

Ofqual Board

Paper 27/17(ii)

Date:

12 July 2017

Title:

Updating our Regulatory Framework for National Assessments

Report by:

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Responsible Director:

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Paper for decision

Open paper, with some sections and phrases closed.



Issue

1. The ASCL Act requires Ofqual to publish regulatory frameworks for National Curriculum and Early Years Foundation Stage (EYFS) assessments¹. We published our current Framework, covering both, in 2011. It is now due for review.
2. Since 2011, there have been changes to roles and responsibilities at the Department for Education (DfE), notably, the creation of the Standards and Testing Agency (STA). Our approach to regulation has also developed, to focus on the validity of assessments and qualifications.
3. In May 2017, the Education Select Committee's report into primary assessment² found that there was a lack of external clarity over Ofqual's responsibilities. The report recommended that our role should be reviewed. As part of our evidence to the Select Committee, we

¹ In our framework and in this paper, we refer to both National Curriculum assessments and Early Years Foundation Stage assessments as 'National Assessments'.

² Paragraphs 18 and 19. The full report can be accessed at:
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmeduc/682/68202.html>

committed to reviewing our National Assessments Regulatory Framework³.

Recommendation

4. The Board is asked to agree that:
 - a. we should review, consult on, and update our *Regulatory Framework for National Assessments* to ensure it is up-to-date and reflects our regulatory approach, to meet our commitment to the Select Committee and to provide greater clarity about our role.
 - b. whilst the revised Framework should reflect our focus on validity, it should also continue to operate at a high level, maximising our ability to oversee and focus on any aspects of National Assessment arrangements necessary to meet our statutory objectives.

Background

5. The Secretary of State is responsible for specifying National Curriculum and Early Years assessment arrangements and may impose functions on other bodies to develop and implement them.
6. Ofqual's powers, duties and objectives relating to National Assessments are different to those relating to qualifications and awarding organisations. Our General Conditions of Recognition do not apply to National Assessments or STA; we do not have powers to direct or fine. Our role is to keep National Assessments arrangements under review and to report to Parliament in line with our statutory objectives to promote standards and public confidence⁴.
7. We have powers to require information to enable us to carry out our review function and we must report to the Secretary of State and/or any other relevant responsible body⁵ if we believe there is or is likely to be a significant failure in assessment arrangements⁶. We also have a role providing advice on assessment policy to the Department: the Secretary of State must consult Ofqual before making changes to National Assessment arrangements.

³ Paragraph 10 of Ofqual's written evidence, October 2016:
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/education-committee/primary-assessment/written/42564.html>

⁴ <http://www.legislation.gov.uk/ukpga/2009/22/part/7/chapter/3/crossheading/review-etc-of-regulated-assessment-arrangements>

⁵ Responsible bodies are those organisations who have roles in the development, implementation or monitoring of National Assessment arrangements, including STA; local authorities; headteachers of maintained schools and early years providers.

⁶ This duty was given to Ofqual in light of high-profile delivery failures in 2008, when test results were returned late to schools due to failures related to a newly contracted marking supplier.

8. This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

9. As part of our duties, Ofqual must prepare and publish a regulatory framework for National Assessments that:
 - a. sets out our role and responsibilities in relation to National Assessment arrangements and how we will meet them; and
 - b. provide guidance to bodies responsible for developing, implementing and monitoring National Assessment arrangements.
10. Before revising our Framework, we must consult the Secretary of State, responsible bodies and anyone else we consider appropriate.

Analysis

11. We published our current Regulatory Framework in 2011⁷. Both the Framework, and our oversight at the time, included a focus on delivery arrangements, such as procurement and logistics, reflecting contemporary concerns.

This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

13. We have set out our intention to review our Regulatory Framework in the past, most recently in evidence to the Select Committee's recent inquiry into primary assessment.⁸

⁷ <https://www.gov.uk/government/publications/regulatory-framework-for-national-assessments>

⁸ Paragraph 10 of Ofqual's written evidence, October 2016:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/education-committee/primary-assessment/written/42564.html>

Ofqual's oral evidence can be accessed at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/education-committee/primary-assessment/oral/47889.html>

Ofqual's additional written evidence can be accessed at:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/education-committee/primary-assessment/written/68993.html>

14. The Select Committee's recent report on primary assessment found that *"there is a lack of clarity over the responsibilities of the Minister, STA and Ofqual through the development process of national curriculum assessments."* It recommended *"an independent review of Ofqual's role in national curriculum assessments to ascertain whether the regulator should have greater oversight."*⁹

This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

16. We plan to consult on our revised Framework following publication of the government response to the Select Committee report. We are seeking to:
- a. make good on our promises to review our Framework and respond to the recommendation that our role should be reviewed;
 - b. provide external stakeholders (including STA) with greater clarity about our role and what that means in practice;
 - c. reflect the shift in focus of our regulatory approach from delivery to validity;
 - d. bring the Framework up to date and improve its clarity for a non-expert audience;
 - e. make sure that our Framework continues to provide us with the latitude to review any aspect of National Assessments arrangements necessary to meet our objectives.

This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

⁹ <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmeduc/682/68202.html>

Finance and Resource

18. A business case for £12,000 has been approved for the external legal support needed to carry out this review.

Impact Assessments

Equality Analysis

19. As a public body, Ofqual has a statutory duty to promote equality and eliminate unlawful discrimination. This informs our work programme for National Assessments and we would expect to continue to reference this duty in our revised Framework. Whilst we have not identified any impacts on equality arising from our Framework review at this stage, we will carry out an equality impact assessment and will seek views through our consultation.

This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

Regulatory Impact Assessment

23. Our regulatory activity relates predominantly to the STA. Responsible bodies that must 'have regard to' our Framework also include STA's suppliers and Local Authorities (who collect data and moderate on behalf of STA). We This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

will monitor for potential regulatory burdens as the project progresses. We hope that

the changes we propose will make our framework easier for responsible bodies to understand.

This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

Communications

25. We will consult publicly and engage with key stakeholders This section has been redacted,

26. Whilst we do not expect to receive a large number of consultation responses, we will use this opportunity to generate greater understanding of our role amongst key stakeholder groups. This in itself could address some of the concerns raised by the Select Committee about a lack of clarity amongst stakeholders about our role in relation to National Assessments.

Internal Stakeholders

27. Key internal stakeholders involved with this work are: the Director of National Assessments, the Regulation Development and Impact team and the Legal team. The General Qualifications Strategic Relationships team has an interest in our overall relationship with the Department and are being kept updated on this work.

This section has been redacted, as its publication would be prejudicial to the effective conduct of public affairs.

Paper to be published	YES (open sections only)
Publication date (if relevant)	With minutes
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA), please include references to specific paragraphs	<p><i>Prejudicial to the effective conduct of public affairs:</i></p> <p><i>Paras 8, 12, 15, 17, 20-22, 23 24, 25, 28</i></p> <p><i>Relates to the formulation or development of government policy:</i></p> <p><i>Paras 15 and 24</i></p>