

# **Regulating Apprenticeship End Point Assessments**

Consultation on Conditions, guidance and requirements for Ofqual-regulated Apprenticeship End Point Assessments (EPAs)



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## 1. Foreword

This consultation relates to Ofqual's external quality assurance of apprenticeship end-point assessments. It is about the rules and guidance we propose to apply, and those that we intend to disapply. Where we are not involved in regulating an end-point assessment, our rules will not apply.

The government is introducing new standards-based apprenticeships in England, led by the Institute for Apprenticeships (the Institute). Each new apprenticeship will require an apprentice to take an end-point assessment to complete their apprenticeship. The end-point assessment is an assessment of the knowledge, skills and behaviours that demonstrate the occupational competence required for the apprenticeship. It is intended to make sure the apprentice meets the standard set by employers and is fully competent in the occupation.

To make sure each end-point assessment is of the required standard, it must be subject to external quality assurance. There are four possible options for providing this external quality assurance. These are the Institute, Ofqual, professional bodies, or employer groups.

Where Ofqual is the external quality assurance provider, we will regulate the end-point assessment in the same way we regulate other qualifications – against our *General Conditions of Recognition*<sup>1</sup>. We propose however to make some slight changes to our requirements – as we do for qualifications such as GCSEs and A levels, and are proposing to do for reformed functional skills qualifications. This will make sure we can take account of the specific way that end-point assessments are delivered, by removing unnecessary rules, providing bespoke guidance, and ensuring the rules that we apply are appropriate.

We are interested in views on our proposed rules and guidance from anyone that has an interest in reformed apprenticeships. We think that this consultation is likely to be of particular interest to end-point assessment organisations. Our consultation questions can be answered either online or in hard copy. We look forward to hearing from you.

**Sally Collier**

**Chief Regulator**

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<sup>1</sup> <https://www.gov.uk/government/publications/general-conditions-of-recognition>

## 2. Executive summary

We are aiming to make sure we can perform our external quality assurance role effectively. We want to make sure that end-point assessment organisations develop and deliver valid assessments and that where they don't, we can take action to correct this. In doing this, we also want to make sure that our approach does not pose unnecessary burden on end-point assessment organisations and that we give clear guidance to help them understand how to meet our requirements.

To do this, we must ensure that we have the appropriate rules in place, and guidance to make sure end-point assessment organisations understand these rules. In the main, we propose to regulate end-point assessments against our existing rules – the *General Conditions of Recognition*. But because there are some differences between end-point assessments and other qualifications, we propose to remove some unnecessary rules, and make a small number of other end-point assessment specific changes. We have summarised these below.

### Rules we propose to remove

We propose to remove some rules that are not relevant for end-point assessments. Typically, this is where the way end-point assessments are delivered differs from other qualifications we regulate. Doing so will help remove unnecessary burden on end-point assessment organisations. Specifically, we propose to remove the following requirements:

- **E1 – Qualifications having an objective and support**, because this will be determined by the Institute, not the end-point assessment organisation
- **E7 – Total Qualification Time** and **E8 – Credit**, because these are rules that relate to measuring the size of qualifications, and the end-point assessment organisation will not be responsible for determining this.
- **I3 – The design and content of certificates and I4 – Issuing certificates and replacement certificates**, because the ESFA operates the process for issuing certificates on behalf of the Secretary of State – end-point assessment organisations do not issue apprenticeship certificates themselves.

### End-point assessment specific guidance

In most cases, we believe that our current rules are effective for end-point assessments. But to help end-point assessment organisations understand how they should be understood in relation to end-point assessments we propose to put in place end-point assessment specific guidance for the following areas.

- **A4 – Conflicts of interest**. This is an area where Ofqual sets expectations, as well as the Institute and the ESFA. Many of these relate to the need to ensure

the end-point assessment is carried out by someone independent. Our proposed guidance will explain this and also how an end-point assessment organisation should ensure it meets our rules.

- **C2 – Arrangements with Centres.** Where they are used in the delivery of qualifications, Ofqual sets requirements relating to centres. Most end-point assessments will not be delivered by centres though, so we are proposing guidance to make it clear in which circumstances our rules on centres do and do not apply.
- **D1 – Fitness for purpose of qualifications; E4 - Ensuring an assessment is fit for purpose and can be delivered; G1 - Setting the assessment.** A key aspect of our Conditions is that qualifications are fit for purpose. Achieving this involves balancing a number of sometimes competing factors. In addition, for end-point assessments, end-point assessment organisations must also meet the requirements of the assessment plan and apprenticeship standard. Our proposed guidance will help end-point assessment organisations decide how to balance these factors.
- **D3 – Reviewing approach.** Ofqual requires awarding organisations to keep qualifications under review. Separately, the Institute regularly reviews apprenticeship standards. To make sure our requirements do not duplicate the work of the Institute, we propose guidance explaining that the end-point assessment organisation’s review should take account of the Institute’s review.
- **E2 – Requirements on qualification titling.** To make sure qualification titles for end-point assessments, where Ofqual is the external quality assurance provider, are consistent with those where we are not, we propose guidance about the titles end-point assessment organisations should use.
- **E3 – Publication of a qualification specification.** For qualifications we regulate, we require awarding organisations to publish a specification to help users understand the qualification. For end-point assessments, there will also be an apprenticeship standard and assessment plan, which contain information about the apprenticeship. We propose guidance to explain how a specification will interact with these documents.
- **H1 – Marking the assessment and H2 – Moderation where an assessment is marked by a Centre.** These Conditions are about how an awarding organisation makes sure its assessments are marked accurately and consistently. End-point assessments will usually be marked by assessors, on behalf of the end-point assessment organisation. This model is different to that which many awarding organisations are used to – often, some marking is done

by centres on behalf of awarding organisations. We propose to put guidance in place to explain how these rules apply to end-point assessments.

- **H6 – Issuing results.** Our rules require awarding organisations to issue results. It is important that these results are not confused with the results for the overall apprenticeship. To make sure this is understood, we propose guidance to explain this.

## **End-point assessment specific rules**

To make sure our rules are appropriate, we propose a small number that will only apply to end-point assessments. Some of these are new, and some are amended versions of rules we currently have in place for other qualifications.

We propose, for end-point assessments, to disapply the following Conditions and replace them with bespoke versions.

- **B3 – Notification to Ofqual of certain events.** This requires awarding organisations to tell us if certain things, such as problems with delivering assessments, happen. There are some specific things we would want to know for end-point assessments, which we wouldn't need to know for other qualifications, such as if an end-point assessment organisation is removed from ESFA's register. We are proposing a bespoke version of this Condition to cover such things.
- **E9 – Qualification and Component levels.** For most qualifications, awarding organisations determine the level of the qualification. For end-point assessments, the Institute approves the level. We propose a bespoke version of this Condition to reflect this.

We also propose some new rules that do not currently exist for other qualifications. The reason for this is to reflect things that are specific to end-point assessments and to provide clarity to end-point assessment organisations about our expectations. We describe these below.

- **A rule in relation to Technical Evaluation**, so that we can request and review end-point assessment materials, to make sure they are of the right quality. We will also ensure that awarding organisations make any changes we identify are necessary, following our review.
- **A rule requiring end-point assessment organisations to comply with Assessment Plans.** This will help make sure that end-point assessments delivered by different end-point assessment organisations are consistent with

one another and that we can take action if end-point assessment organisations do not follow the assessment plan.

- **A rule to ensure gateway requirements have been met** before delivering end-point assessments. This means that where an apprenticeship standard requires certain criteria to have been met before an end-point assessment is taken, we can require end-point assessment organisations to have done so.

## **3. Background**

### **Apprenticeships**

The government is introducing new standards-based apprenticeships. An apprenticeship is a job that includes training. This training is carried out to agreed industry standards and completion of the apprenticeship leads to entry to a recognised occupation. Apprenticeships are employer-led: employers set the standards, create the demand for apprentices, fund the apprenticeship and are responsible for employing and training the apprentice.

The apprenticeship will involve a substantial programme of on and off-the-job training. At the end of the apprenticeship, the apprentice's competence in the occupation is tested by an independent end-point assessment organisation, through completion of an end-point assessment.<sup>2</sup>

### **End-point assessments**

Each apprentice taking a new standards-based apprenticeship is required to take an end-point assessment to complete their apprenticeship. This provides an indication of attainment with respect to the required knowledge, skills and behaviours. It is produced by an end-point assessment organisation and there may be multiple end-point assessments for a given standard. Examples of types of end-point assessment include tasks, interviews and multiple-choice tests.

The end-point assessment will be delivered by an independent assessor, working on behalf of a registered end-point assessment organisation. End-point assessment organisations must be included on the Education and Skills Funding Agency's (ESFA) register of end-point assessment organisations<sup>3</sup>. Where Ofqual is the external quality assurance provider for an apprenticeship standard, any organisations that intend to offer end-point assessments against that standard must be, or become, Ofqual-recognised awarding organisations.

### **Apprenticeship standards**

Apprenticeship standards describe the knowledge, skills and behaviours that an apprentice should be able to demonstrate once they have completed their apprenticeship. The standards are proposed, designed and delivered by employers (through groups of employers and sector organisations known as Trailblazers) to

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<sup>2</sup> <https://www.instituteforapprenticeships.org/quality/what-is-a-quality-apprenticeship/>

<sup>3</sup> This lists those organisations that have been assessed as being suitable to conduct independent end-point assessment of apprentices and be in receipt of public funds



equip apprentices with the knowledge, skills and behaviours they need to succeed in their occupation<sup>4</sup>.

The standard itself is a short document containing a clear occupational profile setting out the responsibilities of the occupation and linked to the knowledge, skills and behaviours which will be applied in the workplace. Apprenticeship standards are approved by the Institute.

### **Assessment plans**

An assessment plan sets out how the end-point assessment organisation should assess whether an apprentice has the knowledge, skills and behaviours required by the apprenticeship standard.

It will set out such requirements as how the apprentice should be assessed (for example through demonstration of a skill or an interview) and what results an apprentice who demonstrates these skills can achieve (eg. pass, merit or distinction). The Institute approves assessment plans.

### **Oversight**

Each end-point assessment will be subject to external quality assurance. There are four possible options for external quality assurance, which are:

- the Institute;
- Ofqual;
- professional bodies; or
- employer groups.

Each of these bodies will be responsible for setting out its own approach to external quality assurance.

In addition to the external quality assurance providers, there are other organisations with responsibility for oversight of apprenticeships. These include:

- The Institute<sup>5</sup>;
- Department for Education (DfE)<sup>6</sup>;

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<sup>4</sup> <https://www.instituteforapprenticeships.org/developing-apprenticeships/what-is-an-apprenticeship-standard/>

<sup>5</sup> <https://www.instituteforapprenticeships.org/>

<sup>6</sup> <https://www.gov.uk/government/organisations/department-for-education>

- Education and Skills Funding Agency (ESFA)<sup>7</sup>;
- Ofsted;
- Higher Education Funding Council for England (HEFCE).

### **Ofqual's external quality assurance of apprenticeship end-point assessments**

External quality assurance is a system of independent monitoring of the development and delivery of end-point assessment. It is important to ensure that end-point assessment is rigorous and fair regardless of which organisation is delivering it<sup>8</sup>. All end-point assessments for a particular standard will be subject to the same external quality assurance.

Where Ofqual agrees to be the external quality assurance provider for a given standard, we will do this by regulating the end-point assessment as a qualification. This means that the end-point assessment, and the end-point assessment organisation delivering it must be, or become, Ofqual-regulated and comply with all of our relevant requirements.

Where we are involved, this will usually be because we have been selected as the external quality assurance provider for an apprenticeship standard. We could also be working with another external quality assurance provider, providing regulation in support of their own external quality assurance arrangements. In both cases, we would require the end-point assessment organisation to comply with our requirements.

There is also a possibility of an end-point assessment organisation choosing to place its end-point assessment on Ofqual's Register where we are not the external quality assurance provider, meaning it becomes regulated. However, this would mean placing itself in a position where it is subject to two different sets of requirements for the end-point assessment which may conflict with each other. This is because where Ofqual is the external quality assurance provider we will have been involved in the development of the relevant assessment plan to ensure that it does not conflict with our own regulatory requirements.

Where we are not the external quality assurance provider this process will not have taken place and there is a risk that such a conflict may exist. This could result in the end-point assessment organisation being in breach of either the Institute's

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<sup>7</sup> <https://www.gov.uk/government/organisations/education-and-skills-funding-agency>

<sup>8</sup> <https://www.instituteforapprenticeships.org/quality/guidance-on-external-quality-assurance/>

requirements (for not complying with the assessment plan) or our requirements for regulated qualifications. Indeed the body that is the external quality assurance provider may have its own requirements for the end point assessment which again may conflict with ours.

For this reason, we do not recommend that end-point assessment organisations place end-point assessments on our Register unless Ofqual is providing external quality assurance for that standard.

We have published a document explaining our approach to external quality assurance on our website<sup>9</sup>. In summary, our approach involves:

- Technical review of the assessment plan submitted by the Trailblazer – before agreeing to provide external quality assurance, we will consider whether there is anything in the assessment plan that would cause an end-point assessment organisation to develop an end-point assessment that is not sufficiently valid.
- Ofqual recognition of end-point assessment organisations – where Ofqual provides external quality assurance, the organisations that provide end-point assessments must be, or become, Ofqual-regulated, as must the end-point assessment itself.
- Technical evaluation of the end-point assessment submitted by the end-point assessment organisation – to check whether the assessment an end-point assessment organisation is proposing to use meets the specifications that employers set out in the assessment plan.
- Ongoing supervision by Ofqual of the end-point assessment when it is in the market – we will apply our established methods for monitoring assessments once they are being delivered.
- Regulatory action by Ofqual if something goes wrong – where we identify issues, we will take action to make sure it is corrected.

We will carry out these activities against our regulatory requirements. This includes our *General Conditions of Recognition, Statutory Guidance to the General Conditions* and the end-point assessment specific requirements we propose in this consultation.

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<sup>9</sup> <https://www.gov.uk/government/publications/apprenticeship-end-point-assessments-a-guide-for-employers>

Ofqual does not have responsibility for apprenticeships more widely, or for end-point assessments where we are not the external quality assurance provider<sup>10</sup>.

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<sup>10</sup> There are two exceptions to this – 1) where we are working with another external quality assurance provider, providing regulation in support of their own external quality assurance arrangements; 2) where an end-point assessment organisation has chosen to have its end-point assessment regulated despite Ofqual not being the named external quality assurance provider.

## 4. Our proposals for regulating apprenticeship end-point assessments

### 4a. Overall approach

Where Ofqual is the external quality assurance provider for an apprenticeship standard, we will regulate those end-point assessments as qualifications<sup>11</sup>. This means that, as with all other qualifications we regulate, end-point assessments, and the end-point assessment organisations who deliver them, must comply with our *General Conditions of Recognition*<sup>12</sup> and have regard to the *Guidance to the General Conditions of Recognition*<sup>13</sup>. They will also have to comply with our other requirements that apply to all qualifications<sup>14</sup>.

We have reviewed the effectiveness of all of our General Conditions for the purpose of regulating end-point assessments. We have also sought views from end-point assessment organisations about whether, in respect of end-point assessments, they would be able to comply with our existing Conditions.

Our view is that the majority of our Conditions and guidance are suitable for regulating end-point assessments. Our General Conditions and guidance were designed to enable us to regulate a wide range of qualification types, and many of the methods of assessment used in end-point assessments will be the same, or similar, to those used in other qualifications. We propose therefore, in the main, to regulate end-point assessments against our existing General Conditions and guidance. We do recognise however that due to some differences between end-point assessments and other qualifications, not all of our General Conditions will be appropriate.

One area of difference is that, for many qualifications, an awarding organisation will design the whole qualification. It will establish the need for a qualification and determine its purpose. It will decide what proficiency in the relevant knowledge and skills would look like, determine how to measure this, and design and deliver the assessment accordingly. It will determine the arrangements for marking the assessment and mark and issue the results. For end-point assessments, many of these elements are instead set out in the assessment plan approved by the Institute. The end-point assessment organisation is responsible for designing and delivering an end-point assessment that follows the assessment plan, but is not responsible for other aspects of the design and delivery.

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<sup>11</sup> <https://www.gov.uk/government/publications/regulation-of-apprenticeship-end-point-assessments>

<sup>12</sup> <https://www.gov.uk/government/publications/general-conditions-of-recognition>

<sup>13</sup> <https://www.gov.uk/government/publications/guidance-to-the-general-conditions-of-recognition>

<sup>14</sup> <https://www.gov.uk/guidance/awarding-organisations-understanding-our-regulatory-requirements>

In addition, end-point assessments may be subject to additional requirements to those set by Ofqual. Examples of such requirements are ESFA's *Conditions for organisations on the register of end-point assessment organisations*<sup>15</sup> and requirements around the design of assessment plans on which end-point assessments are based in the Institute's *'How to' guide for trailblazers*<sup>16</sup>. We want to make sure that our own rules do not conflict with those set by other organisations and avoid unnecessary duplication.

These differences mean that in some instances, we think it will be necessary, and helpful, for us to disapply certain Conditions and provide more specific requirements and guidance in relation to end-point assessments. We propose that in addition to the General Conditions, we will set a small number of end-point assessment specific requirements and guidance, and in some cases, disapply General Conditions that are not relevant.

The specific requirements we propose are set out in full in appendix B and described in the following sections.

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<sup>15</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663968/EPAO\\_Conditions\\_of\\_Acceptance\\_Version\\_2.2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663968/EPAO_Conditions_of_Acceptance_Version_2.2.pdf)

<sup>16</sup> <https://www.instituteforapprenticeships.org/developing-apprenticeships/how-to-develop-an-apprenticeship-standard-guide-for-trailblazers/>

## **4b. Delivering end-point assessments**

### **Conflicts of interest**

Condition A4<sup>17</sup> requires an awarding organisation to identify and monitor all conflicts of interest which relate to it, and any scenario which could lead to a conflict of interest in future. The awarding organisation must take all reasonable steps to make sure that no conflict it identifies has an Adverse Effect<sup>18</sup>. For the purposes of this Condition, a conflict of interest can arise where the interests of the awarding organisation, or a person connected to it, in any activity, have the potential to lead either one to act contrary to their interests in the development, delivery and award of qualifications in line with our Conditions. A conflict can also arise where an informed and reasonable observer would conclude that either situation was the case.

The Institute and ESFA also set out expectations around conflicts of interest in apprenticeships<sup>19</sup>. They say that no one who has been involved in training an apprentice should be involved in assessing them. They also say that the person who assesses the apprentice should be independent and employed by the end-point assessment organisation. They should not be the apprentice's employer or training provider unless the Institute has made an exception in the assessment plan, for example because an employer is the only person that could safely or competently assess the apprentice.

As far as is possible, we want to make sure that our Conditions do not conflict with wider expectations set by ESFA or the Institute. It is also important that those using our Conditions understand this to be the case. We also want to address potential conflicts that may exist in terms of the incentives for end-point assessment organisations that stand to benefit financially in the event that an apprentice has to repeat their end-point assessment.

We propose to provide end-point assessment specific guidance to help end-point assessment organisations understand how they should comply with Condition A4 in respect of end-point assessments. We propose that this guidance will set out that:

- in meeting our Condition, end-point assessment organisations should meet the requirements, and have regard to the guidance, set by the Institute and ESFA;

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<sup>17</sup> <https://www.gov.uk/government/publications/general-conditions-of-recognition>

<sup>18</sup> An act, omission, event, incident, or circumstance has an Adverse Effect if it – (a) gives rise to prejudice to Learners or potential Learners, or (b) adversely affects – (i) the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with its Conditions of Recognition, (ii) the standards of qualifications which the awarding organisation makes available or proposes to make available, or (iii) public confidence in qualifications

<sup>19</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/659055/EPAO\\_Conditions\\_of\\_Acceptance\\_Annex\\_Version\\_2.1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/659055/EPAO_Conditions_of_Acceptance_Annex_Version_2.1.pdf) ESFA's Conditions

- where a conflict of interest cannot be avoided, for example because assessment by an employer is required under the assessment plan, the end-point assessment organisation should ensure that the end-point assessment remains fit for purpose;
- end-point assessment organisations should manage both organisational and individual conflicts of interest;
- processes and procedures relating to delivery of the training should be sufficiently separate from assessment;
- assessment procedures should be sufficiently separate from one another.

We also propose that our guidance sets out:

- examples of who may be considered to have a personal interest in respect of an end-point assessment;
- what to do where it is not possible to avoid someone with a personal interest from being involved in an assessment;
- that assessment organisations should not enter into reciprocal arrangements whereby they assess one another's apprentices, which could lead to a conflict of interest;
- that end-point assessment organisations should be aware of possible financial incentives that could exist based on the number of times an apprentice is required to take an end-point assessment.

**Question 1: To what extent do you agree or disagree with our proposal to provide end-point assessment specific guidance in relation to conflicts of interest covering the areas set out? Please provide any comments.**

### **Event notifications**

Condition B3 requires awarding organisations to report certain events to Ofqual. Some of these are those that have had, or could have an Adverse Effect, such as where an awarding organisation has made an error in its assessment materials. Others are those that awarding organisations must always tell Ofqual about, such as where there has been a change in control of the awarding organisation or where the awarding organisation has, or has cause to believe it may be, subject to insolvency or bankruptcy proceedings.



For end-point assessments, there are additional events that we expect an awarding organisation to report to us. We propose to disapply the existing Condition B3 in respect of end-point assessments, and apply a more specific version covering these events. We believe this will make it easier for end-point assessment organisations to understand what we require of them.

We propose that in addition to what the existing Condition B3 requires, for end-point assessments we will:

- remove references to events that relate to an end-point assessment organisation issuing certificates, as end-point assessment organisations may issue results for end-point assessments, but should not issue certificates to avoid confusion with the overall apprenticeship certificate issued by ESFA;
- provide, examples of events that should be reported including:
  - where an assessment plan could cause an adverse effect, or lead to an end-point assessment that may not be fit for purpose if followed,
  - where an end-point assessment organisation will be unable to deliver an assessment effectively, for example because it does not have enough assessors;
- require that in all cases, end-point assessment organisations tell us:
  - if they are removed from the ESFA's register of end-point assessment organisations,
  - if the assessment plan for its end-point assessment is reviewed,
  - if any changes are made to an assessment plan for its end-point assessment.

**Question 2: To what extent do you agree or disagree with our proposal to apply an end-point assessment specific version of Condition B3, covering the areas set out? Please provide any comments.**

## **Centres**

Condition C2 sets requirements for the arrangements an awarding organisation must have in place with centres that deliver parts of a qualification on its behalf. These requirements do not require an awarding organisation to use a centre, but where it does, they require that it has an agreement in place that meets the requirements set out in the Condition.

End-point assessments are not typically delivered by centres in the same way that other qualifications are. For end-point assessments, it is usually assessors working on behalf of the end-point assessment organisation who mark assessments, not the centre. This means that normally, this Condition won't be relevant for end-point

assessments. To make sure this is understood, we propose to put in place end-point assessment specific guidance which will set out that:

- in most cases, no part of an end-point assessment will be delivered by a centre. This will include where an assessment takes part on a centre's premises, but the centre takes no part on the assessment;
- where this is the case, Condition C2 will not apply.

There is still a possibility, in a small number of cases, that centres will be used. This could be where the Institute has allowed an employer to be involved in the delivery of the assessment, for example where the employer is the only person that could competently or safely assess an apprentice. In these unusual circumstances, as the end-point assessment organisation is not carrying out the assessment itself, the employer would be likely to meet our definition of a centre<sup>20</sup>. Where this is the case, we think it is important that safeguards are in place to ensure the centre delivers the end-point assessment appropriately on behalf of the end-point assessment organisation. In these circumstances, we think that Condition C2 should continue to apply, so we propose that our guidance will also set out that:

- in the small number of cases where a centre, such as an employer, does deliver part of an end-point assessment, the end-point assessment organisation must comply with the requirements of Condition C2.

**Question 3: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out when Condition C2 will, and will not, apply to end-point assessments? Please provide any comments.**

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<sup>20</sup> An organisation undertaking the delivery of an assessment (and potentially other activities) to Learners on behalf of an awarding organisation. Centres are typically educational institutions, training providers or employers.

## **4c. Designing and developing end-point assessments**

### **Reviewing approach**

Condition D3 requires awarding organisations to keep their approach to developing, delivering and awarding qualifications under review. It requires the awarding organisation to have regard to a number of different sources of evidence, such as information, comments and complaints from users. Separately to Ofqual's requirements, apprenticeships and their end-point assessments are subject to regular review by the Institute. Following this review, it may require changes to the apprenticeship standard or assessment plan.

We consider it appropriate that end-point assessment organisations keep their end-point assessments under review. We don't however want to impose requirements that duplicate or conflict with the Institute's review process. We therefore propose that our requirement will continue to apply, but as part of meeting this obligation, end-point assessment organisations should consider the findings from any review carried out by the Institute. To explain this, we propose to issue end-point assessment specific guidance setting out that the end-point assessment organisation:

- in carrying out its review, should consider the extent to which any issues it identifies stem from the assessment plan it is required to follow;
- has regard to the outcomes of any review carried out by the Institute;
- has regard to any feedback provided by the Institute or Ofqual;
- for Ofqual-regulated end-point assessments, should only make changes to an end-point assessment to reflect the version included on the list of Assessment Plans.

**Question 4: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out the need, as part of keeping its qualifications under review, to have regard to the Institute's reviews and feedback? Please provide any comments.**

### **Qualifications having an objective and support**

Condition E1 requires that an awarding organisation must make sure that its qualifications have, and meet, a clear objective. The Condition sets requirements relating to how the awarding organisation must set this objective and how it should ensure the qualification has support.

For end-point assessments, the end-point assessment organisation will not determine the objective itself. This will be set out in the apprenticeship standard,

approved by the Institute. This will mean that an end-point assessment organisation will not, in itself, be able to comply with this requirement. Leaving such a Condition in place would oblige it to do so and could place it in conflict with the Institute if it was not able to do this.

In terms of there being support for the qualification, our view is that the existence of the apprenticeship standard, and its approval by the Institute, will be evidence of there being support for a particular end-point assessment. There is likely to be very little an end-point assessment organisation could provide beyond this as evidence of support for the qualification.

As in both these instances, it will largely be out of the end-point assessment organisation's control whether or not it can comply with this Condition, we propose to disapply this Condition in respect of end-point assessments.

**Question 5: To what extent do you agree or disagree with our proposal to disapply Condition E1 in respect of end-point assessments? Please provide any comments.**

### **Compliance with assessment plans and gateway requirements**

Each apprenticeship standard will have an assessment plan. This is approved by the Institute and contains information about end-point assessments which end-point assessment organisations must comply with when setting and delivering their end-point assessments.

Where Ofqual provides external quality assurance for a standard, we will review the assessment plan to consider whether there is anything in the assessment plan that would cause an end-point assessment organisation to develop an end-point assessment that is not sufficiently valid. We will only agree to provide external quality assurance, where we believe the plan is capable of having a sufficiently valid assessment developed against it.

End-point assessment organisations are expected, by the Institute, to follow assessment plans. To make sure that we can require this where we are providing external quality assurance, and take action where an end-point assessment organisation does not do so, we propose to put in place an end-point assessment specific Condition to require compliance with the assessment plan. We propose to require:

- that an awarding organisation must comply with any requirements, and have regard to any guidance, set out in the Assessment Plan.

In many cases, there will be more than one end-point assessment organisation delivering end-point assessments against the same standard. To make sure that

these are consistent between different end-point assessment organisations, we propose to also require that:

- an end-point assessment organisation interprets an assessment plan in accordance with any requirements, and having regard to any guidance, that Ofqual publishes.

This will mean that, where Ofqual is the external quality assurance provider, if we identify end-point assessment organisations interpreting the same requirements in different ways, we can issue guidance to ensure consistency.

To manage this process, we propose to publish a list of the assessment plans. This will list those assessment plans, where Ofqual is the external quality assurance provider, and which an end-point assessment organisation must comply with. End-point assessment organisations are required by the Institute to follow assessment plans, so we would expect this to happen in any case. This list will set out the specific version that Ofqual has reviewed and will allow us to minimise the possibility of an end-point assessment organisation being subject to conflicting requirements within Ofqual's regulatory framework.

Where Ofqual is the external quality assurance provider, will review and provide feedback on the assessment plan before agreeing to provide external quality assurance. But we cannot prevent an end-point assessment organisation placing its end-point assessments on our Register where we are not the external quality assurance provider. In this case, as we will not have reviewed the assessment plan, so as to assure ourselves that assessments developed from it will be capable of meeting our requirements. Therefore, we will not include it on our list. We do not recommend that end-point assessment organisations place end-point assessments on our Register unless Ofqual is providing external quality assurance for that standard.

We believe this approach provides the best balance between ensuring compliance with assessment plans, ensuring the Institute's expectations are met, and ensuring consistency across end-point assessment organisations offering end-point assessments for the same standard.

**Question 6: To what extent do you agree or disagree with our proposal to set a Condition requiring compliance with assessment plans? Please provide any comments.**

Before an apprentice can take their end-point assessment and complete their apprenticeship, they must meet what are known as 'gateway requirements', set out in the apprenticeship standard. This could include requirements in relation to:

- attainment in English and mathematics;

- attainment of another qualification;
- evidence generated by an apprentice; or
- confirmation from an apprentice's employer that the apprentice is ready to undertake the assessment.

As an end-point assessment cannot be taken without an apprentice having completed the gateway requirements for the apprenticeship, we propose to put in place an end-point assessment specific Condition to require:

- an awarding organisation to take all reasonable steps to make sure any relevant gateway requirements have been met before delivering an end-point assessment.

This requirement is the same as wider expectations around meeting gateway requirements. It will mean though that where Ofqual is the external quality assurance provider, we can make sure gateway requirements are met, and take action if we discover they are not. This will ensure our requirements align with the wider expectations of the ESFA and the Institute.

**Question 7: To what extent do you agree or disagree with our proposal to put in place an end-point assessment specific Condition on the completion of gateway requirements? Please provide any comments.**

## **4d. Providing information about end-point assessments**

### **Total Qualification Time (TQT)**

Condition E7 requires an awarding organisation to assign the number of hours it expects a typical student to take to complete the qualification. This is made up of the time the student spends being taught, and the time the student is expected to spend on other activities such as self-study and completing assessments. We set requirements<sup>21</sup> for how an awarding organisation should calculate these figures.

As many of the aspects used to calculate TQT are not determined by the end-point assessment organisation, and the way an end-point assessment is delivered differs from many qualifications, it will not be possible for them to meet our requirements or comply with our associated criteria. Seeking to do so may impose an unnecessary regulatory burden. In July 2017, we temporarily suspended Condition E7. We propose now to permanently disapply this Condition in respect of end-point assessments.

**Question 8: To what extent do you agree or disagree with our proposal to disapply Condition E7 in respect of end-point assessments? Please provide any comments.**

### **Credit**

Condition E8 requires that awarding organisations assign a value for credit to a qualification, which is equal to one tenth of the TQT value.

As described above, we propose to disapply our TQT requirements in respect of end-point assessments. As we will not be requiring an end-point assessment organisation to calculate a TQT value for its end-point assessments, it will not be able to calculate a value for credit. Therefore we also propose to disapply Condition E8 in respect of end-point assessments.

**Question 9: To what extent do you agree or disagree with our proposal to disapply Condition E8 in respect of end-point assessments? Please provide any comments.**

### **Qualification titling**

Condition E2 sets requirements for how qualifications should be titled. For end-point assessments, it is important that they are titled consistently, both in relation to the apprenticeship standard they relate to, and with other end-point assessments. This is

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<sup>21</sup> <https://www.gov.uk/government/publications/total-qualification-time-criteria>

particularly the case for end-point assessments, because there may be multiple organisations offering the same qualification.

To make it clear what is covered by the end-point assessment, we propose to put in place end-point assessment specific guidance that sets out how our titling requirements should be met in relation to end-point assessments. We propose that our guidance sets out that:

- the level of the qualification in the title should be the same as that of the apprenticeship standard approved by the Institute;
- the qualification type in the title of the qualification should be EPA; and
- the title should include a concise indication of the content of the end-point assessment which replicates the title of the relevant apprenticeship standard.

**Question 10: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance about the titling of end-point assessments? Please provide any comments.**

### **Specifications**

Condition E3 sets requirements relating to specifications. Our Condition requires that an awarding organisation must publish a specification for the qualification and lists a number of items it should include, for example the qualification's objective and the methods of assessment.

The list in our Condition includes both things that a specification must always include, and things that a specification must include where it applies to the qualification. Some of these requirements use the word 'any', for example: *"any other qualification which a Learner must have completed before taking the qualification"*. Such items only need to be included where the item is relevant for the qualification. Others must always be included, such as: *"the qualification's objective"*. For these items, an awarding organisation must always set them out in their specification.

For end-point assessments, some, but not necessarily all, of the items we require in a specification will also be included in the assessment plan, or apprenticeship standard, approved by the Institute. Because of this, we have considered whether or not we should also require the end-point assessment organisation to publish a specification.

There are arguments for why we could decide not to require an awarding organisation to produce a specification in addition to the assessment plan and the apprenticeship standard. These include:

- the possibility of information being duplicated between the documents;



- the risk of confusion for users of potentially having to refer to three separate documents.

There are also a number of arguments for retaining our requirement for awarding organisations to produce a specification for end-point assessments, which include:

- a specification will allow the end-point assessment organisation to set out any design decisions it has taken within the scope of the assessment plan, which is important for users to both understand the end-point assessment and for selecting between different end-point assessment organisations;
- assessment plans and apprenticeship standards between them do not always include all of the information that users may require about an end-point assessment;
- as the purpose of the assessment plan and apprenticeship standard are different to that of a specification, the information may not always be presented as fully, or as clearly, as it would be in a specification that is used by users of qualifications;
- the requirement to publish specifications means they should be readily available to users of qualifications.

Taking account of the factors above, we consider it is appropriate to continue to require end-point assessment organisations to publish specifications for their end-point assessments. We would however welcome views on this.

**Question 11: To what extent do you agree or disagree with our proposal to continue to require end-point assessment organisations to publish specifications for end-point assessments? Please provide any comments.**

On the basis of our proposal above, we propose to produce end-point assessment specific guidance to explain what a specification should include for an end-point assessment. Our proposed guidance will set out that:

- not all the information set out in the Condition will be relevant for end-point assessments;
- those that use the term ‘any’ only need to be included where they are relevant for a particular end-point assessment;
- the apprenticeship standard and assessment plan may contain some of the information covered by the specification;

- relevant information should be extracted from the apprenticeship standard and assessment plan – it will not be sufficient simply to direct users to these documents, although links to supplement the specification can be provided;
- where the areas covered are not detailed sufficiently in the assessment plan, the end-point assessment organisation will need to supplement this with additional information in its specification to ensure it complies with the Condition.

**Question 12: To what extent do you agree or disagree with our proposal to produce end-point assessment specific guidance setting out how Condition E3 applies in respect of end-point assessments? Please provide any comments.**

If, as proposed, we implement this guidance, we believe it will no longer be necessary to continue to suspend the following Conditions, which we suspended in July 2017<sup>22</sup>:

- E3.2(l)
- E3.4(a)
- E3.4(c).

This is because these are requirements that apply only where an end-point assessment has particular features or where an awarding organisation takes a particular action. If the awarding organisation does not do these, then these Conditions would not be relevant and our proposed guidance will explain this. We propose to lift the suspension on these Conditions.

**Question 13: To what extent do you agree or disagree with our proposal to no longer suspend Conditions E3.2(l), E3.4(a) and E3.4(c)? Please provide any comments.**

### **Qualification levels**

Condition E9 requires awarding organisations to assign one or more levels to each qualification they make available. It requires an awarding organisation to comply with any requirements and have regard to any guidance from Ofqual in relation to this.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630446/RO552017\\_Suspending\\_TQT\\_for\\_EPA.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630446/RO552017_Suspending_TQT_for_EPA.PDF)

For most qualifications, the awarding organisation will be responsible for designing both the qualification and the assessment. They will be responsible for determining the level of the qualification, and for meeting our requirements when doing so.

For end-point assessments, the level of the qualification will be determined by the level of the apprenticeship, approved by the Institute. The end-point assessment organisation will not be responsible for setting the overall level; it will be responsible for ensuring that its end-point assessment is at the level of the apprenticeship.

We think it is important that the level of the assessment is clear, but recognise the difficulty for end-point assessment organisations of seeking to comply with our current Condition. We propose therefore to disapply Condition E9, and put in place an end-point assessment specific Condition setting out our requirements for levels. Our proposed Condition will require that an awarding organisation:

- assigns a level or levels to its end-point assessment;
- ensures that that any level it assigns is the same as the level that has been set for the apprenticeship standard, approved by the Institute;
- reviews the level of the end-point assessment if the level of the apprenticeship standard changes;
- takes all reasonable steps to give Ofqual reasonable notice if a level is being revised;
- takes all reasonable steps to protect the interests of apprentices where a level is being changed, puts in place a written revision plan and provides clear information to users of the qualification about this.

**Question 14: To what extent do you agree or disagree with our proposal to put in place an end-point assessment specific Condition to require the level of the end-point assessment to match that of the apprenticeship standard? Please provide any comments.**

## **4e. Ensuring assessments that are set are fit for purpose and can be delivered**

### **Fitness for purpose**

A number of our Conditions relate to the need for an assessment to be fit for purpose. This is covered in particular in Condition D1 which refers to the fitness for purpose of the overall qualification, E4 about ensuring at design stage that an assessment is fit for purpose and can be delivered, and G1, about setting the assessment.

Fitness for purpose of a qualification encompasses a number of things. In particular, it refers to qualifications being valid, reliable, comparable, manageable, and minimising bias.

Awarding organisations must ensure they comply with all of our Conditions. Often this will require them to balance competing factors to make a judgement about how to ensure an assessment is fit for purpose. For end-point assessments, awarding organisations must also follow what is in the assessment plan for that standard. Whilst in most cases, we expect that following an assessment plan would lead an awarding organisation to design and deliver an assessment that would be fit for purpose, we recognise that this will present an additional set of competing demands. An awarding organisation may, in some instances, have to balance what it considers is necessary to ensure an assessment is fit for purpose, with what the assessment plan requires.

We propose to put in place end-point assessment specific guidance to help an awarding organisation make decisions in relation to balancing such competing demands. We propose to set guidance which explains that:

- awarding organisations must balance the requirements of Conditions D1, E4 and G1 with what the assessment plan requires;
- if the requirements of the assessment plan may provide challenges for designing assessments that are fit for purpose, it should consider what additional steps it needs to take within what the assessment plan allows, to meet the requirements of these Conditions;
- if an assessment plan would prevent an awarding organisation from meeting our requirements to produce an assessment that is fit for purpose, it should notify Ofqual of this;
- where an end-point assessment organisation perceives there to be a conflict between Conditions D1, E4 and G1 and an assessment plan on our published

list, the awarding organisation must comply with the assessment plan, whilst meeting those Conditions to the greatest extent that it can;

- where an end-point assessment organisation perceives there to be a conflict between the Conditions and an assessment plan that is not on our published list, the awarding organisation must comply with the requirements of our Conditions whilst meeting the assessment plan to the greatest extent that it can.

We have proposed this approach to minimise the likelihood of an end-point assessment organisation being placed in the position of having to comply with two sets of conflicting requirements within our framework. Whilst we expect this would be rare, as we will review assessment plans before agreeing to provide external quality assurance, we think it is important to have this flexibility, to manage any instances where it did occur. Where we are not the external quality assurance provider, we will not review assessment plans, so will not include them on our published list. This means that we will require compliance with our Conditions, no matter what is contained in the assessment plan. To reduce the likelihood of an end-point assessment organisation having to choose between complying with our Conditions and an assessment plan we have not reviewed, we do not recommend placing end-point assessments on our Register unless Ofqual is providing external quality assurance for that standard.

**Question 15: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out how an end-point assessment organisation should comply with Conditions D1, E4 and G1 relating to ensuring assessments that are set are fit for purpose and can be delivered? Please provide any comments.**

### **Technical evaluation**

To ensure that end-point assessments are fit for purpose and can be delivered, we will carry out a technical evaluation. This will involve reviewing assessment materials to consider the extent to which they are able to comply with our regulatory requirements. In order to carry out our review, we intend to require end-point assessment organisations to provide us with certain materials in relation to their end-point assessments.

If we identify issues with an end-point assessment through our evaluation, we may require an end-point assessment organisation to take certain actions to rectify the issues. If an end-point assessment organisation does not take the necessary action, we may take regulatory action.

To ensure that our requirements for this process are set out clearly, we propose to put in place an end-point assessment specific Condition to require an end-point

assessment organisation to provide us with materials for technical evaluation on request, and to take any action that we deem necessary following our evaluation.

Our proposed Condition will:

- require an end-point assessment organisation to comply with any written request from Ofqual for materials in relation to end-point assessments;
- require the end-point assessment organisation to comply with any requirements specified by Ofqual in relation to the end-point assessment;
- set out the types of things that such a notice to an end-point assessment organisation might contain.

**Question 16: To what extent do you agree or disagree with our proposal to put in place an end-point assessment specific Condition to require end-point assessment organisations to provide materials for the purposes of Ofqual's evaluation and to take any actions specified by Ofqual as a result? Please provide any comments.**

## **4f. Marking, results and certificates**

### **Marking and Moderation**

Conditions H1 and H2 set requirements in relation to marking and moderation. Our Condition on marking requires that awarding organisations have arrangements to make sure that marking allows learners' performance to be differentiated. It requires that the arrangements are understood by markers and applied consistently. It includes requirements relating to the need to ensure marking is consistent where there are optional assessments. These requirements apply whether it is an awarding organisation or a centre who is marking the assessment. Awarding organisations may put in place a number of arrangements to ensure this condition is met, such as training and standardisation of markers, and ongoing monitoring of their performance.

Moderation in our Conditions applies only where assessments are marked by a centre. It refers to the process whereby the awarding organisation reviews a sample of the marking that has been done by a centre, to ensure it has marked assessments consistently. If the awarding organisation finds the centre has not, it can adjust the centre's marking. Our Conditions require awarding organisations to have processes to do this.

For end-point assessments, in almost all cases, marking will be done by the end-point assessment organisation. This could involve assessment materials being sent to an end-point assessment organisation to mark, or often, will involve the end-point assessment organisation sending assessors to an employer, to conduct the assessment on their premises. Both of these approaches will constitute marking. As set out above, the end-point assessment organisation should have processes in place to train the markers it sends out to employers, and to monitor them to make sure they are marking accurately and consistently. We expect an end-point assessment organisation to be able to identify issues with the application of its marking criteria, and to have arrangements in place to enable it to do this independently. End-point assessment organisations may choose, for example, to use an independent third party, or an independent team within their own organisation for this.

It will be rare that an end-point assessment organisation will perform moderation of end-point assessments. Our Conditions around moderation apply only where marking is done by a centre. As assessment plans generally require end-point assessment organisations to conduct assessments independently, this Condition will often not be relevant. However, there could be some scenarios, where an assessment plan approved by the Institute allows for employers to assess apprentices, for example, in circumstances where the employer is the only person that could safely and competently conduct the assessment. Where this is the case, we would expect an awarding organisation to have a process to moderate the

marking done by the employer and to make any adjustments it considers necessary if it finds that marking is not being done accurately or consistently.

Whilst the approach of awarding organisations conducting marking by sending assessors to assess apprentices is not unique, it is an approach that some awarding organisations may not be so familiar with. As a result, we propose to put in place end-point assessment specific guidance to explain how each of these Conditions relates to end-point assessments.

Our proposed guidance for Condition H1 will set out that:

- Condition H1 applies both where an assessment is marked by an awarding organisation and by a centre;
- awarding organisations should ensure marking criteria are understood and applied accurately and consistently by assessors;
- an awarding organisation should have processes in place to standardise and monitor markers;
- an awarding organisation should be able to correct any issues it identifies;
- an awarding organisation should identify and mitigate any conflicts of interest that relate to its marking;
- an awarding organisation should have arrangements in place, that are separate from its marking to identify issues with the application of its marking criteria, such as through the use of an independent third party, or separate team within its own organisation;
- an awarding organisation should make changes to its marking criteria if it identifies a difference in the level of demand between optional tasks or assessments;
- in making any changes to its marking criteria, it should do so within the parameters of the assessment plan;
- where an assessment plan could lead to inconsistent marking, the awarding organisation must take all reasonable steps within the parameters of the plan to prevent an inconsistency while complying with the requirements of the assessment plan.

Our proposed guidance for Condition H2 will set out that:



- the condition only applies where marking is done by a centre and that this will not be the case for many end-point assessments;
- in the limited circumstances where marking is undertaken by a centre, for example, an employer, such as where this is required by an assessment plan, the awarding organisation must have effective Moderation arrangements in place in line with the requirements of Condition H2.

**Question 17: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance setting out how an end-point assessment organisation should comply with Conditions H1 and H2 in relation to marking and moderation? Please provide any comments.**

### Issuing results and certificates

Condition H6 sets requirements in relation to issuing results. It requires that an awarding organisation issues results, that it publishes and meets dates for doing this, and that its results are accurate and can be understood by users.

Condition I3 sets requirements relating to the design and content of certificates. It requires that certificates follow Ofqual's *Additional Certificate Requirements*<sup>23</sup> and set out what a certificate must show. Condition I4 sets requirements for awarding organisations in relation to issuing certificates and replacements, if for example a learner has lost their original certificate.

For apprenticeships, the ESFA operates the process for issuing certificates on behalf of the Secretary of State<sup>24</sup>. The ESFA sets out that an end-point assessment organisation must not issue an apprenticeship certificate and that it must be clear that any record of results it does issue makes clear that it is not an apprenticeship certificate or result.

We do not propose to prevent end-point assessment organisations from issuing results (for example a summary of results), either to ESFA or apprentices. It will be for the end-point assessment organisation to ensure that it is clear that any results it issues are not apprenticeship certificates, and do not constitute an apprenticeship result. We propose to put in place end-point assessment specific guidance for Condition H6, in relation to issuing results. Our proposed guidance will set out that:

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<sup>23</sup> <https://www.gov.uk/government/publications/additional-certificate-requirements>

<sup>24</sup> This is set out in paragraphs 47-52 of the ESFA's *Conditions for organisations on the register of end-point assessment organisations*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663968/EPAO\\_Conditions\\_of\\_Acceptance\\_Version\\_2.2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/663968/EPAO_Conditions_of_Acceptance_Version_2.2.pdf)

- we expect an end-point assessment organisation to issue results to the ESFA for the purpose of issuing an overall apprenticeship certificate;
- where an awarding organisation issues results, such as a summary of results, to an apprentice, it should make it clear that this is not a certificate nor the result for the overall apprenticeship.

We do however propose to disapply Conditions I3 and I4, which relate to the issue of certificates, in respect of end-point assessments. This will mean that end-point assessment organisations are not required, under our rules, to issue certificates for end-point assessments. This will make sure they are able to comply with the ESFA and the Institute's expectations relating to issuing certificates.

**Question 18: To what extent do you agree or disagree with our proposal to put in place end-point assessment specific guidance for Condition H6 on issuing results for end-point assessments? Please provide any comments.**

**Question 19: To what extent do you agree or disagree with our proposal to disapply Conditions I3 and I4 in respect of end-point assessments? Please provide any comments.**

## **4g. Regulating end-point assessments**

### **Ofqual's regulatory framework**

We will regulate apprenticeships using our regulatory requirements – the rules that all those we regulate must comply with and the guidance to those rules they must consider. Our requirements are typically set at the following levels:

- **General** – These apply to all qualifications we regulate. Examples include the General Conditions of Recognition and the Statutory Guidance to the General Conditions.
- **Qualification level** – These apply to all qualifications of a particular type. Examples of these include the GCSE and GCE qualification level Conditions.
- **Subject level** – These apply to all qualifications of a particular type in a specific subject. Examples of these include the Subject Level Conditions for GCSE mathematics.

Our approach is to set requirements at the highest level we can (i.e. General Conditions). This is the case for the majority of qualifications we regulate. But we may choose to set Conditions at the levels below where it is necessary for us to regulate to secure valid qualifications. Our regulatory requirements consist of both rules and statutory guidance. The rules are our Conditions, which awarding organisations we regulate must meet. Awarding organisations must have regard to the guidance, but do not have to follow it, as long as they meet the Conditions.

We have proposed in this consultation to introduce a number of end-point assessment specific Conditions and guidance. We have also proposed to disapply a small number of General Conditions. Our proposed new framework for end-point assessments will consist of:

- **General Conditions of Recognition and Statutory Guidance** – Most of our requirements for end-point assessments will be the same as those that apply to all qualifications so will be contained in these documents.
- **End-point assessment Qualification Level Conditions** – These will be Conditions that apply only to end-point assessments. This will include:
  - A list of the General Conditions that have been disapplied for end-point assessments;
  - New and bespoke versions of Conditions that only apply to end-point assessments.

- **List of assessment plans** – This will be a list, contained within the End-point assessment Qualification Level Conditions, that sets out those versions of Assessment Plans that end-point assessment organisations must follow.
- **End-point assessment Qualification Level Guidance** – This will be guidance against the General Conditions and the End-point assessment Qualification Level Conditions that end-point assessment organisations must have regard to in respect of end-point assessments. It will be published as a separate end-point assessment specific document.

We have included drafts of each of these documents in appendix B.

### **Interpretations and definitions**

Our end-point assessment specific requirements will apply in addition to those imposed by the General Conditions of Recognition, unless we specify otherwise. Where there is any inconsistency between the General Conditions and the end-point assessment specific Conditions, the end-point assessment specific requirements will prevail.

We propose that in addition to the definitions set out in the General Conditions, we will also define, for end-point assessments, the following additional terms, which are set out in appendix B:

- Assessment Plan;
- Assessment Standard;
- Gateway Requirement;
- Register of End-Point Assessment Organisations.

### **References to Institute for Apprenticeships**

In our proposed Conditions and guidance, we refer to the Institute for Apprenticeships. The Institute is due to change to the 'Institute for Apprenticeships and Technical Education' when certain amendments to the Apprenticeships Skills, Children and Learning Act, made by the Technical and Further Education Act 2017 are brought into force. We propose to amend any references to the Institute for Apprenticeships accordingly when a name change is made.

If in future, other terms are amended, we will update our requirements accordingly.

## 5. Equality analysis

Ofqual is a public body, so the public sector equality duty in the Equality Act 2010 applies to us. We explain in Appendix A how this duty interacts with our statutory objectives and other duties. We have considered how our proposals might affect people who share protected characteristics<sup>25</sup>.

Our proposals will apply equally to all end-point assessments where we are the external quality assurance provider or that we regulate.

We have identified that our proposals in relation to requiring compliance with assessment plans could impact on people with protected characteristics. Assessment plans are written by employer groups and approved by the Institute. If an assessment plan, for example, did not allow a particular reasonable adjustment (where this was not a requirement of the knowledge, skills or behaviours for the apprenticeship), this could disadvantage a disabled learner. To mitigate this risk, our proposed Condition is written so that we would only require compliance with assessment plans that we have reviewed. We will review assessment plans before agreeing to act as the external quality assurance provider for a standard. Where we identify issues, we will not agree to be the external quality assurance provider until these have been resolved. In addition, our General Conditions, which continue to apply to all end-point assessments include requirements on awarding organisations to have in place clear arrangements for making Reasonable Adjustments.

We have not identified any other ways in which our proposals will impact, positively or negatively, on learners that share a protected characteristic.

**Question 20: We have set out the ways in which our proposals could impact (positively or negatively) on learners who share a protected characteristic. Are there any potential impacts that we have not identified?**

**Question 21: Are there any additional steps we could take to mitigate any negative impact, resulting from our proposals, on learners who share a protected characteristic?**

**Question 22: Do you have any other comments on the impacts of our proposals on learners who share a protected characteristic?**

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<sup>25</sup> The term 'protected characteristics' is defined in the Equality Act 2010. Here, it means sex, disability, racial group, age, religion or belief, pregnancy or maternity, sexual orientation and gender reassignment.

## **6. Regulatory impact assessment**

We have considered the regulatory impact of our proposals and believe that on balance, these proposals will have a limited impact on the burden we place on awarding organisations.

We are proposing, as far as possible, to regulate end-point assessments in line with our approach for regulating other qualifications that we regulate. Awarding organisations are familiar with this approach and have processes in place to enable them to comply with such requirements.

As far as is possible, we have sought to ensure that our approach does not conflict with requirements put in place by others involved in overseeing apprenticeships, in particular the ESFA's Conditions and the guidance published by the Institute. This should help to reduce the burden posed by our requirements.

We will be removing some requirements that will not be relevant to end-point assessments. This will reduce the burden on awarding organisations of complying with our requirements.

We will be putting in place new statutory guidance against some of our existing, and some of our proposed new Conditions. The guidance should make it easier for awarding organisations to understand our Conditions. Beyond the time taken to read the guidance, we don't expect this to pose an additional burden on awarding organisations. We believe this is proportionate to our aim of ensuring that end-point assessments can be regulated effectively.

We propose two new Conditions. One of these requires end-point assessment organisations to comply with assessment plans and ensure that gateway requirements have been met before they deliver their end-point assessments. These requirements reflect wider apprenticeship policy – this expectation exists whether or not Ofqual is the external quality assurance provider. It is possible that our approach to specifying the version of an assessment plan an end-point assessment organisation must comply with through a list published by Ofqual, could cause an end-point assessment organisation to have to choose between complying with the version of an assessment plan in Ofqual's requirements, or complying with a more up to date version, which has not yet been included on our published list. We will review amended plans to seek to avoid this as far as possible but cannot prevent it where a new version of an assessment plan is not consistent with our requirements.

The other new Condition sets a requirement for end-point assessment organisations to provide, on request, information for the purposes of Ofqual's technical evaluation and to take action where we deem it necessary. This is likely to impose some additional burden on awarding organisations. We have considered this as we have

developed this approach. We propose to sample end-point assessments rather than review them all, which will limit the burden on awarding organisations. By setting out our requirements as Conditions, this will help awarding organisations understand what is likely to be required. As a regulator, we also have a duty not to impose or maintain unnecessary burdens on those we regulate and will be mindful of this when requiring information under this Condition. We believe this burden is proportionate and necessary to enable us to regulate end-point assessments effectively.

There may be some end-point assessment awarding organisations that are not currently regulated by Ofqual. These organisations may not be so familiar with our regulatory approach, or may not have processes in place for managing end-point assessments in line with this approach. For these organisations, the burden may be greater in terms of having to put in place processes to comply with our requirements. Such a burden would however need to be balanced against the benefits of being able to offer end-point assessments by being regulated.

There is a possibility an end-point assessment organisation may choose to have its end-point assessments regulated by Ofqual, despite us not being the external quality assurance provider. In this instance, an end-point assessment organisation would have to comply with both our requirements, and those set by its external quality assurance provider. This would potentially lead to an additional burden of having to comply with two sets of requirements. This would however only happen as a result of a decision by the end-point assessment organisation to place itself in this position. In our communications with end-point assessment organisations, we have been clear that this would be the case and recommend that end-point assessment organisations do not put end-point assessments on our Register unless Ofqual is providing external quality assurance for that standard.

We have not identified any other additional regulatory burden as a result of our proposals.

**Question 23: We have not identified any ways in which our proposals will unduly increase the regulatory impact on end-point assessment organisations. Do you have any comments on this assessment?**

**Question 24: Are there any additional steps we could take to reduce the regulatory impact of our proposals?**

**Question 25: Are there any costs or benefits associated with our proposals which we have not identified?**

We have a duty under the Apprenticeships, Skills, Children and Learning Act<sup>26</sup> to have regard to the desirability of facilitating innovation in connection with the provision of regulated qualifications. We have committed, in our Corporate Plan<sup>27</sup> to survey awarding organisations' 'views of the impact of our regulatory requirements on innovation and consider any revisions required in response. We do not believe that there is anything in our proposals that would prevent innovation by end-point assessment organisations, but would welcome your views on this.

**Question 26: We have not identified any ways in which our proposals will prevent innovation by end-point assessment organisations. Do you have any comments on this assessment?**

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<sup>26</sup> <http://www.legislation.gov.uk/ukpga/2009/22/contents> (section 129 (2) (g))

<sup>27</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/633421/Ofqual-17-6174-Corporate\\_Plan\\_2017-20-27.07.17.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633421/Ofqual-17-6174-Corporate_Plan_2017-20-27.07.17.pdf)



## 7. Responding to the consultation

The closing date for responses is **4 May 2018 at 17:00**.

Please respond to this consultation in one of three ways:

- [complete the online response](#) (click 'Respond online' on the consultation homepage)
- download the response form from the [consultation homepage](#) and either:
  - email your response to [consultations@ofqual.gov.uk](mailto:consultations@ofqual.gov.uk) – please include the consultation title (*Regulating Apprenticeship End Point Assessments*) in the subject line of the email and make clear who you are and in what capacity you are responding
  - post your response to: *Regulating Apprenticeship End Point Assessments*, 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 'About you' section.

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

We will publish a summary of the responses received. We will not include your personal details in any published summary of responses, although we may quote from your response anonymously.

**Please respond by 4 May 2018 at 17:00.**

## **8. Appendix A: Ofqual's objectives and duties**

### **The Apprenticeship, Skills, Children and Learning Act 2009**

Ofqual has five statutory objectives, set out in the Apprenticeship, Skills, Children and Learning Act 2009;<sup>28</sup>

- 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:
    - 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
- 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

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<sup>28</sup> <http://www.legislation.gov.uk/ukpga/2009/22/section/128>

- 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 duty.<sup>29</sup> 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 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.

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;

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<sup>29</sup> Equality Act 2010, s.149. <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

c) the need to maintain public confidence in the qualification.

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 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 our requirements for Ofqual-regulated apprenticeship end-point assessments 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.

## **9. Appendix B – Proposed End-Point Assessment Qualification Level Conditions and Guidance**

We have [published our proposed Conditions and Guidance for end-point assessments in Appendix B on our website](#).

**Question 27: Do you have any comments on our proposed End-point assessment Qualification Level Conditions?**

**Question 28: Do you have any comments on our proposed End-point assessment Qualification Level Guidance?**

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