

# QUALIFICATIONS WALES ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **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.