Consultation response

Arrangements for summer 2020 exam series

Consultation details

Title of consultation: Consultation on arrangements for the summer 2020 exam series

Source of consultation: Qualifications Wales

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About the Commission

The Equality and Human Rights Commission (the Commission) is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution in recognition of its independence, powers and performance.
The Legal Framework

Public authorities in the UK are bound by the Human Rights Act 1998 (HRA) which incorporates into domestic law the rights contained in the European Convention on Human Rights (ECHR). In relation to education and Qualification Wales’s proposals for assessing pupil performance in the absence of exams, Article 2 of the First Protocol of the Human Rights Act 1998 protects the right of every child to an education. This right, as with the other rights enshrined within the Human Rights Act must be protected from discrimination (Article 14, Human Rights Act).

The Equality Act 2010 (‘the Act’) provides a legal framework that protects individuals from unfair treatment, promoting a fair and more equal society. Whilst the public health challenges posed by this crisis are unprecedented, it is essential that every individual and organisation continues to act lawfully. Qualification Wales’ has a critically important role in ensuring that every pupil receives a fair assessment and qualification.

The Act prohibits discrimination against someone because of age, disability, gender reassignment, marriage and civil partnership,
pregnancy and maternity, race, religion or belief, sex and sexual orientation.¹

Section 20 of the Act sets out the reasonable adjustments duty. It requires organisations to take positive steps to remove barriers that disabled people face because of their disability.

Section 149 of the Act contains the Public Sector Equality Duty (the ‘PSED’). The General Duty requires all public authorities and those exercising a public function to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between those who share protected characteristics and those who do not.²

The Specific Duties for Wales set out steps that Qualifications Wales, as a listed body, must take in order to demonstrate that they are paying due regard to the General Duty. The Specific Duties in Wales are set out in the Equality Act 2010 (Specific Duties) (Wales) Regulations 2010.

Assessing impact is one of the Specific Duties in Wales and a key way in which public authorities can assess the expected impact of their policies as they are being developed, monitor their actual impact during implementation and stop or adapt their policies when evidence

¹ Section 4, Equality Act 2010
² Section 149, Equality Act 2010
shows that they can lead to unlawful discrimination or disproportionately affect people with specific protected characteristics.

An impact assessment has been shared as part of this consultation but Qualifications Wales must use monitoring, evaluation and review processes to ensure that the actual impact matches with the impact that was anticipated, and that the relevant actions have been implemented.

Given the impact of poverty and social exclusion on educational attainment we are pleased that Welsh Government has continued to prioritise the commencement of the socio-economic duty in Wales. We will be continuing to work closely with officials to prepare guidance and information to ensure the successful implementation of the duty.
Introduction

The Equality and Human Rights Commission welcomes the opportunity to respond to the Qualifications Wales consultation about changes to its regulations to enable students to be provided with exam grades to facilitate their progression in light of exams being cancelled this summer due to the Coronavirus outbreak.

Predicted grades could have a lasting effect on young people from certain ethnic minority backgrounds and disabled pupils and those with additional learning needs, who are already disproportionately disadvantaged.

We have limited our response to commenting on Qualifications Wales’ proposals that are relevant to the Commission’s remit. These are mainly focused around:

- The proposals to identify and mitigate unconscious and conscious bias by exam centres in provided predicted grades for students to exam boards.
- Learners who may not be able to receive a centre assessment grade and rank order position.
- The appeal process for grades provided to students.

Given our unique status, and considerable expertise in analysing equality and human rights issues, we are keen to offer our support and advice.
Response

At this time of national crisis, there is real danger that existing inequalities in education deepen. It is critically important therefore that the education sector, including Qualifications Wales meet the requirements of the PSED, and consider the particular needs and disadvantages facing students with different protected characteristics.

As stated within your consultation, inequality in educational achievement in Wales exists, particularly those associated with sex, ethnicity, disability and socio-economic background. This was included within the key findings of our state of the nation report, ‘Is Wales Fairer? 2018’ and an area for which we made recommendations for change.

It is very positive that Qualifications Wales is actively taking steps to consider how the assessment process can be made as fair as possible. We appreciate that the information Qualifications Wales published on 3rd April 2020 for exam centres on the submission of predicted grades states, ‘Centre assessment grades submitted to exam boards must reflect a fair, reasonable and carefully considered judgement of the most likely grade a student would have achieved’. ³

³ ‘Summer 2020 grades for GCSE, AS, and A level, and Skills Challenge Certificate (SCC). Information for Centres on the submission of Centre Assessment Grades. Qualifications Wales, 3rd April 2020"
However our view is that this information in itself will not address the risk of unconscious or conscious bias by exam centres predicting grades for students. As such we welcome Qualifications Wales’ determination to ensure, as far as possible under the current circumstances, that the overall process for providing exam grades for students can identify and mitigate bias in the predicted grades provided by exam centres.

We will consequently be making a recommendation to Welsh Government that it should issue guidance to schools on the approach which teachers should take to predicting grades and ranking pupils in order to minimise the risk of conscious or unconscious bias. The guidance should include a requirement for schools to provide WJEC and Qualifications Wales with sufficient data on socio-economic background and the protected characteristics of assessed pupils, including by ethnic group, to support analysis to check for systematic advantages or disadvantages. These data may need to cover both students for whom they are providing assessment grades in 2020 and previous years’ students, where the data are not available from other sources. We would ask Qualifications Wales to support this recommendation to Welsh Government.

We welcome the use of Ofqual's literature review into evidence of bias in teacher predicted grades and acknowledge that the available evidence is limited to teacher predicted grades for university applications and estimated grades for standard setting.

We would hope that Qualifications Wales’ consultation process will help to generate further evidence of potential equality impact to inform its decision making.

If our recommendation to Welsh Government is accepted it will help to generate a rich flow of equality information that will allow for deeper analysis of which groups may be experiencing disadvantage through the assessment process and the nature and scale of mitigating action that will be required.

Qualifications Wales should require WJEC to use this data as part of the statistical standardisation process that is being developed to address inconsistencies in the grades, including any that may have resulted from conscious or unconscious bias.

Following this process, Qualifications Wales should publish a report evaluating the predicted grades process and outcomes for pupils. If the evaluation reveals higher than average disparities for pupils with protected characteristics, these should be investigated thoroughly, with appropriate remedial action taken. This will be to support pupils who have been adversely impacted and also to inform future learning.
We are concerned that for a number of reasons some learners may not be able to receive a centre assessment grade and rank. The home education sector is diverse and reasons for doing so can include additional learning needs and religious beliefs. We would welcome an update on how you will look to mitigate disadvantage for these learners.

We believe the issue of appeals is another element that requires further consideration from an equality perspective. In the event that pupils are not happy with the outcome of their assessment and awarded grade, they must have a meaningful and timely route of appeal. We appreciate that this requires a difficult balance to be struck and it will be important to monitor the appeals process by protected characteristic to ensure that it operates fairly and meets the requirements of the PSED.

We welcome the opportunity for further discussion, to be kept informed and to support the development of the technical detail behind the statistical model and equality analysis.