



Consultation on Transfer Conditions Policy

Date of Issue: **Monday 3 September 2018**

Action Required: **Responses by Monday 26 November 2018**

Consultation

Overview	<p>This consultation seeks views on the Transfer Conditions Policy.</p> <p>The consultation is likely to be of interest to awarding bodies, centres, learners and parents/carers.</p>
How to respond	<p>We would very much appreciate your responses to each of the questions we have posed. If a question is not relevant or you are unsure how to respond, please skip that question and move onto the next one.</p> <p>Responses to this consultation should be submitted using the online form that is available at https://www.smartsurvey.co.uk/s/JVDHZ/</p> <p>Responses should be sent by 18:00 on Monday 26 November 2018 at the latest.</p> <p>If you require this consultation in another format, please contact us at policy@qualificationswales.org or by phone at 01633 077 2789</p>
Further Information and related documents	<p>Qualifications Wales Act 2015</p> <p>Regulatory Appeals Policy</p>
Contact details	<p>For further information:</p> <p>Email: policy@qualificationswales.org</p>
Data protection	<p>How the views and information you provide us will be used</p> <p>We will analyse and consider all responses received to this consultation. A summary report of the findings will be published on our website. Where appropriate, this report will identify trends in responses and relate these to respondent characteristics.</p> <p>We may also publish responses in full, if it is deemed relevant to the consultation. Respondents will be asked for consent for their name or organisation name, and postal</p>

town to be published alongside their response. However, this is not obligatory. If you are happy to be identified, please indicate this in your consultation response by selecting the box in the 'Personal information' section of your response form.

All personal data that we hold will be retained in accordance with UK Data Protection Law. It will only be used for the purpose of developing and reviewing the policies incorporated in this consultation. More information can be found in our Privacy Notice for consultation on a Transfer Conditions Policy which can be found at:

<https://qualificationswales.org/english/get-involved/consultations-and-surveys/>

As we are a public body, all the written material we hold, including any correspondence you send to us, may be considered for release following a request under the Freedom of Information Act 2000. The law does allow us to withhold information under some circumstances. If you have not given consent for your name or organisation name and postal town to be published, this will be considered when responding to requests for information. However, there may be rare instances when we must release this information. In these circumstances, we will endeavour to inform you of this decision.

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Consultation

Preamble

The work of Qualifications Wales centres around two principal aims:

- To ensure that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales; and
- To promote public confidence in qualifications and the Welsh qualification system.

In order to carry out these functions, the [Qualifications Wales Act 2015](#) (the “Act”) gives us a number of powers which enable us to act in the interests of learners and promote public confidence in the qualification system and to take action where needed.

For this consultation, we are seeking views on a new policy, called the Transfer Conditions Policy. This policy has not previously been published. A Transfer Condition is a condition to which an awarding body’s recognition by us may be subject.

If we were to direct an awarding body to transfer a qualification, then this would be following evidence coming to light that there was a risk of a **significant** adverse effect on learners. Our use of our powers around the transfer of qualifications is guided by the key principle that we expect awarding bodies to be responsible for their learners and that, as a regulator, we expect them to manage and mitigate any risks to learners, including **significant** adverse effects.

It is important to read this policy in the wider context of our [Regulatory Framework and Approach](#) and our risk based and proportionate approach to regulation. We have regard to the [five principles of better regulation](#), devised by the Better Regulation Taskforce. They are:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting

As well as our overall risk-based approach, the Act states that a Transfer Condition is a possible option in situations where there is or is likely to be a **significant** adverse effect. Therefore, we envisage that a Transfer Condition would be considered in situations where learners would not be or are unlikely to be awarded their qualification and where there is no appropriate market solution at that time. There may be circumstances in which awarding bodies work together to transfer qualifications and therefore regulatory action may not be needed. In each circumstance, we will aim to consider a range of options including non-regulatory action such as allowing the market to take its course, as well as all forms of regulatory action within our powers.

It is our intention that undertaking this consultation exercise will help us to ensure that the policy meets our principal aims, thereby improving the quality of our regulation and enforcement.

Consultation



Regulatory Document

REGULATORY POLICIES AND PROCEDURES

Transfer Conditions Policy

General principles of the Transfer Conditions Policy

This policy is relevant to all awarding bodies that have been recognised under Section 4 (*Recognition of awarding bodies*) of the Qualifications Wales Act 2015 (“the Act”) and applies to Approved and Designated qualifications.

A “Transfer Condition” is a special condition referred to in Schedule 3 of the Act to which an awarding body’s recognition by Qualification Wales may be subject.

A Transfer Condition allows us to direct an awarding body recognised by us, in circumstances specified in such a condition, to arrange for a qualification or form of qualification that it awards, which is Approved or Designated, to be transferred to another awarding body. This transfer would mean that the awarding body receiving the transferred qualification takes on the responsibility of awarding that qualification to learners.

If we were to direct an awarding body to transfer a qualification, then this would be following evidence coming to light that there was a risk of a **significant** adverse effect on learners.

Our use of our powers around the transfer of qualifications is guided by the key principle that we expect awarding bodies to be responsible for their learners and that, as a regulator, we expect them to manage and mitigate any risks to learners, including **significant** adverse effects.

We envisage that a Transfer Condition would be considered in situations where learners would not be or are unlikely to be awarded their qualification and where there is no appropriate market solution at that time.

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Introduction

1. As the regulator of recognised awarding bodies in Wales, we expect awarding bodies to be responsible for their learners and therefore manage and mitigate any risks accordingly. In the event that these expectations cannot be met, then we will consider what regulatory action we might take, including the imposition of a Transfer Condition.
2. A Transfer Condition is one course of action amongst a suite of powers and this policy should be read in conjunction with our [Regulatory Framework and Approach](#), which sets out our approach to regulating. We are a risk-based and proportionate regulator and use our enforcement powers in a proportionate, transparent and targeted way. Therefore, in determining whether to give a direction to Transfer a qualification or form of qualification, we will consider all potential regulatory actions, as well as a combination of actions, in line with our [Taking Action When Things Go Wrong Policy](#).

Circumstances in which recognition of an awarding body is likely to be made subject to a Transfer Condition

3. A Transfer Condition would be imposed in certain circumstances where we consider there to be a possibility of an event occurring that may give rise to a **significant** adverse effect on learners, at which point we may then give a direction in order to avoid such **significant** adverse effect occurring.
4. The Act provides a power for us to impose a Transfer Condition at the time of recognising an awarding body. We have not imposed a Transfer Condition during recognition to date and most awarding bodies pre-date the establishment of Qualifications Wales however, this does not preclude us from considering this approach in future.
5. Examples of circumstances when a Transfer Condition may be imposed at recognition might include, but are not limited to;
 - i. where the awarding body is newly established and untested,
 - ii. where an awarding body is entering a sector for which it has no or limited experience or where other awarding bodies have failed, or
 - iii. where the awarding body seeking recognition has been the subject of multiple regulatory actions (whether in Wales or elsewhere).

Factors we will take into account when determining whether to impose a Transfer Condition

6. As required by Section 47(2)(a) of the Qualifications Wales Act 2015, this section of the policy sets out circumstances in which we anticipate imposing a Transfer Condition on an awarding body already recognised by us.
7. In accordance with the Act, we can give a Direction to an awarding body to transfer approved and designated qualifications. Therefore, a transfer does not apply to other regulated qualifications.
8. When considering what action to take, we will be mindful of our principal aims, which are set out in the Act, which are:
 - (a) ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales; and
 - (b) promoting public confidence in qualifications and in the Welsh qualification system.
9. We will aim to use our powers in a proportionate, transparent and targeted way and, in line with the Act, would consider a Transfer Condition as proportionate and reasonable in circumstances where the level of risk of adverse effect to learners is likely to be **significant** if it were to happen.
10. An adverse effect is an act, omission, event, incident, or circumstance that gives rise to **significant** prejudice to learners. For the purposes of a Transfer Condition, circumstances likely to cause **significant** adverse effects might include, but would not be limited to, situations where learners who have begun a qualification, or who are committed to commencing a qualification, may be prevented from being awarded that qualification. We would consider transferring a qualification as a potential means of mitigating this risk by ensuring that learners can be awarded the relevant qualification by another awarding body.
11. The circumstances in which we would consider imposing a Transfer Condition will be determined on a case by case basis. The following are examples of circumstances where an awarding body could be at risk of not being able to award a qualification to learners and this puts them at **significant** risk of adverse effect:
 - i. financial difficulties;
 - ii. fire, flood, IT incidents, and Acts of God;

- iii. insufficient employee resources to include strikes or other industrial action;
 - iv. structural changes and changes in control within the organisation that affects the awarding body's delivery and/or awarding of qualifications to learners;
 - v. having been the subject of multiple regulatory actions;
 - vi. failure to implement plans, such as contingency plans, action plans and withdrawal plans, that raise the risk of adverse effect on learners to **significant**.
12. At all times, we require awarding bodies to identify, manage and mitigate risks which could have impacts upon learners as well as to have appropriate plans in place to deal with any circumstances that may arise. Where awarding bodies fail to do so or where a situation arises where they are unable to do so sufficiently, we will consider imposing a Transfer Condition.
13. Where there are market solutions available whereby awarding bodies work together to transfer qualifications in the interests of learners (such as to ensure that they are awarded their qualifications by another awarding body), then we will consider this amongst a range of options available in the given situation, including non-regulatory action.
14. When considering what action is appropriate to take, we will take into account the awarding body's capacity and ability to mitigate or correct the risk of actual **significant** adverse effect; and any steps taken by them to ameliorate the risk, including undertakings, action plans and/or withdrawal plans that are addressing the matter.
15. Given the range of circumstances in which a Transfer Condition could potentially apply, we aim to use the guiding principles in this policy and our other regulatory options and policies to determine the best course of action in the interests of learners and the qualifications system on a case by case basis.

Sources of evidence to identify a significant adverse effect

16. There are numerous sources of evidence which could lead us to identify a potential **significant** adverse effect to learners and therefore the potential to impose a Transfer Condition. These include, but are not limited to, information received in the course of our regulatory activities, through complaints or disclosures, or received directly from an awarding body via incident reporting or other means.
17. Once we are made aware, we will gather evidence on the matter, and will seek to determine:

- i. whether an adverse effect on learners is likely to occur, and
 - ii. whether the adverse effect is likely to be **significant** if it were to occur.
18. Where a **significant** adverse effect to learners is likely, we will consider a Transfer Condition as one of our options.

Process

Stage 1 – Notice of Intent to impose a Transfer Condition

19. Where we have identified a risk of a **significant** adverse effect on learners and decided to impose a Transfer Condition, we will provide the awarding body with a Notice of Intent. This Notice will specify:
- i. the reasons for proposing to impose this condition, including reference to any evidence that we have gathered;
 - ii. the proposed subject matter of the Transfer Condition, including;
 - the qualification(s) to which it refers;
 - that the awarding body's recognition by Qualifications Wales will be subject to the Transfer Condition, and
 - a description of an event, the occurrence of which will lead to us giving a direction in accordance with that Condition,
 - iii. a period within which the awarding body can make representations, and
 - iv. a period within which we will decide whether to impose the proposed Condition.

Stage 2 - Representations

20. Following receipt of the Notice of Intent, the awarding body will have a period of **15 working days** to make representations to us, other than in exceptional circumstances where we identify an immediate and/or severe risk of a **significant** adverse effect to learners, in which case, we could specify a period of 72 hours in which to make representations. If we require this shorter timescale we will include with the notice a statement of our rationale for doing so.

Stage 3 – Impose a Transfer Condition

21. We will consider any representations received and then decide whether or not to proceed. If appropriate, we will impose a Transfer Condition, and this will be in writing to the awarding body and entitled 'Transfer Condition'. This document will include:

- i. the subject matter of the Transfer Condition, as detailed in the Notice of Intent, subject to any amendments made as the result of representations; and
 - ii. the date from which the awarding body's recognition will be subject to this Condition.
22. After imposing a Transfer Condition, we will continue to monitor the awarding body's activities.

Stage 4 - Notice of Intent to Give Direction

23. If the event we specified in the Transfer Condition occurs, we will consider giving a Direction. This is a regulatory action, and the awarding body must comply with any Direction in order to remain recognised by us.
24. If we are minded to give a Direction to an awarding body to transfer a qualification, we will give the awarding body a Notice of Intent to do so. This notice will specify:
 - i. the proposed Direction to be given;
 - ii. the reasons for proposing to give this Direction; and
 - iii. a period within which we will decide whether to give the proposed Direction.

Stage 5 – Representations

25. An awarding body that receives a notice of our intention to give a Direction may:
 - i. submit representations to us within a period of **48 hours** from the date of the notice; or
 - ii. do nothing, in which case, we will normally wait until the period in the notice (of 48 hours) has expired, and then proceed.

Stage 6 – Giving a Direction

26. *Circumstances in which a Direction is likely to be given to an awarding body*
We will consider any representations made by the awarding body if received within the time frame outlined in Stage 5 above. If the awarding body can provide evidence that they can manage the situation including the **significant** adverse effect to learners, then we are less likely to give a Direction to transfer.

We envisage that we would give a Direction in circumstances where the awarding body fails to sufficiently manage the situation itself.

27. *The likely subject matter of a Direction*

If we decide to give a Direction, it is likely to include the following:

- i. grounds for giving the Direction;
- ii. the subject matter of the Direction, which is likely to include;
 - the qualification(s) to which the Direction refers;
 - any relevant property or rights, to be transferred to a receiving awarding body for that body to award that qualification;
 - the timeframe of the transfer to enable the current cohort of learners to complete the qualification to which the notice refers;
 - the date by which, in the absence of a request for a review, the proposed direction is to come into effect;
 - provision for the making of payments, if necessary.
- iii. consequences of non-compliance with the Direction, including the potential withdrawal of recognition;
- iv. the awarding body's right to request an independent review of our decision to direct. Our approach to reviews is set out in our [Regulatory Appeals Policy](#);

28. This Direction will usually be published on our website.

Review of our decision to give a Direction

29. Awarding bodies have the right to request a review of our decision to give a Direction in accordance with a Transfer Condition.

If you wish to request a review, please email the Head of Corporate Governance at corporategovernance@qualificationswales.org or policy@qualificationswales.org or write to us at:

Qualifications Wales
Q2 Building
Pencarn Lane
Imperial Park
Coedkernew
Newport
NP10 8AR

Circumstances in which, and occasions on which, Transfer Conditions are likely to be reviewed or revised, and the factors that are likely to be taken into account

30. A Transfer Condition will not have a specified date of expiry. However, if we have given a Direction in accordance with that Condition and the awarding body has satisfactorily complied with that Direction, on occasions, we will review or revise the Transfer Condition when it is timely and appropriate to do so.
31. In reviewing or revising a Transfer Condition we will take factors such as the following into account:
 - i. the extent to which the awarding body has complied with the Transfer Condition, any Direction and/or its conditions of recognition more widely;
 - ii. whether learners' needs have been met;
 - iii. the extent to which there is public confidence in the qualification;
 - iv. whether it is proportionate and reasonable to have a condition in place on an awarding body for which its recognition is subject.

Identifying and supporting a recipient awarding body

32. As part of the process, we anticipate that we will undertake work to identify potential recipients for the transferred qualification. This work will be informed by our knowledge of the market.
33. In order to identify appropriate and interested awarding bodies, it may be necessary for us to share information. We will endeavour to keep the information we share to a minimum and at a sufficient level to carry out our functions appropriately. Our guiding principle throughout will be to protect learners.
34. We will aim to fully support an awarding body that receives the transferred qualification, and this might include providing financial support, where possible and appropriate for us to do so.

Property and rights

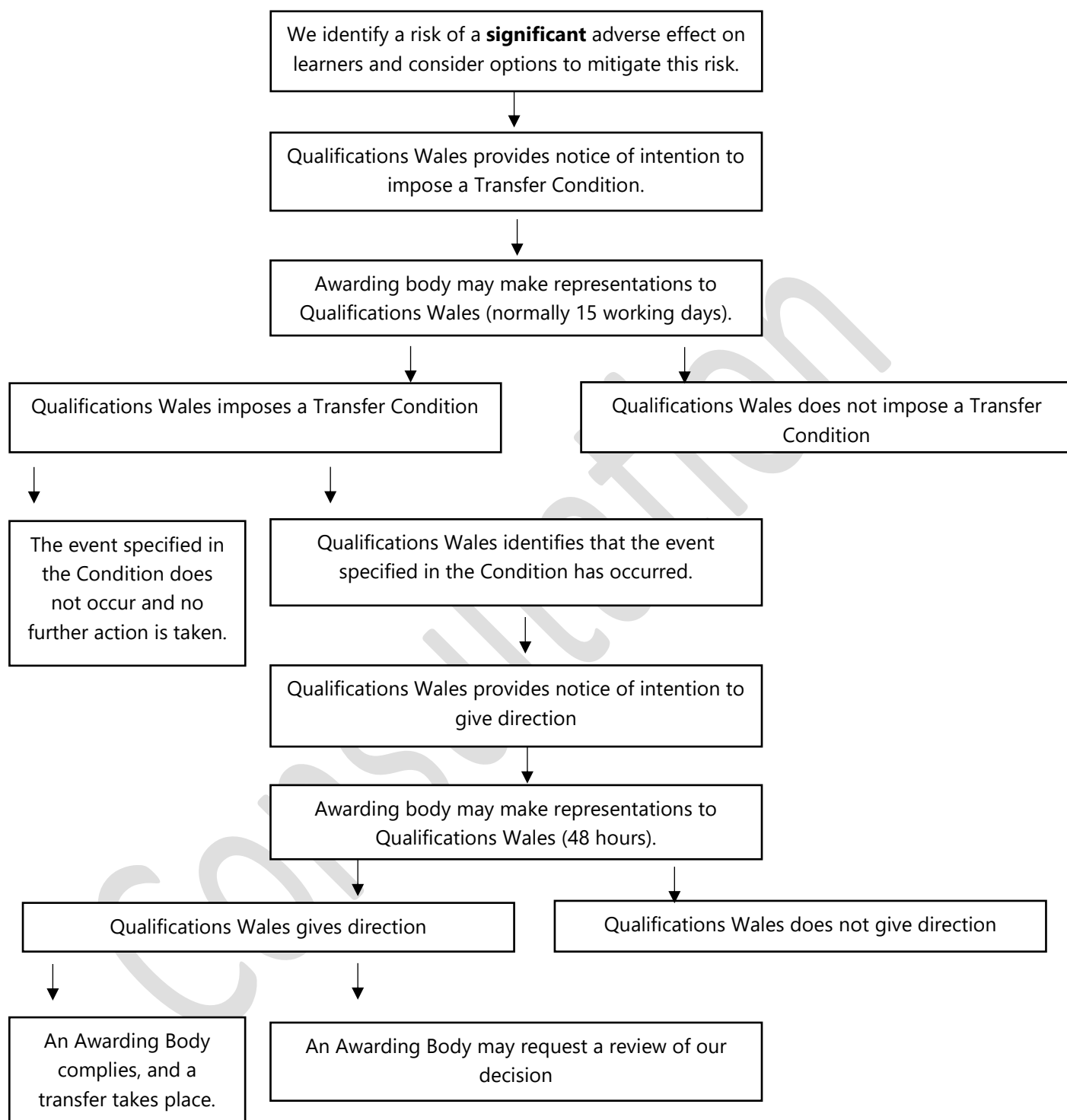
35. Any Direction may include the transfer of relevant property and rights to a second awarding body.

36. Relevant property would be those related to enabling the delivery or award of the relevant qualification. This could include transferring assessment materials, resources, intellectual property, stock and real estate.
37. Relevant rights would be those relating to enabling the successful delivery or award of the relevant qualification. This could include rights to certain types of data or information or the right to access premises.

Payments

38. The Act provides the means for us to make a payment to an awarding body in respect of a loss sustained by the body as the result of complying with the Direction to transfer a qualification. This should not be viewed as rewarding non-compliance, but rather, viewed as a way to reduce or mitigate negative impact on that awarding body's ability to award other qualifications to learners in Wales that arise as a result of complying with a Transfer Condition.
39. Matters we are likely to take into account when determining whether to make a payment and at what level to an awarding body in respect of complying with our regulatory action/ direction include, but are not limited to:
 - i. the awarding body's ability to deliver and award other qualifications it offers to learners in Wales;
 - ii. the risk of adverse effect on learners and the public's confidence in the qualification system.
40. In summary, our principal aim is to protect the interests of learners and promote public confidence in qualifications. Therefore, we expect awarding bodies to take responsibility for their learners and manage risks and contingency plan sufficiently to mitigate **significant** adverse effects whenever possible. Regulatory action is likely to be taken where these expectations are not being met.

Transferring a qualification



Consultation Questions

1. Does the policy clearly explain what a Transfer Condition is?
<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, please state what further clarification is needed:

2. Does the policy clearly explain the circumstances in which a Transfer Condition may apply?
<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, please state what further clarification is needed:

3. Do you agree with the General Principles set out at the beginning of the policy?
Yes, I agree with all principles <input type="checkbox"/>
I agree with some, but not all principles <input type="checkbox"/>
No, I disagree with all principles <input type="checkbox"/>
Please explain the reasons for your response. If you have indicated that you either agree with some of the principles or disagree with all of the principles please state which ones, and include any suggestions for how these could be developed further:

4. Do you agree with the circumstances in which recognition of an awarding body is likely to be made subject to a transfer condition in paragraphs 3 to 5 of the policy?

Yes, I agree with all circumstances []

I agree with some, but not all circumstances []

No, I disagree with all circumstances []

If you have indicated that you either agree with some of the circumstances or disagree with all of the circumstances please state which ones, and include any suggestions for how these could be developed further:

5. Do you believe that the timings set out in the policy are reasonable for awarding bodies?

Yes []

no []

Please explain the reasons for your response.

6. Paragraph 39 sets out matters that we are likely to take into account when determining payment to an awarding body. Do you believe that these matters are reasonable?

- Yes, all matters are reasonable
- Some matters are reasonable and some are not
- None of these matters are reasonable

Please explain the reasons for your response.:

7. Are there any aspects of the policy that require further clarification?

- Yes No

If yes, which aspects and how can they be further clarified? :

8. Would the proposed policy result in any consequences (intended, or unintended) in relation to the following:

	Yes:	No:
(a) opportunities for persons to use the Welsh language,	<input type="checkbox"/>	<input type="checkbox"/>
(b) treating the Welsh language no less favourably than the English language	<input type="checkbox"/>	<input type="checkbox"/>
(c) individuals or groups who share protected characteristics outlined within the Equality Act 2010 .	<input type="checkbox"/>	<input type="checkbox"/>

If you've answered yes to any of the above, please outline what these consequences might be:

9. Please outline in this space any impacts you anticipate or foresee in light of this policy.

Consultation

Additional Information

Are you responding on behalf of an organisation or as an individual (If you select that you are responding on behalf of an organisation, we will assume that you have permission for your responses to be considered as representations of your organisation).

On behalf of the organisation

Individual

If you are responding on behalf of an organisation, please select the option below that best describes your organisation (if applicable):

Awarding body

Education or training provider

Other (please specify)

.....
.....
.....

We may publish responses in full, if it is deemed relevant to the consultation. (Please see the section on data protection in the consultation document). In these circumstances, we would publish the name and postal town of the respondent. If you are happy for these details to be published alongside your response, please select 'yes' below. If not, please leave this question blank.

'Yes, I am happy to be identified'

Contact information

Name:

Postal Town:

Email Address: