

CONSULTATION

Contingency arrangements: GCSE, AS, A level, Project and AEA

Consultation proposals for contingency
arrangements for the award of GCSE, AS, A level,
Project and AEA qualifications in 2022



Department
for Education

ofqual

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Proposals at a glance

The government is firmly committed to GCSE, AS and A level exams going ahead in England in academic year 2021 to 2022, with adaptations to take account of the impact of the coronavirus (COVID-19) pandemic on the education of the students due to sit those exams. This document, which has been prepared jointly by the Department for Education and Ofqual, sets out the plans that are in place to support the taking of exams even if further disruption to education occurs, and invites your views on proposed contingency arrangements for awarding Teacher Assessed Grades (TAGs), in the unlikely event that exams are not able to go ahead as planned. The proposals cover GCSEs, AS, A levels, Project qualifications, and the Advanced Extension Award (AEA) in mathematics.

Audience

This consultation is likely to be of interest to:

- students, including private candidates, who are expecting to take GCSE, AS, A level, Project, and AEA qualifications in summer 2022 and their parents and carers
- teachers of these qualifications
- school Trusts, Trust executives, trustees and governors
- school and college leaders and heads of other types of exam centre
- stakeholder representative organisations, including unions
- exams officers
- exam boards
- those who use qualifications to make selection decisions: further and higher education institutions and employers

Consultation arrangements

Duration

This consultation will be open on Thursday 30 September and close on Wednesday 13 October at 11:45 pm.

Respond

You can [respond to this consultation online](#).

For information on how we will use and manage your data, please see Annex A: Consultation responses and your data.

Introduction

This is a joint consultation by the Department for Education (DfE) and Ofqual on contingency arrangements for the award of GCSE, AS, A level, Project and AEA qualifications in England should exams not be able to go ahead due to the impact of the pandemic.

The DfE is responsible for its policy for qualifications (including as to whether the government considers that exams can safely or fairly go ahead as planned) and the subject content that is taught and assessed. Ofqual is responsible for the assessment arrangements, and is therefore responsible for setting regulations to implement contingency arrangements should they be required. Given we both have responsibilities related to contingency arrangements, we have decided it is helpful for us to consult jointly on this issue. These responsibilities will be reflected in the decisions that are taken following the consultation.

Background

In 2020 and 2021 it was, regrettably, necessary to cancel national exams. In 2020 exams were cancelled in light of school and college closures for the majority of students and uncertainty over whether exams could take place safely. In 2021 the government considered that it would not be fair for exams to go ahead as planned once schools and colleges closed to the majority of students again in January 2021. In place of exams, students were awarded qualifications based on centre assessment grades in 2020 and TAGs in 2021. Whilst there were some important differences between these 2 approaches, both involved students being awarded grades submitted by their school or college.

Exams in 2022

The circumstances of the last 2 years aside, other things being equal, exams and other formal assessments are the best and fairest means of assessment and the government's firm intention is that students will take national exams in summer 2022, set and marked by the exam boards. To help ensure that exams and other formal assessments can go ahead and are fair, we have put in place a range of mitigations. These include:

- adaptations to non-exam assessment to take account of potential public health restrictions and free up teaching time (announced on 16 June)
- adaptations to exams, including a choice of topic or content in some GCSE subjects, exam aids in GCSE maths, physics and combined

science, and advance information about the focus of the content of exams in the majority of subjects at GCSE and for all A and AS level subjects apart from art and design (announced on 30 September)

- asking the exam boards, when setting the timetable for 2022 exams, to ensure that there is at least a 10 day gap between exams in the same subject to reduce the risk of students missing all exams in a subject
- students who unavoidably miss one or more exams in a subject being able to achieve a grade through the special consideration process, so long as they have completed the assessment for at least one component of the qualification
- providing [guidance for exam centres](#) on how to ensure that exams can be conducted safely, for example through appropriate spacing of desks
- [general advice on contingency planning from Ofqual](#), which covers a range of potential scenarios which could affect the delivery of exams

We will continue to monitor the effects of the pandemic on schools and colleges and, if required, introduce further measures as a last resort if there is a significant increase in disruption, and/or a tightening of public health restrictions. In particular:

- if there is further widespread and significant disruption to teaching and learning, we have indicated that we will bring forward the publication of advance information about the focus of the content of exams, to enable schools and colleges to focus their remaining teaching time
- if there are new public health restrictions put in place which may affect exams, the DfE will review its guidance and consider whether to put in place an Exams Support Service, as operated for the autumn series exams in 2020 and 2021, to support centres with access to venues and invigilators

We are confident that these changes will enable exams to go ahead fairly in summer 2022. As COVID-19 becomes a virus that we learn to live with and steps such as the vaccination of young people take effect, it is imperative to reduce the disruption to children and young people's education, including by returning to the normal arrangements for awarding qualifications, particularly given that the direct clinical risks to children are extremely low, and every adult has been offered a first vaccine and the opportunity for 2 doses by mid-September.

Further contingencies

Nevertheless, the last 18 months have shown that the path of the pandemic is unpredictable. Whilst we hope and expect that all exams will be able to take place, it is right that we have contingency plans in place.

As in 2020 and 2021 our priority in circumstances where exams could not go ahead, either because of fairness or safety, would be to ensure that students received grades in as fair a way as possible, to enable them to progress to the next stage of their lives.

If, and only if, the above measures are not sufficient to allow exams to proceed, we propose to maintain stability by awarding grades through a TAGs process similar to that used in 2021. Whilst we recognise that any contingency plan has its drawbacks, we believe that TAGs are the fairest way to assess students if exams are not able to go ahead. Drawing from the experience of 2021 and in light of the additional time that centres have to prepare for such a contingency plan, we are consulting on some proposed changes to improve the process for students, teachers and centres. We are planning that any decision to cancel exams would lead to the use of TAGs for GCSE, AS, A level, project and AEA qualifications, regardless of the precise weighting that they have of exam and non-exam assessment.

Confirmation now that if exams are cancelled, grades will be determined through teacher assessment will give teachers and students some certainty. This consultation has been informed by feedback on, and by a wider review of, the arrangements in place last year, and invites views on how that process can be further improved as a contingency in 2022. Responses to this consultation will allow us to quickly determine our expectations of how centres prepare for TAGs as a contingency and minimise uncertainty should exams be cancelled.

This consultation seeks views on the approach that would be used to determine TAGs if exams cannot take place, to the level of detail that centres need in advance to prepare for such a scenario, for example by collecting and storing evidence. It also seeks views on where improvements should be made to other elements of the process that do not need to be confirmed in advance of knowing the circumstances of any decisions to cancel exams. We will use the responses to this consultation to inform the arrangements for these steps of the TAGs process should exams be cancelled.

This might include issuing additional guidance for centres to help them determine TAGs from the evidence they have collected and would include establishing an emergency regulatory framework. Ofqual anticipates that, informed by this consultation, it would be able to promptly to set up such an emergency regulatory

framework in consultation with the exam boards. As this year, exam boards might also issue guidance for centres under such a framework.

Consultation details

Against the background set out above, we are now seeking views on how the TAG process could be improved and, in particular, how the experience for students could be made more consistent and the burden on students, teachers, schools and colleges reduced. We invite views on:

- the type, volume and timing of the production of the evidence used to inform TAGs
- the support given by the exam boards to teachers determining TAGs
- quality assurance within schools and colleges (internal quality assurance) and undertaken by the exam boards (external quality assurance)

The proposals in this document apply to GCSE, AS and A level, Project and AEA grades awarded in England in summer 2022 only.

TAGs as the contingency for 2022

For GCSE, AS and A level, Project and AEA qualifications awarded in summer 2021, TAGs were used by exam boards to determine results for students. We consulted on the arrangements for 2021, the proposals for which received high levels of support from the 100,000 plus respondents.

Schools and colleges were asked to decide grades based on a range of evidence of students' performance. They were given considerable freedom to decide on the evidence to be used, which generally included some or all of: records of student attainment, classwork, mock examinations, and the range of non exam assessments (NEA) that students were already completing for these qualifications.

The arrangements for TAGs gave students a chance to show what they could do after a year of unprecedented disruption to their education. The flexibility built into the arrangements allowed schools and colleges to decide when to assess their students, enabling them to take account of any local disruption, and to assess their students only on the parts of the subject content their students had been taught. We know that while the arrangements for 2021 were successful in allowing students to move on, they had significant workload implications for teachers. We have sought to reduce this impact in our proposals.

We have considered whether there is a better way by which grades could be issued to students in 2022 should exams again have to be cancelled. We believe that an

approach based on TAGs is the best possible approach, given the firm expectation that exams will be able to take place in 2022, the need to prioritise teaching and learning given the disruption to students' education caused by the pandemic, and the uncertainty about why and when any decision to cancel exams might need to be taken. The approach used in 2021 allowed students to receive grades and move on with their lives. It inevitably placed burdens on teachers, but the introduction of a different system for 2022 (should that be necessary, and assuming an alternative acceptable approach could be found) would mean that teachers had to familiarise themselves with a different approach which would likely be more burdensome still.

However, there are lessons we can learn from 2021, and in identifying TAGs as the best option for contingency arrangements in 2022, we have the opportunity to consider how to make improvements. We know, for example, that when we set out the evidence requirements for 2021 we needed to make them as broad as possible in order to allow schools and colleges the flexibility to respond to their individual circumstances at short notice. One consequence of this, which we have heard from teachers and students, was that in many schools and colleges, students were assessed multiple times in a short timeframe, reducing the already limited teaching time available. Some students and teachers raised concerns that different approaches to gathering evidence were being taken in different schools and colleges, which they considered to be unfair.

In response to these concerns, we propose that if TAGs have to be used again in 2022, there should be tighter guidance on the evidence on which TAGs would be based. This would have several advantages including:

- helping teachers to decide what evidence should be used to inform a TAG, if that was needed
- reducing teacher workload
- reducing student anxiety and the risk of over-assessment
- increasing consistency between centres in the way students are assessed

The evidence used to assess students' performance

We are consulting on guidance that we propose should inform the way teachers collect evidence to support the awarding of TAGs, should they be needed, in 2022. This guidance aims to address concerns raised about the variable amounts and types of evidence on which 2021 TAGs were based. It aims to enable teachers to collect evidence at points in the year that work best for them and their students, whilst minimising the burden of collecting such evidence. It should also reassure

students that not every piece of their work would be used to determine their TAG. Assessing students in line with the proposed guidance would also support students preparing for the exams we expect them to take next summer. The proposed guidance would be common across subjects and exam boards.

This guidance is based on a fundamental principle that, wherever possible and particularly where disruption is limited, teachers should teach students the full course of study for their qualification.

Draft guidance on assessing students to generate evidence to be used to determine TAGs if needed

We are seeking views on the following draft guidance, set out in paragraphs a-m below, which we propose teachers and centres should use as they decide how to prepare for the possibility that exams are cancelled and they need to determine TAGs for their students.

- a. Where a specification includes NEA, centres should support students, wherever possible, to complete that assessment in line with arrangements announced by Ofqual for 2022 and the timescales set by exam boards.
- b. In addition to completing any NEA, centres should plan assessment opportunities for TAGs in advance, to a timetable that secures some evidence early in the academic year (for example, before Christmas) to protect against further disruption. Those assessments should provide students with an opportunity to demonstrate their knowledge and understanding across the full range of content they have been taught. Teachers will want to guard against the risk of over-assessment and think about opportunities to schedule specific assessment opportunities which would provide evidence from a significant proportion of the specification. A sensible pattern could be to plan to assess students once in each of the second half of the autumn term, the spring term, and the first half of the summer term.
- c. When carrying out assessments that could be used towards TAGs, centres should assess students in ways that are as useful as possible for students expecting to take exams next summer by creating assessment opportunities that replicate, in full or part, exam board papers (past papers could be used, in full or part, where appropriate). Such assessments will also help to inform teaching and learning.
- d. The conditions in which the assessments are undertaken should be similar to those students will experience when they take their exams in the summer (for example unseen papers, closed book, timed and with supervision). This will both help ensure that the work is authentic and prepare

students for exams in the summer. Those controls may be provided within a classroom rather than exam hall setting.

e. Each assessment should only cover subject content that students have been taught at the time of the assessment and not include questions on topics they are yet to study. The range of planned assessments should mean that students are prepared to be assessed on the full range of content they will have been taught.

f. Centres may wish to aim for a total assessment time that does not significantly exceed the total exam time for the specification.

g. Students should be told before they take the assessment that their performance in the assessment would be used to inform their TAG if exams were cancelled to ensure they have time to prepare. They should be told the aspects of the content the assessment will cover, but not the specific questions.

h. Students in the same centre cohort should be assessed using the same approach where possible and all the assessments taken should be used to determine the TAG (not just those in which students performed best). The centre will make the final judgement about what is to be used and will need to document the rationale for any instances where consistent evidence is not used for a whole class or cohort.

i. The same reasonable adjustments that will be made for disabled students taking exams in the summer should where possible be applied to the assessments – and records made of the adjustments and the reasons for them. The reason why any reasonable adjustment was not made must be recorded.

j. Where disruption to education does not allow for assessments or NEA to be completed as set out above, centres should arrange to collect evidence that provides equivalent confidence of authenticity and of equivalent breadth where possible. If this does not prove possible, however, centres may also need to collect evidence that is not based on such assessments for either a whole cohort or for individual students and/or mark partially completed NEA.

k. Where disruption necessitates such approaches, centres should record those decisions and the disruption experienced for inclusion in a centre policy should awarding be based on the TAGs that resulted from that evidence.

l. Teachers should mark the work and carry out any internal standardisation of the marking, in line with exam board guidance where appropriate. Students should be provided with feedback, which could include

marks or comments, but teachers must not determine a TAG unless exams are cancelled nor tell their students what their TAG might be.

m. The original student work must be retained by the teacher – students could be given copies if this would help support their learning.

The guidance proposed in this consultation is focused on those steps schools, colleges and teachers should take in the coming months to make sure students have evidence in place on which TAGs could be based if needed. Further guidance on using the evidence collected to determine TAGs, would only be published if a decision was taken to cancel exams.

We consider that the guidance we are proposing above could be applied to every subject although there might be some subjects or qualifications where the range of options for evidence is more limited. For art and design qualifications and Project qualifications, which are not assessed by exams, only the guidance that relates to NEA would apply and TAGs would be determined by an assessment of the fully or partially completed portfolio or project (the requirement for art and design students to also complete an exam board-set task for summer 2022 has already been set aside in the outcome to the consultation on [Proposed changes to the assessment of GCSEs, AS and A levels in 2022](#)). We propose that, as in 2021, we should not require exam boards to complete moderation of NEA if exams are cancelled.

We propose that if exams are cancelled, Ofqual will set conditions as we did in 2021 requiring exam boards to take reasonable steps (including through the use of a head of centre declaration) to make sure that evidence, however collected, is appropriately used by a centre to determine its TAGs. It is not necessary to set out proposals for the regulatory framework for the contingency arrangements at this stage.

Centres could, however, set out in their centre policies (if exams were cancelled) why they had taken a different approach to collecting evidence. Different approaches might be needed, for example, for centres determining TAGs for private candidates and provision might also need to be made for students joining a centre late in the academic year.

In 2021, exam boards provided material to schools and colleges to support them in gathering evidence. The exam boards also provided a range of support materials for use by teachers determining grades, such as exemplar student work, materials on making objective decisions free from bias and grade descriptors.

This exam board provided material, alongside further past papers, will support centres to produce work to inform grades in 2022. While we do not believe further material is necessary, we are, however, interested in views on any additional support the exam boards could provide to teachers should TAGs be needed next year.

Question 1

How helpful do you think this guidance will be for teachers who will be making decisions on how to collect evidence to support TAGs as a contingency if exams are cancelled in 2022?

Question 2

Are there any parts of the guidance which you think could be improved? Please be specific about which element of the guidance (a – m) you are referring to.

Question 3

To what extent do you agree or disagree that the guidance set out above would reduce pressure on students, compared to the arrangements for TAGs in 2021?

Question 4

To what extent do you agree or disagree that the guidance set out above would reduce teacher workload, compared to the arrangements for TAGs in 2021?

Question 5

Do you have any comments on the support exams boards should provide to teachers determining TAGs should they be needed in 2022? Please be specific about any additional support you think should be provided.

Question 6

To what extent do you agree or disagree that if exams are cancelled exam boards should not be required to continue moderation of NEA?

Question 7

Do you have any other comments about the evidence which should be used to assess students' performance?

A national approach

In 2021, the decision to cancel exams was applied at a national level across England. We propose that a national approach should again be taken to exam cancellation (should that be necessary for 2022) and to contingency arrangements. We recognise that regional differences in the impact of the pandemic could potentially make it easier or harder for exams to take place in certain parts of the country than others. But we believe that it would not be acceptable or command public confidence to have different approaches to awarding grades for the same qualifications running in different parts of the country. It would not be possible to align the standards of grades awarded to some students who had taken exams with the TAGs determined by teachers, without the use of a standardisation approach of the type that proved unacceptable in 2020.

Question 8

To what extent do you agree or disagree that if it proves necessary to cancel exams and implement TAGs in some parts of the country, exams should be cancelled for all students and the TAGs approach should be implemented nationally?

Question 9

Do you have any other comments about the proposal for a national approach?

Contingency arrangements for private candidates

Private candidates do not study within a school, college or other exam centre, such as a private tutorial college. Private candidates are typically home educated or students who are re-taking a qualification having left the school or college with which they originally studied. They may be studying with a distance learning provider, tutor, parent, or without of any of these things.

In normal years, when exams take place, such candidates register with an exam centre – a school, college or other type of exam centre – which arranges for the candidate to take their exams alongside their students. As we expect exams to take place in 2022, private candidates should register with a centre to sit exams in 2022 in the usual way. The JCQ has a [database of centres that are willing to support private candidates](#).

In the event of exams being cancelled, private candidates wanting to access the TAG process would need to make arrangements with a centre to complete the required assessments, for the specifications they have studied, in supervised conditions. We propose recommending to private candidates that they discuss these arrangements with centres and take them into account when choosing the centre(s) with which they wish to register to take their exams. We propose that we work with centres and private candidates to support students to find opportunities to generate the evidence that would be required for a TAG. While it might be possible for some private candidates to undertake assessments entirely in line with the proposed guidance outlined above, and some might wish to do so, others would only want to undertake such assessments if exams were cancelled and TAGs needed to be generated. We propose that the same guidance as set out above would apply to how private candidates were assessed, except for the guidance that students' assessments would be spread out over the year. We propose that private candidates could undertake their assessments in a more concentrated period.

Question 10

Do you have any comments on how arrangements from 2021 could be improved in order to better provide access to TAGs for private candidates?

Quality Assurance

In 2021 the exam boards required each school and college to undertake its own quality assurance of the TAGs it proposed to submit. Each school and college developed its own policy for determining and quality assuring TAGs; most developed their policies using a template provided by the exam boards.

The exam boards contacted all schools and colleges to check they understood what was required from them. They also checked each policy submitted to them by schools and colleges and they followed up with any schools or colleges whose policies gave rise to concerns.

We propose that schools and colleges should only develop centre policies for the awarding of TAGs if exams are cancelled, to avoid them diverting resources from other priorities. Schools and colleges are likely to find that their 2021 policy provides a good starting point for their 2022 policy, but they will need to update their policies to reflect any guidance we publish following this consultation in respect of the collection of evidence for 2022 should exams be cancelled. The planning that schools and colleges will do about how they will gather evidence to support contingency arrangements will form a framework that would support the development of a centre policy should one be needed. Centre policies would also need to reflect the detailed arrangements for determining, quality assuring and submitting grades once those arrangements are decided following any announcement to cancel exams.

Following any such announcement, we propose that the exam boards should be proactive in engaging with schools and colleges to ensure they understand the 2022 TAG requirements, in the same way as they did in 2021. We propose that, having had regard to advice provided by the exam boards, schools and colleges should submit their policies to the exam boards for scrutiny.

In 2021 every school and college submitted evidence of student work as part of the QA process and this evidence was required for all students for the appeals arrangements. Centres should be prepared to submit work again in 2022 (perhaps for more students than was the case in 2021) should grades be determined on the

basis of TAGs and evidence of work would again be needed for appeals. For this reason, we propose that centres should keep original records of the work that might be used to contribute to TAGs and that centres should be ready to explain and/or review their TAGs when required to do so by an exam board.

In 2021 the Secretary of State set out in a Direction to Ofqual that it was government policy to trust teachers' judgements and that TAGs should, therefore, only be changed by the exam boards by exception. Following the public rejection of the approach to standardise grades in 2020 in order to maintain standards with previous years, it was government policy that there should be no attempt to standardise grades in 2021. This remains the case. If TAGs are needed in 2022 we intend that the quality assurance arrangements would be similar to those used in 2021, incorporating lessons we and the exam boards have learned.

The exam boards are considering the lessons to be learned from the 2021 process and how they should quality assure TAGs in 2022 should that be necessary. The precise way in which quality assurance of TAGs would operate, if necessary, in 2022 would be set out in detail once a decision to cancel exams was taken. The arrangements would reflect the precise reason for and timing of any decision. We are, however, seeking views on how this year's arrangements could be improved and strengthened. The feedback to this consultation will inform the final approach to quality assuring TAGs in 2022, should they be needed next year.

Question 11

To what extent do you agree or disagree that schools and colleges should only be required to develop centre policies for determining TAGs if exams are cancelled in summer 2022?

Question 12

Do you have any comments on how schools and colleges should quality assure TAGs in 2022 (should they be needed)?

Question 13

Do you have any comments on how the exam boards should quality assure TAGs in 2022 (should they be needed)?

Question 14

Do you have any other comments about how TAGs should be quality assured in 2022 (should they be needed)?

Appeals

In 2021, any student who received a grade based on a TAG had the right to appeal if they believed something had gone wrong when their grade was determined. Appeals could be made on the grounds of an administrative or procedural error by the student's school or college or by the exam board or on the grounds of the unreasonable exercise of academic judgement, either in the choice of evidence used to determine the TAG or in the determination of the TAG itself.

We envisage that if TAGs have to be used in 2022, the same provisions for appeals should be made, but we recognise the appeals process for 2021 is still underway and that we and the exam boards will want to ensure lessons are learned from that process. Our starting proposal upon which we are consulting and which is subject to that further feedback, is that this year's arrangements could be carried forward without further changes. The feedback to this consultation will inform the final approach to the appeals process should TAGs be needed in 2022.

If we were to follow the same approach as in 2021, a student would appeal to their school or college in the first instance, which would consider whether it made a procedural or administrative error. If the student remained concerned after this stage 1 appeal, their school or college would submit an appeal to the exam board on the student's behalf.

As with the arrangements for 2021, if an error was found it would be corrected. The outcome of the teacher assessment could be adjusted up or down as necessary to correct the error. This means that an appeal will result in students being awarded the result that best reflects their performance in assessments. The provision for grades to be adjusted up or down as a result of an appeal, means that there is a disincentive for students to appeal unless they have a genuine concern about their result. However, in line with normal practice, the outcome of the teacher assessment should only be changed if the person conducting the appeal found that the outcome was not legitimate – that the outcome could not have been arrived at by a person who was reasonably exercising their academic judgement.

We propose that, should TAGs be implemented for 2022, provision should again be made for appeals where a student's higher education place depends on the outcome of the appeal to be prioritised by the exam boards. We propose that the final stage of the appeal process should again be to Ofqual for consideration under its Examination Procedure Review Service (EPRS). The EPRS would consider whether the exam board had made any procedural errors in determining the grade or considering the appeal, but the EPRS could not change a grade. If the EPRS found an error had been made it would ask the exam board to review the case.

Question 15

To what extent do you agree or disagree that students should be able to appeal if TAGs are used in 2022?

Question 16

To what extent do you agree or disagree that the grounds for appeal should cover:

- a) administrative and procedural errors
- b) errors of academic judgement

in determining the evidence used to determine a TAG?

Question 17

To what extent do you agree or disagree that the grounds for appeal should cover:

- a) administrative and procedural errors
- b) errors of academic judgement

in the determination of the TAG itself?

Question 18

To what extent do you agree or disagree that appeals should first be considered by the student's school or college which would check for any administrative or procedural errors?

Question 19

To what extent do you agree or disagree that if a student remained concerned after an appeal to their school or college, the school or college would submit an appeal to the exam board on the student's behalf?

Question 20

To what extent do you agree or disagree that a student's result could go down as well as up following an appeal?

Question 21

To what extent do you agree or disagree that a student who had completed the appeal process could apply to Ofqual's Examination Procedural Review Service which would check that the exam board had followed the correct procedure when issuing the grade and considering an appeal?

Question 22

Do you have any other comments about appeal arrangements if TAGs are used in 2022?

Equalities impact assessment

Before making these proposals, we have considered the likely impact on persons who share particular protected characteristics. We have considered this impact in the context of our public sector equality duty in section 149(1) of the Equality Act 2010. This requires us to have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it

Annex B sets out how this duty interacts with Ofqual's statutory objectives and other duties. Awarding organisations are required to comply with equalities legislation, and Ofqual's existing General Conditions of Recognition reinforce this in relation to the qualifications awarding organisations make available. Awarding organisations are required to monitor their qualifications to identify features which may disadvantage a group of learners who may share a protected characteristic; this applies to the design, delivery and award of their qualifications.

In summer 2021, exams did not take place due to the disruption to students' education caused by the coronavirus (COVID-19) pandemic. Instead, students were awarded qualifications based on TAGs. Since the pandemic caused different levels of disruption across the country, many schools and colleges had not been able to teach all the course content. In response, for summer 2021, students were only assessed on the content they had been taught while ensuring sufficient coverage of the curriculum to enable progression. Ofqual's [analysis of summer 2021 results](#) showed general stability in the differences in outcomes for students with different protected characteristics compared to previous years, and increases in outcomes for many groups. This suggested that the changes in assessment arrangements for summer 2021 lessened the unevenness in outcomes we may otherwise have seen. This suggests that our proposed approach, without replicating exactly the arrangements from 2021, may operate in a similar way in the event that exams are cancelled.

Nonetheless, cancelling summer 2022's exams and replacing them with teacher assessment that would draw on a range of evidence of a student's performance may have relative advantages and disadvantages for different groups of students who share particular protected characteristics. We welcome evidence on the possibility that the proposed arrangements may lead to indirect discrimination, and the extent to which they have the potential to advance equality of opportunity and foster good relations.

In developing these proposed contingency arrangements for summer 2022, we have sought to not unfairly disadvantage students, including on the basis of sharing a protected characteristic. We have considered whether any of the proposals in this consultation might impact (positively or negatively) on students who share particular protected characteristics. We set these considerations out below, in addition to the impacts we have identified in the relevant sections throughout this consultation. We

welcome further evidence on those areas we have identified but also on any that we have not.

While it is not possible completely to remove all identified negative impacts, we are keen to understand whether respondents agree with the impacts we have identified, whether there are other impacts that we have not identified, and whether there are ways to mitigate these impacts. We would therefore encourage you to read and respond to this section.

Disabled students, including disabled private candidates, would have to be given reasonable adjustments when taking any assessments that provide evidence of the standard at which they are performing. We do not consider this would be problematic, at least not if the assessments were undertaken within the school or college. The student's school or college would know how the student normally works and make any such adjustments as were necessary to reflect the student's normal way of working.

If the assessments had to be taken in another venue, including at the student's home, some types of reasonable adjustment could be readily made, for example the provision of extra time, or putting the assessment into a larger font. Other types of adjustment could be more difficult to make, for example if the student would normally dictate their work to a scribe or required specialist equipment or software to complete remote assessments. We welcome respondents' views on the best way to ensure students receive the reasonable adjustments they need.

Although Ofqual's [analysis of summer 2021 results](#) (awarded on the basis of TAGs) showed general stability in the differences in outcomes for students with different protected characteristics compared to previous years, we cannot ignore [the risk of unconscious bias](#) towards those with one or more particular protected characteristics when assessments are not exam-based. We would welcome any further evidence of when and how such bias occurs and any best practice to reduce the risk. We do, however, believe that being better able to advise schools and colleges on the scope and nature of evidence for TAGs for summer 2022 (if they are needed) means that there would be more opportunities for greater scrutiny of student work and its marking through the quality assurance arrangements and therefore better opportunities to spot cases where the evidence does not support the TAG submitted.

The proposed contingency arrangements for summer 2022 should be accessible to students who are being educated in alternative forms of provision, such as hospital schools, notwithstanding the issues identified above.

We are aware that a proportion of students who study outside a school or college (private candidates) do so for reasons of SEND or illness. We would therefore welcome evidence on any disproportionate or negative impact our proposals might have on private candidates with particular protected characteristics.

Similarly, teacher assessments could be more difficult to make and/or limited in their usefulness where a student has poor attendance and/or a shorter history at the school or college, and so less interaction with the teacher and presence in school during times in which evidence is produced. For example, evidence from [data on school absences](#) suggests that this is particularly a concern for Gypsy, Roma and Traveller groups, who are likely to move schools more often, and in general struggle to maintain sustainable links with schools. We welcome evidence on how best to mitigate any disadvantage of our proposed contingency arrangements for these groups of students.

It is important that assessments are as accessible and inclusive as possible, so that students are not prevented from demonstrating what they know and can do. We would welcome respondents' views on how schools and colleges could be supported to make any school or college-set assessments as accessible and inclusive as possible.

We will need to take care to make sure all students, regardless of their protected characteristics or wider circumstances, have access to information about the contingency arrangements, including how to appeal their grade. This information must be available to students directly, including those who do not have an established relationship with a school or college, such as private candidates and some Gypsy, Roma and Traveller students. In the unlikely event that exams are cancelled, we will work with our extensive stakeholder networks to ensure that key information is communicated to – and accessible for – all student groups. We will publish information for students, in different formats, and provide an enquiries service to support this.

While mental well-being is not a protected characteristic, we know that the impact of the pandemic on students' mental health and well-being is a common concern. We trust that our proposed contingency arrangements will be of some benefit to students' mental health and well-being, as the proposals offer some certainty regarding how students will be assessed in the unlikely event that exams are cancelled, and will to an extent be familiar given the use of TAGs in 2021. We also believe that being able to better advise schools and colleges on the scope and nature of the evidence on which TAGs should be based (if exams were cancelled) should help to reduce students' anxiety that every piece of work they do might inform their grade and the risk of over-assessment. We do, however, acknowledge that the necessary flexibility of our proposals means that students will not be entirely certain of the full detail of how they would be assessed until such a time as exams were cancelled.

Question 23

Do you believe the proposed arrangements (any or all) would have a positive impact on particular groups of students because of their protected characteristics?

Question 24

If you have answered 'yes' please explain your reason for each proposed arrangement you have in mind.

Question 25

Do you believe the proposed arrangements (any or all) would have a negative impact on particular groups of students because of their protected characteristics?

Question 26

If you have answered 'yes' please explain your reason and suggest how the negative impact could be removed or reduced for each proposed arrangement you have in mind.

Regulatory impact assessment

As set out above, the government is firmly committed to GCSE, AS and A level exams going ahead in England in academic year 2021 to 2022, with adaptations to take account of the impact of the COVID-19 pandemic on the education of the students due to sit those exams.

If, as expected, these changes are sufficient to enable exams to go ahead as planned, then the contingency arrangements will not need to be adopted.

We think a detailed assessment of the costs and savings associated with hypothetical contingency arrangements is inappropriate at this time. That said, we

recognise it is important to understand the likely impacts of possible contingency arrangements.

There are also some elements of our proposals that will have at least some regulatory impact even if the proposed contingency arrangements are not needed.

Likely impact of implementing proposed contingency arrangements

In this section we consider the activities that we expect may give rise to additional costs and burdens, as well as any activities that may not take place and could therefore deliver savings, should we need to implement our proposed contingency arrangements. In many cases, these are similar to the costs, burdens and savings that we anticipated for TAGs in 2021.

While, at this time, we do not anticipate that these additional costs, burdens and savings will materialise, they nonetheless provide important context for our proposed contingency arrangements.

Impact on schools and colleges

We expect there would be one-off, direct costs and administrative burdens to schools and colleges associated with the following activities:

- familiarisation with information and guidance from exam boards on teacher assessment and submitted grades
- communication and training from senior leaders to teaching staff on teacher assessment and submitted grades
- marking and quality assurance of teacher assessments and submitted grades
- amendments to centre systems to enable the required information to be gathered and submitted to exam boards in a format specified by them
- managing high volumes of enquiries from candidates and parents
- managing potentially high volumes of appeals

Some of these costs and burdens are experienced in a normal year as part of formative assessment and the provision of good quality teaching and learning. Others – particularly those related to familiarisation with exam board information and guidance, amendments to centre systems, and (to a lesser extent) training of teaching staff – may be reduced compared to 2021. This is because we have intentionally proposed contingency arrangements for 2022 that are as similar as

possible to those used for TAGs in 2021. This should help minimise the need for schools and colleges to develop or familiarise themselves with additional new systems, processes and guidance.

In addition, providing more detail about the scope and nature of the evidence students will need to generate under the proposed contingency arrangements will increase certainty for schools and colleges, and should help reduce burden further.

Schools and colleges would be delivering the final stages of contingency arrangements in place of, and not in addition to, activity required to deliver summer exams in their centre including, for example, secure handling of exam papers and scripts, invigilation of exams and dealing with any cases of possible malpractice and maladministration arising out of exam delivery. However, there will be additional burden to schools and colleges in preparing both for exams and potential contingency arrangements in advance of any decision to cancel exams.

We acknowledge that the burden of delivering the revised arrangements could be greater and more challenging for both exam boards and centres if staff availability is affected by COVID-19 and/or centres are closed for normal teaching. We also acknowledge the exceptional impact of the pandemic on the workload of teachers and their colleagues.

Impact on students

Students taking the relevant qualifications would be directly affected if we need to implement the proposed contingency arrangements.

The proposed contingency arrangements are designed to ensure students are not disadvantaged if it proves necessary to cancel exams, and that disruption to their planned progression is minimised. As was the case in 2021, we would expect the proposed contingency arrangements to ensure that all students, including private candidates, can continue with their studies and will receive grades as expected in August 2022.

If the proposed contingency arrangements are needed, then some private candidates may incur costs in addition to expected exam entry costs if, for example, centres who are able to assess them are limited and students need to pay for travel or accommodation.

Impact on exam boards

The proposed contingency arrangements would apply to GCSE, AS and A level qualifications regulated by Ofqual and provided by AQA, OCR, Pearson and WJEC Eduqas.

Should we need to implement the contingency arrangements, we would expect the scale of impact to vary across each organisation according to the range of subjects offered and number of entries. We would expect there to be one-off, direct costs and administrative burdens to these organisations associated with the following activities:

- familiarisation with guidance published by Ofqual on the approach to submitting grades
- familiarisation with any new or revised general, qualification level or subject level conditions
- providing information and training to centres to inform teacher assessments, quality assurance and submission of grades to exam boards
- providing guidance on reasonable adjustments and special consideration in the context of teacher assessments
- if required, providing training and mark schemes to support teacher marking
- developing and delivering processes and systems for the collation of grades submitted by centres
- preventing, detecting and investigating any malpractice or maladministration relating to the provision of submitted grades
- external quality assurance of submitted grades
- managing increased volumes of enquiries from centres and candidates
- delivery of appeal arrangements
- assessment of changed costs – both decreasing and increasing – and determining appropriate fees

As with the costs and burdens for schools and colleges, some of these costs and burdens – particularly those related to developing and familiarisation with new arrangements – are likely to be reduced compared to 2021. Again, this is because we have intentionally proposed contingency arrangements for 2022 that are as similar as possible to those used for TAGs in 2021. This should help minimise the need for exam boards to develop or familiarise themselves with additional new systems, processes and guidance in the event that the proposed contingency arrangements are needed.

We acknowledge that the exam boards are already incurring and will incur some additional cost and burden through planning for and engaging with DfE and Ofqual on any potential contingency arrangements – irrespective of whether these need to be implemented. This is addition to the costs they will incur through the implementation of the adaptations to the exams for next summer, such as the provision of advance information.

Any activities needed to deliver contingency arrangements would not be in addition to usual arrangements for delivery of exams in the summer, rather, they are in place of those arrangements. Activities that exam boards would not need to undertake, or would undertake in a different way, should the proposed contingency arrangements be needed, may include:

- printing, delivery, collection and scanning of exam papers and scripts
- marking of scripts - including examiner recruitment, standardisation, and quality assurance arrangements
- identification and investigation of malpractice and maladministration arising in usual exam delivery arrangements
- moderation of non-exam assessments

However, costs associated with some of these activities may already be contractually committed and so may not be recoverable in full or in part. And if any decision to cancel exams is taken relatively late in the academic year, preparations for delivering exams (and the costs incurred in doing so) would be well underway.

Impact on the further education and higher education sectors and employers

There would be significant negative impacts on the further education (FE) and higher education (HE) sectors and employers if students were not able to progress as planned in 2022.

That is why we are proposing contingency arrangements which would ensure – even if exams are unable to proceed as planned – students can receive grades in time to be able to progress to FE or HE.

As in 2021, it is also possible that the proposed contingency arrangements, should it be necessary to implement these in place of exams, could allow for earlier results dates so that appeals can begin to be dealt with before FE and HE decisions are made.

Estimated costs and savings

As set out above, we think a detailed assessment of the costs and savings that might arise should we need to implement contingency arrangements is not appropriate at this time but factors that may influence these have been set out above.

Likely impact if contingency arrangements not needed

Even if the proposed contingency arrangements are (as we hope and expect) not needed, we expect there would be one-off, direct costs and administrative burdens associated with the following activities:

- schools and colleges developing and maintaining systems and processes for collating and storing evidence that would be needed to determine TAGs
- exam boards maintaining systems for collecting TAGs from schools and colleges, quality assurance of TAGs and awarding based on TAGs

Innovation and growth

The Deregulation Act 2015 imposes a duty on any person exercising a regulatory function to have regard for the desirability of promoting economic growth (the Growth Duty). Ofqual must exercise its regulatory activity in a way that ensures that any action taken is proportionate and only taken when needed. The Growth Duty sits alongside Ofqual's duty to avoid imposing unnecessary burden, as required under the ASCL Act 2009, as well as its statutory duties relating to equality and the Business Impact Target.

At this stage, we consider that the proposed contingency arrangements set out in this consultation are – if needed – likely to be proportionate and necessary to achieve our aims. We will of course revisit that question should it prove necessary to adopt the proposed contingency arrangements.

Question 27

Are there additional burdens associated with the delivery of the proposed arrangements on which we are consulting that we have not identified above? If yes, what are they?

Question 28

What additional costs do you expect you would incur through implementing the proposed arrangements on which we are consulting?

Please distinguish in your response between those costs you expect to incur from preparing to put contingency arrangements in place, and those that would be incurred if the arrangements were required.

Question 29

What costs would you save?

Please distinguish in your response between those costs you expect to incur from preparing to put contingency arrangements in place, and those that would be incurred if the arrangements were required.

Question 30

We would welcome your views on how we could reduce burden and costs while achieving the same aims.

Annex A: consultation responses and your data

Why we collect your personal data

As part of our consultation process, you are not required to provide your name or any personal information that will identify you. However, we are aware that some respondents would like to provide contact information. If you or your organisation are happy to provide personal data, with regard to this consultation, please complete the details below. We would like to hear as many views as possible and ensure that we are reaching as many people as possible. In order for us to monitor this, understand views of different groups and take steps to reach specific groups, we may ask for sensitive data such as ethnicity and disability to understand the reach of this consultation and views of specific groups. You do not have to provide this information and it is entirely optional

If there is any part of your response that you wish to remain confidential, please indicate at the appropriate point in the survey.

Where you have requested that your response or any part remains confidential, we will not include your details in any published list of respondents, however, we may quote from the response anonymously in order to illustrate the kind of feedback we have received.

Your data

Your personal data:

- will not be sent outside of the UK unless there are appropriate safeguards in place to protect your personal data
- will not be used for any automated decision making
- will be kept secure

We implement appropriate technical and organisational measures in order to protect your personal data against accidental or unlawful destruction, accidental loss or alteration, unauthorised disclosure or access and any other unlawful forms of processing.

Your rights: access, rectification and erasure

As a data subject, you have the legal right to:

- access personal data relating to you
- object to the processing of your personal data
- have all or some of your data deleted or corrected
- prevent your personal data being processed in some circumstances
- ask us to stop using your data, but keep it on record

If you would like to exercise your rights, please contact us using the details below. You can also find out more about [Ofqual's privacy information](#).

Freedom of Information Act and your response

Please note that information in response to this consultation may be subject to release to the public or other parties in accordance with access to information law, primarily the Freedom of Information Act 2000 (FOIA). We have obligations to disclose information to particular recipients including members of the public in certain circumstances. Your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance requests for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response and assess this in accordance with applicable data protection rules.

Members of the public are entitled to ask for information we hold under the Freedom of Information Act 2000. On such occasions, we will usually anonymise responses, or ask for consent from those who have responded, but please be aware that we cannot guarantee confidentiality.

If you choose 'no' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

How we will use your response

We will use your response to help us shape our policies and regulatory activity. If you provide your personal details, we may contact you in relation to your response. We will analyse all responses and produce reports of consultation responses. In the

course of analysis, we will where possible avoid using your name and contact details. We will only process the body of your response, but we are aware that in some cases, this may contain information that could identify you.

Sharing your response

We may share your response, in full, with The Department for Education (DfE) and The Institute for Apprenticeships & Technical Education (IFATE) where the consultation is part of work involving those organisations. We may need to share responses with them to ensure that our approach aligns with the wider process. Where possible, if we share a response, we will not include any personal data (if you have provided any). Where we have received a response to the consultation from an organisation, we will provide the DfE and IFATE with the name of the organisation that has provided the response, although we will consider requests for confidentiality.

Where we share data, we ensure that adequate safeguards are in place to ensure that your rights and freedoms are not affected.

We use Citizen Space, which is part of Delib Limited, to collect consultation responses and they act as our data processor. You can view [Citizen Space's privacy notice](#).

Your response will also be shared internally within Ofqual in order to analyse the responses and shape our policies and regulatory activity. We use third party software to produce analysis reports, which may require hosting of data outside the UK, specifically the US. Please note that limited personal information is shared. All personal contact information is removed during this process. Where we transfer any personal data outside the UK, we make sure that appropriate safeguards are in place to ensure that the personal data is protected and kept secure.

Following the end of the consultation, we will publish an analysis of responses on [our website](#). We will not include personal details in the responses that we publish.

We may also publish an annex to the analysis listing all organisations that responded but will not include personal names or other contact details.

How long will we keep your personal data?

Unless otherwise stated, Ofqual will keep your personal data (if provided) for a period of 2 years after the consultation closing date.

Our legal basis for processing your personal data

Where you provide personal data for this consultation, we are relying upon the public task basis as set out in Article 6(1)(e) of UK GDPR to process personal data which allows processing of personal data when this is necessary for the performance of our public tasks. We will consult where there is a statutory duty to consult or where there is a legitimate expectation that a process of consultation will take place. Where you provide special category data, we process sensitive personal data such as ethnicity and disability, we rely on Article 9(2)(g) of UK GDPR as processing is necessary for reasons of substantial public interest.

The identity of the data controller and contact details of our Data Protection Officer

This privacy notice is provided by The Office of Qualifications and Examinations Regulation (Ofqual). The relevant data protection regime that applies to our processing is the UK GDPR¹ and Data Protection Act 2018 ('Data Protection Laws'). We ask that you read this privacy notice carefully as it contains important information about our processing of consultation responses and your rights.

How to contact us

If you have any questions about this privacy notice, how we handle your personal data, or want to exercise any of your rights, please contact our data protection officer at dp.requests@ofqual.gov.uk.

We will respond to any rights that you exercise within a month of receiving your request, unless the request is particularly complex, in which case we will respond within 3 months.

Please note that exceptions apply to some of these rights which we will apply in accordance with the law.

¹ Please note that as of 1st January 2021, data protection laws in the UK have changed. The General Data Protection Regulation (EU) 2016/679 (GDPR) no longer applies to the UK. However, the UK has incorporated GDPR into domestic law subject to minor technical changes. The Data Protection, Privacy and Electronic Communications (Amendment etc.) EU exit Regulations (DPPEC) came into force in the UK on 1st January 2021. This consolidates and amends the GDPR and UK Data Protection Act 2018 to create the new UK GDPR.

You also have the right to lodge a complaint with [the Information Commissioner](#) (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at:

ICO

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Telephone: 0303 123 1113

Annex B – Ofqual’s role, objectives and duties

The Apprenticeship, Skills, Children and Learning Act 2009

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

- 1) **The qualification standards objective**, which is to secure that the qualifications we regulate:
 - a) give a reliable indication of knowledge, skills and understanding; and b) indicate:
 - i) a consistent level of attainment (including over time) between comparable regulated qualifications; and
 - ii) a consistent level of attainment (but not over time) between qualifications we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate
- 2) **The assessment standards objective**, which is to promote the development and implementation of regulated assessment arrangements which:
 - a) give a reliable indication of achievement, and
 - b) indicate a consistent level of attainment (including over time) between comparable assessments
- 3) **The public confidence objective**, which is to promote public confidence in regulated qualifications and regulated assessment arrangements
- 4) **The awareness objective**, which is to promote awareness and understanding of:
 - a) the range of regulated qualifications available,
 - b) the benefits of regulated qualifications to Students, employers and institutions within the higher education sector, and
 - c) the benefits of recognition to bodies awarding or authenticating qualifications

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

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

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

The Equality Act 2010

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

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

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

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

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

We are subject to a number of duties and we must aim to achieve a number of objectives. These different duties and objectives can, sometimes conflict with each other. For example, if we regulate to secure that a qualification gives a reliable

indication of a Student's knowledge, skills and understanding, a Student who has not been able to demonstrate the required knowledge, skills and/or understanding will not be awarded the qualification.

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

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

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

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

In setting our proposed requirements, we want to understand the possible impacts of the proposals on Students who share a protected characteristic. The protected characteristics under the Equality Act 2010 are:

- age
- disability
- gender reassignment
- marriage and civil partnerships
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

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



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