



Appeals and the UNCRC

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Introduction

Scotland is set to directly incorporate the United Nations Convention on the Rights of the Child (UNCRC) into domestic law. The UNCRC (Incorporation) (Scotland) Bill was introduced to the Scottish Parliament on 1 September 2020. The bill will make it unlawful for public authorities to act in any way that is incompatible with the incorporated UNCRC requirements. This will give children, young people, and their representatives the power to go to court to enforce their rights.¹

More recently, in response to the Priestley Review², the Scottish Government stated that it fully recognises ‘that young people are rights-holders and key stakeholders with the education system. We will ask the SQA to review the appeals system for National Qualifications, working closely with education partners, including young people, to ensure it best meets the needs of young people in line with the principles of the UNCRC’.³

This paper sets out the implications of that response and, where possible, describes appeals processes in selected comparator countries and how (if at all) these intersect with these countries’ implementation of the UNCRC.

Key findings

Through the course of this work, we have found that there is a variety of approaches taken by different countries, both in terms of UNCRC implementation and regarding appeals against academic judgements.

The UNCRC has been legally incorporated in few countries thus far but, even so, there are disparities between those countries who have embedded it in a wide range of policy and practice and those countries where it remains ratified but somewhat more aspirational. Nevertheless, regardless of the rate of UNCRC implementation, there are few countries researched here where the UNCRC and its implementation appear to have a direct and distinct consequence for appeals.

Different countries’ approaches to appeals are as different as their education systems and, largely, reflect historical practices and culture. For instance, the balance between external and internal assessment in different countries varies enormously. In some countries, the basis for an appeal can encompass a broad range of issues, whereas in others, an appeal is confined to what is essentially a clerical check.

While processes and practices vary greatly across these countries, it seems rare that a candidate would appeal to an exam board about an assessment decision from their centre. Some exam boards or ministries of education, however, do require centres to have appeals processes in place.

Many of the countries covered here accept appeals directly from candidates. However, while this is not a specific focus of the research, it is clear that many countries do not routinely deal with large numbers of appeals each year. Certainly, in non-COVID years, there is little

conflation of appeals processes and what we in Scotland would refer to as 'exceptional circumstance' processes.

In a number of countries, re-sit opportunities are an important aspect of the assessment process.

Finally, it is common for unsuccessful appeals (if not necessarily clerical checks) to incur a fee.

Summary table

Country	UNCRC incorporated in domestic law? (Y/N)	Province/state	Appeals? (Y/N)	Appeals directly from student? (Y/N)	Cost?
England	N		Y	N	If unsuccessful
Wales	N		Y	N	If unsuccessful
Northern Ireland	N		Y	N	If unsuccessful
Australia	N				
		New South Wales	Y	Y	To view script
		Victoria	N		To view script
		Queensland	Y	Y	Y
		South Australia	Y	Y	
		Northern Territory	Y	Y	
		Western Australia	Y	Y	Y
		Tasmania	Y	Y	To view script
Canada	N				
		Alberta	Y	Y	If unsuccessful
		British Columbia	Y	Y	Y
		Manitoba	N		
		New Brunswick	N		
		Newfoundland & Labrador	Y	Y	Y
		Nova Scotia	Y	Y	
		Ontario	Y	N	
		Prince Edward Island	N		
		Quebec	N		
		Saskatchewan	Y	Y	
		Northwest Territories	Y	Y	If unsuccessful
		Nunavut	Y	Y	If unsuccessful
		Yukon	Y	Y	Y
Denmark	N		Y	Y	
Estonia	N		Y	Y	
Germany	N		Y	Y	Y
Iceland	Y		Y	Y	
Ireland	N		Y	Y	If unsuccessful
Italy	N		Y	Y	Y
Latvia	N		Y		
Netherlands	N		N		
New Zealand	N		Y	Y	If unsuccessful
Norway	Y		Y	Y	
South Africa	N		Y	Y	Y
Spain	Y		?		
Sweden	Y		N		

Context

UNCRC

The UNCRC⁴ has 54 articles that cover all aspects of a child's life and set out the civil, political, economic, social, and cultural rights that all children are entitled to. There are four articles in the convention that are seen as crucial, and are known as the General Principles. These help in the interpretation of all the other articles, and play a fundamental role in realising all the rights in the convention. They are:

1. Non-discrimination (article 2)
2. Best interests of the child (article 3)
3. Right to life and survival and development (article 6)
4. Right to be heard (article 12)

Of particular interest to SQA in terms of appeals and the Scottish Government's request, perhaps, is article 12, the right for children to be heard. Article 12 reads:

- ◆ *States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*
- ◆ *For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.*

Results 2020

In his *National Qualifications Experience 2020: Rapid Review*⁵, Professor Mark Priestley recommended a direct appeals process.

Young people are frustrated by the limited nature of the SQA appeals process for 2020. Young people have expressed that they were unable to challenge the decisions of their presenting centre and that they would like to see a direct appeal process available to individuals in 2021.

His call for a review of qualifications appeals systems in the context of the incorporation of the UNCRC into Scottish law explicitly linked an appeals process where candidates have direct recourse to SQA to the UNCRC.

Calls for a direct appeals process have also come from the Children and Young People's Commissioner Scotland (CYPCS)⁶ and the SQA Where's Our Say? campaign⁷. As well as article 12, these groups have cited several UNCRC articles in relation to the assessment process (not just appeals); these include:

- ◆ Article 2 – non-discrimination
- ◆ Article 3 – best interests of the child
- ◆ Article 5 – parental guidance and a child’s evolving capacities
- ◆ Article 17 – the right to information
- ◆ Article 24 – the right to good quality healthcare
- ◆ Article 28 – the right to an education
- ◆ Article 29 – the right to an education which develops personality, respect for others’ rights and the environment

In their letter⁸ to the Scottish Parliament Education and Skills Committee, the SQA Where’s Our Say? campaign stated:

It is important to note that the whole SQA system is not human rights compliant, therefore breaches the legal obligations SQA and Scottish Government has under the CRC. This breach in legal obligations occurred when the right to appeal was removed. Since this time there has been an erosion of the abilities of young people to appeal, through their schools. There has been very limited access to redress when personal circumstances require to be taken into account. This is a key element of children’s rights – involving young people to be directly involved in processes which impact them. It is crucial to upholding the legal obligation to the rights of children that there is a right to redress when things go wrong and this has been removed from the SQA processes in a more blatant way over recent months.

Similarly, in their response⁹ to the Priestley Review, the CYPCS said:

Children have the right to participate in all decisions affecting them as outlined in Article 12 of the UNCRC... The young people affected by this decision were 15-18 years of age and candidates for external examinations – it would be expected that significant weight be given to their views but this did not happen...Being denied a direct right of appeal, where they believe they have experienced discrimination, breaches not only the young person’s right to an effective remedy under Article 13 and the prohibition on discrimination in Article 14 of the ECHR [European Convention on Human Rights], and Article 2 of the UNCRC and in the case of disabled young people Article 23 of the UNCRC.

Implementation of the UNCRC

Once a country has ratified the UNCRC (and the vast majority of countries have), they become known in international law as ‘States Parties’, and subsequently take on duties to respect, protect, and fulfil the rights contained in the treaty. The ways in which the UNCRC is given legal effect is highly contingent on the constitutional and legal systems of individual countries¹⁰.

States Parties need to report every five years on their implementation of the UNCRC¹¹. Implementation may take the form of legal incorporation into a country’s domestic law or non-legal implementation through, for example, plans, strategies, and impact assessments. International human rights treaties do not, in general, specify how States Parties are to give

effect to their obligations at domestic level, but do require that they take 'all appropriate measures'.¹² However, the UN Committee on the Rights of the Child (OHCHR) favours direct and full incorporation as the method of implementation, thus giving full legal effect to the binding commitments made by governments when ratifying the UNCRC¹³. Nonetheless, few countries have fully incorporated the UNCRC into domestic law.

It has not been possible through the course of this work to find examples of countries where the implementation of the UNCRC (through legal incorporation or otherwise) is explicitly referenced in relation to how qualifications (or academic appeals) are administered. Moreover, it appears that, thus far, the focus has been on article 3 (acting in the best interests of the child) rather than article 12 (the right for children to be heard), particularly.

Country data

The following sections look at the situation in comparator countries — whether they have incorporated the UNCRC — and at their academic appeals processes. These countries have been chosen on the basis of availability of data and their similar legal and administrative systems. As noted above, the UNCRC does not appear to be referenced in relation to qualifications administration, and qualifications administration itself is not mentioned in these countries' most recent States Parties Reports (generally the fifth and sixth periodic reports)¹⁴.

Note that this information has been compiled through readily available data in the English language; it may therefore contain unavoidable omissions or misinterpretations. It is worth noting that Belgium has incorporated the UNCRC into domestic law, but it was not possible to gather enough information on their assessment and appeals processes to include here.

England

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into domestic law, but the government has previously stated that all of the rights and obligations set out in the UNCRC are protected in England through a substantial body of legislation.¹⁵

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

In 2020, appeals in England were limited to administrative and procedural issues.

*A student cannot appeal because they disagree with their school's or college's professional judgement of the grade the student would most likely have achieved if exams had taken place.*¹⁶

In more normal years, GCSE, AS level, and A level candidates can ask their school or college to get an exam result looked at again ('requesting a review'). Candidates cannot request a review themselves unless they are a private candidate. On appeal, the mark may be higher or lower than the original.¹⁷

Exam boards must give the candidate's centre a copy of their script so that the centre can decide whether to request a review or not.¹⁸

If candidates are not happy with the review, they can, within 21 days, appeal to Ofqual.¹⁹

According to Ofqual:

*Our rules also allow (but do not require) exam boards to accept requests for reviews of marking directly from individual students. Each exam board can decide whether — and, if so, in what circumstances — it will accept requests from students. Most exam boards choose not to accept requests directly from students. Where this is the case, the exam board must make sure schools and colleges give students the opportunity to appeal against any decision they take not to ask the exam board for a review of marking, and also any decision they take not to seek access to a student's script.*²⁰

In terms of internal assessment, Ofqual rules require the exam boards to include specific arrangements for students to request reviews of internal assessments in their agreements with schools and colleges.²¹

Is there are charge or fee for appeals?

Exam boards can charge a fee for reviewing a mark and for considering an appeal. They have to publish the fees they will charge, and be clear about any circumstances in which they will not charge.

Pearson²²:

- ◆ No fee is charged before an appeals process is completed
- ◆ No fee is charged if the appeal is successful
- ◆ Access to historical data to support a centre considering the decision to appeal is free of charge
- ◆ In cases where the appeal is not upheld, this will be £20 per student, with a cap of £120 per subject
- ◆ £120 for an initial appeal based on exceptional circumstances
- ◆ For an independent appeal conducted by external partners: £150 (this can only take place after an initial appeal has concluded)

OCR will not charge for successful appeals, but charges £18 per candidate for a clerical remark and £50.25 for a review of marking.²³ Exceptional circumstance appeals are more expensive.

According to AQA²⁴, 'Schools and colleges must provide an internal appeals procedure which students can use if there's disagreement about whether or not the school or college should submit an appeal on the student's behalf'.

AQA fees for unsuccessful appeals – or appeals due to centre error – are:

- ◆ Initial review £35 (unless the appeal is on the grounds of exceptional circumstances, in which case the fee is £150)
- ◆ Independent review £150
- ◆ Prior attainment data request: £11.35, or a capped price of £22.70
- ◆ Fees are per appeal, so if multiple students are included in the same appeal, the fee will remain the same

Wales

Is the UNCRC incorporated into law?

The UNCRC is not fully incorporated into law, but Welsh ministers have a duty to have due regard to the convention.²⁵

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

In 2020, appeals in Wales were limited to administrative and procedural issues. Candidates were advised to contact their centre about other concerns, including those about bias or discrimination.²⁶

Qualification Wales has yet to confirm arrangements for 2021, when there will again be no exam diet.²⁷

In more normal years, the appeals process is the same as that for England.

Is there a charge or fee for appeals?

Pearson, OCR, and AQA all award qualifications in Wales; their fees are set out in the England section, above.

WJEC charges £11 for a clerical re-check and around £40 for a review of marking (depending on qualification level).²⁸ Access to a script costs £11.

Northern Ireland

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into domestic law. The Northern Ireland Commissioner for Children and Young People²⁹ promotes the rights and best interests of children and young people in Northern Ireland.

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

Both the 2020 appeal process and that in normal years are the same as in England and Wales.

Is there a charge or fee for appeals?

CCEA charges £8.50 for both a clerical re-check, £8.50 for a copy of the script, and £18.45 for a review of marking.³⁰

Australia

Is the UNCRC incorporated into law?

The UNCRC is not incorporated, but there are examples of the integration of the UNCRC principles into legislation, notably the best interest principle (article 3).³¹

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No. Education and qualifications are administered separately by the Australian states. It is accepted by some state Departments of Education that the UNCRC underpins their education strategies, but it is not explicitly referenced in relation to qualifications administration.

How do appeals against academic judgements work?

As noted above, qualifications are administered by the states and territories.

New South Wales

In New South Wales³², to begin the appeal process, a student can apply to the school principal to request a review. In this review, the school will consider whether it: weighted its assessment tasks in line with the NESA requirements; complied with its stated assessment programme when deciding the final assessment mark; miscalculated or made a clerical error when deciding the assessment mark.

An appeal can then be made to NESA if the student is unhappy with the school's response. The school provides the student with an assessment appeal form. NESA will consider whether the school's internal review was adequate and carried out properly. NESA will not revise assessment marks or rank order.

*Students are not entitled to seek a review of teachers' judgements of the worth of individual performance in assessment tasks. The marks or grades awarded for individual tasks will not be subject to review as part of this process. Any disputes over an individual task must be resolved at the time the task is returned to the student.*³³

If an appeal is upheld, NESA will refer the matter back to the school for a further review. The results of that review may affect the assessment of the student making the appeal and/or the assessments of other students. This may then be reflected in the moderated assessment marks for all students so affected.

Victoria

In terms of school-based assessments, students may inspect their examination scripts on application to the VCAA³⁴. Students receive a personalised application form with their VCE results that covers Statement of Marks, Statement of Study Score, and Inspection of Scripts. A general application form is also available on the VCAA website.

However, published results are final. No school-based assessments will be re-marked once results have been released, unless a student appeals to the VCAA against penalties imposed by their school for breach of VCAA examination rules or school-based assessment authentication rules. There is no provision for a student to appeal to the VCAA against a school's assessment of outcomes for satisfactory completion of a unit.

In terms of VCAA assessments, in exceptional cases the VCAA may consider an application by a principal who believes that there has been an error in the marking of a student's response to one or more questions on a written examination and that, consequently, the student has been incorrectly assessed.

Queensland

Students may ask the QCAA³⁵ to check the results contained in their certificate and statement. This is called 'requesting verification of information'. Students may also apply to the QCAA to have their external assessment or Senior External Examination scripts marked again if they believe there has been a marking error. Marks can decrease, increase, or stay the same.

South Australia

A student can initially appeal the result of an assessment by raising a grievance against a school/centre in relation to South Australian Certificate of Education (SACE)³⁶ assessment. A grievance may arise when a student and/or parent, or another individual, considers that a departure from a SACE assessment policy or procedure has occurred in relation to a student's assessment.

A person who has lodged a grievance may consider that an error has been made in the resolution of the grievance: by the school in the case of school assessment (if the matter deals with the school assessments that are to be submitted to the SACE Board); or by the SACE Board Chief Executive in the case of school assessment (if the matter deals with school assessments after their submission to the SACE Board); or by the SACE Board in the case of external assessment. In such cases the student may seek to appeal the grievance outcome.

Northern Territory

The Northern Territory Certificate of Education (NTCET)³⁷ is administered by SACE, so the processes are the same as for South Australia.

Western Australia

Initially an assessment review is requested by the learner. This is carried out internally by the school to resolve the situation. If the situation is not resolved, the SCSA³⁸ will consider a student appeal based on one of the following:

- ◆ the school's assessment outline does not conform with syllabus requirements
- ◆ the school's assessment policy does not conform with Authority guidelines
- ◆ the school's assessment procedures do not conform with its assessment policy
- ◆ there are procedural or computational errors in the determination of the school mark and/or grade

An Authority officer investigates the appeal, which involves gathering additional evidence and often includes meeting with both the school and the student.

Tasmania

A student can raise an individual results query for any exam³⁹ directly with TASC. However, TASC will not re-mark an examination paper — a review (appeal) will be undertaken only if it is believed a procedural error has occurred, such as the incorrect addition of marks. Students can access their marked paper in one of the regional centres.

Is there a charge or fee for appeals?

In New South Wales, students are able to access both their raw examination marks (school marks) for AUS\$6.40 for each subject and their exam scripts for a fee of AUS\$38.20.

In Victoria, there is a charge for a student to view their examination script for 16 minutes.

In Queensland, the fee for re-assessment is AUS\$63.85 and the script inspection fee is AUS\$18.25.

In Western Australia, an appeal costs AUS\$34.

In Tasmania, there is a charge of AUS\$16.20 for a 30-minute viewing per exam paper.

Canada

Is the UNCRC incorporated into law?

The UNCRC does not form part of Canadian domestic law, but it is increasingly being taken into account.⁴⁰

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

Canadian provinces widely use standardised testing programmes (for accountability and formative assessment) and provincial exams. While external tests do contribute to a learner's high school diploma credits in most provinces, these generally make up (in non-COVID years) around 30%–40% of a learner's final grade.

Alberta

The final mark for diploma examination courses is determined by blending the diploma examination mark (30%) with the school-awarded mark (70%).⁴¹

Following each diploma examination period, each student who has sat one or more diploma examinations can retrieve their Diploma Examination Results Statement from the student self-service website called myPass. The statement shows the diploma examination mark, the school-awarded mark, and the most recent official mark for the course.

A student who is dissatisfied with a school-awarded mark may appeal under the policies set by the school authority or take the course again.

A student who believes that their diploma examination mark does not appropriately reflect their achievement may submit a written request for a re-score to the Provincial Assessment Sector or re-sit the examination at a later administration date.

On appeal, an examination mark may be raised, lowered, or remain the same.

British Columbia

Candidates in the British Columbia Graduation Program complete two provincial tests — literacy and numeracy⁴². Candidates can view their assessment responses through the review process. Reviews can be helpful for candidates to determine whether to pay for a re-mark or when preparing to re-take an assessment.

To begin this process, students need to contact their school to obtain the Review Request Form. The form must be signed by both the school principal and the student before submission to the Ministry.

As the intent of the review request is for individual students to seek information about their own work, the Ministry will not process large numbers of requests from a single school.⁴³

If a candidate questions a mark or score received on a graduation assessment, they may request to have it re-scored within a specific time period for a fee. Otherwise, candidates may re-sit.⁴⁴

Manitoba

Provincial tests are administered each semester count for 30% of students' final course grades.⁴⁵ There does not appear to be a province-wide appeals process:

As the reporting of individual student scores on locally marked provincial tests is the responsibility of each jurisdiction, the reread [re-mark] policy for these tests is determined locally. Should a reread be requested for a test booklet that has been sent to the department as a part of the sample for the feedback on the marking process, the department will return a photocopy of the test booklet upon request.⁴⁶

New Brunswick

Like other Canadian provinces, New Brunswick runs a programme of standardised tests⁴⁷, but provincial tests (while available for those students undertaking their course outwith school, for example) do not generally contribute to learners' high school diploma grades.

Newfoundland and Labrador

If a student is not satisfied with the mark they have received in any public exam course, they may request a re-read (re-mark). The higher of the two marks will be used to determine the final mark.⁴⁸

Nova Scotia

Nova Scotia exams (NSEs) are designed to evaluate student achievement in relation to selected curriculum outcomes. The examination results contribute 20% to students' final course mark.⁴⁹ A request for a re-score of an assessment must be made by a parent/carer or candidate, but the request is processed through the school.⁵⁰ Scripts are not returned.

Ontario

EQAO⁵¹ is responsible for overseeing Ontario's provincial assessment programme. EQAO's provincial tests assess students' literacy (reading and writing) and math skills at key points in their kindergarten to Grade 12 education.

For the Ontario Secondary School Literacy Test (OSSLT), a student is eligible for an appeal⁵² when he or she claims to have written responses, yet:

- ◆ the number of missing items reported on the updated Student Summary is greater than the student claims
- ◆ the number of items listed on the Individual Student Report and the Individual Student Data file (the 'ISR number of questions answered' variable) is fewer than the student claims to have attempted

- ◆ one or more responses are reported blank or missing on his or her Item Information Report: Student Roster (the school principal has access to this second report)

Only the principal of the school where the student registered for the test may submit an appeal on behalf of the student. The appeal application must be completed online and include a short written description of the basis for the appeal identifying the specific items that were reported blank or missing on the Individual Student Report, the number of items reported attempted in the Individual Student Data file and the number of items reported blank or missing on the Item Information Report: Student Roster and stating the reason the principal believes the student completed the work related to the items.

Prince Edward Island

Provincial assessments are conducted each year to measure how well students are meeting expectations set out in the provincial curriculum. Students write (sit) provincial assessments at the end of grades 3, 6, 9 and 11.⁵³ It does not seem that such assessments can be appealed.

Québec

Ministerial Examinations are taken in grade 10 and 11 level subjects. The exam mark is worth 50% of the final grade, but exam results carry more weight.⁵⁴ The Ministère uses moderation, comparing the school marks and the ministerial examination marks. Marks obtained on the examination moderate the school marks, minimising or eliminating the impact of local variables.

It does not appear that exam results can be appealed, but exams can be retaken in the same year.⁵⁵

Saskatchewan

Departmental exams in Saskatchewan are generally taken only by those who are being taught by a non-accredited teacher and home-school learners.⁵⁶

Mathematics and science examinations are 100% machine-scored. Only marker-scored portions of examinations can be appealed, and only English Language Arts has a marker-scored component. Additionally, the candidate must have a composite score above 42% to be able to appeal. Candidates themselves appeal by completing an application form.

Marks cannot be lowered as the result of a re-read (appeal).

Northwest Territories

Northwest Territories uses Alberta Diploma Examinations⁵⁷.

Nunavut

Nunavut uses Alberta Diploma Examinations⁵⁸.

Yukon

Yukon uses British Columbia graduation assessments⁵⁹.

Is there are charge or fee for appeals?

In Alberta, a student who wishes to have a diploma examination rescored is required to submit an application form and pay a rescore fee, per examination, directly to Alberta Education through myPass. This fee is refunded if the examination mark increases by 5% or more as a result of rescoring.

In British Columbia, the fee for a re-mark is C\$50.

The cost of a re-read in Newfoundland and Labrador is a non-refundable C\$10.

In Saskatchewan, no fee applies to re-reads.

Denmark

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into Danish law. However, articles 3 and 12 are integrated into Danish legislation to varying degrees.⁶⁰

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

It is unclear if the UNCRC is explicitly referenced in relation to qualifications administration. However, learners are directly involved in their education. For instance, students have a right to form a student council at their school and they are represented on the school board. Moreover, the school must ensure that the students are involved in the planning of teaching in their class.⁶¹

How do appeals against academic judgements work?

Complaints⁶² about examinations are submitted by the examinee to their institution. The complaint must be in writing and substantiated. The complaint can also be submitted by a parent or carer.⁶³ An appeal is lodged individually and must set out in detail the facts which, in the appellant's opinion, justify it. The complaint may relate to the examination (including examination questions and assignments, as well as its relationship to the goals and requirements of the course) or the assessment itself.

The institution decides whether the appeal should be pursued or rejected as unfounded. The rejection of the complaint must be in writing and substantiated. If the case is to be advanced, the institution immediately submits the complaint to the assessors with a request for a professional opinion from each within a specified period of normally two weeks. The institution submits the assessors' statements to the complainant, who is given the opportunity to make any comments within a period of normally one week.

On the basis of the complaint, the assessors' statements, and any further comments from the complainants, the institution makes its decision, which must be in writing and substantiated. The decision may be the offer of reassessment or that the appeal is unsuccessful.

Acceptance of an offer of reassessment must be submitted to the institution no later than two weeks after the offer has been announced. If the Danish Agency for Education and Quality has appointed an external examiner for the original examination, the institution appoints new assessors. Reassessment may result in a lower grade.⁶⁴

Is there a charge or fee for appeals?

Unknown

Estonia

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into domestic law, but a range of legislative acts have been adopted to fulfil article 12 requirements.⁶⁵

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

Not explicitly, but the student body of a school has the right to decide and independently organise the matters of student life. This includes electing a student council whose role is to reflect the interests, needs, rights, and duties of students.⁶⁶

How do appeals against academic judgements work?

To graduate from upper secondary education, students take three state examinations in Estonian language, Mathematics, and a foreign language. In addition, students need to take a school examination and complete a student research paper or practical project.⁶⁷ State Examinations can be appealed, but there is no further information on Innove's English website.⁶⁸

The Estonian language proficiency examination papers can be reviewed by the examinee upon request. The completed tests can only be reviewed in person at Innove. On request, the marking scheme is also available for reviewing. If a candidate would like additional explanations about grading, they can send Innove their questions and a relevant specialist will provide explanations in writing within 30 days.

If a candidate is not satisfied with the result of the proficiency examinations, they have the right to file a challenge with the Ministry of Education and Research for the review of their examination result. The challenge must be filed within thirty days after being communicated the examination result.

A proficiency examinations challenge committee is formed whose membership is approved by a directive of the Minister of Education and Research. The challenge committee will review the challenge within 30 days and either:

- ◆ dismiss the challenge
- ◆ issue a certificate of proficiency in the Estonian language⁶⁹

Is there are charge or fee for appeals?

Unknown

Germany

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into German domestic law, but Germany is committed to bringing legislation and practice into full conformity with the convention.⁷⁰ Focus is on the best interest principle.⁷¹

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

On successful completion of lower secondary education, at age 15–16, students are awarded a leaving certificate by their school. In an increasing number of Länder, students are required to sit a central examination at state level to obtain this leaving certificate.⁷²

The gymnasiale Oberstufe concludes with the Abitur examination⁷³, which around 20% of the top performing students will undertake. While there has been a move in recent years to a more centralised exam system, each of the 16 Länder has a separate Abitur programme.⁷⁴ The external Abitur examinations are set and marked regionally but they are all set on the same content standards to ensure some comparability.⁷⁵ To achieve the Abitur, students' marks for class work and examinations undertaken during the final two years of school are combined. Assessments and examinations are generally marked by the students' own teachers, with some papers being verified and checked by the regional education authority⁷⁶. The failure rate for the Abitur assessments varies from 2.3% in Thuringia to 7.3% in Mecklenburg-Western Pomerania.

Students wishing to appeal their results can challenge the school directly if they believe there has been an error with marking or procedures. If this is unsuccessful, a legal appeal can be made to the school and/or the region. Appeals can also be lodged as complaints against noise, temperature, and other disturbances during the exam which negatively impacted on a student's performance⁷⁷

Is there a charge or fee for appeals?

A number of students engage legal assistance to dispute their results. Costs vary depending on cost of legal advice.

Iceland

Is the UNCRC incorporated into law?

The UNCRC was incorporated into Icelandic law in 2013.⁷⁸

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No. Article 12 has not yet been put in the context of assessment.⁷⁹

How do appeals against academic judgements work?

In upper secondary school, general student assessment is done in schools by teachers under the supervision of the headmaster. Assessment is based on each school's goals stated in the national curriculum and each school's curriculum. Students have the right to receive an explanation of the final assessment within five days of receiving their grade. If a student does not agree with the teacher's assessment, they are able to ask the headmaster for the second opinion of a neutral examiner (auditor). This external opinion or verdict is final and cannot be appealed in any way.⁸⁰

Is there are charge or fee for appeals?

Unknown

Ireland

Is the UNCRC incorporated into law?

The UNCRC is not fully incorporated into Irish domestic law, but it is embedded into child protection laws, physical and mental health services, and education.⁸¹

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

In 2020, the leaving certificate appeals process focused solely on the accuracy of data transfer⁸², not the percentage marks candidates were awarded by teachers, nor their place in the rank order⁸³. Appeals were accepted from individual students only and not schools or colleges. The appeals process included three stages as follows:

1. Checks undertaken on the forms completed by the school and that the information was transferred correctly from the forms to the data collection system.
2. A review was carried out to ensure that the data was correctly received and processed through the systems used in the national standardisation process. Data checks included a check to ensure that the rank order of the class group for the subject and level taken were preserved in the standardisation process, and that students placed on the same school-estimated mark in the same subject and at the same level were conferred with the same calculated mark.
3. Students who were unhappy with the outcome of the process could invoke a separate process to have their appeal reviewed by independent Appeals Scrutineers. These Scrutineers are independent of the department.

The Independent Appeals Scrutineers checked to ensure the correct procedures were followed throughout the appeals process. The Scrutineers had access to the records and documentation considered at stages 1 and 2. Students who considered that their case had not been processed correctly could make a complaint to the Ombudsman or, in the case of students under 18 years of age, the Ombudsman for Children.⁸⁴

In more normal years, the process for leaving certificate appeals is as follows⁸⁵:

- ◆ Candidates have around a week to access the Candidate Self Service Portal and log an appeal or appeals.
- ◆ Candidates do not have to have viewed their script or scripts, but it is recommended that they do so to make an informed decision. By viewing their script, candidates can see how the marking scheme was applied.
- ◆ If a candidate has viewed their script, they can, if they wish, raise specific issues with the appeal examiners.
- ◆ Scripts can be viewed in arranged viewing sessions at schools or online.

- ◆ Appeals can be made by individual students or through a school.

Candidates for Junior Certificate examinations do not have the opportunity to view their marked scripts, but they can appeal. These appeals must be through a school. The script is sent to an appeal examiner for a full re-mark. A mark cannot be reduced on appeal. 'This practice recognises that...Junior Certificate candidates do not have the opportunity to see the application of the marking scheme to their work.'

Is there are charge or fee for appeals?

The appeal fee is €40.00 per subject for the Leaving Certificate, and €15.50 per subject for the Leaving Certificate Applied. Appeal fees must be paid in advance but will be refunded if the result is upgraded.

The appeal fee for Junior Certificate is €32.00 per subject. The fee will be refunded if the appeal is successful.

Italy

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into domestic law.

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

Each year final year exam subjects are selected at a national level by the Ministry of Education. Assessments are undertaken at a regional/state level following national guidance.

The state examination includes two written national tests and an interview. The questions for the first and second written tests are selected by the Minister from a selection of questions drawn up by an ad hoc commission. On successful completion of final year exams, a student is awarded the Diploma Liceale or the Diploma di Esame di Stato⁸⁶. If unsuccessful, a student will repeat the final year and retake the exams.

Students have the right to appeal a low mark or fail. Appeals are made to the regional education department and based on one of the following:

- ◆ Administrative/ procedural irregularities
- ◆ Negative treatment of student compared to fellow students
- ◆ Marking errors

To appeal a result, a student must gather evidence and lodge the appeal within 60 days of the result being issued. Legal assistance must be sought to lodge an appeal against the region⁸⁷.

Is there are charge or fee for appeals?

The fee for appeal varies according to legal representation. An amount of €3,500 to €4,500 would be an average cost⁸⁸.

Latvia

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into domestic law.

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

VISC is responsible for the development, administration, and grading of centralised examinations and for issuing General Secondary Education Certificates.⁸⁹

To receive the Diploma of General Secondary Education and qualify to continue in education, students must complete courses in all subjects (minimum 12) and pass at least four final examinations including three compulsory subjects and at least one elective.

The compulsory examinations are in Latvian Language, Mathematics, and a foreign language. All compulsory examinations are centrally marked. A number of elective examinations are also centrally marked but some are marked by schools, despite being set centrally.⁹⁰

Documents on VISC's website refer to appeals procedures, but it is unclear what these are.

Is there a charge or fee for appeals?

Unknown

Netherlands

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into domestic law.

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

For most subjects, the final exam in secondary education consists of a school exam, followed by a central exam. The average of these two components is the final mark.⁹¹

The school itself sets assignments and standards for the school exam. For the central exam, exams and assignments, assessment models, and standards are centrally determined. The school administers the exams and applies the assessment models and the established standards. CvTE then carries out standardisation.⁹²

As part of the standardisation process, as well as using item analysis and historical data, CvTE receives feedback from teachers and trade unions on the performance of the central exam. Moreover, there is a complaints line for students:

These reports to the LAKS play a role in the standardisation...When assessing the complaints, the LAKS and the CvTE (mainly) look at the content of the complaint, not the number. A single well-founded substantive complaint can be sufficient for an adjustment. If there are many complaints about an exam that is too difficult, it is always checked against the item analysis to see whether it confirms this.⁹³

All candidates who complete the exam receive a transcript from their headteacher listing the marks scored in the school exam, the marks scored in the national exam, the final marks for each subject, and the outcome of the school-leaving examination. Candidates who fail the examination, even after resitting, may decide to:

- ◆ repeat the final year
- ◆ transfer to an institute for adult secondary general education (VAVO) and take the school-leaving examination there
- ◆ study for the state examination⁹⁴

Is there a charge or fee for appeals?

Unknown

New Zealand

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into New Zealand domestic law, but government departments are encouraged to consider its implications. The best interest principle, particularly, is integrated.⁹⁵

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

Candidates may apply for a review or reconsideration⁹⁶ of their results for externally-assessed NCEA standards and New Zealand Scholarship subjects.

All exam scripts/answer booklets and portfolios are returned to students once marking has been completed. In a review, the request must be made in writing to NZQA and must specify the nature of the alleged processing error. All sections of a booklet or portfolio are checked to make sure they have been marked and results correctly recorded and transferred. A review does not involve re-marking.

A reconsideration involves reassessing all answers in the answer booklet using the original assessment schedule, in other words, re-marking it. It also involves checking mechanical processes, like transferring grades. Applications for a reconsideration are made directly by the student.

Is there a charge or fee for appeals?

A review is free of charge. A reconsideration costs NZ\$20.40 (unless it leads to a change of grade).

Norway

Is the UNCRC incorporated into law?

The UNCRC is incorporated into Norwegian law, with articles 3 and 12 integrated into legislation in a range of areas.⁹⁷ Norway is considered a model of good practice when it comes to the UNCRC and children's rights more generally.

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

The UNCRC is not explicitly referenced in relation to qualifications administration⁹⁸, but the Education Act states that students and apprentices will be actively engaged in their own learning by assessing their own work and development. Students' legislative right to assessment means both a right to formative (continuous) assessment and final assessment, and a right to documentation of their education.⁹⁹

How do appeals against academic judgements work?

Two types of grades are awarded and recorded on students' certificates:

- ◆ Grades for overall achievement in each subject based on the student's work during the school year, including practical work, work in class, homework, tests, project work and group work. The overall achievement grades are given on a six-point scale from 1 (lowest) to 6 (highest). The teacher sets the grades.
- ◆ Grades awarded in end-of-year examinations using the same grading system. A separate commission of examiners deals with appeals¹⁰⁰. Their decision is final.

Children may appeal against academic decisions such as marks awarded for classwork and examination results.¹⁰¹

Children or their parent or guardian have the right to appeal. If the pupil is under 15, they cannot complain without the written consent of their parent or guardian. Those who have the right to appeal are informed of their right to do so and, in the case of exams, that they have the right to receive the guidelines that the examiners used.¹⁰²

In the case of exams, within a set deadline, the student can ask for justification for their grade for oral or practical exams. For written exams, students can ask for access to their script. If a pupil wishes to appeal, a complaint is submitted to the school where the exam took place and then the school forwards that, along with the exam script, to the county governor. The appeal body for assessment of a written centrally set exam in upper secondary is an appeal board appointed by the county governor.¹⁰³

The appeal or complaint must be submitted in writing and be signed by the complainant (student or parent/guardian). This appeal letter should contain justification for the complaint. However, while the appeal board is made aware of the grade obtained in assessment, they

receive only the student's script and original marks, not information on the grounds for appeal.¹⁰⁴

In oral or drawing exams, a successful appeal would involve the pupil being able to sit the assessment again. In the case of other non-written exams, in the absence of evidence, appeals can only be on the basis of errors.¹⁰⁵

An appeal may lead to the grade being confirmed as correct, or to it being upgraded or downgraded. This decision is final.

In the case of an appeal against a teacher's classwork grade, the appeal body can only assess whether the provisions on grading have been complied with. The complaint must be accompanied by a statement from the subject teacher as to how the grade was determined, and a statement from the principal about the case processing at the school. The complainant will receive a copy of the statement. The appeal body in primary and lower secondary school is the county governor. The appeal body in upper secondary education is the county council.¹⁰⁶

If the complaint is found to be justified, the appeal body must specify what rules have been broken. The appeals body informs the student of the result of the appeal proceedings. The principal and the subject teacher carry out a new assessment. The new decision cannot be appealed.¹⁰⁷

Is there are charge or fee for appeals?

Unknown

South Africa

Is the UNCRC incorporated into law?

The UNCRC is not incorporated into South African law. However, children's rights are a strategic focus of the Human Rights Commission.¹⁰⁸

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

National Senior Certificate (NSC or matric) examinations are carried out from October to December each year. Candidates may apply for re-checking or re-marking of examination answer scripts immediately after receiving their results. The closing date for application for a re-check or re-mark is usually announced in January. Application forms for re-checking or re-marking of examination answer scripts are available from schools or examination centres.¹⁰⁹ A candidate appeals, rather than their centre.

Candidates may re-sit in May/June the following year to improve their result.

Is there a charge or fee for appeals?

A re-mark costs R112 and a re-check R27.

Viewing of scripts may only be done after a re-mark or re-check of results. The closing date for applications is seven days after release of re-mark or re-check results. The fee for viewing is R219.

Spain

Is the UNCRC incorporated into law?

The UNCRC forms part of Spanish domestic law and is increasingly applied by Spanish constitutional courts.¹¹⁰

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No

How do appeals against academic judgements work?

The MEFP¹¹¹ is responsible for setting students' progression criteria in the basic curriculum for the Bachillerato. Students who pass all the subjects of the Bachillerato are awarded the Bachillerato certificate. Assessment is carried out by teachers and the teachers of each subject will decide at the end of the academic year whether the evaluation criteria have been met. It is teachers' responsibility to keep students and parents updated on progress throughout the year.

Students who pass all the subjects of the Bachillerato, but who do not pass the final examination at the end of the stage, are awarded a certificate with work and academic purposes.

Students may re-sit the subjects they have failed.¹¹²

Is there are charge or fee for appeals?

Unknown

Sweden

Is the UNCRC incorporated into law?

The UNCRC was incorporated into Swedish law in January 2020¹¹³. Aspects of it were already integrated in legislation, including articles 3 and 12.¹¹⁴

Is the UNCRC explicitly referenced in relation to how qualifications are administered?

No, but in Sweden's fifth periodic report to the UN Committee on the rights of the child¹¹⁵, the authors state that national tests can provide valuable information about 'students at risk of not achieving the objectives and thus qualifying for special support, which, if given early enough, can help to reduce disparities in student potential'.

How do appeals against academic judgements work?

Upper secondary school has a six-level grading scale from A to F, with five pass grades and a non-pass grade. There are national knowledge requirements for grades E, C and A. The knowledge requirements contain a description of what is required for a given grade. If there are insufficient grounds for determining a student's knowledge due to extended absenteeism, a dash (–) replaces the grade.

Grades are awarded based on the goals and knowledge requirements set out in the syllabuses. When starting a new course, the teacher should provide information about what is required for the different grades. It should be possible for students to discuss their grade with a teacher during the course to get an idea of their current position. A teacher awarding a grade should not compare a student's performance with others in the class, but assess how well each student has achieved the goals of the course.

Grades cannot be appealed. The teacher awarding the grade should also be able to inform the student of the reasons for the grade assessment.¹¹⁶

Pupils and their parents/guardians are informed of the pupil's progress through compulsory personal development meetings. These dialogues are based on the pupil's individual study plan which contains information on the choice of programme and courses. The school is obliged to arrange these meetings at least once every term.

Teachers base grades on coursework and national tests.

Is there a charge or fee for appeals?

Pupils are entitled to re-sit national tests free of charge if they have failed a course. Pupils may also retake the whole course.

Appendix – Endnotes

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