

CONSULTATION

Arrangements for the assessment and awarding  
of Vocational and Technical and Other General  
Qualifications in 2020/2021 Consultation – Part  
2

The Extended Extraordinary Regulatory Framework

**ofqual**

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## Proposals at a glance

The government's expectation is that assessments should take place in the academic year 2020 to 2021 because that is the fairest way of providing results for learners.

Our proposed arrangements for 2020 to 2021 will apply to all regulated qualifications apart from GCSEs, AS and A levels, and end-point assessments, and seek to assist in mitigating disruption to teaching, learning and assessments so that, as far as possible, learners have the opportunity to receive fair results in 2020 to 2021 and are not disadvantaged by the longer term impacts of the pandemic.

We have consulted on our proposed arrangements for 2020 to 2021 in two stages.

The first stage of [our consultation](#) ran from 3 to 14 August. We consulted on the introduction of a second version of the Extraordinary Regulatory Framework (ERF), the Extended ERF, which would permit awarding organisations to mitigate the impact of disruptions to teaching, learning and assessment arising from the coronavirus (COVID-19) pandemic, through the adaptation of assessments and qualifications. We also consulted on a set of objectives to guide awarding organisations' decisions about how assessments and qualifications could be adapted. We said that we would consider whether and how to include these objectives within the Extended ERF.

Given the high level of agreement with the arrangements proposed in our first consultation, [we have decided to implement them in full](#).

In this second stage, we are consulting on a further draft version of the Extended ERF to put the arrangements in to effect. It includes revised principles, the statutory guidance we have developed to guide awarding organisations' decisions around adaptation, and statutory guidance on Special Consideration. We are not consulting on any changes to the overall approach.

## Audience

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

- the awarding organisations we regulate, and their representative bodies
- learners who are expecting to be awarded a vocational or technical qualification, or other general qualification, in 2021
- the family, parents or carers of these learners
- teachers, tutors, exam staff and other representatives from schools, colleges, training providers and other places where the relevant qualifications are delivered
- higher education institutions, further education colleges and training providers that may be making offers to learners for future academic years
- education representative bodies
- employers who might be receiving job applications from learners taking these qualifications, or who might already employ these learners
- professional bodies, regulators and industry groups

## Consultation arrangements

### Duration

This consultation will be open for 2 weeks starting on 7 September and ending on 20 September 2020. We recognise this is a much shorter period than we would normally allow for consultation, but we believe it is necessary and reasonable in the current situation.

We have taken this 2-stage consultation approach and set short timelines so that awarding organisations can provide their centres with more certainty about arrangements for 2020 to 2021 as quickly as possible.

### Respond

Please respond to this consultation by completing the online response at [www.gov.uk/government/consultations/consultation-on-the-arrangements-for-the-assessment-and-awarding-of-vocational-technical-and-other-general-qualifications-in-2020-to-2021](http://www.gov.uk/government/consultations/consultation-on-the-arrangements-for-the-assessment-and-awarding-of-vocational-technical-and-other-general-qualifications-in-2020-to-2021)

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

# Introduction

## Background

The government's expectation is that assessments should take place in 2020 to 2021 because that is the fairest way of providing results for learners.

We have engaged with awarding organisations, centres and other stakeholders to explore what mitigations might be necessary in 2020 to 2021, in relation to the assessment of regulated VTQs and other general qualifications, to address the longer term impact of the disruption to teaching, learning and assessment arising from the coronavirus (COVID 19) pandemic.

We know that the impact of the disruption over the spring and summer on teaching, learning and assessment varies between centres, depending on the qualifications that they offer and their approaches to teaching and learning, with some sectors and subjects more affected than others. We know that there may also be a need to adapt assessments in some sectors/subjects to accommodate the impacts of any social distancing requirements or other public health guidance. There is also a risk of further disruption to teaching, learning and assessment due to localised lockdowns or other circumstances where learners are not able to attend centres as they normally would. However, we know that awarding organisations will be able to make many qualifications available as usual or with minimal changes.

In developing our approach, we have sought to balance:

- mitigating these disruptions, so that, as far as possible, learners taking VTQs and other general qualifications have the opportunity to receive fair results in 2020 to 2021 and are not disadvantaged by the longer term impacts of pandemic
- ensuring that assessments lead to the award of qualifications that are a valid and reliable indication of knowledge, understanding and skills, or practical competence, and that, as far as possible, standards are maintained
- developing, as far as possible, consistent approaches across similar qualifications, whilst recognising the diversity of the VTQ landscape

## Consultation approach

We have consulted on our proposed arrangements for 2020 to 2021 in 2 stages.

The first stage of [our consultation](#) ran from 3 to 14 August.

We consulted on the introduction of a second version of the Extraordinary Regulatory Framework (ERF), the Extended ERF, which would permit awarding organisations to mitigate the impact of disruptions to teaching, learning and assessment arising from the coronavirus (COVID-19) pandemic, through the adaptation of qualifications and assessments. The Extended ERF would apply to all qualifications except AS, A levels, GCSEs, and apprenticeship end-point assessments.

We also consulted on a set of objectives to guide awarding organisations' decisions about how qualifications and assessments could be adapted. We said that we would consider whether and how to incorporate these objectives within the final version of the Extended ERF.

## Decisions made following our first consultation

Given the high level of agreement with the arrangements proposed in our first consultation, we have decided to implement them in full, as set out below:

- i. To enable awarding organisations to assist with mitigating the impact of disruptions to teaching, learning and assessment, and any ongoing disruptions or restrictions on the delivery of assessments, through the adaptation of qualifications and assessments
- ii. To introduce a second version of the Extraordinary Regulatory Framework (ERF), the Extended ERF, to reflect this approach to mitigation and adaptation. The Extended ERF will apply to all qualifications except AS, A levels, GCSEs, and apprenticeship end-point assessments
- iii. To make no provision in the Extended ERF for the issue of calculated results which we introduced specifically in relation to the cancellation of assessments in the summer of 2020
- iv. To retain the ERF for certain specific purposes only – to enable eligible learners who did not receive a calculated result this summer to receive their calculated result and to permit appeals for qualifications awarded under the Summer ERF. We will also clarify in this consultation how the ERF, alongside the Extended ERF, will cover assessments taken in autumn 2020.
- v. In light of the diversity of the VTQ landscape, not to prescribe a single approach to adaptation but to issue statutory guidance to inform awarding

- organisations' decisions and to support the development of consistent approaches
- vi. To work with awarding organisations to develop consistent approaches for qualifications which signal similar knowledge, understanding and skills, or practical competence, and have the same assessment approaches and delivery context, or have the same qualification type, for example Performance Table qualifications
  - vii. To include within our statutory guidance some specific guidance on the application of Special Consideration in the context of 2020/21 and the ongoing impact of the pandemic
  - viii. To permit awarding organisations to adapt qualifications and assessments taken in international markets, where this is appropriate, provided that this does not undermine the validity of the qualifications, and risks around malpractice and the particular needs of the international market are considered and addressed
  - ix. That certificates are issued (where appropriate) as normal, with no reference to a result having being determined under the arrangements in the Extended ERF
  - x. Not to supplement General Condition I1 (Appeals process) with any additional guidance around appeals in 2020/21
  - xi. To require awarding organisations to maintain records of the decisions they have made when adapting assessments and qualifications in compliance with our requirements and guidance, and to make those available to us on request
  - xii. To require awarding organisations to have regard to any advice that we provide in writing, in the form of a Technical Advice Notice

## Second consultation

In parallel with the first consultation, we worked with awarding organisations and sector bodies on the development of further guidance, building on the proposed objectives, to support the implementation of our proposed approach and the development of consistent approaches for similar qualifications.

We are now consulting on a further draft version of the Extended ERF, which includes revised principles, and the statutory guidance we have developed to guide awarding organisations' decisions around adaptation. It also includes proposed guidance on the application of Special Consideration. We are not consulting on any changes to our overall approach.

# The Extended Extraordinary Regulatory Framework

## Background

1. We introduced the Extraordinary Regulatory Framework in May (the ERF) as an emergency measure to permit awarding organisations to take approaches to issuing results during the summer that are not normally allowed by our General Conditions of Recognition (GCR). This was because assessments either could not take place or could only take place in an adapted form due to the national lockdown resulting from the coronavirus (COVID-19) pandemic.
2. In our first consultation on arrangements for 2020 to 2021, we consulted on our proposal to issue a second version of the ERF, the Extended ERF, to address the different circumstances of 2020 to 2021 when assessments are expected to take place but when there are also ongoing impacts from the pandemic.
3. Following this consultation, we have decided to introduce the Extended ERF. The Extended ERF applies to all regulated qualifications apart from AS and A levels, GCSEs, and apprenticeship end-point assessments.
4. We consider that the regulatory approach we are taking is sufficiently flexible to allow awarding organisations to respond to the variety of issues raised by the pandemic whilst maintaining the validity and reliability of qualifications. It allows awarding organisations to make adaptations to any of their vocational and technical or other general qualifications and assessments, where this is appropriate to assist in mitigating the impact of the pandemic. It also allows awarding organisations to offer qualifications and assessments as usual and/or in an adapted form.
5. The Extended ERF requires awarding organisations to consider each of their qualifications to decide whether any adaptations are appropriate where, for example, qualifications and assessments cannot progress as they normally would. However, awarding organisations are not required to make adaptations if it is not appropriate to do so.
6. We recognise that awarding organisations will be able to make many qualifications, in particular short qualifications which are available on-demand, available as normal or with minimal changes in 2020 to 2021, and that, in some cases, any proposed adaptations will only apply in very specific circumstances where necessary to comply with public health guidance.
7. As we set out in our first consultation (and confirm in our proposed guidance on adaptation, discussed later in this consultation), we do not expect the content taught for a qualification to be reduced, as this would undermine the validity of the qualification. Any reduction of content would only be acceptable in exceptional circumstances and only after engagement with stakeholders.



8. We do think however that it is possible to streamline assessments to free up teaching time to cover the content of a qualification, without undermining the validity and reliability of the assessment of the qualification. This may include:
- considering whether it would be possible to reduce the amount of content being assessed, whilst still validly and reliably measuring the knowledge, understanding and skills, or practical competence, signalled in the qualification
  - reducing or combining assessments, whilst assessing the same or similar content
  - reviewing the conditions under which some assessments are taken
  - making assessments available to centres earlier or more flexibly
- Such adaptations are most likely to be appropriate for those vocational and technical qualifications most similar to AS and A levels and GCSEs.
9. As we have set out in our proposed guidance on adaptations, where awarding organisations are introducing, or continuing adaptations introduced earlier in the summer, that we expect them to engage with centres and other stakeholders to ensure that they are acceptable and manageable.
10. We will also expect awarding organisations to develop consistent adaptation approaches for similar qualifications, where appropriate, working together and with sector and professional bodies, and to take account of approaches to adaptation already in place for similar general qualifications.

### **The ERF and Extended ERF**

11. The ERF will continue to apply:
- where learners who should have received a calculated result for an assessment they were due to take between 20 March 2020 and 31 July 2020, have not yet received that result but should still do so.
  - to appeals and complaints that may arise from decisions taken by awarding organisations under the ERF
- The Extended ERF does not apply to any of those instances.
12. We are also proposing to make changes to the ERF and the Extended ERF to clarify arrangements for autumn assessment opportunities, as discussed later in this consultation.
13. However, when the Extended ERF is brought into force, it will apply going forwards. Awarding organisations will need to review their qualifications and consider whether any adaptations are appropriate. Where an awarding organisation chooses to maintain, going forward, an adaptation originally made under the ERF, the Extended ERF will apply to that adaptation.
14. The Extended ERF conditions, requirements and guidance apply in addition to the GCR, and to any relevant Qualification Level Condition (QLC) or Subject Level Condition (SLC). However, where there is any conflict between an obligation in the GCR, QLC or SLC and an obligation in the Extended ERF, an awarding organisation must comply with the Extended ERF.

15. The ERF and the Extended ERF will be in force temporarily. We will review when it is appropriate for them to no longer apply and will continue to engage with awarding organisations and other stakeholders in that regard.

## Proposed changes from the first draft version of the Extended ERF

1. In our first consultation on arrangements for 2020 to 2021, we issued a first draft of the Extended ERF and asked for comments on the drafting of the conditions, requirements and guidance.
2. In particular, we asked for views on whether the draft principles which were taken from the ERF were still appropriate in the context of the Extended ERF, or whether a different emphasis was needed going forward, and what that emphasis might be.
3. We also asked for feedback on a set of objectives to guide awarding organisations' decisions around their approach to adaptation. Our proposed objectives were:
  - a. Learners taking VTQs and other general qualifications should have the opportunity to receive fair results, and, as far as possible, not be disadvantaged by the longer term impact of the current public health crisis. Learners taking qualifications most similar to AS and A levels and and GCSEs should not be advantaged or disadvantaged compared to their peers taking those qualifications; this is particularly important where learners are competing for the same progression opportunities.
  - b. As far as possible, standards should be maintained when qualifications are awarded in 2020 to 21.
  - c. Adaptations to assessment and qualifications should not undermine the validity and reliability of the qualifications. We therefore do not expect that the content to be taught is reduced. Changes to the content should only be considered in exceptional circumstances where it is the only way of minimising disadvantage to learners as a result of the pandemic. The views of sector and professional bodies and other stakeholders must also be sought before any changes are made. Any changes to assessment requirements or delivery should also be carefully considered so that they do not undermine the validity and reliability of the qualification.
  - d. Common approaches to adaptation should be followed where qualifications signal similar knowledge, understanding and skills, or practical competence, and have the same assessment approaches.
  - e. The manageability of assessments should be maximised to allow for an increase in teaching time. Any streamlining of assessments should be carefully balanced with the need to ensure that qualifications remain sufficiently valid and reliable.
  - f. Flexibility in how, and how often, assessments are delivered should be maximised so as to reduce the impact of disruption, illness or quarantine, including at a local level.

- g. The opportunities presented by the inherent flexibility of the modular delivery modes of many vocational and technical qualifications should be maximised so that learners can bank assessments as soon as they are ready, in order to safeguard against future disruption.
  - h. Communications should be streamlined and coordinated to support centres implementing adapted assessments and users of the qualifications.
  - i. A coordinated system-wide approach should be developed to address the risks impacting on learners' results which are outside the scope of Ofqual regulation, working with partners, stakeholders, other regulators and government.
4. We said that we would consider whether and how to include these objectives in the Extended ERF and that we might make other changes in light of the feedback we received and the development of the guidance on adaptations.
  5. The feedback we received from the first consultation did not lead us to consider that it was necessary to make many changes to the drafting of the conditions, requirements and guidance. The only changes we are proposing to make to the Extended ERF are to:
    - include revised principles, based on some of the higher-order objectives, and to remove the references to the principles being in a hierarchy, on which we are now consulting (see section below).
    - include guidance on adaptations, in which all but one of the remaining objectives are embedded, on which we are now consulting (see section below)
    - include guidance on the application of Special Consideration in 2020 to 2021, on which we are consulting (see section below)
    - clarify regulatory arrangements for autumn assessment opportunities.

## Principles

6. Draft Condition ExtVTQCov2.3 in the Extended ERF allows us to specify principles with which an awarding organisation must comply where an awarding organisation decides to make adaptations to its qualifications and assessments.
7. We are proposing to replace the principles included in the first draft of the Extended ERF, which were drawn from the ERF, with new principles drawn from the objectives we consulted on in our first consultation. In this way, the objectives are now reflected within the design of the Extended ERF, rather than being a separate set of considerations. The objectives are also incorporated within the guidance on adaptations discussed later in this document.
8. This is because we received feedback that it was unclear what the relationship was between the objectives and the ERF principles, and what priority awarding organisations should give to either the objectives or the principles. We also received feedback that the ERF principles were not

appropriate for the context of 2020 to 2021 where assessments were expected to take place. It was also felt that the objectives were a more appropriate guide for awarding organisations' decisions about adaptation.

9. The proposed revised principles, listed below, are set out in the Extended ERF requirements:

**Principle 1** – As far as possible and without prejudice to the other principles, an awarding organisation must seek to ensure that the adaptations, which it makes to a qualification, assist with mitigating the impact on teaching, learning or assessments caused by the coronavirus (COVID-19) pandemic on learners taking that qualification.

**Principle 2** – An awarding organisation must seek to ensure, as far as possible, that the adaptations which it makes to a qualification do not serve to advantage or disadvantage learners taking that qualification against their peers taking general qualifications not covered by the Extended ERF.

**Principle 3** – An awarding organisation must seek to ensure that, where it makes any adaptations to its qualifications in accordance with the Extended ERF, the validity and reliability of those qualifications is maintained.

**Principle 4** – An awarding organisation must seek to maintain standards, as far as possible, within the same qualification in line with previous years, and across similar qualifications made available by the awarding organisation and by other awarding organisations.

10. We think that these principles more clearly reflect the position where assessments are expected to take place during 2020 to 2021 than the previous principles which gave priority to the issue of results at a time when many assessments could not take place, but there was a need to issue results to enable learners to progress to the next stage of their lives.
11. We are not proposing that the principles form a hierarchy, in that one should be achieved in preference to compliance with another. Rather an awarding organisation must take all reasonable steps to comply with each of the principles to the fullest extent possible.
12. We have taken on board the feedback that awarding organisations cannot fully mitigate the impact of the pandemic through their adaptations in the drafting of the new Principle 1, by saying that the adaptations *assist* with mitigating the impact on teaching, learning and assessment.
13. We have incorporated most of the remaining objectives within the statutory guidance on adaptation, as discussed in the section below.

**Question 1: Do you have any comments on the proposed principles set out above and in the second draft version of the Extended ERF requirements?**

## Guidance on adaptation

14. In parallel with our first consultation, we held a series of workshops with awarding organisations and sector bodies to explore the adaptation approaches which may be appropriate across different sectors and qualification types.
15. This has confirmed our view that any guidance on adaptation must be sufficiently flexible to enable awarding organisations to respond to the wide range of issues they need to consider in developing adaptation approaches which maintain the validity and reliability of the different types of VTQs and other general qualifications, and which are clear and acceptable to users.
16. We are therefore proposing to issue statutory guidance on adaptation which sets out a range of factors which awarding organisations should consider when deciding on their approach to adaptation. Awarding organisations must have regard to this guidance when determining which approach to take to their assessments and qualifications in 2020 to 2021.
17. The guidance reflects the objectives we consulted on, which were supported in the first consultation. It does not however include the final proposed objective - *A coordinated system-wide approach should be developed to address the risks impacting on learners' results which are outside the scope of Ofqual regulation, working with partners, stakeholders, other regulators and government.* We agreed with respondents that this was not a factor which awarding organisations would be able to consider when deciding on their adaptation approach. We will however continue to work with stakeholders, other regulators and government to develop such a system-wide approach.
18. The proposed guidance in relation to the adaptation of qualifications and assessments:
  - sets out the context within which awarding organisations are making their decisions
  - explains how the principles, with which awarding organisations must comply, should be applied
  - sets out a process awarding organisations may wish to follow when determining their approach to adaptation
  - gives examples of the issues which may need to be mitigated as a result of the coronavirus (COVID-19) pandemic
  - gives examples of possible adaptation approaches which may assist in mitigating the impact of the coronavirus (COVID-19) pandemic
  - sets out other factors awarding organisations should consider when developing their approach, such as complying with other organisations' requirements in addition to Ofqual's, for example the DfE's technical requirements for performance table qualifications

- sets out factors awarding organisations should consider to support consistency in line with our expectation that, as far as possible, where qualifications signal similar knowledge, understanding and skills, or practical competence, and have the same assessment approaches and delivery context, the adaptations are consistent
  - sets out factors awarding organisations should consider when working with centres and others to develop and implement adaptations effectively
  - suggests areas where awarding organisations may wish to take steps to build resilience so that they are in the strongest possible position to manage any further disruption caused by the coronavirus (COVID-19) pandemic
19. We have retained, unchanged, the guidance included in the previous draft version of the Extended ERF on the adaptation of remote invigilation, which was taken forward from the ERF.
20. We think that this guidance balances the need for consistency of approach to adaptation with the flexibility necessary for awarding organisations to make decisions that are appropriate for their qualifications and centres.
21. Alongside this guidance on adaptation, we will continue to work with awarding organisations, sector bodies and other stakeholders so that, as far as possible, consistent approaches are taken where qualifications signal similar knowledge, understanding and skills, or practical competence, and have the same assessment approaches and delivery context.
22. As awarding organisations are making decisions appropriate to their qualifications, we cannot set out at a national level the adaptations that may be implemented in the detailed way that it is possible to do with AS and A levels or GCSEs. We do however require awarding organisations to provide clear and timely information to centres about their approaches for each of their adapted qualifications and assessments and to ensure that any adaptations are acceptable and manageable.

**Question 2: Do you have any comments on the proposed guidance on adaptation set out in the second draft version of the Extended ERF?**

## Special Consideration

23. In our first consultation, we said that we were considering whether there was a need for more detailed guidance on Special Consideration in the context of 2020 to 2021 and asked for views on the issues we should consider in any guidance we might develop.
24. There was agreement that this would be helpful and we have proposed some additional guidance, which we think is complementary to the existing guidance in the GCR, and which addresses the particular circumstances of 2020 to 2021.
25. The proposed guidance says that, in accordance with the guidance on General Condition G7 (Arrangements for Special Consideration):

- where learners have missed teaching and learning as a consequence of public health guidance, adaptations to qualifications and assessments should be considered, rather than Special Consideration.
  - if further disruption occurs on a localised basis and assessments cannot take place, awarding organisations should consider whether they can adapt or further adapt their qualifications or assessments before considering whether Special Consideration may apply.
  - where Special Consideration is available to learners who have not completed all of the assessments (because of previous or future lockdowns, for example), awarding organisations must be clear about the amount of assessment evidence a learner must have completed before a qualification can be awarded.
26. The proposed guidance also states that awarding organisations should review their current arrangements for Special Consideration to ensure they remain appropriate in the context of the potential continuing disruption caused by the coronavirus (COVID-19) pandemic.
27. In addition, we will work with awarding organisations to develop a common understanding and, as far as possible, a standardised approach, to the application of Special Consideration in 2020 to 2021.

**Question 3: Do you have any comments on the proposed guidance on Special Consideration set out in the second draft version of the Extended ERF?**

## Autumn assessment opportunities

28. We are proposing to make changes to 2 Conditions (VTQCov10.5 in the ERF and ExtVTQCov 1.1 in the Extended ERF) to clarify the regulatory arrangements for assessments offered in the autumn.
29. As currently drafted, awarding organisations may be unclear whether or how the 2 frameworks apply to the same assessments, when they are made available, once the Extended ERF comes into effect in September.
30. We therefore propose to amend VTQCov10.5 in the ERF by adding point (c) to make it clear that awarding organisations must comply with the Extended ERF, once it comes into force, for any assessments they make available in the autumn. We will also correct the reference in 10.5 to VTQCov10.3 which is a drafting error– it should be a reference to 10.4.

### *VTQCov10.5*

*In respect of each assessment it delivers under Conditions*

*VTQCov10.1 and VTQCov10.4 –*

- (a) an awarding organisation is not required to comply with Conditions VTQCov2 to VTQCov9,*
- (b) Condition VTQCov1.6 does not apply, and*
- (c) an awarding organisation must comply with the ExtVTQCov Conditions.*

31. We also propose to reflect this change in the ExtVTQCov 1.1 in the draft version of the Extended ERF, on which we are now consulting.
32. We have considered whether this will impose any additional regulatory burden on awarding organisations. We do not consider that this will be the case because adaptations already made under the ERF are likely to remain appropriate going forward under the Extended ERF. We consider this point in more detail in the Regulatory Impact Assessment later in this document.
33. If we did not make these changes to our regulatory arrangements there could be confusion as to whether an assessment offered in the autumn was covered by the ERF or the Extended ERF, or both. Our proposed amendments will therefore provide certainty for awarding organisations.

**Question 4: Do you have any comments on the proposed regulatory arrangements for autumn assessment opportunities?**



## Equalities Impact Assessment

1. As a public body, we are subject to the public sector equality duty. Annex B sets out how this duty interacts with our statutory objectives and other duties.
2. Awarding organisations are required to comply with equalities legislation, and our existing General Conditions of Recognition reinforce this in relation to the qualifications they make available. They are required to monitor their qualifications to identify features which may disadvantage a group of learners who may share a protected characteristic<sup>1</sup>, and this applies to the design, delivery and award of their qualifications.
3. In our first consultation, we considered whether any of our proposals for 2020 to 2021 might impact (positively or negatively) on learners and other learners who share protected characteristics, and asked for views on whether there were any other potential positive or negative equality impacts we had not identified and for views on how any potential negative impacts could be mitigated. From this, we have identified the following potential impacts on groups of learners.
4. It is possible that learners from some groups could be disadvantaged. Vocational and technical qualifications are more likely to be taken by learners who are, on average, from more disadvantaged backgrounds compared with those learners taking general qualifications. Additionally, some vocational and technical qualifications are more likely to be taken by learners with certain protected characteristics. It is also possible that because vocational and technical qualifications are more likely to be taken by adult learners than general qualifications, the learners taking these qualifications may have other responsibilities, such as caring responsibilities, which could affect their ability to take an adapted assessment.
5. Some learners could be disadvantaged on the basis of the centre at which they take their assessments. Some centres are more likely than others to be able to accommodate things such as social distancing requirements.
6. There is the potential for some learners to be impacted as a result of access to technology, or their ability to use technology, where this forms part of an awarding organisation's approach to adaptation of its qualifications and assessments. Some learners may not have access to technology due to their socio-economic circumstances or for geographical reasons, for example those in rural areas. Additionally, even where technology is available, some learners may not be able to use the technology for a number of reasons, including due to a disability. This could apply both to assessments or learning that takes place remotely, or to assessments taking place in centres. A centre may not have access to the technology needed to accommodate all learners, or may

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<sup>1</sup> For the purposes of the public sector equality duty, the 'protected characteristics' are: disability, race, age, religion or belief, pregnancy or maternity, sex, sexual orientation, and gender reassignment

not be able to accommodate all learners, while complying with social distancing requirements.

7. It is possible that some adaptations may mean that reasonable adjustments with which learners were familiar may no longer be appropriate for learners taking assessments, and they will require additional support to familiarise themselves with alternative approaches. The use of technology could however also have a positive impact on groups of learners by making assessments more accessible for some. For example, technology might allow for forms of reasonable adjustments which may not be available in paper-based assessments, or remove the need for some forms of reasonable adjustment that may otherwise have been required.
8. As all vocational and technical qualifications are now subject to the same requirements, the possibility of learners being disadvantaged compared to their peers due to not having the evidence available to receive a calculated grade, due to a disability for example, is likely to have been reduced. As all assessments now have the potential to be adapted, and these adaptations must take account of the needs of learners with protected characteristics, learners are less likely to be negatively affected.
9. In the Extended ERF, we have retained the guidance on compliance with General Condition D2 (Accessibility of qualifications) in relation to vocational and technical and other general qualifications in 2020 to 2021, which was included in the first draft of the Extended ERF. This confirms that the equalities legislation with which awarding organisations must comply for any qualification they offer, will continue to apply in relation to qualifications which have been adapted under the Extended ERF.
10. We don't consider that there are any additional equality impacts arising from the proposed new principles, the proposed guidance on adaptation or the proposed guidance on Special Consideration. They do not prescribe any particular approaches which are likely to add to the impacts already identified.
11. We have also considered the impact of our proposed regulatory arrangements for autumn assessment opportunities. We have identified a possible equality impact should an awarding organisation choose to put on an adapted assessment in the autumn, which is less accessible, instead of a non-adapted assessment, as they might have planned, before the Extended ERF came into effect. However, awarding organisations can only make adaptations where this is appropriate under the Extended ERF, which includes compliance with equalities legislation, as noted above.

**Question 5: Are there any potential positive or negative equality impacts arising from the proposed principles, the proposed guidance on adaptation and Special Consideration, and the proposed regulatory arrangements for autumn assessment opportunities, apart from those we have explored? If yes, what are they and how might they be mitigated?**

## Regulatory Impact Assessment

1. In our first consultation, we considered the impact of our proposals on learners, awarding organisations, centres, FE, HE and employers, innovation and growth. We asked respondents to share with us as much information as possible about the likely costs and administrative burdens associated with the implementation of our proposals, as well as any savings or benefits. We set out that there could be a number of costs and administrative burdens to awarding organisations in meeting the Extended ERF, which could include:
  - familiarisation with the proposed Extended ERF
  - development of approaches to adaptations, including engagement with other awarding organisations, sector or professional bodies and with us to develop consistent approaches where possible
  - working with us to streamline and coordinate communications with centres
  - communication of new requirements to centres and supporting centre activities and managing increased volumes of enquiries from centres and learners
  - adaptation or development, and delivery, of processes and systems for adapted assessments and quality assuring these
  - maintaining a record of decisions made to adapt an assessment and the rationale for them and additional and/or revised data submissions to us
  - preventing, detecting and investigating any malpractice or maladministration specifically relating to the delivery of adapted assessments
  - issuing of results in accordance with new arrangements
2. Some of these previously identified costs are likely to still apply as a result of the Extended ERF. Some of these changes may however build on work already undertaken as part of the previous ERF so the extent to which the Extended ERF will pose an additional cost or regulatory impact is likely to be limited.
3. In response to our previous consultation, respondents told us that they did not expect any substantial savings to be made, except potentially around travel costs, for example where external verifiers or assessors may not need to travel to centres because of a change to assessment delivery modes. While some costs such as travel may be reduced, these may be replaced by other costs, for example those relating to investing in other forms of monitoring and invigilation.
4. In addition to the areas identified above, respondents anticipated additional costs relating in particular to the need to invest in technology (for example in relation to delivering adapted assessments online), including specialist software, additional hardware and registration for licences, and also the associated need to train people and provide ongoing support in using new technologies and approaches. The extent of these costs will vary – some

awarding organisations and centres may have access to such resources and equipment, whereas others may not, and therefore may see a greater immediate impact. It is possible that any investment could bring benefits beyond the period during which the Extended ERF is in force, as technology and other equipment may continue to be used, even once there is no need for assessments to be adapted. Access to such equipment may also lead to alternative, potentially cheaper delivery approaches in the long-term, although it is not possible to quantify this at this stage.

5. Awarding organisations indicated a range of additional costs relating to engaging with a new regulatory framework and adapting their assessments, including changing procedures and systems, communicating these changes and supporting their centres. They also noted potential impacts on their 'business as usual' activities as they have to divert funds and resources to delivering their qualifications in extraordinary circumstances under the new framework.
6. As described above, the introduction of the Extended ERF is not entirely new – it builds on the ERF that was put in place over the summer. As such, some of the costs of meeting the Extended ERF may already have been incurred. It is possible that adaptations made under the previous ERF may still be applicable, therefore the additional cost of meeting the Extended ERF could be limited. It is acknowledged though that this won't be the case in all circumstances, and that some awarding organisations may decide to review and amend their approach in light of the extended ERF. Additionally, there will be some qualifications for which calculated results were previously required, which will now potentially need to be adapted, which could lead to additional costs.
7. We are proposing to provide guidance on approaches to adaptation as part of the Extended ERF – whilst awarding organisations will need to familiarise themselves with this guidance, we are hopeful that this will help mitigate the impact, as it will help awarding organisations to understand the Extended ERF and what is required.
8. In addition, the Extended ERF is designed to be flexible. It does not prescribe a single approach – awarding organisations must consider whether adaptations are appropriate, and have regard to the guidance, but are permitted to determine the most suitable approach for their qualifications. This will allow awarding organisations to consider a range of approaches, including not making adaptations if they do not consider this appropriate, and to consider a range of factors, including manageability and cost considerations, when determining their approach.
9. In developing the Extended ERF, we have taken account of the concerns of awarding organisations and other stakeholders. In particular, we have revised the principles that previously existed, to allow for greater flexibility and for awarding organisations to meet a range of factors. They no longer need to prioritise the issuing of results to as many learners as possible over everything else, and instead can take a more flexible approach to determining whether, and how, to make adaptations for assessments. We have also considered our guidance on Special Consideration in light of feedback from stakeholders. While this new guidance helps contextualise the existing

requirements and guidance that exist under the General Conditions of Recognition, they do not impose additional requirements, so should not create an additional burden on awarding organisations.

10. Centres – including teachers, exams officers and senior leaders – all noted a range of costs associated with adjusting to delivering adapted assessments, including working with any social distancing requirements, as well as the costs of trying to catch learners up on lost study time and providing additional support to them. We are proposing, through the Extended ERF, to provide guidance to awarding organisations on the need to ensure a consistent approach for similar qualifications as far as is possible, and to work with centres and others in developing their approaches. These steps should help to reduce the burden on centres to some extent.
11. In addition, we have looked in particular at whether our guidance around building resilience places an additional regulatory burden on awarding organisations. Our guidance in this area does not require awarding organisations to make changes to existing systems or procedures, only to reflect on whether they may need to take additional steps to ensure that they are in the strongest possible position to manage any further disruption caused by the coronavirus (COVID-19) pandemic.
12. We have also looked at the regulatory impact of our proposed regulatory arrangements for autumn assessment opportunities.
13. We recognise that by the time the Extended ERF comes into force in September, awarding organisations may have already set some assessments which they plan to make available in the autumn. Those assessments could be adapted or not.
14. However, we do not think that requiring compliance with the Extended ERF will place an additional burden on awarding organisations in that respect because adaptations already made under the ERF are likely to remain appropriate under the Extended ERF. Also, awarding organisations are able to take into account how close an assessment is to being delivered when considering whether or not it would be appropriate to adapt it. So, for example, where an awarding organisation had set a non-adapted assessment to be taken a very short time after the Extended ERF comes into force it could consider that it is not appropriate to adapt it before it is delivered given the burden this could place on the awarding organisation and on centres.
12. We have concluded therefore that there are no additional regulatory impacts, beyond those already identified, arising from our proposals.

**Question 6: Are there any potential regulatory impacts arising from the proposed principles, the proposed guidance on adaptation and Special Consideration, and the proposed regulatory arrangements for autumn assessment opportunities that we have not explored? If yes, what are they and how might they be mitigated?**

# 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](mailto:dprequests@ofqual.gov)

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/or ESFA and/or 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](http://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.



*Arrangements for the assessment and awarding of Vocational and Technical and  
Other General Qualifications in 2020/2021 Consultation – Part 2*

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](http://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.

## Annex B

# Ofqual's objectives and duties

## The Apprenticeship, Skills, Children and Learning Act 2009

We have five statutory objectives, which are set out in the Apprenticeship, Skills, Children and Learning Act 2009<sup>10</sup>.

**1. The qualification standards objective**, which is to secure that the qualifications we regulate:

- a. give a reliable indication of knowledge, skills and understanding; and
- b. indicate:
  - c. a consistent level of attainment (including over time) between comparable regulated qualifications; and
  - d. a consistent level of attainment (but not over time) between qualifications we regulate and comparable qualifications (including those awarded outside of the UK) that we do not regulate.

**2. The assessment standards objective**, which is to promote the development and implementation of regulated assessment arrangements which

- a. give a reliable indication of achievement, and
- b. indicate a consistent level of attainment (including over time) between comparable assessments.

**3. The public confidence objective**, which is to promote public confidence in regulated qualifications and regulated assessment arrangements.

**4. The awareness objective**, which is to promote awareness and understanding of

- a. the range of regulated qualifications available,
- b. the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and
- c. the benefits of recognition to bodies awarding or authenticating qualifications.

**5. The efficiency objective**, which is to secure that regulated qualifications are provided efficiently, and that any relevant sums payable to a body awarding or authenticating a qualification represent value for money.

We must therefore regulate so that qualifications properly differentiate between learners who have demonstrated that they have the knowledge, skills and understanding required to attain the qualification and those who have not. We also have a duty under the Apprenticeship, Skills, Children and Learning Act 2009 to have regard to the reasonable requirements of relevant learners, including those with special educational needs and disabilities, of employers and of the higher education sector, and to aspects of government policy when so directed by the Secretary of State.

## The Equality Act 2010

As a public body, we are subject to the public sector equality duty<sup>2</sup>.

This duty requires us to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

The awarding organisations that design, deliver and award performance table qualifications are required by the Equality Act, among other things, to make reasonable adjustments for disabled people taking their qualifications.

We are subject to a number of duties and we must aim to achieve a number of objectives.

These different duties and objectives can, sometimes conflict with each other. For example, if we regulate to secure that a qualification gives a reliable indication of a learner's knowledge, skills and understanding, a learner who has not been able to demonstrate the required knowledge, skills and/or understanding will not be awarded the qualification.

A person may find it more difficult, or impossible, to demonstrate the required knowledge, skills and/or understanding because they have a protected characteristic. This could put them at a disadvantage relative to others who have been awarded the qualification.

It is not always possible for us to regulate so that qualifications give a reliable indication of knowledge, skills and understanding and advance equality between people who share a protected characteristic and those who do not. We must review all the available evidence and actively consider all the available options before coming to a final, justifiable decision.

Qualifications cannot mitigate inequalities or unfairness in the education system or in society more widely that might affect, for example, learners' preparedness to take the qualification and the assessments within it. While a wide range of factors can have an impact on a learner's ability to achieve a particular assessment, our influence is limited to the qualification design and assessment.

We require awarding bodies to design qualifications that give a reliable indication of the knowledge, skills and understanding of the learners that take them. We also require awarding organisations to avoid, where possible, features of a qualification that could, without justification, make a qualification more difficult for a learner to achieve because they have a particular protected characteristic. We require awarding organisations to monitor whether any features of their qualifications have this effect.

In setting the overall framework within which awarding organisations will design, assess and award performance table qualifications, we want to understand the possible impacts of the proposals on learners who share a protected characteristic.

The protected characteristics under the Equality Act 2010 are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnerships
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

With respect to the public sector equality duty under section 149 of the Equality Act, we are not required to have due regard to impacts on those who are married or in a civil partnership.



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Published by:

**ofqual**

Earlsdon Park  
53-55 Butts Road  
Coventry  
CV1 3BH

0300 303 3344

[public.enquiries@ofqual.gov.uk](mailto:public.enquiries@ofqual.gov.uk)

[www.gov.uk/ofqual](http://www.gov.uk/ofqual)