

ANALYSIS OF CONSULTATION RESPONSES

Legal establishment and location of awarding organisations

Consultation on the legal establishment and location of awarding organisations regulated by Ofqual

ofqual

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Introduction

We consulted¹ on proposed change to our rules about the legal establishment and location of awarding organisations between 31 January and 21 February 2020.

The consultation covered:

- how our rules should reflect the UK's new relationship with the EU during the transition period following the UK's exit from the EU
- removing the possibility that we might recognise an awarding organisation which, although legally established in the UK, Gibraltar or in an EU or EFTA country, does not have a substantial presence in any of these countries

There were 14 responses to the consultation, submitted either through an online form or by email.

This document provides a summary of the responses we received to our consultation.

Who responded?

We received 14 responses to our consultation. Thirteen were official responses from organisations, and one a personal response from an individual.

Of the 13 official organisation responses:

- 12 were from Ofqual-regulated awarding organisations, and one from a representative group for awarding organisations
- 11 were from organisations based in England, with 1 based in Wales and 1 in a non-EU country

The personal response was from an individual working for a regulated awarding organisation.

Approach to analysis

The consultation included 6 questions and we published it on our website. Respondents could use an online form, send an email or post a response to us.

The nature of the consultation means that only those who chose to participate expressed their views. As such, it cannot be considered as a representative sample of any specific group.

We present here summaries of the responses to the consultation questions in the order in which we asked them.

For each of the questions, we presented our proposals and then asked respondents the extent to which they agreed with our proposals, and their reasons for their views. Respondents could indicate their opinion using a 5-point scale (Strongly agree, Agree, Neither agree nor disagree, Disagree and Strongly disagree), and could also provide additional comments against each question.

Respondents did not have to answer all the questions, although in practice 13 of 14 did. Similarly, respondents did not have to provide comments against each question.

¹ <https://www.gov.uk/government/consultations/legal-establishment-and-location-of-awarding-organisations>

The number of respondents that chose to provide comments varied between questions, but in all cases at least 7 respondents did not provide any comments.

During the analysis, we read every response in full and summarise in this report the range of views respondents expressed.

Question-by-question analysis

Changes to our Criteria for Recognition

Question 1

To what extent do you agree or disagree with our proposal to change the Criteria for Recognition to allow us to recognise organisations based in the UK and Gibraltar (as well as those based in an EU or EFTA country)?

Please add any comments you have.

Overview of responses to Question 1



Of the 14 respondents, 13 (including the only personal response) either agreed or strongly agreed with this proposal.

Six of these respondents (all organisations) provided further comments, with all six noting that this change was necessary given the UK's exit from the European Union. One further commented that it would be helpful to clarify whether organisations based in Crown Dependencies (Jersey, Guernsey and the Isle of Man) could also be granted recognition.

The one remaining respondent (an organisation) told us they strongly disagreed with the proposal, but did not explain the reasons for their disagreement or provide any further comments.

Question 2

To what extent do you agree or disagree with our proposal to change the Criteria for Recognition to prevent us from recognising an awarding organisations which does not have a substantial presence in the UK, Gibraltar or a member state of the European Union or the European Free Trade Association, even if the organisation is legally established in one of those countries?

Please add any comments you have.

Overview of responses to Question 2



Of the 14 respondents, 10 (including the only personal response) either agreed or strongly agreed with this proposal. Three of these respondents (all organisations) provided further comments:

- One commented that they believed the criteria should be changed to avoid compromising Ofqual's ability to regulate and ensure compliance. They also commented that recognising an organisation without a substantial UK or EU presence might lead to unfairness in how awarding organisations were regulated
- One commented that the change was necessary to allow us to regulate effectively
- One noted they agreed in principle with the change, but expressed concerns that the term 'substantial presence' was not sufficiently defined. They commented that this might cause greater problems following the removal of the option for awarding organisations to instead just be legally established in the UK or EU. They also noted it was important that recognition requirements are clear so they can be applied consistently and fairly to all applicants, and so that potential applicants can understand what will be required of them

The remaining 4 respondents (all organisations) told us they disagreed with our proposal. All 4 provided further comments:

- All four expressed concerns that the term 'substantial presence' was not sufficiently well-defined, and that this could result in uncertainty for applicants or inconsistent application of the criteria
- Three expressed concerns about the potential impact on smaller awarding organisations
- Two commented that the proposal did not refer to Crown Dependencies or UK overseas territories, and suggested further clarity would be welcome here
- Two commented that it was unclear to what extent awarding organisations might need to demonstrate compliance with a requirement to maintain a 'substantial presence', or how they would evidence compliance
- One questioned whether awarding organisations would need to have particular functions, or a particular proportion of staff, based in the UK. They suggested that further clarity was needed around such issues

Changes to our General Conditions of Recognition

Question 3

To what extent do you agree with our proposal to change the General Conditions of Recognition to allow awarding organisations to be based in the UK or Gibraltar (as well as member states of the EU and EFTA)?

Please add any comments you have.

Overview of responses to Question 3



Of the 14 respondents, 13 (including the only personal response) either agreed or strongly agreed with this proposal.

Five of these respondents (all organisations) provided further comments to support their answers, with all five noting that this change was necessary given the UK's exit from the European Union. One further commented that it would be helpful to clarify whether organisations based in Crown Dependencies could comply with the Conditions.

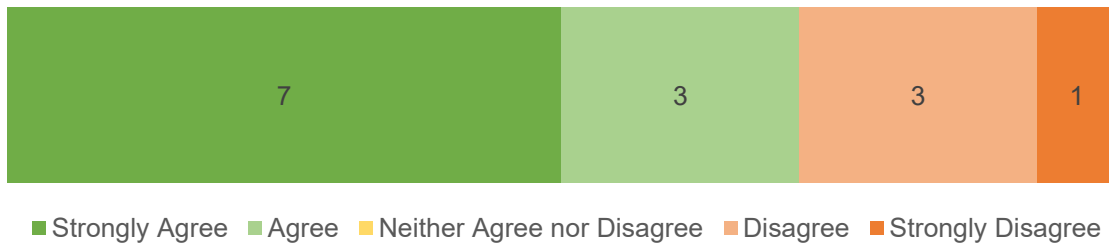
The one remaining respondent (an organisation) told us they strongly disagreed with the proposal, but as with their response to question 1 above provided no further comments.

Question 4

To what extent do you agree or disagree with our proposal to change the General Conditions of Recognition to require an awarding organisation to retain at all times a substantial presence in the UK, Gibraltar or a member state of the EU or EFTA?

Please add any comments you have.

Overview of responses to Question 4



Of the 14 respondents, 10 (including the only personal response) either agreed or strongly agreed with this proposal.

Four of these respondents (all organisations) provided further comments:

- One commented that they believed the Conditions should be changed to avoid compromising Ofqual's ability to regulate and ensure compliance. They also commented that not requiring a substantial UK or EU presence might lead to unfairness in how awarding organisations were regulated
- One commented that the change was necessary to allow us to regulate effectively
- One agreed in principle with the change, but expressed concerns that the term 'substantial presence' was not sufficiently defined. They also noted that the focus of the current Condition was on the establishment of awarding organisations. Finally, they commented that – for the purposes of compliance – it was easier to understand how to evidence 'legal establishment' than a 'substantial presence'
- One supported the proposal on the understanding that there would be a "clearer definition of 'substantial presence' than currently"

The remaining 4 respondents (all organisations) either disagreed or strongly disagreed with our proposal. The one respondent who strongly disagreed did not comment further, but the three respondents who disagreed did:

- Two commented that they agreed with the proposal in principle but could not support it without further clarification of the meaning of 'substantial presence'
- Two commented that it was unclear to what extent awarding organisations could demonstrate compliance with this requirement, and how they would do so. One particularly noted that there would be greater onus on awarding organisations to demonstrate compliance given the removal of the option to be 'legally established' in the EU
- One expressed concern that assessments of compliance might become too subjective, as both 'substantial' and 'presence' were "undefined in this context"
- One suggested further guidance on what constitutes a 'substantial presence' would give awarding organisations confidence that they could comply with the revised Conditions
- One referred to their earlier comments under question 2

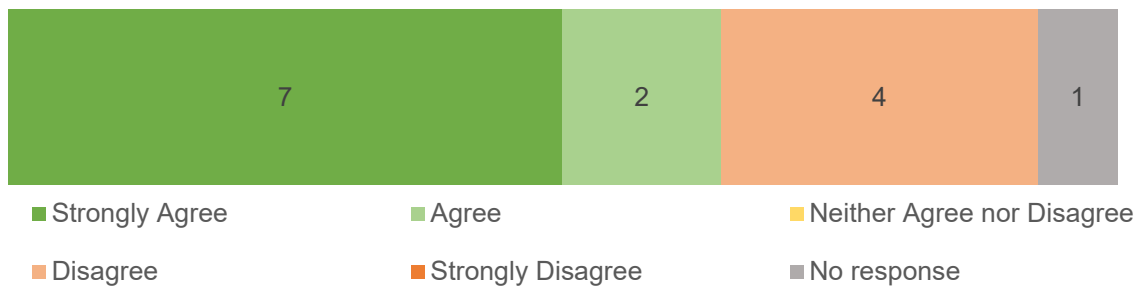
Impact of our proposals

Question 5

To what extent do you agree or disagree with our assessment of the impact of our proposed changes to the Criteria for Recognition and the General Conditions of Recognition?

Please add any comments you have.

Overview of responses to Question 5



Of the 13 respondents who answered this question (all organisations), 9 either agreed or strongly agreed.

Three of the respondents who supported our proposals provided further comments. All three commented that they did not expect the proposals to have significant impacts on organisations currently recognised by Ofqual. One also commented that they would expect any awarding organisation could only operate in the UK effectively if it met the requirement for a 'substantial presence'.

The remaining 4 organisations all told us they disagreed. Echoing their earlier comments, they expressed concerns about the potential impact of our proposals on smaller awarding organisations. They also commented that it was unclear how the requirement for a 'substantial presence' might be interpreted, and how (and to what extent) awarding organisations might be expected to demonstrate compliance with this requirement.

The only individual respondent chose not to answer this question.

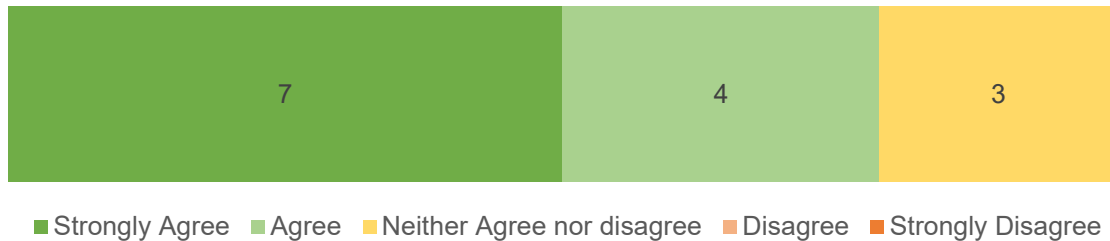
Equality impact assessment

Question 6

To what extent do you agree or disagree with our assessment of the impact of our proposed changes to the Criteria for Recognition and the General Conditions of Recognition on people who share particular protected characteristics?

Please add any comments you have.

Overview of responses to Question 6



Of the 14 respondents, 11 (including the only personal response) either agreed or strongly agreed with this proposal.

Two of these respondents (both organisations) provided further comments. One told us our assessment was appropriate; the other commented that – without further clarification of the meaning of ‘substantial presence’ – it was not possible to say whether or not equality impacts might arise.

The three remaining respondents (all organisations) were neutral. One of these provided further comments, noting that they had not assessed the impact of this proposal.



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