



Analysis of responses to Public  
Consultation on Revisions to Conditions of  
Recognition: Qualifications Wales, CCEA  
Regulation and Ofqual

REPORT

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## 1. Executive summary

The public consultation on Qualifications Wales, CCEA Regulation and Ofqual's proposed changes to their respective Conditions of Recognition (the "Conditions") took place between 2 August 2019 and 25 October 2019. The consultation questions were available to either complete online or to download. The consultation document can be found here<sup>1</sup>.

This report summarises the responses to the consultation. Strategic Research and Insight Limited (SRI), an independent research organisation based in Cardiff, analysed the responses on behalf of the three regulators.

The Conditions contain the main set of requirements that awarding organisations recognised by the three regulators (Qualifications Wales, CCEA Regulation and Ofqual) must adhere. Structured between Sections A to J, the Conditions set out the regulators' requirements from developing a qualification through to awarding and issuing certificates.

There were 48 responses to the consultation:

- 43 were submitted through the online consultation survey. These form the basis of the data analysis;
- three submitted a response directly to regulators by email which broadly followed the layout of the survey. These have been included in the broader analysis, wherever possible and applicable; and
- two further written submissions that were directly submitted to one or more regulators were in a letter format and did not follow the format of the survey. The content of these has been included in the qualitative analysis.

Where responses indicated the respondent type or where this could be determined from other details, four were from individuals and 42 were from organisations, 39 of which were awarding organisations (AOs). Two respondents did not disclose details that would allow categorisation by type of respondent. All consultation responses were received in English and none were received in Welsh.

There was broad agreement to many of the proposals outlined in the consultation. These were often echoed in the open text comments from respondents. Although there was general agreement for many of the proposals put forward, there were also reservations and points for consideration raised by some of those who agreed, disagreed or were neutral on each question. These have been outlined in detail in the analysis presented in this report. Some respondents felt that certain changes to the Conditions were relatively minor and may not add much benefit to warrant the changes proposed, particularly considering the implications of the costs, changes to systems, and communication with stakeholders that would be involved in implementing the changes. Most were concerned that the implementation timeline should be extended beyond April 2020.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/829362/19-6522\\_REVISED\\_-\\_Consultation\\_on\\_changes\\_to\\_the\\_Conditions\\_of\\_Recognition\\_-\\_3\\_country.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829362/19-6522_REVISED_-_Consultation_on_changes_to_the_Conditions_of_Recognition_-_3_country.pdf)

There was more feedback given on some proposals than others. For example, participants were particularly interested in giving additional comment on questions relating to the transparency of fee information, invoicing, guidance on Conflict of Interest, changes to the definition of Special Consideration, and proposed definitions of 'Insolvency Event', the role of the Responsible Officer and 'Change of Control'.

In general, the feedback showed that awarding organisations welcomed the joint revision and the greater alignment across the Conditions that the proposals would achieve. Some awarding organisations fed back that they would like to see even greater alignment on those areas where there are still outstanding differences.

For a number of the proposed changes, responses highlighted a need for greater clarity or guidance to accompany the Conditions. Some respondents found the explanations and examples provided in the consultation document very helpful and would like to see similar text in the guidance for the Conditions as they provide context, particularly on definitions.

## 2. Introduction

This report sets out the analysis of the responses received to the public consultation on proposed revisions to the respective Conditions of Qualifications Wales, CCEA Regulation and Ofqual. The consultation took place over 12 weeks between 2 August 2019 and 25 October 2019.

### Background

Qualifications Wales, CCEA Regulation and Ofqual each have Conditions that set out their requirements on the awarding organisations they regulate. The Conditions are similar across the three regulators, although there are some differences which reflect differences in legislation, processes and national contexts, as well as the different policy decisions of each regulator.

In 2017, Qualifications Wales launched a review of its Conditions in response to feedback from AOs<sup>2</sup>. The review identified that the Conditions should be revised and highlighted that awarding organisations would like them to be aligned across the three regulators, where possible. The published review findings also reported that AOs would appreciate other forms of clarification, guidance and/ or support on complying with the Conditions.

Ofqual gathered stakeholder feedback in 2018 on the availability of fee information, purchasing decisions, and securing value for money in the regulated qualifications market. A summary of the feedback is available on Ofqual's website<sup>3</sup>.

Qualifications Wales, CCEA Regulation and Ofqual have been working together to consider the evidence from these reviews, with each regulator sharing their perspectives on where they believe that changes to the Conditions may be appropriate. A detailed summary of the proposed revisions can be found on pages 11-15 of the [consultation document](#).

In most cases, the regulators propose to align the revisions to their respective Conditions, seeking to update the Conditions and improve their clarity and structure. One of the main changes they propose aims to strengthen the Conditions governing the qualification fee information that awarding organisation must provide to purchasers in order to maximise transparency and value for money. Other proposals in the consultation include revisions to the Conditions which set out the role of the Responsible Officer, recognition of prior learning, and issuing results.

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<sup>2</sup><https://qualificationswales.org/english/publications/?page=1&perpage=10&categories=&sortBy=byDate&fromDate=&toDate=&query=review%20of%20standar&publicationTypes=>

<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/822862/19-6523\\_Fee\\_information\\_purchasing\\_decisions\\_and\\_securing\\_value\\_for\\_money.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822862/19-6523_Fee_information_purchasing_decisions_and_securing_value_for_money.pdf)

### 3. Who responded?

There were 48 responses to the consultation. Of these responses, 43 were submitted through the online consultation survey and these form the basis of the data analysis. However, not all respondents chose to give an answer to each question.

A further three responses were submitted directly to the regulators by email and broadly followed the layout of the online consultation. However, in the instances where these respondents have not answered the closed questions in the survey, they cannot be counted in the quantifications of the data used to determine the overall level of agreement or disagreement. Where possible, these responses have been included in the broader analysis.

Finally, there were two written submissions; the content of which has been incorporated into the qualitative sections.

For 46 of the 48 responses received the type of respondent could be identified. Of these, 42 were from organisations, four were from individuals and the remaining two were unknown. Of the 42 organisations responding to the survey, the majority of these (39) were AOs. This indicates that around a fifth of the AOs which are regulated by one or more of the three regulators responded to the consultation.

All responses were in English and none were in Welsh.

#### Breakdown of consultation responses

Personal / organisational response	Respondent type	Number of responses
<b>Online survey responses</b>		
Organisational	Awarding organisation or exam board	36
Organisational	Trade association	2
Personal	Qualifications Coordinator	1
Personal	Assessor	1
Personal	Responsible Officer	1
Personal	Association staff member	1
Unspecified	Unknown	1
<b>Other responses</b>		
Unspecified but determined by name	Awarding organisation or exam board	3
	Representative organisation	1
	Unknown	1

Of the 39 AOs who responded to the consultation, eight were not identified by name leaving 31 for which the jurisdiction of regulators could be determined. Of these 31:

- 23 are regulated by all three regulators, six by two regulators and two by one regulator only (Ofqual);
- all 31 are regulated by Ofqual;
- 27 are regulated by Ofqual and Qualifications Wales; and
- 25 are regulated by Ofqual and CCEA Regulation.

## 4. Approach to analysis

The consultation was published on the websites of all three regulators. Respondents chose to respond using an online form, by email, or by posting answers to the consultation questions to any of the three regulators. The consultation included 30 questions which related to the proposed changes to the Conditions.

The responses to the consultation questions are presented in this report in the order in which they were asked. For some of the questions, respondents could indicate the extent to which they agreed with the proposals, using a 6-point scale (Strongly agree, Agree, Neither agree nor disagree, Disagree, Strongly disagree and Don't know), as well as providing free-form narrative comments on the proposals. For other proposals, respondents were invited to provide any comments in free-form in an open comments box.

Questions where respondents were asked to indicate the extent of their agreement are referred to as "closed", whereas those which asked respondents to provide comments are referred to as "open".

Not all respondents expressed a preference using the 6-point scale, with some only providing a comment. Likewise, not all respondents who expressed a preference on the scale provided a comment and, of those who did, not all comments were relevant to the question. In some cases, the comment in the open question was that they had no comment.

During the analysis phase, SRI reviewed every response to each question, and also the responses that did not follow the format of the consultation. Using Excel, SRI transformed the data from the closed questions into bar and pie charts which show the proportions of responses to each relevant question.

SRI used a thematic technique to analyse the comments from the open questions, which are presented in tables throughout the report. The thematic analysis technique involved reading, understanding and categorising the open response data, then grouping features into themes. SRI used the themes to develop a coding frame which consisted of key words and short phrases which concisely summarised the open responses' content. Data was then organised against the key themes in the coding frame and numbers have been recorded against each theme to give a sense of scale. Some respondents simply confirmed that they had 'no comment' in the open text boxes and these have been excluded from the data tables and base figures to ensure that the results are not misleading.

The base figures under each chart or table shows how many respondents provided an answer to each question or theme as these varied from question to question. Please note that due to the small base size involved, charts and tables have been constructed using the number of respondents rather than the percentage of respondents in order to avoid misleading the reader. This number changes as not all respondents answered all questions.

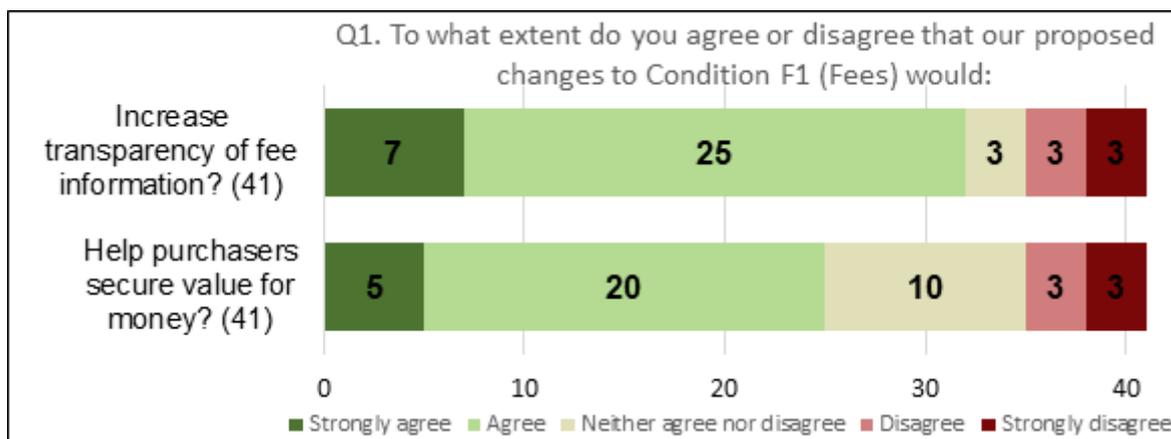
As the majority of respondents were AOs, it was not possible to meaningfully differentiate the content of the consultation responses by the type of respondent. We have noted in the relevant sections of the report, the instances where points of view were exclusively given by AOs within the commentary.

As most of the AOs that responded are regulated by at least two regulators no differences could be extrapolated from the data across jurisdictions. Where possible, we have identified the jurisdiction of the respondents who disagreed with proposals put forward by a single regulator.

## 5. Consultation analysis: Revisions to Condition F

In this section, we report the views of those who responded to questions 1 to 5 in the consultation document which relate to revisions to Section F of the Conditions. This covers Condition F1 (Fees), and Condition F3 (Invoicing).

### Q1: Condition F1 (Fees)



Base: shown in brackets

Overall, of the 41 responses, 32 agreed or agreed strongly that the proposed changes to Condition F1 would increase transparency of fee information. Of the remaining nine responses, three (all AOs) were neutral on this, and the other six (again, all AOs) disagreed to some extent.

On whether the proposed changes to Condition F1 would help purchasers secure value for money, over half (25) of the 41 who responded agreed to some extent. Around a quarter (10) were neutral on this, and six disagreed to some extent: all 16 of which were AOs.

### Additional comments on proposed changes to Condition F1

32 respondents chose to provide additional comments in response to question 1. Their responses are coded into the themes outlined in the table below.

Q1 Comments on proposed changes to Condition F1 (Fees):	Responses
Proposals would increase transparency	18
Proposals need more flexibility	9
Proposals need clarifying / AOs need more guidance	9
Fees are already publicly available	9
Proposals would not help purchasers secure value for money	8

Q1 Comments on proposed changes to Condition F1 (Fees):	Responses
Proposals would help purchasers secure value for money	7
Proposals would help purchasers to make informed decisions	5
Proposals would not increase transparency / proposals would cause confusion	5
Proposals would increase competition between providers	5
AOs should set own fees for international purchasers / there are issues with pricing in international markets	5
Proposals would even out competition / standardise practice between providers	4
Fees should not be published / fees should only be available on request	4
AOs need time / resources / software or system upgrades to implement the proposals	3
Regulators need to monitor / enforce Conditions' implementation	3
Fees are not a big issue / qualification quality is more important than fees	2
Proposals would improve trust / communication between purchasers and providers	1
Proposals assume universal internet access	1
Proposals would improve customer satisfaction	1

Base: 32

### Many comments were positive about the proposals for Condition F1

Many of those who responded to question 1 commented positively on the proposed changes to Condition F1.

Eighteen of the 32 respondents who commented felt that the proposals would increase the transparency of fee information. Seven noted that the proposals would help purchasers to secure value for money, and five stated that they would help purchasers to make informed decisions through enabling them to consider and compare detailed information about qualifications.

Four respondents specifically welcomed the proposed changes to Condition F1 because they felt that they would ensure a level playing field between AOs and help them to manage competition.

Two more respondents made other positive comments about the proposals for Condition F1. They reflected that the increased transparency would improve communication and trust between AOs and would increase customer satisfaction. Nine respondents also noted that their fees were already publicly available, making them compliant with aspects of the proposed changes to Condition F1.

### Some felt that the proposals for Condition F1 should be more flexible

Ten respondents felt that the proposed changes to Condition F1 should be more flexible. Several of these respondents highlighted associated learner fees when making this point. They explained that some associated learner fees were set by centres and could vary by qualification, centre and learner. Others also noted that the centre also plays a role as they can be a purchaser of qualifications as well as charging learners themselves for products and services delivered by them directly.

Other responses asking for more flexibility said that the revised Condition should accommodate qualifications of different durations; those with different modular structures; scenarios where learners completed individual units rather than entire qualifications; and those where learners made multiple examination attempts.

One respondent noted that the prescriptive nature of the proposals could result in AOs automatically defaulting into 'exceptional circumstances' in certain situations.

### **Some said that the proposals for Condition F1 needed further clarification**

Nine respondents stated that the proposals were not as clear as they could be and that AOs would need more guidance on implementing them. In particular, respondents commented that they were unclear:

- what was meant by 'Purchasers' – and whether these could be learners and/or centres;
- whether AOs would have to use the term 'standard qualification fee' when publishing their fees;
- whether the standard qualification fee would have to be paid in full upfront rather than in instalments;
- whether AOs could list fees by qualification type, or if they could list fees for each individual qualification they offer;
- whether fees must be listed alongside 'new' definitions;
- whether AOs would have to list 'new' definitions throughout their IT systems and documentation (e.g. processes, registration, certification and invoicing); and
- whether AOs could publish only the UK qualification fees for each regulated qualification they offer and remain free to provide region-specific fees to potential purchasers only on request.

One respondent said that they would also welcome guidance on how to categorise and define all products and services, including examples of the different types of products and services which fall into the different categories.

### **Some said that the proposals for Condition F1 would not increase transparency or value for money**

Some respondents had concerns about transparency and value for money aspects of the proposed changes to Condition F1. Eight of the 32 total responses to this question felt that the proposals would not help purchasers to secure value for money; five considered that they would not increase transparency or that they would cause confusion; and five felt that the proposals would increase competition between providers.

Some respondents pointed out that purchasing qualifications at the lowest price did not necessarily equate to achieving value for money. They noted that different AOs had different fee structures and products which were not always comparable. Some also stated that offering purchasers a better service at a higher price may provide better value for money and highlighted additional factors which contributed to value for money. These included the way qualifications were assessed and delivered, the nature of support available, the level of administration required and the qualifications' recognition within the market. Others reiterated that publishing fees did not always take account of different costs, particularly centre charges, as already outlined.

Some noted that the proposed changes to Condition F1 would increase competition between providers, and that publishing fees may disadvantage AOs which could not match the fees of their competitors. One felt that the changes could affect smaller AOs to a greater extent because they were less able to be flexible with their fees than larger AOs were. Others felt that publishing fees may encourage some AOs to undercut their fees in a bid to attract business away from them.

*“We also have concerns that AOs that are in direct competition with us would be able to see all of our fees and potentially undercut us by a small amount and use that to steal business from us.”*

In addition, one respondent commented on how this revision may relate to fee capping.

### **A few felt awarding organisations should not have to publish their fees**

Four respondents felt that AOs should not be required to publish their fees, and/or that they should only make their fees available on request. One of these respondents said that this was because the fee information was complex and irrelevant to many users.

Publishing fee information would not allow the different contexts in which qualifications were purchased overseas to be taken into account, according to one respondent. Another explained that they offered some centres discounted rates for certain qualifications if they had helped to develop those qualifications. Other centres did not get such discounts. Publishing fees could therefore raise questions with the centres who were not offered discounted rates, which in turn could affect the AO's business.

### **A few had strong concerns about international markets**

Of those making comments, five noted very strong concerns about the implications if they were required to publish fees for international markets alongside fees for England, Wales and Northern Ireland. These respondents highlighted that there are variations in fees across different markets which may not be comparable due to the nature of each individual market and that publishing them may be unhelpful. They indicated that visibility of UK pricing would raise questions about the cost of delivery in other regions and countries internationally in markets which are very different to the UK and are not 'like for like'. Whilst CCEA Regulation and Qualifications Wales regulate only those qualifications that are taken in Northern Ireland and Wales respectively, Ofqual's regulatory remit extends to qualifications taken outside of the UK. Therefore, this concern raised about international markets and the publication of fees, impacts on regulation by Ofqual only.

*“This consultation document does not appear to give any consideration to the qualifications market outside the UK, but Ofqual's stated position previously has been that the Conditions will apply to a regulated qualification wherever in the world it is used (we acknowledge the remit of the other regulators is restricted to N Ireland and Wales respectively). Due to the different context and factors at play outside the UK, we do not agree that the changes would help secure value for money in markets that are very different to a UK market that consists mainly of regulated qualifications which are publicly funded. Our regulated qualifications are used by customers [...] around the world, in the majority of which they will be an alternative to qualifications and assessments, both local and international, that are not Ofqual regulated and not bound by the same rules.”*

One respondent commented on the need for AOs to set their own fees internationally<sup>4</sup>. Others also commented on the practical implications of publishing complex international pricing.

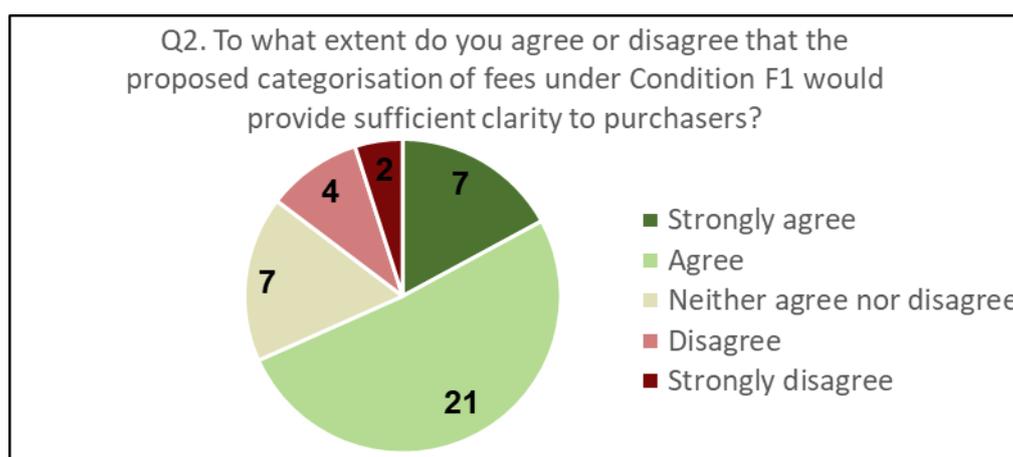
**Additional comments made by fewer than four respondents each**

Three respondents said that AOs would need time and/ or system or process upgrades to implement the proposed changes to Condition F1. One of these respondents also said that this included time to communicate the changes to their purchasers. A further three highlighted the need for the regulators to monitor or enforce AOs' compliance with the changes, with two also noting that not all AOs currently published their fee information. Another comment related to the proposal's assumption that everyone has access to the internet.

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<sup>4</sup> This may reflect a misunderstanding on the respondent's part. The proposed changes to Condition F1 would not prevent AOs from setting their own fees internationally or in the UK. The proposals would simply mean that those fees must be published.

## Q2: Proposed categorisation of fees under Condition F1



Base: 41

Of the 41 respondents to this question, nearly two thirds (28) agreed to some extent that the proposed categorisation of fees under Condition F1 would provide sufficient clarity to purchasers. Fewer than one in five disagreed (6) or were neutral on this (7): all of which were AOs.

### Additional comments on proposed categorisation of fees in F1

30 respondents chose to provide comments in response to question 2. Their responses are coded into the themes outlined in the table below. Of those who commented, five made an incomplete or irrelevant comment mostly referring us to responses given in comments made under question 1.

Q2 Comments on proposed categorisation of fees under Condition F1 would provide sufficient clarity to purchasers:	Responses
Categorisation is a good idea / would provide sufficient clarity to purchasers / proposed categories are clear	16
Categories should show any additional costs associated with qualifications	7
Categories are unclear / confusing / need to use accessible terminology	6
AOs need more information about what's included in fee categories	5
AOs fees are already categorised similarly / in the same way	3
Categorisation is not a good idea / would not provide sufficient clarity to purchasers	3
Categorisation is unnecessary / AOs should provide their own categories	3
Categories need to be updated regularly	2
Categories need to be shared / published in a timely manner	2
Categorisation / fees should not be published	2
Purchasers need more information about what's included in fee categories	1
Categories should allow for qualification completion over several / successive years	1

Q2 Comments on proposed categorisation of fees under Condition F1 would provide sufficient clarity to purchasers:	Responses
Categories should show if qualifications can be purchased individually or as a package	1
Irrelevant comment	5

Base: 30

### **Around half said that they welcomed the proposed fee categorisation**

Around half (16 of the 30 that commented) reflected positively on the proposed fee categorisation. These respondents felt that the proposed categorisation would help to provide a clear, useful framework which made “good business sense” for AOs. Some reported that they would welcome fee information being provided at an earlier stage in order to inform their financial planning. One also said that they liked the flexibility that the proposed terms introduced which may suggest a misinterpretation of the level of flexibility actually being proposed. Three of the 16 respondents who said that they welcomed the proposed fee categorisation also noted that they already categorised their fee information in this way.

### **Categories should show additional costs, according to some**

Eight respondents said that the fee categories should show additional costs which were associated with qualifications. They noted that these costs could arise from:

- bank charges on international transactions;
- VAT;
- secure transit of assessment materials;
- examination resits;
- blended learning options;
- licence to practise requirements, e.g. Construction Skills Certification Scheme (CSCS) cards for construction industry-based learners;
- centre fees, e.g. an annual recognition fee that is not specific to any qualification, which is charged by an awarding organisation to purchasers who are not already registered with them;
- registering learners after the published ‘registration deadline’; and
- external assessment components.

### **Some said that the categories are confusing, inaccessible or unnecessary**

Six respondents said that the proposed categories were confusing, largely due to their complexity, omissions and/ or inaccessible language. Some of these respondents felt that AOs should be able to use simpler wording that purchasers could understand and were familiar with, rather than adopt the proposed wording.

One other respondent felt that the proposed changes should be introduced at the start of the new academic year in September 2020 rather than part-way through to avoid confusing centres.

Several also suggested that including the information about the additional costs and the information about fee categories discussed elsewhere would clarify the categories, as did a further three respondents who said that they disagreed with the categorisation or expressed that it was unnecessary.

### **Some felt that awarding organisations and purchasers need more information about the fee categories**

Six respondents stated that AOs would benefit from more information about what the fee categories included, and one said that the same applied for purchasers. Several of these respondents felt that additional information would help to ensure that AOs interpreted the categories in the same way.

Specific information about the categories that respondents said that they would like further detail on were as follows:

- whether AOs would have to label fees with the specified categories or if they can continue to use their existing categories;
- how to categorise 'minimum annual purchase' charges which are not mandatory centre fees, e.g. where AOs require centres to spend a minimum amount per academic year on standard qualification fees;
- clarification of what is included in 'package fees'; and
- clarification of what is included in 'standard qualification fees' e.g. whether they include both registration and certification fees.

### **Additional comments that were made by fewer than three respondents**

Fewer than three respondents made additional comments about the proposed changes to the categorisation of fees under Condition F1. Two respondents highlighted the importance of keeping the categories up to date, and two more emphasised that the categories needed to be published in a timely manner going forward.

Reiterating points made elsewhere, two respondents said that a full breakdown of fees should not be published. Two more respondents commented on aspects of the categories that they felt should be more flexible. They felt that the categories should accommodate qualifications which were completed over several / successive years, and qualifications that can be purchased individually or as a package.

### Q3: Other potential changes to improve transparency of fee information and/or value for money

This was an open question to which 24 respondents chose to provide comments. Their responses are coded into the themes outlined in the table below.

Q3. 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? Comments:	Responses
No other changes needed / proposals are good / fit for purpose	10
Clarify / expand definition of 'value for money'	7
Ensure that AOs publish complete fee information	3
Clarify 'associated learner fee' proposals	3
Proposals need more flexibility / AOs should provide their own fee information	2
Proposals could disadvantage smaller AOs	1
Add all relevant information to QiW database to allow cross-comparability of qualifications between regulators	1
Provide further information on charges for external QA activities	1
Clarify who the 'purchaser' is	1
Provide a glossary of relevant terminology	1
Categories should allow for qualification completion over several / successive years	1
Categories should show if qualifications can be purchased individually / as a package	1
Regulators need to monitor / enforce Conditions' implementation	1
Categories are unclear / confusing / need to use accessible terminology	1
Fees / full details of fees should not be published	1
Do not change Condition / current Condition is clear	1

Base: 24

#### Around a half agreed with the proposals and/ or suggested no further changes

Just under half of those who commented (11) agreed with the proposals and/ or did not suggest any further changes that the regulators could consider in order to improve transparency and / or value for money in the market for regulated qualifications. Several of these respondents added that the proposals were likely to help to improve transparency and value for money as intended. Most also highlighted additional points for clarification within the proposed changes to Condition F1: many of which have already been raised and discussed elsewhere.

#### The meaning of 'value for money' needs clarifying, according to some

Seven respondents commented that there is a need to clarify what is meant by 'value for money'. Reflecting points made elsewhere, several of these respondents felt that perceptions of what constituted 'value for money' could vary from purchaser to purchaser depending on their needs and preferences. One noted that requiring AOs to publish their fees could over-emphasise the importance of cost in achieving value for money:

*“There might be some merit in providing guidance on what ‘value for money’ means. There are many factors which come into play when determining value and price is only one of these. Requiring AOs to publish price lists will make only this one aspect of value visible and may, in turn, elevate it in consumers’ minds as the most important one. This could lead to smaller AOs being disadvantaged, as they are unable to offer loss-leader products or have the economies of scale enjoyed by the larger organisations. It is feasible that they will offer a better ‘value for money’ product at a higher price, but not be able to compete when decisions become price led.”*

Some felt that considerations of ‘value for money’ could incorporate the following factors:

- innovation in the market;
- the quality and relevance of qualification content;
- brand reputation;
- the availability of support resources;
- the robustness of quality assurance (QA);
- the quality of customer service; and
- development costs.

### **Some felt that although awarding organisations should publish fee information, the proposals should be more flexible**

Three respondents highlighted the importance of ensuring that AOs published their fee information. Some added that this would increase transparency and value for money for centres. However, two of these respondents also noted that the proposals should be more flexible and less prescriptive. Reflecting points made elsewhere, these respondents emphasised that AOs should be able to provide their fee information in a way that meets the needs of their market and business.

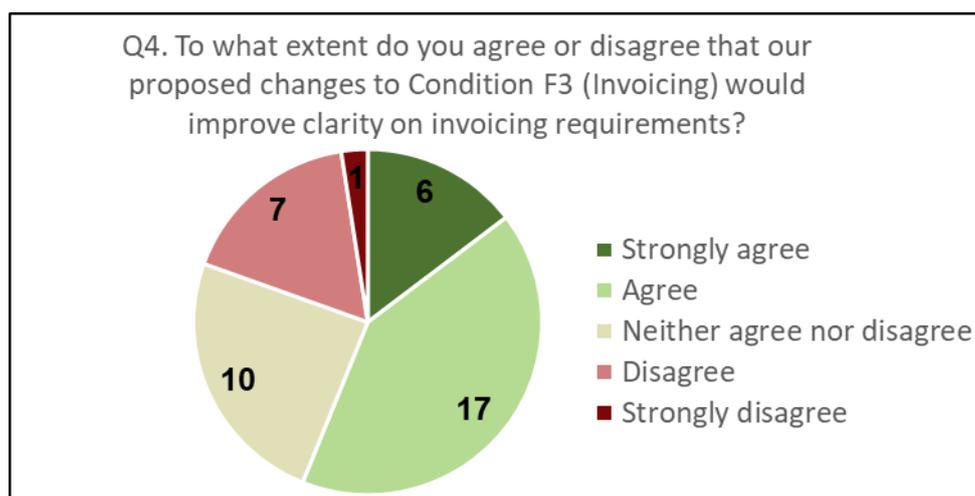
### **Others highlighted points for clarification and/ or requested additional information**

Echoing feedback made in response to other questions, three respondents said that the definition of associated learner fees needed clarifying. At present, they felt that the definition was open to interpretation.

### **Individual respondents made a range of additional comments**

The remaining points were made by one respondent each. They mainly suggested specific clarifications or requested greater flexibility in the Conditions. Nearly all of the points made have already been outlined and discussed elsewhere.

## Q4: Condition F3: changes to improve clarity on invoicing



Base: 41

Of the 41 respondents who responded to question 4, over half (23) agreed to some extent that the proposed changes to Condition F3 (Invoicing) would improve clarity on invoicing requirements. Nearly one quarter (10, all AOs) were neutral on this, and fewer than one in five (8, all AOs) disagreed.

### Additional comments on improving clarity of F3

26 respondents chose to provide comments relating to question 4. Their responses are coded into the themes outlined in the table below.

Q4. To what extent do you agree or disagree that our proposed changes to Condition F3 (Invoicing) would improve clarity on invoicing requirements? Comments:	Responses
Proposals are good / would clarify invoicing requirements	17
Proposals need clarifying / AOs need more guidance	10
Practice is already in line with proposals	5
Proposals are unnecessary / would not clarify invoicing requirements	5
AOs need time / resources / software or system upgrades to implement the proposals	4
Proposals would not change Condition's meaning significantly / proposals would have little impact	2
Proposals need more flexibility	2

Base: 26

### Around two thirds of the comments were positive about the proposals

Around two thirds of those who commented further on the proposed changes to Condition F3 (17 out of 26) were in favour of them and/ or felt that they would clarify invoicing requirements. These respondents did not expand any further on their responses, apart from one who expressed surprise that AOs did not already comply with the proposed invoicing requirements.

### **Nearly two fifths requested clarification or guidance on the proposals**

Almost two fifths (10 respondents) felt that aspects of the proposals needed clarifying or said that they would welcome further guidance on them to enable them to prepare for the changes. Seven of these respondents said that they would like additional guidance on what constituted a 'reasonable level [of detail]'. One also noted that the level of detail would vary between AOs in line with their different contexts and characteristics. Another commented that a more detailed breakdown would be acceptable, but it should not be prescribed. In addition, one respondent said that they would like more guidance on the phrases 'a timely manner'; 'beyond [that required for HMRC]'; and who the 'purchaser' was, as outlined elsewhere.

### **Several said that they are already compliant with the proposals**

Five respondents said that their practice was already in line with the proposed changes to Condition F3. One of these also noted that the proposals would need careful consideration to avoid burdening some AOs.

### **Some felt that the proposals were unnecessary or would not clarify invoicing requirements**

Five respondents felt that the proposals were either unnecessary or would not clarify invoicing requirements. Most of these respondents referred to the aspects of the proposals that they felt were unclear, as already discussed. One respondent foresaw problems with providing meaningful fee breakdowns for qualifications that are offered as individual items and as part of packages.

### **A few noted that awarding organisations would need time, resources, software or system upgrades to implement the proposals**

Although they broadly agreed with the proposals, four respondents also said that AOs needed time, resources, software or system upgrades in order to implement the proposals.

One of these four noted that additional guidance (on the points already highlighted) would be essential to enable AOs to gauge what changes they would need to enable them to accommodate the proposals.

Two noted that AOs would need to update their finance and invoicing software as well as supporting internal processes to provide the level of detail outlined in the proposals. One of these respondents felt that making these changes would burden AOs.

### **Two respondents felt the changes to wording had little effect on meaning**

One respondent felt that although the proposed wording change was appropriate and understood, it would not change the Condition's meaning much. Similarly, another respondent said that the wording change would have little effect because they were already compliant with the updated Condition.

## Q5: Other comments on proposed changes to Section F

22 respondents chose to provide comments in response to question 5. Their responses are coded into the themes outlined in the table below.

Q5. Please provide any other comments you may have on our proposed changes to Section F of our Conditions.	Responses
AOs need time / resources / software or system upgrades to implement the proposals	11
Proposals need clarifying / AOs need more guidance	7
Proposals are good / agree with proposals	6
Practice is already in line with proposals	2
Proposals need more flexibility	1
Proposals would increase competition between providers	1
Regulators need to monitor / enforce Conditions' implementation	1
Proposals are unnecessary / would not clarify invoicing requirements	1

Base: 22

### Half said that awarding organisations would need time, resources, software or system upgrades to implement the proposals

Half of the respondents who commented further (11) said that implementing the proposed changes to Condition F would take substantially more time than the regulators anticipated due to the amount of work involved. They explained that this would arise from updating websites, printed information, policies, processes, IT systems and communicating the changes to customers.

Consequently, most of these respondents said that the proposals' implementation timescale should be extended. Some suggested alternative timescales for implementing the proposals. These included alignment with the academic year (September 2020), the annual statement of compliance (October 2020), and financial year (April 2021). Two respondents noted that a mid-year implementation timescale may result in some awarding organisations feeling it necessary to report non-compliance for the first part of the year against a Condition that came into force mid-year.

### Several would welcome more guidance or clarification on the proposals

Seven respondents listed the topics in which they would like to see guidance or other forms of clarification:

- defining a 'reasonable timescale', and who needs to demonstrate 'reasonableness';
- defining a 'timely manner';
- defining what is/is not included in the 'package fee';
- examples of what could be included in different packages, e.g. learning materials; and
- further clarification of whether fees relating to professional body membership can form part of packages or not.

One respondent highlighted the need for general guidance with examples to accompany the updated Conditions. Another said that Condition F3.1b should be changed to clarify

that a breakdown of the invoice must be provided as opposed to 'following a request from the purchaser'.

### **Some said that they broadly agreed with the proposals in Section F**

Six respondents who made further comments generally about the proposed changes to Section F said that they agreed with the proposals and/or felt that they would improve clarity or value for money. One of these cautioned that larger organisations may use the increased transparency of fee information to undercut smaller organisations. Another noted that the proposals do not reflect the diversity of AOs' business models. Two confirmed that their practice was already in line with the proposals.

## **Comments on the impact of proposed changes to Condition F**

At the end of the consultation questionnaire, respondents were invited to provide comments on the regulators' Impact Assessment of the proposed changes. Although most were general comments, some made specific reference to issues with the proposed changes to Condition F. Those who commented suggested there would be a larger impact in terms of cost, time to implement, documentation and systems than the regulators anticipate. These comments were:

*"We feel that the potential major impact will be regarding F1 if proposed changes are needed to ensure compliance. [If] The changes are required, they could take significant time to implement. We would still like further clarity on who is being considered as a Purchaser."*

*"Each regulator may wish to consider the evidence in relation to changes to Section F (transparency of fees and invoicing), and the time which may be required by some AOs who will need to make substantial changes to their fees lists, and associated published documents (including, for example, hard copy prospecti). Similarly, there may be AOs who have systems of quality control that may be "tagged" against specific regulatory criteria in their current numbered format. The changes proposed within this consultation may see additional work required from many AOs, to ensure any such systems of control are updated and accurate in a timely manner, thus avoiding unintended non-compliance as a result of cataloguing or document control error."*

*"[...] There are potential (significant) costs implications here."*

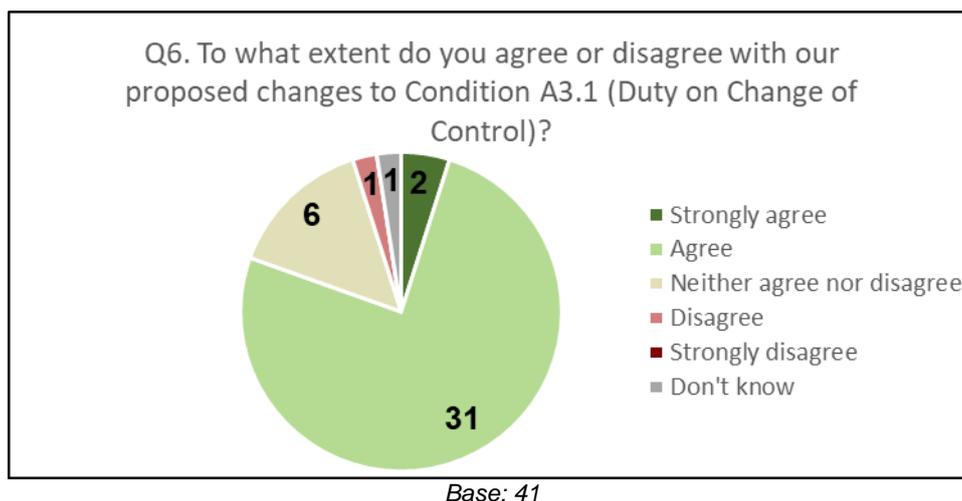
*"In relation to the proposals in relation to Condition F1, we also reference chapter 8 of the consultation on impact assessments, specifically that paragraph 8.8 states that publication will be a "relatively simple process". This would not be the case for us and so this increases the regulatory burden significantly. Paragraph 8.6 therefore incorrectly states that the proposals align with how things are done, as these proposals cannot be easily applied in respect of regulated qualifications that are offered internationally. As such the regulators assessment that there will not be undue burdens is incorrect. We would also draw your attention to the absence of any assessment relating specifically to international qualifications of our type."*

## 6. Consultation analysis: Other revisions to Conditions

In this section, we report the views of those who responded to questions 6 to 13 in the consultation document which relate to other revisions to the Conditions proposed by all three regulators. This chapter covers questions relating to the following parts of the Conditions:

- Q6: Condition A3.1 (Duty of Change of Control);
- Q7: Draft guidance on Conflict of Interest (including personal interest);
- Q8: Condition B1 (Role of Responsible Officer);
- Q9: Condition D6 and 'Rule of Combination' in J1;
- Q10: Condition E10 (Recognition of Prior Learning);
- Q11: Definition of Special Consideration;
- Q12: Condition H6 (Issuing Results); and
- Q13: Condition I1.2 (Appeals).

### Q6: Condition A3.1 (Duty on Change of Control)



Based on the 41 who responded to question 6, 33 agreed or strongly agreed with the proposed changes to Condition A3.1 (Duty on Change of Control). Six were neutral about the proposed changes (all AOs) and just one disagreed (also an AO).

### Additional comments on the proposed changes to A3.1

25 respondents chose to provide comments in response to question 6a. Their responses are coded into the themes outlined in the table below.

Q6. "To what extent do you agree or disagree with our proposed changes to Condition A3.1 (Duty on Change of Control)?" Comments:	Responses
Proposals are good / agree with proposals	19
Added definition of 'procure' is good	8

Q6. "To what extent do you agree or disagree with our proposed changes to Condition A3.1 (Duty on Change of Control)?" Comments:	Responses
Proposed change to 'procure' is not good / needs more clarification / should be changed	3
Proposals need clarifying / AOs need more guidance	3
Proposals are unnecessary / existing Condition is clear	2

Base: 25

### Most agreed with the proposals, particularly the definition of 'procure'

19 of the 25 who commented said that they agreed with the proposed changes to Condition A3.1. Eight of these respondents said that they welcomed the definition of the term 'procure', noting that this clarified the Condition's meaning. However, two of those who said that they agreed with the proposals also noted that the changes were unnecessary because the existing Condition was clear. One respondent who agreed with the proposal also noted that the definition of 'procure' should also be added to Condition J1.8 to prevent any confusion or misunderstanding.

### A few disliked the term 'procure'

Conversely, three respondents were unhappy with the proposed inclusion of the term 'procure'. Two suggested replacing 'procure' with 'ensure', and the third suggested the re-write below to remove the word 'procure':

*"A3.1 Where there is a Change of Control in relation to an awarding organisation, it must take all reasonable steps –*

*(a) to ensure that the Change of Control does not have an Adverse Effect, and  
(b) that every other relevant person takes all reasonable steps to ensure that the Change of Control does not have an Adverse Effect.*

*A3.2 Where there is a Change of Control, the awarding organisation must put in place a plan designed to ensure that the interests of Learners will be protected".*

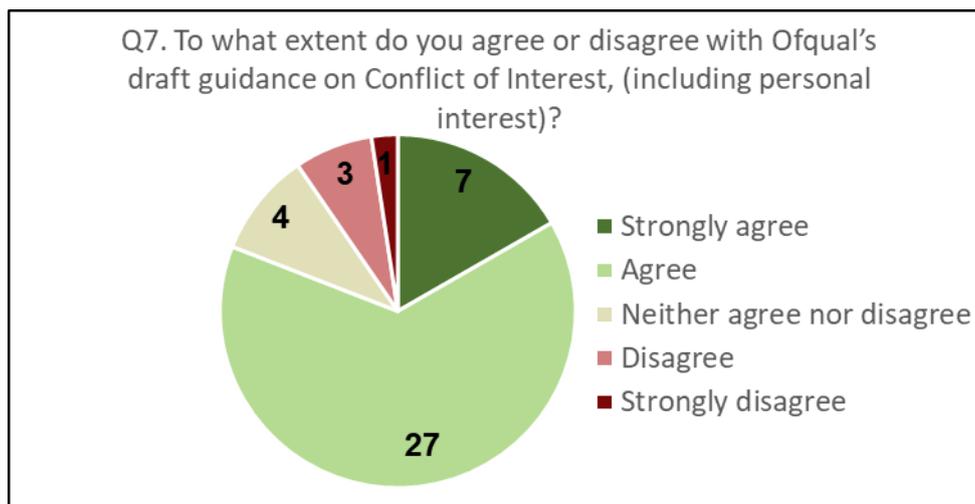
### The proposals need additional clarification or guidance, according to a few

Three respondents felt that the proposed changes to Condition A3.1 required additional clarification or guidance.

One respondent suggested that the requirements in Condition A3.1b should be expanded to centres as well as learners.

One respondent recommended that the regulators included hyperlinks to definitions of all of the complex, legal and potentially ambiguous terms which featured in the revised Conditions in Section J (Interpretation and Definitions). This respondent also advised that the regulators should present a similar rationale for such terms upfront in the Conditions document(s) as is currently included in paragraphs 5.2 and 5.3 of the consultation document.

## Q7: Ofqual’s draft guidance on Conflict of Interest



Base: 42

Of the 42 respondents to question 7, most (34) said that they agreed to some extent with Ofqual’s draft guidance on Conflict of Interest (including personal interest). However, four respondents said that they disagreed (all AOs) and four were neutral about it (all AOs).

### Additional comments on draft guidance on Conflict of Interest

32 respondents chose to provide comments in response to question 7a. Their responses are coded into the themes outlined in the table below.

Q7. To what extent do you agree or disagree with Ofqual’s draft guidance on Conflict of Interest, (including personal interest)? Comments:	Responses
Guidance is good / helpful	21
Proposals need clarifying / guidance needs further detail / needs to include more examples	14
Identifying a 'completely independent' person would be an issue	7
Guidance is unnecessary / confusing	5
Guidance would not change understanding / guidance would have little or no effect on AOs	2
Guidance should be consistent across the regulators	1

Base: 32

#### Around two thirds said that the guidance provided helpful clarification

21 (of 32) respondents said that they approved of the guidance. Most of these noted that the guidance helped to improve clarity and rectify any misunderstanding or confusion around conflicts of interest. One respondent particularly welcomed the detail on incentives, and another appreciated the detail on tests to determine conflicts of interest.

However, one questioned why ‘personal interest’ received more attention in the guidance when it was reportedly just one example of many conflicts of interest. The summary of the relationship between ‘conflicts of interest’ and ‘personal interest’ as outlined in paragraphs

4.10 and 4.11 of the consultation document could usefully preface the proposed guidance, according to one respondent.

Of those who approved of the guidance, two also noted that the guidance would not change their understanding of conflict of interest and/ or personal interest. Another emphasised that the guidance should be consistently adopted by all three regulators.

### **Some want further guidance, particularly around ‘personal interest’**

14 respondents gave a comment that suggested the proposals require further clarification. Some of these questioned the definition of ‘personal interest’. For example, if an AO pays someone external to conduct an appeal, whether this could mean a conflict of personal interest. This individual could perceive that they will not be offered work again if any inquiry is found in favour of the appellant.

Similarly, there were also concerns that it could be difficult to secure someone who is completely independent with no personal interest whatsoever with an AO, i.e. relatively “unknown” by all affected parties. This would be particularly difficult in a specialist area where subject matter expertise is required. This point also covers (and overlaps with) the third most common theme – ‘identifying a ‘completely independent’ person would be an issue’.

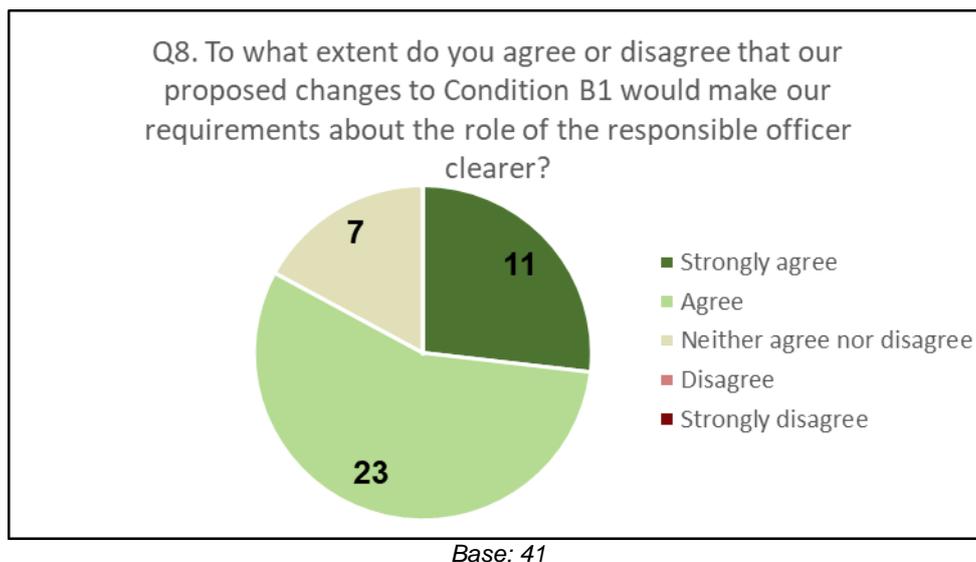
Similarly, there were suggestions that guidance should be provided on the types of conflicts which cannot be managed, for example, for a Head of Centre. They will inevitably have a conflict of interest being as their candidates are their own students.

One respondent suggested ‘a suitable distance from’ could be used to further clarify what is a conflict of interest.

One respondent questioned what constitutes the guidance for Condition A4.6 where it states that part of the assessment should be scrutinised by someone else who does not have an interest. This respondent asked whether this means a section of the assessment has to be scrutinised, or if it should be all of it.

Other areas that were briefly commented on as requiring further clarity include the requirements with regards to Condition A4, further guidance with regards to ‘in centre’ activities, and guidance on the definition of a ‘group’.

## Q8: Condition B1 – the role of the Responsible Officer



Of the 41 respondents to this question, most (34) agreed to some extent that the proposed changes to Condition B1 would bring further clarity to the requirements on the role of the Responsible Officer. However, the remaining seven respondents (six AOs and one other) were neutral on this point.

### Additional comments on proposed changes to B1

28 respondents chose to provide comments in response to question 8. The responses are categorised in the themes outlined in the table below.

Q8. 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? Comments:	Responses
Proposals are good / clarify role of responsible officer	23
Need more / clearer guidance on how to evidence the role of the responsible officer	11
Practice is / should be already in line with proposals	5
Proposals are unnecessary	2

Base: 28

#### Most welcome the proposed change

23 (of 28) respondents said the proposed change was helpful and gave additional clarity particularly on the expectations of the seniority of the role of the Responsible Officer. A few suggested that this would help them to convey what the role involves to colleagues including senior decision makers.

*“Where we do sometimes have challenges is to convey to the Board of Directors the role of the Responsible Officer and what this entails (as well as sometimes internally) so it would be useful to add clarity.”*

One AO noted that this puts in place a safeguard where the Responsible Officer is not the Chief Executive of the AO.

Several, however, suggested that this proposal would not change their approach as they had already understood this requirement correctly. One AO indicated that they would expect AOs already to have job profiles and business objectives in place which outline the requirements and level of authority needed for this role.

### **Whilst generally supported, some wording could be further clarified**

Some commented that the wording of the proposed amendment at B1.5 is ambiguous and felt that more explicit wording or further guidance would be needed to ensure interpretation is less subjective. Some suggested that 'effective in the role' and 'sufficient authority' could be confusing or unclear.

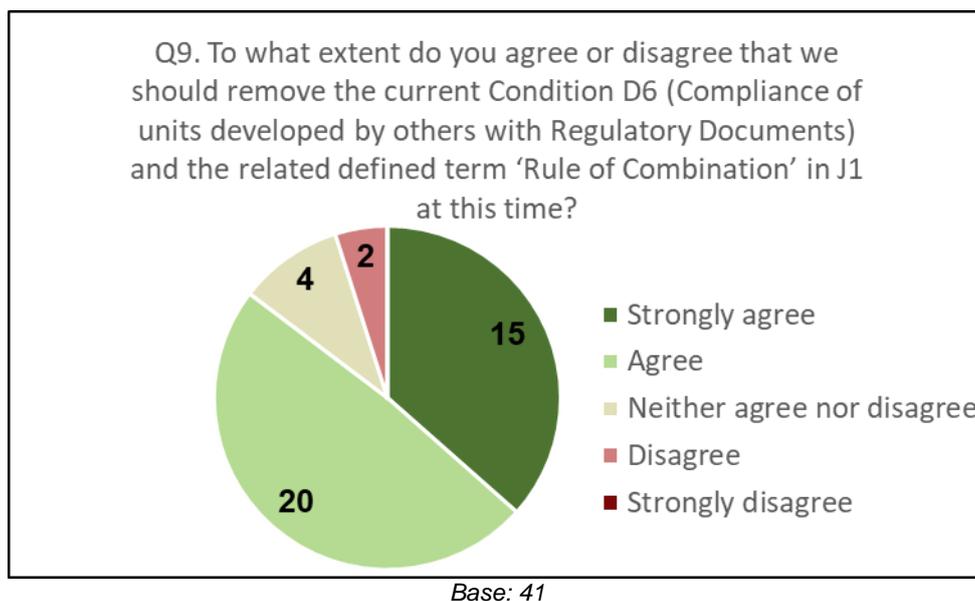
*"The inclusion of the word 'effective' does not really add clarity as this is quite a subjective term. Simplifying the text is welcome, and the emphasis on authority is also appropriate. It might be more appropriate to be more explicit about the role."*

### **Further guidance would be useful on the requirements of the role**

On a related note, some respondents would like to see more guidance on what would constitute a 'suitable' candidate for this role in terms of the type of role, knowledge, duties and level of authority. Some also commented on the difficulty in evidencing effectiveness of this role and would welcome more guidance on this from regulators.

Another concern raised related to the need for further clarity on the liability of the Responsible Officer in the event of an Adverse Effect and some would like more detailed guidance on this point.

## Q9: Removal of Condition D6 and the related defined term 'Rule of Combination' in J1



Of the 41 respondents, most (35) agreed that the current Condition D6 and the related defined term 'Rule of Combination' in J1 should be removed. Four were neutral (all AOs) and two disagreed (one AO and one unidentified respondent).

### Additional comments on removing D6 and related changes

25 respondents chose to provide additional comments in response to question 9. Their responses are coded into the themes outlined in the table below.

Q9. 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? Comments:	Responses
Agree with removal of Condition / Condition is no longer relevant	20
Condition should acknowledge qualifications developed by others which cannot have content altered	4
Proposals would have little or no effect on AOs	2
AOs should be responsible for ensuring qualification compliance	2
AOs need more time to implement the proposals	1
D6 is the only Condition which refers to compliance of a unit and if removed will render the qualification non-compliant	1

Base: 25

#### Most agreed that Condition D6 is now redundant

Comments from 20 (of 25) respondents indicated agreement with the removal of this Condition: many suggesting that it is no longer relevant since the removal of the Qualifications and Credit Framework (QCF).

Several also commented that this emphasises the requirement for AOs to be responsible and accountable for the compliance of the qualifications and units that they offer. Others indicated that it has no relevance to the qualifications they offer because they do not allow units owned by others to be used.

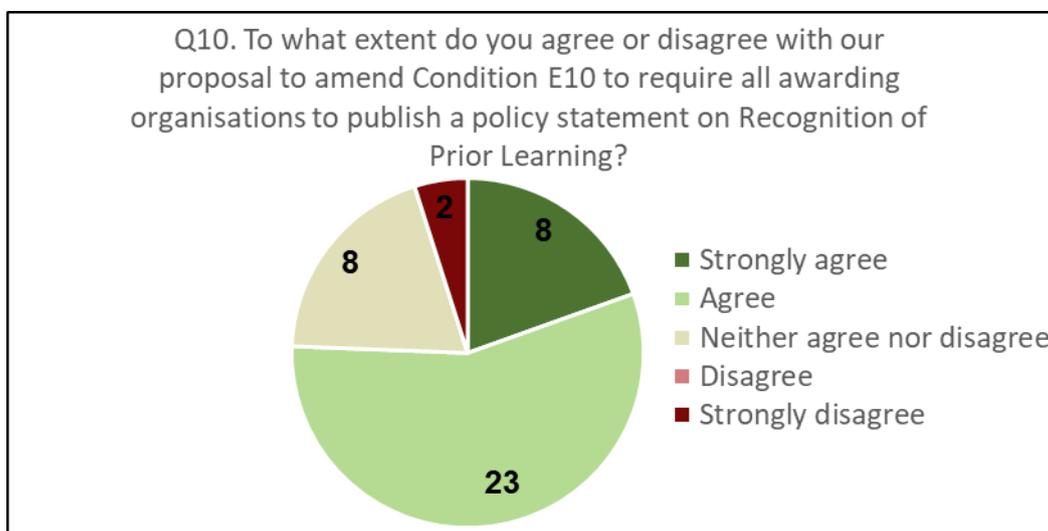
Only three respondents specifically mentioned that they also agreed with the removal of the Rule of Combination in J1, but none of the comments indicated any concerns about its removal.

### Conditions need to recognise that AOs will use some content or units developed by others

Four respondents raised the issue that not all AOs are responsible for all of the content of their qualifications. They also noted that they may have limited influence or control on how this content may be changed when it is developed by others or jointly in collaboration with others, for example forums, specific sectors or for apprenticeship End Point Assessments (EPA). Examples of qualifications or units where this might apply were given by some respondents and included health and safety, first aid, licence to practise and health and social care.

One respondent would prefer to see an amendment to D6 and/or some acknowledgement to recognise circumstances where content is out of the control of AOs, particularly where sector-specific representative organisations are involved.

## Q10: Condition E10 to require a published policy statement on Recognition of Prior Learning



Base: 41

Most respondents (39 of 41) agreed to some extent with the proposal to amend Condition E10 with this requirement. Only two respondents disagreed strongly: both of which were AOs. Eight were neutral about this proposal.

## Additional comments on RPL policy statement

31 respondents chose to provide comments in response to question 10. Their responses are coded into the themes outlined in the table below.

Q10. 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 (RPL)? Comments:	Responses
Proposals are good / agree with proposals	24
Condition should reflect that AOs do not have to offer RPL	8
Condition should reflect when RPL is allowed for some qualifications and not others	6
Proposals would increase AOs' workload	2
Condition should reflect how much detail RPL policies must include	2
Proposals would have little or no effect on AOs	1

Base: 31

### Most had no objections to the proposal, but some said that it does not affect them

Of those who made additional comments in the open comments boxes, 24 were in broad agreement with the proposed change and welcomed the transparency it would bring so that centres, learners and other users could understand whether or not RPL is permitted by a particular AO. Some commented on the clarity it would provide to centres in understanding RPL requirements.

Some said that this amendment to the requirement would provide consistency and ensure that all AOs present clear information about RPL.

Some simply agreed without any objections while others indicated it would not affect them as they already have an RPL policy in place.

### The Condition should ensure that it is clear that AOs do not have to offer RPL

Eight respondents raised that not all AOs offer RPL and that the Condition should recognise this. Several indicated that it should be made clearer in the Condition that offering RPL itself is not a requirement of all AOs.

Some specifically referenced that the consultation document made this clear, but the amended text of the Condition did not, as in the example below:

*“We agree with the requirement to publish a policy but consider that the wording of condition and guidance does not clearly [set] out the regulatory requirements as set out in the consultation. The consultation makes it clear that AOs do not have to offer RPL but rather that they have to publish a RPL policy which could state that the AO does not offer RPL. However, our reading of the amended condition and associated Ofqual guidance would lead us to understand that an AO has to offer RPL. The condition needs to be clearer to confirm that AOs do not have to offer RPL.”*

There were also mixed views about what AOs who do not offer RPL should be required to publish in order to comply with this Condition. Some suggested that the requirement to publish a 'policy' may be inappropriate and potentially confusing.

Some respondents said that there should be a requirement to publish a 'statement' or a 'policy statement', as the regulators are proposing. One respondent suggested that a statement rather than a fuller policy document, giving a reason may be more appropriate.

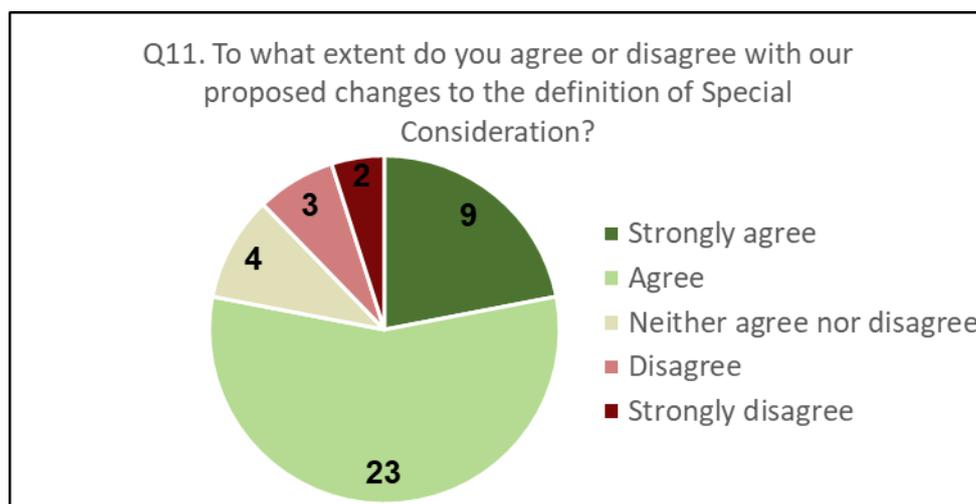
### Clarity on policy content and level of detail required is needed

A few respondents commented that they would like to see more guidance on the level of detail required for the RPL policy to make it useful.

Several were more concerned to understand whether the policy would need to reflect an over-arching organisational approach and outlined that approaches could differ between qualifications or suites of qualifications within an organisation. If the policy would need to reflect this variation, some were concerned it would become very onerous both for AOs and users.

*“This may result in an overly long policy statement that requires an AO to itemise RPL against each qualification for clarity. As the proposal currently stands, it is written from an organisational level, rather than at qualification level.”*

## Q11: Changes to the definition of Special Consideration



Base: 41

Many of those responding (32 of 41) agreed with the proposals to change the definition of Special Consideration. However, five disagreed to some extent (all AOs) and four were neutral (again, all AOs).

## Additional comments on Special Consideration

29 respondents chose to provide comments in response to question 11. Their responses are coded into the themes outlined in the table below.

Q11. To what extent do you agree or disagree with our proposed changes to the definition of Special Consideration? Comments:	Responses
Proposals are good / clarify definition / agree with proposals	20
Proposals need clarifying / AOs need more guidance	8
Proposals would cause confusion	8
Proposals would increase AOs' workload	2
Proposals risk disadvantaging learners	1

Base: 29

### Most find the new wording of the definition clearer and easier to understand

For most respondents, the minor changes suggested provide further clarity on a definition which they suggested was already reasonably clear in the current Conditions. Some noted that moving the definition to Section J is also considered sensible.

### Some had concerns about potential confusion or disagreed with the changes to the definition entirely

Comments from eight respondents indicated that they disagreed with the changes to the definition either completely or expressed caution due to potential confusion caused by the new wording and its implications.

Those who expressed these concerns generally considered Special Consideration to be an exceptional situation which could not be predicted or planned for ahead of the assessment rather than a temporary issue which could be anticipated. One AO noted:

*“This will mean that access arrangements given to candidates with temporary issues will all be defined as Special Considerations.”*

A few AOs stated that the proposed changes to the definition of Special Consideration do not reflect their experience of current industry-wide practice which defines the term as a post-assessment adjustment to results rather than access arrangements which need to be put in place to allow an assessment to take place. They suggested that this could give rise to confusion in the use and interpretation of the term by centres which could also result in learners not being accepted for the correct adjustment or access arrangement.

*“We are aware that Ofqual is concerned that reporting arrangements do not currently distinguish between candidates with temporary conditions and candidates with a recognised disability that would render them eligible for reasonable adjustments. It may be that the proposal to describe access arrangements for temporary conditions as Special Consideration, is seeking to address this issue. If this is the case, we would like to discuss how AOs can provide the data as required, perhaps by changing the information we capture when schools and colleges complete their applications for these*

*arrangements, but we do not believe that the proposed wording is the correct way to address the issue.”*

One AO noted that the proposed new wording would potentially move the definition of ‘Special Consideration’ closer to the definition of ‘Reasonable Adjustments’ and may result in confusion because of potential overlap in the meaning or interpretation of the two terms.

Some suggested that they saw no need for the change to be made as they disagreed on the point made in 4.57 of the consultation document that there is confusion amongst AOs to begin with. Some of those who disagreed with the need for the change suggested it is an issue that has already been considered in the past.

Some respondents specifically noted in detail that the definition, processes and procedures in place to deal with cases of Special Consideration and Access Arrangements are understood by those in the sector and are distinct. They argued that this distinction needs to be maintained including one AO who believed that Access Arrangements are reinforced by the legal requirements set out in the Equality Act 2010.

A few AOs also pointed out that the term Special Consideration is linked with existing online systems which would need to be changed to accommodate the proposed amendment:

*“The way we use the terms reflects JCQ documentation, the functionality of the JCQ Access Arrangements Online (AAO) system and our own Special Consideration online system. If the definition is changed in this way. [...] that could necessitate far reaching changes to all of these, with the risk of causing confusion in centres, and it is not clear to us at present what the benefit of that would be for centres, AOs or indeed Ofqual.”*

### **Further guidance is needed on the intended meaning of Special Consideration**

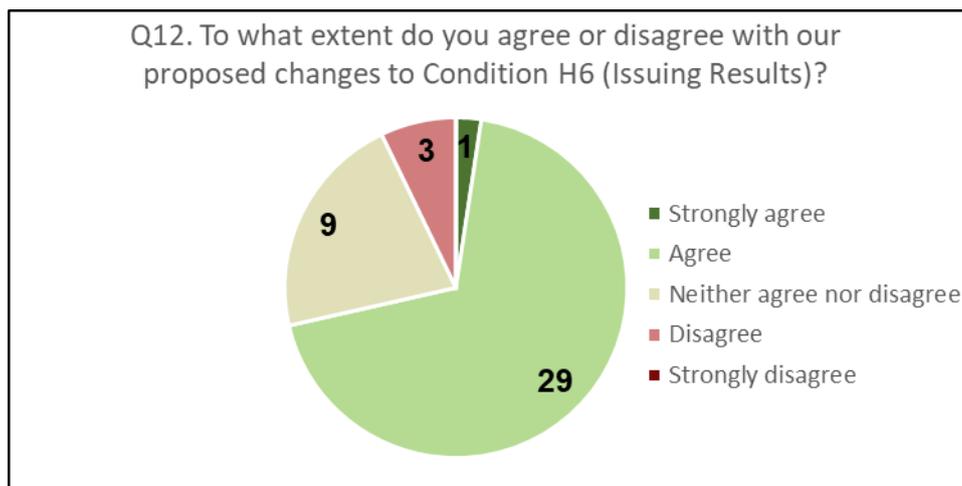
Several respondents also noted the need for further guidance on this proposed change and that the wording in the consultation document was helpful and could be included in a future update to guidance:

*“It would be helpful to include additional guidance on Ofqual’s own explanations with regard to the opportunity for AOs to be proactive as well as reactive to such requests, whilst being reminded of the difference between such requests (in advance of any affected assessment) and those for Reasonable Adjustments where there is a known disability, as defined in legal terms. This opportunity was explained within the consultation itself, but not transferred to the proposed changes to the definition. We recommend, for additional clarity, this is therefore included within guidance.”*

Others suggested that the definition does not make it clear when Special Consideration needs to be applied.

*“The proposed change does not indicate that candidates must be affected at the time of the assessment in order to meet the criteria for special consideration. Although this was also omitted from the previous definition, it may be beneficial to include this.”*

## Q12: Condition H6 (Issuing Results)



Base: 42

Again, there was broad agreement with the proposal to change Condition H6 relating to issuing results (30 of 42 respondents). Over one in five (9 respondents) were neutral, however, and a further three disagreed and all but one of these were AOs.

### Additional comments on H6, Issuing Results

26 respondents chose to provide comments in response to question 12. Their responses are coded into the themes outlined in the table below.

Q12. To what extent do you agree or disagree with our proposed changes to Condition H6 (Issuing Results)? Comments:	Responses
Proposals are good / agree with proposals	18
Proposals need clarifying / AOs need more guidance	7
Proposals risk disadvantaging AOs	7
Proposals would increase AOs' workload	6
Proposals risk disadvantaging learners / other stakeholders	3
Proposals would have little or effect on AOs	1

Base: 26

#### Most agreed with the principle of regulators having the power to delay the issuing of results

Most agreed with the principle of the proposed change and there were very few comments other than to note their agreement that there could be circumstances in which results could need to be delayed, that the change creates greater clarity on the matter and/ or that it is reasonable. Some additionally noted their agreement that this would allow regulators to intervene in a more timely manner, should the issuing of results need to be delayed.

Others agreed broadly but had some reservations which are outlined below.

### **More clarity is needed on the rationale and wording of this addition to the Conditions**

Of the 26 who provided additional comments, seven wanted to see more clarity and a change to the wording. The consultation document outlines that the regulators do not intend to intervene any more frequently than they do currently, but some would like to see this indicated more obviously in the wording of the Condition.

Some indicated that further guidance would also be needed on timescales and examples of the circumstances in which this Condition would be applied.

Two respondents suggested rewording including the use of sub sections/ requirements and an amend from 'until such date...' to 'until a date agreed by the regulator and awarding organisation'.

### **Awarding organisations, stakeholders and learners could be disadvantaged by the proposal**

Several respondents said regulators already have the power to delay the issuing of results at their disposal.

There were concerns about the potential impact on learners and stakeholders should this explicit power be instigated more frequently than it is currently. One commented that they would need to consider the impact on their organisation and would want to have the opportunity to review the impact on learners. They said that any increase in the incidence of this power would require them to review contractual obligations to centres.

Another AO raised the issue that, in some cases, AOs are required to adhere to regulatory requirements of several regulators, especially those operating internationally. Withholding results in this way could put AOs at risk of non-compliance with other regulators.

They would like further clarity on how this Condition and the guidance would take account of this, notably the circumstances that might lead to such a request being made:

*“We believe that awarding organisations must be provided with detailed information which clearly set out the trigger points that would cause a regulator to issue a written notice preventing them from issuing results.”*

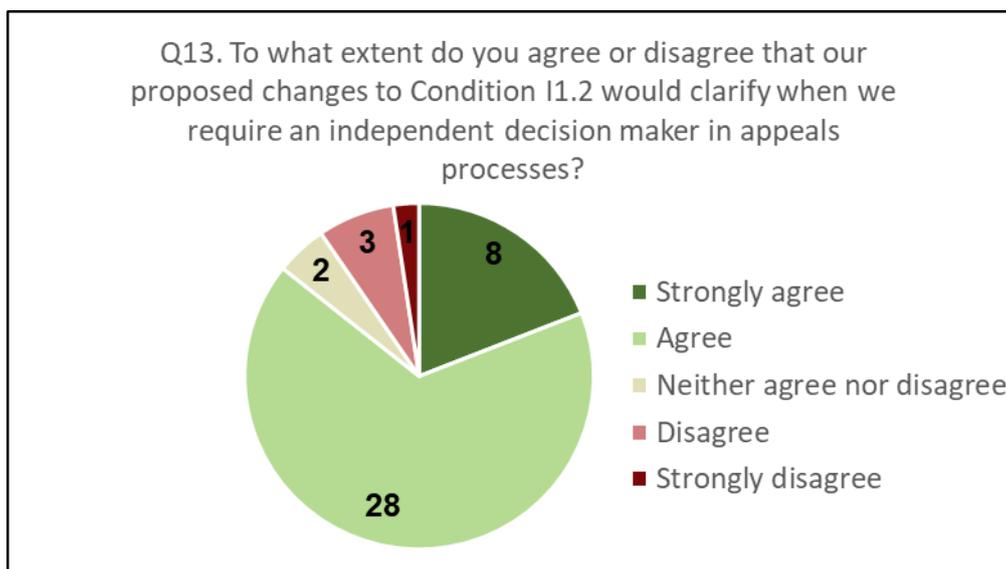
Some AOs raised concerns about their ability to deliver to the expected levels of customer service as set out in service level agreements. There is a concern that this could undermine public confidence even if the reason for delay is not as a result of an AO being in breach of any Conditions.

Some respondents also expressed concerns that systems for issuing results are built around service level agreements so a delay to the issuing of results would require not only adequate notice but also new processes to ensure internal and external requirements are compliant without stakeholders becoming disadvantaged.

### **Additional workload may be created, but some felt this reasonable**

Six respondents noted that this change would have implications for the workload of AOs. Some of the additional tasks anticipated include rewriting processes and procedures and adjusting systems to ensure that they are compliant with stakeholders. There could also be a need to review contractual obligations to centres and service level agreements offered to customers.

## Q13: Condition I1.2 – independent decision maker in the appeals processes



Base: 42

Over eight in ten respondents (36 of 42) agreed that changes to Condition I1.2 would clarify when an independent decision maker would be required in the appeals processes. Just four disagreed (including 3 AOs) and two were neutral (both AOs).

### Additional comments on I1.2

32 respondents chose to provide comments in response to question 13. Their responses are coded into the themes outlined in the table below.

Q13. 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? Comments:	Responses
Proposals are good / agree with proposals	21
Clarify role / definition of 'independent decision maker'	12
Clarify that appeals can conclude at different stages	9
Practice is already in line with proposals	5
Clarify 'final decision'	4

Base: 32

### Most were positive about the proposed changes

Most respondents were generally in agreement with the proposed changes and welcomed additional clarity, the intention behind the amendment and the recognition of a staged process for appeals. Comments from those who disagreed or gave a neutral view generally agreed with the principle behind the change, but would want further guidance, examples, or clarification to demonstrate at what point an independent decision maker would be appropriate in the eyes of the regulators.

### **Clarification on the role or definition of an ‘independent decision maker’ is needed**

Several respondents would like further guidance or examples to define or clarify the role of the independent decision maker. Some noted that the consultation explains this, but that further explanation may be needed in guidance to indicate what is considered to be acceptable.

Respondents said that they understand the need for impartiality when it comes to the role of the independent decision maker so that they have ‘sufficient distance’ from the circumstances to perform this role, but they were unclear on what level of connection would be considered acceptable or unacceptable. For example, one AO noted that they have independent consultants who sit on the Board and they ask whether someone in this position would be considered sufficiently independent to take a final appeal decision.

One respondent noted that finding someone to act as an independent decision maker who is not ‘otherwise connected’ to it could be challenging in a sector which is relatively small and people are well known to each other and they would appreciate further clarification. An additional point made is that having to contract someone to perform this role means by definition that they are ‘connected’ to the AO.

### **The Condition needs to clarify that appeals can be concluded at different stages and be clearer on the definition of ‘final decision’**

Many respondents noted that appeals can be resolved during the early stages of proceedings which may only involve staff from the AO. Some also noted that in some cases appeals are withdrawn and AOs would see it as problematic if an independent decision maker was required at this stage because it has reached the ‘final stage’ of that particular appeal. Further clarity in guidance or the provision of examples would be useful to help AOs interpret the Condition correctly.

*“It needs to be understood that many appeals are satisfied at an early stage of the process and that only the final stage involves the independent decision maker.”*

A few respondents found the term ‘final decision’ confusing and expressed that they would like further guidance on what is meant by this. One commented that the consultation clearly outlines the expectations but the guidance itself does not. They point out that this could mean a final decision which is made at an early stage of the appeal process or could alternatively refer to the stage when all other avenues have been exhausted before referral to the regulator.

*“Does this mean the final decision which can only be made at the final stage of a staged appeal process, or when a (final) decision is made at an earlier stage of a staged appeal process. If the latter applies then an independent decision maker will be required on many rather than on an exceptional occasion which would raise questions about their independence. This confusion is particularly prevalent with regard to our qualifications which are examined throughout the year by demand.”*

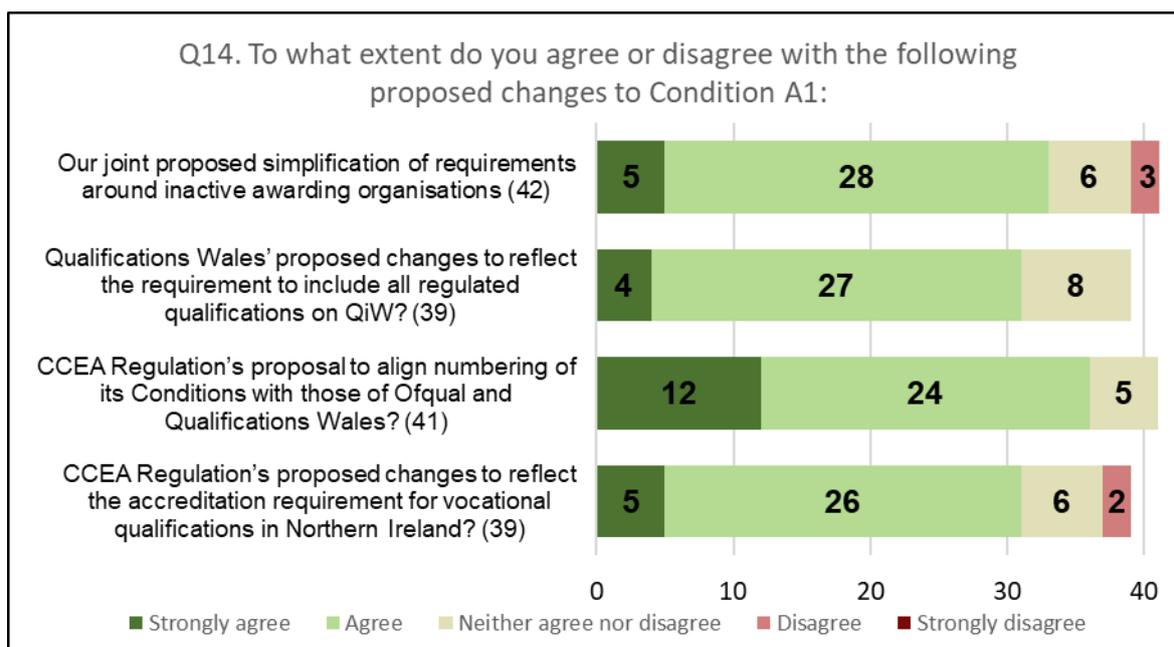
## 7. Consultation analysis: Improving understanding of the Conditions

In this section, we report the views of those who responded to questions 14 to 20 in the consultation document which relate to improving understanding of the Conditions.

This chapter covers questions relating to the following parts of the Conditions:

- Q14: Condition A1 (Suitability for Continuing Recognition);
- Q15: Condition B2 (Annual Statement to Regulator);
- Q16: Condition B4 (Notice to provide information);
- Q17: Condition B8 (Compliance with undertakings);
- Q18: Proposed wording changes to improve AO understanding of requirements;
- Q19: Condition J1.8 (Definitions); and
- Q20: References to 'revised from time to time.'

### Q14: Condition A1 (Suitability of Continuing Recognition)



More than three quarters of respondents agreed with each of the proposed changes to Condition A1. This includes 33 (of 42) who agreed with the joint simplification of requirements around inactive awarding organisations, with 3 disagreeing; and 31 (of 39) who agreed with Qualifications Wales' specific proposed changes to include all regulated qualifications on QiW. All three of those disagreeing were AOs regulated by all three regulators.

For CCEA Regulation's proposals, 36 (of 41) agreed with CCEA Regulation's proposed numbering alignment with Ofqual and Qualifications Wales; 5 gave neutral answers and no respondents disagreed with this proposal. 31 (of 39) respondents agreed with CCEA

Regulation's proposed changes to reflect the accreditation requirement for vocational qualifications in Northern Ireland, but 2 respondents disagreed and 6 gave neutral responses. Of those who disagreed with the proposal, one was an AO regulated by CCEA Regulation and the other was an unidentified AO where jurisdiction could not be established.

## Additional comments on improving clarity of A1

24 respondents chose to provide comments in the open response box to question 14. Their responses are coded into the themes outlined in the table below.

Q14. To what extent do you agree or disagree with the following proposed changes to Condition A1. Comments:	Responses
Proposals are good / agree with proposals	13
Proposals need clarifying / AOs need more guidance	12
Proposals would increase AOs' workload	4
AOs need time / resources / software or system upgrades to implement the proposals	3
Comment relating to database issues when approving qualifications for different jurisdictions	1

Base: 24

### Some positive response to the proposed changes to Condition A1

Over half of respondents (13 of 24) gave positive comments about at least some of the proposed changes to Condition A1. These included comments which were in general, favourable of alignment between the three regulators, and consistency in numbering in particular.

### Further clarity needed on elements of the proposed changes

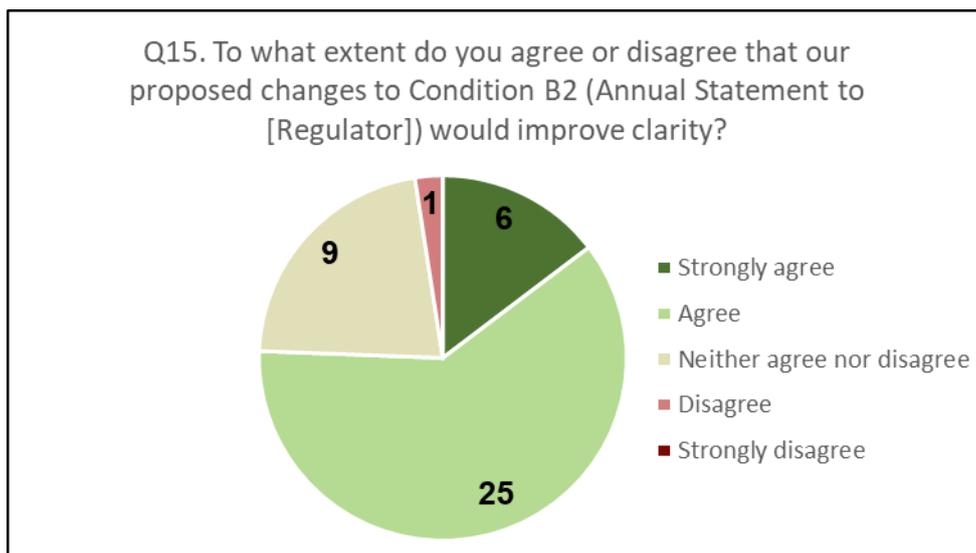
Where more clarity or guidance was thought to be needed, this tended to be focussed on A1.3 specifically, where multiple respondents felt that the wording was ambiguous and open to misinterpretation. Respondents sought clarity as to whether each qualification with their scope of recognition needed to be awarded within every two-year period or whether only a single qualification needed to be awarded by an AO in order to comply.

One respondent also queried whether this would be required in only one country or complied with separately in England, Wales and Northern Ireland within the two-year period.

One other respondent sought clarification on learner registrations on longer-term qualifications, i.e. those that took longer than two years to complete. Similarly, one respondent queried the acceptability of evidence of activity should be clarified, for example, where an AO could provide evidence of learners registering for an award.

Other areas of clarification were around the role of the QiW database, and whether AOs should upload 'other regulated' qualifications in addition to approved and designated ones, whether QiW is linked with the Portal, whether these changes meant QiW would hold non-funded qualifications, and what transition period there would be to implement these changes.

## Q15: Condition B2 (Annual Statement to [Regulator])



Around three quarters of respondents (31 of 41) agreed to some extent that proposed changes to Condition B2 would improve clarity. Just one respondent disagreed (an AO) but nine were neutral on this point: eight of which were AOs.

### Additional comments on clarifying SOC in B2

18 respondents chose to provide comments in response to question 15. Their responses are coded into the themes outlined in the table below.

Q15. To what extent do you agree or disagree that our proposed changes to Condition B2 (Annual Statement to [Regulator]) would improve clarity? Comments:	Responses
Proposals are good / would improve clarity / agree with proposals	13
Proposals would not change the Condition's meaning / proposals would have little impact	5
Current Condition is clear	3

Base: 18

#### The changes reflect common language used by regulators

Almost three quarters (13 of 18) of respondents provided a comment outlining their support for the proposals. Some said that they agreed with the proposals as the change (from 'Annual Statement' to 'Statement of Compliance') would reflect common language used by regulators, which will make things easier for AOs. Some of these referred to the proposals as a 'slight change', but they acknowledged that the change would improve clarity.

The remaining responses gave support for the proposals but did not elaborate further on their response.

### **The proposals will only make a minimal change**

Five respondents made comments suggesting the proposal would have little impact. This ranged from respondents who said the proposed changes are minimal, to others who said there appeared to be no real change. As a result, one respondent said that the changes will not provide greater clarity as the change is negligible.

Similarly, one respondent said that as the changes are so minimal, it will be difficult to determine if the proposals will add clarity or whether they would simply add confusion.

### **The current Condition is clear**

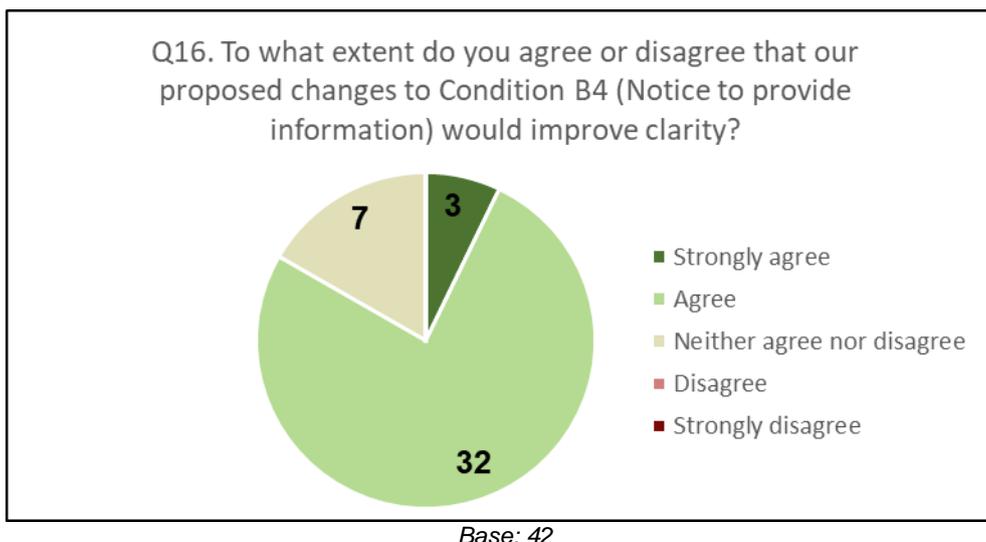
Three respondents said that the current Condition is clear, one of which gave no further explanation.

Of the remaining two responses, one noted that the word 'annual' currently provides clarity (demonstrating that it will be an annual process) and should therefore be retained.

The remaining respondent noted they currently comply with the Conditions stated in the Statement of Compliance, demonstrating that the current Conditions are understandable (in their opinion) and would negatively impact therefore on their current practice:

*“We comply with the current conditions of recognition in providing a Statement of Compliance as outlined in the proposed B2.1 and B2.2 and in the content outlined in B2.3 and B2.4. This suggests that the current conditions are understandable and appropriate, but we see no reason that the proposed changes would affect this.”*

## Q16: Condition B4 (Notice to provide information)



Most respondents (35 of 42) agreed at some level that proposals to change Condition B4 relating to the notice to provide information would enhance clarity. None of those responding disagreed but seven were neutral.

### Additional comments on improving clarity of B4

14 respondents chose to provide comments in response to question 16. Their responses are coded into the themes outlined in the table below.

Q16. To what extent do you agree or disagree that our proposed changes to Condition B4 (Notice to provide information) would improve clarity? Comments:	Responses
Proposals are good / would improve clarity / agree with proposals	12
Proposals would not change Condition's meaning significantly / proposals would have little impact	2
Proposals need clarifying / AOs need more guidance	1
Other detailed response on wording	1

Base: 14

#### Proposals add clarity, consistency and do not change the requirements for AOs

Most of the comments (12 of 14) mention support for the proposals in some form or another. Many of these responses simply voice their support, but without further explanation. Of those who do provide further explanation, one respondent said that the proposals provide 'consistency for AOs', whilst another said that the proposals add clarity without changing the requirement for AOs.

#### The proposed changes are minimal

Two respondents said that the changes to Condition B4 are minimal (as did some about Condition B2). One of these respondents said that the proposals would add clarity, but are nevertheless only subtle changes, whilst the other said that the changes are so minimal that they won't add greater clarity than what is in the current Condition (as some also said when commenting on Condition B2).

### **One respondent would have welcomed evidence of the current lack of clarity**

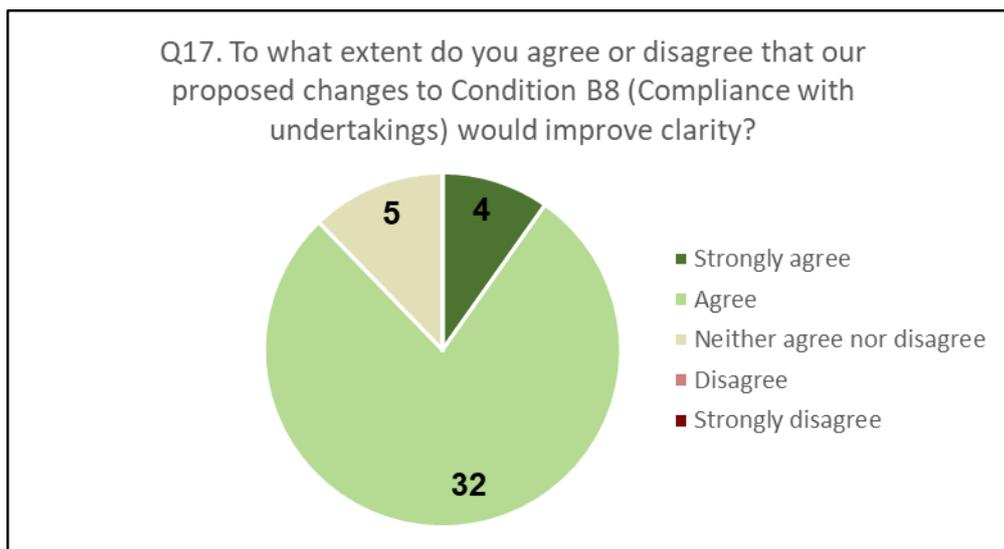
One respondent agreed with the proposals but suggested they would have welcomed sight of examples where the current version led to unsatisfactory outcomes.

*“We agree with this proposal, however as an organisation, we will not necessarily have had sight of any examples where the current version of wording may have led to less than satisfactory outcomes (for either party) caused by the current wording lacking such clarity.”*

### **One remaining ‘other’ response relates to new wording**

One other comment has been categorised as an ‘other’ response. This ‘other’ response went into great detail to explain that the new wording meant that the Condition is now more of a definition rather than a Condition that can be evidenced. They noted other Conditions that they would classify in the same way. As a result, this response does not fit easily into the codes used above and would need separate consideration by the regulators.

## Q17: Condition B8 (Compliance with undertakings)



Most respondents (36 of 41) were in agreement that the proposed changes to Condition B8 would improve clarity. The remaining five respondents, all but one of which were AOs, were neutral on this proposal.

### Additional comments on improving clarity of B8

15 respondents chose to provide comments in response to question 17. All of these responses are coded into the themes outlined in the table below.

Q17. To what extent do you agree or disagree that our proposed changes to Condition B8 (Compliance with undertakings) would improve clarity? Comments:	Responses
Proposals are good / would improve clarity / agree with proposals	14
Proposals would not change the Condition's meaning significantly / proposals would have little impact	3
Current Condition is clear	1

Base: 15

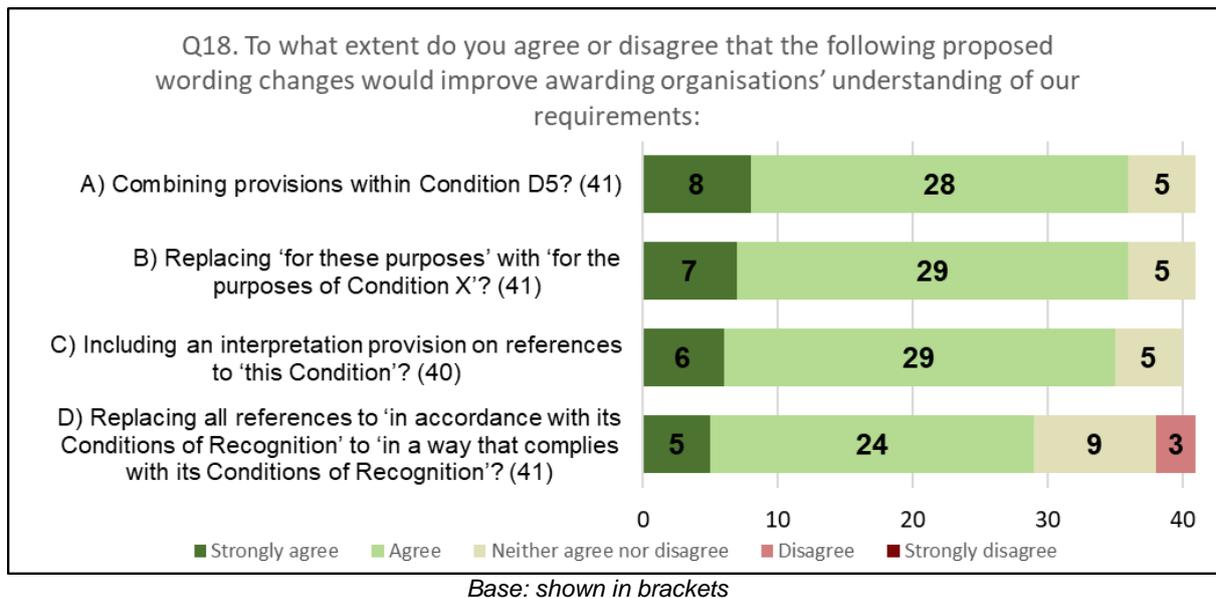
#### Almost all said they agreed with the proposals

14 of the 15 respondents that commented said that they agreed with the proposals to Condition B8. The vast majority of these comments simply said that they agreed with the proposals because they would improve clarity, with no further explanation. Two respondents specifically stated that the merging of B8.1 and B8.2 makes the Condition more concise.

#### The changes are minimal

As with the comments to previous questions, some respondents questioned the significance of the proposal. Some of these specifically stated that the change is subtle, whilst others questioned whether the proposal would make any difference at all.

## Q18: Wording changes to improve awarding organisations' understanding of requirements



The above chart shows the responses received to each of the four changes to wording asked about in question 18 of the consultation (A-D). Most respondents considered that the proposed wording changes outlined above would improve AOs' understanding of the requirements of the regulators. There was some neutral opinion for all of these questions and three respondents (all AOs) disagreed with proposal 'd'.

### Additional comments on proposed changes to D5 and other wording

18 respondents chose to provide comments in response to question 18. Their responses are coded into the themes outlined in the table below.

Q18. To what extent do you agree or disagree that the following proposed wording changes would improve awarding organisations' understanding of our requirements: Please provide any comments below, including on the proposed presentational changes set out at paragraph 5.33.	Responses
Proposals are good / would improve clarity / agree with proposals	15
Current Condition is clear	3
Proposals need clarifying / AOs need more guidance	3
Proposals would not improve clarity / proposals would cause confusion	3
Proposals would not change Condition's meaning significantly / proposals would have little impact	2

Base: 18

#### In most cases, the proposals add clarity

For those who commented on the four proposed changes to wording, most indicated that the changes would provide greater clarity and make them easier to understand. Some

considered these to be minor alterations. Some simply confirmed their agreement without any specific additional comment.

Specific points raised about each of the proposed changes or presentational changes include:

#### **(a) Combining provisions within D5**

Most responses relating to this suggested that the minor change provided consistency and made the Condition clearer or indicated they had nothing further to say. Only two respondents had other points to raise around the clarity of the change:

*“After reading the consultation document four times I am still not clear what exactly you are combining.”*

*“With respect to the proposed changes to Condition D5.1(b), it would be useful for the regulators to provide guidance on the meaning of the word 'regard' in context. Does this mean that awarding organisations must incorporate any good practice highlighted in guidance provided or does this mean that awarding organisations must merely give due consideration to that included but do not necessarily have to incorporate such into policies, processes and procedures in order to maintain compliance?”*

#### **(b) 'For the purposes of Condition X'**

Most comments stated that they agreed with the change, had no objections, thought the change enhanced clarity or had nothing further to say. One noted that they had no issues with the original wording:

*“Although we did not see any issue with the current wording, to avoid any potential confusion, we agree with the proposed wording changes from 'for these purposes' to 'for the purposes of Condition X'”*

#### **(c) Use of 'this Condition'**

Few commented specifically on this point, but noted that they agreed with the change, had no objections, thought the change enhanced clarity or had nothing further to say.

#### **(d) Use of 'In accordance with its Conditions of Recognition'**

Of the four wording changes, this was the only one which gave rise to any significant response. Most respondents indicated that they agreed with the change, had no objections or had no specific comment. However, a few were against the change or felt it unnecessary as the comments below highlight:

*“Although we do not see any problem changing the wording of all references from 'in accordance with its Conditions...' to 'in a way that complies with its Conditions of Recognition', we do feel that this is an unnecessary change as we believe it is sufficiently clear what is meant when the term 'in accordance with' is used.”*

*“We prefer the current wording which is clear, concise and fit for purpose. Although the proposed wording has the same meaning, it is less concise and fragments the text in the conditions.”*

*“Does not improve understanding.”*

*“Use of “in accordance with” does not allow for ambiguity; whereas the suggested alternative “in a way that complies with” introduces ambiguity into imperative Conditions.”*

### **Presentational changes**

Only one respondent commented specifically on the proposed presentational change and raised a query about the nature of further guidance.

*“Happy with the proposed presentational changes - can Ofqual clarify if these changes will include positive and negative indicators as further guidance.”*

## Q19: Comments on the proposal to include all definitions in Condition J1.8

This was an open question and 21 respondents chose to provide comments in response. All responses are coded into the themes outlined in the table below.

Q19. Do you have any comments on our proposal to include all definitions in Condition J1.8?	Responses
Proposals are good / agree with proposals	21
Complex terminology needs further explanation	1
Query on whether all definitions throughout all Conditions are in this section	1

Base: 21

### Most welcomed this proposal

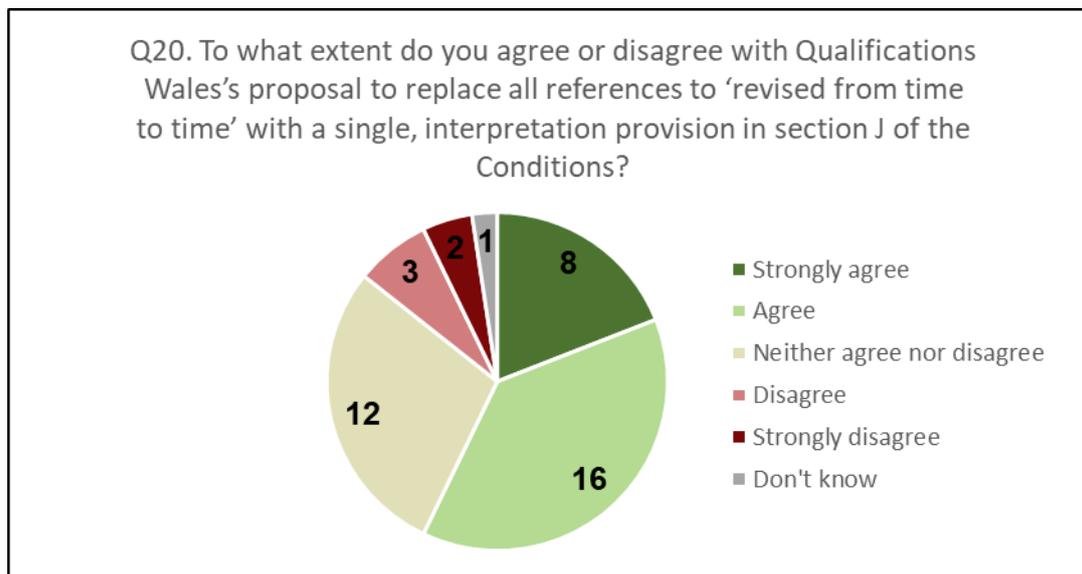
In total, all 21 respondents who made a substantive comment indicated their agreement with the inclusion of all definitions in Condition J1.8. Many suggested that it is a 'sensible' change that will provide consistency and they liked the idea of having everything 'in one place'. Some noted that this change would provide a much easier reference which would benefit them when completing the annual Statement of Compliance.

One respondent queried whether the regulators have explored all of the Conditions to remove all definitions and placed them in Section J.

### Additional definitions would be of use

One respondent suggested that an additional reference to definitions via hyperlinks would be useful where words are 'legalistic, abstruse or otherwise ambiguous'.

## Q20: 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



Base: 42

Over half of the survey respondents (24 of 42) agreed with this proposal, whereas 12 were neutral on this suggestion and one said they did not know. In addition, five disagreed to some extent with the proposal: all five of which were AOs.

One further emailed response indicated agreement with the proposed change - with no indication of the extent to which they agreed.

### Additional comments on proposed ‘revision from time to time’ amendment

16 respondents chose to provide comments in response to question 20. Their responses are coded into the themes outlined in the table below.

Q20. 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? Comments:	Responses
Proposals are good / would improve clarity / agree with proposals	8
Proposals would not improve clarity / proposals would cause confusion	3
Proposals would not change Condition's meaning significantly / proposals would have little impact	2
Proposals are unnecessary / the current Condition is clear	2
Proposals increase divergence between regulators / proposals should be the same for all regulators	2

Base: 16

### **Most common response was from those who welcomed the proposal**

Of the eight that gave a comment welcoming this proposal, four gave no further explanation, whilst one said it would add greater clarity, and another said it would avoid unnecessary words being used.

The remaining two responses elaborated further. These commented to say that they agreed with the proposals because the changes would bring the Conditions closer to those used by other regulators.

### **Preference for Conditions to align with other regulators**

Three respondents disagreed with the proposals and said it would not improve clarity. Two of these responses appear to contradict the interpretation by others that the proposals bring the Conditions into line with other regulators.

### **Little impact and an unnecessary change**

The next two most common responses were from those who said the proposals will have little impact (2 respondents), and those who said the proposals are unnecessary (2 respondents).

One of those who said the changes will have little impact noted that they have no issue with Qualifications Wales including this interpretation in section J, however, they did not feel that this would improve clarity from the current 'from time to time'.

Of those who said the proposal represents an unnecessary change, one said it would be useful for this message to be at the forefront, as Conditions are often cited in isolation (in their opinion). The other respondent felt the proposals are unnecessary because the current Condition highlights to AOs that the particular requirement within that Condition might be subject to change.

## 8. Consultation analysis: Keeping the Conditions up to date

In this section, we report the views of those who responded to questions 21 to 23 in the consultation document which relate to keeping the Conditions up to date and these are:

- Q21: Changes to the numbering of the Conditions;
- Q22: Revised Conditions D7 and B5; and
- Q23: Transitional provisions in Condition E3 (Publication of a qualifications specification) and E7 (Total Qualification Time).

### Additional comments on updating Conditions

This was an open question and 27 respondents chose to provide comments. Their responses are coded into the themes outlined in the table below

Q21. Do you have any comments on our proposals to change the numbering of the Conditions so that they are sequential, and updating some definitions?	Responses
Proposals are good / would improve clarity / agree with proposals	18
AOs need time / resources / software or system upgrades to implement the proposals	7
Proposals would increase AOs' workload	4
Proposals are unnecessary / keep current numbering	2
Definitions should also be updated	1
Regulators should produce a summary table of the final charges	1
Proposals would not improve clarity / proposals would cause confusion	1

Base: 27

#### Some positive reaction to changing the numbering of the Conditions

Around two thirds (18 of 27) made positive comments about changing the numbering of the Conditions. Typically, these comments were general in nature, for example that the proposed numbering change 'makes sense' or 'seems sensible'.

#### Timing and resources to implement the changes required are a concern

Nevertheless, even among those making positive comments, some AOs were wary of the time or resources necessary to implement this change. Some suggestions were made about how to make this more manageable, including considering the timing of the implementation.

Three respondents asked for the implementation to be delayed explicitly, including one comment which suggested delaying the change until October 2020 so that AOs could update their compliance and audit software or update hyperlinks in documentation.

Others made reference to competing changes or time-commitments such as the update to the Conditions and the Annual Statement of Compliance submissions.

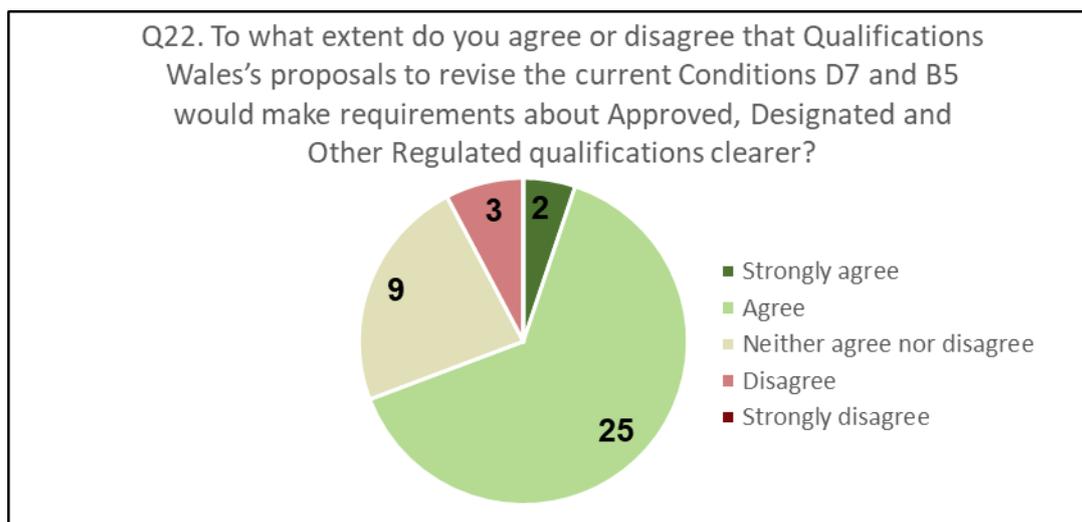
While four respondents commented on the additional workload that this change would impart, particularly in relation to the need to update internal documentation, three of these stated that they accepted the change as necessary in spite of this. It was recommended by one of these respondents to not align numbering and update definitions too frequently due to the burden of updating documentation.

#### **A few felt that the proposed changes are not necessary and could be confusing**

Two AOs felt the changes were unnecessary. One felt that removed Conditions could simply be deleted and subsequent numbering kept consistent, while the other was concerned with confusion due to potential inconsistency in the use of the old and new numbering.

Contrastingly, a different AO felt, while acknowledging the additional work involved in the run up to the Statement of Compliance, that keeping existing numbering and omitting the removed Conditions was also likely to cause confusion.

### **Q22: Qualifications Wales’s proposals to revise the current Conditions D7 and B5 to make requirements about Approved, Designated and Other Regulated qualifications clearer**



Base: 39

Many of the respondents that answered this question (27 of 39) were in agreement that the proposals put forward by Qualifications Wales to revise their Conditions D7 and B5 would make the requirements clearer.

A further nine respondents were neutral and three disagreed and all of these except one were AOs. Of the three respondents who disagreed, one is known to be an AO regulated by Qualifications Wales, one was not an AO and the remaining one was an unidentified AO for which jurisdiction could not be established.

One further emailed response indicated acceptance of the change but gave no indication of the extent to which they agreed.

## Additional comments on revisions to D7 and B5

22 respondents chose to provide additional comments to question 22. Their responses are coded into the themes outlined in the table below.

<b>Q22. 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? Comments:</b>	<b>Responses</b>
Proposals are good / would improve clarity / agree with proposals	13
Proposals need clarifying / AOs need more guidance	5
Proposed wording needs simplifying	2
Proposals should be the same for all regulators	2
Current Condition(s) is / are clear	1
Other	1

Base: 22

### Some positive reaction to this proposal to improve clarity

13 of the 22 who responded to this question made positive comments expressing that the revisions to D7 and B5 would be helpful and achieve greater clarity and understanding. Some acknowledged that this had been a source of confusion or that there was a need to better distinguish between the withdrawal of a qualification and a change in status.

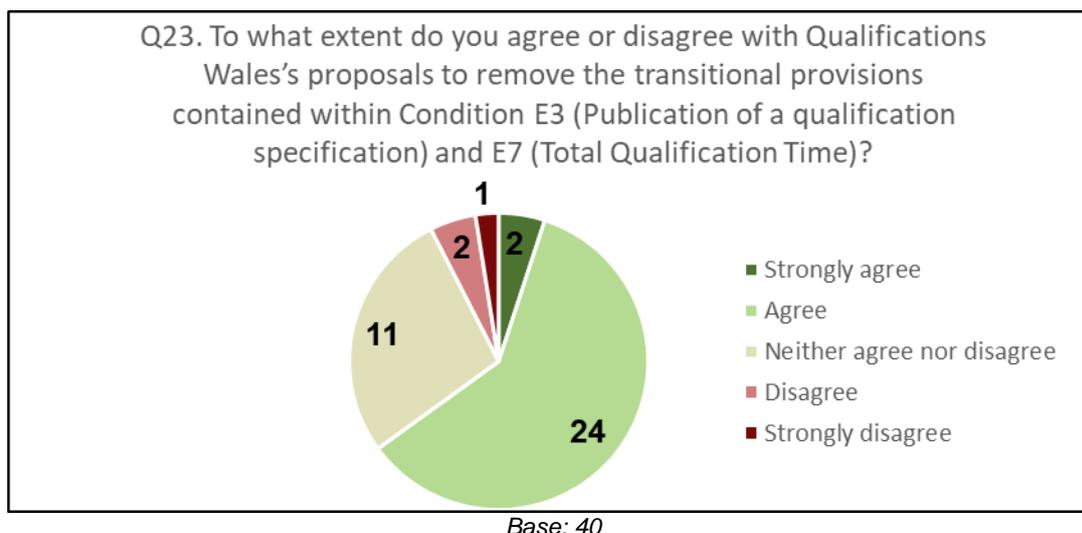
### Some would like further guidance or changes to wording

Five respondents felt that there were some outstanding points about Condition D7 which remained unclear under the proposals, or which needed additional guidance.

Two raised points of clarification around the wording of the Condition; one suggested a clearer way of outlining the Condition by grouping guidance under headings of 'approved' or 'designated' qualifications. One other respondent asked for clarification on Qualification Wales's role when awarding organisations change categorisation of qualifications, and queried whether this should be reflected in guidance. Another view was that the terms 'approved' and 'designated' may not be well understood by employers.

In addition to comments about the Condition's wording, two respondents asked for guidance about the withdrawal of 'other regulated qualifications' as well as approved and designated qualifications. One AO also queried whether Qualifications Wales' position was aligned with the guidance released by Ofqual on D7 in July 2019. It is also worth noting that two respondents felt that the wording of D7 needed further simplification, with both stating that the proposed new wording needed to be more concise.

## Q23: Qualifications Wales’s proposals to remove the transitional provisions contained within Condition E3 and E7



Around two thirds of respondents (26 of 40) agreed or strongly agreed with the proposals by Qualifications Wales to remove transitional provisions in Condition E3 and E7. A remaining 11 respondents were neutral on the proposals and three disagreed with the proposal to some extent. Of the three who disagreed, one was an AO known to be regulated by Qualifications Wales, one was an unidentified AO for which jurisdiction could not be established and one was not an AO.

### Additional comments on removing transitional arrangements in E3 and E7

16 respondents chose to provide comments to question 23. Their responses are coded into the themes outlined in the table below.

Q23. To what extent do you agree or disagree with Qualifications Wales’s proposals to remove the transitional provisions contained within Condition E3 (Publication of a qualification specification) and E7 (Total Qualification Time)?	Responses
Proposals are good / agree with proposals	8
Proposals should be the same for all regulators	6
Proposals would not change Condition's meaning significantly / proposals would have little impact	1
Proposals need clarifying / AOs need more guidance	1
AOs need time / resources / software or system upgrades to implement the proposals	1
Proposals would increase AOs' workload	1
Not regulated by Wales	1

Base: 16

### **Some positive response to the proposal**

Of the 16 that provided additional comments, eight AOs that commented positively on the proposals felt that the removal of these Conditions was 'timely', would improve clarity, or that a sufficient transition period had now elapsed to justify their removal. One respondent who neither agreed nor disagreed with their removal in the closed question expressed that they would not object to the change on the basis that it did not directly affect them.

### **Some concerns about consistency between regulators**

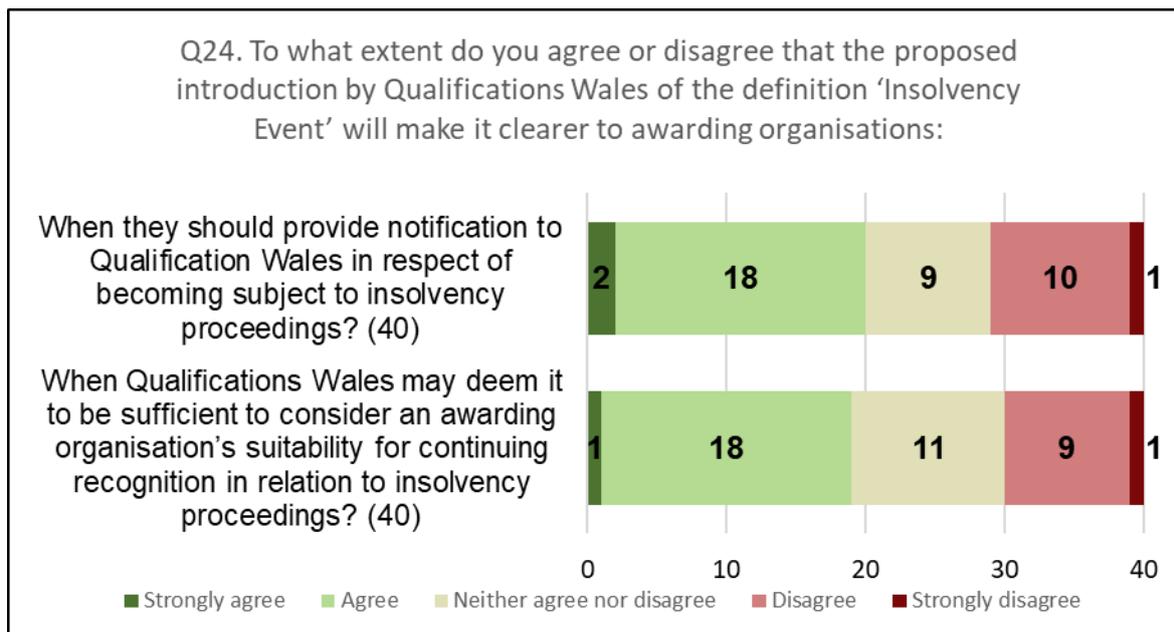
However, among the three that disagreed in the closed question as well as other AOs who gave positive or neutral responses, the importance of consistency between regulators was raised in the comments. There were some six respondents who stated that the proposals should be the same across the regulators and either suggested waiting until all three regulators had concluded their transition arrangements, or for Ofqual and CCEA Regulation to align themselves with Qualifications Wales' timescale.

## 9. Consultation analysis: Proposals by Qualifications Wales

In this section, we report the views of those who responded to questions 24 and 25 in the consultation document which relate to proposals put forward by Qualifications Wales.

- Q24: Definition of 'Insolvency Event'
- Q25: Changes of Control in Section J

### Q24: Proposals to clarify the definition of 'Insolvency Event'



Exactly half of those responding (20 of 40) agreed that the introduction of a definition for 'Insolvency Event' would clarify when AOs should provide notification to Qualifications Wales should they become subject to insolvency proceedings.

However, around a quarter (11 respondents) disagreed to some extent with this proposal and a similar number were neutral on the matter (9). Of the 11 respondents who disagreed, nine were awarding bodies known to be regulated by Qualifications Wales, one was an unidentified AO and one was not an AO.

Similar responses were given on the question of whether the definition would deem it to be sufficient to consider an AOs suitability for continuing recognition in relation to insolvency proceedings. Of the 40 respondents, there were 19 who agreed or agreed strongly, 11 were neutral and 10 who disagreed to some extent. Of the 10 respondents who disagreed, eight were awarding organisations known to be regulated by Qualifications Wales, one was an unidentified AO and one was not an AO.

## Additional comments on definition of insolvency

22 respondents chose to provide comments to question 24 and these are coded into the themes outlined in the table below.

Q24. 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. Comments:	Responses
Proposals are good / agree with proposals	9
Proposals would not improve clarity / proposals would cause confusion	9
Proposals should be the same for all regulators	8
Proposals are unnecessary / the current Condition is clear	5
Not regulated by Qualifications Wales	1

Base: 22

### Agreement with proposed introduction

Several respondents that agreed with the proposal commented that it was sensible and that this would make timing clearer on when Qualifications Wales should be informed in the event of becoming insolvent. It was noted that additional clarification is always welcome and that the detailed definition of an 'Insolvency Event' was useful. One commented that:

*"We accept Qualifications Wales' separate proposed introduction, and it will be for each individual AO to ensure they provide notification of insolvency in accordance with the relevant regulatory Condition."*

### Confusion anticipated unless regulators are aligned and the definition is a legal one

However, 9 noted that the proposal would not improve clarity and could cause confusion for a number of reasons.

Eight respondents commented that they would prefer the three regulators to be aligned and that one regulator (Qualifications Wales) should not define this term as they felt that this could result in different notifications to each of the regulators. Of these, three specifically said that they would prefer that the Ofqual and CCEA Regulation definition is agreed.

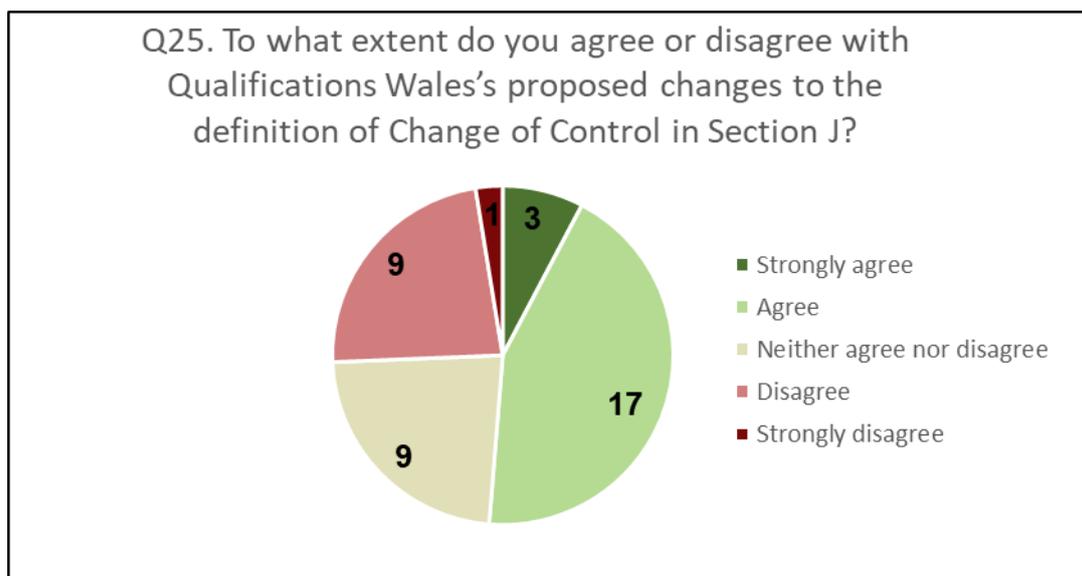
One suggested that both Ofqual and CCEA Regulation should consider making the same changes as Qualifications Wales because these will have to be put in the policies and procedures of all AOs. Four others commented that the changes were not necessary and keeping regulators aligned would be preferable.

It was also noted that this would be a legal issue rather than one for a regulator to consider and that defining its meaning is unnecessary as it is a matter of law.

One other respondent queried whether the current proposed wording would include circumstances where a "statutory demand" was made due to an invoice not being paid on time. They said that the reasons for delayed payment of an invoice may have nothing to do with an inability to pay but could be for many other reasons. This respondent went on to outline the adjustments to the wording they felt should be made:

*“In this context, for the proposed wording of these Conditions we would expect to see an exclusion after “presentation of petition” that says “save for a statutory demand for a small debt”. Without this, the potential effect of a statutory demand on an awarding organisation could be totally out of proportion to the actual solvency position of the company.”*

## Q25: Qualifications Wales’s proposed changes to the definition of Change of Control in Section J



Base: 39

Just over half of the 39 responding to this question (20) were in agreement with the proposed changes to the definition of Change of Control in Section J.

Around a quarter (9 respondents) were neutral and a similar proportion (10 respondents) disagreed with the proposed changes. Thirteen of these 19 were awarding bodies known to be regulated by Qualifications Wales, only one was identified as not being regulated by Qualifications Wales, four were unidentified AOs and one was not an AO.

## Additional comments on changes to definition of Change of Control

23 respondents chose to provide comments to question 25. Their responses are coded into the themes outlined in the table below. .

Q25. To what extent do you agree or disagree with Qualifications Wales’s proposed changes to the definition of Change of Control in Section J? Comments:	Responses
Proposals are good / agree with proposals	9
Proposals should be the same for all regulators	9
Proposals are unnecessary / the current Condition is clear	4
Proposals would not improve clarity / proposals would cause confusion	4

Q25. To what extent do you agree or disagree with Qualifications Wales's proposed changes to the definition of Change of Control in Section J? Comments:	Responses
Proposals would not change the Condition's meaning significantly / proposals would have little impact	1
Proposals would increase AOs' workload	1
Not regulated by Qualifications Wales	1

Base: 23

### Agreement on clarity

A number of the respondents agreed that the changes to the definition of Change of Control would be welcomed. Some mentioned that the change would provide clarity and that the improved definition of Change of Control is helpful.

### Alignment

Whilst respondents were in general agreement or supportive of this change to the definition, due to a preference for all Conditions across regulators to completely align, nine said they would prefer the change was not made:

*"We appreciate that Qualification Wales are attempting to bring clarity to the term 'changes of control' and for the most part we agree with their proposed definition. However, given that neither Ofqual nor CCEA are proposing the same changes, for consistency we do not agree with their proposal as this could result in differing notifications to the regulators."*

## 10. Consultation analysis: Impact Assessments

In this section, we report the views of those who responded to questions 26 to 28 in the consultation document that relate to Impact Assessments, and these are:

- Q26a: Impact of proposals;
- Q26b: Additional steps which could reduce the regulatory impact of the proposals;
- Q26c: Other costs and/or benefits;
- Q27a: Any potential impacts on people who share a protected characteristic not already identified;
- Q27b: Any additional steps which may mitigate any negative impacts on people who share a protected characteristic; and
- Q28: Welsh language impacts.

### Q26a: Impact of proposals

19 respondents chose to provide comments relating to the impact of the proposals. Their responses are coded into the themes outlined in the table below. It should be noted that other points were raised about the impact of the proposals in earlier questions, particularly on the need for further clarification and guidance on many points relating to the proposed changes. In many cases respondents did not repeat these views when asked about the impact of the proposals.

Q26. (a) 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?	Responses
AOs need time / resources / software or system upgrades to implement the proposals	16
Proposals would increase AOs' workload	9
Proposals are good / agree with proposals	3
Proposals would not change the Condition's meaning significantly / proposals would have little impact	3
Proposals should be the same for all regulators	3
Not all impacts identified in draft IA	2
Proposals would increase competition between providers	1
Proposals need clarification	1
Proposals may have unforeseen impacts	1
Proposals would not improve clarity / proposals would cause confusion	1
Other	1

Base: 19

### Resources and IT upgrades will be required to implement proposals

The most frequent comments (16 responses) were from respondents who said that AOs will need time, resources or further system changes to implement the proposals. Respondents said that they will need to review their policies and procedures, such as their compliance monitoring systems, and will also need to update their staff and learners

before implementing the proposals. Respondents said this will inevitably have a financial cost, not only due to the hours spent on implementing the proposals, but also if AOs will need to change their IT systems.

Given the amount of work that some respondents said would be involved, some called for AOs to be given more time to implement the proposals, otherwise there is a possibility that they would declare non-compliance with some revised Conditions in their annual SoC return. A few said that the deadline for compliance should be October 2020, after the September 2020 Statement of Compliance is submitted.

For the reasons mentioned above (need to review policies and procedures), there were nine responses that claimed that the proposals would increase AOs workload.

### Some proposed changes would have little impact

The next two most common responses were from those who agreed with the proposals (3 responses) and those who said the proposals would have little impact (also 3 responses).

Those who said the proposals would have little impact tended to already comply with the proposals, and it was for this reason that the proposals would have little impact on them.

### Increased competition between providers

The remaining themes are fairly self-explanatory. However, the theme 'proposals would increase competition between providers' might require further explanation. The respondent who gave this response had concerns with regards to competition law, in relation to what they perceived to be the need to publish discounts offered to centres, and placing commercially sensitive information into the public domain, such as net prices paid by customers.

## Q26b: Additional steps which could reduce the regulatory impact of the proposals

17 responses were provided that related to any additional steps that could be taken to reduce the regulatory impact of the proposals. The responses are coded into the themes outlined in the table below.

Q26. (b) Are there any additional steps we could take to reduce the regulatory impact of our proposals?	Responses
AOs need time / resources / software or system upgrades to implement the proposals	9
Proposals need clarifying / AOs need more guidance	4
Proposals should be the same for all regulators	3
Regulators should produce a summary of all changes	2
Regulators should carefully monitor proposals' implementation	1
Only introduce proposals which simplify / clarify Conditions	1
Use accessible language / terminology	1
Reduce the number of Conditions	1

Base: 17

## Timeline concerns

Having sufficient transition time was a concern for several respondents with issues raised including changes not introduced part way through a self-assessment year, time for AOs to review their fees in more detail and avoiding being close to year end.

A suggested date of January 2021 was made to avoid confusing the customer of the AOs that publish fees in Q3/Q4 every year.

## Clarity for AOs

Clear exemplar guidance and indicators of good practice have been suggested in order to avoid errors in interpretation:

*“Some further clarification with respect to the points raised throughout this consultation response would make clear what awarding organisations require to do in order to maintain compliance.”*

## One Document

A common approach was suggested by two AOs to combine all 3 regulators’ Conditions into one document. The differences between the regulators’ Conditions would then be highlighted, which would minimise the risk of missing differences when the majority are the same.

*“Combine all 3 regulatory conditions into one document. It would help, because the bulk of the conditions are the same, if the three regulators could issue one set of conditions, jointly branded with difference highlighted in some way. On consultation with other AOs we have found we all self assess in a similar way and this is usually one document source with differences highlighted. This would save us having to identify the changes ourselves and also save us having to plough through 1, 2 or 3 sets of conditions depending on who regulates us. Furthermore, with 3 “documents” it is easy to miss differences when most is the same.”*

## Q26c: Other costs and/or benefits

10 responses were provided that related to the costs and/ or benefits identified within the proposals. The responses are coded into the themes outlined in the table below.

<b>Q26. (c) Are there other costs and/or benefits you have identified from our proposals that you would like to draw to our attention?</b>	<b>Responses</b>
Proposals would incur staff / time costs	4
Proposals would incur system / technology upgrade costs	3
Proposals need more flexibility	2
Proposals would have little / no cost implications	2
Proposals would improve clarity	1
Proposals would align practice between regulators	1
Proposals should be the same for all regulators	1
Proposals would increase competition between providers	1

Base: 10

### **Cost concerns and broader issues identified**

Cost concerns were highlighted by a small proportion of respondents with most respondents having no comment to make regarding costs or benefits identified from the proposals.

For the few comments that were made, the following were the main themes raised: cost of revised invoicing systems for AOs, cost related to changing terminology, communicating the changes to centres and additional staff time to amend documentations.

A flexible approach to changing terminology was suggested to allow awarding organisations to use and justify terms that centres already understand, which would mitigate against the costs to change all terminology.

### **Q27: 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 already identified?**

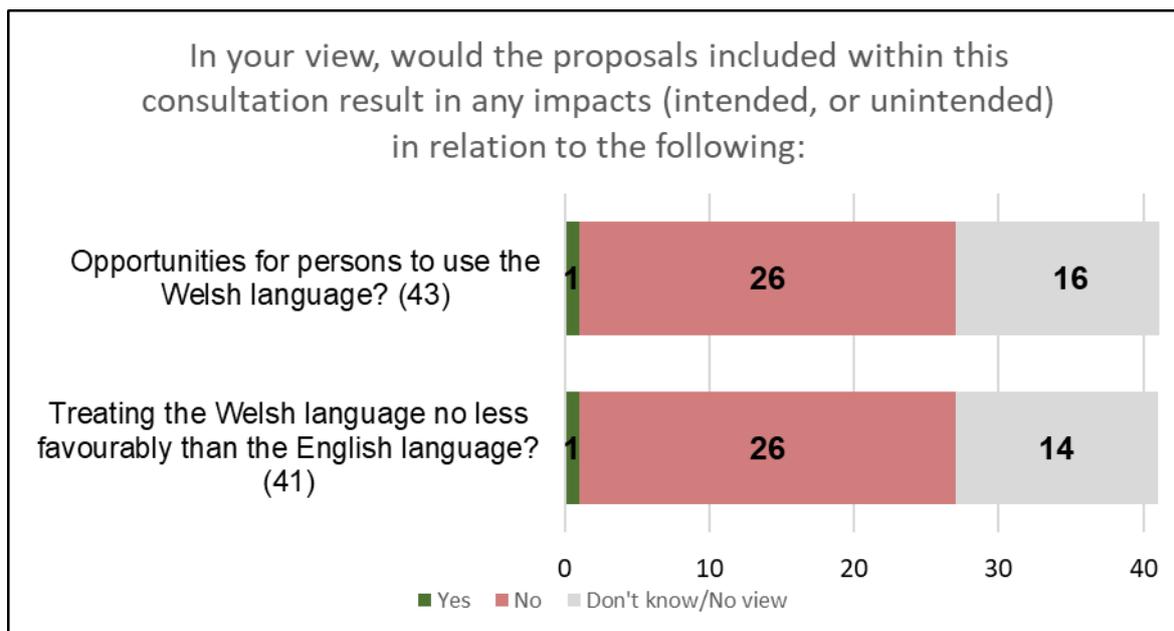
None of the respondents could anticipate any negative impact on people who share a particular protected characteristic. Just one respondent commented on a potential positive impact:

*“Where these proposals relate to streamlining and updating they are welcomed. The initiative to make fee information more accessible also feels welcome and may be of particular value to some individuals, perhaps with visual disabilities, particularly learners and potential purchasers of qualifications.”*

#### **b) Are there any additional steps we could take to mitigate any negative impacts on people who share a protected characteristic?**

As no negative impacts were anticipated, no additional steps to mitigate negative impacts were suggested.

## Q28: Welsh language impacts



Almost all respondents could either see no impact on the use or treatment of the Welsh language or had no view on the matter.

One respondent specifically suggested that the proposals could have some positive impact:

*"We foresee no negative impacts on opportunities for using the Welsh language but can see that the proposals would ensure the continued use of the Welsh language. We believe that the proposals would ensure that Welsh language is treated no less favourably than English by Qualifications Wales."*

## 11. Consultation analysis: Further comments

In this section, we report the views of those who responded to questions 29 and 30 in the consultation document, which gave respondents the opportunity to provide further comment on the proposals, or other related issues.

- Q29: General comments and feedback on the Conditions
- Q30: Comments on the timing of implementation of the proposals

### Q29 General comments on the Conditions

Six respondents gave substantive further written comments about the Conditions when given the opportunity to do so near the end of the consultation questionnaire.

Of these six, three made observations about the costs incurred by AOs in training and documentation changes, while two requested generally that the Conditions be kept consistent across the three regulators to decrease their workload.

Three made comments which suggested alternatives to the proposals that were outlined in the consultation. One of these suggested that the proposals did not go far enough, feeling that most of the proposed changes were minor rewordings and suggesting instead that there was a need to condense the number of Conditions and review them to ensure they are appropriate for vocational qualifications.

A second suggested that Condition D3 be separated into two Conditions, as it currently covers two separate areas: Business Improvement and Review of Qualifications.

The third related to the management of incidents in Condition A7 and expressed caution about overly prescriptive guidance about taking action, favouring a more individualised approach where AOs exercise their own judgement for each incident on a case-by-case basis. They also suggested referring to 'data protection law' in general, rather than GDPR in light of the prospect of leaving the European Union.

### Q30 Timing of the implementation of proposals

29 respondents gave a comment for question 30 (*Q30. Please provide any comments you may have on when we should implement any of our proposals?*).

Of these 29, most (26) were concerned about the timing and implementation of proposals for various reasons which are outlined below. Many suggested an alternative timeline.

#### **Implementation date of April 2020 provides insufficient time**

Seven of the 29 responses specifically said that the timescale of April 2020 for the proposals is insufficient, but did not suggest an alternative. These respondents said that a sufficient lead-in time or transition period will be needed to allow AOs time to prepare.

#### **Implementation should be aligned with (or come after) the submission of the Statement of Compliance**

Nine out of the 29 preferred the date to link to the SoC deadline, noting that it will take time to make the necessary changes outlined in the proposals. Some mention that

considering the consultation decision will not be published until the end of this year (2019), the proposed date of April 2020 is too ambitious, meaning that AOs could fall into a situation of non-compliance.

One respondent also pointed out that they will need to implement the outcomes of four consultations in total, and regulators should consider the other demands placed upon AOs before additional demands (such as these) are also placed on them.

Some respondents specified a particular month as to when they felt the proposals should be implemented. The most common responses were September 2020 (4 responses) and October 2020 (5 responses). These months were suggested because they are in line with the statement of compliance submission window, particularly those who mentioned October 2020 in their response.

*“We believe the earliest these changes should be introduced would be October 2020. This would mean the Annual Statement of Compliance submitted to all three regulators would be completed against the current versions and AOs could commence a new year (October 2020) under the newly updated Conditions.”*

### **Implementation should be aligned with the academic year**

Four respondents said that the proposals should be aligned with the academic year, with some suggesting September 2020 and some suggesting October 2020. A common reason for this is that changing fee terminology part way through an academic year could cause confusion.

### **Agree with the stated timescale**

The next most common response (3 responses) was from those who said they agreed with the stated timescale. One of the respondents did not elaborate on their response, whereas another felt the timescale is fine permitting the decisions are published before the end of 2019, whilst the other said that the changes do not materially impact on any of their current processes and activities (and so the current deadline is sufficient).

### **A few suggested timescales well in the future**

Despite the most common alternative timescales suggested being September or October 2020, a few (3 responses) gave a timescale much further into the future.

One respondent said that their relationship management of centres for courses to be delivered from September 2020 starts in January 2020. This means that fees and packages will be discussed from January, using the current Conditions as guidance. As the new Conditions will have an impact on what is communicated with centres, this respondent felt that the approach they take for fees should be ready and clear for when they discuss fees with centres in January 2021.

The remaining two comments suggested dates well beyond the current timescales.

*“We would be very concerned if any fees changes were to be implemented before April 2021 in case a revision is needed to fees structures.”*

*“An academic year would be appropriate, less impact on centres and AOs. So from 1st September 2022 would be the most suitable date.”*