

# **Regulatory framework for national assessments**

National curriculum and early years foundation stage assessments

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## Introduction

Ofqual regulates statutory early years foundation stage profile and national curriculum assessments (some of which are also known as ‘SATs’), which together we refer to as ‘national assessments’.<sup>1</sup>

This document sets out our regulatory framework for national assessments. **Part 1** explains what national assessments are and who is responsible for developing, delivering and monitoring them. **Part 2** describes our statutory objectives, duties and powers in relation to national assessments, as given to us by the Apprenticeship, Skills, Children and Learning Act 2009 (ASCL Act)<sup>2</sup> and explains how we regulate in practice. **Part 3** sets out our expectations of ‘responsible bodies’ involved in developing, delivering and monitoring national assessments. Responsible bodies must have regard to guidance in this framework as they carry out their national assessments role.

This regulatory framework for national assessments replaces the previous version published in February 2011. We will keep this framework, and our approach to regulating national assessments, under review to make sure it remains appropriate.

This framework does not apply to regulated qualifications and awarding organisations; Ofqual’s regulatory requirements for qualifications and awarding organisations can be found on the Ofqual website<sup>3</sup>.

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<sup>1</sup> In the Apprenticeships, Skills, Children and Learning Act 2009 (see footnote 2) our role applies to ‘regulated assessment arrangements’. In this document we refer to ‘regulated assessment arrangements’ as ‘national assessments’.

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2009/22/contents>

<sup>3</sup> <https://www.gov.uk/guidance/awarding-organisations-understanding-our-regulatory-requirements>

## Part 1: National assessments and responsible bodies

This section sets out what national assessments are and who is responsible for them. It helps to explain the context of Ofqual's regulatory role.

### National assessments

National assessments are statutory assessments of skills, knowledge and understanding within the early years foundation stage (EYFS) and national curriculum key stages. They are delivered in England and have specified purposes set out in statute.<sup>4</sup> National assessments may take a range of different forms, dependent on the age of the children being assessed and the purpose of the assessment; they could include pen-and-paper or online tests, teacher assessments, or national sampling tests. The Secretary of State for Education determines what national assessments should be taken and the number and type of assessments may change over time.

National assessments do not include optional tests which may be provided by the Standards and Testing Agency (STA), or formative assessments which may take place within schools to support ongoing teaching and learning. They do not include qualifications provided by awarding organisations, such as GCSEs, A levels, vocational qualifications or graded music exams.<sup>5</sup>

### Responsible bodies

Responsible bodies are organisations or individuals who have a statutory responsibility for developing, implementing or monitoring national assessment arrangements.<sup>6</sup> These bodies may change over time, but when they are responsible for aspects of national assessments, they are included within Ofqual's regulatory remit. The main responsible bodies include those set out here.

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<sup>4</sup> Section 41(4A) of the Childcare Act 2006, section 76(2) of the Education Act 2002 and secondary legislation made under those sections.

<sup>5</sup> Ofqual regulates different types of qualifications offered by recognised awarding organisations, who must comply with our regulatory requirements, such as our General Conditions of Recognition.

<sup>6</sup> Responsible bodies are organisations and individuals who under or by virtue of an order made under section 39(1)(a) of the Childcare Act 2006 or section 87(3)(c) of the Education Act 2002 have functions in relation to the development, implementation or monitoring of assessment arrangements.

## **Standards and Testing Agency<sup>7</sup>**

The primary responsible body for national curriculum assessments is the STA, an executive agency of the Department for Education. The STA acts on behalf of the Secretary of State for Education, who is accountable to parliament, including via the Education Select Committee.

The STA is responsible for developing, delivering and monitoring a number of national assessments. This includes technical processes, such as test development, standard setting and year-on-year standards maintenance. The STA is responsible for ensuring that accurate and reliable results are issued, for dealing with requests for reviews of results, and for handling queries and complaints about national assessments. The STA is responsible for working with other parts of the Department for Education and with its suppliers, local authorities and schools to secure development and delivery of valid assessments.

## **Department for Education<sup>8</sup>**

The Secretary of State for Education, supported by the Department for Education, is responsible for setting the curriculum and determining whether and what kind of national assessments may be required. The EYFS profile and statutory EYFS assessments are the responsibility of the Department for Education itself, rather than the STA.<sup>9</sup> Parts of the Department for Education, both within and outside the STA, develop policy relating to national assessments.

The Department for Education is also responsible for handling complaints that have been through STA's processes where the person complaining is not satisfied with the outcome.

## **Local authorities**

Local authorities have a range of statutory responsibilities in relation to national assessments. These include monitoring test administration to make sure that the integrity of the tests is maintained; moderating teacher assessments made by schools and early years providers to ensure they are accurate and consistent; and

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<sup>7</sup> In the legislation, strictly the relevant responsible body is the Secretary of State, and the STA performs functions on his/her behalf.

<sup>8</sup> As above, strictly the relevant responsible body is the Secretary of State, and the Department for Education performs functions on his/her behalf.

<sup>9</sup> The STA provides some communications to schools in relation to the EYFSP for the Department.

collecting some teacher assessment outcomes from schools to return them to the STA.

### **Other responsible bodies**

Responsible bodies also include head teachers and governing bodies of schools and early years providers who carry out, administer or oversee assessments. This includes boards of both maintained schools and academy trusts.<sup>10</sup>

Ofsted also have a role as they may, as part of their inspection of schools and early years providers, consider issues related to validity or public confidence in national assessments.

### **Third parties**

Responsible bodies may contract or come to arrangements with suppliers and other third parties to assist them in developing, delivering and monitoring elements of national assessments. For example, this might include item (question) writing, test development, print and distribution or marking. The responsible body is accountable for the performance of its suppliers and those working on its behalf to secure valid assessment arrangements.

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<sup>10</sup> Independent schools are not required to take part in national curriculum testing but are covered by statutory early years assessment requirements.

## **Part 2: Ofqual's role**

### **Section A: Regulatory scope**

Ofqual is a statutory regulator. This means our objectives, duties and powers are set out in law as passed by parliament, in this case, in the Apprenticeship, Skills, Children and Learning Act (ASCL) 2009, which sets us two statutory objectives in relation to national assessments:

1. Our assessment standards objective: to promote the development and implementation of national assessments which give a reliable indication of achievement; and indicate a consistent level of attainment, including over time, between comparable assessments.
2. Our public confidence objective: to promote public confidence in national assessments.

As far as is reasonably possible, Ofqual must act in accordance with our statutory objectives and in the way we consider most appropriate to meeting them. Our objectives are specific and focused on assessment standards and public confidence. We can only act as provided for by our statutory duties and powers. We do not decide whether or not there should be particular statutory assessments or the level of demand at which a particular assessment should be set. We do not determine wider aspects of education policy, such as curriculum or school accountability policy.

Ofqual is an independent regulator. The objectives that we must pursue have been set by parliament and we are accountable to parliament, not to government ministers. This independence is important in the context of national assessments, which are designed and delivered within the Department for Education. Developing and delivering assessments is a complex undertaking and expert independent regulation can provide assurance that effective technical processes, such as those relating to the setting and maintenance of annual test standards, are in place to secure valid assessments and outcomes that can be relied on. This is particularly important where assessment results can be seen as evidence of the success or otherwise of government education policy.

Ofqual's national assessments role is set at a national, system-wide level, taking into account the particular way that national assessments are developed and delivered. Our primary duty, set out in the ASCL Act, is to keep all aspects of national assessments under review. We have powers to require information and a duty to report to the Secretary of State if we think there is or is likely to be a significant failing

in national assessments.<sup>11</sup> The Secretary of State has a statutory duty to consult Ofqual before making specified changes to national assessments. We do not have powers to set rules or approve decisions made by responsible bodies, to investigate complaints about the result of a particular assessment, to impose fines or direct responsible bodies to take a particular course of action.

Our regulation of national assessments covers statutory early years foundation stage and national curriculum key stage assessments. National assessments regulation does not include non-statutory assessments, such as optional tests that may be provided by the STA, or non-statutory, school-based assessments (such as 'assessment for learning').

Ofqual also regulates general qualifications such as GCSEs and A levels, and vocational, technical and other qualifications offered by recognised awarding organisations. Our regulatory framework for national assessments is different to our regulatory framework for qualifications and awarding organisations; we have different statutory objectives, duties and powers for national assessments as for qualifications and awarding organisations. These reflect the significant differences about the way qualifications and national assessments are designed, delivered and made available.

The annex on page 22 summarises the key legislative provisions related to Ofqual's regulation of national assessments.

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<sup>11</sup> There is a significant failing if, as a result of the way in which assessments are developed or implemented, they fail in a significant way to achieve one or more of their specified purposes.



## **Section B: Regulatory approach**

While there are differences between our statutory objectives, duties and powers for national assessments and those for qualifications, we apply the principles of good regulation to both and regulate both by focusing primarily on assessment validity.

This section sets out those principles, explains what we mean by ‘validity’ and sets out how validity informs our view of risk.

### **Principles**

In keeping national assessments under review, we apply the five principles of good regulation:

#### **Transparency**

Our work should be informed by stakeholder views and public opinion. We should provide feedback on our review activities to responsible bodies and publish our conclusions and findings where appropriate. Documents we publish, such as this framework, should be clear and user-friendly whilst recognising the technical nature of our work.

#### **Accountability**

We must be able to justify our conclusions and decisions, which should be evidence-based. We are subject to public scrutiny and accountable to parliament.

#### **Proportionality**

Our regulatory activity should correspond to our assessment of the impact and likelihood of risks to validity and public confidence. It should not impose or maintain unnecessary burden on responsible bodies.

#### **Consistency**

Our focus should be consistent with our regulatory strategy and approach as set out in this framework.

#### **Targeting**

Our activity should focus on areas of risk. Our regulation should be ‘outcomes-focused’, recognising that valid assessment can be achieved by a range of different approaches.

#### **Validity**

Ofqual has two objectives relating to national assessments. Our assessment standards objective is to promote national assessments which ‘give a reliable indication of achievement’ and ‘indicate a consistent level of attainment (including

over time) between comparable assessments'. Our second objective is to 'promote public confidence' in national assessments.

In order for us to most effectively meet both objectives, we consider national assessments against a primary criterion – validity. Considering validity also enables us to judge the extent to which national assessments meet, or are likely to meet, their specified statutory purposes, such as purposes relating to the assessment of relevant knowledge, skills and understanding. Validity is a technical term; the validity of a particular national assessment is

the degree to which it is possible to measure what that assessment ought to measure by implementing its assessment arrangements.

Validity is an overarching term, central to the assessment quality. It encompasses the technical concepts of reliability, comparability, manageability and minimising bias:

### **Reliability**

An assessment should generate outcomes that provide a reliable measure of a pupil's performance. A pupil ought to receive an outcome that represents their level of attainment, regardless of which tasks they happened to be set, who happened to mark their work, and so on.

### **Comparability**

An assessment should generate outcomes that are comparable over time and between comparable assessments. A pupil that achieves a particular standard (threshold or score) in one year should have the same level of attainment as a pupil that achieves that same standard in a comparable assessment in another year.

### **Manageability**

An assessment should be manageable and implementable for those involved. For example, schools and others involved in assessments should be provided with information necessary for effective preparation for and delivery of assessments in a timely manner. The scale of the assessment process should be proportionate to the usefulness of the outcome.

### **Minimising bias**

An assessment should minimise bias, differentiating only on the basis of each pupil's level of attainment. A pupil should not be disadvantaged by factors that do not relate to what is being tested, for example, the way a particular question may be worded.

Consideration of each of these concepts, and consideration of validity generally, helps us to meet both of our objectives. For example, an assessment which does not minimise bias will risk failing to reliably indicate achievement which is likely to undermine confidence in the assessment. An assessment which is not manageable

is unlikely to be effectively delivered and so again presents risks to both assessment standards and to public confidence.

However, the public confidence objective is broader than validity and our standards objective; for instance, a delivery failure by a contractor could undermine confidence in otherwise valid assessment arrangements. While we focus on validity, we also consider these kinds of risks to public confidence as we regulate.

Considering validity does not involve a simple yes or no judgement; it is a matter of degree. An assessment must assess skills and knowledge sufficiently well so that people can be confident that results can be relied on.

Validity is determined by all of the procedures that are put in place throughout an assessment's lifecycle. For an assessment to be valid, the way it is specified, designed, developed and delivered, must ensure that results are as accurate and as useful as possible each time that assessment is taken.

Monitoring and review are important to check that validity has been optimised and so that changes can be made where necessary to secure greater validity. A loss of validity within any part of an assessment procedure can negatively impact on the accuracy and usefulness of assessment outcomes.

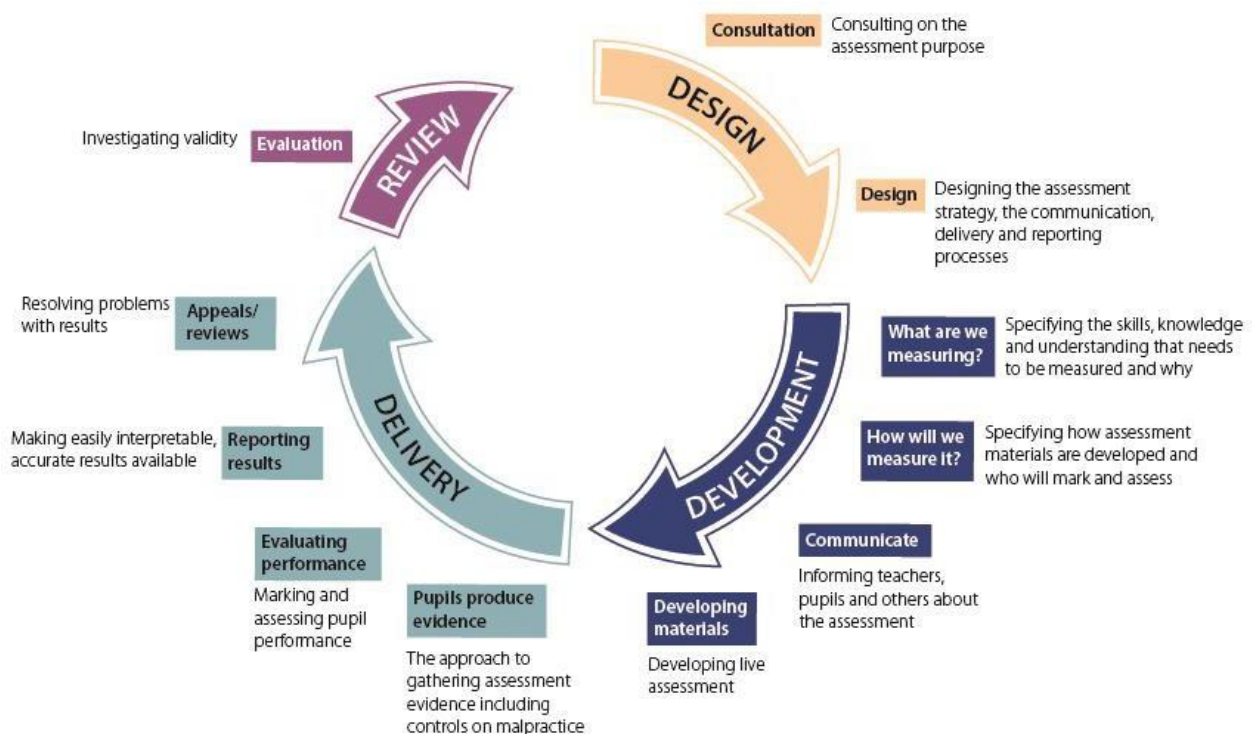


Figure 1: Validity throughout the assessment lifecycle

## **Risk-based regulation**

We take a risk-based approach to regulation. In order to regulate national assessments effectively, we must keep ourselves informed of potential threats to validity and public confidence. Information and insights, including from engagement with responsible bodies and stakeholders, can inform our assessment of risk. Our assessment of risk drives our regulatory activity, the outcomes of which in turn inform our assessment of future risks.

The focus of our activity is likely to be the primary responsible body; the STA. However, there may be instances where we engage with other responsible bodies, depending on the nature of the risk. For example, we may engage with local authorities in relation to assessment moderation, or we may engage with teams in the Department for Education who may be responsible for elements of national assessment policy.

In a similar way, our activity is likely to focus on those national assessments, and aspects of their lifecycle, which are subject to the highest risks to validity and public confidence. Different assessments face different pressures, depending on how results are used and relied upon. For example, where assessments may be heavily relied upon within school performance measures, this is likely to present risks to valid assessment which will need to be identified and mitigated by responsible bodies.

Such 'high-stakes' assessments are also likely to have greater impact on teaching and learning, meaning that any issues experienced could have a greater impact on public confidence in national assessments generally. As we consider where to focus our regulatory activity, we will consider the nature and scale of risks and how our work can most effectively contribute to achieving greater validity and promoting public confidence.

Not all of the STA's or other responsible bodies' activities will relate to national assessments. Similarly, there are aspects of STA's and other bodies' activities which support effective delivery of national assessments, but do not directly relate to assessment validity. This could include human resources, internal governance or financial arrangements. We would not normally expect these types of areas to form a significant part of Ofqual's review activity as they do not usually present direct risks to assessment validity or to public confidence. However, we would expect to keep this approach under review and we may decide to focus on such an area, for example, to monitor it more closely or report on it, if it became likely to present a significant risk to validity or public confidence.

## **Section C: Regulatory tools**

Ofqual has a duty to keep all aspects of national assessments under review and there are a range of different regulatory tools that can help us do this. We can use these tools in different combinations according to the level and nature of risk that we identify. We may apply them to different assessments or focus on different processes within the assessment lifecycle dependent on where we see threats to validity and public confidence. Our key tools are explained here, but this is not an exhaustive list. We recognise that regulation is dynamic and our activity should respond to developing evidence and changes in the environment.

We will set out in advance the key areas that we expect our regulation of national assessments to focus on for each year, however, our activity will not be limited by this, but will respond to changes in the evidence and environment as necessary. We will share relevant details of our proposed work, for example, our scope or rationale, with relevant responsible bodies as appropriate and, where appropriate, respond to requests from responsible bodies.

### **Observing processes related to validity**

We may observe key processes relating to validity, for example, those related to standards maintenance or marking, that are run by responsible bodies such as the STA. Observation can inform us of potential threats to validity and public confidence that can be raised with the responsible body so that appropriate action may be taken (see 'Providing feedback' below) or lead to further regulatory scrutiny. It can also assure us that particular risks are being appropriately identified and managed. Our presence does not in itself provide assurance or indicate sign off for the activity or decisions made by a responsible body, but it may incentivise best practice.

### **Gathering and evaluating information to inform our view of risks to validity**

We may gather and evaluate evidence from responsible bodies. We may ask for information and data to inform our regulatory approach or to provide us with assurance in response to a particular risk or issue. We may request feedback from schools and local authorities or information from other bodies, such as Ofsted.

Under Section 162 of the ASCL Act, we have the power to require a number of specified bodies (including responsible bodies) to provide us with information. Where we use this power, we will endeavour to ensure that we do not impose unnecessary burden, for example, by only seeking information that is targeted and relevant to our needs.

## **Scrutiny of aspects of validity**

Where we consider that there may be risks to validity which would warrant deep and thorough scrutiny, we may decide to audit or conduct research into a particular aspect of national assessments. This may take a range of different forms, including:

- structured review by subject matter experts (eg mathematics, English, science or early years experts)
- quantitative analysis of item or test functioning data
- qualitative research including observation, interview and literature review
- documentation or process audits

We may evaluate evidence and analysis to consider the validity of aspects of existing assessment procedures; the validity of aspects of proposed new assessment procedures; and where assessment procedures change, the impact on validity of any changes on elements that have not changed.

## **Providing feedback and engaging with responsible bodies**

The purpose of regulatory feedback is to ensure that responsible bodies are able to review and where necessary improve their processes over time. We expect to engage in dialogue with relevant responsible bodies prior to, during and following our activity, particularly the primary responsible body, STA. As part of this process, we would expect to discuss relevant questions that may arise from our review.

Following review activities, we will share relevant conclusions and findings with the responsible body as appropriate. We expect the responsible body to consider and respond to our feedback as may be necessary. These findings may include recognition of good practice where we have observed it. Where evidence warrants this, we may raise risks with, or make recommendations to, a responsible body.

Unlike in our regulation of awarding organisations, we do not have powers to require responsible bodies to take a particular course of action. We recognise that, where we have identified a particular risk, there may be a number of effective responses to mitigate that risk and it is for the responsible body to decide the most appropriate approach.

## **Publishing reports**

Reporting is important to provide transparency to stakeholders and to the wider public. Regulatory reports may provide assurance in relation to some aspects of validity. They may also highlight risks and other issues relating to validity and public confidence and provide a view on how these risks and issues are being managed by relevant responsible bodies.

We will publish an annual report on national assessments to parliament. This reports on Ofqual's regulatory activities in relation to that year's assessments and sets out the conclusions of any review work completed during that year.

From time to time, we may also publish additional reports relating to specific activities, for example in relation to a particular research study.

### **Providing an expert view on proposed assessment changes**

The Secretary of State has a duty<sup>12</sup> to consult Ofqual before making specified changes to national assessments and we expect to be consulted by responsible bodies in relation to significant changes. This could include changes such as introducing new assessments, making changes to assessment modes, setting a new standard for an assessment or changes to assessment resulting from revising the curriculum upon which an assessment is based.

In providing a view on proposed changes, Ofqual will consider aspects relevant to validity and public confidence in order to support effective future assessments. We may identify risks or potential approaches to mitigating risk, which could help to reduce the likelihood of such risks occurring. Our advice may consider, for example:

- coherence – the extent to which assessment arrangements are compatible across subjects, stages and ability ranges
- clarity of purpose for each assessment and the extent to which multiple purposes may be compatible or reconcilable
- potential impacts on validity in relation to proposed changes, including to reliability, minimising bias, manageability and comparability
- stakeholder views and potential impacts on public confidence
- the rationale for change, how changes will be implemented, including the timing of changes and any need for trialling or piloting, and any risks associated with their implementation or communication

### **Notifying the Secretary of State**

We have a duty to keep all aspects of national assessments under review. If it appears to us that there is, or is likely to be, a significant failing, we must notify the

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<sup>12</sup> Under section 87 of the Education Act 2002 (for national curriculum assessments) and section 42 of the Childcare Act 2006 (for EYFS assessments).

Secretary of State and any responsible body whose act or omission appears to us to have contributed to the significant failing.

A significant failing will occur if, as a result of the way in which national assessments are being developed or implemented, an assessment fails in a significant way to achieve one or more of its specified purposes. Examples of where it may be appropriate for Ofqual to notify the Secretary of State include if:

- it became evident that there was a risk that significant numbers of test results would be delayed
- it became evident that assessment results would not provide information about the attainment and progress of pupils, assuming that the provision of this information was one of the specified purposes of the assessment
- a new type of national assessment was being developed which Ofqual judged would not provide a valid assessment of pupils' level of attainment



## Part 3: Expectations of responsible bodies

In this section, we set out our expectations about how national assessments will be developed, delivered and monitored by responsible bodies.

### Section D: Validity of national assessments

We expect each responsible body to develop, deliver and monitor national assessments in a way that optimises validity. This expectation applies equally to all forms of assessment, such as traditional paper-and-pen tests, online assessments, oral tests, or teacher assessed/mediated assessments. To help secure validity, we expect:

- each statutory national assessment to have a clear, achievable purpose (which aligns with the specified statutory purposes for national assessments) and that where multiple purposes are identified these are compatible or reconcilable
- procedures, mechanisms and controls to be in place at each stage of the assessment lifecycle to optimise validity
- that any suppliers or others acting on behalf of the responsible body also act in a way that optimises the validity of national assessments

We also expect that assessments should:

- be appropriate to the age of children being assessed
- provide effective measures of children's abilities, skills and concept development regardless of construct irrelevant factors such as social background, gender, faith, or race
- allow for reasonable adjustments to be made, while minimising the need for them

As part of optimising validity, we expect assessments to optimise reliability, comparability and manageability and to minimise bias, as explained in section B above.

#### Demonstrating validity

We expect a responsible body to be able to demonstrate the validity of its assessment arrangements.

For each assessment, we expect information to be published, for example in a specification, setting out:

- the assessment's purpose(s) and how the assessment is expected to meet its purpose(s) (including any specified statutory purposes);
- the form of the assessment
- how relevant programmes of study will be covered
- what results are intended to signify and how they are expected to be used
- any specimen assessments or other materials to exemplify the standards
- how STA and other responsible bodies will fulfil their roles

### **Monitoring and review**

We expect responsible bodies to keep under review, and enhance where necessary, their approach to the design, development and delivery of assessments, to assure themselves that their approach remains appropriate. This should include, for example, considering information, comments and complaints from stakeholders and the public.

Where a notifiable event has taken place (see section E below) we expect the responsible body to review and revise its approach where necessary.

## **Section E: The responsible body**

### **Resources and expertise**

We expect a responsible body to have the capacity and capability to deliver national assessments. This may include resource procured from or provided by third parties. It includes having:

- appropriate governance arrangements in place
- suitable internal controls and quality assurance processes in place
- sufficient resources to carry out its functions in relation to national assessments, such as appropriately trained and expert staff and contractors

### **Third parties**

We expect responsible bodies to ensure that any third parties or suppliers used to carry out their national assessment functions optimise validity. We also expect a responsible body to keep us informed of any proposed or current procurement relating to the development or delivery of national assessments. Where a responsible body sub-contracts any part of the development, implementation or monitoring of a national assessment, it is the responsible body who remains responsible for the quality and timely delivery of the assessment.

### **Risk and issue management**

We expect a responsible body to review and manage risks relating to national assessments, including identifying and planning appropriate contingencies. In particular, we expect responsible bodies to manage risks and issues in relation to:

- threats to the validity of national assessments
- threats to public confidence in national assessments

This includes risks and issues related to the development, delivery and monitoring of national assessments and to procurement and third parties, including suppliers.

### **Conflicts of interest and malpractice**

We expect a responsible body to identify and monitor any conflicts of interest which relate to it. Where a conflict of interest exists, we expect responsible bodies to manage it to ensure that it does not negatively impact on national assessments.

We expect a responsible body to have appropriate arrangements in place to deter, report, investigate and address any cases of maladministration and malpractice,

including appropriate procedures relating to maintaining the security of confidential assessment materials.

### **Notifiable events**

We expect a responsible body to notify us as soon as possible if it has cause to believe that an event has occurred or is likely to occur which may:

- lead to appropriate standards in a particular national assessment (eg a key stage test) not being set or maintained
- otherwise have a detrimental impact on the validity of a particular national assessment
- lead to public confidence in national assessments being damaged
- lead to a particular national assessment failing to meet its purposes (including the specified statutory purposes)

This generally excludes issues that may relate to individuals, such as a complaint about an individual pupil's or school's results, unless they have a wider impact on validity or confidence in the assessment or the assessment system as a whole.

Where a notifiable event has occurred, we expect a responsible body to confirm to Ofqual that the risks and issues identified are being appropriately managed and to keep Ofqual informed about how they are being managed.

### **Providing information**

We expect responsible bodies to provide information we request to carry out our regulatory function. This could include information from suppliers. We expect information provided to be accurate, complete and provided in a timely fashion. If the requested information is not provided within a reasonable timeframe, we may, where appropriate, make a formal information request under Section 162 of the ASCL Act.

### **Engaging with regulation and responding to regulatory feedback**

We expect regular engagement and dialogue with relevant responsible bodies in relation to our activity. As part of this process, we would expect to discuss any questions that may arise during the course of our monitoring and review. We expect responsible bodies to carefully consider our views and respond appropriately to any regulatory feedback.

### **Consulting Ofqual on proposed assessment changes**

We expect responsible bodies to consult us in relation to significant changes proposed to national assessments. Ofqual should be provided with sufficient information to allow a considered opinion to be formed. Consultation should be at the

formative stages of policy development and allow adequate time for Ofqual to effectively respond and for the consulting responsible body to consider Ofqual's views. Consultation may be ongoing where policy develops over time.

We expect responsible bodies to carefully consider our views and respond appropriately.

### **Meeting equality legislation**

We expect a responsible body and its suppliers to comply with relevant equality legislation. Whilst it is not our role to ensure compliance, if we identify a potential issue we may notify the Secretary of State and/or the relevant regulatory body.

## Annex: Key legislation relating to national assessment regulation

Ofqual's statutory objectives, duties and powers are set out in the Apprenticeship, Skills, Children and Learning Act 2009 (ASCL Act). Ofqual's specific duties and powers in relation to national assessments are at Sections 159 to 166. Sections 128, 129 and 131 of the ASCL Act set out Ofqual's objectives and general duties in relation to national assessments and explain what assessments are regulated national assessments. Ofqual is also covered by other legislation relevant to regulators and public sector bodies.

Key provisions relevant to national assessments regulation are summarised below.

### Objectives

Ofqual has two objectives<sup>13</sup> in relation to national assessments:

- the assessment standards objective: to promote the development and implementation of national assessments which
  - give a reliable indication of achievement
  - indicate a consistent level of attainment (including over time) between comparable assessments
- the public confidence objective: to promote public confidence in national assessments

### Duties

Ofqual has the following duties in relation to national assessments:

- we must keep all aspects of national assessments under review.<sup>14</sup>
- if it appears to us that there is, or is likely to be, a significant failing in national assessments, we must notify the Secretary of State and any responsible body whose act or omission appears to us to have contributed to the significant failing.<sup>15</sup>

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<sup>13</sup> Section 128 of the ASCL Act

<sup>14</sup> Section 161 of the ASCL Act

<sup>15</sup> Section 163 of the ASCL Act

- we must prepare and publish a regulatory framework describing how we intend to keep national assessments under review and giving guidance to responsible bodies about the performance of their functions in relation to national assessments.<sup>16</sup>

## **Powers**

We have the power to require information which we consider necessary or expedient to have for the purpose of, or in connection with, our performance of our duty to keep national assessments under review from any responsible body (including the Secretary of State and persons/bodies performing functions on his/her behalf and Ofsted) and any other person specified by the Secretary of State in regulations.<sup>17</sup>

We also have powers to report on matters relating to our national assessments functions.<sup>18</sup>

## **Secretary of State duty to consult**

In addition to the duties placed on Ofqual, the Secretary of State<sup>19</sup> has a duty to consult Ofqual before making an order which makes changes to national assessment arrangements. As well as this, in some cases legislation may oblige the Secretary of State or another responsible body to consult Ofqual before making specified changes to national assessments.

## **Other provisions**

The ASCL Act also specifies that, in performing its functions, Ofqual must have regard to a number of factors<sup>20</sup>, which include:

- the reasonable requirements of pupils and children, including those with special educational needs, in relation to national assessments
- the specified purposes of national assessments

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<sup>16</sup> Sections 164 and 165 of the ASCL Act

<sup>17</sup> Section 162 of the ASCL Act

<sup>18</sup> Section 171 of the ASCL Act

<sup>19</sup> Section 87 of the Education Act 2002 (for national curriculum assessments) and section 42 of the Childcare Act 2006 (for EYFS assessments)

<sup>20</sup> Section 129 of the ASCL Act

- aspects of government policy we have been directed to have regard to
- information provided to us about national assessments by relevant bodies

The ASCL Act also requires that Ofqual must regulate efficiently and effectively<sup>21</sup> and that we must not impose burdens which we consider to be unnecessary or maintain burdens which we consider to have become unnecessary.<sup>22</sup>

We must also fulfil the wider duties placed upon Ofqual as a public body. These include having due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between different groups
- foster good relations between different groups<sup>23</sup>

These duties cover age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty to have due regard to the need to eliminate discrimination also covers marriage and civil partnerships.

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<sup>21</sup> Section 129(8) of the ASCL Act

<sup>22</sup> Section 170(2) of the ASCL Act

<sup>23</sup> Section 149 of the Equality Act 2010



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