

28 September 2018
Memorandum of Understanding
between
The Department for Education
and
The Office of Qualifications and Examinations Regulation

1 Purpose

- 1.1 This Memorandum of Understanding (MoU) is intended to support effective working arrangements between the Department for Education and the Office of Qualifications and Examinations Regulation.
- 1.2 Throughout this MoU, the Department for Education is described as the DfE and the Office of Qualifications and Examinations Regulation as Ofqual, and, collectively, as 'we', with the expressions 'our' and 'us' being used accordingly.
- 1.3 This MoU is not intended to cover every detailed aspect of the working relationship between the two parties. It is a statement of principles that will guide relations to ensure appropriate arrangements are in place to enable us to discharge our respective responsibilities effectively and to avoid duplication of effort, misunderstanding or unnecessary impact on third parties.
- 1.4 Although not legally binding, this MoU will serve as a working document that will be subject to review in the light of operational practice.
- 1.5 This MoU should be considered in the context of the applicable legislation (the [Apprenticeships, Skills, Children and Learning Act 2009](#) and subsequent amendments).

2 Roles of the DfE and Ofqual

- 2.1 Ofqual is a non-ministerial government department. It is independent of government and reports directly to Parliament. Ofqual has a number of statutory objectives, including:

- to secure that regulated qualifications: (a) give a reliable indication of knowledge, skills and understanding; and (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications;
- to promote the development and implementation of regulated assessment¹ arrangements which: (a) give a reliable indication of achievement, and (b) indicate a consistent level of attainment (including over time) between comparable assessments;
- to promote public confidence in, and awareness of, regulated qualifications; and
- to secure the efficiency of regulated qualifications.

2.2 Ofqual has a range of statutory powers to enable it to fulfil its objectives and discharge its functions.

2.3 In performing its role, Ofqual must act in a way which is compatible with its objectives and which is considered to be most appropriate for the purpose of meeting its objectives. It has a number of specific duties, including that it must have regard to such aspects of government policy as the Secretary of State for Education ('the Secretary of State') may direct. Any such direction must be published by the Secretary of State.

2.4 The Secretary of State is accountable for national assessment arrangements and must consult Ofqual before making changes to those arrangements.

2.5 Ofqual is the statutory regulator of national assessments (statutory national curriculum and early years assessments). Ofqual must publish a national assessments regulatory framework and consult (amongst others) the Secretary of State before publishing or revising that framework. Ofqual must tell the Secretary of State if it appears there is or is likely to be a significant failing in national assessment arrangements. Both the DfE and Ofqual undertake to recognise the particular nature of this regulatory relationship and the need for Ofqual's independence in this role to be maintained. Ofqual's regulatory framework for national assessments has statutory status and will take precedence over any memorandum between us. The DfE and Ofqual may from time to time decide to conclude a further memorandum in respect of national assessments regulation.

2.6 The Secretary of State is responsible for policy in respect of the qualifications students take at the end of key stage 4 and by students age 16-19 years, including how those qualifications are reflected in accountability arrangements. The Secretary of State is responsible for decisions on the curriculum, how this

¹ 'Regulated assessments' are more colloquially known as national assessments.

is reflected in any subject content expectations for particular qualifications and, for post 16, on the arrangements for determining the curriculum and any associated content. Ofqual sets the regulatory framework within which certain qualifications are designed, delivered and assessed.

- 2.7 Included in these qualifications is Technical Qualifications, for which Ofqual will develop a bespoke and tailored regulatory framework in collaboration with the Institute for Apprenticeships (IfA) - a non-departmental public body sponsored by the DfE and established in April 2017 by the Apprenticeships, Skills, Children and Learning Act 2009 (as amended) that has overarching responsibility for T Levels². Ofqual's regulatory approach for Technical Qualifications will reflect the different policy and statutory environment, as well as the leading role of the IfA, for T Levels. This MoU does not cover the working arrangements between Ofqual and the IfA for quality assuring T Levels.
- 2.8 The Secretary of State is also responsible and accountable for policy on apprenticeships. Ofqual quality assures end point assessments for some apprenticeships. This MoU does not cover the working arrangements between Ofqual and the IfA. Similarly, it does not cover the working arrangements between Ofqual and the Education and Skills Funding Agency (ESFA) which is an executive agency of the DfE. These arrangements are covered by separate MoUs.

3 Matters of common interest

- 3.1 Whilst we are separate organisations with distinctive roles and responsibilities, there are a number of areas of common interest, in particular the validity and reliability of qualifications (including end point assessments), national assessment arrangements regulated by Ofqual and the public's confidence in those qualifications and assessments.

4 Implementing the MoU

- 4.1 To support the effective working relationship between us we will:
- Acknowledge each other's different remits, responsibilities, accountability structures and enabling legislative frameworks;
 - Notify each other in a timely and appropriate way where there is a likelihood of significant announcements and developments which may impact on each other's key areas of work or responsibilities. Where these

² T Levels are overarching programmes under which different sub-components such as work placements and Technical Qualifications belong.

matters are confidential or sensitive we will communicate this to one another and respect that confidentiality and sensitivity;

- Inform each other in a timely and appropriate manner on policy and other developments, engaging in early dialogue on matters that will have an impact on the work of the other. Again, where these matters are confidential, we will communicate this to one another and respect confidentiality;
- Share information about programmes of work that would be of interest to the other, where appropriate in advance of that work starting;
- Hold meetings between Ministers and the Chief Regulator and/or the Ofqual Chair to share information and, where appropriate, concerns;
- Hold quarterly meetings between the Chief Regulator and the DfE Permanent Secretary and other senior officials to discuss relevant issues and developments, and to provide and receive updates on the parties' work;
- Maintain regular contact between DfE and Ofqual teams;
- In addition, both organisations will support respective correspondence and parliamentary activities in line with agreed ways of working.

5 Ofqual's governance and accountability

- 5.1 Ofqual's statutory functions are vested in its Board, of which its Chief Executive, who is the Chief Regulator, is a member. The Chief Executive is appointed by the Privy Council; the Chair and other members of the Board are appointed by the Secretary of State. Ofqual's Chair meets annually with the Permanent Secretary to review objectives.
- 5.2 Ofqual's Chief Executive acts as its Accounting Officer, who receives financial delegation directly from HM Treasury (HMT).
- 5.3 Ofqual acts in accordance with instructions and guidance issued from time to time by HMT and the Cabinet Office, such as *Managing Public Money*. Ofqual lays its annual report before Parliament, together with signed accounts, confirming the accounts are properly prepared, audited and presented in accordance with directions issued by HMT.

6 Ofqual's funding

- 6.1 Ofqual is funded by Parliament and has its own Supply Estimate.
- 6.2 DfE will be involved in Spending Review negotiations relating to Ofqual and will do so in as transparent a way as possible. As a non-ministerial department, in

line with Managing Public Money,³ Ofqual has the ability to settle its budget directly with HM Treasury. For administrative efficiency, Ofqual will work with HM Treasury and DfE on its Spending Review settlement, and any subsequent changes, before formal submission of financial information to HM Treasury.

7 Additional funding

- 7.1 If the government changes policy direction or requests Ofqual to do something over and above the remit agreed in the Spending Review Settlement letter, then Ofqual may require additional funding. The DfE will set out the nature, scope and timing of the policy change and/or extra work it wishes Ofqual to undertake.
- 7.2 In such cases, Ofqual will agree a business case with DfE (or the relevant other government department) policy officials that will provide a breakdown of the projected additional expenditure. DfE must respond to the business case so that Ofqual can determine how, and the extent to which, it is able to respond to the change of policy and/or request, although Ofqual might begin preliminary work on such developments whilst funding is being established.
- 7.3 Once agreed, the additional funding will be confirmed in writing by the DfE. The letter should set out the work that Ofqual has agreed to undertake, timescales and any additional reporting requirements. The funds will be transferred to Ofqual at the next available opportunity as part of Main or Supplementary Estimates.

8 Reporting

- 8.1 Ofqual is responsible for contributing its financial information to the Whole of Government Accounts programme, and to the Online System for Central Accounting and Reporting directly to HMT.
- 8.2 Ofqual provides information returns directly to the Cabinet Office and publishes on its website a range of information under the transparency guidelines.
- 8.3 For the purpose of delegating authority to incur expenditure, Ofqual shall be regarded as a sponsored body of DfE. This does not prejudice its role as an independent regulator of qualifications and examinations or the fact that it reports directly to Parliament, laying its annual report and accounts before Parliament each year.

9 Exchange of information

³ See paragraph 7.9.2 of HM Treasury publication 'Managing public money', available at: <https://www.gov.uk/government/publications/managing-public-money>.

- 9.1 Where appropriate, and at all times operating in accordance with the requirements of the Freedom of Information Act 2000, the Data Protection Act 2018, the General Data Protection Regulation (GDPR), and any other relevant data protection legislation and/or contractual agreements, we will aim to share information we already hold where this is in the public interest with regards to promoting confidence in, and the quality and standards of, regulated qualifications and assessment arrangements.
- 9.2 Information provided by one of us to the other must be kept and handled securely. Both parties will ensure that adequate and appropriate arrangements are in place to protect the confidentiality and integrity of information provided/shared. Both parties will also ensure that their own arrangements are acceptable to the other.
- 9.3 We will, in line with the Freedom of Information provisions on information provided in confidence, refer back to the originating party any requests for information we hold but did not collect and which we are aware is confidential in nature. We will also make each other aware of any significant disclosure either of us intends to make to a third party of any information we received from that party.
- 9.4 Similarly, we will ensure all necessary checks and balances are in place should we be requested by another ministerial department, non-ministerial department, agency or other public body or devolved administration for information we have shared with each other.

10 Review of this MoU

- 10.1 This MoU will be reviewed by the parties no later than September 2021. Thereafter it will be reviewed at least once every three years, as agreed by all parties.

11 Variation and changes to this MoU

- 11.1 The MoU may be extended. The DfE and Ofqual may agree at any time to amend this MoU with updates made in the light of experience of its operation in practice.
- 11.2 Any amendments must be in writing and agreed to by the parties.

12 Term and termination

12.1 This MoU shall commence on the date of signature by both parties, and shall continue, with any revisions, unless it is terminated in accordance with clause 12.2.

12.2 This MoU may be terminated by way of mutual agreement or at any time by either party giving at least one week's notice in writing to the other party.

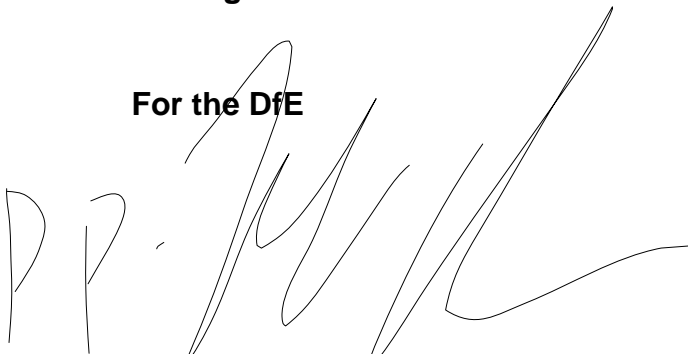
13 Resolution of disputes

13.1 If a dispute should arise in connection with this MoU, the DfE and Ofqual teams will attempt to resolve it in the first instance. If a dispute cannot be resolved within a reasonable time, it may be referred to the parties' more senior officers who have authority to intervene and direct some resolution.

13.2 Disputes that cannot be resolved in this way should be escalated to the Chief Regulator and DfE Permanent Secretary who will then be responsible for resolving the issue, or where not resolvable, for agreeing handling and / or escalation. Both parties will commit to reaching a speedy resolution.

14 Signed:

For the DfE

A large, stylized handwritten signature in black ink, appearing to be 'Jonathan Slater'.

Jonathan Slater, Permanent Secretary

pp. Julia Kinniburgh, Director of
Accountability, Curriculum and
Qualifications

Date: 26/09/18

For Ofqual

A handwritten signature in black ink that reads 'S Collier'.

Sally Collier, Chief Regulator

Date: 28/09/18