

CONSULTATION DECISIONS AND RESPONSE ANALYSIS

Consultation on autumn assessment opportunities for Vocational and Technical and Other General Qualifications

Decisions on the drafting of Condition VCR8:
Assessment opportunity in Autumn 2021

ofqual

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Introduction

The impact of the coronavirus (COVID-19) pandemic has led the Department for Education (the Department) to reach the policy view that it is not viable for external exams to go ahead for some Vocational and Technical Qualifications (VTQs) and other general qualifications. The Secretary of State [issued a direction to Ofqual](#) on 25 February 2021 setting out his policy intention for how results should be awarded for 3 broad groups of VTQs and other general qualifications.

Earlier this year, we [consulted on the detail of the regulatory framework](#) we proposed to put in place to enable awarding organisations to issue results to learners in line with the approaches set out in the direction. This regulatory framework is called the [VTQ Contingency Regulatory Framework \(VCRF\)](#).

In the direction, the Secretary of State also set out an expectation for Ofqual to work with awarding organisations to determine whether there was a need for different provision of autumn and winter assessments beyond those already provided. This was so that VTQ students would have the same opportunity as GCSE, AS and A level learners to sit an exam if they wished to improve on their Teacher Assessed Grade (TAG). Therefore, as part of our consultation on the VCRF, we sought views on what arrangements we should put in place to provide this opportunity.

Following this consultation, we [decided to require awarding organisations](#) that already offer assessments in autumn and winter to give students who received a result based on a TAG an opportunity to sit an assessment to improve their result. Where awarding organisations do not already offer assessment opportunities in autumn and winter, we would expect them to consider whether it would be appropriate to do so.

We then [consulted on the drafting of the Condition](#) we proposed to include within the VCRF (proposed Condition VCR8) to put this policy decision into effect.

This document sets out our analysis of the responses received and our decisions on the drafting of Condition VCR8.

Consultation details

Our consultation ran between 24 March 2021 and 7 April 2021. The consultation included 3 questions and was published on our website with an online form for responses.

Who responded?

We received 22 responses to our consultation. We list the organisations who responded to the consultation in Annex A.

Table 1: Breakdown of consultation responses

Respondent type	Number
Awarding body or exam board	8
Other representative or interest group	4
Student	3
Exams officer or manager	2
Academy chain	1
Awarding organisation employee	1
Parent or carer	1
School or college	1
Teacher (responding in a personal capacity)	1

Twenty-one respondents indicated that they were based in England and one respondent was based in Wales.

This was a public consultation on the views of those who wished to participate. We recognise that the responses are not necessarily representative of the general public or any specific group.

Analysis and decisions

We proposed

We consulted on the drafting of the Condition we proposed to include within the VCRF (proposed Condition VCR8) which would require awarding organisations:

- who normally provide assessment opportunities between September and January of an academic year, to additionally make those assessments available to learners who were eligible to receive a result through a Teacher Assessed Grade (TAG) as well as those who would ordinarily take an assessment at that time

- who do not normally provide assessment opportunities between September and January to provide those opportunities where they reasonably consider there is sufficient demand and where it would be manageable to both the awarding organisation and to centres

The approach should allow awarding organisations to make decisions appropriate to their qualification design and approach to awarding in summer 2021 to enable learners to improve on their result where it is based on a TAG alongside other students who plan to sit assessments in the autumn. We considered that this would serve the need for learners to access opportunities to sit assessments this autumn, and balances any potential burden for centres and awarding organisations that will result from this.

Conditions VCR8.1, VCR8.2 and VCR8.3 set out the circumstances in which an additional assessment opportunity should be provided to students receiving results from qualifications which fall in Category B.

Condition VCR8.4 requires awarding organisations to comply with any requirements specified by Ofqual in relation to the provision of autumn assessment opportunities, including where we might consider that an autumn assessment opportunity was necessary.

Condition VCR8.5 requires awarding organisations to revert to the arrangements for appeals for these assessments which were disapplied in the VCRF (specifically, Condition I1.2(d) which makes provision for the final decision in respect of the outcome of an appeal to involve an independent decision maker, and Condition TQ1.1(c) of the qualification-level conditions for Technical Qualifications).

A draft of the condition we consulted on can be found in Annex B.

We asked

Question 1:

Do you have any comments on the draft wording of Condition VCR8?

Responses received

Thirteen out of the 22 respondents provided comments on the draft wording of Condition VCR8. Of these, 7 respondents were responding on behalf of awarding organisations and 3 respondents were from representative or interest groups. The other respondents were replying in a personal capacity.

Four respondents stated that they agreed with the proposed approach. Reasons for the support varied and included:

- support for not requiring awarding organisations to offer an autumn assessment opportunity for VTQs in instances where there was insufficient demand or it would not be practical
- support for additional assessment opportunities to be made available to students in autumn 2021 and the reflection that awarding organisations should make every effort to offer this opportunity to students
- welcoming the principle of reducing burden and facilitating deliverability for teachers and centres

Three respondents commented on the reference to burden in the condition. One respondent reflected that burden is subjective and so felt that clear guidance on what is classed as disproportionate burden would be necessary. Another felt that students should not be negatively impacted simply because the activity was burdensome to awarding organisations.

Three respondents commented on the scope of the Condition. It was noted that assessment opportunities in January 2022 would be included but also noted that the drafting in the condition referred to 2021. Respondents therefore felt that this could be confusing and suggested that the wording should be amended to include exact dates or reference 'the end of January 2022'. In addition, 1 respondent questioned whether qualifications which fell into Category A would also be in scope of this condition.

Several respondents also commented on the drafting of the condition. Comments included:

- a suggestion for VCR8.1 to be divided into 2 separate sub-conditions because the 'and' at the end of the point is considered 'unusual'
- the terminology used in VCR8.2 and VCR8.3 is flexible and open to interpretation by awarding organisations
- a reflection that awarding organisations should consider other factors over demand when considering whether to hold an additional assessment opportunity especially because demand may need to be gauged in advance of results being released
- a request for VCR8.4 to refer to a 'reasonable timeframe' because awarding organisations would only be able to comply with requirements specified by Ofqual if Ofqual provided sufficient notice
- a request for VCR8.5 to include the titles of the other VCRF conditions referenced within it

Four respondents commented on issues which were out of scope of this consultation. Two respondents talked about the policy position of exams taking place and reflected that students should not be required to take exams. One respondent highlighted the need for the Department to clarify the number of resit attempts that would be permitted for students taking Performance Table Qualifications who had received result based on a TAG in 2021. Another asked for clarification on the requirements for the appeals process for the autumn assessment opportunities.

In addition, one representative organisation highlighted that as a result of the Department's policy position for ESOL Skills for Life and Functional Skills qualifications, it was likely there would be a greater demand for assessments in September. The respondent highlighted the importance of these students receiving their results quickly to allow students to progress to further education or employment in early autumn.

Our decisions

Having considered these responses, we have decided to implement the proposed Condition VCR8 with minor drafting changes.

We have made it clear that Condition VCR8 only applies to qualifications which fall into Category B (i.e. those qualifications where results may be based on TAGs) and that assessment opportunities provided in January 2022 are included in scope of the condition.

We have decided not to make any other changes.

We do not feel that it is necessary to divide VCR8.1 into 2 separate sub-conditions to improve clarity and have decided not to reference the other VCRF Conditions within VCR8.5. The approach we have taken to drafting is consistent with other Conditions within the VCRF and other Ofqual regulatory frameworks.

We note the comments that the drafting of the condition is open to interpretation and the term 'burden' could be considered subjective. However, the overall regulatory approach we have taken through the VCRF is to give awarding organisations the flexibility they need to take decisions which are appropriate for their qualifications based on their assessment design and delivery. In line with this, the approach we have taken in draft Condition VCR8 balances the need to consider the impact on and manageability for awarding organisations and centres, with the need for fairness for learners who wish to improve upon their result when it is based on a TAG.

We have therefore deliberately drafted VCR8.2 and VCR8.3 to be non-prescriptive and to give awarding organisations the scope to make decisions about the provision of autumn and winter assessment opportunities which are appropriate for their qualifications. This includes taking into consideration manageability for centres and awarding organisations as well as likely demand. Although we accept that results

may not be issued until 10 and 12 August, we would expect that awarding organisations would have other ways of estimating demand, such as looking at historical entry patterns or feedback from centres.

We do not feel that it would be consistent with other drafting within the VCRF to include 'reasonable timeframe' within VCR8.4. VCR8.4 requires awarding organisations to comply with any requirements specified to it by Ofqual in relation to the provision of assessment opportunities for VTQs.

Similar wording is used throughout the VCRF and our other regulatory frameworks without any 'reasonable time' limitation and we have not been presented with any evidence that indicates this approach has caused any issues previously. Identical wording to VCR8.4 was used in VTQCov10.4 of the Extraordinary Regulatory Framework (ERF) published in May 2020 without issue. We have therefore decided that it is unnecessary to change the wording of this condition.

Equalities impact assessment

In the Equalities Impact Assessment in our consultation, we highlighted that it was possible that some students could be disadvantaged as a result of sharing a particular protected characteristic of they are unable to take additional assessments in the autumn. This could affect disabled students who may be required to shield for longer.

Students with special educational needs or disabilities could be affected as they may require more time to prepare for assessments and to catch up on teaching and learning, having not had access to their normal support. The timing of any additional assessment opportunity will impact the extent to which this may be an issue, and the impact is likely to be different for different students.

Some students may be positively impacted by these proposals, including disabled students who may be able to take an assessment with their usual reasonable adjustments in place in the autumn, which may not have been possible in the summer.

Additionally, students who were unable to take an assessment that went ahead in the summer as a result of sharing a protected characteristic (such as disabled students who may have been required to shield) may be able to take an autumn assessment so could be positively impacted.

Awarding organisations offering autumn assessments will continue to be subject to our wider equalities' requirements, and to wider equalities legislation. Our proposed Condition allows flexibility for awarding organisations to determine their approach to autumn assessments, so they will be able to consider such factors when deciding their approach.

We asked

Question 2:

Are there any potential positive or negative equality impacts arising from the proposed Condition VCR8, apart from those we have explored?

Responses received

Twenty out of the 22 respondents to the consultation answered this question.

Twelve respondents said that there were no further potential positive or negative equality impacts. Eight respondents said that were additional equality impacts.

Nine respondents provided comments. Of these, 4 respondents were responding on behalf of awarding organisations and 3 respondents were from representative or interest groups. The other respondents were replying in a personal capacity.

Some respondents commented generally on the impact of the pandemic on learners.

One respondent said that students from lower socio-economic groups had also been affected by the pandemic, either because of limited access to digital technology or because of limited parental support or other care giving responsibilities. It was suggested that this could be mitigated by allowing a combination of an assessment grade and TAG based on portfolio work. They also highlighted the need to take account of learners' mental health.

Another respondent also commented on the impact of differential lost learning caused by lockdown on different groups of learners, and said that the opportunity for TAGs for students who cannot safely take VTQ exams this summer would help mitigate this.

One respondent said that students taking practical or hands-on qualifications should not be expected to sit exams.

Two respondents commented specifically on the equalities impacts related to the availability of autumn assessment opportunities. Both commented on the need for further learning to take place before students sit assessments in the autumn to enable them to have the best possible opportunity to receive an improved result. They commented that this may not always be possible (or may be in conflict with VCR8.3).

It was also noted that by the time students had received results from any autumn assessment opportunities, they would have already been required to postpone their progression to the next opportunity/ next academic year.

One respondent said that the students most likely to benefit from an autumn assessment would be those more able to access private learning support in the summer and autumn, or those who can afford to wait for a further assessment opportunity before progressing to the next stage. It is likely that students from lower socio-economic backgrounds would be most likely to be disadvantaged as a result of being unable to benefit from autumn assessment opportunities.

One respondent provided a view that a greater percentage of college students taking Functional Skills qualifications have a declared special educational need in comparison with those taking GCSEs. As such, they anticipated larger numbers than usual needing to take FSQ and ESOL Skills for Life assessments in September 2021 and commented on the need to be assured that these opportunities would be available.

Some respondents commented generally on the impact of the pandemic on learners.

One respondent said that students from lower socio-economic groups had also been affected by the pandemic, either because of limited access to digital technology or because of limited parental support or other care giving responsibilities. It was suggested that this could be mitigated by allowing a combination of an assessment grade and TAG based on portfolio work. They also highlighted the need to take account of learners' mental health.

Another respondent also commented on the impact of differential lost learning caused by lockdown on different groups of learners, and said that the opportunity for TAGs for students who cannot safely take VTQ exams this summer would help mitigate this.

One respondent said that students taking practical or hands-on qualifications should not be expected to sit exams.

One respondent said that there would be no additional equalities impacts, providing that the exam series were able to take place in January, as is normally the case.

One respondent did not directly comment on equality impacts arising from the proposed condition and instead commented on the need for flexible timetabling of autumn assessment opportunities, but also said that awarding organisations may find that there is a low level of demand whilst centres will be busy with their new intake of students.

Our decisions

Having considered this feedback, we do not consider that respondents have identified any additional equalities impacts which would require us to change our approach to autumn assessment opportunities. We have already noted the

differential impact of the pandemic on different groups of learners. Condition VCR8 provides flexibility for awarding organisations to determine their own approach to autumn assessments, so they will be able to consider such factors when deciding their approach, alongside their wider equalities' obligations.

Regulatory impact assessment

In our consultation we recognised that some of our proposals may have a regulatory impact. Where awarding organisations already offer autumn assessment opportunities, the additional regulatory impact of our proposed Condition is likely to be minimal.

It is possible, however, that for those awarding organisations who don't normally offer autumn assessment opportunities, and who choose to do so, the regulatory impact could be greater. Additionally, they could come under greater pressure from centres to offer such opportunities. These potential impacts could include the cost of designing, developing, delivering and marking additional assessments.

The timing of the series may also create an impact if staff and contractors usually involved in such activities are involved in other activities at this time, such as teaching. In addition, there could be an impact on assessments where large or lengthy practical assessments and portfolios are required.

We said that the approach we have taken in draft Condition VCR8 balances the need to consider the impact on and manageability for awarding organisations and centres with the need for fairness for learners who wish to improve upon their result when it is based on a TAG.

Our approach is flexible and allows awarding organisations to consider a range of factors when considering their approach. We considered that overall, while there will be an additional regulatory impact on some awarding organisations, this would be proportionate to meeting the policy intention of ensuring that learners taking vocational and technical qualifications are provided with the same opportunity as GCSEs, AS and A level learners to sit an exam if they wished to improve on their Teacher Assessed Grade.

We asked

Question 3:

Are there any other regulatory impacts, costs or benefits associated with the implementation of our proposals that have not already been identified?

Responses received

Nineteen out of the 22 respondents to the consultation answered this question.

Twelve respondents said that there were no other regulatory impacts, costs or benefits. Seven respondents said that there were additional impacts, costs and benefits.

Nine respondents provided comments. Of these, 5 respondents were responding on behalf of awarding organisations and 3 respondents were from representative or interest groups. The other respondent was replying in a personal capacity.

Some respondents commented on the regulatory burden on awarding organisations of offering autumn assessment opportunities when they did not normally do so.

They commented on the cost of producing (or repurposing) assessments for an autumn assessment series for a low number of entries and on the resource implications of doing so the same time as completing summer 2021 awarding.

Another respondent commented on the operational impact on awarding organisations of planning and preparing for the autumn assessment series at a time when they would already be busy with business-as-usual activities and working towards the implementation of their Centre Assessment Standards Scrutiny arrangements strategy. One respondent also commented on the cost for awarding organisations of marking the assessment papers for an autumn assessment series.

One respondent was also concerned that our proposed regulatory approach may leave them open to challenge if no autumn assessment opportunity was provided which may have an impact on individual learners. They said that the modular nature of many VTQs would mean that even where no autumn opportunity was timetabled, students would be likely to have another opportunity very early in the spring term.

Another respondent questioned the value of offering autumn assessment opportunities if students were not properly prepared, particularly in the context of differential learning loss. Reflecting on the experience of last year, they said that entries for the autumn assessment opportunities had been low and that achievement rates had also been low.

One respondent suggested that there may be a case for a regional or national approach to an autumn assessment series where individual awarding organisations are unable to make provision for a small number of entries.

Two respondents commented that the regulatory impact of providing autumn assessment opportunities would be greater than last year. This was because

awarding organisations would be planning and implementing any autumn assessment opportunities at the same time as processing TAGs. Awarding organisations would also be considering appeals in what may be at higher than usual volumes and as part of 2 stage process looking at both administrative or procedural error as well as unreasonable exercise of academic judgement.

Several respondents also commented on the impact on centres of running additional autumn assessment opportunities and on the need for awarding organisations to take this into account. One respondent said that there may also be additional costs for centres.

We received comments from 2 respondents who said that they had not identified any additional impacts, costs or benefits. One said that they supported proposed Condition VCR8 and welcomed the flexibility it would give awarding organisations in working out for which VTQs an autumn series is necessary and practical.

The other referred to specific qualifications it offers, setting out that as long as there was not an expectation it should provide an exam series for these qualifications before January, the regulatory impact would be the same as in previous years.

We received one comment not directly relevant to this question which said that students should not have to sit exams for qualifications that were practical or 'hands on'.

Our decisions

Having considered this feedback, we do not consider that respondents have identified any additional regulatory impacts, costs or benefits which would require us to change our approach to autumn assessment opportunities.

We note the potential for higher volumes of appeals in the summer and the demands that this might place on awarding organisations. However, as noted earlier, the approach we have taken in Condition VCR8 balances the need to consider the impact on and manageability for awarding organisations and centres, with the need for fairness for learners who wish to improve upon their result when it is based on a TAG. Awarding organisations can therefore take this into account when deciding on their approach to autumn assessment opportunities.

We have confirmed within the drafting of Condition VCR8 that assessments offered up to the end of January 2022 fall within this provision.

Annex A: List of organisational respondents

When completing the consultation questionnaire, respondents were asked to indicate whether they were responding as an individual or on behalf of an organisation.

These are the organisations that submitted a non-confidential response:

AQA

ASCL

Association of Colleges

City & Guilds

EAL

Federation of Awarding Bodies

ICM

Incorporated Society of Musicians

NCFE

OCR

Pearson Education

Training Qualifications UK

WJEC-CBAC

Annex B - Draft Condition VCR8

Assessment opportunity in Autumn 2021

VCR8.1

In respect of the assessments to be taken for a VTQ which it makes available, an awarding organisation must ensure that –

- (a) where it normally provides an opportunity between September and January of an academic year for Learners to take those assessments, it takes all reasonable steps to provide that opportunity in 2021 to each Learner –
 - i. to whom it would normally provide that opportunity
 - ii. who was issued with a result under the VCR Conditions, and
 - iii. who was or is registered to take an assessment, between 1 August 2020 and 31 August 2021, that would have led to a result being issued, but was not issued with a result, and

- (b) where it does not normally provide an opportunity between September and January of an academic year for Learners to complete those assessments, it provides such an opportunity in 2021 to those Learners set out in Condition VCR8.1(a) where it reasonably considers that sufficient demand for that opportunity exists.

VCR8.2

The requirement in Condition VCR8.1(b) does not apply where an awarding organisation reasonably considers that providing that opportunity would be –

- (a) impracticable, or
- (b) would create a disproportionate burden on the awarding organisation or Centres.

VCR8.3

An awarding organisation must seek to ensure that its approach to an assessment provided under Condition VCR8.1 –

- (a) minimises burdens as far as possible, and
- (b) is as deliverable as possible, including by Centres and Teachers.

VCR8.4

An awarding organisation must comply with any requirements specified to it by Ofqual in relation to the provision of assessment opportunities for VTQs.

VCR8.5

In respect of each assessment it delivers under Conditions VCR8.1 and VCR8.3 –

- (a) an awarding organisation must treat the qualification to which that assessment relates as a Category A Qualification for the purposes of compliance with Conditions VCR2 and VCR4 to VCR6, and
- (b) Conditions VCR3 and VCR7 do not apply.



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