

## **Changes to regulations for enquiries and appeals**

Consultation on:

- Conditions and guidance
- Proposals for exam boards to continue to train and monitor markers and moderators
- Proposals for piloting the grounds for appeals
- Proposals for other amendments to General Conditions of Recognition and guidance



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# 1. About this consultation

- 1.1 We are seeking views on how we propose to implement new arrangements for reviews of marking, reviews of moderation, and appeals for GCSE, AS and A level qualifications. This follows on from our *Consultation on: Improving Reviews and Appeals of GCSE, AS and A level Marking; Withdrawing the GCSE, GCE, Principal Learning and Project Code of Practice; and New Requirements on Setting GCSE, AS and A level Grade Boundaries*<sup>1</sup> in December 2015. We announced our decisions and published the analysis<sup>2</sup> of that consultation on 26 May 2016<sup>3</sup>.
- 1.2 This consultation is about the Conditions and guidance we propose to put in place to implement the changes.
- 1.3 There are three areas on which we are now consulting which were not included in our original consultation. These are:
- piloting a new ground on which appeals can be made (challenge marking or moderation on the grounds of a Marking Error);
  - retaining specific requirements for exam boards to train original markers and moderators; and
  - producing statutory guidance on how reviewers determine a Marking Error has been made.
- 1.4 We have decided to amend the Conditions for 2016, which we had consulted on previously, in some areas. These are to:
- require exam boards to only provide reasons for the decision of a review of marking upon request<sup>4</sup>;

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<sup>1</sup> <https://www.gov.uk/government/consultations/marking-reviews-appeals-grade-boundaries-and-code-of-practice>

<sup>2</sup> <https://www.gov.uk/government/consultations/marking-reviews-appeals-grade-boundaries-and-code-of-practice>

<sup>3</sup> <https://www.gov.uk/government/consultations/marking-reviews-appeals-grade-boundaries-and-code-of-practice>

<sup>4</sup> This is a transitional provision for 2016 only. Exam Boards will provide reasons for all review decisions from 2017 onwards

- require exam boards to provide reasons for the decision of a review of moderation, but permit the reasons to follow the decision to minimise delay;
- set a framework for key dates related to reviews and appeals – we set out our proposals for this framework in this consultation;
- permit that the review of centre-marked assessments, which students can request, does not have to take place within the centre, but could be conducted by a third party; and
- permit, but not require the return of GCSE scripts ahead of centre requests for reviews of marking or moderation in 2016. We seek views in this consultation about when to implement this requirement.

1.5 This consultation covers those aspects of our previous consultation that related to reviews of marking, reviews of moderation and appeals. We are consulting separately on our requirements for setting specified levels of attainment<sup>5</sup>.

1.6 We also propose some other amendments to our Qualification Level Conditions and guidance for reformed GCSEs and A levels. These are to:

- correct an error in Condition GCSE5 where the word ‘skills’ has been omitted;
- introduce a Qualification Level Condition for reformed GCSEs and A levels that would require that a qualification could only be developed, where subject level conditions exist in that subject.

1.7 A summary of all our proposals can be seen in the next section.

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<sup>5</sup> <https://www.gov.uk/government/consultations/requirements-on-setting-gcse-as-and-a-level-grade-boundaries>

## 2. Consultation summary

- 2.1 Following analysis of responses to our consultation in December, we have decided to implement our proposals in a phased way. We have made some changes to our proposals to address some particular concerns. We set out our decisions in our decisions document<sup>6</sup>.
- 2.2 We are proposing changes or additions to our original consultation proposals in the areas below. For these areas, we explain in this consultation the reason for this approach and set out our proposed Conditions and guidance.
- 2.3 In summer 2016, we propose that we:
- put in place explicit requirements on exam boards to train and monitor markers and moderators;
  - produce statutory guidance on how reviewers determine a Marking Error has been made;
  - require exam boards to only provide reasons for the decision of a review of marking upon request;
  - require exam boards to provide reasons for the decision of a review of moderation to be provided, but permit the reasons to follow the decision to minimise delay;
  - set a framework for key dates related to reviews and appeals;
  - require exam boards to pilot the provision of the new ground of appeal, on the basis of a Marking Error having been made, in a small number of subjects.
- 2.4 For summer 2017, we propose that we:
- require exam boards to put in place arrangements for students to request the review of marking of centre-marked assessments *but* permit that the review does not have to take place within the centre. It could be conducted by a third party (which could be the exam board).

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<sup>6</sup> <https://www.gov.uk/government/consultations/marking-reviews-appeals-grade-boundaries-and-code-of-practice>

- evaluate the pilot of the new ground for appeal and consider how and whether to roll this out beyond the pilot qualifications.
- require exam boards to put in place arrangements to make the marks of centre-marked assessments available to students but seek views on when this should be implemented.

2.5 In the following areas, we have decided to implement our proposals as consulted on. For these areas, we briefly describe what we previously proposed and set out our Conditions and guidance.

2.6 For summer 2016, we will:

- permit exam boards, if they wish to, to accept requests for reviews and appeals directly from students;
- require that reviewers are trained prior to undertaking reviews of marking or moderation and publish the details of that training;
- require that reviewers will be monitored and the process and outcomes of that monitoring be published;
- permit GCSE scripts to be made available to centres in advance of a review being sought;
- require exam boards to only correct Marking Errors but to not replace a reasonable mark with an alternative, reasonable mark;
- require exam boards to publish deadlines for submitting a review or appeal;
- require exam boards to set their own timescales for each of the processes and publish their performance against those timescales;
- require exam boards to consider appeals on the basis that they have not applied their procedures consistently or that procedures were not followed properly and fairly;
- continue to require exam boards to ensure that centres have arrangements in place for students to request a review of centre marking.

### **Other changes to Conditions and guidance**

2.7 We propose to correct an error in Condition GCSE5 where the word 'skills' has been omitted.

- 2.8 We propose to introduce a Qualification Level Condition for reformed GCSEs and A levels that would require that a qualification could only be developed, where subject level conditions exist in that subject. We explain this in more detail in section 9.

## **How to respond to this consultation**

You can respond to this consultation via any of the methods listed on our website at <https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals> - please respond by 23 June 2016.

## **3. Reviews of marking, reviews of appeals and moderation**

- 3.1 We propose to put in place new Conditions and guidance to implement our proposals. We included our draft Conditions in our previous consultation<sup>7</sup>.
- 3.2 Where a proposal is new, or where there are changes, we set out here what those changes are, the reasons for them and the Conditions and guidance we propose to put in place to implement them. In these areas, we also set out any specific issues we are seeking views on.
- 3.3 Where we have not changed our proposals, we set out briefly what we will require and then the Conditions and guidance we will put in place to do this. In these areas, where we have already taken decisions, we are not seeking views on our approach, only on the Conditions and guidance themselves.

### **Areas where we have amended the requirements on which we previously consulted**

- 3.4 We set out in this section those areas where our proposals are new or have developed from our original proposals within the consultation, and on which we wish to consult further.

### **Piloting the provision of the new ground of appeal, to challenge marking or moderation on the grounds that a Marking Error has been made, in a small number of subjects in 2016**

- 3.5 In light of consultation responses, we have decided to amend our proposal. Our proposal would have required exam boards to allow appeals, in all

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<sup>7</sup> <https://www.gov.uk/government/consultations/markings-reviews-appeals-grade-boundaries-and-code-of-practice>

GCSE and A level qualifications, on the grounds that a Marking Error has been made, from summer 2016. We have decided instead to pilot this in a small number of subjects in 2016. We will consider, in light of this pilot, how and whether to roll this out beyond the pilot qualifications from 2017.

- 3.6 We proposed in our previous consultation, that from summer 2016, appeals should be allowed on the grounds that:
- the exam board did not apply its procedures or follow them properly/fairly when it originally marked or moderated the assessment or reviewed the marking or moderation; and/or
  - the mark or moderation decision contained a Marking Error.
- 3.7 The first ground of appeal described above is the ground on which an appeal can currently be brought under the requirements of the Code. The second ground is new and is now defined as a Marking Error.
- 3.8 School groups welcomed our proposal for this new ground of appeal. Some respondents were concerned that introducing this new ground of appeal in this way will increase the number of appeals to an unmanageable amount and unrealistically raise the expectations of centres.
- 3.9 In light of this feedback, we have decided that for summer 2016, for most subjects, we will only require exam boards to consider appeals on the basis that they have not applied their procedures consistently or that procedures were not followed properly and fairly.
- 3.10 Instead of introducing the new ground of appeal (Marking Error) for all subjects, we propose to pilot it in 2016 for three A level subjects. These subjects will be: mathematics, religious studies and geography.
- 3.11 By piloting this new ground of appeal, schools and colleges will have a chance to understand how appeals on this new ground would work.
- 3.12 We have decided to pilot it in these subjects because we believe that these subjects will provide an accurate representation of how this new ground will work in practice. These are subjects that are offered by more than one exam board, so won't unfairly disadvantage students on the basis of their exam board choice. They are also subjects in which historically, there have been appeals made. In addition, as we will require the return of A level, but not GCSE scripts in 2016 in time for centres to decide whether to request a review of marking or review of moderation, these subjects fall in line with our other proposals. We wish to be able to assess the costs to the system

of such a broad ground of appeal against the benefits, and the pilot will enable us to undertake this assessment.

- 3.13 We intend to consider in 2017, how and whether to roll this approach out for qualifications beyond those in the pilot. This decision will be informed by feedback on the pilot.
- 3.14 Our decision to pilot this approach is based on consideration of a number of factors.
- 3.15 There is a risk that if this approach was implemented for all subjects in 2016, the number of appeals could significantly increase and exam boards may not have sufficient time to establish appropriately competent appeal arrangements to manage the potential increase in numbers. The pilot will enable schools, colleges and exam boards to develop their operational approach to this new ground of appeal and how it will work in practice ahead of us taking a decision on whether to roll it out for qualifications beyond those in the pilot in 2017.
- 3.16 We recognise that there may be concerns about piloting this new ground of appeal for three subjects in 2016, whilst consideration of marking errors is being considered at review in every subject. We have considered these concerns in developing our approach. We have taken account of the regulatory burden on exam boards and the fairness to students or centres of some students having an additional ground on which to submit an appeal that others do not.
- 3.17 Our view is that for appeals, the changes we propose, are a greater departure from the current system than the changes to the process of a review. For an appeal, we believe exam boards' current appeals arrangements are structured to consider procedural grounds only. The new Marking Error test at appeal represents a change. This may require exam boards to consider whether their current appeal arrangements will support consideration of the new ground appropriately and in accordance with the requirements of the new Conditions. Exam boards have told us following consultation that this is likely to pose a greater burden to them than our proposals for reviews of marking and moderation.
- 3.18 For reviews, exam boards' reviewers are already required to review marks, therefore changes to the way they do this is less of a departure from the current system. Whilst changes will be required, these are likely to be to the instructions and training provided for reviewers, as opposed to having to amend the whole process. We believe, and exam boards have told us, that in the case of reviews these changes can be implemented more readily for 2016 than they can be for appeals.

- 3.19 We judge that having identified concerns with the way reviews are conducted currently, it is necessary to make these changes as soon as is possible. There is a risk that introducing new Conditions for reviews, moderation and appeals combined with withdrawal of the Code of Practice could result in some confusion for schools, colleges and students. However, we believe this risk is lower than the risk of delaying implementing these changes and allowing reviews and appeals to continue to be conducted as they are currently.
- 3.20 In terms of the impact on students, we recognise that some students will have an opportunity to appeal on a ground that others do not. In order to pilot this approach, this is unavoidable. All students will be able to appeal on the same grounds that they can now; no students will be put in a worse position than they are currently under the Code. We believe piloting the approach in some subjects is preferable to delaying implementation for all subjects with immediate effect or introducing the new ground in all subjects without testing it first.

**Question 1: To what extent do you agree or disagree with our proposal to pilot the ground for appeal that the mark or moderation decision contained a Marking Error in 2016?**

**Question 2: To what extent do you agree or disagree with our proposal to pilot the ground for appeal that the mark or moderation decision contained a Marking Error in the following qualifications: A level Mathematics, RS and Geography only in 2016?**

### **Guidance on how reasonableness should be judged for reviews of marking, reviews of moderation and appeals**

- 3.21 Our proposals for reviews of marking and reviews of moderation allow for a review to be requested on the grounds that there was a Moderation or Marking Error. A Moderation or Marking Error is the awarding of a mark for a task which could not reasonably have been awarded given the evidence generated by the learner. In particular, this includes where there has been an Administrative Error, a failure to apply criteria and procedures to the evidence generated by a learner, which would include a failure to apply the mark scheme correctly and that there was an unreasonable exercise of academic judgement. As described above, our proposals for appeals (for pilot subjects from 2016 and then potentially all subjects from 2017) would also allow an appeal on the grounds that the mark or moderation decision contained a Moderation or Marking Error.

- 3.22 Respondents to our consultation agreed that whilst errors should be corrected, reviewers should not change a mark that could reasonably have been given by a marker applying the mark scheme. But some respondents raised concerns about how a 'reasonable' mark would be interpreted. They told us they would like clarity for both centres and exam boards on how this would work in practice.
- 3.23 We have decided to implement our proposal that where Moderation or Marking Errors are identified the errors are corrected but reasonable marks will not be replaced with an alternative, reasonable mark. But we recognise that this is an area where greater clarity would be helpful to ensure that exam boards take a consistent approach in deciding whether a decision is reasonable.
- 3.24 We propose to put in place guidance setting out what we mean in this context. This will help centres understand how a review of marking or review of moderation will be considered in 2016, and how an appeal will be considered in pilot subjects from 2016. We will review the pilot as indicated above and consider the impact of the changes and what would be required for 2017.
- 3.25 Our proposed guidance is set out in section 5 and included in appendix 3<sup>8</sup>.

**Question 3: To what extent do you agree or disagree with our proposal to put in place guidance setting out how reasonableness should be judged for reviews of marking, reviews of moderation and appeals?**

### **Training and monitoring of markers and moderators**

- 3.26 The Code currently requires exam boards to have arrangements in place to ensure that markers and moderators who are involved in the original marking/moderation process (as opposed to a review of marking or moderation) are appropriately trained to carry out this role. The Code also requires that exam boards monitor markers and moderators to ensure they are carrying out this role as they should be.
- 3.27 When we remove the Code, this requirement will no longer be in place. Whilst exam boards currently do this, we have decided to put in place rules to make sure that this happens. The requirements we propose to put in place will not introduce new obligations on exam boards; they will preserve the position that currently exists under the Code. They will also ensure that

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<sup>8</sup> Appendix 3 Guidance on considering Marking Errors on a review or appeal  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

the obligations on training and monitoring of reviewers that we are putting in place are replicated for original markers and moderators.

3.28 We will require:

- marking and moderation to be carried out by Assessors who have appropriate competence, have been provided with training and have no personal interest<sup>9</sup> in the outcome of the marking; and
- the exam board to monitor markers and moderators and take action where it discovers they are not.

3.29 Our proposed Conditions are set out in sections 5-8 and included in the relevant appendices.

**Question 4: To what extent do you agree or disagree with our proposal to put in place requirements on exam boards to train Assessors carrying out original marking or moderation?**

### **Communication of outcomes for reviews**

3.30 We proposed that exam boards must report the outcomes of reviews of marking and reviews of moderation to centres, and provide the reasons for these outcomes at the same time.

3.31 We have decided, in light of responses to our consultation, that from 2017 onwards we will allow the reasons and the outcomes to be provided separately to one another. In the case of reviews of marking, for 2016, the reasons are to be provided by exam boards only on request rather than automatically. As it will not be mandatory for reasons to be provided automatically we will also delay implementation of the reporting requirement in respect of the provision of reasons.

3.32 For 2016, the exam boards will be required to provide reasons for the outcome of a review of moderation, but will be permitted to do this separately from the outcome itself. This will allow for outcomes of a review of moderation to be made available to centres sooner, if an exam board wants to do so. This change reflects the fact that for some exam boards, systems changes would be needed to allow for the outcome and the reason to be provided together. In addition, we have been told by exam boards that a mark change is likely to be available to be communicated almost

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<sup>9</sup> To ensure objectivity and to prevent any conflict of interest or bias.

immediately following a review, whereas providing a reason could take longer to present it in a format that would be helpful. In most cases, the mark itself is likely to be the main concern and we would not want to delay this unnecessarily to wait for the reason for the decision to be communicated.

**Question 5: To what extent do you agree or disagree with our proposal to require exam boards to provide reasons only on request in 2016 rather than automatically?**

**Question 6: To what extent do you agree or disagree with our proposal to require exam boards to provide reasons automatically from 2017 onwards?**

**Question 7: To what extent do you agree or disagree with our proposal to allow the reasons and the outcomes to be provided separately to one another?**

### **Reviews of centre-marked assessments**

- 3.33 We proposed that where assessments are marked by a centre, students should be provided with the mark for that assessment. Providing marks to students is a new requirement. We proposed that, as currently, the student should be able to request a review of their mark and that this review should be conducted, wherever possible, by an independent person from within the centre that marked the assessment. Where this review identified any administrative errors, any error or unreasonable exercise of academic judgement, this should be corrected.
- 3.34 In recognition of the fact that these arrangements will not be in place until after centre-marking has taken place in 2016, we proposed that these requirements should take effect from 2017.
- 3.35 In light of consultation responses, we have amended the Condition we are proposing. Our proposed Condition will now not require that this review stage takes place in the centre. Nor will it prohibit this. This will allow centres to complete these reviews themselves, or for them to be completed by a third party, such as another centre, or, if it decided to, the exam board itself.
- 3.36 We are also seeking views, through this consultation, on when we should implement this requirement. Whilst centres currently have to have a review process in place, the requirement to make the marks available to students ahead of moderation is a new requirement. As this is the case, we would welcome views from centres on the impact of requiring them to provide marks ahead of moderation. We are also seeking views on when we should implement this part of our requirements.

**Question 8: To what extent do you agree or disagree with our proposal to permit reviews of centre-marked assessments to be conducted by the centre or by a third party?**

**Question 9: What will be the impact of requiring centres to make marks for centre-marked assessments available to students ahead of moderation?**

**Question 10: When is the earliest that we should implement the requirement for centres to make marks for centre-marked assessments available to students ahead of moderation?**

### **Key dates for reviews of marking, reviews of moderation and appeals**

- 3.37 We proposed that exam boards specify a date by which a request for a review or appeal must be received and by which it will have notified the centre of the outcome of that review or appeal. We proposed that exam boards should set their own deadlines and timescales for their review and appeal processes, though they could set common dates.
- 3.38 Respondents generally disagreed with our proposed approach and felt that a common approach was important for centres and/or students.
- 3.39 We do not think we should impose dates that might discourage exam boards from introducing more innovative, efficient or centre/student focused approaches. But to ensure a common minimum window is available, we have decided to amend our requirement so that Ofqual is able to put in place a framework within which this must be done, or to prescribe dates.
- 3.40 We do not propose specific dates for exam boards to follow. Setting specific dates would require them to be reviewed each exam series to prevent the length of the window in which centres can make requests changing from year to year as results dates move.
- 3.41 We propose instead to set dates which are based on the period of time following the activities that precede the request. We propose to set the following framework:
- closing date for receipt of appeal must be no earlier than four weeks following receipt of reasons for outcome of a review;
  - closing date for receipt of applications for a review of marking and moderation must be no earlier than four weeks following issue of results if the marked assessment materials have not been required to be made available;

- closing date for receipt of applications for a review of marking and moderation to review marks no earlier than two weeks following receipt of marked assessment materials by a centre where these have been required to be made available and requested by the centre.

3.42 These proposals would not prevent an exam board that wanted to set dates that were later than these from doing so, but would ensure that as a minimum, every centre would be able to submit a review or an appeal until the timescales set out.

3.43 We propose that these dates would apply from summer 2017 for all reformed<sup>10</sup> qualifications.

3.44 We would welcome views on these proposed dates.

**Question 11: To what extent do you agree or disagree with the proposed framework for the dates that exam boards set for accepting requests for reviews of marking, reviews of moderation and appeals?**

**If you disagree, what alternative dates would you suggest?**

## Reporting

3.45 We proposed putting in place Conditions which would require exam boards to publish a report each year which reported on, in addition to those mentioned at 3.62 below, the results of monitoring of reviews of moderation. We propose to amend this to require exam boards to report on changes they have made to their review arrangements as a result of their monitoring.

**Question 12: To what extent do you agree or disagree with the proposal that we require exam boards to publish a report each year which identifies changes to their review arrangements as a result of their monitoring of Moderation?**

## Making marked assessment materials available

3.46 Our consultation proposed that from 2016, marked assessment materials – for GCSE and GCE qualifications – must be made available in time for the student or centre to consider whether to request a review of marking or an

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<sup>10</sup> GCSEs graded 9-1 and A/AS levels graded that were made available for first teaching since September 2015.

Administrative Error Review. This part of the proposal represented a change to what happens currently, where GCE scripts have to be made available ahead of the deadline for requesting a review, but GCSE scripts do not.

- 3.47 The majority of respondents supported our original proposal that all exam board marked GCSE, AS and A level scripts should be available to a centre that wanted to see them, before deciding whether to request a review of marking. But there were some concerns about the potential burden on exam boards of making system changes to allow this for GCSE scripts in 2016, and the potential burden on teachers of reviewing any scripts that are requested.
- 3.48 In light of responses to the consultation, we have amended this proposal. We will not now require this to be in place for GCSE scripts in 2016. We do not want to introduce unnecessary risk into the system, particularly at this time of wider reform. However, we will permit exam boards that are able to provide this service to do so. Exam boards operate different administrative systems, and some will be able to implement this change more quickly than others.
- 3.49 Exam boards will need to consider what arrangements and timescales they put in place for those who did want to review the script in advance of a review. This might be a different arrangement to those reviews where centres did not want to review the script in advance of a review.
- 3.50 We will continue to require, as currently, that scripts are made available to this time period for A levels.
- 3.51 We would welcome views on when it is feasible to require exam boards to make GCSE scripts available to centres, in advance of a review.
- 3.52 We are introducing the other parts of this Condition as consulted on. We will require that exam boards must make assessments which they have marked available to centres. It will allow for exam boards to make the material available only on request and to specify reasonable requirements for a request and a date by which a request must be received. Our Condition will require that the mark scheme must be made available when the marked assessment materials are available or prior to that. It will require exam boards to publish information about how a student or centre obtains materials including: how any request must be made; any deadlines for requests; any fees and arrangements for them; and the target date or time period following a request by which it will return the materials.

**Question 13: When should we require exam boards to have arrangements in place to make marked assessment material available to centres in order to request a review?**

## **Areas where we are implementing our requirements as consulted on**

3.53 We have decided to implement the remainder of our requirements as consulted on. We set out in this section what our requirements will cover. The specific Conditions and guidance are included in sections 5-8 and included in the relevant appendices.

### **Reviews of marking and moderation**

3.54 We propose to implement the proposals for reviews of marking and reviews of moderation that we consulted on. We have set out above our intention to provide guidance on how an exam board should consider whether there has been a Moderation or Marking Error, which will apply at review and for the pilot qualifications at appeal. We are consulting on our proposed guidance as part of this consultation.

3.55 We will require that from 2016, a reviewer must only change the mark or moderation outcome if it there was a Moderation or Marking Error. We will require that only people specifically trained to carry out reviews of marking or moderation should do so, that they must not have been involved with the original marking or moderation and that their performance must be monitored by the exam board.

### **Appeals**

3.56 We set out earlier in this consultation our proposal to pilot the new ground of appeal, that being the marking included a Moderation or Marking Error.

3.57 We have decided to implement the other parts of this Condition as consulted on. We will require exam boards to provide the outcome and the reasons for the outcome and that the final appeal decision maker or body must include someone who is external to the exam board and that no one involved with the decision should have an interest in the outcome. We are introducing Conditions which replicate some of the requirements of Condition I1, which we would disapply, for qualifications covered by these review arrangements.

## **Administrative Error Reviews**

- 3.58 We will require exam boards to have a process in place for correcting Administrative Errors. Our Condition will require exam boards to have arrangements to review marked assessment materials for Administrative Errors. The Condition will allow exam boards to require that any request for an Administrative Error Review is made by the student's centre. They will also allow exam boards to specify that Administrative Error Reviews should be subject to payment of a fee; be subject to other reasonable requirements; and specify the date by which a request for an administrative error review must be received.
- 3.59 We will require that when carrying out an Administrative Error Review, exam boards correct Administrative Errors and make any consequent changes to the mark or result; tell the students or centres the outcome of the review; and that reviews are only carried out by competent people with no personal interest in the outcome. We will also require exam boards to publish details of its arrangements for Administrative Error Reviews.

## **Centre decisions**

- 3.60 We will require an exam board that only accepts requests for access to marked assessment materials, Administrative Error Reviews, reviews of marking or its appeals from centres and not from individual students to ensure they have effective arrangements in place for this, and that students have the opportunity to appeal to the centre against decisions it makes in these areas.

## **Target performance**

- 3.61 We are introducing a Condition that requires exam boards to set, publish and meet dates by which centres must request access to marked assessment materials or submit requests for reviews or marking, moderation or appeals and by which the exam board would process these requests and report outcomes. This is the same as we consulted on previously, subject to delaying the implementation of one element as explained in section 3.31 above.

## **Reporting**

- 3.62 We are putting in place Conditions which will require exam boards to publish a report each year which sets out the number of reviews and appeals it has carried out, the outcomes of these and reasons for those outcomes, any action it has taken as a result, and its performance against timelines for processing these.

### **Review arrangements and certificates**

- 3.63 We are introducing a Condition that will require an exam board to take all reasonable steps to revoke any certificates that reflect inaccurate results because of the application of review arrangements. This will supplement General Condition I4.2(c).

### **Discovery of failures in the process**

- 3.64 We are introducing a Condition that will require exam boards that find that there had been a failure in its assessment process to identify other affected students, correct or mitigate the effect of the failure and prevent the failure from reoccurring.

### **Publication of arrangements**

- 3.65 We are putting in place a Condition that will require exam boards to publish information about their review arrangements and appeals process and do this far enough ahead to enable centres to plan their purchasing of qualifications.

## 4. Other amendments to Conditions and guidance

- 4.1 In addition to implementing our proposals for reviews of marking, moderation and appeals, we propose to take this opportunity to make two corrections to our Qualification Level Conditions.
- 4.2 We set out these proposed amendments below and include our proposed draft conditions in appendix 7.

### Correction of GCE5

- 4.3 Condition GCSE5 of our GCSE Qualification Level Conditions requires that:

In designing and setting the assessments for a GCSE Qualification which it makes available, or proposes to make available, an awarding organisation must ensure that taken together, those assessments include questions or tasks which allow Learners to –

(a) provide extended responses, and

(b) demonstrate their ability to draw together different areas of knowledge, **skills** and/or understanding from across a full course of study for that qualification.

- 4.4 This Condition also appears in our GCE Qualification Level Conditions. However, in the GCE version, the word ‘skills’ (in **bold** above) has been omitted. This requirement is intended to be the same at both levels, therefore we propose to add the word ‘skills’ to GCE Qualification Level Condition GCE5.1.
- 4.5 This requirement was already widely understood to be referring to skills and has been interpreted in line with our proposed approach. Exam board specifications that have been accredited already meet the requirement of the revised wording. This minor change will not impact on exam boards that are required to meet this Condition.
- 4.6 Our proposed Condition is set out in section 9 and included in appendix 7<sup>11</sup>.

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<sup>11</sup> Appendix 7 Proposed changes to our Conditions, requirements and guidance for GCSE (9-1) and reformed GCE qualifications  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

## Requirement for subject level conditions to exist for qualifications being developed

- 4.7 Following our consultation, *Completing GCSE, AS and A level reform*<sup>12</sup> we decided that all reformed GCSEs, AS and A levels must be based on core content requirements for the subject in which they are offered.
- 4.8 To implement this earlier decision we will require:
- all new GCSEs, AS and A levels to be based on core content requirements which have been approved by Ofqual. Approved core content will be explicitly referenced in the Subject Level Conditions;
  - only permits short course and double award GCSEs where the approved core content requirements make express provision for those qualifications.
- 4.9 We will do this by introducing a Qualification Level Condition which does not allow an awarding organisation to make available a GCSE or GCE qualification in a subject for which Ofqual has not set and published any Subject Level Conditions.
- 4.10 Our proposed Conditions are set out in section 9 and included in appendix 7<sup>13</sup>.

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<sup>12</sup> <https://www.gov.uk/government/consultations/gcses-as-and-a-levels-new-subjects-to-be-taught-in-2015>

<sup>13</sup> Appendix 7 Proposed changes to our Conditions, requirements and guidance for GCSE (9-1) and reformed GCE qualifications  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

## **5. Proposed Conditions, requirements and guidance for reviews of marking, reviews of moderation and appeals for GCSE(9-1) qualifications**

- 5.1 As set out above, we are proposing to introduce qualification-specific Conditions, requirements and guidance to implement the proposals in this consultation.
- 5.2 Our proposed Conditions and requirements for GCSE(9-1) qualifications are set out in appendix 2 which is available on our website<sup>14</sup>.
- 5.3 Our proposed guidance for GCSE(9-1) qualifications is available in appendix 3, which is available on our website<sup>15</sup>.

### **Proposed Conditions for reviews of marking, reviews of moderation and appeals in GCSE(9-1) qualifications**

- 5.4 We are proposing to introduce the following Conditions and requirements which will apply to all GCSE(9-1) qualifications:
- marking arrangements;
  - moderation arrangements;
  - review of marking of centre-marked assessments;
  - notification of Moderation outcome;
  - review of Moderation;
  - making Marked Assessment Materials available to Learners;
  - administrative Error Review;
  - review of marking of Marked Assessment Material;
  - appeals process for GCSE Qualifications;
  - centre decisions relating to Review Arrangements;

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<sup>14</sup> Appendix 2 Draft Qualification Level Conditions for GCSE (9 to 1)  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

<sup>15</sup> Appendix 3 Guidance on considering Marking Errors on a review or appeal  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

- target performance in relation to Review Arrangements and appeals process;
- reporting of data relating to Review Arrangements and appeals process;
- review arrangements and certificates;
- discovery of failure in assessment processes;
- publication of Review Arrangements and appeals process;
- definitions.

### **Proposed guidance for reviews of marking, reviews of moderation and appeals in GCSE(9-1) qualifications**

5.5 We are proposing to introduce the following guidance which will apply to all GCSE(9-1) qualifications:

- guidance on considering Marking Errors on a review or appeal.

**Question 14: Do you have any comments on our proposed Conditions and requirements for reviews of marking, reviews of moderation and appeals in GCSE(9-1) qualifications?**

**Question 15: Do you have any comments on our proposed guidance for reviews of marking, reviews of moderation and appeals in GCSE(9-1) qualifications?**

## **6. Proposed Conditions, requirements and guidance for reviews of marking, reviews of moderation and appeals for GCSE(A\*-G) qualifications**

- 6.1 As set out above, we are proposing to introduce qualification-specific Conditions, requirements and guidance to implement the proposals in this consultation.
- 6.2 Our proposed Conditions and requirements for GCSE(A\*-G) qualifications are set out in appendix 4 which is available on our website<sup>16</sup>.
- 6.3 Our proposed guidance<sup>17</sup> is available in appendix 3<sup>18</sup>, which is available on our website.

### **Proposed Conditions for reviews of marking, reviews of moderation and appeals in GCSE(A\*-G) qualifications**

- 6.4 We are proposing to introduce the following Conditions and requirements which will apply to all GCSE(A\*-G) qualifications:
- marking arrangements;
  - moderation arrangements;
  - review of marking of centre-marked assessments;
  - notification of Moderation outcome;
  - review of Moderation;
  - making Marked Assessment Materials available to Learners;
  - administrative Error Review;
  - review of marking of Marked Assessment Material;

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<sup>16</sup> Appendix 4 Draft Qualification Level Conditions for GCSE (A\* to G)  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

<sup>17</sup> We have included the guidance for GCSE(9-1) qualifications for the purpose of this consultation. We will apply this guidance to GCSE(A\*-G), reformed GCE and legacy GCE qualifications in the relevant guidance documents.

<sup>18</sup> Appendix 3 Guidance on considering Marking Errors on a review or appeal  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

- appeals process for GCSE (A\*-G) qualifications;
- centre decisions relating to Review Arrangements;
- target performance in relation to Review Arrangements and appeals process;
- reporting of data relating to Review Arrangements and appeals process;
- review arrangements and certificates;
- discovery of failure in assessment processes;
- publication of Review Arrangements and appeals process;
- Interpretation and Definitions.

### **Proposed guidance for reviews of marking, reviews of moderation and appeals in GCSE(A\*-G) qualifications**

6.5 We are proposing to introduce the following guidance which will apply to all GCSE(A\*-G) qualifications:

- guidance on considering Marking Errors on a review or appeal.

**Question 16: Do you have any comments on our proposed Conditions and requirements for reviews of marking, reviews of moderation and appeals in GCSE(A\*-G) qualifications?**

**Question 17: Do you have any comments on our proposed guidance for reviews of marking, reviews of moderation and appeals in GCSE(A\*-G) qualifications?**

## **7. Proposed Conditions, requirements and guidance for reviews of marking, reviews of moderation and appeals for reformed GCE qualifications**

- 7.1 As set out above, we are proposing to introduce qualification-specific Conditions, requirements and guidance to implement the proposals in this consultation.
- 7.2 Our proposed Conditions and requirements for reformed GCE qualifications are set out in appendix 5 which is available on our website<sup>19</sup>.
- 7.3 Our proposed guidance<sup>20</sup> is available in appendix 3<sup>21</sup>, which is available on our website.

### **Proposed Conditions for reviews of marking, reviews of moderation and appeals in reformed GCE qualifications**

- 7.4 We are proposing to introduce the following Conditions and requirements which will apply to all reformed GCE qualifications:
- marking arrangements;
  - moderation arrangements;
  - review of marking of centre-marked assessments;
  - notification of Moderation outcome;
  - review of Moderation;
  - making Marked Assessment Materials available to Learners;
  - administrative Error Review;
  - review of marking of Marked Assessment Material;

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<sup>19</sup> Appendix 5 Draft Qualification Level Conditions for GCE  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

<sup>20</sup> We have included the guidance for GCSE(9-1) qualifications for the purpose of this consultation. We will apply this guidance to GCSE(A\*-G), reformed GCE and legacy GCE qualifications in the relevant guidance documents.

<sup>21</sup> Appendix 3 Guidance on considering Marking Errors on a review or appeal  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

- appeals process for GCE Qualifications;
- centre decisions relating to Review Arrangements;
- target performance in relation to Review Arrangements and appeals process;
- reporting of data relating to Review Arrangements and appeals process;
- review arrangements and certificates;
- discovery of failure in assessment processes;
- publication of Review Arrangements and appeals process;
- definitions.

### **Proposed guidance for reviews of marking, reviews of moderation and appeals in reformed GCE qualifications**

7.5 We are proposing to introduce the following guidance which will apply to all reformed GCE qualifications:

- guidance on considering Marking Errors on a review or appeal.

**Question 18: Do you have any comments on our proposed Conditions and requirements for reviews of marking, reviews of moderation and appeals in reformed GCE qualifications?**

**Question 19: Do you have any comments on our proposed guidance for reviews of marking, reviews of moderation and appeals in reformed GCE qualifications?**

## **8. Proposed Conditions, requirements and guidance for reviews of marking, reviews of moderation and appeals for legacy GCE qualifications**

- 8.1 As set out above, we are proposing to introduce qualification-specific Conditions, requirements and guidance to implement the proposals in this consultation.
- 8.2 Our proposed Conditions and requirements for legacy GCE qualifications are set out in appendix 6 which is available on our website<sup>22</sup>.
- 8.3 Our proposed guidance<sup>23</sup> is available in appendix 3<sup>24</sup>, which is available on our website.

### **Proposed Conditions for reviews of marking, reviews of moderation and appeals in legacy GCE qualifications**

- 8.4 We are proposing to introduce the following Conditions and requirements which will apply to all legacy GCE qualifications:
- marking arrangements;
  - moderation arrangements;
  - review of marking of centre-marked assessments;
  - notification of Moderation outcome;
  - review of Moderation;
  - making Marked Assessment Materials available to Learners;
  - administrative Error Review;
  - review of marking of Marked Assessment Material;

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<sup>22</sup> Appendix 6: Draft Qualification Level Conditions for GCE pre-reform qualifications  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

<sup>23</sup> We have included the guidance for GCSE(9-1) qualifications for the purpose of this consultation. We will apply this guidance to GCSE(A\*-G), reformed GCE and legacy GCE qualifications in the relevant guidance documents.

<sup>24</sup> Appendix 3 Guidance on considering Marking Errors on a review or appeal  
<https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

- appeals process for GCE (Pre-reform) qualifications;
- centre decisions relating to Review Arrangements;
- target performance in relation to Review Arrangements and appeals process;
- reporting of data relating to Review Arrangements and appeals process;
- review arrangements and certificates;
- discovery of failure in assessment processes;
- publication of Review Arrangements and appeals process;
- Interpretation and Definitions.

### **Proposed guidance for reviews of marking, reviews of moderation and appeals in legacy GCE qualifications**

8.5 We are proposing to introduce the following guidance which will apply to all legacy GCE qualifications:

- guidance on considering Marking Errors on a review or appeal.

**Question 20: Do you have any comments on our proposed Conditions and requirements for reviews of marking, reviews of moderation and appeals in legacy GCE qualifications?**

**Question 21: Do you have any comments on our proposed guidance for reviews of marking, reviews of moderation and appeals in legacy GCE qualifications?**

## **9. Proposed changes to our Conditions, requirements and guidance for GCSE, AS and A level qualifications**

- 9.1 As set out above, we are proposing to introduce qualification-specific Conditions, requirements and guidance to implement the proposals in this consultation. We set out our proposed Conditions, requirements in appendix 7 which is available on our website<sup>25</sup>.

### **Proposed Conditions for GCSE(9-1) qualifications**

- 9.2 We are proposing to introduce or amend the following Conditions and requirements which will apply to all GCSE(9-1) qualifications:
- awarding organisations must not make available a GCSE qualification in a subject for which Ofqual has not set and published any GCSE Subject Level Conditions.

### **Proposed Conditions for reformed GCE qualifications**

- 9.3 We are proposing to introduce or amend the following Conditions and requirements which will apply to all reformed GCE qualifications:
- question types;
  - awarding organisations must not make available a GCE qualification in a subject for which Ofqual has not set and published any GCE Subject Level Conditions.

**Question 22: Do you have any comments on our proposed Conditions for requiring that GCSE(9-1) and reformed GCE qualifications can only be developed for subjects which have subject level Conditions?**

**Question 23: Do you have any comments on our proposed amendment to Condition GCE5.1?**

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<sup>25</sup> Appendix 7: Proposed changes to our Conditions, requirements and guidance for GCSE (9-1) and reformed GCE qualifications <https://www.gov.uk/government/consultations/changes-to-regulations-for-enquiries-and-appeals>

## **10. Equality impact analysis**

### **Ofqual's role, objectives and duties**

- 10.1 We are subject to the public sector equality duty. We have set out in Appendix A how this duty interacts with our statutory objectives and other duties.

### **Equality analysis relating to proposals for reviews and appeals of GCSE, AS and A level marking and moderation**

- 10.2 We set out in our previous consultation our analysis of the impact of our proposals.
- 10.3 Where the proposals on which we are now consulting have not changed, we do not repeat that analysis here. This analysis is available on our website<sup>26</sup>. We set out below our equality analysis in those areas where the proposals in this consultation differ from those that we consulted on previously.

### **Piloting the grounds for reviews of marking, reviews of moderation and appeals**

- 10.4 Our proposal to pilot the new ground of appeal will mean that in 2016, students taking qualifications in A level mathematics, religious studies and geography will be able to request an appeal on a new ground to those taking all other GCSE and GCE subjects. All students will be able to appeal on the same grounds that they can now; no students will be put in a worse position than that they are currently in. We have considered the impact of this and this was used to inform the selection of subjects for the pilot. We explained in section 3 our approach to the pilot and the reasons for selecting these subjects.
- 10.5 We do not believe that our proposals with respect to piloting the grounds for appeals will have a positive or negative impact for any particular group of students who share a protected characteristic. If there are any impacts that we have not identified, we should be able to identify these as result of carrying out this pilot.

### **Guidance on how reasonableness should be judged**

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<sup>26</sup> <https://www.gov.uk/government/consultations/markings-reviews-appeals-grade-boundaries-and-code-of-practice>

- 10.6 Our proposal to introduce guidance on how exam boards should consider whether a mark is reasonable will apply equally to all students regardless of whether they share a protected characteristic. We have not identified any positive or negative impacts of this proposal as a result of students sharing a protected characteristic.

### **Requiring training of original markers and moderators**

- 10.7 Our proposal to require exam boards to train markers and moderators will preserve the position that is currently in place in the Code. We do not believe that this proposal will have a positive or negative impact for any particular group of students who share a protected characteristic.

### **Reviews of marking and reviews of moderation on the basis of a Moderation or Marking Error**

- 10.8 Our proposal that reviews of marking or moderation on the grounds of whether there has been a Moderation or Marking Error will apply equally to all students regardless of whether they share a protected characteristic. We have not identified any positive or negative impacts of this proposal as a result of students sharing a protected characteristic.

### **Communication of outcomes for reviews**

- 10.9 Our proposal that the reasons for the outcome of a review of marking will only be provided upon request and the reasons for the outcome of a review of moderation can be provided separately to the outcome could mean that some students receive reasons sooner than others, if an exam board was able to do this. This would not happen as a result of those students sharing a protected characteristic and we do not think it would be reasonable in 2016 to require an exam board to provide review of marking reasons automatically or to prevent an exam board that could provide outcomes of a review of moderation sooner from doing so, by requiring both to be provided together.
- 10.10 We do not believe that this proposal will have a positive or negative impact for any particular group of students who share a protected characteristic.

### **Reviews of centre-marked assessments**

- 10.11 Our proposal that reviews of centre marked assessments can be completed either by the centre, or by a third party should increase the likelihood of all students being treated equally because small centres with fewer trained staff would be able to use a trained third-party instead being required only to use someone from within the centre.

10.12 We do not believe that this proposal will have a positive or negative impact for any particular group of students who share a protected characteristic.

### **Key dates for reviews or marking, reviews of moderation and appeals**

10.13 Our proposal to allow Ofqual to set a framework or specify dates until which reviews and appeals must be permitted and within which they must be completed will reduce the likelihood of students being disadvantaged by exam boards choosing to set significantly earlier or later dates to one another.

10.14 We do not believe that this proposal will have a positive or negative impact for any particular group of students who share a protected characteristic.

### **Making marked assessment materials available**

10.15 Our proposal to permit exam boards to make GCSE marked assessment materials available to students in 2016, but not to require it could mean that some students are able to access GCSE scripts ahead of requesting a review, whilst others are not, depending on the approach of the exam board they are with.

10.16 Whilst this could advantage some students, we do not believe it would be appropriate to prevent those exam boards that can make these materials available from doing so.

10.17 We do not believe that our proposals with respect to making marked assessment materials available will have a positive or negative impact for any particular group of students who share a protected characteristic.

### **Only permitting qualifications where Ofqual has published subject level conditions**

10.18 We do not believe that our proposals with respect to only permitting qualifications where Ofqual has published subject level conditions will have a positive or negative impact for any particular group of students who share a protected characteristic.

**Question 24: We have not identified any ways in which the proposals would impact (positively or negatively) on persons who share a protected characteristic. Are there any potential impacts we have not identified?**

**Question 25: Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic?**

**Question 26: Do you have any other comments on the impacts of the proposals on students who share a protected characteristic?**

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