

CONSULTATION

Arrangements for the assessment and awarding of Vocational, Technical and Other General Qualifications in 2020/2021

The Extended Extraordinary Regulatory Framework

ofqual

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Proposals at a glance

The coronavirus (COVID-19) pandemic has resulted in loss of education and training during this spring and summer. Public health restrictions are likely to be in place during 2020/21, and further disruption may occur on a localised basis, which may affect teaching and learning and the delivery of assessments.

The government's expectation is that assessments should take place in the academic year 2020/2021 because that is the fairest way of providing results for learners.

Our proposed approach for 2020/21 will apply to Vocational and Technical Qualifications (VTQs), including Technical Qualifications within T Levels, and general qualifications other than GCSEs, AS and A levels.

It builds on the approach set out in our [position paper](#) and seeks to balance:

- mitigating disruption to teaching, learning and assessments so that, as far as possible, learners, taking VTQs and other general qualifications, have the opportunity to receive a fair result and are not disadvantaged by the longer term impacts of the pandemic. Also, that learners taking qualifications most similar to A levels or GCSEs are not advantaged or disadvantaged compared to their peers taking those qualifications and competing for the same progression places
- ensuring that assessments lead to the award of qualifications that are a valid and reliable indication of knowledge, understanding and skills, or practical competence, and that, as far as possible, standards are maintained
- developing, as far as possible, consistent approaches across similar qualifications, whilst recognising the diversity of the VTQ landscape

We propose to introduce the following arrangements, for assessments taken and regulated qualifications awarded during 2020/2021:

- i. To enable awarding organisations to mitigate the impact of disruptions to teaching, learning and assessment, and any ongoing restrictions on the delivery of assessments, through the adaptation of assessments and qualifications – and in doing so, there will be no provision for the issue of calculated results which we introduced specifically in relation to the cancellation of assessments in the summer of 2020
- ii. To issue a set of objectives to guide awarding organisations' decisions about how assessments and qualifications should be adapted
- iii. In parallel with this consultation, to work with awarding organisations and sector bodies on the development of guidance to support the implementation of our proposed approach and ensure consistent approaches, with the aim of consulting on that additional statutory guidance later in August 2020
- iv. To introduce a second version of the Extraordinary Regulatory Framework (ERF), the Extended ERF, to reflect the approach to mitigation and adaptation we are proposing to take in response to the situation we face in 2020/21. If awarding organisations make adaptations to assessments and qualifications in 2020/21, they must comply with the Extended ERF. We may also consult on further changes to the Extended ERF later in August if we find that that is necessary as we develop the additional statutory guidance

Audience

This consultation is open to anyone who may wish to make representations but may be of particular interest to:

- the awarding organisations we regulate, and their representative bodies
- learners who are expecting to be awarded a vocational or technical qualification, or other general qualification, in 2021
- the family, parents or carers of these learners
- teachers, tutors, exam staff and other representatives from schools, colleges, training providers and other places where the relevant qualifications are delivered
- higher education institutions, further education colleges and training providers that may be making offers to learners for future academic years
- education representative bodies
- employers who might be receiving job applications from learners taking these qualifications, or who might already employ these learners
- professional bodies, regulators and industry groups

Consultation arrangements

Duration

This consultation will be open for 2 weeks starting on 3 August and ending on 14 August 2020. We recognise this is a much shorter period than we would normally allow for consultation, but we believe it is necessary and reasonable in the current situation. We have adopted a 2-stage consultation approach and set short timelines so that we can provide more certainty about arrangements for 2020/21 to awarding organisations, learners and teaching staff as quickly as possible.

Respond

Please respond to this consultation by completing the online response at <https://www.gov.uk/government/consultations/consultation-on-the-assessment-and-awarding-of-vocational-technical-and-other-general-qualifications-in-2020-to-2021>.

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

Introduction

The coronavirus (COVID-19) pandemic has resulted in loss of education and training during the spring and summer terms of the academic year 2019/2020. It is also likely that some public health restrictions are in place during the next academic year, and that further disruption may occur on a localised basis, which may affect teaching and learning and the delivery of assessments.

The government's expectation is that assessments should take place in 2020/2021 because that is the fairest way of providing results for learners.

We have engaged with awarding organisations, centres and other stakeholders to consider what mitigations might be necessary in 2020/21 in relation to the assessment of regulated VTQs and other general qualifications.

We know from our engagement that the impact of the disruption over the spring and summer on teaching, learning and assessment varies between centres, depending on the qualifications that they offer and their approaches to teaching and learning, with some sectors and subjects more affected than others. In line with public health guidance, there may also be a need going forward to adapt assessments in some sectors/subjects to accommodate the impacts of any social distancing requirements.

We published a [position paper](#) on 2 July 2020 where we set out the themes we were exploring as we developed our approach and invited feedback. We considered:

- the potential for reducing unnecessary assessment burden, for example, there may be the potential to reduce the repeated assessment of skills to increase available teaching time
- the risks around making reductions in the content of qualifications which could undermine their validity and reliability
- how more flexible delivery of assessments could help centres delivering assessments within the constraints of social distancing, and help to deal with the impacts of any further localised disruption
- the need to make the implementation of any changes as manageable as possible for centres
- a move away from the calculation of results process which was introduced for summer 2020 at a time when exams and assessments had been cancelled at short notice

We also explained that we may need to carry out a formal consultation to implement our approach if we needed to make revisions to our regulatory framework.

We have seen that some awarding organisations have already begun to engage with their centres, to explore what changes could be made to their qualifications to make assessments more manageable, to address any specific challenges around loss of teaching and learning or social distancing, and to maximise the flexible delivery of assessments.

Building on the themes set out in our position paper and reflecting on feedback from awarding organisations and other stakeholders, we are now consulting on our proposed approach for VTQs and other general qualifications in 2020/21.

In our approach, we are seeking to balance:

*Arrangements for the assessment and awarding of Vocational, Technical and Other
General Qualifications in 2020/2021*

- mitigating disruptions to teaching, learning and assessments so that, as far as possible, learners taking VTQs and other general qualifications have the opportunity to receive fair results in 2020/21 and are not disadvantaged by the longer term impacts of pandemic
- ensuring that assessments lead to the award of qualifications that are a valid and reliable indication of knowledge, understanding and skills, or practical competence, and that, as far as possible, standards are maintained
- developing, as far as possible, consistent approaches across similar qualifications, whilst recognising the diversity of the VTQ landscape

Part A – Approach to 2020/21

1. It is the Government's policy that assessments should go ahead in 2020 and 2021 because that is the fairest way of providing results to learners, and that we should look to mitigate the impact of the disruption caused by the pandemic so that learners can progress to the next stage of education or employment, whilst maintaining the standards and rigour of the qualifications as far as it is possible to do so.
2. Centres are already looking at changes to teaching and learning to help learners, who have suffered a loss of face-to face teaching time and disruption to their education this year, to 'catch up' on time away from their centre. Many are planning to deliver some teaching and learning on-line and use blended learning approaches.
3. However, the majority of VTQs have (often substantial) practical elements that cannot be fully accommodated through online learning. This learning and assessment activity will have to take place where learners can develop their skills, and/or access relevant equipment, and centres will have to do so in line with any social distancing measures set out in public health and other government guidance.
4. Whilst restrictions are currently easing, any future disruption, for example in response to localised outbreaks of coronavirus (COVID-19), will also require flexible and responsive teaching and assessment at a local level.

The nature of the VTQ landscape

5. An important consideration in the development of our approach has been the complexity of the VTQ landscape.
6. Qualifications sit on a spectrum, with educational qualifications designed primarily to aid progression to FE/HE with an attainment-referenced¹ approach to setting standards at one end, and with workplace qualifications designed to signify occupational competence (often with a licence to practise element within them) and a criterion-referenced² approach to standard setting at the other.
7. The vast majority of VTQs sit in between these categories, with learners using their qualifications for a number of purposes. Many qualifications support entry to further or higher education, as well as allowing learners to access employment, depending on the needs of the user, and qualifications can contain a mixture of practical elements designed to signal competency as well as knowledge and theory elements.
8. The multiple uses to which qualifications are put will have an impact on what can be done to minimise the disadvantage suffered by learners in the 2020/21 academic year. The approaches that awarding organisations will be able to take will also depend on the purpose and design of their individual qualifications.
9. Any approach we take will need to allow awarding organisations to take decisions about what to do to mitigate disadvantage in these very different contexts. It will also need to recognise that some learners will have received a mitigation this

¹ the standard represents an overall level of attainment, typically exemplified in terms of an holistic grade description

² the standard represents a specific profile of attainments, defined in terms of multiple assessment criteria

summer if they were partway through a course of study. Other learners may not have been able to take assessments because the assessments needed to confirm occupational competency in areas where health and safety requirements were critical.

Mitigating the longer term impact of the pandemic

10. As the Government's expectation is that assessments will take place during 2020/21, we do not consider that it will be necessary to permit awarding organisations to offer calculated results to any learners in 2020/21. Although learners part way through their course of study, who will receive calculated results for assessments they expected to take between 20 March and 31 July 2020, can of course carry them forward when their qualifications are awarded in 2020/21.
11. The calculation of results was permitted to mitigate the short-notice cancellation of exams and assessments at a point in the academic year when most learners had completed the majority of their course of study. This was why in the current ERF we limited the issuing of calculated results to learners who were expecting to take assessments between 20 March and 31 July 2020. As this is not the situation we are facing now, there is no need to permit the issuing of calculated results in 2020/21.
12. To mitigate the immediate impact of the pandemic, the current ERF also allowed awarding organisations to adapt their qualifications. We said that awarding organisations could:
 - change the the way in which assessments are delivered, for example by using an online rather than paper-based test, or carrying out an assessment remotely rather than face-to-face
 - adapt assessment methods, for example by using a practical simulation in place of an observation, or professional discussion in place of a practical demonstration
 - change invigilation requirements, for example by allowing the use of online invigilation so that assessments can take place in a wider range of settings
 - waive or adjust work experience or placement requirements, for example allowing learners to undertake a shorter period of work experience
 - change the way in which a qualification is quality assured, for example by allowing for standardisation or Centre Assessment Standards Scrutiny to take place remotely or on-line.
13. We said that, in all cases, awarding organisations must ensure that any adaptations that they made in relation to an assessment for a qualification were in line with the [Principles](#) in the current ERF and, in particular, that they must take all reasonable steps to minimise risks to validity by ensuring that coverage of the key areas of the construct of the qualification is retained within any adapted assessment. We also expected awarding organisations to take account of the increased risk of malpractice arising from any adaptations to assessments.
14. We consider that, where necessary, permitting awarding organisations to adapt their assessments is the best way to mitigate for many of the longer term impacts of the current public health crisis. They will need to take all reasonable steps to

ensure that any adaptations to assessments do not undermine the validity of the qualifications and to manage effectively risks around malpractice.

15. Our recent survey of awarding organisations found that most adaptations made in immediate response to the pandemic were related to the delivery of assessments, in particular the introduction of online assessment and carrying out assessments remotely rather than face-to-face, followed by changes to assessment methods and changes to the way that qualifications were quality assured. A much smaller number of adaptations related to waiving or adjusting work experience requirements.
16. We expect awarding organisations to wish to continue to apply some of these adaptations in 2020/21 for those qualifications where they were able to adapt assessments this summer, where this will provide the flexibility that centres may need to carry out assessments in line with social distancing guidance and build resilience in case of further public health restrictions.
17. Some of these qualifications are available on demand, or on a roll-on/roll-off basis, and are likely to have sufficient flexibility to cater for localised disruption with little or no adaptations now that centres are reopening.
18. Awarding organisations will however have to consider what adaptations may be needed for qualifications for which they previously issued calculated results. This includes those qualifications which are most similar to A levels and GCSEs, and which are most likely to be used to support progression into further and higher education.
19. Our aim is that learners taking these VTQs and other general qualifications, as far as possible, are not advantaged or disadvantaged compared to their peers taking A and AS levels or GCSEs and competing for the same progression opportunities, because of the disruption to teaching, learning and assessment which they experienced in the spring and summer terms.
20. Our engagement with awarding organisations has identified a number of ways in which they believe they could adapt assessments for these qualification to mitigate against the longer term impact of the pandemic. For example they have told us that they could:
 - widen assessment windows to provide greater flexibility (the period of time during which an assessment is conducted)
 - encourage the banking of modular assessments throughout the course of study to mitigate the risk of future disruption
 - change the conditions under which internal assessments may be completed
 - look to change some assessment requirements where this is the only way to deal with the impact of any ongoing social distancing measures, for example in sport or performing arts qualifications where learners are currently assessed working in a group
21. It may also be necessary for awarding organisations to make wider changes to their qualifications by streamlining assessments to free up teaching and learning time in centres, in addition to the adaptations to assessments already permitted in the current ERF. We do not expect however that this will include any reduction to the content that is taught as there is a risk that this would undermine the validity and reliability of the qualifications.
22. We propose to introduce a second version of the ERF, the Extended ERF. This will require awarding organisations to consider whether they should make

adaptations to their assessments and qualifications to mitigate the impact of disruptions to teaching, learning and assessment. They are not however required to make adaptations if they do not consider it to be necessary.

23. Where awarding organisations decide to offer assessments and qualifications as normal without any adaptations, they must comply with our normal regulatory framework, the General Conditions of Recognition. Further explanation of the Extended ERF is provided in Part B of this consultation document.
24. We recognise however that adaptations to assessments and qualifications may not be able to fully address the impact of disruptions to teaching, learning and assessment for all learners, not least because of the differing experiences of learners over the summer. Any continuing restrictions around assessment as a result of social distancing measures, particularly for some qualifications which signal occupational competence, may also mean that it is more difficult for some learners to complete their qualifications during 2020/21.
25. We therefore intend to work with partners, stakeholders, other regulators and with government to deliver a coordinated system-wide approach where the risks impacting on qualifications and assessments are outside the scope of our regulation.

An objectives-based approach

26. We have considered whether we should seek to take a single prescribed approach to adaptation in 2020/21. We have concluded that, because of the diversity of VTQs, that would not be feasible, and that we should allow awarding organisations to make tailored decisions about what to do with each of their qualifications.
27. We recognise that awarding organisations are best placed to balance mitigating disruptions to teaching and learning and/or restrictions around the delivery of assessments, with the need to ensure that assessments lead to the award of qualifications that are a reliable indication of knowledge, understanding and skills, or practical competence.
28. We know however that there is a risk of inconsistent approaches if awarding organisations are making decisions individually, and so we are proposing to issue a set of objectives, informed by our statutory objectives, which will guide the decisions made by awarding organisations, where they plan to adapt assessments. As we explain later, we will also develop additional statutory guidance to support their interpretation and implementation.
29. Our proposed objectives³ are:
 - a. Learners taking VTQs and other general qualifications should have the opportunity to receive fair results, and, as far as possible, not be disadvantaged by the longer term impact of the current public health crisis. Learners taking qualifications most similar to A and AS levels and GCSEs should not be not advantaged or disadvantaged compared to their peers taking those qualifications; this is particularly important where learners are competing for the same progression opportunities.

³ These objectives are based on the principles set out in our [position paper](#) but have been revised in light of feedback.

- b. As far as possible, standards should be maintained when qualifications are awarded in 2020/21.
 - c. Adaptations to assessment and qualifications should not undermine the validity and reliability of the qualifications. We therefore do not expect that the content to be taught is reduced. Changes to the content should only be considered in exceptional circumstances where it is the only way of minimising disadvantage to learners as a result of the pandemic. The views of sector and professional bodies and other stakeholders must be also be sought before any changes are made. Any changes to assessment requirements or delivery should also be carefully considered so that they do not undermine the validity and reliability of the qualification.
 - d. Common approaches to adaptation should be followed where qualifications signal similar knowledge, understanding and skills, or practical competence, and have the same assessment approaches.
 - e. The manageability of assessments should be maximised to allow for an increase in teaching time. Any streamlining of assessments should be carefully balanced with the need to ensure that qualifications remain sufficiently valid and reliable.
 - f. Flexibility in how, and how, often assessments are delivered should be maximised so as to reduce the impact of disruption, illness or quarantine, including at a local level.
 - g. The opportunities presented by the inherent flexibility of the modular delivery modes of many vocational and technical qualifications should be maximised so that learners can bank assessments as soon as they are ready, in order to safeguard against future disruption.
 - h. Communications should be streamlined and coordinated to support centres implementing adapted assessments and users of the qualifications.
 - i. A coordinated system-wide approach should be developed to address the risks impacting on learners' results which are outside the scope of Ofqual regulation, working with partners, stakeholders, other regulators and government.
30. To support the interpretation and implementation of these objectives and the development of consistent approaches where appropriate, we are already working with awarding organisations to develop additional statutory guidance. We will work with awarding organisations to take a sector by sector approach, also taking account of the issues relating to particular qualification types, such as performance table qualifications. We will also work with awarding organisations to develop similar approaches to adaptation where the same assessment methods are used. We will consider how we can reflect our expectations around consistency in our further work on the Extended ERF.
31. We will look to consult on this statutory guidance later in August 2020, alongside any changes to the Extended ERF we feel may be necessary for our 2020/21 approach. At this point, we may also incorporate these objectives into the Extended ERF Principles.
32. We recognise the important contribution professional bodies, regulators and other sector bodies can play in ensuring that the validity of those VTQs which signal occupational competence is not undermined unintentionally by any adaptations to assessments. The ERF already requires awarding organisations to have due

regard to advice provided by professional and sector bodies and we will take account of their views as we develop this additional guidance to facilitate the development of valid and consistent approaches across similar qualifications.

33. We will also work with centres and centre representative groups such as the AOC and AELP, to develop a coordinated and streamlined communications approach.

Question 1: To what extent do you agree or disagree with our proposed approach to mitigating the longer-term impacts of the pandemic in 2020/21 by permitting awarding organisations to adapt assessments and qualifications?

Question 2: To what extent do you agree or disagree with our proposed approach to take an objectives-based approach, supported by additional guidance to develop consistent approaches, rather than prescribing a single approach to adaptation?

Question 3: Do you have any comments on the objectives we have proposed to underpin awarding organisations' decisions about the adaptation of assessments and qualifications?

Question 4: Do you have any comments on our plans to develop and consult on additional statutory guidance and on any changes to the Extended ERF later in August, to support the interpretation and implementation of these objectives?

Special Consideration

34. As stated earlier, we do not think that it will be necessary to permit awarding organisations to offer calculated results to learners in 2020/21.
35. We recognise however that there may be some learners who miss or do not complete assessments which they were preparing to take in 2020/21, due to factors outside of their control. Such a situation could arise as a result of the ongoing pandemic.
36. Our General Condition of Recognition [G7](#) requires awarding organisations to have in place arrangements to give Special Consideration to learners where they have temporarily experienced an illness or injury, or some other event outside of their control, which has had, or is reasonably likely to have had, a material effect on their ability to take an assessment or to demonstrate his or her level of attainment in an assessment.
37. Special Consideration could include, but is not limited to, awarding additional marks where a learner has been able to take an assessment but where their performance has been affected by an illness, injury or other exceptional event outside of their control; awarding a qualification to a learner who has not completed all of the assessments but who has completed the minimum amount of assessment evidence for that qualification; or allowing an alternative assessment opportunity for a learner at a later date.
38. We do not expect awarding organisations to provide Special Consideration where this would alter or prevent the qualification from providing a reliable indication of the knowledge, understanding and skills being measured, or where this would unfairly advantage or disadvantage learners.

39. We propose to work with awarding organisations to explore whether there is a need for more detailed guidance on Special Consideration in the context of 2020/21.

Question 5: Do you have any comments on the issues we should consider in any guidance we develop around Special Consideration?

Qualifications taken internationally

40. Under the current ERF, we currently permit awarding organisations offering regulated qualifications taken internationally:

- to apply the approach in the ERF where appropriate and manageable, or
- to continue to comply with the General Conditions of Recognition if this is more appropriate based on the needs of the specific international market

41. We also flagged that awarding organisations should consider the particular risks of malpractice depending on the nature of the non-UK setting.

42. As stated earlier, the current ERF limits the issuing of calculated results to those learners who were expecting to take assessments during the period 20 March to 31 July, and provision for the issue of calculated results is not included in the Extended ERF.

43. This applies to all learners, including those taking qualifications in international markets.

44. Under our proposals for 2020/21, awarding organisations would however be able to adapt assessments taken in international markets, where this was necessary, provided that this did not undermine the validity of the qualifications and risks around malpractice and the particular needs of the international market were considered and addressed.

Question 6: To what extent do you agree or disagree with our proposed approach to qualifications taken internationally?

Certification

45. When we introduced the ERF, we said that awarding organisations should issue certificates (where appropriate) as normal, and should not refer on the certificate to a result having being determined under the arrangements in the extraordinary framework.

46. We propose to take the same approach for certificates awarded in 2020/21.

Question 7: To what extent do you agree or disagree with our proposed approach to certification?

Appeals

47. General Condition of Recognition [11](#) requires that an awarding organisation's appeals process must provide for the effective appeal of results on the basis that

the awarding organisation did not apply procedures consistently or that procedures were not followed properly and fairly. Awarding organisations continue to have discretion to include additional grounds should they wish to do so, such as allowing appeals to be accepted directly from learners.

48. Under the current ERF, we supplemented General Condition I1 with some specific guidance highlighting the issues that awarding organisations would need to consider, particularly in relation to calculated results. We did not think that it was necessary to develop additional guidance around appeals relating to the adaptation of assessments because the General Condition was sufficient.
49. We do not see any reason to take a different approach relating to the adaptation of assessments in 2020/21 and therefore do not propose to supplement the General Condition with any additional guidance.

Question 8: To what extent do you agree or disagree with our proposed approach to appeals in 2020/21?

Record keeping and regulatory oversight

50. Under the current ERF, awarding organisations are required to maintain records of the decisions they have made when adapting assessments in compliance with our requirements and guidance.
51. They must also provide these records to us upon request to enable us to undertake a risk-based approach to regulatory supervision and monitoring.
52. We set these requirements because the principles-based approach underpinning the ERF placed a high degree of trust in awarding organisations, and as the regulator, we considered that we would need to monitor the decisions taken and in some cases, we would want to test them further.
53. We have undertaken proactive and targeted monitoring work this summer in relation to a number of qualifications and awarding organisations where we have identified the highest levels of risk, using information recorded and supplied by awarding organisations under the current ERF provisions.
54. We are again proposing to place a high degree of trust in awarding organisations by taking an objectives-based approach to adaptations in 2020/21, where awarding organisations will be making tailored decisions about what to do with each of their qualifications.
55. We therefore propose to take a similar approach to record keeping and regulatory oversight in 2020/21.
56. Under the current ERF, awarding organisations must also have regard to any advice that we provide in writing, in the form of a Technical Advice Notice. Awarding organisations are required to follow our advice unless there is a compelling reason not to.
57. We have found this to be a useful regulatory tool and propose to carry forward its use into the Extended ERF.

Question 9: To what extent do you agree or disagree with our proposed approach to record keeping and regulatory oversight?

Part B – Extending the Extraordinary Regulatory Framework to take account of our proposed approach for 2020/21

1. We introduced the current ERF this summer as an emergency measure to permit awarding organisations to take approaches to issuing results during the summer that are not normally allowed by our General Conditions of Recognition. This was because assessments either could not take place or could only take place in an adapted form due to the lockdown resulting from COVID-19.
2. We propose to extend the current version of the ERF to reflect the different circumstances of 2020/21 and to allow awarding organisations to make adaptations to all of their assessments, where this is necessary to mitigate disruptions to teaching and learning and to the delivery of assessments arising from the longer term impact of the pandemic.

The current ERF

3. We have decided to retain the current ERF so that it continues to be available for the following reasons only:
 - firstly, there may still be circumstances where learners who should have received a calculated result for an assessment they were due to take between 20 March 2020 and 31 July 2020, have not yet received that result but should still do so. It is therefore important that the current ERF remains in place to capture outstanding calculated results that are yet to be determined (noting that we will not extend the qualifying period of 20 March to 31 July 2020)
 - secondly, appeals and complaints may arise from decisions taken by awarding organisations under the current ERF. It is therefore necessary for the ERF to continue so that those appeals and complaints can be made
4. Despite the fact the current ERF is continuing, it is still only in force temporarily. We will continue to review when it is appropriate for the ERF to no longer apply and will publish the relevant notice in accordance with VTQCov1.1(b) at that time.

The Extended ERF - general

5. The current ERF currently applies to specific qualifications which were covered by the Secretary of State's [direction](#), including those which are eligible for funding by ESFA, and prioritising results for those qualifications needed for progression. This meant that some qualifications fell outside the scope of the ERF.
6. The Extended ERF follows on from the current ERF. It applies to all regulated qualifications that are not a GCSE, AS or A level, or an apprenticeship end-point assessment. We have explained in paragraph 3 the circumstances in which the current ERF will apply. The Extended ERF will apply in all other circumstances, in that awarding organisations must consider whether they need to adapt their assessments and qualifications to mitigate the impact of the disruption caused by the pandemic. If they decide to adapt assessments and qualifications, awarding organisations must comply with Extended ERF. If they decide that they do not need to make any adaptations, awarding organisations must comply with General

Conditions of Recognition when making assessments and qualifications available.

7. The Extended ERF gives awarding organisations the flexibility to adapt their assessments and qualifications in ways that may not be compliant with the General Conditions of Recognition, where it is appropriate for them to do so. This recognises the fact that although assessments may take place after summer 2020, learners will have seen disruption to teaching, learning and assessment because of the pandemic. However, we have removed all references to calculated results and delays to assessments to make it clear that those mitigations will no longer be applicable in 2020/21.
8. The Extended ERF will apply in addition to the General Conditions of Recognition, but where an awarding organisation could not comply with a requirement in both, it must prioritise compliance with the Extended ERF for those qualifications.
9. Where adaptations are not necessary, awarding organisations must comply with the General Conditions of Recognition when making qualifications available.
10. The layout of the Extended ERF conditions is slightly different to the ERF to reflect the necessary drafting changes and to seek to ensure that the structure is clear. There are some minor drafting amendments to conditions and requirements where the wording has otherwise been carried across from the current ERF to remove references to, for example, “spring and summer 2020”.

Extended ERF - equalities

11. In the Extended ERF, our proposal is that we will not require awarding organisations to offer adapted assessments and qualifications, but that they may do so where necessary. Therefore, we have proposed removing the requirement that an awarding organisation must not refrain from providing an adapted assessment simply because the provision of that assessment gives rise to an unavoidable disadvantage to learners with a protected characteristic or special educational need. Under our proposals, awarding organisations must consider their equalities duties, in accordance with Condition D2 and the guidance on complying with that Condition in the Extended ERF, when deciding whether and how to adapt assessments in all circumstances.

The Principles

12. Aside from the changes described above, the [Principles](#) set out in the current ERF remain in the proposed Extended ERF. However, we are considering (and will continue to do so during our ongoing consultation work) whether all of the principles, and the balance to be achieved between them, remain appropriate in the 2020/21 landscape.
13. We are particularly considering whether Principle 1, which sets out that an awarding organisation must seek to issue results to as many learners as possible, still has the correct emphasis. Now that assessments are to be made available again in all circumstances, awarding organisations need to consider how they can best mitigate the disruption to teaching and learning, and any ongoing disruption to the delivery of assessments, whilst still delivering those assessments.

14. Our current view is that we should no longer prioritise getting results to as many learners as possible over the other principles. We would welcome views on whether Principle 1 is still appropriate or whether a different emphasis is needed going forward, and what that emphasis might be. We would also welcome views on whether the other principles are still correctly worded and whether the required balance between them continues to be suitable in the context of assessments that are to be delivered in 2020/21.

Guidance

15. The guidance to the current ERF has been revised so that it only covers those areas that remain relevant in the context of 2020/21. In the guidance to the Extended ERF, we have therefore retained the guidance on compliance with Condition A8 (malpractice and maladministration) in relation to VTQs, on compliance with Condition D2 (equalities), and on remote invigilation. We have removed the guidance on Condition A6 (identification and management of risks) because it relates to learners in scope of the current ERF, but not of the Extended ERF, and the guidance on appeals, calculated results, the use of hybrid approaches and autumn assessments because it is no longer relevant under the Extended ERF.

Qualifications and learners in scope

16. As we are proposing that the Extended ERF applies to all VTQs, General Qualifications other than GCSEs, AS or A levels, and apprenticeship end-point assessments, there are no restrictions around which learners can take adapted assessments and qualifications where awarding organisations have made them available.
17. Where awarding organisations are seeking to adapt their assessments, they should consider the assessment approach that they might have put in place for private learners under normal circumstances and, where possible and relevant, apply them here.

Categorising qualifications

18. Under the current ERF, we asked awarding organisations to categorise qualifications based on their purpose and to identify a mitigation of either calculated results, adaptation or delay of assessments, aligned to the qualification's purpose and category.
19. As the adaptation approach we are proposing will apply to all VTQs and other general qualifications, and we are not asking awarding organisations to decide between different mitigation approaches, it is not necessary for us to ask awarding organisations to categorise their qualifications in any way for delivery in 2020/21.
20. We also do not plan to update the qualification explainer tool we published in May to help qualification users understand the different mitigations which applied to assessments which were scheduled to be taken during the summer, and which now includes details of autumn assessment opportunities.

Question 10: To what extent do you agree or disagree with our proposal to develop the Extended ERF to take account of our proposed approach for 2020/21?

Question 11: Do you have any comments on the new conditions, requirements and guidance for 2020/21 set out in the Extended ERF?

Equalities Impact Assessment

1. As a public body, we are subject to the public sector equality duty. Annex B sets out how this duty interacts with our statutory objectives and other duties.
2. Awarding organisations are required to comply with equalities legislation, and our existing General Conditions of Recognition reinforce this in relation to the qualifications they make available. They are required to monitor their qualifications to identify features which may disadvantage a group of learners who may share a protected characteristic⁴, and this applies to the design, delivery and award of their qualifications.
3. We have considered whether any of our proposals for 2020/21 might impact (positively or negatively) on learners and other learners who share protected characteristics.
4. We know from the work we did when developing the [Equalities Impact Assessment](#) for the current ERF that, when compared with learners taking GCSEs, the learners taking level 1/2 qualifications that are covered by the ERF were, on average, more likely to come from lower socio-economic backgrounds. This was also the case when we compared learners taking A levels with learners taking other level 3 qualifications. We also found that learners taking level 1 or 2 qualifications typically had a lower average level of achievement at key stage 2 or were more likely to have special educational needs compared to learners taking GCSEs. Again, this was the case for learners taking level 3 qualifications covered by the ERF compared to learners taking A levels.
5. We also know from our engagement with awarding organisations and sector stakeholders when we introduced the ERF that the provision of adapted assessments at that time was likely to be challenging because of the impact of the public health crisis. This was because centres were likely to be closed and learners therefore might be prevented from utilising the technology that would normally be available to them. That would include the standard technology that might be used to deliver assessments, but also assistive technology that is used to enable learners to take such assessments.
6. We also knew that some adaptations which could allow assessments to be taken by learners in their own homes may not be available to all learners, as they may not have access to all the technology necessary to sit those assessments, either due to a disability or other protected characteristic, or for some other reason, such as socio economic circumstances.
7. We also recognised that it was possible that some reasonable adjustments which learners would normally have access to, may either be unavailable to them for some forms of adapted assessment, or learners taking an adapted assessment may require a different reasonable adjustment, to that which they would have required, had the assessment not been adapted.
8. At that time, in line with the the overall aim of the government's policy of ensuring that as many learners as possible were provided with results this summer, we took the view that where an awarding organisation could offer an

⁴ For the purposes of the public sector equality duty, the 'protected characteristics' are: disability, race, age, religion or belief, pregnancy or maternity, sex, sexual orientation, and gender reassignment

adapted assessment but only in a way that, despite their best efforts, could not remove the potential disadvantage for all learners, the awarding organisation should still offer the adapted assessment for those learners that were able to access it.

9. The context for our approach to adaptations in 2020/21 is very different. The expectation is that centres will be open, albeit complying with any public health restrictions, and so learners are more likely to have access to teaching and support staff and will be able to use the assistive technology usually available to them. Many centres are looking at developing blended learning approaches and are providing disadvantaged learners with standard technology to use at home. Centres are also putting in place additional support to address gaps in learning. We expect these approaches to mitigate the potential disadvantage as far as possible, but recognise that it may not be possible to entirely mitigate every disadvantage and awarding organisations will need to consider reasonable adjustments, in line with the existing requirements, on an individual basis.
10. We recognise however that some learners will have been more affected than others by the disruption to teaching, learning and assessment over the spring and summer, either because of their personal circumstances or characteristics, or because of the centre they attended, the way their course was delivered, or the qualification they were studying.
11. As we explained earlier, in the Extended ERF, our proposal is that we will not require awarding organisations to offer adapted assessments, but that they may do so where necessary. Therefore, we have proposed removing the requirement that an awarding organisation must not refrain from providing an adapted assessment simply because the provision of that assessment gives rise to an unavoidable disadvantage to learners with a protected characteristic or special educational need. Under our proposals, awarding organisations must consider their equalities duties (in accordance with General Condition [D2](#) and the guidance on complying with that Condition in the Extended ERF), when deciding whether and how to adapt assessments in all circumstances.
12. We also think that there may be positive equalities benefits arising from proposed approach. In the previous consultation, we said that some students may not be able to access a calculated result if there was not sufficient evidence available on which to base this. One reason could be due to particular protected characteristic (e.g. they were absent due to a disability, long term illness or pregnancy). The move away from calculated results and making adaptation the preferred option should help reduce the disadvantage for these students.
13. Some approaches to adaptation may also benefit learners with disabilities – while some students could be unable to access adaptations, there could be others for whom adaptations mean they are more able to access assessments (e.g. an on-screen assessment could allow for screen readers etc that weren't previously available).
14. Continuing to allow adaptations (compared to if we had decided not to allow them and to revert back to assessments being delivered as normal) could go some way to ensuring that students do not have to delay assessments.
15. We recognise that even so, the need to ensure that assessments lead to the award of qualifications that are a valid and reliable indication of knowledge,

understanding and skills, or practical competence, and that, as far as possible, standards are maintained, may mean that some learners are not able to make up gaps in teaching and learning in the time available to them to complete assessments to the standard necessary to achieve their qualifications.

16. In line with the objectives underpinning our approach to adaptation, we think that it is vital that we work with partners, stakeholders, other regulators and government to address the risks impacting on learners' results which are outside the scope of Ofqual regulation.

Question 12: Are there other potential positive or negative equality impacts that we have not explored? If yes, what are they?

Question 13: Do you have any views on how any potential negative impacts on particular groups of learners could be mitigated?

Regulatory Impact Assessment

Impact on learners

1. We are focused on making sure that, as far as possible, learners have the opportunity to receive a fair result when they have completed their qualification are not disadvantaged by the longer term impact of the current health crisis..
2. For those learners taking qualifications most similar to A levels and GCSEs, our aim is that they are not disadvantaged or advantaged compared to their peers taking general qualifications and competing for the same progression opportunities.
3. We recognise that there could be an impact on learner performance if they are expected to take adapted assessments using methods that are unfamiliar to them, or if assessments are taken in surroundings that might normally not be suitable for assessment. For example, where a learner might take an online assessment in their home rather than at their centre, or where a learner might undertake an activity that is simulated rather than being undertaken in a real or live environment.
4. However, during 2020/21, apart from where there is localised disruption, adapted assessments are now likely to take place in centres or in the workplace, where learners can be supported by teachers and other staff. This will enable awarding organisations and centres to support and prepare their learners for any changes.
5. We recognise that there is the potential for some learners part way through their qualifications to be anxious about how they will cope with the second year of study after the disruption to teaching and learning they may have experienced in the spring and summer terms. As part of our coordinated communications approach, we will work with the awarding organisations and other stakeholders to reassure learners about arrangements for 2020/21.

Impact on awarding organisations

6. In our [Regulatory Impact Assessment](#) for the current ERF we identified the cost and resource impact arising from the introduction of the current ERF.
7. We acknowledge that our new proposals will have a cost and resource impact on awarding organisations which will be in addition to the costs already incurred over the summer and the pressure placed on resources.
8. The proposed arrangements apply to all awarding organisations offering VTQs and other general qualifications, as opposed to only those awarding organisations whose qualifications were previously in scope of the current ERF. This affects 9 awarding organisations, who had none of their qualifications in scope (67 qualifications in total). Across all awarding organisations 2385 qualifications were out of scope of the current ERF.
9. Our proposals to introduce a second version of the ERF, the Extended ERF, require awarding organisations to consider whether they should make adaptations to their assessments and qualifications to mitigate the impact of disruptions to teaching, learning and assessment. They are not however required to make adaptations if they do not consider it to be necessary.
10. However, we recognise that some awarding organisations may need to consider adaptations for those qualifications where previously calculated results were issued. Currently 4667 qualifications have a mitigation of calculated results and 4212 qualifications have a mitigation of adaptation.
11. There may be direct costs and administrative burdens to awarding organisations who make adaptations to assessments and qualifications, associated with activities such as:
 - familiarisation with the proposed Extended ERF
 - development of approaches to adaptations, including engagement with other awarding organisations, sector or professional bodies and with us to develop consistent approaches where possible
 - working with us to streamline and coordinate communications with centres
 - communication of new requirements to centres
 - adaptation or development, and delivery, of processes and systems for adapted assessments
 - maintaining a record of decisions made to adapt an assessment and the rationale for them
 - preventing, detecting and investigating any malpractice or maladministration specifically relating to the delivery of adapted assessments
 - adjustments to systems to enable quality assurance of whichever approach(es) are adopted to obtain results
 - issuing of results in accordance with new arrangements
 - supporting centre activities and managing increased volumes of enquiries from centres and learners
 - additional and/or revised data submissions to us
12. As these activities are largely those which awarding organisations would carry out anyway, the extent to which they result in significant additional costs and resource impacts, may depend the operational arrangements within individual awarding organisations and the number and type of any adaptations

introduced. There may also be some opportunities for awarding organisations to build on work undertaken in the summer. Some will have already adapted their assessments and will simply be carrying those assessments forward, whilst some of the possible adaptations, such as streamlining assessments or moving to remote assessment, remote quality assurance or remote invigilation may also lead to longer term savings. Awarding organisations will also no longer incur the costs associated with issuing calculated results or the drop in income associated with having to delay assessments.

Impact on centres

13. There may be the following direct costs and administrative burdens to centres associated with our proposals, depending on the qualifications offered, and, whether and how they are adapted:
 - familiarisation with guidance issued by awarding organisations, communicating this to staff and training as then required
 - communication and ongoing support to learners in relation to adapted assessments and qualifications
 - enabling and supporting the delivery of adapted assessments and qualifications
 - managing a high volume of enquiries from learners, parents and employers
14. We also recognise that some centres will be managing the introduction of adapted assessments at the same time as they might be running delayed assessments and/or giving learners the opportunity to resit assessments in the autumn term.
15. Our objectives for the adaptation for assessments are intended to support centres by making assessments more manageable, supporting the development of consistent approaches between awarding organisations across similar assessments and qualifications and by coordinating and streamlining communications.

Impact on FE and HE and employers

16. We recognise that there would be significant negative impacts on FE and HE and employers – in terms of their recruitment activity – if large numbers of learners were not able to progress as planned in 2020/21 because they were unable to pass or complete their qualifications because of disruptions to teaching, learning and assessments arising from the pandemic.
17. We consider that the adaptation approach we are proposing will help to mitigate this risk without undermining the validity of qualifications or leading to lower standards.
18. However, we also recognise in our objectives that there is a need for a system-wide approach to address the risks impacting on qualifications and assessments which are outside the scope of our regulation, and we will work with partners, stakeholders, other regulators and government to achieve this.

Innovation and growth

19. 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). We must exercise our regulatory activity in a way that ensures that any action taken is proportionate and only taken when needed. Growth Duty sits alongside our duty to avoid imposing unnecessary burden, as required under the ASCL Act 2009, as well as our statutory duties relating to equality and the Business Impact Target.
20. We consider our proposals for adaptation are proportionate and necessary to manage the longer term impacts of the pandemic. However, it may also be that adaptations to assessments encourage innovation and investments which yield for awarding organisations in the longer term.

Estimated costs and savings

21. We encourage respondents to share with us as much information as possible about the likely costs and administrative burdens, as well as any savings or benefits, of the proposals set out in this consultation, so that we may consider this information when reaching our decisions. We encourage anyone who responds to this consultation to tell us if they think there is something we could do differently that would still achieve the same aim but would reduce costs and administrative burden.

Question 14: Are there any regulatory impacts, costs or benefits associated with the implementation of our proposals that are not identified in this consultation? If yes, what are they?

Question 15: What additional costs do you expect you will incur through implementing our proposals? Will you save any costs? When might these costs and savings occur? Please provide estimated figures where possible.

Question 16: Are there any additional or alternative approaches we could take to minimise the regulatory impact of our proposals?

Annex A

Your data

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). We are a 'controller' for the purposes of the General Data Protection Regulation (EU) 2016/679 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:

Data Protection Officer at dprequests@ofqual.gov

As part of this 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 may be happy to be contacted by Ofqual in relation to their response. If you or your organisation are happy to be contacted with regard to this consultation, please give your consent by providing your name and contact details in your response.

Our legal basis for processing your personal data

For this consultation, we are relying upon your consent for processing personal data. You may withdraw your consent at any time by contacting us using the details above.

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.

Sharing your response

We may share your response, in full, with the Department for Education (DfE) and/or ESFA and/or the Institute for Apprenticeships (IFA) 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. 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 IFA with the name of the organisation that has provided the response, although we will consider requests for confidentiality.

Following the end of the consultation, we will publish a summary of responses and may publish copies of responses on our website, www.gov.uk/ofqual. We will not include personal details.

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

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 or including member 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, but we cannot guarantee that confidentiality can be maintained in all circumstances.

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 long will we keep your personal data

For this consultation, Ofqual will keep your personal data (if provided) for a period of 2 years after the close of the consultation.

Your data

Your personal data:

- will not be sent outside of the European Economic Area
- 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, e.g. access, rectification, erasure

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

- access personal data relating to you
- 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 set out above.

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.

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.org.uk, or telephone 0303 123 1113. ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

If there is any part of your response that you wish to remain confidential, please indicate so in your response.

Annex B

Ofqual's objectives and duties

The Apprenticeship, Skills, Children and Learning Act 2009

We have five statutory objectives, which are set out in the Apprenticeship, Skills, Children and Learning Act 2009¹⁰.

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:
 - c. a consistent level of attainment (including over time) between comparable regulated qualifications; and
 - d. a consistent level of attainment (but not over time) between qualifications we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate.

2. **The assessment standards objective**, which is to promote the development and implementation of regulated assessment arrangements which

- a. give a reliable indication of achievement, and
- b. indicate a consistent level of attainment (including over time) between comparable assessments.

3. **The public confidence objective**, which is to promote public confidence in regulated qualifications and regulated assessment arrangements.

4. **The awareness objective**, which is to promote awareness and understanding of

- a. the range of regulated qualifications available,
- b. the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and
- c. the benefits of recognition to bodies awarding or authenticating qualifications.

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

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

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

The Equality Act 2010

As a public body, we are subject to the public sector equality duty⁵.

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 performance table qualifications are required by the Equality Act, among other things, to make reasonable adjustments for disabled people taking their qualifications.

We are subject to a number of duties and we must aim to achieve a number of objectives.

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

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

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

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

We require awarding bodies to design qualifications that give a reliable indication of the knowledge, skills and understanding of the learners that take them. We also require awarding organisations to avoid, where possible, features of a qualification that could, without justification, make a qualification more difficult for a learner to

⁵ <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

achieve because they have a particular protected characteristic. We require awarding organisations to monitor whether any features of their qualifications have this effect.

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

The protected characteristics under the Equality Act 2010 are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnerships
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

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



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