the group of learners who took that assessment.
- 6.3 While we recognise that some of the evidence used to set standards in GCSEs, AS and A levels is not as readily or consistently available for FSQs, we still consider it important that awards have a robust basis. Evidence regarding learners' prior attainment may not always be available, as this depends on the types of learners taking the assessments. However, evidence of how assessments perform in practice should always be drawn on. This may be from learners who have taken the assessment in question – if so, it is important that these are an appropriately representative sample of the learners taking the assessment. Alternatively, it may be from a robust technical pre-testing of the assessments.
- 6.4 We are therefore proposing to set rules for new FSQs which require awarding organisations to consider, as a minimum, evidence of the following in setting specified levels of attainment:
 - the level of demand of the assessment

- learners' attainment (based on the performance of either learners who have completed the assessment, or the performance of individuals used to pre-test it)
- where available, learners' prior attainment
- once the new qualifications have been awarded, performance of learners who have previously achieved the qualification

6.5 We are also proposing to publish guidance on standard setting which:

- sets out examples of qualitative and quantitative evidence awarding organisations could use in meeting these requirements
- indicates how the evidence used might vary for different approaches to assessment (for example, between sessional awards and on-demand assessment)
- explains that awarding organisations should consider how performance compares with current FSQs, but that the importance of this comparison will reduce over time as they obtain more data on the new qualifications

Question 25

To what extent do you agree or disagree with our proposals around the use of evidence to support standard setting?

Maintaining standards

Our decision so far:

We will put in place enhanced scrutiny of qualification outcomes over time.

- 6.6 We are proposing that awarding organisations should set pass marks for new FSQs in a way that secures qualification-level standards. Although the decisions in setting specified levels of attainment in FSQs are made at component level, it is at the level of the qualification as a whole where the standard resides. For example, it is achievement of the qualification (rather than its constituent parts) that has currency; and it is the requirements in combination, rather than individually, that determine the achievement of qualifications.
- 6.7 Linked to this, we are proposing that to achieve a new FSQ in English, a learner must have passed the components at the level of the qualification. In current FSQs, awarding organisations must permit learners to aggregate results from components taken at different levels to receive a qualification in

English. The qualification the learner receives is at the lowest level of the three components. Although this gives flexibility for learners, allowing aggregation of components from different qualification levels makes it considerably more difficult to set qualification-level standards, compromising awarding organisations' ability to maintain standards over time.

- 6.8 It is also important that different routes to a qualification entail comparable requirements. Where more than one version of an assessment is available at any given time, there may be some slight differences in their difficulty and in the spread of marks they lead to. Where that is the case, awarding organisations may need to set different pass marks for the different assessment versions. (Similarly, the pass marks would be expected to be the same where assessments are highly comparable in their requirements.)
- 6.9 Our approach to maintaining standards will therefore require awarding organisations to set pass marks in a way that ensures standards are comparable across different assessment versions, and are then maintained subsequently.

Question 26

To what extent do you agree or disagree with our proposals around the maintaining standards in reformed FSQs?

- 6.10 We are developing the processes we will use for evaluating the maintenance of standards in new FSQs.
- 6.11 At this stage, we are proposing to include an enabling provision in our rules that allows us to set more detailed requirements for promoting consistency of standards across the different awarding organisations. We will carry out further work and consult, as appropriate, before introducing more detailed requirements at a later date.

7. Transitional arrangements

Our decisions so far:

- There should be a transition period between the current and new FSQs which should take place as soon as reasonably practicable, but in a way that ensures, as far as possible, that learners are not disadvantaged by the arrangements.
- There should be a maximum 12 month overlap period between the current and new FSQs.

7.1 We are proposing to implement these decisions by introducing our new rules for FSQs in phases. This would involve:

- applying our new rules immediately to all learners registered onto new FSQs in English or mathematics or after 1 September 2019; and
- extending our new rules to cover all FSQs in English and mathematics from 1 September 2020.

7.2 The approach we are taking will lead to all current FSQs in English and mathematics becoming non-compliant with our rules on 1 September 2020. Awarding organisations will have to ensure they have withdrawn their existing qualifications by that date.

7.3 However, awarding organisations will not have to continue making their existing qualifications available until 1 September 2020. Rather, each awarding organisation will be able to plan the withdrawal of its existing qualifications in the way that best works for its approach to assessment within this 12 month transition period, taking into account the need to protect the interests of learners taking its qualifications.

7.4 The current rules⁵ will continue to apply to the current FSQs during the transition period.

New FSQs will not be subject to the current rules, (save for the Specifications in relation to the reasonable adjustment of general qualifications⁶).

⁵ www.gov.uk/government/collections/functional-skills-qualifications-requirements

⁶ www.gov.uk/government/publications/specifications-in-relation-to-the-reasonable-adjustment-of-general-qualifications

Part 2 – Our proposed rules and guidance

8. Our proposed rules and guidance

8.1 Alongside this consultation, we have [published two draft documents](#) that set out, respectively:

- our rules and guidance for new Functional Skills qualifications in English
- our rules and guidance for new Functional Skills qualifications in mathematics

Structure of our proposed rules

8.2 In both subjects, our rules begin with a set of high level Conditions that set out our overarching rules for:

- subject content
- assessment strategies
- technical evaluation
- assessment
- standard setting
- interpreting the Conditions

8.3 These Conditions are supported by more detailed requirements that set out:

- the approach awarding organisations must take to assessment design (these differ significantly between the subjects)
- how awarding organisations must set standards
- the information awarding organisations must include in their assessment strategies

Structure of our proposed guidance

8.4 In both subjects, our proposed guidance includes guidance that covers interpretation of the subject content, assessment availability and standard setting. Again, this guidance is largely identical in the two subjects.

8.5 In English, we also include additional proposed guidance on the reading component, on centre monitoring, and on the application of General Condition G3 (Use of language and stimulus materials).

Question 27

Do you have any comments on our proposed rules and guidance for new FSQs in English?

Question 28

Do you have any comments on our proposed rules and guidance for new FSQs in mathematics?

9. Regulatory impact assessment

- 9.1 We have already published our regulatory impact assessment⁷ on the key policy decisions we have taken for new FSQs in English and mathematics.
- 9.2 We do not repeat our earlier assessment here. Instead, we set out where we think the detailed proposals in this consultation are likely to have an incremental impact.
- 9.3 We invite respondents to comment on any regulatory impacts we have not identified, and whether there are additional measures we can take to ensure the regulatory impact of our proposals is manageable and justifiable.

Assuring the approach to assessment

Assessment strategies

- 9.4 Our published regulatory impact assessment already includes the cost of developing and maintaining assessment strategies, so here we only consider whether setting specific requirements for the content of an assessment strategy will impose an incremental burden.
- 9.5 Our view is that these requirements will not impose any incremental burden; if anything, they will reduce burden on awarding organisations by clarifying what we require assessment strategies to include.

Design rules

- 9.6 The introduction of our rules and guidance may lead to an increased regulatory burden on awarding organisations, as they will need to comply with or have regard to those rules and guidance.
- 9.7 In many areas the design rules simply carry forward approaches that are in place in current FSQs (for example, the requirements for learners in English to pass assessments in each of Reading; Writing; and Speaking, listening and communicating). However, in some places we are introducing new requirements (for example, the rules around non-calculator based assessment and weightings around underpinning skills and problem solving).
- 9.8 Where the introduction of our design rules leads to an increase in burden, we consider this to be necessary in order to secure the curriculum intentions for the new FSQs, and to secure increased comparability between the different awarding organisations offering the qualifications.

⁷ <https://www.gov.uk/government/consultations/reforming-functional-skills-qualifications-in-english-and-maths>

Pass/Fail grading

- 9.9 We are proposing to set rules for new FSQs that require awarding organisations to award learners who do not achieve a 'Pass' a result of 'Fail'.
- 9.10 Currently there is no such rule, and awarding organisations may choose to issue a learner with a different outcome, for example a result of 'Not Classified'.
- 9.11 For the majority of awarding organisations we do not think this will represent an increased burden, because we understand that the issue of a 'Fail' result is consistent with common practice. However, we recognise that if any awarding organisations do issue outcomes other than 'Pass' and 'Fail', this requirement will impose some additional burden.
- 9.12 We think that this approach is necessary however, because it is important that results are reported consistently across all new FSQs, regardless of the awarding organisation a learner takes their qualification with. We think that it could be confusing for learners (and other qualification users) if one awarding organisation issued a result of 'Fail', and another issued a result of 'Not Classified', when both are intended to mean the same thing. We also think that any alternative ways of describing results such as 'Not Classified' could be misunderstood as implying a multi-grade scale for the qualification.

Subject-specific features – English

Assessment criteria for Speaking, listening and communicating

- 9.13 Our view is that our proposed common assessment criteria for the Speaking, listening and communicating component may act to reduce burden on awarding organisations.
- 9.14 Awarding organisations must normally spend time and resource developing criteria to use for differentiating learner performance. Our proposals mean that awarding organisations will not need to do this for the Speaking, listening and communicating component.

Centre monitoring requirements

- 9.15 We are proposing to introduce a bespoke monitoring regime for the Speaking, listening and communicating component. This replaces the requirement to carry out moderation imposed by General Condition H2, which applies to all components in current FSQs.
- 9.16 Our proposal here recognises that the ephemeral nature of evidence for the Speaking, listening and communicating component creates genuine difficulties for moderation. Our proposals introduce a more proportionate and pragmatic approach to securing assessment reliability.

- 9.17 In principle, the centre monitoring approach is strictly optional – awarding organisations can choose to set and mark the Speaking, listening and communicating component themselves, in which case monitoring will not be required. In practice though, we think it is likely that centres will continue to mark the Speaking, listening and communicating component.
- 9.18 We think our proposed monitoring arrangements will mean that some awarding organisations will have to carry out more monitoring visits than they do currently. This will place some additional burden on both awarding organisations and centres.
- 9.19 In December 2017 we wrote to the awarding organisations who have expressed an interest in offering new FSQs. We sought detailed information to support the assessment of the impact of our proposal to introduce requirements around monitoring arrangements. In January 2018 thirteen awarding organisations responded, all of whom currently offer FSQs.
- 9.20 Twelve of the thirteen awarding organisations confirmed details of their current centre monitoring arrangements. Of these, the majority visit their centres at least once per year. On this basis, the requirement to undertake annual visits would be unlikely to create an additional burden for most awarding organisations.
- 9.21 We acknowledge, however, that our requirements will impose an additional burden on those awarding organisations who do not currently undertake annual monitoring visits with their centres.
- 9.22 We think this additional burden is justified because it is necessary for us to have confidence that standards are set and maintained appropriately across awarding organisations and over time.

Setting and maintaining standards

- 9.23 Our proposals around setting and maintaining standards could mean significant changes for awarding organisations if adopted. However, introducing the necessary controls to allow us to maintain qualification standards over time is a key government intention for reform.
- 9.24 We acknowledge that this may lead to an additional burden for awarding organisations as a result of the evidence they would need to consider in awarding the new FSQs, and their engagement with the process which will surround the scrutiny of qualification outcomes. However, we think that this approach is necessary in order to secure the maintenance of standards over time.

9.25 We are still developing the process for scrutiny of qualification outcomes. We will carry out further work and consult, as appropriate, before introducing these more detailed requirements at a later date.

Question 29

Are there any regulatory impacts that we have not identified arising from our proposals?

Question 30

Are there any additional steps we could take to minimise the regulatory impact of our proposals?

Question 31

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

Question 32

Is there any additional information we should consider when evaluating the costs and benefits of our proposals?

9.26 We have a duty under the Apprenticeships, Skills, Children and Learning Act⁸ to have regard to the desirability of facilitating innovation in connection with the provision of regulated qualifications. We have committed, in our Corporate Plan to survey awarding organisations' views of the impact of our regulatory requirements on innovation and consider any revisions required in response.

9.27 Our proposal to introduce detailed rules and guidance in relation to new FSQs may have an impact on the approaches and therefore degree of innovation an awarding organisation might employ in the design of their qualifications. We think however that setting detailed rules and guidance is necessary in order to secure both the curriculum intentions for new FSQs, and comparability between awarding organisations and over time.

9.28 Our proposed approach does not prevent innovation in all areas, for example in terms of the method of delivery of the new FSQs, and in relation to areas where our rules permit different approaches to be employed by awarding organisations.

⁸ <https://www.gov.uk/government/publications/ofquals-corporate-plan>

Question 33

Do you have any comments on any ways in which our proposals will prevent innovation by awarding organisations?

10. Equality analysis

- 10.1 Ofqual is a public body, so the public sector equality duty in the Equality Act 2010 applies to us. We explain in Appendix A how this duty interacts with our statutory objectives and other duties.
- 10.2 We have previously considered the impact of our decisions around our high level regulatory approach⁹ on people who share protected characteristics.¹⁰ We do not repeat here the impacts and evidence we considered at the policy consultation stage. Instead, we focus on the specific impacts that we think could arise from our proposed requirements and guidance for new FSQs.
- 10.3 For our proposals in this consultation, we did not identify any impacts on people who share the protected characteristics of age, religion or belief, sex, sexual orientation, or gender reassignment.
- 10.4 For the remaining protected characteristics, we set out the impacts (both positive and negative) we have identified, as well as the ways we could mitigate any negative impacts.
- 10.5 We have not considered subject specific issues that arise as a result of the requirements, recommendations and guidelines set out in the Department for Education's subject content documents. The Department for Education consulted separately on the draft subject content and has published an equality impact assessment¹¹ that relates to the subject content documents.

Overall approach to assessment

Overall assessment times

- 10.6 The minimum and maximum overall assessment times we propose to set represent slight increases on the times in place for current FSQs at the Entry levels in both subjects, and at Levels 1 and 2 in mathematics.
- 10.7 These proposals could have a negative impact on learners with certain disabilities as they may suffer with symptoms such as fatigue. If additional time is granted as a reasonable adjustment as a result of their disability, this may exacerbate the situation.

⁹ www.gov.uk/government/consultations/reforming-functional-skills-qualifications-in-english-and-maths

¹⁰ The term 'protected characteristics' is defined in the Equality Act 2010. Here, it means sex, disability, racial group, age, religion or belief, pregnancy or maternity, sexual orientation and gender reassignment.

¹¹ www.gov.uk/government/publications/english-and-maths-functional-skills-content-equality-analysis

- 10.8 We think the impact of this change is likely to be relatively minor, particularly since we are not proposing large changes to assessment times. In any event, we think the proposed increases in assessment times are necessary to ensure valid assessment of the new subject content, which sets out more detailed and extensive expectations for learners.

Approach to assessment in English

Access to spelling and grammar checks in Writing component

- 10.9 For the writing component in English, we propose to prohibit access to external spelling, punctuation and grammar (SPaG) aids, including dictionaries.
- 10.10 While recognising that this decision stemmed from the subject content requirement that underpinning skills should be assessed, we noted in our previous consultation that we expected this decision to have a negative impact on a number of learners, including those with particular disabilities such as dyslexia.
- 10.11 We have carefully considered whether it is possible to mitigate this negative impact by reducing the proportion of assessment marks available for SPaG in the writing component - currently 40-45% at levels 1 and 2 - whilst still enabling full and effective coverage of the subject content.
- 10.12 Our view is that, taking account of the importance of SPaG within the subject content for writing, we could reduce the current SPaG weightings for Levels 1 and 2, and this is what we are proposing. However, we also think it is necessary to set a SPaG weighting of 40-45% at the three Entry levels. This is because of the inclusion of specific spelling expectations in the subject content that must be assessed.
- 10.13 Other existing mitigations will also continue to remain available. Learners with particular disabilities remain eligible to apply for reasonable adjustments that do not give them access to SPaG aids, for example, extra time. Any learners whose disability means they are unable to access any of the marks in the writing assessment will be able to request an exemption from it.

Monitoring of Speaking, listening and communicating assessments

- 10.14 As part of our detailed proposals around the monitoring of Speaking, listening and communicating assessments, we propose to require awarding organisations to observe one or more assessments as they are undertaken.
- 10.15 Additional observers in an assessment can make the learner under observation feel increased pressure. This may have an impact on learners who are less confident. We think that the impact could be greater for some

learners who speak English as a second language, and may share the characteristic of racial group, or for some learners with particular disabilities.

10.16 We think that the monitoring requirements we are proposing to put in place are necessary to ensure that assessment is being conducted and marked appropriately. However, centres and awarding organisations can be pragmatic when selecting the particular assessments that will be observed. They could choose to avoid selecting learners whose performance is more likely to be negatively affected by observation, which could mitigate the impact of our monitoring proposal.

Requirement to pass components at the same qualification level in English

10.17 In current FSQs in English, awarding organisations are required to allow learners to aggregate components at different levels to achieve an overall qualification. The pass would be awarded at the level of the lowest of the three component. We are proposing to prevent this approach in new FSQs.

10.18 The current rule may benefit learners with certain disabilities if they have weaknesses in particular skill areas, or learners with English as a second language (who may represent particular racial groups) who may struggle more with, for example, the Speaking, listening and communicating component. This is because the current rule allows these learners to demonstrate the true level of their ability across all of the different components, while gaining a qualification overall. In new FSQs they would need to pass all three components (Reading; Writing; and Speaking, listening and communicating) at the same level in order to gain a qualification. This may preclude these learners from attempting the components they struggle with at a higher level.

10.19 We believe that our proposed approach is necessary because the current approach makes it considerably more difficult to set meaningful qualification-level standards, which compromises the awarding organisations' ability to maintain standards over time.

Approach to assessment in mathematics

Use of a single component

10.20 We are proposing that new FSQs in mathematics should be comprised of a single component. While this is not a change from current qualifications, we note that the introduction of non-calculator based assessment means it has different consequences in the new FSQs.

10.21 Learners with a disability that impacts on their ability to perform non-calculator tasks (such as dyscalculia, or cognitive impairments that affect working memory) will not be able to request an exemption from a separate non-

calculator assessment as a reasonable adjustment. This is because our rules on reasonable adjustments¹² prohibit exemptions from parts of a component.

10.22 We think this is the right approach for two reasons:

- we only permit exemptions where a learner's disability means they cannot access any part of an assessment, and we think it is unlikely that a learner could legitimately be unable to access any part of the non-calculator assessment
- it ensures that awarding organisations' decisions on whether to set a separate non-calculator assessment do not affect learners' access to exemptions

10.23 We think it is appropriate for there to be a single component in mathematics, rather than there being two separate pass marks (with non-calculator based assessment introducing a hurdle to the qualification), as this approach avoids the qualification becoming less reliable.

Question 34

We have set out the ways in which our proposals could impact (positively or negatively) on learners who share a protected characteristic.¹³ Are there any potential impacts that we have not identified?

Question 35

Are there any additional steps we could take to mitigate any negative impact, resulting from our proposals, on learners who share a protected characteristic?

Question 36

Do you have any other comments on the impacts of our proposals on learners who share a protected characteristic?

¹² See our '[Specifications in relation to the reasonable adjustment of general qualifications](#)'.

¹³ The term 'protected characteristics' is defined in the Equality Act 2010. Here, it means sex, disability, racial group, age, religion or belief, pregnancy or maternity, sexual orientation and gender reassignment.

Responding to the consultation

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)
- download the response form from the [consultation homepage](#) and either:
 - email your response to consultations@ofqual.gov.uk – please include the consultation title (*Implementing Functional Skills reform*) in the subject line of the email and make clear who you are and in what capacity you are responding
 - post your response to: Implementing Functional Skills reform, Ofqual, Spring Place, Herald Avenue, Coventry, CV5 6UB, making clear who you are and in what capacity you are responding

Evaluating the responses

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity. We will therefore only consider your response if you complete the 'About you' section.

Any personal data (such as your name, address and any other identifying information) will be processed in accordance with the Data Protection Act 1998.

We will publish a summary of the responses received. We will not include your personal details in any published summary of responses, although we may quote from your response anonymously.

Please respond by Friday 11 May 2018

Appendix A: Ofqual's objectives and duties

The Apprenticeship, Skills, Children and Learning Act 2009

Ofqual has five statutory objectives, set out in the Apprenticeship, Skills, Children and Learning Act 2009;¹⁴

- 1) **The qualification standards objective**, which is to secure that the qualifications we regulate:
 - a) give a reliable indication of knowledge, skills and understanding; and
 - b) indicate:
 - i) a consistent level of attainment (including over time) between comparable regulated qualifications; and
 - ii) a consistent level of attainment (but not over time) between qualifications we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate
- 2) **The assessment standards objective**, which 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
- 3) **The public confidence objective**, which is to promote public confidence in regulated qualifications and regulated assessment arrangements
- 4) **The awareness objective**, which 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

¹⁴ www.legislation.gov.uk/ukpga/2009/22/section/128

- 5) **The efficiency objective**, which is to secure that regulated qualifications are provided efficiently, and that any relevant sums payable to a body awarding or authenticating a qualification represent value for money.

We must therefore regulate so that qualifications properly differentiate between learners who have demonstrated that they have the knowledge, skills and understanding required to attain the qualification and those who have not.

We also have a duty under the Apprenticeship, Skills, Children and Learning Act 2009 to have regard to the reasonable requirements of relevant learners, including those with special educational needs and disabilities, of employers and of the higher education sector, and to aspects of government policy when so directed by the Secretary of State.

The Equality Act 2010

As a public body, we are subject to the public sector equality duty.¹⁵ This duty requires us to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The awarding organisations that design, deliver and award Functional Skills Qualifications are required by the Equality Act, among other things, to make reasonable adjustments for disabled people taking their qualifications, except where we have specified that such adjustments should not be made.

When we decide whether such adjustments should not be made, we must have regard to:

- (a) the need to minimise the extent to which disabled persons are disadvantaged in attaining the qualification because of their disabilities;
- (b) the need to secure that the qualification gives a reliable indication of the knowledge, skills and understanding of a person upon whom it is conferred;
- (c) the need to maintain public confidence in the qualification.

¹⁵ Equality Act 2010, s.149. www.legislation.gov.uk/ukpga/2010/15/section/149

We are subject to a number of duties and we must aim to achieve a number of objectives. These different duties and objectives can, sometimes conflict with each other. For example, if we regulate to secure that a qualification gives a reliable indication of a learner's knowledge, skills and understanding, a learner who has not been able to demonstrate the required knowledge, skills and/or understanding will not be awarded the qualification.

A person may find it more difficult, or impossible, to demonstrate the required knowledge, skills and/or understanding because they have a protected characteristic. This could put them at a disadvantage relative to others who have been awarded the qualification.

It is not always possible for us to regulate so that qualifications give a reliable indication of knowledge, skills and understanding *and* advance equality between people who share a protected characteristic and those who do not. We must review all the available evidence and actively consider all the available options before coming to a final, justifiable decision.

Qualifications cannot mitigate inequalities or unfairness in the education system or in society more widely that might affect, for example, learners' preparedness to take the qualification and the assessments within it. While a wide range of factors can have an impact on a learner's ability to achieve a particular assessment, our influence is limited to the qualification design and assessment.

We require awarding bodies to design qualifications that give a reliable indication of the knowledge, skills and understanding of the learners that take them. We also require awarding organisations to avoid, where possible, features of a qualification that could, without justification, make a qualification more difficult for a learner to achieve because they have a particular protected characteristic. We require awarding organisations to monitor whether any features of their qualifications have this effect.

In setting the overall framework within which awarding organisations will design, assess and award reformed FSQs, we want to understand the possible impacts of the proposals on learners who share a protected characteristic.

The protected characteristics under the Equality Act 2010 are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnerships

- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation.

With respect to the public sector equality duty under section 149 of the Equality Act, we are not required to have due regard to impacts on those who are married or in a civil partnership.

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