

*Draft Regulations laid before the National Assembly for Wales under section 55(2)(b) of the Qualifications Wales Act 2015, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2019 No. (W.)**

**EDUCATION, WALES**

**Qualifications Wales (Monetary  
Penalties) (Determination of  
Turnover) Regulations 2019**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 38(1) of the Qualifications Wales Act 2015 (“the Act”) enables Qualifications Wales to impose a monetary penalty on an awarding body that has failed to comply with a condition of its recognition or a condition of approval to which its approved qualification is subject.

These Regulations make provision on how to determine the amount to be paid by the awarding body for the purposes of section 38(3) of the Act.

The amount of monetary penalty may be whatever Qualifications Wales decide is appropriate in all the circumstances of the case, but must not exceed the amount outlined by the Welsh Ministers in regulation 3 of these Regulations.

Regulations 4 and 5 determine the turnover of an awarding body for the purposes of regulation 3.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Curriculum and Assessment Division in the Department for Education and Public Services in the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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*Made* \*\*\*

*Coming into force* \*\*\*

The Welsh Ministers in exercise of the powers conferred on them by sections 38(3) and 55(1) of the Qualifications Wales Act 2015<sup>(1)</sup> make the following Regulations.

In accordance with section 55(2)(b) of that Act, a draft of this instrument was laid before and approved by a resolution of the National Assembly for Wales.

**Title and commencement**

1.—(1) The title of these Regulations is the Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019.

(2) These Regulations come into force on 12 April 2019.

**Interpretation**

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Qualifications Wales Act 2015;

“awarding body” (“*corff dyfarnu*”) has the meaning given by section 57 of the Act;

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(1) 2015 anaw 5; *see* the definition of “regulations” in section 57(3).

“business year” (“*blwyddyn fusnes*”) means a period of more than 6 months in respect of which an awarding body publishes accounts or, if no such accounts have been published for the period, prepares accounts;

“date of notice” (“*dyddiad hysbysu*”) means the date on which Qualifications Wales gives notice to an awarding body under section 38(4) of the Act of their intention to impose a monetary penalty on the awarding body;

“preceding business year” (“*blwyddyn fusnes flaenorol*”) means the business year immediately preceding the date of notice.

### **Monetary penalty: amount**

3.—(1) The amount of a monetary penalty imposed on an awarding body under section 38 of the Act must not exceed 10% of the awarding body’s turnover.

(2) The turnover of an awarding body for the purposes of paragraph (1) is to be determined in accordance with regulations 4 and 5.

(3) Subject to paragraph (1), the amount may be whatever Qualifications Wales decide is appropriate in all the circumstances of the case.

### **Determination of turnover for the purposes of regulation 3**

4.—(1) Where the preceding business year is a period of 12 months, the turnover of an awarding body is the body’s applicable turnover for the entire preceding business year.

(2) Where the preceding business year did not equal 12 months, the turnover is the awarding body’s applicable turnover for that business year divided by the number of months in that business year and multiplied by 12.

(3) Where there was no preceding business year, the turnover is the applicable turnover for the 12 months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3) the awarding body has turnover for a period of less than 12 months, the turnover is the applicable turnover in that period divided by the number of months in that period and multiplied by 12.

(5) In this regulation—

“applicable turnover” has the meaning given in regulation 5.

### **Applicable turnover**

5.—(1) For the purposes of regulation 4, the applicable turnover of an awarding body is the sum of—

- (a) all amounts derived by the body from the provision of goods and services falling within the body's ordinary activities in the United Kingdom; and
- (b) all other amounts received by the body in the course of the body's ordinary activities in the United Kingdom by way of gift, grant, subsidy or membership fee,

after deduction of trade discounts, value added tax and other taxes based on the amounts so derived or received.

(2) The amounts are to be calculated in conformity with generally accepted accounting principles in the United Kingdom.

*Name*

Minister for Education, one of the Welsh Ministers

Date