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Corporate report

Regulatory burden statement – April 2022

Updated 4 May 2022

Applies to England

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Overview

This statement explains the work undertaken in the last 12 months (1 April 2021 to 31 March 2022) to ensure that Ofqual has neither introduced or maintained unnecessary burdens on regulated awarding organisations. This report comes in the context of an exceptionally challenging year, where in response to the effects of the coronavirus (COVID-19) pandemic, additional demands were placed on awarding in the interests of students and apprentices. Inevitably, and unfortunately, awarding organisations will have experienced additional burden in light of those requirements. This report sets out how Ofqual sought to minimise that additional burden and to support awarding organisations in these exceptional circumstances. It also sets out how Ofqual proposes to manage regulatory burden in the next 12 months (1 April 2022 to 31 March 2023).

Ofqual is the independent, expert regulator of qualifications and assessments for England. Ofqual regulates on behalf of students of all ages and apprentices to make sure that qualifications, apprenticeship end-point assessments and National Assessments are good quality.

Ofqual is required under the [Apprenticeships, Skills, Children and Learning Act \(ASCL\) 2009](#) to publish an annual statement outlining plans to keep our regulatory functions under review. Additionally, Ofqual is also required to publish information regarding the regulatory provisions imposed in light of the [Business Impact Target 2020 to 2021](#).

Any requirement placed on regulated awarding organisations is a burden. Ofqual is required not to [impose or maintain any unnecessary regulatory burden](#), and therefore burden is evaluated as part of how regulatory requirements and activity are designed. The objective is not to remove necessary burden, rather to ensure that it is exceeded by the benefits achieved through the measures employed. This includes consideration of the wider impacts of any requirements, such as how schools, colleges, students and apprentices will be affected.

In the interests of students of all ages and apprentices, Ofqual's regulatory approach is continually

reviewed and enhanced. To inform this process, feedback on Ofqual's regulatory approach and associated activities is sought from awarding organisations and other stakeholders.

Much of Ofqual's regulatory approach is outcomes focused, rather than prescriptive. This approach to regulation allows awarding organisations more flexibility to take specific action that is fitting to their context whilst securing what is in the interests of students and apprentices. For example, in 2021 in light of the pandemic, exam boards collaborated through the Joint Council for Qualifications (JCQ) to devise an alternative way for students to receive grades and to provide consistent guidance and support to centres, in line with government policy and regulatory requirements. Ofqual is committed to continuing with an outcomes based regulatory approach wherever possible. Prescriptive requirements are used only where this is needed. This might happen where specific requirements are necessary to secure fairness for students and clarity for users of qualifications; or where, prescribing an approach to be used by all awarding organisations would reduce burden on centres.

Qualification delivery was severely disrupted during 2021 due to the coronavirus (COVID-19) pandemic and, for the second year in a row, GCSEs, AS, A levels and some vocational and technical exams and formal assessments could not take place. Ofqual's overriding priority was to enable students and apprentices to progress to the next stage of their lives.

In response, regulatory requirements for summer 2021 were adapted through the [general qualifications alternative awarding framework](#) (GQAAF) and the [vocational and technical qualifications contingency regulatory framework](#) (VCRF) and accompanying guidance. Whilst these arrangements necessarily generated burden for awarding organisations, Ofqual put in place a range of measures to support and work with awarding organisations to aid them in working in this new regulatory context, with the aim of minimising the resulting burden. The activities awarding organisations needed to undertake to deliver qualifications in 2021, with a focus on associated costs and savings, are outlined in a report published alongside the longitudinal [qualifications price index report for 2021](#).

Activity to manage regulatory burden between April 2021 and March 2022

In May 2021 the Ofqual [corporate plan 2021 to 2022](#) was published setting out the planned work to fulfil our statutory objectives. As in 2020, this was a single year plan to reflect the uncertainty created by the pandemic. The plan was intentionally restrained and focused to reflect the significant extra work awarding organisations had to undertake.

Ofqual introduced new extraordinary regulatory frameworks for delivering qualifications in 2021 in

response to the ongoing impact of the pandemic for the purpose of securing the interests of students of all ages and apprentices.

The GQAAF and the VCRF were developed in consultation with awarding organisations (and others) to ensure that the requirements were proportionate and workable and would enable students and apprentices to secure qualifications wherever possible. Specifically, the VCRF was designed as a principles-based framework to enable awarding organisations to develop approaches appropriate for their qualifications

The GQAAF catered for a narrower group of qualifications. Whenever possible, the framework was written to allow approaches which would enable awarding organisations to minimise burden. For example, the requirements for the external quality assurance of teacher-assessed grades allowed awarding organisations to work collaboratively so that each centre was only contacted by one awarding organisation, rather than requiring each awarding organisation to contact every centre with which they had entries. This reduced the burden on awarding organisations as well as schools, colleges, and other exam centres.

Consultations and impact assessments

Ofqual is legally required to consult on changes to its regulations, to ensure that they are fit for purpose. Consultation responses are analysed to understand stakeholders' views on the impact of regulatory requirements, including impacts on awarding organisations. This feedback is used when evaluating whether a proposed or existing regulatory requirement should be introduced, removed or changed.

To develop the GQAAF and the VCRF, a regulatory impact assessment for each framework was completed. These were published in the consultation outcome documents: the [GQAAF consultation outcome](#) and the [VCRF consultation outcome](#).

Awarding organisations were encouraged to engage with Ofqual before, during and after the publication of each consultation. This assisted awarding organisations in quickly getting up to speed on any proposed or final requirements, and quickened implementation. These activities were in addition to specific and targeted meetings with those most affected by proposed regulatory change.

Collaboration with other regulators and government bodies

Ofqual engaged regularly with the Department for Education (DfE) on a wide range of matters especially in the context of the pandemic and the government's reform agenda. This included the

consideration of adaptations for qualifications used for performance table purposes following the cancellation of formal assessments in summer 2021, the approach to awarding GCSEs, AS and A levels in summer 2021, the Skills and Post-16 Education Bill and the government's post-16 qualification review.

The Institute for Apprenticeships and Technical Education (the Institute) were consulted to clarify roles and responsibilities for regulating apprenticeship end-point assessments and to avoid duplication of processes where possible. For example, Ofqual and the Institute worked together to develop a single set of materials for awarding organisations to submit Higher Technical Qualification reapplications, which are used by both the Institute and Ofqual.

In August 2021 an annex to the [Memorandum of Understanding](#) between Ofqual and the Institute was published, explaining the responsibilities of each organisation. This sits alongside [Regulatory External Quality Assurance of Apprenticeship End-Point Assessments](#) guidance, which provides an overview of the range of activities undertaken and explains how these align to the Institute's framework.

Throughout the pandemic Ofqual has collaborated with the Institute and with the Education and Skills Funding Agency (ESFA) in the adoption and implementation of assessment flexibilities enabling awarding organisations to continue to deliver end-point assessments and apprentices to complete their apprenticeship. For example, where apprentices were unable to progress due to an inability to access the Functional Skills Qualifications (FSQ) assessment, awarding organisations were encouraged to a) introduce remote invigilation, and b) engage with the ESFA to consider alternative flexibilities like the reordering of gateway requirements and FSQ completion. Through collaboration, communications, and requests to awarding organisation's to jointly meet the needs of Ofqual, ESFA and / or the Institute have been streamlined.

Work has been undertaken with the ESFA to align the recognition processes for entry onto the Register of End-Point Assessment Organisations. As a result, from summer 2022, the ESFA will take greater assurance from Ofqual's recognition process thereby reducing much of the duplication required for new organisations applying to both registers.

The same alignment activity has been undertaken with the qualifications' regulators in the devolved administrations to avoid duplication wherever possible. For example, the approach to be used to award teacher-assessed grades in 2021 was aligned so that, although those approaches were not identical and reflected different decisions and factors in the different jurisdictions, unnecessary divergence was minimised. This reduced burden in several ways and facilitated exam boards allowing centre policy portability across jurisdictions, minimising burden for both centres and awarding organisations.

Regarding the annual requirements for awarding organisations to submit a statement of compliance, this activity was also aligned and as such, awarding organisations needed to make only one submission (instead of one to each regulator). This also included the coordination of follow

up meetings, reducing the need for potentially similar discussions with different regulators.

In addition, these regulators were invited to all webinars and many of the working groups with awarding organisations throughout the pandemic, to ensure they heard what Ofqual were proposing along with the responses from awarding organisations. These included fortnightly meetings (without the awarding organisations) on the subject of policy proposals and implementation.

Regulatory audit activity

Business as usual regulatory audit activity continued to be postponed during the period April 2021 to March 2022, in response to the pressures on the industry created by the pandemic.

Confidence in the standards of qualifications is crucial in regulating on behalf of students, apprentices and those that use and fund qualifications. Therefore Ofqual required awarding organisations to put in place a [centre assessment standards scrutiny \(CASS\)](#) strategy by September 2021. These requirements ensure that appropriate controls are in place when centres mark assessments on behalf of awarding organisations. They establish clear accountability with awarding organisations for ensuring that that students' results can be trusted to provide an accurate reflection of their performance in assessments. In response to a request from the Federation of Awarding Bodies (FAB) and awarding organisations directly, and in acknowledgement of the additional burden, the start of the formal monitoring programme was delayed from autumn 2021 until April 2022.

In early 2021, Ofqual updated [General Condition F](#) to secure price transparency in the sector. This is important as it supports those who buy qualifications to be well-informed when making purchasing decisions. Planned monitoring of this new requirement was also delayed to reduce burden on awarding organisations during the pandemic.

Qualification reform

The DfE is leading a review of post-16 qualifications at level 3 and below that will receive public funding. The policy aims of the programme are to create better outcomes for learners, employers and the economy, and establish a landscape of funded qualifications for post-16 learners that:

- is clearer to navigate for learners and other users
- is populated by high-quality qualifications
- ensures learners are better equipped to progress to their intended destination

Ofqual has worked closely with DfE and the Institute to inform and influence ongoing qualification reform and the development of the Skills and post-16 Education Bill.

In the [Ofqual response to the second stage of consultation](#) for DfE's review of post-16 qualifications at level 3 in England, we asked DfE to consider whether there were aspects of the proposed reforms for which implementation could be delayed by a year. This recognised the importance of giving more notice to the sector ahead of the changes. In the [Skills and Post-16 Education Bill: Second Reading Opening Speech](#) (DfE, November 2021) DfE announced it was allowing an extra year before implementing the reforms.

Collaboration with DfE and the Institute will continue as the Skills and post-16 Education Bill passes through parliament in an effort to support its introduction, and to manage the impact of the implementation of the reform.

Regulatory data and monitoring requests

Collecting data from awarding organisations is an important tool in informing regulatory policy, technical decisions and effective regulatory monitoring. Data enables Ofqual to regulate effectively for students and apprentices by providing greater insight into the diverse set of regulated qualifications and organisations. The data collected makes a significant contribution to the ongoing approach to regulation, which ensures that qualifications are fit for purpose, can be relied upon by learners, and are delivered in a secure and timely manner. It also informs improvements in the oversight of systemic risks and any reform activity.

In light of the value and importance of data to effective regulation for students and apprentices, the number and range of regulatory data collection requirements from awarding organisations was expanded.

In each case, new requests were carefully evaluated, recognising the additional burden they create for awarding organisations. In total, 12 new additional data requests related to vocational and technical qualifications and 4 additional monitoring collections for general qualifications were raised within the last year.

To support awarding organisations, data collections that were scheduled during the reporting period were reviewed and as a result 3 were cancelled. Data collections that remained were, where possible, undertaken in collaboration with the devolved administrations. The timing of scheduled data collections for both general and vocational and technical qualifications over a 12-month period are published in advance to aid planning. [Submitting data to Ofqual](#) provides more detailed guidance on formats and timings for data collections.

Opportunities were provided for awarding organisations to discuss data requests in order to gather their feedback and inform planning decisions. During 1 April 2021 to 31 March 2022 4 (virtual) vocational and technical qualifications data forums and 3 general qualification data forums were held to discuss data collections. Relevant awarding organisations were consulted on the detail of each data request to ensure that timescales were reasonable and achievable. Where the original proposal posed a challenge, the scope was revised accordingly.

Following feedback from awarding organisations Ofqual:

- aligned new data requests with existing data templates, where possible
- expanded engagement to also include a workshop format, to enable further discussion about upcoming data requirements
- streamlined internal processes to ensure responses were made in a timely manner to any queries from awarding organisations regarding guidance on templates used for data collections
- delayed the intention to collect candidate-level appeals data for vocational and technical qualifications, instead keeping that collection for now at an aggregate level
- cancelled initial plans to collect data on reasonable adjustments and special considerations for undertaking vocational and technical qualification assessments

Digital communication

In September 2021 Ofqual completed a significant work programme to align its awarding organisation facing digital communications system ('the Portal') with the government website accessibility regulations. These improvements were aimed at making the Portal more intuitive and user friendly through improved layout and functionality, thereby reducing user burden.

Awarding organisations were supported with the introduction of the system changes by being given access to a secure demonstration environment. This enabled users to familiarise themselves with the new layout and functionality before the release date.

Approach to managing regulatory burden between April 2022 and March 2023

Co-regulation

Ofqual has committed to deploying a 'co-regulatory' approach, building on the more collaborative approach that was necessitated by the pandemic. Co-regulation involves working closely with regulated awarding organisations to:

- identify and analyse threats to quality and fairness, in the interests of students, apprentices and those that use qualifications
- develop controls that will mitigate those threats
- implement controls in a way that minimises burden
- secure public confidence in those arrangements

A co-regulatory approach makes use of a range of tools including:

- closely working on the development of regulatory policy
- organising working groups with awarding organisations to discuss systemic issues, develop solutions and disseminate good practice
- research coordination and dissemination
- the development of guidance to support compliance
- coordination of communications and engagement with those that use qualifications
- governance arrangements to support alignment between awarding organisations and coordination with the regulator and government
- targeted data collection and sharing

Co-regulation does not preclude the full use of Ofqual's regulatory tools, including enforcement. It also, inevitably, requires significant engagement with awarding organisations. Ofqual's expectation, nevertheless, is that over time co-regulation can play an important role in minimising burden. Specifically, co-regulation supports minimising burden by:

- helping target work on the most important issues
- ensuring regulatory requirements are well designed, to avoid unnecessary burden
- addressing areas where regulation is inadvertently getting in the way of good practice or innovation, that is in the interests of students and apprentices
- enabling system-wide activity to secure public confidence in qualifications that is either not possible, or more resource intensive, for individual awarding organisations to undertake

We welcome engagement from awarding organisations on optimal ways to implement co-regulation that maximise benefits to students and apprentices, whilst minimising burden.

Specific work to address burden

The following work to address burden is planned:

- continue to evaluate responses to consultations which indicate where burden may be removed or mitigated
- continue to ask for evidence from awarding organisations to inform regulatory impact assessments, helping to improve decision making and minimise burden where appropriate
- continue working with the Institute to implement a ‘single approval gateway’ which removes duplication in Institute approval and Ofqual accreditation processes for Technical Qualifications
- continue supporting applicant awarding organisations, including those offering end-point assessments, with an account management approach and a wide suite of materials that enable them to better understand how to approach applying for recognition
- review monitoring and data collections to ensure that they are an accurate reflection of awarding arrangements in 2022 and do not require awarding organisations to provide unnecessary or irrelevant information
- adapt regulatory monitoring requirements for general qualifications and vocational and technical qualifications, including arrangements that allow data collated on behalf of JCQ to be used, avoiding duplication
- wherever possible, continue to share information with the Welsh and Northern Irish regulators on operational activities and areas of collaboration to avoid duplicate requests for information and support coordinated responses to issues
- continue to use the Portal for communicating with awarding organisations alongside a variety of communication formats, including in person events, webinars and virtual meetings for engagement activities
- continue to listen to and respond to feedback from awarding organisations on specific areas of burden that can be reduced or eliminated
- continue to use developments and reforms of the government’s Better Regulation Framework and wider regulatory best practice developments to inform regulatory approach
- engage with awarding organisations delivering vocational and technical qualifications to enable sharing of good practice and to promote and ensure that new approaches are implemented safely and appropriately
- use research capability to inform the opportunities for and adoption of technology and innovative approaches to improve assessment for students, apprentices, and centres. In addition, making the outcomes of research widely available to support awarding organisations in their own technology adoption

Looking to the future, there is both the opportunity and the desire in the industry to make use of technology and innovative approaches to improve the resilience, quality, fairness, accessibility, and efficiency of qualifications. Removing any barriers that regulation may inadvertently create to good innovation that is in the interests of students and apprentices, is important. Ofqual welcomes engagement from awarding organisations if there are examples of such barriers, and, also in relation to areas of regulatory uncertainty related to innovation.

Annex

Engagement with existing and prospective awarding organisations

Throughout the year meetings with selected awarding organisations were held to discuss pandemic-related matters, including contingency planning. At these meetings information about policy developments was shared and awarding organisation feedback welcomed. Where necessary one-to-one meetings with awarding organisations were held.

In addition, a number of optional events and webinars were hosted or co-hosted to support, inform and consult with awarding organisations, as set out below.

Table 1: Summary of the webinars and virtual events from April 2021 to March 2022

Ofqual webinar or virtual event	Dates
Department for Business, Energy & Industrial Strategy (BEIS) consultation on UK Internal Market Act 2020 (hosted by BEIS)	April 2021
Equalities webinar	June 2021
Performance table qualifications - consultation meeting with awarding organisations	July 2021
Consultation with VCRF category B awarding organisations	July 2021
National Cyber Security Centre webinar: tools and support for cyber incidents (jointly hosted between NCSC and Ofqual)	July 2021

End-point assessment organisation forum, customer service practitioner discussion	August, September, October 2021
Regulatory compliance webinar	September 2021
In conversation with Dr Jo Saxton – getting to know your new Chief Regulator	November 2021
Digital Functional Skills Qualifications consultation	December 2021
Ofqual Portal User Group meeting	January 2022
Consultation outcome on guidance on malpractice and maladministration webinar	January 2022
Ofqual statutory guidance consultation – Designing and developing accessible assessments webinar	January 2022
Ofqual’s role in the approval process for Higher Technical Qualifications webinar	February 2022
Research, Data and Analytics team webinar	February 2022
Researching confirmation of all specified learning outcomes (CASLO) qualifications	February 2022
End-point assessment outcomes data collection webinar	March 2022
Complaints, Whistleblowing, Malpractice, and Executive Correspondence team webinar	March 2022

Recognition regulatory activity

The recognition process for all awarding organisations is necessarily robust. It is important Ofqual maintains a high bar for new entities to be recognised to provide regulated qualifications.

Ofqual provides external quality assurance of apprenticeship end-point assessments through the [regulation of end-point assessment organisations](#) (EPAOs). Ofqual recognition ensures that end-point assessments are delivered by those organisations who have the capacity and capability to design, develop and deliver them. It is a consistent and objective process for all applicants, which ensures fairness and provides assurance.

Table 2: An overview of the pre-recognition activity for the previous 12 months and those relating to end-point assessment organisations.

This table includes Ofqual led activities and those which were led by other organisations in which Ofqual made a substantive, targeted, contribution.

Ofqual webinar or virtual event	Dates
Ofqual webinar – Understanding conflicts of interest	April 2021
Ofqual webinar - EUIAS applying for Ofqual recognition	April 2021
FE Week Annual Apprenticeship Conference joint Ofqual and ESFA workshops x 2	April 2021
AELP support surgery for end-point assessment organisation (EPAOs)	May 2021, June 2021 and July 2021
Four FAB Quality Clinics on topics to support prospective awarding organisations:	May 2021 and June 2021
<ul style="list-style-type: none"> • Showing your integrity as an AO or EPAO • Showing your competence as a regulated AO or EPAO • Preparing for your Ofqual submission • Regulation and Quality Assurance what's the difference 	
Ofqual webinar – EPAO recognition evidence and resources toolkit (14 sessions in total)	June 2021
AELP's National Conference presentation with Q&A on Ofqual's EQA of Apprenticeship EPA	June 2021
Ofqual webinar – Royal Aeronautical Society applying for Ofqual recognition	September 2021
SDN webinar on The Ofqual recognition process for EPAOs – What you should know before applying	February 2022

Two FE Week Annual Apprenticeship Conference workshops – Ofqual’s external quality assurance of Apprenticeships: findings from the regulator

March 2022

Ofqual event for phase 2 applicant recognition

March 2022

Table 3: An overview of recognition activity for the previous 12 months, and those relating to organisations offering end-point assessments only.

Regulatory activity	1 April 2021 to 31 March 2022	1 April 2020 to 31 March 2021	1 April 2019 to 31 March 2020
Recognition decisions	477	203	84
Of these, recognition decisions on organisations offering end-point assessments only	428	149	Not applicable

Compliance and enforcement regulatory activity

Ofqual sets requirements that awarding organisations must continuously meet and then monitors their compliance with these requirements. Where problems are identified, compliance and enforcement regulatory action is taken to make sure awarding organisations put things right, and that the students and apprentices are treated fairly. (A full list of such actions can be found at [‘regulatory actions and interventions’](#)).

Table 4: An overview of compliance and enforcement regulatory activity over the previous 12 months and compared with recent years.

Regulatory activity	1 April 2021 to 31 March 2022	1 April 2020 to 31 March 2021	1 April 2019 to 31 March 2020
Audit visits	0	0	32
Investigation visits	0	7 (remote)	3
Directions	0	0	0

Special Conditions	25 (20 of which were imposed at recognition)	8 (4 of which were imposed at recognition)	16 (6 of which were imposed at recognition)
Fines	1	0	3
Undertakings	1	4	7

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