



Llywodraeth Cymru
Welsh Government

Qualifications Wales Bill

Policy intent for regulations
to be made under the Bill

December 2014

POLICY INTENTION FOR PROPOSED REGULATIONS UNDER THE QUALIFICATIONS WALES BILL

This document provides an indication of the current policy direction for regulations that the Welsh Ministers intend to make using the powers in the Qualifications Wales Bill.

The Qualifications Wales Bill provides for the establishment of a new independent body called 'Qualifications Wales' to be responsible for the regulation of awarding bodies and qualifications in Wales.

The new regulatory framework is set out on the face of the Bill. In respect of the order making power for commencement, section 55 of the Bill provides that certain provisions will come into force on the day on which the Act receives Royal Assent. The other provisions of the Bill will be commenced, by way of order, at such times as the Welsh Ministers consider appropriate or expedient.

The Bill provides the Welsh Ministers with three regulation making powers. The Welsh Government considers these regulation making powers to be essential in order to:

- (a) prescribe the means of determining the value of monetary penalties that Qualifications Wales is able to charge;
- (b) enable Welsh Ministers to propose orders specifying minimum requirements of certain qualifications in relation to curriculum matters; and
- (c) to enable the proposal of any necessary consequential and/or transitional (etc.) provisions.

In each case, regulations are the proposed route in order, also, to provide for future flexibility with regard to matters which may change from time to time.

This document represents a compilation of statements of policy intent in relation to the regulations which may be made under the Qualifications Wales Bill, if enacted.

This document should be read in conjunction with:

The Qualifications Wales Bill

<http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=11777>

The Explanatory Memorandum for the Qualifications Wales Bill

<http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=11777>

The Consultation and summary of responses - *Our qualifications: our future*

<http://wales.gov.uk/consultations/education/our-qualifications-our-future/?status=closed&lang=en>

REGULATIONS RELATING TO:	Power to specify minimum requirements
BILL PART:	Part 4 – Approval of Qualifications
SECTION	21
DESCRIPTION OF THE POWER/REGULATION	
<p>This section gives the Welsh Ministers the power to make regulations that set out minimum requirements for a form of qualification that may be approved by Qualifications Wales. The requirements must relate to the knowledge, skills or understanding (essentially the ‘subject content’) that are required to be addressed by that qualification.</p> <p>The Bill sets out a number of conditions which must be met before the Welsh Ministers may make these regulations. These conditions ensure that the regulations are only introduced where the Welsh Ministers are satisfied that it is necessary to specify the requirement with the purpose of ensuring that learners follow an appropriate curriculum for the reasonable needs of those persons. This need not necessarily be any published ‘national curriculum’ but the requirements set out in regulations must relate to knowledge, skills and understanding that the learner must demonstrate for the purpose of determining whether a person is to be awarded the qualification. Before making regulations specifying minimum requirements, the Welsh Ministers must consult Qualifications Wales and others, as appropriate, giving reasons for proposing to specify the minimum requirements.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>The Welsh Ministers retain responsibility for the curriculum and for policies in relation to skills for employment. It is important that qualifications for learners are designed to assess the learning (the knowledge, skills and understanding) that they are required to be taught – or that is deemed essential for them to learn. In the normal course of events it is expected that Qualifications Wales will ensure that the content requirements of qualifications are appropriate in relation to these needs. However, this regulation-making power will exist as a fall-back position in order that the Welsh Ministers may insist that specific elements of content are included that are appropriate for the reasonable needs of learners.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The effect of introducing minimum requirements is that Qualifications Wales may not approve a form of that qualification unless it is satisfied that the qualification complies with the requirements set out in regulations. The draft regulations must follow the affirmative procedure and be approved by the National Assembly for Wales before they can be made and come into force.</p>	
Other relevant information (work to date, policy documents or ministerial statements)	
<p>Similar powers exist for the Secretary of State under sections 141-144 of the Apprenticeships, Skills, Children and Learning Act 2009.</p>	

REGULATIONS RELATING TO:	Power to impose monetary penalties
BILL PART:	Part 6 – Enforcement powers of Qualifications Wales
SECTION:	33(3)
DESCRIPTION OF THE POWER/REGULATION	
<p>Section 33 enables Qualification Wales to impose a monetary penalty on an awarding body where it has failed to comply with a condition of recognition or approval, and sets out the requirements in relation to imposing such a penalty, including requirements on giving notice and having regard to any representations.</p> <p>It also provides in subsection (3) for Welsh Ministers to make regulations on how Qualifications Wales must determine the amount to be paid. Regulations made by Welsh Ministers will set out requirements as to how the amount is to be calculated. These regulations are subject to the affirmative procedure.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>Qualifications Wales may, if it considers that a body has failed to comply with a condition of its recognition or of any qualification approval, impose a penalty. The regulation power requires the Welsh Ministers to set limits on the amount of the monetary penalty.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The regulations are intended to limit the range of the penalty that Qualifications Wales may impose on awarding bodies in Wales.</p> <p>The powers that are currently in place enable Welsh Ministers to impose a monetary penalty of up to 10% of the total turnover of the awarding body in question: this limit was set in order to match the cap in place with regard to Ofqual’s powers in England. However, officials are of the view that the figure of 10% of total turnover could be considered to be excessive – both for smaller and larger organisations – particularly given the small proportion of their business that may be conducted in Wales in many cases. Therefore, consideration is being given to a methodology for reaching a more proportionate approach to calculating a monetary penalty figure, which is to be set out in regulations.</p>	
Other relevant information (work to date, policy documents or ministerial statements)	
<p>The current Fining Policy of Welsh Ministers in relation to imposing monetary penalties on recognised awarding bodies can be viewed online, at: http://wales.gov.uk/topics/educationandskills/qualificationsinwales/qualificationregulation/regpublication/regulations/?lang=en</p> <p>The current limit of 10% of turnover is provided for in section 32AB of the Education Act 1997 and the Recognised Persons (Monetary Penalties) (Determination of Turnover) (Wales) Order 2012 (S.I. 2012/1248) sets out how turnover is calculated for these purposes.</p>	

REGULATIONS RELATING TO:	Power to make consequential and transitional provision etc.
BILL PART:	Part 8 – General
SECTION:	54
DESCRIPTION OF THE POWER/REGULATION	
<p>This section empowers the Welsh Ministers to make regulations to provide for any supplemental, consequential, or incidental provision, or any transitional, transitory or saving provisions to give full effect to a provision of the Bill, or for the purposes of, or in consequence of, a provision of the Bill. Such regulations may amend, repeal or revoke any enactment, including secondary legislation and future enactments. Where they do amend primary legislation, the regulations will need to follow the affirmative procedure in the Assembly.</p>	
WHY THE REGULATION POWER IS REQUIRED	
<p>Schedule 4 makes consequential amendments to existing primary legislation. Further provisions may be required to give effect to the Bill or in consequence of the Bill. Similarly, in making such amendments, there may be a need for transitional, transitory or saving provisions in order to maintain continuity of provision or to address specific matters which may arise in transfer.</p>	
POLICY INTENTION OF THE REGULATIONS	
<p>The intention is to enable an effective transition from the old regulatory regime to the new and to ensure that consequential amendments to legislation can be made.</p>	

ORDER RELATING TO:	Power to make consequential and transitional provision etc. in connection with commencing a Bill provision
BILL PART:	Part 8 – General
SECTION:	55
DESCRIPTION OF THE POWER/ORDER	
<p>This section empowers the Welsh Ministers to make a commencement order which also provides for any transitional, transitory or saving provisions to be made in connection with the coming into force of a provision of the Bill.</p>	
WHY THE ORDER POWER IS REQUIRED	
<p>In connection with commencing provisions of the Bill, there may be a need for transitional, transitory or saving provisions in order to maintain continuity of provision or to address specific matters which may arise, for example in the transfer from one regulatory regime to another.</p>	
POLICY INTENTION OF THE ORDER	
<p>The intention is to enable an effective transition from the old regulatory regime to the new and to ensure that appropriate transitional, transitory or saving provision can be made.</p>	