

National Assembly for Wales
Children, Young People and Education
Committee

Qualifications Wales Bill: Stage 1 Committee Report

March 2015

Cynulliad
Cenedlaethol
Cymru

National
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Wales



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Children, Young People and Education Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 0300 200 6565

Email: seneddcype@assembly.wales

Twitter: @SeneddCYPE

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Children, Young People and Education Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the education, health and wellbeing of the children and young people of Wales, including their social care.

On 22 January 2014, the Assembly agreed to alter the remit of the Committee to include Higher Education. This subject will continue to be included in the remit of the Enterprise and Business Committee, with both committees looking at Higher Education from their particular perspectives. The Committee was previously known as the Children and Young People Committee.

Current Committee membership:



Ann Jones (Chair)
Welsh Labour
Vale of Clwyd



Angela Burns
Welsh Conservatives
Carmarthen West and South
Pembrokeshire



Keith Davies
Welsh Labour
Llanelli



Suzy Davies
Welsh Conservatives
South Wales West



John Griffiths
Welsh Labour
Newport East



Bethan Jenkins
Plaid Cymru
South Wales West



Lynne Neagle
Welsh Labour
Torfaen



David Rees
Welsh Labour
Aberavon



Aled Roberts
Liberal Democrats
North Wales



Simon Thomas
Plaid Cymru
Mid and West Wales

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1. The Committee's Key Conclusions and Recommendations

Recommendation 1. While the Committee fully supports the establishment of Qualifications Wales, the Welsh Government must give consideration to the overarching concerns raised by stakeholders, and must work closely with the Chief Executive of Qualifications Wales, prior to the formal establishment of that body, to ensure that potential problems are fully considered in advance. (Page 19)

Recommendation 2. While the Committee is content that Qualifications Wales will have the level of independence required for it to undertake its role effectively, it believes that the Minister should ensure that reference to the framework document and the annual remit letter is included within the Bill, outlining the general process and including a requirement for publication of the documents. (Page 22)

Recommendation 3. The Welsh Government should give a commitment to holding a debate on the annual report of Qualifications Wales. (Page 24)

Recommendation 4. The Minister should consider including additional matters on the list within section 3(2), relating to promotion of vocational qualifications and/or a parity of esteem; and international benchmarking. (Page 28)

Recommendation 5. The Minister should reconsider the wording of section 29(3) of the Bill, and the reference to a "Welsh version of the qualification", in the interests of providing certainty and clarity in the meaning of this section. (Page 30)

Recommendation 6. The Minister should consider the potential unintended consequences of the provision of section 29 of the Bill for AHE Diplomas, or any other qualification that may be similarly affected, and provide clarity on whether they will be approved and regulated by Qualifications Wales or continue to come under the responsibility of the QAA and HEFCW. (Page 31)

Recommendation 7. While the Committee is content with the powers for prioritisation, as contained in the Bill, the Committee calls on the Minister to fully consider concerns raised by stakeholders, and to include those concerns in early discussions with Qualifications Wales' Chief Executive. (Page 34)

Recommendation 8. Prior to enactment of the Bill the Minister should fully consider the concerns raised by the Federation of Awarding Bodies relating to restricting priority qualifications, particularly the potential unintended consequences. (Page 40)

Recommendation 9. The Welsh Government should review the impact on the qualifications market of decisions made to restrict priority qualifications, and should report the findings of that review back to the Assembly. (Page 40)

Recommendation 10. The Minister should consider whether to include provision within the Bill requiring details of the rationale for prioritising and restricting academic and vocational qualifications to be included in the annual report of Qualifications Wales. (Page 43)

Recommendation 11. Following the outcome of the review "Aligning the apprenticeship model to the needs of the Welsh economy", the Minister should fully consider the role that Qualifications Wales should have towards apprenticeships. (Page 46)

Recommendation 12. Prior to enactment of the Bill, the Minister / Qualifications Wales must ensure that a clear protocol is in place to mitigate any potential conflict of interest that might arise through the provision of commercial services under section 40 of the Bill. (Page 50)

Recommendation 13. Should Qualifications Wales use its powers to charge fees, it should be required to undertake an assessment of the impact of charging fees, which should be included within its annual report. (Page 51)

Recommendation 14. The Minister should ensure that the negative Assembly procedure is applied to Commencement Orders provided for in section 55 of the Bill. (Page 52)

2. Pre-legislative Scrutiny

The Review of Qualifications for 14 to 19-year-olds in Wales

1. In September 2011, an independent Review of Qualifications for 14 to 19-year-olds in Wales¹ (the Review) was commissioned to consider how the Welsh Government could achieve a “vision of qualifications that were understood and valued and would meet the needs of our young people and the Welsh economy”. The Review was prompted by a number of concerns about the complexity of the current system and the extent to which it is understood, and the relevance, value and rigour of some qualifications.

2. The Review reported in November 2012, and one of the key recommendations made was that:

“The Welsh Government should establish a single body (Qualifications Wales) that is responsible for the regulation and quality assurance of all non-degree level qualifications available in Wales. In time, Qualifications Wales should take responsibility for developing and awarding most qualifications for learners at 14 to 16. For learners post-16, Qualifications Wales should develop and award most general qualifications and should also regulate qualifications from other awarding organisations. The Welsh Government and Qualifications Wales should work together to shape the national qualifications system for Wales and to rationalise and strengthen the processes for regulation and continuous improvement, learning from the model in operation in Scotland.”²

3. The Welsh Government accepted the recommendation, and proposed to bring forward a Bill to establish Qualifications Wales, confirming that the purpose of the Qualifications Wales Bill would be to:

- establish a single body to be responsible for the regulation and quality assurance of non-degree qualifications in Wales and remove the current regulatory responsibility for qualifications from Ministers; and
- in due course, for a single body to be responsible for the development and awarding of most general qualifications in Wales, with responsibility for awarding most qualifications for 14 to 16-year-olds as well as A levels and the Welsh Baccalaureate.

¹ [The Review of Qualifications for 14 to 19-year-olds in Wales](#)

² Ibid

Committee's Pre-legislative inquiry

4. On 29 January 2014, the Children, Young People and Education Committee received a technical briefing from Welsh Government officials on the legislative proposal to establish Qualifications Wales. The technical briefing provided the Committee with early notice of what the Bill was likely to contain, but opened questions in numerous areas, including how the proposed model compared to that in Scotland – on which the Welsh Government had based much of the detail of its proposals.

5. In advance of the Bill's introduction therefore, the Committee undertook a short and focussed inquiry to scrutinise the Welsh Government's emerging proposals at this pre-legislative stage. The Committee established terms of reference, and agreed to focus on models elsewhere, undertaking "fact finding" visits to Quality and Qualifications Ireland (QQI)³ and the Scottish Qualifications Authority (SQA)⁴ to explore how the qualifications systems operate in those two countries.

The evolutionary approach for Qualifications Wales

6. The Welsh Government's initial vision for Qualifications Wales was set out in two stages. The first stage was to establish Qualifications Wales and transfer to it regulatory functions from the Welsh Government. The second stage was, in due course, to widen the remit of Qualifications Wales to include awarding functions.

7. The indication was that the "Qualifications Wales Bill" would be the primary legislation which will allow for the initial stage of establishing the new body with regulatory functions, and subsequently adding awarding functions to its remit. Although this second stage would have been enacted "in due course", the Committee's understanding was that the proposed Bill at that time would include provisions relating to both stages.

8. The Bill was being brought forward at a time of considerable review and change within the sector, which was likely to have an effect on the way in which Qualifications Wales, awarding bodies, and providers of higher education operate in both the near future and longer term. This includes the curriculum and assessment review, the second phase of which was undertaken independently by Professor Graham Donaldson, and published

³ Committee visit to QQI: Thursday 1 May 2014

⁴ Committee visit to SQA: Thursday 1 May 2014

on 25 February 2015.⁵ The outcome of that review is likely to have a significant bearing on the work of Qualifications Wales. The Committee heard evidence emphasising the importance of closely aligning qualification and curriculum reform and arguments that the two must be sufficiently developed in tandem.

9. The clear view of the Committee was that the inclusion of provisions in the Bill for Qualifications Wales' future remit in respect of awarding functions would be more appropriately considered after the outcome of the on-going curriculum and assessment review and following further work on how the awarding process will operate. The Committee was unconvinced that there was sufficient clarity in terms of how the proposed commissioning model would work in practice and the responsibilities of the respective organisations involved.

10. The Committee believed that the Welsh Government would not have sufficient time to fully consider the issues relating to Qualifications Wales' wider remit, and that a greater reliance on secondary legislation would be necessary. The Committee was concerned about how the Bill will be able to account, and make provision, for such an evolving approach to the remit and responsibilities of Qualifications Wales.

11. It was vital that the process for establishing Qualifications Wales was managed in the most effective manner, which would result in an organisation that was robust and has a clear and well defined purpose.

12. The Committee believed that this would be best achieved if the Welsh Government initially brought forward a Bill to establish Qualifications Wales as a regulating body only. The full range of Qualifications Wales' role and functions, including its functions as an awarding body, should be brought forward in a future Bill following completion of reviews, after full consideration of all of the relevant issues, and once there is sufficient clarity about how the awarding process is to work in practice.

13. The Committee published its report on its Pre-legislative scrutiny of the proposed Qualifications Wales Bill⁶ in July 2014. The report made a clear recommendation that the Bill should be drafted to establish Qualifications Wales as a regulating body only. This recommendation was accepted by the Minister for Education and Skills, who confirmed that:

⁵ [Successful Futures: Independent Review of Curriculum and Assessment Arrangements in Wales](#)

⁶ [CYPE Committee Report: Pre-legislative scrutiny of the proposed Qualifications Wales Bill](#)

“...I remain convinced that a qualifications body for Wales, which is independent of Government and which both awards and regulates qualifications, should remain our long-term national ambition. The Welsh Government will, in the first instance, bring forward legislation to establish Qualifications Wales as a national body to regulate awarding bodies and to quality assure qualifications. Future legislation would be necessary to confer awarding powers on Qualifications Wales.”

3. Introduction of the Qualifications Wales Bill

14. On 1 December 2014, Huw Lewis AM, Minister for Education and Skills, introduced the Qualifications Wales Bill⁷ (the Bill) and Explanatory Memorandum. The Minister made an oral statement in plenary⁸ on 2 December 2014⁹.

15. At its meeting on 18 November, the National Assembly's Business Committee agreed to refer the Bill to the Children, Young People and Education Committee ("the Committee") for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 13 March 2015.

Terms of scrutiny

16. The Committee agreed the following framework within which to scrutinise the general principles of the Bill:

17. To consider:

- the general principles of the Qualifications Wales Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- the key provisions set out in the Bill and whether they are appropriate to deliver its stated purposes, including:
 - whether the Welsh Government has correctly identified the four main limitations of the current arrangement and whether the two principal aims the Bill sets for Qualifications Wales, as well as the eight matters which it must have regard when exercising its functions, will effectively address these limitations; and
 - the suitability of the proposal for determining "priority qualifications" and, within these, "restricted priority qualifications", of which Qualifications Wales may limit the forms available for public funding in Wales;
- potential barriers to the implementation of the key provisions and whether the Bill takes account of them;

⁷ [Qualifications Wales Bill](#)

⁸ A full meeting of the National Assembly for Wales

⁹ Plenary, 2 December 2014, [Record of Proceedings](#)

- the financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment, which estimates the costs and benefits of implementation of the Bill)); and
- the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

The Committee's approach

18. The Committee issued a consultation and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses is attached at Annexe 1.

19. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached at Annexe 2.

20. The following report represents the conclusions and recommendations the Committee has reached based on the evidence received during the course of its work.

21. This report does not comment on all sections of the Bill. Where no comment is offered on a particular section, it can be assumed that the Committee is content with the provisions as drafted within the Bill.

22. The Committee would like to thank all those who have contributed to its scrutiny of the general principles of the Bill.

4. General principles and the need for legislation

The National Assembly's legislative competence to make the Bill

23. The Explanatory Memorandum¹⁰ ("EM") states:

"The National Assembly for Wales has the legislative competence to make provision in the Qualifications Wales Bill under Part 4 of the Government of Wales Act 2006 (GoWA 2006). The relevant provisions of GoWA 2006 are set out in section 108 and Schedule 7. Paragraph 5 of Part 1 of Schedule 7 sets out the following subjects on which the Assembly may legislate under the heading 'Education and Training'..."

24. The Presiding Officer issued a statement on 1 December 2014,¹¹ which stated, in her opinion, that the Bill would be within the legislative competence of the National Assembly for Wales.

Purpose and intended effect of the Bill

25. The Bill provides for the establishment of Qualifications Wales as the independent regulatory body responsible for the recognition of awarding bodies and the review and approval of non-degree qualifications in Wales. Qualifications Wales will also, along with the Welsh Ministers, be responsible for preparing a list of priority qualifications, designated as such by reason of the significance of the qualification, having regard to the needs of learners and employers in Wales.

26. In addition, the Welsh Government is using the Bill as an opportunity to make improvements through reforms. Their intention is, through the establishment of Qualifications Wales, to strengthen the oversight of qualifications and of the qualification system in Wales. The Minister, within the Explanatory Memorandum states that one of the advantages is that:

"Primary legislation can establish Qualifications Wales with powers that go beyond those currently held by Welsh Ministers. These will include the power to commission and control the majority of general qualifications in Wales; enabling Wales to move away from the market-based approach to qualifications delivery and towards a single

¹⁰ [Explanatory Memorandum](#), paragraph 2

¹¹ [Presiding Officer's Statement](#)

suite of qualifications for Wales. This will in turn simplify the qualification system and facilitate a strengthening of regulation.”¹²

27. The Bill is intended to address the four main limitations of the current system, identified by the Welsh Government. These are outlined in the Explanatory Memorandum as:

- there is no single organisation that is dedicated to ensuring the effectiveness of qualifications and the qualification system;
- there are no powers to prioritise qualifications and to thereby focus regulatory activity where it is most needed – with the result that there are large numbers of regulated qualifications but limited resources to ensure effectiveness;
- there are no powers to select a single provider of a given qualification to ensure that learners across Wales take the same qualification; and
- the capacity to drive forward the strategic development of qualifications within the current arrangements is too limited - creating a risk that Wales’ qualifications will not be held in as high esteem, nationally and internationally, as those in other nations.

28. The Bill does not contain any provisions conferring functions or powers on Qualifications Wales as an awarding body. The Committee very much welcomes this, given the recommendation made during pre-legislative scrutiny, and the commitment given by the Minister that any powers relating to such awarding functions would be contained in future legislation.

29. The Bill does, however, require Qualifications Wales to keep under review its relationship with awarding bodies. The Minister has stated in the Explanatory Memorandum that “It is expected that, in due course, the organisation will be responsible for performing a formal review to address the question of how it could become an awarding body”.¹³

Principal Aims of Qualifications Wales

30. The Bill provides Qualifications Wales with the following principal aims, and it must act compatibly with these when exercising its functions:

- Ensuring that qualifications, and the Welsh qualification system, are effective for meeting the reasonable needs of learners in Wales; and

¹² [Explanatory Memorandum](#), paragraphs 186 and 187

¹³ [Explanatory Memorandum](#), paragraph 68

- Promoting public confidence in qualifications and in the Welsh qualification system.

31. The Bill also prescribes a non-exhaustive list of eight matters to which Qualifications Wales must have regard when seeking to achieve these two principal aims. Those eight matters are:

- a) the desirability of promoting sustainable growth in the Welsh economy;
- b) the desirability of promoting and facilitating the use of the Welsh language, including through the availability of assessment arrangements that provide for assessment through the medium of the Welsh language, and of qualifications that otherwise promote or facilitate the use of the Welsh language;
- c) the range and nature of qualifications available, and of their assessment arrangements;
- d) the reasonable requirements of employers, higher education institutions and the professions regarding education and training (including as to required standards of practical competence);
- e) whether the knowledge, skills and understanding required to be demonstrated for the purpose of determining whether a person is to be awarded a qualification reflect current knowledge and best practice;
- f) whether qualifications indicate a consistent level of attainment with that indicated by whatever Qualifications Wales considers to be comparable qualifications, whether awarded in Wales or elsewhere;
- g) whether qualifications are provided efficiently and so as to secure value for money;
- h) the respective roles played by, and responsibilities of, each of the following persons in respect of the Welsh qualification system (including by reference to co-operation between those persons, and their effectiveness in performing their roles)—
 - (i) awarding bodies, learning providers, Qualifications Wales and the Welsh Ministers;
 - (ii) any other persons exercising functions that Qualifications Wales considers relevant for the purpose of the Welsh qualification system.

Support for Establishing Qualifications Wales

32. The Welsh Government has stated within the Explanatory Memorandum that to establish the independent body, significant changes and amendments to primary legislation would be required. Within both the written and oral evidence presented to the Committee, there has been almost universal support for the principle of transferring responsibility for the regulation of qualifications away from government and setting up a dedicated independent body for this purpose, as set out in the Bill.

33. Evidence has also, however, highlighted concerns and potential risks associated with establishing Qualifications Wales, and having too separate a qualifications system in Wales. Some of the key issues and concerns identified by those providing evidence to the Committee included:

- the practicalities of how Qualifications Wales will work;
- what is required to ensure Qualifications Wales successfully meets its purpose;
- the clarity of provisions within the Bill, in particular relating to section 29(3) regarding “Welsh versions” of qualifications;
- the advantages and disadvantages of the new arrangements for prioritising and restricting qualifications;
- whether the Bill facilitates a more strategic approach to qualifications; and
- the financial and commercial issues relating to the new system.

Committee view

34. The Qualifications Wales Bill will provide for the establishment of a new body, independent of Welsh Government, that will be responsible for the regulation of the qualifications system in Wales. The Bill will also provide that body with additional powers enabling the new body to strengthen the regulatory system.

35. The Committee is unanimous in its view that the establishment of Qualifications Wales is a positive step forward, and fully supports the approach taken in the Bill.

36. The Bill contains a list of matters to which Qualifications Wales must have regard to when undertaking its functions, all of which are aimed at seeking improvement in the regulatory system. However, the Committee

believes that the establishment of Qualifications Wales itself will have a major impact in achieving the improvements / changes that are proposed.

37. The Committee also acknowledges the concerns raised by stakeholders. While these are explored in greater detail throughout the report, the Committee believes that the Welsh Government must give consideration to those overarching concerns, and must work closely with the Chief Executive of Qualifications Wales, prior to the formal establishment of that body, to ensure that potential problems are fully considered in advance.

Recommendation: While the Committee fully supports the establishment of Qualifications Wales, the Welsh Government must give consideration to the overarching concerns raised by stakeholders, and must work closely with the Chief Executive of Qualifications Wales, prior to the formal establishment of that body, to ensure that potential problems are fully considered in advance.

5. Practical workings of Qualifications Wales

Level of independence

38. Qualifications Wales will be independent from the Welsh Government in the way in which it works towards achieving its principal aims and its qualifications functions and will report to the National Assembly for Wales (the Assembly).

39. As Qualifications Wales will be funded by the Welsh Government it will have a “framework” document which will outline its responsibilities to the Welsh Government (particularly its financial responsibilities). Those responsibilities will fall under the oversight of a sponsorship unit within the Welsh Government.

40. Both the unions representing head teachers and school/college leaders, the National Association of Headteachers (NAHT) and the Association of School and College Leaders (ASCL) expressed reservations about the genuine level of independence of Qualifications Wales. They pointed in particular to the powers of the Welsh Ministers to make appointments to the new body and to issue an annual remit letter. Concerns were also raised that the provisions of the Bill require the prioritisation of qualifications to be done jointly between Qualifications Wales and Welsh Ministers.

41. The NAHT “remain concerned that the new body will not be independent of Government” while for ASCL, “it is unclear how the independence of this new body will be maintained under the arrangements described in the Bill”.

42. The importance of genuine independence for Qualifications Wales was also an issue raised in several written submissions. The Federation of Small Businesses (FSB) stressed the regulator must be fully independent from the Welsh Government and that there should be strong formal lines of accountability and commitment to regular scrutiny by an Assembly Committee.

43. The Association of Teachers and Lecturers (ATL) emphasised the importance of openness and transparency, whilst expressing concern that the Welsh Government sponsor unit may interfere with Qualifications Wales’ independence.

44. The Minister explains in the Explanatory Memorandum¹⁴ that the sponsor unit will have “oversight” of Qualifications Wales’ responsibilities and that financial accountability will be provided through a “framework” document. However, the Welsh Government says that regular dialogue on policy will not undermine the independence of Qualifications Wales.

45. During pre-legislative scrutiny the Committee explored the issue of independence and accountability with Quality and Qualifications Ireland (QQI) who stressed that what was fundamental to a successful system was that the regulator had operational independence. The Minister told the Committee:

“What the Bill, as drafted, seeks to do is strike the best possible balance that we can find between that operational independence and the need for accountability.”¹⁵

46. In response to concerns that the sponsor unit may be seen as undermining Qualifications Wales’ independence, the Minister said:

“In terms of the sponsor unit.... It would be a small administration team—a conduit, if you like—for communication between the Welsh Government and the new body, the primary purpose of which would be to make sure we have a good constant working relationship, particularly in relation to curriculum development.”¹⁶

Committee view

47. Following on from the conclusions made during pre-legislative scrutiny, the main concern of the Committee was to ensure that Qualifications Wales would have operational independence from Welsh Government. While the Committee notes the concerns raised by stakeholders, it believes that the Bill provides Qualifications Wales with the level of independence required for it to undertake its role effectively.

48. The Committee notes that the Welsh Government will not determine Qualifications Wales’ annual priorities or business plan, but that there will be matters of policy which the Welsh Government will wish to draw to the attention of Qualifications Wales, or additional activities that it wishes to ask Qualifications Wales to perform on its behalf. The Committee believes that

¹⁴ [Explanatory Memorandum](#), paragraph 59

¹⁵ Oral Evidence, 5 February 2015, [Record of Proceedings](#)

¹⁶ *Ibid*

this will not detract from the operational independence of Qualifications Wales.

49. Similarly, the Committee notes the statement in the Explanatory Memorandum¹⁷ that the annual “remit” letter will set out any particular areas of focus or activities that would supplement the core functions of Qualifications Wales, as well as settling the annual grant to be provided. Again, the Committee believes that this will not detract from the body’s operational independence.

50. The Committee is also content with the proposed role of the sponsor unit, as outlined by the Minister, and that the unit will not interfere with the independence of Qualifications Wales, as had been suggested.

51. The Committee is however, unclear on the process for agreeing the framework document and annual remit letter referred to. While these are clear mechanisms proposed by the Minister in moving towards establishing the independent body, there is no provision on the face of the Bill on the process for agreeing either document.

52. The Committee therefore believes that the Minister should ensure that reference to the framework document and the annual remit letter is included within the Bill, outlining the general process and including a requirement for publication of the documents.

Recommendation: While the Committee is content that Qualifications Wales will have the level of independence required for it to undertake its role effectively, it believes that the Minister should ensure that reference to the framework document and the annual remit letter is included within the Bill, outlining the general process and including a requirement for publication of the documents.

Scrutiny and accountability

53. Both NAHT and ASCL suggested stronger scrutiny would be required from the National Assembly to balance the perceived influence that the Welsh Government might have over Qualifications Wales.

54. Robin Hughes, Secretary of ASCL, referred to the fact that the annual report would simply be laid before the Assembly, asking whether there would be an assurance that there would be opportunity to look into the depths of the new body.

¹⁷ [Explanatory Memorandum](#), paragraph 62

55. Dr Chris Howard, Acting Director of NAHT Wales, expressed concerns that there may be times when, as an independent body, Qualifications Wales would not be “on the same page” as the Minister, and suggested that the Bill would be more secure if there was opportunity for the Assembly to hear from Qualifications Wales two or three times during the year.

56. The Bill requires Qualifications Wales to lay a copy of their annual report before the National Assembly for Wales and to publish the report. However, the Bill does not make any provision detailing what would happen after Qualifications Wales’ report is laid or whether it would be subject to debate by Members.

57. The fact that a document is laid does not in itself require it to be debated by the Assembly. However, the Explanatory Memorandum suggests that Members would scrutinise the annual report, stating that “Qualifications Wales will be held to account by the National Assembly for Wales either in full session or by Committee”.¹⁸

58. When asked about this by the Committee, the Minister said:

“Well, this, of course, would be a matter for the Assembly itself, or for committees and Assembly Members to decide. I would envisage that we would have an analogous process to that which Estyn, for instance, will undergo every year.”¹⁹

59. The Minister also stated in evidence that the Bill was deliberately set out in the way it is to allow the Assembly to call the new body to account. He suggested that (for example) in a sector where policy developments might suddenly change that it is necessary not just to restrict the ability of the Assembly to have oversight of the new body to the annual report. There could be day-to-day matters on which a committee or the wider Assembly would need to hold Qualifications Wales to account.

60. In considering the provisions in the Bill relating to the Annual Report of Qualifications Wales, the Committee has looked at the relevant legislation concerning annual reports produced by Estyn’s Chief Inspector and the Children’s Commissioner. In both cases, the legislation requires only that their annual reports be laid before the National Assembly for Wales. However, in relation to both, the responsible Committee holds an annual

¹⁸ [Explanatory Memorandum](#), paragraph 322

¹⁹ Oral evidence, 5 February 2015, [Record of Proceedings](#)

scrutiny session, and the Government holds a debate each year, on their annual report.

Committee view

61. The provisions in the Bill relating to the annual report of Qualifications Wales are comparable to the legislative arrangements for the annual reports of similar bodies, such as the Children’s Commissioner for Wales and Estyn. The Committee is therefore content that the Bill’s provisions are adequate in this regard.

62. The Committee believes that the Bill would be too restrictive, were it to contain provision specifying how or when Qualifications Wales should be brought before the Assembly for scrutiny. However, the Committee also believes that as with the annual reports of similar bodies, the Welsh Government should give a commitment to holding a debate on the annual report of Qualifications Wales.

Recommendation: The Welsh Government should give a commitment to holding a debate on the annual report of Qualifications Wales.

Stakeholder engagement

63. Section 42(3) of the Bill requires Qualifications Wales to publish a statement setting out the circumstances in which it proposes to carry out consultation and the manner in which it proposes to carry out that consultation.

64. A number of respondents to the Committee’s written consultation, including the NUT, FSB, NUS, ATL, and UCAC, argued the Bill should include more detail on how Qualifications Wales is expected to engage and consult with stakeholders. The NUT in particular argued that it would like the Bill to specify a detailed list of the stakeholders Qualifications Wales must consult as “leaving it to a vague list to be determined could lead to accusations that the body is not engaging efficiently”.²⁰

65. UCAC also called for clear arrangements to communicate with stakeholders, while the ATL would prefer the “hope” for engagement expressed in the Explanatory Memorandum²¹ to be translated into something more concrete in the Bill.

²⁰ Written evidence, [NUT Cymru: QW15](#)

²¹ [Explanatory Memorandum](#), paragraph 101

66. The Minister told the Committee that Qualifications Wales will be required to be in regular conversation with universities throughout the UK and throughout the world; similarly, with employers and professional bodies.

67. The Minister also confirmed that the annual report would have to contain details of how Qualifications Wales has actually engaged with stakeholders. The Minister stated that that would be an expected part of Qualifications Wales' day-to-day workings.

Committee view

68. The Bill requires Qualifications Wales to publish a statement setting out the circumstances in which it proposes to carry out consultation and the manner in which it proposes to carry out that consultation. The Bill also requires Qualifications Wales to include within its annual report details of how it has involved stakeholders in the exercise of its functions.

69. The Committee therefore notes the concerns raised, but believes that the Bill provides sufficient safeguards to ensure that Qualifications Wales engages and consults effectively with stakeholders.

6. The purpose the Bill sets for Qualifications Wales

70. The Bill's main purpose is to address the four main limitations in the current system that have been identified by the Welsh Government. In doing so, the Bill sets out two principal aims for Qualifications Wales and includes a non-exhaustive list of eight matters that Qualifications Wales must have regard to in achieving its principal aims.

71. The evidence the Committee has received generally agrees that the Welsh Government has correctly identified those four limitations. However ColegauCymru and the WJEC highlight the fact that regulation is currently carried out by government as effectively a fifth limitation, although recognise this is directly addressed by the Bill itself.

Principal aims

72. The principal aims of Qualifications Wales are set out on the face of the Bill at section 3. Evidence received by the Committee was generally in favour of the principal aims, there was however some concern expressed in relation to the second principal aim of "promoting public confidence".

73. In emphasising the importance of promoting public confidence in Wales' qualifications system outside of Wales, Universities Wales suggested the second principal aim may be too narrow and that "the new body will need also to inspire the confidence of employers, universities and other stakeholders not just in Wales but across the UK and internationally".

74. When asked by the Committee whether the second principal aim should be broadened to explicitly refer to the international dimension, the Minister stated that there isn't mention of the word "international" within the principal aims because it is taken to be part and parcel of what Qualifications Wales needs to be doing every day.

Committee view

75. The Committee is content with the two principal aims the Bill sets for Qualifications Wales, as drafted in section 3(1) of the Bill. The Committee notes that the second principal aim does not refer specifically to promoting public confidence internationally, but agrees with the Minister's view that the day to day operation of promoting public confidence would include that international dimension, whether or not it is stated on the face of the Bill.

Matters

76. No comments were received that disagreed with any of the eight matters, set out in section 3(2) of the Bill. However, it was noted that the list of eight matters was non-exhaustive and several suggested additions were put forward by consultees.

77. ColegauCymru believes there is a need for a clearer remit for Qualifications Wales to fulfil the following two purposes, which they recommend are also listed under section 3(2):

- To promote the parity of esteem between academic and vocational qualifications;
- To promote the compatibility of qualifications in Wales with the relevant European credit and qualifications frameworks.

78. Emphasising the inclusion of vocational qualifications in the offer to learners is also a matter which the WJEC would like added to section 3(2) along with something that explicitly relates to the needs of learners and their progression.

79. UCAC also advocate making more explicit reference within the eight matters to vocational qualifications, suggesting the words “to the learner, including vocational qualifications” are appended to the matter which refers to the “range and nature of qualifications available”. The importance of aligning Wales’ qualifications with those of other nations was also highlighted by the responses from Universities Wales and the NAHT.

80. On adding a matter specifically promoting a “parity of esteem”, the Minister told the Committee:

“Well, everyone agrees that we need to make absolutely crystal clear to everyone involved the parity of esteem between general and vocational qualifications. This is our aim in Wales; this is our commitment. There are two ways to go about that. I suppose, you could get into the business of wording something on the face of the Bill that underscores that, or—and this is the approach we’ve taken—you simply make no distinction in the Bill between general and vocational qualifications. We just talk about “qualifications”, and that is your job, as a regulator—the whole gamut of qualifications, and no distinction being made.”²²

²² Oral evidence, 5 February 2015, [Record of Proceedings](#)

81. In relation to international benchmarking of qualifications, the Minister stated that colleagues working on qualifications already engage with Europe and are cognisant of the European qualifications framework. The Minister confirmed that work is ongoing at the moment to ensure that qualifications are of the appropriate level and comparable with Europe and that he would expect Qualifications Wales to continue in a similar vein if it saw fit.

82. The Minister also stated that it was important to remember that Qualifications Wales would have operational independence from Welsh Government, so it was very important that Welsh Government did not over-specify how Qualifications Wales should go about prioritising its business, or start to micromanage what the organisation did.

Committee View

83. The Committee is content with the eight matters listed within section 3(2) of the Bill, and notes that as this is a non-exhaustive list, it would not prevent Qualifications Wales having regard to other matters that were not necessarily included on the face of the Bill.

84. The Committee is however concerned that the matters listed on the face of the Bill should include the main areas identified by stakeholders as being relevant. Evidence has been provided that there are other areas that are not currently included within the list of matters.

85. Of particular concern to stakeholders was the promotion of vocational qualifications and/or a parity of esteem; and international benchmarking. The Committee believes that the Minister should give consideration to including these additional matters on the list within section 3(2).

Recommendation: The Minister should consider including additional matters on the list within section 3(2), relating to promotion of vocational qualifications and/or a parity of esteem and international benchmarking.

7. Restriction on funding for certain courses

Requirement for Welsh-versions of qualifications

86. The Committee has heard concerns about the wording of section 29(3) of the Bill. Section 29(3) requires that for a course of education or training to be publicly funded it must lead to a qualification that is “a Welsh version of the qualification”. Both the Explanatory Memorandum (para 64) and the Explanatory Notes (para 64) indicate this means the qualification must be approved by Qualifications Wales. This is different from a requirement for a specific version unique to Wales, as inferred by the wording of section 29(3).

87. The WJEC wrote that the wording of section 29(3) “is not particularly helpful and seems to be unnecessary” given other sections of the Bill refer to the condition that a qualification is approved by Qualifications Wales. The WJEC believe this is a “more appropriate descriptor”.²³

88. Gareth Pierce, WJEC Chief Executive, told the Committee²⁴ the “idea that we need a Welsh version of everything” is “quite negative” and he does not “foresee it being necessary or efficient”. When asked for their views, Pearson and OCR told the Committee²⁵ that the wording of section 29(3) appeared “vague” and they would like it clarified.

89. The Federation of Awarding Bodies (FAB), along with its three members who submitted very similar consultation responses, urged for any requirements for Welsh versions of qualifications to be at “a sufficiently high level” so that awarding bodies are able to “contextualise qualifications and/or use core and options approaches to meet those requirements”. For the FAB, this would help ensure “the Welsh market does not become too specific” and avoid awarding bodies viewing offering qualifications as unattractive or unviable.

90. The FAB suggest if a “slightly different separate version of what is basically the same qualification” is necessary, this could be “confusing for learners, employers and other stakeholders”, adversely affecting learner mobility. The FAB recommends, therefore, that the Bill is amended to “clarify that the term “Welsh version” should be an administrative label only, which is

²³ Written evidence, [WJEC, QW01](#)

²⁴ Oral evidence, 14 January 2015, [Record of Proceedings](#)

²⁵ Oral evidence, 22 January 2015, [Record of Proceedings](#)

used to refer to those qualifications that are accredited by Qualifications Wales for use in Wales”.²⁶

91. The Minister responded confirming that the term “Welsh version” is essentially an administrative or legal label, which signals that a qualification comes under the remit of Qualifications Wales. The Minister also confirmed that the term “Welsh version” could apply to a qualification that was no different to what was provided in England, other than perhaps its reference number.

Committee view

92. The Committee acknowledges the explanation provided by the Minister regarding the meaning of “Welsh version” within section 29(3) of the Bill, and is content with the policy intention behind that section. However, the Committee also notes the concerns of stakeholders that the wording of section 29(3) of the Bill is unclear, and believes the Welsh Government should reconsider the wording in the interests of certainty and clarity.

Recommendation: The Minister should reconsider the wording of section 29(3) of the Bill, and the reference to a “Welsh version of the qualification” in the interests of providing certainty and clarity in the meaning of this section.

Access to Higher Education Diplomas

93. Section 51(1) defines a qualification to which the Act applies as “an academic or vocational qualification awarded in Wales, other than a foundation degree; a first degree or a degree at a higher level”. The Committee takes this to mean that Access to Higher Education (AHE) Diplomas would fall under the remit of Qualifications Wales.

94. The Committee received written evidence from Agored Cymru suggesting that there is an “anomaly” regarding the “unique position” of AHE Diplomas. Agored Cymru is the Access Validating Agency for Wales, which means it validates all AHE Diplomas. The recognition scheme for AHE Diplomas is set by the Quality Assurance Agency (QAA), a UK wide organisation which is contracted by the Higher Education Funding Council for Wales (HEFCW) to regulate and quality assure higher education provision in Wales.

²⁶ Written evidence, [Federation of Awarding Bodies: QW16](#)

95. On the face of it, AHE Diplomas will be within the remit of Qualifications Wales as they are a Level 3 qualification and below Foundation Degree level. However, Agored Cymru say that as these qualifications are regulated by the QAA, they “will not be approved by Qualifications Wales”.²⁷

96. Whilst the majority of learners undertaking AHE Diplomas are over 19 and therefore exempt from the requirement in section 29 that for a course to be publicly funded it must lead to a Qualifications Wales-approved qualification, Agored highlight that AHE Diplomas can be suitable for learners aged below 19 in special circumstances. Agored argue “the Bill will need to accommodate a mechanism for approval of the AHE Diploma that does not prevent it being publicly funded in appropriate circumstances”.²⁸

Committee View

97. The Committee notes the provision of section 29(6) for the Welsh Ministers to designate any course of education and training as eligible for public funding. Such “anomalies” may therefore be addressed through using such a power.

98. However, Committee is concerned about potential unintended consequences of the provision of section 29 of the Bill (that only courses which lead to Qualifications Wales-approved qualifications will be publicly funded for learners aged below 19) arising for AHE Diplomas or any other qualification that may be similarly affected.

99. The Committee believes that the Minister should clarify the position of AHE Diplomas, or similar qualifications, and whether they will be approved and regulated by Qualifications Wales or continue to come under the responsibility of the QAA and HEFCW.

Recommendation: The Minister should consider the potential unintended consequences of the provision of section 29 of the Bill for AHE Diplomas, or any other qualification that may be similarly affected, and provide clarity on whether they will be approved and regulated by Qualifications Wales or continue to come under the responsibility of the QAA and HEFCW.

²⁷ Written evidence, [Agored Cymru: QW21](#)

²⁸ Ibid

8. Prioritising qualifications

The need for prioritisation

100. The majority of evidence received by the Committee generally recognises the need to streamline and rationalise the volume of vocational qualification that currently exist in Wales. The powers the Bill gives to Qualifications Wales and the Welsh Ministers to prioritise qualifications will enable this.

101. The Explanatory Memorandum states that having a list of priority qualifications will enable Qualifications Wales to focus public resources most effectively on qualifications that are most significant. Qualifications Wales will not be obliged to consider approving non-priority qualifications. It may decide not to do so, provided the decision is clear and in accordance with its published decision-making process.

102. The Minister described the priority qualifications list as a tool that enables Qualifications Wales to strategise, and concentrate efforts on particular types of qualifications. The Minister also suggested that the priority list will help tackle the over-proliferation of qualifications that are available, which he stated was widely perceived to be a problem.

How prioritisation will work in practice

103. Several witnesses have highlighted that the process of prioritisation will not be straightforward. The Council for the Curriculum Examinations & Assessment (CCEA), who are the qualifications regulator for Northern Ireland, advised in their written evidence that “across the current suite of non-degree level, general and vocational qualifications, this is a potentially large item of work ... and it will take some time to meet the objectives stated”.²⁹

104. They also warn that it will be a “significant challenge” to review all vocational and general qualifications for the purposes of prioritisation or otherwise even before this process takes place.

105. In oral evidence, the CCEA Chief Executive, Justin Edwards, said:

“I think one of the challenges around establishing prioritisation is how often you cycle or identify these priorities. If you identify the priorities too often and take in every opportunity, you could end up

²⁹ Written evidence, [Council for the Curriculum Examinations and Assessment: QW13](#)

differentiating the market, to an extent, or having smaller qualifications that are difficult to benchmark, and, if you leave it too long, you could miss an economic or a social opportunity that is presenting itself.”³⁰

106. The FAB expressed concern that a list of priority qualifications risks becoming quickly out of step with the needs of employers and the wider economy, despite measures to update it on a regular basis. They believe there are better, alternative approaches to address the rationale behind prioritisation than by Qualifications Wales and the Welsh Ministers producing a list.

107. The FAB recommended that consideration be given to “different ways that can be used to target the regulatory resources that are available to ensure they are effectively allocated”³¹, adding “exploration of risk based approaches to regulation may present an alternative approach to a priority list approach”.³²

108. When asked about the scale of the task of prioritising qualifications and how the process will actually work, the Minister said:

“But, in terms of how we set off on this road now, I will be having early discussions with Philip Blaker, the Chief Executive Officer of Qualifications Wales, about how that first priority list is actually drawn up. It will be a decision for the board of Qualifications Wales, working alongside, and consulting obviously, with me. It is about recognising the fact that the qualifications landscape is complex, overly complex in fact.”³³

Committee view

109. The majority of evidence received suggests that there is a need to streamline and rationalise the qualification that currently exist in Wales. The Committee believes that that having a list of priority qualifications will enable Qualifications Wales to focus public resources most effectively on qualifications that are most significant, and is content with the powers for prioritisation, as contained in the Bill.

³⁰ Oral evidence, 22 January 2015, [Record of Proceedings](#)

³¹ Written evidence, [Federation of Awarding Bodies: QW16](#)

³² Ibid

³³ Oral Evidence, 5 February 2015, [Record of Proceedings](#)

110. The Committee acknowledges concerns raised by stakeholders about the potential difficulties involved in prioritising qualifications in Wales, and believes the Minister should fully consider these concerns. The Committee welcome the commitment from the Minister that in moving forward with prioritising he will be having early discussions with Qualifications Wales' Chief Executive, about how that first priority list is actually drawn up, and believes that concerns raised should form part of those early discussions.

Recommendation: While the Committee is content with the powers for prioritisation, as contained in the Bill, the Committee calls on the Minister to fully consider concerns raised by stakeholders, and to include those concerns in early discussions with Qualifications Wales' Chief Executive.

Prioritising qualifications according to the importance of public confidence

111. Whilst the WJEC agreed with the principle of prioritising qualifications, they are uncomfortable with the main criteria section 13(2) sets for decisions over this. According to the WJEC, care is needed in introducing the notion that public confidence is more important for some qualifications than others. In Committee, Gareth Pierce explained it as follows:

“Surely, the public has a right to expect to be able to place the same confidence in all qualifications, whether it’s a GCSE in mathematics or a competence qualification in electrical installation. I would hope that we’re placing the same level of confidence. So, that’s my concern, that this concept of confidence seems to drive the whole process of prioritising and, therefore, will create a rank order of confidence, which I think is not the right thing.”³⁴

112. The WJEC argue a better basis for prioritisation would be the need for consistency in design and standards, similar to the criteria for restricting qualifications.

Committee View

113. In relation to prioritising a qualification, section 13(2) of the Bill sets the condition that “Qualifications Wales and the Welsh Government must be satisfied that maintaining public confidence in that qualification is a priority for Qualifications Wales...”.

³⁴ Oral evidence, 14 January 2015, [Record of Proceedings](#)

114. Section 13(2) does however go further and states that a decision to prioritise is also made “...by reason of the significance of the qualification having regard to the needs of learners and employers in Wales”.

115. While the Committee acknowledges the point raised by the WJEC, the Committee believes that the decision to prioritise a qualification, in accordance with section 13(2), will be based on more than just maintaining public confidence. In reaching a decision to prioritise, Qualifications Wales must also have considered the significance of the qualification having regard to the needs of the learner and of employers.

116. The Committee agrees that the public should have confidence in all qualifications offered in Wales, and is content that section 13(2) does not work against that concept. The Committee believes that the condition set out in section 13(2) marries public importance to the significance of the qualification, and as such the Committee is content with the wording of this section.

9. Restricting qualifications

117. Evidence received on the sections of the Bill establishing the processes for restricting qualifications was mixed. Interpretations of what the Bill proposes can be characterised on either side as:

- Either: a mechanism of simplifying and streamlining the quantity of qualifications on offer to young people, as well as establishing more consistency;
- Or: adversely limiting choice over which qualification is best suited for an individual and potentially distorting the qualifications market in Wales.

118. Those that supported the provisions for restriction mainly did so for the purposes of consistency in the qualifications taken by learners, for example Estyn, NUS and the Catholic Education Service.

Concern registered by the FAB

119. Opposition to the sections of the Bill which make provision for the prioritisation and restriction of qualifications comes predominantly from the FAB and its three members (HABC, Agored Cymru and CMI) who submitted near-identical responses to their umbrella representative.

120. The FAB argue that the proposal for prioritisation and restriction may impact on the qualifications market in Wales and the needs of learners. Much of their evidence was framed within a context of distortion of the qualifications market in Wales and the potential for some/many awarding bodies to withdraw from Wales as a result of these aspects of the Bill.

121. The FAB believes that restricting a qualification to a single provider will have a negative effect on the qualifications market in Wales. They would prefer Qualifications Wales to use its research functions provided by the Bill to “support the effective comparability of qualifications” and “focus on taking steps to improve the public perception of the current competitive market”.³⁵

122. Risks identified by the FAB include:

- Removal of centres’ (employers, colleges and training providers) choice over which awarding body’s qualification best meets their own and their learner’s needs;

³⁵ Written evidence, [Federation of Awarding Bodies: QW16](#)

- Added complexity for centres if different awarding bodies are selected for different restricted priority qualifications (at present they may opt to use the same provider for all/or some of the qualifications they offer);
- Lack of choice for learners over which awarding body suits them best (may be particularly relevant where certain bodies have resonance within a certain industry sector);
- Diminishing incentive for awarding bodies to innovate due to removal of the competitive driver to do so;
- Whether Welsh versions of qualifications will be sufficiently portable into England, Europe and beyond;
- Impact on the future shape of the vocational qualifications market (see unintended consequences below).

123. Pearson were also sceptical of the benefits which the Welsh Government claim will arise from being able to select a single provider for certain qualifications. They commented in their response to the Welsh Government's consultation in 2013³⁶ that:

“Competition, when aligned with effective regulation, is the best means of delivering efficient outcomes.

“By contrast a system that is reliant on a single supplier of qualifications is likely to become less responsive to the market and less efficient in delivery. It will also be a single point of failure in the system which can often make quick remedial action more difficult to accomplish.”

Unintended negative consequences

124. The FAB identify some possible outcomes to Qualifications Wales' restriction of priority qualifications which could be described as potential unintended consequences of the Bill. They highlight that the market in Wales is likely to be relatively small for most awarding bodies in most sectors compared to their overall business.

125. FAB also say that, if an awarding body is prevented from providing a particular restricted priority qualification which generates significant revenue, it may decide for commercial reasons not to bother offering any of

³⁶ [Our Qualifications - Our Future: Consultation on proposals to establish a new qualifications body for Wales](#)

their qualifications at all in Wales, particularly if they are those that are less profitable. This could impact on some niche sectors which may find their qualifications are not catered for.

126. In addition, the FAB state that there is no guarantee that an awarding organisation would wish to return to the Welsh market when a further commissioning exercise is undertaken in future or if the qualification is no longer restricted. This, they say, could leave Qualifications Wales in a “high risk position” and result in a scenario where one provider, is by default, the only realistic provider of some vocational qualifications.

127. For the FAB, these factors are part of a combination of reasons why awarding bodies may be less inclined to offer qualifications in Wales as a result of the Bill, contrary to what the Welsh Government anticipates.

128. Responding to the points raised by the FAB, the Minister told Committee:

“Well, we should all be concerned if someone is coming out with that kind of comment, and then we should move on swiftly to making sure that it’s a baseless comment. You see, this will be a matter for Qualifications Wales: to make sure that the strategy enables stakeholders to have a fair crack of the whip. So, in other words, you know, it’ll have to sit down with awarding bodies.”³⁷

129. The Minister had previously explained to Committee how he felt the new provision for commissioning or selecting an awarding body to be the sole provider of a given qualification would be more attractive to awarding bodies than the present arrangements. Describing the current position, the Minister said:

“Now that is not very attractive for some awarding bodies, particularly those that are England based. There is a very large market in England and a very small market in Wales. Essentially, what you would be asking them to do is to collaborate with WJEC and/or others for a small proportion of a small proportion of their business. Their response to that was, ‘Sorry, but that’s not worth our while’. So, you are left effectively with a default position of WJEC being the only player in town.

³⁷ Oral evidence, 5 February 2015, [Record of Proceedings](#)

“What the new system will allow is a more attractive proposition for all awarding bodies because they can all step up and compete equally for the business.

“...the new system will give us clarity and will actually open up the system to a greater degree than it is at the moment.”³⁸

130. Explaining the response of awarding bodies other than the WJEC to what the Welsh Government is proposing in the Bill: the Minister’s official said:

“I need to confirm that, when we met with senior officials in the main awarding bodies, they explained why they had withdrawn from the collaborative option, which was because it would not have been favourable to their business to have to share intellectual property rights and so on with a provider on a single specification. If they had the opportunity, they told us, to compete for a whole qualification or a specific suite of qualifications, then they would have been very interested in doing so and they were very welcoming of, and receptive to, the idea and the proposals that we were developing.”³⁹

131. When the Committee asked OCR and Pearson whether they would be interested in being commissioned to provide a given qualifications to the whole of the publicly funded market, they both said they potentially would.

Committee view

132. The Committee is concerned that there is a clear split in opinion in the evidence it has received, and that there is no firm evidence either way to suggest what the on-going impact of restricting priority qualifications will be.

133. The Committee is particularly concerned about the potential unintended consequences raised by the FAB, and believes that the Minister should fully consider these concerns prior to enactment of the Bill.

134. The Committee also believes that the Welsh Government should review the impact on the qualifications market of decisions made to restrict priority qualifications, and should report the findings of that review back to the Assembly.

³⁸ Oral evidence, 11 December 2014, [Record of Proceedings](#)

³⁹ Ibid

Recommendation: Prior to enactment of the Bill the Minister should fully consider the concerns raised by the Federation of Awarding Bodies relating to restricting priority qualifications, particularly the potential unintended consequences.

Recommendation: The Welsh Government should review the impact on the qualifications market of decisions made to restrict priority qualifications, and should report the findings of that review back to the Assembly.

10. Strategic approach to qualifications

135. Much of the evidence the Committee has received stressed the importance of taking opportunities to develop a more strategic approach to vocational qualifications and to promote a parity of esteem with their general/academic counterparts.

136. Following introduction of the Bill, in an oral statement the Minister said that he envisaged Qualifications Wales being active in the vocational field:

“There has been a wall of confusion in terms of vocational qualifications for some time, but I am sure that Qualifications Wales will bring further progressive pressure in order to make sure that the landscape for learners is clearer, that we have a simpler path to navigate, and that we have that reassurance around the quality of individual qualifications.”⁴⁰

Strategic approach to prioritisation and restriction

137. The inference in the Explanatory Memorandum is that the commissioning model for restricted qualifications is more likely to be adopted for academic than vocational qualifications with the anticipation that:

While some vocational qualifications will continue to exist in a multi-provider market, Qualifications Wales may determine that for others a single suite approach is most appropriate.⁴¹

138. This approach would be supported by the National Training Federation for Wales (NTfW) who argued that whilst restricting priority academic qualifications may be beneficial in the interests of uniformity and consistency, the same would not be true of the vocational sector.

139. The NTfW, which accepts there is a strong need for the Bill, would also be concerned if the provision for restricting qualifications to one form and one provider was applied to vocational qualifications. Whilst the NTfW argue strongly for a parity of esteem between vocational and academic qualifications, this does not necessarily mean treating them the same. They wrote that:

⁴⁰ Plenary, 2 December 2014, [Record of Proceedings](#)

⁴¹ [Explanatory Memorandum](#), paragraph 87

“...any restriction on awarding bodies to operate in Wales would have a detrimental effect on choice, especially as it is felt that no one awarding body would have the breadth of specialism required to work across the broad spectrum of sectors within Wales.”⁴²

140. The NTfW added:

“In addition, we must recognise that the qualifications ‘market’ in Wales is comparatively small, and that a restrictive commissioning process will be counterproductive to provider and employer choice and/or meeting the unique needs of learners.”

141. However, the Minister told the Committee⁴³ that there was no reason to distinguish between academic and vocational qualifications and that Initial Vocational Education and Training (IVET) courses were one of the obvious candidate areas for prioritising and possibly restricting qualifications. This is in line with the Welsh Government’s policy of not referring specifically to vocational qualifications or a parity of esteem within the Qualifications Wales’ principal aims or matters to which it must have regard.

142. For the Minister, any difference in approach would emerge from the way Qualifications Wales used the powers given to it by the Bill, rather than being defined in the legislation itself:

“... there’s no distinction in the Bill between vocational and other qualifications. So, that toolkit around restriction and commissioning is exactly the same in terms of the two strands of qualification. So, essentially, it would be up to Qualifications Wales to utilise that toolkit as it saw fit, in terms of what it saw as the best strategic way forward. The toolkit is there, and it is exactly the same toolkit, no matter what kind of qualification we’re talking about.”⁴⁴

143. When asked whether he could actually set out the strategic direction Qualifications Wales will take on vocational qualifications, the Minister answered that while he could give a political opinion on it, in terms of this piece of legislation, he should not provide that strategic direction.

⁴² Written evidence, [National Training Federation for Wales: QW24](#)

⁴³ Oral evidence, 11 December 2014, [Record of Proceedings](#)

⁴⁴ Oral evidence, 5 February 2015, [Record of Proceedings](#)

Committee view

144. The Committee believes that the Bill makes sufficient provision to enable Qualifications Wales to take a strategic approach to vocational qualifications.

145. As outlined by the Minister, the Bill does provide Qualifications Wales with a “toolkit” allowing them to tailor their approach for both general/academic and vocational qualifications where necessary.

146. However, the Committee is concerned that where the approach by Qualifications Wales does vary, there needs to be an effective mechanism for scrutiny and accountability of how this has been done. The Committee believes that the Minister should consider whether to include provision within the Bill to require details of any such varied approach to be included within the annual report of Qualifications Wales.

Recommendation: The Minister should consider whether to include provision within the Bill requiring details of the rationale for prioritising and restricting academic and vocational qualifications to be included in the annual report of Qualifications Wales.

Sector Qualifications Advisory Panels

147. The Committee heard clear views from the NTfW about the relationship Qualifications Wales should have with the new Sector Qualifications Advisory Panels (SQAPs). The NTfW emphasised the importance of the SQAPs, which the Welsh Government say will offer a strategic view of qualifications and identify any gaps in particular sectors.

148. The NTfW believe Qualifications Wales should have a “strong role in coordinating the SQAPs to ensure that the vocational qualifications developed in Wales (for Wales) are fit for purpose”.⁴⁵

149. The Glossary accompanying the Explanatory Memorandum describes SQAPs as follows:

Sector Qualifications Advisory Panels are a new system for involving employer representatives and experts in the review of qualifications in Wales. Currently in development for a number of sectors it is the

⁴⁵ Written evidence, [National Training Federation for Wales: QW24](#)

intention that they will provide key advice to Qualifications Wales on the qualifications needs of the sectors that they represent.⁴⁶

150. The Minister confirmed his intention that there should be close links between Qualifications Wales and SQAPs. The Minister said that although SQAP's are not mentioned specifically within the Bill, there has to be a constant, well-maintained relationship between them and Qualifications Wales.

Committee view

151. The Committee acknowledges the important role that SQAPs have to play in the review of qualifications in Wales, and believes that Qualifications Wales must maintain a close relationship with SQAPs.

Apprenticeships

152. Apprenticeships issuing authorities are responsible for ensuring that only those apprenticeship frameworks which comply with the Specification of Apprenticeship Standards for Wales are issued and therefore recognised. Currently, the issuing authorities in Wales are primarily sector skills councils and standard setting bodies.

153. Both the NTfW and the FAB referred in their written evidence papers⁴⁷ to the absence of a defined role for Qualifications Wales in relation to apprenticeships.

154. The FAB write that Qualifications Wales' remit in this area is not clear either from the Bill or the Explanatory Memorandum. The NTfW told the Committee that they "strongly advocate that Qualifications Wales takes a stronger position with regard to apprenticeships, in terms of being the gatekeeper for apprenticeships within Wales".⁴⁸

155. NTfW also told the Committee that "as apprenticeships are made up of qualifications, generally, there needs to be a single body that is responsible for the whole apprenticeship offer, in terms of making sure that the framework is correct, in terms of the qualifications that go into the apprenticeship framework".⁴⁹

⁴⁶ [Explanatory Memorandum](#), Annex C

⁴⁷ Written evidence, [Federation of Awarding Bodies: QW16](#) and [National Training Federation for Wales: QW24](#)

⁴⁸ Oral evidence, 28 January 2015. [Record of Proceedings](#)

⁴⁹ *Ibid*

156. However, there is the consultation on apprenticeship frameworks that was launched by the Welsh Government on 22 January 2015, and which is open until 24 April 2015. Some of the areas that are explored within that consultation include whether or not Qualifications Wales should be taking more of an active role in becoming either the gatekeeper and/or an issuing authority.

157. While NTfW strongly advocate Qualifications Wales being the single body that looks after apprenticeships in Wales, they also acknowledged that it is for the Welsh Minister to decide who is an issuing authority.

158. The Explanatory Memorandum (Annex C) explains that the Bill does not make provision for Qualifications Wales to take responsibility for regulating or quality assuring apprenticeships. Should the Welsh Ministers decide to do so, they could designate Qualifications Wales as the issuing authority for apprenticeships using existing powers under the Apprenticeships, Skills, Children and Learning Act 2009.⁵⁰

159. The Minister told the Committee that there was no need for the Bill to provide new powers in respect of apprenticeships and any change in policy should wait until after the current consultation “Aligning the apprenticeship model to the needs of the Welsh economy”,⁵¹ which is currently on-going. The Minister said:

“Well, we’re currently going through the review of the apprenticeships system and we’ll have to take into account the results of that review that’ll come along later in the year.

“We do have existing legislation with the 2009 Act, which allows Welsh Ministers to designate, or would allow Ministers to designate, Qualification Wales as a Welsh issuing authority for apprenticeships—in other words, issues and publishes the frameworks for apprenticeships. So, that role is compatible with the powers that Qualifications Wales would have, but we also need to take into account what the review...is actually going to tell us.”⁵²

160. Following his appearances at Committee, the Minister wrote to the Chair saying “it would be premature to commit Qualifications Wales to a specific role in relation to apprenticeships before the outcome of that review is

⁵⁰ [Apprenticeships, Skills, Children and Learning Act 2009](#)

⁵¹ [Aligning the apprenticeship model to the needs of the Welsh economy](#)

⁵² Oral evidence, 5 February 2015, [Record of Proceedings](#)

known”.⁵³ The Minister added that, if it is decided that Qualifications Wales should become the issuing authority for apprenticeships, “there is nothing in the proposed Qualifications Wales Bill that would preclude this from taking place”.

Committee view

161. The Committee believes that the Minister should fully consider the role that Qualifications Wales should have towards apprenticeships. It is however clear that this should be done following the review “Aligning the apprenticeship model to the needs of the Welsh economy”, which is currently on-going.

Recommendation: Following the outcome of the review “Aligning the apprenticeship model to the needs of the Welsh economy”, the Minister should fully consider the role that Qualifications Wales should have towards apprenticeships.

⁵³ [CYPE\(4\)-07-15 - Paper to Note 1](#)

11. Financial and commercial issues

Costs of establishing Qualifications Wales

162. None of the evidence the Committee has received actually disputes that Option 3 (the preferred option) is the best option and no witnesses expresses any direct opposition to additional funding being allocated to establishing Qualifications Wales.

163. However, several stakeholders, including ColegauCymru have stressed the importance of ensuring value for money and “rigorous scrutiny” of the budget provide to Qualifications Wales, particularly in an on-going climate of austerity.

164. The Regulatory Impact Assessment within the Explanatory Memorandum shows the estimated additional cost of the new system is £15.7 million over the next five years (2015-16 until 2019-20) compared with the realistic status quo option. The Minister told the Committee⁵⁴ that this money would have to come from the existing Education and Skills budget and that he did “not have access to an additional resource”.

165. The Minister’s paper to the Committee during draft budget scrutiny in October 2014⁵⁵ said an initial £2.3 million had been allocated in 2015-16 to the set up costs of Qualifications Wales. He also confirmed this in writing to the Finance Committee.⁵⁶

166. Jim Bennett, Principal of Coleg Gwent, who accompanied ColegauCymru at Committee, said:

“...that is going to cost money. For me, this issue is not so much that – it’s where it comes from. If this means a significant further squeeze on the education budget, then that will be a big issue for us.”⁵⁷

167. Referring to reductions in Coleg Gwent’s part-time provision as a result of cuts in the 2015-16 budget, Mr Bennett added:

“But if doing this costs 50% of the part-time provision in FE colleges in Wales... then the whole notion, the whole concept, of value for money takes on a different colour.”⁵⁸

⁵⁴ Oral evidence, 11 December 2014, [Record of Proceedings](#)

⁵⁵ [CYPE\(4\)-25-14 – Paper 5](#)

⁵⁶ [CYPE\(4\)-07-15 – Paper to Note 2](#)

⁵⁷ Oral evidence, 22 January 2015, [Record of Proceedings](#)

168. As outlined in the Explanatory Memorandum, the Welsh Government's Cabinet has acknowledged the high additional costs as the "justifiable expense of the independence of the qualification system in Wales".⁵⁹ The Minister told Committee:

"We've made the commitment to Qualifications Wales. It is, perhaps, some would say, with some justification, the most expensive option, and I would be unembarrassed in defending ourselves going for the very best and most robust model for independent qualifications regulation in Wales, because the reputation of Welsh qualifications needs to be unimpeachable in terms of the future."⁶⁰

169. In a letter to the Chair of the Finance Committee,⁶¹ the Minister provided a more detailed breakdown of the ICT and staff costs for establishing Qualifications Wales.

Committee view

170. The Committee has noted the estimated costs of implementing the Bill and is in the main in content, but does share some of the concern expressed about ensuring value for money, and potential cuts elsewhere in the Education and Skills budget.

171. As part of their scrutiny of the Welsh Government's budget, the Committee will continue to check that the Welsh Government has made provision for these costs in the future budget allocations, and will seek assurances on the effect the funding of Qualifications Wales has had on other programmes and priorities within the Education and Skills portfolio.

Provision for Qualifications Wales to provide commercial services

172. The WJEC express concern about section 40 which allows Qualifications Wales to provide consultancy and other services on a commercial basis. They wrote this "introduces significant potential for a conflict of interest",⁶² particularly where these services relate to qualifications which are subsequently submitted for Qualifications Wales' approval.

173. The Welsh Government's Explanatory Notes to the Bill say Qualifications Wales may develop expertise in relation to qualifications that could be of

⁵⁸ Oral evidence, 22 January 2015, [Record of Proceedings](#)

⁵⁹ [Explanatory Memorandum](#), paragraph 236

⁶⁰ Oral evidence, 5 February 2015, [Record of Proceedings](#)

⁶¹ [CYPE\(4\)-07-15 – Paper to note 2](#)

⁶² Written evidence, [WJEC: QW01](#)

commercial value. Section 40 enables the organisation to charge fees to organisations for such services and determine the scale of these without reference to the Welsh Government. This is different to any fees it charges for its regulatory activity, which must be approved by the Welsh Ministers.

174. WJEC Chief Executive, Gareth Pierce, told the Committee that he believed “there is very real potential for a conflict of interest here”⁶³ and that in his view “this should be deleted from the Bill. The potential for conflict further down the line is far too significant”.⁶⁴

175. Another awarding body, OCR, appeared to agree, stressing that care would be needed in how Qualifications Wales might use the powers in section 40 to provide commercial services.

176. When questioned by the Committee, the Minister explained it was important for Qualifications Wales to be able to capitalise on its expertise, and be able to use that expertise outside of its own building. In terms of the potential conflict of interest the Minister said:

“Qualifications Wales will be a public body. As such, it’s going to have to set up its own protocols for avoiding any conflict of interest. That’s part of its self-management as a public organisation, as a regulatory body. I don’t see the need, really, to spell that out in the Bill, because it’s already there as part of legislation governing the conduct of public bodies.”⁶⁵

Committee view

177. As an independent body, Qualifications Wales should have the ability to provide commercial services, and the Committee agrees in principle with the provisions set out in section 40 of the Bill.

178. The Committee is, however concerned that Qualifications Wales must have clear protocols in place to mitigate any potential conflict of interest that might arise through the provision of such services. The Committee therefore believes that work must be undertaken before enactment of the Bill to ensure that a protocol is in place.

⁶³ Oral evidence, 14 January 2015, [Record of Proceedings](#)

⁶⁴ Ibid

⁶⁵ Oral evidence, 5 February 2015, [Record of Proceedings](#)

Recommendation: Prior to enactment of the Bill, the Minister / Qualifications Wales must ensure that a clear protocol is in place to mitigate any potential conflict of interest that might arise through the provision of commercial services under section 40 of the Bill.

Qualifications Wales' power to charge fees.

179. The WJEC warned about the prospect of Qualifications Wales being able to charge for applications for recognition of awarding bodies and approval of their qualifications. Section 10(3)(b) gives Qualifications Wales a power to set fees which the Welsh Ministers already have (but do not use). However, the WJEC suggested Qualifications Wales may be more likely to resort to using the power than the Welsh Government if its financial situation left it with no alternative.

180. The WJEC and OCR were clear they would have to pass on such costs, if significant, to examination centres and Pearson said its position would depend on the transparency of whether these fees were merely to recoup administrative costs or being used by Qualifications Wales to generate income. All three awarding bodies confirmed that Ofqual does not levy routine fees on awarding bodies.

181. The Minister explained that section 10(3)(b) is simply transferring to Qualifications Wales powers that Welsh Ministers already have themselves:

“This is simply a carry over, as you say, of powers that I currently have, but no Welsh Minister has actually exercised since devolution came along. It’s there to be prudent.... To change the situation would be to actually strip Qualifications Wales of the power I currently have. The prudence comes in, I suppose, in terms of future-proofing that ability for Qualifications Wales, given that we’re in a very uncertain world and that financial considerations might change in the world of awarding bodies in ways in which we can’t predict.”⁶⁶

182. The Minister added that the powers to cap fees charged to awarding bodies by Qualifications Wales were an important “safeguard” should they be needed in the future.

Committee view

183. The Committee acknowledges that the powers contained in the Bill enabling Qualifications Wales to charge fees are a “carry over” of powers

⁶⁶ Oral evidence, 5 February 2015, [Record of Proceedings](#)

already held by the Welsh Ministers. As that power currently exists for Welsh Ministers, the Committee is content that the same powers should be given to Qualifications Wales.

184. However, as the power has never been used by Welsh Ministers, it is not possible to provide a clear picture about the effect on awarding bodies, and others, should Qualifications Wales decide to charge fees. The Committee believes that should fees be charged, that Qualifications Wales should be required to undertake an assessment of the impact of charging fees, which should be included within its annual report.

Recommendation: Should Qualifications Wales use its powers to charge fees, it should be required to undertake an assessment of the impact of charging fees, which should be included within its annual report.

12. Powers to make subordinate legislation

185. The Bill contains only four provisions enabling the Welsh Ministers to make subordinate legislation. In relation to the provisions set out in sections 21(1) and 33(3) of the Bill, the Minister has proposed to use the affirmative procedure for making the relevant regulations.

186. Section 54 (1) of the Bill enables the Minister to make regulations relating to consequential and transitional provisions. The Minister confirms that where such provisions affect primary legislation, the affirmative procedure will be used. The Minister also confirms that where such provisions do not affect primary legislation and are relatively minor and technical, the negative procedure would be used.

187. Section 55 of the Bill enables the Minister to bring forward Commencement Orders at an appropriate point. The Minister confirms in the Explanatory Memorandum that as Commencement Orders “simply allow the policy in the Bill to be given effect”, no Assembly procedure is applied to their making.

Committee view

188. The Committee welcomes the approach in the Bill for regulations under sections 21(1), 33(3) and 54(1), as this allows for an appropriate level of scrutiny. However, while the Committee accepts that Commencement Orders do not change policy, it believes that the Orders provided for in section 55 of the Bill should be subject to the negative Assembly procedure.

Recommendation: The Minister should ensure that the negative Assembly procedure is applied to Commencement Orders provided for in section 55 of the Bill.

Annexe A - List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=161

Organisation	Reference
Welsh Joint Education Committee (WJEC)	QW 01
National Association of Headteachers (NAHT)	QW 02
Association of School and College Lecturers (ASCL)	QW 03
Association of Teachers and Lecturers (ATL Cymru)	QW 04
Catholic Education Service (Adviser for Wales)	QW 05
Estyn	QW 06
Federation of Small Businesses	QW 07
National Union of Students (NUS Wales)	QW 08
Care Council for Wales	QW 09
The Council for Awards in Care, Health and Education	QW 10
Universities Wales	QW 11
ColegauCymru	QW 12
Council for the Curriculum Examinations and Assessment	QW 13
Conwy Education Services	QW 14
NUT Cymru	QW 15
Federation of Awarding Bodies (FAB)	QW 16
Highfield Awarding Body for Compliance (HABC)	QW 17
Edexcel (Pearson)	QW 18
Oxford Cambridge and RSA Examinations (OCR)	QW 19
Chartered Management Institute (CMI)	QW 20
Agored Cymru	QW 21
Coleg y Cymoedd	QW 22
Cardiff Council	QW 23
National Training Federation for Wales (NTfW)	QW 24
Undeb Cenedlaethol Athrawon (UCAC)	QW 25
Ofqual	QW 26

