

# QUALIFICATIONS WALES ACT 2015

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Qualifications Wales Act 2015 which was passed by the National Assembly for Wales on 16 June 2015 and received Royal Assent on 05 August 2015. They have been prepared by the Department for Education and Skills of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.
2. They are not and not meant to be a comprehensive description of the Act. So where a section or part of a section is self explanatory, no further explanation or comment is provided.

### Background

3. The Review of Qualifications for 14 to 19 year olds in Wales was commissioned by the Welsh Ministers in 2011 and was chaired by Huw Evans, former principal of Llandrillo College. Tasked with identifying how the Welsh Government could ensure that Wales has qualifications that are understood and valued and meet the needs of our young people and the Welsh economy, it reported to Ministers in November 2012. The Review of Qualifications emphasised the importance of ensuring that the qualifications taken by learners in Wales are recognised and valued world-wide.
4. The Welsh Ministers accepted the 42 recommendations contained within the report. In relation to the qualification system in Wales the report concluded that “a single body should be established to regulate, approve and assure the quality of all qualifications (below degree level) available in Wales, bringing in a new and stronger approach to regulation” and that “regulatory decisions would be separate from government”.
5. The report also envisaged that Qualifications Wales should become an awarding organisation for Wales, developing and awarding “most qualifications for 14 to 16-year-olds and most general qualifications for 16 to 19-year-olds”.
6. This Act gives effect to the first part of the recommendation in that it establishes a regulatory body for qualifications at arms’ length from the Welsh Ministers, and removes the Welsh Ministers’ current regulatory functions relating to qualifications. It does not give Qualifications Wales powers to be an awarding body. Further legislation would be required to achieve this.

7. A consultation paper setting out the Welsh Government's policy was published on 1 October 2013 and a summary of the responses received to the consultation was published in June 2014. Responses to the consultation expressed strong endorsement of the proposals to set up a new regulatory body and this Act brings into effect those proposals.

### **Summary of the Act**

8. This Act establishes a new organisation, Qualifications Wales, to deliver a new model of regulation. Under the regime established by the Act, Qualifications Wales will exercise regulatory functions in relation to qualifications awarded in Wales. Functions exercisable by Qualifications Wales under this Act replace similar functions exercised by the Welsh Ministers under Chapter 2 of Part 5 of the Education Act 1997.
9. The Act gives Qualifications Wales two principal aims that give Qualifications Wales responsibility for ensuring that qualifications awarded in Wales (and the underpinning qualification system) are effective for meeting the needs of learners and promoting public confidence in them. In order to address a number of matters which contribute to effectiveness and public confidence, Qualifications Wales is required to develop and implement a system for recognising awarding bodies and approving and designating qualifications.
10. In order to provide Qualifications Wales with effective regulatory powers, the Act gives functions to Qualifications Wales to regulate awarding bodies awarding qualifications in Wales, to focus on priority qualifications, to approve forms of qualification (which are then eligible for being provided to learners attending certain publicly funded courses), to designate other forms of qualification as eligible for use on those courses of learning, to restrict the number of certain forms of qualification that may be approved, to commission new forms of qualification where such a restriction is in place and to review qualifications and the qualification system.

## **COMMENTARY ON SECTIONS**

### **PART 2: ESTABLISHMENT AND PRINCIPAL AIMS OF QUALIFICATIONS WALES**

#### **Section 2: Establishment of Qualifications Wales**

11. This section establishes Qualifications Wales as a body corporate. It introduces Schedule 1 which provides further details about its establishment and Schedule 2 which allows the Welsh Ministers to transfer staff of the Welsh Assembly Government and property, rights and liabilities from the Welsh Ministers to Qualifications Wales.

#### **Section 3: Principal aims of Qualifications Wales**

12. This section sets out the principal aims of Qualifications Wales: these will underpin all of the work that Qualifications Wales undertakes – and Qualifications Wales will need always to ensure that its actions are compatible with these aims. This section requires Qualifications Wales, in exercising any function, to act in a way that it considers appropriate for the purpose of achieving the principal aims.

13. The first principal aim gives Qualifications Wales responsibility for ensuring the effectiveness of qualifications in meeting the reasonable needs of learners in Wales. The meaning of qualification is defined in section 56. While this principal aim is broad in scope, Part 4 of the Act (priority qualifications and approval of qualifications) provides for the prioritisation of some qualifications, so that Qualifications Wales may focus its activities on approving qualifications. Qualifications Wales will be able to designate other forms of qualifications under Part 5 as eligible for funding on certain programmes of learning and to regulate the award in Wales of those and other qualifications by recognised awarding bodies through conditions of recognition under Part 3 (see section 36). This principal aim also requires Qualifications Wales to take responsibility for the effectiveness of the qualification system in Wales (namely, the whole system by which qualifications are awarded to persons who are assessed wholly or mainly in Wales for those qualifications, as defined in section 3(3)). The 'system' is the infrastructure which underpins and enables the delivery of qualifications – it includes the *way* that qualifications are developed, delivered and awarded as well as *what* is developed, delivered and awarded.
14. The second principal aim requires Qualifications Wales to promote public confidence in both the qualifications and the supporting system. For the qualifications and the system to be truly effective, together they must inspire public confidence. An assessment of public confidence could include, for example, the level of confidence of employers, learning providers, learners, parents and carers in the relative value of qualifications taken in Wales compared with those taken, for example, in England.
15. Sub-section 2 sets out a non-exhaustive list of the matters to which Qualifications Wales must have regard in determining what is appropriate for the purpose of meeting its principal aims. While most of these matters are self-explanatory, additional notes are provided here to give context and/or examples to illustrate some of the terms:
  - a) A skilled workforce is an important factor in the growth of the Welsh economy – and qualifications are both an indicator of the skills of potential new workers and a measure for developing the skills of the existing workforce (paragraph (a)).
  - b) Qualifications Wales will need to specifically consider the provision of assessments through the medium of Welsh and, for example, the provision of qualifications that enable learners to develop or use the Welsh language (paragraph (b)).
  - c) 'Assessment arrangements' are defined in section 57(3) to mean "arrangements for assessing relevant skills, knowledge and understanding in relation to the qualification". Considerations may include the nature of the assessment taken by learners (for example, consideration of the quality of an examination paper) as well as, for example, the security arrangements relating to the storage of assessment records (paragraph (c)).
  - d) The reasonable requirements of employers could be taken into account, for example, in relation to the need to equip learners with the knowledge, skills and understanding relevant to general and particular employment. Higher education institutions may need to be satisfied, for example, that the qualifications awarded to learners in Wales both sufficiently differentiate between different levels of ability and provide sufficient preparation for

further study. 'The professions' is not confined to any limited list of professions but may be taken to include, for example, the views of relevant professional experts and representatives (paragraph (d)).

- e) Qualifications Wales must have regard to the content of qualifications, in particular the extent to which they are up to date and to which they reflect best practice in, for example, the performance of tasks (paragraph (e)).
- f) A 'consistent level of attainment' may, for example, relate to consistency over time, across different nations (including those in Europe), across subjects or across qualifications taken by a given age group. Attainment, in this context, could refer, for example, to the extent to which learners have acquired (or are required to acquire) the requisite level of knowledge, skills and understanding pertaining to the qualification (paragraph (f)).
- g) Consideration of whether qualifications are delivered 'efficiently' is not limited solely to financial or economic considerations but may, for example, include consideration of the impact on effectiveness and public confidence of the number and quality of interactions between different bodies and individuals (paragraph (g)).
- h) In considering the effectiveness of the system, Qualifications Wales will need to consider the roles and responsibilities of the different bodies in that system, including, for example, its own role in the system (paragraph (h)).

### **PART 3: RECOGNITION OF AWARDING BODIES**

- 16. Awarding bodies may apply for general recognition by Qualification Wales, and be regulated by Qualifications Wales (through conditions of recognition) in respect of qualifications for which they are recognised and which are awarded in Wales. Section 57 defines "awarding body" as "a person who awards, or proposes to award, a qualification". There is no requirement that an awarding body be recognised in order to award qualifications in Wales. An awarding body must however be recognised in order to apply for the approval or designation of a form of qualification it awards. Generally speaking, it is only such qualifications that can be provided on certain publicly funded courses. In addition, by selecting qualifications from an awarding body that is recognised, learning providers, and through them learners, will be provided with the additional levels of protection that the oversight of a regulatory body provides.
- 17. The Act refers to two types of recognition: general and specific. General recognition covers all qualifications except those for which Qualifications Wales has developed specific recognition criteria. However, provision is also made later in this Part at section 8 to enable awarding bodies to exclude certain qualifications from their application for general recognition, with the effect that Qualifications Wales would not apply the conditions of recognition to the excluded qualification and so would not regulate the excluded qualification. Awarding bodies may subsequently apply to Qualifications Wales if they wish the excluded qualification to become regulated by Qualifications Wales in future.

18. In exercising its functions under this Part Qualifications Wales must have regard to the principles 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 4: Recognition of awarding bodies**

19. This section gives Qualifications Wales the power to recognise awarding bodies. Section 57 defines what is meant by an “awarding body”. Only awarding bodies that have been recognised by Qualifications Wales may apply to have their qualifications approved or designated by Qualifications Wales (and so eligible for use on certain publicly funded courses). Awarding bodies typically develop qualifications and deliver them through learning providers, such as schools, colleges and work-based learning providers. Awarding bodies specify and administer assessment arrangements and are accountable for determining whether or not to award a qualification to a learner (and, if appropriate, what grade should be issued).

#### **Section 5: Duty to set general recognition criteria**

20. Qualifications Wales is under a duty to set and publish the criteria against which it will consider whether or not to recognise, generally, an awarding body. These criteria are referred to as ‘general recognition criteria’ but there may be different criteria for different types of awarding body. An example of a general criterion that might apply to all bodies would be a requirement that an awarding body has appropriate arrangements to identify and monitor conflicts of interest. On the other hand, a criterion about the ability to provide safe warehouse facilities to store secure examination papers may not be applicable to an awarding body solely providing online assessment.

#### **Section 6: Power to set qualification specific recognition criteria**

21. This section gives Qualifications Wales the power to determine that awarding bodies intending to offer certain types of qualification should, in addition to the general recognition criteria, meet specific criteria in order to be regulated in respect of them and to be eligible to submit those types of qualification to Qualifications Wales for approval or designation. For example, Qualifications Wales may require all awarding bodies intending to offer GCSEs and/or A levels in Wales to demonstrate a capability to fulfil marking and grading processes in time to issue a high volume of accurate results on a single date. As with the general recognition criteria, the specific recognition criteria may vary according to the type of awarding body. In addition, they may vary according to the type of qualification in question.

#### **Section 7: Revision of general and qualification specific recognition criteria**

22. This section gives Qualifications Wales the power to revise the general and qualification specific recognition criteria. It must publish the revised criteria and make it clear from which date the revisions apply. Revised criteria must be published before they can come into effect. Although there is no express requirement for an awarding body, once recognised, to continue to meet the general recognition or qualification specific recognition criteria, Qualifications Wales could include such a requirement as a condition of recognition under Schedule 3.

## **Section 8: General recognition of an awarding body**

23. Awarding bodies may apply to Qualifications Wales to become generally recognised as a body awarding qualifications in Wales. This section requires Qualifications Wales to recognise all awarding bodies that have applied to it and which meet the published general recognition criteria. Awarding bodies may however specify, in applying to be recognised, that they do not wish to be generally recognised in respect of a specified qualification or description of qualification – that is, that they wish to exclude one or more specified qualifications from regulation by Qualifications Wales. An awarding body may wish to do this, for example, in the case of a qualification that it has developed to meet the needs of a particular employer and which does not enable the awarding body to meet Qualifications Wales’s conditions of recognition (perhaps in relation to the structure or title of the qualification). In such a case, the criteria against which the application is considered are not to include criteria to the extent that they apply in respect of any excluded qualifications. So where an awarding body does not meet all the criteria but its failure to do so is only to the extent that the criteria apply to a qualification which it has excluded from its application for recognition, the effect of subsection (6) is that Qualifications Wales must recognise the awarding body. If an awarding body has previously excluded qualifications from its recognition, surrendered part of its general recognition, or had part of its general recognition withdrawn, it may apply to Qualifications Wales to bring those qualifications into its general recognition in the future (see subsections (7) and (8)).
24. The Act also enables Qualifications Wales to recognise an awarding body that has applied for general recognition but does not fully meet all of the criteria (for reasons other than the criteria in question not being met only in respect of qualifications that have been excluded from the awarding body’s application for recognition). Subsection (5) sets out the matters that Qualifications Wales must consider when deciding whether to recognise an awarding body that does not meet all the criteria. This provision could address situations where, for example, it emerges that a particular criterion is not relevant to the body being considered. General recognition is required before any qualification offered by that awarding body can be approved (under Part 4) or designated (under Part 5) by Qualifications Wales. In order to have some types of qualifications regulated (and also submitted for approval or designated) by Qualifications Wales, an awarding body may in addition, have to obtain ‘qualification specific recognition’ under section 9.

### **Section 9: Qualification specific recognition of an awarding body**

25. This section is similar to section 8 but applies in situations where an awarding body is applying to be recognised in respect of qualifications to which qualification specific recognition criteria apply (section 6). An awarding body can only obtain specific recognition if it also has general recognition. If a body applies for qualification specific recognition, provided that the body satisfies the general and applicable qualification specific recognition criteria, Qualifications Wales must recognise the body in respect of that specific qualification. As with general recognition, if the body does not meet the criteria in full, Qualifications Wales has discretion to recognise the body under this section.

### **Section 10: Rules about applications for recognition**

26. This section requires Qualifications Wales to make and publish the rules that awarding bodies need to follow in making their application for recognition to Qualifications Wales. These rules may specify, for example, how applications must be made and any fees to be paid for dealing with the application – providing such a fee has been included in a published scheme approved by the Welsh Ministers (under section 49).

## **PART 4: PRIORITY QUALIFICATIONS AND APPROVAL OF QUALIFICATIONS**

27. In exercising its functions under this Part Qualifications Wales must have regard to the principles 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 13: Duty to prepare list of priority qualifications**

28. This section places a duty on Qualifications Wales and the Welsh Ministers to prepare a list of qualifications that are a priority for Qualifications Wales. They may only include a qualification in the list if the condition in subsection (2) is met in relation to the qualification. It will be for Qualifications Wales and the Welsh Ministers to determine together the sort of qualifications that are included in the list – but it might include, for example, qualifications for which specific approval criteria have been developed to meet the needs of learners in Wales – whether those be in relation to the curriculum in Wales or, for example, to the requirements of employers in Wales. Those qualifications will be listed on a published ‘priority qualifications list’ which may be amended from time to time, providing both Qualifications Wales and the Welsh Ministers agree. Qualifications may be listed either individually, or by reference to a description that includes more than one qualification.
29. The functions of Qualifications Wales in relation to approving qualifications (which are set out in Part 4) vary according to whether or not a qualification is on the list.

30. Subsection (6) introduces the terms 'priority qualification', 'restricted priority qualification' and 'unrestricted priority qualification' – which are referred to in the subsequent sections of the Act.

#### **Section 14: Restricted priority qualifications**

31. This section gives Qualifications Wales the power to decide that some qualifications on the priority qualification list should be restricted to a maximum number of 'forms' (this is a particular version of the qualification offered by a particular awarding body: section 56(4)) which may be approved by Qualifications Wales at any one time. For example, Qualifications Wales may decide that it only intends to approve one version of GCSE English Language. In this case it would make a determination under this section and this qualification would become a restricted priority qualification.
32. Qualifications Wales may only make such a decision if it is satisfied that the intended restriction is desirable in light of its principal aims, and the objectives of:
- a) avoiding inconsistency between different forms of a qualification; and
  - b) enabling Qualifications Wales to exercise choice between awarding bodies who may want to develop a new form of the qualification or between different forms of qualifications submitted for approval.
33. Prior to making and publishing a decision to restrict the number of approved forms of a qualification, Qualifications Wales must notify each recognised awarding body and any other person Qualifications Wales thinks might reasonably be expected to have an interest in the proposal and consider any responses it receives from those persons that relate to the proposal.
34. Once Qualifications Wales has published a decision to restrict a qualification to a maximum number, it must then exercise its functions under sections 15 to 17 to ensure that no more than the maximum number of forms of the qualification are approved. Qualifications Wales may enter into arrangements with an awarding body for the awarding body to develop the qualification and may approve the form of qualification developed (sections 15 and 16 refer) or select for approval from any forms of qualification submitted by recognised awarding bodies (section 17 refers). A determination under this section does not directly affect any existing approvals of the forms of the qualification concerned. However, it may result in Qualifications Wales taking steps to withdraw approval under section 27 and it will directly affect any existing designations of the form of qualification concerned (see section 30(3) and (4) for details of where section 29 designations cease to have effect on the approval of a restricted priority qualification).

### **Section 15: Power to make arrangements for development of restricted priority qualification**

35. This section gives Qualifications Wales the power to enter into arrangements with an awarding body for the body to develop a new form of a restricted priority qualification. Qualifications Wales may wish to do this, if, for example, there is a need to address a particular requirement of the curriculum in Wales – or if there is a gap in the market in relation to employment skills that are important for Wales. Those arrangements are with a view to its subsequent submission to Qualifications Wales for approval and Qualifications Wales must apply its approval criteria under section 20. Qualifications Wales must publish a scheme that sets out the procedure for making such arrangements and the procedure must be open, fair and transparent. This is to ensure that there is an open, fair and transparent competition to select the awarding body. Qualifications Wales must exercise its functions in accordance with the scheme and may revise the scheme from time to time. An awarding body need not be recognised in order to enter into arrangements under this section (although it will need to be recognised in order to apply for approval under section 16).
36. Qualifications Wales will be able to specify requirements ('criteria') for the form of qualification that is to be developed. Qualifications Wales will also be able, if it chooses, to make payments to the awarding body(ies) for the work that the awarding body(ies) undertakes/undertake under these arrangements. Payment, however, need not necessarily be required.

### **Section 16: Approval of a restricted priority qualification developed in accordance with section 15 arrangements**

37. This section gives Qualifications Wales the power to approve forms of qualifications that have been developed as a consequence of the arrangements set out in section 15. Awarding bodies which have been selected under the procedure set out in section 15 and which are recognised, may submit a form of qualification, which they have developed following their selection, to Qualifications Wales for approval. This section requires Qualifications Wales to consider and decide whether to approve, or not approve, this form of qualification and in doing so, it will apply its criteria published under section 20. Any minimum requirements that the Welsh Ministers have specified (see section 21), which are relevant to this qualification, must be met before Qualifications Wales may approve the form of the qualification. An approval under this section may only be granted for a limited period (see section 23(1)).

### **Section 17: Approval of a restricted priority qualification in the absence of section 15 arrangements**

38. This section provides an alternative course of action (to that set out in section 15) for Qualifications Wales to decide whether or not to approve a form of a restricted priority qualification.

39. Where Qualifications Wales opts not to follow the route of selecting an awarding body to develop a restricted priority qualification under section 15, Qualifications Wales may approve forms of the restricted qualification submitted to it by recognised bodies. Qualifications Wales must publish a scheme about the making of applications for approval to it under this section, and its consideration of those applications. When Qualifications Wales receives an application to approve a restricted priority qualification that has not been commissioned by it under section 15, Qualifications Wales must consider the application in accordance with its scheme. The scheme must set out an open, fair and transparent procedure. Again, this is to ensure a competitive process, which meets those characteristics, to select the approved form(s) of the qualification. Qualifications Wales may revise the scheme from time to time.
40. Qualifications Wales must apply its criteria published under section 20 in deciding whether or not to approve a restricted priority qualification submitted to it. In addition, any minimum requirements that the Welsh Ministers have specified under section 21 and which are relevant to this qualification, must be met before Qualifications Wales may approve the form of the qualification. An approval under this section may only be granted for a limited period (see section 23(1)).

#### **Section 18: Approval of unrestricted priority qualifications**

41. Where a qualification on the priority qualifications list is not restricted, any appropriately recognised awarding body may submit a form of this qualification to Qualifications Wales for approval.
42. This section places a duty on Qualifications Wales to consider whether to approve forms of qualification which are on the priority qualifications list and in respect of which an application for approval has been made. In considering an unrestricted priority qualification for approval, Qualifications Wales must apply its criteria published under section 20.
43. In making a decision to approve, or not approve, Qualifications Wales has to consider whether any relevant minimum requirements specified by the Welsh Ministers (in relation to knowledge, skills and understanding -see section 21) have been addressed by any form of the qualification that Qualifications Wales intends to approve. If such conditions have not been met, then Qualifications Wales must not approve that form of the qualification. Approvals of unrestricted priority qualifications may be for a limited or indefinite period, as specified by Qualifications Wales (see section 23(2)).

#### **Section 19: Approval of qualifications that are not priority qualifications**

44. This section gives Qualifications Wales the power to choose whether or not to consider for approval forms of qualification that are not listed on the priority qualifications list. It establishes a difference between applications for approval of forms of qualification on the list (which Qualifications Wales must consider, or must consider in accordance with its scheme (sections 16 - 18)) and applications for approval of forms of qualification not on the list (which Qualifications Wales may consider).

45. Qualifications Wales must publish a scheme setting out the factors it is likely to take into account in determining whether to consider applications for approval of forms of non-priority qualifications. As a result, awarding bodies and other interested parties will be aware of Qualifications Wales's approach to the decision-making process and decisions can be made in a transparent way.
46. If Qualifications Wales does decide to consider a form of a non-priority qualification for approval, any minimum requirements that the Welsh Ministers have specified (see section 21), and which are relevant to the qualification, must be met before Qualifications Wales may approve the form of the qualification. Qualifications Wales must apply its criteria (see section 20) in deciding whether to approve the form of the qualification. Approvals of forms of a non-priority qualification may be limited or for an indefinite period, as specified by Qualifications Wales (see section 23(2)).

### **Section 20: Approval criteria**

47. This section requires Qualifications Wales to publish the criteria it uses to decide whether or not to approve a form of qualification. There may be a range of different criteria - for example, for different descriptions of qualifications such as 'all GCSEs' or for 'all qualifications where performance is observed in a work environment' or, more specifically, for 'A level French'.
48. Qualifications Wales's power under section 20 is broad enough to enable approval criteria to set out the knowledge, skills and understanding required in certain priority qualifications (and, in particular, restricted priority qualifications) as well as requirements relating to the assessment requirements. In considering what is appropriate to achieve its principal aims under section 3, Qualifications Wales might also engage with, for example, employers, higher education institutions and the professions to ensure that the criteria appropriately reflect their reasonable requirements.

### **Section 21: Power to specify minimum requirements**

49. This section gives the Welsh Ministers the power to make regulations that set out requirements for a qualification in relation to the knowledge, skills and understanding (essentially the 'subject content') that are required to be addressed by approved forms of that qualification.
50. Qualifications Wales may specify content requirements for priority qualifications through the approval criteria and this may address any such requirements of the Welsh Ministers. In practice, it is envisaged that the power is unlikely to be used other than as a last resort in the event that Qualifications Wales should, in the view of the Welsh Ministers, fail to ensure that approval criteria address content requirements sufficiently. The Welsh Ministers will therefore be able to require that Qualifications Wales ensures that specific requirements are met where the Welsh Ministers think it necessary to ensure that the curriculum for a course leading to the qualification is appropriate for the reasonable needs of learners taking the course. This power reflects the Welsh Ministers' responsibilities in relation to the curriculum for schools under the Education Act 2002.

51. The Act sets out a number of conditions which must be met before the Welsh Ministers may make regulations. These conditions ensure that the regulations are only introduced with the purpose of ensuring that learners follow an appropriate curriculum. This need not necessarily be any published 'national curriculum' but the requirements set out in regulations must relate to the knowledge, skills and understanding that the learner must demonstrate for the purpose of determining whether a person is to be awarded the qualification. Before specifying minimum requirements, the Welsh Ministers must consult Qualifications Wales and others, as appropriate, giving reasons for proposing to specify minimum requirements.
52. The effect of introducing minimum requirements is that Qualifications Wales may not approve a form of that qualification unless it is satisfied that the qualification complies with the requirements set out in the regulations. The draft regulations must be approved by the National Assembly for Wales before they can be made and come into force (see section 55(2)).

## **Section 22: Conditions of approval**

53. Any approval by Qualifications Wales of a form of qualification is subject to a condition requiring the form of qualification to be identified by an approval number in order for it to be awarded as approved. Qualifications Wales will give each form of qualification it approves a unique reference number. The form of qualification is awarded as approved only if awarded with that number in accordance with the condition. This will differentiate between the award of an approved form of qualification and the award of any similar forms of qualification that are not approved.
54. This section also gives Qualifications Wales the discretion to apply further conditions to its approval of forms of qualifications – either at the time that the qualifications are approved, or later. The conditions of approval may, for example, relate to the circumstances in which a qualification is awarded, or the persons to whom it is awarded. For example, a condition may prevent the award of the approved form of the qualification to learners under the age of 18. If Qualifications Wales changes the conditions of approval after a qualification has been approved (or introduces new ones that apply to an approved qualification) it has to give notice to the awarding body of the change, the date it will come into effect and the reasons for the change. This is to ensure, for example, that awarding bodies have a reasonable time in which to amend their qualifications, if appropriate, to address the new conditions or to request that the new conditions or variations are applied to them in a different way. In the event of a failure to comply with the approval conditions, Qualifications Wales may exercise its power to withdraw approval under section 27 or its powers of enforcement under Part 7 or its power to withdraw recognition under paragraph 19(2) of Schedule 3.

### **Section 23: Duration of approval**

55. Approval of restricted priority qualifications must be granted for a limited period so that other awarding bodies may compete to be the provider of a restricted qualification for each limited period.
56. Approval of non-restricted priority qualifications and of non-priority qualifications may be indefinite or for a limited period. Where approval is for a limited period, this has to be made clear at the point of approval – and where this is the case, approval ceases at the end of that period. For details of how approval may be withdrawn or surrendered, please see the notes for sections 25 to 28. It is envisaged that Qualifications Wales is likely to publish, on its online database, information on all approved qualifications and the details of when each approval has effect.

### **Section 24: Rules about applications for approval**

57. Qualifications Wales must make and publish rules about how applications for approval are made, which may cover what such applications should contain and whether and how any fee must be paid (providing such a fee has been included in a published scheme approved by the Welsh Ministers under section 49). The rules may make different provisions for different purposes – for example there may be particular rules that apply to applications for the approval of restricted priority qualifications and not to other types of priority qualifications.

### **Section 25: Surrender of approval**

58. An awarding body may give Qualifications Wales a surrender notice asking it to remove its approval of one or more forms of qualification. The surrender notice must specify the date on which the awarding body wishes the approval to end. Qualifications Wales must act as soon as reasonably practicable in acknowledging such an application. In that acknowledgement, Qualifications Wales may require approval to cease on a different date to that suggested by the awarding body, and must give reasons for the approval to cease on that date. In deciding whether to keep the date specified by the awarding body or set a different date, Qualifications Wales must have regard to the need to avoid prejudice to learners (for example those already on a course leading to the qualification concerned) and to the awarding body's wish for it to end on the date it has specified.

### **Section 26: Transitional provision in connection with surrender of approval**

59. This section allows the acknowledgement of surrender given by Qualifications Wales under section 25 to provide for an extension period after the surrender date until a later date (the extension date). During that period, the form of the qualification continues to be treated as approved, but only for the purposes specified in the acknowledgement of surrender. This can only be done if Qualifications Wales considers it appropriate to avoid prejudicing learners – for example to provide an opportunity for learners to resit the qualification. “Surrender date” and “extension date” are both defined in this section.

### **Section 27: Withdrawal of approval**

60. This section enables Qualifications Wales to end its approval of a form of qualification by withdrawing the approval. The reasons for withdrawing approval are that Qualifications Wales is satisfied:
- a) that the awarding body has not complied with a condition of approval (under section 22). This could happen for example, if the awarding body fails or omits to comply with conditions set at the time of approval or if the conditions of approval (such as knowledge requirements) change and the qualification ceases to comply with the conditions (in this case an awarding body might intend to submit a replacement form of qualification for approval);
  - b) that the awarding body offering that form of qualification is no longer recognised as an awarding body by Qualifications Wales (in respect of that form of qualification). Recognition ceases to have effect in the circumstances set out in paragraph 1(2) of Schedule 3;
  - c) that the qualification concerned has become a restricted priority qualification in accordance with a determination under section 14 (before which Qualifications Wales will have consulted recognised bodies and others).
61. The section sets out what Qualifications Wales must do before it can withdraw approval. Qualifications Wales must:
- a) give notice to the awarding body of Qualification Wales's intention to issue a notice of withdrawal, explaining why the withdrawal is proposed and when it proposes to make the decision; and
  - b) take account of any response provided by the awarding body.
62. If Qualifications Wales then decides to withdraw approval, it must notify the awarding body, specifying the date that withdrawal will take effect. Qualifications Wales is also given the power to vary the date of the withdrawal, providing the awarding body consents to that variation. Variation could enable Qualifications Wales to take account of the time needed to develop qualifications to replace the existing qualifications and to extend that time if there are delays, for example.
63. When determining a date for withdrawal or variation of that date, Qualifications Wales must have regard to the need to avoid prejudice to learners, such as those already following a course leading to the qualification in question.

### **Section 28: Transitional provision in connection with withdrawal of approval**

64. Qualifications Wales may make arrangements to continue treating a form of a qualification, approval of which has been withdrawn, as if it is approved, for a specified time and for specified purposes, in order to avoid prejudice to learners – for example, in order to provide an opportunity for learners to resit the qualification. This provision is similar to the transitional provision that may be made in connection with the surrender of approval, as described in the notes for section 26.

## **PART 5: DESIGNATION OF OTHER QUALIFICATIONS**

65. In exercising its functions under this Part Qualifications Wales must have regard to the principles set out in section 54(2) (performance of regulatory activities). See also section 47 as to the requirement for Qualifications Wales to prepare a statement of its policy in relation to its functions under this Part.

### **Section 29: Designation of other qualifications**

66. This section enables Qualifications Wales to designate a form of qualification so that the designated qualification is eligible to be provided on publicly funded courses of education or training for learners under the age of 19. A recognised body may apply for designation in respect of a form of qualification it offers and in respect of which it is recognised by Qualifications Wales. Qualifications Wales can only make a designation if it is satisfied that the conditions in subsection (4) are met. The conditions relate to the appropriateness of the form of qualification being used on a publicly funded course and to the appropriateness of the form of qualification being designated rather than approved. The ability to designate forms of qualifications is intended to assist in the transition of qualifications from the previous regulatory regime into that of Qualifications Wales, enabling Qualifications Wales itself to consider and judge which qualifications should be approved – other than any which may be transferred to it as approved (under powers to make transitional provision in Part 9). It will also enable Qualifications Wales to allow or continue to allow the public funding of courses leading to particular forms of qualification where appropriate, so as to avoid gaps in publicly funded provision arising should some qualifications not be submitted for approval. Qualifications Wales may designate forms of qualifications as being eligible for use on a specific course of education or training (for example, for use on certain apprenticeship programmes) or as being eligible for funding on courses for learners under the age of 19 more generally.

### **Section 30: Further provision about section 29 designations**

67. This section requires designations under section 29 to be time limited: at the time it makes a designation Qualifications Wales is required to specify a start and end date to the designation. A designation will also cease to have effect earlier in the following circumstances (and in these cases Qualifications Wales must notify the awarding body of the date from which it ceases to have effect):
- a) if the awarding body's recognition ceases in respect of the form of qualification that has been designated (in which case the designation ceases to have effect at the same time as the recognition ceases to have effect);
  - b) if the form of designated qualification is approved under Part 4, from the date that it becomes an approved qualification – although Qualifications Wales may make transitional arrangements under section 31 to treat the qualification as approved for specified purposes for an extended period of time in order to avoid prejudice to learners; and

- c) from the point that a form of the qualification becomes approved as a restricted priority qualification – although, again, Qualifications Wales may make transitional arrangements under section 31.
68. Qualifications Wales may specify the purpose for which a designation has effect, which could be by reference to the circumstances in which, or the persons to whom, a designated qualification may be awarded. This could enable Qualifications Wales to state, for example, that the qualification must not be offered to learners younger than any lower age limit placed on the qualification by Qualifications Wales (similar to, for example, an award limitation condition for approved qualifications - see section 34(3) and (4)). Where purposes have been specified, a course that leads to a form of qualification that is designated must be provided in a way that complies with those purposes in order for it to be publicly funded (section 34(5)(b)).

### **Section 31: Transitional provision in connection with section 29 designations**

69. This section allows Qualifications Wales to provide for designations to continue to have effect for limited purposes after they have ceased, otherwise, to have effect (due either to the approval of the form of qualification taking effect, or to an approval of a restricted priority form of the qualification taking effect). Qualifications Wales may provide for the form of the qualification which was designated to continue to be treated as if it were designated for the purposes and until the end of the date specified by Qualifications Wales. This transitional provision may only be made where Qualifications Wales considers it appropriate to do so for the purpose of avoiding prejudice to learners seeking to obtain the form of the qualification – for example, to allow learners to complete a qualification for which they have started to prepare or to allow learners to resit a qualification.

### **Section 32: Revocation of section 29 designations**

70. This section enables Qualifications Wales to revoke a designation. Before doing this, it must give notice of its intention to the relevant recognised body, explaining why it is proposing to revoke and stating when it is due to decide whether or not to revoke. Qualifications Wales must have regard to any representations made by the recognised body and, if it decides to revoke, must give notice to the recognised body of the decision and of when the revocation is to take effect. The revocation will apply from 1 September in the year following the decision to revoke and only applies in respect of learners starting a course on or after that date. The notice of revocation to the recognised body must be made promptly but in any case by (or on) 31 December of the year in which it is made. This means that recognised bodies (and consequently learning providers and learners) will have at least 8 months between knowing of the decision to revoke and the revocation coming into effect at the beginning of the next academic year. The notice of revocation must be published.

### **Section 33: Rules about applications for designation**

71. This section requires Qualifications Wales to make and publish rules about how applications for designation must be made. The rules may address what such applications should contain and whether and how any fee must be paid (providing such a fee has been included in a published scheme approved by the Welsh Ministers under section 49). The rules may make different provisions for different purposes – for example there may be particular rules that apply to applications for the designation of qualifications used in apprenticeships.

## **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.

### **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;
  - 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)).

## **PART 8: SUPPLEMENTARY**

### **Section 45: Provision of services etc by Qualifications Wales**

99. Qualifications Wales has the power under this section to provide consultancy and other services on a commercial basis and to charge fees for these. Qualifications Wales may develop expertise in relation to qualifications that could be of value commercially. Unlike the position with any charges to be made in connection with its regulatory functions (the scheme for which requires the prior approval of the Welsh Ministers under section 49), Qualifications Wales will be able to determine its own scale of charges for commercial activities without reference to the Welsh Ministers.
100. Qualifications Wales may for example think it expedient to provide such services through a company. This section allows Qualifications Wales to provide the services through a wholly owned company, subject to the Welsh Ministers' approval. Under section 47, Qualifications Wales must set out a statement of its policy on the exercise of this function.

### **Section 46: Review and research**

101. In exercising its functions under this section, Qualifications Wales must have regard to the principles 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.
102. This section enables Qualifications Wales to review the awarding of approved and designated qualifications and other activities of recognised bodies relevant to their recognition, on an ongoing basis, as well as to conduct any other reviews related to any aspect of qualifications ("qualification" is defined in section 56). For example, Qualifications Wales may conduct a review of an individual recognised body's quality assurance processes, or it may decide to review the processes for delivering online assessment of all awarding bodies that it recognises. In relation to approved or designated qualifications, Qualifications Wales may, for example, decide to review one awarding body's form of GCSE Biology, or it may decide, for example, to review all approved and/or designated qualifications at a given level. Qualifications Wales may also, for example, wish to review qualifications awarded by bodies that are not recognised by it or qualifications that recognised bodies have decided to exclude from recognition.
103. The section also requires Qualifications Wales to keep its own role and that of awarding bodies under review. This duty may, for example, encompass consideration of whether and in what way, in time, Qualifications Wales should become an awarding body. This would require further legislation (see paragraphs 6 and 7 above).
104. The section also gives Qualifications Wales the power to undertake or commission research, about any matter connected with qualifications. Qualifications Wales may use its own staff to carry out this research, or it may ask others to carry it out on its behalf.

#### **Section 47: Policy statement and statement about consultation**

105. This section requires Qualifications Wales to publish information that sets out the approach it intends to take to performing its key functions. The purpose of the policy statement is to make Qualification Wales's likely approach to its functions transparent to those potentially affected by them and the public generally. The statement must include information on the matters listed in subsection (2), as these matters could impact significantly on awarding bodies and how they conduct their business.
106. In addition, subsection (3) requires Qualifications Wales to prepare a statement about the circumstances and the manner in which it proposes to consult. This is not confined to written consultations, and would also cover other forms of interaction with others with a view to getting their views.
107. These statements must be kept under review and if appropriate revised. Both the first statement and any subsequent revised statements must be published.

#### **Section 48: Complaints**

108. This section requires Qualifications Wales to publish information that sets out the ways in which it will deal with complaints that it receives, whether they are about the exercise of its own functions, specifically relate to the award of an approved or designated qualification, or are about any other activities of a recognised body which are relevant to its recognition. This section requires Qualifications Wales to decide what arrangements it will follow in respect of any of these types of complaints, and to publish these arrangements. The arrangements may be different according to the type of complaint. Qualifications Wales may consider that, once it has handled a complaint to a certain point, there is a need to refer the complaint to an independent third party and these published arrangements may make provision for this. Subsection (4) defines a person as being 'independent' for this purpose where the person is neither a member of Qualifications Wales nor a member of its staff (or, in the case of the independent person being a body, if none of its members is a member of Qualifications Wales or a member of Qualifications Wales's staff).

#### **Section 49: Charging scheme**

109. This section sets out Qualifications Wales's powers to charge fees. If Qualifications Wales wishes to charge awarding bodies in connection with its regulatory activities listed in subsection (1), it must first produce a list of the proposed fees relating to Qualification Wales's costs in a scheme which is to be approved by the Welsh Ministers. This does not include enforcement functions in Part 7 (there is a specific power in section 41 for Qualifications Wales to recover costs in connection with imposing sanctions). Qualifications Wales can only charge fees in accordance with the scheme (or the scheme as revised), which must have been approved by the Welsh Ministers and published.

## **Section 52: Joint working**

110. This section enables Qualifications Wales to work with others, providing it considers it appropriate to do so in connection with its own functions. For example, Qualifications Wales may wish to work jointly with other UK qualifications regulators in relation to reviewing – or investigating complaints about – designated forms of qualification which are also regulated by the other regulators.

## **PART 9: GENERAL**

### **Section 55: Regulations**

111. This section deals with how the powers under the Act to make regulations may be exercised and what they may contain. The regulations referred to in subsection (2) are to be made by statutory instrument following the affirmative procedure which requires the National Assembly for Wales's approval of a draft instrument before it can be made. The powers to make the regulations referred to are provided in sections 21 (power to specify minimum requirements), 38(3) (power to make regulations about the amount of monetary penalties) and 59 (power to make consequential and transitional provision). But if regulations making consequential and transitional provision do not amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales, they must be made by statutory instrument, but the negative procedure applies (subsection (3)).

### **Section 56: Interpretation of references to “qualification”**

112. This section defines “qualification” for the purposes of the Act. Degrees of various levels are excluded.
113. Except so far as a contrary intention appears, the definition requires that the qualification is “awarded in Wales”. The meaning of this expression in this context is explained in subsection (2). Whether a qualification is awarded in Wales depends in part upon the location of the assessment, or prospective assessment in respect of the qualification, which must be wholly or mainly in Wales, rather than the location of the awarding bodies. Section 57(4) explains further what this means.
114. An award of a qualification is defined as including the award of credits in respect of components of a qualification and to a qualification awarded by one or more bodies together. References to a form of a qualification are to the version of a qualification that a particular awarding body offers or wishes to offer.

### **Section 57: General interpretation and index of defined expressions**

115. Subsection (1) provides that the Act is to be read as one with the Education Act 1996. This means that general provisions and general definitions in that Act apply to this Act. For example, the term “special educational needs” (used in subsection (5)) has the same meaning in this Act as that given in the Education Act 1996 (see section 312 of that Act). But where an expression in this Act has a different interpretation from that in the Education Act 1996, the definition in this Act applies rather than the definition in the Education Act 1996.

116. Subsection (3) sets out definitions which are self-explanatory and subsection (4) deals with what it means for a person to be assessed wholly or mainly in Wales, which depends upon the location where the learner carries out the activities being assessed (for example sitting an examination or performing an observed activity) as opposed to the location of the person making the assessment judgement (for example an examiner marking question papers elsewhere in the UK).
117. Definitions are also provided in respect of what is meant in the Act by references to a person having a learning difficulty and to a body being recognised in respect of a qualification.

### **Section 58: Consequential amendments**

118. This section introduces Schedule 4 containing consequential amendments to legislation to take account of the establishment of Qualifications Wales and the new regulatory system.

### **Section 59: Power to make consequential and transitional provision etc**

119. This section empowers the Welsh Ministers to make regulations to provide for any consequential, supplementary or incidental provision, or any transitional, transitory or saving provisions in the circumstances set out.

### **Section 60: Coming into force**

120. This section provides for certain provisions within the Act to come into force on Royal Assent. The remaining provisions of the Act come into force on the date specified by the Welsh Ministers in commencement orders made under this section.

### **Section 61: Short title and inclusion as one of the Education Acts**

121. This section is self-explanatory. See paragraph 722 above about the effect of this Act being listed as one of the Education Acts.

## **SCHEDULE 1 QUALIFICATION WALES**

### **PART 1 – ESTABLISHMENT OF QUALIFICATIONS WALES**

122. This Schedule is introduced by section 2.

#### **Paragraph 1: Status**

123. This paragraph explains that Qualifications Wales is not a Crown body.

#### **Paragraph 2: Membership**

124. This paragraph outlines the membership of Qualifications Wales. The Chief Executive Officer will be a member of Qualifications Wales and a chair and eight to ten ordinary members will be appointed by the Welsh Ministers.

**Paragraphs 3 to 9: The chair and ordinary members**

125. These paragraphs outline the requirements and restrictions relating to the appointments, resignation and potential removal of members of Qualifications Wales. The chair may be reappointed as chair once only, and restrictions on the ordinary members' terms of appointment and reappointment enable the membership of Qualifications Wales to be regularly renewed.

**Paragraphs 10 to 16: The chief executive and other staff**

126. The first chief executive will be appointed by the Welsh Ministers, for a period of up to three years and subsequent appointments will be made by Qualifications Wales. Reappointments to the role of chief executive are permitted.

127. Other than the first chief executive, Qualifications Wales may appoint its own staff. (This is in addition to the power of the Welsh Ministers to make a transfer scheme under Schedule 2 to the Act to transfer staff from the Welsh Government to Qualifications Wales). Qualifications Wales will determine the terms and conditions, remuneration and pension provisions for staff – but these arrangements must be approved by the Welsh Ministers. The staff of Qualifications Wales will not be civil servants.

**Paragraphs 17 and 18: Committees**

128. These paragraphs give Qualifications Wales powers to establish and to dissolve committees, sub-committees and joint committees. Qualifications Wales is able to pay remuneration and allowances to members of each of these three categories of committee (unless they are also members of Qualifications Wales or its staff).

**Paragraphs 19 to 21: Delegation**

129. These paragraphs give Qualifications Wales the powers to delegate any of its functions to a member of Qualification Wales, to a member of staff, to a committee or to a joint committee. A committee or a joint committee may itself sub-delegate a function to one of its sub-committees. Committees and joint committees may set the terms and extent of a delegation to a sub-committee, but any delegation, in the case of a committee, is subject to any direction given by Qualifications Wales and in the case of a joint committee, to a direction given by Qualifications Wales and the person with whom the joint-committee is established. The terms of the delegation and any direction govern what a committee may or may not do.

**Paragraphs 22 to 25: Procedure**

130. Qualifications Wales may determine the procedure (for example, the terms of reference) for itself and its committees. Committees may regulate the procedure of sub-committees they establish. Joint committees may set out their own procedures and those of sub-committees they establish. Vacancies in membership or deficiencies in appointments to Qualifications Wales, its committees, sub-committees or joint committees do not affect the validity of the proceedings.

**Paragraph 26: Register of interests**

131. This paragraph requires Qualifications Wales to record and publish its members' interests.

### **Paragraph 27: Supplementary powers**

132. This paragraph gives Qualifications Wales the power to do anything necessary or appropriate in relation to its functions. Sub-paragraph (2) sets out the exceptions to that general position, with the effect that Qualifications Wales can neither exceed any expenditure threshold set out by the Welsh Ministers, nor borrow or lend money, without the Welsh Ministers' approval. Any expenditure threshold will be set out in a notice given to Qualifications Wales by the Welsh Ministers.

### **Paragraphs 28 to 30: Annual and other reports**

133. These paragraphs require Qualifications Wales to report annually to the National Assembly for Wales and specify what that report must contain, while enabling Qualifications Wales to include additional information. As well as reporting on its work of the previous year, and setting out its proposals for the coming year, Qualifications Wales must report on any findings it has made in the reporting year about the impact of its activities on the qualification system, about its engagement with stakeholders and about any conclusions it has drawn from research it has undertaken. Stakeholders might include, for example, learners, parents, employers, higher education institutions, schools, colleges, awarding bodies, professional bodies and other regulators.
134. The reporting year runs to 31 August each year and the annual report must be prepared as soon as reasonably practicable after that date. The annual report must be published. Qualifications Wales may produce and publish additional reports as it sees fit on matters relating to its functions.

### **Paragraph 31: Finance**

135. This paragraph enables the Welsh Ministers to provide funding in the form of grants to Qualifications Wales. The Welsh Ministers must publish any terms and conditions of such grants.

### **Paragraphs -32 - 34: Accounts and audit**

136. Qualifications Wales must ensure it keeps proper accounts and records, and prepare a statement of accounts for each financial year. The Welsh Ministers have the power to issue directions to Qualifications Wales on the preparation of the statement of accounts covering the information to be contained in the statement, how the information needs to be presented, the method and principles according to which the statement needs to be made and any other additional information to accompany it.
137. These paragraphs set out the accounts and audit processes required of Qualifications Wales; these include the preparation and submission to the Auditor General for Wales of an annual statement of accounts by 31 August each year and, in accordance with any directions provided by the Welsh Ministers. The Welsh Ministers may vary or revoke a direction given to Qualifications Wales at any time. These paragraphs also places duties on the Auditor General in relation to the statement of accounts and defines financial year.

**Paragraph 35: Examination of use of resources**

138. This paragraph enables the Auditor General for Wales to audit the performance of Qualifications Wales but not the merits of Qualifications Wales' policy objectives.

**SCHEDULE 1 PART 2**

**Paragraphs 36 - 40: Consequential Amendments**

139. These paragraphs contain amendments to primary legislation. The effect of these amendments is that Qualifications Wales:
- a) will become subject to review by the Children's Commissioner for Wales and the Commissioner for Older People in Wales;
  - b) must adhere to the requirements of the Freedom of Information Act 2000;
  - c) may be investigated by the Public Services Ombudsman for Wales; and
  - d) must comply with duties under the Equality Act 2010.

**SCHEDULE 2: TRANSFERS OF PROPERTY AND STAFF TO QUALIFICATIONS WALES**

140. This Schedule enables the Welsh Ministers to transfer property, rights, liabilities and staff to Qualifications Wales through a transfer scheme or schemes. The Welsh Ministers must lay the scheme(s) before the National Assembly for Wales as provided in paragraph 5.
141. Paragraph 1(3) sets out a non-exhaustive list of the additional provisions that may be made in the scheme, including creating rights and imposing liabilities, providing for matters transferred to have a continuing effect, and to make provision which is the same as or similar to a provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 in circumstances where those regulations do not apply.
142. Paragraph 2 allows for a scheme to be modified by agreement and for such modifications to be back-dated to the original date of the scheme.
143. Paragraph 3 provides clarification about how the employment of individuals in the civil service is to be treated for the purposes of a transfer under a scheme to Qualifications Wales.
144. Paragraph 4 provides for the meanings of defined terms appearing in this Schedule.

**SCHEDULE 3: FURTHER PROVISION ABOUT RECOGNITION OF AWARDING BODIES**

**Paragraph 1: Duration of recognition**

145. This paragraph clarifies the start date of an awarding body's recognition and specifies the three circumstances when recognition ceases.

### **Paragraphs 2 and 3: Standard Conditions of Recognition**

146. These paragraphs place a duty on Qualifications Wales to publish 'standard conditions of recognition' which will apply to awarding bodies once they have been recognised. It is likely that standard conditions of recognition would be concerned with a broad range of matters, such as, for example, the management of conflicts of interest, the provision of appropriately qualified staff, the management of adverse effects and of risks. Standard conditions of recognition will apply to a body recognised in respect of the award of a qualification even if that qualification is not approved or designated. The provisions allow for different conditions to be applied in relation to:
- a) different types of awarding bodies (for example, 'awarding bodies which are charities');
  - b) different types of qualification (for example, 'awarding bodies offering designated qualifications');
  - c) different circumstances in which a qualification is awarded (for example when a qualification is awarded following the resit of a module by a learner); and
  - d) different descriptions of person to whom a qualification is awarded (for example when awarded to learners under the age of 19).
147. Standard conditions will normally apply to recognised awarding bodies, but Qualifications Wales will be able to decide that in particular cases some standard conditions that would otherwise apply will not apply, and may make that decision either when granting recognition or afterwards. Qualifications Wales can also revoke its decision. Paragraph 2(6) provides that 'fee capping' and 'transfer' conditions are not standard conditions (see paragraph 4 of Schedule 3 for more information about fee-capping and transfer conditions which are defined as 'special conditions').
148. Qualifications Wales can revise the standard conditions, but if it does so it must publish the revisions, notify recognised bodies and be clear about the date from which they apply (which, in relation to a body, cannot be before it has been notified of it). Different start dates may apply to different bodies. While Qualifications Wales must have regard (under section 54) to the principles that regulatory activities (such as the enforcement of its standard conditions) should be carried out in a transparent, accountable, proportionate and consistent way, any breach of these conditions triggers the enforcement powers under Part 7 – as well as the power to withdraw recognition under paragraph 19(1) of Schedule 3.

### **Paragraphs 4 and 5: Special conditions to which recognition may be subject**

149. These paragraphs set out the other type of conditions (known as special conditions) that may be placed on a recognised awarding body by Qualifications Wales, including (but not limited to) fee-capping (a requirement that certain fees don't exceed a given limit); transfer (the purpose of which is to ensure that an approved or designated qualification awarded by the recognised body may be awarded by another body); and a requirement for recognised awarding bodies to comply with directions given by Qualifications Wales under paragraph 4. Provision is made for Qualifications Wales to revise or revoke these special conditions, and there are also requirements regarding notification and timing.

150. Qualifications Wales's policy statement must set out the circumstances in which recognition of an awarding body is likely to be made subject to a special condition, when special conditions are likely to be reviewed or revised and the factors that are likely to be taken into account in doing that (section 47(2)).

**Paragraphs 6 to 11: Fee capping conditions**

151. These paragraphs define what a fee capping condition is. It can only limit fees (for example, examination entry fees) in relation to approved or designated qualifications awarded to learners who are undertaking publicly funded courses of education or training leading to those qualifications. Fees charged as a result of the body's provision of services or facilities in respect of the award of those qualifications to such learners, for example fees for the provision of replacement certificates, may also be limited by a fee-capping condition. Qualifications Wales must be satisfied that it is appropriate to impose the condition to secure value for money. Section 47(2) requires Qualifications Wales to set out in its policy statement the criteria it is likely to apply in determining whether it is appropriate to impose a fee capping condition, the matters likely to be taken into account in determining the limit specified in it and the likely duration of one. A "course of education which is publicly funded" is defined in paragraph 6(2).
152. Paragraph 8 sets out the process by which Qualifications Wales may impose a fee capping condition, including the requirement to give notice to the concerned awarding body of its intention to impose the condition, give reasons for why it intends to impose the condition and say when it is proposed to decide whether to impose the condition. Qualifications Wales must consider representations made by the body and if it decides to impose the condition, the body must be notified of this and also of its right to request a review of the decision. The notice must also say when the condition takes effect if the body does not make a request for review.
153. If the body requests a review of the decision to impose a fee-capping condition, paragraph 10 provides details about the arrangements Qualifications Wales must make in arranging for an independent reviewer to review the decision. Following the review, if Qualifications Wales confirms its decision to impose the condition, or changes the condition, then Qualifications Wales must give notice to the awarding body which includes the details set out in paragraph 10(5).
154. Paragraph 11 requires Qualifications Wales to follow the same procedure for revising a fee-capping condition as for the issue of an initial fee-capping condition.

### **Paragraphs 12 to 16: Transfer conditions**

155. A transfer condition may enable Qualifications Wales to direct an awarding body to transfer things to another awarding body in order for that other body to award the qualification. The grounds for giving such a direction are that Qualifications Wales considers it necessary to do so to avoid significant adverse effects on learners. If events described in the condition come to pass, Qualifications Wales may direct an awarding body to make arrangements to enable another awarding body to deliver an approved or designated form of a qualification. Qualifications Wales must set out in a policy statement the circumstances in which a direction is likely to be given to an awarding body in accordance with a transfer condition and the likely subject matter of any such direction (section 47(2)).
156. Paragraphs 13 and 14 set out the process for Qualifications Wales when it proposes to make the direction, for the awarding body to be notified of a proposed direction, and for the body to be able to request a review of any subsequent decision to direct. Paragraph 16 sets out the details of the process for review by an independent person. If following the review Qualifications Wales confirms its decision, paragraph 16 also requires Qualifications Wales to notify the body and sets out what details the notice must contain.
157. Paragraph 15 enables Qualifications Wales to pay compensation to the body in respect of losses sustained in complying with the direction, but only if Qualifications Wales thinks it is reasonable and appropriate to do so in the circumstances. Qualifications Wales, in a policy statement under section 47(2), must set out the matters it is likely to take into account in determining whether to make such a payment and in determining the amount of it.

### **Paragraphs 17 and 18: Surrender of recognition**

158. Under paragraph 17, a recognised awarding body may give Qualifications Wales a surrender notice asking it to remove its recognition of the awarding body – either in respect of every qualification for which it is recognised or in relation to a specified qualification (or description of qualification). The surrender notice must specify the date on which the awarding body wishes the recognition to end. Qualifications Wales must give the awarding body an acknowledgement of surrender which sets out the date that recognition will come to an end. The date may be the same as that proposed by the awarding body or a different date, as Qualifications Wales thinks appropriate. Qualifications Wales must give reasons in the notice as to why a different date is provided from that proposed by the awarding body, and paragraph 17(6) refers to the matters that Qualifications Wales must consider in deciding upon the date for recognition to be surrendered, which are the need to avoid prejudice to learners and the awarding body's wish that recognition ceases on the date it has specified.

159. Under paragraph 18, Qualifications Wales, for a specified period of time, may treat a body that has surrendered its recognition as if it continues to be recognised for specified purposes. Qualifications Wales may only make such a provision if it thinks it appropriate to do so to avoid prejudice to learners. Similar provision is made in respect of the surrender of approval (see the notes accompanying section 26).

### **Paragraphs 19 to 23: Withdrawal of Recognition**

160. These paragraphs enable Qualifications Wales to end its recognition of an awarding body in respect of a qualification (or description of qualification) or every qualification in respect of which the awarding body is recognised. Recognition may be withdrawn only if the awarding body does not comply with conditions of recognition or conditions of approval. The consequences of withdrawal of recognition are that Qualifications Wales is then able to withdraw approval of qualifications under section 27, that designation would cease under section 30 and that the awarding body is no longer able to apply for approval or designation of its qualifications. Only recognised bodies can apply for approval or designation of their qualifications.
161. The process for withdrawing recognition is set out in paragraphs 20 to 22 and includes requirements to give notice with reasons for the proposal to withdraw, to consider representations made by the recognised body, to notify the recognised body of a decision to withdraw and its right to review and to make arrangements for an independent review of the decision to withdraw if the awarding body requests such a review. If following the review Qualifications Wales confirms its decision to withdraw recognition, the recognised awarding body must be notified of the decision and when the withdrawal will take effect.
162. Paragraph 23 sets out that notices given by Qualifications Wales under paragraphs 21 or 22 (withdrawing recognition, or confirming withdrawal of recognition) can make a provision to the effect that a body that has had its recognition withdrawn, continues to be treated as if it is recognised for a specified time and for specified purposes. This is to avoid prejudice to learners. The notice must include the additional information set out in paragraph 23(3). Similar provision is made in respect of the withdrawal of approval (see the notes accompanying section 28).

### **SCHEDULE 4: CONSEQUENTIAL AMENDMENTS**

163. This Schedule makes changes to legislation to reflect that this Act establishes Qualifications Wales as the regulator of a new system of qualification regulation in Wales. One such change is the repeal of the Welsh Ministers' regulatory functions relating to qualifications under the Education Act 1997; another is to confine the application of the restriction on public funding of certain courses in the Learning and Skills Act 2000 to England only, since section 34 provides the new restriction in relation to Wales. The Schedule also repeals related obsolete provisions.

## **RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES**

164. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.assembly.wales/en/bus-home/bus-legislation/Pages/bus-legislation.aspx>

<b>Stage</b>	<b>Date</b>
Introduced	01 December 2014
Stage 1 - Debate	24 March 2015
Stage 2 Scrutiny Committee - consideration of amendments	30 April 2015
Stage 3 Plenary - consideration of amendments	16 June 2015
Stage 4 Approved by the Assembly	16 June 2015
Royal Assent	05 August 2015