

Consultation on changes to the Conditions of Recognition: Decisions Report



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Chapter 1 - Introduction

- 1.1 CCEA Regulation, Ofqual and Qualifications Wales each publish 'Conditions of Recognition' for the qualifications and organisations they regulate.
- 1.2 Throughout this decisions document, we use **awarding organisation** to mean a provider of regulated qualifications operating anywhere in England, Northern Ireland and/or Wales. Similarly, we will use **Conditions** to mean the versions of the General Conditions of Recognition used in England and Northern Ireland (respectively), and the Standard Conditions of Recognition used in Wales.
- 1.3 The Conditions are largely the same across England, Northern Ireland and Wales with some differences, reflecting legislation, processes and national contexts.
- 1.4 As a newly established regulator in 2015, Qualifications Wales announced a review of its Regulatory Framework and Approach, including its Conditions.
- 1.5 This review concluded that:
 - awarding organisations wished to see changes across the Conditions
 - awarding organisations preferred for these changes to be aligned across the three regulators as much as reasonably possible
 - whilst changes were suggested across the Conditions, the review also highlighted that in some cases other forms of clarification or guidance and support would be helpful
- 1.6 Following the publication of Qualifications Wales's review, we committed to working together to consider the findings, at the same time bringing each regulator's own views, analysis and perspectives on where it would be appropriate to propose changes to respective Conditions.
- 1.7 Whilst we did not believe that the Conditions needed to change significantly, we believed there was room for improvement. We also recognised that awarding organisations would prefer that our respective Conditions stayed as similar as possible.
- 1.8 We therefore consulted together between 2 August and 25 October 2019 on a set of changes that we proposed to make. Many of the changes proposed to the Conditions as part of this consultation were designed to improve awarding organisations' understanding of them, keep them up-to-date and to provide further clarification, where necessary. We also proposed more substantive changes, which included requiring all awarding organisations to provide fee

information on their public-facing website, requiring all awarding organisations to publish a policy that makes clear whether they recognise prior learning, and to introduce a new Condition designed to make explicit that the regulators can instruct awarding organisations not to issue results.

- 1.9 Engagement events were held in Coventry during the consultation period so that stakeholders could explore our proposals in more detail before submitting their responses. We also offered the opportunity to hold focussed discussions in Wales and Northern Ireland. A meeting was held with an awarding organisation located in Wales and a meeting with a representative body in Northern Ireland.
- 1.10 An independent research organisation, Strategic Research and Insight Limited (SRI), was commissioned to analyse responses to the consultation on behalf of the three regulators. We have considered all the responses we received before making final decisions on our proposals.
- 1.11 We set out in this document the decisions we have taken following that consultation and explain how we have taken account of respondents' feedback to our consultation. Alongside this document, we have also published the independent analysis of consultation responses and a summary of our engagement events.

Chapter 2 – Summary of decisions

- 2.1 This chapter provides a summary of our proposals and the decisions that relate to them. Each of these is discussed in more detail in chapters 3-7.
- 2.2 Where we have decided to implement the proposals on which we consulted with no changes, we do not repeat the wording of the relevant Condition(s) or guidance in this document, as this is set out in the consultation document. Where we have decided to revise wording of Conditions or guidance following our consultation, we include the revised text in full.
- 2.3 We are publishing alongside our decisions a copy of the Conditions that will come into effect in October 2020.

Table 1 – Decisions on the proposals by theme

Other than where specified, all revised Conditions will take effect on 1 October 2020.

Theme	Key proposals	Decision
Transparency of qualification fees (Condition F1)	Requiring all awarding organisations to publish fee information in a standard format, which must include: <ul style="list-style-type: none"> a qualification fee that encompasses all mandatory costs for a single, additional learner to take the qualification, from registration to receipt of certificate if they pass any fees for other products and services that must be purchased with the qualification any fees for optional services directly related to the delivery and award of a qualification to a learner any mandatory cohort or centre-level fees All fee information must be easily accessible by any	Implemented in full: England: ✓ *please see reference to application of Condition in other markets below Northern Ireland: ✓ Wales: ✓
		Ofqual only: Amended approach so that existing rules continue to apply in markets outside England.

	potential purchaser without that person having to request it from the awarding organisation.	
Invoicing of qualification fees (Condition F3)	Clarifying the expectation for awarding organisations to issue invoices in line with HMRC requirements and provide a more detailed breakdown upon request.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
Change of Control (Condition A3)	Introducing a definition of 'procure' in Section J and splitting A3.1 (a) into two parts to make clearer the distinct nature of the requirements.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
Conflict of interest and personal interest (Ofqual only)	Clarifying the distinction between a conflict of interest and personal interest: <ul style="list-style-type: none"> • new guidance (CCEA Regulation) • new statutory guidance (Ofqual) • new guidance (Qualifications Wales) 	Ofqual only statutory guidance: Implemented with changes from 20 February 2020 CCEA Regulation and Qualifications Wales will introduce guidance separately with consideration of Ofqual's published guidance.
Role of the Responsible Officer	Clarifying the requirement for awarding organisations to ensure their Responsible Officer is effective in that role.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
Use of units developed by third parties (Condition D6)	Removing current Condition D6. This means that awarding organisations would be responsible for the compliance of units they use in their qualifications – irrespective of	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓

	whether they (or a third party) developed the unit.	
Recognition of Prior Learning (Condition E10)	Requiring all awarding organisations to publish a policy that makes clear whether they will recognise prior learning.	Implemented with amendments: England: ✓ Northern Ireland: ✓ Wales: ✓
Special Consideration (Condition G7)	Confirming that Special Consideration can include proactive adjustments made prior to assessments as well as reactive adjustments to marks. Moving the definition from Condition G7.1 to Section J.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
Issuing results (Condition H6)	Requiring awarding organisations to not issue results when directed by a regulator.	Implemented in full*: England: ✓ Northern Ireland: ✓ Wales: ✓ *Effective March 2020
Use of independent reviewers in appeals (Condition I1.2)	Clarifying that it is the final decision in respect of an appeal that must involve an independent party.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
Improving understanding of the Conditions	Rewording of 'For these purposes' and references to 'this Condition'.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
	Rewording 'In accordance with its Conditions of Recognition'	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
	Revising the structure of B2, B4, B8 and D5 to provide greater clarity without altering requirements	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
	Revising the use of defined terms <ul style="list-style-type: none"> • moving some existing definitions in Conditions to 	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓

	<p>be defined terms in Condition J1.8</p> <ul style="list-style-type: none"> • updating existing defined terms • introducing new defined terms 	
Keeping the Conditions up to date	Updating definitions, including Data Protection Law to align with substantive law – including to reflect the introduction of the General Data Protection Regulation (GDPR).	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
	Replacing existing references to the legacy IT system RITS with references to the new awarding organisation Portal.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: n/a
	Reordering Condition A1 for consistency between the regulators and to amend the wording to better reflect the accreditation requirement for qualifications in Northern Ireland.	Implemented in full: England: n/a Northern Ireland: ✓ Wales: n/a
	Updating references to substantive corporation tax law in the definition of Change of Control.	Implemented in full: England: n/a Northern Ireland: ✓ Wales: n/a
	Revising Condition A1.3 to make it clearer that awarding organisations must submit a qualification within two years of being recognised and that after this point, they must take all reasonable steps to ensure that they award a qualification at least once every two years.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
	Removing transitional provisions under Conditions E3 and E7.	Qualifications Wales only: Implemented in full
		CCEA Regulation and Ofqual will remove these

		transitional provisions when they are no longer needed in their jurisdictions
	Use of Qualifications in Wales (QiW) (E6 and A1.3) – requiring awarding organisations to submit all qualifications regulated by Qualifications Wales to QiW.	Implemented in full: England: n/a Northern Ireland: n/a Wales: ✓
	Updating the Conditions with new defined terms in line with policy in Wales.	Implemented in full: England: n/a Northern Ireland: n/a Wales: ✓
	Renumbering Conditions to prevent proposed changes leaving confusing gaps in the Conditions.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
	Amending Condition J1.7(c) to remove the words ‘if available’ relating to publication of information on an awarding organisation’s website.	Implemented in full: England: ✓ Northern Ireland: ✓ Wales: ✓
Insolvency Event (Wales only)	A new defined term of ‘Insolvency Event’ to describe the point at which an awarding organisation is required to notify Qualifications Wales in accordance with Condition B3.	Implemented in full: England: n/a Northern Ireland: n/a Wales: ✓
Change of Control (Wales only)	Revising the defined ‘Change of Control’ to make it clearer to awarding organisations the circumstances in which a change of control is likely to have occurred, and at which point it should notify Qualifications Wales if it is, or believes that it is likely to be, subject to a change of control,	Implemented with amendments: England: n/a Northern Ireland: n/a Wales: ✓

	in accordance with Condition B3.	
Use of 'revised from time to time' (Wales only)	Removing all references to 'revised from time to time' from the Conditions (B5.3, E6.2(a), E9.3, I2.1 and I3.1), and replace them with a single, interpretation provision in section J of the Conditions	Not to be implemented

Timing of Implementation

- 2.4 We explained in the consultation that we intended to bring our proposed changes to the Conditions and guidance into effect from April 2020, but would consider whether a different implementation date was appropriate.
- 2.5 A number of respondents expressed concern that this timescale would impose unnecessary burden on awarding organisations. There was a broad consensus that the implementation timetable should be extended, with some respondents suggesting that the implementation of our decisions should follow the next annual Statement of Compliance cycle.
- 2.6 We have reflected on this feedback and have decided that, with two exceptions, the changes will be implemented from 1 October 2020.
- 2.7 Those exceptions are:
- Ofqual's guidance on conflicts of interest. This is designed to help awarding organisations understand its rules. It does not change existing requirements. Ofqual has therefore decided it would be beneficial to introduce this as soon as possible.
 - our three-regulator new Condition H6.2. As we explained in the consultation, the purpose of this Condition is to make as clear as possible that we can intervene to secure a delay in an awarding organisation issuing results, and to allow us to do so quickly in the rare cases where it is necessary. Of course, it is all but impossible to predict when such cases might arise. We therefore want this Condition in place, and available for us to use, as soon as possible. Given the fact that this new Condition does not impose any proactive requirements on awarding organisations, we do not believe there to be any material impact if this Condition were to become effective from March 2020. We

are therefore of the view that it is reasonable to implement this Condition in March 2020.

Chapter 3: Changes to Section F – proposed by all three regulators

3.1 In this chapter, we set out the decisions we have taken considering the responses to our joint proposals to amend Conditions related to providing fee information to purchasers.

Condition F1 – Fee Information

Condition F1.1

3.2 We proposed replacing the current Condition F1.1, which specifies how an awarding organisation that has a list of standard fees for its qualifications must make that information available, and Condition F1.2, which specifies how an awarding organisation that does not have a list of standard fees must provide information about fees to a potential purchaser, with a single revised Condition that would specify the qualification fees that an awarding organisation would be required to publish, unless it was impossible to do so.

3.3 The proposed Condition F1.1 on which we consulted was:

F1.1 In respect of each of its qualifications that it makes available for purchase, an awarding organisation must publish:

- (a) where possible, the Standard Qualification Fee,*
- (b) where applicable, any Package Fee,*
- (c) where possible, any Associated Learner Fees,*
- (d) where possible, any Mandatory Centre Fees,*
- (e) where it is not possible for the awarding organisation to calculate a Standard Qualification Fee, Associated Learner Fees or any Mandatory Centre Fees, a statement of the method by which these fees are calculated.*

We also proposed to amend Condition J1.7 to remove the words 'if available' from part (c), in relation to the publication of information on an awarding organisation's website. The amended Condition we proposed was as follows:

J1.7 Where an awarding organisation is required to publish a document or information, that document or information must be published in a way which is:

- (a) clear to its intended audience,*
- (b) accurate, and*
- (c) reasonably accessible (including by way of publication on the awarding organisation's website).*

You told us

- 3.4 41 respondents to the consultation expressed a view on whether this proposal would increase transparency. Of these 41 respondents, 32 agreed or strongly agreed, three were neutral and the other six disagreed or strongly disagreed.
- 3.5 41 respondents expressed a view on whether this proposal would help purchasers secure value for money. Twenty-five respondents agreed or strongly agreed, 10 were neutral and six disagreed or strongly disagreed.
- 3.6 While many respondents highlighted that they were already compliant, voluntarily, with the proposals, others specifically welcomed the proposed changes because they felt that they would ensure a level playing field between awarding organisations.
- 3.7 Some also reflected that the increased transparency would improve communication and trust between awarding organisations and purchasers and would increase customer satisfaction.
- 3.8 Those that disagreed with the proposals were mainly concerned about the commercial sensitivity of their fees. Some argued that fee transparency may enable larger competitors to undercut smaller awarding organisations on fees. There was also concern that making fees transparent may lead to a disproportionate focus on fees rather than content and quality, potentially leading to an unwelcome 'race to the bottom' on fees.
- 3.9 One respondent disagreed with the idea of making fees available to learners, in situations where centres were the purchasers on behalf of learners, as 'these prices will not be of relevance to a significant number of users who access the site'.
- 3.10 There were also some concerns expressed regarding our reference to 'value for money'. Respondents pointed out that 'value for money means different

things to different parties' and that 'the key value to a qualification is the standards that are set by the awarding organisation'.

- 3.11 Another concern raised was whether the use of the phrase 'where possible', in relation to providing fee information, gave awarding organisations an opportunity to exclude themselves from the requirement to publish their fees.
- 3.12 Other responses sought clarity on our expectations and confirmation of the treatment of certain types of fee. Queries raised included how a minimum spending threshold for centres, differently priced options to achieve a single qualification, and one-off lifetime registration fees for a learner should be treated.
- 3.13 An attendee at one of our events raised a concern that the proposed change to Condition J1.7 may have an impact on other information the Conditions require them to publish on their website.

Our view

- 3.14 With regard to issues of commercial sensitivity of fees and a 'race to the bottom' on fees, a desk-based review established that approximately half of the market is already transparent on fees. We consider the benefits of fee transparency to stakeholders, referenced in paragraph 3.5 of the consultation document, are sufficient to justify the low, but real, risk of aggressive pricing policies emerging.
- 3.15 Regarding the concerns raised in paragraph 3.9, the inevitable effect of transparency is that information becomes available to an audience far wider than that for which the information is most relevant or useful. We acknowledge that our proposals will have this effect, but do not consider that this universal visibility of fee information would have a negative effect on market participants.
- 3.16 We agree that value for money can only be assessed on a case by case basis by the potential purchaser, using all the relevant information on the qualification, with price being only one element. Much of this information is already available, such as the Specification. Our proposed Condition F1 will ensure that fee information is, other than exceptionally, also available to a potential purchaser, so improving their ability to make a holistic judgement and better enable them to secure value for money.
- 3.17 The use of the phrase 'where possible' in Conditions F1.1(a) – (d) means the requirement will apply in almost all circumstances. The alternative arrangements detailed in Condition F1.1(e) will only apply in exceptional

circumstances, where it is not possible for an awarding organisation to publish the information required by Conditions F1.1(a) - (d).

- 3.18 Clarity on the preferred treatment of certain types of fees will be provided through the publication of guidance on the new Condition F1.1, to support awarding organisations in achieving compliance.
- 3.19 Unlike CCEA Regulation and Qualifications Wales, Ofqual must consult before adopting what would be, for it, statutory guidance, so a formal consultation by Ofqual will open alongside the publication of this Decisions Report. This guidance has been developed in conjunction with CCEA Regulation and Qualifications Wales. CCEA Regulation and Qualifications Wales will take into account any revisions made as a result of Ofqual's consultation, and will introduce guidance separately. This will enable their respective guidance to be in place well before the new Condition F1.1 comes into force in October 2020.
- 3.20 Having considered all responses, we have decided to implement the proposed changes to Condition F1.1 for qualifications delivered in England, Wales and Northern Ireland, replacing the current Conditions F1.1 and F1.2. Ofqual's approach to qualifications delivered in markets outside England is set out in more detail below.
- 3.21 As we proposed, we will now remove the now redundant phrase 'if available' from Condition J1.7(c). This means that where the Conditions require an awarding organisation to publish information, this includes publication on their website. We proposed this as practice has changed since the Conditions were first written and we now expect all awarding organisations to have websites. The changes resulting from this consultation do not alter what the Conditions require an awarding organisation to publish (the exception being the new information about fees required by the changes to Condition F1.1).
- 3.22 As part of Ofqual's continued work on monitoring the efficiency of the regulated market for qualifications and whether purchasers are securing value for money, it intends using its existing powers to request qualification-level fee information from all awarding organisations on an annual basis. A first, retrospective request for 2020 prices will be made in October 2020, when the changes to the Conditions become effective, with future requests being made in the first quarter of each year. Qualifications Wales and CCEA Regulation will also be keeping fees under review going forward.

Fee Information in markets outside England (Ofqual only)

- 3.23 One key issue raised by respondents to the consultation was in relation to the international scope of Ofqual's regulations. Ofqual-regulated qualifications

are regulated by Ofqual wherever in the world they are taken, not just in England; this is in order to protect the currency of the qualification. The value of qualifications would be undermined if regulatory expectations did not apply equally and, for example, standards were different in another jurisdiction.

- 3.24 The aim of the proposed new Condition F1.1 was to create a level playing field, in regard to fee transparency in the qualification markets that CCEA Regulation, Ofqual and Qualifications Wales regulate. For the core markets in England, Wales and Northern Ireland, we are confident that the proposals will create the level playing field we intended. However, the proposals would have also required fee transparency beyond England, Wales and Northern Ireland for Ofqual-regulated awarding organisations. Since the changes would not create a level playing field in other markets, as most competitors in these markets would not necessarily be subject to the same fee transparency expectations, we have reconsidered the appropriateness of requiring transparency by Ofqual-regulated awarding organisations in those markets.
- 3.25 There were also concerns expressed that requiring fee transparency by Ofqual-regulated awarding organisations in markets outside England would significantly disadvantage them when operating in those markets.
- 3.26 In light of these responses, Ofqual has decided not to require fee information specific to markets outside England to be published. Ofqual will instead implement a new Condition F1.5, as set out at paragraph 3.30 below, to retain the existing requirements for the provision of fee information to potential purchasers outside England. Ofqual will also amend the wording of Condition F1.1 on which it consulted to make clear that the requirement applies in England.

Ofqual's Condition F1.1 will read as follows:

- F1.1* In respect of each of its qualifications that it makes available for purchase, an awarding organisation must publish the following information for potential purchasers in England –
- (a) Where possible, the Standard Qualification Fee.
 - (b) Where applicable, any Package Fee.
 - (c) Where possible, any Associated Learner Fees.
 - (d) Where possible, any Mandatory Centre Fees.

- (e) Where it is not possible for the awarding organisation to calculate a Standard Qualification Fee, Associated Learner Fees or any Mandatory Centre Fees, a statement of the method by which these fees are calculated.

Qualifications Wales and CCEA Regulation will implement the new Condition F1.1 on which we consulted, excluding the phrase 'the following information for potential purchasers in England' shown in Ofqual's Condition F1.1 above.

Conditions F1.2, F1.3 and F1.4

- 3.27 We proposed a new Condition F1.2, relating to the accuracy, clarity and accessibility of the information published in accordance with the new Condition F1.1. We also proposed new Conditions F1.3 and F1.4, being amended versions of the existing Conditions F1.5 and F1.6. These relate to the timeliness of publishing fee information and, where a fee cannot be published, the requirement to publish information that will provide a reasonable indication of the likely fees.
- 3.28 No concerns were raised about these proposals. We have decided, therefore, to implement the proposed new Conditions F1.2, F1.3 and F1.4, on which we consulted.

Condition F1.5 (Ofqual only)

- 3.29 As discussed under the decisions on Condition F1.1, we are only extending the requirement for fee transparency to potential purchasers in England, Wales and Northern Ireland. For purchasers in markets outside England, Ofqual will retain the existing requirement that awarding organisations must provide fee information upon request to such purchasers.
- 3.30 Ofqual has, therefore, decided to implement a new Condition F1.5 as follows:

F1.5 In respect of each of its qualifications that it makes available for purchase, an awarding organisation must make the information set out in Condition F1.1(a) – (e) available for potential purchasers outside England on request.

New defined terms for fee categories in Condition J1.8

- 3.31 We proposed to include new defined terms for the fee categories specified in the new Condition F1.1 in Condition J1.8. Using defined terms allows us to

make sure awarding organisations understand precisely what information they must publish in compliance with the new Condition F1.1, so that potential purchasers can make informed choices.

- 3.32 Respondents to the consultation did not raise specific concerns with the proposed new defined terms, but a number of attendees at our consultation events did query how existing products and services might map across to our defined fee categories and whether they would be required to use this terminology on their websites.
- 3.33 Our view remains that our proposed new defined terms are appropriate, and we have decided to implement them unchanged. We have, however, developed further guidance to help awarding organisations understand the relationship between these categories and their existing products and services.

Condition F2 – Packaging qualifications with other products and services

- 3.34 We considered that the proposed changes to Condition F1 would provide clarity to potential purchasers where a qualification can *only* be purchased along with other products and services, meaning that no changes were proposed to Condition F2 itself.
- 3.35 No respondents to the consultation raised concerns with this approach and therefore we have made no changes to Condition F2.

Condition F3 - Invoicing

- 3.36 We proposed adding the words 'beyond that already required by HMRC' to Condition F3.1(b), leaving all other parts of Condition F3 unchanged.

You told us

- 3.37 41 respondents expressed a view on this proposal, with 23 agreeing or strongly agreeing, 10 identifying as neutral and eight disagreeing or strongly disagreeing.
- 3.38 The respondents who supported the proposal did not expand any further on their responses, apart from one who expressed surprise that awarding organisations did not already comply with the proposed invoicing requirements.
- 3.39 The additional comments made by those who disagreed largely questioned the subjective nature of the phrases 'in a timely manner' and 'reasonable level of detail'. Both phrases were already contained in Condition F3.1.

3.40 One respondent questioned whether it was appropriate for our Conditions to require awarding organisations to produce a breakdown of fees that is beyond that required by HMRC.

Our View

3.41 We consider it is neither possible nor appropriate to seek to define or to prescribe what is 'timely' or 'reasonable', as this will depend on the circumstances and can only be determined on a case-by-case basis. We expect that what is considered a 'reasonable level of detail' will vary depending on the circumstances relating to a particular invoice.

3.42 Regarding further breakdowns of fees, there will always be circumstances where, for a purchaser to reconcile and agree an invoice, further information is required. This requirement was already implicit in the original Condition F3.1. This proposed amendment does not alter the requirement on awarding organisations; it simply makes it explicit.

3.43 We have decided, therefore, to implement the proposed change to Condition F3.1.

Chapter 4: Other changes to Conditions – proposed by all three regulators

- 4.1 In this chapter we set out the decisions we have taken considering feedback on other changes to Conditions proposed by all three regulators.

Condition A3 – Safeguards on Change of Control

- 4.2 We proposed a change to Condition A3.1 aimed at making the requirements in the Condition clearer. This involved restructuring the way the Condition was set out and defining the word 'procure'. The proposed changes were particularly in response to feedback, provided as part of Qualifications Wales's review of its Conditions that some awarding organisations found the word 'procure' confusing in this context.

You told us

- 4.3 Of the 41 who chose to respond, 33 strongly agreed or agreed with our proposed changes; one disagreed and six neither agreed nor disagreed. One respondent told us that they didn't know.
- 4.4 Where respondents chose to provide additional comments, many of them confirmed that they found both the proposed revised structure of Condition A3.1 and the introduction of a defined term of the word 'procure' helpful.
- 4.5 Three respondents suggested we consider other approaches to improving clarity, specifically to restructure the Condition so that the word 'procure' is removed, or to replace 'procure' with 'ensure'.
- 4.6 One individual respondent who agreed with our proposal added a comment that we should add centres alongside learners in part (c) of the revised Condition. This suggestion falls outside the scope of the consultation, and we already have other Conditions (for example, Condition C2) that deal with the relationship between centres and awarding organisations.

Our view

- 4.7 We have considered both alternative suggestions and, in addition, explored other possible approaches to making this Condition as clear as possible to regulated awarding organisations. We consider that to replace 'procure' with 'ensure' would set a higher bar than the current requirement by making awarding organisations strictly liable for the actions of other persons.
- 4.8 While we understand awarding organisations' desire that we use language that is as accessible as possible, we have not been able to identify suitable

alternative wording that would not alter the requirement in this Condition. We have concluded that 'procure' is the appropriate word, and that the addition of a definition will help awarding organisations understand its meaning in this context.

- 4.9 We have therefore decided to implement the changes to Condition A3.1 as consulted on.

Condition A4 - Conflict of Interest and Personal Interest – proposal to introduce guidance (Ofqual only)

- 4.10 Ofqual proposed to introduce new statutory guidance designed to help awarding organisations understand how the Conditions use the term 'conflict of interest', and the related term 'personal interest'.
- 4.11 In addition, and in line with our general approach to definitions, all three regulators proposed to move the current definition of 'Conflict of Interest' to Condition J1.8. We discuss this proposal in more detail below (see 'Moving all definitions to J1.8').

You told us

- 4.12 Of the 42 respondents who expressed a view on this proposal, most (34) agreed or strongly agreed with it. However, four disagreed or strongly disagreed and four neither agreed nor disagreed.
- 4.13 In the main, respondents said the guidance was helpful, as it provided clarity and addressed confusion around this subject. However, 14 respondents suggested additional guidance on this subject would be helpful, noting a range of further questions about both the concept of a personal interest and specific circumstances in which conflicts of interest might arise.
- 4.14 A small number of respondents, as well as some attendees at consultation events, also queried some aspects of the wording of Condition A4 itself. In particular, the requirement to identify 'all conflicts of interest'. We note that these comments are outside the scope of the consultation and are not persuaded that any change is needed.
- 4.15 Some also queried what was meant by a person 'connected to' the development delivery or award of qualifications. This is explained in the current Condition J1.5.

Our View

- 4.16 Based on the consultation feedback, Ofqual has decided to introduce a revised version of its draft guidance, which incorporates additional examples of both personal interests and wider conflicts of interest. It has published its revised guidance alongside this document.
- 4.17 Some of the issues raised by respondents suggest that additional guidance on conflicts of interest could be helpful. Ofqual will consider whether it might introduce more wide-ranging guidance in the future. It would consult further ahead of introducing any such guidance.
- 4.18 As set out in the consultation, CCEA Regulation and Qualifications Wales do not have the same powers to introduce statutory guidance. However, CCEA Regulation and Qualifications Wales will introduce guidance separately with consideration of Ofqual's published guidance.

Condition B1 – Role of the Responsible Officer

- 4.19 We proposed two main changes here:
- introducing a new defined term 'Responsible Officer' to be included in Condition J1.8
 - introducing a new Condition B1.5 clarifying the requirement that each awarding organisation must ensure its 'Responsible Officer' is effective in the role and has sufficient authority

You told us

- 4.20 Most respondents supported our proposed changes, with 34 of those who expressed a view either agreeing or strongly agreeing with them and seven neither agreeing nor disagreeing. In particular, respondents welcomed the increased emphasis on ensuring Responsible Officers had sufficient authority.
- 4.21 Whilst there was overall agreement with the changes we proposed, some respondents commented that it was not clear what we meant by 'effective' (as this was potentially subjective and open to interpretation) or what would constitute 'sufficient authority', and that both might be difficult for awarding organisations to evidence.

Our View

- 4.22 It is important to read the proposals here in context, rather than in isolation. Here, the proposed Condition would require awarding organisations to ensure their Responsible Officer is 'effective in the role', i.e. that their Responsible Officer properly carries out the functions required by the rest of Condition B1.

Similarly, the phrase 'sufficient authority' should be understood in the context of the role of Responsible Officer, ie that the Responsible Officer has the authority needed to carry out those functions.

- 4.23 As we explained in the consultation, we intentionally do not specify the position a Responsible Officer should hold within an awarding organisation. This is because different awarding organisations might legitimately take different approaches, as appropriate to their size, structure and nature, and to the qualifications they offer. Given this, what an individual awarding organisation will need to do to ensure its Responsible Officer is effective in the role might vary.
- 4.24 Overall, our view remains that it is helpful for our Conditions to be more explicit that an awarding organisation must ensure its Responsible Officer is effective. The majority of respondents also agreed with the new defined term. We have therefore decided to implement our proposals, as set out in 4.19 above, unchanged.

Condition D6 – Compliance of units developed by others with Regulatory Documents

- 4.25 We proposed to remove the currently published Condition D6 – Compliance of units developed by others with Regulatory Documents, and the related defined term 'Rule of Combination' in Condition J1.8. This proposal was designed to ensure that awarding organisations would become fully responsible for ensuring all their qualifications comply with any relevant rules specified in our Regulatory Documents, as required by Condition D5, irrespective of whether the awarding organisation developed all of the units and rules of combination used within them.

You told us

- 4.26 Of the 41 who responded to this consultation question, 35 supported this proposal by either agreeing or strongly agreeing, two disagreed and four neither agreed nor disagreed.
- 4.27 Those who disagreed with our proposal highlighted the continuing use of units that were previously developed by other bodies, typically sector bodies, as part of the unit bank that operated between 2010 and 2015.

Our view

- 4.28 In light of these comments we think it would be helpful to clarify our position in respect of the use of such units by awarding organisations.

- 4.29 Following the [decision by Ofqual in England to withdraw the Regulatory Arrangements for the Qualifications and Credit Framework](#), all three regulators have required awarding organisations to only award units developed by others where they reasonably believe that these units comply with regulatory requirements.
- 4.30 This was intended to be a transitional provision, as it was anticipated that changes to the way that qualifications were developed and awarded, as well as the gradual replacement of units from the unit bank, would lead to a situation in which awarding organisations were responsible for the compliance of all qualifications and units that they award. We believe that it is now appropriate to remove this provision.
- 4.31 A small number of respondents queried their ability to ensure compliance of units which are delivered within license to practise qualifications, and for which the content is determined largely by standard-setting bodies. We can clarify that we consider awarding organisations to be fully responsible for ensuring that such units are compliant.
- 4.32 We have therefore decided to implement our proposals, as set out in 4.25 above, unchanged.

Condition E10 - Recognition of Prior Learning

- 4.33 We proposed to extend the requirements of Condition E10 so that all awarding organisations will be required to publish a policy outlining their approach to the recognition of prior learning (RPL). We did not propose that all awarding organisations recognise prior learning, but rather that all must publish a policy which makes clear to users of qualifications whether or not they do.

You told us

- 4.34 Of the 41 respondents who chose to respond to this question, 31 either strongly agreed or agreed with our proposal; two strongly disagreed; eight neither agreed nor disagreed.
- 4.35 Respondents made many comments supporting our proposed change, considering this to be appropriate in the interests of clarity, transparency and consistency. However, eight awarding organisations commented that our

proposed changes to the wording of Condition E10.1 did not make sufficiently clear that while an awarding organisation must publish a policy, it is not required to recognise prior learning. Some respondents thought the wording could be read as explicitly requiring awarding organisations to recognise prior learning. Attendees at our engagement events made similar comments.

- 4.36 The two respondents who strongly disagreed with our proposal did so on the basis that they did not consider the proposed revised wording of Condition E10 achieved what we intended. One of these respondents explicitly stated that while not agreeing with the revised wording, they supported our proposal to extend the requirement so that awarding organisations who do not recognise prior learning must publish a policy.
- 4.37 A few comments suggested that awarding organisations were not entirely clear about the expected format and content of an RPL policy. Some asked for clarification on whether a statement, rather than a detailed policy, would meet our requirements if the awarding organisation does not recognise prior learning. A few respondents also asked for clarity on whether an RPL policy should set out the awarding organisation's approach at an organisational level or by each qualification (or suite of qualifications). An attendee at our consultation event queried whether we would expect an awarding organisation's policy to include a rationale for not accepting RPL, where that is its approach.
- 4.38 One industry body questioned whether an awarding organisation whose published policy was not to recognise prior learning, but having been challenged wished to make an exception, would be prevented from doing so as it would be required to comply with its policy.

Our view

- 4.39 It is for each awarding organisation to determine its approach to the recognition of prior learning, including the extent to which it retains flexibility to deal with exceptional cases. Similarly, it is for each awarding organisation to decide how best to set this information out in its policy, including the level of detail it wishes to provide.
- 4.40 What matters is that an awarding organisation's approach is clear and transparent to users of qualifications. Depending on an awarding organisation's choice of approach, this might be achieved with a short statement, or a more detailed policy. We want awarding organisations to have this flexibility.
- 4.41 In line with consultation feedback, we have decided to proceed with our proposal to require each awarding organisation to publish a policy which

makes clear to all users of their qualifications whether or not they will recognise prior learning.

- 4.42 That said, we agree with respondents' comments that the draft of Condition E10 on which we consulted could have been clearer, that awarding organisations, while required to have a policy, are not required to recognise prior learning.
- 4.43 We have therefore decided to amend our proposal by restructuring Condition E10 so that it separates:
- the requirement to publish a policy which specifies whether or not it recognises prior learning, and
 - where the policy does permit the recognition of prior learning, it ensures that the policy enables it to award qualifications in a compliant way

In addition, we have also moved the definition of Recognition of Prior Learning to Condition J1.8 (see 'Moving all definitions to J1.8').

Recognition of Prior Learning policy

E10.1 An awarding organisation must publish, maintain and comply with a policy which specifies whether or not it recognises prior learning.

Further requirements where an awarding organisation permits Recognition of Prior Learning

E10.2 In any circumstances where the policy it has in place permits the Recognition of Prior Learning, an awarding organisation must ensure that policy enables it to award qualifications in a way that complies with its Conditions of Recognition.

Condition G7 – Definition of 'Special Consideration'

- 4.44 In addition to moving the definition of Special Consideration to Condition J1 (see 'Moving all definitions to J1.8') we proposed a minor change to the wording of the definition.
- 4.45 We proposed this change to make clearer that the term Special Consideration (as it is used in the Conditions) covers **any** changes made for learners who have experienced illness, injury or some other event outside their control. It does not cover Reasonable Adjustments that are made for disabled learners.

You told us

- 4.46 Of the 41 respondents who expressed a view on this proposal, most (32) agreed or strongly agreed with it. However, five disagreed to some extent and four were neutral.
- 4.47 Comments from several 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.
- 4.48 Those who expressed these concerns generally considered Special Consideration to be an exceptional situation which could not be effectively mitigated by changes to the way in which the assessment is carried out, rather than a temporary issue which is able to be addressed in the way the assessment is conducted.
- 4.49 Some also commented that the proposed changes to the definition of Special Consideration do not reflect their experience of current industry-wide practice, which defines the term solely as a post-assessment adjustment to results. They also commented that centres were familiar with current practice, and that changing processes to also refer to some adjustments to assessments as 'Special Consideration' might confuse and could disadvantage learners.
- 4.50 In our consultation events, several awarding organisations commented that they view all changes made to the way assessments are delivered as 'Reasonable Adjustments'. One awarding organisation made similar comments in their response to the consultation.
- 4.52 Some respondents suggested adopting the existing terminology 'Access Arrangements', as this is widely-used within the sector and well understood.

Our view

- 4.51 The Conditions have always distinguished between the two different types of case where awarding organisations might change the standard assessment procedures:
- cases where learners have a disability, and therefore have a legal entitlement to reasonable adjustments by virtue of Equalities Law, and
 - cases where learners' performance in (or ability to take/complete) an assessment is affected temporarily by illness, injury, or some other event outside their control. Here, the learner will have no such legal entitlement, but an awarding organisation might nonetheless choose to make changes to their standard assessment procedures in the interests of fairness, and to ensure the qualification provides the best possible measure of all learners' knowledge, skills and understanding. Any

changes made for these reasons fall outside our definition of Reasonable Adjustment, which are made for disabled learners only (which is consistent with Equalities Law)

- 4.52 This distinction is intentional. Both types of case can result in changes to assessment procedures, and both can legitimately result in the same change. For example, the best reasonable adjustment for a disabled learner might be a human scribe; it might also be the best change to make for a learner with a broken arm, as special consideration.
- 4.53 But the legal basis for these decisions is different in the two types of case, as is the degree of discretion awarding organisations have when making them. That means awarding organisations may need to consider different evidence when taking decisions on adjustments for learners with disabilities, and when taking decisions on adjustments made for other reasons.
- 4.54 Post-assessment adjustments to marks are a **form** of Special Consideration. But awarding organisations can, and routinely do, make other accommodations for learners whose performance is affected by illness, injury or other events outside their control. Those other accommodations fall – and have always fallen – within the definition of Special Consideration in the Conditions.
- 4.55 We are not persuaded that clarifying this aspect of the Conditions – which will not alter the requirements already in place for awarding organisations – will, in itself, require large-scale changes to awarding organisations’ policies or processes, or that it needs to result in confusion for centres. It may, however, help some awarding organisations better understand what we mean, and have always meant, by Special Consideration and could therefore lead some organisations to reflect on their existing approaches.
- 4.56 Although they do need to ensure that they comply with the Conditions, awarding organisations’ policies and processes do not necessarily need to mirror the structure of the Conditions (or use the exact same terminology). A number of awarding organisations told us that they currently operate a single process which covers all adjustments to assessment delivery, including both those that are reasonable adjustments for disabled learners, and other accommodations which fall within the definition of Special Consideration in the Conditions. This does not necessarily need to change.
- 4.57 That said, awarding organisations do need to ensure they make all decisions on changes to assessment procedures on a proper basis, including by considering the appropriate evidence. That means their policies and processes

need to make clear how they will determine whether to make a change (whether before or after an assessment), and how that might differ depending on a learner's individual circumstances.

- 4.58 Our view remains that our proposed changes make the intended scope of Special Consideration clearer. We have therefore decided to implement this proposal unchanged.

Condition H6 - Issuing results

- 4.59 We proposed to introduce a new Condition H6.2, designed to make explicit that the regulators can instruct awarding organisations not to issue results.

You told us

- 4.60 Of the 42 respondents who expressed a view on this proposal, most (30) agreed or strongly agreed with it. However, three disagreed and nine were neutral.
- 4.61 Comments from respondents indicated broad agreement that the change provides helpful clarity and might help the regulators intervene in a more timely manner if they needed to require an awarding organisation to delay the issuing of results.
- 4.62 Some respondents, though, expressed reservations about the proposal, commenting that it could be clearer in the Conditions that regulators would normally only intervene in exceptional circumstances. Others noted the significant consequences (for awarding organisations, learners and other users of qualifications) that could potentially accompany a delay in issuing results.

Our view

- 4.63 We recognise that suspending the issuing of results would be a significant regulatory intervention, with potentially material impacts. As with all our powers, we will intervene only where it is necessary and proportionate to do so.
- 4.64 As a result, we do not think it is necessary or desirable to attempt to specify in advance when we might and might not exercise our powers to suspend the issuing of results. We think doing so risks constraining our ability to act in situations we could not (or did not) foresee.
- 4.65 It is important to reiterate that we do not expect or intend to intervene more often to secure a delay in the issuing of results. That is not the purpose of this change. Rather, we want to make sure that the Conditions are clear that we can intervene in this way, and that we can act quickly in the rare cases where it is necessary.

- 4.66 We will consider in each case whether – and, if so, how and when – to announce we have required an awarding organisation not to issue results. We can see that there could be cases where a formal announcement would be necessary to minimise impacts on awarding organisations, learners and other users of qualifications. But we can also envisage scenarios where it might be appropriate to give an awarding organisation time to resolve an issue before making such an announcement. It is also possible that we could decide not to announce publicly that we have required an awarding organisation to delay the issuing of results, for example, where an issue is resolved before the planned date of release. In any event, it would always be open to an awarding organisation to consider disclosing that the regulator had required them not to issue results.
- 4.67 Our view remains that it is helpful for the Conditions to specify explicitly that the regulators can suspend the issuing of results. We have therefore decided to implement our proposals unchanged, and the new Condition H6.2 will come into force in March 2020.

Condition I1 – Appeals process

- 4.68 We proposed a change to Condition I1.2 (c) in respect of appeals. This change was intended to make clearer to awarding organisations when an independent decision-maker¹ must be used when hearing an appeal about the results of assessments, decisions regarding reasonable adjustments and special consideration, and decisions relating to action to be taken in the case of proven malpractice.

You told us

- 4.69 Out of 42 responses to our question about this proposal, 36 agreed or strongly agreed. Four respondents disagreed to some extent with our proposal, and two neither agreed nor disagreed.
- 4.70 Some respondents highlighted a continuing uncertainty about when awarding organisations must use an independent decision maker, noting that the wording ‘final decision’ might imply the last decision that the awarding organisation takes, even if this is taken at an early stage in its process and is satisfactory to the appellant.

¹ Strictly speaking, the Conditions require the use of a decision maker who is not ‘an employee of the awarding organisation, an Assessor working for it, or otherwise connected to it’. For ease of reading, we use the term ‘independent decision maker’ here to mean a decision maker who meets these requirements.

4.71 We also received comments corroborating other evidence gathered as part of Qualifications Wales' earlier review of its Standard Conditions of Recognition. This evidence suggests that there is a lack of understanding about who can be considered to be 'otherwise connected' to an awarding organisation. In particular, we were asked whether a member of the awarding organisation's governing body would be considered to be 'connected to it'. Condition J1.5 explains the meaning of the term 'connected to', which is a person that 'undertakes or is involved in any activity undertaken by the awarding body'. For the avoidance of doubt, we consider members of an awarding organisation's governing body are 'otherwise connected to' the awarding organisation and cannot be used as an independent decision-maker.

Our view

4.72 We note the concerns raised about the use of the wording 'final decision', and its implications for staged appeals processes. In this instance, though, we believe these concerns do not require us to change the wording we consulted on.

4.73 When read in its full context, the requirement in question is that an awarding organisation's **appeals process** must provide for the final decision in respect of the outcome of an appeal to involve at least one [independent decision-maker]'. This intentionally stops short of requiring an independent decision-maker's involvement in every appeal case or at every stage.

4.74 So, where an awarding organisation's appeals process involves more than one stage, it is only the final stage of that process that must involve an independent decision-maker. If the appellant chooses not to proceed to that final stage, then it is possible (and permissible) for an appeal to conclude without the involvement of an independent decision-maker.

4.75 We have considered whether alternative wording might make this clearer, but have decided to implement our proposals unchanged.

Chapter 5: Improving understanding of the Conditions

- 5.1 We proposed changes to the Conditions intended to improve understanding. This was to address responses to Qualifications Wales's review where awarding organisations highlighted several features of the drafting of the Conditions that they felt made them harder to understand and other changes identified by the other regulators.
- 5.2 Keeping in mind that the Conditions are a formal legal instrument and must – if needed – be enforceable in a court of law, we proposed changes to the wording of some Conditions where we were able to do so, which we hoped would help awarding organisations better understand what the Conditions require.
- 5.3 We have considered feedback from the consultation and in this chapter, we set out our decisions.

Condition A1 – Inactive awarding organisations

- 5.4 Condition A1.3 requires awarding organisations to be active in the regulated qualifications market. Awarding organisations must introduce at least one qualification in a timely fashion once the organisation has become recognised and must continue to award regulated qualifications regularly thereafter.
- 5.5 All three regulators proposed simplifying the wording of this Condition, including a proposal to amend the wording we use to describe compliance (see proposal relating to the use of 'in accordance with its Conditions of Recognition').
- 5.6 Of the 42 respondents who expressed a view, 33 agreed or strongly agreed with this proposed simplification, three disagreed and six were neutral. However, several queried the precise meaning of this Condition. Some questioned whether they were expected to award all or just one of their regulated qualifications in a two-year period. Others questioned the use of a two-year period, noting that some qualifications may require a longer period of study. One respondent also queried whether this is required in only one country, or must be complied with separately in each of England, Wales and Northern Ireland.
- 5.7 Having considered all responses from the consultation we have decided to implement the proposed change as consulted on. We would also like to take this opportunity to clarify some of the questions raised in responses.

- 5.8 Condition A1.3 is concerned with awarding activity at the level of the awarding organisation as a whole, and not with individual qualifications. An awarding organisation must award a regulated qualification within two years of being recognised and must take all reasonable steps to make sure it awards at least one further regulated qualification that complies with its Conditions of Recognition in every subsequent two-year period. The requirement applies in each jurisdiction in which an awarding organisation is recognised.
- 5.9 We note that comments on the appropriateness of the two-year period fall outside the scope of the consultation. Additionally, if any awarding organisation were unable to comply with this Condition, we would consider any legitimate explanations before deciding whether to take regulatory action in respect of that non-compliance.

Condition B2 – The annual statement to [the Regulator]

- 5.10 We proposed changing the term ‘annual statement’ to the more familiar and commonly used ‘statement of compliance’. The majority of respondents (31 of 41) agreed to some extent that this proposed change would improve clarity. One respondent stated that the word ‘annual’ provides clarity and should be retained. The title of Condition B2 still includes the word ‘annual’.
- 5.11 Having considered all responses from the consultation we have decided to implement the proposed change as consulted on.

Structural changes to some Conditions (B2, B4, B8 and D5)

- 5.12 We proposed changing the structure of the following Conditions:

Condition	Title	Response
B2	The annual statement to [the Regulator]	31 of 41 strongly agreed or agreed
B4	Notice to provide information to [the Regulator]	35 of 42 strongly agreed or agreed
B8	Compliance with undertakings given to [the Regulator]	36 of 41 strongly agreed or agreed
D5	Compliance with Regulatory Documents	36 of 41 strongly agreed or agreed

- 5.13 The proposed changes in structure aim to improve the clarity of the Conditions, but do not alter what awarding organisations are required to do.

These proposed structural changes were broadly welcomed by respondents as indicated in the table above. The remaining respondents were neutral, with none disagreeing or strongly disagreeing with the proposed changes.

- 5.14 Having considered all responses, we have decided to implement the proposed structural changes for the Conditions B2, B4, B8 and D5 as consulted on.

Use of 'For these purposes'

- 5.15 We proposed replacing instances in the Conditions that say, 'for these purposes' with 'for the purposes of Condition X' and 'for these requirements' with 'for the requirements of Conditions X'. As we explained in our consultation document, we felt it would be helpful to specify in each instance the purposes to which requirements relate.
- 5.16 41 respondents expressed a view on these proposals. 36 strongly agreed or agreed with the proposals, with five respondents neither agreeing nor disagreeing.
- 5.17 Having considered all responses from the consultation we have decided to implement this proposal as consulted on.

Use of 'this Condition'

- 5.18 We also proposed to include an interpretation provision on references to 'this Condition'. This interpretation provision, to be included in Condition J1.2, would make explicit that references to 'this Condition' are to be read as references to the Condition as a whole.
- 5.19 40 respondents expressed a view on this proposal. Of those, 35 either strongly agreed or agreed, with five respondents neither agreeing nor disagreeing.
- 5.20 Having considered all responses from the consultation we have decided to implement this proposal as consulted on.

Use of 'in accordance with its Conditions of Recognition'

- 5.21 We proposed in our consultation to change the use of the phrase 'in accordance with its Conditions of Recognition' with 'in a way that complies with its Conditions of Recognition' in all instances.
- 5.22 We proposed this change in response to some confusion that awarding organisations had previously expressed in relation to the use of the phrase 'in accordance with its Conditions of Recognition' as part of Qualifications Wales's review. Awarding organisations believed that such references were

linked to the scope of each awarding organisation's recognition i.e. the types of qualifications awarding organisations can offer under their recognition.

You told us

- 5.23 Of the 41 that responded, 29 either strongly agreed or agreed with our proposal, nine neither agreed nor disagreed and three disagreed.
- 5.24 For those who provided additional comments, most indicated that the changes would provide greater clarity and make them easier to understand. Some considered these to be minor alterations, with others confirming their agreement without any specific additional comment.
- 5.25 Of all the wording changes aimed at improving understanding of the Conditions, this proposal gave rise to more comments, with one respondent suggesting that it introduced ambiguity into 'imperative Conditions'.

Our view

- 5.26 We do not believe the proposed change adds ambiguity. As regulators, we expect awarding organisations to comply with all our rules. However, we do not prescribe the way in which an awarding organisation secures compliance. Compliance can very often be context sensitive, and there may be more than one way in which an awarding organisation can secure compliance with our rules.
- 5.27 We have considered the issues raised and balanced these against the aims of our original proposal, the fact that the proposal was generally well supported and that we remain of the view that it is clearer. On this basis, we have decided to implement our proposal as consulted on.

Moving all definitions to J1.8

- 5.28 We proposed moving all definitions in the body of the Conditions so that they are included as defined terms within Condition J1.8.
- 5.29 All 21 respondents who answered this question agreed that all definitions should be included in Condition J1.8. One respondent queried whether we have explored all of the Conditions in order to remove all definitions and place them in J1.8. Our revision of the Conditions involved detailed consideration of all wording and we are content that all definitions will be moved to J1.8 and none remain in the body of our rules. We have decided to implement this proposal as consulted on.
- 5.30 Another respondent suggested that an additional reference to definitions via hyperlinks would be useful. We note that Ofqual's handbook, which sets out

Ofqual's General Conditions of Recognition (and associated requirements), currently enables users to position a computer cursor over such terms to access the definition. Both Qualifications Wales and CCEA Regulation will ensure that hyperlinks are included in their respective Conditions of Recognition which are currently presented in a pdf format.

Use of 'revised from time to time' (Qualifications Wales only)

5.31 Qualifications Wales proposed to remove all references to the phrase 'revised from time to time' from individual Conditions, and to replace them with a single, interpretation provision in section J of the Conditions. This proposed change was designed to make the Conditions clearer, more useable and address several concerns previously expressed by awarding organisations that there were elements of repetition throughout.

You told us

5.32 Of the 42 who responded on this proposal, 24 agreed or strongly agreed, while 12 were neutral and five disagreed to some extent with the proposal. One further emailed response indicated agreement with the change but gave no indication of the extent to which they agreed.

5.33 Some of those in agreement welcomed this proposal, stating that it would add greater clarity and avoid superfluous wording. However, some of the respondents that expressed neutrality or disagreed with this proposal noted their preference for all regulators' Conditions to align and were of the view that the proposed change would make little material difference and therefore considered it to be unnecessary.

5.34 In their opinion, such references were useful to be included in each Condition as Conditions are often cited in isolation. Others felt that the current Condition explicitly brings to awarding organisations' attention the fact that requirements might be subject to change from time to time.

Qualifications Wales's view

5.35 Whilst remaining of the view that the proposal for a single provision would have achieved our overarching aim of reducing repetition in the Conditions, Qualifications Wales has reflected on this feedback and decided not to implement the proposal as outlined in the consultation. This will mean that all references to 'revised from time to time' will be retained in the Conditions, and subsequently will also ensure closer alignment across all three regulators' Conditions.

Chapter 6: Keeping the Conditions up to date

- 6.1 This chapter outlines the decisions we have taken on our proposed changes to update the Conditions. As explained in our consultation document, we identified a number of changes we wanted to make which would address and reflect changes to substantive law, changes in our policies, processes and systems, and also which would help eliminate any divergences, thus making our Conditions more aligned.
- 6.2 We have listened to the feedback and set out our decision for each proposal in turn.

Defined terms of 'Data Protection Law' and 'Characteristic'

- 6.3 We proposed updating our defined terms of 'Data Protection Law' and 'Characteristic' in order to ensure they reflect changes made to substantive law.
- 6.4 We asked an open question here inviting respondents to comment on our proposals to update these definitions as well as changing the numbering of the Conditions so that they are sequential. Of the 27 respondents who chose to provide a comment, none expressed disagreement or concern with the proposal. We have decided to implement the changes to these defined terms as consulted on.

Revised numbering

- 6.5 Eighteen respondents (out of 27) made positive comments about the renumbering of the Conditions. Some respondents expressed concern about the time and resources required to implement the change as it would require system upgrades and consequential amendments to related documentation. Suggestions were made about the timing of the implementation of the proposals to accommodate this.
- 6.6 Having considered all responses, we have decided to implement this change. We address all views expressed in relation to timing, together with our decision on this aspect, in Chapter 8.

Use of QiW - Changes to Conditions A1.3 and E6 (Qualifications Wales only)

- 6.7 Qualifications Wales consulted on changes to Conditions A1.3 and E6 so that awarding organisations will be required to submit all qualifications regulated by Qualifications Wales, to the QiW database.
- 6.8 Some respondents highlighted that the current format of QiW requires qualifications to be described as either Approved or Designated, and that this

will have to change for the proposals to be implemented. To that end, they noted a need for further clarity about the practicalities of using QiW for all regulated qualifications in this way.

- 6.9 Qualifications Wales will implement changes to the functionality of QiW so that awarding organisation can add and review their Other Regulated qualifications in addition to their Approved and Designated qualifications. Qualifications Wales will implement the change as consulted on and write to awarding organisations with further details shortly.

Changes to Condition A1 (CCEA Regulation only)

- 6.10 CCEA Regulation proposed reordering its Condition A1 to align with Ofqual's and Qualifications Wales's Condition.
- 6.11 41 respondents expressed a view on this proposal with 36 agreeing or strongly agreeing with the proposal and five neither agreeing nor disagreeing. CCEA Regulation has decided therefore to implement the proposed numbering change to its Condition A1.
- 6.12 CCEA Regulation also proposed amending the wording of this Condition to better reflect the accreditation requirement in place for qualifications in Northern Ireland. The proposed change was to part (a) of Condition A1.3 (A1.5 in current Conditions).
- 6.13 Of the 39 responses to this question, 31 agreed or strongly agreed with this proposal, six were neutral and two respondents disagreed. One of the two who disagreed expressed a concern that the requirement for an accreditation process for certain types of qualifications makes the process more burdensome for small awarding organisations. One respondent, whilst agreeing with the proposed change, commented that the requirement for accreditation only applies to qualifications which are seeking funding in Northern Ireland.
- 6.14 The requirement for an accreditation process in Northern Ireland has been in place since 2016. This requirement applies to all qualifications and not just those seeking funding in Northern Ireland. The proposed change in wording does not introduce a new requirement, but rather, better reflects the existing one. CCEA Regulation has decided to implement the proposed rewording as consulted on.

Structure of Conditions D7 and B5 – Approved, Designated and Other Regulated qualifications (Qualifications Wales only)

- 6.15 Condition D7 (as currently numbered) relates to the withdrawal and change of status of qualifications. The changes proposed by Qualifications Wales were intended to provide greater clarity by distinguishing between withdrawing qualifications (meaning that they are no longer available to learners) and changing their status (no longer Approved or Designated).
- 6.16 Respondents were generally supportive of the proposals, with 27 (out of 39) agreeing or strongly agreeing with the change. Three disagreed and 9 were neutral. A small number of comments suggested that even further clarity could be achieved with Condition D7 and it could be made shorter.
- 6.17 No substantive comments were received in relation to the proposed changes to Condition B5. As such, Qualifications Wales will implement its proposals in relation to this Condition as consulted on.
- 6.18 In light of the feedback received, we have made further changes to Condition D7 (as currently numbered) to provide additional clarity. Conditions B5, D7² and associated definitions will now read as follows:

Statements regarding qualifications which are not Regulated Qualifications

B5.1 An awarding body must not (and must take all reasonable steps to ensure that any person connected with it does not) make any statement (via any act or omission) that would be likely to lead Users of qualifications to believe that a qualification is:

- (a) a Regulated Qualification when it is not a Regulated Qualification;*
- (b) an Approved Qualification when it is not an Approved qualification, or*
- (c) a Designated qualification when it is not a Designated qualification.*

Management of the change in the status of qualifications or withdrawal of Qualifications

D6.1 For the purposes of this Condition, an awarding body withdraws a qualification at the point in time when:

- (a) it ceases to register Learners for the qualification;*

² Condition D7 will now read as D6, D8 as D7 and D9 as D8 in Qualifications Wales's Conditions as a result of the decision to remove the current Condition D6 [Compliance of units developed by others with Regulatory Documents].

- (b) it ceases to deliver or award that qualification to Learners;*
- (c) it surrenders its recognition in respect of that qualification, or*
- (d) it has its recognition withdrawn by Qualifications Wales in respect of that qualification.*

D6.2 For the purposes of this Condition, an awarding body changes the status of an Approved Qualification at the point in time when:

- (a) its Approval in respect of that qualification expires;*
- (b) it surrenders its Approval in respect of that qualification; or*
- (c) it has its Approval withdrawn by Qualifications Wales in respect of that qualification.*

D6.3 For the purposes of this Condition, an awarding body changes the status of a Designated Qualification at the point in time when:

- (a) its Designation in respect of that qualification expires; or*
- (b) it has its Designation revoked by Qualifications Wales in respect of that qualification.*

Condition J1.8 – Defined terms

Regulated Qualifications

All non-degree qualifications (whether an Approved, Designated or Other Regulated) that are offered for award by an awarding body recognised by Qualifications Wales (unless either an awarding body has surrendered its recognition in respect of that qualification, or if an awarding body excluded that qualification from the scope of its recognition by notifying the Welsh Government prior to 21 September 2015).

Other Regulated

Other Regulated qualifications are those qualifications awarded in Wales by a recognised awarding body, which are not currently Designated or Approved by Qualifications Wales, and which the awarding body has not surrendered from the scope of its recognition.

Conditions E3 and E7 – Removal of Transitional Provisions (Qualifications Wales only)

- 6.19 Qualifications Wales proposed in the consultation that the transitional provisions in Conditions E3 and E7 would be removed and therefore these Conditions would in future apply in respect of all qualifications regulated by it.
- 6.20 Consultation responses were generally supportive of the proposal with 26 (of 40) agreeing or strongly agreeing with the proposal with three disagreeing to some extent and 11 neutral. The proposed removal of transitional provisions accurately reflects the existing requirements of E3 and E7 in Wales. As a result, Qualifications Wales will proceed with the proposal as consulted on.
- 6.21 As we explained in the consultation, both CCEA Regulation and Ofqual have not completed the introduction of Conditions E3 and E7 for all qualifications, and therefore need to retain the transitional provisions at this time. Both will look to remove these provisions as soon as they are no longer needed, which is likely to be within the next year.

Introduction of new defined terms (Qualifications Wales only)

- 6.22 Qualifications Wales consulted on proposals to introduce the following defined terms to its Conditions:
- Learner
 - Level, and
 - Qualifications in Wales (QiW)
- 6.23 No comments were received expressing concern or opposition to these proposals. Qualifications Wales will therefore implement the changes as consulted on.

References to RITS (CCEA Regulation and Ofqual only)

- 6.24 CCEA Regulation and Ofqual proposed replacing the current defined term of the legacy IT system RITS in their Conditions with a new defined term of the Portal, and to replace all references to RITS with references to the Portal.
- 6.25 No comments were received expressing concern or opposition to this proposal. CCEA Regulation and Ofqual will therefore implement the change as consulted on.

Chapter 7: Proposals by Qualifications Wales

- 7.1 In the consultation Qualifications Wales made several proposed changes to its Conditions which Ofqual and CCEA Regulation did not. This chapter sets out the remaining decisions Qualifications Wales has taken.

Conditions A1 and B3 - Definition of Insolvency Event

- 7.2 In response to the evidence gathered, Qualifications Wales proposed to set out more clearly in the Conditions when awarding organisations must notify an 'Insolvency Event'. This is a recognised and well-established legal term in UK Corporate and Insolvency Law and Qualifications Wales proposed to define this in order to make it clearer to awarding organisations when they must notify it.

You told us

- 7.3 Of the 40 who responded to the question, 20 strongly agreed or agreed that the proposed definition provides greater clarity. 11 disagreed to some extent with this proposal and a similar number were neutral on the matter (nine).
- 7.4 Of these, several respondents noted that additional clarification is always welcome and that the detailed definition of an 'Insolvency Event' was useful. There was also feedback from some that it would be helpful if all regulators aligned so as to ensure that awarding organisations would notify all regulators at the same time.
- 7.5 Some respondents felt that the changes were not necessary as it was a matter of law and stated their overall preference for all three regulators to be aligned.
- 7.6 Some respondents said that they viewed insolvency as a process rather than an event, commenting that notification to a regulator might be at different points in time, depending on circumstances. To that end, they felt that introducing a definition of Insolvency Event would remove their ability to judge events where there may be a real insolvency risk.
- 7.7 One other respondent queried whether the 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 be for reasons other than an inability to pay and suggested a rewording to avoid any potential effect of a statutory demand being disproportionate to the actual solvency position of the company.

Qualifications Wales's view

- 7.8 Qualifications Wales does not consider that the current proposed wording would include circumstances where a 'statutory demand' was made due to an invoice not being paid on time. Paragraph (a) relates specifically to an awarding body suspending payment of its debts or threatening to do so, and not the circumstances where it simply omits to pay an invoice whether deliberately or otherwise. Similarly, paragraph (b) relates to negotiations to reschedule debts or entering arrangements with creditors as to the payment of debts, and not omitting to pay an invoice.
- 7.9 Furthermore, a statutory demand is a demand from a creditor for repayment of a debt, which if unpaid can lead to a winding up petition being issued against the awarding body. Paragraph (c) is only engaged at the point of a petition being made or the awarding body having cause to believe that a winding up petition is likely to be made.
- 7.10 However, Qualifications Wales has listened to the feedback received and has decided to amend the definition of 'Insolvency Event' in light of the consultation comments.
- 7.11 With regard to the comments on aligning requirements across regulators, Qualifications Wales remains of the view that the introduction of a definition does not change the requirement nor should it lead awarding organisations to notify regulators at different times. Qualifications Wales believes that the amendments to the proposed definition will address the concerns outlined above.
- 7.12 In light of the consultation responses, Qualifications Wales's Condition J1.8 will be amended to include its new defined term of Insolvency Event which will now read as follows:

Insolvency Event

Where -

- (a) *the awarding body suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, within the meaning of section 268 of the Insolvency Act 1986;*

- (b) *the awarding body commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the awarding body with one or more other companies or the solvent reconstruction of that other party;*
- (c) *a petition is filed, a resolution is passed, or an order is made, for, or in connection with, the winding up of the awarding body (being a company), other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;*
- (d) *an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the awarding body;*
- (e) *the holder of a qualifying floating charge over the assets of the awarding body (being a company) has appointed an administrative receiver;*
- (f) *a receiver is appointed over the assets of the awarding body;*
- (g) *a creditor or encumbrancer of the awarding body attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the awarding body's assets and such attachment or process is not discharged within fourteen (14) days;*
- (h) *any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or*
- (i) *the awarding body suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.*

Condition A3 - Definition of Change of Control

7.13 Qualifications Wales proposed to amend the existing definition of Change of Control, and to move this definition into Condition J1.8.

7.14 The proposed changes were made primarily to ensure that the definition captured all necessary legislative provisions, and that it applied to the variety

of structures across awarding organisations i.e. not only limited companies, but charities, partnerships and others relevant to the legislation being referred to.

You told us

- 7.15 20 of the 39 who responded to this question agreed or strongly agreed that the changes to the definition of Change of Control would be welcomed. Ten respondents disagreed to some extent and 9 were neutral. Some of those who agreed mentioned that the change would provide clarity and that strengthening the existing definition was helpful.
- 7.16 However, some respondents considered the definition to be complex, convoluted, and not easy to follow. Others felt that as Change of Control was already defined in law, there was no need for the regulator to further define this term³.
- 7.17 There was also feedback from some that it would be helpful if all regulators aligned to ensure that awarding organisations would notify all regulators at the same time.

Qualifications Wales's view

- 7.18 Whilst Qualifications Wales wants to continue to reflect all relevant legislation in its revised definition, it has also considered how best to present this as clearly and simply as possible. Therefore, based on the feedback received, Qualifications Wales has decided to shorten and further simplify the definition of Change of Control.
- 7.19 With regard to the comments on aligning requirements across regulators, Qualifications Wales remain of the view that the introduction of a definition does not change the requirement nor should it lead awarding organisations to notify regulators at different times. Qualifications Wales believes that the amendments to the proposed definition will address the concerns outlined above.
- 7.20 Qualifications Wales's Condition J1.8 will include a defined term of 'Change of Control' which will now read as follows:

Change of Control

³ It should be noted that all three regulators have defined Change of Control for the purposes of their Conditions of Recognition.

A Change of Control takes place in relation to an awarding body where –

- (a) a person obtains control of the awarding body who did not, immediately prior to doing so, have control of it, or*
- (b) the awarding body merges with any person.*

Where the awarding body is a company, sub-sections (2), (3) and (4) of section 450 of the Corporation Tax Act 2010 shall apply for the purpose of determining whether a person has or had control of the awarding body.

Where the awarding body is a partnership or sole trader, a person(s) shall be treated as having control of the awarding body if they exercise, are able to exercise or are entitled to acquire direct or indirect control of the affairs of the awarding body.

Updating CCEA Regulation's definition of Change of Control

- 7.21 CCEA Regulation proposed updating its current definition of Change of Control to reference sub-sections (2), (3) and (4) of section 450 of the Corporation Tax Act 2010. This would bring its definition into line with that of Ofqual's.
- 7.22 No concerns were raised about this proposal and CCEA Regulation will therefore implement it.

Chapter 8: Impact Assessment

- 8.1 In the consultation we summarised the main findings of the assessments we had undertaken to identify the potential impacts (both positive and negative) of our proposals. These included regulatory impacts as well as those on equalities and the Welsh language.
- 8.2 We sought views on the extent to which our proposals would impact (positively or negatively) on a range of stakeholders, any additional steps we could take to reduce or mitigate those impacts and whether there were additional impacts that we had not identified.
- 8.3 A summary of responses is provided below.

Regulatory Impact Assessment

- 8.4 19 respondents chose to provide comments relating to the impact of our proposed changes to Conditions.
- 8.5 The most significant impacts identified by respondents were as follows:
- the need for awarding organisations to be given sufficient time to implement the proposals
 - increase in workload for awarding organisations, and
 - different requirements proposed by regulators could lead to divergence
- 8.6 17 respondents to the consultation also provided feedback in relation to additional steps that could be taken to reduce the regulatory impact of our proposals. The steps which garnered the greatest response were as follows:
- provide additional time for awarding organisations to implement the proposals
 - provide further clarification and/or guidance to awarding organisations, and
 - secure greater alignment across the three regulators' Conditions

Changes to Condition F1 (Information on fees and features of qualifications)

- 8.7 Our consultation explained that we felt the categorisation of fees proposed by the new Condition F1.1 would not be significantly different to how all awarding organisations currently structure their fees. Awarding organisations would need to review their pricing structures to ensure alignment, but we considered the proposed Condition F1.1 categorisation would not create an inappropriate level of burden on any single awarding organisation.

- 8.8 Our consultation also explained that we felt that the burden imposed by the requirement to publish fees, specifically for those awarding organisations who do not already have their fees publicly available, was justified by the benefits to purchasers and the market as a whole.
- 8.9 We would expect the publishing of fees, by awarding organisations who do not currently have their fees available on their website, to require no more than one day of work to create and no more than half a day per year to maintain, so costs of less than £1,000 per year per awarding organisation.
- 8.10 Where respondents provided comments on the impact of these changes, the majority raised concerns over the short timeframes for implementation, discussed below.
- 8.11 No respondents raised concerns on the burden that would be imposed by the proposals themselves.

Changes to Condition F3 (Invoicing)

- 8.12 Our consultation explained that the proposal to amend Condition F3 did not change the requirements of the Condition, but simply made it clearer. As such, no additional burden would be imposed through the change.
- 8.13 Four awarding organisations raised concerns that they would need resource and/or system upgrades to implement the proposals. Since the proposals do not alter the requirements of this Condition, we consider all awarding organisations compliant with the current Condition will be compliant with the amended version with no changes to their systems or processes.

Changes to Condition E10 (Recognition of Prior Learning)

- 8.14 Our consultation explained that the proposal to amend Condition E10, to require all awarding organisations to publish a statement confirming if they recognise prior learning, would create a burden of up to one day of work to create for those awarding organisations who do not already have this information published. This would represent a one-off cost of less than £1,000 for each affected awarding organisation.
- 8.15 Two respondents to the Consultation stated that the proposal would increase the workload of awarding organisations. This was accepted in our consultation and we received no information to indicate that our assessment of this increased workload was not reasonable.

Changes to Condition G7 – Definition of ‘Special Consideration’

- 8.16 Our consultation proposed an amended definition of Special Consideration. We did not consider that this proposal would have any burden on awarding organisations.
- 8.17 Two respondents to the consultation stated that the proposal would increase the workload of awarding organisations. They considered the change would mean the Ofqual definition would no longer align with industry norms. As stated in 4.57 above, we are not persuaded that clarifying this aspect of the Conditions – which will not alter the requirements already in place for awarding organisations – will, in itself, require large-scale changes to awarding organisations’ policies or processes. We therefore do not judge that this will impose a burden upon awarding organisations. We acknowledge, however, it may help some awarding organisations better understand what we mean, and have always meant, by Special Consideration and could therefore lead some organisations to reflect on their existing approaches.

Changes to Condition H6 – Issuing Results

- 8.18 We proposed to introduce a new Condition H6.2, designed to make explicit that the regulators can instruct awarding organisations not to issue results, and also to enable us to act quickly in the rare cases where it is necessary. We considered that this change would not impose additional burden. Regulators already have the power to intervene to delay the issuing of results by awarding organisations.
- 8.19 Six respondents raised concerns that this change would impose burdens. These would include the rewriting of processes and procedures, adjusting systems and reviewing contractual requirements with centres and service level agreements offered to customers.
- 8.20 We do not expect or intend to intervene more often to secure a delay in the issuing of results as a result of this change. We therefore do not consider there will be any additional burden on awarding organisations, beyond that of familiarisation which is considered at paragraph 8.23 below.

Additional time

- 8.21 Many responses regarding the overall impact of the proposals cited the intention to implement the changes from April 2020 as presenting a significant burden. Awarding organisations explained that they needed to review their policies and procedures in light of the proposed changes and communicate the new requirements to their staff and relevant centres. This could not be done satisfactorily by April 2020 without imposing significant costs and disruption on the system. Some respondents also suggested that

the Conditions should not become effective until October 2020 in order to align with the annual Statement of Compliance process.

- 8.22 We have decided to amend the implementation date for the changes to almost all of the amended Conditions from April 2020 to October 2020. This extended lead in time should minimise the burden on awarding organisations.

Familiarisation

- 8.23 We estimated in our consultation, at paragraphs 8.29 to 8.33, that the one-off cost to each awarding organisation of familiarisation with the new Conditions, including making any necessary updates to documentation, would be in the region of ten days of staff time. We also set out, based on information gathered as part of Qualifications Wales's review, that we expected there to be an ongoing benefits/ saving to awarding organisations from the improvements in the region of ten to twenty days' staff time per annum, meaning a positive overall effect for awarding organisations. Having considered the consultation responses, we consider this estimate to be reasonable.

- 8.24 Four respondents did raise concerns that the change proposed to Condition A1 would impose additional workload on awarding organisations. Since the change proposed was to improve clarity of wording and not to alter the requirements of our Conditions, there can be no additional burden, beyond that of familiarisation.

Additional clarification / guidance

- 8.25 We have addressed points raised about greater clarity in the changes we have made, and each regulator keeps the guidance it issues under review.
- 8.26 As stated in our consultation, we had identified some areas – for example, in relation to management of incidents – where additional guidance would be useful for awarding organisations. We will also introduce guidance for specific areas of our Conditions as a result of this consultation. This includes guidance in relation to Condition A4 (Conflict of Interest) and Condition F1.

Alignment across the three regulators

- 8.27 As independent regulators in our respective jurisdictions, there are, and will be, changes that we each rightfully want to make to our Conditions to reflect changes in policies, processes and systems. However, as stated in the consultation document, in the main we proposed to make the same (or closely aligned) changes.

8.28 We will also look to facilitate awarding organisations' understanding and familiarity with each set of Conditions by producing a document which will present those few areas of difference in a visual and accessible way.

Equalities Impact Assessment

8.29 We considered the potential impact of the proposals on people who share protected characteristics⁴, and did not identify any such impacts (positive or negative).

8.30 We asked respondents whether there were any potential impacts that we had not already identified, and if so, whether there were any additional steps we could take to mitigate those impacts.

8.31 One respondent identified a potential positive impact. The publication of fees on awarding organisations' websites means that this information will be more accessible to all purchasers. Disabled people, in particular, may be able to access the information more easily, for example through the use of assistive technology.

8.32 Given this feedback, our view remains that – with the sole exception of this potential benefit from greater transparency of fees – the changes set out in this consultation will not have a material impact on people who share protected characteristics.

Welsh language Impact Assessment

8.33 We asked respondents whether the proposals included within our consultation would result in any impacts (intended, or unintended) on the following:

- (a) opportunities for persons to use the Welsh language, and*
- (b) treating the Welsh language no less favourably than the English language.*

8.34 Almost all respondents reported that there were neither positive nor negative impacts on the use or treatment of the Welsh language or had no views on the matter. One respondent said that the proposals could have some positive impact, noting that they would ensure the continued use of the Welsh language and that the language would not be treated less favourably by Qualifications Wales.

⁴ As outlined under the Equality Act 2010 and Section 75 of the Northern Ireland Act 1998.

Chapter 9: Next steps

Implementation

- 9.1 The majority of these changes will come into effect from 1 October 2020, with the exception of two which are listed together with their dates in paragraph 9.4 of this report.
- 9.2 This means that awarding organisations will have an opportunity to familiarise themselves with our new requirements and to make any relevant changes to their own policies, processes and systems ahead of them coming into effect.
- 9.3 It also means that awarding organisations will submit their Statement of Compliance for 2020 against the current Conditions, and the corresponding Statement of Compliance for 2021 against the revised Conditions.
- 9.4 As noted above, Ofqual's guidance on Condition A4 will be in place immediately, and Condition H6.2 will become effective for all three regulators from March 2020.

Guidance

- 9.5 As set out in the section on publication of fee information, we have jointly developed guidance on Condition F1. Ofqual has opened a formal consultation on adopting this as statutory guidance alongside the publication of this Decisions Report. CCEA Regulation and Qualifications Wales will take into account any revisions made as a result of Ofqual's consultation and will introduce guidance separately. All three regulators intend that their respective guidance will be in place well before the new Condition F1 comes into force in October 2020.
- 9.6 Awarding organisations have identified a number of areas where thematic guidance and/or forms of clarification would aid understanding and compliance with our Conditions.
- 9.7 We set out in the consultation our intention to develop and publish specific guidance on the management of incidents. This guidance will seek to address the themes highlighted by Qualifications Wales's review, and to aid awarding organisations' understanding of how to comply with this Condition. All three regulators are working together to produce this guidance, and our aim is to develop this during 2020.

- 9.7 We will also consider whether there is additional joint guidance we could produce in response to any other issues raised in this consultation or which we think would be of use to awarding organisations.

Other work on the Conditions

- 9.8 Ofqual has recently published its decisions on changes to the Conditions following its consultation on Accountability for Awards, and as a result has introduced changes to Conditions A4, C2, H2, H6 and I4.
- 9.9 Both CCEA Regulation and Qualifications Wales have introduced similar changes to their Conditions in parallel.
- 9.9 Ofqual has also published a consultation on changes to The Criteria for Recognition and Condition A2, predominantly reflecting changes which are necessary as a result of the UK's exit from the European Union. Again, CCEA Regulation and Qualifications Wales expect to introduce changes to their Conditions and Criteria in parallel, with Qualifications Wales and CCEA Regulation having already written to Responsible Officers to notify them of their intention.
- 9.10 To minimise the number of occasions we need to revise the Conditions; we intend to introduce the new Condition H6.2 at the same time as any changes to Condition A2 in March.
- 9.11 The changes we are making to the Conditions may also result in some consequential changes to the more detailed, qualification-specific rules we each publish. We will be reviewing those documents in due course. In line with its statutory duties, Ofqual will consult as appropriate before making these changes. Qualifications Wales and CCEA Regulation will communicate to their Responsible Officers when consequential amendments to their regulatory documents are published.