

Government response: Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019

Technical Scrutiny

The technical scrutiny element of the draft report refers to one drafting point - that the draft Regulations do not give absolute clarity as to the meaning of “month” in regulation 4.

We note the commitment made by the Counsel General in the letter of 9 February 2018 to look to make greater use of approaches such as footnotes where a definition is not contained in the secondary legislation itself. However, the Counsel general also advised in the same response that “... *if a term is intended to have its ordinary dictionary meaning, or it is obvious from the context what the term is referring to, it might be positively confusing to include a definition*”. We consider in these circumstances that the meaning of month (i.e. a calendar month) is sufficiently clear from the context of the regulations. As you have correctly highlighted, this is demonstrated by references to “*the last day of the month*” which clearly indicates that month is to mean a calendar month.

Also, the wording and the method of calculating an awarding body’s turnover has existed for a significant period of time without any apparent problem (see Office of Qualifications and Examinations Regulation (Determination of Turnover for Monetary Penalties) Order 2012 in England and the previous regulations which were in force in Wales - Recognised Persons (Monetary Penalties) (Determination of Turnover) (Wales) Order 2012). Awarding bodies, which operate in both England and Wales, would therefore be familiar with this wording and that “month” means calendar month.

Therefore, an amendment to address this technical scrutiny point is not considered necessary.

Merits Scrutiny

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The point is noted. However, the Welsh Government would make the following point:

- A policy decision has been taken to allow Qualification Wales, as the independent regulator of qualifications in Wales, a wide discretion when imposing monetary penalties on awarding bodies. As the regulations are being made subject to the affirmative procedure, we consider that the Assembly are being provided with an adequate opportunity to debate and scrutinise the way in which penalties will be set.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The point is noted.

3. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Welsh Government has noted the matters the Committee has suggested should be clarified and the Explanatory Memorandum will be withdrawn and revised before re-laying.