Qualifications Wales Act 2015

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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.

Status: *Point in time view as at 21/09/2015.*
Changes to legislation: *There are currently no known outstanding effects for the Qualifications Wales Act 2015, PART 7. (See end of Document for details)*

Commencement Information

I1 S. 37 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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.

Commencement Information

I2 S. 38 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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.

Commencement Information

I3 S. 39 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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).

Commencement Information

I4 S. 40 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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.

Commencement Information

I5 S. 41 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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.

Commencement Information

I6 S. 42 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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.

Status: *Point in time view as at 21/09/2015.*
Changes to legislation: *There are currently no known outstanding effects for the Qualifications Wales Act 2015, PART 7. (See end of Document for details)*

(5) No interest is payable in respect of any period during which the requirement to pay the costs is suspended under section 42(3).

Commencement Information

I7 S. 43 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

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.

Commencement Information

I8 S. 44 in force at 21.9.2015 by S.I. 2015/1687, **art. 2** (with arts. 3-12)

Status:
Point in time view as at 21/09/2015.

Changes to legislation:
There are currently no known outstanding effects for the Qualifications Wales Act 2015, PART 7.