

CONSULTATION DECISIONS

Extraordinary regulatory framework, General Qualifications COVID-19: Guidance

Consultation on statutory guidance in relation to
appeals under the GQCovid regulatory framework

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Introduction

We consulted on exceptional arrangements for awarding GCSE, GCE, Extended Project and Advanced Extension Award qualifications this summer between 15 April 2020 and 29 April 2020. We announced our decisions following that consultation on 22 May 2020.

On 11 June 2020 we set and published the GQCOVID-19 Conditions and Requirements which implement those policy decisions. We published further Requirements under those conditions on 7 July 2020.

We consulted between 30 June and 14 July 2020 on draft statutory guidance to help awarding organisations to comply with 2 of the new conditions. We received 130 responses to our consultation and have separately published an analysis of those responses.

We conducted further consultation with affected awarding organisations on 4 and 5 August, in light of some of the responses we received and additional feedback from awarding organisations. We have highlighted below the decisions which we have made following this further consultation.

We now set out our decisions following our analysis of the consultation responses.

Summary of Decisions

As set out in more detail below, we have decided to:

- introduce new guidance to support Conditions GQCov4 and GQCov5
- make some changes to the wording of our proposed guidance in response to the feedback we received

Details

In this decisions document, we have not sought to discuss every point that has been made by respondents to our consultation. However, in arriving at our final decisions in respect of the Guidance to the GQCov Conditions we have considered all the points made by respondents.

As well as the substantive changes to the draft guidance which we have identified in this decisions document, we have made further refinements which do not alter the meaning or effect of the guidance but make it clearer.

References to paragraph numbers in this decisions document refer to the proposed guidance, as set out in the consultation document.

Guidance in respect of Condition GQCov4

Condition GQCov4 requires awarding organisations to have arrangements in place to provide sufficient information to assist centres to decide whether to appeal on behalf of a student, or students.

Our proposed guidance explained what information an awarding organisation would need to provide in order to comply with this Condition where a request for information is made by a centre.

Paragraph 5

This section of the proposed guidance set out a description of the minimum information which we considered it would be necessary for an awarding organisation to provide in order to comply with the requirement to provide 'sufficient information' to a centre in accordance with Condition GQCov4.2(a).

No respondents identified additional information which should be provided by an awarding organisation, although a number of respondents were uncertain as to whether or not the information specified in paragraph 5 might be available to the awarding organisation in relation to their particular centre. We have recently published detailed information on the statistical standardisation process which should help centres to understand the data which will be used in a variety of different scenarios.

A suggestion was made that because most centres would find this information useful it might be administratively simpler for the information to be given to centres proactively.

At the same time as proposing the guidance, we have been working with awarding organisations to consider what information they might provide to centres together with results, to help centres understand as soon as possible how those results were calculated and to explain that process to students. In practice, we think that a lot of information which would otherwise be provided following a request under Condition GQCov4 will now be provided to all centres alongside results.

We have amended the guidance to reflect the fact that the information which will be provided alongside results may be sufficient in many cases to allow a centre to decide whether or not to appeal on behalf of a student. The guidance now specifies the additional information which we consider it will be necessary for an awarding organisation to provide where a request for information is made, although we do not now anticipate it will be necessary for a centre considering an appeal routinely to make such a request as the necessary information will in most cases have been made available with results.

Paragraph 6

This section of the proposed guidance explained that an awarding organisation could choose to provide more information to a centre if it considered it appropriate to do so.

We do not think it is necessary, as was suggested in some responses, to provide detailed guidance on what further information might be provided, because whether or not to provide additional information, and what information to provide, is something which awarding organisations can decide on a case-by-case basis.

We have already published detailed information about the operation of the statistical standardisation process and will publish further detail on 13 August. It is likely that this information, together with the further information provided with results, will be sufficient information to allow, in the majority of cases, a centre to decide whether to appeal.

Paragraph 7

This section of the proposed guidance explained that we do not expect awarding organisations to control, or attempt to control, onward transmission by a centre of the information provided to them following a request under Condition GQCov4.

The suggestion was made that Ofqual could provide further information about a centre's responsibilities in relation to this information under data protection law. We have worked with the Information Commissioner's Office to make sure relevant advice is available to centres¹. However, we do not consider that our guidance – which concerns how an awarding organisation might secure compliance with our conditions – is an appropriate vehicle to provide advice to centres.

Guidance in respect of Condition GQCov5

Condition GQCov5 requires awarding organisations to have in place arrangements to allow a Centre to appeal results on behalf of a student or students and explains the grounds of appeal which are available for calculated results in summer 2020.

The proposed guidance set out further explanation and exemplification in relation to appeals on the basis that the 'wrong data' was used for the purposes of standardisation.

Paragraph 8

This section summarised the grounds of appeal which are available in respect of calculated results under the GQCov framework.

Some respondents suggested there was an apparent inconsistency between the proposed guidance, which states that a centre can appeal on one (or more) of 3 separate grounds, and Condition GQCov5.1 which provides that an awarding organisation must have in place an appeals process which allows for appeals on all 3 grounds. Those respondents commented that the condition suggests all 3 grounds must be satisfied for an appeal to succeed.

¹ <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/exam-script-exemption/>

We do not agree that there is any inconsistency. The condition describes the obligation on an awarding organisation: to have in place an appeals process which provides for appeals on all 3 of the potential grounds. The guidance describes the effect of that condition from the point of view of a centre - a centre need only establish one of the 3 available grounds for the appeal to succeed.

Paragraph 10

In this section we repeat the 3 examples of 'wrong data' which are specified in condition GQCov5.2(a). No specific guidance was proposed in paragraph 10, which was included only for context and not for consultation.

Since publishing our consultation, we have published further information about the statistical standardisation process and have confirmed that further information will be published on A level results day. We consider this should resolve the concern raised that centres might not have enough information on results day to know whether the wrong data might have been used, as well as providing further information about those instances where KS2 or GCSE prior attainment information was not available.

A suggestion was made about other sources of information which could be used either at standardisation or for the purposes of an appeal. However, such considerations are beyond the scope of this consultation and were addressed when we made published our [initial policy decisions](#) on 22 May.

In responses which referred to paragraph 10, awarding organisations set out specific aspects of the appeals process on which they considered further guidance would be useful. We do not agree that further statutory guidance is necessary at this stage, but will instead work with awarding organisations to understand the issues they have raised and explain our views.

Paragraph 11

Like paragraph 10, this section of the proposed guidance is included for context, and notes that where one of the errors summarised at paragraph 10 is shown to have occurred, the awarding organisation must take appropriate action to correct the data and to issue results which reflect the corrected data.

Some respondents commented that this does not fully summarise an awarding organisation's obligations where wrong data is identified and, to the extent that those obligations extend to considering whether the use of wrong data affected other learners (on behalf of whom no appeal was made), do not reflect that an awarding organisation must take all reasonable steps to correct results for those non-appellant learners. However, the guidance is not intended to be a comprehensive guide to the GQCov conditions and we do not consider it is necessary to repeat the obligations to which awarding organisations refer (which appear in Condition GQCov5.8) in the guidance.

We agree with the observations made in respect of footnote 3 to paragraph 11 of the guidance and have amended the footnote to reflect that the obligation to which it refers is not absolute.

Paragraphs 12-15

Only awarding organisation made substantive comments on this section. To the extent that those comments directly concerned appeals – what evidence a centre should provide to support its appeal and clarity that the shortened appeal process specified at GQCo5.7 might nonetheless take some time – they are matters for awarding organisations to consider as part of their operational approach and are not appropriate for Ofqual’s statutory guidance.

The several comments made in respect of paragraph 15, which notes the possibility that a learner who considers their centre assessment grades or rank order position might have been affected by bias, discrimination or another irrelevant factor, might make a complaint of malpractice or maladministration, are beyond the scope of this consultation – which concerns statutory guidance to Conditions GQCov4 and GQCov5 – and will be considered separately.

Paragraph 19

We do not consider it would be appropriate, as was suggested, to set out in statutory guidance what quality assurance processes we anticipate an awarding organisation might have place this summer.

Paragraph 20

We do not consider it is necessary, as was suggested, to make clear in statutory guidance that an awarding organisation may reject an application for appeal in respect of which the centre has not specified the error which is said to have occurred. Awarding organisations will make their own operational decisions and to how and when evidence supporting an application for appeal must be submitted and how applications for appeal will be reviewed.

Paragraph 22

We agree with the observations made in respect of footnote 6 to paragraph 23 of the proposed guidance and have amended the footnote.

Paragraph 23

We note the observation that it is for an awarding organisation to make its own decisions as to the management of appeals, but do not consider it appropriate to remove from the guidance the observation that a centre might, in limited circumstances, be allowed to amend its application for appeal.

Paragraph 24

No specific guidance was proposed in paragraph 25, which is contextual and simply describes the effect of condition GQCov5.2(b). We will consider the observations made in respect of that condition separately as they are out of scope for this consultation.

Paragraphs 26 - 30

This section of the proposed guidance describes the possibility that an awarding organisation might identify that some of the historical data included for the purposes of the statistical standardisation process was the 'wrong data', because of clear and objective evidence which undermines the central assumption that the performance of a centre's past cohorts is a reliable indicator of the likely performance of the 2020 cohort had exams taken place. Some specific examples were identified at paragraph 30.

Suggestion was made that the examples given would be clear at the standardisation stage, such that the necessary adjustment could be made without the need for an appeal. This consideration is, however, out of scope for this consultation which concerns proposed statutory guidance on conditions GQCov4 and GQCov5.

During the process of consultation, we have identified a possible further circumstance where 'wrong data' might be demonstrated by objective evidence. We have amended the guidance to recognise that a centre might have evidence of improved exam results which are clearly associated with an event and might argue that results before that event are the wrong data. For example, a school which experienced a governance or leadership change in 2017, and which had improved exam results in 2018 and 2019 might appeal on the basis that exam results from 2017, before the change took effect, are the wrong data.

Following further consultation with awarding organisations on 4 and 5 August, we have decided to include an additional example of a scenario in which an appeal might be brought on the basis that historical results data was not sufficiently representative of the 2020 cohort to reliably inform the calculation of results.

The example we have included would allow an appeal to be brought where a centre's 2020 cohort shows a bi-modal distribution of Centre Assessment Grades, which was not seen in results for previous cohorts. In these circumstances, we recognise that the narrowing effect of the statistical standardisation process might affect the reliability of results.

We have also revised the wording to more closely follow the regulatory requirements document which was published on 7 July 2020.

We have carefully considered whether further precision could be given in the guidance as to how an awarding organisation might decide whether a centre has demonstrated 'a substantive difference' between the 2020 cohort and a previous cohort, the circumstances in which teaching and learning might have been 'significantly disrupted' and further examples of 'extraordinary' and 'momentous' incidents which might have affected a cohort. However, we consider these judgements will need to be made on a case by case basis and we do not think that

the absence of further explanation – which could not in any event be exhaustive – will prevent awarding organisations from identifying relevant cases.

Paragraphs 31-36

This section of the proposed guidance considers how an awarding organisation might determine whether a substantive difference between cohorts means some of the historical data used as part of the model was, in that instance, the wrong data. At paragraph 36, the guidance proposes that awarding organisations will have recourse to a technical panel in such cases.

Awarding organisations identified in their responses to the consultation the particular challenges of identifying cases where wrong data might have been used, particularly those cases which might turn on identifying whether a differentiating factor does or does not affect the calculated results to a sufficiently measurable degree.

We do not think it is practicable to set out further guidance in this respect, as whether a case does or does not meet the relevant thresholds will depend on the circumstances of the individual case. We will however work closely with awarding organisations to develop terms of reference for a technical panel to provide support and advice in these complicated cases.

Implementation timescales

We have set and published statutory guidance at the same time as publishing this decisions document. The guidance will have effect immediately.

Equalities impact assessment

We have carefully considered the representations made in respect of equalities impacts. As we set out in our consultation, the purpose of the proposed guidance is to assist awarding organisations to comply with conditions GQCov4 and GQCov5. The representations made in respect of equalities considerations related either to the substantive conditions GQCov4 and GQCob5, to other GQCovid conditions or to the General Conditions of Recognition (predominantly Condition A8 – Malpractice and Maladministration) in the context of this summer, and not the guidance itself. Those representations are, therefore, outside the scope of this consultation.

The GQCov Conditions reflect the policy decisions we explained on 22 May following our consultation between 15 April and 29 April. We considered the impact of our policy proposals and subsequent decisions on persons who share protected characteristics in our policy consultation and decisions documents. We consider that the issues raised in response to this consultation were fully addressed in those earlier documents.

We did not consider there would be any adverse impact on persons who share protected characteristics in respect of the further example of wrong data on which we consulted affected awarding organisations on 4 and 5 August. We asked those awarding organisations to consider whether there were any adverse impacts which we had not identified, no such impacts were brought to our attention.

Regulatory impact assessment

We remain of the view that the proposed guidance does not impose any regulatory burden in addition to the GQCov Conditions. We have already considered the regulatory impact in relation to those conditions, which we consider to be proportionate in the exceptional circumstances of this summer.



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