

SL(6)783 – The Higher Education (Qualifying Courses and Qualifying Persons) (Wales) Regulations 2026

Background and Purpose

These Regulations specify qualifying courses and qualifying persons for the purposes of section 32 of the Tertiary Education and Research (Wales) Act 2022 (“the 2022 Act”).

A qualifying person undertaking a qualifying course of higher education may not be charged fees that exceed the maximum permitted by the Higher Education (Fee Limits) (Wales) Regulations 2026. Regulation 2 of those Regulations specifies a maximum fee of £9,790 per academic year. Lower fees are specified for certain courses that involve a shortened period of full time study in an academic year, for example a sandwich course.

Regulation 3 specifies the criteria a course must meet to be a qualifying course. Regulation 4 and Schedule 1 together list persons who are a qualifying person.

Procedure

Senedd annulment procedure.

These Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 8 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 3, there is a difference between the English and Welsh text. The English text of regulation 3(2), in Condition 1, in paragraph (1)(e), says “a course for the Diploma of Higher Education”. The meaning given by the Welsh text of paragraph (1)(e) is “a course for the Higher National Diploma or Higher National Certificate of the Business and Technician Education Council, or the Diploma in Management Studies”.

2. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.



Regulation 3(1) provides that a qualifying course is one that satisfies conditions set out in regulation 3(2) and does not not fall within exceptions set out in regulation 3(3). Exception 1 in regulation 3(3) is that the course is a part-time course however that term is not defined and the Welsh Government are asked to clarify what is considered a part-time course for this purpose.

3. Standing Order 21.2(v) - that for any particular reason its form or meaning needs further explanation.

Regulation 4(1) provides that a qualifying person is one that satisfies conditions set out in regulation 4(2) and does not not fall within exceptions set out in regulation 4(3). Exception 3 in paragraph (a) refers to a person falling within paragraph 16 and in paragraph (b) refers to a person falling within paragraph 19 or 20. Exception 5 refers to a person falling within paragraph 21. Do these paragraph numbers refer to paragraphs in the Schedule to these Regulations?

4. Standing Order 21.2(i) - that there appears to be doubt as to whether it is intra vires

Section 32(9) of the 2022 Act provides that qualifying person is a person who is not an international student and who falls within any class of persons *specified in regulations made by the Welsh Ministers*. Regulation 4(1) provides that a qualifying person is a person that satisfies conditions set out in regulation 4(2) and does not not fall within either of the exceptions set out in regulation 4(3). Exception 4 in regulation 4(3) provides that if a person already holds a higher education qualification and a qualifying course being undertaken by that person leads to a qualification which is equivalent or lower, they are not a qualifying person. Regulation 4(6) provides that the question of whether a qualification is equivalent or lower will be *determined by the Welsh Ministers* which suggests an administrative decision making process, albeit one that will apply criteria which is set out in regulation 4(5). The enabling power in section 32(9) requires the Welsh Ministers set out who is a qualifying person *in regulations* and providing for any administrative determination is outside the scope of that power. The Welsh Ministers are asked to clarify how the determination process provided for in regulation 4(6) will operate.

5. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 3, there is a difference between the English and Welsh text. In the English text of regulation 4(6) in the definition of “equivalent or lower qualification” the words that appear in italics and brackets immediately after the definition are “(“cymhwyster cyfwerth neu is”)”. However the definition in the Welsh text is “(“cymhyster cyfatebol neu is”)”.

6. Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In paragraph 1(1) of the Schedule, in the definition of “person with protected rights” there is a difference in the paragraph numbering between the English and Welsh text. The English text of the definition sets out a paragraph (1), sub-paragraph (a) and paragraph (i) to (v). The Welsh



text provides for paragraph (1), sub-paragraph (a), paragraphs (i) to (iv) followed by a sub-paragraph (b). Paragraph (1)(a)(v) of the English text corresponds to paragraph (1)(b) of the Welsh text.

7. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 23 of the Schedule makes provision for persons resident in Gibraltar. Paragraph 23(2) provides that paragraph 23(1)(c) does not apply to a family member of a person who is an EU national to whom paragraph 23(2)(b) applies. However, the criteria set out in paragraph 23(1)(c) appears to the same as the criteria set out in paragraph 23(2)(b) and the Welsh Government are asked to clarify how the scope of the alternative provision set out in paragraph 23(2)(b) differs.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

11 March 2026

