

**National Assembly for Wales**  
Act Summary

**Qualifications Wales Act 2015**

August 2015

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## **National Assembly for Wales** Act Summary

# **Qualifications Wales Act 2015**

August 2015

Michael Dauncey

The Qualifications Wales Bill received Royal Assent on 5 August 2015. The Act transfers regulatory responsibility for qualifications from the Welsh Government to a new independent body, 'Qualifications Wales'. Qualifications Wales will commence its regulatory functions on 21 September 2015.

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# Qualifications Wales Act

## 1. Introduction

The [Qualifications Wales Act 2015](#) ('the Act') provides for the **establishment of Qualifications Wales as an independent regulatory body** responsible for the recognition of awarding bodies and the review and approval of non-degree qualifications in Wales.

The Welsh Government is also seeking to strengthen oversight of qualifications and of the qualifications system in Wales by **reforming the current arrangements**. The Minister for Education and Skills, Huw Lewis AM, said the aim was to 'shape', 'rationalise' and 'strengthen' the system.<sup>1</sup>

The Act is intended to address what the Welsh Government sees as the four main limitations of the current system:

- 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;
- there are **no powers to select a single provider of a given qualification** to ensure that learners across Wales take the same qualification; and
- the capacity to drive forward the **strategic development of qualifications** within the current arrangements is **too limited**.

The Act provides Qualifications Wales with the following **two principal aims**, and the new regulator must act compatibly with these when exercising its functions:

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

The Qualifications Wales Bill was **introduced** by Huw Lewis AM, Minister for Education and Skills on **1 December 2014**. Following the four stages of the Assembly's legislative process, Assembly Members **passed** the Bill in Plenary on **16 June 2015**.

The Qualifications Wales Act received [Royal Assent on 5 August 2015](#).

**Qualifications Wales will commence its regulatory functions on 21 September 2015.**

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<sup>1</sup> National Assembly for Wales, Children, Young People and Education Committee, [RoP\[paras 11-12\]](#), 11 December 2014

## 2. Background

The Welsh Government brought forward this legislation following its acceptance of one of the main recommendations (Recommendation 5) of **Huw Evans' Review of Qualifications for 14 to 19 year olds in Wales**. However, the policy approach has evolved since the Welsh Government's initial responses in [December 2012](#) and [February 2013](#) and has been informed by a due diligence review, a [consultation exercise](#), and the Children, Young People and Education Committee's [pre-legislative scrutiny](#).

The legislation is also part of the move away from a three-country model of qualifications regulation (with England and Northern Ireland) which the Welsh Government says is currently heavily reliant on the regulator in England, the Office of Qualifications and Examinations Regulation (Ofqual).

### *2.1. Review of 14-19 Qualifications*

The Review of Qualifications for 14-19 year olds in Wales was launched by Jeff Cuthbert AM, the then Deputy Minister for Skills, in September 2011. The Review Board, chaired by Huw Evans OBE, made **42 recommendations in its final report [Review of Qualifications for 14-19 year olds in Wales, Final Report and Recommendations \(pdf 293KB\)](#)**, published on 28 November 2012.

The majority of recommendations in the Review focused on reforms to qualifications themselves and establishing a national qualifications system for Wales. These recommendations are being implemented through other work undertaken by the Welsh Government outside of this Bill.<sup>2</sup>

### *2.2. Welsh Government consultation*

The Welsh Government held a [consultation](#) between 1 October and 20 December 2013 outlining its plans to establish Qualifications Wales. A summary of responses were published alongside a [statement](#) by the Minister for Education and Skills, on 2 June 2014.

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<sup>2</sup> For further information, see: Welsh Government, Huw Lewis (Minister for Education and Skills), [Qualifications Reform](#), Cabinet Oral Statement, 4 November 2014 and the Welsh Government websites, [Qualified for Life](#) and [Qualifications Wales](#)



### *2.3. Committee pre-legislative scrutiny*

The Children, Young People and Education Committee undertook some pre-legislative scrutiny of the Welsh Government's proposals and published a [report of its findings and recommendations \(pdf 562KB\)](#) in July 2014. The Committee's overarching recommendation was that the **forthcoming legislation to establish Qualifications Wales should be limited to giving it regulatory functions only** i.e. that **to extend its remit to include awarding functions in the future would require a separate Bill.**

The **Minister** announced in a [letter to the Committee Chair \(pdf 138KB\)](#) on 17 July 2014 that he was **accepting that overarching recommendation.**

### 3. What the Act does

There are 9 Parts to the Act, which in total consists of 61 sections and 4 Schedules.

**Part 1** (section 1) provides an **overview of the main provisions** of the Act.

**Part 2** (s2-3) **establishes the new body** as 'Qualifications Wales', stating its **principal aims** and the **matters to which it must have regard** when exercising its functions.

**Part 3** (s4-12) makes provision for Qualifications Wales to **recognise bodies** which award qualifications in Wales.

**Part 4** (s13-28) provides for Qualifications Wales' **approval of qualifications** that may be publicly funded. This includes Qualifications Wales and the Welsh Ministers defining a list of '**priority qualifications**', circumstances in which Qualifications Wales may '**restrict**' the **number of forms** of any priority qualification available for public funding to **one or more**, and arrangements for Qualifications Wales to **approve one awarding body** to provide a single form of a qualification following an open, fair and transparent process.

**Part 5** (s29-33) provides for Qualifications Wales to **designate a qualification** so it is eligible for public funding. This provision was added to the Bill on amendment during its passage through the Assembly in the interests of **transition and continuity**. It avoids Qualifications Wales having to undertake the full approval process for every qualification as soon as the new body is established, and **reduces the risk of disruption to learners**.

**Part 6** (s34-36) makes further provision on recognition and approval, **requiring education and training courses** for learners aged under 19 **to lead to a Qualifications Wales approved qualification** where those courses are publicly funded. Part 5 also **clarifies the roles** of Qualifications Wales and its English counterpart, **Ofqual**, so that there is **no duplication** of regulatory responsibilities.

**Part 7** (s37-44) contains the **enforcement provisions** available to Qualifications Wales where awarding bodies **fail to comply** with conditions of recognition or approval.

**Part 8** (s45-54) makes provision about Qualifications Wales' **other functions**, including review and research, a duty to prepare a policy statement and complaints procedures.

**Part 9** (s55-61) makes **general provision**, including an index of defined terms used in the Act.

The Welsh Government identified four main limitations of the current arrangements which it intends the Act to address. As with the information the Welsh Government published in the Explanatory Memorandum (EM), the detail of the purpose and intended effect of the Act provided below is structured around these four limitations. Where references are made to the EM, this is the [revised version after the Bill was amended at Stage 2 \(pdf 1.13MB\)](#) unless stated.

### 3.1. *A single dedicated organisation*

The first main limitation the Act seeks to overcome is:

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

- The two principal aims the Act sets for Qualifications Wales underpin the Welsh Government's approach to overcoming this limitation.
- Qualifications Wales' **principal aims** (ensuring qualifications and the qualification system meet the reasonable needs of learners, and promoting public confidence) coupled with the eight **matters** to which it must have due regard, are **designed to ensure that the long-term benefit of Wales and its learners remains the focus of the organisation.**
- Section 53(1) of the Act provides that Qualifications Wales must also have **regard to relevant Welsh Government policy.** The EM envisages that Qualifications Wales will have regular dialogue on policy with Welsh Government officials, for example regarding curriculum and skills, but asserts this will not undermine the **organisation's independence from the Welsh Government.**
- The Act requires Qualifications Wales to submit an **annual report to the National Assembly**, including how it has exercised its functions with reference to its principal aims and its proposed activities and priorities for the following year.
- While the Welsh Government will not determine Qualifications Wales' annual priorities or business plan, it will issue a **grant allocation letter**<sup>3</sup>. This will set out any particular areas of focus or activities to supplement its core functions as well as settling the **annual grant** to be paid to Qualifications Wales to perform its functions. The Welsh Ministers have powers under the Act to also pay additional grants to Qualifications Wales.

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<sup>3</sup> This letter will not be dissimilar to the remit letter which the Welsh Government issues Estyn each year. However, to reflect the fact Qualifications Wales takes its remit from the Act rather than from Ministers, the Welsh Government decided during passage of the Bill to use the term 'grant allocation letter' rather than 'remit letter'. The Act itself does not make reference to the letter but, following Stage 2, references in the Explanatory Memorandum to 'annual remit letter' were replaced with 'annual grant allocation letter'.

- Due to the fact that Qualifications Wales will be funded by the Welsh public purse, there will be a **framework document** outlining its responsibilities to the Welsh Government (particularly its financial responsibilities). Oversight of these will be undertaken by a **sponsor unit** within the Welsh Government.
- **Schedule 1** of the Act sets out further details of the **practical arrangements** for the new organisation such as membership, appointment of the chair and chief executive, and accounts and audit.

### 3.2. *Prioritising qualifications*

The second main limitation the Welsh Government identified was:

*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.*

Section 13 of the Bill places a duty on **Qualifications Wales and the Welsh Ministers to jointly agree and publish** a list of qualifications, or a description of qualifications, which is to be known as the '**Priority Qualifications List**'. In order for a qualification to be a priority qualification, the condition the Act places is that public confidence in it must be a priority. The EM explains that 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. (para 69)

The EM adds that having a list of priority qualifications will enable Qualifications Wales to **focus public resources most effectively** on qualifications that are most significant, whilst also having the flexibility to consider whether or not to approve a non-priority qualification.

One of the main significances of whether a qualification is a priority qualification is that, where a priority qualification is submitted by a recognised awarding body for approval, Qualifications Wales **must** consider whether to approve the form of the qualification for public funding. For non-priority qualifications, Qualifications Wales will not be obliged to consider approving the qualification, provided the decision to do so is clear and in accordance with its published decision-making process.

Where a qualification is a priority qualification, Qualifications Wales may choose to restrict the number of forms of that qualification available for public funding in Wales to one or more.

### 3.3. *Restricting qualifications to one or more forms and approving a single provider*

The third main limitation the Act seeks to overcome is:

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

The Welsh Government had already signalled for some time that it wanted to move towards a **single specification** of qualifications such as GCSEs and AS and A levels. For example, the Minister for Education and Skills told a national qualifications conference in Cardiff on 11 December 2013<sup>4</sup> that, in respect of the new English/Welsh Language and Mathematics GCSEs, and revised English/ Welsh Literature GCSEs:

The new GCSEs will be the **only game in town** for these subjects from September 2015 – no other versions will be approved for public funding in Wales. [my emphasis]

The Children, Young People and Education Committee questioned the Minister on why, if the Welsh Government did not have powers at that time to restrict qualifications to only one provider, it is only the WJEC that is offering the new and revised GCSEs in Wales from September 2015. The Minister explained this was because other awarding bodies (whose markets are predominantly in England) did not wish to collaborate with the WJEC on the Welsh Government's requirement for a single specification. If they had, the Welsh Government would not have had the powers to limit provision to only one awarding body.

Section 14 of the Act provides for Qualifications Wales to assign qualifications to a category known as '**restricted priority qualifications**', **the numbers of forms of which may be restricted to as few as one**. For example, Qualifications Wales may determine that it will only approve one form of GCSE Geography, meaning this would be the only version available for public funding in Wales. In making such a determination, Qualifications Wales **must be satisfied** that it is desirable in light of its principal aims and the following **two objectives**:

- To **avoid inconsistency** between different forms of the same qualification (this could include the level of attainment they indicate).
- To **enable Qualifications Wales to exercise choice** between different awarding bodies which may want to develop a new form of the qualification or between different forms of qualifications submitted for approval.

The EM (para 74) observes that Wales, England and Northern Ireland are unusual amongst European countries in having a market structure for qualifications taken

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<sup>4</sup> Huw Lewis, Minister for Education and Skills, [\*Speech to Delivering a National Qualifications System for Wales conference\*](#), Swalec Stadium, Cardiff, 11 December 2013

by young people in schools and colleges. Through this part of the Act, therefore, the Welsh Government wants to **remove the qualifications market in maintained schools for certain qualifications where considered appropriate**. The EM highlights the challenge of ensuring parity between different forms of qualifications, inefficiencies created by the need to demonstrate consistencies and the scope for perceptions that some forms of the same qualifications sat by some young people are ‘easier’ than those sat by others.

In summary, the Welsh Government believes the introduction of a Priority Qualifications List and, within that, a list of restricted qualifications, will contribute to the **simplification of the qualification system**. For some types of subjects, this will mean a single suite of qualifications. The Minister had argued in his speech in December 2013:

Whichever awarding bodies undertake the work, we are moving towards a single suite of GCSEs. Every learner in Wales taking a subject at GCSE will be working to the same specification and taking the same assessments. This will help to simplify the qualifications system, in line with the Review’s [Huw Evans’ Review of 14-19 Qualifications] recommendations. With just one GCSE per subject area, Qualifications Wales will be able to concentrate more time and resources on making sure that the quality of our GCSEs is world class, that assessment is rigorous, that grades are fair and that providers get the support they need.

The Act sets out a **commissioning type model**, providing for Qualifications Wales to enter into arrangements with an awarding body to develop a new form of a restricted priority qualification, with a view to approving it. Where Qualifications Wales does not actually enter into arrangements with an awarding body to develop the qualification, it may still decide between different forms of a qualification that are submitted to it.

The Act therefore provides for a process where awarding bodies compete with each other to be selected by Qualifications Wales as the provider of a given qualification. The Explanatory Notes (paragraph 38) to section 17 refer to a ‘competitive process’ to ‘select the approved qualification(s)’.

The Act requires that, in making its selection of an awarding body with which to work, or a form of qualification to approve, Qualifications Wales must do so in an **‘open, fair and transparent’** procedure set out in a published scheme. Qualifications Wales must also inform each recognised awarding body that it intends to restrict a priority qualification and undertake such a process of selection.<sup>5</sup>

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<sup>5</sup> Annex B to the EM (paras 69-70) explains it is assumed that WJEC will be the single provider in respect of general qualifications, where these are restricted, until September 2020 at the earliest. It adds the next review period, where the new commissioning approach can be introduced, is therefore 3-4 years away.

Whilst the decision on what is a priority qualification will be taken jointly with Welsh Ministers, the **decision whether a priority qualification is restricted or not will be for Qualifications Wales alone**. Qualifications Wales will also have the decision over which awarding body, or bodies, are able to provide the form(s) of qualification(s) eligible for public funding in Wales. The Welsh Government anticipates that Qualifications Wales will need to take appropriate steps to have a separate system for its functions of commissioning and approvals. This is not automatic but the Welsh Government says the Act sets out a range of powers and corporate structures enabling Qualifications Wales to do so.

The Welsh Government believes that the functions being given to Qualifications Wales, alongside the principal aims that have been set for it, will enable it to establish a **more ‘demand-led’ qualifications system that better serves the interests of the learners**. The EM argues that:

Where Qualifications Wales thinks that is appropriate to do so it is possible to take Wales’ qualifications 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. (para 84)

The Welsh Government also envisages that:

Enabling Qualifications Wales to enter into arrangements with awarding bodies 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. (para 85)

The inference is that the commissioning model for restricted qualifications is more likely to be adopted for academic than vocational qualifications with the EM anticipating that:

While some vocational qualifications will continue to exist in a multi-provider market, Qualifications Wales may determine that for others a single suite approach is most appropriate. (para 88)

However, the Minister told the Children, Young People and Education Committee there was no reason to distinguish between academic and vocational qualifications and that Initial Vocational Education and Training (IVET) courses were one of the obvious candidate areas for prioritising and possibly restricting qualifications.<sup>6</sup> He also said in Plenary on 2 December 2014 that he envisaged Qualifications Wales being very active in the vocational field.<sup>7</sup>

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<sup>6</sup> National Assembly for Wales, Children, Young People and Education Committee, [RoP\[para56\]](#), 11 December 2014

<sup>7</sup> National Assembly for Wales, Plenary, [RoP\[15:43\]](#), 2 December 2014

### 3.4. *Enhancing the capacity to strategically develop qualifications*

The fourth main limitation the Act seeks to overcome is:

*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.*

In the [EM accompanying the Bill on introduction \(page 22\) \(pdf 1.11MB\)](#), the Welsh Government identified four elements to Qualifications Wales’ work:

- Monitoring and Quality Assurance
- Strategic Policy and Research
- Qualifications Development and Commissioning
- Recognition and Approval

In Committee, the Minister gave an insight into how he foresees Qualifications Wales using its functions strategically:

‘Employers and higher education institutions are all critical, ongoing partners in the ongoing conversations that will be part of the daily business of Qualifications Wales to be getting on with. That will be part of its remit and its day-to-day operation, and it will have a capacity way over and above the current set-up to be able to conduct that business. So, first of all, there will be a clear point of contact for employers, universities and other stakeholders. They will know where to go—‘**There’s one place to go; it’s Qualifications Wales**’. Qualifications Wales will have a much greater capacity than the subsection of my department that currently regulates the situation.

Qualifications Wales will have a much more expansive conversation with employers. It would be possible to have developmental conversations over time about the kind of qualifications that might be necessary in some years in the future. You know, there is **no reason why Qualifications Wales should not be overseeing a landscape of development that goes 20 years into the future**. That is extraordinarily difficult at the moment for a temporary politician, like me, to have oversight of a narrower degree of functions, really.<sup>8</sup> [my emphasis]

**Comparability** of qualifications is one of the matters to which Qualifications Wales must have regard under the Act. The Welsh Government set out in the EM (para 98) how it believes Qualifications Wales’ powers under the Act and its involvement of stakeholders will ensure qualifications produced and awarded in Wales ‘**positively compare** with those in the rest of the UK and elsewhere’.

Section 46 provides for Qualifications Wales to carry out **research** on any matter connected with qualifications and the Welsh Government says this will inform development of regulatory policy and promotion of best practice.

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<sup>8</sup> National Assembly for Wales, Children, Young People and Education Committee, [RoP\[paras 66-67\]](#), 11 December 2014



The Act provides Qualifications Wales with functions to **recognise awarding bodies and award qualifications** that apply to any academic or vocational qualification awarded in Wales, other than degrees. Qualifications Wales will set criteria and must recognise awarding bodies which satisfy this. There are two types of recognition. Section 8 provides for Qualifications Wales to give **general recognition** to an awarding body, whilst section 9 provides for an awarding body that is already generally recognised to receive **specific recognition** in respect of a particular qualification or description of qualifications. Where an awarding body has general recognition from Qualifications Wales, it may 'opt out' in respect of some its qualifications by specifying those qualifications for which it does not wish to be recognised.

Where awarding bodies seek approval for particular qualifications, there is a **different process** to be followed depending on whether they are restricted priority, non-restricted priority, or non-priority, qualifications. If a qualification is a restricted priority qualification, Qualifications Wales will undertake the commissioning type process outlined in section 3.3 of this paper above. If it is a priority but is non-restricted, Qualifications Wales must consider whether to approve it or not and must publish approval criteria on which it will base its decision. For non-priority qualifications, Qualifications Wales will be able to decide whether or not to even consider it for approval but must publish a scheme setting out the factors it is likely to take into account when making such decisions.

The Act gives Qualifications Wales the power to **apply conditions to its approval** of qualifications, with **provision for enforcement** of those conditions. The EM (para 96) highlights that there are also 'detailed provisions' for the withdrawal of recognition from a body or withdrawal of the approved status for a qualification, including 'numerous safeguards on the face of the [Act]'.

#### 4. Power to make subordinate legislation

The Act contains **four provisions** which give powers to the Welsh Ministers to make subordinate legislation. In all cases, the power is to be exercised through the **Affirmative** procedure other than the commencement order where no procedure is necessary.

- **Section 21(1)** provides for regulations to be made specifying **minimum requirements for any qualification** approved by Qualifications Wales. Whilst Qualifications Wales will be able to specify content requirements for priority qualifications it approves, the Explanatory Notes explain this power acts as a fall-back for the Welsh Ministers to ensure that Qualifications Wales ensure specific requirements are met.
- **Section 38(3)** provides for regulations setting out how Qualifications Wales is to calculate the **monetary penalties** it can levy on an awarding body that has failed to comply with conditions of its approval.
- **Section 59(1)** provides the Welsh Ministers with **flexibility** to make regulations for any supplementary, incidental, consequential, transitional, transitory, or saving provision that may be **necessary to give full effect** to the Act.
- **Section 60(2)** provides for the majority of provisions in the Act (other than those stated as commencing upon Royal Assent) to **come into force** through an order made by the Welsh Ministers.

## 5. Estimated costs of implementing the Act

A Regulatory Impact Assessment (RIA) was contained within the [Explanatory Memorandum \(as amended after Stage 2\) \(pdf 1.13MB\)](#) that was published by the Welsh Government alongside the Bill.

The Welsh Government estimates that implementing the Act will cost **£42 million** during the five year period from **2015-16 until 2019-20**. This compares to the £20 million cost of the ‘do-nothing’ option where the Welsh Ministers maintain the regulatory function.

However, in the context of gradual movement away from a three-country model of qualifications regulation across Wales, England and Northern Ireland, the Welsh Government says there would be **additional costs even in maintaining some form of status quo**. These additional costs are estimated as £6 million over the five years. The Welsh Government therefore estimates that the **additional costs of setting up Qualifications Wales and implementing the legislation are £16 million during the five-year period 2015-16 until 2019-20**.

The RIA acknowledged that there is a high additional cost associated with the changes under the Act, but reported the Welsh Government Cabinet’s view that this is the ‘justifiable expense’ associated with having an independent qualifications system in Wales.<sup>9</sup> The Welsh Government believes:

[the Act] 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 (Option 1), or providing Wales with a weaker version of what is actually required (Option 2).<sup>10</sup>

The Minister for Education and Skills stated in evidence to the Children, Young People and Education Committee that **the Act would be funded from existing resources**, and that there was no extra allocation to the Education and Skills Main Expenditure Group for its provisions.<sup>11</sup> Looking at benefits, as with most legislation, these were not quantified as the RIA stated there were no direct financial benefits associated with the legislation. In the longer term, the trading arm that will be established as part of Qualifications Wales will enable it to generate its own income. However, the RIA assumed that Qualifications Wales will receive 100% of its funding via Welsh Government grant-in-aid for the first five years.

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<sup>9</sup> Welsh Government, [Explanatory Memorandum to the Qualifications Wales Bill \(as amended after Stage 2\) \(pdf 1.12MB\)](#), June 2015, paragraph 240

<sup>10</sup> *Ibid*, paragraph 252,

<sup>11</sup> National Assembly for Wales, Children, Young People and Education Committee, [RoP\[para118\]](#), 11 December 2014

The majority of the additional costs associated with the Act relate to **staff costs**. These are for staff delivering qualifications functions, corporate staff, and for the Welsh Government sponsor unit. Costs associated with **premises**, such as rent and utilities, are also a significant component of the additional set-up and ongoing costs of the Act. The other major source of additional costs are **ICT costs**, most of which are one-off set-up costs.

The Assembly's Finance Committee considered the financial implications of the Bill at its meeting of 21 January 2015. At the Committee's request, the Minister provided more details of ICT costs.<sup>12</sup>

**Table 1** provides a summary of estimated total and additional costs resulting from implementing the Act.

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<sup>12</sup> National Assembly for Wales, Children, Young People and Education Committee, [\*Letter from the Finance Committee to the Minister for Education and Skills: Qualifications Wales Bill CYPE\(4\)-04-15-Paper to note 4\*](#), 5 February 2015  
National Assembly for Wales, Children, Young People and Education Committee, [\*Letter from the Minister for Education and Skills to the Chair of the Finance Committee following the Finance Committee meeting on 21 January CYPE\(4\)-07-15-Paper to note 2\*](#), 4 March 2015

**Table 1: Estimated total and additional costs of the Act, 2015-16 to 2019-2020**

| <b>Costs</b>  | <b>2015-16</b>   | <b>2016-17</b>   | <b>2017-18</b>   | <b>2018-19</b>   | <b>2019-20</b>   | <b>Total</b>      |
|---|------------------|------------------|------------------|------------------|------------------|-------------------|
| <b>Set-up costs</b>   |                  |                  |                  |                  |                  |                   |
| <b>Revenue costs</b>  |                  |                  |                  |                  |                  |                   |
| Cost of project to effect organisation                                      | 1,202,000        |                  |                  |                  |                  | 1,202,000         |
| Staff - Corporate   | 240,000          |                  |                  |                  |                  | 240,000           |
| Staff - non-pay   | 294,000          |                  |                  |                  |                  | 294,000           |
| Premises  | 232,000          |                  |                  |                  |                  | 232,000           |
| ICT   | 580,000          |                  |                  |                  |                  | 580,000           |
| <b>Capital costs</b>  |                  |                  |                  |                  |                  |                   |
| ICT   | 664,000          |                  |                  |                  |                  | 664,000           |
| Fixtures and Fittings   | 226,000          |                  |                  |                  |                  | 226,000           |
| <b>Total set-up costs</b>   | <b>3,438,000</b> |                  |                  |                  |                  | <b>3,438,000</b>  |
| <b>Operating Costs</b>  |                  |                  |                  |                  |                  |                   |
| <b>Revenue costs</b>  |                  |                  |                  |                  |                  |                   |
| Staff - Corporate   | 869,000          | 1,490,000        | 1,490,000        | 1,490,000        | 1,490,000        | 6,829,000         |
| Staff - Qualifications Functions  | 1,862,000        | 2,422,000        | 2,422,000        | 2,422,000        | 2,422,000        | 11,550,000        |
| Staff - Non-pay   | 95,000           | 163,000          | 163,000          | 140,000          | 123,000          | 684,000           |
| Staff - Sponsor Unit  | 102,000          | 203,000          | 203,000          | 203,000          | 203,000          | 914,000           |
| Premises  | 436,000          | 748,000          | 748,000          | 748,000          | 748,000          | 3,428,000         |
| ICT   | 0                | 326,000          | 326,000          | 326,000          | 326,000          | 1,304,000         |
| Other, Legal and Professional   | 180,000          | 306,000          | 306,000          | 306,000          | 306,000          | 1,404,000         |
| <b>Capital costs</b>  |                  |                  |                  |                  |                  |                   |
| ICT   | 0                | 0                | 0                | 178,000          | 0                | 178,000           |
| <b>Other costs</b>  |                  |                  |                  |                  |                  |                   |
| Depreciation  | 50,000           | 86,000           | 86,000           | 86,000           | 86,000           | 394,000           |
| Qualifications Wales Programme Spend  | 2,380,000        | 2,380,000        | 2,380,000        | 2,380,000        | 2,380,000        | 11,900,000        |
| <b>Total operating costs</b>  | <b>5,974,000</b> | <b>8,124,000</b> | <b>8,124,000</b> | <b>8,279,000</b> | <b>8,084,000</b> | <b>38,585,000</b> |
| <b>Total costs</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> | <b>42,023,000</b> |
| <b>Additional costs compared to option 1a (current status quo)</b>          | <b>5,406,000</b> | <b>4,118,000</b> | <b>4,118,000</b> | <b>4,273,000</b> | <b>4,078,000</b> | <b>21,993,000</b> |
| <b>Additional costs compared to option 1b (realistic future status quo)</b> | <b>4,334,000</b> | <b>2,822,000</b> | <b>2,822,000</b> | <b>2,977,000</b> | <b>2,782,000</b> | <b>15,737,000</b> |

Source: Research Service calculations from Welsh Government, [Explanatory Memorandum \(as amended after Stage 2\) \(pdf 1.13MB\)](#), June 2015

## 6. Reception from stakeholders

As part of its scrutiny of the Bill at Stage 1 of the Assembly's legislative process, the Children, Young People and Education Committee issued a [call for evidence](#).

This consultation sought views on questions such as the need for legislation; whether the Welsh Government had correctly identified the main limitations of the current system, Qualifications Wales' principal aims and eight matters to which it must have regard; and potential barriers to implementation and financial implications.

There was almost **universal support** for the principle of **transferring responsibility** for the regulation of qualifications away from government and setting up a **dedicated independent body** for this purpose. Views tended to **focus on the practicalities** of how the new organisation will work; what is required to ensure its success in meeting its principal aims; and the advantages and disadvantages of the new arrangements for prioritising and restricting qualifications.

Of the 26 respondents to the Committee's consultation, **17 positively agreed there was a need for the legislation**. This included the largest awarding body in Wales, the WJEC, which had previously opposed the Welsh Government's initial plan to accept Huw Evans' recommendation in full and set up Qualifications Wales as both regulator and awarder of qualifications.<sup>13</sup>

Two respondents did not state a clear view on whether there was a need for legislation, whilst one (the Council for Awards in Care, Health and Education) did not agree with the need for a Bill due to 'significant concerns about the likely impact on learners'.

In addition to the WJEC, six other awarding bodies supported the principle of an independent regulator whilst urging some caution about some elements of the Bill. This included two other leading awarders of academic qualifications, OCR and Pearson. Furthermore, three vocational awarding bodies followed the position of their umbrella organisation (the [Federation of Awarding Bodies \(pdf 666KB\)](#)) in warning about a **potential negative impact on the qualifications market in Wales**.

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<sup>13</sup> In its written submission to the CYPE Committee, the [WJEC \(pdf 107KB\)](#) welcomed the 'prudence' of not including awarding functions in this legislation, reiterating they had previously expressed concerns about combining regulatory and awarding functions within one body. In the Explanatory Memorandum to the Bill, the Welsh Government referred to the 'significant number of consultees' who expressed such concerns. During pre-legislative scrutiny in May 2014, [Huw Evans told the Committee \(pdf 190KB\)](#) that the vision of his Review required a merger between the WJEC and the new organisation, Qualifications Wales. Mr Evans said 'early discussions revealed the clear determination of the WJEC to retain its independence and identified a philosophical divide, which allied to the potential for legal challenge, made the initial vision very difficult to achieve'. He added this was 'reluctantly accepted' by the Advisory Board (which he chaired) that worked with the Welsh Government ahead of the Bill being brought forward.

There was **general agreement** that the Welsh Government had identified the **right limitations** of the current system and stakeholders also generally felt the two **principal aims and eight matters were appropriate**. However, there were several suggested additions to the list of matters, including more explicit reference to promoting a **parity of esteem** between vocational and academic qualifications, and promoting **international compatibility**. The Welsh Government agreed these issues were of utmost importance but argued they were already implicit in the remit the Act sets Qualifications Wales.

Views on the sections of the Act establishing the processes for **prioritising and restricting qualifications** were more mixed, which reflected the fact this aspect of the legislation triggered the most debate during scrutiny.

Rather than explicitly agreeing or disagreeing with the concept of Qualifications Wales undertaking a **commissioning** type process for restricted priority qualifications, stakeholders emphasised the importance of ensuring the process is **open, fair and transparent**. This itself implied tacit support generally for Qualifications Wales having these functions.

Stakeholders generally identified awarding bodies as being most affected by the changes introduced by the Bill.

Only a small number of potential barriers to implementation of the Bill were identified, including:

- the **costs** associated with establishing Qualifications Wales in an era of austerity;
- **staffing** and human resource issues;
- **challenges of portability and comparability** in a distinct Welsh system;
- **the responsiveness of awarding bodies** to the new arrangements; and
- achieving **public confidence and engagement with stakeholders**.

## 7. Passage through the Assembly

The [Children, Young People and Education \(CYPE\) Committee's web-page](#) details the Bill's passage through the Assembly's legislative process. A summary is provided below.

### 7.1. Stage 1

The Bill was scrutinised at Stage 1 of the Assembly's legislative process by both the CYPE Committee and the Constitutional and Legislative Affairs (CLA) Committee.

The CYPE Committee considered the **general principles** of the Bill, whilst the CLA Committee considered the **appropriateness of provisions** within the Bill, particularly those that give powers to Ministers to make subordinate legislation.

Both Committees reported in March 2015.<sup>14</sup>

The CYPE Committee, which had already undertaken pre-legislative scrutiny on the Welsh Government's proposals to establish Qualifications Wales, mainly made recommendations on matters that the Welsh Government should consider as part of its general approach to the policy surrounding the Bill. However, the Committee did recommend several specific changes to the Bill itself, including **amending the wording of the provision determining eligibility of qualifications for public funding**.

The CYPE Committee called for 'Welsh version of the qualifications' to be replaced with alternative wording which more accurately reflected the Welsh Government's policy intention that only qualifications approved or designated by Qualifications Wales be eligible for use on publicly funded courses. The Committee felt that the original wording could imply something further than approval by Qualifications Wales, for example that the qualification had to be unique to Wales or different to that offered elsewhere. This was accepted by the Minister at Stage 2 and the Bill was accordingly amended.

The CLA Committee commended the Minister for the way in which the Bill had been drafted, concluding the level of detail on its face was appropriate and that the small number of regulation-making powers were clear and justifiable.

The general principles of the Bill were approved in [Plenary on 24 March 2015](#).

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<sup>14</sup> Children, Young People and Education Committee, [Qualifications Wales Bill: Stage 1 Committee Report \(pdf 457KB\)](#), March 2015  
Constitutional and Legislative Affairs Committee: [Report on the Qualifications Wales Bill \(pdf 347KB\)](#), March 2015



## 7.2. Stage 2

The Research Service produced an earlier, separate publication, [Qualifications Wales Bill: Summary of changes made at Stage 2 \(pdf 233KB\)](#), which details amendments – both successful and unsuccessful – tabled at Stage 2.

**76 amendments** were tabled, of which 55 were tabled by the Minister. All of the Minister's amendments were agreed by the CYPE Committee on [30 April 2015 \(pdf 465KB\)](#).

However, Opposition Members abstained from the votes on a number of amendments relating to a new Part being added to the Bill, which provided for '**designated qualifications**'. This was because of concerns about a significant new element being added to the Bill without consideration and scrutiny at Stage 1.

As stated earlier in this paper, the provision for Qualifications Wales to designate qualifications is to enable an alternative route for qualifications to become eligible for public funding in Wales. The Welsh Government argued this **avoids Qualifications Wales having to undertake the full approval process for every qualification** as soon as the new body is established, thereby reducing the risk of disruption to learners and **enabling continuity**.

During the early part of Stage 3, the CYPE Committee sought views on the new provisions to designate qualifications. The Committee did not receive any strong objections to the new provisions, although some respondents highlighted the potential risks of having two different categories of qualifications eligible for public funding.

Of the 21 non-Government amendments, only one succeeded. This amendment (Amendment 68) strengthened the requirement on Qualifications Wales to include in its annual report details of how it has consulted with stakeholders in the previous year.

The Welsh Government produced a [revised Explanatory Memorandum \(pdf 1.13MB\)](#), reflecting the changes made to the Bill at Stage 2.

## 7.3. Stage 3

**46 amendments** were considered by Members in Plenary on [16 June 2015](#). 40 of these were tabled by the Minister for Education and Skills. The vast majority of these amendments either made **minor changes** to the Bill or stemmed from the addition at Stage 2 of the new Part 5 making provision for designated qualification. All 40 of the Minister's amendments were agreed by the Assembly, 35 passing unanimously.

Five of the six amendments from opposition parties were defeated, four as a result of the requirement in the Assembly's Standing Orders for the Deputy

Presiding Officer to exercise his casting vote against the amendment. A further non-Government amendment was not moved.

#### *7.4. Stage 4*

Following a short debate, the final Bill was approved by Members in Plenary on [16 June 2015](#).

#### *7.5. Royal Assent*

Once a Bill is passed by the Assembly at Stage 4, the *Government of Wales Act 2006* provides that it may be submitted for Royal Assent by the Clerk of the Assembly, but only after the expiry of a four week window known as the ‘period of intimation’.

During this period, the 2006 Act allows an Assembly Bill to be challenged through one of two ways:

- A referral to the Supreme Court by either the Counsel General of the Welsh Government or the Attorney General of the UK Government.
- An order made by the Secretary of State prohibiting the Clerk of the Assembly from submitting a Bill for Royal Assent.<sup>15</sup>

**No such challenge** took place in respect of the Qualifications Wales Bill. It received [Royal Assent and became an Act on 5 August 2015](#).

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<sup>15</sup> Research Service Quick Guide, [Reconsideration of Assembly Bills passed](#), September 2012

## 8. Commencement and transitional arrangements

Under section 60, some sections of the Act came into force on the day of **Royal Assent (5 August 2015)**; others will take effect in accordance with a commencement order made by the Welsh Ministers.

In July 2015, the Minister for Education and Skills provided a written **update** to the Children, Young People and Education Committee on the **commencement and transitional arrangements**. The Minister said that Welsh Government officials were working towards commencing the provisions of the Act in the following order:

- Those which are brought about by Royal Assent;
- Those which relate to the establishing of Qualifications Wales shortly after Royal Assent, in order that the necessary preparations can be made before it becomes fully operational; and
- Those which, on **21 September 2015**, will **commence Qualifications Wales' regulatory functions**. Regulations regarding monetary penalties will be brought forward at a later date.

An **Interim Chief Executive, Philip Blaker**, has been in place since July 2014<sup>16</sup> and the Minister now intends to appoint Mr Blaker as the **first Chief Executive Officer** of Qualifications Wales. Subsequent appointments will be made by the organisation itself.

The Minister has also appointed a **Qualifications Wales Shadow Board** and **Ann Evans was appointed as its Chair** in March 2015<sup>17</sup>. Ms Evans is a former Chief Executive of Careers Wales in Mid Glamorgan and Powys, and former Assistant Chief Executive of ACCAC (the former Qualifications Curriculum and Assessment Authority for Wales). The Minister intends to appoint the members of the Shadow Board to the first Qualifications Wales Board.

The Minister's update to the Committee in July also said:

- Over 60 **staff positions** are close to being filled with either job offers made or interviews undertaken. A further ten positions are expected to be filled later in the year to bring Qualifications Wales to its full head-count of 74.
- Premises for Qualifications Wales' **headquarters** have been leased and fitted out.

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<sup>16</sup> Welsh Government, News release, [New head of Qualifications Wales announced](#), 7 July 2014 [accessed 23 July 2015]

<sup>17</sup> Welsh Government, News release, [Appointment of chair of Qualifications Wales' Shadow Board](#), 13 March 2015 [accessed 23 July 2015]

- The **ICT infrastructure** has been largely completed and ICT equipment purchased. Software has also been purchased and is being configured whilst the new organisation's website is being developed ready for launch.

Other transitional arrangements described by the Minister include:

- Any awarding body already **recognised** by the Welsh Ministers under the current arrangements will be treated as being recognised generally by Qualifications Wales. Such awarding bodies will be given the opportunity to identify any qualifications that they do not wish to be included in their general recognition by Qualifications Wales.
- Most qualifications listed as eligible for public funding on the [Database of Approved Qualifications in Wales \(DAQW\)](#) immediately before 21 September 2015 will be treated as **designated** by Qualifications Wales thereafter until the review date shown on the database or 31 August 2018, whichever is earlier.
- The remaining few qualifications listed as eligible for public funding immediately before 21 September 2015 will be treated as **approved** by Qualifications Wales thereafter until their review date listed on DAQW. These qualifications will be the **key reformed, Wales only**, qualifications: GCSEs, AS and A levels, Welsh Baccalaureate and Essential Skills Wales.

## 9. Reviewing implementation

In its Explanatory Memorandum (EM), the Welsh Government outlined four main areas on which review and evaluation of the implementation of the Act will focus.<sup>18</sup>

### *9.1. The exercise of Qualifications Wales' statutory functions*

Qualifications Wales is required to **report annually to the National Assembly for Wales**, including on the performance of its functions in relation to its principal aims and how it intends to carry out those functions in the following year. Its first annual report will be prepared in 2016.

The Act does not specify how scrutiny of the annual report will be carried out although the Explanatory Memorandum says Qualifications Wales may be held to account by the Assembly either in Plenary or by Committee.

### *9.2. Qualifications Wales' responsibility for reviewing the qualification system in Wales, including its own role*

Section 46(2) of the Act requires Qualifications Wales to keep under review 'the **respective roles played by it and by awarding bodies** in respect of the Welsh qualification system'. The Welsh Government suggests this will enable Qualifications Wales to advise on the feasibility of it becoming an awarding body in the longer-term, which remains the Minister's stated long-term aim.

The Act also sets Qualifications Wales a wider principal aim of ensuring the effectiveness of the qualification system. In addition, the Welsh Government expects that Qualifications Wales' **annual report will include a general analysis** of the qualifications system in Wales.

### *9.3. Measuring public confidence in the Welsh qualification system*

Qualifications Wales' second principal aim under the Act is to promote public confidence in qualifications and the Welsh qualifications system. The Welsh Government argues that **Qualifications Wales will need to determine how it will best monitor confidence on an on-going basis in the long-term**. It suggests this is likely to be gauged through specific stakeholder groups.

The EM sets out some shorter-term methods for Qualifications Wales to measure public confidence such as working with its sponsor unit within the Welsh Government and the work being undertaken to evaluate the impact of implementation of the Review of Qualifications for 14 to 19 year olds.

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<sup>18</sup> National Assembly for Wales, [Explanatory Memorandum \(as amended at Stage 2\), Qualifications Wales Bill](#), paragraphs 318-336

#### *9.4. Impacts of establishing Qualifications Wales*

The sponsor unit within the Welsh Government will be responsible for reviewing the impact of establishing Qualifications Wales. This is likely to be informed by **revisiting the impact assessments** undertaken whilst developing the Bill.

The EM explains the Welsh Government will **hand these impact assessments over to Qualifications Wales** who will decide whether and how to use them as part of its ongoing review and evaluation work.



