

# Consultation on changes to the Conditions of Recognition: Engagement events



We held consultation events at Ofqual's offices in Coventry on 19 September and 3 October 2019. Across the two events there were over 70 attendees representing around 55 awarding organisations and an industry body. We also offered to hold sessions in Wales and Northern Ireland, and based on demand there was one additional meeting in each location respectively. In Wales the meeting was with an awarding organisation and in Northern Ireland with a representative body.

Attendees at the events provided views on the key proposals and themes in our consultation, rather than on a question by question basis. Many of those who attended our events also responded formally to our consultation.

The majority of views expressed broadly mirrored those reported in our consultation analysis. As such, we do not repeat these in detail but instead provide below a summary of those views.

### **Condition F1 - Information on fees, and proposed new fee categories:**

Attendees at our events indicated broad support for the proposed changes, commenting that:

- price transparency is appropriate, and will bring benefits to purchasers, helping them understand exactly what they are getting for their money (proposals supported by both awarding organisations that currently publish prices, and those that do not)
- the proposed new fee categories are appropriate, and will make comparison easier for purchasers
- it is helpful that the proposed new requirements explicitly permit price negotiation

Many attendees indicated that greater clarity would be helpful on the types of fees that might fall in each of the different categories (eg professional membership, one-off learner registration). They felt that such clarification would avoid awarding organisations investing time and resource in making changes that do not satisfy the new requirements.

Attendees also commented that:

- some awarding organisations do not currently publish a total price for their qualifications – instead they publish fees by unit, or by exam, that learners build up over time to make a complete qualification, taking longer than one academic cycle
- on the fee categories: it is not clear whether a Standard Qualification Fee (SQF) is required per qualification or per qualification type; splitting Associated Learner Fees and Mandatory Centre Fees could be problematic; the term 'package' is currently used in a different way and could cause confusion
- the wording 'where possible/ where not possible' in the proposed new Condition F1.1 may suggest that an awarding organisation is not required to publish fees
- it would not be desirable to have to publish details of discounts
- the SQF may never actually be charged if discounts are always applied
- centres can charge a different (higher) price to learners, and this is beyond the awarding organisation's control
- if awarding organisations are required to use the new fee terminology on their websites, this could cause issues for purchasers
- some awarding organisations have in place a minimum spend per centre
- there can be different 'external quality assurance' prices for different sized centres
- awarding organisations do not necessarily publish a full list of fees in one central place
- transparency may have a greater impact on smaller awarding organisations – prices may sometimes be higher due to higher overheads, but it will appear they are choosing to charge more

- large awarding organisations might use published prices to undercut smaller awarding organisations
- the extent to which purchasers are concerned about price is not clear
- on the related proposed change in Condition J1.7, removing 'if available' in relation to publication on a website: one awarding organisation indicated there may be an impact for other material they are required to publish under the Conditions.

### **Condition F1 – fee information in markets outside England (Ofqual regulated qualifications only)**

On the proposal that awarding organisations would be required to publish fees in markets outside England under the proposed new Condition F1.1 (noting that Qualifications Wales and CCEA Regulation plan to require publication of this information for regulated qualifications in Wales and Northern Ireland), some attendees commented that:

- it could be challenging to publish fees in markets outside England. Prices vary in different markets for good reasons and awarding organisations would prefer not to highlight the variance
- where it is evident that purchasers outside England are paying a higher price for the same qualification, it could make it harder to sell that qualification
- it is not clear how this approach fits with the desire to increase the volume of qualifications that are offered outside England.
- prices are not easily comparable if published in different currencies.
- clarity is needed on whether this could just be published on the website in the relevant country
- the wording of the proposed new Condition F1.1 is not sufficiently clear that this is intended to include fees in markets outside England. If Ofqual proceeds with this change, it needs to be made explicit

### **Condition F3 - Invoicing**

Many attendees indicated support for the proposed change, commenting that:

- this should result in little or no change from what awarding organisations currently do
- providing a breakdown should make it easier for centres to understand costs
- any initial impact to adjust systems should be small

Some attendees indicated that it would be helpful to have clarity, possibly through guidance, on the meaning of a 'reasonable level of detail' so that there is consistency across awarding organisations. One individual suggested that the 'request' should be reasonable, rather than the level of detail provided on an invoice. A few also suggested that clarity of HMRC's requirements would be useful.

A few attendees suggested that the current rule is fine and the proposed change is not necessary.

One noted that the requirement could be challenging for markets outside England, due to exchange rates.

### **Condition A3 - Safeguards on Change of Control**

Attendees indicated broad support for the proposed changes, commenting that:

- the structural changes should improve clarity
- the definition of 'procure' is helpful

Some suggested they would prefer a more straightforward word than 'procure' if possible, such as 'ensure'. Some did not feel strongly but had no objections to the proposed changes. One attendee said that changing the structure of Condition A3 would create a burden.

One attendee suggested that in part (c) of the revised Condition, it would be helpful to understand how detailed the plan should be; that it may be better to say 'provide a statement of assurance' (to note, the consultation did not propose changes to this part of the requirement).

### **Condition B1 - Role of the Responsible Officer**

Attendees indicated broad support for the proposed changes, commenting that:

- the wording is clearer than in the current Condition B1
- the wording is helpful for an awarding organisation when considering who is the right individual for this role

One attendee suggested we could consider including 'sufficient authority' in the proposed new definition, for continuity.

A number of attendees indicated that greater clarity would be helpful on:

- the meaning of 'effective'; how AOs should measure and demonstrate this to the regulator
- the meaning of 'sufficient' authority
- the expected seniority of the Responsible Officer. In some awarding organisations it is the CEO, in others it is a more junior officer
- possible options for covering/ deputising for a Responsible Officer in their absence

Some suggested we may wish to consider additional guidance on Condition B1.

### **Condition D6 – Compliance of units developed by others with regulatory documents**

Attendees indicated broad support for our proposal to remove Condition D6 and the defined term 'Rule of Combination'.

Some attendees indicated there may be an impact to consider for licence to practise qualifications.

One attendee questioned whether it was necessary and appropriate to remove the defined term 'Rule of Combination' at the same time. Another said it would be helpful to have a definition of unit, and to be clear on whether a unit could be compliant in one qualification but not in another.

### **Condition E10 – Recognition of Prior Learning (RPL)**

Attendees broadly supported our proposal to extend the requirement in Condition E10, commenting that transparency on approach to RPL is sensible and helpful for users of qualifications.

Attendees indicated they would welcome clarity on whether:

- the regulator expects an awarding organisation to provide a rationale if it chooses not to recognise prior learning
- an RPL policy should cover each qualification individually, or rather, an organisation's high level approach
- the policy can simply be a statement if the awarding organisation does not recognise prior learning – many attendees thought the consultation text was clear, but that without this explanation, the proposed revised Condition wording was not clear

Attendees also commented that:

- the regulators could require all awarding organisations to recognise prior learning
- centres should also be required to have policies
- if an awarding organisation recognises prior learning for some of its qualifications but not for others, it is burdensome to have to state where they do not
- the reason/ rationale for proposing this change is not clear

### **Condition H6 – Issuing results**

Attendees generally thought this proposal seemed reasonable, and understood why the regulators would want to introduce this new provision.

Some attendees raised questions about how this would work for results issued by a centre, and also for 'on demand' assessments.

One attendee suggested it would be useful for the regulators to provide further information on how this would be likely to work in practice. Another queried whether the regulator would publish details of an instruction under the proposed new H6.2 as an enforcement action, and what an awarding organisation should tell affected centres and learners.

### **Condition I1 – Appeals Process**

In the main, attendees welcomed the proposed change, indicating that it would clarify when an independent decision-maker should be involved in an appeal.

A number of attendees indicated that it would be helpful to have greater clarity on the meaning of 'final', and the implications for cases where there is early resolution and the appeal does not reach the stage at which an independent person would be involved in the decision. They suggested that it would be useful for the wording to make explicit that resolution of an appeal before the final stage, without the involvement of an independent person, is acceptable.

Some attendees commented that the independent decision-maker must have the appropriate knowledge and competence to conduct the appeal. One commented that payment to an independent person could be substantial for a lengthy appeal.

A number of attendees raised queries about wording in Condition I1 that is already in place and that we did not propose to change – that is, the requirement that an independent decision-maker is not an employee, an assessor, or 'otherwise connected to' the awarding organisation.

Many commented that clarity would be helpful on:

- what constitutes being 'connected to' the AO
- the acceptable level of pre-existing relationship
- whether payment means they become connected
- whether it is acceptable to use a Board member who is not directly linked to the particular issue – and that the regulator should be very clear if this is not permitted

Some also commented that:

- in niche markets, it can be difficult to find an independent person who has not been involved in some way
- some awarding organisations use independent people from other organisations in a reciprocal arrangement, with no costs incurred

- it may be helpful to link this up with our approach on conflict of interest

### **Definition of Special Consideration**

Our proposed change aimed to make as clear as possible that Special Consideration encompasses all changes made for learners whose performance has been affected by temporary illness, injury or other event, and includes adjustments to the way an assessment is conducted, as well as post-assessment adjustments to marks.

Many attendees were unclear about the distinction between Special Consideration and Reasonable Adjustments; they thought that any adjustments prior to an assessment are Reasonable Adjustments, and that Special Consideration is post-assessment adjustment to marks only. Some attendees told us that some awarding organisations' systems and policies are set up in line with this approach. Many thought the proposed revised definition meant a change in approach and indicated concerns about their compliance with this. They suggested that greater clarity would be helpful on the difference between Reasonable Adjustments and Special Consideration, and the timing of each, so that awarding organisations can make sure their approach and policies are compliant.

Attendees also commented that:

- the Reasonable Adjustments definition could be widened to include all pre-assessment adjustments
- the proposed change could be confusing for awarding organisations

### **Definitions proposed by Qualifications Wales**

Attendees commented on Qualifications Wales's proposed new definition of Insolvency Event and its proposed revised definition of change of control:

- some awarding organisations are charities and therefore the specific legislative reference to companies would not relate to them
- while some supported the proposed definition of change of control, others indicated they preferred the current definition and did not think additional clarity was needed
- one said it was not possible to read and understand the definitions easily, without being a legal expert
- some thought it was unhelpful that the regulators were proposing to take different approaches on the two definitions; others thought the different approaches would have no impact. One said that to have small differences across very similar documents can be challenging – it is almost better to have completely different sets of rules

### **Moving definitions to Condition J1.8**

The majority of attendees supported the proposal to move all definitions to Condition J1.8, for the purposes of consistency. They commented that it would be helpful to have these all in one place, and also that it helps for purposes of reporting the annual statement of compliance.

Attendees commented that:

- it would be helpful to include the subsection of acts referenced within the document
- some definitions use subjective terms– it would be helpful to remove these as it is necessary to be a legal expert to understand them

### **Condition A4 – Guidance**

Most attendees were supportive of the proposed guidance and indicated it was helpful that it explains conflicts of interest, and separately, personal interests, and where the Conditions prohibit the involvement of an individual with a personal interest. Some attendees indicated that it may be useful to develop this guidance further; others said they had no issue understanding the requirements in Condition A4.

Attendees said that clarity would be helpful on:

- the meaning of 'reasonably foreseeable'
- where a failure to manage conflicts of interest would create an Adverse Effect
- management of conflict of interests in centres
- 'perceived' conflicts of interest, and the meaning of an 'informed and reasonable observer'

Attendees also commented that:

- the Condition sets an unobtainable standard and this should instead be a 'reasonable steps' expectation. The requirements to identify 'all' and 'any' conflicts are an issue, in particular as awarding organisations are reliant on information being provided to them
- awarding organisations need to consider what behaviours are incentivised through pay
- the draft guidance could be developed to cover qualification development stages, not just assessment delivery
- in certain industries/ niche markets it can be hard to find individuals that do not have some interest
- managing conflicts of interest is easier for some awarding organisations than others due to scale

### **Structural changes: Conditions B2, B4, B8 and D5**

In the main, attendees indicated they felt these changes were small but sensible, and made things a bit clearer. Some thought they made no difference, but equally, had no concerns with the proposals.

Some commented that:

- awarding organisations sometimes face a difficulty in obtaining information requested by the regulator from third parties (B4)
- there are issues with the Chair's role in signing off the statement of compliance through the Portal (B2)
- it is important that the Condition remains clear this is an annual statement (B2)

### **Changes to improve clarity and understanding**

**Changes to 'for these purposes' and 'this Condition':** broadly attendees were not concerned about the proposed changes. Some supported them and felt them helpful, while others thought there were no issues with the current wording.

**Changing 'in accordance with its Conditions of Recognition' to 'in a way that complies with its Conditions of Recognition':** some considered the current wording to be clear and that this change

does not need to be made. Others had no comments or did not feel strongly either way. One felt strongly we should not adopt the proposed wording.

**Replacing references from 'time to time' with an interpretation provision (Qualifications Wales only):** one attendee suggested it was helpful generally to try to reduce words; another said they had raised this previously as an issue but now did not feel strongly. Some thought it was fine, while others had no comments.

### **Condition A1 – Inactive awarding organisations**

A number of attendees queried whether the requirement means they are required to offer a qualification, or each of their qualifications, at least once in every two-year period. Some indicated that they thought that the requirements for Ofqual, CCEA and Qualifications Wales are different on this.

### **Renumbering**

Attendees noted that any renumbering would have an impact on their processes for reporting the annual statement of compliance.

Some indicated that they were not keen on renumbering as they get used to specific conditions referring to a specific thing. Instead, they would prefer that, for example, if D6 is removed, it simply stays there with the words [No longer in use] or similar below it, so that none of the other numbering needs to be changed.

### **Implementation timing**

The majority of attendees commented that April 2020 would be too soon for the new Conditions to become effective. In particular they felt they would need more time to meet the new fee requirements. They also indicated they would need time to update their policies and systems, to train staff and communicate with centres.

October 2020 was widely suggested as a more reasonable timeframe, after the 2020 statement of compliance window. Attendees also asked that we think about how the timing fits with any new requirements associated with 'accountability for awarding'.

### **Other comments**

Attendees made further comments that were not directly related to the consultation proposals, as follows:

- it would be helpful to have a PDF version of Ofqual's Conditions as well as the digital handbook
- it would be helpful to have one Conditions document with all three sets of conditions, highlighting what the differences are – or a separate document summarising the differences
- on any areas in the Conditions where judgement is required, it is possible that an awarding organisation's judgement might differ from the regulator's
- awarding organisations would like to understand why Qualifications Wales and CCEA request additional information in the statement of compliance process
- the timing of the CCEA logo requirements change has caused a problem, as certificates are purchased two years in advance
- it would be helpful if the regulators could provide a definition of a 'replacement certificate'