

CONSULTATION DECISIONS

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

The Extended Extraordinary Regulatory Framework

The logo for Ofqual, consisting of the word "ofqual" in a bold, lowercase, sans-serif font. The letters "o" and "q" are underlined with a thick white bar. The logo is positioned in the bottom left corner of the page, which is partially covered by a dark teal triangular graphic.

Contents

Introduction	3
Summary of decisions	4
Details	4
The Extended ERF	4
Guidance on adaptation	9
Special Consideration	13
Autumn assessment opportunities	15
Equality impact assessment	16
Regulatory impact assessment	19
Implementation timescales	21
Annex A - Awarding organisations' equality obligations	22

Introduction

Our second consultation on the arrangements for the assessment and awarding of vocational and technical and other general qualifications in 2020 to 2021, and on the second draft version of the Extended Extraordinary Regulatory Framework, took place between 4 September and 20 September 2020. A copy of the consultation and our analysis of responses is available on [our website](#).

The government's expectation is that assessments should take place in 2020 and 2021 because that is the fairest way of providing results for learners. We too consider that assessments are the fairest mechanism where it is possible to hold them. Our proposed arrangements seek to mitigate the disruption to teaching, learning and assessments caused by the coronavirus (COVID-19) pandemic so that, as far as possible, learners have the opportunity to receive fair results in 2020 to 2021.

When implemented, the arrangements would apply to all regulated qualifications, apart from GCSEs, AS and A levels, and end-point assessments.

Consultation approach

We consulted on our proposed arrangements for 2020 to 2021 in two stages:

- the [first stage of our consultation](#) ran between 3 to 14 August. We consulted on the introduction of a second version of the Extraordinary Regulatory Framework (ERF), the Extended ERF, which would permit awarding organisations to mitigate the impact of disruptions to teaching, learning and assessment arising from the coronavirus (COVID-19) pandemic, through the adaptation of assessments and qualifications. We also consulted on a set of objectives to guide awarding organisations' decisions about how assessments and qualifications could be adapted. We said that we would consider whether and how to include these objectives within the Extended ERF. Given the high level of agreement, we have already [decided to implement](#) these proposals in full
- this [second stage of consultation](#) ran between 7 and 20 September 2020. We consulted on a further draft version of the Extended ERF to put our proposed arrangements into effect. We did not consult on any changes to the overall approach. The second draft version of the Extended ERF included revised principles to guide awarding organisations' decisions around their approach to adaptation, together with further statutory guidance on adaptation. The objectives on which we consulted in our first consultation were incorporated in these revised principles and guidance. We also consulted on statutory guidance on Special Consideration and on the regulatory arrangements for autumn assessment opportunities

We are grateful to the considerable number of respondents who took the time to engage with this complex set of issues and provide their views on our proposals.

This document sets out the decisions we have made following this second consultation. In reaching our decisions, we considered the consultation responses we received and the views of attendees at our consultation events with awarding organisations and other stakeholders.

Summary of decisions

We received 53 responses to this consultation. Respondents were generally supportive of both the principles and guidance, on which we consulted, and did not raise any issues that we had not considered in developing our approach.

Having considered these responses, we have decided to implement the second draft of the Extended ERF with the following minor changes:

- we have made a minor grammatical change to principle 1 and a change to the wording of principle 3 in the Extended ERF Conditions and Requirements
- we reordered the equalities obligations in the Extended ERF Conditions and Requirements
- we have removed a reference to T Levels which was not felt to be helpful in the Extended ERF Guidance

Respondents also highlighted some areas they felt that we needed to clarify our expectations which we have done in this decisions document.

Details

In this section, we provide our decisions in light of consultation responses. We include a brief summary of the responses received and the key aspects that have informed the decisions we have taken.

The Extended ERF

What we proposed

We set out revised principles to guide awarding organisations' decisions around adaptation, listed below, in the Extended ERF requirements. These principles were drawn from the higher-order objectives on which we consulted in our first consultation.

Principle 1 – As far as possible and without prejudice to the other principles, an awarding organisation must seek to ensure that the adaptations, which it makes to a qualification, assist with mitigating the impact on teaching, learning or assessments caused by the coronavirus (COVID-19) pandemic on learners taking that qualification.

Principle 2 – An awarding organisation must seek to ensure, as far as possible, that the adaptations which it makes to a qualification do not serve to advantage or disadvantage learners taking that qualification against their peers taking general qualifications not covered by the Extended ERF.

Principle 3 – An awarding organisation must seek to ensure that, where it makes any adaptations to its qualifications in accordance with the Extended ERF, the validity and reliability of those qualifications is maintained.

Principle 4 – An awarding organisation must seek to maintain standards, as far as possible, within the same qualification in line with previous years, and across similar qualifications made available by the awarding organisation and by other awarding organisations.

We asked:

Question 1: Do you have any comments on the proposed principles set out above and in the second draft version of the Extended ERF requirements?

Responses received

Of those respondents who provided a comment, only 1 respondent, a teacher responding in a personal capacity, said that the principles were not appropriate. This was because they believed that they did not support students or teachers in the state system but instead served the interests of exam boards.

We received feedback from awarding organisations, a representative body for awarding organisations, and other representative bodies that the principles were generally appropriate.

The inclusion of 'assist' in revised principle 1 was welcomed as a useful addition to emphasise that awarding organisations are ultimately not in a position to fully mitigate all potential issues that could arise from a global pandemic.

We were however asked to clarify whether, if an adaptation does not assist with 'mitigating the impact on teaching, learning or assessments caused by the coronavirus', it should not be used and the awarding organisation should work within the General Conditions of Recognition. We were also asked to clarify whether the use of remote assessment and remote invigilation constituted an adaptation, and, more generally, when a change to a qualification was significant enough to be considered an adaptation under the Extended ERF.

We were also asked to clarify whether principle 2 applied to all qualifications or to just those that were most like general qualifications.

We were asked to clarify whether the principles were in a hierarchy and, in particular, whether principle 3 was an overriding principle because that principle was not caveated in any way.

Respondents also highlighted challenges in trying to maintain standards between adapted and non-adapted qualifications as required by principle 4. They commented that there are likely to be several different types of adaptation in play for every qualification with arrangements potentially needing to be considered on a case-by-case basis for centres (e.g. where centres have varying levels of access to key equipment, where local lockdowns are in place etc). Other respondents commented on the challenges around maintenance of standards and approaches to standard setting in light of the way results were awarded in 2020 to 2021. We were asked to provide additional guidance on ensuring consistency in this context.

We also received feedback that, where qualifications were influenced by third parties, such as sector bodies, this may conflict with principle 4 and to provide guidance on awarding organisation accountability for changes to their qualifications.

Whilst recognising the need for a short consultation period, a representative body for awarding organisations also commented that the limited time for awarding organisations to consider the principles might mean that further issues arise when they have the opportunity to further reflect on the principles as they work through their adaptations.

We were also asked to clarify what evidence awarding organisations should retain to demonstrate compliance with the principles.

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

A centre representative body commented that it needed to be clear in which qualifications adaptations were not required and why, and emphasised the importance of awarding organisations working together to ensure consistency across similar qualifications.

We were asked to provide greater clarity on whether there can be a reduction in content in VTQs. Some respondents said that the guidance for AS and A Levels permits a reduction in the content delivered to students as questions will be adapted but that there is no clear statement about this in this guidance. VTQ students might therefore be disadvantaged by having to cover all of the content they would usually have been expected to in a normal year.

We were also asked to clarify whether in-flight learners were eligible for calculated results.

Other teachers and staff in centres made comments not directly relevant to the principles about the challenges around work experience, the timing of information about adaptations, and how results in 2020 to 2021 would be used in progress measures.

We also received feedback about the need for calculated results to continue so that learners in 2020 to 2021 were not disadvantaged by not being in scope for calculated results in the way that learners in the summer were, and for them to continue as part of a contingency plan should assessments not be able to take place.

Our decisions

Having considered these responses, we have decided to implement our proposed principles with a minor grammatical change to principle 1 and change to the wording of principle 3.

In principle 1, we have replaced '*on learners*' with '*for learners*'. Principle 1 is now drafted as:

Principle 1 – As far as possible and without prejudice to the other principles, an awarding organisation must seek to ensure that the adaptations which it makes to a qualification assist with mitigating the impact on teaching, learning or assessments caused by the coronavirus (COVID-19) pandemic for learners taking that qualification.

We can confirm that there is no hierarchy between these guiding principles, as there was in the ERF. The driving force behind the Extended ERF is no longer to issue results to as many learners as possible, as was the case this summer. That was a necessary position in view of the unprecedented circumstances at that time and taking into account the Secretary of State's direction to Ofqual of 9 April 2020. Going forward, the approach taken by awarding organisations will need to reflect the intention that, unlike the spring and summer of 2020, centres will remain open in so far as that is possible. The principles should be considered equally and awarding organisations must take all reasonable steps to comply with each of the principles to the fullest extent possible.

As explained above, we do not intend principle 3 to override the other principles. However, we think that it would be helpful to make a change to the wording of principle 3. We recognise that, in making any adaptations to assist in mitigating the impact of the coronavirus (COVID-19) pandemic, awarding organisations will be

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

making changes to their original design intentions and there may be some impact on the reliability and validity of their assessments and qualifications. In our statutory guidance on adaptation, we address this by asking awarding organisations to identify any risks to validity and reliability arising from their adaptation approach and to consider how they could be mitigated.

We have therefore redrafted principle 3 as:

Principle 3 – An awarding organisation must seek to ensure that, where it makes any adaptations to its qualifications in accordance with the Extended ERF, the validity and reliability of those qualifications is *sufficiently* maintained (emphasis added)

We have also considered whether there is a need to change the wording of principle 2 but have decided that this is not necessary. As currently worded, principle 2 requires awarding organisations to consider whether there is any advantage or disadvantage, but where there is not, then they do not need to take any further action

We recognise the challenges around maintenance of standards and approaches to standard setting arising from principle 4, both in the particular circumstances of 2020 to 2021 and more generally across similar qualifications where the mechanisms to do this are not currently in place. We do not consider however that it would be appropriate to make any changes to this principle.

Awarding organisations are already under an obligation to consider the standard of similar qualifications made available by other awarding organisations under General Condition H3 (Monitoring the specified levels of attainment for a qualification) and the wording of principle 4 is consistent with that used in the earlier ERF. It requires awarding organisations to do so as 'as far as possible' so it already acknowledges that awarding organisations may not be able to set inter-awarding organisation standards for some VTQs, even where they are similar. We will however take forward a programme of work around developing a shared understanding of maintenance of standards in the context of 2020 to 2021.

In the statutory guidance on adaptation, we set out our expectation that awarding organisations work together and with sector bodies, where appropriate, to develop their adaptation approaches to, as far as possible, ensure consistency between similar qualifications. However, this does not in any way remove an awarding organisation's obligation to take all reasonable steps to comply with each of the principles for its own qualifications. This means that although an awarding organisation should seek input from third parties, such as sector bodies, where appropriate, it cannot let that input undermine its duty to take all reasonable steps to comply with the principles.

With regard to sufficiency of record keeping, under Condition ExtVTQCov3 (Keeping a record of decision-making) in the Extended ERF, awarding organisations are required to maintain records of their decisions around adaptations. In those records, they must show how they have taken account of these four guiding principles. We do not prescribe the format or detail of those decision records. It is for awarding organisations to make a judgement about what is sufficient should they be asked to justify and explain their approach to us.

With regard to interaction between the different regulatory frameworks, the Extended ERF Conditions, Requirements and Guidance apply in addition to the General

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

Conditions of Recognition (GCR), and to any relevant Qualification Level Condition (QLC) or Subject Level Condition (SLC). Where there is any conflict between an obligation in the GCR, QLC or SLC and an obligation in the Extended ERF, an awarding organisation must comply with the Extended ERF.

When the Extended ERF is brought into force, it will apply going forwards. Awarding organisations will need to review their qualifications and consider whether any adaptations are appropriate. Where an awarding organisation chooses to maintain, going forward, an adaptation originally made under the ERF, the Extended ERF will apply to that adaptation.

Under Condition ExtVTQCov2.1, the requirements, principles and guidance in the Extended ERF apply only in relation to adaptations to mitigate disruption caused by the pandemic. Where awarding organisations are choosing to make adaptations for other reasons, then it is the GCR, and any relevant QLCs and SLCs, which provides the relevant regulatory framework. It should be noted that the Extended ERF provides for greater flexibility for 2020 to 2021 in relation to adaptation than does the normal regulatory framework, so long as the proposed adaptation is compliant with the Extended ERF.

In particular, in the areas of remote assessment or remote invigilation, and especially where this is a change from an assessment strategy which has undergone technical evaluation, or where awarding organisations are accelerating their plans in response to the coronavirus (COVID-19) pandemic, awarding organisations should give careful consideration as to whether these adaptations will be compliant with the GCR.

Where awarding organisations are introducing remote invigilation under the Extended ERF, they must have regard to the statutory guidance on remote invigilation, which we have carried forward from the ERF.

We acknowledge the short consultation period but many awarding organisations had the opportunity to feedback on the principles and draft guidance (and did so) through our engagement activities before the period for written responses. However, should further issues arise when awarding organisations work through their adaptations, we will work with awarding organisations to address them.

We understand centre and stakeholder concerns that there is a risk of inconsistent approaches if awarding organisations are making decisions individually, and we are mitigating this risk through our regulatory framework (the statutory guidance on adaptation makes clear the need for awarding organisations to work both together and with sector bodies to agree adaptation approaches) and through our regulatory oversight of awarding organisations' decision records.

Although we do not explicitly refer to coverage of content in the principles themselves, principle 3 states that adaptations to assessments and qualifications should not undermine the validity and reliability of qualifications. A natural result of this is the starting point that the content to be taught should not be reduced. In our statutory guidance on adaptations, we state that changes to the content taught for a qualification should only be considered in exceptional circumstances where it is the only way of minimising disadvantage to learners as a result of the pandemic and that the views of sector and professional bodies and other stakeholders must also be sought before any changes are made. The focus is on considering how the assessment is approached rather than reducing the taught content as a starting point. However, for qualifications used for progression similar to GCSEs, AS and A

levels, where the competency issues are less of a factor, awarding organisations might consider that in order to minimise disadvantage to their learners, they need to consider removing content. There is flexibility within our arrangements that would allow awarding organisations to consider this approach, subject to the point made above about taking account of the views of stakeholders.

In the Extended ERF, there is no provision for the issue of calculated results. However, we have retained the ERF for specific purposes, one of which is to allow eligible learners¹ who have not yet received their calculated results to receive them. This includes learners carrying forward calculated results² from summer 2020 into their final award in summer 2021.

Our arrangements for 2020 to 2021 are based on the government's expectation that assessments take place. Should the government's position change, then we will of course work with government and other stakeholders, to revisit our arrangements.

We fully understand that teachers and exams officers urgently need information about what adaptations are being introduced. Awarding organisations have agreed that they will start to communicate details of their approach to adaptation to centres by 23 October 2020.

Guidance on adaptation

What we proposed

We proposed to issue statutory guidance on adaptation which awarding organisations must have regard to when determining their approach to adaptation. The guidance reflected the objectives we consulted on, which were supported in the first consultation.

We considered that any guidance on adaptation must be sufficiently flexible to enable awarding organisations to respond to the wide range of issues they need to consider in developing adaptation approaches which maintain the validity and reliability of the different types of VTQs and other general qualifications, and which are clear and acceptable to users. The guidance was not therefore prescriptive but set out a range of factors which awarding organisations should consider when deciding on their approach to adaptation.

The proposed guidance:

- set out the context within which awarding organisations are making their decisions
- explained how the principles, with which awarding organisations must take all reasonable steps to comply, should be applied
- set out a process awarding organisations may wish to follow when determining their approach to adaptation
- gave examples of the issues which may need to be mitigated as a result of the coronavirus (COVID-19) pandemic

¹ To be eligible, a learner must have expected to take an assessment(s) between 20 March and 31 July 2020 for a qualification in scope under the ERF for calculated grade.

² Or a centre assessed grade where this was permitted in place of the calculated result issued by the awarding organisation

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

- gave examples of possible adaptation approaches which may assist in mitigating the impact of the coronavirus (COVID-19) pandemic
- set out other factors awarding organisations should consider when developing their approach, such as complying with other organisations' requirements in addition to Ofqual's, for example the DfE's technical requirements for performance table qualifications.
- set out factors awarding organisations should consider to support consistency in line with our expectation that, as far as possible, where qualifications signal similar knowledge, understanding and skills, or practical competence, and have the same assessment approaches and delivery context, the adaptations are consistent
- set out factors awarding organisations should consider when working with centres and others to develop and implement adaptations effectively
- suggested areas where awarding organisations may wish to take steps to build resilience so that they are in the strongest possible position to manage any further disruption caused by the coronavirus (COVID-19) pandemic

As awarding organisations are making decisions appropriate to their qualifications, we said that we could not set out at a national level the adaptations that may be implemented in the detailed way that it is possible to do with GCSEs and AS and A levels. We said that we would however require awarding organisations to provide clear and timely information to centres about their approaches for each of their adapted qualifications and assessments and to ensure that any adaptations are acceptable and manageable.

We asked:

Question 2: Do you have any comments on the proposed guidance on adaptation set out in the second draft version of the Extended ERF?

Responses received

We did not receive any feedback that suggested that the overall approach we had taken to the guidance on adaptation was not appropriate but we did receive feedback which reinforced the need for awarding organisations to take consistent approaches. We also had some feedback from respondents replying in a personal capacity that it was too late to put any meaningful adaptations in place or to communicate with centres in a timely and clear manner, as teaching has already begun and that it would not be possible to make up for lost teaching time.

Awarding organisations and a representative body for awarding organisations said that the guidance provided on adaptation was useful – it was not overly prescriptive and could be applied flexibly to different qualifications and contexts.

We were however asked to provide more examples of the types of adaptations that would be permitted, including those relevant to a wider range of qualification types (e.g. graded music qualifications, sports-related qualifications which may be impacted differently by official advice outside of the control of awarding organisations) and to different centre types and delivery models. We were also asked to clarify the status of the statutory guidance on adaptations.

We were also asked to provide clarity on where adaptations were considered significant enough to require regulation under the Extended ERF instead of the

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

General Conditions of Recognition. We were also asked to clarify our expectations on how awarding organisations should work with their centres, and whether they must consult with them when developing their adaptations.

We also had feedback that the reference to T Levels in the section on consistency of approach in the guidance was not helpful as each qualification is only offered by one awarding organisation.

Awarding organisations also pointed out that awarding organisations' communications to centres were sometimes contingent on other stakeholders, for example the Department for Education's guidance on PTQs.

Some awarding organisations were not sure that it would be possible to have a uniform approach with other awarding organisations offering similar qualifications because of the differences in assessment approaches. It was suggested that sector led working groups might facilitate this.

A centre representative body commented on the need for awarding organisations to take consistent approaches and for there to be clarity on how this will be assured. They said that a lack of consistency in summer 2020 caused unnecessary confusion for college staff and thus students. They also said that it was important to balance maintaining standards and reliability and taking account of professional/sector body views with the need for adaptations to be manageable for college staff and students and in line with government public health advice. They emphasised the need for centres and students to be properly prepared for remote assessment and/or remote invigilation if they were the adaptations proposed by awarding organisations. Finally, they commented on the need for any cost implications for centres to be made clear as exam and assessment fees constitute a significant part of a college budget and will have been planned for in advance. They did not expect that there would be any additional costs arising from the adaptations.

The need for centres to have clear communication channels with awarding organisations to raise issues around adaptations was also identified by respondents.

A respondent also asked us for guidance on the equality implications arising from adaptations and highlighted the need to take account of safeguarding considerations where adaptations involved the use of technology and recording equipment.

We also received other comments not directly related to the guidance on adaptation, including that there was a need for guidance on the implementation of Reasonable Adjustments, for example on the use of scribes and readers, in the context of social distancing guidelines.

Our decisions

Having considered these responses, we have decided to implement our proposed statutory guidance on adaptation without any substantive changes. Awarding organisations must have regard to this guidance when deciding on their adaptation approach in 2020/21. By this, we mean that they must consider and engage with the guidance, not ignore or merely pay lip-service to it. Guidance is not a further set of rules. However, if an awarding organisation takes a different approach, it must have a cogent reason for doing so. That reason needs to be clear, logical and convincing and must be recorded under Condition ExtVTQCov3.1(a).

We have clarified how the General Conditions of Recognition and the Extended ERF interact in question 1.

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

The guidance is intended to apply across the breadth of VTQs and other general qualifications and so does not claim to cover all contexts and circumstances. It is intended to provide awarding organisations with a framework to work through when deciding on their adaptation approaches based on their understanding of the design and delivery of their qualifications.

The reference to T Levels was included to provide clarity that these new qualifications, being offered for the first time in 2020/21, would still fall under the Extended ERF. However, we accept the point made that reference to them in this part of the guidance is not particularly helpful and will reference FSQs instead. For clarity, this change in wording does not in any way suggest that T Levels do not fall within the Extended ERF – they do.

Awarding organisations have an obligation under Condition ExtVTQCov4.1 to provide effective guidance to centres on their adaptations. We have also made it clear in the statutory guidance that awarding organisations must ensure that their adaptations are clear and acceptable to centres. They must also provide sufficient guidance in relation to those adaptations so that centres are clear about the adaptations they are permitted to make. We don't consider however that we can prescribe how awarding organisations should achieve the outcomes set out in the statutory guidance on adaptation around working with centres. It is for awarding organisations to decide how best to work with their centres to ensure that any adaptations they introduce are clear and acceptable for each qualification they make available as they are best placed to understand both their qualifications and the needs of their centres.

We acknowledge that there are challenges in agreeing consistent approaches across qualifications offered by different awarding organisations, particularly where there are different assessment models. However, we are clear in the Extended ERF requirements and in the statutory guidance on adaptation that we expect awarding organisations to work together and with sector bodies to avoid some of the challenges faced by centres in the early summer when the ERF came into effect. If awarding organisations identify particular challenges in doing so, they should notify us as soon as possible. We would hope that the lessons learned from summer 2020 will assist with identifying where particular issues may arise, and that the sector and qualification type working groups already established will help to facilitate the development of consistent approaches.

We have established a joint communications working group (Ofqual, FAB, JCQ, AoC, AELP, HOLEX) to improve and streamline communications between awarding organisations and centres and, through this group, we will work with other stakeholders to coordinate communications and milestones. As explained in relation to question 1, awarding organisations have agreed that they will start to communicate details of their approach to adaptation to centres by 23 October 2020.

We have considered the equality impact of our proposals in both consultations on arrangements for 2020 to 2021. As part of the Extended ERF, we have set a requirement relating to equalities considerations, that awarding organisations must ensure that, in any approach to adaptations, they minimise bias as far as is possible. This means that they will need to ensure that their approach to adaptation does not produce unreasonably adverse outcomes for learners who share a common attribute. We consider the equalities' obligations of awarding organisations in more detail later in the equality impact section of this document.

With regard to the request for guidance on the implementation of Reasonable Adjustments, for example on the use of scribes and readers, in the context of social distancing guidelines, we will include a link in our decisions document to the DfE guidance on [Public health arrangements for autumn exams](#). This includes some guidance on arrangements when scribes, readers or other individuals are supporting candidates.

Special Consideration

What we proposed

We proposed to supplement General Condition G7 (Arrangements for Special Consideration) with additional statutory guidance to reflect the circumstances of 2020 to 2021. In this guidance, we said that:

- where learners have missed teaching and learning as a consequence of public health guidance, adaptations to qualifications and assessments should be considered, rather than Special Consideration
- if further disruption occurs on a localised basis and assessments cannot take place, awarding organisations should consider whether they can adapt or further adapt their qualifications or assessments before considering whether Special Consideration may apply
- where Special Consideration is available to learners who have not completed all of the assessments (because of previous or future lockdowns, for example), awarding organisations must be clear about the amount of assessment evidence a learner must have completed before a qualification can be awarded

The proposed guidance also stated that awarding organisations should review their current arrangements for Special Consideration to ensure they remain appropriate in the context of the potential continuing disruption caused by the coronavirus (COVID-19) pandemic.

In addition, we said that we would work with awarding organisations to develop a common understanding and, as far as possible, a standardised approach, to the application of Special Consideration in 2020 to 2021.

We asked:

Question 3: Do you have any comments on the proposed guidance on Special Consideration set out in the second draft version of the Extended ERF?

Responses received

There was agreement across almost all respondents that all efforts should be made to allow a candidate to take an assessment and that all avenues should be explored before considering the application of Special Consideration.

We received feedback from awarding organisations, a representative body for awarding organisations and other representative bodies that the proposed guidance on Special Consideration provided useful clarification that awarding organisations should explore adaptations before deciding to apply Special Consideration. The representative body also said that they felt that this should help to ensure that awarding organisations are better able to manage the administrative burden associated with each Special Consideration request by ensuring that it is only

deployed in exceptional circumstances. They also asked for clarification on the information awarding organisations should make available to their centres on Special Consideration.

We were also asked by some awarding organisations to clarify if there was a hierarchy of Special Consideration. The need to be clear about the different purposes of adaptation, reasonable adjustments and Special Consideration was also raised by respondents.

We had some feedback that suggested that Special Consideration should apply only in those circumstances which cannot be mitigated for in advance, and that, therefore coronavirus (COVID-19) pandemic related events did not fall in to this category.

We also had feedback that there was a need to monitor the impact of local lockdowns or isolated outbreaks in centres on teaching, learning and assessment and to take local circumstances into account when applying Special Consideration.

Some respondents expressed concern that learners could be disadvantaged by the application of Special Consideration and that it might not be used responsibly.

We also had feedback from teachers responding in a personal capacity that it was too late to consider Special Consideration and that the guidance on Special Consideration did not take account of the fact that centres have lost months of time that may have been allocated to the completion of an entire coursework unit.

Our decisions

Having considered these responses, we have decided to implement our proposed statutory guidance on Special Consideration without any changes. Awarding organisations must have regard to this guidance when applying Special Consideration in 2020 to 2021.

Our guidance does not suggest any hierarchy of approach to Special Consideration.

This guidance supports [General Condition 7 \(Arrangements for Special Consideration\)](#), under which awarding organisations are required to have in place clear arrangements for Special Consideration to be given to learners in relation to qualifications which it makes available. They are also required to publish details of its arrangements for giving Special Consideration, which must include details as to:

- (a) how a learner qualifies for Special Consideration, and
- (b) what Special Consideration will be given

The Ofqual Handbook also provides examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply with this Condition.

We can also confirm that it is not the case that Special Consideration should apply only in those circumstances which cannot be mitigated for in advance, and that Special Consideration does apply to coronavirus (COVID-19) pandemic related events and can take account of local circumstances.

In addition to the statutory guidance, we will also take forward a programme of work with awarding organisations to develop a common understanding and, as far as possible, a standardised approach, to the application of Special Consideration in 2020 to 2021. This will help to mitigate the risk that Special Consideration is used in a way which might advantage or disadvantage groups of learners.

Autumn assessment opportunities

What we proposed

We proposed to make changes to 2 Conditions (VTQCov10.5 in the ERF and ExtVTQCov 1.1 in the Extended ERF) to clarify the regulatory arrangements for assessments offered in the autumn.

As currently drafted, we felt that awarding organisations may be unclear whether or how the 2 frameworks apply to the same assessments, when they are made available, once the Extended ERF comes into effect in September.

We therefore proposed to amend Condition VTQCov10.5 in the ERF to make it clear that awarding organisations must comply with the Extended ERF, once it comes into force, for any assessments they make available in the autumn. We also corrected the reference in ConditionVTQCov10.5 to Condition VTQCov10.3 which was a drafting error– it should have been a reference to Condition VTQCov10.4.

We also proposed to reflect this change in Condition ExtVTQCov1.1 in the draft version of the Extended ERF.

We considered that if we did not make these changes to our regulatory arrangements there could be confusion as to whether an assessment offered in the autumn was covered by the ERF or the Extended ERF, or both. Our proposed amendments were intended to provide certainty for awarding organisations by making it clear that awarding organisations must comply with the Extended ERF, once it comes into force, for any assessments they make available in the autumn.

We asked:

Question 4: Do you have any comments on the proposed regulatory arrangements for autumn assessment opportunities?

Responses received

We did not receive any comments on the drafting changes we had made to the ERF or the draft Extended ERF which were intended to clarify the regulatory arrangements for the autumn assessment opportunities.

Respondents, including awarding organisations and a representative body for awarding organisations, agreed that the arrangements for the autumn assessment opportunities were clear and made sense.

Other respondents commented on the importance of clarity around the arrangements, with one awarding organisation suggesting that it would be useful to be provided with exemplifications of how the regulatory frameworks interacted. It was felt that this might be helpful to centres.

A centre representative body also said that it needed to be clear to centres when the original ERF finishes and the Extended ERF starts and if there was any impact on learners.

Other responses, which were not directly related to the question, commented on the need to make decisions quickly and on the burden on teachers and centres arising from the autumn assessment opportunities.

Our decisions

Having considered these responses, we have decided to implement our proposed regulatory arrangements for the autumn assessment opportunities. Awarding organisations must comply with the Extended ERF, once it comes into force, for any assessments they make available in the autumn.

We note the request for greater clarity for awarding organisations and centres about how our regulatory frameworks interact and have set out below a summary to explain this.

Which regulatory framework applies?	
General Conditions of Recognition	The General Conditions of Recognition apply to all qualifications Qualification Level Conditions (QLC) and Subject Level Conditions (SLC) apply to specific qualifications
ERF	The ERF continues to apply in addition to the GCR and any relevant QLCs and SLCs for specific circumstances only: <ul style="list-style-type: none"> • to allow eligible learners to receive calculated results if they have not done so already • to allow appeals against results issued under the ERF • for autumn assessment opportunities provided in accordance with Condition VTQCov10 (assessment opportunity in autumn 2020)
Extended ERF	The Extended ERF applies in addition to the GCR and any relevant QLCs and SLCs where qualifications cannot progress as normal because of the pandemic – it does not require awarding organisations to make adaptations. When the Extended ERF comes into effect: <ul style="list-style-type: none"> • awarding organisations will need to review their qualifications, including assessments offered under Condition VTQCov10, and consider whether any adaptations are appropriate • where there is any conflict between the conditions and an awarding organisation is not able to comply with the GCR, QLC or SLC, they must comply with the Extended ERF instead

We have not identified any impact on learners arising from awarding organisations' need to consider the GCR alongside the Extended ERF and, where relevant, the ERF.

Equality impact assessment

In our consultation, we set out our assessment of the potential impact of our proposals on particular groups of students, including those with protected characteristics.

One of our key aims in developing our proposals was to seek to assist in mitigating disruption to teaching, learning and assessments so that, as far as possible, learners have the opportunity to receive fair results in 2020 to 2021 and are not disadvantaged by the longer term impacts of the coronavirus (COVID-19) pandemic. We aimed to ensure that assessments lead to the award of qualifications that are a

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

valid and reliable indication of knowledge, understanding and skills, or practical competence; that as far as possible, standards are maintained; and to develop as far as possible, consistent approaches across similar qualifications, whilst recognising the diversity of the VTQ landscape.

In developing our approach, we recognised that given the qualifications covered by the Extended ERF, and the range of learners taking these qualifications, the number of awarding organisations offering them and the number of centres delivering them, it was possible that some learners may be affected, both positively and negatively, in different ways to others by any adaptations that awarding organisations choose to make. This may include those that are affected as a result of sharing a protected characteristic or belonging to a particular group.

To seek to mitigate this to some extent, we designed the Extended ERF to be flexible, and not to prescribe a single approach, but to allow awarding organisations to take account of a range of factors when determining whether, and how, to adapt their assessments. These factors will include the wider obligations placed on them under the Equality Act and the requirements in the General Conditions for awarding organisations to design assessments which allow for reasonable adjustments to be made, while minimising the need for them.

Despite this, we recognise that it may not be possible, in all cases, to fully mitigate any disadvantage faced by learners as a result of a protected characteristic, or belonging to a particular group. We identified a number of potential disadvantages, and sought views through our consultation on whether there were any impacts we had not identified, and how any identified impacts could be mitigated. This built on the equalities impact assessment carried out [as part of our first consultation](#).

As part of our equalities impact assessment, the main impacts we identified were that:

- learners who take vocational and technical qualifications covered by the Extended ERF are, on average, more likely to be from more disadvantaged backgrounds than those taking general qualifications
- some vocational and technical qualifications are more likely to be taken by learners with protected characteristics. Additionally, VTQs are more likely to be taken by adult learners, who may have additional responsibilities, such as caring responsibilities
- some learners could be disadvantaged as a result of the centres where they take their assessments, as some are more likely than others to be able to provide equipment or resources, and accommodate social distancing requirements
- some learners could be disadvantaged as a result of access to technology or resources, or the ability to use them outside of a centre. This could be due to socio-economic circumstances, as a result of a disability, or geographical factors
- some adaptations may mean that reasonable adjustments with which learners are familiar may no longer be appropriate, or may require learners to use and familiarise themselves with alternative reasonable adjustments.
- some learners could be positively impacted as adaptations to assessments may make them more accessible

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

- as all qualifications covered by the Extended ERF will be potentially subject to adapted assessments, then learners taking different qualifications are less likely to be treated differently (in contrast to some receiving calculated grades as was the case under the ERF)

In our consultation we asked whether there were any positive or negative equality impacts arising from the proposed principles, the proposed guidance on adaptation and Special Consideration, and the proposed regulatory arrangements for autumn assessment opportunities, beyond those identified. We also asked how any impacts identified might be mitigated.

Respondents mainly reiterated impacts that had been identified either in this consultation, or in the first stage of our consultation. These impacts included:

- the potential impact on students where centres take different approaches to qualification delivery. This could lead to students doing the same qualification at different centres, having different combinations of calculated grades from summer 2020 and adapted assessments from 2021, depending on the order in which centres entered them for assessments
- the potential impact on group work, which may be difficult to address through adaptation
- the use of Special Consideration where students have been unable to take units
- whether Special Consideration and adaptations could apply together and the potential impact for private candidates
- the need to consider the diverse range of qualifications and circumstances of students who take them

We also received feedback that, by not including the original principle 1 from the ERF, which prioritised the issuing of results, that awarding organisations could not introduce adaptations unless they were accessible to all learners. We received similar responses to our first consultation, which we tried to address by setting out awarding organisations' equalities obligations under our framework in our decisions document. We thought that it would be helpful to provide another summary in this decisions document and have done so in Annex A.

We were asked by a representative body to remove the requirement in the Extended ERF that refers to an awarding organisation ensuring that it minimises bias, as far as possible, when it is making any adaptations to a qualification. This would only leave the mandatory duty to comply with General Condition D2 (Accessibility of qualifications). We do not propose to implement this change given the obligation in General Condition D1.2(e), which sets out that a qualification will only be fit for purpose if that qualification, as far as possible, secures the requirement of minimising bias.

'Minimising bias' is defined in General Condition J1.8 as follows:

Minimising Bias is about ensuring that an assessment does not produce unreasonably adverse outcomes for Learners who share a common attribute. The Minimisation of Bias is related to fairness to all Learners and is also closely related to statutory equality duties.

The concept, and its inclusion in General Condition D1.2(e) is therefore an important additional element in helping to ensure that awarding organisations meet their equality obligations. As such we consider it appropriate to refer to it in the requirements under the Extended ERF.

We do however propose to reorder the equalities considerations in the Extended ERF requirements, as shown below, to put the stronger emphasis first.

In all cases, an awarding organisation must comply with the requirements of Condition D2 (Accessibility of qualifications) and Condition G6 (Arrangements for Reasonable Adjustments).

Likewise, an awarding organisation must ensure that in making any Adaptations to a VTQ which it makes available it Minimises Bias, as far as possible.

Our decisions

Having considered these responses, we do not believe there are any additional impacts or mitigations beyond those we have already identified.

It is important to note that equalities law places direct obligations on awarding organisations. It will be for awarding organisations to take decisions on adaptations in compliance with those obligations in this regard and it is not our place to advise awarding organisations on how best to comply. Rather it is our role to facilitate rather than impede their compliance. As such, we have drawn the attention of awarding organisations to their obligations in our requirements, and ensured that the framework we have put in place is flexible enough to allow each awarding organisation to make its own decisions on adaptations in line with its equalities' obligations.

As noted earlier, we are proposing to make a minor drafting change to Extended ERF requirements in light of the response to the consultation.

We have explained in our statutory guidance on Special Consideration that awarding organisations should make adaptations to their qualifications or assessments in the first instance before considering whether Special Considerations apply. This is the case in respect of all learners, including private candidates.

Regulatory impact assessment

In our consultation, we considered the impact of our proposals on learners, awarding organisations, centres, FE, HE and employers, innovation and growth. We asked respondents to share with us as much information as possible about the likely costs and administrative burdens associated with the implementation of our proposals, as well as any savings or benefits.

As set out earlier, one of our key aims in developing our proposals was to seek to assist in mitigating disruption to teaching, learning and assessments so that, as far as possible, learners have the opportunity to receive fair results in 2020 to 2021 and are not disadvantaged by the longer term impacts of the coronavirus (COVID-19) pandemic. We aimed to ensure that assessments lead to the award of qualifications that are a valid and reliable indication of knowledge, understanding and skills, or practical competence; that as far as possible, standards are maintained; and to

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

develop as far as possible, consistent approaches across similar qualifications, whilst recognising the diversity of the VTQ landscape.

In developing our approach, we recognised that in adapting assessments, there were likely to be costs associated with doing so. Some of these may be immediate and short term, others may be incurred over a longer period. While we were mindful of the need to minimise the burden of our proposals, we also considered that some cost and burden is inevitable, and indeed, may bring longer term benefits, for example through the increased use of technology.

We sought, as far as possible, to balance the need for awarding organisations to deliver adapted assessments that are valid and reliable, with ensuring that any approaches to adaptation they develop are manageable for awarding organisations themselves, centres, learners and other users of qualifications. Our proposed approach built on the ERF put in place in the summer – and [our previous regulatory impact assessment](#) – meaning some of the adaptations already in place may continue to be appropriate. It also allowed for flexible approaches, as opposed to prescribing a single approach, to allow awarding organisations to consider a range of factors, including the manageability of any adapted assessments. It required awarding organisations to only act within the limits of their own capacity and capability, and included guidance on factors awarding organisations should consider, including their capacity and capability and the manageability of assessments.

As part of our regulatory impact assessment, the main regulatory impacts identified were:

- familiarisation with the proposed Extended ERF
- development of approaches to adaptations
- communication of new requirements to centres, supporting centre activities and managing increased volumes of enquiries from centres and learners
- adaptation or development, and delivery, of processes and systems for adapted assessments and quality assuring these
- investment in technology needed to deliver adapted assessments including specialist hardware or software and training in how to use these
- maintaining a record of decisions made to adapt an assessment and the rationale for them
- preventing, detecting and investigating any malpractice or maladministration specifically relating to the delivery of adapted assessments
- issuing of results in accordance with new arrangements
- the impact on business as usual activities of having to comply with the Extended ERF
- costs to centres of delivering adapted assessments, combined with meeting other external factors such as social distancing requirements

In our consultation we asked whether there were any potential regulatory impacts arising from the proposed principles, the proposed guidance on adaptation and Special Consideration, and the proposed regulatory arrangements for autumn assessment opportunities, beyond those identified. We also asked how any impacts identified might be mitigated.

Respondents mainly reiterated impacts that had been identified either in this consultation, or in the first stage of our consultation. These impacts included:

- concerns about the manageability and costs for centres
- the need for approaches to be set out as soon as possible to give centres time to plan
- the need for consistent approaches between awarding organisations
- concerns about costs of adaptations and the regulatory burden on awarding organisations arising from our record-keeping requirements
- the difficulty in predicting costs in the current context where there may be further restrictions in arrangements which could increase costs for awarding organisations
- the need to clarify for awarding organisations what constitutes an adaptation

Our decisions

Having considered these responses, we do not believe there are any additional impacts or mitigations beyond those we have already identified.

We recognise that adaptation approaches could lead to additional costs for awarding organisations and centres, and would expect that awarding organisations ensure their approaches are manageable. However, the burden imposed by any particular adaptation on an awarding organisation, its centres and learners will be something which the awarding organisation considers as part of deciding whether that adaptation is appropriate to implement.

We consider that our record keeping requirements are proportionate and necessary to give us oversight of awarding organisations' approach to adaptation. Awarding organisations will already have record keeping obligations under the ERF and can retain these arrangements without the need to put in place new ones for the Extended ERF.

We have clarified earlier in this document what constitutes an adaptation.

Implementation timescales

We intend to publish the Extended ERF on 12 October. This is to enable awarding organisations to finalise their adaptation approaches and to inform their centres by 23 October. This is the date agreed by the joint communications working group we have established (Ofqual, FAB, JCQ, AoC, AELP, HOLEX) by when all awarding organisations should have started to communicate to centres their planned approach to any adaptations.

Annex A - Awarding organisations' equality obligations

Obligations under Extended ERF

Under the Extended ERF, we have set a number of obligations on awarding organisations, which will help ensure that the needs of learners are considered.

In particular, we require that under the Extended ERF, awarding organisations ensure that any adaptations they make to qualifications are sufficiently transparent to meet the reasonable needs of users of the qualification.

We require awarding organisations to keep a record of any adaptations they make, and the rationale for the decisions it has taken. Awarding organisations will need to provide this record to Ofqual on request. This means that Ofqual is able to hold awarding organisations to account for any adaptations they make, and where adaptations are not made in accordance with our regulatory framework, including where an adaptation introduces a disadvantage to learners with particular characteristics which cannot be justified, we would be able to take action against that awarding organisation.

As part of the Extended ERF, we have set a requirement relating to equalities considerations, that awarding organisations must ensure that, in any approach to adaptations, they minimise bias as far as is possible. This means that they need to ensure that their approach to adaptation does not produce unreasonably adverse outcomes for learners who share a common attribute. The Extended ERF also highlights the other obligations that awarding organisations must meet under the General Conditions of Recognition, which we explain in more detail below.

General Conditions of Recognition

The Equality Act 2010 imposes obligations directly on awarding organisations. Awarding organisations need to ensure that they comply with their duties under the legislation in deciding whether to adapt any of their qualifications and what adaptations to make

Our General Conditions of Recognition (GCR) set out a number of obligations, in addition to those imposed by equalities legislation, on awarding organisations. The GCR apply in addition to the Extended ERF. In particular, General Condition D2 requires that awarding organisations ensure that they comply with the requirements of equalities law in relation to each of the qualifications which it makes available. They must monitor their qualifications to identify any feature that could disadvantage learners with a protected characteristic and remove those features where they cannot be justified, or maintain a record of such features which it believes are justified.

General Condition D2 mirrors the idea in equalities law that there will be some cases in which the design of a qualification leads to a disadvantage to persons with protected characteristics, but that the disadvantage can be justified in the circumstances. This means that, even though principle 1 from the ERF has not been included in the Extended ERF, there may be some cases in which an awarding organisation considers that a particular adaptation is justified even though some

Decisions on arrangements for the assessment and awarding of vocational, technical and other general qualifications in 2020 to 2021 – Part 2

learners cannot access the resulting assessment. Under equalities law, the primary responsibility will be on awarding organisations to consider whether adaptations are justified.

Additionally, the GCR require that awarding organisations ensure their assessments permit reasonable adjustments to be made whilst minimising the need for them, and set a requirement, under General Condition G6 for awarding organisations to have in place clear arrangements for making Reasonable Adjustments in relation to qualifications which it makes available.

One way for an awarding organisation to meet its equalities obligations may be to offer a mix of different adaptations, where appropriate and feasible, with a view to making sure that different learners with different needs are able to access at least one of the adapted versions.

Other factors

In addition to the factors set out above, awarding organisations are not prevented from delivering qualifications and assessments as normal, where this is possible and where they don't consider that any adaptations are appropriate. For many vocational and technical qualifications, assessments are made available on a rolling basis, multiple times each year. This means that in many cases, if a learner is unable to take an assessment, either as a result of being in a particular group, sharing a protected characteristic, or for some other reason, they may be able to take their assessment at a later date.

Regulatory oversight

While the steps we have taken and which are outlined above will go some way to minimising the disadvantage faced by some groups of learners, it may not be possible to completely remove any disadvantage in all cases. As part of our ongoing regulation of awarding organisations, we will monitor the approaches they put in place.



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