

Consultation response

Consultation on Changes to the Conditions of Recognition

22 October 2019

Chapter 3

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

a. Increase transparency of fee information?

AQA agrees that Awarding Organisations (AOs) publishing price information could make prices more transparent, provide a level playing field among Awarding Organisations and increase information for customers. We have concerns, however, about the timescales the regulators have stated between when this information is published and when candidates sit the qualifications.

For instance, a teacher will choose a specification (and AO) at least 27 months before their students in Key Stage 4 sit their first GCSE examination (which usually occurs 21 months after they begin learning the specification, and a teacher will usually have chosen the specification six months earlier so they and colleagues can prepare).

AQA further has concerns that AOs' websites might publish fee information but make it difficult to find. The regulators might, therefore, want to tighten their requirements about how easily accessible the published information is.

While we are slightly reassured, therefore, that Condition F1.4 allows AOs to accompany the publication of its prices with a statement that they are indicative, we would urge strongly against the regulators being too prescriptive with how far in advance of entry the reformed information on fees would need to be published.

We would also, on this point, note that we do not receive any complaints from our centres about the time between when we publish our price information and when the candidates sit their qualifications.

b. Help purchasers secure value for money?

While AQA agrees it will help centres compare fee information, we feel they will continue to make purchasing decisions based on quality and suitability as well as cost.

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

AQA agrees they would provide sufficient clarity.

3. What other changes could we consider to improve:

- a. **Transparency of fee information; and/or**
- b. **Value for money;**

In the market for regulated qualifications

If the regulators required the publication of fees on a pre-determined date each year, customers could be confident that AOs had not amended their pricing plans once competitor information had been published. Centres would benefit from lower prices, as AOs would be incentivised to give their best price on publication date.

While we would be happy to publish our package fee for a given qualification if that was the only way in which a qualification could be bought, AQA has concerns about publishing the package fee where a qualification can be bought both on its own and as part of a bundle.

AQA is of the view that the wording in paragraph 3.24 of the consultation document is clearer than paragraph 3.25 about what must be published in helping buyers achieve value for money. The fees published should be the actual fees a purchaser would pay. Any allowance for the publication of 'notional' fees, which exclude other parts of a package including products, services and other qualifications, might encourage AOs to manipulate their pricing information, by giving a higher cost to other aspects of the package, and implying a lower-than-actual qualification fee. The regulators' Conditions should require, therefore, that AOs publish either (i) a Standard Qualification Fee that must be something the purchaser can actually buy (which may require a change to Condition F2) or (ii) the actual prices they charge together with a very clear list of which products and services are included.

The proposal as currently worded risks making pricing information more complicated, rather than less complicated, so AQA would strongly recommend the regulators provide the clarifications above.

AQA further feels it would increase transparency if Ofqual tightened and clarified its definition of 'associated learner fees'. While reviews of marking are given as an example of a delivery service, it would be helpful to understand the full extent of services included in 'delivery'.

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

AQA would accept a requirement to provide a more detailed, but otherwise unspecified, price breakdown than on current invoices. A requirement with a more specified level of granularity would not be as acceptable

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

AQA has no further comments on this Section.

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

AQA welcomes clarification of which meaning of the word ‘procure’ is being used here. We also note the regulators’ explanation about why such legalistic, technical and formal language is sometimes needed in the Conditions of Regulators, set out in Chapter 5. AQA would recommend that the regulators:

- i. ensure that legal and otherwise abstruse or potentially ambiguous terms are hyperlinked in every instance to their corresponding definition in Section J (Interpretation and definitions) of the Conditions of Recognition, to aid understanding.
- ii. ensure that the rationale for complex and formal language, as helpfully described in paragraphs 5.2 and 5.3 of the Consultation document, is included prominently near the beginning of the Conditions of Recognition.

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

AQA welcomes the regulators’ draft guidance on Conflict of Interest, particularly the guidance on future ‘tests’ when reviewing personal interests.

Paragraphs 4.10 and 4.11 of the Consultation document neatly summarise the relationship between ‘conflicts of interest’ and ‘personal interest’, and could usefully preface the proposed guidance.

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

AQA notes that both sufficient authority *and effectiveness* are needed for a Responsible Officer to carry out their role.

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

AQA is happy to support this – although it will not affect us as we do not offer any qualifications that allow other AOs’ units to be used.

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

AQA has no concerns about this proposal.

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

We disagree with the proposal to make yet another change to the regulators' definition of the term 'Special Consideration'.

It could seem immediately appealing to have one catch-all term, but 1) it is not needed because the distinction between Access Arrangements and Special Consideration is well and widely understood, follows clear logic, and is practically helpful in guiding those requesting these services to define what they need; and 2) the distinction is reinforced in law (Disability Act 2010) which makes one service a legal right, but not the other service.

- i. There is currently no confusion within the awarding bodies or within schools and colleges. There are two distinct terms used and understood by all:

Access Arrangements which are granted before assessments are taken, for known circumstances and

Special Consideration which is granted after assessments have been taken for circumstances that could not have been foreseen.

Each of these distinct processes has equally distinct and clear procedural documentation, published by JCQ, and each has its own online application facility with which schools are very familiar.

There is no confusion where these processes are already regularly used, understood and effectively applied to vulnerable students who benefit from their effects. The proposed change would throw this into jeopardy for no tangible advantage to those students.

- ii. This clear distinction between Access Arrangements (before assessments) and Special Consideration (after assessments) is also reinforced by the Equality Act 2010.

The term 'reasonable adjustment' refers to the process applied to our assessments, before they are taken, in order to make them accessible in students' known circumstances. This process meets the legal requirement set by the Equality Act 2010, which is properly reflected in Condition G6 of the Conditions of Recognition and the regulators' proposed change to J1.8:-

Reasonable Adjustment

An adjustment made to an assessment for a qualification so as to enable a disabled Learner to demonstrate his or her knowledge, skills and understanding to the levels of attainment required by the specification for that qualification.

This confirms our understanding that a reasonable adjustment is made 'to an assessment' before it is taken in order to make it accessible to a learner who would otherwise be excluded due to their disability, as defined by the Equality Act 2010. This adjustment allows a disabled candidate to demonstrate their skills, knowledge

and understanding. This reasonable adjustment therefore falls under the Access Arrangement heading.

By contrast, Special Consideration (granted after assessments, for unforeseen circumstances) is not a legal requirement.

Therefore, it is vital that a distinction is maintained, in both the regulators' Conditions of Recognition and any accompanying guidance, between what is specified in law (Access Arrangements, defined as Reasonable Adjustment in the Equality Act 2010) and what is not (Special Consideration).

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

AQA feels this proposal adds welcome clarity to the fact that AOs must explicitly comply with the exceptional cases in which regulators instruct us to delay the issue, or not to issue, results.

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

AQA welcomes the clarity this introduces, and feels it brings the Conditions of Recognition into line with qualification-level conditions.

Chapter 5

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

a. Our joint proposed simplification of requirements around inactive awarding organisations?

AQA welcomes bringing the regulators' clarification of their Conditions of Recognition – and their bringing them in line with one another.

b. Qualification Wales' proposed changes to reflect the requirement to include all regulated qualifications on QiW (please refer to the proposal in Chapter 6)?

AQA welcomes bringing the regulators' clarification of their Conditions of Recognition – and their bringing them in line with one another.

c. CCEA Regulation's proposal to align numbering of its Conditions with those of Ofqual and Qualifications Wales (please refer to the proposal in Chapter 6)?

AQA welcomes bringing the regulators' clarification of their Conditions of Recognition – and their bringing them in line with one another.

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- d. CCEA Regulation’s proposed changes to reflect the accreditation requirement for vocational qualifications in Northern Ireland (please refer to the proposal in Chapter 6)?**

AQA welcomes bringing the regulators’ clarification of their Conditions of Recognition – and their bringing them in line with one another.

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

AQA is happy with this proposed change.

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

AQA is happy with this proposed change.

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

AQA is happy with this proposed change.

- 18. To what extent do you agree or disagree that the following proposed wording changes would improve awarding organisations’ understanding of our requirements:**
- a. Combining provisions within Condition D5**

AQA is happy with this proposed change.

- b. Replacing ‘for these purposes’ with ‘for the purposes of Condition X’**

AQA is happy with this proposed change.

- c. Including an interpretation provision on references to ‘this Condition’**

AQA is happy with this proposed change.

- d. Replacing all references to ‘in accordance with its Conditions of Recognition’ to ‘in a way that complies with its Conditions of Recognition’?**

AQA does not have a view on this change.

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

AQA welcomes including all definitions in Section J, and further suggests hyperlinking to these definitions words which are legalistic, abstruse or otherwise ambiguous.

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

AQA does not have a view on this proposal.

Chapter 6

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

AQA welcomes these changes.

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

AQA agrees these might add clarity, but notes that if the equivalent (Condition D7) continues to be D7 in the Ofqual and CCEA guidance this would work against bringing the regulators' Conditions of Recognition in line with each other. AQA hopes this Condition would be consistent across the regulators.

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

This would depend on the timescale. AQA would struggle to be compliant with this change any sooner than September 2020. Further, it would be unhelpful to have different requirements across the jurisdictions (as much of this consultation's proposals acknowledge). That is not to say Qualifications Wales is wrong to want to move sooner, but it would be helpful if Ofqual and CCEA were also aligned so there were consistent requirements for currently-exempt qualifications (GCSEs, AS-levels and A-levels.)

Chapter 7

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

a. When they should provide notification to Qualifications Wales in respect of becoming subject to insolvency proceedings?

AQA has no objection to the proposed introduction by Qualifications Wales of the definition 'Insolvency Event', but recognises its positive intent.

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- b. When Qualifications Wales may deem it to be sufficient to consider an awarding organisation's suitability for continuing recognition in relation to insolvency proceedings?**

AQA has no objection to the proposed introduction by Qualifications Wales of the definition 'Insolvency Event', but recognises its positive intent.

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

AQA has no objection to Qualifications Wales's proposed changes to the definition of Change of Control in Section J.

Chapter 8

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

- a. Do you have any comments on the impact of these proposals?**

AQA has concerns about competition law – particularly with regard to having to publish data like discounts offered to centres, and placing commercially sensitive data such as the net prices paid by customers into the public domain.

- b. Are there any additional steps we could take to reduce the regulatory impact of our proposals?**

AQA has no view on this.

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

AQA has no further views on this.

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

- a. Are there any potential impacts that we have not identified?**

AQA has no view on this.

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

AQA has no further views on this.

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

- a. Opportunities for persons to use the Welsh language,**

AQA has no view on this.

b. Treating the Welsh language no less favourably than the English language.

AQA has no further views on this.

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

AQA notes the regulators' thinking around Condition A7, and that the regulators will consult on any changes which come about through this thinking. We would like, however, to share these initial thoughts.

AQA has concerns that the regulators sometimes seem overly keen for awarding organisations to take action (or be seen to take action) on every incident based on the misguided assumption that this will always solve the problem. AQA believes that sometimes doing nothing is the best, or at least the least-worst, course of action – because doing nothing preserves more faithfully the validity of the assessment in terms of the proper rank order of candidates and coverage of assessment objectives than discounting whole questions or sections of a paper on account of a small proportion of students being (dis)advantaged by an incident. Fairness for the minority against fairness for the majority must sometimes be considered. Clearly, often wholesale discounting is the appropriate course of action, but not always; each case must be decided on its merits, considering the stage at which the incident comes to light; the time available to take specific actions (eg replacing a paper); and weighing up the evidence available (statistical and otherwise).

Related to this, we would like to raise a second point which is alluded to in paragraph 4.26 of the consultation document. We welcome the desire to provide greater clarity of Conditions where necessary, but are wary of potential unintended consequences of developing “specific guidance on the management of incidents”. Our experience of incidents is that they are many and varied, and even those of the same type, eg security breaches, often have to be treated differently depending on the considerations summarised at the end of the paragraph above. We hope that the envisaged ‘guidance’ is, indeed, only guidance, and not rules, because Awarding Organisations must be free to act in the best way according to how the incident presents. Enforcing rules would risk introducing unforeseen and unintended consequences, in that rules may constrain Awarding Organisations to act in a way which could be less than optimal. In this vein, we are somewhat reassured by the first sentence in paragraph 4.28.

AQA would also encourage Ofqual that its Conditions and guidance should refer to data protection law in general, rather than to GDPR specifically, in light of the prospect of leaving the European Union.

Chapter 10

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

Beyond any concerns about these proposals raised above, AQA takes no view on this.

