

# Confidence in Standards:

regulating and developing  
qualifications and assessment –  
next steps





# Foreword

Qualifications and assessment are at the heart of our education and skills agenda. We are undertaking wide-ranging reforms to ensure that young people are ready to respond to the challenges of the future, and adults can develop the skills they and their employers need. We have announced the next phase of our School Improvement Strategy – the National Challenge – to transform schools with low GCSE attainment, raise results in English and maths, and tackle underachievement. Our *Making Good Progress* reforms are focusing the school system more sharply on the learning and progression of each individual pupil. We are currently legislating to raise the age of participation in education or training to 18 through the Education and Skills Bill. We are expanding young people's options through the new 14-19 Diplomas, 90,000 more apprenticeships by 2013, and a sharp focus on functional skills in English and maths. We are also working to make sure that the vocational qualifications system is more flexible and responsive to employers' needs, and that good quality employer training is recognised.

These reforms will all help our education and training system meet the skills challenges identified by Lord Leitch<sup>1</sup>. For reforms of scale to succeed, there needs to be confidence in the

qualifications and assessment system. People need to be sure that new qualifications are of the highest quality: that they are as good as – or better than – the qualifications they already know. For example, the new 14-19 Diplomas, which are due to be taught for the first time in September 2008, have been designed with business and academia to offer the best of practical and theoretical learning in a high quality, coherent and exciting package. Learners, parents, and employers will all benefit from strong, independent assurance that these new qualifications are valid and valuable.

We therefore need a regulator which checks qualifications, ensures that they are strengthened when necessary, and provides an objective and evidence based judgement about their quality and value. It is important that its voice is independent of Ministers and seen to be objective and impartial.

The current qualifications regulator, the Qualifications and Curriculum Authority (QCA), has done excellent work over the last decade to manage the examination system, to maintain robust independence within that system, and to secure confidence in standards. The result is an internationally renowned assessment and qualifications system. However, as more

<sup>1</sup> The final report of the Leitch Review of Skills, *Prosperity for all in the global economy – world class skills*, was published on 5th December 2006.

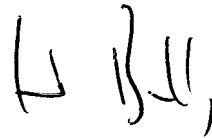
demands are made on the system we need to strengthen the visible independence of the regulator. For this reason, we announced last autumn plans to create an independent regulator of qualifications and tests for England, to report to Parliament rather than Ministers.

At the same time we announced that the QCA would evolve into a Qualifications and Curriculum Development Agency (QCDA). Working with awarding bodies, the new agency will support Ministers in developing qualifications and a curriculum that inspires and motivates young people, and gives them the skills that employers and higher education are looking for. It will also deliver the National Curriculum assessments which are such an important measure of children's achievements.

Our consultation document last December set out the details of our plans. The consultation finished in March, and we announced in April the establishment of the regulator – the Office of the Qualifications and Examinations Regulator (Ofqual) – in interim form within existing legislation, and the appointment of Kathleen Tattersall OBE as its Chair following an open competition. In May we confirmed our plans to legislate to establish Ofqual in the 2008/09 Parliamentary session as part of a wider Education and Skills Bill. This document summarises the responses to our consultation. It confirms our intention to proceed, and sets out our decisions on some of the areas on which we specifically consulted.

We are pleased that our plans have been so warmly welcomed and supported. There is widespread agreement that they will ensure Ofqual is a credible, authoritative regulator, able to challenge, support and improve the qualifications and tests system, and as such likely to strengthen public confidence in that system.

At the same time our proposals to focus QCDA on advising Ministers and on delivery have also been welcomed. On this basis we will proceed with our plans for legislation. We are confident that, as a result, the qualification and assessment system will be strengthened to the benefit of employers, higher education, and most important of all for learners of all ages.



**Ed Balls, Secretary of State for Children, Schools and Families**



**John Denham MP, Secretary of State for Innovation, Universities and Skills**

# 1. Introduction

In September last year, we announced plans to create a new independent regulator of qualifications and tests for England. On 17 December, the Department for Children, Schools and Families (DCSF) and the Department for Innovation, Universities and Skills (DIUS) published the consultation document “Confidence in Standards: regulating and developing qualifications and assessment”<sup>2</sup>, setting out detailed proposals. We invited comments on the detail of:

- the proposed set-up of an independent regulator of qualifications and tests with stronger powers, to be known as the Office of the Qualifications and Examinations Regulator – Ofqual; and
- how the Qualifications and Curriculum Authority (QCA), which currently has a range of both regulatory and non-regulatory responsibilities over the curriculum, assessment and qualifications, should evolve into a development agency for curriculum, assessment and qualifications to take forward its non-regulatory responsibilities.

The consultation on the proposals ran until 10 March.

This document:

- summarises the responses we received to the consultation;
- explains how in light of those responses we are taking forward the specific matters on which we consulted; and
- gives further information on progress with these reforms.

## Context

Qualifications and assessment are central to the education and skills system. They are used for a variety of different purposes: to support teachers in focusing on the needs of individual learners; to recognise and record the achievements of students; and to measure the performance of individual institutions and of the system as a whole, to enable excellence to be celebrated and development areas to be identified and tackled.

It is critically important that the benchmarks against which learners are measured – the standards of qualifications and tests<sup>3</sup> – are comparable over time and between subjects. This enables learners’ achievements to be properly measured and valued. Maintaining that

<sup>2</sup> “Confidence in Standards: regulating and developing qualifications and assessment”, DCSF/DIUS, Cm 7281, <http://www.official-documents.gov.uk/document/cm72/7281/7281.pdf>

<sup>3</sup> The standards of qualifications and tests – the benchmarks against which learners are measured – should not be confused with the standards of education more broadly. The first are like the height of a hurdle, which should be maintained as far as possible over time. The second are like the number of people jumping that hurdle: we want as many people as possible to be able to jump the hurdle, to meet their potential and to meet the skills challenges of the future.

comparability is a core task for a qualifications regulator.

Over the last ten years the QCA has been highly successful as the qualifications regulator for England. The QCA has been responsible for overseeing the qualifications system, and in particular for checking and accrediting high quality qualifications developed by awarding bodies. QCA also has a number of non-regulatory functions, including: developing and advising Ministers on the National Curriculum; developing and delivering high-quality National Curriculum assessments; developing the criteria for 14–19 qualifications; and reforming the vocational qualifications system.

QCA's approach to qualifications regulation has been recognised internationally for its quality and reliability. For example, in 2004 the report of the Independent Committee on Exam Standards, chaired by Barry McGaw, Education Director of the Organisation for Economic Co-operation and Development, concluded that "No examination system at the school or other level is so tightly or carefully managed".<sup>4</sup>

Yet the work of a qualifications regulator must go beyond securing standards: it must also be seen to have secured standards. The public, employers and further and higher education institutions must have complete confidence that standards are comparable across qualifications, that results are reliable and that standards are maintained from one year to the next. This public confidence is particularly important at a time of qualifications and tests reform.

Our reforms to qualifications and tests are intended to motivate and engage all young people, including those who are turned off by current qualifications and those who are not progressing fast enough; and to make sure that all learners have the skills they will need for life

and work. So major new qualifications are being developed, such as Diplomas and functional skills qualifications; the National Curriculum assessment regime is likely to be changing with the piloting of 'single level' tests; and reforms of vocational qualifications are being planned. These reforms are an important part of our response to the challenges facing the education and skills system in the coming years.

But there are two barriers to securing the confidence the system needs:

- first, the fact that QCA as an organisation reports to Ministers can make it harder to demonstrate that, in carrying out its regulatory function, it is acting wholly independently; and
- second, there is an inherent conflict of interest between QCA's existing functions. As set out above, QCA is for example responsible for developing the content of public qualifications and tests, and for the actual delivery of National Curriculum assessments, as well as for regulating those qualifications and tests. It is difficult for QCA to be seen as a truly independent guarantor of standards in qualifications or tests which it itself delivers or develops.

Our plans are intended to help overcome these barriers, so that not only are qualifications and tests – current and new – of the highest quality, they are seen to be so by learners, employers and the public. The new regulator will anchor the system in a time of change, and thereby safeguard standards, and confidence in standards, for the benefit of learners now and in the future.

### Progress since we consulted

The idea of a new independent regulator was broadly welcomed in responses to the

4 Independent Committee Report on Examinations Standards, published Dec 2004 [http://www.qca.org.uk/qca\\_9810.aspx](http://www.qca.org.uk/qca_9810.aspx)

consultation and we are keen to implement the reforms as quickly as possible. We will therefore bring forward legislation in the 2008/09 session to establish the regulator as an independent organisation with enhanced powers.<sup>5</sup>

In the meantime, in order to keep up momentum and to deliver the benefits of reform as soon as possible, Ofqual was established in interim form in April, using QCA's existing regulatory powers. Ofqual is operating with as much independence as possible within the current legislative parameters.<sup>6</sup> Following a public appointments process overseen by the Office for the Commissioner of Public Appointments (OCPA), Kathleen Tattersall OBE (who has had a long and distinguished career in qualifications, including as founding chair of the Chartered Institute of Educational Assessors) has been appointed Chair of the interim regulator. Isabel Nisbet (formerly the Director of Regulation and Standards at QCA) is Acting Chief Executive. Ofqual has established its headquarters in Coventry.

Ofqual is already making an impact as an independent arbiter of standards. The Chair announced in May that Ofqual will be carrying out a "healthcheck" of the reliability of exams, tests and teacher assessments. They will be appointing an expert panel to oversee the work. Ofqual will undertake this work in an open way that will involve listening to learners, parents, teachers, awarding bodies, research experts, employers, higher education and the wider public. The Government welcomed this healthcheck: we believe that it will help to improve understanding and confidence in the system, as well as providing a foundation for Ofqual's approach to regulation in the future.

Ofqual also recently published its first report, on the readiness of the exam system for the summer 2008 exams.<sup>7</sup> Ofqual looked at the awarding bodies' customer service systems and their use of new technology to support the smooth running of this summer's exams.

### The results of the consultation

We received around 80 responses to the consultation: these were mostly from organisations which have a direct interest in the new regulatory regime including awarding organisations, Sector Skills Councils and examinations centres.

Responses to the proposals were broadly positive. Most respondents were enthusiastic about the proposal to create a new independent body to regulate qualifications and the qualifications market. They felt that this would be helpful in highlighting the importance of qualifications and assessment; and they agreed that by separating regulation from the development of qualifications and assessment it would help maintain the integrity and reputation of the regulatory body. More details about the responses can be found on our consultations website.<sup>8</sup>

In the light of these responses, we have decided that we will proceed with the proposals set out in "Confidence in Standards", and that we will legislate in 2008/09. The rest of this document confirms our plans.

5 The Government's Draft Legislative Programme was published on 14 May. See. <http://www.official-documents.gov.uk/document/cm73/7372/7372.asp>

6 See [www.ofqual.gov.uk](http://www.ofqual.gov.uk) for more details.

7 "Getting it right: Promoting confidence in the GCSE and GCE system in England, 2008", <http://www.ofqual.gov.uk/1651.aspx>

8 <http://www.dcsf.gov.uk/consultations/>

# 2. The new regulator for tests and qualifications

## What will be new about the regulator?

“Confidence in Standards” set out our intention to set up a new regulator for tests and qualifications. Ofqual will take over the current regulatory functions of the QCA. We are planning legislation to give Ofqual the powers it needs to carry out its role effectively. Prior to legislation, Ofqual has begun its work in interim form using QCA’s existing statutory powers.

Our intention is that Ofqual will be an entirely new body which operates independently of Ministers. It will be a Non-Ministerial Department, and will report directly to Parliament on its activities. This will place Ofqual on a similar footing to the Office for Standards in Education, Children’s Services and Skills (Ofsted), which delivers independent inspections of education institutions. Whereas Ofsted assesses and inspects the quality of the education being delivered, Ofqual will be concerned with regulating the qualifications and assessments which measure and demonstrate the outputs of that provision. Ofqual will be responsible for giving recognition to organisations which want to award accredited qualifications.

As an independent body, Ofqual will be able to make objective judgments about the extent to which qualifications standards remain consistent from one year to the next. Comparability

over time and across awarding bodies and qualifications is fundamental to confidence and fairness in the system. The new regulator will have the credibility and powers to assure comparability of standards.

## Functions of Ofqual

Ofqual’s purpose will be to ensure that standards of assessment are maintained right across the qualifications and assessments system in England. This will include National Curriculum assessments and the Early Years Foundation Stage Profile, public qualifications and vocational and non-vocational qualifications; but – as with QCA – it will not have responsibility for first degrees or other qualifications offered under degree-awarding powers. Ofqual will also take over QCA’s responsibility for vocational qualifications in Northern Ireland (subject to the passage of the current Education and Skills Bill). It will work closely with the bodies which regulate qualifications in Wales and Northern Ireland. For Wales this is the Department for Children, Education, Lifelong Learning and Skills (DCELLS), a department of the Welsh Assembly Government; for school qualifications in Northern Ireland, the Northern Ireland Council for Curriculum, Examinations and Assessment (CCEA). These arrangements will help ensure that qualifications are understood and recognised across the

three countries, benefiting learners, employers and further and higher education institutions. Ofqual will also, where appropriate, work with counterparts in Scotland and internationally.

### **Regulating awarding organisations**

In “Confidence in Standards” we proposed that Ofqual should be responsible in law for recognising organisations that award qualifications or parts of qualifications in the national framework. This will allow the regulator to operate at a more strategic level than if it were required, as now, to accredit all qualifications. In practice, QCA has given recognition to awarding bodies which wish to offer accredited qualifications. We are aiming to put this recognition process on a statutory footing through the Education and Skills Bill that is currently before Parliament.

The proposal to set up an independent regulator to carry out this function was welcomed in the consultation. Ofqual will set criteria which organisations have to meet in order to be recognised and will maintain a list of recognised awarding organisations. Details of which qualifications a recognised organisation can offer will be specified at the time when recognition is confirmed.

Awarding organisations will need to show that they work within the rules of the national framework for qualifications set out by Ofqual – these rules may include allowing units awarded by other recognised organisations to count towards their qualifications; and seeking approval for the content of vocational qualifications from the relevant Sector Skills Council.

Awarding organisations must not become involved in activities which conflict with their awarding functions, unless they can demonstrate that there are systems in place to ensure the integrity of the qualifications they are awarding. Ofqual will ensure that recognised organisations have adequate safeguards in place to deal with potential conflicts which arise.

### **Removing the restriction to externally awarded qualifications**

At present, regulatory activity is limited to qualifications awarded by a body which is external to the one which did the teaching, or which are authenticated by a third party. Organisations wishing to deliver and award their own accredited qualifications, such as large employers or further education colleges, are unable to do so without use of a third party.

This restriction was introduced as a mechanism for safeguarding the quality of qualifications, by separating the provision of learning from the awarding of the qualifications themselves. Over time, however, the restriction has come to be viewed as unnecessarily bureaucratic. We therefore proposed in “Confidence in Standards” that the restriction on externally awarded qualifications should now be removed. Most respondents to the consultation were in favour of this proposal, saying that it would provide a more inclusive and flexible qualifications system which recognised a wider range of achievement, engaged more learners and would be more responsive to the needs of employers. We are therefore planning to remove this restriction when we legislate for the new regulator. This will allow employers and training providers, for example, to award their own qualifications if they can show the regulator that they have the capability to do so.



The regulator will determine the terms on which those organisations are recognised as awarding organisations, applying a rigorous quality threshold so as to ensure that the qualifications are of a satisfactory and comparable standard.

### Setting qualification requirements at general, qualification and subject level

There are currently three levels of requirements for qualifications in the regulatory system:

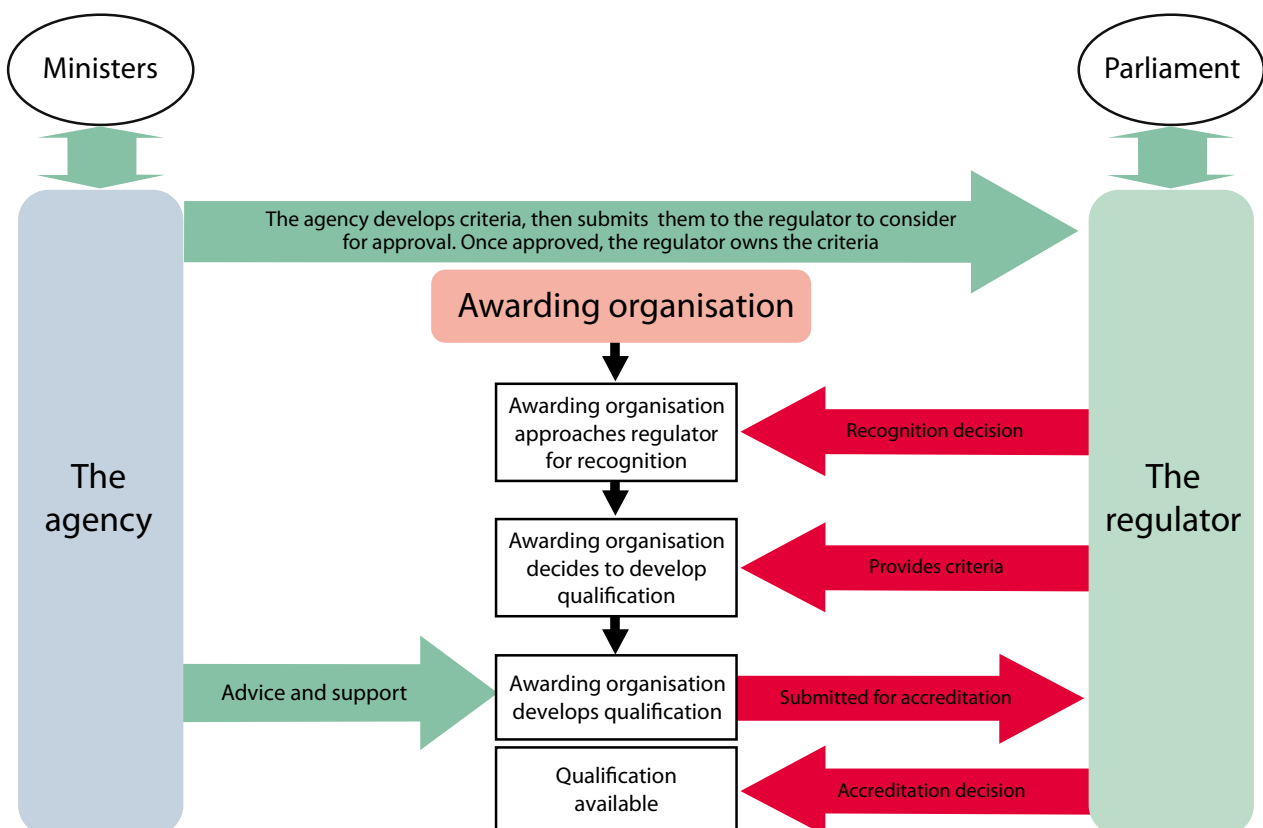
general level – high level requirements such as ensuring that each new qualification has the support of interested parties such as Sector Skills Councils and awarding bodies ensuring that exam centres can confirm that candidates’ work is authentic;

qualification level – requirements specific to a particular “suite” or category of qualification, e.g. Diplomas having the right combination of learning; A levels being graded in a particular way; and

sector or subject level – currently only for GCSEs, A levels and Diplomas, e.g. requirement that GCSE music includes a performance element.

We consulted on proposals to maintain requirements at these three levels but we suggested that general requirements should only be looked at as part of the process of recognition of awarding organisations. Most people replying to the consultation agreed with the idea of subsuming general requirements into the recognition process. This was subject to there being sufficient safeguards in place to ensure that there was no loss of rigour once organisations had been recognised.

We would expect that criteria at qualification and subject level will normally be developed by the QCDA, reflecting Government policy objectives for GCSEs, A levels and diplomas, and consulting expert organisations and building on the work of Diploma Development Partnerships (DDPs) as necessary. These criteria will be scrutinised and



adopted by Ofqual, provided that it is satisfied that they enable standards to be maintained. Ofqual will then use these criteria to consider for recognition awarding bodies which wish to offer these qualifications, and where appropriate individual qualifications against qualification and subject criteria. This relationship is summarised in the diagram on page 8. QCDA will continue to work closely with its partners in Wales and Northern Ireland in the development of criteria.

The relationship between the QCDA and Ofqual will be an important one to get right. Ofqual and QCA are now working up more detail about how their respective roles in the development and accreditation of qualifications will work in practice. The consultation responses helpfully highlighted some of the issues which need to be resolved as this detail is worked up. We would expect that the two organisations will in due course agree and publish a Memorandum of Understanding between them, setting out how they will work together. This will be important to ensure transparency in relation to the regulation of these qualifications, and therefore to maintain confidence.

Since consulting on “Confidence in Standards” we have published a consultation on a 14–19 qualifications strategy.<sup>9</sup> The strategy aims to ensure that the qualification offer to young people is comprehensive and coherent. The qualifications available to young people will need to allow for clear progression through the main qualification “suites and frameworks”, i.e. GCSE and A levels; Diplomas; Apprenticeships; and the Foundation Learning Tier. QCDA will continue to lead on developing specifications for GCSEs and A-levels, and working with DDPs, for the components of Diplomas. It will also

work jointly with the proposed Young People’s Learning Agency (announced in the recent White Paper “Raising Expectations: enabling the system to deliver”<sup>10</sup>) to make recommendations about which qualifications should be approved by the Secretary of State for funding for delivery to young people. We have proposed that the two agencies will do this with the support of a new Joint Advisory Committee for Qualifications Approval. We will need to ensure that these new arrangements dovetail with the work of Ofqual on recognition of awarding organisations and accreditation of qualifications.

### A risk-based approach to accreditation

We intend that the regulatory framework should allow for different approaches to different qualifications. High stakes qualifications will be subject to scrutiny by Ofqual before they are accredited. For other qualifications, recognised awarding organisations could be allowed to add to the list of accredited qualifications once they have been through internal quality assurance processes, which will have been checked by the regulator as part of the recognition process. We would expect that A levels, GCSEs and Diplomas – high profile, high stakes qualifications in which there is a lot of public interest and significant reputational risk were things to go wrong – will continue to be signed off by the regulator before they are added to the list. It might also be appropriate for Ofqual to scrutinise any other qualifications which are being considered for widespread use for young people in publicly funded schools and colleges.

The accreditation system is, in any case, already partly risk-based. Awarding organisations that have satisfied the regulators that their

9 “Promoting achievement, valuing success: a strategy for 14–19 qualifications”, available at: <http://www.dfes.gov.uk/consultations/conDocument.cfm?consultationId=1539> The consultation closed on 31 May.

10 Raising Expectations: Enabling the system to deliver published 17 March 2008 [www.dfes.gov.uk/publications/raisingexpectationswhitepaper/pdfs/Raising\\_Expectations.pdf](http://www.dfes.gov.uk/publications/raisingexpectationswhitepaper/pdfs/Raising_Expectations.pdf)

qualifications development systems meet the requirements of the regulatory criteria submit their qualifications for fast-track accreditation (known as five day accreditation) in which fewer checks are made. In addition, as set out above, certain types of qualifications have extra criteria that need to be fulfilled, for example GCSEs. This leads to a level of scrutiny at accreditation which is higher than is the case for those qualifications that have to fulfil only the common criteria.

Taking a risk-based approach does not mean that there will be lower standards for types of qualification which are not considered to be high risk. Ofqual will ensure that standards are applied rigorously for all qualifications and assessments.

This move towards risk-based accreditation implements a direction of travel announced by the Government in “World Class Skills”<sup>11</sup> in July 2007, namely to move the regulator towards regulating more strategically at the level of awarding organisations rather than at the level of each individual qualification.

### **Ofqual’s role in regulating National Curriculum assessments and the Early Years Foundation Stage Profile**

QCA currently has responsibility for development and delivery of National Curriculum assessments and the Foundation Stage Profile (which is completed at the end of the Foundation Stage). This is done through the National Assessment Agency (NAA), a division of QCA. We consulted on whether the new regulator should have a statutory role in regulating:

- National Curriculum assessments – QCA is currently responsible for developing, delivering and administering national tests, auditing and moderation, and maintaining standards of

assessment. The regulation of National Curriculum assessments is not an express legislative function of QCA but QCA nevertheless currently does regulate NC assessments. We consulted on the proposal to make it a statutory function of Ofqual to regulate National Curriculum tests and assessments.

- the Early Years Foundation Stage Profile (EYFSP) – QCA currently has a statutory role in relation to the development and moderation of the Foundation Stage Profile, and will have that role for the new EYFS Profile from September. We consulted on the proposal to give the regulator statutory powers to regulate the process for national and local authority moderation of the EYFS Profile.

Most people responding to these proposals agreed that the regulator should have a role in maintaining standards in National Curriculum assessments and the Early Years Foundation Stage Profile. Respondents said that the lack of external regulation of National Curriculum assessments and the Foundation Stage Profile (the assessment arrangements are monitored by local authorities and by the NAA nationally) was a cause for concern and that these assessments should be brought within the scope of the broader regulatory system.

We are therefore continuing with plans to include the National Curriculum assessments and Early Years Foundation Stage Profile within the regulator’s remit. Its exact powers in relation to these statutory activities will be different from those relating to qualifications, but Ofqual will seek to make the detailed regulatory arrangements as similar as possible. As with the equivalent role over qualifications, further work

11 World Class Skills: implementing the Leitch Review of Skills in England. <http://www.dius.gov.uk/publications/worldclassskills.pdf>

will be needed to firm up the respective roles and responsibilities of the new regulator and the QCDA.

### Managing appeals and complaints

As a regulator, Ofqual will play an important role in ensuring that complaints and appeals about qualifications and assessment are dealt with swiftly and efficiently and will work closely, where appropriate, with its regulatory counterparts in Wales and Northern Ireland. As part of the recognition process, Ofqual will continue to require awarding organisations to have effective internal procedures for complaints and appeals, including appeals against grades awarded in examinations. In cases where appeals about qualifications and assessments are not resolved through those internal processes, there is a continuing need for an external independent process.

In “Confidence in Standards” we consulted on whether Ofqual should have the power to investigate complaints and appeals about all types of qualifications, as well as National Curriculum assessments. We also asked whether Ofqual should be required to set up an independent appeals panel or whether it should have discretion regarding the details of the appeals arrangements.

Most respondents were attracted to the option of Ofqual setting up independent appeals arrangements, so that complaints and appeals would be addressed in an independent and professional manner. There were mixed views about the detail of how these arrangements should work: some respondents wanted the work of the existing Examinations Appeals Board (EAB) to continue, whereas others favoured the idea of a new panel set up by Ofqual.

We have discussed the proposals and the responses to the consultation further with Ofqual, the NAA, the EAB and the regulators in Wales and Northern Ireland. We have concluded that the best solution is to have appeal arrangements that:

- relate to procedures in awarding organisations or the NAA which have an impact on the outcomes of qualifications and assessments;
- are a ‘last resort’, to be used only after the appeals procedures in the awarding bodies (for qualifications) and the NAA (for National Curriculum assessments) have been exhausted;
- cover all regulated qualifications and National Curriculum assessments;
- in the case of National Curriculum assessments, replicate the current appeals process. This includes the right for a school to appeal if the correct process for marking review has not been followed and against decisions relating to the outcomes of investigations of maladministration;
- are clearly independent - of the regulators in England, Northern Ireland and Wales; of Government; and of the awarding bodies and the NAA – with a panel which is able to report independently on its work;
- are flexible, so that they can be tailored for the variety of qualifications and assessment that are now to be considered; and
- in relation to qualifications, will (like the current system) operate on a three country basis.

These arrangements would be in relation to ‘appeals’. Similar matters falling outside the definition of ‘appeal’ would fall to Ofqual to deal with as a ‘complaint’.

## Powers of Ofqual

Ofqual needs to operate from a position of strength. The regulator needs the right powers to allow it to intervene where there is a real risk of standards being compromised. The challenge now is to give Ofqual the right suite of powers so that it can maintain and enforce those standards, securing public confidence in qualifications and assessments and responding appropriately and flexibly when problems arise. It needs also to observe the Government's five key principles of good regulation - that any regulatory activity should be: transparent, accountable, proportionate, consistent and targeted only at cases where action is needed.

There is currently a range of sanctions available to QCA for regulation of the qualifications system. The QCA can set new conditions for accreditation of qualifications; suspend or remove accreditation; and direct awarding bodies to take or refrain from taking steps in particular circumstances.

We consulted on proposals to give powers to the new regulator which were at least equal to those held by QCA. We also asked whether the regulator should have various additional powers, such as to direct a third party and to charge recognised organisations for the costs of imposing sanctions on them.

Those responding to the proposals expressed a wide range of opinions about the powers of the regulator. Most respondents were broadly in favour of Ofqual having additional powers, seeing this as appropriate for a regulatory body of this nature. Several respondents commented, however, that much depended on the detail of how any sanctions would be imposed. There was a need for confidence that the regulator would apply its powers fairly and transparently.

In working through the detail of those comments, we have come to the view that some of the powers proposed in "Confidence in Standards" are unnecessary for the regulator to be able to exercise its functions. However, we will need to strengthen Ofqual's powers in some areas, taking into account the need to recognise and to establish effective working relationships with awarding organisations.

We said that we would carry out further consultation about these powers. Awarding bodies will be the organisations which are most directly affected by Ofqual's powers, so it will be particularly important that their views are heard and understood. We will carry out this further consultation in July and publish the results later in the summer.

## The power to charge fees

We also consulted on whether Ofqual should have the power to charge awarding organisations for the recognition process. This would be in addition to QCA's existing power to charge for accreditation of specific qualifications. There was a range of views on this proposal. The main concerns were that we should make sure that a new power did not lead to unreasonably high charges, or increases in fees paid by schools, colleges or other providers, much of which are paid from public funding. For this reason, we have concluded that any fees regime would need to be approved by the Secretary of State in order to safeguard public funding and the interests of learners. In the light of the responses, we are investigating what fee powers, if any, might be appropriate and we will publish our conclusions later in the summer.

## Innovation in the system

Regulation must enable and encourage innovation in qualifications where that is in the interests of learners. In “Confidence in Standards” we acknowledged the welcome innovations by awarding organisations, including the increase in testing online. In recent years, the growth in the use of technology in assessment has opened the door to improvements in the quality of marking and the feedback available to students and teachers. It also allows for challenging tasks to be undertaken as part of a wider assessment. We invited suggestions about how the new regulator could promote and recognise innovation in the qualifications market. Those replying to the consultation generally welcomed the fact that innovation was to be a feature of the new system. Some respondents said that the regulator needed to be responsive to the market and avoid setting criteria at too detailed a level, otherwise there was a risk that Ofqual might end up stifling innovation. Others supported the idea of the new agency, QCDA, working with awarding bodies to pilot and test new assessment approaches.

We have shared these ideas with Ofqual in order to inform their thinking about how to support innovation through the regulation process.

Ofqual will consider how it can set a clear framework which encourages innovation and sharing of best practice, and provides the stability needed to encourage investment, whilst ensuring that standards of assessment are appropriately safeguarded.

# 3. The Qualifications and Curriculum Development Agency

In “Confidence in Standards” we described plans to transform the non-regulatory part of QCA into a new development agency. We have since announced that the agency will be known as the Qualifications and Curriculum Development Agency (QCDA). These proposals drew a variety of responses, most of which were positive about the role of the new agency. Some respondents said they valued QCA’s work as an expert authority and wanted its role as an independent adviser to continue. Others argued that its functions could perhaps be carried out by central Government or delegated to other existing specialist organisations.

QCA has had ten years of success and it is important that we build upon that firm basis in moving forward. For that reason we believe it remains right that there should be an agency responsible for taking forward QCA’s non-regulatory functions, at least in relation to pre-19 qualifications, curriculum and assessment. The comments made in the consultation are welcome in that they will help us to shape the agency’s new role as an expert advisory body. The QCDA will no longer be responsible for regulating the activities of awarding organisations, so it will be able to focus on its functions of developing and

delivering qualifications and assessment and advising on the curriculum.

## Functions of the agency

QCDA will inherit QCA’s corporate structure and staff and it will continue to carry out QCA’s non-regulatory functions. It will have the following objectives:

- to be the key source of expertise supporting Ministers in the monitoring and development of curriculum and related qualifications, and of learning and development in the early years, to meet the Government’s objectives for education and skills; and
- to develop and deliver National Curriculum assessments, and other forms of assessment decided by Ministers, and ensure delivery of public qualifications, to measure and recognise the achievements of learners and the performance of schools and colleges.

## Developing criteria for qualifications

The creation of the regulator and the new agency will allow for a clear split of responsibilities between development of qualifications criteria and the maintenance of standards. We consulted

on the following roles for the two organisations in development of public qualifications:

- the new agency will develop qualifications and subject criteria against which qualifications are developed by awarding organisations. Qualifications design criteria will include the number of units, the grading structure and methods of assessment for the qualification. The agency will work closely with its counterparts in Wales and Northern Ireland in doing this;
- the regulator will approve the agency's proposed criteria after satisfying itself that they are appropriate and enable maintenance of standards; and
- the regulator will adopt the criteria and accredit and monitor qualifications against them.

Most respondents to "Confidence in Standards" were in favour of the proposal to separate the roles of development and regulation of qualifications criteria, and agreed that the new agency was the right body to develop the criteria. A small number of respondents suggested that these functions could be carried out by existing bodies including Sector Skills Councils (SSCs) and employers.

Given the general support for the proposed relationship between the new agency and the regulator with regard to development of qualifications criteria, we will now press on with working through the detail of how these respective roles will be carried out in practice. We do not think that the proposed role for the agency in respect of qualifications such as GCSEs could be undertaken by SSCs.

## Disapplication of the National Curriculum

Under current legislation maintained schools are required to deliver the National Curriculum in full. Formal disapplications may be considered locally for individual pupils under the Education Act 2002 – either through a statement of special educational needs, or for a temporary period, through regulations under section 93 of the Act. However, schools wishing to disapply the curriculum for groups of pupils to enable curriculum development or experimentation are currently required to apply to the Secretary of State for Children, Schools and Families for permission to do so. Such applications are rare and almost never approved, as close examination generally reveals that the proposals can be carried out without the need for disapplication simply by making effective use of existing curriculum flexibilities.

We consulted on the proposal to create a new function for the QCDA to advise the Secretary of State on bids for disapplication of the National Curriculum as well as exemptions from EYFS requirements. Most respondents supported this proposal on the basis that the agency was the appropriate body to carry out this function.

Where the relevant governing body wishes, it is already possible for QCA to be involved in making such applications to the Secretary of State. We propose to retain this option for governing bodies, but also to extend the role of QCDA so that even where it does not play a part in developing the initial request it takes on the roles of:

- providing advice to schools as to whether their proposals a) are likely to achieve the effect they are looking for; and b) would require a formal disapplication; and



- considering the merits of each case and making recommendations on whether it should be approved.

We believe that requiring schools to come to QCDA for expert advice and guidance will contribute to the agency's understanding of the issues schools wish to explore with regard to curriculum innovation. It will provide them with useful evidence of where schools currently feel inhibited by the statutory framework, and of where there is confusion about what can and cannot be done within existing flexibilities.

For similar reasons, we believe it is appropriate for QCDA to advise on bids for exemptions from the EYFS learning and development requirements, where they are sought in respect of a whole setting. QCDA will be well placed to consider whether the exemption sought is appropriate under the circumstances and what the impact of granting it would be on young children's learning and development during the period in which the exemption is in force.

### **Consultation on changes to the National Curriculum and Early Years Foundation Stage**

In "Confidence in Standards" we proposed that the requirements for consultation about changes to the National Curriculum and EYFS should be simplified. The requirement on the agency to consult about proposed changes to the curriculum would remain. However, the terms of this requirement would be updated to allow for consultations to take place online.

Most respondents agreed that allowing for consultations via the internet was sensible provided that communications were user-friendly and robust, and that care was taken to bring consultations to the attention of everyone with an interest. We will therefore bring forward the

necessary legislation to reform the consultation process in this way.

### **Moderation of Foundation Stage Assessments**

"Confidence in Standards" invited suggestions about how we could improve confidence in the moderation of Foundation Stage Assessments. The agency will, like QCA, moderate assessments under the National Curriculum and EYFS. The regulator will be at a distance from this process, responsible for checking the validity of tests and delivery models and assuring standards.

This question drew a range of responses, covering issues to do with:

- improving communication in order to build confidence in the usefulness of tests;
- making the moderation process integral to teachers' day-to-day work and engaging professionals in ongoing development of the process; and
- sharing good practice among local authorities.

The NAA is now engaged in a programme of continuous improvement, which is designed to improve the capability and confidence of local authorities, schools and other early years providers in administering the National Curriculum and EYFS assessments, and ultimately to improve confidence in the accuracy and reliability of assessment outcomes.

The NAA's moderation model, including improvements, will be subject to the scrutiny and approval of the regulator. Moderation of Key Stage 1 assessments will also be brought under the scrutiny of the regulator.

### **The post-19 qualifications system**

We have proposed that the new agency should continue QCA's work on developing the

Qualifications and Credit Framework and on developing adult qualifications which are not subject to approval by Sector Skills Councils (SSCs), including key skills, basic skills, functional skills and the Foundation Learning Tier. For sector specific qualifications, SSCs will lead in developing content and on approving qualifications. We consulted about what the longer term role should be for QCDA with regard to the post-19 qualifications framework as a whole, for example whether it should retain some capacity to review the adequacy of the system and make recommendations for change where necessary.

Most respondents to the consultation believed that there should be one national body which would oversee the qualifications system for post-19 learners. Those who were less sure about the proposal questioned whether this was a role for the agency or the regulator, or for the UK Commission for Employment and Skills.

We have decided not to make any changes in the current arrangements at this stage. This means that QCDA will be able to focus on the important tasks which need to be carried out between now and 2010: tasks related to reform of vocational qualifications, and developments which impact both on 14–19 and 19-plus provision such as Functional Skills and the Foundation Learning Tier.

We should make an informed decision about the future role of the QCDA and the need for a single agency to have oversight of all post-19

qualifications once the planned Skills Funding Agency is operational and the UK Commission for Employment and Skills has had time to make an impact. We expect to be in a position to make a decision closer to 2010. The legislation will allow QCDA to take this role, but will allow the Secretary of State to withdraw it should that be the decision that is taken.

# 4. Other questions in the consultation

## The right to take an exam

Current legislation requires maintained schools to enter registered pupils for those public examinations for which they have been prepared, except in certain circumstances, notably when in the judgment of the school there are educational reasons for not doing so. In “Confidence in Standards” we asked what rights pupils in maintained schools and 14–19 year olds in other sectors should have to take qualifications for which they had been prepared. We asked this question particularly in light of the plans to raise the participation age: if the relevant legislation is passed, by 2013 young people will be required to participate in learning until they reach 17, rising to the age of 18 in 2015. In such a scenario, it is likely that more young people will be learning in settings other than schools.

Most people who responded to this question said that it was essential that learners in schools and 14–19 year olds in other sectors had fully protected rights to undertake a qualification for which they had been prepared. Some respondents said that pupils should only have this right if they had produced the coursework required and attended the necessary number of classes. This is in fact consistent with the way in which the law works now: schools have discretion to require young people to meet the

course requirements in order to be entered for an examination.

However, the responses did not provide any new evidence of there being problems for young people wanting to access exams through providers which are not maintained schools. We know that getting access to exams can sometimes be difficult for some young people, for example those being educated at home, though this is an issue which could not easily be tackled by extending the existing right. There is no evidence of a need to legislate in relation to private and independent providers. We are not aware of problems for young people who are studying in further education (FE) colleges. FE Colleges are, and will continue to be, funded on the basis of the qualifications that they deliver and the outcomes and achievements of the young people who access this provision. Therefore, access to examinations is essential in order for FE Colleges to deliver their funding agreements.

Given this, we believe there is no strong case to change the legislation around the right of an individual to take an exam. We know that there is emerging good practice among some local authority areas which provide information about exams centres for those being educated at home, and this should help in a number of cases. We will, however, review local approaches to exams

access when the provisions about raising the participation age come into force, to ensure that young people who are learning in FE colleges and other settings are not disadvantaged in any way.

# 5. Next steps with implementation

Our plans to legislate for the new regulator were announced in the Government's Draft Legislative Programme on 14 May. There will be opportunities to comment on the Draft Legislative Programme at consultation events around the United Kingdom in July.

We are planning further discussions with awarding organisations over the summer about the powers of the regulator, looking at how these can be used to best effect in order to secure an efficient qualifications market. We will publish the results of those discussions later in the summer.

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