

FAB Response to Ofqual Consultation - Lifting the Accreditation Requirement, July 2014

About you*

Your details:

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Would you like us to treat your response as confidential?* If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes **No**

Are the views you express on this consultation an official response from the organisation you represent or your personal views?*

Personal views

Official response from an organisation/group (please complete the type of responding organisation tick list)

If you ticked “Personal views”, which of the following are you?

Student

- Parent/carer
- Teacher (but not responding on behalf of a school or college)
- Other (including general public) (please state capacity) _____

If you ticked “Official response from an organisation/group”, please respond accordingly:

Type of responding organisation*

- Awarding organisation
- Local authority
- School/college (please complete the next question)
- Academy chain
- Private training provider
- University or other higher education institution
- Employer

(X) Other representative group/interest group (please skip to type of representative group/interest group)

School/college type

- Comprehensive/non-selective academy
- State selective/selective academy
- Independent
- Special school
- Further education college
- Sixth form college
- None of the above (please state what) _____

Type of representative group/interest group

- Group of awarding organisations

- Union
- Employer/business representative group
- Subject association/learned society
- Equality organisation/group
- School/college or teacher representative group

(X) None of the above (please specify)

The Federation of Awarding Bodies (FAB) is the membership organisation for vocational awarding bodies and we currently have over 110 awarding bodies in membership. Our members range from generic awarding bodies to small specialist organisations. We also have more than 30 professional bodies in membership.

Our members are all affected by the current accreditation requirement which applies to all qualifications. The Federation therefore welcomes the opportunity to respond to this consultation.

The Federation wishes to make the following submission for your consideration. This response is submitted on behalf of the FAB membership following consultation with them and with the Federation's Board of Directors. Awarding Organisations (AOs) are a diverse community and our members may wish to make their own individual submissions containing their own particular perspectives and emphases, in addition to any comments forwarded to FAB for inclusion in this overall response.

Although the Federation welcomes this consultation we are disappointed that Ofqual has decided to make this opportunity available for only 4 weeks during a peak summer holiday period. We do feel that a longer consultation period would have been useful given the importance of the change being proposed. Given that this change was first signalled in the Risk Based Regulation consultation in February 2012 we are not clear why such a short consultation period has been provided.

Nation*

England

Wales

Scotland

Northern Ireland

Other EU country (please state which) _____

Non-EU country (please state which) _____

The Federation's members operate across all countries in the UK and, in many cases, on an international basis both within and outside the EU.

How did you find out about this consultation?

Our newsletter or another of our communications

Via internet search

From our website

From another organisation (please state below)

Other (please state) - Input from an Ofqual representative at the DfE AOVQ Group meeting on the morning of the launch of the consultation 09/07/14.

May we contact you for more information?

Yes

No

*Denotes mandatory fields

Questions

Question 1: Ofqual should remove the requirement that every regulated qualification must be accredited by Ofqual before it can be awarded.

What is your view of this statement?

Strongly agree	()
Agree	(X) see comments below
Disagree	()
Strongly disagree	()
No opinion	()

The Federation welcomes Ofqual's intention to adopt a more risk based approach to regulation throughout the lifecycle of qualifications. We are therefore broadly in favour of the proposal to lift the accreditation requirement that is currently applied to all AOs and all qualifications. We hope that this change would result in a decrease in the burden of regulation for some AOs whilst also providing Ofqual with an opportunity to more effectively focus its resources on areas where they can have greatest impact. We believe it is in the sector's interest to have regulatory scrutiny more intensely focused on areas that present the most significant risk or where there is evidence that the validity of qualifications is not at the required standard.

Since the launch of the General Conditions of Recognition (GCRs) in 2011, Ofqual has frequently stated its intention to lift the accreditation requirement. The Federation therefore welcomes the action to progress this matter. Unfortunately, the Federation does not feel able to 'strongly agree' with the proposal because of the lack of information provided within the consultation document in relation to the approach that Ofqual intends to introduce in place of the accreditation requirement. It is unfortunate that the letter from the Chief Regulator, published on the same day as the consultation, refers to requiring AOs to develop validity strategies which will be subject to audit. However, the letter does not provide any information about what will be required and the consultation does not include any proposals for comment. In the absence of this information we cannot be confident that the lifting of the accreditation requirement will deliver the benefits we anticipate to our members. Areas where the provision of more comprehensive information would be useful include:

- Details relating to 'validity strategies', what information will be required, how this information will be processed by Ofqual, what timescales will be involved and whether these strategies relate to each qualification, each qualification category or in general to the AO's approach to ensuring validity. Such information would provide some indication of the amount of resource AOs will need to invest in developing their strategies. In the absence of this information it is not possible to strongly agree with the proposal to lift the accreditation requirement as there are some concerns within the membership that accreditation may be replaced with an approach that is even more

burdensome and resource intensive for AOs. These concerns are similarly mirrored in relation to 'validity audits' and the resource implications these may have for AOs.

- The process that AOs will be required to follow to enter qualifications onto the Register and whether all of the information they currently supply on RITS will continue to be required or if it will be streamlined to ease the burden on AOs. Reference is made within the proposed new Condition E6.1 of a form for the provision of this information but no further clarification is provided about what information AOs will be required to provide. AOs also have questions about the future plans for RITS, how long that will be in use for and what system will replace it.
- How this change will impact on regulated qualifications that are intended for use within both England and Wales. Currently, qualifications are submitted on RITS for accreditation and once that is granted by Ofqual the qualification is also accredited for use in Wales. This is currently a joined up approach which is effective in avoiding duplication of effort by AOs. We understand that, as each of the regulators continues to develop their own regulatory approach, there is likely to be an increasing level of divergence in the approaches adopted. However, where this impacts on systems that have been in place for some time it is useful for AOs to have clarification of what the future arrangements will be so they can make the appropriate arrangements. It is not clear from the consultation document how qualifications will be accredited for use in Wales in the future.

The Federation also feels it is important to establish how the removal of an up-front accreditation requirement will be received by other qualification stakeholders such as DfE and Skills Funding Agency. We are particularly concerned about whether or not the removal of the accreditation requirement is likely to result in these agencies reaching the required level of confidence in qualifications which would allow them to remove their additional 'quality' checks on qualifications that are already recognised by Ofqual. We have some concerns that these agencies may feel the removal of the up-front accreditation requirement means there is less assurance of the quality of qualifications and that they may, as a result, put in place an even greater level of additional requirements. The Federation would like to avoid any additional burden being placed on AOs by other agencies and would welcome a position where Ofqual's regulation of a qualification was sufficient assurance of validity for all other stakeholders. We would therefore welcome assurance from Ofqual that its discussions with other relevant agencies to date have indicated that they are likely to respond positively to the lifting of the accreditation requirement.

Question 2: Ofqual should impose an accreditation requirement for GCSE, AS and A level qualifications.

What is your view of this statement?

Strongly agree	()
Agree	(X) - but see comments
Disagree	()
Strongly disagree	()
No opinion	()

Do you have any comments or suggestions about this proposal?

The Federation understands the high stakes nature of GCSE, AS and A level qualifications and the level of scrutiny these are subjected to by learners, the media, the general public, government and other stakeholders both in England and on an international basis. As such, we believe that the assurance of the validity of these qualifications is essential and understand that Ofqual must maintain a position where it has complete confidence in the regulatory approach it operates for these qualifications. However, the Federation does have some concerns about how the automatic imposition of an accreditation requirement on the general qualifications (GQs) may be perceived, particularly by broader stakeholder groups. There may be an important communications role for Ofqual in helping a broad range of stakeholders to understand the rationale for this approach. Our concerns are that the reintroduction of the accreditation requirement for GQs could result in a perception that:

- the GQs are more important than other types of qualifications and therefore require a more robust approach. This could contribute to reinforcing the belief that GQs are of greater value than other types of qualifications; a belief that the Federation does not share.
- the arrangements that are applied to other types of qualifications are not robust enough and do not therefore offer sufficient assurance of the validity of the qualifications (as if they did, why would the same arrangements not be sufficient for GQs?). This could result in a perception that non-GQ qualifications are not regulated as robustly as GQs and the perception of a 2-tiered system.
- Ofqual has concerns about the performance of GQ AOs (which may not be the case). An accreditation requirement will generally only be applied to an AO where it is new to awarding (either completely or in relation to a particular type of qualification) or where Ofqual 'have concerns about the ability of the awarding organisation to develop, deliver and award valid and reliable qualifications'.

The Federation believes it would be more desirable to have one approach that was applied to all AOs with those offering 'high risk' qualifications receiving more frequent scrutiny through the validity strategy and audit mechanisms that will be developed and implemented, provided there is a clear, transparent and agreed definition of 'high risk' qualifications. However, if this is not possible, and we do understand the pressure that Ofqual faces in relation to GQs, we do

believe that Ofqual will need to clearly communicate why this accreditation requirement continues to be applied to GQ AOs and takes positive steps to ensure the messaging also clearly signals that other qualifications are just as valid as GQs.

Question 3: Should Ofqual impose an accreditation requirement for any other qualification or description of qualifications? If so, which qualification(s) and why?

The Federation suggests that there may be some qualifications, where there is agreement that they are 'high stakes' qualifications such as, for example, ESOL and Licence to Practice qualifications, where an accreditation requirement may be appropriate. There may well be other types of qualifications such as First Aid qualifications or sectors/sub-sectors where the risk to the general public is significant e.g. some care qualifications. We believe that it should be possible for the awarding industry to agree with Ofqual how it should define and then identify high risk or high stakes qualifications which would be suitable for full accreditation.

There is also a belief within the membership that an accreditation requirement should be applied where an AO is entering a new sector where they have no proven track record. This would allow Ofqual to take the appropriate steps to assure themselves, learners and other stakeholders in the specific sector of the quality of the qualifications being offered.

Proposed regulatory framework to support our approach

Question 4: Condition E6 (as quoted below) is appropriate to confirm our requirement that all regulated qualifications must appear on the Register of Regulated Qualifications.

Condition E6

E6.1 An awarding organisation must not make available a qualification unless it has first submitted that qualification to the Register.

E6.2 An awarding organisation must ensure that its submission of a qualification to the Register:

- (a) is in a form that may be published by Ofqual and revised from time to time
- (b) includes the number of hours of guided learning that the awarding organisation has assigned to the qualification [*we anticipate that this aspect will change after we consult on guided learning hours*]
- (c) contains only accurate information
- (d) contains all information about the qualification that is requested on the form.

What is your view of this statement?

Strongly agree	()
Agree	(X) – but see comments
Disagree	()
Strongly disagree	()
No opinion	()

Do you have any comments or suggestions about our proposed Condition E6?

The Federation fully agrees that it is important for any **regulated** qualification to be listed on the Register before it is made available. We believe this requirement will provide learners and other stakeholder with a degree of confidence and assurance that the regulated qualification they are investing in (whether this is a financial investment or not) is legitimate and that they can rely on the protection afforded to them by the full scope of regulation.

We fully support the requirement for **regulated** qualifications to be on the Register; hence our agreement with what we now believe is the intended meaning and interpretation of E6. However, Ofqual is already aware that the Federation has a major concern about the wording of the draft Condition E6 in that, in its current form, we believe it could easily be (mis)interpreted to mean that **all** qualifications offered by an AO (including those that we currently refer to a non-regulated) must be on the Register. The Federation welcomes Ofqual's recent assurances and subsequent addition of footnote 6 to confirm that this is not the intention of Condition E6. However, if the Condition is to be added to the GCRs, the Federation feels that the wording of the final Condition will need to be amended to clearly reflect the intention of the Condition and to ensure there is no opportunity for misunderstanding or a shift in its interpretation over time. The changes we would suggest are (in **bold italics**, below):

Condition E6

E6.1 An awarding organisation must not make available a qualification, **as a regulated qualification**, unless it has first submitted that qualification to the Register.

E6.2 An awarding organisation must ensure that its submission of a qualification (**to become a regulated qualification**) on the Register:

- (a) is in a form that may be published by Ofqual and revised from time to time
- (b) includes the number of hours of guided learning that the awarding organisation has assigned to the qualification [*we anticipate that this aspect will change after we consult on guided learning hours*]
- (c) contains only accurate information
- (d) contains all information about the qualification that is requested on the form.

The Federation believes that the amended wording makes it clear that the Condition relates only to qualifications that an AO intends to offer to the market as regulated qualifications.

It is also fair to say that a number of our members have questioned the need to introduce this additional Condition. The Federation believes that the GCRs have an important role to play in the regulation of the sector and as such we are keen to ensure that they are specific, clear and manageable for AOs. We are concerned that the number of GCRs is steadily growing and we feel there is a risk that as a set of requirements they will become unwieldy. We are therefore keen to only see new Conditions added where they add real value to regulation. In terms of E6, we would suggest that this requirement is already adequately covered in the existing Conditions A1.3, B5.1, E2, E5 and I3.2.

Question 5: We provide statutory Guidance for a number of Conditions which sets out examples of compliance with specific Conditions. Awarding organisations are required to have due regard to this statutory Guidance.

Would you welcome statutory Guidance from Ofqual about Condition E6?

Yes – but see comments
No

If yes, on what aspects?

If Ofqual does proceed with the addition of a new Condition we would support the proposal for the development of guidance within a full suite of guidance for the GCRs. However, we would not see this Condition as being a priority area and would recommend that other Conditions (such as H3) would benefit more greatly from the provision of guidance by Ofqual.

The Federation would also like to take this opportunity to reiterate some key points relating to guidance that we have communicated to Ofqual in previous consultation responses and communications:

1. Over 3 years after the initial launch of the General Conditions of Recognition (GCRs) we are still in a position where we do not have a full suite of guidance relating to the Conditions. Ofqual produced an initial batch of guidance in 2012/13 and has added some updates to this periodically as new Conditions have been developed and implemented. Ofqual has made a number of verbal commitments to producing more guidance but we are not aware of any published timescale for commencing or completing this work. The Federation would find it useful to have a firm commitment from Ofqual to producing a complete suite of guidance in relation to all of the GCRs along with associated timescales for producing this guidance. We understand that resource requirements may result in the need to take a phased approach to developing guidance and we would be willing to work with our members to support Ofqual in the prioritising Conditions that would most benefit from the provision of guidance.

2. It is fair to say that within the FAB membership there is a range of views on the value of guidance given that the GCRs should be clear enough in themselves not to require further clarification. On balance, the Federation's view is that it is useful and we therefore welcome Ofqual's proposals to develop further guidance. We also recognise that the development of guidance requires the investment of valuable Ofqual resources. As a result, the Federation feels that such an investment should only be made if it results in guidance which clarifies the meaning and intent of the Conditions. With this in mind, the Federation has expressed our concerns about the quality of the guidance issued in June 2014 as Annex 1 of RO22 regarding endorsement of products by awarding organisations. This is not the style of guidance that we would want to see replicated in the future. This 8 page guidance document includes approximately 4 pages which in effect are duplicated text where the positive indicators have been repeated in negative terms. As a result, they add no value to the document. Ofqual representatives clearly stated in the initial workshops related to the development of guidance that it was categorically not the intention to take this approach which only succeeds in adding to the word count of the document instead of adding value and aiding clarity.

If, during the development of future guidance, Ofqual is not in a position to identify valid negative indicators then we would recommend the guidance states that these will be added at a later date, as appropriate. We recognise that these may emerge over time as the regulator undertakes a greater volume of monitoring activity.

3. In relation to Ofqual's work to develop any further guidance on the GCRs, we would like to reiterate the Federation's willingness to support the regulator with this activity and we would be happy to facilitate contact with a range of our members if this would be useful in the development or testing of draft guidance.

Question 6:

The draft accreditation criterion (quoted below) is appropriate to allow us to decide, where an accreditation requirement applies, whether we should accredit a new qualification:

An awarding organisation must demonstrate to Ofqual's satisfaction that it is capable of complying, on an on-going basis, with all of the General Conditions of Recognition that apply in respect of the qualification for which it is seeking accreditation, including all relevant Qualification Level Conditions and Subject Level Conditions.

What is your view of this statement?

Strongly agree	()
Agree	()
Disagree	(X) – see comments
Strongly disagree	()
No opinion	()

Do you have any comments or suggestions about our proposed Accreditation Criterion?

In terms of the criterion above we do not have any issue with the first section of it which makes reference to compliance with the GCRs.

However the final part of the criterion, which contains reference to the ‘Qualification Level Conditions and Subject Level Conditions’, gives rise to a couple of areas that require more clarity. This is mainly based on the fact that the Qualification Level Conditions and Subject Level Conditions are GQ focussed documents and will presumably only be ‘relevant’ to those seeking accreditation for GQ qualifications. We feel this could be made clearer in the criterion; otherwise there is a concern that there may be some attempt to apply these documents to VQs. Also, some VQ qualifications also need to meet qualification criteria e.g. QCF and ESOL qualifications but there is no reference made to these in the criterion. It is possible that some VQs will be subject to an accreditation requirement so it is important that the accreditation criterion is clearly applicable to VQs as well as GQs.

Some members have also raised a concern that the criterion does not go far enough and need to reflect a requirement for subject expertise as the GCRs do not require AOs to demonstrate this. There is a further concern that Ofqual may not be in a position to pick this up as they themselves do not employ subject experts. Close scrutiny of new entrants into subject areas may help to address these concerns.

Question 7:

Are there any specific positive or negative impacts on people who share particular protected characteristics¹ that we should consider in relation to these proposals?

Yes	()
No	(X)

If yes, what are they and how could any negative impacts be avoided or reduced?

The Federation has not identified any positive or negative impacts on people who share particular protected characteristics.

¹ Including those defined in the Equality Act 2010 and in Section 75 of the Northern Ireland Act 1998, namely: age, disability, gender reassignment, marriage and civil partnership, race, religion and belief, sex and sexual orientation and additionally in Northern Ireland political opinion and caring for dependents.

Question 8:

Are there any positive or negative regulatory impacts we should consider in relation to these proposals?

Yes (X)
No ()

If yes, what are they and how could any negative impacts be avoided, reduced or managed?

The Federation believes there is the potential within these proposals for positive regulatory impact including:

- A reduction in the burden that a uniform application of the accreditation requirement places on the regulator and its resources and therefore an opportunity for the regulator to refocus resources on areas that more effectively safeguard the validity of qualifications.
- A reduction in the burden that uniform application of the accreditation requirement places on AOs and their resources and therefore an opportunity for AOs to refocus their resources on areas that more effectively safeguard the validity of qualifications.
- An opportunity for AOs to better plan the timescales for responding to an identified market need without having to build in contingencies for the submission (and potential resubmission) of qualifications for Ofqual accreditation.
- An opportunity for Ofqual to recognise and reward where AOs are effectively ensuring the validity of their own qualifications without relying on Ofqual accreditation checks to identify weaknesses.

The Federation also believes there is the potential within these proposals for negative regulatory impact including:

- The introduction of confusion within the sector in relation to the regulatory approach that will take the place of the uniform application of the accreditation requirement. As no detail is provided in the consultation in relation to a number of key aspects such as validity audits and validity strategies there is a risk that removing a process (accreditation) which is long established and familiar to AOs and the regulator could result in confusion about the future regulatory approach. The Federation feels this could be avoided by the provision of detail in relation to how these processes are intended to work. In addition, working with a range of AOs to test the thinking in relation to the intended approach will also help to ensure that the final processes are fit for purpose across the sector and not just in relation to a specific size or type of AO.
- An increase in the burden placed on AOs if the requirements of the validity strategies and audits are too onerous. As above, the Federation would see some collaborative working with a representative range of AOs to be useful in identifying the most effective and streamlined approach for the future.
- An increased resource requirement for Ofqual. The Federation is particularly concerned about the proposals to conduct validity audits with all AOs who have qualifications in the Key Stage 4 and Key Stage 5 performance tables between the

closing date of this consultation and early/mid-September in order for the qualifications to be accredited prior to the DfE submission deadline of 12 September. There is a risk that this will stretch Ofqual and the AOs resources in a peak summer holiday period. The Federation feels that this risk could be managed by effective pre-planning and scheduling audits as soon as possible to allow both parties to schedule other activity around these.

- An increased burden of regulation on AOs who operate in Wales as well as England. It is not yet clear how the process of accreditation will operate for qualifications that are intended for use in Wales as well as England and there is a risk that this will result in confusion and an increased burden for some AOs. Ofqual and the Welsh Government should consider issuing a joint statement to clarify how they envisage the accreditation process operating in the future.
- Other agencies and stakeholders may not view the removal of the accreditation requirement as a positive action and may increase their additional requirements for qualification information for funding or other purposes. The Federation would not want to see the burden on AOs simply shifting from one agency (Ofqual) to another.