

# Rules and regulations on teacher involvement in exam development: Consultation analysis



## Introduction

We have consulted on our proposals for new and revised Conditions and guidance to strengthen the safeguards when teachers are involved in developing confidential assessment materials. The consultation ran between 11 May and 08 June 2018. This was a technical consultation which followed a policy consultation that ran earlier in 2018.

The consultation questions were available to complete online or download. A copy of the consultation is available at: <https://www.gov.uk/government/consultations/rules-and-regulations-on-teacher-involvement-in-exam-development>

We received nine responses to the consultation. We are grateful to everyone who participated.

This report is a summary of the views expressed by those who responded to our consultation. We sought views on the wording of our proposed Conditions and guidance to strengthen our regulation of awarding organisations' when they involve teachers in developing of confidential assessment materials.

In September 2017 we announced we would review:

- the risks and benefits of the long-established practice whereby some teachers who write or contribute to exam papers also teach the qualification; and
- the effectiveness of the safeguards used to reduce the risk of a teacher who has this dual role disclosing or otherwise misusing information about confidential assessments.

This consultation sought views on our proposed Conditions and guidance. It followed decisions made after we had consulted on our policy proposals, which are available here: <https://www.gov.uk/government/consultations/consultation-teacher-involvement-in-the-development-of-confidential-assessment-materials>.

## Who responded?

We received nine responses to our consultation. They were from those organisations listed in Appendix A: List of organisational consultation respondents. One response only answered a single question; the other eight answered a varying number of the questions we asked.

## Approach to analysis

The consultation was published on our website. Respondents could choose to respond using an online form, by email or by posting their answers to the consultation questions to us. The consultation included six questions relating to the proposed wording of our revised Conditions and guidance.

This was a public consultation on the views of those who wished to participate. We recognise that the responses are not necessarily representative of the general public or any specific group. We present the responses to the consultation questions in the order in which they were asked. Respondents could choose to answer all or just some of the questions.

We read all responses in full and summarise in this report the range of views that were expressed. While we structure the report by question asked, some comments straddled two or more of the questions. As a result we recognise not all views expressed or the extracts we have included fit neatly under individual questions. We have sometimes edited comments for brevity and to preserve anonymity but have been careful not to change their meaning.

## Consultation response outcomes

### **Question 1. Do you have any comments on the wording of the proposed amended Condition A4.3?**

Seven of the nine responses included substantive comments in relation to our proposals for new wording in Condition A4.3. The responses were generally either supportive or neutral about the proposal, although several did call for clarification on specific points, for example whether the use of the single “register” of interests precludes a number of registers fulfilling this requirement. Also whether “all conflicts of interest that relate to [the AO]” only relate to those conflicts of interest which, after an AO has taken reasonable steps to collect them, have been declared.

**Question 2 – Do you have any comments on the wording of the proposed amended guidance for Condition A4?**

We received specific comments from five of the nine respondents on the proposed guidance. The other four made general statements welcoming the new guidance. Two respondents noted that the proposed guidance focusses on the collection of conflict of interest information, and that it might be helpful to include more about the management of conflicts of interest during delivery of the qualification.

Other comments included feedback on some of our drafting, with suggestions that some sentences could be simplified, and concern around some of the negative indicators which are based around an awarding organisation not knowing something. Respondents noted that it would be possible for an awarding organisation to not know something despite have taken all reasonable steps to collect the relevant information.

**Question 3 – Do you have any comments on the wording of lines 42 onwards of the proposed amended guidance for Condition A8?**

There was widespread support from respondents for the principle of the Teaching Regulation Authority being notified of teacher misconduct. However comments from the exam boards offering GCSEs and A levels who responded to our consultation, as well as their representative organisation the Joint Council for Qualifications, noted that discussions had taken place with TRA in which it was agreed that normally a centre should make a referral; where a centre will not refer a case then where it considers it appropriate to do so the awarding body would make the referral.

Other comments questioned Ofqual's relationship with TRA, and also raised concerns about the precise scope of this guidance:

The reference to “any organisation that carries out the same function in England” suggests that there are other organisations in England with the same function. We do not believe this to be the case but can see the benefit of referring to the ‘TRA or any successor organisation’.

The reference to ‘another jurisdiction’ raises some questions about which qualifications this guidance applies to, under what circumstances, and whether all jurisdictions have an equivalent to the TRA.

*Awarding organisation*

**Question 4 – Do you have any comments on the wording of the proposed amended Condition G4.3, G4.5 or the title of the condition?**

Only three respondents made substantive comments in response to this question, although another three gave general expressions of support.

The three substantive comments each covered a slightly different point. Two suggested alterations to the text, one of which was to take a different approach to defining “prohibited training” and the other was a suggestion to reflect more precisely the scope of the condition, which includes third parties who have access to secure materials but who have not been involved in the development of the assessment.

The third comment suggested that the proposed addition to Condition G4.5 did not add any value to the original, and that it should not be implemented.

### **Question 5 – Do you have any comments on the wording of the proposed amended guidance for Condition G4?**

Six of the respondents made detailed comments regarding our proposed amended guidance for Condition G4. In some cases these were very detailed, proposing alternatives for individual words in particular sentences. Four of them clearly welcomed the revised guidance in general, although three of these made suggestions for how it could be improved.

We believe that the proposed wording offers greater clarity and explanation, and we welcome the continued inclusion of appropriate definitions, eg ‘prohibited training’.

*Awarding organisation*

Most of the suggestions were for clarification, rather than disagreements with the content or purpose of the guidance. Overall, none of the responses indicated significant concern with the proposed wording.

### **Question 6 – Do you have any comments about our proposed guidance on safeguarding confidentiality where teachers are involved in developing assessments?**

Six respondents made substantive answers in response to this question. The responses varied in terms of their level of detail. With some exceptions, comments were either neutral or positive about the guidance as a whole. Two responses, in particular, were critical of some elements of the proposed guidance, although all of them offered suggestions for greater clarity in specific areas.

The two more critical responses highlighted concerns with some of the examples of the types of monitoring that an awarding organisation could undertake which we set out in lines 205 – 217 of our proposed guidance. They cautioned that these measures could introduce risks such as in recruiting examiners or constructing

question papers. This section was also noted in other responses, albeit in less critical terms.

We urge Ofqual to carefully reconsider the guidance, and the 'strength' of the measures proposed. By introducing, what we perceive to be quite strong 'packages', the validity and reliability of 'high stakes' qualifications are likely to be threatened by other means.

*Awarding organisation*

These suggestions therefore appear expensive, risky and ineffective.

*Awarding organisation*

Three responses raise a point about the nature of parts of the guidance, in particular lines 148-153, 183-185 and 193-199. They argue that these sections set out explicit requirements rather than guidance.

On a general note, however, there are parts of the guidance which would be better placed within Condition G4 itself or written as new General Conditions, since they are setting out requirements rather than indicative good practice ... If our compliance to the General Conditions is dependent upon our meeting these particular statements, these should be embedded in the General Conditions themselves and not within guidance, which is already very extensive and not easily navigable.

*Awarding organisation*

Three responses welcomed in particular the use of illustrative examples in the guidance. A fourth noted that the examples "each relate to safeguards built around a single qualification. It might be helpful to consider examples at an organisational level where many hundreds of exam papers are being developed across a wide range of subjects."

**Question 7: We have not identified any ways in which the proposed amended Conditions or guidance would impact (positively or negatively) on persons who share a protected characteristic. Are there any potential impacts we have not identified?**

**Question 8: Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic?**

**Question 9: Do you have any other comments on the impacts of the proposals on students who share a protected characteristic?**

We received no comments from any respondents which indicated any ways in which the proposed amended Conditions or guidance would impact (positively or negatively) on persons who share a protected characteristic.

**Question 10: Do you have any further comments on the estimated costs of awarding organisations, large and small, complying with our proposed new Conditions and following our revised guidance?**

Five respondents made comments regarding this question. One large awarding organisation estimated that their direct costs would be in the region of £1 million. They also noted however that “there are additional opportunity costs and risks associated with implementing requirements linked to this guidance.”

Another large awarding organisation gave some indicative costs. They estimated that implementing all the conditions and following all the guidance would necessitate the employment of two new members of staff at £25,000 each, and the training of 700 existing employees at a cost of £175,000. They gave two alternatives for costs of producing exam papers:

- They noted their current budget for question paper production averages at £2,950 per paper and that additional costs would be incurred as multiples of this figure. They did not, however, indicate how many papers they produce currently, or how many they might need to produce in the future.
- They said that “The introduction of a process and system for item banking would involve system development or licencing at a potential cost of between £60,000 per annum for a licence arrangement and up to £2.5m for system development (although this potential cost has not been fully researched at this point)”

Another awarding organisation noted that the increased costs which our proposed conditions and guidance would incur might lead to them having to reconsider the fees they charge to centres, although they offered no specifics. They mentioned particular concerns about potential negative impacts for low entry subjects.

Two smaller awarding organisations said that the changes would incur minor administrative costs, but did not put a figure on these.

**Question 11: Are there any additional steps we could take to reduce the regulatory impact of our proposals?**

Five respondents made substantive comments regarding this question. Four of them highlighted the importance of a proportionate timeline for implementation of the proposed changes to the Conditions and guidance. Two emphasised the need for a consultative and collaborative approach to deciding these timescales. One

highlighted the risks of requiring a wholesale move to the new proposed approaches in a single summer series, and suggested a phased roll out would be more sensible.

The fifth response made a specific point about the need for compliance with the General Data Protection Regulation when holding information about individuals' conflicts of interest.

**Question 12: Are there any costs or benefits associated with our proposals which we have not identified?**

A single respondent raised an issue in response to this question. The same awarding organisation which agreed that their direct costs would be in the region of £1 million in its response to question 10, said that the figure “does not take into account the opportunity costs and the impact on our wider development plans, particularly systems development, which may need to be deferred.”

It also used this question to highlight again the risks around timescales, and encouraged viewing costs “in the context of wider incremental costs to awarding organisations as a result of ongoing reforms and increased regulatory expectations.”

**Question 13: Do you have any comments on the readability and accessibility of the guidance?**

**Question 14: Do you have suggestions on how it might be improved?**

Two respondents said that the guidance was clear and useful. Another two respondents, however, said that the guidance was not as easy to read as it could be. They did not make specific suggestions for improvement, but noted that their suggestions made in response to earlier questions would go some way to improving the guidance. One said that “the format would benefit from a full review to ensure clarity and logical progression.”

One organisation objected to statutory guidance in principle:

[We have] always considered that statutory guidance is unnecessary and apt to lead to increased prescription. This is inconsistent with Ofqual's statutory duty to have regard to the desirability of facilitating innovation. In particular, [we are] concerned that proliferation of guidance may reflect poor regulatory drafting.

*Awarding organisation*

## **Appendix A: List of organisational consultation respondents**

Cambridge Assessment International Education

Chartered Institute of Legal Executives (CILEx)

NCFE

Joint Council for Qualifications

Open Awards

WJEC



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