

CONSULTATION

Terms of Reference for EPRS in summer 2021

Proposed revisions to the way the Exam
Procedures Review Service will operate for
qualifications awarded in summer 2021

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Proposals at a glance

The Exam Procedures Review Service (EPRS) is an Ofqual process to consider whether an awarding organisation has followed its own processes, and secured the outcomes required by its conditions of recognition, in relation to the award of specified qualifications.

Qualifications will be awarded differently in summer 2021, because the ongoing pandemic means it is not possible for public examinations to be held. The EPRS will still have a role but the current Terms of Reference do not reflect the way the affected qualifications will be awarded, or the extraordinary regulatory frameworks which we have put in place.

We are consulting on proposed changes to the Terms of Reference for EPRS which will affect relevant qualifications awarded in summer 2021 only.

Audience

This consultation is open to anyone who may wish to make representation but may be of most interest to:

- awarding organisations which make available the qualifications in scope of EPRS schools
- colleges
- teachers who deliver qualifications
- students and their parents or carers

Consultation arrangements

Duration

This consultation will be open from 11am on Monday 14 June and will end on Monday 28 June at 11.45pm.

Respond

Please respond to this consultation by [completing the online survey on our consultation page](#).

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

Introduction

Overview

The Exam Procedures Review Service (EPRS) is an Ofqual process to consider whether an awarding organisation has followed its own processes, and secured the outcomes required by its conditions of recognition, in relation to the award of a relevant qualification, including the application of reasonable adjustments or the award of special consideration.

Awarding organisations must give due regard to the outcome of the EPRS process in each case which relates to their qualifications. The outcome in each case will be a finding either that the awarding organisation has or has not followed its own procedures, or that it has or has not secured the outcomes required by its conditions of recognition (the regulations we set).

The EPRS cannot decide that a learner's result was wrong, or that a different result must be issued in an individual case, because only an awarding organisation can decide that a result is incorrect and what the replacement result should be. The purpose of the EPRS is to consider whether the awarding organisation followed an appropriate process when it determined the result and when it considered any review or appeal in respect of that result.

Where the EPRS identifies a failure by the awarding organisation, the awarding organisation must have regard to that finding and decide what action to take, if any. In some recent cases, for example, EPRS has made a finding that an awarding organisation failed to secure the outcomes required by its conditions of recognition because the reasons it gave for dismissing an appeal were insufficient. That decision will affect future appeals, because in giving due regard to the outcome the awarding organisation will consider how it came to give inadequate reasons and how it can prevent recurrence of that problem, but did not alter the grade awarded to the learner on whose behalf the application was made.

The EPRS is available only for a selection of the qualifications we regulate, and only for learners who took assessments in England. Most applications relate to GCSE and GCE (AS and A level) qualifications, but EPRS will also consider applications in relation to Project qualifications. In summer 2019 we decided that the EPRS would be available for Technical Qualifications which form part of T levels, as those qualifications become available.

EPRS in summer 2021

Following a series of public consultations, we have set new exceptional regulatory frameworks to allow qualifications to be awarded this summer following Government's decision that public exams would not take place. The exceptional regulatory frameworks take precedence over the usual framework of conditions, requirements and guidance, and require awarding organisations to put in place new processes.

The usual Terms of Reference for EPRS will not be relevant this year because they refer to processes followed by awarding organisations to secure compliance with the usual regulatory framework. We therefore need to set revised Terms of Reference which will apply only to relevant qualifications awarded in summer 2021.

We previously set revised Terms of Reference for EPRS in summer 2020. Before making the changes for summer 2020 we consulted the awarding organisations which make available the qualifications EPRS will consider. We did not think it was necessary to consult more broadly. This year, we have decided to consult publicly on the proposed 2021 Terms of Reference. This is because the changes we are proposing to make affect the remit of EPRS this summer, as well as who may make an application. We therefore think that this year it is important to allow learners, their parents and carers as well as centres and teachers the opportunity to comment on that proposal.

We are on consulting on proposed changes to the Terms of Reference for EPRS which will affect relevant qualifications awarded in summer 2021 only.

Consultation details

The substantive changes to the Terms of Reference to EPRS which we propose to make for qualifications awarded in summer 2021 concern:

- Advanced Extension Award (AEA) qualifications
- Technical Qualifications forming part of T levels
- the role of the EPRS for summer 2021 qualifications
- who may make an application

In addition, we have made some alternations to the formatting and structure of the Terms of Reference document for the purposes of clarity. We are not consulting on these alterations.

Advanced Extension Award qualifications

Advanced Extension Award qualifications in maths are awarded to approximately 200 to 300 learners each year alongside A levels. As with A levels, we have set specific Qualification Level Conditions for the award of AEA qualifications in a normal year.

However, unlike A levels, the AEA Conditions do not specify the arrangements which an awarding organisation must have in place for reviews and appeals. Instead, an awarding organisation is allowed greater discretion as to its appeals arrangements under General Condition I1. AEA qualifications are normally outside the scope of EPRS because the EPRS approach is relevant only to those qualifications for which we have specified the arrangements for reviews and appeals in detail.

This year, AEA qualifications will be awarded on the basis of Teacher Assessed Grades (TAGs), in the same way as A level qualifications, under the General Qualifications Alternative Awarding (GQAA) framework of conditions and requirements. Arrangements for reviews and appeals will be the same for AEA qualifications this year as for A levels, in accordance with Condition GQAA4.

For this reason, we propose that AEA qualifications awarded in summer 2021 should be in scope for the EPRS.

Question 1

To what extent do you agree or disagree with our proposal that AEA qualifications awarded in summer 2021 should be in scope for the EPRS?

Technical Qualifications in T levels

We decided in 2019, following consultation, that the EPRS would consider applications in respect of Technical Qualifications which form part of T levels (TQs) as those qualifications became available.

When we consulted on extending the remit of the EPRS to include TQs, we explained the primary reason for that proposal was that we had set Qualification Level Conditions which specified the arrangements for reviews and appeals which an awarding organisation must have in place for those qualifications. That process was identical to the process specified for GCSE, GCE and Project qualifications and

sets the post-results arrangements for those qualifications apart from other regulated qualifications where there is no requirement for a review process and greater flexibility is permitted in respect of appeals. The remit of EPRS included all of the qualifications for which the same reviews and appeals process was specified and it was logical to extend the remit to TQs.

Some components of TQs will be awarded for the first time this summer. We have considered whether the remit of the EPRS should include TQs from this summer, in light of the 2019 decision.

However, TQs this summer will be awarded under the exceptional regulatory arrangements specified by the Vocational Contingency Regulatory Framework (VCRF). In particular, the Qualification Level Conditions which specify the reviews and appeals process which must be in place for TQs will not apply this summer.

The qualifications which are usually within the remit of EPRS (and AEA qualifications) will this year be awarded under the GQAA Framework, which specifies the reviews and appeals process which must be in place. Although we have set guidance which encourages awarding organisations to follow the GQAA process for some qualifications awarded under the VCRF, including TQs, awarding organisations are not required to follow a reviews and appeals process for TQs which is identical to that for GCSEs and A levels, as they are in a normal year.

It follows that the primary reason for our decision to include TQs within the remit of the EPRS will not exist this year.

In the circumstances, we consider that we should delay implementation of our decision to extend the remit of the EPRS until such time as TQs are first awarded under the TQ Qualification-Level Conditions. We consider that approach, which would mean EPRS would consider only qualifications awarded under the GQAA, is consistent with the reasons for our decision in 2019 to extend the remit of EPRS to include TQs and with our decision in February 2021 that TQs awarded in summer 2021 should be included within the VCRF.

We therefore propose to delay the implementation of the 2019 decision and that for summer 2021 the remit of EPRS should include only those qualifications awarded under the GQAA Framework.

Question 2

To what extent do you agree or disagree with our proposal that for summer 2021 EPRS should consider only those qualifications awarded under the GQAA Framework?

The role of the EPRS

An application to the EPRS is an application for a procedural review. The EPRS considers whether the awarding organisation followed the processes it says it will follow to determine a result, or consider an appeal, and whether, in following those processes, the awarding organisation has secured the outcomes required by the applicable conditions and requirements.

The exceptional regulatory arrangements we have put in place, following Government's decision that exams should not take place this summer, specify the way in which results must be determined this summer and set an approach to reviews and appeals which differs substantially from that in place in a normal year.

We think the Terms of Reference for EPRS should reflect the different processes which will be in place this summer.

The determination of results and awarding organisation errors

In a normal year, results for the qualifications in scope of the EPRS are determined by the awarding organisation setting and marking examinations, and in some subjects moderating the marking of non-exam assessment. We have set detailed regulations for these processes, which are capable of review by the EPRS once the awarding organisation's appeal process is complete.

This year, awarding organisations must issue results which reflect the TAGs submitted to them by centres (an awarding organisation may subsequently decide to correct a result following a review or an appeal, under Condition GQAA4.10). Awarding organisations must provide guidance for centres on the determination of TAGs, and must undertake quality assurance, but they will not have control over the process by which the TAGs submitted to them have been determined.

EPRS is an Ofqual process and, as such, can review only those matters which are within Ofqual's jurisdiction. Ofqual does not regulate centres and it follows that EPRS cannot review the process followed by schools and colleges to determine TAGs.

It is possible that an awarding organisation will make an administrative error which leads it to issue a result which does not reflect the TAG submitted for that learner. If such an error is made, the learner can appeal to the awarding organisation and the error can be corrected through the appeals process (under Condition GQAA4.1(b)(iii)). We consider it is highly unlikely an awarding organisation will both issue a result which does not reflect a TAG and fail to correct that error through its appeals process. It is possible, however, that such a circumstance could arise.

Similarly, it is possible that an awarding organisation might make an administrative error when it decides to correct a result following a centre review or following an appeal.

The awarding organisation's process from receiving the TAG to issuing the affected result would in any of those circumstances be capable of review.

An EPRS review of these processes would not involve second-guessing the awarding organisation – the role of EPRS is not to determine whether an administrative error occurred in connection with the result – but reviewing whether the awarding organisation followed its own processes and secured the outcomes required by the conditions in this connection.

We think it is appropriate that learners should have the opportunity to seek an EPRS review of these processes, which have a similar purpose to processes which may be subject to EPRS review in a normal year.

We therefore propose that the matters considered by EPRS for summer 2021 should include:

- whether the awarding organisation followed its own process to issue the Learner's result
- whether that process was capable of securing compliance with the GQAA Conditions – issuing a result which reflected the TAG submitted by the centre (GQAA3.2(a)(i)), or the awarding organisation's decision to issue a corrected result following a review or an appeal (GQAA4.10)
- whether the awarding organisation followed its own process to consider an appeal on the basis that the awarding organisation made an administrative error in connection with the learner's result
- whether that process was capable of securing the outcomes required by Condition GQAA 4.1(b)(iii)

Question 3

To what extent do you agree or disagree with our proposal that for GQ Qualifications awarded in summer 2021 EPRS should consider:

- a. whether the awarding organisation followed its own process to issue the Learner's result?
- b. whether that process was capable of securing compliance with the GQAA Conditions – issuing a result which reflected the TAG submitted by the centre (GQAA3.2(a)(i)), or the awarding

organisation's decision to issue a corrected result following a review or an appeal (GQAA4.10)?

- c. whether the awarding organisation followed its own process to consider an appeal on the basis that the awarding organisation made an administrative error in connection with the learner's result?
- d. whether that process was capable of securing the outcomes required by Condition GQAA 4.1(b)(iii)?

Appeals on procedural grounds

A learner may appeal to an awarding organisation, following a centre review, where the learner considers the centre did not follow its procedures properly or consistently in: arriving at the learner's TAG, conducting internal quality assurance, or conducting the centre review.

An awarding organisation must establish, maintain and comply with a process to consider such appeals and it would be possible for EPRS to review whether the awarding organisation followed its process, and whether that process was capable of securing the outcomes required by the conditions, in this case Condition GQAA4.1(b)(i), in connection with its consideration of procedural appeals.

The focus of such a review would be the process followed by the awarding organisation to consider the learner's appeal. EPRS would not consider whether or not the centre followed its process properly and consistently, or the merits of the awarding organisation's decision, but would review how the awarding organisation managed the appeal.

We consider this to be analogous to a normal year, in which an awarding organisation must consider appeals on procedural grounds and the EPRS will consider how the awarding organisation managed such an appeal. We think it is appropriate for the EPRS to consider such cases this year.

We therefore propose that the matters considered by EPRS for summer 2021 should include:

- whether the awarding organisation followed its procedures properly and consistently in the management of an appeal on procedural grounds
- whether that process was capable of securing the outcomes required by Condition GQAA4.1(b)(i)

Question 4

To what extent do you agree or disagree with our proposal that for GQ Qualifications awarded in summer 2021 EPRS should consider:

- a. whether the awarding organisation followed its procedures properly and consistently in the management of an appeal on procedural grounds?
- b. whether that process was capable of securing the outcomes required by Condition GQAA4.1(b)(i)?

Unreasonable exercise of academic judgement

A learner may appeal to an awarding organisation, following a centre review, where the learner considers the TAG which led to their result reflected an unreasonable exercise of academic judgement by their centre.

An awarding organisation must establish, maintain and comply with a process to consider such appeals. It would be possible for EPRS to review whether the awarding organisation followed its process, and whether that process was capable of securing the outcomes required by the conditions, in this case Condition GQAA4.1(b)(ii).

The focus of such a review would be the process followed by the awarding organisation to consider the learner's appeal. EPRS would not consider whether or not an unreasonable exercise of academic judgement occurred, or the merits of the awarding organisation's decision, but would review how the awarding organisation managed the appeal.

We consider this to be comparable to other years. In a normal year, an awarding organisation must conduct a review of marking, or review of moderation, and must determine appeals with the object of correcting any marking errors or moderation errors which have occurred. The EPRS will consider how the awarding organisation managed the review and appeal process in such circumstances in a normal year and we think it is appropriate for the EPRS to consider such cases this year.

We therefore propose that the matters considered by EPRS for summer 2021 should include:

- whether the awarding organisation followed its procedures properly and consistently in the management of an appeal on the grounds of unreasonable academic judgement

- whether that process was capable of securing the outcomes required by Condition GQAA4.1(b)(ii)

Question 5

To what extent do you agree or disagree with our proposal that for GQ Qualifications awarded in summer 2021 EPRS should consider:

- a. whether the awarding organisation followed its procedures properly and consistently in the management of an appeal on the grounds of unreasonable academic judgement?
- b. whether that process was capable of securing the outcomes required by Condition GQAA4.1(b)(ii)?

Correcting results

Awarding organisations are responsible for deciding whether to correct any incorrect result which they discover through the reviews and appeals process, whether the incorrect result is first identified by the centre or by the awarding organisation.

Condition GQAA4.10 provides that an awarding organisation must correct an incorrect result only where it considers it is appropriate to do so, and requires the awarding organisation to have regard to our Guidance on Correcting Incorrect Results when deciding whether or not it is appropriate to correct the result.

In a normal year, the conditions require an awarding organisation to correct any incorrect result which it discovers through a reviews or appeal process, and it follows that there is no process in a normal year which is comparable to that which will be in place this year. The issue of correcting an incorrect result is not normally susceptible to EPRS review.

This year, where an incorrect result comes to light through the reviews or appeals process, an awarding organisation must have regard to our Guidance on Correcting Incorrect Results and must decide whether it considers it appropriate to correct the result. We do not expect an awarding organisation will have a lengthy or detailed process in place to make these decisions, which are essentially a matter of judgement. However, we anticipate records will be maintained which demonstrate that a deliberate decision – to correct or not to correct – was taken in each case and that the decision-maker was aware of the need to have regard to our Guidance.

We consider the EPRS could review these records, to make sure a deliberate decision was made, that the eventual outcome reflected that decision, and that the decision-maker was aware of the Guidance.

The EPRS would not consider the merits of the awarding organisation's decision, and nor would an EPRS review consider how the decision-maker balanced the factors in our Guidance on Correcting Incorrect Results, because these decisions are essentially a matter of judgement for the awarding organisation.

We consider that to include this aspect of the reviews and appeals process within the matters which could be reviewed by the EPRS this summer might provide reassurance to learners, without being unduly burdensome for awarding organisations or centres, or placing significant additional demands on Ofqual's resources.

We therefore propose that the matters considered by EPRS for summer 2021 should include:

- whether the awarding organisation followed its procedures properly and consistently in deciding whether to correct an incorrect result which it discovered through the reviews and appeals process
- whether that process was capable of securing the outcomes required by Condition GQAA4.10

Question 6

To what extent do you agree or disagree with our proposal that for GQ Qualifications awarded in summer 2021 EPRS should consider:

- a. whether the awarding organisation followed its procedures properly and consistently in deciding whether to correct an incorrect result which it discovered through the reviews and appeals process?
- b. whether that process was capable of securing the outcomes required by Condition GQAA4.10?

Who may make an application

In other years, the EPRS will accept applications directly from private candidates or from centres on behalf of their learners. A learner who is not a private candidate cannot themselves make an eligible application for an EPRS review. This is because the EPRS process aligns with the relevant awarding organisations' reviews and appeals process, for the purposes of which applications must be made by centres, or by private candidates. Other than in respect of private candidates, the centre has the final decision whether to submit the application for a review or appeal, or to make an application to the EPRS

In summer 2021, applications for an appeal will be made by centres but it is the learner and not the centre who has the final decision that an application for appeal will be made – the centre must submit the application to the awarding organisation where the learner asks them to do so.

We think it is appropriate that learners should have the same access to the EPRS as they will have to the appeals process.

Ofqual does not regulate centres and does not have a written and enforceable agreement with centres (as an awarding organisation must) under which a centre could be instructed to submit applications to EPRS on behalf of learners. We consider the best way to make sure learners this summer have the same access to the EPRS as they have to awarding organisation appeals is to allow learners to make applications themselves, following the conclusion of their appeal to the awarding organisation.

We therefore propose to accept applications from any learner who is awarded a relevant qualification in summer 2021 and who has completed the awarding organisation's appeals process.

We will review the information we publish about the EPRS and about making an application for EPRS review to make sure it is accessible to learners, their parents and carers.

It will still be possible for a centre to submit an application to EPRS on behalf of a learner, or learners, where they consider this appropriate and where the learner consents. We will adjust our procedures to prevent duplicate applications being considered.

Question 7

To what extent do you agree or disagree with our proposal that in summer 2021 EPRS should accept applications from learners as well as from centres?

Equality impact analysis

The changes we propose to make to the Terms of Reference for EPRS reflect the policy and regulatory decisions made earlier this year and are intended to make sure the EPRS is at least as accessible this year as it is in a normal year, when exams take place. We do not think our proposals will have any impact on persons who share protected characteristics which has not already been identified and taken into account in our earlier decisions.

Question 8

Do you consider there are any equalities impacts arising from our proposed temporary changes to the Terms of Reference for EPRS which we have not otherwise identified?

Regulatory impact analysis

The changes we propose to make to the Terms of Reference for EPRS reflect the policy and regulatory decisions made earlier this year and are intended to make sure the EPRS is at least as accessible this year as it is in a normal year, when exams take place.

We do not think our proposals will have any impact on awarding organisations or centres which has not already been identified and taken into account in our earlier decisions.

Question 9

Do you consider there are any regulatory impacts arising from our proposed temporary changes to the Terms of Reference for EPRS which we have not otherwise identified?

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 dp.requests@ofqual.gov.uk or write to us at: Data Protection Officer, Ofqual, Earlsdon Park, 53-55 Butts Road, Coventry, CV1 3BH.

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 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.



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Information Policy Team, The National Archives, Kew, London TW9 4DU

Published by:

ofqual

Earlsdon Park
53-55 Butts Road
Coventry
CV1 3BH

0300 303 3344

public.enquiries@ofqual.gov.uk

www.gov.uk/ofqual