

Requirements on setting GCSE (9 to 1) grade boundaries

Consultation on Conditions, requirements and guidance



November 2016

Ofqual/16/6128

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1. About this consultation

- 1.1 We are seeking views on our proposed technical requirements for setting GCSE (9 to 1) grade boundaries. This follows on from our earlier consultations: *Setting the grade standards of new GCSEs in England – part 2*¹ in April 2016; and *Setting the Grade Standards of New GCSEs in England*² in April 2014. We announced our decisions³ and published the analysis⁴ of the consultation to which this technical consultation relates on 7 September 2016.
- 1.2 This consultation is about the Conditions, requirements and guidance we propose to put in place to implement some of these decisions. It includes our proposed requirements and guidance for setting grade boundaries for all GCSE (9 to 1) qualifications⁵. We have consulted previously and announced our decisions⁶ for GCSE (A* to G), AS and A level qualifications and the equivalent requirements for these qualifications are already in place.
- 1.3 We are putting new requirements in place now as GCSE (9 to 1) qualifications have not previously been awarded, therefore no such requirements exist. Our requirements are designed to protect students taking the new qualifications, particularly in the first year when teachers will be less familiar with the new content and how it is assessed. They are designed to carry forward the standard in subsequent years. Whilst these qualifications are new, the principles and approaches used reflect those that are established and have been used previously in GCSEs.
- 1.4 Our proposed requirements would put in place the approach on which we have previously consulted and that, following earlier consultation, we have already announced we will adopt. This consultation is on the specific wording we propose to use for the Conditions, requirements and guidance that will give effect to our earlier decisions.

¹ <https://www.gov.uk/government/consultations/setting-the-grade-standards-of-new-gcses-in-england-2017-2018>

² <http://comment.ofqual.gov.uk/setting-the-grade-standards-of-new-gcses-april-2014/>

³ https://www.gov.uk/government/consultations/setting-the-grade-standards-of-new-gcses-in-england-2017-2018#attachment_1708642

⁴ https://www.gov.uk/government/consultations/setting-the-grade-standards-of-new-gcses-in-england-2017-2018#consultation_public_feedback_8123

⁵ The processes for setting grade boundaries are not used in the separately reported spoken language assessments in GCSE(9 to 1) English language, which are awarded a Pass, Merit or Distinction, not a 9 to 1 grade.

⁶ <https://www.gov.uk/government/consultations/requirements-on-setting-gcse-as-and-a-level-grade-boundaries>

- 1.5 We also propose to remove a requirement from the *GCSE Subject Level Conditions and Requirements for Mathematics*⁷ and *GCSE Subject Level Conditions and Requirements for Modern Foreign Languages*⁸. This is because these subject level requirements duplicate a requirement that we propose to put in place at qualification level. This will not alter the way the grade boundaries for these qualifications are set, but will avoid unnecessary duplication between our requirements.
- 1.6 This consultation does not include the requirements for all of the decisions we announced. In addition to the requirements we are consulting on here, we publish requirements relating to grade standards⁹ each year for all GCSE, AS and A level qualifications. These procedures set out requirements for awarding organisations to provide data about GCSEs, A levels, AS levels and Level 1 and 2 certificates, as appropriate, to Ofqual along with any specific requirements relating to grade standards in a particular year. In future, we will include in this the process exam boards must use for setting the grade 8/9 boundary and for referencing between current (alphabetical) and new (numerical) grades to set standards in the new qualifications. We have already decided and published the approach exam boards must take when setting this grade boundary.

⁷ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-mathematics>

⁸ <https://www.gov.uk/government/publications/gcse-9-to-1-subject-level-conditions-and-requirements-for-modern-foreign-languages>

⁹ See, for example: <https://www.gov.uk/government/publications/data-exchange-procedures-for-a-level-gcse-level-1-and-2-certificates>

2. Consultation summary

- 2.1 Following analysis of responses to our consultation in April, we propose to implement the proposals on which we consulted¹⁰.
- 2.2 We propose to introduce a qualification level Condition which requires exam boards to comply with any requirements we set, and have regard to any guidance we provide, in relation to setting specified levels of attainment.
- 2.3 We propose to introduce a qualification level Condition requiring exam boards to have regard to an appropriate range of evidence when setting specified levels of attainment, supported with guidance providing examples of such evidence. Our proposed Conditions would require exam boards to maintain a record of the evidence they use, and their rationale for selecting such evidence.
- 2.4 We propose qualification-specific requirements about the way in which grade boundaries should be set. These will be similar to the approaches used in other qualifications (GCSE (A* to G), AS and A levels).
- 2.5 We have already consulted on the approach we intend to use. We are now consulting only on the proposed wording of the requirements.
- 2.6 We propose to remove one requirement from the *GCSE Subject Level Conditions and Requirements for Mathematics* and *GCSE Subject Level Conditions and Requirements for Modern Foreign Languages*. These existing requirements duplicate a qualification level requirement we propose to introduce through this consultation.
- 2.7 Some of the requirements we plan to introduce will not be set through qualification level Conditions or guidance. Instead, and in line with existing practice, we will include them in the requirements relating to grade standards that we publish each year. This will include the detailed process for setting the grade 8/9 boundary and for referencing between current (alphabetical) and new (numerical) grades to set standards in the new qualifications. We are not, therefore, consulting on these requirements. They will be included when we update the document each year.

¹⁰ <https://www.gov.uk/government/consultations/setting-the-grade-standards-of-new-gcses-in-england-2017-2018>

3. Setting specified levels of attainment

- 3.1 We propose to put in place new Conditions, requirements and guidance to implement our proposals. We explain below each area where we will introduce rules or guidance.
- 3.2 We are putting in place rules which will apply to all GCSE (9 to 1) qualifications. We will do this through qualification level Conditions and requirements. We will supplement this with qualification level guidance.

Compliance with Ofqual's requirements in setting specified levels of attainment

- 3.3 We propose to introduce a Condition to make sure that exam boards comply with any requirements we set in relation to setting specified levels of attainment. The Condition will also require exam boards to have regard to any guidance we publish in relation to setting specified levels of attainment. Such requirements and guidance will include those proposed in this consultation together with, for example, the requirements relating to grade standards which we publish each year.

Evidence used in setting specified levels of attainment

- 3.4 We propose to introduce a Condition to require exam boards to base decisions on setting specified levels of attainment on an appropriate range of qualitative and quantitative evidence. We also propose to provide guidance to set out what this evidence might be.
- 3.5 Our proposed Condition will require that exam boards have regard to information about:
- the level of difficulty of assessments for a qualification compared to any previous assessments. Evidence might include senior examiner reports on how candidates have performed in the paper, as well as quantitative information such as mark distributions, the mean mark, the spread of marks and item-level statistics;
 - how candidates have performed on the assessments. Evidence might include samples of work from candidates taking the qualification;
 - the cohort of candidates taking the assessment. Evidence might include prior attainment data (for example, candidates' attainment at Key Stage 2 is currently used for setting grade boundaries in GCSEs);
 - how previous candidates performed in prior assessments or prior qualifications. Evidence might include archived candidate work from

previous exams, or data about whether exam boards' standards were aligned in previous assessments.

- 3.6 We propose to introduce a Condition that will require an exam board to maintain a record of the evidence it has used in setting specified levels of attainment and its rationale for the selection of and weight given to that evidence.
- 3.7 We propose to put in place guidance to help exam boards understand the type of evidence that may be appropriate for meeting this Condition.

Technical requirements for setting specified levels of attainment for GCSE (9 to 1) qualifications.

- 3.8 The technical requirements set out in detail the way in which exam boards set grade boundaries. The requirements we propose reflect those that are used in other similar qualifications (GCSE (A* to G), AS and A levels) which are well established and have been used by exam boards for a number of years.
- 3.9 These requirements set out the way in which grade boundaries should be set. They set out requirements for the qualification as a whole and also requirements for both tiered and non-tiered components and qualifications.
- 3.10 We include our proposed technical requirements for these qualifications in section 6.

4. Consequential amendments

4.1 As a result of the requirements we propose to put in place following this consultation, we propose to make a minor change to the following subject level documents:

- *GCSE Subject Level Conditions and Requirements for Mathematics*
- *GCSE Subject Level Conditions and Requirements for Modern Foreign Languages*

4.2 The tiering requirements in both of these documents contain the following requirement, which we propose to remove:

6. The 3/U grade boundary for higher tier assessments is provisionally set by subtracting half the mark interval between the 5/4 and 4/3 grade boundaries (rounding up half marks) from the 4/3 boundary.

4.3 We propose to remove this because it duplicates part of the following qualification level requirement which we propose to introduce through this consultation.

6e). In a tiered GCSE qualification, the 3/U boundary on the higher tier is provisionally set by subtracting half the mark interval between the 5/4 and 4/3 boundaries (rounding up half marks) from the 4/3 boundary. Where a review of statistical and technical evidence leads the awarding organisation to judge that the 3/U boundary should be set at a different mark, consideration must be given to moving the grade 3/U boundary, and the reasons for this must be recorded.

4.4 These amendments will not change what is actually required; we are only changing where within our regulations the requirement sits. This will ensure our requirements are clear and will remove unnecessary duplication.

Question 1: Do you have any comments on our proposal to remove the requirement (detailed in paragraph 5.2 of this consultation) in the *GCSE Subject Level Conditions and Requirements for Mathematics* and *GCSE Subject Level Conditions and Requirements for Modern Foreign Languages*?

5. Our proposed Conditions, requirements and guidance for setting specified levels of attainment for GCSE (9 to 1) qualifications

5.1 As set out above, we are proposing to introduce qualification-specific Conditions, requirements and guidance to implement the proposals in our previous consultation.

Proposed Conditions and requirements for setting specified levels of attainment in GCSE (9 to 1) qualifications

5.2 We are proposing to introduce the following Conditions and requirements which will apply to all GCSE (9 to 1) qualifications:

- Conditions in relation to standard setting
- Requirements on the specified levels of attainment to be used in GCSE (9 to 1) qualifications
- Requirements on standard setting for GCSE (9 to 1) qualifications

Condition GCSE9	Standard setting
GCSE9.1	<p>In respect of each GCSE Qualification which it makes available, an awarding organisation must comply with any requirements, and have regard to any guidance, which may be published by Ofqual and revised from time to time in relation to –</p> <p>(a) the promotion of consistency between the measurement of Learners' levels of attainment in that qualification and similar qualifications made available by other awarding organisations, and</p> <p>(b) the setting of specified levels of attainment.</p>
GCSE9.2	<p>In setting the specified levels of attainment for a GCSE Qualification which it makes available, an awarding organisation must have regard to an appropriate range of qualitative and quantitative evidence.</p>
GCSE9.3	<p>In respect of each GCSE Qualification which it makes available, the range of evidence to which an awarding organisation has regard for the purposes of Condition GCSE9.2 will only be appropriate if it includes evidence of –</p>

	<ul style="list-style-type: none">(a) the Level of Demand of the assessments for that qualification,(b) the level of attainment demonstrated in those assessments by an appropriately representative sample of Learners taking that qualification,(c) the level of attainment demonstrated by Learners taking that qualification in a –<ul style="list-style-type: none">(i) prior assessment (which was not for that qualification), whether or not that assessment was for a regulated qualification, or(ii) prior qualification, whether or not that qualification was a regulated qualification, and(d) following the first year in which the qualification is awarded, the level of attainment demonstrated by Learners who have previously been awarded the qualification.
GCSE9.4	<p>An awarding organisation must maintain a record of –</p> <ul style="list-style-type: none">(a) the evidence to which it has had regard in setting the specified levels of attainment for each GCSE Qualification which it makes available, and(b) its rationale for the selection of and weight given to that evidence.

Requirements in relation to the specified levels of attainment to be used for GCSE Qualifications

Condition GCSE3.1 allows us to specify requirements and guidance in relation to the setting of specified levels of attainment for GCSE Qualifications.

We set out below our requirements for the purposes of Condition GCSE3.1.

Specified levels of attainment for GCSE Qualifications other than double award qualifications

Except as provided for in the Subject Level Conditions and Requirements¹¹ for a GCSE Qualification which it makes available, other than a GCSE double award qualification, an awarding organisation must ensure that the specified levels of attainment take the form of a nine-point scale from 9 to 1, where 9 represents the highest level of attainment.

A Learner who does not meet the criteria to be awarded a specified level of attainment on the nine-point scale must be issued with a result of 'unclassified'.

Specified levels of attainment for GCSE double award qualifications

An awarding organisation must ensure that the specified levels of attainment for a GCSE double award qualification which it makes available take the form of a 17-point scale in the following format, with 9-9 representing the highest level of attainment –

9-9, 9-8, 8-8, 8-7, 7-7, 7-6, 6-6, 6-5, 5-5, 5-4, 4-4, 4-3, 3-3, 3-2, 2-2, 2-1, 1-1

A Learner who does not meet the criteria to be awarded a specified level of attainment on the above scale must be issued with a result of 'unclassified'.

Requirements for setting specified levels of attainment for GCSE Qualifications

Condition GCSE9.1(b) allows us to specify requirements and guidance in relation to the setting of specified levels of attainment for GCSE Qualifications.

We set out below our general requirements for the purposes of Condition GCSE9.1(b). We will publish additional specific requirements from time to time, including in relation to the setting of particular specified levels of attainment.

For ease of reference, the specified levels of attainment used in GCSE Qualifications are referred to below as 'grades'.

These requirements apply to assessments for GCSE Qualifications that are graded using the 9 to 1 or 9-9 to 1-1 scales.

Setting grade boundaries for all GCSE Qualifications

1. For non-double award GCSE qualifications, the four key grade boundaries are:

¹¹ Currently different provision is made for the specified levels of attainment to be used in spoken language assessments for GCSE Qualifications in English Language.

- a) 1/U
 - b) 4/3
 - c) 7/6
 - d) 9/8
2. For double award GCSE qualifications, the four key grade boundaries are:
- a) 1-1/U
 - b) 4-4/4-3
 - c) 7-7/7-6
 - d) 9-9/9-8
3. An awarding organisation must set these key grade boundaries for each Component where they apply. In doing this, the awarding organisation must have regard to achieving suitable qualification level outcomes.
4. An awarding organisation must set key grade boundaries for each GCSE Qualification as a whole using the following method:
- a) The boundary mark for each Component is scaled as necessary to reflect the intended weighting of that Component as detailed in the specification.
 - b) The resulting scaled Component boundary marks are added and the result is rounded to the nearest whole number (0.5 is rounded up).
5. In setting the key grade boundaries an awarding organisation must:
- a) in the first year in which a GCSE Qualification is awarded¹², comply with any specific requirements that Ofqual may set¹³,
 - b) in compliance with Condition H3.1, in the second and subsequent years of awarding, set each key grade boundary so as to ensure consistency with

¹² For the purposes of these requirements, the reference to the first year in which a GCSE Qualification is awarded means the first year in which a GCSE Qualification in the same subject is awarded by any awarding organisation. It does not mean the first year in which each particular awarding organisation awards a GCSE Qualification in that subject. Where an awarding organisation (A) first awards a GCSE Qualification in a subject and a GCSE Qualification in the same subject has already been awarded by another awarding organisation (B), awarding organisation A must follow the process described in the section on setting grade boundaries from the second year of award onwards.

¹³ For clarity, this is without prejudice to the obligation under Condition GCSE9.1 for an awarding organisation to comply with any additional requirements set by Ofqual in relation to subsequent years.

the standard set for the same grade boundary in the first year in which the qualification is awarded, and

- c) without prejudice to the requirements in paragraphs 2(a) and 2(b), have regard to achieving suitable qualification level outcomes.

Setting remaining grade boundaries for non-double award GCSE Qualifications

6. After setting the key grade boundaries as outlined above, an awarding organisation must set the 8/7, 6/5, 5/4, 3/2 and 2/1 qualification grade boundaries as follows. Where there is a remainder of one or more marks, one extra mark is added in turn to successive grade intervals, starting with the highest grade interval:
 - a) The 8/7 boundary must be set by dividing the mark interval between the 9/8 and 7/6 boundaries by two.
 - b) For non-tiered qualifications and at higher tier in tiered qualifications, the 6/5 and 5/4 boundaries must be set by dividing the mark interval between the 7/6 and 4/3 boundaries by three.
 - c) The 3/2 and 2/1 boundaries must be set by dividing the mark interval between the 4/3 and 1/U boundaries by three.
 - d) At foundation tier in tiered qualifications, the 5/4 boundary is provisionally set at the same number of marks above the 4/3 boundary as the 4/3 boundary is above the 3/2 boundary. The 5/4 boundary is adjusted as necessary using statistical and technical evidence to align with the standard of grade 5 at the higher tier.
 - e) In a tiered GCSE qualification, the 3/U boundary on the higher tier is provisionally set by subtracting half the mark interval between the 5/4 and 4/3 boundaries (rounding up half marks) from the 4/3 boundary. Where a review of statistical and technical evidence leads the awarding organisation to judge that the 3/U boundary should be set at a different mark, consideration must be given to moving the grade 3/U boundary, and the reasons for this must be recorded.

Setting remaining grade boundaries for double award GCSE qualifications

7. After setting the key grade boundaries as outlined above, an awarding organisation must set the remaining qualification grade boundaries as follows. Where there is a remainder of one or more marks, one extra mark is added in turn to successive grade intervals, starting with the highest grade interval:

- a) The 9-8/8-8, 8-8/8-7 and 8-7/7-7 grade boundaries must be set by dividing the mark interval between the 9-9/9-8 and 7-7/7-6 boundaries by four.
- b) For non-tiered qualifications and at higher tier in tiered qualifications, the 7-6/6-6, 6-6/6-5, 6-5/5-5, 5-5/5-4 and 5-4/4-4 grade boundaries must be set by dividing the mark interval between the 7-7/7-6 and 4-4/4-3 boundaries by six.
- c) The 4-3/3-3, 3-3/3-2, 3-2/2-2, 2-2/2-1 and 2-1/1-1 grade boundaries must be set by dividing the mark interval between the 4-4/4-3 and 1-1/U boundaries by six.
- d) At foundation tier in tiered qualifications, the 5-5/5-4 boundary is provisionally set at the same number of marks above the 4-4/4-3 boundary as the 4-4/4-3 boundary is above the 3-3/3-2 boundary. The 5-5/5-4 boundary is adjusted as necessary using statistical and technical evidence to align with the standard of grade 5-5 at the higher tier. The 5-4/4-4 boundary must be set by dividing the mark interval between the 5-5/5-4 and 4-4/4-3 boundaries by two.
- e) In a tiered GCSE double award qualification, the 4-3/U boundary on the higher tier is provisionally set by subtracting half the mark interval between the 5-4/4-4 and 4-4/4-3 boundaries (rounding up half marks) from the 4-4/4-3 boundary. Where a review of statistical and technical evidence leads the awarding organisation to judge that the 4-3/U boundary should be set at a different mark, consideration must be given to moving the grade 4-3/U boundary, and the reasons for this must be recorded.

Carrying forward non-examination Component marks

8. So long as the requirements in Condition E10.1 are met, an awarding organisation may permit a Learner to carry forward his or her mark/moderated mark (scaled as appropriate) for an assessment which is not an Assessment by Examination from a previous attempt at the same GCSE Qualification awarded by the awarding organisation.

Proposed guidance for setting specified levels of attainment in GCSE (9 to 1) qualifications

5.3 We are proposing to introduce the following guidance which will apply to all GCSE (9 to 1) qualifications:

- Guidance on standard setting

Guidance on standard setting for GCSE Qualifications

Condition GCSE9.1(b) allows us to specify requirements and guidance in relation to the setting of specified levels of attainment for GCSE Qualifications.

We set out below our guidance for the purposes of Condition GCSE9.1(b).

Condition GCSE9.2 states that in setting the specified levels of attainment for a GCSE Qualification which it makes available, an awarding organisation must have regard to an appropriate range of qualitative and quantitative evidence.

Condition GCSE9.3 states that such evidence will only be appropriate if it includes evidence of –

- (a) the Level of Demand of the assessments for that qualification,
- (b) the level of attainment demonstrated in those assessments by an appropriately representative sample of Learners taking that qualification,
- (c) the level of attainment demonstrated by Learners taking that qualification in a –
 - (i) prior assessment (which was not for that qualification), whether or not that assessment was for a regulated qualification, or
 - (ii) prior qualification, whether or not that qualification was a regulated qualification, and
- (d) following the first year in which the qualification is awarded, the level of attainment demonstrated by Learners who have previously been awarded the qualification.

Without prejudice to the requirements set by Ofqual in relation to the weight to be given to statistical evidence in the first year of awards, examples of the evidence that may be used by an awarding organisation in setting the specified levels of attainment for a GCSE Qualification which it makes available may include –

- question papers/tasks and final mark schemes,

- senior Assessor input into decisions, for example comments on how the assessments have worked and recommendations for the setting of specified levels of attainment,
- technical information about how the assessments have functioned, for example mark distributions, mean marks, standard deviations, item-level statistics,
- samples of current Learners' work selected from a range of Centres and assessed/Moderated by Assessors/moderators whose work is known to be reliable,
- details of changes in entry patterns and choices of options,
- archive Learners' work exemplifying specified levels of attainment in previous assessment series for the qualification, together with the relevant question papers/tasks and mark schemes,
- inter-awarding organisation screening data for GCSE Qualifications,
- pertinent material deemed to be of equivalent standard from similar qualifications or other relevant qualifications,
- information on Learners' performance in previous assessment series, and
- marking guides for assessments where the evidence is of an ephemeral nature.

In addition, in setting the specified levels of attainment for a GCSE Qualification that it makes available, we expect an awarding organisation to have regard, as appropriate, to the level of attainment demonstrated by Learners who have taken a pre-reform GCSE qualification in –

- (a) the same subject, or
- (b) where there was no pre-reform GCSE qualification in the same subject, a similar subject.

We expect the weight placed on such evidence to decrease over successive assessment series as the awarding organisation builds an archive of evidence of the level of attainment demonstrated by Learners in the GCSE Qualification itself.

In determining whether it has sufficient evidence of the level of attainment demonstrated in the assessments for a GCSE Qualification by an appropriate percentage of the Learners taking that qualification, an awarding organisation should consider whether the marks on its system reflect –

- all possible routes through the qualification, and

- a representative proportion of Learners' marks for the qualification.

Questions on proposed Conditions, requirements and guidance for GCSE (9 to 1) qualifications

Question 2: Do you have any comments on our proposed Conditions and requirements for GCSE (9 to 1) qualifications?

Question 3: Do you have any comments on our proposed guidance for GCSE (9 to 1) qualifications?

6. Impact analysis

Equality analysis relating to setting specified levels of attainment in GCSE (9 to 1) qualifications

- 6.1 We are subject to the public sector equality duty. We have set out in Appendix A how this duty interacts with our statutory objectives and other duties.
- 6.2 We set out in our previous consultation our analysis of the impact of our proposals. Our previous analysis is available on our website¹⁴. We have not identified any new impacts arising from the proposals outlined in this consultation on persons who share protected characteristics.

Regulatory impact analysis relating to setting specified levels of attainment in GCSE (9 to 1) qualifications

- 6.3 We have considered the regulatory impact of introducing these requirements. Whilst exam boards will need to familiarise themselves with any new requirements, these largely reflect established processes which exam boards are familiar with.
- 6.4 We consider it important that we set requirements in this area to ensure the standards of GCSE (9 to 1) qualifications and consider it proportionate and necessary to set these requirements.

¹⁴ <https://www.gov.uk/government/consultations/setting-the-grade-standards-of-new-gcses-in-england-2017-2018>

7. How to respond to this consultation

The closing date for responses is 6 January 2017 at 23:45.

Please respond to this consultation in one of three ways:

- complete the online response at <https://www.surveymzmo.com/s3/3211311/Requirements-on-setting-GCSE-9-to-1-grade-boundaries>
- download the response form from <https://www.gov.uk/government/consultations/requirements-on-setting-gcse-9-to-1-grade-boundaries> and either:
 - email your response to consultations@ofqual.gov.uk – please include the consultation title ‘Requirements on setting GCSE(9 to 1) grade boundaries’ in the subject line of the email and make clear who you are and in what capacity you are responding
 - post your response to: Requirements on setting GCSE(9 to 1) grade boundaries, Ofqual, Spring Place, Herald Avenue, Coventry, CV5 6UB, making clear who you are and in what capacity you are responding

Evaluating the responses

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity. We will therefore only consider your response if you complete the information page.

Any personal data (such as your name, address and any other identifying information) will be processed in accordance with the Data Protection Act 1998 and our standard terms and conditions.

We will publish the evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Please respond by 6 January 2017 at 23:45.

8. Appendix A - Ofqual's role, objectives and duties

Our statutory objectives include the qualifications standards objective, which is to secure that the qualifications we regulate:

(a) give a reliable indication of knowledge, skills and understanding; and

(b) indicate:

(i) a consistent level of attainment (including over time) between comparable regulated qualifications; and

(ii) a consistent level of attainment (but not over time) between qualifications we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate.

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

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

As a public body, we are subject to the public sector equality duty¹⁵. 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 exam boards that design, deliver and award GCSE, A level and AS qualifications are required by the Equality Act, among other things, to make reasonable adjustments for disabled people taking their qualifications, except where we have specified that such adjustments should not be made.

¹⁵ Equality Act 2010, s.149

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

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

Legislation therefore sets out a framework within which we must operate. We are subject to a number of duties and we must aim to achieve a number of objectives. These different duties and objectives can, from time to time, conflict with each other. For example, if we regulate to secure that a qualification gives a reliable indication of a student's knowledge, skills and understanding, a student who has not been able to demonstrate the required knowledge, skills and/or understanding will not be awarded the qualification. A person may find it more difficult, or impossible, to demonstrate the required knowledge, skills and/or understanding because they have a protected characteristic. This could put them at a disadvantage relative to others who have been awarded the qualification. It is not always possible for us to regulate so that we can both secure 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, rational decision.

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

We require the exam boards to design qualifications to give a reliable indication of the knowledge, skills and understanding of those on whom they are conferred. We also require the exam boards to avoid, where possible, features of a qualification that could, without justification, make a qualification more difficult for a student to achieve because they have a particular protected characteristic. We require exam boards to monitor whether any features of their qualifications have this effect.

In setting the overall framework within which exam boards will design, assess and award GCSE, A level and AS qualifications, we want to understand the possible impacts of the proposals on persons 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

It should be noted that 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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