



31 July 2019

Memorandum of Understanding
between
The Office of Qualifications and Examinations Regulation
and
The Standards and Testing Agency

1 Purpose

- 1.1 This Memorandum of Understanding (MoU) is intended to support effective working arrangements between the Office of Qualifications and Examinations Regulation and the Standards and Testing Agency, an executive agency within the Department for Education.
- 1.2 In this MoU, the Office of Qualifications and Examinations Regulation is referred to as Ofqual, the Standards and Testing Agency is referred to as STA and, collectively, as 'we', with the expressions 'our' and 'us' being used accordingly. The Department for Education is referred to as DfE.
- 1.3 This MoU is not intended to cover every detailed aspect of the working relationship between Ofqual and STA. It is a statement of principles that will guide relations to ensure appropriate arrangements are in place to support the effective regulation of National Assessments, an appropriate regulatory relationship between STA and Ofqual 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 Ofqual and STA

- 2.1 Ofqual is a non-ministerial government department. It is independent of government and reports directly to Parliament. Ofqual is the statutory regulator of National Assessment arrangements and regulated qualifications. National

Assessments are statutory National Curriculum and Early Years Assessments. Ofqual has two key statutory objectives relating to National Assessments:

- to promote the development and implementation of regulated assessment¹ arrangements which give a reliable indication of achievement and indicate a consistent level of attainment (including over time) between comparable assessments;
- to promote public confidence in National Assessments

Unlike for qualifications, Ofqual does not have objectives to secure the efficiency of, or promote awareness of National Assessments.

2.3 Ofqual has a range of statutory powers and duties in relation to its National Assessments objectives and functions. Its primary duty in relation to National Assessments is to keep all aspects of National Assessment arrangements under review. Ofqual can require information from STA and other relevant parties. Ofqual is also required to report on its National Assessments functions and must tell the Secretary of State if it appears there is or is likely to be a significant failing in National Assessment arrangements. 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.

2.4 Ofqual must publish a National Assessments regulatory framework and consult (amongst others) the Secretary of State before publishing or revising that framework. Ofqual's Regulatory Framework for National Assessments (referred to as the Framework) has statutory status and takes precedence over any memorandum between us. The Framework explains Ofqual's focus on assessment validity and sets out the key tools Ofqual might use in order to fulfil its National Assessments functions, for example:

- observing processes relating to the validity of assessments
- gathering and evaluating information to inform our view of risks to validity
- scrutiny of aspects of validity, e.g. via research or audit
- engagement and feedback to responsible bodies²
- publishing reports
- providing an expert view on proposed assessment changes
- notifying the Secretary of State in relation to a significant failing

2.5 STA has primary operational responsibility for National Curriculum Assessments. STA is an executive agency of DfE and is responsible to the Secretary of State for Education for the developing, delivering and monitoring National Curriculum Assessments. This includes technical processes, such as test development, standard setting and year-on-year standards maintenance.

¹ 'Regulated assessments' are known as National Assessments.

² Responsible bodies, such as STA, are organisations or individuals with statutory responsibility for developing, implementing or monitoring national assessment arrangements.

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. STA is responsible for working with other parts of DfE and with its suppliers, local authorities and schools to secure development and delivery of valid assessments. The Chief Executive of STA has a specific, fully delegated role for test standards and standard setting and maintenance. The Secretary of State, who is accountable for National Assessment arrangements, must consult with Ofqual before making changes to National Assessment arrangements in line with the Framework.

- 2.6 Ofqual's National Assessments work will be carried out in accordance with the Framework. STA will ensure ongoing compliance with the Framework.
- 2.7 Both STA and Ofqual undertake to recognise the particular nature of our regulatory relationship and the need for Ofqual's independence in its National Assessments regulatory role to be maintained.

3 Other parties

- 3.1 It is recognised that both of us have wider responsibilities than in relation to National Assessments. It is also recognised that other teams in DfE may, from time-to-time, fall within Ofqual regulation when they are responsible for aspects of National Assessments not within STA's responsibilities (e.g. the Early Years Foundation Stage Profile assessment). Relevant teams in DfE will also aim to work in accordance with the principles established in this MoU in order to support the effective regulation of all National Assessments.
- 3.2 Working arrangements between DfE as a whole and Ofqual (e.g. in relation to qualifications and corporate affairs) are covered by a separate MoU to which this MoU is aligned.
- 3.3 STA regularly engages suppliers to carry out a range of activities relating to National Assessment arrangements and retains responsibility for ensuring these activities comply with the Framework. STA will support relevant suppliers to understand and meet regulatory expectations and engage positively with regulation. Where Ofqual is reviewing such activities as part of its regulation of National Assessments arrangements, STA will facilitate access to relevant information from its suppliers.

4 Matters of common interest

- 4.1 Whilst we are separate organisations with distinctive roles and responsibilities, we are both focused on the validity of National Assessments and public confidence in those assessments.

4.2 Ofqual is obliged to ensure that it does not impose unnecessary burden and both parties will pursue a regulatory approach and relationship which minimises unnecessary burdens on either organisation.

5 Approach to engagement

5.1 Appropriate engagement between STA and Ofqual supports effective regulation. It allows Ofqual to build an accurate understanding of risks to validity and to effectively communicate its areas of regulatory focus and view of risk to STA. It also supports effective and timely notification of risks and issues from STA to Ofqual, regulatory feedback from Ofqual and response to that feedback from STA.

5.2 To support an effective working relationship between us we will aim to:

- Hold monthly meetings between Ofqual's Director of National Assessments Regulation and Deputy Directors in STA and maintain contact between STA and Ofqual teams as appropriate
- Hold regular meetings between Ofqual's Chief Regulator and STA's Chief Executive and maintain appropriate contact between respective Heads of CEO/CR Office
- Acknowledge each other's different remits, responsibilities, accountability structures and enabling legislative frameworks
- Provide each other with advance sight of publications relating to the others' work on National Assessments
- Notify each other in a timely and appropriate way where there is a likelihood of significant announcements and developments relating to National Assessments which may have an impact on each other's key areas of work or responsibilities. Where these 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 relating to National Assessments that will or might 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

6 Exchange of information and documentation

6.1 Ofqual has specific statutory powers to require information from STA in order to support fulfilment of its National Assessments functions. Information required in the course of day-to-day regulation is likely to include, but is not limited to:

- Meeting dates, times and paperwork to support Ofqual's observations of relevant STA meetings
- Operational marking data to inform analysis of marking consistency

- Information about new assessments being designed
- Advance notice and sight of relevant content of ministerial submissions to inform Ofqual's technical advice

6.2 Ofqual observes STA meetings as part of its regulatory monitoring. The types of meetings Ofqual may observe may include STA's sub-programme boards, advisory groups, risk meetings and those relating to operational processes underpinning assessment validity such as marking, moderation, test development and standards maintenance. Ofqual will provide STA, annually, a document listing meetings it intends to observe (based on its analysis of risk or other specific requirements in line with the principles of good regulation in the Framework and its statutory standards and public confidence objectives). If, due to changes in circumstance or information available, Ofqual wishes to make changes to the meetings it observes, it will advise STA of such changes in a timely fashion. STA will ensure that relevant STA documentation reflects the nature of Ofqual's observer role.

6.3 Ofqual has contact with government ministers during the course of discharging its functions. The Secretary of State also has a duty to consult Ofqual on specified changes to National Assessment arrangements. Where Ofqual wishes to provide formal advice to ministers in connection with proposed changes to National Assessments arrangements, STA will ensure this advice is transmitted in full. Where STA wishes to represent Ofqual's views within its own ministerial advice, STA will seek Ofqual's approval for such representation. STA will aim to provide Ofqual with reasonable advance sight of submissions and reasonable notice of opportunities to provide technical advice, aiming for a minimum of one week's notice where possible.

6.4 Information shared between Ofqual and STA will be handled in accordance with the requirements of the Freedom of Information Act 2000, the Data Protection Act 2018, the General Data Protection Regulation and any other relevant data protection legislation, taking appropriate security measures. Both parties will ensure that adequate and appropriate arrangements are in place to protect the confidentiality and integrity of information provided/shared.

6.5 Where either party receives a request for information which belongs to the other party, we will consult the other party in considering whether such information should be disclosed under information access legislation (including data protection legislation and the Freedom of Information Act 2000). 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 the originating party.

7 Escalation processes

7.1 If a dispute should arise between the parties, STA and Ofqual teams will attempt to resolve it in the first instance. Prior to further escalation, any

concerns or disputes should be raised with the Director of National Assessment Regulation at Ofqual and the relevant Deputy Director at STA, with a view to achieving resolution.

- 7.2 Disputes that cannot be resolved in this way should be escalated to Ofqual's Chief Regulator and STA's Chief Executive who will then be responsible for resolving the issue, or where not resolvable, for agreeing handling and / or discussing escalation. Both parties will commit to reaching a timely resolution. Should resolution not be possible, Ofqual will meet the Permanent Secretary at DfE and the two parties will aim to reach a resolution.
- 7.3 If a dispute relates to a potential or actual significant failing in National Assessment arrangements, Ofqual will communicate this to STA's Chief Executive and, if necessary, to the Permanent Secretary at DfE prior to notifying the Secretary of State for Education. In cases of significant urgency, Ofqual may escalate a likely or actual significant failing to STA's Chief Executive and the Permanent Secretary of DfE at the same time as notifying the Secretary of State. Where concerns or disputes cannot be resolved at this level, Ofqual may escalate these to the Education Select Committee, to which it reports.

8 Review of this MoU

- 8.1 This MoU will be reviewed by the parties no later than July 2022. Thereafter it will be reviewed at least once every three years, as agreed by the parties.

9 Variation and changes to this MoU

- 9.1 The MoU may be the subject of variation, including extension. STA and Ofqual may agree at any time to amend this MoU with updates made in the light of experience of its operation in practice.
- 9.2 Any amendments must be in writing and agreed to by the parties.

10 Term and termination

- 10.1 This MoU shall commence on the date of signature by the parties, and shall continue, with any revisions, unless it is terminated in accordance with clause 10.2.
- 10.2 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.

11 Signed:

For STA

Handwritten signature of Una Bennett in black ink, consisting of a stylized 'U' followed by 'NB'.

Una Bennett, Chief Executive

Date: 31 July 2019

For Ofqual

Handwritten signature of Sally Collier in black ink, consisting of 'S' followed by 'Collier'.

Sally Collier, Chief Regulator

Date: 31 July 2019