



Llywodraeth Cymru  
Welsh Government

# **Qualifications Wales Bill**

## **Explanatory Memorandum**

Incorporating the  
Regulatory Impact Assessment  
and Explanatory Notes

December 2014

# **Qualifications Wales Bill**

## **Explanatory Memorandum to the Qualifications Wales Bill**

This Explanatory Memorandum has been prepared by the Department for Education and Skills of the Welsh Government and is laid before the National Assembly for Wales.

### **Member's Declaration**

In my view the provisions of the Qualifications Wales Bill introduced by me on 1 December 2014, would be within the legislative competence of the National Assembly for Wales.

### **Huw Lewis AM**

Minister for Education and Skills  
Assembly Member in charge of the Bill

1 December 2014

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# PART 1

## Description

1. The Qualifications Wales Bill ('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. The intention is, through the establishment of Qualifications Wales, to strengthen the oversight of qualifications and of the qualification system in Wales.

## 2. Legislative background

2. 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” and which is reproduced below:

***Education and training***

*5. Education, vocational, social and physical training and the careers service.*

*Promotion of advancement and application of knowledge.*

*Exception –  
Research Councils.*

### 3. Purpose and intended effect of the legislation

#### Context

##### Welsh Government Strategic Priorities

3. Qualifications are vitally important, not only to learners in Wales, but to the Welsh economy. Historically, much of Wales' qualifications policy has been heavily influenced by requirements in England and, to some extent, the needs of learners in Wales have been secondary to the requirements of English policy. The time is now right for Wales to take greater ownership of qualifications offered in Wales, and to provide our learners and employers with a qualification system that is confidently and reliably designed to meet their needs, and to support them with their challenges. Growth and sustainable jobs are at the heart of the *Programme for Government*, and the Welsh Government's *Qualified for Life* strategy seeks to ensure that (by creating Qualifications Wales) qualifications that are developed in Wales are 'nationally and internationally recognised and act as a credible passport to future learning and employment'.

4. The Review of Qualifications for 14 to 19-year-olds in Wales<sup>1</sup> (The Review of Qualifications), compared the position in Wales with that in Scotland, and said:

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 organisation. The Welsh Government and Qualifications Wales should work together to shape the national qualification system for Wales and to rationalise and strengthen the processes for regulation and continuous improvement, learning from the model in operation in Scotland.

5. Whilst the policy has evolved from this original concept (see below), the vision for an independent Welsh qualifications body remains a Welsh Government priority.

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<sup>1</sup> <http://wales.gov.uk/topics/educationandskills/qualificationsinwales/revofqualen/?lang=en>

## Scope of the Bill

6. This Bill provides for the establishment of Qualifications Wales as an independent regulator for Wales. It gives Qualifications Wales two principal aims which place learners at the heart of the qualification system and require Qualifications Wales to take responsibility for the effectiveness of qualifications and the qualification system – and for public confidence in both of these. In addressing its principal aims the Bill sets out a series of key matters to which Qualifications Wales must have regard, and confers a number of functions on Qualifications Wales including the recognition of awarding bodies and the approval of qualifications. The Bill enables Qualifications Wales to work with the Welsh Ministers to prioritise qualifications in terms of their significance for learners and employers and gives Qualifications Wales the ability to restrict the number of forms of a priority qualification. It may select, through an open, fair and competitive process, either an awarding body to work with to deliver each qualification that is restricted in this way or from a number of competing qualifications.
7. *Our qualifications – our future: Consultation on proposals to establish a new qualifications body for Wales* was published on 1 October 2013 and closed to responses on 20 December 2013. Analysis of the consultation activity undertaken for this Bill and of responses to it is available at <http://wales.gov.uk/consultations/education/our-qualifications-our-future/?lang=en>
8. Further to the responses received and further exploration of the issues, this Bill does not aim to establish Qualifications Wales with awarding functions at this time.
9. Further legislation will be required to enable Qualifications Wales to become an awarding body in the future.

## Pre-Legislative Scrutiny

10. In May 2014, the National Assembly for Wales' Children, Young People and Education Committee (CYPEC) undertook a Pre-legislative scrutiny of the Qualifications Wales Bill. Scrutiny activity included receiving written and oral evidence from:
  - Huw Evans, Chair of the *Review of Qualifications*, and Chair of the Qualifications Wales Advisory Board.
  - Gareth Pierce, CEO of WJEC.
  - Arwyn Watkin (CEO), Jeff Protheroe (Operations Manager) and Faith O'Brien (Interim Chair) of the National Training Federation for Wales (NTfW).
11. The Committee also undertook 'fact-finding' visits to Quality and Qualifications Ireland and the Scottish Qualifications Authority (SQA) to explore how the qualification systems operate in those two countries.

12. The report released by the CYPEC in July 2014 contained many recommendations that aligned with the development of the Bill's provisions, and demonstrated a shared view on many aspects of the policy.
13. The Minister for Education and Skills' response to the Report is available at:  
<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=9151>

### **Territorial Extent**

14. The Bill applies in relation to Wales. Engagement with the UK Government's Department for Education and the Wales Office to address certain cross border issues arising from the proposed changes is ongoing.

## **Background**

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

15. In taking forward the recommendation to establish Qualifications Wales, the Welsh Government will be supporting the vision to develop a world-class qualification system for Wales that will provide learners with qualifications that are respected by employers and universities and that lead to progression along their chosen pathway.
16. A recommendation from the *Review of Qualifications* was that Wales should learn from the model in operation in Scotland; referring to SQA.
17. The Minister for Education and Skills, Welsh Government officials, and Members of the CYPEC have undertaken visits to SQA. Officials have continued to maintain a relationship throughout the Qualifications Wales Project to seek advice and further information.
18. The CYPEC, understanding the scope of regulatory powers conferred on the SQA by the Education Act (Scotland) 1996, recommended that consideration should be given to how academic qualifications should be quality assured and regulated, and that the Bill should make appropriate provision for this.
19. A significant number of consultees, when responding to proposals set out for Qualifications Wales to take on awarding powers in due course, expressed concern about combining the dual functions of regulating and awarding in one body and stressed the need for transparency and clarity.
20. Awarding functions are not included in this Bill but Qualifications Wales is given a duty to keep under review the respective roles played by it and awarding bodies.

21. In addition, Qualifications Wales is given, in the proposed Bill, the power to enter into arrangements with awarding bodies to secure the development and subsequent award of custom-made qualifications for Wales.

## **Current Position**

### **Current regulatory system in Wales**

#### **Current powers of the Welsh Ministers**

22. Responsibility for the regulation of 'relevant qualifications' and the development of qualifications policy in Wales rests with the Welsh Ministers under Part 5 of the Education Act 1997 (the 1997 Act). These functions are carried out by officials in the Department for Education and Skills of the Welsh Government.
23. The Welsh Ministers set requirements for relevant qualifications (which are academic or vocational qualifications awarded or authenticated in Wales other than a foundation degree, a first degree, or a degree at a higher level) and also for the awarding bodies who offer them. Regulation is carried out using a number of tools including:
  - *Recognition*  
The confirmation that an awarding body meets the recognition criteria for awarding bodies who wish to award relevant qualifications in Wales.
  - *Accreditation*  
The confirmation that a relevant qualification meets the necessary qualification criteria before it is offered. The nature of the criteria vary according to the qualification.
24. An awarding body's recognition is subject to ongoing 'conditions of recognition'. Compliance with these conditions is monitored as part of the Welsh Ministers' regulatory activity.
25. The Welsh Ministers currently have a number of powers under the 1997 Act at sections 32A to 32BC which they may use to enforce the conditions of recognition. These include fining, issuing a direction, and withdrawal of recognition. A direction can require an awarding organisation to take, or refrain from taking, a particular action, with a view to securing compliance with the conditions of recognition or accreditation. It is enforceable by court order.
26. The Welsh Government monitors qualifications offered by awarding bodies in Wales and also investigates complaints and malpractice in relation to qualifications offered in Wales.

### **Three-country working**

27. The regulation of relevant qualifications taken by learners in Wales is the responsibility of the Welsh Ministers. However, where the same qualification is offered in Wales, England and Northern Ireland, Welsh Government officials work closely with their counterparts across England and Northern Ireland.
28. This involves working with Ofqual in England, and in Northern Ireland with the Council for the Curriculum, Examinations and Assessment (CCEA). Many of the vocational qualifications offered in these three nations are also offered in Scotland and some of these are accredited by SQA.
29. Previously, much of the work to develop and publish requirements for regulated qualifications has been undertaken jointly with England and Northern Ireland.

### **Design, development and regulation of qualifications**

30. Historically, qualifications have been developed by awarding organisations for delivery in England, Wales and Northern Ireland – and, in the case of vocational qualifications, Scotland.
31. The Welsh Government worked together with the Qualifications and Curriculum Authority (later the Qualifications, Curriculum and Development Agency) on the development of criteria for new qualifications such as GCSEs and A levels – with particular reference to changes in the curricula. In developing these criteria, the bodies engaged with relevant sector stakeholders, subject experts and teachers among other representatives.
32. The level of detail of the criteria for regulated qualifications varies; with some qualifications, such as GCSEs or A levels, having more detailed criteria than others.
33. Qualifications are assigned a level indicating how demanding they are, and some – mainly vocational qualifications – are allocated a credit value based on the level and the average amount of time a learner is expected to take to complete the qualification.
34. In recent years, Welsh Government has taken a greater role in this in two ways: it has developed requirements for more Wales-only qualifications, and it has worked more closely with awarding bodies to specify requirements in more detail.

## **Awarding of qualifications in Wales**

35. The awarding of GCSEs and A levels currently operates in a competitive market structure with five awarding bodies able to offer these qualifications in Wales: AQA, CCEA, Edexcel, OCR and WJEC.
36. Over 120 other awarding bodies are also recognised to offer other regulated qualifications in Wales, and these mainly award vocational qualifications.
37. Awarding organisations are free to develop qualifications that meet the published requirements, with the content and assessment structure that they believe best suits the needs of their 'centres'. Centres, or 'learning providers', are typically schools, colleges, private training providers or work-based learning environments that prepare and enter learners for qualifications. One consequence of the competitive market structure is that qualifications with the same or similar titles often have significant differences.
38. Overall, centres' choices can be influenced, for example, by:
  - the needs and/or preferences of learners;
  - performance measures for institutions;
  - restrictions under sections 96 to 102 of the Learning and Skills Act (2000) in relation to the public funding of courses for learners under the age of 19;
  - conditions of funding for further education institutions and work based learning;
  - practitioners' preference for specific content coverage or assessment methods; and
  - the views of higher education institutions or employers.
39. Qualifications are awarded by awarding bodies once they are satisfied that learners have achieved the requirements of each award. For some qualifications, such as GCSEs and A levels, this involves making a decision on which grades learners have achieved. For GCSEs and A levels the method for reaching those decisions has, until recently, been steered by the regulators in England, Northern Ireland and Wales – although influenced strongly by the data available in England about learners in England.
40. For other qualifications, including many vocational qualifications, awarding decisions involve determining whether learners have provided sufficient evidence to demonstrate the level of competence required to achieve the qualification.

## **Award of qualifications in Wales**

41. Once qualifications have been accredited, awarding bodies are then able to market and award the qualifications in Wales as being accredited by

the Welsh Government. The processes underpinning the award of a qualification include, for example, the design, production, translation and distribution of question papers, tasks, mark schemes, teaching support material and other resources (circulars, continuing professional development sessions, one-to-one sessions), recruitment and training of examiners, organisation of examiner and moderator meetings, production of data to inform awarding decisions, production of results, handling of post-results enquiries and the production of certificates.

42. Centres play a substantial role in the delivery of the assessment of qualifications, with their activities ranging in scope from exam entries, administration and invigilation, to more in-depth involvement such as in the design of tasks or tests, marking, moderation and verification. Whatever the level of centres' involvement in the process, the Welsh Government holds the awarding body accountable for the award of the qualification(s).
43. Regulation is, in essence, voluntary since awarding bodies are not required by law to apply to be recognised by the Welsh Government. However, by choosing to seek recognition and to be regulated by the Welsh Ministers, an awarding body's accredited qualification could be used on publicly funded programmes for learning for learners under the age of 19 (Learning and Skills Act (2000), s96 and s99).
44. Performance measures for learning providers only take into account accredited qualifications, so this will be a further incentive.
45. Additionally, awarding bodies value the presentational status conferred by submitting to regulation and having the use of the Welsh Government logo on certificates, indicating that the qualification is accredited.

### **Fees**

46. Awarding bodies charge centres a fee for candidate entries – which tends to include all services up until the provision of a certificate (but not post-results enquiries unless these result in a change to the grade or resits).
47. Additional fees may be chargeable for additional services such as provision of learning materials.
48. The Welsh Ministers have the power under section 30 of the 1997 Act, to charge fees for the recognition of bodies or for the accreditation or approval of qualifications, but does not currently make such charges.

### **Limitations of the current system**

49. The limitations of the current system and legislation include that:

- 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;
- 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.

## **Purpose and intended effect of the legislation**

50. The legislation is intended to address the four limitations outlined above.

### **There is no single organisation that is dedicated to ensuring the effectiveness of qualifications and the qualification system**

#### **Principal Aims of Qualifications Wales**

51. Section 2 of the Bill 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.
52. The first principal aim gives Qualifications Wales responsibility for ensuring the effectiveness of qualifications in meeting the reasonable needs of learners in Wales. While this is broad in scope, the Bill also provides Qualifications Wales with powers to determine the focus of its activities, as set out in Part 4 (approvals). This principal aim also requires Qualifications Wales to take responsibility for the effectiveness of the qualification system in Wales – as well as for the qualifications within it. The 'system' is the infrastructure which underpins and enables the delivery of qualifications – it is the *way* qualifications are developed, delivered and awarded, as well as *what* is developed, delivered and awarded.
53. The second principal aim requires Qualifications Wales to promote public confidence in both the qualifications and the supporting system.

For the qualifications and the system to be truly effective they must inspire public confidence. Any assessment of public confidence could include, for example, the level of confidence of employers, learning providers, learners and parents.

54. The link between the effectiveness of qualifications, the qualification system and the Welsh economy is that many qualifications define the knowledge, skills and understanding that learners need to be able to make an effective contribution to the economic health of Wales. At the same time, the growth of the Welsh economy is dependent upon a skilled workforce – and qualifications are both an indicator of the skills of potential new workers and a measure for developing the skills of the existing workforce.
55. The qualification system in Wales should reflect its inclusive educational ethos and be able to respond effectively to the needs of a bilingual nation and its wealth of culture. Currently, the choice of Welsh-medium qualifications is variable, particularly for vocational qualifications, and work is needed to improve bilingual provision across the range of qualifications offered in Wales.
56. Further to the above, the legislation also sets out a non-exhaustive list of the matters to which Qualifications Wales must pay regard in performing all of its functions (section 3(2)):
  - The desirability of promoting sustainable growth in the Welsh economy.
  - 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.
  - The range and nature of qualifications available, and of their assessment arrangements.
  - The reasonable requirements of employers, higher education institutions and the professions regarding education and training (including as to required standards of practical competence).
  - 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.
  - 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.

- Whether qualifications are provided efficiently and so as to secure value for money.
  - The respective roles played by, and responsibilities of, awarding bodies, learning providers, Qualifications Wales and the Welsh Ministers in respect of the Welsh qualification system, and of any other persons exercising functions that Qualifications Wales considers relevant for the purpose of that system (including by reference to co-operation between those persons, and their effectiveness in performing those roles).
57. All of the above matters are designed to ensure that the focus of the organisation remains the long-term benefit of Wales and its learners. To further support this, the Bill provides that Qualifications Wales must also have regard to relevant Welsh Government policy and other matters where the Welsh Ministers has directed so (section 48(1) refers).

#### **Independence of the body**

58. Qualifications Wales will be independent from the Welsh Government in respect of its principal aims and its qualifications functions and will report to the National Assembly for Wales (the Assembly) (Schedule 1, para 28 of the Bill refers).
59. 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). The responsibilities therein will fall under the oversight of a sponsorship unit within the Welsh Government.
60. It is envisaged that regular dialogue on policy – for example with regard to the curriculum and skills strategies, workforce capacity and performance measurement indicators – will take place between senior officials of the Welsh Government and Qualifications Wales. This will not, however, undermine the independence of Qualifications Wales in developing and implementing regulatory policy in relation to qualifications.
61. While the Welsh Government will not determine Qualifications Wales' annual priorities or business plan it is likely that there will be matters of policy to which the Welsh Government will wish to draw to the attention of Qualifications Wales, or perhaps additional activities that it wishes to ask Qualifications Wales to perform on its behalf (for example research-based projects in the field of qualifications).
62. There will be an annual 'remit' letter which sets out any particular areas of focus or activities that would supplement the core functions, as well as settling the annual grant to be provided to Qualifications Wales for the performance of its functions. The Bill (Schedule 1, paragraph 31)

provides the Welsh Ministers with the power to fund Qualifications Wales by grants.

63. The power to decide which programmes of learning to fund will remain with Welsh Ministers and local authorities (in relation to maintained schools).
64. Currently there is a restriction on the public funding of courses of education or training for under 19 year olds which lead to qualifications (sections 96 – 102 of the Learning and Skills Act 2000). The general position is that if a qualification to which the course leads is accredited by Welsh Ministers, such courses may be publicly funded, although this does not mean that they will be publicly funded. The Bill (section 29) provides that such courses must not be publicly funded (i.e. funded by Welsh Ministers, local authorities in Wales or provided by or on behalf of a maintained school in Wales) unless the qualification to which the course leads is approved by Qualifications Wales. There are exceptions to the position under the Bill in that this funding restriction does not apply in respect of a course provided to a person with learning difficulties and neither does it apply to courses designated by the Welsh Ministers.
65. While it is to be hoped that independent schools in Wales choose to offer qualifications designed for Wales, they will be able to offer any qualifications that they choose. Awarding bodies (whether recognised by Qualifications Wales or not) will not be prohibited from offering any of their qualifications (whether approved by Qualifications Wales or not) to an independent school.
66. There is no legislative requirement for providers of publicly funded programmes of learning for learners over the age of 19 to ensure that the qualifications selected are accredited or otherwise approved by Welsh Ministers.
67. While, for some post-19 programmes, it is likely that the Welsh Government will require, within the terms and conditions of any grants or funding arrangements, that qualifications used on certain programmes must be selected from those approved by Qualifications Wales, this is not made a requirement by the Bill.

#### **Potential future role of Qualifications Wales**

68. The policy intention remains that, in the medium- to long-term future, awarding functions will be conferred upon Qualifications Wales. However, this will require separate legislation. In the meantime, the Bill provides that Qualifications Wales must keep under review its relationships with awarding bodies (section 41(2)). 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.

**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**

69. Qualifications Wales and the Welsh Ministers are under a duty to agree and publish a list of qualifications, or descriptions of qualifications, that are to be a priority for Qualifications Wales (see section 13). This is known as the 'Priority Qualifications List' and the intention is to enable Qualifications Wales to focus public resources most effectively on qualifications that are particularly significant. For a qualification to be listed, Qualifications Wales and the Welsh Ministers must be satisfied that public confidence in it is a priority, because the qualification is particularly significant to the needs of learners and/or employers in Wales.
70. The Priority Qualification List will enable Qualifications Wales to appropriately prioritise its considerations whilst also having the flexibility to consider whether or not to approve a non-priority qualification.
71. The Bill provides (section 18), that, where priority qualifications are submitted by recognised awarding bodies for approval, Qualifications Wales must consider whether to approve the form of the qualification for award in Wales by the awarding body concerned. If it decides that it is appropriate to do so, it may approve the qualification. Qualifications Wales will have the freedom (section 19) to not review a qualification for approval if it is not on the Priority Qualifications List, provided that its decision to do so is clear, and in accordance with the decision-making process set out in a scheme, which Qualifications Wales must publish.

**There are no powers to select a single provider of a given qualification to ensure that learners across Wales take the same qualification**

72. The Bill also establishes (section 14) a category of qualifications known as restricted priority qualifications which are priority qualifications as described above, whose forms have been restricted by Qualifications Wales to a limited number (which may be one). The Bill gives Qualifications Wales powers (section 15) to make arrangements to effect such a restriction. These are discussed below.
73. Wales, England and Northern Ireland are unusual among European countries in having a market structure for the qualifications that are taken by young people in schools and colleges. Within this market structure, the delivery of these qualifications is undertaken by competing awarding bodies that offer different versions of the 'same' qualification. For example, schools in Wales wanting their learners to take GCSE French are able to choose, currently, from five different versions of GCSE French, each offered by a different awarding body (WJEC, OCR, AQA, Edexcel (Pearson) or CCEA). For some subjects this is further complicated by each single awarding body offering more than one

version of a qualification with the same name. For example, WJEC offers two different versions of GCSE Geography.

74. Within this complex market structure there are challenges in ensuring parity. Detailed comparisons of the different versions of qualifications are made by the regulators to ensure that they can be deemed to be equivalent, though not 'the same' (it is currently valid for each version to cover different content and to be assessed differently, within some very high level criteria).
75. Further complex and time-consuming work is undertaken by the regulators and by awarding bodies themselves, to ensure that the level of attainment that a learner has to demonstrate to achieve a particular grade is consistent across different versions of the same qualification. This work currently relies on sophisticated statistical comparisons.
76. Despite this work, the scope remains for allegations or beliefs (whether true or false) that some qualifications are 'easier' than others. This could apply, for example, to different versions of a GCSE in the same subject, where some commentators allege that one awarding body's specification is easier than the others', or to more general suggestions that one awarding body's qualifications as a whole are 'easier' than another's.
77. It is envisaged that the introduction of the Priority Qualifications List and, within that, of a list of restricted qualifications, will contribute to the simplification of the qualification system by establishing, for some types or subjects, a single suite of qualifications.
78. Designating a priority qualification as a restricted one means that Qualifications Wales decides that there will be a maximum number of forms of qualifications that it may approve at any one time. In order to designate such a qualification, Qualifications Wales must be satisfied that it is desirable to take this course of action having had regard to its principal aims, and to its objective of avoiding inconsistency between different forms of the qualification.
79. Qualifications Wales is given a power to enter into an arrangement with an awarding body for it to develop a restricted priority qualification, with a view to having that qualification approved. This is a commissioning-type arrangement, and Qualifications Wales will publish a scheme setting out how it proposes to exercise these functions and how it will implement a procedure that is open, fair and transparent so that awarding bodies and others are informed of the process.
80. There is no requirement for a body to be recognised in advance of entering into such arrangements, but the awarding body must ensure that it has obtained recognition before its developed qualification can be approved. When an application is made to approve a restricted priority qualification developed under the arrangements provided for in the Bill, Qualifications Wales must consider whether to approve the qualification

and may approve the qualification where it is appropriate to do so (section 16 refers).

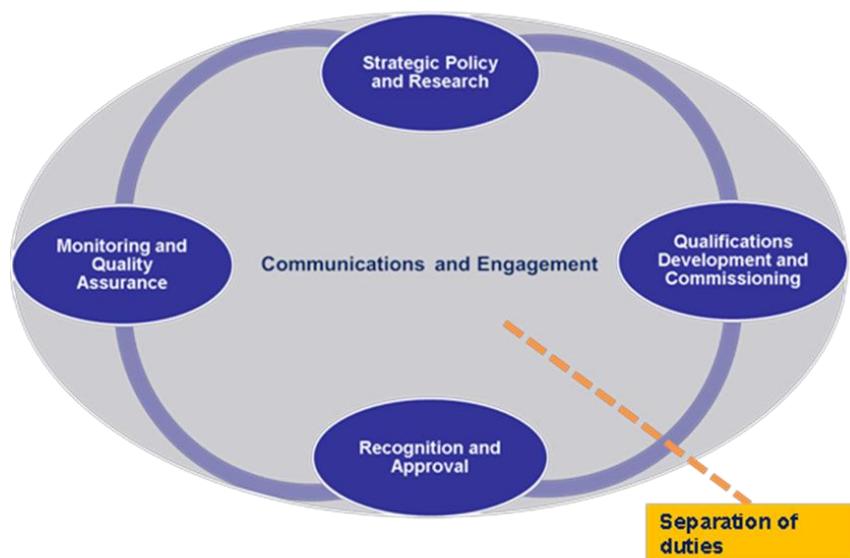
81. Alternatively, restricted priority qualifications may also be submitted by awarding bodies where no commissioning arrangements have been made by Qualifications Wales (section 17 refers).
82. Where an application is made to approve a restricted priority qualification that has not been developed under the commissioning arrangements, Qualifications Wales may select the form or forms of qualification that it will approve. Here too Qualifications Wales is required to publish a scheme setting out how applications are to be made and how it will consider and select from those applications. It is under a duty to ensure that its procedures for approval are open, fair and transparent, as before.
83. In this way, where Qualifications Wales thinks that it is appropriate to do so it is possible to take Wales' qualification system from being supply-led, to demand-led; ensuring that having a reduced number of better qualifications available provides value for money and enables a simplicity of choice for centres and learners that better meets the needs of learners and the economy.
84. It is envisaged that enabling Qualifications Wales to enter into arrangements with awarding bodies (section 15) to develop a qualification will ensure that the development of qualifications in Wales can be tailored to its economic and educational needs, whilst robustly comparing with equivalent qualifications in neighbouring and further countries.
85. In the scenario of there being only one awarding body provider for a given qualification, it is important that Qualifications Wales:
  - a) has the necessary understanding of the market to assess the impact of its actions and to enable careful consideration of appropriate strategies;
  - b) creates a means to engage more closely with teachers and learners; to both specify requirements and monitor delivery against these requirements; and
  - c) follows an open and transparent process of decision-making as required by its schemes detailing its approach to restricting a qualification and entering into arrangements with awarding bodies.
86. It is anticipated that Qualifications Wales will need to take appropriate steps to have a separate system for its functions of commissioning and approvals. Qualifications Wales is best placed to manage its own processes in this respect and has a range of powers and corporate structures set out in Part 4 and Schedule 1 of the Bill to enable it to do so.

87. The Bill provides Qualifications Wales with the power to designate any qualification as a priority qualification or a restricted priority qualification. 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.
88. Qualifications Wales is required (section 42) to make and publish policy statements about its functions of recognition, approval and enforcement, as well as its powers of review, in order to provide a clear indication to awarding bodies and others of how it intends to exercise those functions.

**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**

**Power to conduct research**

89. The Bill provides (section 41(3)) for Qualifications Wales to undertake programmes of research into any matter connected with qualifications, which could enable it to research the field of qualifications design and delivery with a view to developing best practice, ascertaining the comparability of qualifications in Wales and identifying opportunities for innovation. It will be able to use that work to inform its development of regulatory policy, and criteria and in the promotion of best practice in the field of qualifications – as well as in providing advice to the Welsh Ministers on their request (section 46) or otherwise. The diagram below is a visual summary of how it is envisaged that Qualifications Wales' functions are intended to interrelate.



90. The organisation's regulatory activity and its regular review of the effectiveness of qualifications and the qualification system in Wales

(monitoring and quality assurance) are likely to provide information to support the organisation's strategic policy and research functions. This work, in turn, will identify which qualifications will be of greatest benefit to Wales' learners and economy, and which therefore should be included in Wales' priority qualifications list. From here, the development and commissioning activity will work to ensure that restricted priority qualifications are developed to meet the needs of learners in Wales. Subsequently the approval of qualifications that have been developed and meet approval criteria completes this first cycle of assurance.

### **Conditions of recognition and approval**

91. Qualifications Wales will be able to exercise its functions in relation to academic or vocational qualifications awarded in Wales, other than foundation degrees; first degrees; or degrees at higher level (section 51).
92. Awarding bodies that have been recognised by Qualifications Wales (Part 3) may submit a qualification for approval. Qualifications Wales may set recognition criteria for awarding bodies, and, provided that the awarding bodies satisfy the criteria, Qualifications Wales must approve them (section 5). There are two types of recognition - general and specific. The qualifications that may then be provided govern the kind of recognition that is required of awarding bodies. The Bill (Part 3) details the procedures for applying for recognition and gives Qualifications Wales the power to make rules about applications for recognition (section 10). Part 4 of the Bill also details procedures for the approval of qualifications, with a similar power for Qualifications Wales to make rules about applications for approval.
93. Conditions may be applied for both recognition (Schedule 3) and approval (Part 4). Breach of conditions may result in Qualifications Wales taking enforcement action (Part 6) comprising fining and direction-making powers and powers to enter and inspect premises (having obtained a court order to do so and in limited circumstances prescribed by the Bill).
94. There are also detailed provisions for the withdrawal of recognition from a body (Schedule 3, paragraph 19) or removal of the approved status of a qualification (section 27) which involve numerous safeguards on the face of the Bill, including notification of the awarding body and enabling it to respond to proposed actions.

### **Comparability**

95. The Bill provides that the comparability of qualifications is a matter to which Qualifications Wales must have regard. It is envisaged that Qualifications Wales will do this through establishing programmes of review (section 41 refers) and by involving stakeholders extensively in its work. By ensuring that Qualifications Wales can set its own approval criteria and that Qualifications Wales must show how it has done so in its

annual report, which must also report on whether and how Qualifications Wales has involved stakeholders, it is envisaged that the qualifications produced and awarded in Wales will positively compare with those in the rest of the UK and elsewhere. This is of particular importance, as the movement of learners to Higher Education (HE) and employment across the Welsh borders depends on the confidence that HE institutions and employers have in the qualifications and qualification system in Wales.

96. The intended combined effect of the proposed legislation is, via the provisions described above, to ensure that future qualifications, and the qualification system, both meet the needs of learners in Wales and secure the confidence of stakeholders - in Wales, and internationally.

## **Who is affected by the legislation?**

### **Learners**

97. One of the overriding principles of the project to establish Qualifications Wales is that no learner in Wales will be unfairly advantaged or disadvantaged as a result of the transition of functions from Welsh Ministers to Qualifications Wales.
98. In the context of the implementation of the wider reforms recommended by the Review of Qualifications, the Welsh Government has established communications channels with stakeholders across all sectors, including with learner representative groups. It is anticipated that, through these channels, the transition to the new organisation will provide the least disruption possible; enabling the organisation to commence operations with the full confidence of all stakeholder groups.
99. It is expected that, in time, learners will feel benefits from both improved qualifications and from the enhanced confidence of potential employers and education institutions. By providing them with a credible passport to future learning and employment, in the form of recognised and well-reputed qualifications, Qualifications Wales will assist the Welsh Government in meeting its educational and national objectives in terms of the future economic and educational growth of Wales.

### **Employers and Education Institutions**

100. The main criterion for the success of this legislation is the confidence experienced by employers, HE providers, those delivering qualifications, learners and the wider public about the qualification system in Wales.
101. Qualifications Wales will be able to engage with sector and education representatives in a wide range of contexts, including the development of criteria for qualifications and in the assessment of whether qualifications are fit for purpose. The Bill requires Qualifications Wales to publish information on its stakeholder engagement activity (section

42(3)), and it is hoped that this will encourage further engagement as well.

102. For those employers who provide work-based learning, or apprenticeships, it is expected that they will also feel the benefits of qualifications that better meet their needs as well as economic benefits from any qualification investment made in their workforce, and that a cumulative effect will be felt across the economy of Wales as a whole. The significance of this feature is described in the eight main matters (section 3(2)) which are amongst the things which Qualifications Wales will be duty-bound by the Bill to consider as part of its ongoing operations.

### **Responsibilities of Ofqual**

103. The Bill clarifies the responsibilities of Ofqual and of Qualifications Wales in a given set of circumstances (section 30).

### **Current staff responsible for qualifications in the Welsh Government**

104. While there will be external recruitment, a significant proportion of staff in the Qualifications and Regulation Division of Welsh Government are expected to transfer to Qualifications Wales, with a few moving to the sponsor unit within the Department for Education and Skills.
105. The change programme for staff is being managed by the Qualifications Wales - Transition Division. This also includes the necessary transfer of physical assets, documentation and information (Schedule 2 refers).

### **Centres**

106. There will be a minimal disruption to centres as a result of the Bill. The qualifications reform currently being implemented as a result of the Review of Qualifications will not be negatively impacted by the passing of the Bill. In addition, the requirement for Qualifications Wales to develop a complaints policy, providing the means to respond fairly not only to complaints about Qualifications Wales itself but also about awarding bodies and qualifications, will provide centres (as well as other stakeholders) with a clear route of response should any issues of unfairness, impropriety or matters of other concern arise (section 43 refers).

### **Awarding bodies**

107. For the majority of awarding bodies in the UK, there will be no immediate change arising from the provisions of the Bill. Over time, the following changes are likely to have an effect on awarding bodies:
- a) When the Priority Qualifications List has been published (section 13), Qualifications Wales will be in a position to refuse to consider non-

priority qualifications for approval (section 19). Awarding bodies will not be prevented from offering such qualifications in Wales but the qualifications will not be regulated and approved by Qualifications Wales and would not bear any endorsement to this effect (for example the Qualifications Wales logo may not be able to be used on the certificate). Qualifications Wales may also implement charges that may be applied, for example, only in relation to non-priority qualifications (section 44).

- b) Once the organisation is in a position to implement powers to restrict qualifications and enter into arrangements with awarding bodies, those awarding bodies which have not been successful in the competition to provide the restricted priority qualification will not be able to provide the restricted priority qualification for courses in maintained schools (or other publicly funded provision for learners under the age of 19) in Wales for the duration of the approval given. For most awarding bodies, the Welsh market is a very small percentage of their work. Awarding bodies would have the opportunity to compete for restricted qualifications at regular intervals. The Qualifications Wales Transition Division is communicating regularly with awarding bodies to make them aware of the proposed developments, and Qualifications Wales is required by the Bill to notify and consult those who may be affected by such a proposed decision, as well as to have open, fair and competitive process for selecting the sole provider.
- c) Qualifications Wales will have the power to apply specific recognition criteria in relation to certain qualifications or descriptions of qualifications (section 9). Those awarding bodies who do not meet those specific recognition criteria will not be able to apply to have forms of that qualification or description of qualification approved. Qualifications Wales also has the power to apply standard and special conditions of recognition to bodies (Schedule 3, paragraphs 2 to 5) and to enforce these, in the event of actual or likely non-compliance through a power to give directions (section 32). Qualifications Wales may also determine that a particular awarding body is not to be subject to a standard or special condition. In terms of the special conditions, these may include, amongst other things,
  - i) fee-capping conditions limiting the fees that may be charged by an awarding body for qualifications awarded to learners on publicly funded courses of education or training leading to those qualifications; and
  - ii) transfer conditions, which enable Qualifications Wales to direct that certain things are transferred from one awarding body to another, for example in order to enable an approved qualification awarded by the awarding body to be awarded by another awarding body. However the grounds for making such a direction

are that Qualifications Wales must consider it necessary to do so to avoid significant adverse effects on learners.

The procedure for imposing, reviewing and varying the fee capping conditions and transfer conditions are set out in Schedule 3, and include steps for notification, giving reasons, taking account of representations, and enabling reviews of Qualifications Wales' decision.

- d) Qualifications Wales will have the power to apply conditions of approval to qualifications (section 22) and to enforce these, in the event of actual or likely non-compliance, through a power to give directions (section 32). These powers will mean that Qualifications Wales is able to more robustly require improvements to be made than is provided for under the current regulatory regime. It will also mean that awarding bodies will have a clearer need to take action to ensure that their qualifications remain approved.
- e) Awarding bodies will benefit from a greater degree of protection from any potentially unfair regulatory action, through the establishment in the Bill of clear provision for the independent review of certain regulatory decisions, such as any decision to give a direction or to withdraw recognition (Schedule 3, paragraphs 16 and 22).
- f) Both recognition and approval may be surrendered by awarding bodies following Qualifications Wales' agreement, or withdrawn by Qualifications Wales. There are detailed provisions governing the circumstances and procedure for both surrender and withdrawal (sections 25-28 and Schedule 3 paragraphs 17 to 23).
- g) Awarding bodies will be provided with a greater degree of protection in relation to entry and inspection powers. The provision made in the Bill for entry and inspection no longer takes the form of a condition (as it does for the Welsh Ministers) and is now a power for Qualifications Wales to apply to the court for an Order where certain requirements are met (section 39). Qualifications Wales must have reasonable grounds for believing that the awarding body has failed to comply with a condition of recognition or approval, and that the Order is needed; either because entry to premises has been or is likely to be refused, or that requesting entry would be likely to defeat the object of the entry (for example, when it would be judged likely that providing notice of entry would be likely to result in an awarding body destroying key documents). Entry must be necessary for the purpose of ascertaining whether or not there has been a breach of the condition or approval in question. In this way, there is a clear process on the face of the Bill requiring Qualifications Wales to prove the grounds for needing an Order and requiring determination by a justice of the peace in order to proceed with entry to the premises.

- h) Qualifications Wales will have the power to direct awarding bodies if they have failed or are likely to fail to comply with a condition of recognition or approval. The purpose of giving a direction is to secure compliance with a condition by requiring the awarding body to take or to refrain from taking specified steps. The Bill specifies a procedure which must be followed to notify the awarding body of Qualifications Wales's intention to issue a direction and also provides for Qualifications Wales to have regard to the awarding body's representations in deciding whether or not to give a direction.
- i) Other sanctions are available to Qualifications Wales by way of a power to impose monetary penalties. Again, these powers can only be used if it appears to Qualifications Wales that the awarding body has failed or is failing to comply with a condition of recognition or of approval. The Bill specifies the procedure for imposing a penalty; including provisions about Qualifications Wales giving notice of its intention to impose a penalty, allowing a representation period, giving notice of the decision to impose a penalty, the amount of the penalty and the period in which payment is to be made (section 33). Qualifications Wales must also set out the grounds for imposing the penalty, how to pay, the consequences of non-payment and the rights of appeal under the Bill. Currently, under the Education Act 1997, the Welsh Ministers have a power to set out the amount of a monetary penalty which must not exceed 10% of an awarding body's turnover. The turnover of an awarding body is to be determined in accordance with an order made by the Welsh Ministers. Under this Bill, the amount of the monetary penalty is to be determined in accordance with regulations made by the Welsh Ministers.
- j) The Bill enables an awarding body to appeal to the First-tier Tribunal against either a decision to impose a monetary penalty or to appeal the amount of the penalty itself (section 34). There are provisions in the Bill which enable interest to be chargeable if the monetary penalty is unpaid (section 35). The rate of interest is specified in section 17 of the Judgments Act 1838 and the Bill provides that the total amount of the interest must not exceed the amount of the penalty.
- k) The Bill includes provision for Qualifications Wales to require an awarding body to pay the costs incurred by Qualifications Wales in connection with imposing a sanction on the awarding body (section 36). The sanctions are defined as the giving of a direction, imposing a monetary penalty or withdrawing recognition. The Bill sets out the meaning of costs and the notice requirements, which must include the period for the awarding body to make payment to Qualifications Wales. The notice must also set out the method of payment, the consequences of non-payment and the rights of appeal against the payment.

- l) The Bill enables an awarding body to appeal to the First-tier Tribunal against a decision to pay costs, or to appeal against the amount of the costs (Section 37), and provides for interest to be payable on unpaid costs (section 38). The interest is to be determined in accordance with the rate specified in the Judgments Act 1838 and the total amount of interest payable must not exceed the amount of the costs (similar to section 34).
  
- m) Qualifications Wales is also required to publish its approach to its regulatory decisions and enforcement action in a policy statement (section 42). This could give awarding bodies an understanding of the kinds of matters that Qualifications Wales will take into account when exercising its functions, and could provide clarity and transparency in respect of the decisions it has made.

## 4. Consultation

### The Qualifications Wales Bill Consultation Paper

108. The First Minister in his legislative statement of July 2011 made a commitment to consult appropriately and engage meaningfully with partners when developing legislation. In keeping with this statement the Department for Education and Skills issued a formal consultation paper on 1 October 2013 '*Our qualifications – our future: Consultation on proposals to establish a new qualifications body for Wales*'. The Consultation Paper invited comments on the proposals to establish Qualifications Wales, as a new body to be responsible for qualifications in Wales, and was published on the Welsh Government website at: <http://wales.gov.uk/consultations/education/our-qualifications-our-future/?status=closed&lang=en>
109. The Consultation Paper asked stakeholders for views on proposals comprising:
- The establishment of Qualifications Wales as the single body responsible for the regulation and quality assurance of non-degree qualifications in Wales;
  - That Qualifications Wales would develop and award most general qualifications in Wales;
  - The simplification of the qualification system in Wales, bringing together key qualification functions relating to qualification design, development, awarding, support and quality assurance into a single, independent and authoritative body;
  - That Qualifications Wales would be responsible for the quality assurance of qualifications delivered in Wales and offered by awarding bodies;
  - That Qualifications Wales, as an independent statutory body, would be better placed to ensure that qualifications offered in Wales serve the cultural and economic needs of Wales and meet the needs of learners in Wales;
  - That Qualifications Wales would be the principal authority on qualifications in Wales and provide professional advice to the Welsh Ministers on relevant matters as well as information, advice and support to a wide range of stakeholders;
  - That Qualifications Wales would communicate the value of qualifications offered in Wales to stakeholders inside and outside of Wales;

- That, in due course, Qualifications Wales would take on responsibility for awarding most qualifications for 14 to 16-year-olds as well as A levels and the Welsh Baccaureate (Welsh Bacc).

110. The consultation posed the following questions to stakeholders:

#### The case for change

- 1) Are there any other barriers to the effectiveness of the current system, or are there any other weaknesses?
- 2) Are there any specific features in the current system that you would like to see changed?

#### Our Vision

- 3) What are your views on our proposed vision for Qualifications Wales?

#### How we will achieve our vision

- 4) What are your views on whether these proposed activities and functions will achieve the vision for Qualifications Wales?
- 5) What are your views on the proposed governance arrangements for Qualifications Wales?
- 6) What are your views on the proposed scope and functions of Qualifications Wales? Do you think its scope and functions are about right, or should it have a different remit?
- 7) What should Qualifications Wales do to strengthen public confidence in qualifications offered in Wales?
- 8) How, and to what extent, do you feel that these proposals will have an impact on you, your organisation, learners and/or any particular categories of stakeholders?

111. The consultation ran for twelve weeks and concluded on 20 December 2013. The table below summarises the distribution of responses from various sectors.

Awarding Body	15
Teacher Association	7
Sector Skills / Business / Employers	9
Local Authority	3
School / College	2
Higher Education	6
Further Education	6
Student Voice	2
National Body	6
Individual Response	6
<b>Total</b>	<b>62</b>

Wales-only responses	36
Welsh response with UK interest	1
Non-Welsh response with UK interest	25
<b>Total</b>	<b>62</b>

112. The outcomes of this consultation exercise have been used to inform the policy development process.
113. A summary of the Consultation Paper responses was published on 2 June 2014 and is available at:  
<http://wales.gov.uk/consultations/education/our-qualifications-our-future/?status=closed&lang=en>
114. The Minister for Education and Skills indicated in his accompanying Written Statement that the vast majority of responses broadly supported his vision for the new body and that many respondents had offered to help with its development. The Written Statement is available at:  
<http://wales.gov.uk/about/cabinet/cabinetstatements/2014/qualwalesbillconsultationresponse/?lang=en>
115. The key themes which emerged from the consultation responses are summarised below.

### Summary of responses

116. Overall there was very strong support for the establishment of an independent regulator and quality assurance body outside of Welsh Government.
117. There were strong reservations, concerns and some opposition to the inclusion of awarding responsibilities in the remit for Qualifications Wales. Responses particularly stressed the need for a clear separation of duties if awarding powers were enacted, to avoid conflict of interest.

118. There were also concerns from awarding bodies in particular about the 'single suite' of qualifications in terms of reducing choice for learners and limiting the incentives for innovation.
119. It was strongly emphasised by many that whatever system evolved, qualifications developed in and for Wales must be portable, be of high quality and have cross-border currency in the UK and Europe. Qualifications with common titles such as GCSE and A level, even if divergent in structure, must be comparable in standards and have equal value in the eyes of stakeholders in order to support learner mobility and progression into Higher Education (HE) and employment.
120. Strong support was expressed for the proposed high level of stakeholder engagement for Qualifications Wales and encouragement to continue to engage with other regulators including The Office of Qualifications and Examinations Regulation (Ofqual). It was also emphasised by some respondents that Qualifications Wales should engage fully with other national bodies in Wales such as Estyn and the General Teaching Council for Wales (GTCW) and that there was a need for clarity on the relationship between curriculum and the qualifications body with the need for coherence as well as stability.
121. There was strong support for the Welsh Bacc as the flagship qualification for Wales as well as strong support for Qualifications Wales to take on responsibility for Apprenticeships frameworks. It was also noted that Qualifications Wales needed to be inclusive and ensure high quality qualifications for all learners, including those with disabilities.
122. Many respondents from a range of stakeholder groups were keen to be involved in future developments and expressed their commitment to working collaboratively with Qualifications Wales as the organisation developed, in order to ensure a transparent and robust qualification system.

## **Children and Young People's Consultation**

123. As part of the Welsh Government's compliance with the United Nations' Convention on the Rights of the Child a consultation specifically tailored to children and young people was undertaken using an external facilitator, Cognition.
124. The children and young person's version of the consultation document is available on the Welsh Government website at:  
<http://wales.gov.uk/consultations/education/our-qualifications-our-future/?status=closed&lang=en>
125. As part of the consultation a range of workshops were held across Wales through the media of English and Welsh to seek children's and young people's views on:

- the model of the new organisation for regulating, quality assuring and, in time, awarding qualifications in Wales,
- the naming of the first of a new suite of GCSEs for Wales – (in the subjects of English and Maths) and the future grading of the Welsh Bacc,
- how their needs could be met by the online interface with the organisation, such as what they would expect to see, what they think of a unique learner number and learning achievement record, careers advice.

126. Over December 2013 and January 2014, Cognition talked with 124 children and young people in 12 different institutions across Wales. The following table provides a breakdown of this number into places of learning.

Schools (older age groups)	52
Schools (younger age groups)	13
Colleges	35
Training Provider	16
University	8
<b>Total</b>	<b>124</b>

### Summary of responses from children and young people

127. The proposals for Qualifications Wales were generally seen as a very positive development for the future of education in Wales, with particular praise for the increased fairness and simplicity of the system.
128. Participants also commented positively on the potential benefits for Welsh speakers, the increased confidence that will be encouraged by improved quality and the greater ease with which students will be able to move between schools in Wales.
129. Alongside these perceived advantages, participants also expressed concerns about the way in which the new system would be introduced and managed.

## Themes common to responses from both consultations

130. Themes common to the responses to both consultation activities are:

- the need to strengthen public confidence;
- the need to ensure that transitional arrangements are sound;
- the ongoing portability of qualifications; and
- the independence of the new organisation.

131. Broadly, respondents supported the proposals in the consultation document, but many expressed significant concerns about the perceived conflict of interest in performing both awarding and quality assurance functions.

## Additional Engagement

132. Officials have also engaged directly with key stakeholders; specifically:

- Scottish Qualifications Authority (SQA) in relation to lessons learned from the establishment of a single qualifications body for Scotland;
- Ofqual in relation to lessons learned from the establishment of an independent regulator and to the potential powers and duties that might be given to Qualifications Wales;
- WJEC and other awarding bodies in relation to the development of the power for Qualifications Wales to make arrangements for the development and delivery of 'restricted priority qualifications'; and
- the UK Government Department for Education in relation to restrictions on the funding of courses for learners under the age of 19, where those courses lead to qualifications and to the repeal of the Welsh Ministers' current powers.

133. Further meetings were held prior to the drafting of the legislation with other stakeholders including the higher education and further education sectors in relation to the need for an independent regulator of qualifications for Wales.

134. Engagement with the UK Government's Department for Education and the Wales Office to address certain cross border issues arising from the proposed changes is ongoing.

## 5. Power to make subordinate legislation

135. The Bill contains provisions to make subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power, and
- the applied procedure if any, together with the reasons why it is considered appropriate.

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
21(1)	Welsh Ministers	Regulations	<p>Under this power, Welsh Ministers may make regulations specifying minimum requirements that must be met in relation to any form of a qualification which is approved by Qualifications Wales. It may only be exercised if Welsh Ministers are satisfied that it is appropriate to specify such requirements in order to ensure that the curriculum pursued by learners taking a course leading to the qualification is appropriate for their reasonable needs.</p> <p>Flexibility is needed, as the power is there to address particular</p>	Affirmative procedure	<p>Affirmative procedure is appropriate as the regulations affect Qualifications Wales' ability to determine the required content of a qualification. The intention is that Qualifications Wales should be independent from Ministers in performing its functions in relation to qualifications. The Welsh Ministers are given the power, however, to set out in regulations matters which awarding bodies must, as a minimum, address in a qualification which is to be approved by Qualifications Wales. This procedure offers the Assembly</p>

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			<p>circumstances which may or may not arise in future.</p> <p>The alternative would be for the Bill to give Welsh Ministers a direction power. A regulation making power is considered more appropriate because it interferes with the discretion of Qualifications Wales in relation to its functions in approving qualifications.</p>		<p>an opportunity to scrutinise and to review what the Welsh Ministers believe should be the minimum requirements in terms of the knowledge, skills and understanding that a learner should demonstrate in order to be awarded the qualification in question.</p>
33(3)	Welsh Ministers	Regulations	<p>The regulations must set out limits on how Qualifications Wales determines the amount of a monetary penalty it is imposing.</p> <p>Section 32AB of the Education Act 1997 provides for a monetary penalty imposed by Welsh Ministers to be limited to 10% of turnover and for turnover to be determined in accordance with an order made by Welsh Ministers, which is subject to affirmative procedure.</p>	Affirmative procedure	<p>Affirmative procedure is appropriate as this affects the amount an awarding body may be required to pay as a monetary penalty and affords the Assembly the opportunity to debate and scrutinise the amount of the penalty.</p>

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			There may be a need to change limits over time, for example to reflect changes in accounting standards.		
54(1)	Welsh Ministers	Regulations	Schedule 4 makes consequential amendments to existing primary legislation. Flexibility may be needed to make amendments, including amendments to secondary or primary legislation, of the types listed (supplemental, incidental, consequential, transitional, transitory or saving) for the purposes of, in consequence of, or to give full effect to the Bill.	Affirmative procedure if amending / repealing Act of Parliament, Measure or Act of Assembly; otherwise negative procedure	Affirmative – as this would affect primary legislation so requiring Assembly scrutiny by way of the affirmative procedure is appropriate.  Negative – this is appropriate for other provisions, which would be relatively minor and technical, which does not amend primary legislation and must be provision which the Welsh Ministers consider necessary or expedient for the purpose of, in consequence of, or to give full effect to, any provision of the Bill.
55(2)	Welsh Ministers	Order	Suitable for order because this provision enables the Welsh Ministers to provide for commencement of the Bill. Orders under this provision may make	No procedure	Commencement Orders do not change policy, they simply allow the policy in the Bill to be given effect.

Section	Power conferred on	Form	Appropriateness for delegated power	Procedure	Reason for procedure
			<p>transitional, transitory or saving provision.</p> <p>Flexibility is needed to be able to commence the various provisions of the Bill at an appropriate point, when the preparatory work has been done for the commencement to occur and so that any appropriate transitional, transitory or saving provision (which relates to the regime which will continue in force after Royal Assent) can be made.</p>		

136. Schedule 2 (introduced by section 2(3)), gives Welsh Ministers power to make transfer schemes providing for staff of the Welsh Assembly Government, property, rights and liabilities of Welsh Ministers to transfer to Qualifications Wales. Any such transfer scheme made by the Welsh Ministers is not exercisable by statutory instrument. However, under paragraph 5 of Schedule 2, it must be laid before the National Assembly for Wales.



# **PART 2**

## **REGULATORY IMPACT ASSESSMENT**

## **6. Statement**

137. A regulatory impact assessment has been completed in accordance with Standing Order 26.6(vi) for the proposed Bill, and follows at chapters 7 and 8.
138. A competition assessment and specific impact assessments are included at chapter 9.
139. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

## 7. Options

140. Three options for establishing Qualifications Wales as a regulatory and quality assurance body are outlined below, and the advantages and disadvantages of each are presented.
141. All options outlined are based on Qualifications Wales having regulatory functions and commissioning the award of qualifications through a competitive process. They are not based on Qualifications Wales having direct awarding powers, although all models are capable of being developed in this way through future legislation.

### Option 1

142. Option 1 is to do nothing – that is not to establish Qualifications Wales. This option has been analysed as two sub-options: the first being to fully maintain the position prior to the commencement of the implementation of the Review of Qualifications whereby qualifications were largely offered on a three- or four-country basis across the UK. The second sub-option is more realistic in that it takes account of reforms that have been concurrent with the development of the Bill and which have been carried out in the expectation of the establishment of Qualifications Wales.

#### **Option 1a - Do nothing: Welsh Ministers maintain their regulatory function.**

143. This is the baseline option; to continue with the current system.
144. Qualifications in Wales are currently delivered via a market-based model, under which a variety of awarding bodies offer qualifications to schools and colleges throughout Wales. The Welsh Ministers are currently responsible for regulating the delivery of qualifications in Wales, using the powers conferred on them under Part 5 of the Education Act 1997.
145. Awarding organisations, that have chosen to enter the regulated qualification system, are recognised by the regulators in Wales, England and Northern Ireland. These awarding bodies maintain compliance with similar General Conditions of Recognition. These conditions were developed by Ofqual, working in conjunction with regulatory officials in Wales and Northern Ireland, and were adopted and slightly amended by the regulators in Wales (the Welsh Ministers) and Northern Ireland.
146. Ofqual plays a major role in, and has significant resource to support, the administration of the three-country system. This comes at a minimal

financial cost to the Welsh Government (See Table 26 at Annex B). If three-country working is maintained, the Welsh Ministers retain a direct voice, allowing Ministerial intervention where appropriate (such as happened with the GCSE English Language re-grading that occurred in Summer 2012).

**Option 1b: Do nothing but continue to respond to the gradual separation from three-country practises, with the qualifications reform (following the *Review of Qualifications*) in Wales taking place guided by officials in the Qualifications and Regulation Division in Welsh Government.**

147. This option is the realistic ‘do nothing’ option that reflects the need, even without a ‘Qualifications Wales’, to respond to changes in England by strengthening research and regulation in Wales. The recommendations of the *Review of Qualifications* would be taken forward as far as possible by the Qualifications and Regulation Division in Welsh Government.

**Advantages**

148. The qualifications reform currently being implemented by the Qualifications Regulation Division within the Department for Education and Skills would continue.

149. There remain opportunities for the Welsh Government’s position to be strengthened without making structural changes; such as the recent agreement of a concordat between Welsh Government and Ofqual in order to create a framework for future collaborative working, or the involvement of Welsh Government with the WJEC in relation to the new Welsh Bacc.

**Disadvantages**

150. Even with the increased resource shown in Option 1b, capacity within the Welsh Government to ensure that qualifications are designed and developed to meet the specific needs of Wales would remain severely limited.

151. Welsh Government’s ability to deliver the recommendations of the *Review of Qualifications* will be seriously compromised by the limitations of resources and opportunity to take independent action.

152. Welsh Government’s ability to improve bilingual provision across the range of qualifications offered in Wales would be limited.

153. Wales would lack an independent expert voice to build public confidence in the qualification system in Wales – in the context of a clear and confident independent regulator in England.

154. With the absence of independent and expert regulation, the national and international reputation of qualifications in Wales could decrease, which may damage inward investment in the coming years.
155. There could be accusations of politically-motivated intervention in qualifications decisions, where Ministers retain direct regulatory responsibilities.
156. Regulators in Wales would remain overly reliant on Ofqual. Continued dependence upon the regulator in England and attempts to align policies and processes, would waste opportunity and resources that could otherwise be utilised to research and develop Wales' qualification system.
157. Continued dependence upon the regulator in England would not enable a proper divergence of qualifications policy in Wales. Qualifications policy in Wales would be reactive to changes elsewhere and officials would be unable to take control and proactively address the needs of Wales.
158. Engagement with the media and general public to communicate positive aspects of the qualification system in Wales would continue to be perceived as political messaging rather than based on professional expert opinion.

### **Summary**

159. This is not an acceptable option. The *Review of Qualifications* drew on a wide range of evidence and expertise to produce its conclusions. The need for an independent regulator for Wales has very high support, as evidenced by the public consultation response.
160. This option is therefore presented only as a counterfactual to the two options discussed below.

## **Option 2**

### **Do minimum: Create an independent Commissioner role and office scrutinising the activity of an internal Welsh Government unit.**

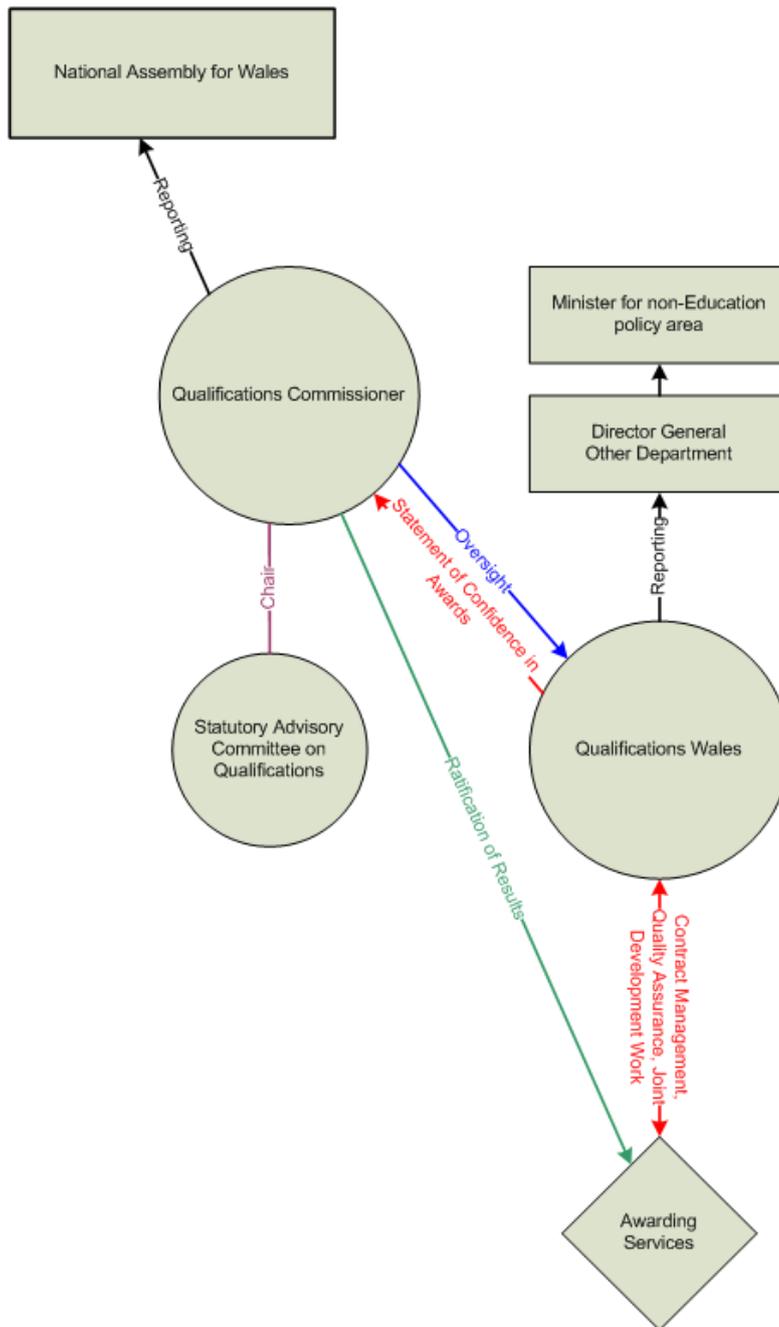
161. When considering options to achieve independent regulation, consideration was given to the establishment of Qualifications Wales as an independent regulatory unit (Qualifications Wales), set up within Welsh Government, reporting through a different Minister from the Minister for Education and Skills, in a manner similar to that of the Care and Social Services Inspectorate Wales (CCSIW).
162. Rather than creating a statutory body, this proposal would see legislation to repeal or amend Welsh Ministers' functions under the Education Act

1997, and replace them with a new statutory framework which would allow for the development, regulation, quality assurance and commissioning of qualifications within a mixed market economy in Wales. This framework would confer the majority of new statutory functions on Welsh Ministers, to be exercised through the new unit. In doing so, Qualifications Wales would aim to have a significant degree of operational and recognisable independence. It was expected that the staff in the Qualifications and Regulation Division in Welsh Government would transfer to this new unit.

163. This option also required the creation of an independent 'Qualifications Commissioner', whose role would be to oversee and scrutinise the work of the regulatory unit (Qualifications Wales), as well as perform any other desired functions. The Qualifications Commissioner could be appointed by the National Assembly for Wales (or by Welsh Ministers), and would be required to lay annual reports before the Assembly on the work of Qualifications Wales. The Commissioner post would be legally independent from Qualifications Wales and the wider Welsh Government, which would therefore give some reassurance on the level of external scrutiny built into the new system.
164. The Commissioner would be supported by a separate office, administrative and technical teams, and an Advisory Committee.

#### **Advantages**

165. The figurehead for Wales' qualifications system - the proposed Qualifications Commissioner – would be separated from Government, and be able to exercise a degree of independence.
166. The Qualifications Commissioner would have a recognisable brand and status, raising the profile of qualifications in Wales, and bringing a sense of confidence regarding the development of the agenda.
167. The size of the Qualifications Wales unit within Welsh Government and the new powers would enable a move away from the three-country model of qualifications regulation.
168. Welsh Government staff would not need to move outside Welsh Government.



### Disadvantages

169. This model does not provide the degree of independence for Qualifications Wales that the Assembly and stakeholders are demanding, and presents confusing lines of accountability for qualifications in Wales. This could undermine public confidence in the qualification system for Wales.
170. This model is complex, and does not achieve the simplicity that was described as the intention for Wales, in the Bill's Consultation document.
171. The Commissioner would require a supporting office which would incur additional cost. Some of the Commissioner's work would involve

checking work that had already been carried out by the Qualifications Wales unit, creating duplication and potential inefficiencies.

172. While not meeting fully the policy intention, the model would still have required primary legislation to repeal some of the Welsh Ministers' functions and to give certain powers to the Commissioner.
173. It was unclear how, in this model, a conflict of policy intention would be resolved, or how the relationships between accountable and sponsoring Welsh Ministers, the Commissioner, awarding bodies and the National Assembly for Wales would work productively in such a situation.

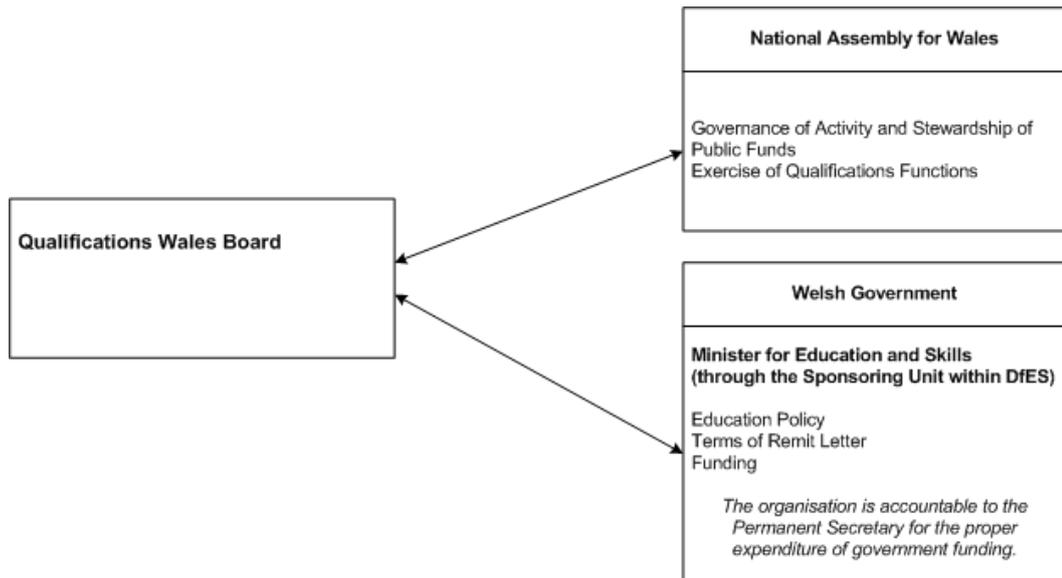
### **Summary**

174. The organisational structure, with the staff of Qualifications Wales being civil servants, is felt to be too close to Government to claim adequate independence, and does not make the best use of resources. It is therefore not the preferred option.

## **Option 3**

### **Preferred option: Create an arm's length regulatory body**

175. This option requires the repeal of Welsh Ministers' regulatory functions, and the conferring of awarding and regulatory functions on a statutory Welsh Government Sponsored Body, Qualifications Wales.
176. The organisation would operate its qualifications functions independently from Welsh Government. It would have a duty to pay regard to relevant Welsh Government policies that Welsh Ministers would like to bring to its attention, and additional qualifications-related work could be commissioned by Welsh Government.
177. The body would be responsible for the regulation and quality assurance of approved qualifications in Wales, and for the commissioning of certain qualifications – enabling it to meet more effectively and specifically the needs of Welsh learners as was the vision of the 2012 Review.
178. The body would receive an annual funding agreement and remit letter from Welsh Government in which its administrative and financial responsibilities would be set out. It would be accountable for its qualifications functions to the National Assembly for Wales.



179. The body would be able independently to perform research activity and advise Welsh Ministers, the National Assembly for Wales, or any other individual on the matter of Wales' qualifications.
180. Whilst this Bill will not confer awarding functions on Qualifications Wales, the policy intention remains for it to become an awarding body in the fullness of time, although this would require further primary legislation. The awarding function is outside the scope of this Bill.
181. It is expected that the body would be staffed by the majority of Welsh Government staff employed in the Qualifications and Regulation Division of the DfES.
182. The organisation will be enabled to have a trading arm separated from its qualifications functions to enable it to engage in economic activity within the boundaries of the competence of Welsh Ministers.

### **Advantages**

183. Qualifications Wales would be established as independent from Government in terms of its qualifications functions.
184. The organisation could establish a clear expert voice and recognisable brand, raising the profile and perceived value of Wales' qualifications. This will increase public confidence in the development of Wales' qualifications and its qualification-system, and ensure that learners benefit from qualifications whose value is internationally recognised.
185. This option enables a move away from the three-country model of qualifications regulation, reducing over-reliance on Ofqual. Qualifications Wales will be able to exercise greater control over the

qualification system in Wales and proactively address the needs of Wales.

186. Removing the function of regulating (general and vocational) qualifications in Wales from government would remove any perception of political interference in regulatory decision-making in Wales.
187. 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 suite of qualifications for Wales. This will in turn simplify the qualification system and facilitate a strengthening of regulation.
188. Income generation from independent business activity may enable the organisation potentially to contribute towards the burden on the public purse in the longer term.
189. Qualifications Wales will be able to fully implement the *Review of Qualifications* and to continue to build upon those ambitions, being capable of responding to changes in learner needs and the qualifications landscape.

#### **Disadvantages**

190. Implementation would require significant changes and amendments to primary legislation to establish the body.
191. Welsh Government staff who agree to join the new organisation would need to move outside of Welsh Government, placing an additional burden of change and transition on these staff with the potential to disrupt the delivery of regulatory business as usual activity.
192. Establishing Qualifications Wales as an arm's length body outside of Government could invite comparisons with the former ACCAC which was previously merged into Government – although it should be noted that ACCAC had responsibilities in relation to the curriculum and these functions remain in Government.

#### **Summary**

193. This is the only option that fully delivers the objectives of independence, simplification and strengthening of regulation and creates a model capable of responding to future changes in the qualifications landscape and the longer term ambition for Wales' qualification system.

## 8. Costs and Benefits

194. The costs and benefits associated with each option have been calculated over a five year period. Where appropriate, the costs are presented in present value terms using a discount rate of 3.5%. This is in line with the guidance in HM Treasury's Green book.
195. This assessment presents the best estimate of costs as is informed by:
- A Welsh Government-commissioned high-level costing exercise performed by PwC.
  - The Qualifications Wales ICT Scoping Project, which was commissioned as part of the Qualifications Wales Transition Project run from within the Welsh Government.
  - An analysis of the options for support services for Qualifications Wales, commissioned from PwC by the Qualifications Wales Transition team.
196. The options presented below outline the cost implications for the Welsh Government of implementing each option. As explained further, in paragraphs 254 and 255, Chapter 9, there is not expected to be a financial impact for other organisations (such as local authorities, schools, colleges, training providers or employers) as a result of the options presented. Any additional costs are expected to be minimal.
197. This Regulatory Impact Assessment has been produced in consultation with colleagues within Welsh Government, in:
- Economic Advice Unit
  - Welsh Government Finance
  - Strategic Budgeting and Monitoring
198. The policy effected by this Bill has been consulted on with stakeholders. Details of all consultative activity are provided in Chapter 4 of this document.
199. For the purposes of these costings, the policy intention for the organisation's commencement of operations in September 2015 has been followed for each option. This will be achievable by the early commencement of the organisation's establishment provisions, thereby enabling the infrastructure for the body to be set up, and for staff to be set up, trained, and ready to exercise functions.
200. Further detail of the methodology used to estimate costs can be found at Annex B.

## Option 1

**Option 1a - Do nothing: Welsh Ministers maintain their regulatory function.**

**Option 1b - Do nothing but continue to respond to the gradual separation from three-country practises, with the qualifications reform (following the *Review of Qualifications*) in Wales taking place guided by officials in the Qualifications and Regulation Division in Welsh Government.**

### Costs

201. Technically, as a 'do nothing' option, there should be no additional costs associated with this option – and this is shown as Option 1a.

202. The table below shows the estimated costs of maintaining the Qualifications and Regulation Division within the DfES for the next five years (baselined at budgets for 2015-16), the costs of which fall to Welsh Government (see Tables 5, 6 and 28 in Annex B).

**Table 1**

Costs to Welsh Government	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Revenue Costs: Staff - Qualifications functions	£ 1,562,000	£ 1,562,000	£ 1,562,000	£ 1,562,000	£ 1,562,000
Revenue Costs: Staff - Non-pay	£ 64,000	£ 64,000	£ 64,000	£ 64,000	£ 64,000
Programme budget	£ 2,380,000	£ 2,380,000	£ 2,380,000	£ 2,380,000	£ 2,380,000
<b>TOTAL</b>	<b>£ 4,006,000</b>				

203. Nonetheless, given that, whilst the creation of Qualifications Wales is not included in this option, Ministers (via the Qualifications and Regulation Division within Welsh Government) would seek to respond to the gradual separation from three country practices and continue, as far as possible, with implementation of the remaining recommendations of the *Review of Qualifications*. In practise, this would require officials to undertake additional activities.

204. It would, therefore, be inexact to present the 'do nothing' option as having no additional costs, and so Option 1b is provided as the realistic 'do nothing'. The following activities have been costed into this option to better illustrate the true cost of not proceeding with the establishment of a statutory body:

- *Moving away from three-country working*  
Additional qualifications/regulatory staff have been costed to strengthen the regulatory function and perform additional duties similar to those tasks currently performed by Ofqual on behalf of Welsh Government. These include, for example, a range of accreditation, monitoring, review and regulatory development tasks.

- *Research activity*  
A greater level of research would be undertaken and managed to better inform the qualifications reform and ongoing activity in Wales
- *Qualifications commissioning*  
Staff have been costed to oversee the procurement of commissioned call-off contracts in relation to restricted priority qualifications to be commissioned for Wales.

205. The table below shows estimated costs for Option 1b. Further details are available at Tables 5, 6, 7, 8 and 28 of Annex B.

**Table 2**

<b>Costs to Welsh Government</b>	<b>2015-2016</b>		<b>2016-2017</b>		<b>2017-2018</b>		<b>2018-2019</b>		<b>2019-2020</b>	
Revenue Costs: Staff - Qualifications functions	£	2,228,000	£	2,703,000	£	2,703,000	£	2,703,000	£	2,703,000
Revenue Costs: Staff - Non pay	£	64,000	£	64,000	£	64,000	£	64,000	£	64,000
Revenue Costs: Staff - Additional Non-pay	£	117,000	£	76,000	£	76,000	£	76,000	£	76,000
Revenue Costs: ICT	£	289,000	£	79,000	£	79,000	£	79,000	£	79,000
Programme budget	£	2,380,000	£	2,380,000	£	2,380,000	£	2,380,000	£	2,380,000
<b>TOTAL</b>	<b>£</b>	<b>5,078,000</b>	<b>£</b>	<b>5,302,000</b>	<b>£</b>	<b>5,302,000</b>	<b>£</b>	<b>5,302,000</b>	<b>£</b>	<b>5,302,000</b>

206. There are no additional costs expected to be borne by awarding bodies, learners or employers as a result of the implementation of this Option.

207. The present value of costs for Option 1b for the period 2015-16 to 2019-20 is £23,722,000.

## **Benefits**

208. The principal benefit of this option is the avoidance of the set up and running costs that are proposed in the preferred option.

209. By removing Wales' reliance on Ofqual, and the current need to align policies and processes, this Option creates a freedom for officials to use opportunities and resources to the best advantage for Wales.

210. The simplification of the qualifications market for regulation purposes will, however reduce the amount of time spent by officials in understanding, making comparison between and monitoring the differences in qualifications of the same name, and instead enable improved regulatory activity and the opportunity for the organisation to focus on its strategic direction. It is not possible to calculate a financial value of this benefit, as those qualifications that will be restricted and commissioned have not yet been fully identified. It will be for Qualifications Wales to identify these.

## Option 2

**Do minimum: Create an independent Commissioner role and office scrutinising the activity of an internal Welsh Government unit.**

### Costs

211. There are additional costs associated with this option compared with Options 1a and 1b.

212. The table below shows the estimated costs for the establishment of an external Qualifications Commissioner role and supporting office, and the running costs for Qualifications Wales as a department within Welsh Government for the next five years, with the expectation that the unit would continue to develop the *Review of Qualifications* agenda as far as possible. (These costs are further explained at paragraphs 36 to 58 of Annex B.)

213. These costs would fall to Welsh Government.

**Table 3**

Costs to Welsh Government	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
<b>SET-UP COSTS</b>					
Revenue Costs: Cost of project to effect organisation	£ 1,090,000				
Revenue Costs: Staff - Non-pay	£ 164,000				
Revenue Costs: ICT	£ 356,000				
Capital Costs: ICT	£ 119,000				
Capital Costs: Fixtures and Fittings	£ 90,000				
<b>OPERATING COSTS</b>					
<b>Running Costs</b>					
Revenue Costs: Staff - Corporate	£ 830,000	£ 1,305,000	£ 1,305,000	£ 1,305,000	£ 1,305,000
Revenue Costs: Staff - Qualifications functions	£ 2,228,000	£ 2,703,000	£ 2,703,000	£ 2,703,000	£ 2,703,000
Revenue Costs: Staff - Non-pay	£ 189,000	£ 218,000	£ 218,000	£ 218,000	£ 218,000
Revenue Costs: ICT	£ 29,000	£ 138,000	£ 138,000	£ 138,000	£ 138,000
Revenue Costs: Premises	£ 136,000	£ 235,000	£ 235,000	£ 235,000	£ 235,000
Revenue Costs: Other, L&P	£ 130,000	£ 222,000	£ 222,000	£ 222,000	£ 222,000
Depreciation	£ 25,000	£ 42,000	£ 42,000	£ 42,000	£ 42,000
QW Programme spend (Research etc)	£ 2,380,000	£ 2,380,000	£ 2,380,000	£ 2,380,000	£ 2,380,000
<b>TOTAL</b>	<b>£ 7,766,000</b>	<b>£ 7,243,000</b>	<b>£ 7,243,000</b>	<b>£ 7,243,000</b>	<b>£ 7,243,000</b>

214. The most significant up front costs relate to the investment required for ICT systems in order to operate the Commissioner's external office, and the costs of recruiting the additional staff to operate within the model.

215. This model incorporates an additional Governance structure of a Commissioner role and supporting administrative team of 20 staff, plus a Governance Board comprising 11 Members, including a Chair.

216. In addition, 15 extra qualifications-focused staff are also costed, to strengthen the regulatory function and to perform additional duties similar to those tasks currently performed by Ofqual on behalf of the

Welsh Government. These include, for example, a range of accreditation, monitoring, review, and regulatory development tasks.

217. In addition, a further 8 staff are also costed in, to support the organisation's exercise of its commissioning and research activities.
218. There are no additional costs expected to be borne by awarding bodies, learners or employers as a result of the implementation of this Option.
219. The present value of costs for Option 2 for the period 2015-16 to 2019-20 is £33,208,000.
220. It should be noted that costs for this Option have been estimated using accounting data available from Commissioners for Wales' offices of comparable size, and pro-rated to fit an estimated size of 20 staff for the Qualifications Commissioner's Office. This option was not explored in detail, as it was quickly determined not to satisfy policy requirements, and so the costs of this Option could vary in actuality, depending on the precise scope of the Commissioner's work and therefore the number of staff required. The Option presented here is a conservative estimate of a Commissioner's Office of 20 supporting staff, costing £2,172,000 in its first year, but other Commissioners have a staffing structure of approximately 50, which could more than double the cost of the Commissioner's Office to £5,010,000 in its first year (See table 12 in Annex B).

## **Benefits**

221. Value for money: this model benefits from the corporate services of Welsh Government, existing accommodation and the extant pension arrangements. As such, it provides a financially secure means of ensuring business continuity, minimising the risks to learners at the various stages of the qualifications cycle.
222. Human resource issues, such as TUPE and pension realisation costs are not incurred.
223. The risk of the loss of expertise if staff did not wish to transfer to an external body is removed in that the bulk of staff required to operate the new system would remain as Welsh Government civil servants.
224. By removing Wales' reliance on Ofqual, and the current need to align policies and processes, this Option creates a freedom for officials to use opportunities and resources to the best advantage for Wales.
225. The simplification of the qualifications market for regulation purposes will, however reduce the amount of time spent by officials in understanding, making comparison between and monitoring the differences in qualifications of the same name, and instead enable improved regulatory activity and the opportunity for the organisation to

focus on its strategic direction. It is not possible to calculate a financial value of this benefit, as those qualifications that will be restricted and commissioned have not yet been fully identified. It will be for Qualifications Wales to identify these.

### Option 3

**Preferred option: Create an arm's length regulatory body in the first instance, with the intention of it becoming an awarding body in the fullness of time.**

#### Costs

226. There are significant additional costs associated with this option compared with Options 1 and 2. These costs are presented in Table 4 below, and explained further at paragraphs 59 – 85 of Annex B.

227. Qualifications Wales will be a Welsh Government Sponsored Body, funded by Welsh Government through grant-in-aid. It may also be possible for Qualifications Wales to generate additional income by selling services in the future, but as future business activity is impossible to predict, the costs here are based on the assumption that Welsh Government will provide 100% of funding.

**Table 4**

Costs to Welsh Government	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
<b>SET-UP COSTS</b>					
Revenue Costs: Staff - Cost of project to effect organisation	£ 1,202,000				
Revenue Costs: Staff - Corporate	£ 240,000				
Revenue Costs: Staff - Non-pay	£ 294,000				
Revenue Costs: Premises	£ 232,000				
Revenue Costs: ICT	£ 580,000				
Capital Costs :ICT	£ 664,000				
Capital Costs: Fixtures and Fittings	£ 226,000				
<b>OPERATING COSTS</b>					
Revenue Costs: Staff - Corporate	£ 869,000	£ 1,490,000	£ 1,490,000	£ 1,490,000	£ 1,490,000
Revenue Costs: Staff - Qualifications functions	£ 1,862,000	£ 2,422,000	£ 2,422,000	£ 2,422,000	£ 2,422,000
Revenue Costs: Staff - Non-pay	£ 95,000	£ 163,000	£ 163,000	£ 140,000	£ 123,000
Revenue Costs: Staff - Sponsor Unit	£ 102,000	£ 203,000	£ 203,000	£ 203,000	£ 203,000
Revenue Costs: Premises	£ 436,000	£ 748,000	£ 748,000	£ 748,000	£ 748,000
Revenue Costs: ICT	£ -	£ 326,000	£ 326,000	£ 326,000	£ 326,000
Revenue Costs: Other, Legal and Professional	£ 180,000	£ 306,000	£ 306,000	£ 306,000	£ 306,000
Capital Costs: ICT	£ -	£ -	£ -	£ 178,000	£ -
Depreciation	£ 50,000	£ 86,000	£ 86,000	£ 86,000	£ 86,000
QW Programme spend (Research etc)	£ 2,380,000	£ 2,380,000	£ 2,380,000	£ 2,380,000	£ 2,380,000
<b>Total</b>	<b>£ 9,412,000</b>	<b>£ 8,124,000</b>	<b>£ 8,124,000</b>	<b>£ 8,279,000</b>	<b>£ 8,084,000</b>

228. The highest costs shown relate to staffing costs which, for functional staff, are largely already met from Welsh Government budgets. The most significant up-front costs relate to premises costs and ICT infrastructure costs.

229. On an ongoing basis, the most significant costs (other than staffing costs for qualifications staff) relate to premises costs, and corporate staffing costs.
230. This model incorporates the creation of a Welsh Government Sponsored Body (WGSB). Its governance structure includes a Chief Executive, and a Board of 10 Members, plus a Chair.
231. The full staff complement of the organisation is estimated at 73, which includes 3 staff currently seconded from Welsh Government to WJEC.
232. There are no significant costs expected to be borne by awarding bodies, learners or employers as a result of the implementation of this Option. Where Qualifications Wales exercises its right to recover costs for the approval of non-priority qualifications, awarding bodies who seek approval would incur the set fee. Awarding bodies making proposals for commissioned qualifications would incur the associated administrative costs. Fees will be charged on a cost-recovery basis, but it will be for Qualifications Wales to determine the relevant processes for either of these cases, and so the level of the fee cannot be estimated as these processes are not yet known. In order to ensure that charges are not prohibitive, the Bill provides that any proposed fee schedule must be approved by the Welsh Ministers. The Welsh Ministers' decision on the charging regime will necessarily be informed by an impact assessment.
233. The present value of costs for Option 3 for the period 2015-16 to 2019-20 is £38,026,000.

## **Benefits**

234. There are no direct financial benefits of this option.
235. The simplification of the qualifications market for regulation purposes will, however reduce the amount of time spent by officials in understanding, making comparison between and monitoring the differences in qualifications of the same name, and instead enable improved regulatory activity and the opportunity for the organisation to focus on its strategic direction. It is not possible to calculate a financial value of this benefit, as those qualifications that will be restricted and commissioned have not yet been fully identified. It will be for Qualifications Wales to identify these.
236. There is a high additional cost associated with this option, which was acknowledged by Cabinet as the justifiable expense of the independence of the qualification system in Wales. Maintaining the status quo, as in Option 1, or creating a pseudo-independent organisation, as in Option 2, was not considered to represent value for money, despite the lower costs.

237. The cost of the establishment of Qualifications Wales represents the cost of independence; providing a strong regulatory function for Wales that is not reliant on three-country working and whose professional expertise sits outside of Welsh Government.
238. This Option provides Wales with a reputable, independent decision-making body, enabled to make consistent and professional judgements against clear and transparent criteria. The value that this represents is evidenced in the *Review of Qualifications* that concluded that an independent body was required in Wales, and exemplified by the success of the Scottish Qualifications Authority.
239. By having a single, independent and authoritative body representing the qualification system in Wales, Wales will be better able to respond to changes in the qualifications landscape in the UK, and also have a respected and commanding voice that can also be heard in the European and International qualifications environments.
240. The organisation itself will not provide a financial benefit, but as an enabler of the qualification system in Wales, of confidence, consistency, clarity, accountability and authority, it will facilitate widespread effects throughout the country, for learners and employers in Wales, and beyond. By bringing stakeholders together and being established in such a way as to be able to positively influence qualifications policy, the creation of such an organisation has been assessed as being worth the cost to the public purse.
241. By removing Wales' reliance on Ofqual, and the current need to align policies and processes, this Options creates a freedom for officials to use opportunities and resources to the best advantage for Wales.
242. This option places Wales in the optimum position for meeting the needs of its citizens (learners and businesses), particularly its Welsh speaking citizens. This in turn is likely to result in citizens becoming better able to contribute positively to the economy.
243. The inclusion of a trading arm feature will enable Qualifications Wales, in the longer term, to generate its own income, which may lessen the burden of the cost of the organisation on the public purse.

## Summary

244. The nature of the benefits identified in this RIA means that they do not lend themselves well to quantification. This makes it difficult to compare the costs and benefits in an objective way. In such a situation, a judgement has to be made on whether the additional costs are justified by the benefits.
245. Option 1 offers the lowest cost and achieves part of the policy requirements; the qualifications reform in Wales would continue, but without a sense of independent expertise and ownership in Wales. This, however, fails to meet the overriding policy requirement, and it is not felt to be a suitable option to pursue.
246. Option 2 again partly meets the policy requirements. The creation of a Qualifications Commissioner's goes some way to providing some independence. However the independent organisation is of a much smaller scale and scope than the preferred option, and would lead to some duplication of activity with additional resource invested in checking the activities of others rather than in delivery. Therefore, while of a lower cost than Option 3, this option still fails to meet the policy requirements in full and is not considered a suitable option.
247. Option 3 fulfils the policy requirements in full. Its cost is greater than Options 1 and 2, but the scope to effect a difference and deliver true independence is greater.
248. At the heart of the decision is a matter of judgement as to the value of the policy requirement. Option 3 delivers the best value for money as it fully delivers the objective and in this context the additional cost is justified. This should be compared with the perceived (lack of) value of either retaining the current position in Wales (Option1), or providing Wales with a weaker version of what is actually required (Option 2). On this basis, Option 3 is the preferred option.

## 9. Competition Assessment and Specific Impact Assessments

### Competition Assessment

249. A competition filter test was applied to the policy in the Bill, because its provisions potentially affected the price, quality, range and location of qualifications, for which there is a market in the UK.
250. Providers of qualifications, 'awarding bodies', operate across the UK and therefore the 'qualifications market' exists at a UK level.
251. While it has been made clear in the vision for this policy that one of its goals was the 'simplification of the market structure' in Wales, this is from the point of view of qualifications regulation.
252. The aim is to ensure that, where appropriate, the number of different forms of certain priority qualifications that are approved in Wales is restricted (for example, one GCSE History, instead of four). The intention is not to remove providers from the qualifications market. Fewer versions of key qualifications are required in Wales than at present, but a healthy competitive market to provide those qualifications is of importance to the overall qualification system, and it is a policy aim to maintain a competitive qualifications market awarding qualifications in Wales.
253. The test determined that it is not likely that there will be any detrimental effects on competition in the qualifications market<sup>2</sup>. Further detailed assessment was not therefore deemed to be necessary.
254. The market structure will remain competitive. It is unlikely that the number of awarding bodies will change as a result of this policy, as Wales is a small part of a wider UK market, and the majority of awarding bodies, including WJEC, operate across the UK, not just in Wales. Therefore, there is expected to be no significant increase in costs or labour market, or reduction in levels of business generated for either existing or new suppliers to the market as a result of the policy effected by this proposed Bill. There may be small administrative costs relating to making proposals to deliver commissioned restricted qualifications. In addition Qualifications Wales will be able to produce a charging scheme that sets out fees that are payable by an awarding body in respect of the

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<sup>2</sup> In performing the test, officials sought advice from the Welsh Government's economic advice unit who confirmed that it seemed that the suppliers to the qualifications market in Wales operated in a single UK market, of which the market in Wales was one component. On that basis it was advised that the changes being proposed to the market in Wales was unlikely to have a detrimental impact (in terms of size or number) on suppliers to either the Wales or UK qualifications markets.

costs incurred by Qualifications Wales in connection with some of its regulatory functions; including recognition, approval, review and complaint handling. Such a scheme would require the prior approval of the Welsh Ministers and would, if implemented, have some financial impact on awarding bodies, although it will not be more onerous than on a cost-recovery basis. Ministerial approval for such a scheme would be informed by an impact assessment, focused particularly on the financial impact on awarding bodies.

255. Neither is there expected to be an increase in the costs to employers or learners as a result of the policy effected by this Bill.

## **Specific Impact Assessments**

256. A series of impact assessments on the Bill have been completed as part of the Regulatory Impact Assessment. The impacts varied in a number of policy areas but were largely positive.

257. It is intended that the examination of the organisation's impacts will be handed to Qualifications Wales to take forward when it is established.

## **Sustainable Development**

258. There are many aspects of the sustainable development and Qualifications Wales policies that align, although not always directly.

259. The strongest alignment occurs in two areas:

- Across industry in Wales, where Qualifications Wales will be working directly with those industry sectors that support the Green Growth agenda, to ensure that qualifications are fit for purpose to support the long-term sustainable growth of industry, and its associated outcomes, in Wales.
- In the principles of collaboration and stakeholder engagement, which are integral to the principal aims of the new organisation.

## **Environment, Climate Change, Biodiversity**

260. No impacts were identified on the environment, climate or biodiversity in Wales as a result of this Bill.

## **Equality**

261. The Bill's Equality Impact Assessment can be viewed online at: <http://wales.gov.uk/legislation/programme/assemblybills/qualifications-wales/?lang=en>

### **Age (Under 18)**

262. It is intended that the organisation will quality assure those qualifications in Wales that are submitted for approval by recognised awarding bodies to help ensure that qualifications are effective in meeting the reasonable needs of learners and that there is public confidence in these qualifications and regulatory processes.
263. The intended positive impacts on children and young people are:
- that they can be more confident that the qualifications they take will be fit for purpose – in terms of content, assessment and the ability to progress,
  - that further and higher education providers will be more confident in offering them places on programmes of learning and that they will be better equipped with the skills, knowledge and understanding needed to progress well in those programmes, and
  - that employers in, and beyond Wales, will be more confident in offering them employment and that the children and young people will be better equipped to perform well in that employment.
264. In the long-term, it is hoped that the reputation of Wales' qualifications will be so well-regarded that having qualifications attained in Wales and approved by Qualifications Wales will be considered to be an asset for Wales' children and young people.
265. Children and young people in Wales will benefit as a result, by being considered to be desirable students and potentially highly effective employees. This in turn will lead to greater potential for employability, and it is hoped that the associated improvements in income levels, health and wellbeing for Wales' children and young people and their families for current and future generations.
266. The health and wellbeing benefits associated with confidence and the ability to provide for one's family environment creates a cycle of mental and physical health benefits. It is hoped that learners within this age group and other age groups will benefit from this.
267. At any point during the project to establish the organisation (including during the passage of the Bill), there will be children and young people in Wales who are choosing, beginning, in the middle of, completing, or re-taking qualifications. It is recognised that the Welsh Government, and subsequently Qualifications Wales, will need to work to ensure that each cohort is best served by the qualifications that they are taking, and that, in the transition to Qualifications Wales, no child or young person is disadvantaged or unfairly advantaged.

268. To reduce the risk that the transition from the old system to the new should have a negative impact on any groups of children and young people, communications and engagement activity has been established from an early date to ensure that the support network around children and young people (teachers, centres, employers) is fully aware of and able to meet changing requirements.
269. Feedback from children and young people in Wales raises the concern that the qualifications attained before Qualifications Wales is established will be perceived as lower quality than those offered afterwards, and that children and young people taking those qualifications now will have a stigma of sorts attached to their qualifications.
270. Work is in hand to consider the methods by which the outcomes of qualifications are determined, so as not to unfairly disadvantage one cohort of learners in relation to another. This is a 'business as usual' activity within the Qualifications and Regulation Division of the Welsh Government that forms part of the design and introduction of the new suite of GCSEs and A levels. Instructions and/or guidance is issued to the awarding body(ies) in relation to the process that should be adopted in making grading decisions.
271. In addition, the communications strategy includes the development and provision of information for young people and their parents on the changes to the qualification system in Wales.

#### **Age (18 to 50)**

272. The positive and negative issues concerning learners up to the age of 18 also apply to learners aged between 18 and 50.
273. It is also intended that Qualifications Wales' work should ultimately improve public confidence in qualifications attained in Wales – including the confidence that employers have in qualifications when employing staff; and so potentially encouraging inward investment. As a result, the benefits of this Programme are likely to extend well into learners' adulthood and years of employment.

#### **Age (50+)**

274. The positive and negative issues concerning learners up to the age of 18 also apply to learners aged over 50.

#### **Disability**

275. In so far as meeting the needs of learners with physical and/or learning disabilities is concerned, the Bill's provisions will not impact them directly, as the Bill will effectively transfer the responsibility for meeting their needs from Welsh Government to Qualifications Wales.

### **Mental Health**

276. There is no evidence to suggest that the Bill's provisions will impact on people with mental health problems.

### **Gender**

277. There is no evidence to suggest that the Bill's provisions will have an impact on people because of their gender.

### **Transgender**

278. There is no evidence to suggest that the Bill's effect on the qualifications policy in Wales will have an impact on people because they are transgender.

### **Marriage or civil partnership**

279. There is no evidence to suggest that the Bill's provisions will have an impact on people because they are married or in a civil partnership.

### **Pregnancy and/or Maternity**

280. There is no evidence to suggest that the Bill's effect on the qualifications policy in Wales will have an impact on people because of pregnancy or maternity.

### **Race**

281. There is no evidence to suggest that the Bill's effect on the qualifications policy in Wales will have an impact on people in ethnic minorities.

### **National Origin**

282. As described in *Our qualifications – our future*, the new organisation to be established by the Bill will be able to be more responsive to Wales' cultural and economic needs; for example, be able to address Wales-only issues, such as subject content, or ensure continuity and coherence with the curriculum in Wales.
283. As a result, a positive impact is expected in that Wales' learners will be qualified in subjects relevant to them both culturally (for example in the curriculum assessed for history or geography qualifications) and economically (where, for example, Wales' industry sectors have collaborated with Qualifications Wales to ensure that the skills and knowledge needed to create economic success for Wales' industry are met by Wales' learners and workers).
284. It is an overriding concern that the qualifications represented by Qualifications Wales should be well regarded across its borders,

particularly in England, where many Welsh students aim to travel for education or employment purposes. Aside from the conceptual perception of those qualifications, concern was raised about a negative impact regarding the practicality of studying for and attaining Wales' qualifications very close to the border where pools of potential students or employees come from two distinct qualifications systems and where any poor level of regard for Wales' qualifications would create a disadvantage for Wales' learners' opportunities.

285. There is no evidence to suggest that the Bill's provisions will impact on people in these groups:

- Asylum seekers
- Gypsies and travellers
- Migrants

#### **Religious or Non-religious Belief**

286. There is no evidence to suggest that the Bill's provisions will impact on people because of their religious belief or non-belief.

#### **Sexual orientation**

287. There is no evidence to suggest that the Bill's provisions will impact on people because of their sexual orientation.

#### **Human Rights**

288. The Bill's provisions positively support the UN Convention on the Rights of the Child, specifically articles 12, 29 and 30.

#### **Welsh Language**

289. As a matter of policy, it is intended that, in time, the organisation will be brought within the group of bodies named in the Welsh Language (Wales) Measure 2011, who are liable to have to comply with Welsh language duties, known as Welsh Language Standards under the system established by the Measure.

290. The following measures/targets are expected to be put in place for Qualifications Wales to meet regarding the Welsh language, either through the legislation, through the Framework document or through the annual remit letter:

- Have regard to Welsh Government policy and strategies such as the Welsh medium education strategy and Welsh language strategy *A living language: a language for living*.
- Have regard to 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.

- Ensure that qualifications for Welsh language as a subject, first and second language and Welsh for Adults, are in place.
- Promote and facilitate the uptake of Welsh language qualifications.

## **Children's Rights**

291. The Bill's Children's Rights Impact Assessment can be viewed online at: <http://wales.gov.uk/legislation/programme/assemblybills/qualifications-wales/?lang=en>

292. Positive impacts on children and young people were identified:

- that they will have clearer choices to make when choosing their qualifications,
- that they can be more confident that the qualifications they take meet their reasonable needs – in terms of content, assessment and the ability to progress,
- that further and higher education providers will be more confident in offering them places on programmes of learning and that they will be better equipped with the skills, knowledge and understanding needed to progress well in those programmes, and
- that employers in, and beyond Wales, will be more confident in offering them employment and that the children and young people will be better equipped to perform well in that employment.

293. In the long-term, it is hoped that the reputation of Wales' qualifications will be so well regarded that having qualifications approved by Qualifications Wales will be considered to be an asset for Wales' children and young people. Children and young people in Wales will benefit as a result, by being considered to be desirable students and potentially highly effective employees. This in turn will lead to greater potential for employability, and it is hoped that the associated improvements in income levels, health and wellbeing for Wales' children and young people and their families for current and future generations.

294. Work is in hand to ensure that children and young people in Wales are not negatively impacted by the perception that the qualifications attained *before* Qualifications Wales is established will be perceived as lower quality than those offered afterwards, so that children and young people taking those qualifications have a stigma of sorts attached to their qualifications. Consideration of this is part of the 'business as usual'

activity within the Qualifications and Regulation Division and forms part of the design and introduction of the new suite of GCSEs and A levels.

## **Health**

295. The main impacts of this policy on health will be felt in the following areas, from among the common social determinants of health:

### **Income/Poverty**

296. There is an expectation that, as a result of the establishment of an organisation to improve the education outcomes of learners in Wales, this policy will, in due course, have a positive impact on the incomes of people living in Wales through enhanced employment opportunities, and, as described below, should, over time, help to reduce poverty and its associated impacts.

### **Education**

297. It is expected that the simplification and strengthening of the qualification system will underpin many of the actions underway that aim to tackle inequity in educational attainment in Wales; ensuring a consistency of quality and therefore opportunity for those who attain the qualifications, and the perception and value of the skills and qualifications attained by those who employ them. And, it is hoped, by leading to high-quality employment and improving the conditions in which people are born and live and rear their own families.

### **Employment**

298. It is expected that the provisions of the Bill to strengthen and simplify the qualification system in Wales, and focus on ensuring that qualifications are effective, will have a direct beneficial impact on the types and quality of employment opportunities available to, and the quality and skills brought to the workplace by, Wales' learners.

299. Having employment has a direct impact on mental and physical wellbeing. Motivation and esteem also improve this, as well as reduce the likelihood of sickness absence from the workplace.

300. In addition, children from families with an employed member are less likely to experience psychiatric disorders and behavioural and conduct problems.

301. The compounded effect of employment improves the likelihood of increased wealth and a healthier environment in retirement, which has a direct impact on wellbeing, recovery and mortality rates in older people.

302. In addition, engagement activity by the new qualifications body with employers and training organisations is hoped to strengthen the

economy of Wales, and the investment of businesses in their employees and trainees. The impact of this on the employment and progression opportunities for those learners is hoped to be significant, and the potential for business expansion is hoped to increase the scale of the opportunities available.

### **Social Cohesion**

303. It is expected that there will be limited positive impact on the social cohesion of Wales as a result of the Bill being enacted. Positive effects are likely to improve the conditions in which people are born, grow, live, work and age and therefore increase family stability and cohesion (which has its own health benefits) and potentially also reduce the instance of teenage pregnancy (see below).
304. However, the course of effects on health and wellbeing is described as cyclical and self-fulfilling, with disadvantage or advantage beginning before birth, and accumulating through life. It is hoped that, by improving the social outcome of the education and qualification system, and also the economic environment of Wales, the cumulative effect on health and wellbeing in Wales may, though very gradually, improve significantly over time.
305. However, an acknowledged intention of the policy underpinning the Bill is to encourage learners in Wales to study and work worldwide. There may be a small negative result for Wales where the benefit of such investment in Wales' learners is actually felt elsewhere in the world, and not in Wales.

### **Poverty**

306. An indirect link has been identified with the Welsh Government's Tackling Poverty agenda, in that a better-qualified work-force is likely to secure higher paid employment, which has a direct impact on health and life quality/outcomes.
307. Qualifications Wales will not be directly involved in monitoring or improving levels of poverty or child poverty in Wales.

### **State Aid**

308. The ability for Qualifications Wales to generate income was considered in detail to ensure that the options available would not breach state aid rules.

### **Arrangements for restricted priority qualifications**

309. Provided that there was a clear justification for the benefits from doing so, and that it was clear that the purpose of doing so was the improvement of the qualification system in Wales (and that the selection

process was done in a open, fair and transparent manner), there would be no state aid impact for Qualifications Wales from restricting the number of forms of certain priority qualifications for Wales.

### **Consultancy / Other trading activity**

310. It is a policy intention that Qualifications Wales should be able to generate income from the sale of its services, such as consultancy, as well as other qualifications-related products that it might choose to provide. Provided that this activity was not funded by Government, and was linked with its statutory functions, this would not breach state aid regulations. The development of this concept led to the policy requirement that Qualifications Wales should be able to set up a separate trading arm, and the draft Bill contains a provision enabling this by way of a power to set up a company, the exercise of which is subject to the approval of the Welsh Ministers.

### **Charging Scheme**

311. The policy intention is that Qualifications Wales should be able to charge fees for performing its regulatory functions, and the Bill enables it to do so on a cost-recovery only basis, provided that any such fees are published in a scheme approved by the Welsh Ministers. Any scheme needs to take into account state aid considerations and the Welsh Ministers would need to ensure that:
- All fees charged must only be on a cost-recovery basis.
  - Fees apply equally and transparently to all awarding bodies.
  - The Charging Scheme is fair (deemed 'affordable').

### **Implications for the Courts**

312. The functions of Qualifications Wales generally reflect those currently exercised by the Welsh Ministers under the Education Act 1997 with some changes and additional functions. In particular, the enforcement powers of Qualifications Wales may have implications for the courts and justice system. The exercise of these functions may result in an application to court (for a mandatory order to enforce a direction) or appeals to the First-tier Tribunal (for example, against a decision to impose a monetary penalty). These provisions reflect similar provisions in the Education Act 1997. However, the Bill contains a new enforcement power, the exercise of which involves the courts and justice system, namely the power to apply to a justice of the peace for an order authorising entry and inspection of premises occupied by a recognised body. Given the requirements which must be met for such an order to be granted, it is not expected that applications for such orders will occur often. Therefore, the overall impact on the courts and justice system is not expected to be significant.

### **Geographic Impact**

313. No significant impact on the needs and desires of people, communities and businesses in rural Wales has been identified as arising from the policy in this Bill.

### **Privacy**

314. A full Privacy Impact Assessment was not required, as no impact on privacy was identified as a result of this Bill.

## **10. Post-implementation Review**

### **The Policy within the Bill**

315. The Bill establishes Qualifications Wales as a Welsh Government Sponsored Body with responsibilities in relation to qualifications in Wales.
316. The organisation has the following principal aims:
- 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.

### **Reviewing the implementation of the policy**

317. Review and evaluation of the policy contained in the Bill will focus on the implementation of the following:
- Qualifications Wales' statutory functions: Qualifications Wales will have functions in relation to qualifications in Wales. Some similar functions are currently exercised by the Welsh Ministers.
  - Qualifications Wales' responsibility for reviewing the effectiveness of the qualification system in Wales, including its own position in that system.
  - The measurement of levels of public confidence in the organisation as the independent regulator of qualifications for Wales, in the qualifications approved in Wales and in the qualification system prior to and after the establishment of Qualifications Wales; and
  - Review of the impacts of the establishment of Qualifications Wales.

318. These are described more fully below.

### **The exercise of Qualifications Wales' statutory functions: regulation, quality assurance functions and commissioning**

319. The organisation will be required to report annually to the National Assembly for Wales on (amongst other issues) the performance of its functions, and its plans for how it intends to carry out those functions in the following year.

## **Review Methodology**

320. The method for producing this annual report will be the responsibility for Qualifications Wales to design and perform. The first Annual Report will be prepared in 2016.
321. In producing the report, Qualifications Wales will be required to report on, amongst other matters, the performance of its functions, with reference to its principal aims. It will also, for example, be expected to report on how it has engaged with stakeholders in delivering its functions.
322. Qualifications Wales will be held to account by the National Assembly for Wales either in full session or by Committee.

## **Reviewing the qualification system in Wales, including the relationship between Qualifications Wales and Awarding Bodies**

323. In support of the principal aim of ensuring the effectiveness of the Welsh qualification system, Qualifications Wales will be specifically under a duty to review the inter-relationships between different bodies, including its own relationship with awarding bodies. This will, for example enable Qualifications Wales to be in a position to advise Welsh Ministers on the feasibility of Qualifications Wales becoming an awarding body in the longer-term.

## **Review Methodology**

324. On an annual basis, the organisation will report to the National Assembly for Wales. Part of its statutory reporting on an annual basis will include a general analysis of the qualification system in Wales.

## **Public confidence in Wales' qualification system**

325. A significant argument for the establishment of an independent qualifications body for Wales was the positive impact on public confidence in Wales' approved qualifications and the Wales qualification system, and this is listed as one of the organisation's principal aims.
326. While initial review plans are laid out below, Qualifications Wales will need to determine how it will best monitor confidence on an on-going basis in the longer term. This is likely to be through monitoring the confidence of specific stakeholder groups. Qualifications Wales will need to agree this with its Board.

## Review Methodology

327. The new body will have a Sponsor unit located within Welsh Government. The Sponsor Unit will be responsible for reviewing the impact of the implementation of the *Review of Qualifications* which includes the decision taken to create Qualifications Wales.
328. The *Review of Qualifications* was strongly evidence-based and provided a strong basis for the case for investment. Recommendations were informed by extensive discussion with a wide range of stakeholders from Wales and across the UK, whose views were gathered through both formal consultation and wider stakeholder engagement. These activities were supported by analysis of existing data sources and by commissioning a number of research projects. This work can therefore form the base-line.
329. Evaluation of the impact of the implementation will be carried out by qualitative research using facilitated workshops and involving informed stakeholders who are members of the *Review of Qualifications* External Stakeholders Group. The research will assess the level of confidence among stakeholders and will cover both the reform of qualifications (which Qualifications Wales will regulate) as well as the creation of the new body. It is intended that this be carried out at 3 points – in 2015 (when the new body goes live), in 2017 (when learners will have taken the first new qualifications) and in 2019 (when learners will have taken the higher level new Welsh Bacc). This may be supplemented by small amount of commissioned work, such as focus groups with parents, if gaps are identified in the evidence base.
330. It is intended that the new body will work closely with Welsh Government and adopt Government Social Research protocols. It is hoped that Qualifications Wales will be able to access some existing survey mechanisms as well as commission new ones. Qualifications Wales will work with its Sponsor Unit and may take opportunities to jointly commission, design and perform research. It is likely that any such research will be a broad, commissioned review; potentially sitting within an ongoing programme of research to measure confidence in the organisation as regulator, and confidence in qualifications (together with other research and evaluation projects as necessary).
331. Measurement of confidence can also be informed through existing surveys currently undertaken by the Welsh Government and other partners. The new body may be able to utilise these or commission new ones. A further measure of general public confidence will be media reporting.

## **Impacts of the Establishment of Qualifications Wales**

332. The Welsh Government Sponsor Unit will be responsible for reviewing the impact of the establishment of Qualifications Wales and this review is likely to be informed by revisiting the impact assessments performed as part of the policy development of the legislation.
333. These impact assessments will also be handed over to Qualifications Wales when it is established. It will be for Qualifications Wales to determine the use to which it will put these assessments, and whether they will feature as part of the ongoing review and evaluation that it will perform as part of its business as usual.

# QUALIFICATIONS WALES BILL

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## Annex A – EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes are for the Qualifications Wales Bill, introduced into the National Assembly for Wales on 1 December 2014. They have been prepared by the Department for Education and Skills to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.
2. They are not and not meant to be a comprehensive description of the Bill. So where a section or part of a section is self explanatory, no further explanation or comment is provided.
3. The powers to make the Bill are contained in Part 4 and paragraph 5 of Part 1 of Schedule 7 to the Government of Wales Act 2006. The National Assembly for Wales has the requisite legislative competence to make provision for and in connection with the Bill by virtue of Schedule 7, paragraph 5 (Education and training).

### Background

4. The Review of Qualifications for 14 to 19 year olds in Wales was commissioned by the Welsh Ministers in 2011 and was chaired by Huw Evans, former principal of Llandrillo College. Tasked with identifying how the Welsh Government could ensure that Wales has qualifications that are understood and valued and meet the needs of our young people and the Welsh economy, it reported to Ministers in November 2012. The Review of Qualifications emphasised the importance of ensuring that the qualifications taken by learners in Wales are recognised and valued world-wide.
5. The Welsh Ministers accepted the 42 recommendations contained within the report. In relation to the qualification system in Wales the report concluded that “a single body should be established to regulate, approve and assure the quality of all qualifications (below degree level) available in Wales, bringing in a new and stronger approach to regulation” and that “regulatory decisions would be separate from government”.
6. The report also envisaged that Qualifications Wales should become an awarding organisation for Wales, developing and awarding “most qualifications for 14 to 16-year-olds and most general qualifications for 16 to 19-year-olds”.
7. This Bill gives effect to the first part of the recommendation in that it establishes a single regulatory body for qualifications at arms’ length from the Welsh Ministers, and removes the Welsh Ministers’ current regulatory functions relating to

qualifications. It does not give Qualifications Wales powers to be an awarding body. Further legislation would be required to achieve this.

8. A consultation paper setting out the Welsh Government's policy was published on 1 October 2013 and a summary of the responses received to the consultation was published in June 2014. Responses to the consultation expressed strong endorsement of the proposals to set up a new regulatory body and this Bill brings into effect those proposals.

### **Summary of the Bill**

9. This Bill will establish a new organisation, Qualifications Wales to deliver a new model of regulation. Under the regime to be established by the Bill, Qualifications Wales will exercise regulatory functions in relation to qualifications awarded in Wales. Some of these functions are similar to those currently exercised by the Welsh Ministers.
10. The Bill gives Qualifications Wales two principal aims that establish Qualifications Wales' responsibility for ensuring that qualifications in Wales (and the underpinning qualification system) are effective in meeting the needs of learners and promote public confidence. In order to address a number of matters which contribute to effectiveness and public confidence, Qualifications Wales is required to develop and implement a system for recognising awarding bodies and approving qualifications.
11. In order to improve the quality of the qualifications and provide Qualifications Wales with effective regulatory powers, the Bill enables Qualifications Wales to focus on priority qualifications, to commission qualifications and to limit the number of certain qualifications that may be approved.

## **COMMENTARY ON SECTIONS**

### **PART 2: ESTABLISHMENT AND PRINCIPAL AIMS OF QUALIFICATIONS WALES**

#### **Section 2: Establishment of Qualifications Wales**

12. This section establishes Qualifications Wales as a body corporate. It introduces Schedule 1 which provides further details about its establishment and Schedule 2 which allows the Welsh Ministers to transfer staff of the Welsh Government and property, rights and liabilities from the Welsh Ministers to Qualifications Wales.

#### **Section 3: Principal aims of Qualifications Wales**

13. This section sets out the principal aims of Qualifications Wales: these will underpin all of the work that Qualifications Wales undertakes – and Qualifications Wales will need always to ensure that its actions are compatible with these aims.
14. The first principal aim gives Qualifications Wales responsibility for ensuring the effectiveness of qualifications in meeting the reasonable needs of learners in Wales. The meaning of qualifications is defined in section 51. While this principal aim is

broad in scope, Part 4 of the Bill (Approvals) provides Qualifications Wales with powers to determine the focus of its activities. This principal aim also requires Qualifications Wales to take responsibility for the effectiveness of the qualification system in Wales. The 'system' is the infrastructure which underpins and enables the delivery of qualifications – it includes the *way* that qualifications are developed, delivered and awarded as well as *what* is developed, delivered and awarded.

15. The second principal aim requires Qualifications Wales to promote public confidence in both the qualifications and the supporting system. For the qualifications and the system to be truly effective, together they must inspire public confidence. An assessment of public confidence could include, for example, the level of confidence of employers, learning providers, learners, parents and carers in the relative value of qualifications taken in Wales compared with those taken, for example, in England.
16. Sub-section 2 sets out a non-exhaustive list of the matters to which Qualifications Wales must have regard in determining what is appropriate for meeting its principal aims. While most of these matters are self-explanatory, additional notes are here provided to give context and/or examples to illustrate some of the terms:
  - a. A skilled workforce is an important factor in the growth of the Welsh economy – and qualifications are both an indicator of the skills of potential new workers and a measure for developing the skills of the existing workforce.
  - b. Qualifications Wales will need to specifically consider the provision of assessments through the medium of Welsh and, for example, the provision of qualifications that enable learners to develop or use the Welsh language.
  - c. 'Assessment arrangements' includes, for example, consideration of the validity and reliability of assessment arrangements. It may include the nature of the assessment taken by learners (for example, consideration of the quality of an examination paper) as well as, for example, the security arrangements relating to the storage of assessment records.
  - d. The reasonable needs of employers could be taken into account, for example, in relation to the need to equip learners with the knowledge, skills and understanding relevant to general and particular employment. Higher Education Institutions may need to be satisfied, for example, that the qualifications awarded to learners in Wales both sufficiently differentiate between different levels of ability and provide sufficient preparation for further study. 'The professions' is not confined to any limited list of professions but may be taken to include, for example, the views of relevant professional experts and representatives.
  - e. Qualifications Wales must have regard to the content of qualifications, in particular the extent to which they are up to date and to which they reflect best practice in, for example, the performance of tasks.
  - f. A 'consistent level of attainment' may, for example, relate to consistency over time, across different nations, across subjects or across qualifications taken by

a given age group. Attainment, in this context, could refer, for example, to the extent to which learners have acquired (or are required to acquire) the requisite level of knowledge, skills and understanding pertaining to the qualification.

- g. Consideration of whether qualifications are delivered 'efficiently' is not limited solely to financial or economic considerations but may, for example, include consideration of the impact on effectiveness and public confidence of the number and quality of interactions between different bodies and individuals.
- h. In considering the effectiveness of the system, Qualifications Wales will need to consider the roles and responsibilities of the different bodies in that system, including, for example, its own role in the system. In this context, for example, Qualifications Wales could consider its own potential future role as an awarding body.

### **PART 3: RECOGNITION OF AWARDING BODIES**

#### **Section 4: Recognition of awarding bodies**

- 17. This section gives Qualifications Wales the power to recognise awarding bodies. Only awarding bodies that have been recognised by Qualifications Wales can have qualifications approved by Qualifications Wales. Awarding bodies typically develop qualifications and deliver them through learning providers, such as schools, colleges and work-based learning providers. Awarding bodies specify and administer assessment arrangements and are accountable for determining whether or not to award a qualification to a learner (and, if appropriate, what grade should be issued).

#### **Section 5: Duty to set general recognition criteria**

- 18. Qualifications Wales is under a duty to set and publish the criteria against which it will consider whether or not to recognise an awarding body. These criteria are referred to as 'general recognition criteria' but there may be different criteria for different types of awarding body. For example, a criterion about the ability to provide safe warehouse facilities to store secure examination papers may not be applicable to an awarding body solely providing online assessment.

#### **Section 6: Power to set qualification specific recognition criteria**

- 19. This section gives Qualifications Wales the power to determine that awarding bodies intending to offer certain types of qualification should, in addition to the general recognition criteria, meet specific criteria in order to be eligible to submit those types of qualification for approval. For example, Qualifications Wales may require all awarding bodies intending to offer GCSEs and/or A levels in Wales to demonstrate a capability to fulfil marking and grading processes in time to issue a high volume of accurate results on a single date. As for the general recognition criteria, the specific recognition criteria may vary according to the type of awarding body. In addition, they may vary according to the type of qualification in question.

**Section 7: Revision of general and qualification specific recognition criteria**

20. This section gives Qualifications Wales the power to revise the general and qualification specific recognition criteria. It must publish the revised criteria and make it clear from which date the revisions apply. Revised criteria must be published before they can come into effect.

**Section 8: General recognition of an awarding body**

21. Awarding bodies may apply to Qualifications Wales to become generally recognised. This section requires Qualifications Wales to recognise all awarding bodies that have applied to it and which meet the published general recognition criteria. However, the Bill also provides for Qualifications Wales to recognise an awarding body that has applied, but does not fully meet all of the criteria. Subsection 4 sets out the matters that Qualifications Wales must consider when deciding whether to recognise an awarding body that does not meet all the criteria. This provision could address situations where, for example, it emerges that a particular criterion is not relevant to the body being considered. General recognition is required before any qualification offered by that awarding body can be approved by Qualifications Wales. In order to have some types of qualifications approved by Qualifications Wales, an awarding body may in addition, have to obtain 'specific recognition'.

**Section 9: Qualification specific recognition of an awarding body**

22. This section generally mirrors section 8 but applies in situations where an awarding body is applying to be recognised in respect of qualifications for which specific recognition criteria apply. An awarding body can only obtain specific recognition if it is also has general recognition. If a body which has general recognition applies for special recognition, provided that the body satisfies the general and applicable specific recognition criteria, Qualification Wales must recognise the body in respect of that specific qualification.

**Section 10: Power to make rules about applications for recognition**

23. This section enables Qualifications Wales to set out the rules that awarding bodies need to follow in making their application for recognition to Qualifications Wales. If Qualifications Wales makes such rules, it must publish them. These rules may specify, for example, how applications must be made and any fees to be paid for recognition – providing such a fee has been included in a scheme approved by the Welsh Ministers (under section 44).

**Section 11: Further provision about recognition**

24. Qualifications Wales must give reasons to the awarding body if the awarding body's application for recognition has been refused.
25. The section also introduces Schedule 3 which makes further provisions about recognition.

**Section 12: Recognition: interpretation**

26. This section explains that where the Bill refers to a 'recognised body' it refers to a body recognised either generally under section 8 or, in addition, specifically

recognised under section 9 in respect of a qualification for which there are specific recognition criteria.

## **PART 4: APPROVAL OF QUALIFICATIONS**

### **Section 13: Duty to prepare list of priority qualifications**

27. This section places a duty on Qualifications Wales and the Welsh Ministers to prepare a list of qualifications that are a priority for regulation in Wales. They may only include a qualification in the list if the condition in subsection (2) is met in relation to the qualification. Those qualifications will be listed on a published 'priority qualification list' which may be amended from time to time, providing both Qualifications Wales and the Welsh Ministers agree. Qualifications may be listed either individually, or by reference to a description that includes more than one qualification.
28. The functions of Qualifications Wales in relation to approving qualifications (which are set out in Part 4) vary according to whether or not a qualification is on the list.
29. Subsection 6 introduces the terms 'priority qualification', 'restricted priority qualification' and 'unrestricted priority qualification' – which are referred to in the subsequent sections of the Bill.

### **Section 14: Restricted priority qualifications**

30. This section gives Qualifications Wales the power to decide that some qualifications on the priority qualification list should be restricted to a maximum number of versions or 'forms' which may be approved by Qualifications Wales at any one time. For example, Qualifications Wales may decide that it only intends to approve one version of GCSE English Language. In this case it would make a determination under this section and this qualification would become a restricted qualification.
31. Qualifications Wales may only make such a decision if it is satisfied that the intended restriction is desirable, in light of its principal aims and the objectives of:
  - a. avoiding inconsistency between different forms of a given qualification and
  - b. enabling Qualifications Wales to exercise choice between awarding bodies who may want to develop a new form of the qualification or between different forms of qualifications submitted for approval.
32. Prior to making and publishing a decision to restrict the number of approved forms of a qualification, Qualifications Wales must notify each recognised awarding body and any other parties Qualifications Wales thinks may have an interest in the proposal and consider any responses it receives from those persons that relate to the proposal.
33. Once Qualifications Wales has published a decision to restrict a qualification to a maximum number, it must then ensure that no more than the maximum number of forms of the qualification are approved. Qualifications Wales may enter into arrangements with an awarding body for the awarding body to develop the qualification (sections 15 and 16 refer) or select from any forms of qualification

submitted by awarding bodies (section 17 refers). A determination under this section does not directly affect any existing approvals of the type of qualification concerned. However, it may result in Qualifications Wales taking steps to withdraw approval under section 27.

**Section 15: Power to make arrangements for development of restricted priority qualifications**

34. This section gives Qualifications Wales the power to enter into arrangements with an awarding body for the body to develop a new form of a restricted priority qualification. Those arrangements are with a view to its subsequent submission to Qualifications Wales for approval. Qualifications Wales must publish a scheme that sets out the procedure for making such arrangements and the procedure must be open, fair and transparent. This is to ensure that there can be an open, fair and transparent competition to select the awarding body. Qualifications Wales may revise the scheme from time to time.
35. Qualifications Wales will be able to specify requirements ('criteria') for the qualification that is to be developed. Qualifications Wales will also be able, if it chooses, to make payments to the awarding body(ies) for the work that the awarding body(ies) undertake under these arrangements. Payment, however, need not necessarily take place.

**Section 16: Approval of a restricted priority qualification developed in accordance with section 15 arrangements**

36. This section gives Qualifications Wales the power to approve qualifications that have been developed as a consequence of the arrangements set out in 15. Awarding bodies which have been selected under the procedure set out in section 15 and which are recognised, may submit any qualification, which they have developed following their selection, to Qualifications Wales for approval. This section enables Qualifications Wales to consider and decide whether to approve, or not approve, this qualification and in doing so, it will apply its criteria published under section 20. Any minimum requirements that the Welsh Ministers have specified (see section 21, which are relevant to this qualification, must be met before Qualifications Wales may approve the qualification. An approval under this section may only be granted for a limited period (see section 23 (1)).

**Section 17: Approval of a restricted priority qualification in the absence of section 15 arrangements**

37. This section provides an alternative course of action (to that set out in section 15) for Qualifications Wales to decide which form or forms of a restricted qualification to approve.
38. Where Qualifications Wales opts not to follow the route of selecting an awarding body to develop a restricted qualification, Qualifications Wales must decide which form or forms of qualification it will approve (applying its criteria published under section 20). In this case Qualifications Wales must publish a scheme, which sets out an open, fair and transparent procedure, for determining which form(s) it will approve. Again, this is to ensure a competitive process, which meets those characteristics, to select the approved qualification(s). Qualifications Wales may revise the scheme from time to time.

39. Any minimum requirements that the Welsh Ministers have specified (see section 21), which are relevant to this qualification, must be met before Qualifications Wales may approve the qualification. An approval under this section may only be granted for a limited period (see section 23(2)).

### **Section 18: Approval of unrestricted priority qualifications**

40. Where a qualification on the priority qualifications list is not restricted, any appropriately recognised awarding body may submit a form of this qualification to Qualifications Wales for approval.
41. This section places a duty on Qualifications Wales to consider whether to approve eligible applications for qualifications on the priority qualifications list. In considering an unrestricted priority qualification for approval, Qualifications Wales must apply its criteria published under section 20.
42. In making a decision to approve, or not approve, Qualifications Wales has to consider whether any relevant minimum requirements specified by the Welsh Ministers (in relation to knowledge, skills and understanding (see section 21 )) have been addressed by any form of the qualification that Qualifications Wales intends to approve. If such conditions have not been met, then Qualifications Wales must not approve that form of the qualification.

### **Section 19: Approval of qualifications that are not priority qualifications**

43. This section gives Qualifications Wales the power to choose whether or not to consider, for approval qualifications that are not listed on the priority qualifications list. It establishes a difference between qualifications on the list (which Qualifications Wales must consider – section 18) and qualifications not on the list (which Qualifications Wales may consider).
44. Qualifications Wales must publish a ‘scheme’ setting out the factors it is likely to take into account in determining whether to consider applications for approval of non-priority qualifications. As a result, awarding bodies and other interested parties will to be aware of Qualifications Wales’ approach to the decision-making process and decisions can be made in a transparent way.
45. If Qualifications Wales does decide to consider a non-priority qualification for approval, any minimum requirements that the Welsh Ministers have specified (see section 21, which are relevant to the qualification, must be met before Qualifications Wales may approve the qualification. Qualifications Wales must apply its criteria (see section 20) in deciding whether to approve the qualification.

### **Section 20: Approval criteria**

46. This section requires Qualifications Wales to publish the criteria it uses to decide whether or not to approve a form of qualification. There may be a range of different criteria – whether, for example, for different descriptions of qualifications such as ‘all GCSEs’ or ‘all qualifications where performance is observed in a work environment’, or whether more specifically for ‘A level French’.

47. Qualifications Wales could use approval criteria to set out the knowledge, skills and understanding required in certain priority qualifications (and, in particular, restricted priority qualifications) as well as requirements relating to the assessment requirements. In considering what is appropriate to achieve its principal aims, Qualifications Wales is also able to engage with, for example, employers, higher education institutions and the professions to ensure that the criteria appropriately reflect their reasonable requirements.

### **Section 21: Power to specify minimum requirements**

48. This section gives the Welsh Ministers the power to publish regulations that set out requirements for a form of qualification in relation to the knowledge, skills and understanding (essentially the 'subject content') that are required to be addressed by that qualification.
49. Qualifications Wales may specify content requirements for priority qualifications through the approval criteria – but this regulation-making power will exist as a fall-back for the Welsh Ministers to require Qualifications Wales to ensure that specific requirements are met.
50. The Bill sets out a number of conditions which must be met before the Welsh Ministers may make regulations. These conditions ensure that the regulations are only introduced with the purpose of ensuring that learners follow an appropriate curriculum. This need not necessarily be any published 'national curriculum' but the requirements set out in regulations must relate to knowledge, skills and understanding that the learner must demonstrate for the purpose of determining whether a person is to be awarded the qualification. Before specifying minimum requirements, the Welsh Ministers must consult Qualifications Wales and others, as appropriate, giving reasons for proposing to specify minimum requirements.
51. The effect of introducing minimum requirements is that Qualifications Wales may not approve a form of that qualification unless it is satisfied that the qualification complies with the requirements set out in regulations. The draft regulations must be approved by the National Assembly for Wales before they can be made and come into force.

### **Section 22: Conditions of approval**

52. This section gives Qualifications Wales the power to apply conditions to its approval of qualifications – either at the time that the qualifications are approved, or at a subsequent time. If Qualifications Wales changes the conditions of approval after a qualification has been approved (or introduces new ones that apply to an approved qualification) it has to give notice to awarding bodies of the change, the date it will come into effect and the reasons for the change. This is to ensure, for example, that awarding bodies have a reasonable time in which to amend their qualifications, if appropriate, to address the new conditions or to request that the new conditions or variations are applied to them in a different way.

### **Section 23: Duration of approval**

53. Approval of restricted priority qualifications must be granted for a limited period so that other awarding bodies may compete to be the provider of a restricted qualification for each limited period.

54. Approval of non-restricted priority qualifications and of non-priority qualifications may be indefinite or for a limited period. Where approval is for a limited period, this has to be made clear at the point of approval – and where this is implemented, approval ceases at the end of that period. For details of how approval may be withdrawn or surrendered, please see the notes for sections 25 to 28.

**Section 24: Rules about applications for approval**

55. Qualifications Wales can make rules about how applications for approval must be made, what such applications should contain and whether and how any fee must be paid (providing such a fee has been included in a scheme approved by the Welsh Ministers under section 44).
56. If Qualifications Wales makes rules, it must publish them.

**Section 25: Surrender of approval**

57. An awarding body may give Qualifications Wales a surrender notice asking it to remove its approval of one or more forms of qualification. The surrender notice must specify the date on which the awarding body wishes the approval to end. Qualifications Wales must act as soon as reasonably practicable in acknowledging such an application. In that acknowledgement, Qualifications Wales may require approval to cease on a different date to that suggested by the awarding body, and must give reasons for the approval to cease on that date. In deciding whether to keep the date specified by the awarding body or set a different date, Qualifications Wales must have regard to the need to avoid prejudice to learners and to the awarding body's wish for it to end on the date it has specified.

**Section 26: Transitional provision in connection with surrender of approval.**

58. This section allows the acknowledgement of surrender given by Qualifications Wales under section 25 to provide for an extension period from the date following which approval is surrendered (the surrender date) until a later date (the extension date). During that period, the form of the qualification continues to be treated as approved, but only for the purposes specified in the acknowledgement of surrender. This can only be done if Qualifications Wales considers it appropriate to avoid prejudicing learners.

**Section 27: Withdrawal of approval**

59. The purpose of this section is to enable Qualifications Wales to end its approval of a form of qualification by withdrawing the approval. The reasons for withdrawing approval are that Qualifications Wales is satisfied:
- a) that the awarding body has not complied with a condition of approval. This could happen for example, if the awarding body fails or omits to comply with conditions set at the time of approval or if the conditions of approval (such as knowledge requirements) change and the qualification ceases to comply with the conditions (in this case an awarding body might intend to submit a replacement for approval);
  - b) that the awarding body offering that form of qualification is no longer recognised as an awarding body by Qualifications Wales (in respect of that form of qualification);

- c) that Qualifications Wales has decided that the form of qualification is a 'restricted priority qualification'.
60. The section sets out what Qualifications Wales must do to withdraw approval. These include duties for Qualifications Wales to:
- a) give notice to the awarding body of Qualification Wales' intention to issue a notice of withdrawal, explaining why the withdrawal is proposed and the proposed timing of its decision; and
  - b) take account of any response provided by the awarding body.
61. Qualifications Wales is also given the power to vary the date of the withdrawal, providing the awarding body consents to that variation. Variation could enable Qualifications Wales to take account of the time needed to develop qualifications to replace the existing qualifications and to extend that time if there are delays, for example.
62. When determining a date for withdrawal or variation of that date, Qualifications Wales must have regard to the need to avoid prejudice to learners.

**Section 28: Transitional provision in connection with withdrawal of approval**

63. Qualifications Wales may make arrangements to continue treating a withdrawn qualification as if it is approved, for a specified time and for specified purposes, in order to avoid prejudice to learners.

**PART 5: FURTHER PROVISION ABOUT RECOGNITION AND APPROVAL**

**Section 29: Restriction on funding and provision of certain courses**

64. The purpose of this section is to place a restriction on the public funding of courses of education or training for learners under the age of 19, if those courses lead to qualifications. Where those courses are funded by the Welsh Ministers, by local authorities or are provided by (or on behalf of) a maintained school, the qualifications must be chosen from those which are Welsh versions of the qualification. A Welsh version of a qualification is a form of a qualification which is awarded pursuant to its approval by Qualifications Wales for its award in Wales. This means that the qualification must be awarded in Wales (although the course leading to it need not necessarily be in Wales) and regulated by Qualifications Wales. In the case of a maintained school providing the course, the local authority and the governing body must ensure that they adhere to this restriction.
65. There is a specific exception to this restriction for any course provided to a person with learning difficulties. This exception only relates to the course in relation to the person(s) with learning difficulties and does not provide an exception in relation to other learners on that course. This exception applies where authorised bodies fund courses for learners with learning difficulties, whether the course is provided within or outside Wales. However, it does not give authorised bodies the power to fund learners with learning difficulties on courses as this depends upon their powers to do

so. Section 52 defines what is meant by a person with a learning difficulty for the purposes of this Bill.

66. The provision gives the Welsh Ministers the power to make further exceptions to this restriction – either for some particular courses (for example for courses in a subject for which there is relatively little demand and so there might not be a qualification approved by Qualifications Wales), or for other specific circumstances or particular cases that may arise. For example, an exception might reasonably be made in relation to a learner whose parent(s) had had their employment transferred to Wales, very near to the end of their course, in order to enable the learner to finish the course and so then take the qualification for which they had been prepared. The exception is made by Welsh Ministers designating (in writing) the course.
67. The provision does not provide for the Welsh Ministers to establish an alternative route for approving qualifications – its effect is that authorised bodies may be able to fund learners (who are under 19) on a course within the designation, even though it leads to a form of a qualification which is not approved by Qualifications Wales.
68. The Bill does not otherwise restrict the qualifications which may be used on courses. For example, an independent school in Wales could provide courses leading to forms of qualifications which are not Welsh versions of the qualification.

**Sections 30 and 31: Delineation of roles of Qualifications Wales and Ofqual**

69. The purpose of these provisions is to avoid a form of a qualification being regulated simultaneously by both Qualifications Wales and Ofqual. Ofqual is the regulator of qualifications awarded in England, as provided for in the Apprenticeships, Skills, Children and Learning Act 2009. Ofqual’s functions are similar to the functions of Qualifications Wales. An awarding body may be recognised by Ofqual and by Qualifications Wales under the respective legislative regimes.
70. Section 30 prevents any conditions of recognition imposed by Ofqual from applying to the award in Wales (which is where learners are assessed wholly or mainly in Wales) of a Welsh version of a qualification. A Welsh version of a qualification is defined in section 29(11) and is a form of a qualification awarded pursuant to its approval by Qualifications Wales for its award in Wales (so it must be awarded in Wales and regulated by Qualifications Wales). It is only conditions (of recognition and any of approval) imposed by Qualifications Wales which apply in these circumstances. This is to avoid the potential difficulty of conflicting conditions or regulation of the form of the qualification. It does not affect the application (if any) of conditions of recognition imposed by Ofqual to the award in Wales of forms of a qualification which are not Welsh versions of the qualification.
71. Similarly, under section 31, conditions of recognition imposed by Qualifications Wales will not apply in relation to the award (wherever it takes place) of a form of a qualification which is not a Welsh version of the qualification.
72. This does not affect the availability in Wales of forms of qualifications which are not Welsh versions of a qualification (for example, qualifications regulated by Ofqual) in circumstances where the restriction in section 29 does not apply. For example, independent schools may choose to offer a form of a qualification accredited by

Ofqual rather than a form of the qualification approved by Qualifications Wales. In these circumstances, Qualifications Wales would not regulate the form of qualification accredited by Ofqual.

## **PART 6: ENFORCEMENT**

### **Section 32: Power to give directions**

73. This section is to enable Qualifications Wales to require an awarding body to take (or not take) action, through issuing a written direction to that awarding body. A direction could only be issued if Qualifications Wales judged that the awarding body had failed, or was likely to fail, to comply with one or more conditions of recognition and/or one or more conditions of approval (which apply, respectively, to the body's recognition or an approved qualification it awards). Any actions that Qualifications Wales requires (or prohibits) through the direction must be for the purpose of ensuring that the awarding body complies with the condition.
74. Qualifications Wales must give notice to the awarding body if it intends to issue a direction and it must provide the awarding body with the reasons for the proposed direction and specify when it proposes to make the decision. This is so that the awarding body can make representations before that time and, if it does so, Qualifications Wales must consider them. If, having considered any representations, Qualifications Wales proceeds to issue a direction, it must do so in writing and the awarding body must comply with it. Should Qualifications Wales need subsequently to enforce the direction, it may apply to the Court for a mandatory order which, if granted, would require compliance.
75. In exercising this power, Qualifications Wales must have regard to the principles regarding regulatory activities set out in section 49. This power would not preclude Qualifications Wales from seeking to address any concerns regarding possible failures to comply with conditions through discussions with awarding bodies.

### **Sections 33 to 35: Monetary penalties**

76. The purposes of these sections are to:
- a) enable Qualifications Wales to impose a monetary penalty on an awarding body and set out the requirements in relation to giving notice of such a penalty;
  - b) provide for Welsh Ministers to make regulations on how to determine the amount to be paid;
  - c) enable awarding bodies to appeal to the First-tier Tribunal against such a penalty;
  - d) enable Qualifications Wales to recover interest on any part of the penalty which is unpaid by a particular time.
77. In exercising all its functions related to monetary penalties, Qualifications Wales has a duty to comply with the principles in section 49. Under section 42 Qualifications Wales must set out in its policy statement the circumstances in which it is likely to impose such a penalty and the factors it will take into account in determining the amount to be imposed.

78. If it appears to Qualifications Wales that an awarding body has failed to comply with a condition of its recognition or of any qualification approval, it may impose a monetary penalty.
79. As for the direction-making power, Qualifications Wales must first give notice to the awarding body of its intention to impose a monetary penalty, giving its reasons, specifying the proposed amount and the period following which Qualifications Wales proposes to make its decision. This is to give the awarding body an opportunity to make representations. In this case a minimum period of 28 days (starting from the date the notice is sent) must be provided for.
80. If, having considered any representations, Qualifications Wales decides to impose a monetary penalty, it must set this out in a further written notice, specifying the amount of it, the period within which payment must be made (which must not be less than 28 days beginning with the date of the notice) and setting out information as to the grounds for it, how payment may be made, rights of appeal and consequences of non-payment.
81. Regulations made by Welsh Ministers will set out the requirements as to how the amount is to be calculated. These regulations are subject to the affirmative procedure. Subject to the constraints imposed by those regulations, Qualifications Wales may decide the amount of the penalty, though it must have set out the factors which it is likely to take into account in deciding upon that amount in its policy statement (section 43).
82. An awarding body may appeal to the First-tier Tribunal against a decision to impose a monetary penalty (on the grounds set out in subsection (2)) or against a decision as to the amount of the penalty. Interest also is payable on any amount of an unpaid monetary penalty after the “applicable date”, provided for in section 35 (2) (except for any period during which the requirement to pay is suspended). The rate of interest is that specified in section 17 of the Judgments Act 1838. The total amount of interest must not exceed the amount of the penalty.

**Sections 36 to 38: Costs recovery for imposition of sanctions**

83. The purpose of these sections is to enable Qualifications Wales to recover costs incurred in connection with imposing a sanction. The costs may be incurred either in the giving of a direction (section 32), the imposing of a monetary penalty (section 33) or for the withdrawal of recognition (paragraph 19 of Schedule 3).
84. Section 36 describes the type of costs that may be recovered and specifies how Qualifications Wales can require costs recovery and the details to be provided to the awarding body.
85. Section 37 gives awarding bodies the power to appeal to the First-tier Tribunal against a decision by Qualifications Wales to recover costs or as to the amount of the costs.
86. Section 38 provides for interest to accrue on any amount of unpaid costs at the end of the period ending with the “applicable date” as defined in section 38 (2) (except for

any period during which the requirement to pay is suspended). The total amount of interest must not exceed the amount of the costs.

### **Section 39: Entry and inspection of premises**

87. This section enables Qualifications Wales to apply to a magistrate for an order allowing it to enter an awarding body's premises to inspect records, documents and the operation of electronic devices. Only a member of staff authorised by Qualification Wales for the purposes of this section may apply to the magistrate. An order can be made only if the magistrate is satisfied that the requirements in subsections (3) to (5) are met. If an order is granted, an authorised member of Qualifications Wales' staff, accompanied by a police officer, may enter the premises for the purpose of ascertaining whether there has been a breach of a condition of recognition or approval to which the awarding body, or its form of qualification, is subject. The authorised person and police officer may do various things (listed in subsection (6)) for that purpose. If the police officer needs to use force to enable the exercise of the powers, then this is permitted.

## **PART 7: SUPPLEMENTARY**

### **Section 40: Provision of services etc by Qualifications Wales**

88. Qualifications Wales is enabled to provide consultancy or other services on a commercial basis and to charge fees for this. Qualifications Wales may develop expertise in relation to qualifications that could be of value commercially. Unlike any charges to be made for its regulatory functions, the scheme for which requires the prior approval of the Welsh Ministers (see section 44), Qualifications Wales will be able to determine its own scale of charges for commercial activities without reference to the Welsh Ministers.
89. It may be expedient for Qualifications Wales to provide such services through a company. This section allows Qualifications Wales to provide the services through a wholly owned company, subject to the Welsh Ministers' approval.

### **Section 41: Review and research**

90. This section enables Qualifications Wales to review recognised awarding bodies and the awarding of approved qualifications on an ongoing basis, as well as to conduct any other reviews related to qualifications that are awarded in Wales. For example, Qualifications Wales may conduct a review of a specific, recognised awarding body's quality assurance processes, or it may decide to review the processes for delivering online assessment across all awarding bodies that it recognises. In relation to approved qualifications, Qualifications Wales may, for example, decide to review one awarding body's form of GCSE Biology, or it may decide, for example, to review all approved qualifications at a given level in the Credit and Qualifications Framework for Wales (such as at Entry level or Level 1).
91. The section requires Qualifications Wales to keep its own role and that of awarding bodies under review. This duty may encompass consideration of whether and in what way, in time, it should become an awarding body.

92. The section also gives Qualifications Wales the power to undertake or commission research, whether about qualifications in Wales or about topics connected with those qualifications. Qualifications Wales may use its own staff to carry out this research, or it may ask others to carry it out on its behalf.

#### **Section 42: Policy statements**

93. Qualifications Wales must publish information that sets out the approach it will take to performing its key regulatory functions. The purpose of the policy statement is to make Qualification Wales's approach to its regulatory functions transparent to those affected by them and the public generally. The statement must include information on the matters listed in subsection (2), as these matters could impact significantly on awarding bodies and how they conduct their business.
94. Qualifications Wales must also prepare a statement about the circumstances and the manner in which it proposes to carry out consultation. This is not confined to written consultations, and would also cover other forms of interaction with others with a view to getting their views.
95. Because Qualifications Wales may change its policies from time to time, these statements may need to be revised to reflect such changes. Both the first statement and any subsequent revised statements must be published.

#### **Section 43: Complaints**

96. Qualifications Wales must publish information that sets out the ways in which it will deal with complaints that it receives, whether they are about the exercise of its own functions, activities of a recognised awarding body (which are relevant to its recognition), or specifically in relation to the award of an approved qualification. The Bill requires Qualifications Wales to decide what procedures it will follow in the event of any of these types of complaints, and to publish these procedures. The procedures may be different according to the type of complaint. Qualifications Wales may decide that, once it has handled a complaint to a certain point, there is a need to refer the complaint to an independent third party. The Bill defines 'independent' as being someone who is neither a member of the Board of Qualifications Wales nor a member of its staff (or, in the case of the independent person being a body, if none of its members is a member of Qualifications Wales or a member of Qualifications Wales' staff).

#### **Section 44: Charging scheme**

97. If Qualifications Wales wishes to charge for certain of its regulatory activities, it must first produce a list of the proposed fees relating to Qualification Wales's costs in a scheme which is to be approved by the Welsh Ministers. The regulatory functions for which a scheme may set out fees are those listed in subsection (1), which does not cover enforcement functions in Part 5 (there is a specific power in section 36 for QW to recover costs in connection with imposing sanctions). Qualifications Wales can only charge fees in accordance with the scheme.

#### **Section 45: Grants**

98. This section enables Qualifications Wales to make grants and to place conditions on these grants, providing it considers it appropriate to do so in connection with any of its functions.

**Section 46: Provision of information or advice**

99. This section requires Qualifications Wales to provide information and advice on matters related to its functions to Welsh Ministers, as requested by them.

**Section 47: Joint working**

100. This section enables Qualifications Wales to work with others, providing it considers it appropriate to do so in connection with its own functions. For example, Qualifications Wales may wish to work jointly with other UK qualifications regulators on some matters.

**Section 48: Duty to have regard to government policy and other matters**

101. This provision enables the Welsh Ministers to issue a direction to Qualifications Wales that it should pay regard to one or more government policies and such other matters as specified in the direction. Any such direction must be published and may be varied or revoked.

**Section 49: Performance of regulatory activities by Qualifications Wales**

102. This provision requires Qualifications Wales, in performing the regulatory functions listed in subsection (1), to adopt principles of good regulation such as transparency, accountability, proportionality and consistency.

**PART 8: GENERAL**

**Section 50: Regulations**

103. This section sets out that the three sets of regulations referred to in subsection (2) are to be made by statutory instrument following the affirmative procedure which requires the National Assembly for Wales' approval before they can come into force. The powers to make the regulations referred to are provided in sections 21 (Power to specify minimum requirements), 33(3) (power to make regulations about the amount of monetary penalties) and 54 (Power to make consequential and transitional provision). But if regulations making consequential and transitional provision do not amend or repeal any provision of an Act of Parliament or a Measure or Act of the National Assembly for Wales, the negative procedure applies (subsection (3)).

**Section 51: Interpretation of references to "qualification"**

104. This section defines the qualifications that come within the Bill's compass. Degrees of various levels are excluded.
105. Subsection 3 provides that a qualification is defined as being awarded in Wales in relation to the location of the assessment, or prospective assessment, of learners, which must be wholly or mainly in Wales, rather than the location of the awarding bodies. Section 52 explains further what this means.
106. An award of a qualification is defined as including the award of credits in respect of components of a qualification and to a qualification awarded by one or more bodies together. References to a form of a qualification are to the version of a qualification that a particular awarding body offers or wishes to offer.

**Section 52: General interpretation and index of defined expressions**

107. This section provides that interpretations in the Education Act 1996 (c.56) are to be applied to this Bill. But where a provision in this Bill has a different interpretation of a term that also appears in the Education Act 1996, the definition in this Bill applies rather than the definition in the Education Act 1996.
108. Subsection 3 sets out a series of definitions which are self-explanatory and subsection 4 explains that, for the purposes of the Bill, where it is said that a person is assessed wholly or mainly in Wales, this refers to the location where the learner carries out the activities being assessed (for example sitting an examination or performing an observed activity) as opposed to the location of the person making the assessment judgement (for example an examiner marking question papers elsewhere in the UK).
109. Definitions are also provided in respect of what is meant in the Bill by references to persons with learning difficulties and to recognised bodies.

**Section 53: Consequential amendments**

110. This section introduces Schedule 4 containing consequential amendments to primary legislation to take account of the establishment of Qualifications Wales and a new regulatory system.

**Section 54: Power to make consequential and transitional provision etc.**

111. This section empowers the Welsh Ministers to make regulations to provide for any additional consequential, or incidental provision, or any transitional, transitory or saving provisions to give full effect to a provision of the Bill, or for the purposes of, or in consequence of, a provision of the Bill.

**Section 55: Coming into force**

112. This section provides for certain Bill provisions to come into force on Royal Assent. The remaining provisions of the Bill come into force on the date specified by the Welsh Ministers in commencement orders made under this section.

**Section 56: Short title and inclusion as one of the Education Acts**

113. This section is self-explanatory.

**SCHEDULE 1 QUALIFICATION WALES**

**PART 1 - ESTABLISHMENT OF QUALIFICATIONS WALES**

114. This Schedule is introduced by section 2.

**Paragraph 1: Status**

115. This paragraph explains that Qualifications Wales is not a Crown body.

**Paragraph 2: Membership**

116. This paragraph outlines the membership of Qualifications Wales. It identifies that the Chief Executive Officer will be a member of Qualifications Wales and that a chair and eight to ten ordinary members will be appointed by the Welsh Ministers.

**Paragraphs 3 to 9: The chair and ordinary members**

117. These paragraphs outline the requirements and restrictions relating to the appointments, resignation and potential removal of members of Qualifications Wales. The chair may be reappointed as chair once only, and restrictions on the ordinary members' the terms of appointment and reappointment enable the membership of Qualifications Wales to be regularly renewed.

**Paragraphs 10 to 16: The chief executive and other staff**

118. The first chief executive will be appointed by the Welsh Ministers, for a period of up to three years and subsequent appointments will be made by the members of Qualifications Wales. Reappointments to the role of chief executive are permitted.
119. Other than the first chief executive, Qualifications Wales appoints its own staff. Qualifications Wales will determine the terms and conditions, remuneration and pension provisions for staff – but these arrangements must be approved by the Welsh Ministers. The staff of Qualifications Wales will not be civil servants.

**Paragraphs 17 and 18: Committees**

120. The purpose of these paragraphs is to give Qualifications Wales powers to establish and to dissolve committees, sub-committees and joint committees. Qualifications Wales is able to pay remuneration and allowances to members of each of these three categories of committee.

**Paragraphs 19 to 21: Delegation**

121. The purpose of these paragraphs is to give Qualifications Wales the powers to delegate any of its functions to a member of Qualification Wales, to a member of staff, to a committee or to a joint committee. A committee or a joint committee may itself sub-delegate a function to one of its sub-committees. Joint committees may set the terms and extent of a delegation to a sub-committee, but any delegation is subject to any direction given by Qualifications Wales and the person with whom a joint-committee is established. The delegation and any direction govern what a committee may or may not do.

**Paragraphs 22 to 25: Procedure**

122. Qualifications Wales may determine the procedure (for example, the terms of reference) for itself, its committees and sub-committees. Joint committees may set out their own procedures. Vacancies in membership or deficiencies in appointments to Qualifications Wales, its committees, sub-committees or joint committees do not affect the validity of the proceedings (providing that proceedings, including quorum are adhered to).

**Paragraph 26: Register of interests**

123. This paragraph requires Qualifications Wales to record and publish its members' interests.

**Paragraph 27: Supplementary powers**

124. The purpose of this paragraph is to give Qualifications Wales the power do anything necessary or appropriate in relation to its functions. Sub-paragraph 2 sets out the exceptions to the general position, with the effect that Qualifications Wales can neither exceed any expenditure threshold set out by the Welsh Ministers, nor borrow or lend money, without the Welsh Ministers' approval. The expenditure threshold will be set out in a notice given to Qualifications Wales by the Welsh Ministers.

**Paragraphs 28 to 30: Annual and other reports**

125. The purpose of these paragraphs is to require Qualifications Wales to report annually to the National Assembly for Wales and to specify what that report must contain, while enabling Qualifications Wales to include additional information. As well as reporting on its work of the previous year, and setting out its proposals for the coming year, Qualifications Wales must report on any findings it has made in the reporting year about the impact of its activities on the effectiveness of the qualification system, about its engagement with stakeholders and about any conclusions it has drawn from research it has undertaken.
126. Qualifications Wales must submit its report annually to the National Assembly for Wales. The reporting year runs to 31 August each year and the annual report should be submitted as soon as reasonably practicable after that date. The annual report must be published. Qualifications Wales may produce and publish additional reports as it sees fit.

**Paragraph 31: Finance**

127. This paragraph enables the Welsh Ministers to provide funding, in the form of grants, to Qualifications Wales.

**Paragraph 32: Accounts and audit**

128. These paragraphs set out the accounts and audit processes required of Qualifications Wales. These include the preparation and submission to the Auditor General of an annual statement of accounts, in accordance with directions provided by the Welsh Ministers, by 31 August each year. The paragraph also places duties on the Auditor General in relation to the statement of accounts and defines the applicable financial year.
129. Qualifications Wales must ensure it keeps proper accounts and records, and prepare a statement of accounts for each financial year. The Welsh Ministers have the power to issue directions to Qualifications Wales on the preparation of accounts statement, including, for example, the information to be contained in the statement, how the information needs to be presented, the method and principles which the statement needs to be made and any other additional information to be included.
130. The Welsh Ministers may vary or review a direction given to Qualifications Wales at any time.

**Paragraph 35: Examination of use of resources**

131. This paragraph enables the Auditor General for Wales to audit the performance of Qualifications Wales (but not the merits of Qualifications Wales' policy objectives).

**SCHEDULE 1 PART 2**

**Paragraphs 36 to 40: Consequential Amendments**

132. These paragraphs contain amendments to primary legislation. The effect of these amendments is that Qualifications Wales
- a) will become subject to review by the Children's Commissioner for Wales and the Commissioner for Older People in Wales;
  - b) must adhere to the requirements of the Freedom of Information Act 2000;
  - c) may be investigated by the Public Services Ombudsman for Wales; and
  - d) must comply with duties under the Equality Act 2010.

**SCHEDULE 2: TRANSFERS OF PROPERTY AND STAFF TO QUALIFICATIONS WALES**

133. The purpose of this Schedule is to enable the Welsh Ministers to transfer property, rights, liabilities and staff to Qualifications Wales through a transfer scheme or schemes. The Welsh Ministers must lay the scheme(s) before the National Assembly for Wales as provided in paragraph 5.
134. Paragraph 1(3) sets out a non-exhaustive list of the provisions that may be made in the scheme, including creating rights and imposing liabilities, providing for matters transferred to have a continuing effect, and to make provision which is the same as or similar to a provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 in circumstances where those regulations do not apply.
135. Paragraph 2 allows for the scheme to be modified by agreement of Qualifications Wales and the Welsh Ministers and for such modifications to be back-dated to the original date of the scheme.
136. Paragraph 3 provides clarification about how the employment of individuals in the civil service is to be treated when they transfer to Qualifications Wales.
137. Paragraph 4 provides for the meanings of defined terms appearing in this Schedule.

**SCHEDULE 3: FURTHER PROVISION ABOUT RECOGNITION OF AWARDING BODIES**

**Paragraph 1: Duration of recognition**

138. This paragraph clarifies the start date of an awarding body's recognition and specifies the three circumstances when recognition ceases.

**Paragraphs 2 and 3: Standard Conditions of Recognition**

139. These paragraphs place a duty on Qualifications Wales to publish ‘standard conditions of recognition’ which will apply to awarding bodies once they have been recognised. As is the case for the criteria for recognition, the provisions allow for different conditions to be applied in relation to:
- a) different types of awarding bodies (for example, ‘awarding bodies which are membership organisations’);
  - b) different types of qualification (for example, ‘awarding bodies offering externally marked qualifications’);
  - c) different circumstances in which a qualification is awarded (for example when a qualification is awarded following the resit of a module by a candidate); and
  - d) different descriptions of person to whom a qualification is awarded (for example when awarded to learners under the age of 19).
140. Standard conditions will normally apply to recognised awarding bodies, but Qualifications Wales will be able to decide that, in particular cases, some standard conditions will not apply, and may make that decision either when granting recognition or afterwards. Qualifications Wales can also revoke its decision. Paragraph 2(6) provides that ‘fee capping’ and ‘transfer’ conditions are not standard conditions (see paragraph 4 of Schedule 3 for more information about fee-capping and transfer conditions).
141. Qualifications Wales can revise the standard conditions, but if it does so it must publish the revisions, notify recognised bodies and be clear about the date from which they apply (which, in relation to a body, cannot be before it has been notified of it). Different start dates may apply for different bodies.

**Paragraphs 4 and 5: Special conditions to which recognition may be subject**

142. These paragraphs set out other types of conditions (known as special conditions) that may be placed on a recognised awarding body by Qualifications Wales, including (but not limited to) fee-capping (a requirement that fees don’t exceed a given limit); transfer (the purpose of which is to ensure that an approved qualification awarded by the recognised body may be awarded by another body); and a requirement for recognised awarding bodies to comply with directions given by Qualifications Wales. Similar provision is made for Qualifications Wales to revise or revoke these special conditions, with a requirement for clarity in relation to notification and timing.

**Paragraphs 6 to 11: Fee capping conditions**

143. These paragraphs define what a fee capping condition is. They can only limit fees in relation to qualifications awarded to learners, who are undertaking publicly funded courses of education or training leading to those qualifications. Qualifications Wales must be satisfied that it is appropriate to impose the condition to secure value for money. A “course of education which is publicly funded” is defined in paragraph 6(2).
144. Paragraph 8 sets out the process by which Qualifications Wales may impose a fee capping condition, including the requirement to give notice to awarding bodies of its

intention to impose the condition, give reasons for why it intends to impose the condition and say when it is proposed to decide whether to impose the condition. Qualifications Wales must consider representations made by the recognised body and if it decides to impose the condition, the awarding body must be notified of this and also of its right to request a review of the decision. The notice must also say when the condition takes effect if the awarding body does not make a request for review.

145. If the awarding body requests a review of the decision to impose a fee-capping condition, paragraph 10 provides details about the arrangements Qualifications Wales must make in arranging for an independent reviewer to review the decision. Following the review, if Qualifications Wales confirms its decision to impose the condition, or changes the condition, then Qualifications Wales must give notice to the awarding body which includes the details set out in paragraph 10(5).
146. Paragraph 11 requires Qualifications Wales to follow the same procedure for issuing a variation to a fee-capping condition as for the issue of an initial fee-capping condition.

#### **Paragraph 12 to 16: Transfer conditions**

147. A transfer condition may enable Qualifications Wales to direct an awarding body to transfer things to another awarding body in order for that other body to award the qualification. The grounds for giving such a direction are that Qualifications Wales considers it necessary to do so to avoid significant adverse effects on learners. If events described in the condition come to pass, Qualifications Wales may direct an awarding body to make arrangements to enable another awarding body to deliver an approved form of a qualification. Qualifications Wales must set out in a policy statement the circumstances in which a direction is likely to be given to an awarding body in accordance with a transfer condition and the likely subject matter of any such direction (section 42).
148. Paragraphs 13 and 14 set out the process for Qualifications Wales to make the direction, for the awarding body to be notified of a proposed direction, and for the body to be able to request a review of any subsequent decision to direct. Paragraph 16 sets out the details of the process for review by an independent person. If following the review Qualifications Wales confirms its decision, paragraph 16 also requires Qualifications Wales to notify the body and sets out what details the notice must contain.
149. Paragraph 15 enables Qualifications Wales to pay compensation to the body in respect of losses sustained in complying with the direction, but only if Qualifications Wales thinks it is reasonable and appropriate to do so in the circumstances. Qualifications Wales, in a policy statement under section 42, must set out the matters it is likely to take into account in determining whether to make such a payment and in determining the amount of it.

#### **Paragraph 17 and 18: Surrender of recognition**

150. Under paragraph 17, a recognised awarding body may give Qualifications Wales a surrender notice asking it to remove its recognition of the awarding body. The surrender notice must specify the date on which the awarding body wishes the

recognition to end. Qualifications Wales must give the awarding body an acknowledgement of surrender which sets out the date that recognition will come to an end. The date may be that proposed by the awarding body or a different date, as Qualifications Wales thinks appropriate. Qualifications Wales must give reasons in the notice as to why a different date is provided from that proposed by the awarding body, and paragraph 17 refers to the matters Qualifications Wales must consider in deciding upon the date for recognition to be surrendered, which are the need to avoid prejudice to learners and the awarding body's wish that recognition cease on the date it has specified.

151. Under paragraph 18, Qualifications Wales, for a specified period of time, may treat a body that has surrendered its recognition as if it continues to be recognised for specified purposes. Qualifications Wales may only make such a provision if it thinks it appropriate to do so to avoid prejudice to learners.

### **Paragraphs 19 to 23: Withdrawal of Recognition**

152. These paragraphs enable Qualifications Wales to end its recognition of an awarding body in respect of a qualification or every qualification in respect of which it is recognised. Recognition may be withdrawn if the awarding body does not comply with conditions of recognition or conditions of approval of qualifications.
153. The process for withdrawing recognition is set out in paragraphs 20 to 22 and includes requirements to give notice with reasons for the proposal to withdraw, to consider representations made by the recognised body, to notify the awarding body of a decision to withdraw and its right to review and to make arrangements for an independent review of the decision to withdraw, if the awarding body requests such a review. If following the review Qualifications Wales confirms its decision to withdraw recognition, the awarding body must be notified of the decision and when the withdrawal will take effect.
154. Paragraph 23 sets out that notices given by Qualifications Wales under paragraphs 21 or 22 (withdrawing, or confirming withdrawal of, recognition) can make a provision to the effect that a body that has had its recognition withdrawn, is treated as if it is recognised for a specified time and for specified purposes. This is to avoid prejudice to learners. The notice must include the additional information set out in paragraph 23(3).

## **SCHEDULE 4: CONSEQUENTIAL AMENDMENTS**

155. This Schedule makes changes to primary legislation to reflect that this Bill establishes Qualifications Wales as the regulator of a new system of approved qualifications in Wales; one such change is the repeal of the Welsh Ministers' regulatory functions relating to qualifications under the Education Act 1997.

## **Annex B – Costing the Options**

### **Principal Assumptions**

- 1 As part of the development of the costing analysis, the following key assumptions were used:

#### **Establishment of the organisation**

- 2 For the purposes of these costings, the policy intention for the organisation's commencement of operations in September 2015 has been followed for each option.
- 3 For Option 1b, additional staff have been costed from September 2015.
- 4 For Option 2, the commencement of functions of the Commissioner's Office is costed from September 2015.
- 5 For Option 3, costs have been calculated on the basis that the organisation will be established soon after Royal Assent, in the summer of 2015, and that its qualifications functions will be commenced from September 2015. These costings have been made using these additional assumptions:
  - That the Shadow Board will be recruited from April 2015.
  - That four senior members of staff will be recruited from April 2015.
  - That office fit-out and infrastructure installation will occur over the summer of 2015.
  - That staff will transfer from Welsh Government to the new organisation in September 2015.

#### **Status of the organisation**

- 6 It has been assumed that the organisation would not have charitable status and would not attract a UK corporation tax charge. It has also been assumed that Qualifications Wales would become VAT-registered, based on comparator organisations.
- 7 Any changes to tax status could have a significant impact on the costs incurred.

#### **Staff costs**

- 8 Salary and on-cost data was based on a combination of Welsh Government rates and market salary rates. The following information was used to produce estimated costs:

- Pay scales related to grade.
  - Current pay costs for current staff in Qualifications and Regulation Division (numbering 37, in August 2013).
  - An estimated Senior Civil Service salary and on-costs figure for the Commissioner role for option 2.
  - Estimates of the number of additional regulatory and corporate staff required for Options 2 and 3.
- 9 For Options 1b and 2, the salary costs used were from work undertaken by consultants PwC to develop optional models for use by Ministers when considering the policy to establish Qualifications Wales in 2013. As these models were not explored in depth, their staffing complements and job descriptions remained theoretical and were based on average market rates. As further detailed work on these models was not undertaken, it was not felt appropriate artificially to try to match these into Welsh government salary bands, and, therefore, it was felt to be more representative to use workings of average salary cost for those models for comparison with the preferred model. The staffing figures for Option 3 are more detailed, and use the tops of Welsh Government salary scales. It is felt that, while the organisation design is not finalised, this better reflects the full potential cost of the organisational structure.
- 10 Recruitment costs have been based on an industry average cost of recruitment per head as the method of recruitment is not yet determined.
- 11 No inflationary elements have been included within the model, nor have any potential movements in pay scales over time of employees.
- 12 The non-inclusion of inflation could mean that the salary costs increase slightly from year 1 onwards.

### **Training**

- 13 This has been based on a per head calculation drawn from comparator organisations.
- 14 It has been assumed that there will be annual training for all staff, and some initial induction training for all new posts.

### **Governance Board**

- 15 The structure of this Board has been assumed as comprising a Chairman, remunerated at £35,000 per annum, with the remaining 10 members being remunerated at £7,500 per annum. It is assumed that these figures include fees and travel and subsistence costs.

### **Travel and subsistence costs**

- 16 These have been calculated based on current Welsh Government expenditure per head (and cross checked with budgetary information for comparator organisations).
- 17 It has been assumed that the travel and subsistence costs for both Options 2 and 3 would be the same, as it would be mainly regulatory staff making such claims. This also serves to better reflect the actual cost difference between the two options.

### **ICT costs**

- 18 For Option 2, it has been assumed that the Welsh Government ICT running costs will be charged to the organisation at current rates.
- 19 For Option 3, the estimate for up-front capital cost of hardware and systems was drawn from a detailed scoping study and budgetary quotations obtained. It was cross-checked against costs shown in Ofqual accounts.
- 20 Work has been undertaken on the ICT systems and hardware required for Option 3, and a revision to these costs may be required once the detailed survey of the new premises is undertaken by telecommunications providers.

### **Programme spend**

- 21 The programme expenditure has been estimated at £2,380,000 per annum for five years, for all options. This expenditure covers areas such as research, communication and expert services which would be incurred regardless of which option was taken forward.

### **Inflation impact**

- 22 No inflation has been included within the general operating cost base.

### **Qualifications climate**

- 23 It has been assumed that no crises or significant changes will occur to the qualifications system in Wales, during the period of costing, and that the level of funding granted to Qualifications Wales will remain the same.

### **Cost of effecting the model**

- 24 The cost of the project to effect Option 2 excludes the cost of the HR and Location workstreams. Whilst Option 3 required primary legislation and Option 2 didn't, it was felt that the legislative support required to repeal

Ministerial functions was comparable, and the calculation of remaining costs was the same for both options. The cost of producing legislation is excluded from this cost.

### **Comparison with other public organisations**

- 25 It was assumed that the models being costed would be suitably comparable with other public organisations. Publicly-available information was used with regard to comparator organisations, and further expertise and information was sought from amongst those and other organisations in order to provide costing information.
- 26 These organisations are listed at paragraphs 91-93 below.

### **Presentation**

- 27 All calculations have been rounded to the nearest £1,000, with the exception of staffing costs, whose calculation are necessarily detailed. Those totals have been rounded to the nearest £1,000.

## **Option 1**

**Option 1a - Do nothing: Welsh Ministers maintain their regulatory function.**

**Option 1b - Do nothing but continue to respond to the gradual separation from three-country practises, with the qualifications reform (following the *Review of Qualifications*) in Wales taking place guided by officials in the Qualifications and Regulation Division in Welsh Government.**

### **Detailed Assumptions – Option 1a**

#### **Staffing**

- 28 These costs have been calculated using the assumption that the complement of the Qualifications and Regulation Division would remain constant at 37 staff.

### **Detailed Assumptions – Option 1b**

#### **Staffing**

- 29 These costs have been calculated using the assumption that, in addition to the 37 Qualifications and Regulation Division staff, 23 further staff will be recruited to continue the development of the qualifications reform agenda, thus:

- Moving away from three-country working  
An additional estimated 15 qualifications/regulatory staff have been costed to strengthen the regulatory function and perform additional duties similar to those tasks currently performed by Ofqual on behalf of Welsh Government. These include, for example, a range of accreditation, monitoring, review and regulatory development tasks. This estimate is mirrored in the estimated additional regulatory staff proposed in Option 2.
  - Research activity  
A greater level of research would be undertaken and managed by an estimated 3 staff to better inform the qualifications reform and ongoing activity in Wales
  - Qualifications commissioning  
An additional estimated 5 staff have been costed to oversee the procurement of commissioned call-off contracts in relation to the single suite of qualifications to be commissioned for Wales.
- 30 In order to maintain consistency with other options, additional staff are costed from September 2015, to align with the changes of activity proposed in Options 2 and 3.
- 31 Option 1b costs a total staffing complement from September 2015 of 60 staff.

## Calculations

### Revenue Costs: Staff – Qualifications Functions

- 32 Additional staff structures have been estimated from preliminary organisational design structure concepts being developed for the Qualifications Wales of the preferred Option (3). These account for additional regulatory, research and commissioning and procurement teams being required.

**Table 5**

Grade	Salary £	x	Salary cost £	On-cost %	On-cost £	2015-2016 Set-up	2015-2016 Operating	Ongoing	Source / Assumption
<b>Current regulatory staff (37)</b>						650,811	911,136	1,561,947	Welsh Government figures
<b>Estimated additional regulatory staff</b>									
G6	62,850	1	62,850	0.32	20,112				Welsh Government salary information
G7	51,025	4	204,100	0.32	65,312				
SEO	39,425	3	118,275	0.27	31,934				
HEO	30,725	3	92,175	0.27	24,887				
EO	24,075	2	48,150	0.27	13,001				
TS	19,075	2	38,150	0.24	9,156				
		15	563,700		164,402				
Cost of additional regulatory staff, including on-costs					728,102			728,102	
Pro-rated for 7 months to March 2016							424,726		
<b>Estimated additional research function staff</b>									
G7	51,025	1	51,025	0.32	16,328				Estimated from provisional OD concept
SEO	39,425	2	78,850	0.27	21,290				
		3	129,875		37,618				
Cost of additional regulatory staff, including on-costs					167,493			167,493	
Pro-rated for 7 months to March 2016							97,704		
<b>Estimated additional commissioning / procurement staff</b>									
G7	51,025	1	51,025	0.32	16,328				Estimated from provisional OD concept
SEO	39,425	2	78,850	0.27	21,290				
HEO	30,725	2	61,450	0.27	16,592				
		5	191,325		54,209				
Cost of additional regulatory staff, including on-costs					245,534			245,534	
Pro-rated for 7 months to March 2016							143,228		
						<b>£ 651,000</b>	<b>£ 1,577,000</b>	<b>£ 2,703,000</b>	Rounded to the nearest £1,000

**Revenue Costs: Staff – Non-pay**

33 Costs here reflect the current non-pay costs for Option 1a.

**Table 6**

Revenue Costs: Staff - Non-pay	Ongoing	Source / Assumption
Ordinary training costs	45,000	Welsh Government. Ave. £1,214 per head p.a.
Travel and subsistence	19,000	Welsh Government. Ave. £505 per head p.a.
	<b>£64,000</b>	

**Revenue Costs: Staff – Additional Non-pay**

34 These comprise:

- Travel and subsistence for additional regulatory staff for the seven months from September 2015 – March 2016, and following.
- Training costs for existing staff, and for additional regulatory, research and commissioning/procurement staff for September 2015-March 2016.
- Setting-up costs associated with training staff for new ICT systems.
- Recruitment costs.

**Table 7**

<b>Additional Revenue Costs: Staff - Non-pay</b>	<b>2015-16 Set-up</b>	<b>2015-16 Operating</b>	<b>Ongoing</b>	<b>Source / Assumption (Rounded to nearest £1,000)</b>
<b>New Staff Costs</b>				
Recruitment of 23 new staff	46,000			At CIPD average £2k per head
Up-front training on new systems		28,000		At average of £1,214 per head per annum
ICT Charges		23,000	40,000	Welsh Government Charge @ £145 per head pcm
Ordinary training costs		16,000	28,000	Ave. £1,214 per head p.a.
Travel and subsistence		4,000	8,000	Ave. £505 per person p.a. 15 Regulatory staff 09.2015
	<b>46,000</b>	<b>71,000</b>	<b>£76,000</b>	

**Revenue Costs: ICT**

- 35 These costs reflect the set-up and ongoing costs associated with the replacement for DAQW.

**Table 8**

<b>Revenue Costs: ICT</b>	<b>2015-2016 Set-up</b>	<b>2015-2016 Operational</b>	<b>Ongoing</b>	<b>Source / Assumption</b>
DAQW (Set up new database)	115,000			
Welsh Government ICT Resources	144,000			
DAQW (ongoing costs)			29,000	
ICT Contractor		30,000	50,000	Band F Equivalent
	<b>£ 259,000</b>	<b>£30,000</b>	<b>£79,000</b>	

**Option 2**

**Do minimum: Create an independent Commissioner role and office scrutinising the activity of an internal Welsh Government unit.**

**Detailed Assumptions****Legislation**

- 36 It is assumed that legislation to repeal Welsh Ministers' functions, and confer them upon a Commissioner role would take place under the same timetable as the one for this Bill.

**Relocation**

- 37 It has been assumed that there will be no relocation costs for staff for this option.

### ICT Costs

- 38 For this option, it has been assumed that Welsh Government ICT running costs will be charged to the organisation at current rates.

### Staffing

- 39 This Option requires the current 37 Qualifications and Regulation Division staff, plus (as for Option 1b) a further 15 regulatory staff estimated to be required to fulfil additional functions as the organisation moves away from three-country working, 3 staff to perform research functions, and 5 staff members to manage the commissioning and procurement aspects of the unit's remit, bringing the total of qualifications functions staff to 60.
- 40 In addition, 20 additional corporate staff members are required to support the Commissioner, and the Advisory Board. The total corporate staffing structure is 32, including 11 Board Members.
- 41 The total staff complement for this Option, including the Commissioner, is 92.

### Calculations

#### Revenue Costs: Cost of Project to Effect Organisation

- 42 The cost of the project to effect the new organisation has been costed as similar to actual costs, less costs relating to the HR and Location workstreams.

**Table 9**

Cost of Project to Effect the Organisation	2015-2016	Ongoing	Source / Assumption (to nearest 1000)
Qualifications Wales - Transition Project Team	560,000		Salaries, including on-costs
Legal & Professional Advice	200,000		Estimated
ICT Contractors	250,000		Estimated
Other Project Running Costs	80,000		T&S / Catering / Car Hire / Accommodation
	<b>£ 1,090,000</b>	<b>£ -</b>	

#### Revenue Costs: Staff – Qualifications functions

- 43 It is assumed that the internal Welsh Government department in this model will comprise the existing complement of the Qualifications and Regulation Division staff (37), plus 15 additional regulatory staff, 3 additional research staff, and 5 staff to manage the commissioning activity. The calculation of the annual cost for staff uses current Welsh Government salary scales and is shown below:

**Table 10**

Grade	Salary £	x	Salary cost £	On-cost %	On-cost £	2015-2016 Set-up	2015-2016 Operating	Ongoing	Source / Assumption
<b>Current regulatory staff (37)</b>						650,811	911,136	1,561,947	Welsh Government figures
<b>Estimated additional regulatory staff</b>									
G6	62,850	1	62,850	0.32	20,112				Welsh Government salary information
G7	51,025	4	204,100	0.32	65,312				
SEO	39,425	3	118,275	0.27	31,934				
HEO	30,725	3	92,175	0.27	24,887				
EO	24,075	2	48,150	0.27	13,001				
TS	19,075	2	38,150	0.24	9,156				
		15	563,700		164,402				
Cost of additional regulatory staff, including on-costs Pro-rated for 7 months to March 2016					728,102			728,102	
							424,726		
<b>Estimated additional research function staff</b>									
G7	51,025	1	51,025	0.32	16,328				Estimated from provisional OD concept
SEO	39,425	2	78,850	0.27	21,290				
		3	129,875		37,618				
Cost of additional regulatory staff, including on-costs Pro-rated for 7 months to March 2016					167,493			167,493	
							97,704		
<b>Estimated additional commissioning / procurement staff</b>									
G7	51,025	1	51,025	0.32	16,328				Estimated from provisional OD concept
SEO	39,425	2	78,850	0.27	21,290				
HEO	30,725	2	61,450	0.27	16,592				
		5	191,325		54,209				
Cost of additional regulatory staff, including on-costs Pro-rated for 7 months to March 2016					245,534			245,534	
							143,228		
						<b>£ 651,000</b>	<b>£ 1,577,000</b>	<b>£ 2,703,000</b>	Rounded to the nearest £1,000

- 44 The cost of additional staff in 2015-2016 is for the 7 months from September 2015 to March 2016.
- 45 This cost of qualifications functions staff mirrors that shown in Option 1b for qualifications functions staff.

#### Revenue Costs: Staff - Corporate

- 46 The corporate staff costs include additional salary costs of the Commissioner role, their administrative staff and the Governance Board. The annual cost of corporate officers for Option 2 is calculated below:

Table 11

Grade	Av.ge Salary £	x	Salary / Fees £	On-cost %	On-cost £	2015-16	Ongoing	Source / Assumption
<b>Governance Board</b>								
Chair	35,000	1	35,000		-	20,417	35,000	Fees, no on-costs, inc T&S
Members	7,500	10	75,000		-	43,750	75,000	Fees, no on-costs, inc T&S
<b>Corporate Team</b>								
Head of Corp. Servs	55,500	1	55,500	0.32	17,760			
EA	42,850	1	42,850	0.27	11,570			
PA	33,900	1	33,900	0.27	9,153			
TS / Recep	25,750	1	25,750	0.24	6,180			
IT Support	42,850	1	42,850	0.27	11,570			
Finance Support	42,850	1	42,850	0.27	11,570			
HR Support	42,850	1	42,850	0.27	11,570			
Deputy C.ssr	62,850	1	62,850	0.32	20,112			
Research Officers	33,900	3	101,700	0.27	27,459			
Policy Officers	42,850	4	171,400	0.27	46,278			
Research Ass.ts	25,750	2	51,500	0.24	12,360			
Public Affairs Office	42,850	1	42,850	0.27	11,570			
Head of Comms	55,500	1	55,500	0.32	17,760			
Comms Ass.t	33,900	1	33,900	0.27	9,153			
		31	806,250		224,063			
Total cost of additional corporate staff, including on-costs					1,030,313		1,030,313	
Pro-rated for 7 months to March 2016						601,016		
<b>Commissioner</b>					-	165,000	165,000	Estimate includes on-costs
						<b>£ 830,000</b>	<b>£ 1,305,000</b>	Rounded to nearest £1,000

- 47 The cost of the Commissioner in 2015-2016 is for the full year. Costs for the Board Members' fees are for the 7 months from September 2015 to March 2016.
- 48 Costs have been calculated based on accounting data available from Welsh Commissioners' offices of comparable size. Because this Option was not explored in depth, as it was quickly disregarded on account of its not meeting policy criteria, there is a possibility that the size and structure of the Commissioner's office could be very different, depending on the precise scope of the Commissioner's work, and therefore the number of staff required. The Option presented here is a conservative estimate of a Commissioner's Office of 20 supporting staff, costing £2,172,000 in its first year, but other Commissioner's offices have a staffing structure of approximately 50, which could more than double the cost of the Qualifications Commissioner's Office to £5,010,000 in its first year. The calculation of this range of figures is presented in the table below:

**Table 12**

<b>First 12 months with the estimate of 20 staff</b>	
Cost of Board	£110,000
Cost of Commissioner	£165,000
Cost of 20 Staff	£1,030,000
Non-pay costs	£138,000
Premises	£235,000
Capital Premises	£90,000
ICT (Revenue and Hardware Setup)	£404,000
	<b>£2,172,000</b>
<b>First 12 months with the estimate of 50 staff</b>	
Cost of Board	£110,000
Cost of Commissioner	£165,000
Cost of 50 Staff	£2,576,000
Non-pay costs	£344,000
Premises	£470,000
Capital Premises	£335,000
ICT (Revenue and Hardware Setup)	£1,010,000
	<b>£5,010,000</b>

**Revenue Costs: Staff – Non-pay**

49 These are shown at Table 13 and comprise:

- Travel and subsistence for existing staff, and for additional regulatory and corporate staff for the seven months from September 2015 – March 2016.
- Training costs for existing staff, and for additional regulatory and corporate staff for September 2015-March 2016.
- Setting-up costs associated with training staff for new ICT systems
- Recruitment costs.
- ICT charge to organisation by Welsh Government.

50 Only regulatory staff and the Commissioner are costed for travel and subsistence purposes.

51 Training costs and ICT charges are not calculated for the 11 Board Members.

**Capital Costs: ICT**

52 This cost relates to ICT hardware and office peripherals required to enable a standard office to function. Costs have been calculated using the same figures used for Option 3, which have been revised and pro-rated to fit Option 2.

**Table 13**

<b>Additional Revenue Costs: Staff - Non-pay</b>	<b>2015-16 Set-up</b>	<b>2015-16 Operating</b>	<b>Ongoing</b>	<b>Source / Assumption (Rounded to nearest £1,000)</b>
<b><i>New Qualifications Staff Costs</i></b>				
Recruitment of new staff	46,000			At CIPD average £2k per head (23 staff)
Up-front training on new systems		28,000		At average of £1,214 per head per annum (23 staff)
ICT Charges		23,000		Welsh Government Charge @ £145 per head pcm (23)
Ordinary training costs		16,000		Ave. £1,214 per head p.a. (23 staff)
Travel and subsistence		4,000		Ave. £505 per head p.a. (15 Reg Staff from 09.2015)
	46,000	71,000	-	
<b><i>New Corporate Staff Costs</i></b>				
Recruitment of new staff	64,000			At CIPD average £2k p.c. (32 staff, inc. Board, Ccsr)
Up-front training on new systems		25,000		At average of £1,214 per head per annum (21 staff)
Ordinary training costs		15,000		Ave. £1,214 per head p.a. (21 staff)
Travel and subsistence		3,000		Ave. £505 per head p.a. Ccsr+10 Reg Staff from 09.15
	64,000	43,000	-	
<b><i>Ordinary Staff Costs</i></b>				
Ordinary training costs	19,000	26,000	79,000	Ave. £1,214 per head p.a. (37, then 65 staff)
Travel and subsistence	8,000	11,000	26,000	Ave. £505 per person p.a. (Total 52 Regulatory staff)
ICT Charges	27,000	38,000	113,000	Welsh Government Charge @ £145 per head pcm
	54,000	75,000	218,000	
	<b>£ 164,000</b>	<b>£ 189,000</b>	<b>£ 218,000</b>	

**Capital Costs: Fixtures and Fittings**

- 53 This cost relates to office fixtures and fittings estimated to furnish a standard office. Costs have been calculated using the same figures used for Option 3, which have been pro-rated to fit Option 2.

**Revenue Costs: ICT**

- 54 The new organisation will require set-up costs within Welsh Government for its database, website, records management and internal communications. It has been assumed that a contractor would be retained to maintain the database used for Option 2. Fees for this are included in the Revenue Costs for ICT.
- 55 Hardware costs relate to the replacement of small peripherals such as mobile phones, printer capability and video-conferencing capability on an ongoing basis.

**Table 14**

Revenue Costs: ICT	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption
<b>SET-UP COSTS</b>				
Web Site Consultancy	78,000			All costs include VAT
DAQW	115,000			
Welsh Government ICT Resources	144,000			
Gartner (ICT Consultants)	19,000			
<b>OPERATING COSTS</b>				
Web Site Consultancy			32,000	
DAQW			29,000	
Contractor		29,000	50,000	Band F Equivalent
Hardware			27,000	
	<b>£ 356,000</b>	<b>£29,000</b>	<b>£138,000</b>	

### Revenue Costs: Premises

- 56 These costs include maintenance, stationery and postage costs, and are estimated from accounting data from a comparable organisation.

**Table 15**

Revenue Costs: Premises	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption
<b>OPERATING COSTS</b>				
Rent	-	41,000	71,000	Using comparable organisation figures
Repairs, Maintenance, Security	-	27,000	47,000	Using comparable organisation figures
Administration and Office Costs	-	68,000	117,000	Using comparable organisation figures
	<b>-</b>	<b>£136,000</b>	<b>£235,000</b>	

### Revenue Costs: Other, Legal & Professional

- 57 These costs have been estimated from accounting data from a comparable organisation.

**Table 16**

Revenue Costs: Other, Legal and Professional	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption (Rounded to nearest £1,000)
<b>OPERATING COSTS</b>				
Communications		41,000	71,000	Based on comparable organisation
ICT		30,000	51,000	Based on comparable organisation
Legal and professional costs		25,000	42,000	Based on comparable organisation
Insurance		34,000	58,000	Based upon £1,048 per employee, capped at £60k
	<b>-</b>	<b>£130,000</b>	<b>£222,000</b>	

### Depreciation

- 58 Depreciation has been calculated on a flat line over 5 years after 12 months from the transfer of assets to Qualifications Wales.

**Table 17**

Revenue Costs: Depreciation	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption
<b>OPERATING COSTS</b>				
ICT Hardware	0	14000	24,000	
Fixtures and Fittings	0	11000	18,000	
	<u>£0</u>	<u>£25,000</u>	<u>£42,000</u>	

## Option 3

### Detailed Assumptions

#### Property data – Option 3

- 59 Estimated space requirements were used of 10m<sup>2</sup> per person. A mid-point was also taken from high- and low-end property costs to provide further costs.
- 60 Business rates have been based on industry averages for the required square footage of the property.
- 61 Based on an understanding of the current market, no premium has been built into the costing of the property lease, nor has any rent-free period on inception of the lease.
- 62 Further work is being undertaken on the location of the new organisation. Any significant changes to estimated costs will be provided during scrutiny of the Bill.

#### Other costs

- 63 Costs such as electricity, gas, water, legal and professional and office administration costs have been based on per head costing drawn from comparator organisations.
- 64 Insurance and audit fees have been based on organisation of similar size and structural complexity.

#### Financing

- 65 For the purpose of these costings, it has been assumed that, while there is an intention for the organisation to generate a small amount of independent income in due course, the organisation will be 100% funded by Welsh Government grant-in-aid for its first five years.

## **Funding**

- 66 In estimating the amount of programme funding required by Qualifications Wales, it is assumed that:
- There will be minimal qualifications development costs, as these are borne by awarding bodies.
  - There will be no large-scale crises.
  - Any internal communications costs, or staff training, will be borne through corporate services.
  - Qualifications Wales will have minimal subject expertise (and therefore buy it in when required).
  - Qualifications Wales will do minimal work on curriculum matters.
  - Any major qualification or system reform work will be undertaken through a funded remit letter.
  - There will be no instances of needing to go to court.
  - Qualifications Wales will offer support, but not CPD, to practitioners.
  - Qualifications Wales will not commission UKCES for NOS development (which currently utilises £300k of the Qualifications and Regulation Division budget).

## **Pensions**

- 67 It is assumed that all employees will be admitted into the Civil Service Pension Scheme on comparable terms and conditions, and that no transfer issues will arise of the existing Welsh Government staff.

## **TUPE**

- 68 Similarly, it is assumed that there will be no issue in relation to TUPE or COSOP and (for salary and estimated recruitment costs) that all staff in the Qualifications and Regulation Division of the DfES will transfer to Qualifications Wales.

## **Qualifications market**

- 69 It is estimated that the impacts/results of the first round of commissioned qualifications will not be evident or available until September 2020 at the earliest.
- 70 It is assumed that in relation to general qualifications, WJEC will be the single provider until the next review period when a new commissioning approach can be introduced. As this is at least 3-4 years away, it is impossible to accurately predict future commercial activity and therefore it has not been done.
- 71 It is assumed that in relation to vocational qualifications, the new body will start to consider the current provision for various professional or

industry sectors and may, as a result, commission new qualifications as a result. While this may take effect from September 2016, it is assumed that this approach will not affect the majority of vocational qualifications for at least 3-4 years, and it is therefore impossible to accurately predict future commercial activity.

### Staffing

- 72 This Option estimates a total of 73 members of staff for Qualifications Wales, which includes the current 37 staff employed in Qualifications and Regulation Division in the Welsh Government.
- 73 In addition to these staff are the organisation's Governance Board and Chairman who total 11, bringing the total staff complement for this Option to 84.

### Calculations

#### Revenue Costs: Cost of Project to Effect Qualifications Wales

- 74 The cost of the Transition Project includes the cost of the project to effect the organisation, but excludes the cost to Welsh Government of producing legislation.

**Table 18**

Cost of Project to Effect the Organisation	2015-2016	Ongoing	Source / Assumption (To nearest £1,000)
Qualifications Wales - Transition Project Team	661,000		Salaries, including on-costs
Legal & Professional Advice	202,000		Estimated
ICT Contractors	255,000		Estimated
Other Project Running Costs	84,000		T&S / Catering / Car Hire / Accommodation
	<b>£ 1,202,000</b>	<b>£ -</b>	

#### Revenue Costs: Staff – Corporate

- 75 These costs have been calculated with the expectation that a significant proportion of the organisation's corporate staff will be in place before it is established.
- 76 It is hoped that, in addition to the CEO, the Heads of ICT, Communications, Finance and HR will commence in post in April 2015, together with members of the Shadow Board.
- 77 The CEO (Interim) began in post in October 2014.
- 78 Work to develop the organisation's structure will be finalised by January 2015 but will operate within the cost envelope proposed.

**Table 19**

Grade	Salary £	x	Salary / Fees £	On-cost %	On-cost £	2015-2016 Set-up	2015-2016 Operating	Ongoing	Source / Assumption
<b>Estimated corporate staff structure</b>									
EB1	70,000	1	70,000	0.32	22,400				PWC Estimate (ave cost)
EB2	65,000	2	130,000	0.32	41,600	35,750			Addl Running Costs (top end of band)
F	55,500	2	111,000	0.32	35,520	61,050			Mirrors functional staff figs, above
E	42,850	6	257,100	0.27	69,417	22,675			Mirrors functional staff figs, above
D	33,900	6	203,400	0.27	54,918				Mirrors functional staff figs, above
C	25,750	1.5	38,625	0.27	10,429				
TS / Recep	20,950	6	125,700	0.24	30,168				Mirrors functional staff figs, above
		24.5	935,825		264,452			1,200,277	
Pro-rated for 7 months to March 2016							700,161		
<b>Governance Board</b>									
Chair	35,000	1	35,000	-					Est.d fees, including T&S - no on-costs
Members	7,500	10	75,000	-					Est.d fees, including T&S - no on-costs
		11	125,000					125,000	
Pro-rated for April - August 2016						52,083			
Pro-rated for 7 months to March 2016							72,917		
<b>Chief Executive (Pro-rated before and after establishment)</b>									
						68,750	96,250	165,000	Salary plus on-costs estimated.
						<b>£ 240,000</b>	<b>£ 869,000</b>	<b>£ 1,490,000</b>	Rounded to nearest £1,000

### Revenue Costs: Staff – Qualifications functions

79 These costs have been calculated by creating a new complement of staff to deliver the functions of the proposed organisation. Whilst it is hoped that the majority of staff currently in the Qualifications and Regulation division within the DfES will transfer to the new organisation, there was a deliberate shift away from moving existing structures into the new organisation. Therefore these costs do not relate to current regulatory staff costs.

80 Costs are estimated at the top of current Welsh Government pay scales.

**Table 20**

Grade	Salary £	x	Salary cost £	On-cost %	On-cost £	2015-2016 Set-up	2015-2016 Operating	Ongoing	Source / Assumption
<b>Estimated functional staff structure</b>									
SCS	85,000	2	170,000	0.32	54,400				Top end of Welsh Government salary bands
F	55,500	9	499,500	0.32	159,840				
E	42,850	12	514,200	0.27	138,834				
D	33,900	11	372,900	0.27	100,683				
C	25,750	11	283,250	0.27	76,478				
TS	20,950	2	41,900	0.24	10,056				
		47	£ 1,881,750		£ 540,291				
Total cost of staff for Qualifications Wales per annum					£ 2,422,041	-		2,422,041	
Pro-rated from September 2015.							1,211,020		
<b>Current cost of functional staff in Qualifications and Regulation Division per annum</b>									
37 staff					£ 1,561,947				
Pro-rated						650,811			
						<b>£ 651,000</b>	<b>£ 1,211,000</b>	<b>£ 2,422,000</b>	Rounded to the nearest £1,000

### Revenue Costs: Staff – Sponsor Unit

81 The following structure for the Qualifications Wales Sponsor Unit has been estimated as comprising 4 members of staff.

**Table 21**

Grade	Salary £	x	Salary cost £	On-cost %	On-cost £	2015-2016 Set-up	2015-2016 Operating	Ongoing	Source / Assumption			
<i>Estimated Sponsor Unit staff structure</i>												
F	£55,500	1	55,500	0.32	17,760				Top end of Welsh Government salary bands			
E	£42,850	1	42,850	0.27	11,570							
D	£33,900	1	33,900	0.27	9,153							
C	£25,750	1	25,750	0.27	6,953							
		4	158,000		45,435							
Total cost of staff for Sponsor Unit per annum Pro-rated from September 2015.					203,435	-	101,718	203,435				
						<u>£</u>	<u>-</u>	<u>£</u>	<u>102,000</u>	<u>£</u>	<u>203,000</u>	Rounded to the nearest £1,000

- 82 The Sponsor Unit structure will have been finalised by January 2015. Any significant changes to estimated costs will be provided during scrutiny of the Bill.

### Revenue Costs: Staff – Non-pay

- 83 The most significant non-pay costs relate to the recruitment and relocation of staff, as well as training costs and excess fares for staff needing to work from a different location under existing terms and conditions.

Revenue Costs: Staff - Non-pay	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption (Rounded to nearest £1,000)
<b>SET-UP COSTS</b>				
Recruitment of staff (corporate and regulatory)	144,000			At CIPD average £2k per head
Up-front training for new staff on new systems	87,000			At average of £1,214 per head per annum
Relocation	10,000			PwC Calculation
<b>OPERATING COSTS</b>				
Ordinary training costs			87,000	Ave. £1,214 per head p.a. 37 staff
Set-up Costs: Pro-rated for April - August 2016	45,000			
Operating Costs: Pro-rated for 7 months to March 2016		51,000		
Travel and subsistence			36,000	Ave. £505 per head p.a. 37 staff
Set-up Costs: Pro-rated for April - August 2016	8,000			
Operating Costs: Pro-rated for 7 months to March 2016		21,000		
Excess Fares			40,000	40ppm, est. 30 staff, ave 15m per day, 44 x 5-day wks (p.a. for 36 m)
Operating Costs: Pro-rated for 7 months to March 2016		23,000		
	<u>£294,000</u>	<u>£95,000</u>	<u>£163,000</u>	

### Revenue Costs: Premises

- 84 These costs include maintenance, stationery and postage costs.

**Table 23**

Revenue Costs: Premises	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption (To the nearest £1,000)
<b>OPERATING COSTS</b>				
Rent	102,000	143,000	245,000	At £513 per m2 at 10m2pp, 72 people
Utilities	80,000	112,000	192,000	At £2,207pp, 72 people
Rates	32,000	44,000	77,000	At c.£6 per ft2, 110ft2pp, 72 people
Repairs and Maintenance	18,000	25,000	42,000	At £500pp, 72 people
Administration and Office Costs		112,000	192,000	Based upon £2,200 per person and 72 people.
	<u>232,000</u>	<u>£436,000</u>	<u>£748,000</u>	

- 85 Further work is being undertaken on the location of the new organisation. Any significant changes to estimated costs will be provided during scrutiny of the Bill.

### Revenue Costs: Other, Legal and Professional

- 86 These costs account for costs associated with translation, financial services, legal services and insurances.

**Table 24**

Revenue Costs: Legal and Professional	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption (To the nearest £1,000)
<b>OPERATING COSTS</b>				
Outsourced internal audit		14,000	24,000	From comparator organisations and sector knowledge
Outsourced payroll contract		11,000	18,000	Welsh Gov SLA with Estyn (100 employees) = c.£15k
Legal and professional costs		88,000	150,000	Based upon £1,770 per person and 72 people
External audit		25,000	42,000	y/e31.03.2013, Estyn incurred £30k re. external audit
Insurance		42,000	72,000	Based upon £1,048 per employee, capped at £60k
	-	<b>£180,000</b>	<b>£306,000</b>	

### Revenue Costs: ICT

**Table 25**

Revenue Costs: ICT	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption (To the nearest £1,000)
<b>SET-UP COSTS</b>				
Consultancy	457,000			All costs include VAT
WAN	22,000			
Other Software	101,000			
<b>OPERATING COSTS</b>				
Consultancy			95,000	
WAN			87,000	
Other Software			70,000	
Microsoft Support			47,000	
Hardware			27,000	
	<b>580,000</b>	<b>£0</b>	<b>£326,000</b>	

### Capital Costs: ICT

- 87 A scoping project was begun in Autumn 2013 to determine the most appropriate ICT infrastructure for the new organisation. A hybrid model of cloud-based and server-based infrastructure was developed, and it is this that represents a large proportion of these costs.

**Table 26**

Capital Costs: ICT	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption (To the nearest £1,000)
<b>SET-UP COSTS</b>				
Cloud Licensing and Support*	247,000			
Hardware	204,000			
WAN	213,000			
<b>OPERATING COSTS</b>				
Hosting and License			178,000	Triennial fee: hosting, license
	<b>£ 664,000</b>	<b>£0</b>	<b>£178,000</b>	

## Depreciation

88 Depreciation has been calculated on a flat line over 5 years after 12 months from the transfer of assets to Qualifications Wales.

**Table 27**

Revenue Costs: Depreciation	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption
<b>OPERATING COSTS</b>				
ICT Hardware	0	24,000	40,800	
Fixtures and Fittings	0	26,000	45,200	
	<u>-</u>	<u>£50,000</u>	<u>£86,000</u>	

## Programme Costs

89 The following costs are not included in Qualifications Wales' estimated programme spend:

- Running costs for the DAQW replacement (included in ICT costs).
- Facilities costs (included in staffing costs).
- Translation (included in Legal and Professional costs).
- Legal costs (included in Legal and Professional costs).
- Stationery / postage (Included in Premises costs).
- Maintenance costs (included in Premises costs).

90 These costs are consistent with the current Qualifications and Regulation Division budget expenditure line.

**Table 28**

Programme Costs	2015-2016 Set-up	2015-2016 Operational	Ongoing	Source / Assumption
<b>Regulation / Quality Assurance</b>				
Monitoring	62,500	87,500	150,000	
Subject/technical expertise	47,917	67,083	115,000	
Enforcement	4,167	5,833	10,000	
Tribunal and other costs	4,167	5,833	10,000	
Criteria development	83,333	116,667	200,000	
Welsh Language grants	375,000	525,000	900,000	
<b>Communication</b>				
Annual public confidence surveys	31,250	43,750	75,000	
Promotion and awareness campaigns	20,833	29,167	50,000	
Information to stakeholders	20,833	29,167	50,000	
Centre/practitioner support	20,833	29,167	50,000	
Results day	8,333	11,667	20,000	
<b>Engagement Research and Development</b>				
Stakeholder consultation/engagement	50,000	70,000	120,000	
Research	83,333	116,667	200,000	
Comparability	62,500	87,500	150,000	
Statistical data including analysis	20,833	29,167	50,000	
Regulatory/QA development	29,167	40,833	70,000	
Horizon scanning	12,500	17,500	30,000	
<b>Governance</b>				
Publication costs (including translation)	12,500	17,500	30,000	
Reporting (including annual report glossy publication)	8,333	11,667	20,000	
Archiving	4,167	5,833	10,000	
Ofqual	12,500	17,500	30,000	
Staff professional development	16,667	23,333	40,000	
	<u>£ 991,667</u>	<u>£1,388,333</u>	<u>£2,380,000</u>	

## Sources of Information

- 91 Publicly-available information was used with regard to comparator organisations:

Ofqual  
The Scottish Qualifications Authority  
The Children’s Commissioner for Wales  
Estyn  
The General Teaching Council for Wales  
The Older People’s Commissioner for Wales  
The Welsh Language Commissioner  
The Children’s Commissioner for Wales  
The Care Council for Wales

- 92 Further information was obtained with the co-operation of:

The Older People’s Commissioner for Wales  
The Care Council for Wales  
Natural Resources Wales  
HEFCW  
National Museums Wales  
Cardiff Council  
Rhondda Cynon Taf County Borough Council  
Cardiff Metropolitan University  
NHS Wales Shared Services Partnership  
The Northern Ireland Civil Service  
Microsoft

- 93 In addition, expertise from PricewaterhouseCoopers and Welsh Government was drawn upon in developing some of the costing information.

## **Annex C - Glossary**

### **Accreditation**

Accreditation in the current qualifications landscape in Wales refers to the decision by the Welsh Government (and by other UK regulators in their respective jurisdictions) that qualifications meet designated criteria. However, the term is often informally used in a number of other ways: for example awarding bodies may use the term accreditation to define the process of approving centres to deliver their qualifications, and other quality agencies may use the term to define a quality stamp on providers' courses. For this reason and in the interests of clarity, the Bill describes the similar decisions to be made by Qualifications Wales as 'Approval' and does not use the term 'Accreditation' in defining Qualifications Wales' functions, duties and powers.

### **Apprenticeships issuing authority**

Apprenticeship issuing authorities are responsible for ensuring that only those apprenticeship frameworks which comply with the Specification of Apprenticeship Standards for Wales are issued and thereby recognised Welsh frameworks. Issuing authorities are designated by the Welsh Ministers under the Apprenticeship, Skills, Children and Learning Act 2009. Currently, issuing authorities are primarily sector skills councils and standard setting bodies. The Bill does not make provision in relation to Qualifications Wales but should the Welsh Ministers decide to do so, they would be able to designate Qualifications Wales as an issuing authority in due course.

### **Apprenticeships Certifying Authority**

This is a body which issues certificates to learners upon completion of an apprenticeship.

### **Approved Qualification**

A form of a qualification approved by Qualifications Wales under Part 4 of the Bill (approval of qualifications).

### **Assessment Arrangements**

In relation to a qualification, these are arrangements for assessing relevant skills, knowledge and understanding in relation to the qualification. These arrangements could include, for example, all aspects of the development, production and administration of assessment tools (for example examinations) as well as, for example, the design, validity and reliability of the assessments.

### **Assessment of a qualification**

This has a range of meanings depending on the context. In the context of the Bill it generally refers to the activity that a learner undertakes in order to demonstrate that they have the necessary knowledge, skills and understanding to be deemed to have met the requirements of a qualification. However, it can also refer to the judgement of that work by an assessor, examiner or marker.

### **Attainment**

Attainment identifies the knowledge, skills and understanding which learners are expected to demonstrate or have demonstrated in order to achieve a qualification, or a particular grade or outcome in a qualification. It may be considered in terms of individual learners or across a particular cohort, and may be in relation to the comparative level of achievement, either quantitatively (for example the percentage of learners to reach grade C or above) or qualitatively (for example the extent to which learners demonstrated competence in a given skill).

### **Awarding**

Awarding, in everyday language, has a range of meanings, depending on the context. It can refer to the whole range of work undertaken by an awarding body in relation to the delivery, assessment and award of qualifications. It can sometimes refer to a precise part of the process, for example the decision of an 'awarding committee' as to where the grade boundaries for a qualification should be set. Furthermore, it is also sometimes to refer to the moment when a certificate or award is physically granted to a candidate. In the Bill it refers to the whole process of delivering qualifications to learners, where those learners are assessed wholly or mainly in Wales. A qualification is awarded in Wales, for the purposes of the Bill, if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are, will be, or may reasonably be expected to be, assessed in respect of the qualification wholly or mainly in Wales.

### **Awarding Body**

A person (most commonly an organisation) who awards, or proposes to award a qualification. 'Awarding body' is the term used in this Bill as it is more familiar to most stakeholders than 'awarding organisation' which is an equivalent term sometimes used.

### **Candidate**

A candidate is a learner who is entered for, or is potentially to be entered for, a qualification.

### **Centre (also referred to as 'Learning Provider')**

An organisation that enters learners for qualifications and has a range of responsibilities relating to the delivery and management of assessment activities (and sometimes for the judgement of candidates' performance, particularly in relation to the observation of performance or the marking of 'internal' assessments. Centres interact with Awarding Bodies on behalf of candidates. It is rare for candidates to interact directly with Awarding Bodies. Centres are typically educational institutions, training providers, or employers.

### **Certificate**

A record of attainment of credit or a qualification issued by an awarding organisation.

### **Commissioning**

The process of entering into arrangements with a provider of services, such as those arrangements described in the Bill in relation to arrangements for the development of Restricted Priority Qualifications.

### **Comparability**

The degree to which qualifications are similar to other qualifications, whether in terms of the level of difficulty, the validity of the assessment, the knowledge skills and understanding required, or any other features which may be compared between qualifications. Qualifications, and data relating to the achievement of qualifications, are typically compared over time as well as across awarding bodies. It is harder to compare across different subjects, but common descriptors of the type of skills to be expected at different levels can assist in doing so.

### **Credit**

Credit is used in the Bill to refer to the recognition of achievement of *part* of a qualification. It can also be used, when accompanied by a numeric value, to compare the relative value of different qualifications, or parts of qualifications.

### **Credit and Qualifications Framework for Wales**

A framework that identifies how different qualifications relate to each other and to different types of learning and assessment – in terms of level and size.

### **DAQW**

The Database of Approved Qualifications in Wales (DAQW) was developed for the purpose of sharing qualification information with learning providers. It is intended to replace this Database with a new database, Qualifications in Wales (QiW) which will be published by Qualifications Wales.

### **Delivery of qualifications**

The delivery of qualifications refers to the practical steps that are taken by awarding bodies to administer qualifications. Activities include the design, production, translation and distribution of question papers, tasks, mark schemes, teaching support material and other resources (circulars, CPD sessions, and one-to-one sessions), recruitment and training of examiners, organisation of examiner and moderator meetings, production of data to inform awarding decisions, production of results, handling of post-results enquiries and the production of certificates. Centres play a large part in the delivery of the assessment of qualifications, with their activities ranging in scope from exam entries, administration and invigilation to more in-depth involvement such as in the design of tasks or tests, marking, moderation and verification.

### **Delivery of teaching**

The teaching of a course of study that leads to a qualification is the responsibility of centres. Estyn (Her Majesty's Inspectorate of Education and Training in Wales) inspects quality and standards in education and training providers in Wales.

### **Entry level**

Entry Level is the lowest level in the National Qualifications Framework in England, Wales, and Northern Ireland. Qualifications at this level recognise basic knowledge and skills and the ability to apply learning in everyday situations under direct guidance or supervision.

### **External assessment**

Generally this refers to form of assessment in which question papers, assignments and/or tasks are set by the awarding organisation, taken under specified conditions (including details of supervision and duration) and marked by the awarding body. However, variants of this exist where, for example, an awarding body marks candidates' answers to questions that have been set by a centre.

### **Fee capping condition**

A special condition limiting the amount charged by a recognised body in connection with the award by the body to a person of an publicly funded approved qualification or otherwise providing any service or facility in respect of the award to a person by the body of an approved qualification.

### **General recognition criteria**

Qualifications Wales will set and publish criteria for recognition to be applied for the general recognition of an awarding body.

### **Grade**

A point on a scale of performance used to differentiate achievement within a qualification.

### **Internal assessment**

A form of assessment in which full examination conditions do not necessarily apply and where, typically, the Centre plays a larger role in assessment than the awarding body. Normally the awarding body will specify the controls that will apply to how candidates should be assessed and the conditions under which this must be administered.

### **Learner**

A person who is undertaking, planning to undertake or likely to undertake a programme of learning. The programme of learning may be designed to prepare learners for a qualification. Once a learner has entered, or been entered for a qualification, he or she is often referred to as a candidate.

### **Learning Programmes**

The main vehicle for planning, allocating, delivering and monitoring under the new post-16 planning and funding framework with each learning programme defined by its purpose, outcomes and outputs. Learning Programmes (as opposed to Programmes of Learning) are packages of learning that has a clear purpose and planned outcomes.

**Level**

An indication of the relative demand, complexity and/or depth of achievement, and/or the autonomy of the learner in demonstrating that achievement

**Level of demand**

The degree of challenge that an assessment presents for the learner.

**Mark scheme**

A scheme detailing how marks are to be awarded in relation to a particular assessment unit or component. A mark scheme normally characterises acceptable answers to questions/tasks or parts of questions/tasks and identifies the amount of credit each attracts.

**Moderation**

The process through which the marking of assessments by centres is monitored to make sure it meets required standards and through which adjustments to results are made, where required, to ensure that results are based on the required standard.

**National Occupational Standards**

Published descriptions, agreed by occupational sector specialists, of what employers need a person to do, know and understand in a job to carry out the role in a consistent and competent way. A key purpose of these is to underpin the requirements of vocational qualifications.

**Ofqual**

The Office of the Qualifications and Examinations Regulator – a Non Departmental Government Body with responsibility for qualifications in England (and for vocational qualifications in Northern Ireland).

**Persons with Learning Difficulties**

For the purpose of this Bill if a person has special education needs or has a significantly greater difficulty in learning compared to the majority of persons of the person's age or has a disability that either prevents or hinders the person making use of education facilities of a kind generally provided for persons of the same age.

**Publicly funded programmes**

Funded by the Welsh Ministers or by Local Authorities in Wales and within policy commitments.

**Priority Qualifications List**

A list of qualifications jointly prepared by Qualifications Wales and Welsh Ministers to indicate those qualifications which are of particular significance or importance to Wales.

### **Recognised body**

An awarding body recognised by Qualifications Wales in respect of the award of qualifications.

### **Recognition**

The determination by Qualifications Wales that an awarding body meets criteria sufficiently to be able to submit qualifications for approval by Qualifications Wales and to offer those qualifications once approved.

### **Regulating body**

A body recognised in respect of the regulation of qualifications, such as Qualifications Wales or Ofqual.

### **Restricted priority qualification**

A determination, by Qualifications Wales, that specifies the finite number of forms of that qualification that Qualifications Wales will be prepared to approve.

### **RITS**

The Regulatory Information Technology System, which is a database, owned and largely managed by Ofqual but also utilised by the Welsh Government, that provides a portal for the accreditation of qualifications and a database for interested stakeholders of awarding bodies and their qualifications.

### **Sector Qualifications Advisory Panels**

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

### **Sector Skills Council**

An independent, employer-led UK-wide body, responsible for developing high quality skills standards with employers, to support productivity, profitability and growth, and enhance competitiveness in the UK and overseas markets.

### **Specification**

The complete description – including mandatory and optional aspects – of the content, assessment arrangements and performance requirements for a qualification.

### **Transfer conditions**

A special condition whereby Qualifications Wales directs an awarding body to arrange for another body to award a qualification for which the first body is approved. Such a condition would only be applied exceptionally, where learners are at risk of not being able to complete qualifications due to the first awarding body's non-compliance.

### **Unrestricted priority qualification**

A priority qualification which has no determination under restricted priority qualifications.

### **Abbreviations**

<b>ACCAC</b>	Qualifications, Curriculum and Assessment Authority for Wales. ACCAC (the acronym of Awdurdod Cymwysterau, Cwricwlwm ac Asesu Cymru) prior to 2006
<b>AS/ A Level</b>	Main general (non-vocational) qualifications at level 3 taken 16-19.
<b>CCEA</b>	Council for the Curriculum, Examinations and Assessment, Northern Ireland.
<b>CQFW</b>	Credit and Qualifications Framework for Wales
<b>CVET</b>	Continuing Vocational Education and Training courses.
<b>DAQW</b>	Database of Approved Qualifications in Wales.
<b>EQF</b>	European Qualifications Framework
<b>GCE</b>	General Certificate of Education
<b>GCSE</b>	General Certificate in Secondary Education.
<b>GTCW</b>	General Teaching Council for Wales
<b>IVET</b>	Initial Vocational Education and Training courses.
<b>NAfW</b>	National Assembly for Wales
<b>NOS</b>	National Occupational Standards
<b>NTfW</b>	The National Training Federation for Wales
<b>PQL</b>	Priority Qualifications List
<b>QAA</b>	Quality Assurance Agency
<b>QQI</b>	Quality and Qualifications Ireland was established 2012 as a new integrated agency (replacing the Further Education and Training Awards Council, the Higher Education and Training Awards Council and the National Qualifications Authority of Ireland and incorporating the functions of the Irish Universities Quality Board). QQI is responsible for the external quality

assurance of further and higher education and training (including English language provision) and validates programmes and makes awards for certain providers in these sectors. QQI is also responsible for the maintenance, development and review of the National Framework of Qualifications (NFQ).

**RITS** Regulatory Information Technology System: Ofqual’s online system that allows awarding organisations to manage their regulated qualifications listings on the Register of Regulated Qualifications.

**SCQF** Scottish Credit and Qualifications Framework

**SQA** Scottish Qualifications Authority is the executive non-departmental public body of the Scottish Government responsible for accrediting educational awards. It is partly funded by the Education and Lifelong Learning Directorate of the Scottish Government.

**SVQ** Scottish Vocational Qualifications.

**VQ** Vocational Qualifications

**Welsh Bacc** Welsh Baccalaureate

## Annex D – Table of Derivation

This document is intended as an informal aid to debate on the Bill in the National Assembly for Wales. While care has been taken to ensure that the document is as accurate as reasonably practicable, it does not purport to be, and should not be relied on as, authoritative.

The attached tables are intended to provide information on the derivation of the provisions of the Qualifications Wales Bill and lists where there is existing provision in current legislation. They do not provide definitive or exhaustive guidance, and should be read in conjunction with the Bill and with the explanatory notes on the Bill.

### Key to Abbreviations

EA 1997: Education Act 1997

LSA 2000: Learning and Skills Act 2000

<b>QUALIFICATIONS WALES BILL – TABLE OF DERIVATION</b>		
<b>SECTION/ PARAGRAPH</b>	<b>EXISTING LEGISLATION</b>	<b>SUBSTANTIVE CHANGE</b>
<b>PART 1 – Overview</b>		
1	-	-
<b>PART 2 – ESTABLISHMENT AND PRINCIPAL AIMS OF QUALIFICATIONS WALES</b>		
2 (Establishment) 3 (Principal aims)	New Takes into account matters in s.30(1) & s.32(1) EA 1997	- More defined
<b>PART 3 – RECOGNITION OF AWARDING BODIES</b>		
4(1) (Recognition of awarding bodies)	S.30(1)(e) EA 1997	Partial
4(2)	New	-
5 (Duty to set general recognition criteria)	s.30(1)(d) EA 1997	-
6 (Power to set specific recognition criteria)	s.30(1)(d) EA 1997	More defined
7 (Revision of general and qualification specific recognition criteria)	s.30(1)(d) EA 1997	-
8 (General recognition of	s.30(1)(e) EA 1997	-

an awarding body)		
9 (Qualification specific recognition of an awarding body)	S.30(1)(e) EA 1997	More defined
10 (Power to make rules about applications for recognition)	New	-
11 (Further provision about recognition)	New	-
12 (Recognition: interpretation)	New	-
<b>PART 4 – APPROVAL OF QUALIFICATIONS</b>		
13 (Duty to prepare list of priority qualifications)	New	-
14 (Restricted priority qualifications)	New but s.30(1)(f) EA 1997 and s.30(1A) has similar considerations	Previously there was a general accreditation system under s. 30(1)(h) EA 1997 which has now been separated into 4 different ways of approving a qualification, depending on the nature of the qualification
15 (Power to make arrangements for development of restricted priority qualification)	New	
16 (Approval of a restricted priority qualification developed in accordance with s.15)	New	
17 (Approval of a restricted priority qualification in the absence of s.15 arrangements)	New	
18 (Approval of unrestricted priority qualification)	New	
19 (Approval of qualifications that are not priority qualifications)	New	
20 (Approval criteria)	s.30(1)(g) EA 1997	
21 (Power to specify minimum requirements)	New	
22 (Conditions of approval)	s.32(3A) EA 1997	
23 (Duration of approval)	New	
24 (Rules about applications for approval)	New	-
25 (Surrender of approval)	New	-
26 (Transitional provision in connection with surrender of approval)	New	-
27 (Withdrawal of	New	s.32B(3) and (4) of EA

approval)		1997 is similar in terms of a failure to comply with accreditation conditions, but results in withdrawal of recognition rather than accreditation
28 (Transitional provision in connection with withdrawal of approval)	New	-
<b>PART 5 – FURTHER PROVISION RELEVANT TO RECOGNITION AND APPROVAL</b>		
29 (Restriction on funding and provision of certain courses)	ss. 96-102 LSA 2000	Partial. In particular, amendments exclude from the general funding restriction 1. courses of education or training provided to persons with learning disabilities, and 2. courses or persons designated by the Welsh Ministers.
30 (Award in Wales of a Welsh version of a qualification: restriction on application of conditions imposed by Ofqual)	New	
31 (Award of qualification outside Wales: restriction on application of conditions imposed by Qualifications Wales)	New	
<b>PART 6 – ENFORCEMENT POWERS OF QUALIFICATIONS WALES</b>		
32 (Power to give directions)		
(1) failure or likely failure to comply with recognition conditions	s.32A(1) EA 1997	More detailed provision made
(2) failure or likely failure to comply with approval conditions	s.32A(2) EA 1997	More detailed provision made
33 (Power to impose monetary penalties)	s.32AA EA 1997	More detailed provision made
34 (Monetary penalties: appeals)	s.32AC EA 1997	
35 (Monetary penalties:	s.32AD EA 1997	More detailed provision

interest)		made
36 (Costs recovery for imposition of sanctions)	s.32BA EA 1997	More detailed provision made
37 (Costs recovery: appeals)	s.32BB EA 1997	
38 (Costs: interest)	s.32BC EA 1997	More detailed provision made
39 (Entry and inspection of premises)	New standalone power but similar provision in s.32(4)(b) EA 1997	More detailed provision made/court order required
<b>PART 7 – SUPPLEMENTARY</b>		
40 (Provision of services etc by Qualifications Wales)	New	-
41 (Review and research)	s.30(1)(a) EA 1997 (review) and s.30(1)(c) EA 1997	-
42 (Policy statement and statement about consultation)	New	
43 (Complaints)	New	
44 (Charging scheme)	New	
45 (Grants)	New	
46 (Provision of information or advice)	New	
47 (Joint working)	s.32ZA(1) EA 1997	
48 (Duty to have regard to government policy and other matters)	New	
49 (Performance of regulatory activities by Qualifications Wales)	New	
<b>PART 8 – GENERAL</b>		
50 (Regulations)	New	
51 (Interpretation of references to “qualification”)	s.30(5)-(5C) EA 1997	
52 (General interpretation and index of defined expressions)	New but some definitions already defined in other Education Acts, namely Education Act 1996.	
53 (Consequential amendments)	New	
54 (Power to make consequential and transitional provision etc.)	New	
55 (Coming into force)	New	
56 (Short title etc)	New	

<b>SCHEDULE 1 – QUALIFICATIONS WALES</b>		
Part 1 Paras 1-16, 27-35 Paras 17-22	New s.32ZA(3)-(12) EA 1997	
Part 2 Paras 36-40	New	
<b>SCHEDULE 2 – TRANSFERS OF PROPERTY AND STAFF TO QUALIFICATIONS WALES</b>		
Paras 1-5	New	
<b>SCHEDULE 3 – FURTHER PROVISION ABOUT RECOGNITION OF AWARDING BODIES</b>		
Paras 1(1) & 1(2)(c) Para 1(2)(a)-(b)	New ss 32B and 32C EA 1997	
Paras 2-6	s.32(3)-(4) EA 1997	
Paras 8-16	New	
Para 17	s.32C EA 1997	
Para 18	New	
Paras 19 - 23	New	
<b>SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS</b>		
Paras 1-7	New	