

# QUALIFICATIONS WALES ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *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

*These notes refer to the Qualifications Wales Act 2015  
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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).