



**8 November 2017**  
**Memorandum of Understanding**  
Between  
**The Education and Skills Funding Agency**  
And  
**The Office of Qualifications and Examinations Regulation**

### **Introduction**

1. This MoU is intended to support effective working arrangements between the Education and Skills Funding Agency and the Office of Qualifications and Examinations Regulation.
2. Throughout this MoU, the Education and Skills Funding Agency may be referred to as ESFA and the Office of Qualifications and Examinations Regulation as Ofqual, and collectively as 'we', with the expressions 'our' and 'us' being used accordingly.
3. This MoU is not intended to cover every detailed aspect of the working relationship between us. It is a statement of principles that will guide relations to ensure appropriate arrangements are in place to enable us to discharge our respective responsibilities effectively and to avoid duplication of effort, misunderstanding or unnecessary impact on third parties.

### **Status of the Memorandum of Understanding**

4. Although not legally binding this MoU will serve as a working document that will be subject to review in the light of operational practice.
5. This MoU may be supported by further and more detailed operational agreements, particularly in relation to the sharing of information.
6. This MoU should be considered in the context of the applicable legislation (Apprenticeships, Skills, Children and Learning Act 2009 and the Further Education Loans Regulations 2012 and subsequent amendments).

### **Roles of the ESFA and Ofqual**

7. **The Education and Skills Funding Agency (ESFA)** is an executive agency of the Department for Education and is accountable for funding education and training (excluding higher education) for children, young people and adults. The ESFA is also responsible for the regulation of academies, further education colleges, employers and training providers and for the delivery of major projects and operation of key services in the education and skills sector such as National Careers Service, the digital Apprenticeship Service and National Apprenticeship Service. The ESFA is also responsible for identifying providers eligible to deliver Advanced Learner Loans funded provision, for designating regulated qualifications for Advanced Learner Loans and calculating maximum loans amounts.
8. **The Office of Qualifications and Examinations Regulation (Ofqual)** is a non-ministerial government department set up under the Apprenticeships, Skills, Children and Learning

Act (2009) and also covered by the Education Act 2011. Ofqual is independent of government and reports directly to Parliament. Ofqual has a number of objectives that include statutory duties to secure and maintain qualification standards; to promote public confidence in and awareness of regulated qualifications; and to secure the efficiency of regulated qualifications.

### **Matters of common interest**

9. Whilst respecting our distinctive roles and responsibilities there are a number of areas of common interest. There will be circumstances where collaborative working between us will be the best way to enable us to discharge our respective regulatory and statutory responsibilities effectively and efficiently. This will be to our benefit and that of the awarding organisations that Ofqual regulates by avoiding duplication and unnecessarily increasing regulatory burden, and to the benefit of the learners, providers and employers who access and who use the qualifications and other provision which the ESFA makes eligible for government funding. Those areas of common interest include but are not limited to:

- End-point assessment of apprentice standards;
- Reducing the burden on organisations seeking Ofqual recognition as an Awarding Organisation and also seeking to enter the ESFA's register of End Point Assessment Organisations;
- The validity and reliability of qualifications which are on the Register of regulated qualifications and which ESFA may make eligible for funding;
- Working together to protect learners where there is a risk of organisational failure of an Awarding Organisation or mismanagement of public funds by such an organisation.

### **Implementing the MoU**

10. To support on-going good working relationships between us, we will aim to:

- identify what degree of joint working would be appropriate in any given circumstance, recognising that this will differ according to the specifics of the case;
- acknowledge each other's different responsibilities, accountability structures and legislative frameworks;
- aim through discussion to explain and understand the reasons for any differences of view;
- develop a deeper understanding of our respective roles and responsibilities;
- take advantage of the opportunities for co-ordinated scheduling of activities where appropriate and where there is benefit in doing so;
- notify each other in a timely and appropriate way where there is a likelihood of significant announcements and developments which may impact on each other's key areas of work. Where these matters are confidential, we will respect that confidentiality;
- inform each other in a timely and appropriate manner on policy and developments, engaging in early dialogue on matters that will impact on the work of the other;
- proactively seek solutions to avoid or mitigate the effects of any disagreement that may impact on the delivery of either organisation; and

- inform stakeholders about our relationship including publishing a copy of this Memorandum of Understanding on our respective websites.

11. Against this background we will aim to:

- hold at least one annual meeting between the Chief Regulator and Chief Executive, at least quarterly strategic and at least monthly operational meetings, to inform one another as soon as possible on relevant developments within our areas of responsibility and, where possible, before the release of any relevant reports, press releases, speeches or policies;
- communicate jointly on matters of mutual interest, when it is appropriate to do so;
- share information about programmes of work that would be of interest to the other in advance, where possible, of that work starting.

12. On a day-to-day basis, ESFA and Ofqual teams at working level should resolve issues. Those that cannot be resolved should be escalated to the relevant Executive Director at Ofqual and the Director of Funding Programmes at ESFA, who if necessary will take a decision to escalate to the Chief Executive of the ESFA and Chief Regulator for England, who will then be responsible for resolving the issue. Both organisations will commit to reaching a speedy resolution.

### **Exchange of Information**

13. Where appropriate and at all times operating in accordance with the Freedom of Information Act 2000, the Data Protection Act 1998 and any and all other legislation and contractual agreements, we will aim to share information we already hold where this is in the public interest with regards to promoting confidence in and quality of publically funded regulated qualifications.

14. Information provided by one of us to the other must be kept secure. Both parties will ensure that adequate arrangements are in place to protect the confidentiality of information provided. Both parties will also ensure that their own arrangements are acceptable to the other.

15. We will, in line with the Freedom of Information provisions on information provided in confidence, refer back to the originating party any requests for information we hold but did not collect and which we are aware is confidential in nature. We will make each other aware of any of any significant disclosure either of us intends to make to a third party of any information we received from that party.

16. Similarly, we will ensure all necessary checks and balances are in place should we be requested by another ministerial department, non-ministerial department, agency or other public body or devolved administration for information we have shared with each other.

### **Amendments to the Memorandum of Understanding**

17. If the MoU needs to be amended or altered, proposals should be made via monthly meetings. All changes need to be signed off by the Chief Executive of the ESFA and Chief Regulator for England or their delegated representatives within each organisation.

## Term and Termination

18. This MoU shall commence on the date of signature by all Parties, and shall continue, with any revisions, unless it is terminated in accordance with clause 18.
19. This MoU may be terminated by way of mutual agreement or at any time by either organisation by giving at least three months' notice in writing to the other party.

## Contacts

20. Lucy Sydney (Director of Strategic Relations for VTQ, Ofqual) and Janet Ryland (Head of Technical Education, Funding & Programmes, ESFA).

## Signed:

For ESFA



**Peter Lauener, Chief Executive**

**Date: 8 November 2017**

For Ofqual



**Sally Collier, Chief Regulator**

**Date: 22 November 2017**