

Confidence in Standards: Regulating and developing qualifications and assessment

Consultation Response Form

The closing date for this consultation is: 10 March
2008

Your comments must reach us by that date.

department for
children, schools and families

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Please tick if you want us to keep your response confidential.

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If your enquiry is related to the policy content of the consultation you can contact Helen Buckley of General Qualifications Division on:

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If you have a query relating to the consultation process you can contact the Consultation Unit on:

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Please tick the box below which best describes you as a respondent

<input checked="" type="checkbox"/> Recognised awarding organisations, including employers authorised to award accredited qualifications	<input type="checkbox"/> Unrecognised awarding body	<input type="checkbox"/> Representative body
<input type="checkbox"/> Employers not recognised as awarding organisations	<input type="checkbox"/> Local Authority	<input type="checkbox"/> School/College/Work-Based Learning provider
<input type="checkbox"/> Young person	<input type="checkbox"/> Adult learner	<input type="checkbox"/> Parent

Please Specify:

1 Do you agree that the proposals at paragraphs 2.11-2.13 are the best way of regulating at the organisational level?

Yes

No

Not Sure

Comments:

The declared intention that Ofqual should operate at a more strategic level, regulating the overall system for delivering qualifications is strongly welcomed. This would be far preferable to the current model, in which the regulator tends to concentrate on micromanaging processes and scrutinising the design and implementation of individual qualifications, and would concentrate the regulator's efforts on macro-level risks to public confidence over time.

Although a new, strategic approach is the stated intent, the proposals do not guarantee that the new regulator will necessarily behave in this way. We know from our current long experience of working with the regulator that, if left unchecked, its natural tendency has been towards greater intervention, increased bureaucracy and a tendency to slow down developments and discourage innovation.

In spite of the promise of 'lighter touch' regulation, we note that the proposals provide Ofqual with a raft of new powers without removing any of its current powers. Its existing powers to regulate at qualification level are enhanced by greater powers at system and organisational level. Under paras 2.36-2.38 further proposals include powers to intervene at every point in the process, and to a level of detail which includes recommending levels of compensation that should be afforded to individual learners who have their complaints upheld.

Later proposals around risk management, and the introduction of a new category of 'public qualifications' suggest that, if anything, certain qualifications will be subject to even greater scrutiny and micro-management than is currently the case. We would expect to see sensible constraints on the behaviour of Ofqual with clear guidelines about when it is appropriate to intervene at qualification level, and an overt statement that under normal circumstances regulation will be at system and organisational level. The Governance of Ofqual as set out in 2.42 is not sufficiently independent; the board should be appointed by the Crown, and the Chief Executive should be appointed by the board (not the Secretary of State), to avoid the suspicion of partial independence from which the Bank of England has suffered following the delay in re-appointing its Governor.

Even with these safeguards, much will depend on the style of Chair, Chief Executive and board appointed. Nevertheless, regulators in other industries have been able to develop a more strategic role and thereby promote investment and competition by the regulated using the Principles of Good Regulation. Adherence to those principles ought to be enshrined in the new regulator's constitution and board appointments should reflect the need for the board to adopt these principles as a modus operandi.

2 Do you agree with the proposal to remove the restriction to externally awarded qualifications (paragraph 2.14)?

Yes

No

Not Sure

Comments:

The crucial point is that all organisations that are accredited as awarding organisations should be required to meet the same criteria.

We have no objection in principle to organisations that deliver training or education also being allowed to award qualifications, providing accreditation criteria requires that such an inherent conflict of interest is safely managed. This is particularly important where qualification delivery and achievement is supported by public funding. The risks attached to such a model would need to attract greater scrutiny, at organisational level, from Ofqual.

There are other potential conflicts of interest which are particular to the post-19 landscape. For example, the role of Sector Skills Councils as developers and approvers of qualifications seems to replicate the current flawed model within QCA – this will need to be subject to further consideration where the SSC also owns an awarding body. There are also risks where an employer becomes an awarding body and is also a major sponsor of a particular Sector Skills Council.

We will need reassurance that Ofqual will have the resources (and skills) to monitor adequately a significant increase in the number of organisations wishing to award qualifications, and an ability to differentiate the levels of risk presented by newer awarding organisations with little or no track record in maintaining auditable assessment standards.

3 Do you believe that the regulator should have the power to charge for recognition of awarding organisations (paragraph 2.15)?

Yes

No

Not Sure

Comments:

There are different models for funding the activities of regulatory bodies; in some industries the regulator is financed by those operating in that industry. We believe the model currently in place, whereby QCA's regulatory role is publicly funded is more appropriate to a sector which is itself largely in the public sector.

Many awarding bodies are not-for-profit organisations and any significant charges would be reflected in the fees awarding bodies charged to schools, colleges and other customers. There is a possibility that this model would replicate the kind of recycling of public money that led to criticism of the £10 NVQ levy, which is now to be withdrawn.

4 Do you agree that the regulator should be able to set qualification requirements at general, qualification and subject/sector level, with the general requirements being subsumed into the recognition process (paragraphs 2.16-2.17)?

Yes

No

Not Sure

Comments:

The distinction between the 'requirements' described here, and the 'criteria' described in 3.21-3.26 is not clear. Our response to question 15 describes the different types of criteria/content that are required and where the responsibility should lie for developing them ie that the regulator, and not the proposed agency, should be responsible for setting criteria in those instances where they are judged necessary.

Primarily, a strategic regulator should be interested in monitoring that organisations are meeting criteria at an organisational level, rather than, as implied by these proposals, checking that the performance element of GCSE Music is being applied effectively.

5 Do you agree with the proposal for a risk-based approach to the way in which qualifications enter the national system (paragraphs 2.18-2.22)?

Yes

No

Not Sure

Comments:

Whereas a risk-based approach is wholly sensible, we cannot support the categories of risk, based on qualification type, that are used to illustrate this model. It is also important to understand that whilst those qualifications identified as high risk might be subject to greater scrutiny, all recognised qualifications must operate to the same rigorous baseline criteria.

The assumption that 'public qualifications' present the highest risk is tenable in terms of the level of public interest and the high stakes nature of Level 3 qualifications. However, General Qualifications are long-established with tried and tested processes, delivered by trusted professionals in heavily monitored and inspected schools, and awarding is already heavily monitored every year. This is an area where Ofqual might want to move away from monitoring processes, and instead sponsor more research into how standards are maintained against a backdrop of a changing curriculum, so it is better placed to answer any alleged decline in public confidence in standards.

Post-19 Qualifications that offer a licence to practice are, in our experience, both high stakes and subject to high risk. Qualifications in food handling, operating machinery or childcare are self-evidently 'high risk'. We are concerned more generally that Ofqual might effectively abdicate responsibility for the standards of post-19 vocational qualifications on the pretext that they are low risk. A failure in one part of the system can create a loss of confidence in the whole system. It is also important to continue to recognise the role of vocational qualifications in 14-19 education. Many vocational qualifications are counted as GCSE 'equivalents' in league tables, and others attract UCAS points. With the raising of the participation age to 18 they are likely to figure even more prominently than they do now.

In our covering letter we strongly contest the view stated here that only qualifications designed by the development agency will be capable of delivering public policy. The converse is often true. Furthermore, the sentence, "Ministers might also take a view on which qualifications should be closely scrutinised as a matter of policy..." sits uneasily with the notion of the regulator acting independently.

6 What should the regulator do to encourage and enable innovation by awarding organisations (paragraphs 2.23-2.24)?

Comments:

We welcome the acknowledgement of the considerable innovations that awarding bodies have introduced. Over sustained periods of immense social and economic change, awarding bodies have ensured that qualifications have paved the way for changes in educational approaches. Innovation is not only about technology - OCR has not only worked with partners to develop an internationally acclaimed e-marking system, but it leads the field with innovative qualification design, for example its Twenty First Century Science GCSE specification and ground-breaking work-related OCR Nationals.

The flow diagram at Figure 1 on page 35 is assumed throughout the consultation document to be the historical standard model for qualifications development, so that Figure 2 represents an evolution from existing practice. In fact, Figure 1 describes the exception. The closest approximation to this model has been the development of Diplomas, and before that NVQs and GNVQs; given the extreme newness of the first, the persistent lack of public credibility of the second, and the ultimate failure of the third, we strongly caution against basing a future regulatory model solely on that model.

In fact, the most successful qualifications innovations have historically emerged from awarding organisations, who have successfully triangulated the needs of government and society with the needs of, on one hand, universities and employers, and on the other, educators and trainers wanting to offer individuals satisfying, stimulating and manageable learning. Awarding bodies are frequently the first to pick up on innovations in education and lead the way in introducing changes to a wider community of teachers. That model of development produced CLAIT, the single most heavily used skills qualification in the UK, OCR Nationals, already taken by over 170,000 learners in the last two years, and the Critical Thinking A level, as well as modular examinations for flexible and personalised assessment and the first e-assessments. It also brought, in the 1970s and 1980s, outstanding syllabuses in Mathematics, Science, Geography and History based on partnerships with forward-thinking universities.

Rather than adopting detailed government prescription as its starting point, we believe the new regulator should be well informed about government education policy and treat it as one key driver, but not an exclusive driver, of developments by awarding organisations. Awarding organisations will then have the potential both to respond innovatively to the stimulus of public policy (e.g. greater funding for work-related learning) and to respond to stimuli emerging directly from higher education or the employment market (e.g. enhanced mathematical skills for engineers).

One key lesson we have learned is that the regulator should not try to *be* an innovator. Its attempts to bring about 'modernisation' through the interventions of the National Assessment Agency ate up large amounts of public money and

actually slowed the progress of awarding bodies by displacing their energies into numerous committees led by the regulator.

7 Do you agree with the proposed extension of the regulator's statutory role to cover National Curriculum and Early Years Foundation Stage assessments and tests (paragraphs 2.27-2.28)?

Yes

No

Not Sure

Comments:

National Curriculum and EYFS assessments should be regulated. In order to maintain confidence in standards we would expect Ofqual to play a role in researching how effectively the assessments perform over time and making judgements made about their validity, their value for money and their impact on teaching and learning. This should mirror exactly the approach to regulation of qualifications.

8 Do you agree that the regulator should have the power to investigate appeals and complaints covering all types of qualifications and National Curriculum assessments (paragraphs 2.29-2.33)?

Yes

No

Not Sure

Comments:

Ofqual should have powers to investigate complaints and appeals, though should only exercise these powers according to well-understood, published escalation procedures and only after all the usual internal resolution processes have failed. It should be noted that complaints and appeals are quite distinct from each other.

It is not clear how accusations of non-compliance or malpractice amongst deliverers or candidates will be dealt with by Ofqual. Past cases of fraud in private training providers have thrown up ambiguities about the extent of the role of Ofqual in such cases.

9 On appeals (paragraph 2.34) should the regulator:

(a) be required to establish an independent panel for appeals? or

(b) have discretion regarding the details of the arrangements?

(Please tick one box only)

(a) be required to establish an independent panel for appeals?
or

(b) have discretion regarding the details of the arrangements

Comments:

The extension of the scope of an appeals board to cover all regulated qualifications is logical. Before requiring Ofqual to create such a board, it is necessary to evaluate how significant an increase in appeals would result from this wider scope and the resource implications and the range of expertise that would be needed to review such a potentially diverse range of appeals. Consideration should also be given to ways of deterring the escalation of trivial or clearly unfounded grievances. The powers of the board should be limited to ruling on individual appeals.

Do you agree that the regulator should have the following powers (paragraphs 2.36-2.38):

10 a) the power to require information, including the power of search and access?

Yes No Not Sure

10 b) the power to direct an awarding organisation?

Yes No Not Sure

10 c) the power to direct a third party to do something or refrain from doing something?

Yes No Not Sure

10 d) the power to charge recognised organisations for the costs incurred in investigating/imposing sanctions?

Yes No Not Sure

10 e) the power to undertake financial scrutiny?

Yes No Not Sure

10 f) the power to intervene and/or impose a sanction, including the power to enforce financial or other penalties?

Yes No Not Sure

10 g) the power to issue non-binding recommendations to awarding organisations to compensate candidates or their families, and to publish any instances where the recommendation is not followed?

Yes No Not Sure

10 h) the power to set conditions for any charges levied by recognised awarding organisations?

Yes

No

Not Sure

10 i) the power to co-operate with other regulators such as the Office of Fair Trading, the Competition Commission and the Charity Commission?

(Please use the comments box to expand on any of your answers for question 10).

Yes

No

Not Sure

Comments:

The powers being sought by Ofqual seem disproportionate and out of keeping with its intended strategic role and its overarching purpose of sustaining public confidence over time. Organisations wishing to operate in the regulated market should expect to provide information to Ofqual in return for their 'licence to operate'. A series of sanctions and penalties which can be imposed by Ofqual should be sufficient powers.

- We would wish to be absolutely clear that such powers would only be used as an extreme measure under clearly defined circumstances.
- The term, 'the power to direct an awarding organisation' suggests unnecessary blanket powers, and a level of competence in operational management which Ofqual will not possess.
- We would like further clarification of how Ofqual could expect to exercise powers 'to direct a third party to do something'.
- If a regulator were able to charge for costs incurred during an investigation, the party which was liable would need reassurances that the costs were fair and proportionate to the perceived risk.
- The extent to which it would be necessary for a regulator to undertake financial scrutiny needs further and considered debate, with a far clearer statement of the purposes of such intervention.
- The Independent Adjudicator for HE is not a regulator. In recommending compensation, Ofqual is seeking to act like an adjudication service or an ombudsman which suggests a confusion of roles. This would introduce unnecessary complications which would do little to enhance the role of Ofqual.
- The powers to 'set conditions for any charges' needs an expanded response on the principles and purpose behind any move to intervene on fees. We believe excessive ambiguity on this responsibility will tend to allow Ofqual to be diverted from its core purpose of guarding standards.

- Ofqual would not require any specific powers in order to 'co-operate' with the Office of Fair Trading, the Competition Commission, or the Charity Commission. In co-operating with them it cannot seek to take on their powers by proxy, nor should it duplicate their activities or those of the Courts.

11 Do you agree with the proposals for the objectives of the development agency for curriculum, assessment and qualifications (paragraphs 3.7-3.12)?

Yes

No

Not Sure

Comments:

The "development agency" function could simply be reabsorbed into government departments, since we observe that many of QCA's current curriculum and policy functions are duplicated in DCSF or DIUS and much of the actual work is carried out by consultants, with QCA simply acting as a procurement agency and a passporter of government funds.

This view is further substantiated elsewhere in our response and, particularly, in our answer to question 15.

12 Do you agree with the proposed changes to the arrangements for consultation on changes to the National Curriculum or the Early Years Foundation Stage (paragraph 3.21)?

Yes

No

Not Sure

Comments:

Yes, although we would dispute that this work needs to be carried out by the proposed development agency. There are a number of bodies which could be commissioned by the DCSF to carry out this work, or consultation and notification could be conducted directly by the DCSF itself.

13 Do you agree with the proposal to give the agency responsibility for advising on bids for disapplication of the National Curriculum and exemptions from the Early Years Foundation Stage learning and development requirements (paragraph 3.22)?

Yes

No

Not Sure

Comments:

This function would be managed as easily within the DCSF, working with Local Authorities.

14 How can confidence in the moderation process for Foundation Stage assessments be improved (paragraph 3.25)?

Comments:

The best way of ensuring confidence in the moderation of the assessments would be to commission a body other than the proposed development agency to develop and moderate the assessments. Ofqual should be entirely independent and should review and report on the validity and reliability of the tests and their moderation and should also make judgements about the efficiency and value for money of the model.

15 Do you support the proposal that the development agency for curriculum, assessment and qualifications, and not the regulator, should develop the criteria for public qualifications (paragraphs 3.26-3.31)?

Yes

No

Not Sure

Comments:

The use of qualifications criteria has, over time, become a core part of QCA's regulatory method. However, we believe this is largely a result of the need to bridge the gap between QCA's dual roles as curriculum developer and qualifications regulator. With those roles split in future, we question the need for such criteria and the bureaucracy and cost which they entail within both QCA and the bodies it regulates.

Qualifications criteria in their current form serve two functions; firstly, to define learning content (e.g. the inclusion of Shakespeare in English GCSE); and secondly, to constrain assessment design (e.g. the proportion of coursework). We propose that these functions should be split; the government or its directly accountable agency should take responsibility for what is to be learned; the new regulator should be responsible for regulating how it is assessed. This is essential if we are to avoid future scenarios like the recent appearance of a Minister on national television defending changes to the oral assessment of GCSE Languages and assuring the public that there will be no impact on standards.

The new regulator will then need to consider what form of regulation is proportionate. Over-prescriptive criteria duplicate the work done in awarding organisations and block innovation. Even worse, as was the case with GCSEs taught from 2001 onwards, over-prescription can lead to uninspiring and mechanical approaches to teaching, learning and assessment and the loss of a

range of approaches to a subject to suit different teaching and learning styles (for a good example, see GCSE Science).

The new regulator must also be mindful of the need for innovation. It will be presented from time to time with mould-breaking proposals for new qualifications. These are likely to fall foul of overly rigid approval criteria. It is instructive that, during the early stages of the National Qualifications Framework (1999 onwards), OCR had little difficulty in gaining re-accreditation of 51 qualifications for the moribund steel industry, but had to go to extraordinary lengths to have its first assessment of Internet user skills accredited. Even more strikingly, development of the first tranche of Diplomas began without regulatory criteria and simply used DDP curriculum definitions as a starting point.

The new regulator must build the capability to accredit new types of qualification and new approaches to assessment on the basis of fitness-for-purpose, not just conformance to historical criteria. This will be critical if we are to enable schools to deliver on a key aim of Every Child Matters, that 'Children and young people are encouraged to attend and enjoy school and to achieve highly'.

16 How can the agency most effectively support the delivery of public qualifications (paragraphs 3.32-3.36)?

Comments:

Awarding bodies have a strong history of working together to develop shared processes and interoperable systems such as the adoption of EDI for entries in the 1990s and, in the last three years, the delivery of "Eight Pledges" to reduce the burden on FE. It may be necessary under exceptional circumstances for Ofqual, (**not** the proposed agency), to support awarding bodies in such developments. This has been the case with the development of the Diploma Aggregation Service where a regulator has assumed a role in facilitating industry-owned solutions, rather than generating a role in the on-going delivery of those solutions and creating a conflict between the government's stated aim of making the qualifications system independent and its involvement, via a key NDPB, in operational delivery of qualifications. Such an approach would avoid the unwelcome intervention of bodies which believe they can introduce and manage systems on behalf of awarding bodies.

17 What rights should pupils in maintained schools and 14-19 year olds in other sectors have to take qualifications for which they have been prepared (paragraph 3.37)?

Comments:

We do not feel able to comment on this question.

18 Should there be an ongoing role for a national body to keep under review the qualifications system for post-19 learners and offer advice when requested (paragraphs 3.38-3.40)?

Yes

No

Not Sure

Comments:

High level strategic advice on the post-19 qualifications system should be given (not only when requested, but whenever felt necessary) by the UK Commission for Employment and Skills and not by the proposed agency. It would remain the responsibility of the DCSF and DIUS to seek advice from a range of other stakeholders such as the CBI and the Federation of Awarding Bodies.

No single agency should be appointed for 'reviewing, advising on, developing and delivering qualifications which will not fall to be approved by SSCs' as stated in 3.40. There may be a limited role for the DCSF, DIUS or an appointed body to develop new curriculum policy as outlined in our answer to question 15.

19 If so, would the development agency for curriculum, assessment and qualifications be the right organisation to fulfil this function?

Yes

No

Not Sure

Comments:

No

20 a) Do you have any other comments on the proposals for the regulator?

Comments:

See our covering letter.

20 b) Do you have any other comments on the proposals for the development agency for curriculum, assessment and qualifications?

Comments:

See our covering letter, particularly our comments about the risks inherent in simply defining a new development agency as a replica of QCA's current over-extended activities with the regulatory ones removed.

There is no question relating to paras 2.25-2.26 on 'Monitoring and Inspection'. We strongly believe that recognised organisations should be required to account publicly for their performance. If this is to be done at a 'strategic level', as proposed, we would expect all awarding bodies to report on their overall performance rather than just on 'public qualifications'. It might be the case that those organisations which do not offer 'public qualifications', might, at an organisational level, present the highest risk.

There are no questions relating to the proposals in paras 2.40-2.53. We have commented elsewhere on the weakness of the proposed governance structure but would draw to your attention the extraordinary suggestion at 2.43 that 'the regulator will be regulating the delivery of government policy'. We cannot accept this as the function of an independent regulator, and this illustrates clearly why defining the key purposes of a new regulator as we have in our covering letter are a critical starting point.

Sections 2.49-2.53 on the UK and international dimensions demand further comment: The consultation document recognises the interrelationship of England's qualifications system with those of Wales, Scotland and Northern Ireland. However, we believe the implications are not clearly stated. Similarly titled qualifications (e.g. GCSEs) offered in England and Wales must be of an equivalent standard if learners are to enjoy employment and higher education mobility between the two countries. There are already serious doubts as to whether English GCSE standards are diverging. We would urge much more serious consideration of the arrangements for ensuring UK-wide comparability of standards and a separate consultation on this issue. It may no longer be tenable for the English regulator to accept by proxy decisions made by the other UK regulators and vice versa.

Moreover, the consultation document makes only a passing reference to international qualifications. We find this surprising, not least because non-UK qualifications (e.g. Microsoft IT user qualifications) are already offered here. Ofqual must be constituted in such a way as to be able to treat non-English qualifications on a level playing field, with regulatory criteria defined in sufficiently generic terms to allow qualifications to be accepted or rejected based on their fitness-for-purpose rather than their conformance to known English norms.

Driven by higher education, and to a degree the publishing market, education is internationalising. In this country, the International Baccalaureate is growing

as an alternative to A level; the International GCSE is offered by independent schools, with some state schools clamouring for the opportunity to do the same; and the Cambridge Pre-U will shortly be launched as an overtly supra-national qualification. Overseas qualifications are heavily used for admission to HE in the UK via UCAS.

If the intention is to establish a regulator which will last for five to ten years, or perhaps longer, its creators cannot ignore this shift. International qualifications cannot simply be treated as occasional exceptions, to be handled on an ad hoc basis outside normal rules and regulations.

Moreover, it is essential that the regulator is able to engage with the full range of diverse needs of learners. As it says in the DCSF's own summary of its Children's Plan:

'By promoting diversity in a collaborative system we can ensure that children, young people and parents are able to choose provision that suits their particular needs.'

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply

Here at the Department for children, schools and families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 10 March 2008

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