

ACCOMPANYING DOCUMENTS  
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# Qualifications Wales Bill

[AS PASSED]

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# Qualifications Wales Bill

[AS PASSED]

An Act of the National Assembly for Wales to establish a new body to be known as Qualifications Wales; providing for Qualifications Wales to be able to recognise bodies responsible for awarding certain qualifications in Wales and to approve certain qualifications awarded in Wales and to perform certain other functions; and for connected purposes.

**Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### OVERVIEW

#### 1 Overview

- (1) This section is an overview of the main provisions of the Act.
- (2) Part 2—
  - (a) establishes Qualifications Wales and (at Schedule 1) makes provision about its membership and governance arrangements,
  - (b) sets out the principal aims of Qualifications Wales, and
  - (c) requires Qualifications Wales, in exercising its functions, to act in a way that it considers appropriate for the purpose of achieving those aims.
- (3) Part 3 makes provision about the recognition by Qualifications Wales of bodies that award qualifications in Wales.
- (4) Part 4 makes provision about priority qualifications and the approval by Qualifications Wales of qualifications for award in Wales. It—
  - (a) requires Qualifications Wales and the Welsh Ministers to prepare a list of qualifications that are to be a priority for Qualifications Wales,
  - (b) enables Qualifications Wales in certain circumstances to determine that the number of forms of those qualifications approved by it should be restricted (either to one or more than one),
  - (c) enables Qualifications Wales to enter into arrangements with a body for the development of a new form of qualification to be awarded in Wales, where it has made a determination as described in paragraph (b) in respect of the qualification concerned, and
  - (d) enables Qualifications Wales to consider approving a qualification for award in Wales that is not included on the list referred to in paragraph (a).

- (5) Part 5 enables Qualifications Wales to designate a qualification for the purpose of enabling a course leading to it to be funded by the Welsh Ministers or a local authority in Wales, or provided by or on behalf of a maintained school in Wales.
- (6) Part 6—
  - (a) provides that a course of education or training may be funded by the Welsh Ministers or a local authority in Wales, or provided by or on behalf of a maintained school in Wales, only if the form of the qualification to which it leads has been approved or designated by Qualifications Wales, and
  - (b) makes provision restricting the effect of conditions imposed by Ofqual, in respect of the award in Wales of a form of a qualification that has been approved by Qualifications Wales; and restricting the effect of conditions of recognition imposed by Qualifications Wales so that they do not apply in respect of the award of qualifications outside Wales.
- (7) Part 7 makes provision about steps that may be taken by Qualifications Wales if it considers that a body awarding qualifications in Wales has failed to comply with a condition to which its recognition, or the approval of a qualification awarded by it, is subject.
- (8) Part 8 makes provision about other functions of Qualifications Wales, including—
  - (a) the power to provide consultancy and other services on a commercial basis,
  - (b) the duty to prepare a policy statement,
  - (c) how Qualifications Wales is to deal with complaints,
  - (d) fees that may be charged by Qualifications Wales, and
  - (e) the duty to have regard to certain principles in performing regulatory activities.
- (9) Part 9 makes general provision, including setting out an index of defined terms used in the Act.
- (10) In Part 9, section 56 sets out the meaning of the term “qualification” as used in the Act.

## PART 2

### ESTABLISHMENT AND PRINCIPAL AIMS OF QUALIFICATIONS WALES

#### **2 Establishment of Qualifications Wales**

- (1) Qualifications Wales is established as a body corporate.
- (2) Schedule 1 contains further provision about Qualifications Wales.
- (3) Schedule 2 makes provision about transfers of staff and property to Qualifications Wales.

### 3 Principal aims of Qualifications Wales

- (1) In exercising its functions, Qualifications Wales must act in a way that it considers appropriate for the purpose of achieving the following principal aims –
  - (a) ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales;
  - (b) promoting public confidence in qualifications and in the Welsh qualification system.
- (2) In considering what is appropriate for the purpose of achieving its principal aims, the matters to which Qualifications Wales is to have regard include (among other things) –
  - (a) the desirability of promoting sustainable growth in the Welsh economy;
  - (b) the desirability of promoting and facilitating the use of the Welsh language, including through the availability of assessment arrangements that provide for assessment through the medium of the Welsh language, and of qualifications that otherwise promote or facilitate the use of the Welsh language;
  - (c) the range and nature of qualifications available, and of their assessment arrangements;
  - (d) the reasonable requirements of employers, higher education institutions and the professions regarding education and training (including as to required standards of practical competence);
  - (e) whether the knowledge, skills and understanding required to be demonstrated for the purpose of determining whether a person is to be awarded a qualification reflect current knowledge and best practice;
  - (f) whether qualifications indicate a consistent level of attainment with that indicated by whatever Qualifications Wales considers to be comparable qualifications, whether awarded in Europe or elsewhere;
  - (g) whether qualifications are provided efficiently and so as to secure value for money;
  - (h) the respective roles played by, and responsibilities of, each of the following persons in respect of the Welsh qualification system (including by reference to co-operation between those persons, and their effectiveness in performing their roles) –
    - (i) awarding bodies, learning providers, Qualifications Wales and the Welsh Ministers;
    - (ii) any other persons exercising functions that Qualifications Wales considers relevant for the purpose of the Welsh qualification system.
- (3) References in this Act to the Welsh qualification system are to the system, taken as a whole, by which qualifications are awarded to persons assessed wholly or mainly in Wales for this purpose.

## PART 3

### RECOGNITION OF AWARDING BODIES

#### *General*

#### **4 Recognition of awarding bodies**

- (1) Qualifications Wales may recognise an awarding body under the provisions of this Part.
- (2) Part 4 (priority qualifications and approval of qualifications) makes provision for a body that is recognised under this Part in respect of the award of a qualification to apply to Qualifications Wales for approval of a form of that qualification.
- (3) Part 5 (designation of other qualifications) makes provision for a body that is recognised under this Part in respect of the award of a qualification to apply to Qualifications Wales for a form of that qualification to be designated under section 29.

#### *Recognition criteria*

#### **5 Duty to set general recognition criteria**

- (1) Qualifications Wales must set and publish criteria for recognition (“general recognition criteria”) to be applied by it for the purposes of section 8 (general recognition of an awarding body).
- (2) The general recognition criteria may make different provision for different descriptions of awarding body.

#### **6 Power to set qualification specific recognition criteria**

- (1) Qualifications Wales may set and publish criteria for recognition (“qualification specific recognition criteria”) to be applied by it for the purposes of section 9 (qualification specific recognition of an awarding body).
- (2) The criteria may make different provision for –
  - (a) different descriptions of awarding body;
  - (b) different qualifications or different descriptions of qualification.

#### **7 Revision of general and qualification specific recognition criteria**

- (1) Qualifications Wales may revise –
  - (a) the general recognition criteria;
  - (b) the qualification specific recognition criteria.
- (2) If Qualifications Wales revises the criteria, it must –
  - (a) publish the criteria as revised, and
  - (b) specify when the revisions are to come into effect.



- (3) The date specified under subsection (2)(b) must not precede the date on which the revised criteria are published.

*Recognition of awarding bodies*

**8 General recognition of an awarding body**

- (1) An awarding body may apply to Qualifications Wales for general recognition as a body awarding qualifications in Wales.
- (2) The awarding body may specify in its application a qualification or description of qualification in respect of the award of which it does not wish to be recognised.
- (3) If the body meets the general recognition criteria most recently published under section 5, Qualifications Wales must recognise the awarding body.
- (4) If the body does not meet all of those criteria Qualifications Wales may nevertheless, if it thinks it appropriate to do so, recognise the body.
- (5) In determining whether it is appropriate to recognise a body under subsection (4), Qualifications Wales must have regard to—
  - (a) whether the body substantially meets the general recognition criteria,
  - (b) the effect of its failure to meet those criteria in full, and
  - (c) the likelihood of its subsequently meeting the criteria in full.
- (6) Where a qualification or description of qualification is specified by an awarding body in accordance with subsection (2), references to the general recognition criteria in subsections (3) to (5) are not to be treated as including those criteria to the extent that they apply in respect of the award of the qualification or description of qualification specified.
- (7) Where an awarding body is recognised under this section other than in respect of the award of a qualification or description of qualification specified by it in accordance with subsection (2), or a qualification or description of qualification in respect of the award of which recognition under this section has been surrendered or withdrawn, it may apply to Qualifications Wales to be recognised in respect of the award of the qualification or description of qualification.
- (8) Subsections (2) to (6) apply for the purposes of an application under subsection (7) as if it were an application under subsection (1).
- (9) The effect of recognition under this section is that the body is recognised in respect of the award in Wales of qualifications other than—
  - (a) those qualifications in respect of which qualification specific recognition criteria apply,
  - (b) any qualification or description of qualification specified in accordance with subsection (2), and
  - (c) any qualification or description of qualification in respect of the award of which recognition under this section has ceased to have effect by virtue of being surrendered or withdrawn.

## **9 Qualification specific recognition of an awarding body**

- (1) An awarding body may apply to Qualifications Wales for recognition in respect of the award in Wales of a qualification or description of qualification in relation to which qualification specific recognition criteria are set under section 6.
- (2) If the body meets both—
  - (a) the general recognition criteria most recently published under section 5, and
  - (b) the qualification specific recognition criteria applicable in respect of the qualification and the body concerned,Qualifications Wales must recognise the body in respect of the award in Wales of the qualification or description of qualification concerned.
- (3) If the body does not meet all of those criteria Qualifications Wales may nevertheless, if it thinks it appropriate to do so, recognise the body in respect of the award in Wales of the qualification or description of qualification concerned.
- (4) In determining whether it is appropriate to recognise a body under subsection (3), Qualifications Wales must have regard to—
  - (a) whether the body substantially meets the criteria referred to in subsection (2),
  - (b) the effect of its failure to meet those criteria in full, and
  - (c) the likelihood of its subsequently meeting those criteria in full.
- (5) The effect of recognition under this section is that, provided the body is recognised under section 8, it is recognised also in respect of the award in Wales of the qualification or description of qualification specified in the recognition under this section.

## **10 Rules about applications for recognition**

- (1) Qualifications Wales must make rules about the making of applications to it under this Part.
- (2) The rules may make different provision for different purposes.
- (3) They may make provision about—
  - (a) the form and content of applications;
  - (b) the way in which applications are to be made (including as to any fee payable in respect of an application).
- (4) The rules made under this section must be published by Qualifications Wales.

## **11 Further provision about recognition**

- (1) If Qualifications Wales refuses an application for recognition made under this Part, it must provide the awarding body concerned with a statement setting out its reasons for refusal.

- (2) Schedule 3 makes further provision about recognition under this Part, including about—
  - (a) the duration of recognition;
  - (b) conditions to which recognition is to be subject;
  - (c) the surrender and withdrawal of recognition.

## **12 Recognition: interpretation**

- (1) For the purposes of this Act, a body is recognised in respect of the award of a qualification—
  - (a) if no criteria are set under section 6 in respect of the qualification, if the body is recognised under section 8 (provided that the qualification is not one that is specified, or of a description specified, by the body under section 8(2) and is not one in respect of which recognition of the body has ceased to have effect as set out in paragraph 1(2) of Schedule 3);
  - (b) if criteria are set under section 6 in respect of the qualification, or qualifications of that description, if the body is both—
    - (i) recognised under section 8, and
    - (ii) recognised under section 9 in respect of the award of the qualification or description of qualification concerned.
- (2) In this Act—
  - (a) references to recognition are to recognition under this Part;
  - (b) references to a recognised body are to an awarding body recognised under this Part.
- (3) For the purposes of this Part, the award of a qualification in Wales is its award to persons assessed in respect of the qualification wholly or mainly in Wales.

## **PART 4**

### **PRIORITY QUALIFICATIONS AND APPROVAL OF QUALIFICATIONS**

#### *Priority qualifications*

## **13 Duty to prepare list of priority qualifications**

- (1) Qualifications Wales and the Welsh Ministers must jointly prepare a list of qualifications, in respect of each of which the condition in subsection (2) is met.
- (2) The condition is that Qualifications Wales and the Welsh Ministers are satisfied that ensuring and maintaining public confidence in the qualification is a priority for Qualifications Wales, by reason of the significance of the qualification having regard to the needs of learners and employers in Wales.

- (3) The list may make provision by reference to qualifications, or descriptions of qualification.
- (4) The list must be published, in whatever way Qualifications Wales and the Welsh Ministers agree.
- (5) Qualifications Wales and the Welsh Ministers may jointly review the list and, if they consider it appropriate, revise it.
- (6) In this Act—
  - (a) references to a priority qualification are to a qualification included on the list, or to a qualification that is of a description included on the list;
  - (b) references to a restricted priority qualification are to a priority qualification in respect of which a determination under section 14 has effect;
  - (c) references to a unrestricted priority qualification are to a priority qualification in respect of which no determination under section 14 has effect.

#### **14 Restricted priority qualifications**

- (1) Qualifications Wales may make a determination under this section in respect of a priority qualification if the condition in subsection (3) is met.
- (2) A determination under this section is a determination specifying the maximum number (being either one or more) of forms of the qualification that are to be capable of being approved under this Part at any one time.
- (3) The condition is that Qualifications Wales is satisfied that, having regard to the principal aims of Qualifications Wales, and to the objectives in subsection (4), it is desirable to restrict the number of forms of the qualification that are approved by Qualifications Wales under this Part to the maximum number that is specified in the determination.
- (4) The objectives are to—
  - (a) avoid inconsistency between different forms of the same qualification (whether by reference to the level of attainment indicated by different forms of the same qualification, or otherwise), and
  - (b) enable Qualifications Wales to exercise choice between different awarding bodies, in entering into arrangements under section 15, and between different forms of a qualification, in granting approval under section 17.
- (5) Qualifications Wales must publish a determination under this section.
- (6) Qualifications Wales must exercise its functions under sections 15 to 17 so as to secure that the number of forms of a restricted priority qualification approved by it under this Part does not exceed the maximum number specified in the determination under this section in respect of the qualification.
- (7) If Qualifications Wales proposes to make a determination under this section in respect of a qualification, it must before doing so—

- (a) notify each recognised body, and any other person that Qualifications Wales considers might reasonably be expected to have an interest in the proposed determination, of the proposal, and
  - (b) consider any representations made to it by those persons in respect of the proposal.
- (8) A determination under this section may be revoked or varied; and the preceding provisions of this section apply for the purposes of a variation of a determination as if it was the making of a determination.

## **15 Power to make arrangements for development of restricted priority qualification**

- (1) Qualifications Wales may enter into arrangements with an awarding body the effect of which is to provide for the body to develop a new form of a restricted priority qualification, with a view to the prospective approval of that form of the qualification under section 16.
- (2) The arrangements may make provision about, among other things –
  - (a) criteria to be met by the form of the qualification to be developed;
  - (b) payments to be made by Qualifications Wales in respect of its development.
- (3) Qualifications Wales must prepare a scheme making provision about the making of arrangements under this section.
- (4) Qualifications Wales must exercise its functions in accordance with the scheme.
- (5) The scheme must provide for a procedure that is open, fair and transparent.
- (6) Qualifications Wales may revise the scheme.
- (7) The scheme must be published by Qualifications Wales.

## **16 Approval of a restricted priority qualification developed in accordance with section 15 arrangements**

- (1) This section applies where a form of a restricted priority qualification has been developed by an awarding body in accordance with arrangements under section 15.
- (2) If the awarding body is recognised in respect of the award of the qualification concerned, it may make an application to Qualifications Wales for approval of the form of the qualification under this section.
- (3) Qualifications Wales must consider whether to approve the form of the qualification for award in Wales by the body concerned.
- (4) Qualifications Wales may if it considers it appropriate to do so approve the form of the qualification for award in Wales by the body concerned.
- (5) But this is subject to section 21 (power to specify minimum requirements).
- (6) For the purposes of this Part, the award of a form of a qualification in Wales is its award to persons assessed in respect of the qualification wholly or mainly in Wales.

**17 Approval of a restricted priority qualification in the absence of section 15 arrangements**

- (1) This section applies for the purpose of the approval by Qualifications Wales of a form of a qualification that is a restricted priority qualification, but in respect of which Qualifications Wales does not propose to enter into arrangements under section 15.
- (2) Qualifications Wales may, on an application from a body that is recognised in respect of the award of the qualification concerned, if it considers it appropriate to do so approve a form of the qualification for award in Wales by the body concerned.
- (3) Qualifications Wales must prepare a scheme making provision about—
  - (a) the making of applications for approval under subsection (2);
  - (b) the consideration by Qualifications Wales of those applications.
- (4) Qualifications Wales must exercise its functions in accordance with the scheme.
- (5) The scheme must provide for a procedure that is open, fair and transparent.
- (6) Qualifications Wales may revise the scheme.
- (7) The scheme must be published by Qualifications Wales.
- (8) Subsection (2) is subject to section 21 (power to specify minimum requirements).

**18 Approval of unrestricted priority qualifications**

- (1) This section applies where an application is made to Qualifications Wales for approval of a form of an unrestricted priority qualification by an awarding body that is recognised in respect of the award of the qualification concerned.
- (2) Qualifications Wales must consider whether to approve the form of the qualification for award in Wales by the body concerned.
- (3) Qualifications Wales may if it considers it appropriate to do so approve the form of the qualification for award in Wales by the body concerned.
- (4) But this is subject to section 21 (power to specify minimum requirements).

*Other qualifications***19 Approval of qualifications that are not priority qualifications**

- (1) This section applies where—
  - (a) an application is made to Qualifications Wales, for approval of a form of a qualification, by an awarding body that is recognised in respect of the award of the qualification concerned, and
  - (b) Qualifications Wales is satisfied that the qualification concerned is not a priority qualification.
- (2) Qualifications Wales may at its discretion determine whether to consider the form of the qualification for approval.
- (3) If Qualifications Wales does consider the form of the qualification for approval it may approve the form of the qualification for award in Wales by the body concerned, if it considers it appropriate to do so.

- (4) But this is subject to section 21 (power to specify minimum requirements).
- (5) Qualifications Wales must prepare a scheme making provision about the making of determinations under subsection (2).
- (6) The scheme must, among other things, set out factors likely to be taken into account by Qualifications Wales in determining whether to consider a form of qualification for approval.
- (7) Qualifications Wales must exercise its functions in accordance with the scheme.
- (8) Qualifications Wales may revise the scheme.
- (9) The scheme must be published by Qualifications Wales.

*Approval criteria*

**20 Approval criteria**

- (1) Qualifications Wales must set and publish criteria to be applied by it in deciding whether to approve a form of a qualification under this Part.
- (2) The criteria may make different provision by reference to different qualifications or different descriptions of qualification.
- (3) Qualifications Wales may revise the criteria.
- (4) If Qualifications Wales revises the criteria, it must publish the criteria as revised.

*Power for Welsh Ministers to specify minimum requirements*

**21 Power to specify minimum requirements**

- (1) The Welsh Ministers may by regulations specify minimum requirements, in relation to a qualification, that are to be met by any form of that qualification approved under this Part.
- (2) The requirements must relate to the knowledge, skills or understanding required to be demonstrated for the purpose of determining whether a person is to be awarded the qualification.
- (3) But a requirement may be specified in relation to a qualification only if the Welsh Ministers are satisfied that it is necessary to specify that requirement in order to ensure that the curriculum pursued by persons taking a course leading to the qualification is appropriate for the reasonable needs of those persons.
- (4) Before making regulations under this section specifying minimum requirements, the Welsh Ministers must consult Qualifications Wales and such other persons (if any) as they consider appropriate, specifying—
  - (a) the proposed minimum requirements, and
  - (b) their reasons for proposing them.
- (5) Where requirements have been specified in relation to a qualification by regulations under this section, Qualifications Wales may not approve a form of that qualification under this Part unless satisfied that form of the qualification complies with those requirements.

*Supplementary provision relevant to all approvals***22 Conditions of approval**

- (1) Approval of a form of a qualification –
  - (a) must be subject to a condition within subsection (2), and
  - (b) is to be subject to any other conditions Qualifications Wales may impose either at the time of granting approval or subsequently.
- (2) A condition within this subsection is a condition requiring a form of a qualification that is to be awarded as an approved qualification to be identified by an approval number.
- (3) An approval number is a number (with or without letters or symbols) allocated to a qualification by Qualifications Wales.
- (4) A form of a qualification is awarded as an approved qualification only if it is awarded with its approval number in accordance with the condition mentioned within subsection (2).
- (5) The conditions that may be imposed by Qualifications Wales may make different provision, in respect of the award of the same qualification, for different purposes (including among other things by reference to the circumstances in which, or the persons or descriptions of persons to whom, a qualification is awarded).
- (6) If after approving a form of a qualification for award by a recognised body Qualifications Wales –
  - (a) imposes new conditions to which the approval is to be subject, or
  - (b) varies the conditions to which the approval is to be subject,it must give notice to the awarding body of the new (or varied) conditions.
- (7) The notice must –
  - (a) specify the date on which the new conditions (or the conditions as varied) will come into effect, and
  - (b) give reasons for the change.

**23 Duration of approval**

- (1) Approval under section 16 or 17 –
  - (a) has effect from whatever date is specified by Qualifications Wales, and
  - (b) is to be granted for a limited period specified by Qualifications Wales on granting approval.
- (2) Approval under section 18 or 19 –
  - (a) has effect from whatever date is specified by Qualifications Wales, and
  - (b) may be granted indefinitely or for a limited period specified by Qualifications Wales on granting approval.



**24 Rules about applications for approval**

- (1) Qualifications Wales must make rules about the making of applications to it under this Part.
- (2) The rules may make different provision for different purposes.
- (3) The rules may make provision about –
  - (a) the form and contents of applications;
  - (b) the way in which applications are to be made (including as to any fee payable in respect of an application).
- (4) The rules made under this section must be published by Qualifications Wales.

*Surrender and withdrawal of approval***25 Surrender of approval**

- (1) An awarding body may give notice to Qualifications Wales that it wishes approval of a form of a qualification awarded by it to cease to have effect (a “surrender notice”).
- (2) A surrender notice must specify the date with the expiry of which the body wishes the approval to cease to have effect.
- (3) As soon as reasonably practicable after receipt of a surrender notice, Qualifications Wales must give notice to the awarding body (an “acknowledgement of surrender”) providing that the approval is to cease to have effect with the expiry of the date specified in the surrender notice or, if Qualifications Wales thinks appropriate, with the expiry of a different date.
- (4) If the acknowledgement of surrender specifies that the approval is to cease to have effect with the expiry of a different date from that specified in the surrender notice, the acknowledgement of surrender must give reasons for this.
- (5) The approval ceases to have effect with the expiry of the date specified in the acknowledgement of surrender.
- (6) In determining whether the approval is to cease to have effect with the expiry of the date specified in the surrender notice, or with the expiry of a different date, Qualifications Wales is to have regard to –
  - (a) the need to avoid prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain the form of the qualification concerned;
  - (b) the body’s wish that approval should cease to have effect with the expiry of the date specified in the surrender notice.

**26 Transitional provision in connection with surrender of approval**

- (1) This section applies for the purposes of an acknowledgement of surrender under section 25.
- (2) If Qualifications Wales considers it appropriate to do so for the purpose of avoiding prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain the form of the qualification concerned, it may make provision in the acknowledgement of surrender that is within subsection (3).

- (3) Provision within this subsection is provision to the effect that, from the expiry of the surrender date until the expiry of the extension date, the form of the qualification is to be treated, for purposes specified by Qualifications Wales in the acknowledgement of surrender, as being approved under this Part by Qualifications Wales for award by the body concerned.
- (4) If Qualifications Wales makes provision within subsection (3) –
  - (a) it must give reasons for this in the acknowledgement of surrender, and
  - (b) the form of the qualification is to be treated, from the expiry of the surrender date, for the purposes specified in the acknowledgement of surrender, and until the expiry of the extension date, as being approved under this Part for award by the body concerned.
- (5) In this section –

“extension date” (*“dyddiad estyn”*) means a date specified by Qualifications Wales in the acknowledgement of surrender for the purposes of this section;

“surrender date” (*“dyddiad ildio”*) means the date specified by Qualifications Wales in the acknowledgement of surrender as being the date from the expiry of which the approval is to cease to have effect.

## 27 Withdrawal of approval

- (1) Qualifications Wales may withdraw approval under this Part of a form of a qualification if it is satisfied that –
  - (a) a condition to which the approval is subject has not been complied with,
  - (b) the body by which the form of the qualification is awarded has ceased to be recognised in respect of the award of the qualification concerned, or
  - (c) in the case of an approval of a form of a qualification granted under section 18 or 19, the qualification concerned has become a restricted priority qualification.
- (2) Before withdrawing approval, Qualifications Wales must give the awarding body concerned notice of its intention to do so.
- (3) The notice must –
  - (a) explain why Qualifications Wales proposes to withdraw approval, and
  - (b) specify when Qualifications Wales proposes to decide whether to withdraw approval.
- (4) In deciding whether to withdraw approval, Qualifications Wales must have regard to any representations made by the awarding body.
- (5) If Qualifications Wales decides to withdraw approval, it must give notice to the awarding body of the decision, specifying the date with the expiry of which withdrawal of approval will take effect (the “withdrawal date”).
- (6) At any time before the withdrawal date, Qualifications Wales may, with the agreement of the awarding body concerned, give notice to the body varying the date on which withdrawal is to take effect.

- (7) Where notice under subsection (6) is given, the date specified in the notice as the withdrawal date is to be treated, as from the date on which the notice is given, as being the withdrawal date for the purposes of any further notice under that subsection.
- (8) In determining a date for the purposes of this section, Qualifications Wales is to have regard to the need to avoid prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain the form of the qualification.

## **28 Transitional provision in connection with withdrawal of approval**

- (1) This section applies for the purposes of notice under section 27(5).
- (2) If Qualifications Wales considers it appropriate to do so for the purpose of avoiding prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain the form of the qualification concerned, it may make provision in the notice that is within subsection (3).
- (3) Provision within this subsection is provision to the effect that, from the expiry of the withdrawal date until the expiry of the extension date, the form of the qualification is to be treated, for purposes specified by Qualifications Wales in the notice, as being approved under this Part by Qualifications Wales for award by the body concerned.
- (4) If Qualifications Wales makes provision within subsection (3) –
  - (a) it must give reasons for this in the notice, and
  - (b) the form of the qualification is to be treated, from the expiry of the withdrawal date, for the purposes specified in the notice, and until the expiry of the extension date, as being approved under this Part for award by the body concerned.
- (5) In this section –

“extension date” (*“dyddiad estyn”*) means a date specified by Qualifications Wales in the notice for the purposes of this section;

“withdrawal date” (*“dyddiad tynnu’n ôl”*) means the date specified by Qualifications Wales in the notice as being the date from the expiry of which withdrawal of approval is to take effect.

## **PART 5**

### **DESIGNATION OF OTHER QUALIFICATIONS**

## **29 Designation of other qualifications**

- (1) Qualifications Wales may, on application under subsection (2), designate a form of qualification under this section.
- (2) An application under this subsection is an application by a recognised body to Qualifications Wales for a form of qualification –
  - (a) offered by it, and

- (b) in respect of which it is recognised,  
to be designated under this section.
- (3) Qualifications Wales may not designate a form of qualification under this section unless it is satisfied that the following conditions are met.
- (4) The conditions are that—
- (a) it would be appropriate for a course of education or training that is within section 34(2) and that leads to the award of the form of qualification to be publicly funded, and
  - (b) it is currently appropriate, with a view to permitting that public funding, to designate the form of qualification under this section rather than approve it under Part 4.
- (5) For the purposes of subsection (4)(a) a course of education or training is publicly funded if it is funded by the Welsh Ministers or a local authority in Wales, or provided by or on behalf of a maintained school in Wales (within the meaning given by section 34(12)).
- (6) The reference in subsection (4)(a) to a course of education or training is a reference to a specific course of education or training or to such courses generally.
- (7) In this Part, references to a section 29 designation are to a designation of a form of a qualification under this section.

### **30 Further provision about section 29 designations**

- (1) If Qualifications Wales makes a section 29 designation, it must specify the date from which the designation has effect and the date with the expiry of which it ceases to have effect.
- (2) A section 29 designation ceases to have effect—
- (a) if the awarding body in respect of which the form of qualification in question is designated ceases to be recognised in respect of that form of qualification, at the same time as that recognition ceases to have effect (for which see paragraph 1(2) of Schedule 3);
  - (b) if the form of qualification in question is approved under Part 4, from the coming into effect of the approval as specified under section 23 (but see section 31).
- (3) Subsection (4) applies where a form of a qualification is designated under section 29 and the qualification is a restricted priority qualification (for which see section 14).
- (4) The section 29 designation referred to in subsection (3) ceases to have effect from the coming into effect of the first approval of any form of the restricted priority qualification under section 16 or 17 as specified under section 23 (but see section 31).
- (5) If a section 29 designation ceases to have effect in accordance with subsection (2) or (4), Qualifications Wales must give the awarding body concerned notice of the date from which the designation ceases to have effect.

- (6) Qualifications Wales may specify that a section 29 designation is to have effect for specific purposes, including by reference to the circumstances in which the qualification is awarded and the person or description of person to whom the qualification may be awarded.
- (7) A section 29 designation must be published by Qualifications Wales.

### **31 Transitional provision in connection with section 29 designations**

- (1) If Qualifications Wales considers it appropriate to do so for the purpose of avoiding prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain a form of qualification that has been designated under section 29, it may make provision that is within subsection (2).
- (2) Provision within this subsection is provision to the effect that, despite section 30(2)(b) or (4), a form of qualification designated under section 29 is to be treated, for purposes specified by Qualifications Wales, as being designated under section 29 until the expiry of a date specified by Qualifications Wales.

### **32 Revocation of section 29 designations**

- (1) Qualifications Wales may revoke a section 29 designation.
- (2) Before revoking a section 29 designation, Qualifications Wales must give the recognised body in respect of which the form of qualification in question is designated notice of its intention to do so.
- (3) The notice must –
  - (a) explain why Qualifications Wales proposes to revoke the section 29 designation, and
  - (b) specify when Qualifications Wales proposes to decide whether to revoke the section 29 designation.
- (4) In deciding whether to revoke a section 29 designation, Qualifications Wales must have regard to any representations made by the recognised body.
- (5) If Qualifications Wales decides to revoke a section 29 designation, it must give notice to the recognised body of the decision explaining when the revocation is to take effect.
- (6) The revocation is to take effect on 1 September falling in the year after the decision to revoke has been made but the revocation applies only in relation to a learner starting a course of education or training on or after that date.
- (7) The notice under subsection (5) must be given –
  - (a) if the decision to revoke is made on 31 December, on that day, or
  - (b) if the decision to revoke is made on any other day, promptly and in any event on or before the 31 December following the decision.
- (8) Notice of a decision to revoke a section 29 designation must be published by Qualifications Wales.

**33 Rules about applications for designation**

- (1) Qualifications Wales must make rules about the making of applications to it under section 29.
- (2) The rules may make different provision for different purposes.
- (3) The rules may make provision about –
  - (a) the form and contents of applications;
  - (b) the way in which applications are to be made (including as to any fee payable in respect of an application).
- (4) The rules made under this section must be published by Qualifications Wales.

**PART 6****FURTHER PROVISION RELEVANT TO RECOGNITION, APPROVAL AND DESIGNATION***Funding etc of certain courses***34 Restriction on funding and provision of certain courses**

- (1) Unless a requirement set out in subsection (3) or (5) is met, a course of education or training that leads to the award of a form of a qualification and is within subsection (2) must not be –
  - (a) funded by an authorised body, or
  - (b) provided by or on behalf of a maintained school in Wales.
- (2) A course of education or training is within this subsection if it is provided, or proposed to be provided –
  - (a) by or on behalf of a school or institution or employer, and
  - (b) for pupils who are of compulsory school age, or above compulsory school age but under 19.
- (3) The requirement is that –
  - (a) the form of qualification to which the course leads is awarded by a recognised body as an approved qualification, and
  - (b) if the form of the qualification is subject to an award limitation condition, the provision of the course is not such that it leads to the award of the qualification to a person otherwise than in accordance with that condition.
- (4) In subsection (3)(b), an award limitation condition is a condition to which approval of the form of qualification under Part 4 is subject and which relates to the person or description of person to whom the qualification may be awarded.
- (5) The requirement is that –

- (a) the form of the qualification to which the course leads is awarded by a recognised body and is designated under section 29, and
  - (b) if Qualifications Wales has specified purposes under section 30(6) for which the designation is to have effect, the provision of the course is not such that it leads to the award of the qualification otherwise than in accordance with those purposes.
- (6) In relation to a maintained school, the local authority and governing body must carry out their functions with a view to securing that subsection (1)(b) is not contravened.
- (7) The restriction imposed by this section does not apply in respect of the provision of a course of education or training to a person with a learning difficulty.
- (8) Nor does the restriction apply in respect of a course of education or training designated by the Welsh Ministers for the purpose of this section.
- (9) A designation under subsection (8) may make provision—
- (a) generally in respect of a course or description of course, or
  - (b) in respect of a course or description of course provided in circumstances, or to a person or description of person, specified in the designation.
- (10) A designation under subsection (8)—
- (a) must be in writing;
  - (b) may be varied or revoked.
- (11) In this section, references to a course leading to a form of a qualification include references to a course that is one of two or more components leading to a form of the qualification.
- (12) In this section—
- “authorised body” (“*corff awdurdodedig*”) means—
    - (a) the Welsh Ministers;
    - (b) a local authority in Wales;
  - “maintained school” (“*ysgol a gynhelir*”) means—
    - (a) a community, foundation or voluntary school;
    - (b) a community special school.

*Delineation of roles of Qualifications Wales and Ofqual*

**35 Award in Wales of an approved qualification: restriction on application of conditions imposed by Ofqual**

- (1) Any condition to which recognition of an awarding body by Ofqual under section 132 of the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) (recognition of awarding bodies) is subject does not apply in respect of, or for the purposes of, any award in Wales by that body of a form of qualification awarded as an approved qualification (but this does not affect the application, if any, of those conditions in respect of or for the purposes of the award in Wales of a form of qualification that is not awarded as an approved qualification, even if that form is designated under section 29).

- (2) Accordingly, in section 132 of the Apprenticeships, Skills, Children and Learning Act 2009, after subsection (9), insert—

“(10) See section 35 of the Qualifications Wales Act 2015 for provision about the effect of conditions imposed by or under this section, in respect of or for the purposes of the award in Wales by an awarding body of a form of a qualification awarded as an approved qualification (for which see section 22(4) of that Act).”

- (3) In this section “Ofqual” means the Office of Qualifications and Examinations Regulation established under section 127 of the Apprenticeships, Skills, Children and Learning Act 2009.
- (4) For the purposes of this section and section 36, the award of a form of a qualification in Wales is its award to persons assessed in respect of the qualification wholly or mainly in Wales.

### **36 Restriction on application of conditions imposed by Qualifications Wales**

- (1) Any condition within subsection (2) applies only in respect of, or for the purposes of, the award in Wales by an awarding body of a form of a qualification in respect of the award of which the body is recognised under Part 3.
- (2) The conditions are the conditions to which recognition of the body under section 8 or 9 is subject.

## **PART 7**

### **ENFORCEMENT POWERS OF QUALIFICATIONS WALES**

#### **37 Power to give directions**

- (1) If it appears to Qualifications Wales that an awarding body has failed or is likely to fail to comply with a condition to which its recognition is subject, Qualifications Wales may direct the body to take or refrain from taking specified steps with a view to securing compliance with the condition.
- (2) If it appears to Qualifications Wales that an awarding body that awards an approved qualification has failed or is likely to fail to comply with a condition to which that approval is subject, Qualifications Wales may direct the body to take or refrain from taking specified steps with a view to securing compliance with the condition.
- (3) Before giving an awarding body a direction under this section, Qualifications Wales must give notice to the body concerned of its intention to do so.
- (4) The notice must—
- (a) set out Qualifications Wales’ reasons for proposing to give the direction;
  - (b) specify when Qualifications Wales proposes to decide whether to give the direction.
- (5) In deciding whether to give the direction, Qualifications Wales must have regard to any representations made by the awarding body.
- (6) An awarding body must comply with a direction given to it under this section.



- (7) A direction under this section –
  - (a) must be in writing;
  - (b) may be varied or revoked by a later direction;
  - (c) is enforceable by a mandatory order on the application of Qualifications Wales.

### **38 Power to impose monetary penalties**

- (1) If it appears to Qualifications Wales that an awarding body has failed to comply with a condition to which its recognition is subject, Qualifications Wales may impose a monetary penalty on the body.
- (2) If it appears to Qualifications Wales that an awarding body that awards an approved qualification has failed to comply with a condition to which that approval is subject, Qualifications Wales may impose a monetary penalty on the body.
- (3) A “monetary penalty” is a requirement to pay to Qualifications Wales a penalty of an amount determined by it in accordance with regulations.
- (4) Before imposing a monetary penalty, Qualifications Wales must give notice to the awarding body concerned of its intention to do so.
- (5) The notice must –
  - (a) set out Qualifications Wales’ reasons for proposing to impose the penalty;
  - (b) specify the proposed amount of the penalty;
  - (c) specify a period with the expiry of which Qualifications Wales proposes to decide whether to impose the penalty.
- (6) The period specified under subsection (5)(c) must be a period of at least 28 days beginning with the date of the notice.
- (7) In deciding whether to impose the penalty, Qualifications Wales must have regard to any representations made by the awarding body.
- (8) If Qualifications Wales decides to impose a monetary penalty, it must give the awarding body concerned a notice specifying –
  - (a) the amount of the penalty, and
  - (b) the period within which payment must be made.
- (9) The period specified under subsection (8)(b) must be a period of at least 28 days beginning with the date of the notice.
- (10) The notice must also contain information as to –
  - (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) rights of appeal under section 39, and
  - (d) the consequences of non-payment.
- (11) Any sums received by Qualifications Wales by way of a monetary penalty imposed under this section or interest under section 40 must be paid by it into the Welsh Consolidated Fund.

**39 Monetary penalties: appeals**

- (1) An awarding body may appeal to the First-tier Tribunal against –
  - (a) a decision to impose a monetary penalty on the body under section 38;
  - (b) a decision as to the amount of the penalty.
- (2) An appeal under this section may be made on the ground –
  - (a) that the breach of condition in respect of which the monetary penalty was imposed did not occur, or
  - (b) that the decision was otherwise –
    - (i) based on an error of fact,
    - (ii) wrong in law, or
    - (iii) unreasonable.
- (3) If an appeal is made under this section, the requirement to pay the penalty is suspended until the appeal is withdrawn or determined.
- (4) On an appeal under this section the Tribunal may –
  - (a) withdraw the requirement to pay the penalty;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) remit the decision whether to confirm the requirement to pay the penalty, or any matter relating to that decision, to Qualifications Wales.

**40 Monetary penalties: interest**

- (1) Subsection (3) applies if all or part of a monetary penalty imposed on an awarding body under section 38 is unpaid at the end of the period ending with the applicable date.
- (2) The applicable date is the latest of –
  - (a) the last date on which payment may be made in accordance with the notice given under section 38(8);
  - (b) the last date on which the awarding body may make an appeal under section 39 in respect of the penalty, if no such appeal is made on or before that date;
  - (c) if an appeal under section 39 in respect of the penalty is made on or before the date referred to in paragraph (b) –
    - (i) the final day of the period of 14 days beginning with the date on which the appeal is determined, or
    - (ii) if the appeal is withdrawn before being determined, the final day of the period of 14 days beginning with the date on which the appeal is withdrawn.
- (3) The unpaid amount of the penalty for the time being carries interest, beginning with the day after the applicable date, at the rate for the time being specified in section 17 of the Judgments Act 1838 (c.110) (and does not also carry interest as a judgment debt under that section).

- (4) The total amount of interest imposed under subsection (3) must not exceed the amount of the penalty.
- (5) No interest is payable in respect of any period during which the requirement to pay a monetary penalty is suspended under section 39(3).

#### **41 Costs recovery for imposition of sanctions**

- (1) Qualifications Wales may, by notice, require an awarding body on which a sanction has been imposed to pay the costs incurred by Qualifications Wales in connection with imposing the sanction.
- (2) The references in subsection (1) to imposing a sanction are to –
  - (a) giving a direction under section 37;
  - (b) imposing a monetary penalty under section 38;
  - (c) withdrawing recognition under paragraph 19 of Schedule 3.
- (3) “Costs” includes, among other things –
  - (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice).
- (4) A notice given to an awarding body under subsection (1) must –
  - (a) specify the amount required to be paid,
  - (b) specify the period within which payment must be made, and
  - (c) contain a detailed breakdown of the amount specified.
- (5) The period specified under subsection (4)(b) must be a period of at least 28 days beginning with the date on which the notice is sent.
- (6) The notice must also contain information as to –
  - (a) how payment may be made,
  - (b) rights of appeal under section 42, and
  - (c) the consequences of non-payment.

#### **42 Costs recovery: appeals**

- (1) An awarding body may appeal to the First-tier Tribunal against –
  - (a) a decision under section 41(1) to require the body to pay costs;
  - (b) a decision as to the amount of those costs.
- (2) An appeal under this section may be made on the ground –
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) If an appeal is made under this section, the requirement to pay the costs is suspended until the appeal is withdrawn or determined.

- (4) On an appeal under this section the Tribunal may –
  - (a) withdraw the requirement to pay the costs;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) remit the decision whether to confirm the requirement to pay the costs, or any matter relating to that decision, to Qualifications Wales.

#### **43 Costs: interest**

- (1) Subsection (3) applies if all or part of an amount of costs that an awarding body is required to pay under section 41(1) is unpaid at the end of the period ending with the applicable date.
- (2) The applicable date is the latest of –
  - (a) the last date on which payment may be made in accordance with the notice given under section 41;
  - (b) the last date on which the awarding body may make an appeal under section 42 in respect of the costs, if no such appeal is made on or before that date;
  - (c) if an appeal under section 42 in respect of the costs is made on or before the date referred to in paragraph (b) –
    - (i) the final day of the period of 14 days beginning with the date on which the appeal is determined, or
    - (ii) if the appeal is withdrawn before being determined, the final day of the period of 14 days beginning with the date on which the appeal is withdrawn.
- (3) The unpaid amount of the costs for the time being carries interest, beginning with the day after the applicable date, at the rate for the time being specified in section 17 of the Judgments Act 1838 (c.110) (and does not also carry interest as a judgment debt under that section).
- (4) The total amount of interest imposed under subsection (3) must not exceed the amount of the costs.
- (5) No interest is payable in respect of any period during which the requirement to pay the costs is suspended under section 42(3).

#### **44 Entry and inspection of premises**

- (1) An authorised person may apply to a justice of the peace for an order under this section in respect of premises occupied by a recognised body.
- (2) The justice of the peace may make an order under this section only if satisfied that the requirements in subsections (3) to (5) are met.
- (3) The first requirement is that there are reasonable grounds for believing that the body has failed to comply with –
  - (a) a condition to which its recognition is subject, or

- (b) a condition to which approval under Part 4 of a form of a qualification awarded by it is subject.
- (4) The second requirement is that –
  - (a) entry to the premises has been, or is likely to be, refused, or
  - (b) requesting entry would be likely to defeat the object of the entry.
- (5) The third requirement is that entry to the premises is necessary to ascertain whether there has been a breach of the condition by reference to which the requirement in subsection (3) is met.
- (6) When an order under this section is in force, an authorised person and any constable accompanying the authorised person in accordance with the order may, for the purpose of ascertaining whether there has been a breach of a condition referred to in subsection (3) –
  - (a) enter the premises specified in the order;
  - (b) inspect and copy records and documents found on the premises or remove them from the premises;
  - (c) require access to, and inspect and check the operation of, any computer or other electronic device found on the premises, and any associated apparatus or material found on the premises, which is or has been in use in connection with records or other documents;
  - (d) require –
    - (i) the person by whom or on whose behalf the electronic device is or has been so used, or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the device, apparatus or material,  
to afford the authorised person such assistance as the authorised person may reasonably require (including, among other things, the making of information available for inspection or copying in a legible form).
- (7) An order under this section must specify –
  - (a) the premises to which it relates;
  - (b) the period for which the order is in force.
- (8) An order under this section may –
  - (a) permit or require the authorised person to be accompanied by a constable;
  - (b) restrict the time at which the power of entry conferred by the order may be exercised;
  - (c) require notice of the order to be given to the recognised body concerned.

- (9) A constable accompanying the authorised person in accordance with the order may (if necessary) use reasonable force to enable the exercise of the powers conferred by the order.
- (10) References in this section to an authorised person are to a member of the staff of Qualifications Wales who is authorised (generally or specifically) by Qualifications Wales for the purposes of this section.

## **PART 8**

### **SUPPLEMENTARY**

#### *Commercial activities*

#### **45 Provision of services etc by Qualifications Wales**

- (1) Qualifications Wales may, on a commercial basis, provide consultancy and other services in connection with any of its functions or any other matter related to qualifications.
- (2) Services may be provided under this section on such terms and subject to such conditions (if any) as Qualifications Wales may determine, including (among other things) as to fees charged by Qualifications Wales.
- (3) Qualifications Wales may, with the Welsh Ministers' approval, form a company to provide services under this section.
- (4) Qualifications Wales is to be the sole member of any company formed under subsection (3).

#### *Review and research*

#### **46 Review and research**

- (1) Qualifications Wales may keep under review –
  - (a) the awarding of approved qualifications by a recognised body;
  - (b) the awarding of forms of qualification designated under section 29 by a recognised body;
  - (c) any other activities of a recognised body which Qualifications Wales considers are relevant to the body's recognition;
  - (d) any other aspect of qualifications.
- (2) Qualifications Wales must keep under review the respective roles played by it and by awarding bodies in respect of the Welsh qualification system.
- (3) Qualifications Wales may carry out or commission research into any matter connected with qualifications.

*Subsidiary functions***47 Policy statement and statement about consultation**

- (1) Qualifications Wales must prepare a statement of its policy (a “policy statement”) with respect to the exercise of its functions under—
  - (a) Part 3 (recognition of awarding bodies);
  - (b) Part 4 (priority qualifications and approval of qualifications);
  - (c) Part 5 (designation of other qualifications);
  - (d) Part 7 (enforcement powers of Qualifications Wales);
  - (e) section 45 (provision of services etc by Qualifications Wales);
  - (f) section 46(1) (reviews).
- (2) The policy statement must contain information as to—
  - (a) circumstances in which recognition of an awarding body is likely to be made subject to a special condition;
  - (b) matters likely to be taken into account by Qualifications Wales in deciding whether to designate a form of qualification under section 29, in determining the period for which such a designation is to have effect and in deciding whether to revoke such a designation;
  - (c) criteria likely to be applied by Qualifications Wales in determining whether it is appropriate in any case to impose a fee capping condition so as to secure value for money;
  - (d) matters likely to be taken into account by Qualifications Wales in determining the limit specified in a fee capping condition;
  - (e) the likely duration of a fee capping condition;
  - (f) circumstances in which a direction is likely to be given to an awarding body in accordance with a transfer condition, and the likely subject matter of any direction given in accordance with a transfer condition;
  - (g) matters likely to be taken into account by Qualifications Wales in determining whether to make a payment to an awarding body under paragraph 15 of Schedule 3, and in determining the amount of any such payment;
  - (h) the circumstances in which, and occasions on which, special conditions are likely to be reviewed or revised, and the factors that are likely to be taken into account in any review or revision;
  - (i) the circumstances in which Qualifications Wales is likely to impose a monetary penalty under section 38;
  - (j) factors which Qualifications Wales is likely to take into account in determining the amount of a penalty to be imposed under that section.
- (3) Qualifications Wales must also prepare a statement setting out—
  - (a) circumstances in which Qualifications Wales proposes to carry out consultation in respect of the exercise of any of its functions;

- (b) the manner in which it proposes to carry out consultation.
- (4) Qualifications Wales must keep the statements prepared under this section under review, and if it considers it appropriate in consequence of a review, prepare revised statements.
- (5) Qualifications Wales must publish any statement or revised statement prepared under this section.

#### **48 Complaints**

- (1) Qualifications Wales must make arrangements for dealing with complaints made in respect of—
  - (a) the exercise of its functions;
  - (b) the awarding of approved qualifications by a recognised body;
  - (c) the awarding of forms of qualification designated under section 29 by a recognised body;
  - (d) any other activities of a recognised body which Qualifications Wales considers are relevant to the body's recognition.
- (2) Qualifications Wales must publish the arrangements.
- (3) The arrangements may (among other things) make provision—
  - (a) about the type of complaint in respect of which they apply;
  - (b) for a complaint to be referred to a person who is independent of Qualifications Wales.
- (4) A person is independent of Qualifications Wales, for this purpose—
  - (a) in the case of an individual, if he or she is neither a member of Qualifications Wales nor a member of Qualifications Wales' staff;
  - (b) in the case of a body, if none of the body's members is a member of Qualifications Wales nor a member of Qualifications Wales' staff.

#### **49 Charging scheme**

- (1) Qualifications Wales may charge fees to be paid by an awarding body in respect of the costs incurred by it in relation to that body in connection with—
  - (a) the exercise of its functions under Part 3 (recognition of awarding bodies),
  - (b) the exercise of its functions under Part 4 (priority qualifications and approval of qualifications),
  - (c) the exercise of its functions under Part 5 (designation of other qualifications),
  - (d) the exercise of its functions under section 46(1)(a) to (c) (review of approved qualifications, designated qualifications and recognised bodies), or
  - (e) the handling of a complaint against an awarding body under arrangements made under section 48.
- (2) Any fees charged by Qualifications Wales in connection with the matters referred to in subsection (1) must be charged in accordance with a scheme prepared and published by Qualifications Wales that sets out the fees payable in respect of those matters.



- (3) Qualifications Wales may revise the scheme.
- (4) The scheme (and any revised scheme) is to be treated as having effect only if approved by the Welsh Ministers.

#### **50 Grants**

- (1) Qualifications Wales may make grants to a person if Qualifications Wales considers it is appropriate to do so in connection with any of Qualifications Wales' functions.
- (2) A grant under this section may be made subject to conditions (including conditions as to repayment).

#### **51 Provision of information or advice**

If requested to do so by the Welsh Ministers, Qualifications Wales must provide the Welsh Ministers with such information or advice, on matters relating to any of its functions, as is specified in the request.

#### **52 Joint working**

Qualifications Wales may work jointly with another person if Qualifications Wales considers it is appropriate to do so in connection with any of Qualifications Wales' functions.

#### **53 Duty to have regard to government policy and other matters**

- (1) In exercising its functions, Qualifications Wales must have regard to such aspects of government policy, and to such other matters, as the Welsh Ministers may direct.
- (2) A direction given under subsection (1) –
  - (a) must be published by the Welsh Ministers;
  - (b) may be varied or revoked by a later direction.

#### **54 Performance of regulatory activities by Qualifications Wales**

- (1) Qualifications Wales must have regard to the principles in subsection (2) in carrying out its functions under –
  - (a) Part 3 (recognition of awarding bodies);
  - (b) Part 4 (priority qualifications and approval of qualifications);
  - (c) Part 7 (enforcement powers of Qualifications Wales);
  - (d) section 46(1)(a) to (c) (review of approved qualifications, designated qualifications and recognised bodies);
  - (e) section 48 (complaints).
- (2) The principles are that –
  - (a) regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent, and
  - (b) regulatory activities should be targeted only at cases in which action is needed.

**PART 9**  
**GENERAL**

**55 Regulations**

- (1) A power to make regulations under this Act –
  - (a) is exercisable by statutory instrument;
  - (b) includes power to make different provision for different purposes;
  - (c) includes power to make supplemental, incidental, consequential, transitional, transitory or saving provision.
- (2) A statutory instrument containing any of the following may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales –
  - (a) regulations made under section 21 (power to specify minimum requirements);
  - (b) regulations made under section 38(3) (power to impose monetary penalties);
  - (c) regulations made under section 59 that amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales.
- (3) Any other statutory instrument containing regulations made under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

**56 Interpretation of references to “qualification”**

- (1) References in this Act to a qualification, except so far as a contrary intention appears, are to an academic or vocational qualification awarded in Wales, other than –
  - (a) a foundation degree;
  - (b) a first degree;
  - (c) a degree at a higher level.
- (2) A qualification is awarded in Wales, for the purposes of this section, if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are, will be, or may reasonably be expected to be, assessed in respect of the qualification wholly or mainly in Wales.
- (3) A reference in this Act to the award of a qualification includes a reference to –
  - (a) the award of credits in respect of components of a qualification;
  - (b) the award of a qualification by a body either jointly or with others.
- (4) References in this Act to a form of a qualification are to the particular version of a qualification that is, or is to be, offered by a particular awarding body.

## 57 General interpretation and index of defined expressions

- (1) The provisions of this Act and those of the Education Act 1996 (c.56) are to be read as if they were all contained in the Education Act 1996 (but this is subject to subsection (2)).
- (2) Where for the purposes of any provision of this Act an expression is given a meaning different from that given to it in the Education Act 1996 (c.56), that meaning is to apply for the purposes of that provision, instead of the meaning given for the purposes of the Education Act 1996 (c.56).
- (3) In this Act—

“approved qualification” (*“cymhwyster a gymeradwywyd”*) means a form of a qualification approved by Qualifications Wales under Part 4 (priority qualifications and approval of qualifications);

“assessment arrangements” (*“trefniadau asesu”*), in relation to a qualification, means arrangements for assessing relevant skills, knowledge and understanding in relation to the qualification;

“awarding body” (*“corff dyfarnu”*) means a person who awards, or proposes to award, a qualification;

“company” (*“cwmni”*) means a company as defined in section 1(1) of the Companies Act 2006 (c.46);

“fee capping condition” (*“amod capio ffioedd”*) has the meaning given in paragraph 6 of Schedule 3;

“general recognition criteria” (*“meini prawf cydnabod cyffredinol”*) has the meaning given in section 5(1);

“higher education institution” (*“sefydliad addysg uwch”*) means an institution within the higher education sector;

“learners” (*“dysgwyr”*) means persons who are seeking to obtain, or who might reasonably be expected to seek to obtain, qualifications;

“learning provider” (*“darparwr dysgu”*) means a person by whom education or training leading to a qualification is provided;

“monetary penalty” (*“cosb ariannol”*) has the meaning given in section 38(3);

“notice” (*“hysbysiad”*) means notice in writing;

the “principal aims” (*“prif nodau”*) of Qualifications Wales means the aims listed in section 3(1);

“priority qualification” (*“cymhwyster blaenoriaethol”*) has the meaning given in section 13(6);

“qualification” (*“cymhwyster”*) has the meaning given in section 56;

“qualification specific recognition criteria” (*“meini prawf cydnabod sy’n benodol i gymhwyster”*) has the meaning given in section 6(1);

“recognised body” (*“corff cydnabyddedig”*) has the meaning given in section 12(2);

“recognition” (*“cydnabyddiaeth”*) has the meaning given in section 12(2);

“regulations” (*“rheoliadau”*) means regulations made by the Welsh Ministers;

“relevant knowledge, skills or understanding” (*“yr wybodaeth berthnasol, y sgiliau perthnasol neu’r ddealltwriaeth berthnasol”*), in relation to a qualification, are the knowledge, skills or understanding required to be demonstrated for the purpose of determining whether a person is to be awarded the qualification;

“restricted priority qualification” (*“cymhwyster blaenoriaethol cyfyngedig”*) has the meaning given in section 13(6);

“special condition” (*“amod arbennig”*) has the meaning given in paragraph 4 of Schedule 3;

“transfer condition” (*“amod trosglwyddo”*) has the meaning given in paragraph 12 of Schedule 3;

“unrestricted priority qualification” (*“cymhwyster blaenoriaethol anghyfyngedig”*) has the meaning given in section 13(6);

“Welsh qualification system” (*“system gymwysterau Cymru”*) has the meaning given in section 3(3).

- (4) For the purposes of this Act a person is assessed wholly or mainly in Wales, in respect of a qualification, only if the activities carried out by the person for the purposes of demonstrating relevant knowledge, skills or understanding are carried out wholly or mainly in Wales.
- (5) A person has a learning difficulty, for the purposes of this Act, if the person—
  - (a) has special educational needs, or
  - (b) has a significantly greater difficulty in learning than the majority of persons of the person’s age, or
  - (c) has a disability that either prevents or hinders the person from making use of educational facilities of a kind generally provided for persons of the same age.
- (6) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which the person is or will be taught is different from a language (or form of language) which has at any time been spoken in the person’s home.
- (7) References in this Act to a body’s being recognised in respect of a qualification are to be construed in accordance with section 12.
- (8) References in this Act to the award of a form of qualification as an approved qualification are to be construed in accordance with section 22(4).

## 58 Consequential amendments

Schedule 4 contains consequential amendments.

**59 Power to make consequential and transitional provision etc**

- (1) If the Welsh Ministers consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act, they may by regulations make—
  - (a) any supplementary, incidental or consequential provision;
  - (b) any transitional, transitory or saving provision.
- (2) Regulations under this section may (among other things) amend, repeal or revoke any enactment.
- (3) In this section, “enactment” mean an enactment, whenever enacted or made, comprised in or made under—
  - (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales.

**60 Coming into force**

- (1) The following provisions come into force on the day on which this Act receives Royal Assent—
  - (a) section 1;
  - (b) section 2(3);
  - (c) sections 55 to 57;
  - (d) section 59;
  - (e) this section;
  - (f) section 61;
  - (g) Schedule 2.
- (2) The other provisions of this Act come into force on such day as the Welsh Ministers may appoint by order made by statutory instrument.
- (3) An order under subsection (2) may—
  - (a) appoint different days for different purposes;
  - (b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

**61 Short title and inclusion as one of the Education Acts**

- (1) The short title of this Act is the Qualifications Wales Act 2015.
- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.

SCHEDULE 1  
(introduced by section 2)

QUALIFICATIONS WALES

PART 1

ESTABLISHMENT OF QUALIFICATIONS WALES

*Status*

- 1 Qualifications Wales is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

*Membership*

- 2 Qualifications Wales is to consist of the following members –
- (a) a person appointed under paragraph 10 as the chief executive of Qualifications Wales (“the chief executive”);
  - (b) a person appointed by the Welsh Ministers to chair Qualifications Wales (“the chair”);
  - (c) at least eight and no more than ten other persons appointed by the Welsh Ministers under this paragraph (“ordinary members”).

*The chair and ordinary members*

- 3 (1) The chair and ordinary members hold and vacate office in accordance with the terms and conditions of their appointments.
- (2) Subject to the provisions of this Schedule, those terms and conditions are to be determined by the Welsh Ministers.
- 4 (1) A person is disqualified from being the chair or an ordinary member if the person is –
- (a) a member of an awarding body recognised by Qualifications Wales or a member of its staff;
  - (b) a Member of the National Assembly for Wales;
  - (c) a Member of the House of Commons or the House of Lords.
- (2) A person ceases to hold office as the chair or as an ordinary member if that person becomes disqualified.
- 5 (1) The chair is to be appointed for a term of up to three years.
- (2) A person may be reappointed as chair once only.
- 6 (1) Ordinary members are to be appointed for a term of up to three years.
- (2) A person who has held office as an ordinary member may be reappointed.
- (3) The terms of any reappointment may not permit an ordinary member to hold office for a total period of more than six years (whether or not continuous).

(4) But where a person previously appointed as an ordinary member has not held office as such in an immediately preceding period of three years or more, that person's previous period or periods of office as an ordinary member are to be disregarded for the purposes of sub-paragraph (3).

7 The chair or an ordinary member may resign from office at any time by giving written notice to the Welsh Ministers and to Qualifications Wales.

8 The Welsh Ministers may remove the chair or an ordinary member from office if they are satisfied that the person is unable or unfit to carry out the functions of office, or is otherwise failing to do so.

9 Qualifications Wales may, with the Welsh Ministers' approval, pay or make provision for the payment of remuneration, allowances and pension to, or in respect of, a person who is or has been the chair or an ordinary member.

#### *The chief executive and other staff*

10 (1) The first person appointed as chief executive is to be appointed by the Welsh Ministers –  
(a) on such terms and conditions (including conditions as to remuneration, allowances and pension) as the Welsh Ministers determine, and  
(b) for a term of up to three years.

(2) Subsequent appointments (or reappointments) of a person as chief executive are to be made by Qualifications Wales.

11 A person may not be appointed as chief executive if the person is –  
(a) a member of an awarding body recognised by Qualifications Wales or a member of its staff;  
(b) a Member of the National Assembly for Wales;  
(c) a Member of the House of Commons or the House of Lords.

12 The previous appointment of a person as chief executive does not affect the person's eligibility for reappointment.

13 The chief executive is a member of Qualifications Wales' staff.

14 Qualifications Wales may appoint other members of staff.

15 Except in relation to the first person appointed as chief executive under paragraph 10(1), the following are to be determined by Qualifications Wales, with the approval of the Welsh Ministers –

- (a) the terms and conditions of its staff (including remuneration and allowances);
- (b) the payment or provision for the payment of pension to or in respect of a member of its staff or a former member of staff.

16 Service as a member of Qualifications Wales' staff is not service in the civil service of the State.

*Committees*

- 17 (1) Qualifications Wales may establish committees.
- (2) A committee established under this paragraph may –
- (a) establish sub-committees;
  - (b) dissolve sub-committees established by it.
- (3) Qualifications Wales may also dissolve sub-committees established under this paragraph.
- (4) Qualifications Wales may pay remuneration and allowances to any person who –
- (a) is a member of a committee or a sub-committee established under this paragraph, but
  - (b) is not a member of Qualifications Wales or a member of its staff.
- 18 (1) Qualifications Wales may, in connection with the exercise of its functions, establish a committee jointly with any person.
- (2) In this Schedule a committee established under this paragraph is referred to as a “joint committee”.
- (3) A joint committee may establish sub-committees (“joint sub-committee”).
- (4) Qualifications Wales may pay remuneration and allowances to any person who –
- (a) is a member of a joint committee or a joint sub-committee, but
  - (b) is not a member of Qualifications Wales or a member of its staff.

*Delegation*

- 19 (1) Qualifications Wales may delegate any of its functions to –
- (a) a member of Qualifications Wales or a member of its staff;
  - (b) a committee established by Qualifications Wales under paragraph 17;
  - (c) a joint committee.
- (2) A function is delegated under this paragraph to the extent and on the terms that Qualifications Wales determines.
- 20 (1) A committee established by Qualifications Wales under paragraph 17 may delegate any of its functions to a sub-committee established by it.
- (2) A function is delegated under this paragraph to the extent and on the terms that the committee determines, but this is subject to any direction given by Qualifications Wales as to what a committee established by it may or may not do.
- 21 (1) A joint committee may delegate any of its functions to a sub-committee established by it.
- (2) A function is delegated under this paragraph to the extent and on the terms that the joint committee determines, but this is subject to any direction given by Qualifications Wales and the person with whom it established the joint committee as to what the joint committee may or may not do.



*Procedure*

- 22 Qualifications Wales may regulate –
- (a) its own proceedings (including quorum), and
  - (b) the procedure (including quorum) of its committees (except joint committees).
- 23 A committee established by Qualifications Wales under paragraph 17 may regulate the procedure (including quorum) of any sub-committee established by it.
- 24 A joint committee may regulate –
- (a) its own procedure (including quorum), and
  - (b) the procedure (including quorum) of any sub-committee established by it.
- 25 The validity of proceedings of Qualifications Wales, of a committee or sub-committee established under paragraph 17, or of a joint committee or a joint sub-committee, is not affected by –
- (a) a vacancy;
  - (b) a defective appointment.

*Register of interests*

- 26 (1) Qualifications Wales must establish and maintain a system for the declaration and registration of its members' interests.
- (2) Qualifications Wales must publish entries recorded in the register of members' interests.

*Supplementary powers*

- 27 (1) Qualifications Wales may do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions.
- (2) But Qualifications Wales may not, without the approval of the Welsh Ministers –
- (a) acquire or dispose of land or any other property, for consideration of an amount in excess of the expenditure threshold;
  - (b) borrow or lend money.
- (3) The expenditure threshold is whatever amount (if any) is specified in a notice given by the Welsh Ministers to Qualifications Wales for the purposes of this paragraph.
- (4) A notice under paragraph (3) –
- (a) may specify different thresholds for different kinds of land or other property, and
  - (b) may be varied or revoked by the Welsh Ministers.

*Annual and other reports*

- 28 (1) As soon as reasonably practicable after the end of each reporting period Qualifications Wales must prepare a report ("the annual report") giving details of –
- (a) how Qualifications Wales has exercised its functions during the period (including by reference to its principal aims);

- (b) Qualifications Wales' proposed activities and priorities for the next reporting period.
  - (2) The information that is to be included under sub-paragraph (1)(a) includes (among other things) –
    - (a) details of the conclusions of any assessment carried out by Qualifications Wales, during the reporting period, of the impact of the exercise of its functions on –
      - (i) the Welsh qualification system;
      - (ii) learners, employers and higher education institutions;
    - (b) details of how Qualifications Wales has involved stakeholders in the exercise of its functions during the reporting period;
    - (c) details of any conclusions reached, during the reporting period, as a result of any research carried out by or on behalf of Qualifications Wales under section 46(3).
  - (3) In sub-paragraph (2)(b) “stakeholders” means those persons whom Qualifications Wales considers have an interest in the exercise of its functions.
  - (4) The annual report may include any other information Qualifications Wales thinks fit.
  - (5) In this paragraph “reporting period” means –
    - (a) the period beginning with the day on which section 2(1) comes into force and ending with 31 August 2016; and
    - (b) subsequently, each successive period of 12 months.
- 29 Qualifications Wales must –
- (a) lay a copy of the annual report before the National Assembly for Wales;
  - (b) publish the annual report.
- 30 Qualifications Wales may if it thinks fit prepare and publish other reports on matters relating to its functions.

#### *Finance*

- 31 (1) The Welsh Ministers may make grants to Qualifications Wales of such amounts and subject to such terms and conditions (including as to repayment) as they may determine.
- (2) The Welsh Ministers must publish any terms and conditions to which grants made under sub-paragraph (1) are subject.

#### *Accounts and audit*

- 32 (1) Qualifications Wales must keep proper accounts and proper records in relation to the accounts.
- (2) Qualifications Wales must prepare a statement of accounts in respect of each financial year in accordance with directions given by the Welsh Ministers.

- (3) The directions may make provision as to—
- (a) the information to be contained in the statement;
  - (b) the manner in which the information is to be presented;
  - (c) the methods and principles according to which the statement is to be prepared;
  - (d) any additional information that is to accompany the statement.
- (4) The Welsh Ministers may vary or revoke a direction they have given under this paragraph.
- 33 (1) No later than 31 August after the end of each financial year Qualifications Wales must submit its statement of accounts to the Auditor General for Wales.
- (2) The Auditor General must—
- (a) examine, certify and report on the statement of accounts, and
  - (b) no later than 4 months after the statement was submitted, lay before the National Assembly for Wales a copy of the certified statement and report.
- 34 In paragraphs 32 and 33 “financial year” means—
- (a) the period beginning on the day on which section 2(1) comes into force and ending on the following 31 March;
  - (b) subsequently, each successive period of 12 months.

#### *Examination of use of resources*

- 35 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which resources have been used in discharging Qualifications Wales’ functions.
- (2) Sub-paragraph (1) is not to be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of Qualifications Wales.

## PART 2

### CONSEQUENTIAL AMENDMENTS

#### *Care Standards Act 2000 (c.14)*

- 36 In Schedule 2A to the Care Standards Act 2000 (persons subject to review by the commissioner under section 72B), after paragraph 10, insert—
- “10A Qualifications Wales.”

#### *Freedom of Information Act 2000 (c.36)*

- 37 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general), at the appropriate place insert—
- “Qualifications Wales.”

*Public Services Ombudsman (Wales) Act 2005 (c.10)*

38 In Schedule 3 to the Public Services Ombudsman (Wales) Act 2005 (investigation of complaints etc: listed authorities), under the sub-heading “Education and training”, at the end insert –

“Qualifications Wales.”

*Commissioner for Older People (Wales) Act 2006 (c.30)*

39 In Schedule 2 to the Commissioner for Older People (Wales) Act 2006 (persons whose functions are subject to review under section 3), under the sub-heading “Education and training” –

(a) omit the entry “The Qualifications, Curriculum and Assessment Authority for Wales”, and

(b) at the end insert –

“Qualifications Wales.”

*Equality Act 2010 (c.15)*

40 In Part 2 of Schedule 19 to the Equality Act 2010 (public authorities subject to public sector equality duty: relevant Welsh authorities), under the sub-heading “Other educational bodies”, at the end insert –

“Qualifications Wales.”

SCHEDULE 2  
(introduced by section 2)

TRANSFERS OF PROPERTY AND STAFF TO QUALIFICATIONS WALES

- 1 (1) The Welsh Ministers may make one or more schemes providing for—
- (a) staff of the Welsh Assembly Government to become members of staff of Qualifications Wales, and
  - (b) the transfer of property, rights and liabilities of the Welsh Ministers to Qualifications Wales.
- (2) The things that may be transferred under a scheme under this Schedule (a “transfer scheme”) include—
- (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme.
- (3) A transfer scheme may make consequential, supplementary, incidental, transitional or transitory provision, for example so as to—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done in respect of anything transferred;
  - (d) make provision for the shared ownership or use of property;
  - (e) make provision for references to the Welsh Assembly Government or the Welsh Ministers in an instrument or other document in respect of anything transferred to be treated as references to Qualifications Wales;
  - (f) make provision which is the same as or similar to a provision made by the TUPE regulations in a case where those regulations do not apply in relation to the transfer.
- 2 A transfer scheme may provide—
- (a) for modification by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- 3 For the purposes of this Schedule—
- (a) an individual who holds employment in the civil service is to be treated as employed by virtue of a contract of employment, and
  - (b) the terms of the individual’s employment in the civil service are to be regarded as constituting the terms of the contract of employment.
- 4 In this Schedule—
- “civil service” (“*gwasanaeth sifil*”) means the civil service of the State;

“TUPE regulations” (“*rheoliadau TUPE*”) means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

references to rights and liabilities include rights and liabilities relating to a contract of employment;

references to the transfer of property include the grant of a lease.

- 5 The Welsh Ministers must lay a copy of a transfer scheme made under this Schedule before the National Assembly for Wales.

SCHEDULE 3  
(introduced by section 11)

FURTHER PROVISION ABOUT RECOGNITION OF AWARDING BODIES

*Duration of recognition*

- 1 (1) The recognition of an awarding body has effect from whatever date is specified by Qualifications Wales on recognising the body.
- (2) It ceases to have effect on whichever is the earliest of—
- (a) its surrender under paragraph 17;
  - (b) its withdrawal under paragraph 19;
  - (c) the awarding body (in the case of a body recognised under section 9) ceasing to be recognised under section 8.

*Standard conditions of recognition*

- 2 (1) Qualifications Wales must prepare and publish conditions (the “standard conditions”) to which (subject to sub-paragraphs (3) and (4)) each recognition of an awarding body is to be subject.
- (2) The standard conditions may, among other things, make provision about compliance with directions given to a recognised body by Qualifications Wales under this paragraph.
- (3) Different standard conditions may be set for different purposes, including among other things by reference to—
- (a) different descriptions of awarding bodies;
  - (b) different qualifications or descriptions of qualification (including by reference to whether or not a qualification is an approved qualification or a qualification designated under section 29);
  - (c) different circumstances in which a qualification is awarded;
  - (d) different descriptions of person to whom a qualification is awarded.
- (4) Qualifications Wales may determine that, in a particular case, recognition of an awarding body is not to be subject to a standard condition specified in the determination which would otherwise apply.
- (5) A determination within sub-paragraph (4) may be made either at the time of granting the recognition concerned, or subsequently, and may be revoked by Qualifications Wales.
- (6) The standard conditions may not include—
- (a) fee capping conditions (for which see paragraphs 6 to 11);
  - (b) transfer conditions (for which see paragraphs 12 to 16).
- 3 (1) Qualifications Wales may revise the standard conditions; and if it does so, each recognition (whether granted before or after the revisions come into effect) is to be subject to the conditions as revised.

- (2) Sub-paragraph (1) is subject to paragraph 2(3) and (4).
- (3) If Qualifications Wales revises the standard conditions, it must –
  - (a) publish the conditions as revised,
  - (b) notify each recognised body of the revisions, and of when they are to come into effect.
- (4) Qualifications Wales may provide that a revision to the conditions is to come into effect on different dates in relation to different bodies, or in relation to different descriptions of body.
- (5) A revision is not to be treated as coming into effect in relation to a body before the body has been notified of it.

*Special conditions to which recognition may be subject*

- 4 (1) The recognition of a body may, in addition, be made subject to any other conditions (“special conditions”) specified by Qualifications Wales, either at the time of recognising the body or subsequently.
- (2) The special conditions may include –
  - (a) fee capping conditions;
  - (b) transfer conditions;
  - (c) conditions making provision about compliance with directions given under this paragraph by Qualifications Wales.
- (3) Special conditions may make different provision for different purposes, including among other things by reference to –
  - (a) different qualifications or descriptions of qualification (including by reference to whether or not a qualification is an approved qualification or a qualification designated under section 29);
  - (b) different circumstances in which a qualification is awarded;
  - (c) different descriptions of person to whom a qualification is awarded.
- 5 (1) Qualifications Wales may revise or revoke a special condition.
- (2) If Qualifications Wales revises or revokes a special condition, it must –
  - (a) notify the body concerned of the revision or revocation, and
  - (b) specify when the revision or revocation is to come into effect.
- (3) The date specified under sub-paragraph (2)(b) must not precede the date of notification under sub-paragraph (2)(a).
- (4) This paragraph is subject to paragraph 11 (revision of a fee capping condition).

*Fee capping conditions*

- 6 (1) A fee capping condition is a special condition limiting the amount charged by a recognised body in connection with –
  - (a) the award by the body to a person of an approved qualification,



- (b) the award by the body to a person of a form of a qualification that is designated under section 29, or
- (c) the provision by the body of any other service or facility in respect of the award by the body to a person of an approved qualification or of a form of qualification designated under section 29, as the case may be,

where the course of education or training leading to the qualification, and undertaken by the person concerned, is publicly funded.

- (2) A course of education or training is publicly funded, for the purposes of this paragraph, if it is—
  - (a) funded by the Welsh Ministers or a local authority in Wales, or
  - (b) provided by or on behalf of a maintained school in Wales.
- (3) In this paragraph, “maintained school” means—
  - (a) a community, foundation or voluntary school;
  - (b) a community special school.

7 Qualifications Wales may impose a fee capping condition only if satisfied that it is appropriate to do so to secure value for money.

#### *Procedure for imposing fee capping conditions*

- 8 (1) Before imposing a fee capping condition, Qualifications Wales must give the body concerned notice of its intention to do so.
- (2) The notice must—
  - (a) set out the fee capping condition Qualifications Wales proposes to impose;
  - (b) explain why Qualifications Wales proposes to impose the condition;
  - (c) specify when Qualifications Wales proposes to decide whether to impose it.
- (3) In deciding whether to impose the condition, Qualifications Wales must have regard to any representations made by the recognised body.
- 9 (1) If Qualifications Wales decides to impose the fee capping condition, it must give notice to the recognised body of the decision.
- (2) The notice must—
  - (a) inform the body of its right under arrangements made under paragraph 10 to request a review of the decision,
  - (b) state the latest date on which any request for review may be made, and
  - (c) specify the date on which, in the absence of a request for review, the condition is to take effect.
- (3) The date specified under sub-paragraph (2)(c) must be a date after the latest date on which a review may be requested under arrangements made under paragraph 10.

*Review of fee capping conditions*

- 10 (1) Qualifications Wales must make arrangements for a decision under paragraph 9 to impose a fee capping condition to be subject to review at the request of the recognised body concerned.
- (2) The arrangements must –
- (a) specify the period within which a review may be requested,
  - (b) make provision for recommendations to be made by the person carrying out the review to Qualifications Wales in respect of the fee capping condition concerned,
  - (c) make provision for Qualifications Wales, having considered those recommendations, either to confirm or reverse its decision to impose the condition, or to alter the condition concerned, and
  - (d) require Qualifications Wales to notify the body concerned of the outcome of the review.
- (3) The arrangements must require a review to be carried out by a person who is independent of Qualifications Wales.
- (4) A person is independent of Qualifications Wales, for this purpose –
- (a) in the case of an individual, if he or she is neither a member of Qualifications Wales nor a member of Qualifications Wales' staff;
  - (b) in the case of a body, if none of the body's members is a member of Qualifications Wales nor a member of Qualifications Wales' staff.
- (5) If following a review Qualifications Wales confirms its decision to impose a condition, or alters the condition concerned, it must give notice to the body concerned –
- (a) setting out the condition, as confirmed or altered,
  - (b) giving reasons for the confirmation or alteration, and
  - (c) stating the date on which the condition, or the condition as altered, will take effect.

*Revision of fee capping conditions*

- 11 Paragraphs 8 to 10 apply in respect of a revision of a fee capping condition under paragraph 5 as if the revision constituted the imposition of a fee capping condition.

*Transfer conditions*

- 12 (1) A transfer condition is a special condition requiring an awarding body, on the occurrence of an event specified in the condition, and on being so directed by Qualifications Wales, to make arrangements specified in the direction for the purpose of securing that a form of a qualification which is or has been awarded by the body may be awarded by another awarding body where –
- (a) the form of qualification has been approved by Qualifications Wales, or
  - (b) the form of qualification has been designated by Qualifications Wales under section 29.
- 2

- (2) The arrangements may include, among other things, provision for the transfer of property and rights and for the making of payments.
  - (3) Qualifications Wales may give a direction to an awarding body in accordance with a transfer condition only if it is satisfied that it is necessary to do so in order to avoid significant adverse effects on persons who are seeking, or might reasonably be expected to seek, to obtain the form of a qualification to which the direction relates.
- 13 (1) If Qualifications Wales proposes to give a direction to an awarding body in accordance with a transfer condition, it must give the body concerned notice of the proposal.
  - (2) The notice must—
    - (a) set out the proposed direction;
    - (b) explain why Qualifications Wales proposes to give the direction;
    - (c) specify when it proposes to decide whether to give the direction.
  - (3) In deciding whether to give the direction, Qualifications Wales must have regard to any representations made by the awarding body.
- 14 (1) If Qualifications Wales decides to give the direction, it must give notice to the awarding body of the decision, setting out the direction.
  - (2) The notice must—
    - (a) inform the body of its right to request a review of the decision,
    - (b) state the latest date on which any request for review may be made, and
    - (c) specify the date by which, in the absence of a request for review, the direction is to come into effect.
  - (3) The date specified under sub-paragraph (2)(c) must be a date after the latest date on which a review may be requested under arrangements made under paragraph 16.
- 15 If Qualifications Wales gives a direction to an awarding body in accordance with a transfer condition, it may, if it considers it reasonable and appropriate to do so in the circumstances, pay compensation to the body in respect of loss sustained by the body by reason of compliance with the direction.

*Review of decision to give direction*

- 16 (1) Qualifications Wales must make arrangements for its decision to give the direction referred to in paragraph 14 to be subject to review at the request of the awarding body concerned.
  - (2) The arrangements must—
    - (a) specify the period within which a review may be requested,
    - (b) make provision for recommendations to be made by the person carrying out the review to Qualifications Wales in respect of the direction,
    - (c) make provision for Qualifications Wales, having considered those recommendations, either to confirm or reverse its decision to give the direction, or to alter the direction, and

- (d) require Qualifications Wales to notify the body concerned of the outcome of the review.
- (3) The arrangements must require a review to be carried out by a person who is independent of Qualifications Wales.
- (4) A person is independent of Qualifications Wales, for this purpose –
  - (a) in the case of an individual, if he or she is neither a member of Qualifications Wales nor a member of Qualifications Wales' staff;
  - (b) in the case of a body, if none of the body's members is a member of Qualifications Wales nor a member of Qualifications Wales' staff.
- (5) If following a review Qualifications Wales confirms its decision to give a direction, or alters the direction concerned, it must give notice to the body concerned –
  - (a) setting out the direction, as confirmed or altered,
  - (b) giving reasons for the confirmation or alteration, and
  - (c) stating the date on which the direction, or the direction as altered, will take effect.

#### *Surrender of recognition*

- 17 (1) A recognised body may give notice (a "surrender notice") to Qualifications Wales that it wishes to cease to be recognised in respect of –
- (a) the award of a specified qualification or description of qualification, or
  - (b) every qualification in respect of which it is recognised.
- (2) A surrender notice must specify the date with the expiry of which the body wishes to cease to be recognised in the respect concerned.
- (3) As soon as reasonably practicable after receipt of a surrender notice, Qualifications Wales must give notice to the recognised body (an "acknowledgement of surrender") providing that the body is to cease to be recognised in that respect with the expiry of the date specified in the surrender notice or, if Qualifications Wales thinks appropriate, with the expiry of a different date.
- (4) If the acknowledgement of surrender specifies that the body is to cease to be recognised in that respect with the expiry of a different date from that specified in the surrender notice, the acknowledgement of surrender must give reasons for this.
- (5) Recognition in the respect concerned ceases to have effect with the expiry of the date specified in the acknowledgement of surrender.
- (6) In determining whether a body's recognition is to cease to have effect with the expiry of the date specified in the surrender notice, or with the expiry of a different date, Qualifications Wales is to have regard to –
- (a) the need to avoid prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain the qualification, or a qualification of the description, specified in the surrender notice, and

- (b) the body's wish that recognition should cease to have effect with the expiry of the date specified in the surrender notice.

*Transitional provision in respect of surrender*

- 18 (1) Qualifications Wales may, if it considers it appropriate to do so for the purpose of avoiding prejudice to persons who are seeking or might reasonably be expected to seek to obtain the qualification concerned, or a qualification of the description concerned, make provision in an acknowledgement of surrender under paragraph 17(3) that is within sub-paragraph (2).
- (2) Provision within this sub-paragraph is provision to the effect that, from the expiry of the surrender date until the expiry of the extension date, the body is to be treated for purposes specified by Qualifications Wales in the acknowledgement of surrender as being recognised in respect of the award of the qualification or description of qualification concerned.
- (3) If Qualifications Wales makes provision within sub-paragraph (2) –
- (a) it must give reasons for this in the acknowledgement of surrender, and
  - (b) the body is to be treated, from the expiry of the surrender date, for the purposes specified in the acknowledgement of surrender, and until the expiry of the extension date, as being recognised in respect of the award of the qualification or description of qualification concerned.
- (4) In this paragraph –
- “extension date” (*“dyddiad estyn”*) means a date specified by Qualifications Wales in the acknowledgement of surrender for the purposes of this paragraph;
- “surrender date” (*“dyddiad ildio”*) means the date specified by Qualifications Wales in the acknowledgement of surrender as being that from the expiry of which the body is to cease to be recognised.

*Withdrawal of recognition*

- 19 (1) If a recognised body fails to comply with any condition to which recognition in respect of the award of a qualification or description of qualification is subject, Qualifications Wales may withdraw its recognition of the body in respect of the award of –
- (a) a specified qualification or description of qualification, or
  - (b) every qualification in respect of the award of which the body is recognised.
- (2) If a recognised body that awards an approved qualification fails to comply with any condition to which the approval is subject, Qualifications Wales may withdraw its recognition of the body in respect of the award of –
- (a) a specified qualification or description of qualification, or
  - (b) every qualification in respect of the award of which the body is recognised.

*Procedure for withdrawal of recognition*

- 20 (1) Before withdrawing recognition from a recognised body under paragraph 19, Qualifications Wales must give the body notice of its intention to do so.
- (2) The notice must—
- (a) explain why Qualifications Wales proposes to withdraw recognition in the respect concerned, and
  - (b) specify when Qualifications Wales proposes to decide whether to withdraw recognition.
- (3) In deciding whether to withdraw recognition as specified in the notice, Qualifications Wales must have regard to any representations made by the recognised body.
- 21 (1) If Qualifications Wales decides to withdraw recognition, it must give notice to the recognised body of the decision.
- (2) The notice must—
- (a) inform the body of its right under arrangements made under paragraph 22 to request a review of the decision,
  - (b) state the date by which any request for review must be made, and
  - (c) specify the date with the expiry of which, in the absence of a request for review, the withdrawal is to take effect (the “withdrawal date”).
- (3) The withdrawal date must be a date after the last date on which a review may be requested under arrangements made under paragraph 22.
- (4) At any time before the withdrawal date, Qualifications Wales may decide not to withdraw the body’s recognition; and if it does so, must give the body notice to this effect.
- (5) In determining the withdrawal date, Qualifications Wales is to have regard to the need to avoid prejudice to persons who are seeking, or might reasonably be expected to seek, to obtain a qualification, or a qualification of the description, in respect of the award of which recognition is to be withdrawn.

*Review of decision to withdraw recognition*

- 22 (1) Qualifications Wales must make arrangements for a decision to withdraw recognition from a body to be subject to review at the request of the body concerned.
- (2) The arrangements must—
- (a) specify the period within which a review may be requested,
  - (b) make provision for recommendations to be made by the person carrying out the review to Qualifications Wales in respect of the withdrawal,
  - (c) make provision for Qualifications Wales, having considered those recommendations, either to confirm or reverse its decision to withdraw recognition, and
  - (d) require Qualifications Wales to notify the body concerned of the outcome of the review.

- (3) The arrangements must require a review to be carried out by a person who is independent of Qualifications Wales.
- (4) A person is independent of Qualifications Wales, for this purpose –
  - (a) in the case of an individual, if he or she is neither a member of Qualifications Wales nor a member of Qualifications Wales' staff;
  - (b) in the case of a body, if none of the body's members is a member of Qualifications Wales nor a member of Qualifications Wales' staff.
- (5) If following a review Qualifications Wales confirms its decision to withdraw recognition, it must give notice to the body concerned –
  - (a) giving reasons for the confirmation, and
  - (b) stating the date with the expiry of which the withdrawal will take effect.

*Transitional provision in respect of withdrawal*

- 23
- (1) Notice under paragraph 21 or 22 may include provision within sub-paragraph (2), if Qualifications Wales considers that provision appropriate for the purpose of avoiding prejudice to persons who are seeking or might reasonably be expected to seek to obtain the qualification, or a qualification of the description, in respect of the award of which recognition is to be withdrawn.
  - (2) Provision within this sub-paragraph is provision to the effect that, from the expiry of the withdrawal date until the expiry of the extension date, the body is to be treated for purposes specified by Qualifications Wales in the notice as being recognised in respect of the award of the qualification or description of qualification concerned.
  - (3) If Qualifications Wales makes provision in a notice within sub-paragraph (2) –
    - (a) it must give reasons for this in the notice, and
    - (b) the body is to be treated from the expiry of the withdrawal date, for the purposes specified in the notice, and until the expiry of the extension date, as being recognised in respect of the award of the qualification or description of qualification concerned.
  - (4) Sub-paragraph (5) applies if –
    - (a) notice under paragraph 21 contains provision within sub-paragraph (2) (the "original extension provision"), and
    - (b) a review of the decision to withdraw recognition is carried out under paragraph 22.
  - (5) The original extension provision has no effect, for the purposes of sub-paragraph (3)(b), unless it is confirmed in notice under paragraph 22 confirming the decision to withdraw recognition.
  - (6) In this paragraph –

*"extension date"* (*"dyddiad estyn"*) means a date specified by Qualifications Wales in the notice for the purposes of this paragraph;

“withdrawal date” (*“dyddiad tynnu’n ôl”*) means the date specified by Qualifications Wales in the notice as being that from the expiry of which recognition is to be withdrawn.



SCHEDULE 4  
(introduced by section 58)

CONSEQUENTIAL AMENDMENTS

*Education Act 1996 (c.56)*

- 1 (1) The Education Act 1996 is amended as follows.
- (2) In section 408 –
- (a) in subsection (1)(a) after “2009” insert “or the provisions of the Qualifications Wales Act 2015”;
  - (b) in subsection (2)(e) omit “or 99”;
  - (c) after subsection (2)(e), insert –
    - “(f) arrangements relating to qualifications within the meaning given in section 56 of the Qualifications Wales Act 2015 which are approved under Part 4 of that Act and to courses of education or training leading to such qualifications.”
- (3) In Schedule 36A, in the table in paragraph 2, in the entry for sections 96, 101 and 102 of the Learning and Skills Act 2000 –
- (a) in the first column, omit “and 102”;
  - (b) in the second column, after “qualifications” insert “(in England)”.

*Education Act 1997 (c.44)*

- 2 (1) The Education Act 1997 is amended as follows.
- (2) In section 29, after subsection (6) insert –
- “(7) In this section references to “school examinations and assessment” do not include examinations taken or assessments carried out for the purpose of the award of a qualification within the meaning of section 56 of the Qualifications Wales Act 2015.”
- (3) Omit –
- (a) section 30;
  - (b) section 32(3), (3A) and (4);
  - (c) sections 32ZA to 32C.
- (4) In section 54 (orders and regulations) –
- (a) in subsection (2) omit “32AB(2) or”;
  - (b) omit subsection (2A).

*Learning and Skills Act 2000 (c.21)*

- 3 (1) The Learning and Skills Act 2000 is amended as follows.

- (2) In section 96—
  - (a) in subsection (2)—
    - (i) in the opening words, omit “or 99”;
    - (ii) in paragraph (b), after “maintained school” insert “in England”;
  - (b) for subsection (5) substitute—

“(5) In this section “a relevant qualification” means a qualification to which Part 7 of the Apprenticeships, Skills, Children and Learning Act 2009 applies.”;
  - (c) in subsection (9), for “102 “local authority” has the same meaning as” substitute “101 “local authority” has the same meaning as “local authority in England””.
- (3) In the cross-heading immediately preceding section 96, at the end insert “: England”.
- (4) In section 98 (the title of which becomes “Approved qualifications”), in subsection (1) omit the words from “in its” to the end.
- (5) Omit section 99.
- (6) In section 100—
  - (a) in the opening words of subsection (1), omit “in its application to England”;
  - (b) omit subsection (2).
- (7) In section 101 (the title of which becomes “Enforcement”), in subsection (1) omit “in its application to England”.
- (8) Omit section 102.
- (9) Omit section 103(4).

*Education Act 2002 (c.32)*

- 4 Omit paragraph 7 of Schedule 17 to the Education Act 2002.

*National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3238)*

- 5 Omit paragraph 72 of Schedule 1 to the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005.

*Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3239)*

- 6 Omit paragraphs 14, 15, 18(c), (d) and (e) and 30 of Schedule 1 to the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005.

*Government of Wales Act 2006 (c.32)*

- 7 In section 148 of the Government of Wales Act 2006, after subsection (2)(l) insert—

“(la) Qualifications Wales,”.

*Education and Skills Act 2008 (c.25)*

8 Omit sections 160(1) and (3) and 162 of the Education and Skills Act 2008.

*Apprenticeships, Skills, Children and Learning Act 2009 (c.22)*

- 9 (1) The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.
- (2) In section 253A(6) in the definition of “relevant qualification”, for “by section 30(5) of the Education Act 1997” substitute “to “qualification” by section 56 of the Qualifications Wales Act 2015”.
- (3) Omit paragraphs 45 and 48 of Schedule 6.
- (4) Omit paragraphs 15, 16(3), 17 to 19 and 29 of Schedule 12.

*Education Act 2011 (c.21)*

10 Omit section 24 of the Education Act 2011.

*Counter-Terrorism and Security Act 2015 (c.6)*

- 11 (1) The Counter-Terrorism and Security Act 2015 is amended as follows.
- (2) In section 32, in subsection (1), in the definition of “relevant further education body”, for the words from “Regulation” to the end of paragraph (b) substitute “, or to qualifications awarded by bodies in respect of the award of which they are recognised by Qualifications Wales under Part 3 of the Qualifications Wales Act 2015;”.
- (3) In Schedule 6, under the heading “Education, child care etc”, in the last entry (relating to the governing body or proprietor of an institution not otherwise listed), for the words from “Regulation” to the end of paragraph (a) substitute “, or to qualifications awarded by bodies in respect of the award of which they are recognised by Qualifications Wales under Part 3 of the Qualifications Wales Act 2015;”.
- (4) In Schedule 7, under the heading “Education, child care etc”, in the last entry (relating to the governing body or proprietor of an institution not otherwise listed), for the words from “Regulation” to the end of paragraph (a) substitute “, or to qualifications awarded by bodies in respect of the award of which they are recognised by Qualifications Wales under Part 3 of the Qualifications Wales Act 2015;”.