

Explanatory Memorandum to the Qualifications Wales Act 2015 (Consequential Amendments) Regulations 2016

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Qualifications Wales Act 2015 (Consequential Amendments) Regulations 2016.

Huw Lewis AM,
Minister for Educations and Skills,
26 January 2016

1. Description

These Regulations are made in consequence of the Qualifications Wales Act 2015 (“the Act”), which established Qualifications Wales as the independent regulator of qualifications in Wales. These Regulations update references in other legislation so as to reflect the new system of qualification regulation in Wales as a result of the Act.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations are made under powers given by an Act of the Assembly and therefore the extent of the instrument, and the amendments made by it, is England and Wales. Three of the provisions to be amended by these Regulations extend beyond England and Wales. These are the provisions of the Motor Vehicles (Driving Licences) Regulations 1999 (regulation 7), the Gangmasters Licensing (Exclusions) Regulations 2013 (regulation 16) and the National Minimum Wage Regulations 2015 (regulation 19). We have raised this with the relevant UK Government Departments so that they can consider whether to extend the amendments further, for example, by way of a section 150 order under the Government of Wales Act 2006.

3. Legislative background

The Act was passed by the National Assembly for Wales on 16 June 2015 and received Royal Assent on 5 August 2015. Its provisions were all commenced by 21 September 2015.

The Act established a new body, Qualifications Wales, and conferred upon it functions related to the regulation of qualifications awarded in Wales. It also repealed functions of the Welsh Ministers in the Education Act 1997 related to the regulation of qualifications awarded in Wales and replaced a restriction in the Learning and Skills Act 2000 on the public funding of certain courses with a similar restriction (in section 34 of the Act).

These Regulations are made under sections 55(1)(c) and 59 of the Act.

Section 59 of the Act, gives the Welsh Ministers power to make various types of provision, including supplementary and consequential provision, if they consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the Act. This power includes power to amend, repeal or revoke enactments (whether made in or under an Act of Parliament, a Measure or Act of the National Assembly for Wales).

The power also includes power to make supplemental, incidental, consequential, transitional, transitory or saving provision (section 55(1)(c) of the Act).

A statutory instrument containing regulations made under section 59 that amend any provision of an Act of Parliament (as these Regulations do) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales (i.e. affirmative resolution procedure applies) (section 55(2) of the Act).

4. Purpose & intended effect of the legislation

Overview

The purpose of these Regulations is to update references in legislation which refer to the previous system of qualification regulation so that the law is more readily accessible and clearer. So these Regulations remove references to provisions on qualification regulation in the Education Act 1997, in most cases replacing them with equivalent references to the new system provided for in the Act. Similarly, they update references to the restriction on the public funding of certain courses which was contained in the Learning and Skills Act 2000.

They also add Qualifications Wales to lists of prescribed persons to whom certain persons may provide particular information. This covers information relating to pupils at schools in England and at schools in Wales and student information provided by the Secretary of State or an information collator in England. This is for the purpose of section 3 of the Act (principal aims of Qualifications Wales). The provision of such information to Qualifications Wales could enable it to better perform its functions under the Act and so facilitate it in achieving its principal aims which are set out in section 3 of the Act.

Updating definitions of “course of study” used in the context of provisions on the local curricula

The amendments to primary legislation (regulations 2 and 3) are to update the definitions of “course of study”. These definitions are relevant to the provisions on the local curricula for students aged 16 to 18 (in the Learning and Skills Act 2000) and those for pupils in the fourth key stage (in the Education Act 2002). They capture courses which lead to qualifications which are approved for public funding purposes (referring to sections 96 and 99 of the Learning and Skills Act 2000). Similarly, the new definitions are aligned with the courses for under 19 year olds which may be publicly funded (see section 34 of the Act). Regulation 15 makes an equivalent amendment to the definition of that term in the Operation of the Local Curriculum (Wales) Regulations 2013.

Updating references to the definition of (relevant) qualification in section 30(5) of the Education Act 1997

Regulations 5, 6, 11, 12(a), 13(a), 14(3), and 16 to 18 replace references to a qualification or relevant qualification within the meaning of section 30(5) of the Education Act 1997, with references to a qualification within the meaning of section 56 of the Act. Section 56 is in similar terms to section 30(5).

Regulation 16 amends the Gangmasters Licensing (Exclusions) Regulations 2013. The 2013 Regulations extend to Scotland but the amendment only extends to England and Wales. This has been raised with the Home Office so that it can consider whether to extend the amendment to Scotland.

Updating definitions of particular frameworks

Regulations 10, 12 and 13 involve amendments to the definitions of the terms “NQF” and “QCF”, which are used in enactments related to education applicable in relation to Wales. These terms are labels for particular frameworks for qualifications, which are in turn described by reference to the previous regulatory system. The purpose here is to avoid possible confusion to the reader of the legislation, given that the descriptions of what these frameworks comprise is by reference to repealed enactments. The definitions will still refer to the same frameworks. There are also related amendments to tidy up these references.

Amendments to allow information to be shared with Qualifications Wales for the purposes of the Act

There are also several amendments to enactments on the provision of certain information relating to pupils or students. Qualifications Wales is added to the lists of prescribed persons to whom:

- (i) the Welsh Ministers may provide individual pupil information (which relates to pupils at schools in Wales) (regulation 8(b));
- (ii) the Secretary of State, an information collator and any person holding the information may provide individual pupil information (which relates to pupils at schools in England) (in the case of an information collator, it is prescribed individual pupil information) (regulation 9); and
- (iii) the Secretary of State or an information collator in England may in prescribed circumstances provide prescribed student information (regulation 20). Student information is information relating to an individual who is seeking to obtain, has sought to obtain, or has obtained, certain qualifications (which in summary covers qualifications below degree level awarded in Wales and qualifications below degree level awarded by bodies recognised in respect of them by Ofqual).

The effect is that the persons referred to above may provide the respective information to Qualifications Wales. The provisions are permissive: they allow, rather than require, the information to be shared.

The provision of this information to Qualifications Wales could enable it to better perform its functions under the Act and so facilitate it in achieving its principal aims (set out in section 3 of the Act). For example, the information may inform Qualifications Wales in its consideration of whether qualifications awarded in Wales are comparable to those awarded elsewhere or enable Qualifications Wales to interrogate whether qualifications in Wales are delivering for the needs of Welsh learners.

The Welsh Ministers are prescribed persons in relation to the situations in sub-paragraphs (ii) and (iii) above. Although the Welsh Ministers no longer regulate qualifications awarded in Wales, it remains appropriate for them to continue to be prescribed as this information may inform the exercise of their other education functions. Therefore, Qualifications Wales has been added to the lists of prescribed persons, rather than replacing the Welsh Ministers as prescribed persons.

Regulation 8 also updates a reference to the previous regime and adds provision to take account of the new regime under the Act in relation to the information which an information collator may provide.

Draft Regulations 9 and 20 were shared with the UK Department for Education, which had no substantive comments on them.

Amendment to the School Performance Information (Wales) Regulations 2011

Regulation 14 updates these 2011 Regulations in light of the Act. This includes updating the information to be provided to the Welsh Ministers about the qualification results of certain pupils to reflect the effect of the Act that approved qualifications will have approval numbers and that qualifications taken by those pupils may not be on the Ofqual register.

Amendment to the Council Tax (Discount Disregards) Order 1992

Regulation 4 amends the Welsh application of the definition of “apprentice” for the purposes of council tax discounts. Part of that definition is essentially that the person is undertaking a programme of training leading to a qualification, including one awarded by a body recognised by the Welsh Ministers under the Education Act 1997 in respect of it. Regulation 4 updates that aspect of the definition to refer to the equivalent under the new regime, which is that the qualification is awarded by a body which is recognised by Qualifications Wales in respect of its award of that qualification.

Amendment to the Motor Vehicles (Driving Licences) Regulations 1999

In these 1999 Regulations, the term “educational qualification” is defined to cover qualifications regulated under different systems within Great Britain for regulating qualifications. The reference to the previous system in relation to Wales covered qualifications awarded by bodies recognised in respect of them by the Welsh Ministers, and, if the Welsh Ministers had subjected the qualification to the accreditation requirement, the qualification had to be accredited. There is no equivalent to the accreditation requirement under the Act, so the new replacement definition simply captures qualifications which are within the awarding body’s recognition by Qualifications Wales. The context is that educational qualifications which involve passing a safe road use test can be relevant for driving licence purposes.

This amendment extends to England and Wales only. As the Motor Vehicles (Driving Licences) Regulations 1999 extend to Scotland, we have consulted with the UK Department for Transport so that it can consider whether to extend the amendment to Scotland.

Amendment to the National Minimum Wage Regulations 2015

Regulation 19 amends the definition of 'further education course' to replace references to the previous system under the Education Act 1997 and section 99 of the Learning and Skills Act 2000. One of those references referred to a qualification accredited by the Welsh Ministers. The Welsh Ministers subjected all qualifications within an awarding body's recognition to the accreditation requirement and regulated them through conditions of recognition. The amendment captures qualifications which are within an awarding body's recognition.

As a result of this amendment, the saving provision made in the order commencing Qualifications Wales's regulatory functions (SI 2015/1687 (W. 219) (C.98)) is no longer needed and Regulation 21 revokes it.

The 2015 Regulations have a UK extent, but the proposed amendment is of England and Wales extent only. This has been raised with the UK Department for Business, Innovation and Skills so that it can consider whether to extend the amendment to Scotland.

5. Consultation

There has been no public consultation in respect of these Regulations as the Regulations update existing legislation as a result of the Qualifications Wales Act 2015. However, as highlighted above, there has been consultation on some of the amendments to be made by these Regulations with the Wales Office and relevant UK government policy departments.

6. Regulatory Impact Assessment (RIA)

An RIA has **not been** conducted as these Regulations make consequential amendments to existing legislation to update it as a result of the Qualifications Wales Act 2015 and there is no major policy impact, nor is there an impact on public or private sectors, charities, the voluntary sector or the business sector in Wales.