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# **Consultation on Transfer Conditions Policy**

Report of decisions taken following consultation

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## Contents

<b>1. Introduction.....</b>	<b>3</b>
<b>2. Summary of consultation responses .....</b>	<b>4</b>
General comments .....	4
Thematic comments.....	5
The distinction between a Transfer Condition and a Direction .....	5
Circumstances in which recognition of an awarding body is likely to be made subject to a Transfer Condition .....	5
Significant adverse effect.....	5
Circumstances in which we are likely to Direct an awarding body to transfer a qualification .....	6
Withdrawing recognition .....	6
Imposing a Transfer Condition at the point of recognition .....	7
Timings in the process of transferring a qualification .....	7
Payments.....	8
Property and rights .....	9
The duration of a Transfer Condition .....	9
Effect of a Transfer Condition on award of qualifications outside of Wales .....	10
Identifying a recipient awarding body .....	10
<b>3. Next steps.....</b>	<b>12</b>

# 1. Introduction

A “Transfer Condition” is a Special Condition to which an awarding body’s recognition may be subject, as outlined in Schedule 3, Section 12 of the Qualifications Wales Act 2015 (“the Act”).

Section 47 of the Act requires Qualifications Wales to prepare a policy statement containing information as to circumstances in which recognition of an awarding body is likely to be made subject to a Transfer Condition, and the circumstances in which a Direction is likely to be given in accordance with that Condition.

In 2018, we commenced work on producing a policy in accordance with the Act and engaged with both internal and external stakeholders. Between August 2018 and November 2018, we carried out a 12-week public consultation on a draft Transfer Conditions Policy. This document provides a summary of the responses we received from the consultation and our response to them. Revisions have been made to the policy following the consultation and the policy will be published along with the publication of this report.

The use of a Transfer Condition is one course of action amongst a suite of powers available to us and our intention would be to use such powers in accordance with the five principles of good regulation as well as in line with our Regulatory Framework and Approach.

All our regulatory policies are underpinned by the [five principles of good regulation](#) (2003), which are:

- Proportionality;
- Accountability;
- Consistency;
- Transparency; and
- Targeting.

Our [Regulatory Framework and Approach](#) sets out the ways in which we regulate. We take a risk-based approach and uphold our two principal aims of maintaining public confidence in the Welsh qualification system and protecting the reasonable interests of learners.

By seeking feedback on our draft policy through this consultation, we aimed to ensure that our policy would meet these principles, thereby improving the quality of our regulation and enforcement.

## 2. Summary of consultation responses

For this consultation, we received 11 responses. Ten out of 11 responded as representatives of organisations and one responded as an individual. One of the 10 responses was from the Federation of Awarding Bodies (FAB), the trade association for vocational and technical awarding organisations, responding on behalf of its members. In the following report, references to 'some' responses refer to 5 or fewer, while references to 'most' responses refer to 6 or more.

Prior to beginning the consultation, we carried out three focus groups during 2018 raising awarding bodies' awareness about the Transfer Conditions Policy and presented information related to the policy at the FAB annual conference to a wide range of awarding bodies, which informed our approach. Our public consultation ran for 12 weeks from 3 September to 26 November 2018.

Throughout this time, we raised awareness of our consultation on our website, and through several channels including the Slate, The Examiner and through external stakeholders' newsletters. As part of the consultation, we also invited awarding bodies to discuss any questions with us and produced FAQs on our website to facilitate understanding of this power and the content of the policy draft. We also presented at FAB's annual conference and engaged with a number of awarding bodies in two seminar events there.

We have carefully considered and analysed all responses to the consultation and provided explanations in this report on each of the themes raised. We have weighed the principles of good regulation and the potential impacts that the transfer of a qualification may have on awarding bodies. Consistent with our principal aims, we will seek at all times to protect the interests of learners and promote public confidence in the Welsh qualification system.

### General comments

In general, respondents recognised that a Transfer Condition forms part of our regulatory and enforcement framework and understood that it would be used in very specific instances to protect learners.

Respondents were supportive of this principle and therefore agreed the need for a policy to clearly outline the circumstances in which such a power would be used and the process which would be followed. However, most respondents felt that the draft policy would benefit from a little revision and the two broad areas were: to clarify further what circumstances may result in a qualification being transferred; and further

detail on the process through which the transfer of a qualification would be undertaken.

## **Thematic comments**

In the following sections, we summarise the responses by theme. Where six or more respondents made similar comments, we refer to 'most', and where five or fewer made similar comments we refer to 'some'.

### **The distinction between a Transfer Condition and a Direction**

Most respondents felt that the policy clearly explained what a Transfer Condition is. However, in some of the detail of some responses, there was some confusion about the distinction between the imposition of a Transfer Condition and the subsequent Direction. Some respondents suggested that a one-stage process would be clearer.

The Act specifies a two-stage process. This is designed to allow a staged approach to the management of risks of a significant adverse effect on learners. The imposition of a Transfer Condition signifies that a risk of an event has been identified, whilst the Direction signifies that the event has occurred. At this second stage, the awarding body would be directed to transfer a qualification. If the event does not occur, then the Direction may not be given. The process outlined in the Act ensures that our rationale for directing an awarding body to transfer a qualification is made clear at an early stage and that they can work to avoid the need for such action to be taken.

In order to make this distinction clearer, we have re-structured our policy to illustrate two distinct sets of circumstances, one in which we would be likely to impose a Transfer Condition and one in which we would be likely to give a Direction. This is intended to illustrate that there are two distinct stages.

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

Most respondents felt that the policy was clear on the circumstances in which a Transfer Condition might be used. Most respondents recognised that this regulatory power would only be used in very specific instances.

### **Significant adverse effect**

Some responses asked for greater clarification on the meaning of a 'significant adverse effect on learners', as this would largely determine those circumstances. We have clarified within the revised policy that the kinds of significant adverse effects we would consider in relation to a Transfer Condition are likely to be those where awarding

bodies are not able to award relevant qualifications despite learners having completed relevant work or assessments.

Our principal aims require us to work to secure the reasonable needs of learners and promote public confidence in the Welsh qualification system. We consider situations in which learners may not be awarded a relevant qualification as those which present a risk of significant adverse effect, and therefore the use of a Transfer Condition would be deemed appropriate and proportionate.

### **Circumstances in which we are likely to Direct an awarding body to transfer a qualification**

Some respondents felt that awarding bodies' risk management processes, as required by the Standard Conditions of Recognition, should feature more prominently in our consideration of the circumstances leading to a Direction to transfer a qualification.

We have made specific reference to awarding bodies taking responsibility for their learners in the General Principles section of the policy and within the document, we make several references to how we expect awarding bodies to take action to identify, manage and mitigate any risk of adverse effects. For example, we include action plans, contingency plans and giving undertakings in the '*Circumstances in which we are likely to Direct an awarding body to transfer a qualification*' section of the policy. This is to make clear that we would expect awarding bodies to follow such plans, and that where they do so sufficiently, and where a significant adverse effect does not occur, we would not anticipate the need to Direct.

Furthermore, as we have stated in our policy, we would always consider whether suitable alternative provision for learners is available. Some respondents asked about circumstances where qualifications are jointly owned, where the intellectual property was also used in other qualifications owned by the awarding body e.g. as units in other qualifications or where qualifications are offered under contractual arrangements. We have made clear in our policy that we would take such matters into account for the qualification under consideration.

### **Withdrawing recognition**

A small number of respondents identified the use of a Transfer Condition as valuable in a situation where an awarding body is likely to have recognition withdrawn.

*We feel this Transfer Condition would be applied at the point when recognition is being removed by the Regulator from an AO. This would be the final step*

*after the Regulator has taken all other steps to mitigate the adverse effect on learners.*

We recognise this as an example where a Transfer Condition could be applied in order to protect learners. In such circumstances, we would require an awarding body to take all reasonable steps to protect the interests of learners in relation to that qualification, including the implementation of a withdrawal plan. We have referred to such plans in the policy.

We explain that where a withdrawal plan did not sufficiently protect the interests of learners, or where the awarding body's actions would lead to a significant adverse effect on learners, we would consider the use of a Transfer Condition.

Whilst the above is an example, we would not limit our use of a Transfer Condition to this particular circumstance. In line with our [Taking Action When Things Go Wrong Policy](#), we consider the withdrawal of recognition to be the most significant and impactful enforcement action we could take against an awarding body.

We envisage that the circumstances in which a Transfer Condition would be used to be those where we wish to manage events of significant adverse effect, and to try to avoid the escalation of non-compliance to such a level where withdrawal of recognition might be more likely.

### **Imposing a Transfer Condition at the point of recognition**

Some respondents queried the principle of imposing a Transfer Condition at the point of recognition, noting that if we were aware of risks, it would be better not to recognise the awarding body in question.

*It appears odd that Qualifications Wales would consider recognising an awarding organisation if, at the point of recognition, Qualifications Wales already believed there was evidence of the likely possibility of an event occurring that may give rise to a significant adverse effect on learners.*

Schedule 3 of the Act says that we may impose a Transfer Condition at the point of recognition or subsequently.

### **Timings in the process of transferring a qualification**

The general timings allowed for receiving representations from awarding bodies in response to our intention to impose a Transfer Condition were supported by most awarding bodies as being reasonable. However, where we indicated that in certain

circumstances this could be reduced to 72 hours, most respondents felt that this was unreasonable.

*...a 72-hour period is just not reasonable for an awarding body to prepare a robust representation, particularly if they need to access legal services. This timescale would effectively require an awarding body to drop everything else and focus on the transfer issue.*

We would like to clarify that reducing the time for representations would only be undertaken in exceptional circumstances, such as when we identify an immediate risk of a significant adverse effect to learners and where it would be necessary to act to this timescale to avoid such effects to learners. In considering the points raised, we have further clarified in the policy that if it was necessary to act in a compressed timescale due to exceptional circumstances, we would provide the awarding body with our rationale for doing so in the Notice of Intent.

Some respondents asked for clarification on how many hours would constitute a working day, with one asking if this included non-working days. In response, we have amended our policy to refer explicitly to working days, rather than hours.

Some respondents also highlighted the 48-hour period for representations following a Notice of Intention to Direct an awarding body as being unreasonable, for similar reasons.

It is important to note that the decision to Direct an awarding body would only be taken after the occurrence of a specified event, which the awarding body would have been made aware of through the Transfer Condition itself. Similarly, awarding bodies would have been given the opportunity to make representations in respect of the Transfer Condition. Importantly, giving a Direction to an awarding body to transfer a qualification would come at a point where we believe it is necessary to do so to prevent a significant adverse effect on learners, and therefore we would want to act as quickly as was reasonably possible in order to protect their interests.

Nonetheless, we have carefully considered the 48-hour period and in light of comments have revised this to 3 working days.

## **Payments**

Most respondents felt that the matters should include reference to the financial costs of developing qualifications.

Payments has a particular meaning in the context of this power and our policy reflects this. Therefore, payments to awarding bodies may be made in situations where they have sustained a loss in complying with this Direction.

We envisage that a payment would be made to reduce or mitigate negative impact on an awarding body's ability to award other qualifications to learners in Wales that arise as a result of complying with the Direction.

We have re-drafted this section of the policy to make this more explicit.

## **Property and rights**

Some respondents requested further clarity on the scope of property and rights that could be transferred and how it might be transferred, with some noting that this could be controversial and impactful on awarding bodies' business.

The policy notes that property and rights could be understood in the sense that is normally used in legislation, but that we would consider what property and rights were relevant for the purposes of a transfer. It is important to note that, as stated in the policy, we would consider what would be appropriate and reasonable to transfer in each given circumstance. In particular, the property and rights would relate to the delivery and award of the qualification which is subject to the transfer.

We would engage with the awarding body to discuss these matters, with the aim of protecting learners whilst ensuring that our regulatory action is reasonable and proportionate. We have also provided an illustrative but not exhaustive list of such property and rights in the policy to provide further clarity to awarding bodies.

## **The duration of a Transfer Condition**

Some respondents queried the duration of a Transfer Condition, and whether their recognition would be subject to this condition indefinitely. They also asked for clarification as to whether a qualification could be returned to an awarding body if the circumstances that led to the transfer had changed.

We have clarified in the policy that we would review a Transfer Condition to consider whether or not it remained necessary in order to manage the risk of significant adverse effect on learners. We have noted, for clarity, that when a Direction given in accordance with a Transfer Condition had been complied with to our full satisfaction, we would be likely to revise or review that Condition when it is timely and appropriate to do so.

We have also included in the policy that we would write to the awarding body to confirm that the Transfer Condition has been completed to our satisfaction and the awarding body's recognition is no longer subject to it. However, it is important to note that the removal of a Transfer Condition does not mean that the qualification is returned to the awarding body.

## **Effect of a Transfer Condition on award of qualifications outside of Wales**

Some respondents queried the effect of a transfer on an awarding body's ability to award that qualification in another country.

Our position, as described in the Qualifications Wales Act 2015, is that any Special Condition would apply to that awarding body's recognition to award qualifications to learners who are assessed wholly or mainly in Wales. We would consider the impact of our proposed regulatory action on provision of the same qualification offered elsewhere in the UK.

We would also like to reiterate that a Transfer Condition is limited to qualifications that are Approved or Designated in Wales i.e. those eligible to receive public funding.

Therefore, a Transfer Condition could not be imposed in relation to a qualification which is considered 'Other Regulated'. For further details around the regulatory status of qualifications awarded in Wales, please refer to our [Regulatory Framework and Approach](#) ("Framework").

## **Identifying a recipient awarding body**

Some respondents asked for more information about how we would identify a recipient awarding body to transfer the qualification to. In particular: how we would ensure that they had the capacity, subject knowledge and skills to award the qualification, including qualifications through the medium of Welsh. Some respondents asked how we would share information with them; how we would ensure their interest, and; how we would avoid giving an unfair advantage in doing so.

As we have stated in our policy, our approach in identifying appropriate awarding bodies to transfer the qualification will be informed by our knowledge of the qualification system.

We have also clarified in the policy that we would aim to identify awarding bodies with expertise in the relevant sector, a history of compliance and of good risk management.

If there was not a suitable alternative recipient, then a Transfer Condition would not be a suitable regulatory action to take.

### **3. Next steps**

Following the publication of this report we will publish a finalised version of our Transfer Conditions Policy.

If you have any further feedback or comments, please contact the Regulatory Policy Team at [policy@qualificationswales.org](mailto:policy@qualificationswales.org).