

MEMORANDUM OF UNDERSTANDING

Introduction

1. In this Memorandum:

"Act" means the Education Act 1997 as amended from time to time;

"Acting CEO" means the chief executive officer of the Interim Regulator;

"Code of Practice" means the QCA Board Members' Code of Practice 2005 as amended from time to time;

"Committee" means the committee established by QCA to carry out the Regulatory Functions;

"Core Objectives" means the core objectives specified in paragraph 18;

"DCSF" means the Department for Children, Schools and Families;

"Direction" means the direction given by the Secretary of State to QCA referred to in paragraph 10 and annexed at Annex 1;

"Departments" means DCSF and DIUS

"DIUS" means the Department for Innovation, Universities and Skills;

"Interim Chair" means the member of QCA appointed by QCA to chair the Committee;

"Interim Regulator" means the Interim Chair, the other members of the Committee and the Acting CEO jointly and severally;

"Memorandum" means this memorandum of understanding;

"QCA" means the Qualifications and Curriculum Authority;

"QCA Board" means the Board of QCA;

"QCA CEO" means the chief executive officer of QCA;

references to paragraphs and Annexes are to paragraphs of and Annexes to this Memorandum;

"Regulator" means the non-ministerial government department to be established to undertake the Regulatory Functions;

"Regulatory Functions" means the functions and powers specified in the Direction;

"Regulatory Purpose" means the purpose of exercising on behalf of QCA functions and powers in relation to the regulation of (a) external qualifications and the bodies which award or authenticate such qualifications and (b) National Curriculum assessments;

"Secretary of State" means the Secretary of State for Children, Schools and Families; and

"Shared Services" means the services referred to in paragraph 23.

2. On 26 September 2007, the Secretary of State announced that DCSF intends to seek the enactment of legislation to establish the Regulator. To this end, DCSF has launched a public consultation which sets out detailed proposals regarding the operational relationship between QCA and the Regulator and the responsibilities and powers of each organisation.

3. Until the Regulator has been established and the Regulatory Functions have been conferred

upon it, the Regulatory Functions will remain, in law, those of QCA. Interim arrangements are nevertheless to be put in place with a view to facilitating the eventual transfer of the Regulatory Functions from QCA to the Regulator.

4. Those arrangements are set out in this Memorandum, which describes the relationship between QCA and the Interim Regulator, and in a parallel memorandum of understanding, which describes the relationship between DCSF and QCA insofar as the Interim Regulator is concerned.
5. This Memorandum shall remain in force until the Regulator has been established and the Regulatory Functions have been conferred upon it or, if shorter, for so long as the Committee is established.
6. The requirements of this Memorandum may be supplemented by such further requirements in respect of the exercise of any individual functions, duties and powers of the Interim Regulator, as may be issued from time to time by QCA, acting reasonably with a view to achieving the Core Objectives.
7. The Interim Regulator shall at all times meet the requirements of this Memorandum together with any further requirements as are referred to in paragraph 6.
8. QCA for their part shall discharge their responsibilities and commitments under this Memorandum.

QCA's Statement of Commitment

9. QCA is committed to facilitating the seamless transfer of the Regulatory Functions to the Regulator. To that end, QCA:
 - 9.1 recognises and shall strive to respect, within the legal constraints to which it is subject, the degree of separation between it and the Interim Regulator envisaged by this Memorandum;
 - 9.2 shall act at all times in good faith towards the Interim Regulator; and
 - 9.3 shall support the Interim Regulator through the provision of the Shared Services.

The Committee

10. Pursuant to his powers under paragraphs 13(1)(b) and 14(2) of Schedule 4 to the Act, the Secretary of State has directed QCA to establish the Committee for the purpose of exercising on behalf of the QCA functions and powers in relation to the regulation of external qualifications and the bodies which award or authenticate such qualifications and national curriculum assessments. To that end, the Secretary of State has authorised the Committee to

exercise the Regulatory Functions, but only in furtherance of the Regulatory Purpose. The activities underpinning the Regulatory Functions are described more particularly in Annex 2 as amended from time to time.

11. The Committee shall comprise such persons as QCA may from time to time appoint.
12. The Committee shall act as the Board of the Interim Regulator and shall report to the Board of QCA, as required by this Memorandum. Communications between the Committee and the QCA Board shall normally be through the Interim Chair. The Interim Chair will not take part in any business of QCA unrelated to the Regulatory Functions.
13. The Committee shall:
 - 13.1 demonstrate high standards of corporate governance at all times;
 - 13.2 comply with the Code of Practice and with the rules relating to the use of public funds and to conflicts of interest;
 - 13.3 not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
 - 13.4 comply with QCA's rules on the acceptance of gifts and hospitality, and of business appointments; and
 - 13.5 act at all times in good faith and in the best interests of the Interim Regulator and of QCA.

The Acting CEO

14. The Acting CEO shall be Isabel Nisbet, who shall report to the Interim Chair and not to the QCA CEO, save in respect of matters relating to the Shared Services. The Acting CEO shall no longer be a member of the QCA Executive, but may attend any parts of QCA Executive meetings which may indirectly impact upon the exercise of the Regulatory Functions by the Interim Regulator. The Acting CEO shall attend meetings of the QCA Board in respect of the Regulatory Functions, as requested.
15. The funding for the Interim Regulator will be ring-fenced from the funding for the rest of QCA. The QCA CEO shall remain responsible as Accounting Officer for the financial management and control of resources used by QCA for all its activities, including those of the Interim Regulator. The QCA CEO shall delegate responsibility for the financial management and control of resources used in connection with the exercise of the Regulatory Functions to the Acting CEO, who will exercise the functions of an Accounting Officer in relation to such resources. Accordingly, the Acting CEO shall be personally responsible:
 - 15.1 for safeguarding the public funds for which she has charge;
 - 15.2 for ensuring propriety and regularity in the handling of those public funds; and

15.3 for the day-to-day operations and management of the Interim Regulator within the constraints laid down in this Memorandum.

16. The Acting CEO shall give evidence when summoned before the Committee of Public Accounts on the use and stewardship of public funds by the Interim Regulator.

The Regulatory Functions

17. In exercising the Regulatory Functions, the Interim Regulator shall at all times:

17.1 respect, abide by and comply with the controls set out in paragraphs 18 to 22 inclusive;

17.2 meet the five Principles of Good Regulation devised by the Better Regulation Task Force and endorsed by the Government, namely:

17.2.1 proportionality;

17.2.2 accountability;

17.2.3 consistency;

17.2.4 transparency; and

17.2.5 targeting; and

17.3 conduct themselves in such a way so as to ensure:

17.3.1 that the qualifications market is fit for purpose;

17.3.2 that qualifications are fair;

17.3.3 that standards are secure;

17.3.4 that public confidence is maintained; and

17.3.5 that the Interim Regulator acts as the public champion of the learner.

Controls

18. The Interim Regulator shall be subject to such controls as QCA shall from time to time specify, for the core objectives of ensuring:

18.1 that the actions of the Interim Regulator may be said to be the actions of QCA in law;

18.2 that QCA discharges its legal responsibilities under the Act; and

18.3 that QCA discharges its legal responsibilities as an exempt charity.

19. Without prejudice to the generality of paragraph 18, it shall be the responsibility of QCA, acting through the QCA Board, to:

19.1 set the overall strategic direction of the Interim Regulator within the policy and resources framework determined by the Departments;

19.2 approve the Interim Regulator's corporate and business plans;

19.3 ensure that the Interim Regulator does not operate beyond the limits of QCA's

- statutory authority; and
- 19.4 ensure that all statutory and administrative requirements for the use of public funds are complied with.
20. In support of QCA's responsibilities under paragraph 19, the Interim Regulator shall:
- 20.1 pursue and at all times operate within the overall strategic direction set by the QCA Board;
 - 20.2 ensure that the QCA Board is kept informed of any changes which are likely to impact on the strategic direction of the Interim Regulator or on the attainability of any of their targets, and determine the steps needed to deal with such changes;
 - 20.3 submit their corporate and business plans and any changes to their corporate and business plans to the QCA Board for approval;
 - 20.4 ensure that the QCA Board receives regular financial information regarding the management of the Interim Regulator;
 - 20.5 ensure that the QCA Board is informed in a timely manner about any complaints or concerns about the activities of the Interim Regulator;
 - 20.6 ensure that the QCA Board is regularly informed of the Interim Regulator's progress in attaining their targets and of their performance compared with their aims and objectives;
 - 20.7 provide the QCA Board with such other information as it may from time to time reasonably require;
 - 20.8 ensure that a system of risk management is maintained to inform decisions on financial and operational planning and to assist in achieving objectives and targets;
 - 20.9 ensure that an effective system of programme and project management is maintained;
 - 20.10 ensure that all public funds made available to the Interim Regulator including any approved income or other receipts are used for the purpose intended by Parliament, and that such monies, together with the resources, equipment and staff deployed by the Interim Regulator, are used economically, efficiently and effectively;
 - 20.11 ensure that adequate internal management and financial controls are maintained by the Interim Regulator, including effective measures against fraud and theft;
 - 20.12 maintain a comprehensive system of internal delegated authorities which are notified to all staff deployed by the Interim Regulator, together with a system for regularly reviewing compliance with those delegations; and
 - 20.13 ensure that the QCA Board is regularly informed in relation to the Interim Regulator's compliance with this Memorandum and with such further requirements as may be imposed by QCA from time to time.
21. In support of QCA's responsibilities under paragraph 19, the Interim Regulator shall not:
- 21.1 cause QCA to act beyond the limits of its statutory authority or in any other way unlawfully;
 - 21.2 give or purport to give any direction pursuant to section 26A of the Act without the

- prior approval of the QCA Board;
- 21.3 take or purport to take any other form of regulatory action falling outside the ordinary course of its day to day business without the prior approval of the QCA Board;
 - 21.4 make any public statement that conflicts or is otherwise inconsistent with the overall strategic direction of the Interim Regulator set by the QCA Board;
 - 21.5 act or omit to act in any way contrary to any directions given from time to time by the Secretary of State to QCA which relates directly or indirectly to the exercise of the Regulatory Functions by the Interim Regulator, provided that the Interim Regulator is made aware of any such directions in a timely manner; and
 - 21.6 act or omit to act in any way which may jeopardise the achievement of the Core Objectives or any of them.
22. For the purpose of paragraphs 21 and 22, the principal point of contact of the QCA Board shall be QCA's Director of Legal and Corporate Affairs or her nominee and the principal point of contact of the Interim Regulator shall be the Acting CEO or her nominee.

Shared Services

23. QCA shall provide the following services to the Interim Regulator upon terms to be agreed and set out in a service level agreement or agreements (including terms as to cross-charging) and it shall be a term of this Memorandum that the Interim Regulator makes exclusive use of such services:
- 23.1 Legal;
 - 23.2 Communications;
 - 23.3 HR;
 - 23.4 ITS;
 - 23.5 Procurement;
 - 23.6 Strategic Systems;
 - 23.7 Relocation;
 - 23.8 Finance;
 - 23.9 Commercial; and
 - 23.10 Business Management.
24. QCA offers its assurance to the Interim Regulator that the Shared Services will be of a quality and fitness for purpose comparable to those enjoyed by QCA.

Disputes

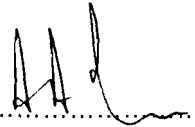
25. In the event of any dispute or difference arising as to whether a particular matter falls within the Regulatory Functions exercisable by the Interim Regulator, it shall be resolved by QCA in consultation with the Interim Regulator. In the event that the matter falls within both the Regulatory Functions exercisable by the Interim Regulator and QCA's continuing functions, it

shall fall to be dealt with as QCA directs, having consulted the Interim Regulator.

Review of this Memorandum

26. The operation of this Memorandum shall be kept under continual review by the QCA Board and in any event shall be subject to formal review once every six months. Any amendments to this Memorandum shall be made by the QCA in consultation with the Interim Regulator.

SIGNED BY
FOR AND ON BEHALF OF THE
QUALIFICATIONS AND CURRICULUM AUTHORITY


.....
(CHAIR)

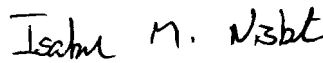
SIGNED BY
FOR AND ON BEHALF OF THE
QUALIFICATIONS AND CURRICULUM AUTHORITY


.....
(CHIEF EXECUTIVE OFFICER)

SIGNED BY
FOR AND ON BEHALF OF THE
INTERIM REGULATOR


.....
(INTERIM CHAIR)

SIGNED BY
FOR AND ON BEHALF OF THE
INTERIM REGULATOR


.....
(ACTING CHIEF EXECUTIVE OFFICER)

**DIRECTION UNDER PARAGRAPHS 13 AND 14 OF SCHEDULE 4 TO THE
EDUCATION ACT 1997**

The Secretary of State for Children, Schools and Families gives the following direction to the Qualifications and Curriculum Authority ("QCA") in exercise of his powers under paragraphs 13(1)(b) and 14(2) of Schedule 4 to the Education Act 1997 ("the 1997 Act"):

Establishment of the Interim Regulator

1. The QCA must establish a committee under paragraph 13 of Schedule 4 to the 1997 Act (referred to in this Direction as "the Interim Regulator") for the purpose of exercising on behalf of the QCA functions and powers in relation to the regulation of:
 - a. external qualifications and the bodies which award or authenticate such qualifications, and
 - b. National Curriculum assessments.

This purpose is referred to in this Direction as "the regulatory purpose". The particular functions and powers, which may be exercised by the Interim Regulator in furtherance only of the regulatory purpose, are those specified in paragraphs 3 to 12 below (referred to in this Direction as "the regulatory functions").

2. The QCA must establish the Interim Regulator on 2 April 2008 or as soon as practicable after that date. The Secretary of State authorises the Interim Regulator to exercise the regulatory functions as soon as it is established by the QCA.

Regulation of external qualifications and bodies awarding external qualifications; and National Curriculum assessments

3. The Interim Regulator is to exercise the function of the QCA under section 24(2)(f) of the 1997 Act to develop criteria for accreditation of external

qualifications. That function is only to be exercised by the Interim Regulator to the extent provided in this paragraph:

- a. The Interim Regulator is to exercise the function in so far as it relates to the development (including the setting) of:
 - i. criteria common to all accredited qualifications (known as the common criteria); and
 - ii. criteria for assessing whether a particular body is suitable to award or authenticate accredited qualifications.
- b. The Interim Regulator is also to exercise the function in so far as it relates to setting any other criteria which must be met for an external qualification to be accredited (irrespective of whether those criteria have been developed by it, the QCA or any other relevant body).

The function described in this paragraph includes the power to vary or revoke criteria which have previously been set by the QCA in exercise of section 24(2)(f) of the 1997 Act.

4. The Interim Regulator is to exercise the function of the QCA under section 24(2)(f) of the 1997 Act to publish criteria for the accreditation of external qualifications. In exercise of this function, the Interim Regulator is to ensure that any criteria set by the QCA are or continue to be published unless those criteria have been revoked by the Interim Regulator.
5. The Interim Regulator is to exercise the functions of the QCA under section 24(2)(g) of the 1997 Act to decide applications for the accreditation of an external qualification, and to accredit an external qualification where it meets the published criteria. The Interim Regulator is also to determine applications made before the date on which this function becomes exercisable by the Interim Regulator, if no determination has been made by the QCA by that date.

6. The Interim Regulator is to exercise the functions of the QCA under subsections (3) to (4) of section 26 of the 1997 Act¹. This is to include exercising the power to impose conditions under subsections (3A) and (4) in relation to the accreditation or continued accreditation of a qualification, where the qualification was accredited by the QCA before the function of accrediting qualifications was conferred on the Interim Regulator. For the avoidance of doubt, the Interim Regulator must obtain the consent of the Secretary of State under subsection (5) of section 26 of the 1997 Act as to such matters relating to the exercise of the power to impose conditions falling within subsection (4)(a) as he may determine before exercising that power.
7. The Interim Regulator is to exercise the powers of the QCA under section 26A of the 1997 Act to give and enforce directions.
8. The Interim Regulator is to exercise the function of the QCA under section 24(2)(a) of the 1997 Act to keep under review all aspects of external qualifications.
9. The Interim Regulator is to exercise the powers of the QCA under section 24(2)(e) of the 1997 Act to publish and disseminate information.
10. The Interim Regulator is to exercise the function of the QCA under section 23(2)(a) of the 1997 Act in so far as it relates to keeping under review the National Curriculum assessment arrangements made by the National Assessment Agency².

¹ Subsection (3) enables the accreditation of a qualification to be done on such terms (including as to payment) as the QCA may determine. Subsection (3A) enables the QCA to impose conditions on accreditation or continued accreditation. Such conditions may be imposed at the time of accreditation or later. Subsection (4) specifies that such conditions may include conditions limiting fees chargeable in respect of any award or authentication of the qualification in question. It also provides that the conditions may include conditions relating to rights of entry and inspection and copying of documents.

² The National Assessment Agency is a division of the QCA.

11. The Interim Regulator is to exercise the function of the QCA under section 23(2)(d) of the 1997 Act in so far as it relates to the publication and dissemination of information relevant to its carrying out of the function mentioned in paragraph 10.

12. In accordance with section 24(4) of the 1997 Act, the functions under section 24(2)(a) to (g) conferred on the Interim Regulator under this Direction are to be exercisable by it in relation to Northern Ireland but only with respect to National Vocational Qualifications. In relation to Northern Ireland, the Interim Regulator is to exercise the function of the QCA under section 24(2)(d) of the 1997 Act to provide support and advice to persons providing courses leading to external qualifications.

Ancillary matters

13. In exercising the regulatory functions, the Interim Regulator must exercise the functions for the purposes mentioned in subsections (1) and (2) of section 22 of the 1997 Act.

14. In exercise of its powers under paragraph 14 of Schedule 4 to the 1997 Act, the QCA may authorise the Interim Regulator to exercise further functions on its behalf, and nothing in this Direction is to be taken as restricting the powers of the QCA in that regard.

15. Nothing in this Direction is to be taken as preventing the QCA from authorising one or more of its employees from carrying out activities in connection with, and for the purpose of facilitating, the performance by the Interim Regulator of the regulatory functions.

16. Nothing in this Direction is to be taken as preventing the QCA from exercising the functions specified in paragraphs 3b, 5 and 8 to 11 in furtherance of purposes other than the regulatory purpose. Nor shall this Direction prevent the QCA from facilitating the performance of the

regulatory functions by the Interim Regulator by carrying on such activities preparatory to, or connected with, such functions as the QCA thinks fit.

Signed on

for and on behalf of the Secretary of State for Children, Schools and Families

A handwritten signature in black ink, appearing to read 'Lesley Longstone', written in a cursive style.

Lesley Longstone

Director General for the Young People Directorate

Department for Children, Schools and Families

2 April 2008

Annex 2

Activities underpinning Regulatory Functions

The Regulatory Functions shall include (but shall not be limited to) the carrying out of the following activities in furtherance of the Regulatory Purpose:

- Maintain assessment standards in existing, new and revised qualifications and tests
- Promote qualifications and assessments which are valid; reliable; fair and manageable
- Foster levels of attainment assessed which conform to national requirements and provide progression routes for learners
- Collect, analyse and disseminate data on qualifications and tests
- Set and publish regulatory criteria for accreditation including common criteria; criteria for qualification types; subject criteria; criteria for e-assessment
- Accredite external qualifications where accreditation criteria are met
- Publish a list of accredited qualifications
- Determine any conditions to be imposed upon accreditation
- Develop and implement a sanctions policy
- Devise, maintain, operate and quality assure QCA's accreditation systems
- Exercise regulatory powers as required and in accordance with s26 and s26(A) [power to direct] of the Act
- Monitor national curriculum assessments and qualifications
- Publish reports of monitoring exercises
- [Confirm validity of credit value ascribed to units]
- Recognise awarding organisations that are fit to be in the national system and make sure that they are effective
- Develop, maintain and operate systems to recognise awarding bodies in the regulated sector
- Publish a list of recognised organisations
- Review and report publicly on awarding body performance
- Monitor and inspect awarding bodies and their systems and processes to ensure that the regulatory requirements are met.
- Monitor the delivery of examinations and assessment
- Publish the reports of inspections and monitoring
- Secure an effective and efficient qualifications market
- Develop, implement and evaluate the policy and framework for regulation and its reform.
- Develop Ofqual's role as "market regulator" by for example publishing of the fees for GCSE in a common format
- Conduct studies of the qualifications and assessments system(s) in England, including for example, studies of the value for money/efficiency of those systems
- Publish information about the national system(s) for qualifications and assessments
- Act in the public interest if things go wrong
- Handle queries and complaints about results in qualifications or assessment and continue to improve the quality of responses
- Promote and sustain public confidence in the regulated system
- Conduct and publish research into qualifications; assessment; level setting; comparability of examination standards; principles of regulation of assessment ; predictability in examinations and other areas relevant to the regulator's overarching objective
- Promote good/best practice in all of the above.
- Raise public awareness and inform the public about the system of regulated qualifications and assessment