

# QUALIFICATIONS WALES ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7: Enforcement**

83. The means by which Qualifications Wales will regulate awarding bodies and qualifications within its remit is through conditions of recognition under Part 3 and conditions of approval under Part 4. Powers of enforcement under this Part ensure that action can be taken in the event of a failure, or likely failure, to comply with any of those conditions. Qualifications Wales also has available to it the power to withdraw recognition (in Schedule 3), the power to withdraw approval (in section 27) and the power to revoke a designation (in section 32). In exercising the powers under this Part, Qualifications Wales must have regard to the principles regarding regulatory activities set out in section 54(2) (performance of regulatory activities). See also section 47 as to the requirement to prepare a statement of its policy in relation to its functions under this Part.

#### ***Section 37: Power to give directions***

84. This section enables Qualification Wales to require an awarding body to take (or not take) action, through issuing a written direction to that awarding body. A direction could only be issued if Qualifications Wales judged that the awarding body had failed, or was likely to fail, to comply with one or more conditions of recognition and/or one or more conditions of approval, to which the awarding body is subject. Any actions that Qualifications Wales requires (or prohibits) through the direction must be for the purpose of ensuring that the awarding body complies with the condition.
85. Qualifications Wales must give notice to the awarding body if it intends to issue a direction and it must provide the awarding body with the reasons for the proposed direction and specify when it proposes to make the decision. This is so that the awarding body can make representations before the decision is made and, if it does so, Qualifications Wales must consider them. If, having considered any representations, Qualifications Wales proceeds to issue a direction, it must do so in writing and the awarding body must comply with it. If it does not comply, Qualifications Wales may apply to the Court for a mandatory order.
86. This power to give directions would not preclude Qualifications Wales from seeking to address any concerns regarding possible failures to comply with conditions through discussions with awarding bodies.

#### ***Sections 38 to 40: Monetary penalties***

87. These sections:
- a) enable Qualifications Wales to impose a monetary penalty on an awarding body for non-compliance with conditions and set out the requirements in relation to giving notice of such a penalty;

*These notes refer to the Qualifications Wales Act 2015  
(c.5) which received Royal Assent on 05 August 2015*

- b) provide for the Welsh Ministers to make regulations on how to determine the amount to be paid;
  - c) enable awarding bodies to appeal to the First-tier Tribunal against such a penalty; and
  - d) enable Qualifications Wales to recover interest on any part of the penalty which is unpaid by a particular time.
88. Under section 47(2)(i) and (j) Qualifications Wales must set out in its policy statement the circumstances in which it is likely to impose such a penalty and the factors it will take into account in determining the amount to be imposed.
89. If it appears to Qualifications Wales that an awarding body has failed to comply with a condition of its recognition or a condition of approval to which its approved qualification is subject, it may impose a monetary penalty (see section 38(1) and (2)).
90. However, Qualifications Wales must first give notice to the awarding body of its intention to impose a monetary penalty, giving its reasons, specifying the proposed amount and the period following which Qualifications Wales proposes to make its decision. This is to give the awarding body an opportunity to make representations. In this case a minimum period of 28 days (starting from the date the notice is sent) must be provided for.
91. If, having considered any representations, Qualifications Wales decides to impose a monetary penalty, it must set this out in a further written notice, specifying the amount, the period within which payment must be made (which must not be less than 28 days beginning with the date of the notice) and setting out information as to the grounds for it, how payment may be made, rights of appeal under section 39 and the consequences of non-payment.
92. Regulations made by the Welsh Ministers will set out the requirements as to how the amount is to be calculated. These regulations must be approved by a resolution of the National Assembly for Wales before they can be made (see section 55(2)). Subject to the constraints imposed by those regulations, Qualifications Wales may decide the amount of the penalty, though it must have set out the factors which it is likely to take into account in deciding upon that amount in its policy statement (section 47).
93. An awarding body may appeal to the First-tier Tribunal against a decision to impose a monetary penalty or against a decision as to the amount of the penalty. The appeal must be made on the grounds set out in section 39(2). Interest also is payable on any amount of an unpaid monetary penalty after the “applicable date” defined in section 40(2), except for any period during which the requirement to pay is suspended under section 39(3). The rate of interest is that specified in section 17 of the Judgments Act 1838. The total amount of interest must not exceed the amount of the penalty.

***Sections 41 to 43: Costs recovery for imposition of sanctions; appeals and interest***

94. These sections enable Qualifications Wales to recover costs incurred by it in connection with imposing a sanction. The costs may be incurred either in the giving of a direction (section 37), the imposing of a monetary penalty (section 38) or for the withdrawal of recognition (paragraph 19 of Schedule 3).
95. **Section 41** describes the type of costs that may be recovered and specifies how Qualifications Wales can require costs recovery and the details to be provided to the awarding body.
96. **Section 42** enables awarding bodies to appeal to the First-tier Tribunal on any of the grounds set out in subsection (2) against a decision by Qualifications Wales to recover costs or as to the amount of the costs.

97. **Section 43** provides for interest to accrue on any amount of unpaid costs at the end of the period ending with the “applicable date” as defined in section 43 (2) (except for any period during which the requirement to pay is suspended under section 42(3)). The total amount of interest must not exceed the amount of the costs.

***Section 44: Entry and inspection of premises***

98. This section enables Qualifications Wales to apply to a justice of the peace for an order allowing it to enter an awarding body’s premises to inspect and copy records and documents, or remove them, and to require access to, and to inspect and check the operation of, electronic devices, associated apparatus or material. Where there is an order in place, the authorised person must be assisted as the authorised person may reasonably require. Only a member of staff authorised by Qualification Wales for the purposes of this section may apply to the justice of the peace. An order can be made only if the justice of the peace is satisfied that the requirements in subsections (3) to (5) are met. If an order is granted, an authorised member of Qualifications Wales’s staff may enter the premises for the purpose of ascertaining whether there has been a breach of a condition of recognition or approval to which the awarding body’s recognition, or a form of qualification awarded by it, is subject. The order may permit or require a police officer to accompany the authorised person. The authorised person and police officer (if in attendance) may do the various things listed in subsection (6) for that purpose. If an accompanying police officer needs to use reasonable force to enable the exercise of the powers, then this is permitted (subsection (9)).