

# Consultation on changes to the Conditions of Recognition



AUGUST 2019

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## Foreword

As qualifications regulators we are committed to protecting the interests of learners, maintaining standards in qualifications and promoting confidence in the qualifications system. We work closely together, and many of the awarding organisations we regulate are common to us all.

The Conditions of Recognition are the rules we set for the awarding organisations we regulate. Every recognised awarding organisation must make sure that it, and all of its regulated qualifications, meet the Conditions. Across England, Wales and Northern Ireland, the Conditions are broadly similar – although there are some differences reflecting our policy and legislative contexts.

Our respective Conditions are well established and awarding organisations, in the main, report to us each year that they are complying with them. During 2018, Qualifications Wales carried out a review of its Conditions, talking to awarding organisations and centres. Ofqual issued a call for evidence on the transparency of qualification fee information. We committed to work together to consider the evidence gathered, while also bringing together our wider views, analysis and perspectives on where changes to the Conditions may be appropriate.

This consultation proposes a number of changes to our Conditions including, in particular, changes aimed at improving the level of transparency and clarity of qualification fees, as well as changes aimed at improving structure and clarity of wording. We have sought to align our proposals as far as possible – and this is reflected in the fact that there are only a very small number of instances in this consultation where we are proposing different requirements.

We would like to thank the stakeholders who have contributed to this collaborative review and look forward to receiving responses to our consultation.

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## Chapter 1: Introduction

- 1.1 CCEA Regulation, Ofqual and Qualifications Wales are consulting on proposed revisions to our respective Conditions of Recognition, which have been in place for some years. While we do not believe we need to change the Conditions significantly, we believe there is room for improvement. We recognise that awarding organisations would prefer that our respective Conditions are as similar as possible. We are therefore consulting together on a set of changes we plan to make.
- 1.2 Education policy is a devolved matter. As a result, there are different qualifications regulators in England, Northern Ireland and Wales:
- Ofqual in England
  - CCEA Regulation in Northern Ireland Qualifications Wales in Wales
- 1.3 We each regulate in different contexts and have different aims, objectives, powers and duties, derived from separate legislation.
- 1.4 Throughout this consultation, we use the terms 'we', 'us' and 'our' to refer to CCEA Regulation, Ofqual and Qualifications Wales collectively. Where we mean an individual regulator and not all three, we refer to each by name.

### About CCEA Regulation

- 1.5 As set out in the Education (Northern Ireland) Order 1998, CCEA Regulation regulates qualifications offered to learners in Northern Ireland. It does this on behalf of the Department of Education (NI) and Department for the Economy (NI).
- 1.6 The Order sets out the following regulatory powers:
- i. to develop and publish criteria for the accreditation of relevant external qualifications;
  - ii. to seek to ensure that the standards of examinations and assessments in Northern Ireland are recognised as equivalent to those conducted elsewhere in the United Kingdom;
  - iii. in carrying out its functions, to have regard to the requirements of industry, commerce and the professions, and of persons with special learning needs.

### About Ofqual

- 1.7 Ofqual is the independent regulator of qualifications and national curriculum assessments for England, established by the [Apprenticeships, Skills, Children and Learning Act 2009](#). The Act sets out Ofqual's duties and powers, as well as its 5 statutory objectives. In summary, these are:

- i. to secure qualifications standards;
- ii. to promote National Assessment standards;
- iii. to promote public confidence in regulated qualifications and National Assessment arrangements;
- iv. to promote awareness of the benefits of recognition and the range and benefits of regulated qualifications;
- v. to secure that regulated qualifications are provided efficiently.

## About Qualifications Wales

- 1.8 Qualifications Wales is the independent regulator of qualifications in Wales, established by the [Qualifications Wales Act 2015](#). The Act sets out Qualifications Wales's duties and powers, and its principal aims, which are:
- i. ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales; and
  - ii. promoting public confidence in qualifications and in the Welsh qualification system.

## Conditions of Recognition

- 1.9 CCEA Regulation, Ofqual and Qualifications Wales each publish 'Conditions of Recognition' for the qualifications and organisations they regulate. These are known as the *General Conditions of Recognition* in England and Northern Ireland, and the *Standard Conditions of Recognition* in Wales.
- 1.10 The General/Standard Conditions of Recognition (the 'Conditions') are largely the same across England, Northern Ireland and Wales. There are some differences, reflecting differences in legislation, processes and national contexts. For example:
- the three regulators' Conditions each set different rules around the language of assessments;
  - the Conditions refer to the different IT systems used by the three regulators;
  - Qualifications Wales's Conditions refer to a regulated entity as an 'awarding body', whereas Ofqual's and CCEA Regulation's Conditions both use the term 'awarding organisation';
  - Qualifications Wales's Conditions contain rules that relate to 'Approved' and 'Designated' qualifications, which are types of regulated qualification defined only in the Qualifications Wales Act 2015; and
  - Ofqual publishes statutory guidance alongside its Conditions to which awarding organisations must have regard.
- 1.11 Similarly, there are Conditions that differ across regulators as a result of different policy decisions of each regulator.

## Definitions

Throughout this consultation document, we use:

**Awarding organisation** to mean a provider of regulated qualifications operating anywhere in England, Northern Ireland and/or Wales.

**Conditions** to mean the versions of the General Conditions of Recognition used in England and Northern Ireland (respectively), and the Standard Conditions of Recognition used in Wales.

## Three-regulator joint working

- 1.12 Awarding organisations may choose to be recognised in England, Northern Ireland or Wales, or any combination of these. This means that they may need to follow more than one set of Conditions.
- 1.13 As noted above, there are valid reasons why our Conditions might, and indeed do, differ in some places; awarding organisations are already aware of these and are familiar with them.
- 1.14 We have agreed to work together, wherever possible aligning our Conditions, with the aims of:
- securing qualification standards;
  - promoting the interests of learners and public confidence in regulated qualifications;
  - promoting awareness of the benefits of regulated qualifications;
  - maximising value for money for purchasers; and
  - minimising the burden on awarding organisations.
- 1.15 Our consultation is informed by evidence from:
- Qualifications Wales's Review of its Standard Conditions of Recognition<sup>1</sup>,
  - Ofqual's call for evidence on the availability of fee information<sup>2</sup>; and
  - three-regulator meetings to discuss proposed revisions.

## ***Qualifications Wales's Review of the Standard Conditions of Recognition***

- 1.16 As a newly established regulator in 2015, Qualifications Wales announced a review of its Regulatory Framework and Approach. As part of this review, some awarding organisations told Qualifications Wales that the Conditions should be reviewed as they are too prescriptive, lengthy and not transparent, and that they limit, rather than enable, innovation.

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<sup>1</sup> [Qualifications Wales' Review of Standard Conditions of Recognition](#)

<sup>2</sup> [Responses to Ofqual's call for evidence](#)

1.17 As a result of its feedback, Qualifications Wales launched a review of its Conditions on 30 August 2017. The scope of this review was to:

- identify and address, where appropriate, the challenges awarding organisations face in demonstrating compliance with the Conditions;
- review the Conditions for their appropriateness and relevance;
- consider current, emerging and future policy developments and identify changes that may be implemented as part of this review, and changes that may need a longer-term approach;
- explore opportunities for simplifying the Conditions, focusing on issues such as clarity, levels of prescriptiveness, duplication, structure and value; and
- identify any examples of good practice by awarding organisations.

1.18 Qualifications Wales published a report that summarised its findings<sup>3</sup> in October 2018. The review concluded that:

- awarding organisations wished to see revisions across the Conditions;
- awarding organisations preferred for these revisions to be aligned across three regulators as much as reasonably possible; and
- whilst revisions were suggested across the Conditions, the review also highlighted that in some cases other forms of clarification or guidance and support would be helpful.

1.19 Following the publication of Qualifications Wales's review, Ofqual and CCEA Regulation committed to working with Qualifications Wales to consider the findings, at the same time bringing their views, analysis and perspectives on where it would be appropriate to propose changes to our respective Conditions.

### ***Ofqual's call for evidence on qualification fees, purchasing and value for money***

1.20 From 20 July to 30 September 2018, Ofqual invited stakeholders to provide evidence about the availability of fee information<sup>4</sup>, purchasing decisions and securing value for money in the regulated qualifications market.

1.21 Ofqual's summary of the responses<sup>5</sup> is published alongside this consultation.

## **Changes proposed in this consultation**

1.22 This consultation sets out proposed changes to the Conditions. In the main we are proposing to make the same (or closely aligned) changes. Similarly, there are some changes that we each want to make to our respective Conditions to reflect changes in our policies,

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<sup>3</sup> [Qualifications Wales' Review of Standard Conditions of Recognition](#)

<sup>4</sup> [Call for evidence: qualification fees, purchasing and value for money](#)

<sup>5</sup> [Responses to Ofqual's call for evidence](#)

processes and systems. These are all outlined in chapter 3, chapter 4, chapter 5 and chapter 6.

- 1.23 However, there are some proposals on which only one or two regulators are consulting and some of these would create different approaches if adopted. We explain whether each proposal is being made by one or two regulators, or all three, and why.

## Chapter 2: Proposals at a glance

### Introduction

- 2.1 This chapter provides a summary of our proposals which are discussed in chapters 3-7.
- 2.2 These chapters provide a detailed explanation of the main changes we are proposing throughout the Conditions and all of these are tracked as changes in each regulators' Conditions attached at Annex 1-3.
- 2.3 In addition, there are smaller changes also tracked in each of the regulator's annexes. Due to the nature of these changes, these are not listed in the chapters. However, all changes can be seen in the tracked change version of the Conditions in Annexes 1-3 and your feedback is welcomed on all of them.

Table 1 - Revisions proposed by theme and by regulator

Theme	Key proposals	Applies to
<b>Transparency of qualification fees (Condition F1)</b>	<p>Requiring all awarding organisations to publish fee information in a standard format, which must include:</p> <ul style="list-style-type: none"> <li>• a qualification price that encompasses all mandatory costs for a single, additional learner to take the qualification, from registration to receipt of certificate if they pass;</li> <li>• any fees for other products and services that must be purchased with the qualification;</li> <li>• any fees for optional services directly related to the delivery and award of a qualification to a learner, and</li> <li>• any mandatory cohort or centre-level fees.</li> </ul> <p>All fee information must be easily accessible by any potential purchaser without that person having to request it from the awarding organisation.</p>	<p>England: ✓ Northern Ireland: ✓ Wales: ✓</p>

Theme	Key proposals	Applies to
<b>Invoicing of qualification fees (Condition F3)</b>	Clarifying the expectation for awarding organisations to issue invoices in line with HMRC requirements and provide a more detailed breakdown upon request.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Change of Control (Condition A3)</b>	Introducing a definition of 'procure' in Section J and splitting A3.1 (a) into two parts to make clearer the distinct nature of the obligations.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Conflict of interest and personal interest</b>	Clarifying the distinction between a conflict of interest and personal interest: <ul style="list-style-type: none"> <li>• new guidance (CCEA Regulation)</li> <li>• new statutory guidance (Ofqual)</li> <li>• new guidance (Qualifications Wales)</li> </ul>	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Management of Incidents (Condition A7)</b>	Proposing to develop specific guidance on the management of incidents in order to aid awarding organisations' understanding of how to comply with this Condition.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Role of the Responsible Officer</b>	Clarifying awarding organisations' obligation to ensure their Responsible Officer is effective in that role.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Use of units developed by third parties (Condition D6)</b>	Removing current Condition D6. This means that awarding organisations would be responsible for the compliance of units they use in their qualifications – irrespective of whether they (or a third party) developed the unit.	England: ✓ Northern Ireland: ✓ Wales: ✓

Theme	Key proposals	Applies to
<b>Recognition of Prior Learning (Condition E10)</b>	Requiring all awarding organisations to publish a policy that makes clear whether they will recognise prior learning.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Special Consideration (Condition G7)</b>	Confirming that Special Consideration can include proactive adjustments made prior to assessments as well as reactive adjustments to marks. Moving the definition from Condition G7.1 to Section J.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Issuing results (Condition H6)</b>	Requiring awarding organisations to not issue results when directed by a regulator.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Use of independent reviewers in appeals (Condition I1.2)</b>	Clarifying that it is the final decision in respect of an appeal that must involve an independent party.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Improving understanding of the Conditions</b>	Rewording of “For these purposes” and references to “this Condition”.	England: ✓ Northern Ireland: ✓ Wales: ✓
	Rewording “In accordance with its Conditions of Recognition”	England: ✓ Northern Ireland: ✓ Wales: ✓
	Revising the structure of B2, B4, B8 and D5 to provide greater clarity yet not alter requirements	England: ✓ Northern Ireland: ✓ Wales: ✓
	Revising the use of defined terms <ul style="list-style-type: none"> <li>• moving existing defined terms to Section J</li> <li>• updating existing defined terms</li> <li>• introducing new defined terms</li> </ul>	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Keeping the Conditions up to date</b>	Updating definitions, including Data Protection Law to align with substantive law – including to reflect	England: ✓ Northern Ireland: ✓ Wales: ✓

Theme	Key proposals	Applies to
	the introduction of the General Data Protection Regulation (GDPR).	
	Replacing existing references to the legacy IT system RITS with references to the new awarding organisation Portal.	England: ✓ Northern Ireland: ✓ Wales: n/a
	Re-ordering Condition A1 to bring it into line with fellow Regulators and to amend the wording to better reflect the accreditation requirement for vocational qualifications in Northern Ireland.	England: n/a Northern Ireland: ✓ Wales: n/a
	Updating references to substantive corporation tax law in the definition of Change of Control.	England: n/a Northern Ireland: ✓ Wales: n/a
	Revising Condition A1.3 to make it clearer that awarding organisations must submit a qualification within two years of being recognised and that after this point, they must take all reasonable steps to ensure that they award a qualification at least once every two years.	England: ✓ Northern Ireland: ✓ Wales: ✓
	Removing transitional provisions under Conditions E3 and E7	England: n/a Northern Ireland: n/a Wales: ✓
	Use of QiW (E6 and A1.3) – requiring awarding organisations to submit <b>all</b> Qualifications Wales-regulated qualifications to QiW. This extends the existing requirement to submit Approved and Designated qualifications.	England: n/a Northern Ireland: n/a Wales: ✓

Theme	Key proposals	Applies to
	Introducing new definitions to reflect policy in Wales.	England: n/a Northern Ireland: n/a Wales: ✓
	Renumbering Conditions to prevent proposed changes leaving confusing gaps in the Conditions.	England: ✓ Northern Ireland: ✓ Wales: ✓
	Amending Condition J1.7(c) to remove the words "if available" relating to publication of information on an awarding organisation's website.	England: ✓ Northern Ireland: ✓ Wales: ✓
<b>Insolvency</b>	A new definition of 'Insolvency Event' to describe the trigger point for when awarding organisations are required to notify the regulator about insolvency proceedings.	England: ✗ Northern Ireland: ✗ Wales: ✓
<b>Change of Control</b>	Revising the definition of 'Change of Control' to make it clearer to awarding organisations the circumstances in which a change of control is likely to have occurred, and at which point it should notify us if it is, or believes that it is likely to be, subject to a change of control.	England: ✗ Northern Ireland: ✗ Wales: ✓
<b>Use of 'revised from time to time'</b>	Removing all references to 'revised from time to time' from the Conditions (B5.3, E6.2(a), E9.3, I2.1 and I3.1), and replace them with a single, interpretation provision in section J of the Conditions	England: ✗ Northern Ireland: ✗ Wales: ✓

## Chapter 3: Revisions to Section F – proposed by all three regulators

### Introduction

- 3.1. In this section we set out our proposals to amend Condition F1, on providing fee information to purchasers. As a general principle, prices charged for qualifications should offer value for money and be clear and accessible to those who use and purchase qualifications.

### Condition F1 – Information on fees and features of a qualification

- 3.2. All three regulators are committed to ensuring that the qualification system secures value for money<sup>6 7 8</sup>.
- 3.3. Section F of the Conditions covers the obligations in respect of providing information about the fee for a qualification (Condition F1), packaging qualifications with other products or services (Condition F2), and Invoicing (Condition F3).
- 3.4. The flexibility contained within the existing Condition F1.1 allows awarding organisations to provide a list of standard fees upon request, rather than providing it on a publicly available web page. While half of awarding organisations currently publish their fee information, the other half<sup>9</sup> do not, meaning there is, to a degree, a lack of price transparency in the regulated qualifications market, specifically in respect of vocational and technical qualifications. The fees for general qualifications and related services are currently published by the five awarding organisations that offer them and our proposals should not require much, if any, change to this information.
- 3.5. A 2007 US Report for Congress, 'Does Price Transparency Improve Market Efficiency?'<sup>10</sup> drew together the empirical studies of recent decades from around the world. The report concluded that most studies show that price transparency leads to lower and more uniform prices. The report concluded that, even if the average price remains the same, the

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<sup>6</sup> The Apprenticeships, Skills, Children and Learning Act 2009 sets out five statutory objectives for Ofqual, including the 'efficiency objective', requiring that "sums paid [for qualifications]...represent value for money".

<sup>7</sup> The Qualifications Wales Act 2015 requires Qualifications Wales to ensure: 'that qualifications are provided efficiently and so as to secure value for money.'

<sup>8</sup> In Northern Ireland, CCEA Regulation are committed to providing value for money from their qualifications and, as regulator, promoting the need for efficient production from all awarding organisations.

<sup>9</sup> Desk-based review by Ofqual in Feb 2019 found 68 of 152 awarding organisations did not have prices publically available on their websites. Qualification Wales and CCEA Regulation regulate sub-sets of these 152 awarding organisations, with similar profiles of transparency.

<sup>10</sup> [Congressional Research Service \(2007\) "Does Price Transparency Improve Market Efficiency? Implications of Empirical Evidence in Other Markets for the Health Sector"](#)

introduction of price transparency removes some of the unfairness that can occur in an opaque market.

- 3.6. In the qualification system, we know that price is only one factor amongst many other considerations, when purchasing qualifications. However, as the absence of full price transparency could create unfairness or inefficiency, we wish to improve transparency and better enable purchasers to make active and informed decisions.

### **Qualifications Wales's Review of its Standard Conditions of Recognition**

- 3.7. During its review of the Conditions, Qualifications Wales explored the accessibility and transparency of fee information to purchasers, gathering evidence from awarding organisations through stakeholder panels, focus groups and surveys on:
- the extent to which fee information was publicly available;
  - the range of fees that are set for other products and services;
  - practice in relation to packaging qualifications with other products or services; and
  - clarity of invoices issued to purchasers.
- 3.8. Qualifications Wales also sought views from purchasers through focus groups and surveys on:
- the accessibility and transparency of fee information;
  - the perceived value for money of those fees and related products or services; and
  - their experiences of invoices issued by awarding organisations.
- 3.9. Qualification Wales had also researched fees in general qualifications<sup>11</sup> which fed into its review.
- 3.10. Qualifications Wales held discussions and focus groups with a sample of awarding organisations and representative organisations, including the Federation of Awarding Bodies (FAB) and the Joint Council for Qualifications (JCQ), to test some early proposals and to determine the potential impact of revising Condition F.
- 3.11. Evidence gathered demonstrated broad support to make awarding organisations publish their fees and pricing structures, including details about other products and services.
- 3.12. Most awarding organisations supported the principle that they should be required to publish fee information. Some awarding organisations thought this was already required and wanted all awarding organisations to do so. They described this as ensuring a 'level playing field'.

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<sup>11</sup> [GCSE and A level exam fees – research report](#) (Qualifications Wales, 2018)

3.13. In addition, Qualifications Wales commissioned an independent cost-benefit analysis of the proposals to test the perceived benefits and impacts. The benefits were shown clearly to outweigh the potential costs, as reflected in the Regulatory Impact Assessment for this consultation (Chapter 8).

### **Ofqual's call for evidence**

3.14. Ofqual issued a call for evidence<sup>12</sup> in July 2018 to establish whether qualification market stakeholders, particularly purchasers, consider there is a lack of transparency in this market that might inhibit market efficiency.

3.15. The call for evidence sought views from purchasers on:

- i. how they gathered information on the available qualifications;
- ii. their experiences of switching providers; and
- iii. the clarity of awarding organisations' invoices.

3.16. It also sought the views of awarding organisations on qualification pricing and their relationships with centres.

3.17. Ofqual engaged directly with stakeholders, through:

- i. a focus group discussion for awarding organisations;
- ii. meetings with several industry bodies, including FAB and the Association of Colleges, and
- iii. one-to-one conversations with some further education college staff.

3.18. Ofqual also commissioned SLG Economics Ltd, to provide an independent review of the issues around price transparency and market efficiency and to consider the responses to the call for evidence.

3.19. Individual purchasers and purchaser industry bodies (including the Association of Colleges and the Association of School and College Leaders), all wanted better access to fee information.

3.20. A few awarding organisations felt that their price information was commercially sensitive, with smaller organisations perceiving that they might be undercut by larger organisations. More than half of the market already publish their prices openly, covering awarding organisations of all sizes. The responses to Ofqual's call for evidence did not, however, raise concerns or examples of manipulative pricing strategies being deployed.

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<sup>12</sup> [Responses to Ofqual's call for evidence](#)

3.21. The review by SLG Economics, based on its experience of regulated markets and stakeholders' responses, concluded that:

- "the low importance of price in purchasing decisions, the difficulty of gaining pricing information, the difficulties of switching supplier and the lack of transparency of prices [means] the market does not appear to be operating particularly efficiently"; and

"at the least, this evidence points to the need for greater price transparency in the market."

## Proposals

3.22. As we began to develop proposals for a new Condition F1 that would secure greater price transparency, we judged that we would also need to improve pricing clarity, to ensure price information is meaningful.

3.23. We are therefore consulting on proposals that are more prescriptive on how some fees are presented. We think this will realise the benefits of greater price transparency.

3.24. To ensure the proposals achieve our aims and the expectations of market participants, the proposed new Condition F1 would create new requirements for awarding organisations to identify categories of fees and publish them in a form that is compliant with the new Condition. The proposed Condition would require the publication of:

- i. a qualification price that encompasses all mandatory costs for an individual learner to obtain the qualification, from registration to receipt of the certificate;
- ii. any fees for other products and services that are required to be purchased along with the qualification;
- iii. any fees for optional services directly related to the delivery and award of a qualification to a learner, e.g. reviews of marking; and
- iv. any mandatory cohort or centre-level fees, such as annual inspection fees.

3.25. The proposed Conditions to replace Conditions F1.1 to F1.6 are:

- F1.1** In respect of each of its qualifications that it makes available for purchase, an awarding organisation must publish –
- (a) where possible, the Standard Qualification Fee,
  - (b) where applicable, any Package Fee,
  - (c) where possible, any Associated Learner Fees,
  - (d) where possible, any Mandatory Centre Fees,
  - (e) where it is not possible for the awarding organisation to calculate a Standard Qualification Fee, Associated Learner Fees or any Mandatory Centre Fees, a statement of the method by which these fees are calculated.

- F1.2** An awarding organisation must ensure that the information which it publishes as required by Condition F1.1 is –
- (a) kept up to date,
  - (b) clear to a potential purchaser, and
  - (c) easily accessible to any potential purchaser without that person having to request it from, or provide any information to, the awarding organisation.
- F1.3** An awarding organisation must take all reasonable steps to publish the information required by Condition F1.1 sufficiently far in advance of the time at which the qualifications to which that information relates will be made available to Learners as to satisfy the reasonable planning requirements of potential purchasers.
- F1.4** Where such information cannot be published to this timescale, the awarding organisation must instead provide or make available to potential purchasers information that is sufficient to give a reasonable indication of its likely fees, together with a clear statement to make potential purchasers aware that this information is only indicative.

- 3.26. We have intentionally worded the proposed requirements in Conditions F1.1(a)-(d) and F1.3 so that they would apply in almost all circumstances. The alternative arrangements detailed in the proposed Condition F1.1(e) would only apply in exceptional circumstances where it is not possible to publish the information required by the proposed Conditions F1.1(a)-(d). Similarly, the alternative arrangements in the proposed Condition F1.4 would only be available where an awarding organisation cannot publish all required information within the timescale specified in Condition F1.3.
- 3.27. New definitions for these fee categories are proposed to be included in Section J of the Conditions. This will ensure all awarding organisations' pricing structures and published fees comply with the revised Conditions and subsequently support potential purchasers in making informed choices.
- 3.28. The proposed new definitions to be included in Section J are:

**Standard Qualification Fee**

A fee which, subject to negotiation, is payable to an awarding organisation by a purchaser that represents the sum of all mandatory fees that must be paid in respect of an individual Learner for that Learner to have the opportunity to obtain one of the awarding organisation's qualifications, including a certificate in relation to it.

This would exclude any Learner pre-requisites clearly set out in the qualification specification, for example prior learning or membership of a professional body.

Where an awarding organisation only makes a qualification available as part of a package, together with other products and services, the Standard Qualification Fee will be the notional fee payable in respect of the qualification only.

### **Package Fee**

Where an awarding organisation only makes a qualification available as part of a package together with other products and services, any notional fee which is -

- (a) subject to negotiation, payable to an awarding organisation by a purchaser of the package in respect of each of those other products and services, and
- (b) not included in the Standard Qualification Fee.

### **Associated Learner Fees**

Any fee which is –

- (a) subject to negotiation, payable to an awarding organisation by a purchaser for an optional service that is directly related to the delivery and award of a regulated qualification to an individual Learner, and
- (b) not included in the Standard Qualification Fee.

### **Mandatory Centre Fees**

Any mandatory fee which –

- (a) subject to negotiation, an awarding organisation requires a Centre to pay to it in order to undertake the delivery of an assessment to Learners (or any other activities) on behalf of the awarding organisation, irrespective of the number of Learners taking the qualification, and
- (b) is not included in the Standard Qualification Fee.

- 3.29 Condition J1.7(c) includes the words “if available”, relating to publication of information on an awarding organisation’s website. We propose the removal of these words as we consider they are no longer appropriate due to changes in practice since the Conditions were first written. This proposal would apply in all instances where the Conditions require awarding organisations to publish information, and with reference to the above paragraphs, specifically Condition F1.

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### **QUESTION 1**

To what extent do you agree or disagree that our proposed changes to Condition F1 (Fees) would:

- a) increase transparency of fee information?
- b) help purchasers secure value for money?

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### **QUESTION 2**

To what extent do you agree or disagree that the proposed categorisation of fees under Condition F1 would provide sufficient clarity to purchasers?

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### **QUESTION 3**

What other changes could we consider to improve:

- a) transparency of fee information; and/or
- b) value for money;

in the market for regulated qualifications?

## Condition F2 - Packaging qualifications with other products or services

- 3.30 Condition F2 currently allows awarding organisations to only make a qualification available in a package, together with other products or services, if it considers it appropriate to do so.
- 3.31 We considered the extent to which the current Condition F2 could create a situation in which centres are compelled into making purchases which may not be in the best interests of their learners, or represent value for money.
- 3.32 Packaging qualifications with other products or services should not create unreasonable disincentives to learners and centres nor lead to purchasers paying for services they did not need and/or want. However, we also recognise and acknowledge that there are instances of packaging in the qualification system that are entirely appropriate and can provide financial savings.
- 3.33 We believe that the proposed changes to Condition F1, in particular the introduction of the defined term 'Package Fee', will clarify for purchasers where qualifications are packaged with other products or services.
- 3.34 Importantly, this new definition will require awarding organisations to separate the fees relating to the other products and services from the notional standard qualification fee. Potential purchasers will then be better able to decide whether these packaged products or services represent value for money.
- 3.35 We have concluded that, given the improved transparency that would result from the proposed changes to Condition F1, we do not need to change Condition F2 at present. However, we will continue to monitor market behaviours in this area.

## Condition F3 – Invoicing

- 3.36 Condition F3.1 requires awarding organisations to issue invoices ‘in a timely manner’ and to ‘provide a breakdown of its fees to a reasonable level of detail following a request from a purchaser’.
- 3.37 Centres told us they find it difficult to reconcile amounts on invoices, particularly in large centres where some of the amounts can be significant.
- 3.38 While the requirements of Condition F3.1 in relation to the content of awarding organisation invoices appear brief, this is because the legal requirements for the content of invoices issued by VAT-registered businesses are already set out by HMRC<sup>13</sup> and are mirrored in their guidance for non-VAT invoices. They constitute what would be considered a sufficient level of detail to allow centres to be clear about what they are being asked to pay for.
- 3.39 The intention of the current wording of Condition F3.1(b) is to require awarding organisations to provide a further breakdown upon request, where a Centre is unclear on the make-up of one or more elements of this invoice. This breakdown would need to be at a level of granularity appropriate to the request, so long as the request is reasonable.
- 3.40 It may be that, these requirements are not conveyed in the wording of Condition F3.1, so we propose to alter the wording as follows:

### Condition F3 – Invoicing

#### **F3.1** An awarding organisation must –

- (a) ensure that its invoices in relation to the provision of qualifications are issued in a timely manner, and
- (b) provide a breakdown of its fees, beyond that already required by HMRC, to a reasonable level of detail following a request from a purchaser.

- 3.41 While this proposal does not increase the requirements imposed by Condition F3.1, it will provide clarity to purchasers and awarding organisations on the expectations imposed by this Condition.

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<sup>13</sup> <https://www.gov.uk/vat-record-keeping/vat-invoices>

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**QUESTION 4**

To what extent do you agree or disagree that our proposed changes to Condition F3 (Invoicing) would improve clarity on invoicing requirements?

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**QUESTION 5**

Please provide any other comments you may have on our proposed changes to Section F of our Conditions.

## Chapter 4: Other revisions to Conditions – proposed by all three regulators

### Introduction

- 4.1. This chapter sets out the proposed revisions (in addition to those to Condition F) on which we are all consulting.

### Condition A3 – Safeguards on Change of Control

- 4.2. Condition A3.1 currently specifies a duty on awarding organisations in relation to changes of control.

**A3.1** Where there is a change of control in relation to an awarding organisation, it must -

- (a) take (and procure that every other relevant person takes) all reasonable steps to ensure that the change of control does not have an Adverse Effect; and
- (b) put in place a plan designed to ensure that the interests of Learners will be protected.

- 4.3. As part of Qualifications Wales's review, some awarding organisations said they found the use of 'procure' in this context confusing. They questioned whether it should be understood in a contractual context, and whether it might require formal contractual arrangements with a wide range of third parties, including some with limited involvement in any change of control.
- 4.4. We use the word 'procure' here in its formal legal sense of 'persuading, inducing or causing someone else to do something'.
- 4.5. In the context of a change of control, that means an awarding organisation must cause 'every other relevant person' (including, for example, potential future owners) to take all reasonable steps to prevent the change of control having an Adverse Effect. The Condition intentionally does not specify how the awarding organisation should do this – as the awarding organisation may need to take different steps depending on the nature of a particular change of control.
- 4.6. We believe the current wording of this Condition sets the appropriate bar for compliance. However, we think that some changes to the wording may help awarding organisations better understand our requirements.
- 4.7. We have identified two ways in which we might alter the drafting of the Conditions to aid awarding organisations' understanding. First, we think it might be helpful to separate the current Condition A3.1(a) into two parts – splitting the requirement that relates to the awarding organisation's own actions from the requirement that relates to the actions of

third parties. We think this might help make the distinct nature of these obligations clearer. Secondly, we think it might be helpful to introduce a definition of the term 'procure' in Section J of the Conditions. This will make explicit how awarding organisations should interpret this word in this context.

4.8 We set out our proposed revised Condition A3.1, and definition of 'procure' below:

**A3.1** Where there is a Change of Control in relation to an awarding organisation, it must

-

- (a) take all reasonable steps to ensure that the Change of Control does not have an Adverse Effect, and
- (b) Procure that every other relevant person takes all reasonable steps to ensure that the Change of Control does not have an Adverse Effect, and
- (c) put in place a plan designed to ensure that the interests of Learners will be protected.

**Procure**

To cause or bring about an outcome by care and effort.

## QUESTION 6

To what extent do you agree or disagree with our proposed changes to Condition A3.1 (Duty on Change of Control)?

## Condition A4 - Conflict of Interest and Personal Interest – proposal to introduce guidance

- 4.9 The Conditions currently refer to two distinct, but related concepts: 'conflicts of interest' (used only in Condition A4) and 'personal interest' (used in Conditions A4, A8, G4 and I1).
- 4.10 The Conditions do not prohibit all conflicts of interest. They do require awarding organisations to identify, monitor and manage all 'conflicts of interest' to prevent them having an Adverse Effect<sup>14</sup>, and minimising and correcting any Adverse Effect they do have.
- 4.11 However, the Conditions that refer to a 'personal interest' do limit what individuals with such an interest can do (and in some cases prohibit them from doing something altogether). We take this approach where the personal interest cannot be mitigated effectively.
- 4.12 One example is the current Condition A8, which prohibits anyone with a personal interest from carrying out investigations into alleged or suspected malpractice. This is to ensure decisions on whether malpractice occurred reflect the facts, and are not influenced by inappropriate factors such as:
- personal relationships between the investigator and the individual accused/suspected of malpractice (including the extreme case where the investigator would be the individual accused/suspected of committing malpractice); or
  - financial incentives that could influence the investigator to conclude that malpractice did (or did not) take place.
- 4.13 A theme that emerged from Qualifications Wales's review of its Conditions was that awarding organisations found our requirements relating to conflicts of interest difficult to understand. Awarding organisations told us:
- they found it confusing that the Conditions use both the term 'conflict of interest' and the term 'personal interest';
  - it was unclear why personal interest was being used in some instances and what this meant.
- 4.14 Ofqual has also received feedback on this area, including in response to questions on guidance included in its 2018 awarding organisation communications survey. When Ofqual recently consulted on new guidance for GCSEs and A levels, including a section on personal interest, the awarding organisations that offer GCSEs and A levels agreed unanimously that Ofqual should introduce the guidance.

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<sup>14</sup> Please refer to the definition of Adverse Effect which can be found in Section J of our Conditions.

- 4.15 Based on this feedback, we agree that we should address awarding organisations' confusion.
- 4.16 We have considered the options available to us, including the potential inclusion of a definition for 'personal interest' in Section J and guidance and/or the provision of awarding organisation workshops on the issues surrounding both terms.
- 4.17 Whether an individual has a personal interest or not depends very much on the context and facts of a particular case: this is difficult to capture within a definition. As a result, we think the best way to provide the clarity awarding organisations are seeking is to introduce guidance which explains how the concept of 'personal interest' relates to the wider concept of conflict of interest.
- 4.18 Guidance allows for fuller discussion of the issues and also means we can:
- provide examples of situations where a personal interest could arise; and
  - suggest how an awarding organisation might approach determining whether or not a personal interest exists in a particular case.
- 4.19 In Ofqual's case, this reflects the approach already taken in relation to the term 'personal interest' in respect of appeals in GCSE, AS, A level, Project and Technical Qualifications. Feedback from awarding organisations suggests that this approach has worked well for these qualifications.
- 4.20 Ofqual is proposing to introduce guidance (set out in full below) that will form part of its statutory guidance on the Conditions.
- 4.21 Qualifications Wales and CCEA Regulation do not have the same powers to introduce statutory guidance, but they intend to introduce guidance separately.

### **Guidance on Conflicts of Interest (including personal interest)**

#### ***What is a conflict of interest?***

Condition J1 defines a Conflict of Interest<sup>15</sup> as:

[Definition from Condition J1]

The three parts of this definition cover, respectively:

- actual Conflicts of Interest which relate to the awarding organisation itself,

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<sup>15</sup> See paragraph 5.24 where we set out proposals to move all definitions to section J of the Conditions

- actual Conflicts of Interest which relate to the individuals connected to the development, delivery or award of the awarding organisation's qualifications, and
- perceived Conflicts of Interest (which may relate either to the awarding organisation or to individuals connected to the development, delivery or award of its qualifications).

**What requirements must an awarding organisation meet?**

Condition A4 imposes a number of obligations on awarding organisations in relation to Conflicts of Interest. Awarding organisations must -

- identify and monitor all Conflicts of Interest which relate to it, as well as any scenario in which it is reasonably foreseeable that any such conflict of interest will arise in the future (Condition A4.2),
- establish and maintain an up to date record of all Conflicts of Interest which relate to it (Condition A4.3),
- take all reasonable steps to ensure no Conflict of Interest which relates to it has an Adverse Effect (Condition A4.4),
- in any case where Conflict of Interest nonetheless results in an Adverse Effect, take all reasonable steps to mitigate the Adverse Effect as far as possible and correct it (Condition A4.5), and
- establish, maintain and comply with a written conflict of interest policy (Condition A4.7).

The Conditions do not impose a general prohibition on all Conflicts of Interest. Rather, they require awarding organisations to identify, monitor and manage those Conflicts of Interest with a view to minimising any Adverse Effect they might have.

However, some of the Conditions do impose additional restrictions on activities that can be carried out by individuals with a personal interest:

- Condition A4.6 requires awarding organisations to take all reasonable steps to avoid Learners being assessed by anyone with a personal interest in the outcome of the assessment, and – where it is unavoidable – to ensure that part of the assessment is scrutinised by someone else who does not have such an interest,
- Condition A8.2 prohibits anyone with a personal interest in the outcome of the investigation from carrying out investigations of suspected or alleged malpractice,
- Condition G4.6 prohibits anyone with a personal interest in the outcome of the investigation from carrying out investigations of suspected or alleged breaches of confidentiality, and
- Condition I1.2 prohibits anyone with a personal interest in the decision being appealed in a decision being appealed from taken decisions on an appeal.

**What is a personal interest?**

A personal interest is a Conflict of Interest that relates to a particular individual. It can either be an actual Conflict of Interest under part (b) of our definition or a perceived Conflict of Interest under part (c).

A personal interest can be financial or non-financial in nature. So, for example:

- if a person conducting an investigation into alleged malpractice is related to one of the Learners accused of malpractice, that would be a personal interest and prohibited by Condition A8.2.
- if a person's salary is related to the number of appeals they uphold (or reject), that too would be a personal interest and prohibited by Condition I1.2.

To determine whether or not a personal interest exists in a particular case, the relevant question to ask is whether:

- the person carrying out the assessment, investigation or appeal has any reason or incentive to make anything other than a good faith decision in line with the relevant Conditions; or
- an informed or reasonable person would conclude that such a reason or incentive exists.

## QUESTION 7

To what extent do you agree or disagree with Ofqual's draft guidance on Conflict of Interest, (including personal interest)?

## Condition A7 - Management of Incidents

4.22 Condition A7.1 requires awarding organisations to respond to incidents that could have an Adverse Effect.

**A7.1** Where any incident occurs which could have an Adverse Effect, an awarding organisation must (whether or not it has previously identified a risk of that incident occurring) promptly take all reasonable steps to -

- (a) prevent the Adverse Effect and, where any Adverse effect occurs, mitigate it as far as possible and correct it, and
- (b) give priority to the provision of assessments which accurately differentiate between Learners on the basis of the level of attainment they have demonstrated and to the accurate and timely award of qualifications.

4.23 During Qualifications Wales's review, several awarding organisations suggested that the requirements of sub-clause (b) of this Condition were not clear. Awarding organisations suggested multiple different interpretations for what (b) described, including:

- i. giving priority to assessments with grading scales, as opposed to pass-fail;
- ii. giving priority to those qualifications which differentiate accurately, rather than those which do so inaccurately; and
- iii. giving priority to the provision of assessments, rather than to other aspects of the development, delivery and award of qualifications.

4.24 We want our requirements to be as clear as possible to awarding organisations, but they must also be precise, and provide appropriate protection for learners and other users of qualifications.

4.25 As currently written, Condition A7 applies when an awarding organisation is managing an incident that may lead to an adverse effect. In that scenario, it requires the awarding organisation to prioritise good assessments that allow them to make accurate judgements about learners' attainment, and delivering accurate and timely awards. Our view is that this is the appropriate bar for compliance, and we do not want to alter it.

4.26 Instead (and in line with awarding organisation feedback that support and guidance was just as important as revisions to the Conditions) we plan to develop specific guidance on the management of incidents.

4.27 This guidance will seek to address some of the key misconceptions highlighted by Qualifications Wales's review, and to aid awarding organisations' understanding of how to comply with this Condition.

4.28 We will look to work together to produce this guidance. In line with its statutory duty to consult on changes to its regulatory framework, Ofqual will consult on any new guidance at a later date.

## Condition B1 – Role of the Responsible Officer

- 4.29 The current Condition B1 requires an awarding organisation to ensure that:
- it has a responsible officer at all times;
  - its responsible officer serves as the authoritative point of contact about all activities undertaken that are of interest to the regulator;
  - the regulator can rely on statements made by the responsible officer as accurate, and made on behalf of the awarding organisation; and
  - the regulator can treat any statements, requests or notices given to the responsible officer as having been given to the awarding organisation.
- 4.30 The Conditions do not currently specify the position a responsible officer should hold within an awarding organisation. This is intentional, as the different sizes, structures and natures of awarding organisations mean a “one-size-fits-all” approach would not be appropriate.
- 4.31 That said, evidence gathered through Qualifications Wales’s review suggests that responsible officers can have very different levels of seniority within awarding organisations. While this might be legitimate, we are also concerned that it may reflect a misunderstanding of our expectations.
- 4.32 We intentionally do not prescribe the position a responsible officer should hold within an awarding organisation. The Conditions require the responsible officer to act as an authoritative point of contact – that means we must be able to rely on their statements as being the formal view of the awarding organisation. We must also be able to treat communications sent to the responsible officer as having been received by the awarding organisation as a whole.
- 4.33 This means awarding organisations must consider carefully how they enable their responsible officer to carry out that role effectively- and in particular whether they have sufficient authority to carry out the role.
- 4.34 We think it would be helpful if our rules made this more explicit. This will allow awarding organisations to reflect on their approach and make changes where necessary.
- 4.35 We are therefore proposing to amend Condition B1 to include the following new requirement:

### **The role of the Responsible Officer**

[...]

**B1.5** An awarding organisation must ensure that its Responsible Officer is effective in the role, including, in particular, by ensuring the Responsible Officer has sufficient authority to carry out that role.

4.36 We also think it could be helpful for our Conditions to include an explicit definition of the term 'Responsible Officer'. Currently, the functions and responsibilities of the responsible officer are embedded within Condition B1, and the role is not defined separately in Section J.

4.37 Our proposed definition for 'Responsible Officer' is as follows:

**Responsible Officer**

An individual appointed to act as an awarding organisation's authoritative point of contact for [Regulator].

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**QUESTION 8**

To what extent do you agree or disagree that our proposed changes to Condition B1 would make our requirements about the role of the responsible officer clearer?

## Condition D6 – Compliance of units developed by others with Regulatory Documents

- 4.38 Conditions D5 and D6 both relate to the application of Regulatory Documents<sup>16</sup> to regulated qualifications. Taken together, they require (with one exception) awarding organisations to ensure that:
- qualifications (and their constituent units) comply with any relevant rules set out in Regulatory Documents;
  - they have regard to any relevant guidelines and principles of good practice in Regulatory Documents when developing qualifications (and their constituent units).
- 4.39 The exception is when a qualification uses units (or rules for combining units) that the awarding organisation did not develop itself. In that scenario, the awarding organisation must reasonably believe that any units it did not itself develop comply with the relevant requirements, and have been developed having regard to relevant guidelines and principles of good practice.
- 4.40 In principle at least, this means awarding organisations are currently slightly less accountable for a qualification's compliance if it uses units that were developed by someone else.
- 4.41 In practice, this distinction is largely a nominal one. This is because many of the rules and guidance set out in Regulatory Documents apply solely to qualifications that only use units the awarding organisation itself developed.
- 4.42 Our current rules were necessary under the Qualifications and Credit Framework (QCF) – a jointly-regulated credit transfer system that was previously used across England, Northern Ireland and Wales. This is because the QCF rules compelled awarding organisations to use existing units from the unit bank (which may well have been developed by others) wherever this was possible.
- 4.43 However, the QCF is no longer in use; it has been replaced in Wales by the Credit and Qualifications Framework for Wales, and in England and Northern Ireland by the Regulated Qualifications Framework. Therefore, there is no longer any regulatory requirement for awarding organisations to use units developed by someone else.

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<sup>16</sup> Formal documents published by the regulator that set out rules and guidance for regulated qualifications. Ofqual and CCEA Regulation use the term to mean documents that are separate from the Conditions (and any additional qualification-specific Conditions of Recognition); Qualifications Wales use it to mean a broader range i.e. all documents that are regulatory in nature e.g. conditions, criteria, policies and procedures – including the Standard Conditions of Recognition.

- 4.44 Awarding organisations can now choose freely between developing their units, and entering into an agreement to use a unit developed by someone else. We believe they should be fully responsible and accountable for all aspects of the qualifications they offer.
- 4.45 As a result, we propose to remove Condition D6. This means that awarding organisations would become fully responsible for ensuring all their qualifications comply with any relevant rules specified in our Regulatory Documents, as required by Condition D5, irrespective of whether the awarding organisation developed all of the units and rules of combination used within them.
- 4.46 At the same time, we propose to remove the defined term 'Rule of Combination' from Condition J1, as Condition D6 was the only place that this term was used.

## **QUESTION 9**

To what extent do you agree or disagree that we should remove the current Condition D6 (Compliance of units developed by others with Regulatory Documents) and the related defined term 'Rule of Combination' in J1 at this time?

## Condition E10 - Recognition of Prior Learning

4.47 Recognition of Prior Learning (RPL) is the identification, assessment and formal acknowledgement of whether a learner can demonstrate that they can meet the assessment requirements for a unit or qualification through knowledge, understanding or skills they already possess.

4.48 Where an awarding organisation chooses to recognise prior learning, Condition E10.1 (set out in full below) currently requires them to do so in line with a published policy. That policy must also ensure that the awarding organisation's approach to recognition of prior learning does not compromise its ability to comply with any of our rules.

**E10.1** Where an awarding organisation has in place a policy for the recognition of prior learning it must -

- (a) ensure that the policy which it has in place enables the awarding organisation to award qualifications in accordance with its Conditions of Recognition,
- (b) publish that policy, and
- (c) comply with that policy.

4.49 However, Condition E10.1 does not require awarding organisations to have a policy for RPL. Learners, and other users of qualifications, might legitimately want to understand whether an awarding organisation would recognise prior learning, as this might inform their decisions about purchasing qualifications. Currently, they might only be able to infer (from the absence of a published policy) that an awarding organisation does not offer RPL. We think it would be clearer and more transparent for all users of qualifications if information about awarding organisations' use (or not) of RPL were consistently available.

4.50 CCEA Regulation, Ofqual and Qualifications Wales are currently undertaking a re-referencing of their respective frameworks<sup>17</sup> to the European Qualifications Framework (EQF). Part of this referencing requires clarity on processes for the validation of prior learning. In this context, and in order to reflect and align these expectations in our regulatory requirements, we have identified the value in making arrangements for RPL transparent.

4.51 We are therefore proposing to extend the requirements of Condition E10 so that all awarding organisations will be required to publish a policy statement outlining their approach to RPL. This does not mean that we will require awarding organisations to offer RPL - simply that they need to publish a policy statement which makes clear, to all users of qualifications, whether or not they do.

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<sup>17</sup> [Credit and Qualifications Framework \(CQFW\)](#) and the [Regulated Qualifications Framework \(RQF\)](#)

4.52 Where an awarding organisation does offer RPL, our existing requirements to have, publish and comply with a policy that enables them to comply with all our relevant rules would remain unchanged. Our proposed revised Condition E10.1 is shown below.

**E10.1** An awarding organisation must establish, maintain, publish and comply with a written policy for the Recognition of Prior Learning which enables the awarding organisation to award qualifications in a way that complies with its Conditions of Recognition.

## QUESTION 10

To what extent do you agree or disagree with our proposal to amend Condition E10 to require all awarding organisations to publish a policy statement on Recognition of Prior Learning?

## Condition G7 – Definition of ‘Special Consideration’

- 4.53 Currently, Condition G7 provides a definition of ‘Special Consideration’ and a cross reference to that definition appears in Condition J1.8. In line with the more general change proposed in Chapter 5 (see paragraphs 5.34-5.37), we are proposing to move the full definition from the current Condition G7.1 and replace the cross referenced definition at Condition J1.8.
- 4.54 We are also proposing to make minor adjustments to the definition of Special Consideration.
- 4.55 We originally defined Special Consideration in the ‘*GCSE, GCE, principal learning and project code of practice*’<sup>18</sup>. This original definition specifically related to post-assessment adjustments to marks for learners whose performance had been affected by temporary illness, injury or some other event outside their control.
- 4.56 When we introduced the Conditions, we altered the definition of Special Consideration to include other changes made for learners in this position – such as the provision of scribes in assessments for learners with temporary injuries that prevented them writing.
- 4.57 In part because the definition has changed over time, there remains some confusion amongst awarding organisations about what we mean by Special Consideration. We want to be as clear as possible that Special Consideration encompasses all changes made for learners whose performance in an assessment will be (or has been) affected by temporary illness, injury or some other event outside their control.
- 4.58 We are therefore proposing to make some minor changes to the definition of Special Consideration to achieve that aim.

### Current definition in Condition G7.1:

For the purposes of this condition, Special Consideration is consideration to be given to a Learner who has temporarily experienced –

- (a) an illness or injury, or
- (b) some other event outside of the Learner’s control,

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<sup>18</sup> <https://www.gov.uk/government/publications/gcse-gce-principal-learning-and-project-code-of-practice>

which has had, or is reasonably likely to have had, a material effect on that Learner's ability to take an assessment or demonstrate his or her level of attainment in an assessment.

**Proposed revised definition in section J:**

***Special Consideration***

Consideration to be given to a Learner who has temporarily experienced an illness or injury, or some other event outside of his or her control, which has, or is reasonably likely to have, materially affected the Learner's ability to –

- (a) take an assessment, or
- (b) demonstrate his or her level of attainment in an assessment.

**QUESTION 11**

To what extent do you agree or disagree with our proposed changes to the definition of Special Consideration?

## Condition H6 - Issuing results

- 4.59 Condition H6 requires all awarding organisations to issue results, and to take all reasonable steps to issue results in line with their published timescales.
- 4.60 There are, occasionally, some situations where we would want awarding organisations to delay issuing results. The most obvious is when the awarding organisation needs to take more time to ensure its results are accurate. However, another scenario might be where multiple awarding organisations issue their results at the same time, but will not all be able to meet a planned deadline. Here, we might want to delay all awarding organisations' results so that learners are not disadvantaged; for example, in the university admissions process.
- 4.61 Our existing powers already allow us to intervene to secure a delay in issuing results. However, we think it will be clearer for awarding organisations if the Conditions explicitly require an awarding organisation to comply with an instruction to not issue results. This would enable us to intervene in the most efficient way to protect learners.
- 4.62 We propose to do this by introducing a new Condition H6.2:

**H6.2** An awarding organisation must comply with any notice in writing issued by [the regulator] under this Condition requiring it to refrain from issuing results for a qualification or qualifications -

(a) until such date as [the regulator] might specify; and

(b) until it has complied with such requirements as [the regulator] might specify.

- 4.63 It is important to understand that we do not expect or intend to intervene more often to secure a delay in the issuing of results. That is not the purpose of this change. Rather, we want to make sure that the Conditions are clear that we can intervene in this way, and that we can act quickly in the rare cases where it is necessary.
- 4.64 There may also be situations where we continue to use existing powers, either on their own or in conjunction with the new Condition H6.2. As now, we will use the most appropriate approach in each case, based on the individual circumstances.

## QUESTION 12

To what extent do you agree or disagree with our proposed changes to Condition H6 (Issuing Results)?

## Condition I1 – Appeals process

4.65 Condition I1.2(c) currently states:

**I1.2** For these purposes [specified in Condition I1.1], the appeals process must provide for  
 –  
 [...] (c) all appeal decisions to involve at least one decision maker who is not an employee of the awarding organisation, an Assessor working for it, or otherwise connected to it,  
 [...]

4.66 This Condition does not currently apply to certain general qualifications – including all GCSEs, AS and A levels – as we specify more detailed, bespoke, appeal arrangements for these qualifications.<sup>19 20 21</sup>

4.67 Awarding organisations have told us – both in their responses to Qualifications Wales’s review of its Conditions, and more generally – that they are unclear when Condition I1 requires them to use an independent decision maker.

4.68 Some interpret the term “appeal decision” broadly (as including every decision made about an appeal, however trivial) and some more narrowly (for example, as only including substantive decisions on whether or not to uphold an appeal).

4.69 We want awarding organisations to have scope to consider different options and approaches in designing effective appeals arrangements, so long as their appeals process involves an independent decision maker when making a final decision on the outcome of an appeal.

4.70 We therefore propose to amend this Condition to make this as clear as possible. We also want to be clear that:

- we do not prevent awarding organisations offering a staged appeals processes (for example, to allow for an initial, more expedited, stage that does not involve independent decision makers), so long as all appeals can be referred for a final decision that does involve an independent decision maker; and
- we also do not require awarding organisations to offer a staged appeals process.

<sup>19</sup> <https://www.qualificationswales.org/english/publications/additional-standard-conditions-of-recognition-for-gcse-gce-qualifications/>

<sup>20</sup> CCEA Regulation – Qualification Level Conditions for GCE and GCSE - <http://ccea.org.uk/regulation/compliance>

<sup>21</sup> Ofqual Qualification-Level Conditions for [reformed AS and A levels](#), [legacy AS and A levels](#), [GCSEs \(graded 9 to 1\)](#) and [GCSEs \(graded A\\* to G\)](#).

- 4.71 Our proposed changes to Condition I1 will make clear that awarding organisations are able to offer streamlined and cost-effective appeal arrangements prior to the final stage. They will also ensure our requirements in relation to independent decision-makers are consistent across all the qualifications we regulate.
- 4.72 For consistency with the approach taken in our requirements for general qualifications, we also propose minor restructuring within this Condition, meaning that the revised wording would be at Condition I1.2(d) rather than I1.2(c) (and the current I1.2(d) would become the new I1.2(c)). Our proposed revised wording is set out below.

**Proposed Revised Condition I1.2(c):**

**I1.2** For the purposes of Condition I1.1, an awarding organisation’s appeals process must provide for –

[...]

- (c) the final decision in respect of the outcome of an appeal to involve at least one decision maker who is not an employee of the awarding organisation, an Assessor working for it, or otherwise connected to it,

[...]

**QUESTION 13**

To what extent do you agree or disagree that our proposed changes to Condition I1.2 would clarify when we require an independent decision maker in appeals processes?

## Chapter 5: Improving understanding of the Conditions

- 5.1 In their responses to Qualifications Wales's review, awarding organisations highlighted several features of the drafting of the Conditions that they felt made them harder to understand.
- 5.2 The Conditions are a formal legal instrument that allows us to hold awarding organisations to account. They must – if needed – be enforceable in a court of law.
- 5.3 As such, the Conditions need to be drafted precisely, and a degree of complexity and formality is inevitable. At the same time, we think it is right for us to explore alternative drafting options that might help awarding organisations understand our requirements better. That is what we do in this chapter.

### Condition A1 – Inactive awarding organisations

- 5.4 We all require awarding organisations to be active in the regulated qualifications market. Awarding organisations must introduce at least one qualification in a timely fashion once the organisation has become recognised, and must continue to award regulated qualifications regularly thereafter.
- 5.5 Currently, our Conditions are either worded or organised slightly differently – in the main because of the different qualification databases in use in England and Northern Ireland, and in Wales.
- 5.6 As set out in Chapter 6 below, both Qualifications Wales and CCEA Regulation are proposing changes to their versions of Condition A1. This will mean all our Conditions will align more closely in the future.
- 5.7 However, we are also all proposing to make a small change to the wording of the current Condition A1.3(b) (Condition A5.1(b) in Northern Ireland) to simplify the language used.

#### Current wording

**A1.3** An awarding organisation must -

[...]

take all reasonable steps to ensure that, once it has submitted a qualification that meets its Conditions of Recognition, no two-year period passes in which it does not award a qualification in accordance with its Conditions of Recognition .

#### Proposed revised wording

**A1.3** An awarding organisation must -

[...]

take all reasonable steps to ensure that, once it has complied with Condition A1.3(a), it awards a qualification in a way that complies with its Conditions of Recognition at least once in every two-year period.

## QUESTION 14

To what extent do you agree or disagree with the following proposed changes to Condition A1:

- (a) Our joint proposed simplification of requirements around inactive awarding organisations?
- (b) Qualifications Wales' proposed changes to reflect the requirement to include all regulated qualifications on QiW (please refer to the proposal in Chapter 6)?
- (c) CCEA Regulation's proposal to align numbering of its Conditions with those of Ofqual and Qualifications Wales (please refer to the proposal in Chapter 6)?
- (d) CCEA Regulation's proposed changes to reflect the accreditation requirement for vocational qualifications in Northern Ireland ((please refer to the proposal in Chapter 6)?

## Condition B2 – The annual statement to [Regulator]

- 5.8 We all use Condition B2 to require awarding organisations to complete an annual statement of compliance. In it, awarding organisations self-assess their compliance with both the Conditions and our other rules, and declare any failures to comply, and any likely failures to comply in the coming 12 months.
- 5.9 Both the statements awarding organisations submit to us, and the process we use to collect them, are commonly known and referred to as the "statement of compliance". Condition B2, though, refers to the "Annual statement" (see below).

### Condition B2 – The annual statement to [Regulator]

**B2.1** An awarding organisation must provide to [Regulator] an annual statement in accordance with this condition.

**B2.2** The statement must specify either:

- (a) that the awarding organisation is fully compliant with its Conditions of Recognition at the date of the statement, or

(b) that it is not so compliant, in which case the statement must describe each instance of non-compliance and the date by which the awarding organisation expects to rectify the failure.

**B2.3** The statement must also specify either:

(a) that the awarding organisation has no cause to believe that it will be likely to fail to comply with any of its Conditions of Recognition during the period of twelve months immediately following the date of the statement, or

(b) that it does have such a cause for belief, in which case the statement must describe each instance of potential non-compliance, the ground for believing it to be likely to occur, and the steps being taken by the awarding organisation in relation to it.

**B2.4** The statement must be accurate, formally approved by the Governing Body of the awarding organisation, and signed by the chair of the Governing Body and the Responsible Officer.

**B2.5** The statement must be made in any form and on any date as may be notified to the awarding organisation by [Regulator].

5.10 We think it would be helpful for awarding organisations if this Condition used the more familiar language of "statement of compliance", and are proposing to amend it so that it does.

5.11 We are also taking the opportunity to reorganise this Condition so that it groups the obligations that relate to the nature of the statement of compliance (SoC), and those that relate to specific declarations that must be included in it.

5.12 We set out our proposed revised Condition B2 below.

## **Condition B2 – The annual statement of compliance to [Regulator]**

### ***Provision of the statement of compliance***

**B2.1** An awarding organisation must submit to [Regulator] an annual statement of compliance.

**B2.2** The statement of compliance must be –

(a) made in any form and on any date as may be notified to the awarding organisation by [Regulator],

(b) accurate,

- (c) formally approved by the Governing Body of the awarding organisation, and
- (d) signed by the chair of the Governing Body and the Responsible Officer.

**Content of the statement of compliance**

**B2.3** The statement of compliance must specify either –

- (a) that the awarding organisation is fully compliant with its Conditions of Recognition at the date of the statement, or
- (b) that it is not so compliant, in which case the statement must describe each instance of non-compliance and the date by which it expects to rectify the failure.

**B2.4** The statement of compliance must also specify either –

- (a) that the awarding organisation has no cause to believe that it will be likely to fail to comply with any of its Conditions of Recognition during the period of twelve months immediately following the date of the statement, or
- (b) that it does have such a cause for belief, in which case the statement must describe each instance of potential non-compliance, the grounds for believing it to be likely to occur, and the steps being taken in relation to it.

**QUESTION 15**

To what extent do you agree or disagree that our proposed changes to Condition B2 (Annual Statement to [Regulator]) would improve clarity?

## Condition B4 – Notice to provide information to [the Regulator]

5.13 We propose to restructure Condition B4 so that it separates:

- what an awarding organisation is required to do when served a written notice by a regulator, and
- what information the regulator might include in the written notice.

5.14 Our currently published Condition B4 is as follows:

### **Condition B4 – Notice to provide information to [Regulator]**

**B4.1** Where [Regulator] serves a written notice on an awarding body requiring the awarding body to provide it with any information that it seeks for the purpose of performing its functions, the awarding body must comply with the terms of that notice.

**B4.2** For these purposes a notice given by [Regulator] may -

- (a) specify the time within which the information is to be provided;
- (b) specify a form in which the information is to be provided;
- (c) require that the information is accompanied by such supporting documents or data as may be described, and
- (d) require an awarding body to provide information whether that information is already in its possession or has to be created or obtained by it.

**B4.3** An awarding body must ensure that all information provided to [Regulator] in accordance with this condition is accurate and complete.

5.15 The proposed revision aims to make explicit that the requirement in the current B4.3 relates to the information the awarding organisation provides in response to a notice, and is set out below:

**B4.1** Where [Regulator] serves a written notice on an awarding organisation requiring the awarding organisation to provide it with any information that it seeks for the purpose of performing its functions, the awarding organisation must –

- (a) comply with the terms of that notice, and
- (b) ensure that all information provided to [Regulator] in response to such a notice is accurate and complete.

**B4.2** Any such notice may include terms which –

- (a) specify the time within which the information is to be provided,
- (b) specify a form in which the information is to be provided,

(c) require that the information is accompanied by such supporting documents or data as may be described, and

(d) require an awarding organisation to provide information which is already in its possession, or which has to be created or obtained by it.

## **QUESTION 16**

To what extent do you agree or disagree that the proposed revision to Condition B4 improves clarity?

## Condition B8 – Compliance with undertakings given to [the Regulator]

5.16 We propose to simplify the structure in Condition B8 by merging Conditions B8.1 and B8.2.

### Current Condition B8

**B8.1** An awarding organisation must comply with the requirements of any relevant undertaking.

**B8.2** For the purposes of this condition, a relevant undertaking is an undertaking which -

- (a) has been given to [Regulator] by the awarding body
- (b) is in writing, and
- (c) states that it is an undertaking given in accordance with this condition.

5.17 The proposed revision aims to improve clarity; we are not changing what awarding organisations are required to do. We set out our proposed revised Condition B8 below:

**B8.1** An awarding organisation must comply with the requirements of any undertaking which –

- (a) it has given to [Regulator],
- (b) is in writing, and
- (c) states that it is an undertaking given in accordance with this Condition.

### QUESTION 17

To what extent do you agree or disagree that our proposed changes to Condition B8 (Compliance with undertakings) would improve clarity?

## Structure of Condition D5

- 5.18 Condition D5 requires awarding organisations to ensure that its qualifications comply with any relevant requirements, and have regard to any relevant guidelines and principles of good practice, which are set out in regulatory documents.
- 5.19 We think it could be helpful to combine these two provisions, to make clearer that they are closely related. These structural changes (set out below) are intended to provide greater clarity, and do not alter our requirements in respect of how awarding organisations' should make sure their qualifications are in line with regulatory documents.

**D5.1** An awarding organisation must ensure that in the development, delivery and award of any qualification which it makes available, or proposes to make available, it -

- (a) complies with any requirement relating to that qualification which is set out in a Regulatory Document; and
- (b) has regard to any guidelines and principles of good practice relating to that qualification which are set out in a Regulatory Document.

## Use of 'For these purposes'

- 5.20 In some cases, requirements in the Conditions refer to purposes specified elsewhere. For example:

**A5.2** For these purposes, an awarding organisation must establish and maintain –

- (a) arrangements which will ensure that it retains at all times a Workforce of appropriate size and competence,

[...]

**E1.4** For these purposes, the following considerations will in particular be relevant in determining what constitutes sufficient support -

- (a) the objective of the new qualification;

[.....]

- 5.21 As part of Qualifications Wales’s review, awarding organisations highlighted that these could not be read as ‘stand-alone’ requirements, and commented that it was not always clear which “purposes” were being referenced.
- 5.22 We have intentionally written these parts of the Conditions in a way that means they cannot be read as ‘stand-alone’ requirements; this is because these particular requirements must be understood in the context of other, related provisions within the Conditions.
- 5.23 However, we do think it could be helpful to specify in each instance the purposes to which requirements relate. We therefore propose to replace all instances of ‘for these purposes’ with a specific cross-reference, as follows:

**A5.2 For the purposes of Condition A5.1**, an awarding organisation must establish and maintain –

(a) arrangements which will ensure that it retains at all times a Workforce of appropriate size and competence,

....

**E1.4 For the purposes of Condition E1.3**, the following considerations will in particular be relevant in determining what constitutes sufficient support -

(a) the objective of the new qualification;

(.....)

- 5.24 We also propose to take a similar approach in Condition D1.3 by replacing ‘these requirements’ with a specific reference to the requirements in Condition D1.2. The revisions can be found in our tracked change version of the Conditions in Annexes 1-3 published alongside this consultation document. The full list of revised Conditions where we have replaced either ‘for these purposes’ or ‘these requirements’ with a specific reference to a Condition is as follows:

- A1.2
- A1.5
- A5.2
- A5.3
- D1.3
- E1.4
- I1.2

- 5.25 If the changes proposed in this consultation to restructure Condition B4 are implemented, the words ‘for these purposes’ will be removed and so will not need amending in Condition B4.2

## Use of ‘this condition’

- 5.26 In some places, the Conditions include a reference to ‘this condition’, for example:

A4.8 An awarding organisation must establish, maintain, and at all times comply with an up to date written conflict of interest policy, which must include procedures on how the awarding organisation intends to comply with the requirements of **this condition**.

B3.5 When it notifies [the Regulator] of an event in accordance with **this condition**, or as soon as possible afterward, an awarding organisation must also notify [the Regulator] of any steps that it has taken or intends to take to prevent the event having an adverse effect or to correct or mitigate that adverse effect if it occurs.

C3.2 For the purposes of **this condition**, an 'endorsement process' is a process by which the awarding organisation endorses resources which are designed to support the preparation of Learners and persons likely to become Learners for assessments for a qualification which it makes available or proposes to make available.

- 5.27 In response to Qualifications Wales's review, several awarding organisations commented that we all use the word 'Condition' to refer both to a Condition as a whole (such as Condition B3) and to the subdivisions within it (such as Condition B3.1). As a result, they felt it was not entirely clear what we meant by 'this Condition' in these contexts.
- 5.28 We use 'this condition' to mean a condition as a whole and this is in line with drafting conventions that are common in legislation and other documents like the Conditions: which are legally enforceable.
- 5.29 Given awarding organisations' comments, we consider it may be helpful to make this explicit within the Conditions. We are therefore proposing to add the following interpretation provision to section J of the Conditions:

**J1.2** Unless the context suggests otherwise, in these Conditions –

[...]

References to 'this Condition' are to be read as references to the Condition as a whole (such as Condition B3) [...]

## Use of ‘In accordance with its Conditions of Recognition’

5.30 Another phrase that some awarding organisations specifically commented on in Qualifications Wales’s review of the Conditions was ‘in accordance with its Conditions of Recognition’, which we use in a small number of Conditions – for example:

**A5.1** An awarding organisation must -

(a) ensure that it has the capacity to undertake the development, delivery and award of qualifications which it makes available, or proposes to make available, **in accordance with its Conditions of Recognition,**

5.31 To help make this clearer for awarding organisations, we are proposing to change the use of this phrase, in all instances throughout the Conditions. Examples of this can be seen below:

A5.1 An awarding organisation must -

(a) ensure that it has the capacity to undertake the development, delivery and award of qualifications which it makes available, or proposes to make available, **in a way that complies with** its Conditions of Recognition,

### Adverse Effect

An act, omission, event, incident, or circumstance has an Adverse Effect if it -

(a) gives rise to prejudice to Learners or potential Learners, or  
 (b) adversely affects:

(i) the ability of the awarding body to undertake the development, delivery or award of qualifications **in a way that complies with** its Conditions of Recognition;

(ii) the standards of qualifications which the awarding body makes available or proposes to make available, or

(iii) public confidence in qualifications [or the Welsh qualification system\*].

\* Qualifications Wales only

5.32 All such revisions can be found in our tracked change version of the Conditions in Annexes 1-3 published alongside this consultation document.

5.33 We also propose to make some minor presentational changes in other sections of the conditions. These are not intended to change our requirements. We summarise these below,

and each proposed change can be seen in full in our tracked change versions of the Conditions at Annexes 1-3:

- a) In Conditions A6.3 and A8.3 we propose to replace 'and' with a comma, for consistency with the wording and structure in other conditions;
- b) In Condition E3.2(d) we propose to insert 'any' at the start of the paragraph, for consistency with the rest of Condition E3.2;
- c) In Condition E6.2(c) we propose a change that aligns the requirements in England, Wales and Northern Ireland; this includes removing reference to 'on the form', as qualifications are submitted through the Portal in England and Northern Ireland and through the QiW database in Wales.

## QUESTION 18

To what extent do you agree or disagree that the following proposed wording changes would improve awarding organisations' understanding of our requirements:

- a) Combining provisions within Condition D5
- b) Replacing 'for these purposes' with 'for the purposes of Condition X'
- c) Including an interpretation provision on references to 'this Condition'
- d) Replacing all references to 'in accordance with its Conditions of Recognition' to 'in a way that complies with its Conditions of Recognition'?

## Use of defined terms

- 5.34 For clarity and consistency, we are proposing to make some changes to where we place defined terms in the Conditions. Currently, some definitions are included within individual Conditions, and others are included in the list of defined terms in Condition J1.8.
- 5.35 In their responses to Qualifications Wales's review, some awarding organisations commented that they would prefer all definitions set out together. Some also noted that having definitions embedded within Conditions made annual reporting of compliance more complicated, as it meant parts of some Conditions contained no operative requirements.
- 5.36 The placing of defined terms within our Conditions does not affect the substance of our requirements, and we are willing to consider alternative approaches. Based on the feedback received, we are therefore proposing to move the following defined terms so that they are included in the list within Condition J1.8:
- Change of control (currently defined in Condition A3);
  - Conflict of interest (currently defined in Condition A4);
  - Recognition of Prior Learning (currently defined in Condition E10);
  - Reasonable Adjustment (currently defined in Condition G6); and
  - Special Consideration (currently defined in Condition G7).
- 5.37 As set out in chapters 3, 4 and 6, we are also proposing to introduce several new defined terms to support some of our proposals, for example, to improve the transparency of fees, and to make changes to some existing defined terms. We summarise all our proposed changes to defined terms in the table below.

Table 2 - Proposed changes to Defined Terms

	New defined terms	Revisions to existing defined terms	Existing defined terms moved to Section J
All regulators	<ul style="list-style-type: none"> <li>Associated Learner Fees</li> <li>Mandatory Centre Fees</li> <li>Package Fee</li> <li>Procure</li> <li>Responsible Officer</li> <li>Standard Qualification Fee</li> </ul>	<ul style="list-style-type: none"> <li>Characteristic</li> <li>Data Protection Law</li> <li>Special Consideration (revised and moved to Section J)</li> </ul>	<ul style="list-style-type: none"> <li>Conflict of Interest</li> <li>Recognition of Prior Learning</li> <li>Reasonable Adjustment</li> </ul>
Ofqual and CCEA Regulation only		<ul style="list-style-type: none"> <li>Portal (to replace RITS)</li> </ul>	
Qualifications Wales only	<ul style="list-style-type: none"> <li>Insolvency Event</li> <li>Learner</li> <li>Level</li> <li>Qualifications in Wales (QiW)</li> </ul>	<ul style="list-style-type: none"> <li>Change of Control (revised and moved to Section J)</li> </ul>	
CCEA Regulation only		<ul style="list-style-type: none"> <li>Change of Control (revised and moved to Section J)</li> </ul>	
Ofqual only			<ul style="list-style-type: none"> <li>Change of Control</li> </ul>

## QUESTION 19

Do you have any comments on our proposal to include all definitions in Condition J1.8?

## Use of ‘revised from time to time’ (Qualifications Wales only)

- 5.38 Currently, the Conditions make reference to the fact that as a regulator, Qualifications Wales publishes requirements and guidance that awarding organisations are required to comply with, or give due regard to. It also reflects the fact that these publications may be amended or updated periodically.
- 5.39 Qualifications Wales publishes a large number of regulatory documents, as prescribed in the Qualifications Wales Act and described in our Regulatory Documents List. All regulatory documents are reviewed periodically by Qualifications Wales, and if revisions are made, we will publish the most up to date version. As such, Qualifications Wales expects awarding organisations to be aware of, and to comply with, the most up-to-date version of each regulatory document that is published.
- 5.40 To make this principal clearer, Qualifications Wales is proposing to remove all references to ‘revised from time to time’ from the Conditions (B5.3, E6.2(a), E9.3, I2.1 and I3.1), and replace them with a single, interpretation provision in section J of the Conditions. We believe that this change will make the Conditions clearer and more useable.
- 5.41 The proposed provision is as follows:

### **J1.2**

[...]

- (l) references to any document, requirements or guidance published by Qualifications Wales means that document, or those requirements or guidance, as published, and revised from time to time.

## Ofqual / CCEA Regulation view

- 5.42 We consider that the phrase within the Conditions “revised from time to time” is one which is included to bring to awarding organisations’ attention that the particular requirement within that Condition may be subject to change. As such it is incumbent on the awarding organisation to ensure that it is aware and compliant with the most up-to-date version of that document. We consider it important that this is visible at all times and acts as a reminder to awarding organisations when they are considering the requirements of the specific Condition.

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**QUESTION 20**

To what extent do you agree or disagree with Qualifications Wales's proposal to replace all references to 'revised from time to time' with a single, interpretation provision in section J of the Conditions?

## Chapter 6: Keeping the Conditions up to date

- 6.1 In the course of this work, we have identified a small number of changes we want to make to the Conditions to reflect changes to substantive law. We have also identified further changes that we each want to make to our respective Conditions to reflect changes in our policies, processes and systems, and to eliminate unnecessary divergence between our current Conditions.
- 6.2 This section outlines each of these proposals in turn.

### Definition of 'Data Protection Law'

- 6.3 We are proposing to revise the definition of 'Data Protection Law' to reflect the introduction of the General Data Protection Regulations<sup>22</sup> (GDPR), which we have reflected in changes to our definition of 'Data Protection Law'.

### Definition of 'Characteristic'

- 6.4 We are also proposing to revise the definition of the term Characteristic so that it makes explicit reference to Equalities Law.

### Revised Numbering

- 6.5 As a result of our proposed revisions, there will be an impact on the numbering of our Conditions. We are proposing to renumber some Conditions to ensure that they are sequential rather than risk potential confusion by retaining old numbering and gaps in sequencing.
- 6.6 An example of a proposed numbering change is presented below:
- Condition A4.1 currently presents a definition of Conflict of Interest. We are proposing to move this definition to Section J of the Conditions, meaning that the previous A4.2 will become A4.1.
- 6.7 All proposed numbering changes can be seen in the tracked change version of the Conditions in Annexes 1-3 published alongside this consultation document.
- 6.8 We do not anticipate that the new numbering will place any undue burden on awarding organisations. However, awarding organisations will need to review the Conditions and may need to update their systems and approach to providing statements of compliance (SOCs) to reflect these numbering changes. We also acknowledge that other related documents

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<sup>22</sup> [2018 reform of EU data protection rules](#)

that refer to numbered Conditions will need to be updated. We believe this should be a manageable, one-off task.

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**QUESTION 21**

Do you have any comments on our proposals to change the numbering of the Conditions so that they are sequential, and updating some definitions?

## Use of QiW - Revisions to Conditions A1.3 and E6 (Qualifications Wales only)

6.9 Qualifications in Wales (QiW) is the national database for regulated qualifications for Wales.

6.10 Originally, awarding organisations were only required to submit Approved and Designated qualifications to QiW, but in November 2018, we requested that awarding organisations submit Other Regulated qualifications to QiW. To reflect this change to QiW, and to formalise the requirement, Qualifications Wales is proposing to introduce a new Condition E6.1:

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

6.11 As a consequence of having a full record of all regulated qualifications offered in Wales by Qualifications Wales-recognised awarding organisations, Qualifications Wales will no longer be requiring awarding organisations to surrender qualifications or descriptions of qualifications that they wish to offer as unregulated in Wales.

6.12 This proposal will bring Qualifications Wales's requirements more in line with those of CCEA Regulation and Ofqual.

6.13 Condition A1.3 in Qualifications Wales's Standard Conditions of Recognition currently requires awarding organisations to actively award qualifications once they have been recognised.

**A1.3** An awarding organisation must -

(a) take all reasonable steps to ensure that no two – year period passes in which it does not award a qualification in accordance with its Conditions of Recognition.

6.14 In line with the proposal to require awarding organisations to enter all regulated qualifications onto QiW (see Qualifications Wales's proposals for Condition E6), Qualifications Wales is proposing to introduce a new clause to A1.3 to align with that in Ofqual's and CCEA Regulation's Conditions.

6.15 This proposal is intended to make it clearer to awarding organisations that they must submit a qualification to QiW within two years of being recognised and that after this point, they must take all reasonable steps to ensure that they award a qualification at least once every two years.

- 6.16 Qualifications Wales's proposed Condition A1.3 would read as follows. All three regulators propose to align on a drafting revision to A1.3(b), in line with version set out below.

**A1.3** An awarding organisation must -

- (a) ensure that, within two years of first being recognised for the award of qualifications, it has submitted directly to QiW a qualification that complies with its Conditions of Recognition, and
- (b) take all reasonable steps to ensure that, once it has complied with Condition A1.3(a), it awards a qualification in a way that complies with its Conditions of Recognition at least once in every two-year period.

- 6.17 These proposed changes are referred to in Question 14 of this consultation.

## Revisions to Condition A1 (CCEA Regulation only)

- 6.18 The ordering of Condition A1 in CCEA Regulation's Conditions is currently different from Ofqual's and Qualifications Wales's Conditions. CCEA Regulation's Condition relating to inactive awarding organisations is numbered A1.5. To obtain greater alignment across the regulatory Conditions documents, CCEA Regulation is proposing to re-order Condition A1. Our current Condition A1.5 on inactive awarding organisations would become A1.3.
- 6.19 CCEA Regulation is also proposing to amend the wording of this Condition to better reflect the accreditation requirement in place for vocational qualifications in Northern Ireland. This is outlined in CCEA Regulation's Condition E5.2, which places a requirement on awarding organisations to submit, every quarter, a list of qualifications to CCEA Regulation for accreditation and await an accreditation decision before uploading to the Register the availability of the qualification in Northern Ireland.

### Proposed revised Condition A1.3

**A1.3** An awarding organisation must -

- (a) ensure that, within two years of first being recognised it has submitted a qualification to the Register which is accredited by CCEA Regulation, or which complies with its Conditions of Recognition for offer to learners in Northern Ireland, and
- (b) take all reasonable steps to ensure that, once it has complied with Condition A3.1(a), it awards a qualification in a way that complies with its Conditions of Recognition at least once in every two-year period.

6.20 These proposed changes are referred to in Question 14 of this consultation.

## Structure of Conditions D7 and B5 – Approved, Designated and Other Regulated qualifications (Qualifications Wales only)

- 6.21 Condition D7 of Qualifications Wales’s current Conditions requires awarding organisations to protect the interests of learners and notify Qualifications Wales when they change the status of a qualification. This includes the withdrawal and surrendering of its approval in respect of Approved qualifications and where Designation has been revoked in respect of a Designated qualification.<sup>23</sup>
- 6.22 Our proposal to remove Condition D6, if undertaken, would mean that Condition D7 would become Condition D6 in the revised document.
- 6.23 Qualifications Wales is proposing a further revision to the structure of this Condition. The proposed revision would distinguish between withdrawing a qualification (meaning that the qualification will no longer be available to learners) and changing the status of that qualification (meaning that the qualification may no longer be Approved or Designated).
- 6.24 Qualifications Wales recognises that, whilst the provisions in the rest of the Condition should apply in both instances, it is valuable to make a distinction between withdrawing and changing the status of qualifications. These different outcomes are likely to have different effects on learners and the actions that awarding organisations would take.
- 6.25 Qualifications Wales’s proposed revisions are as follows:

### **Condition D6 – Management of the change in the status of qualifications or withdrawal of qualifications**

- D6.1** For the purposes of Condition D6, an awarding body withdraws a qualification at the point in time when -
- (a) it ceases to register Learners for the qualification;
  - (b) it ceases to deliver or award that qualification to Learners;
  - (c) it surrenders its recognition in respect of that qualification, or
  - (d) it has its recognition withdrawn by Qualifications Wales in respect of that qualification.

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<sup>23</sup> Qualifications regulated by Qualifications Wales are categorised as Approved, Designated or Other. These categories are described in [Qualifications Wales’s Regulatory Framework and Approach](#).

**D6.2** For the purposes of Condition D6, an awarding body changes the status of a qualification at the point in time when -

- (a) its Approval in respect of that qualification expires (where a qualification is an Approved Qualification);
- (b) it surrenders its Approval in respect of that qualification (where a qualification is an Approved Qualification);
- (c) it has its Approval withdrawn by Qualifications Wales in respect of that qualification (where a qualification is an Approved Qualification);
- (d) its Designation in respect of that qualification expires (where a qualification is a Designated Qualification);
- (e) it has its Designation revoked by Qualifications Wales in respect of that qualification (where a qualification is a Designated Qualification), or
- (f) transitional arrangements may be implemented where withdrawal of Approval or revocation of Designation is made on the basis that the qualification concerned has become a Restricted Priority Qualification.

6.26 Qualifications Wales is also proposing to make revisions to Condition B5, which requires awarding organisations to ensure that users of qualifications are not misled about whether a qualification is Regulated, Designated or Approved. Qualifications Wales believes that its proposed revisions to Condition B5 will make this distinction clearer.

**B5.1** An awarding body must not (and must take all reasonable steps to ensure that any person connected with it does not) make any statement that would be likely to lead Users of qualifications to believe that a qualification is -

- (a) a Regulated Qualification when it is not a Regulated Qualification;
- (b) an Approved qualification when it is not an Approved qualification; or
- (c) a Designated qualification when it is not a Designated qualification.

## QUESTION 22

To what extent do you agree or disagree that Qualifications Wales's proposals to revise the current Conditions D7 and B5 would make requirements about Approved, Designated and Other Regulated qualifications clearer?

## Conditions E3 and E7 – Removal of Transitional Provisions (Qualifications Wales only)

- 6.27 Following the withdrawal of the QCF in England, the Conditions were updated to incorporate changes to requirements in respect of credit and recognition of prior learning, qualification titling, size, level and specifications.<sup>24</sup>
- 6.28 To allow us to introduce some of these changes in phases, we introduced transitional provisions in both Conditions E3 and E7 (Conditions E3.6-E3.8 and E7.6-E7.8, respectively).
- 6.29 Qualifications Wales wrote to awarding organisations in May 2016, confirming that from 1 June 2016 all Approved or Designated qualifications in Wales would be required to comply with Conditions E3.2(l), E3.2(m), E3.4, E3.5 and E7.1-E7.5.
- 6.30 Qualifications Wales is now proposing to apply the requirements of E3 and E7 in respect of all regulated qualifications. As a result, these transitional provisions would be removed.
- 6.31 CCEA Regulation and Ofqual are still in the process of introducing these requirements for some qualifications, so cannot remove the transitional provisions at this time. Both will also look to remove the provisions once they are no longer needed.

### QUESTION 23

To what extent do you agree or disagree with Qualifications Wales' proposals to remove the transitional provisions contained within Condition E3 (Publication of a qualification specification) and E7 (Total Qualification Time)?

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<sup>24</sup> Conditions E3.2(l), E3.2(m), E3.4 and E3.5 E7.1 to E7.5 relating to qualification size expressed in terms of Total Qualification Time were published.

## Introduction of new definitions (Qualifications Wales only)

6.32 Qualifications Wales is proposing to introduce several new definitions that would be unique to its Conditions. These are as follows:

Table 3 - Proposed, new definitions

Proposed definition	Rationale
Learner	Greater alignment with the definition used in the Qualifications Wales Act 2015. <sup>25</sup>
Level	Reflecting how levels should be considered in light of the Credit and Qualifications Framework for Wales (CQFW)
Qualifications in Wales (QiW)	Replacing the defined term 'Qualifications Database' to reflect the functionality of QiW as a national database for regulated qualifications in Wales.

6.33 These definitions can be found in the tracked change version of the Conditions in Annexes 1-3 published alongside this consultation document.

## References to RITS (CCEA Regulation and Ofqual only)

6.34 Both CCEA Regulation's and Ofqual's General Conditions of Recognition use the defined term RITS. This refers to the legacy Regulatory Information Technology System, which was replaced by the Portal in 2016.

6.35 CCEA Regulation and Ofqual are therefore proposing to replace the definition of RITS in Condition J1.8 with a new definition of the Portal (set out below), and replace existing references to RITS with references to the Portal.

### Portal

The information technology system provided by Ofqual to allow awarding organisations to exchange information securely with Ofqual and CCEA Regulation, as it may be varied and replaced from time to time.

<sup>25</sup> CCEA Regulation's and Ofqual's General Conditions of Recognition already include a definition of the term 'Learner', which differs slightly from the definition in the Qualifications Wales Act 2015. We do not think this difference is material, or that it will result in any significant impact on awarding organisations.

## Chapter 7: Proposals by Qualifications Wales

### Background

- 7.1 As is illustrated in this consultation document, many of the revisions are being proposed by all three regulators and every effort has been made to align as much as possible.
- 7.2 Awarding organisations will be aware that there are already differences between each regulator's Conditions, due to organisational, legal and institutional contexts. There are instances where Qualifications Wales wishes to propose changes to its requirements based on the evidence of its review, that Ofqual and CCEA Regulation do not.
- 7.3 This next section outlines each of these in turn.

### Conditions A1 and B3 - Definition of Insolvency Event

- 7.4 Condition A1.2 and B3.3 currently refers to "becoming insolvent"<sup>26</sup> or "being subject to insolvency proceedings"<sup>27</sup>.
- 7.5 Qualifications Wales's Conditions require an awarding organisation to promptly notify Qualifications Wales if the awarding organisation is likely to be, or has cause to believe that it is likely to be, insolvent or subject to such proceedings. Similarly, becoming insolvent may lead Qualifications Wales to determine that the awarding organisation is no longer suitable to continue to be recognised by it.
- 7.6 UK Corporate law provides that a body is insolvent if it has insufficient assets to discharge its debts and liabilities. However, there are different tests to determine insolvency, depending on the context in which the expression is used.
- 7.7 When Qualifications Wales engaged with awarding organisations during the review of its Conditions, feedback suggested that the current wording does not provide sufficient clarity to awarding organisations on the precise event which would trigger the requirement to notify the regulator. Also, awarding organisations reported that references to legislation alone were not entirely helpful in setting out the regulator's requirements clearly.
- 7.8 To provide this clarity to awarding organisations, Qualifications Wales is proposing to set out in the Conditions what is meant by notifying the regulator about insolvency, by introducing a definition of 'Insolvency Event' - a recognised and well-established legal term in UK Corporate and Insolvency Law.

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<sup>26</sup> Condition A1.2

<sup>27</sup> Condition B3.3

- 7.9 Qualifications Wales believes that the introduction of such a definition will address some awarding organisations' misunderstandings regarding the point in time at which they are required to inform us that such an event had arisen.
- 7.10 It is also important to note that the list of circumstances outlined in Condition A1.2 – including an insolvency event – could lead to the withdrawal of recognition. However, it is equally important to note that this is an indicative rather than exhaustive list and is not intended to signal that an awarding organisation would necessarily have its recognition withdrawn should such circumstances arise.
- 7.11 Similarly, Qualifications Wales recognises that there could be situations where entering insolvency proceedings is the most appropriate approach to take. Therefore, Qualifications Wales would consider each matter in the context of its enforcement powers and in line with its Regulatory Framework and Approach.
- 7.12 Qualifications Wales does not consider this to be a change to its existing requirements – it has always required awarding organisations to notify Qualifications Wales when the awarding organisation is becoming insolvent. However, Qualifications Wales believes that describing the specific point in time by which awarding organisations are expected to make a notification could be made clearer. This does not prevent an awarding organisation from approaching us earlier.
- 7.13 Qualifications Wales's proposed revisions to Condition A1.2, B3.3 and Section J, are as follows:

**A1.2** Acts or omissions which could render an awarding body unsuitable to continue to be recognised for the award of a relevant qualification may include, in particular, those which result in the awarding organisation -

- (a) being convicted of a criminal offence;
- (b) being held by a court or any professional, regulatory, or government body to have breached any provision of Competition Law, Equalities Law, or Data Protection Law;
- (c) being held by a court or any professional, regulatory, or government body to have breached a provision of any other legislation or any regulatory obligation to which it is subject;
- (d) becoming subject to an Insolvency Event, or
- (e) becoming subject to corporate financial restructuring.

**B3.3** An awarding body must promptly notify Qualifications Wales if it is, or if it has cause to believe that it is likely to be, subject to -

- (a) a material change in its governance structure or legal status;
- (b) a Change of Control;

- (c) becoming subject to an Insolvency Event; or
- (d) subject to bankruptcy proceedings.

## **Section J**

### ***Insolvency Event***

Means where -

- (a) the awarding body suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, within the meaning of section 268 of the Insolvency Act 1986;
- (b) the awarding body commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the awarding body with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for, or in connection with, the winding up of that other party (being a company), other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the awarding body;
- (e) the holder of a qualifying floating charge over the assets of the awarding body (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the awarding body or a receiver is appointed over the assets of the awarding body;
- (g) a creditor or encumbrancer of the awarding body attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or
- (i) the awarding body suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **Ofqual / CCEA Regulation view**

- 7.14 Ofqual and CCEA Regulation are not consulting on changes to their rules in this area. They consider that whether an awarding organisation finds itself in the position of 'becoming insolvent' (Condition A1.2) or is subject to 'insolvency proceedings', (Condition B3.3(d)) is a matter of law. Therefore, it is Ofqual and CCEA Regulation's view that they do not need to explain these terms any further in their rules in order to protect learners when such situations arise.
- 7.15 Leaving these terms undefined means they have their ordinary meaning when they are used in the Conditions. As such, Ofqual and CCEA Regulation will not be making judgements about whether or not an awarding organisation has become insolvent (or entered insolvency proceedings). This will be a matter for the awarding organisation and relevant authorities.
- 7.16 Ofqual and CCEA Regulation consider that introducing the proposed defined term 'Insolvency Event' in Condition A1.2 would also change awarding organisations' expectations of when the regulators might examine their suitability for continuing recognition, meaning they would ordinarily consider an awarding organisation's suitability for continuing recognition as soon as insolvency proceedings commence, rather than when insolvency proceedings have concluded.
- 7.17 It may be that this has a limited impact however as an awarding organisation entering insolvency proceedings could well lead to significant Adverse Effects. Moreover, the current Conditions already allow the regulators to consider suitability for continuing recognition based on those Adverse Effects.

### **QUESTION 24**

To what extent do you agree or disagree that the proposed introduction by Qualifications Wales of the definition 'Insolvency Event' will make it clearer to awarding organisations:

- a) when they should provide notification to Qualifications Wales in respect of becoming subject to insolvency proceedings?
- b) when Qualifications Wales may deem it to be sufficient to consider an awarding organisation's suitability for continuing recognition in relation to insolvency proceedings?

## Condition A3 - Definition of Change of Control

7.18 Condition A3.3 currently describes a change of control as a situation where:

'a person obtains control of the awarding organisation who did not, immediately prior to doing so, have control of it, or the awarding organisation merges with any person'.

7.19 We currently require awarding organisations to put safeguards in place where a change of control occurs, and to notify us of such a change in all cases.

7.20 It also confirms that sub-sections (2), (3) and (4) of section 450 of the Corporation Tax Act 2010 would apply where an awarding organisation is deemed to be a company.

7.21 Evidence provided by awarding organisations during Qualifications Wales's review, showed that understanding of Condition A3 rests on correctly interpreting 'control' in the context of the Corporation Tax Act 2010. Similarly, in stakeholder panels, awarding organisations suggested that a reference to the Act alone was not particularly helpful and that presenting all relevant requirements and information in the Conditions would be more beneficial. Other feedback queried the extent to which this definition would apply to awarding organisations that are not companies.

7.22 As part of its review of the Conditions, Qualifications Wales identified other provisions within the Corporation Tax Act 2010 that are considered relevant. Similarly, the statutory definition of 'control' in the context of a partnership as described in the Income Tax Act 2007 was identified as relevant.

7.23 To ensure that all relevant legislative provisions are reflected transparently in its rules, Qualifications Wales is consulting on proposals to change its definition of Change of Control to reflect these updates. Also, as a consequential amendment, Qualifications Wales is proposing to remove sub-clause (c) from Condition B3.3 to reflect the fact that a merger between an awarding organisation and another person is sufficiently captured within its revised definition of Change of Control.

7.24 The proposed change is structured into three parts in order to cover where an awarding organisation is a company, partnership or has any other structure. These changes are designed to be inclusive so that the Conditions apply to the variety of structures across awarding organisations i.e. not only limited companies, but charities, partnerships and others relevant to the legislation being referred to.

7.25 The proposed change to Qualifications Wales's definition says:

## **Change of Control**

A Change of Control takes place in relation to an awarding body where -

- (a) a person obtains control of the awarding body who did not, immediately prior to doing so, have control of it, or
- (b) the awarding body merges with any person.

Where the awarding body is a company, control means -

- i.** the power of a person to secure that the affairs of the awarding body (including without limitation the direction and management of its policies or other affairs) are conducted in accordance with that person's wishes, whether as a result of the ownership of shares or possession of voting power in the awarding body (or any other body corporate), or as a result of any powers conferred by the articles of association or other documents regulating the awarding body (or any other body corporate); or
- ii.** the possession (or entitlement to possession) by a person directly or indirectly of more than 50% of the share capital or the voting power in the awarding organisation.

Where the awarding body is a partnership, control means -

- i.** the right to a share of more than half the assets, or more than half the income of, the awarding body.

Where the awarding body is neither a company nor a partnership, control means -

- i.** the power of a person to secure that the affairs of the awarding body (including without limitation the direction and management of its policies or other affairs) are conducted in accordance with that person's wishes.

7.26 Qualifications Wales believes that this proposal makes it clearer to awarding organisations the circumstances in which a change of control is likely to have occurred, and that this would be applicable to all types of ownership structures. Qualifications Wales also believes that the new wording would make it clearer to an awarding organisation at which point it should notify Qualifications Wales if it is, or believes that it is likely to be, subject to a change of control.

### **Ofqual's view**

7.27 Ofqual is not consulting on changing this definition. It intends to retain existing references to legislation.

7.28 When a change of control takes place is a matter of law and therefore this is not an area that Ofqual considers it should expand upon in its rules. Ofqual's interest as a regulator is in protecting learners whenever a change of control occurs. It is not directly concerned with questions of whether a change of control has occurred, which it believes is for other relevant authorities to judge. Retaining the current wording means that Ofqual does not need to interpret the relevant legislation, and should not need to revise its Conditions if the law changes.

### **CCEA Regulation's view and approach**

- 7.29 The current definition of Change of Control in CCEA Regulation's Conditions confirms that current legislation in Northern Ireland regarding the Corporation Tax Act 2010 shall apply in those circumstances where an awarding organisation is deemed to be a company.
- 7.30 This differs from Ofqual's and Qualifications Wales's current definition which makes specific reference to sub-sections (2), (3) and (4) of section 450 of the Corporation Tax Act 2010. These sub-sections of the Corporation Tax Act 2010 extend to Northern Ireland.
- 7.31 CCEA Regulation shares Ofqual's view about including an additional reference to substantive law to define when a change of control takes place, and as such, is not proposing to adopt the additional wording put forward by Qualifications Wales.
- 7.32 However, CCEA Regulation is proposing to update its current wording for the definition of 'Change of Control' to make specific reference to sub-sections (2), (3) and (4) of section 450 of the Corporation Tax Act 2010.

## **QUESTION 25**

To what extent do you agree or disagree with Qualifications Wales' proposed changes to the definition of Change of Control in Section J?

## Chapter 8: Impact assessments

### Introduction

- 8.1. This chapter summarises the main findings of the assessments we have undertaken into identifying the potential impacts (both positive and negative) of our proposals.
- 8.2. We have drawn on the sources of evidence collected throughout our review and conducted additional research: both desk research and semi-structured interviews with a sample of awarding organisations, to estimate the potential impact as part of our regulatory impact assessment work.
- 8.3. We have taken an integrated approach and have undertaken regulatory and equalities impact assessments as well as assessing the impact on the Welsh language. A summary of all three is found below.

### Regulatory Impact Assessment

- 8.4. We have undertaken initial impact assessments on the most significant revisions we are proposing, and the need for awarding organisations to familiarise themselves with the suite of changes being proposed as part of this consultation.
- 8.5. On balance, we have assessed that the benefits of the proposed changes outweigh the costs, and as a result, we believe that what we are proposing is proportionate.

### ***Revisions to Condition F1 (Information on fees and features of qualifications)***

#### **Categorisation of prices**

- 8.6. The proposed categorisation of fee information to be published should align with how prices are currently articulated by awarding organisations. We do not anticipate this categorisation will present any undue burden on awarding organisations.
- 8.7. Where an awarding organisation only makes a qualification available as part of a package together with other products and services, there may be some burden to calculate the notional Standard Qualification Fee element of the package price. However as there are few, if any, mandatory packages offered by recognised awarding organisations, there should be little or no burden arising from this aspect of categorisation. Any burden would be justified by the improved transparency that would result.

#### **Publishing prices**

- 8.8. We consider the publishing of price information in the prescribed format would be a relatively simple process. The bare minimum for compliance would be publishing prices within an existing website, showing the Standard Qualification Prices for each regulated

qualification offered and publishing any other mandated prices. An awarding organisation would need to keep the information up to date.

- 8.9. From our research, we estimate that around half of awarding organisations already publish their fee information and so the impact is likely to be on around half of recognised awarding organisations.
- 8.10. All the awarding organisations interviewed by Ofqual reported that they had a base set of fee information for all their qualifications, with discounts available on a centre-by-centre basis. Therefore, to comply with the proposed Condition awarding organisations reported that they would simply have to publish this information on their website.
- 8.11. The cost of publishing this information may vary between awarding organisations. For those with a smaller qualification offering, it is likely publication of a standalone document would be sufficient to comply with the revised Condition, requiring up to half a day of IT staff time. For larger offerings, awarding organisations may need to update multiple qualification webpages to incorporate fee income, meaning IT resource of up to a day may be necessary. This small burden would be considered reasonable, given the benefits to the transparency of this market.
- 8.12. A few awarding organisations responding to Ofqual's call for evidence reported that the publication of fee information could mean they would have to share commercially sensitive information which they felt could mean they lose market share to larger awarding organisations.
- 8.13. By improving the availability and accessibility of fee information, purchasers will be better able to select qualifications that meet their needs. They will also be better able to plan their spending on both qualifications and other aspects of their spending, and more confident they have received value for money from that spending. We believe these benefits would justify the small burden the proposals would place upon awarding organisations.

### **Revisions to Condition F3 (Invoicing)**

- 8.14. The proposed revisions to the wording of Condition F3.1 do not alter the requirements that it places upon awarding organisations; it simply makes explicit the implicit requirement that, when a purchaser requests a reasonable breakdown of the fees on an invoice, the breakdown must be more granular than that already provided in the original invoice.
- 8.15. We do not believe that this proposed change increases the obligations on awarding organisations and, therefore, we consider there would be no additional burden imposed by this proposal.

### **Revisions to Condition B1 (Role of the Responsible Officer)**

- 8.16. We are proposing to introduce an explicit requirement for awarding organisations to ensure their Responsible Officer is effective in the role, including, by ensuring they have sufficient authority.
- 8.17. Our view is that this is already an implicit requirement of the current Condition B1 – particularly Conditions B1.3 and B1.4 – and not a material new obligation. As such, we consider there is unlikely to be an additional burden imposed by this proposal. However, we think it is important that all Responsible Officers are effective and so any additional burden is justified by the importance of this role in allowing for effective interactions between awarding organisations and the regulators.

### ***Removal of Condition D6 (Compliance of units developed by others with Regulatory Documents)***

- 8.18. In principle, the removal of Condition D6 represents a strengthening of our requirements for qualifications that use shared units – as awarding organisations can no longer rely on third-party assurances about a unit's compliance.
- 8.19. In practice, we believe that any such impact is limited. We withdrew the QCF rules (and closed the unit bank) on 30 September 2015. We decided not to remove Condition D6 at that time, primarily because we thought it would be disproportionate to require all awarding organisations that were then using shared units to assume strict liability for their compliance with our rules overnight. Instead, we allowed awarding organisations to consider whether they wished to continue using shared units as part of the normal qualification review cycle.
- 8.20. By the time any changes following this consultation take effect, awarding organisations will have had almost five years to adjust to the new arrangements, and we expect that most qualifications that were live in September 2015 will have been through a review cycle.
- 8.21. As a result, we consider that there is no meaningful additional burden imposed by this proposal.

### ***Revisions to Condition E10 (Recognition of Prior Learning)***

- 8.22. Awarding organisations that do not recognise prior learning would be required, under these proposals, to make this clear by publishing a statement to this effect. There will be an additional one-off cost associated with producing and publishing this information. We estimate this is likely to be a nominal cost (up to a day of administrative resource) but would welcome views on this assumption. We consider that the benefits of making each awarding organisation's position on RPL clearer justify this small burden.
- 8.23. Overall, we believe there are tangible benefits to learners, centres and the wider qualification system from the improved clarity offered by this proposal and that the time and cost to awarding organisations is low and outweighed by the benefits.

### **Revisions to Condition I1.2 (Appeals)**

- 8.24 Our proposed amendment would make it clear that it is specifically the final decision on an appeal that must involve an independent decision maker. This allows for an initial, more expedited stage that does not involve independent decision makers.
- 8.25 Of course, this would not prevent any awarding organisation from having an independent decision maker at every stage of the appeals process if it so wished. Our intention here is to provide clarity around the existing requirement, and to acknowledge that awarding organisations may choose to consider their existing arrangements in light of this clarification.
- 8.26 Therefore, this proposed change, has the potential to deliver efficiencies and savings to awarding organisations if they are currently using independent decision makers at stages other than the final stage, but leaves in place the important safeguard of independence in decision making in any case where the appellant wishes to take the case to this stage.

### **Revisions to Condition H6 (Issuing Results)**

- 8.27 We do not expect or intend to intervene more often to stop the issuing of results. There may be situations where we continue to use existing powers, either on their own or in conjunction with the new Condition H6.2 if we decide to implement this proposal. As now, we would use the most appropriate approach in each case, based on the individual circumstances.
- 8.28 We do not consider there would be a significant regulatory impact on awarding organisations. We believe that a clear instruction from the regulator not to issue results has the potential to deliver efficiencies to awarding organisations by providing valuable clarity and certainty on the appropriate course of action in complex, and exceptional, cases.

### **Familiarisation with Revisions**

- 8.29 The vast majority of our proposed revisions do not change our requirements, but rather improve their clarity. Awarding organisations will need to review and familiarise themselves with the changes, and consider the steps they will need to take to comply with them. Going forward, the improved clarity that would be afforded by many of the changes should provide benefits to awarding organisations.
- 8.30 Awarding organisations have indicated, in Qualifications Wales's review, that they would benefit from the changes by:
- having to spend less time working with the regulator to deal with non-compliance with the Conditions;

- spending less time 'going down the wrong development path' and then having to change processes when they are found non-compliant. This would generate greater efficiency in the work of their compliance teams.

8.31 The awarding organisations had difficulties in monetising what cost savings this could offer but a few suggested it could save between 10 and 20 days of the organisation's time a year. This would free the time of awarding organisation staff to undertake other activities that could improve their quality assurance processes more generally.

8.32 We estimate that there would be a one-off cost to awarding organisations in familiarising themselves with the new revisions and changes to numbering when completed. Awarding organisations identified the following steps as a result of revisions to the Conditions:

- review the changes and ascertain what implications this may have for their existing policies or procedures related to the regulations;
- make changes to their policies and procedures estimated to be around 20 related documents referring to the Conditions. Even where the changes are minor, they would likely take at least half a day to review a policy.
- change the database they use for self-assessment evidence and possibly make changes to the monitoring information they collect to ensure they evidence the extent to which the regulation is met.
- awarding organisations anticipated they would provide training to staff to inform them of any changes, and that this would generally be short (half a day) training.
- the final step would be to inform centres of any changes in their policies. Awarding organisations reported that they would incorporate this in their current communication channels with centres, such as in their newsletter, centre training events and annual conference.

8.33 We anticipate that these activities would be undertaken by internal staff and consequently, the majority of the costs would be opportunity costs (the cost of taking staff away from undertaking other activities). While initial familiarisation with the changes has been estimated to be around ten days of staff time, as a one-off activity, the on-going benefits are estimated at ten to twenty days of staff time saved per annum, meaning a very positive overall effect for awarding organisations. Awarding organisations also confirmed that if the timescales for implementing the changes were reasonable, then it would not affect their core activities.

## QUESTION 26

We have set out our views of the regulatory impacts we anticipate from our proposals.

- a) Do you have any comments on the impact of these proposals?
- b) Are there any additional steps we could take to reduce the regulatory impact of our proposals?

c) Are there other costs and/or benefits you have identified from our proposals that you would like to draw to our attention?

## Equalities Impact Assessment

- 8.34 Ofqual and Qualifications Wales are public bodies, so the public sector equality duty in the Equality Act 2010 applies to them.
- 8.35 This duty requires Ofqual and Qualifications Wales to have due regard to the need to:
- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 8.36 Separate legislation is in place in Northern Ireland. CCEA Regulation is a public body and is therefore subject to the public sector duties set out in Section 75 of the Northern Ireland Act 1998.
- 8.37 Section 75 of the Northern Ireland Act 1998 provides that:
- (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity –
    - (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
    - (b) between men and women generally;
    - (c) between persons with a disability and persons without; and
    - (d) between persons with dependants and persons without.
  - (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- 8.38 We considered the potential impact of the proposals included in this consultation on people who share protected characteristics outlined under the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998. We have not identified any impacts of our proposals (positive or negative) on persons who share protected characteristics.

## QUESTION 27

It is our view that our proposals would not impact (positively or negatively) on people who share a particular protected characteristic.

- a) Are there any potential impacts that we have not identified?
- b) Are there any additional steps we could take to mitigate any negative impacts on people who share a protected characteristic?

## Welsh Language Impact Assessment

8.39 The 1993 Welsh Language Act established the requirement for public sector organisations to prepare Welsh Language Schemes and deliver Welsh-language services. This was followed in 2011 with the introduction of the Welsh Language (Wales) Measure.

8.40 This Measure gave the Welsh language official status in Wales and introduced duties on bodies to use the Welsh language as described in Welsh Language Standards. It also introduced the principle that Welsh must be treated no less favourably than English.

8.41 Although Qualifications Wales is not currently required to comply with Welsh Language Standards, the Qualifications Wales Board have indicated their commitment to the Welsh language by voluntarily producing and publishing a Welsh Language Scheme. This Scheme sets out how Qualifications Wales will give effect to the principle of equality when delivering its functions and communicating with the public in Wales.

8.42 With regard to regulatory policy, Qualifications Wales will;

- seek to engage Welsh-speakers and encourage them to contribute when it carries out consultations in relation to our regulatory functions;
- make regulatory documents available in Welsh and English;
- consider the implications that its regulatory documents may have on the Welsh language; and
- monitor engagement with Welsh-speakers in any consultation processes to ensure representation and engagement where appropriate.

8.43 Qualifications Wales's Conditions are currently published in Welsh and English, and any revisions to the Conditions will be reflected in both versions. This provides opportunities for people to use the Welsh language in their work.

## QUESTION 28

In your view, would the proposals included within this consultation result in any impacts (intended, or unintended) in relation to the following:

- (a) opportunities for persons to use the Welsh language,
- (b) treating the Welsh language no less favourably than the English language.

## Further Comments

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### QUESTION 29

Please provide any further comments and feedback about our Conditions of Recognition in Annexes 1, 2 and 3, or about any of the proposals outlined in this consultation.

## Chapter 9: Additional Information

### How to respond

- 9.1 Responses to this consultation can be submitted by [completing the online survey](#).
- 9.2 Responses should be submitted by 18:00 on 25 October 2019 at the latest.
- 9.3 If a question is not relevant or you are unsure how to respond, please skip that question and move onto the next one.
- 9.4 If you would like to submit your response using another format, please contact one of the following:

[policy@qualificationswales.org](mailto:policy@qualificationswales.org)

[consultations@ofqual.gov.uk](mailto:consultations@ofqual.gov.uk)

[ccearegulation@ccea.org.uk](mailto:ccearegulation@ccea.org.uk)

### Privacy notice

- 9.5 This Privacy Notice is provided by The Council for the Curriculum, Examinations and Assessment (CCEA), the Office of Qualifications and Examinations Regulation (Ofqual) and Qualifications Wales.

### Our purpose and legal basis for processing your personal data

#### Purpose

- 9.6 Under the law that governs the work we do, we are required to create Conditions of Recognition that organisations we regulate are obliged to comply with.
- 9.7 We are considering changes to those Conditions and will process your information for the purposes of considering your views on our proposals. We explain in more detail how we will use your information for this purpose in the section below headed 'How we will use your response'.

#### Legal basis

- 9.8 Our processing of the data required in this consultation is necessary for the performance of a task carried out in the public interest and in exercise of official authority that has been vested in:
- Qualifications Wales, by section 2, Schedule 3 of the Qualifications Wales Act 2015 ("Standard Conditions of Recognition");
  - Ofqual, by section 134, Chapter 2 of the Apprenticeships, Skills, Children and Learning Act 2009 ("General Conditions of Recognition"); and

- CCEA Regulation, by Education (Northern Ireland) Order 1998.

9.9 Qualifications Wales, The Office of Qualifications and Examinations Regulation (Ofqual) and The Council for the Curriculum, Examinations and Assessment (CCEA are joint 'controllers' for the purposes of the General Data Protection Regulation (EU) 2016/679 and Data Protection Act 2018 ('Data Protection Laws'). We have an arrangement in place in accordance with Article 26 of the General Data Protection Regulation that is available on request. A summary of the arrangement is published alongside this consultation document.

## How we will use your response

9.10 All personal data that we hold will be retained in accordance with Data Protection Laws. It will only be used for the purpose of developing and reviewing the Conditions of Recognition incorporated in this consultation.

9.11 Following the end of the consultation, we will publish a summary of responses and may publish copies of responses on our respective websites. We will not include personal details. Where appropriate, this report will identify trends in responses and relate these to respondent characteristics.

9.12 We will also publish an annex to the consultation summary listing all organisations that responded. We will not include personal names or other contact details. If you provide your personal details, we may contact you in relation to your response.

## Freedom of Information Act 2000 (FOIA)

9.13 Please note that information in response to this consultation may be subject to release to the public or other parties in accordance with information access law (primarily the FOIA). We may be obliged to disclose information to the public in certain circumstances. In the event that you wish for your response to be treated in confidence, please identify this and explain why you want your response treated this way.

9.14 If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.

## How long we will keep your personal data

9.15 For this consultation, we will keep your personal data (if provided) for a period of two years after the close of the consultation.

## Your rights, e.g. access, rectification, erasure

9.16 Subject to some legal exceptions, as a data subject, you have the legal right to:

- access personal data relating to you

- have all or some of your data deleted or corrected
- prevent your personal data being processed in some circumstances
- ask us to stop using your data, but keep it on record

## How to contact us

9.17 If you would like to exercise your rights, please contact us using the details set out below.

Data Protection Officer  
Qualifications Wales  
Q2 Building  
Pencarn Lane  
Imperial Park  
Coedkernew  
Newport  
NP10 8AR  
[dpo@qualificationswales.org](mailto:dpo@qualificationswales.org)

9.18 We will respond to any rights that you exercise within a month of receiving your request, unless the request is particularly complex, in which case we will respond within three months.

9.19 If you are dissatisfied with our response, you can complain to the [Information Commissioner's Office](#) (please see details below):

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

**Telephone:** 0303 123 1113 (local rate) or 01625 545 745

## Chapter 10: Next steps

- 10.1 We encourage comments and feedback on our proposals. We will be holding engagement events during the consultation period, so that you can explore our proposals in more detail before submitting your responses.
- 10.2 Following the consultation we will consider all the responses we receive, and we will each take decisions on whether or not to adopt our proposals. We are aiming to publish our decisions – and any changes to our Conditions and guidance – before the end of 2019.
- 10.3 Our intention is that any revised Conditions and guidance will come into effect from April 2020, but will consider whether a different implementation date might be appropriate for some of our proposals in light of the feedback we receive. We would welcome views from respondents on whether we should introduce any of our proposals at an earlier (or later) date.

### Future work

- 10.4 Following the publication of the revised Conditions, we aim to give awarding organisations the time to work with them and we have no plans to consult again in the near future on changes of the type proposed in this consultation. However, we all keep our Conditions under review, and will make changes to them where needed. For example:
  - We may need to make changes to Condition A2 (Establishment in the EU or the EFTA);
  - Ofqual has also recently consulted on proposals for awarding organisations' approach to moderation and verification of centre-assessment judgements, which could lead to changes to some of its Conditions of Recognition. Ofqual has engaged with CCEA Regulation and Qualifications Wales throughout this work. Once Ofqual has taken decisions on any changes, CCEA Regulation and Qualifications Wales will both consider whether to make any changes to their Conditions.
- 10.5 We have also identified some areas – for example, in relation to management of incidents – where additional guidance could be useful for awarding organisations.
- 10.6 We will continue to work together on all these issues and on future potential changes to the Conditions.

### QUESTION 30

Please provide any comments you may have on when we should implement any of our proposals?

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