

Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019. From Integrated Impact Assessment.

The Qualifications Wales Act 2015 (“the Act”) established Qualifications Wales as the independent regulator for non-degree qualifications in Wales.

Section 3 of the Act provides Qualifications Wales with the following principal aims, and it must act compatibly with these when exercising its functions:

- a) Ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales; and
- b) Promoting public confidence in qualifications and in the Welsh qualification system.

Section 4 of the Act gives Qualifications Wales the power to recognise awarding bodies.

Part 7 of the Act makes provision about steps that may be taken by Qualifications Wales if it considers that a body awarding qualifications in Wales has failed to comply with a condition to which its recognition, or the approval of a qualification awarded by it, is subject.

Power of Qualifications Wales to impose a monetary penalty

Among the enforcement sanctions available to Qualifications Wales is the power to impose a monetary penalty on a body it regulates for non-compliance with its Standard Conditions of Recognition and regulatory documentation.

Section 38(3) of the Act provides that the amount of the penalty is to be determined in accordance with regulations made by the Welsh Government. The regulations are intended to limit the range of the penalty that Qualifications Wales may impose on bodies it regulates. The regulations are being made under the affirmative resolution procedure in the Assembly in order to allow Qualifications Wales to exercise its power to impose a monetary penalty.

Proposal

Prior to the 2015 Act receiving Royal Assent the Welsh Ministers had the power to impose a monetary penalty of up to a maximum of 10% of the total turnover of the awarding body in question; this mirrored the provisions developed by the Department for Education for operation by Ofqual, the qualifications regulator for England.

The regulation we are now aiming to introduce also sets an upper limit for a monetary penalty of 10% of an awarding body’s annual UK turnover in cases where Qualifications Wales may impose a monetary penalty on an awarding body non-compliant with its standard conditions of recognition. The regulations will also define the parameters through which Qualifications Wales will decide the turnover of the awarding body.

Consultation

The Welsh Government's Consultation exercise on the regulations ran from October 2018 to January 2019 and was published on the Welsh Government Website. There were 13 responses despite the fact that Qualifications Wales regulates 104 awarding bodies. Eight responses were from awarding bodies.

The majority of respondents to the consultation (eleven out of thirteen) agreed that Qualifications Wales should be able to impose monetary penalties and that these should be capped at a maximum level. 'We agree that all Regulators should have the ability to use monetary penalties as part of their risk management and deterrent procedures'

Having taken into account responses to the consultation exercise and the concern expressed by some awarding bodies at the upper limit for the monetary penalty to be 10% of UK turnover it is important to state that moving away from this approach would be problematic for a number of reasons.

10% of turnover

Some awarding bodies felt it would be possible to separate out 'revenue' generated from business in Wales. As stated previously, Qualifications Wales is not able to access authoritative data on awarding bodies' turnover in Wales (rather than in the UK as a whole). It will only be able to access UK turnover as awarding bodies are generally registered as companies operating in England and Wales. Qualifications Wales would work with an awarding body which may be subject to a monetary penalty to see what the level of their activity in Wales was and would take this into account in determining a potential monetary penalty.

Regulated activity only

Some awarding bodies suggested that only 'Regulated activity' in Wales should be taken into account when determining any monetary penalty. However, 'regulated activity' does not always result in income and awarding bodies have many different business models.

The proposed definition of turnover allows Qualifications Wales to have an effective monetary penalties policy taking into account the diverse nature of the qualifications market.

Consistency

Officials believe that in order to be consistent with Ofqual, the English qualifications regulator and other regulators; 10% of an awarding body's UK turnover is an appropriate upper limit for the monetary penalty which could be imposed by Qualifications Wales.

Checks and balances

The First-tier Tribunal will be in place to ensure there are effective checks and balances in the system. The Regulations should set the overall parameters, but it is

Qualifications Wales' responsibility as regulator to place an appropriate level of monetary penalty which is proportionate and reasonable or else risk being referred to the Tribunal.

For these reasons it is felt appropriate to continue with the proposal for the upper limit for a monetary penalty to be set at 10% of an awarding body's UK turnover as proposed in the consultation paper.

The work of Qualifications Wales contributes towards achieving the goal of a prosperous Wales, one of the seven well-being goals set out in the Well-being of Future Generations (Wales) Act 2015 by supporting our young people to develop into a skilled and well educated workforce of the future. The work of Qualifications Wales also contributes, albeit indirectly, towards achieving commitments in the Tackling Poverty Action Plan related to education and educational attainment. These regulations take a preventative approach by giving Qualifications Wales an additional regulatory tool to use as a deterrent to help stop awarding bodies failing in their obligations towards learners taking their qualifications.

How have people most likely to be affected by the proposal been involved in developing it?

Consultation on the Qualifications Wales Act 2015 took place in 2014. 62 responses to this consultation were received. Consultation included reference to the Monetary Penalties Regulations in section 38.

Consultation with young people also took place in December 2014, 124 young people responded.

The National Assembly for Wales Children and Young People's Committee also undertook a consultation exercise and call for evidence in 2014 while the Bill was in development.

Qualifications Wales undertook a consultation exercise on their approach to Monetary Penalties in early 2018. It is called: Consultation on complaints, whistleblowing and enforcement.

<https://www.qualificationswales.org/media/2854/171115-consultation-on-complaints-whistleblowing-and-enforcement.pdf>

The Welsh Government has also consulted from October 2018-Jan 2019 on the detailed Monetary Penalties policy:

https://beta.gov.wales/sites/default/files/consultations/2018-10/qualifications-wales-monetary-penalties-regulations_0.pdf

The consultation report form can be found at the link below:

<https://gov.wales/qualifications-wales-monetary-penalties-regulations>

What are the most significant impacts, positive and negative?

The introduction of the Qualifications Wales (Monetary Penalties) (Determination of Turnover) Regulations 2019 address a gap in Qualifications Wales' range of sanctions as previously there was nothing between a power to direct and the ultimate sanction of withdrawing the awarding organisation's recognition.

This change brings Qualifications Wales in line with similar regulators and is consistent with the Regulatory Enforcement and Sanctions Act 2008. It will strengthen the regulatory powers of Qualifications Wales and will therefore improve quality assurance for all learners in Wales. It will act as a deterrent to awarding bodies and encourage them to avoid errors in examination papers for instance.

Well-being of Future Generations Act 2015 and Tackling Poverty Action Plan

The work of Qualifications Wales who will have the ability to impose Monetary Penalties contributes towards achieving the goal of a prosperous Wales, one of the seven well-being goals set out in the Well-being of Future Generations (Wales) Act 2015 by supporting our young people to develop into a skilled and well educated workforce of the future.

The work of Qualifications Wales also contributes, albeit indirectly, towards achieving commitments in the Tackling Poverty Action Plan related to education and educational attainment. These regulations will give to Qualifications Wales an additional regulatory tool to use in the event of an awarding body failing in their obligations towards learners taking their qualifications.

Programme for Government

The work of Qualifications Wales contributes towards achieving the goal of an ambitious and learning Wales, one of the four key themes of *Prosperity for All*. The Monetary Penalty regulations will give Qualifications Wales an additional regulatory tool to use in the event of an awarding body failing in their obligations towards learners taking their qualifications and their conditions of recognition.

In light of the impacts identified, how will the proposal:

- **maximise contribution to our well-being objectives and the seven well-being goals; and/or,**
- **avoid, reduce or mitigate any negative impacts?**

It is expected that the Monetary Penalties regulations will assist with ensuring the qualifications system in Wales continues to be robust and effective in meeting the needs of learners and will have a direct beneficial impact on the types and qualities of employment opportunities available to Welsh learners. It will make the regulatory system stronger in terms of protecting learners' interests.

Engagement activity by Qualifications Wales with employers, training organisations and educational establishments should strengthen the economy of Wales and the investment of businesses in their employees and trainees.

Positive effects have been identified on children and young people too, they can be more confident that the qualifications they take meet their reasonable needs – in terms of content, assessment and the ability to progress.

How will the impact of the proposal be monitored and evaluated as it progresses and when it concludes?

A review of the Monetary Penalty Regulations will be undertaken in 3-4 years as is good practice with legislation. The QW Sponsorship team works closely with QW on a daily basis on all key areas of budget, priorities and overall accountability.

There is a Framework agreement between Qualifications Wales and the Welsh Government which is reviewed every 3-5 years. Qualifications Wales publishes an annual report and the Minister for Education has regular review sessions with the Chair of Qualifications Wales. It is suggested that all of these forums give the opportunity for the use of the Monetary Penalties Regulations to be reviewed and monitored to see how often the new regulations are used. They are likely to act as a deterrent rather than to be used with any great frequency.