CONSULTATION

# Amending the Taking Regulatory Action policy

Updating our approach to taking regulatory action and supporting compliance

ofqual

# Contents

# 1 Introduction

1.1 We are proposing amendments to our policy Taking Regulatory Action (the TRA policy) which explains the powers we have to take regulatory action in respect of awarding organisations and the factors we consider when deciding whether and how to use those powers. The policy was first published in 2011 and was last revised in 2012.

1.2 The purpose of our proposals is to bring the policy up to date, so it reflects how we use our powers in practice. These proposals should be considered alongside our regulatory strategy which sets the context for our work, helps us to decide how to prioritise our activities and when to use the powers we have[1].

1.3 The current TRA policy remains in force whilst we consult on our proposals. Respondents to this consultation might find it useful to read these proposals alongside the current policy.

1.4 We are proposing changes which:

(a) Explain developments in our approach to managing non-compliance including new types of action in less serious cases;

(b) Explain developments in our approach to supporting awarding organisations to remain in compliance, including proposals about how we might notify awarding organisations where we have concerns about a school, college or training provider;

(c) Remove the £10,000 lower threshold on recovering our costs where we take regulatory action.

1.5 We are also proposing changing the name of the policy to better reflect our regulatory strategy. We propose to call the policy 'Supporting Compliance and Taking Regulatory Action'.

[1] Our regulatory strategy is explained in our corporate plan - https://www.gov.uk/government/publications/ofquals-corporate-plan

# Audience

1.6 This consultation is open to anyone who may wish to make representations but may be of most interest to:

(a) awarding organisations;

(b) schools, colleges and others who deliver or take qualifications.

# Consultation arrangements

## *Duration*

1.7 This consultation will be open for eight weeks starting on 8 October 2019 and ending on 2 December 2019.

## *Respond*

1.8 Please respond to this consultation by using one of the following methods;

(a) complete the online response at www.gov.uk/government/consultations/amending-the-taking-regulatory-action-policy

(b) email your response to consultations@ofqual.gov.uk - please include the consultation title in the subject line of the email and make clear who you are and in what capacity you are responding

1.9 For information on how we will use and manage your data, please see annex A.

# 2 Proposals

## Managing non-compliance

2.1 The awarding organisations we regulate must comply with the conditions of recognition which apply to them. There are a number of actions we can take where an awarding organisation fails to comply with its conditions of recognition, including statutory and non-statutory actions. When we decide to take action we act in a way which is proportionate to the non-compliance and the circumstances in which it has occurred. We take statutory regulatory action in response to non-compliance only rarely.

2.2 Like regulators in other sectors, we can impose monetary penalties (fines) where an awarding organisation has breached its conditions of recognition, if we consider a fine to be an appropriate response. The TRA policy explains the factors we consider when we decide whether a fine should be imposed. We are not proposing to make any substantive changes to the factors we take into account when considering imposing a fine.

2.3 We are consulting on proposals to explain in the TRA policy how we record non-compliance in cases where we decide not to take any further action at all, as well as on two new approaches for non-compliance which is less serious than where we have imposed fines in the past.

### *Recording non-compliance*

2.4 In most cases, when an awarding organisation breaches its conditions, we will decide that no formal action is required in response to the breach. This is because the majority of breaches are minor in nature, have limited impact, are swiftly resolved, and we can have confidence that a recurrence of the breach is unlikely. We already make and retain records in these cases and we communicate this to awarding organisations on a case-by-case basis.

2.5 These records are important for a number of reasons:

(a) They allow us to properly take into account an awarding organisation's compliance history when we consider whether to take regulatory action and when we are deciding the form and scale of any regulatory action we take,

(b) They form part of the package of evidence which we use to inform our assessment of the regulatory risk presented by an awarding organisation,

(c) They help us identify any patterns of non-compliance with particular conditions, which in turn informs our approach to monitoring and our approach to the development of guidance.

2.6 In most cases, awarding organisations recognise when they have fallen into non-compliance and will admit the breach in their correspondence with us. In other cases, we will explain why we consider a breach has occurred and give the awarding organisation an opportunity to explain why it considers there has been no failure to comply. We have mechanisms in place to decide any cases where we cannot reach agreement.

2.7 Although individual awarding organisations are aware of our approach to recording non-compliance in these cases, other stakeholders are not. In line with our intention that we should be transparent about how we regulate awarding organisations, we consider we should explain in the policy that most non-compliance is resolved without formal action and explain how we use the records we create.

2.8 We do not currently publish information about non-compliance where we have taken no formal action and we continue to think that there is not any need routinely to do so. Over time, publishing this information could create a public record of an awarding organisation's compliance history, without the necessary context and supporting information, which could have unintended consequences and could unnecessarily undermine public confidence.

2.9 We think we should keep under review the possibility of publishing general information about the non-compliance we record, without naming the awarding organisation(s) concerned, where we consider this might help other awarding organisations remain in compliance, or otherwise further our objectives.

*Question 1: To what extent to do you agree or disagree that we should explain our approach to recording non-compliance in the TRA policy?*

*Question 2: To what extent do you agree or disagree with we should not publish records of non-compliance as a matter of routine?*

*Question 3: Do you have any comments on whether, and in what circumstances, we should publish general information about the non-compliance we record?*

## *Managing non-compliance in other circumstances*

2.10 Our approach to managing non-compliance has evolved as we have gained experience of the sector we regulate; we used our fining power for the first time in 2016 and have issued six fines since then. At the same time, the sector we regulate continues to change, both as a result of market pressures and as we develop the way we regulate to better secure our objectives; for example though our work on Accountability for Awards.

2.11 Where we impose a fine, one of our aims is to educate other awarding organisations by explaining the circumstances surrounding the non-compliance and demonstrating that we consider those circumstances to be serious. We hope in this way to influence awarding organisations so similar incidents are prevented in the future.

2.12 So far, we have imposed fines only in the most serious cases. In a small number of other cases we have given directions, which also demonstrate that we consider the non-compliance to be serious, but that power is not available unless the non-compliance is ongoing or likely to recur. We think it would be useful to have the ability to draw attention to other instances of non-compliance which, although not so serious as to require a substantial fine, should nonetheless be highlighted as serious issues which we would not expect to see occur elsewhere.

2.13 We have identified two ways in which we might alter our approach to broaden the range of cases we mark out as serious without significantly increasing either the resources we need for the process of taking regulatory action or the burden on awarding organisations:

(a) By issuing a rebuke;

(b) By issuing fixed penalties in some circumstances.

## *Rebuke*

2.14 We think it would help us to secure our objectives and support our regulatory strategy if we were to issue a rebuke to an awarding organisation where we think this is an appropriate response to an occurrence of non-compliance.

2.15 A rebuke would, we think, serve a number of purposes:

(a) To promote public confidence by demonstrating that we take non-compliance seriously even in cases where fines are not imposed,

(b) To deter future non-compliance by the affected awarding organisation,

(c) To inform other awarding organisations and help them to avoid non-compliance.

2.16 The circumstances in which we might issue a rebuke are broad and we think would vary over time as our regulatory strategy evolves and our priorities change. We do not anticipate a reduction in the number of fines we impose as a result of adding the use of a rebuke to our non-statutory powers.

2.17 We consider that any rebuke we issue should be published and that the publication should include much of the same information as in a notice of monetary penalty. In particular, for a rebuke to have the desired impact, we would name the awarding organisation, include details of the impact and effect of the incident, and set out why we think a rebuke is an appropriate action.

*Question 4: To what extent do you agree or disagree that we should add issuing a rebuke to our non-statutory powers?*

*Question 5: To what extent do you agree or disagree with our proposals for publication, as set out in para 2.17, if we issue a rebuke?*

## *Fixed Penalties*

2.18 There are some breaches of the conditions which we think are straightforward to avoid and which could have potentially significant consequences for our ability to discharge our functions, particularly if they were repeated by a number of other awarding organisations.

2.19 In isolation such breaches rarely have identifiable adverse effects, which means the cost of imposing a monetary penalty using our usual procedure could be far greater than the value of any penalty we might impose. As a result, awarding organisations might think these breaches are condoned or tolerated which means the risk of repetition, and potential adverse impact on our ability to discharge our functions, is likely to increase over time.

2.20 We consider we should be able to issue small penalties of fixed amounts, to reflect particular breaches, and to do so as an administrative action without following all of the procedure for imposing monetary penalties which is currently set out in the TRA policy.

2.21 Fixed penalties would be imposed in relation to breaches of the conditions which are straightforward to establish. Examples might include fixed penalties for awarding organisations which fail to submit a statement of compliance within the prescribed window for doing so, or which delay submitting certification data which impacts our preparation of national statistics.

2.22 We would anticipate awarding organisations accepting a decision to impose such a penalty and choosing to pay the penalty promptly. We would put in place safeguards to allow the opportunity for review, but given the nature of the incidents which might give rise to a fixed penalty we would not expect this facility to be used frequently and would look to discourage unmeritorious review applications.

2.23 We consider that we should publish information about any fixed penalties we might impose, in order to deter other awarding organisations from similar non-compliance and because we consider that demonstrating we will take action where an awarding organisation breaches its conditions of recognition will promote public confidence.

2.24 We anticipate that the circumstances in which we might use fixed penalties would change over time to reflect our regulatory strategy, our strategic priorities, and any patterns of non-compliance we see. We also think we should take some time to consider how fixed penalties might be calculated, what the review mechanism might be and how fixed penalties would interact with our other enforcement tools.

2.25 Accordingly, rather than include the details of any approach to fixed penalties in the TRA policy, we are consulting now on the principle that fixed penalties should form part of our response to non-compliance.

2.26 If we decide, following consultation, to use fixed penalties then we will develop a detailed approach and consult separately on that approach, including how fixed penalties would be calculated. Any approach we adopt would then form an annex to the TRA policy. This would also allow our approach to evolve, potentially year by year in line with our priorities, without the need regularly to amend the TRA policy.

*Question 6: To what extent do you agree or disagree that issuing/imposing fixed penalties should, in principle, form part of our response to non-compliance?*

## *Settlement in fining cases*

2.27 We have imposed six monetary penalties since 2016. None of those cases would have been suitable for a fixed penalty (or a rebuke) and we do not anticipate our proposals for change will of themselves lead to any decrease in the number of cases in which we consider imposing a substantial penalty through our casework procedure.

2.28 In four of the cases where we imposed a fine, the awarding organisation admitted before we made a preliminary decision that it had breached the conditions and agreed to pay the proposed fine. In those cases, we made clear in our published documents that we had reduced the amount of the fine to reflect the awarding organisation's co-operation. This is consistent with good regulatory practice and reflects the current TRA policy which explains that we will take the awarding organisation's co-operation into account when considering the amount of any fine.

2.29 Settlement of fining cases with the agreement of the awarding organisation is consistent with our objectives and duties because it allows us to manage a broader range of cases and to target more resources to contentious cases.

2.30 Awarding organisations which recognise they have failed to comply with their conditions of recognition and which are prepared to agree to pay a fine should be able to explain this to us promptly, so settlement discussions can start straight away. Currently, an awarding organisation which is interested in settlement might be put off because our policy does not mention that possibility. This is inefficient for awarding organisations and for us, because time and resources can be wasted gathering and reviewing evidence in circumstances where the awarding organisation intends to admit the non-compliance.

2.31 We think the TRA policy should make clear that we will allow the opportunity for an awarding organisation to make settlement proposals whenever we are considering a fine (other than fixed penalties), and in particular:

(a) That we will explain at an early stage why we are considering imposing a fine and will do so in sufficient detail to allow the awarding organisation to engage with the issues and consider whether it might wish to make a settlement proposal;

(b) That we will have confidential discussions with an awarding organisation to consider the parameters of any settlement proposal which might be acceptable to us;

(c) That a settlement proposal will not be accepted unless it includes all of the necessary elements: sufficient admissions, an offer to pay a sufficient fine, agreement to a shortened procedure, and agreement to pay our costs.

2.32 We think the policy should also explain that we will only make a final decision to accept a settlement proposal after we have allowed interested parties to make representations, and taken into account any such representations, about our intention to accept the proposal.

*Question 7: To what extent do you agree or disagree that we should explain our approach to settlement in the TRA policy?*

*Question 8: Do you have any comments on the proposed approach to the settlement described in para 2.31?.*

## *Recovering Our Costs*

2.33 We have the power to recover our costs whenever we impose a fine, give a direction or withdraw recognition from an awarding organisation. The TRA policy currently explains that we will not usually seek to recover our costs unless those costs exceed £10,000.

2.34 The rationale in the policy is that we will seek to recover costs only where the amount of those costs is likely to exceed the expenditure we would incur in the process of recovery. The policy explains that the £10,000 threshold was set to make sure our decisions in this respect would be consistent.

2.35 With the greater experience we now have of taking regulatory action, and of recovering our costs, we no longer think this threshold is appropriate.

2.36 In particular, based on our experience, we anticipate that it is unlikely awarding organisations will refuse to pay costs where we have required them to do so. We therefore think it is unlikely that we will regularly incur any expenditure at all in connection with an unpaid requirement to pay our costs. In practice, rather than refuse to pay costs, in past cases awarding organisations have agreed to pay our costs in connection with monetary penalties even where the total was less than £10,000.

2.37 In addition, we no longer think our previous estimate that it would be too costly to seek to recover costs of less than £10,000 is realistic. This is because developments in the Courts' processes, and the greater experience of our in-house legal team, mean we are confident we could recover modest costs through the Courts without incurring disproportionate expenditure.

2.38 We have considered whether to propose a lower threshold below which we would not normally recover our costs, because the current policy describes the purpose of the £10,000 threshold as being to promote consistency when we decide whether to recover costs.

2.39 However, we do not think we should make our decision based on how much it might cost us to take action if an awarding organisation refuses to pay our costs. We think it would be more appropriate to recover our costs where we think it is the right thing to do in the particular case.

2.40 We are therefore proposing to remove the £10,000 lower threshold and recover the costs of taking regulatory action whenever we consider it proportionate in the circumstances of the case

2.41 This would give us the flexibility to decide not to recover costs in some cases and to decide that costs should be recovered in others even where there is a risk that subsequent action to enforce costs-recovery might extinguish the benefit. As with any Court action, we would have discretion to discontinue any proceedings where we thought this was the right thing to do.

*Question 9: To what extent do you agree or disagree that we should remove the £10,000 threshold for the recovery of costs?*

*Question 10: To what extent do you agree or disagree that we should seek to recover costs whenever we think it proportionate in the circumstances of the case?.*

# Supporting compliance

2.42 Most of the action we take as a regulator is to support awarding organisations to remain compliant with their conditions of recognition or to come into compliance where breaches have occurred. Some of the regulatory tools we use in this supportive role are described in the TRA policy but others are not. We think we should refer in the policy to more of the tools we use, and that we should provide more information about some of those already referred to in the policy.

## *Making requirements under the conditions*

2.43 A number of the conditions of recognition allow us to make requirements with which all awarding organisations must comply, such as the Total Qualification Time Criteria. We publish all such requirements and they are imposed following consultation.

2.44 Several of the conditions also allow us to make requirements addressed to a specific awarding organisation. These range from instructions to take specific action within a timescale, requirements to have regard to our technical advice in connection with a particular qualification, or advice about where it may be possible for an awarding organisation to improve its approach, to which it must have regard.

2.45 When and how we use these powers varies depending on the circumstances. Sometimes we will use requirements as a routine part of a regulatory activity, for example where we use Technical Evaluation in respect of a suite of qualifications, we might expect to make requirements based on the outcome of that evaluation in several cases.

2.46 In some other cases we might make requirements as a precursor to, or an attempt to avoid the necessity for, taking more substantial regulatory action. In these cases, we might consider any failure to comply with our requirements to be a significant breach of the underlying condition, which might lead us to take immediate and serious regulatory action.

2.47 We consider it would increase transparency, and promote public confidence if we were to explain in the policy that we can make requirements and issue recommendations, or advice to which an awarding organisations must have regard, in a variety of circumstances and that in some cases we might regard failure to comply with such requirements as a serious non-compliance. We think the policy should explain that we would not normally publish either the fact that we had made a requirement or the specifics of that requirement, but we might do so in an appropriate case.

*Question 11: To what extent do you agree or disagree that we should explain our approach to making requirements under the conditions in the TRA policy;*

*Question 12: To what extent do you agree or disagree with the proposed approach to the publication of requirements under the conditions (as set out in para 2.47)?*

## *Notices about centres*

2.48 The relationship between awarding organisations and the schools, colleges and training providers (centres) which deliver their qualifications has been a focus of our work in recent years. This reflects the crucial role centres have in the delivery of high quality regulated qualifications. Good centres benefit our system but centres can be subject to external pressures which could undermine standards, reinforcing the need for awarding organisations to have strong controls to prevent and detect malpractice and maladministration.

2.49 Through our work, we have identified examples of centres found by one awarding organisation to be responsible for malpractice which move, or try to move, swiftly to another awarding organisation offering similar qualifications when that finding is made.

2.50 In many cases, having anticipated the centre's actions, the first awarding organisation will be able to identify those other awarding organisations which the centre might target, and will have informed them of its malpractice finding[2]. We recognise, however, that an awarding organisation will not always be able to identify which organisations such a centre might look to move to, and that this notification will not always be possible.

2.51 In most of these cases the awarding organisation will have told us that it has established malpractice occurred at the centre[3]. We think there are some circumstances in which it might be appropriate for us to make other awarding organisations aware that, as a result of information given to us about malpractice findings, we have concerns about a specific centre.

2.52 We consider we could explain our concerns in a notice which we would issue to awarding organisations. The notice would explain that we had concerns because of information given to us by awarding organisations and would summarise that information.

2.53 We would not expect to issue notices about centres regularly, and would be unlikely to consider doing so in connection with every report of malpractice made to us. We would anticipate issuing such notices only where there have been multiple malpractice findings in relation to a centre, perhaps by multiple

[2] In accordance with Condition A8.7
[3] In accordance with Condition B3.1, and B3.2(g)

awarding organisations within a relatively short period of time. Exceptionally, we might issue a notice in relation to a single finding of particularly serious malpractice, perhaps involving allegedly fraudulent activities.

2.54 Issuing such a notice would not prevent an awarding organisation from making arrangements with the centre for the delivery of qualifications, but the awarding organisation would need to take into account the information in the notice as part of its assessment of the risks associated with the centre. This might lead the awarding organisation to put in place particular controls to secure the safe delivery of assessments, over and above the controls it would normally consider necessary.

2.55 Similarly, we would anticipate that an awarding organisation which already has arrangements in place with a centre which is the subject of such a notice would review those arrangements, and consider whether the controls it has in place are sufficient.

2.56 If an incident affecting an awarding organisation occurred at a centre about which we had issued a notice, any failure by the awarding organisation to have regard to our notice would be an aggravating factor in any regulatory action we then took in respect of the awarding organisation.

2.57 We consider that we should notify any centre about which we intend to issue a notice in advance, but anticipate that we might in some circumstances only be able to give the centre very limited warning before issuing the notice to awarding organisations.

2.58 We think we should explain the possibility that we might issue notices about centres and the arrangements for doing so in the TRA policy.

*Question 13: To what extent do you agree or disagree that we should add issuing notices about centres to our non-statutory powers?*

*Question 14: Do you have any comments on the circumstances in which we might issue a notice about a centre?*

# Amendments to existing text

2.59 When we publish a new version of the TRA policy, we will take the opportunity to make any minor changes to the wording of the policy which we consider necessary to bring it up to date. We also think there are some areas in which it would be useful to include additional or different examples to illustrate how we might use some of our powers. For example, further examples of the circumstances in which we might impose special conditions and examples of circumstances which might cause us to think particular breaches were serious in nature.

2.60 There are three specific changes on which we consider we should seek views through this consultation.

## *Accepting an undertaking*

2.61 The TRA policy refers to the possibility that we might accept an undertaking, in accordance with Condition B8 of the General Conditions of Recognition, instead of taking formal regulatory action. We think the policy should explain more about the circumstances in which, in practice, we are likely to accept an undertaking. In particular, we think the policy should explain:

(a) That we use undertakings where an awarding organisation has breached, or is likely to breach, its conditions of recognition but where we don't think a direction is necessary or appropriate;

(b) Undertakings will normally be published on our website. We will, however, give consideration to any aspects which are commercially sensitive and listen to representations about the timing of publication.

*Question 15: To what extent do you agree or disagree that we should explain the circumstances in which we are likely to accept an undertaking, in the TRA policy?*

## *Giving a direction*

2.62 We are not proposing any change to our description of the circumstances in which we might give a direction. We are however proposing changing the way we describe the period we will allow for representations to be made once we have issued notice of intention to give a direction.

2.63 The TRA policy currently explains that we will allow up to 30 days for representations to be made unless we think there is an urgent need to take action, in which circumstances we might allow only a very short time for representations.

2.64 In practice, we use our power to give a direction only rarely and in almost every case the requirement for us to act is urgent. This is because where there is no immediate need for intervention we are usually able to negotiate with the awarding organisation to give an undertaking.

2.65 We consider that the TRA policy should be changed to reflect our experience and should make clear that in most cases we would anticipate an urgent need for action where a direction is contemplated, and that the period for representations would therefore usually be relatively short.

2.66 For any non-urgent cases, we consider the usual period for representations should be 14 days, rather than 30 as the TRA policy now contemplates. Awarding organisations would in any event have the opportunity to ask for an extension of time in which to make representations where there is a good reason.

*Question 16: To what extent do you agree or disagree that we should revise the current TRA policy for representations (as described in paragraphs 2.65 and 2.66)?*

## *Changing the name of the policy*

2.67 Finally, given the weight of information in the revised policy will concern non-statutory enforcement, we propose changing the title of the policy to ‘Supporting Compliance and Taking Regulatory Action’.

*Question 17: To what extent do you agree or disagree that we should change the name of the TRA policy to 'Supporting Compliance and Taking Regulatory Action?*

# 3 Impact of our proposals

3.1 Taking regulatory action, whether formal or informal, will have an impact on the affected awarding organisation and might have broader impacts, on centres and potentially on individuals. We consider the likely impact of any action we propose to take on a case-by-case basis and will provide opportunities for consultation with those affected as appropriate.

3.2 Similarly, although we recognise that action we take might, directly or indirectly, affect persons with protected characteristics, we again assess any such impacts on a case by case basis when action is proposed.

3.3 This consultation is about changes to our overarching policy. The changes we are proposing to make will only have any impact when we use our powers to take regulatory action. We will continue to assess impact on a case-by-case basis, but do not think there are any specific impacts on which it would be useful to consult at this stage.

*Question 18: To what extent do you agree or disagree that we should continue to assess the impact of any proposed regulatory action on a case-by-case basis?*

Annexes

Annex A – Your data

# Annex A
# Your data

## The identity of the data controller and contact details of our Data Protection Officer

This Privacy Notice is provided by The Office of Qualifications and Examinations Regulation (Ofqual). We are a 'controller' for the purposes of the General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018 ('Data Protection Laws'). We ask that you read this Privacy Notice carefully as it contains important information about our processing of consultation responses and your rights.

## How to contact us

If you have any questions about this Privacy Notice, how we handle your personal data, or want to exercise any of your rights, please contact:

Data Protection Officer at dprequests@ofqual.gov.uk or write to us at: Data Protection Officer, Ofqual, Earlsdon Park, 53-55 Butts Road, Coventry, CV1 3BH.

As part of this consultation process you are not required to provide your name or any personal information that will identify you however we are aware that some respondents may be happy to be contacted by Ofqual in relation to their response. If you or your organisation are happy to be contacted with regard to this consultation, please give your consent by providing your name and contact details in your response.

## Our legal basis for processing your personal data

For this consultation, we are relying upon your consent for processing personal data. You may withdraw your consent at any time by contacting us using the details above.

## How we will use your response

We will use your response to help us shape our policies and regulatory activity. If you provide your personal details, we may contact you in relation to your response.

# Sharing your response

We may share your response, in full, with The Department for Education (DfE) and The Institute for Apprenticeships (IFA) where the consultation is part of work involving those organisations. We may need to share responses with them to ensure that our approach aligns with the wider process. If we share a response, we will not include any personal data (if you have provided any). Where we have received a response to the consultation from an organisation, we will provide the DfE and IFA with the name of the organisation that has provided the response, although we will consider requests for confidentiality.

Following the end of the consultation, we will publish a summary of responses and may publish copies of responses on our website, www.gov.uk/ofqual. We will not include personal details.

We will also publish an annex to the consultation summary listing all organisations that responded. We will not include personal names or other contact details.

Please note that information in response to this consultation may be subject to release to the public or other parties in accordance with access to information law, primarily the Freedom of Information Act 2000 (FOIA). We have obligations to disclose information to particular recipients or including member of the public in certain circumstances. Your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance requests for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

Members of the public are entitled to ask for information we hold under the Freedom of Information Act 2000. On such occasions, we will usually anonymise responses, or ask for consent from those who have responded, but please be aware that we cannot guarantee confidentiality.

If you choose ‘No’ in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won’t make your personal name and private contact details publicly available.

# How long will we keep your personal data

For this consultation, Ofqual will keep your personal data (if provided) for a period of 2 years after the close of the consultation.

# Your data

Your personal data:

- will not be sent outside of the European Economic Area
- will not be used for any automated decision making
- will be kept secure

We implement appropriate technical and organisational measures in order to protect your personal data against accidental or unlawful destruction, accidental loss or alteration, unauthorised disclosure or access and any other unlawful forms of processing.

Your rights, e.g. access, rectification, erasure

As a data subject, you have the legal right to:

- access personal data relating to you
- have all or some of your data deleted or corrected
- prevent your personal data being processed in some circumstances
- ask us to stop using your data, but keep it on record

If you would like to exercise your rights, please contact us using the details set out above.

We will respond to any rights that you exercise within a month of receiving your request, unless the request is particularly complex, in which case we will respond within 3 months.

Please note that exceptions apply to some of these rights which we will apply in accordance with the law.

You also have the right to lodge a complaint with the Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at ico.org.uk, or telephone 0303 123 1113. ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

If there is any part of your response that you wish to remain confidential, please indicate so in your response.

Published by:

ofqual

Earlsdon Park
53-55 Butts Road
Coventry
CV1 3BH

0300 303 3344
public.enquiries@ofqual.gov.uk
www.gov.uk/ofqual

**October 2019**

**Ofqual/19/6550/1**