



# Education Act 2011

## 2011 CHAPTER 21

### PART 4

#### QUALIFICATIONS AND THE CURRICULUM

##### *Qualifications: Wales*

#### **24 Enforcement powers of Welsh Ministers**

- (1) Chapter 2 of Part 5 of EA 1997 (functions of Welsh Ministers: qualifications and the school curriculum) is amended as set out in subsections (2) to (6).
- (2) In section 32A (power to give directions), for subsections (1) and (2) substitute—
  - “(1) Subsection (1A) applies if it appears to the Welsh Ministers that a recognised person has failed or is likely to fail to comply with a condition subject to which the recognition has effect.
  - (1A) The Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect.
  - (2) Subsection (2A) applies if it appears to the Welsh Ministers that a recognised person who awards or authenticates a qualification accredited by them has failed or is likely to fail to comply with a condition subject to which the accreditation has effect.
  - (2A) The Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.”
- (3) In section 32A(5), for “32B and” substitute “32AA to”.
- (4) After section 32A insert—

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*Status: This is the original version (as it was originally enacted).*

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### **“32AA Power of Welsh Ministers to impose monetary penalties**

- (1) Subsection (2) applies if it appears to the Welsh Ministers that a recognised person has failed to comply with a condition subject to which the recognition has effect.
- (2) The Welsh Ministers may impose a monetary penalty on the recognised person.
- (3) Subsection (4) applies if it appears to the Welsh Ministers that a recognised person who awards or authenticates a qualification accredited by them has failed to comply with a condition subject to which the accreditation has effect.
- (4) The Welsh Ministers may impose a monetary penalty on the recognised person.
- (5) A “monetary penalty” is a requirement to pay to the Welsh Ministers a penalty of an amount determined by them in accordance with section 32AB.
- (6) Before imposing a monetary penalty on a recognised person, the Welsh Ministers must give notice to the person of their intention to do so.
- (7) The notice must—
  - (a) set out their reasons for proposing to impose the penalty, and
  - (b) specify the period during which, and the way in which, the recognised person may make representations about the proposal.
- (8) The period specified under subsection (7)(b) must not be less than 28 days beginning with the date on which the notice is received.
- (9) The Welsh Ministers must have regard to any representations made by the recognised person during the period specified in the notice in deciding whether to impose a monetary penalty on the person.
- (10) If the Welsh Ministers decide to impose a monetary penalty on the person, they must give the person a notice containing information as to—
  - (a) the grounds for imposing the penalty,
  - (b) how payment may be made,
  - (c) the period within which payment is required to be made (which must not be less than 28 days),
  - (d) rights of appeal,
  - (e) the period within which an appeal may be made, and
  - (f) the consequences of non-payment.

### **32AB Monetary penalties: amount**

- (1) The amount of a monetary penalty imposed on a recognised person under section 32AA must not exceed 10% of the person’s turnover.
- (2) The turnover of a person for the purposes of subsection (1) is to be determined in accordance with an order made by the Welsh Ministers.
- (3) Subject to subsection (1), the amount may be whatever the Welsh Ministers decide is appropriate in all the circumstances of the case.

### **32AC Monetary penalties: appeals**

- (1) A recognised person may appeal to the First-tier Tribunal against—
  - (a) a decision to impose a monetary penalty on the person under section 32AA;
  - (b) a decision as to the amount of the penalty.
- (2) An appeal under this section may be made on the grounds—
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) The requirement to pay the penalty is suspended pending the determination of an appeal under this section.
- (4) On an appeal under this section the Tribunal may—
  - (a) withdraw the requirement to pay the penalty;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) take such steps as the Welsh Ministers could take in relation to the failure to comply giving rise to the decision to impose the requirement;
  - (e) remit the decision whether to confirm the requirement to pay the penalty, or any matter relating to that decision, to the Welsh Ministers.

### **32AD Monetary penalties: interest and recovery**

- (1) This section applies if all or part of a monetary penalty imposed on a recognised person is unpaid at the end of the period ending on the applicable date.
  - (2) The applicable date is—
    - (a) the last date on which the recognised person may make an appeal under section 32AC in respect of the penalty, if no such appeal is made;
    - (b) if an appeal under section 32AC in respect of the penalty is made—
      - (i) the date on which the appeal is determined, or
      - (ii) if the appeal is withdrawn before being determined, the date on which the appeal is withdrawn.
  - (3) The unpaid amount of the penalty for the time being carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (and does not also carry interest as a judgment debt under that section).
  - (4) The total amount of interest imposed under subsection (3) must not exceed the amount of the penalty.
  - (5) The Welsh Ministers may recover from the person, as a civil debt due to them, the unpaid amount of the penalty and any unpaid interest.”
- (5) In section 32B (power to withdraw recognition)—
- (a) for subsection (2) substitute—

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*Status: This is the original version (as it was originally enacted).*

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- “(2) The Welsh Ministers may withdraw recognition from the recognised person in respect of the award or authentication of—
- (a) a specified qualification or description of qualification in respect of which the person is recognised, or
  - (b) every qualification or description of qualification in respect of which the person is recognised.”;
- (b) for subsection (4) substitute—

- “(4) The Welsh Ministers may withdraw recognition from the recognised person in respect of the award or authentication of—
- (a) the qualification or a specified description of qualification in respect of which the person is recognised, or
  - (b) every qualification or description of qualification in respect of which the person is recognised.”

- (6) After section 32B insert—

**“32BA Costs recovery**

- (1) The Welsh Ministers may, by notice, require a recognised person on whom a sanction has been imposed to pay the costs incurred by the Welsh Ministers in relation to imposing the sanction, up to the time it is imposed.
- (2) The references in subsection (1) to imposing a sanction are to—
  - (a) giving a direction under section 32A;
  - (b) imposing a monetary penalty under section 32AA;
  - (c) withdrawing recognition under section 32B.
- (3) “Costs” includes in particular—
  - (a) investigation costs;
  - (b) administration costs;
  - (c) costs of obtaining expert advice (including legal advice).
- (4) A notice given to a recognised person under subsection (1) must contain information as to—
  - (a) the amount required to be paid,
  - (b) how payment may be made,
  - (c) the period within which payment is required to be made (which must not be less than 28 days),
  - (d) rights of appeal,
  - (e) the period within which an appeal may be made, and
  - (f) the consequences of non-payment.
- (5) The person may require the Welsh Ministers to provide a detailed breakdown of the amount specified in the notice.

**32BB Costs recovery: appeals**

- (1) A recognised person may appeal to the First-tier Tribunal against—
  - (a) a decision under section 32BA(1) to require the person to pay costs;
  - (b) a decision as to the amount of those costs.

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*Status: This is the original version (as it was originally enacted).*

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- (2) An appeal under this section may be made on the grounds—
  - (a) that the decision was based on an error of fact;
  - (b) that the decision was wrong in law;
  - (c) that the decision was unreasonable.
- (3) The requirement to pay the costs is suspended pending the determination of an appeal under this section.
- (4) On an appeal under this section the Tribunal may—
  - (a) withdraw the requirement to pay the costs;
  - (b) confirm that requirement;
  - (c) vary that requirement;
  - (d) take such steps as the Welsh Ministers could take in relation to the failure to comply giving rise to the decision to impose the requirement;
  - (e) remit the decision whether to confirm the requirement to pay the costs, or any matter relating to that decision, to the Welsh Ministers.

### **32BC Costs: interest and recovery**

- (1) This section applies if all or part of an amount of costs that a recognised person is required to pay under section 32BA(1) is unpaid at the end of the period ending on the applicable date.
- (2) The applicable date is—
  - (a) the last date on which the recognised person may make an appeal under section 32BB in respect of the costs, if no such appeal is made;
  - (b) if an appeal under section 32BB in respect of the costs is made—
    - (i) the date on which the appeal is determined, or
    - (ii) if the appeal is withdrawn before being determined, the date on which the appeal is withdrawn.
- (3) The unpaid amount of the costs for the time being carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838 (and does not also carry interest as a judgment debt under that section).
- (4) The total amount of interest imposed under subsection (3) must not exceed the amount of the costs.
- (5) The Welsh Ministers may recover from the person, as a civil debt due to them, the unpaid amount of the costs and any unpaid interest.”
- (7) In section 54 of EA 1997 (orders and regulations)—
  - (a) in subsection (2), after “section” insert “32AB(2) or”;
  - (b) after subsection (2) insert—

“(2A) A statutory instrument which contains (whether alone or with other provision) an order under section 32AB(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.”