

QUALIFICATIONS WALES ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: Enforcement

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

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

amount of the penalty, though it must have set out the factors which is it 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.