

QUALIFICATIONS WALES ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Further Provision Relevant to Recognition, Approval and Designation

Section 34: Restriction on funding and provision of certain courses

72. This section places a restriction on the public funding of courses of education or training for learners under the age of 19, if those courses lead to qualifications. Those courses can only be funded by the Welsh Ministers, by local authorities or provided by (or on behalf of) a maintained school, if the forms of qualifications concerned are awarded by a recognised body as approved by Qualifications Wales under Part 4 (that is, awarded with the approval number), or if they are designated by Qualifications Wales under Part 5. In the case of a maintained school providing the course (or the course being provided on its behalf), the local authority and the governing body must ensure that they adhere to this restriction. Part 2 of the Schools Standards and Organisation (Wales) Act 2013 gives local authorities and the Welsh Ministers powers to intervene in the conduct of maintained schools and gives the Welsh Ministers powers to intervene in a local authority's exercise of its education functions. The effect of section 57(1) of this Act (which provides for this Act to be read as one with the Education Act 1996) and section 61(2) (which provides for this Act to be one of the Education Acts) is that these powers of intervention would be available in the event of a governing body or local authority failing to comply with the duty under this section.
73. It is also a requirement that the provision of the course is in accordance with any award limitation condition attaching to the approval (in the case of an approved qualification), or with any specified purposes for which the designation is to have effect (in the case of a designation). Subsection (4) explains that an award limitation condition is a condition of approval which relates to the person or description of person to whom the qualification may be awarded – such as a limitation based on the age of learners.
74. There is a specific exception to this restriction for any course provided to a person with a learning difficulty: this exception only relates to the course provided to the person with a learning difficulty and does not provide an exception in relation to other learners on that course. Dependent on the authorised body's funding powers, this exception would enable it to fund courses provided to any learner with a learning difficulty whatever qualification the course leads to and wherever the course is provided, for example whether in or outside of Wales. Section 57(5) defines what is meant by a person with a learning difficulty for the purposes of this Act.
75. Subsection (8) gives the Welsh Ministers the power to make further exceptions to this restriction – either for some particular courses or for other specific circumstances or particular cases that may arise. For example, an exception might be considered to enable a learner who has moved from an independent sector school to a maintained school in Wales to take the qualification for which they had been prepared. The exception is made by Welsh Ministers designating the course in writing.

76. Designation by the Welsh Ministers does not establish an alternative route for approving qualifications – its effect is that authorised bodies may be able to fund courses for learners who are under 19 even though it leads to a form of a qualification which is neither approved nor designated by Qualifications Wales.
77. The Act does not otherwise restrict the qualifications which may be used on courses. For example, an independent school in Wales could provide courses leading to forms of qualifications which are neither approved nor designated by Qualifications Wales.

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

78. **Section 35** avoids a form of a qualification that is awarded as approved by Qualifications Wales being regulated simultaneously by both Qualifications Wales and Ofqual. Ofqual is a regulator of qualifications established under the Apprenticeships, Skills, Children and Learning Act 2009. Ofqual’s functions are similar to the functions of Qualifications Wales. An awarding body may be recognised by both Ofqual and by Qualifications Wales under the respective legislative regimes.
79. **Section 35** prevents any conditions of recognition imposed by Ofqual from applying to the award in Wales of a form of a qualification that is awarded as approved by Qualifications Wales. Qualifications Wales’s conditions of recognition and those of approval would apply in these circumstances; Ofqual’s conditions of recognition would not. The meaning of the award of a form of a qualification in Wales is set out in subsection (4) and section 57(4) is also relevant to this.
80. Qualifications not awarded as approved but regulated under Qualifications Wales’s conditions of recognition, including any designated qualifications, may also be regulated by Ofqual (see section 36 whereby Qualifications Wales may regulate, through conditions of recognition, qualifications awarded in Wales which are within the body’s recognition even if they are not approved). Section 35 ensures that such overlap does not occur in relation to forms of qualifications awarded as approved under Part 4 of the Act; sections 57(8) and 22(4) explain what is meant when a qualification is awarded as approved. Section 35 does not affect the application (if any) of conditions of recognition imposed by Ofqual to the award in Wales of forms of a qualification which are not awarded as approved – for example, designated qualifications or other qualifications which are not awarded as approved by Qualifications Wales, and may instead be ones in relation to which Ofqual regulates.

Section 36: Restriction on application of conditions imposed by Qualifications Wales

81. Under section 36, conditions of recognition imposed by Qualifications Wales on a recognised body apply in relation to the body’s award of qualifications in Wales, in respect of which it is recognised. This covers all qualifications within its recognition, and not just any which are approved under Part 4 or designated under section 29. Recognised bodies may also be regulated through conditions of recognition imposed by Ofqual (under the Apprenticeships, Skills, Children and Learning Act 2009) in respect of qualifications awarded in Wales, other than those forms awarded as approved. This is because section 35 only prevents Ofqual’s conditions of recognition from applying in respect of forms of qualifications awarded in Wales as approved.
82. Conditions of recognition imposed by Qualifications Wales will not apply in relation to the award of a form of a qualification outside of Wales.