

# QUALIFICATIONS WALES

## REGULATORY POLICIES AND PROCEDURES

### RESTRICTED PRIORITY QUALIFICATIONS POLICY

#### **Version control**

This version (1) of Qualifications Wales' Restricted Priority Qualifications policy was approved on 22 July 2016 by the Qualifications Wales Board.

Section 47(1)(b) of the Qualifications Wales Act 2015 ("the Act") requires Qualifications Wales to publish a statement of its policy with respect to the exercise of its functions under Part 4 of the Act, which includes provisions on restricted priority qualifications. Qualifications Wales will keep its policy statements prepared under section 47 of the Act under review, and if it considers it appropriate in consequence of a review, prepare revised statements. Qualifications Wales will review this document at least once a year. Such a review may consider the effectiveness of the policy and its ongoing applicability. The next review of this statement is due to take place no later than 3 August 2017.

Feedback on this policy is welcomed at any time. Please send any comments to [policy@qualificationswales.org](mailto:policy@qualificationswales.org).

#### **General principles of the restricted priority qualifications policy**

This policy will be of interest to awarding bodies, all users of qualifications in Wales and the Welsh Government. It explains how Qualifications Wales exercises its functions in relation to the restriction of qualifications.

Under the Act, schools, institutions and employers in Wales can only offer a course funded by Welsh Ministers or by a local authority in Wales, to learners under the age of 19 that leads to a qualification that is approved or designated (unless an exemption has been granted by the Welsh Ministers).

Section 13 (Duty to prepare list of priority qualifications) outlines the duty of Qualifications Wales and the Welsh Ministers to jointly prepare a priority qualifications list. A qualification may be included on the List "when Qualifications Wales and Welsh Ministers are satisfied that ensuring and maintaining public confidence in the qualification is a priority for Qualifications Wales, by reason of the significance of the qualification having regards to the needs of learners and employers in Wales".

Section 14 (Restricted priority qualifications) of the Act provides Qualifications Wales with the power to restrict priority qualifications. In deciding to impose a restriction, Qualifications Wales must take into account its principal aims under the Act and two objectives – namely to avoid inconsistencies between different forms (or 'versions') of the same qualification and to enable Qualification Wales to exercise a choice between different awarding bodies or between different forms of qualification.

If Qualifications Wales is satisfied that it is desirable to restrict the number of forms of priority qualification that are approved to a maximum number (one or more), there are two routes by which a restricted priority qualification may be approved. The first route, set out in section 15 (Power to make arrangements for development of restricted priority qualification) and section 16 (Approval of a restricted priority qualification developed in accordance with section 15 arrangements) of the Act, is for Qualifications Wales to enter into a contractual arrangement with awarding bodies for the development of a new form of a restricted priority qualification which will then be submitted to Qualifications Wales for approval. Qualifications Wales refers to this route as the 'commissioning' route. The second route, set out in section 17 (Approval of a restricted priority qualification in the absence of section 15 arrangements), is for Qualifications Wales to approve one or more versions of a qualification from those submitted for approval. Qualifications Wales refers to this route as the 'selection' route. This policy will apply to both of those routes unless specified otherwise.

The aim of this policy is to explain:

- the reasons for restricting priority qualifications;
- the process by which priority qualifications are restricted.

### **Restricted Priority Qualifications**

1. Section 14 of the Act allows Qualifications Wales to restrict a qualification that is on the Priority Qualifications List ("the List").<sup>1</sup> Qualifications Wales may consider whether to apply a restriction to a qualification on the List. A restriction will limit the number of forms (or 'versions') of a qualification that may be approved at any time.
2. Priority qualifications may be restricted if Qualifications Wales is satisfied that it is desirable to do so, having regard to the principal aims and the objectives to:
  - avoid inconsistency<sup>2</sup> between different forms of the same qualification (by reference to the level of attainment indicated by different forms of the same qualification, or otherwise)
  - to enable Qualifications Wales to exercise a choice between different awarding bodies or different forms of qualificationas outlined under section 14(4) of the Act.
3. In deciding which qualifications to restrict, Qualifications Wales will consider our principal aims of 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. Qualifications Wales may identify qualifications that potentially should be restricted through a range of sources including sector reviews, stakeholder engagement and market research.

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<sup>1</sup> A qualification may be included on the List "when Qualifications Wales and Welsh Ministers are satisfied that ensuring and maintaining public confidence in the qualification is a priority for Qualifications Wales, by reason of the significance of the qualification having regards to the needs of learners and employers in Wales".

<sup>2</sup> Inconsistency could relate to a concern regarding a range of issues for example, content or assessment methodology.

4. The following are examples of situations in which Qualifications Wales may consider a restriction of a priority qualification. These examples are not exhaustive:
  - where there is a need for specific qualification content in Wales due to curriculum or devolved policy requirements and that restriction would support the economic viability for awarding bodies to develop such qualifications for Wales;
  - where there is a need for specific assessment arrangements (including, for example assessment through the medium of Welsh) in Wales due to curriculum or devolved policy requirements and that restriction would support the economic viability for awarding bodies to develop such qualifications for Wales;
  - where Qualifications Wales identifies that inconsistency between different existing forms of the same qualification is significant and problematic.
5. Qualifications Wales will consider on a case by case basis whether to apply a restriction to a qualification and how many forms the qualification should be restricted to. Such consideration will be based on a range of sources of information including reviews of existing provision, stakeholder feedback, market research. In considering whether to develop a proposal to restrict, Qualifications Wales will consider the options available and evaluate their effectiveness in meeting the aims and objectives outlined in points 2 and 3.
6. If Qualifications Wales proposes to apply a restriction to a qualification, before doing so it will notify each recognised body, and any other parties that Qualifications Wales considers might reasonably be expected to have an interest in the outcome of the proposal. 'Other parties' may include the learning providers who enter candidates for qualifications, such as schools, Further Education Institutions, sector bodies and work based learning providers.
7. The notification may form part of a wider consultation and impact assessment. It will also include, the subject of the proposed restriction, the rationale for the proposed restriction, supporting evidence, and information on the arrangements relating to any restriction that Qualifications Wales are considering.
8. Before applying a restriction, Qualifications Wales will consider any representations made to it by respondents to the consultation in respect of the proposal.
9. Where an awarding body has raised objections to the proposed restriction this will not prejudice the outcome of any subsequent commissioning or selection process. Where any awarding body can demonstrate to the reasonable satisfaction of Qualifications Wales that there is a danger of prejudice, this will be managed by appropriate steps, for example, by ensuring separation of duties for staff involved where appropriate.
10. Qualifications Wales will publish a determination of a restricted priority qualification as required by section 14(5) of the Act. The determination will be published by

noting on the Priority Qualifications List the qualifications or descriptions of qualifications that Qualifications Wales intends to restrict. A determination will specify the maximum number of forms of the qualification that may be approved at any one time and may indicate whether Qualifications Wales intends to adopt the commissioning or selection route in respect of the restricted priority qualification. Without compromising Qualification Wales' freedom to choose either route at its discretion, the commissioning route is more likely to be chosen where there is a need to develop a new qualification to meet the needs of learners in Wales. The selection route is more likely to be chosen where there are a number of existing qualifications which have the potential to be fit for purpose but where there may be inconsistencies that make it desirable to impose a restriction. Whether the commissioning or selection route is used, the choice of awarding bodies will be subject to open, fair and transparent competition.

11. If Qualifications Wales has restricted a priority qualification, it has the power to:

- enter into an arrangement with an awarding body to develop a new form of a restricted priority qualification (section 15) which may be approved (section 16) – Qualifications Wales refers to this as the ‘commissioning’ route; or
- approve the prescribed form(s) of a qualification that is restricted without entering into an arrangement with an awarding body (section 17) – Qualifications Wales refers to this as the ‘selection’ route. This may include the selection of existing qualifications from those submitted subsequently, for approval by recognised awarding bodies.

12. Section 23 (Duration of approval) of the Act provides that Qualifications Wales will grant approval of the restricted priority qualification for a period specified at the time of granting approval, Qualifications Wales envisages that this would normally be for a period of up to 5 years.

13. At least one year prior to a restricted priority qualification expiry date, Qualifications Wales will review the objectives of the initial determination and consider whether a further restriction should be applied. If we propose to apply a further restriction Qualifications Wales will follow the process outlined in paragraphs 6-12 above: the choice of awarding body will again be subject to open, fair and transparent competition.

### **Commissioning of a new Restricted Priority Qualification**

14. Section 15 of the Act provides that Qualifications Wales may enter into arrangements with an awarding body for the development of a new form of a restricted priority qualification and that it must prepare a scheme about the making of such arrangements. Qualifications Wales refers to this as the ‘commissioning’ route.

15. Qualifications Wales must prepare and publish a scheme for commissioning qualifications that is open, fair and transparent. The scheme will set out the general procedure to be followed by Qualifications Wales, and may be supplemented with documentation specific to each potential restriction. In broad terms, where the Concession Contracts Regulations 2016 apply to the commission, Qualifications Wales will proceed in accordance with those Regulations. In other cases,

Qualifications Wales will apply its own procedure. In either case, this will involve a staged bidding process, applying the principles of transparency, non-discrimination and equal treatment. Once the commission to develop the qualification has been awarded, Qualifications Wales will have close oversight of the work of the commissioned awarding body as it develops the qualification. This oversight will take the form of close contract management as well as involvement with key decisions about subject content and assessment methodology.

16. Where the Concession Contracts Regulations 2016 apply, unsuccessful bidders may make an application to the court to challenge the award of contract(s) if they believe there has been a breach of the Regulations. The process and timescales are set out in Part 5 of the Regulations.
17. Once a commissioned restricted priority qualification has been developed by an awarding body it must be submitted for approval by Qualifications Wales who will review the qualification against the relevant approval criteria which Qualifications Wales has published under Section 20 (Approval criteria) of the Act. If the qualification meets the approval criteria, the qualification will be approved. If it does not meet the approval criteria, the awarding body will be asked to revise the qualification to meet the criteria. Qualifications Wales may specify a time limit for such revisions to be made. Failure to meet the approval criteria and/or to address the necessary revisions within this time limit may lead to termination of the commission.
18. Only commissioned awarding bodies will be able to offer the restricted qualification, as “Approved”, until the approval period expires (or approval is surrendered or withdrawn). This will be subject to transitional arrangements for legacy qualifications to ensure that learners who have already started courses leading to legacy qualifications are not unfairly disadvantaged.
19. Qualifications Wales will not designate any form of qualification that is subject to a restriction or which in its judgment is the same as or similar in purpose to a restricted priority qualification, particularly where a qualification could be chosen as an alternative to a restricted priority qualification.

### **Selection of a Restricted Priority Qualification**

20. Section 17 of the Act provides that Qualifications Wales may approve a form of a qualification that is a restricted priority qualification where it does not intend to enter into arrangements under section 15. Qualifications Wales refers to this as the ‘selection’ route.
21. Qualifications Wales must prepare and publish a scheme for selecting qualifications that is open, fair and transparent. The scheme will set out the general procedure to be followed by Qualifications Wales, and may be supplemented with documents specific to each potential restriction in relation to:
  - the making of applications for approval under section 17
  - how Qualifications Wales will consider those applications
  - the priority approval period and the approval and selection criteria to be used.Selection criteria will be used to enable Qualifications Wales to make the choice between those qualifications which meet the approval criteria.

22. Qualifications Wales will exercise its functions in accordance with the scheme and applying the principles of transparency, non-discrimination and equal treatment. In broad terms, where the Concession Contracts Regulations 2016 apply, Qualifications Wales will proceed in accordance with those Regulations. In other cases, Qualifications Wales will apply its own procedure. The process will seek to allow a period of approval that provides awarding bodies with reasonable time to prepare an application.
23. Awarding bodies may appeal against the selection decision through our Regulatory Appeals Policy within 20 working days of the notification of the decision. In cases where the Concession Contracts Regulations 2016 apply, Awarding Bodies may also have remedies under those Regulations.
24. Only selected awarding bodies will be able to offer the restricted qualification, as “Approved”, until the restriction period expires (or approval is surrendered or withdrawn). This will be subject to transitional arrangements for legacy qualifications to ensure that learners who have already started courses leading to legacy qualifications are not unfairly disadvantaged.
25. Qualifications Wales will not designate any form of qualification that is subject to a restriction or which in our judgment is the same as or similar in purpose to a restricted priority qualification, particularly where a qualification could be chosen as an alternative to a restricted priority qualification.

#### **Approval Criteria for Restricted Priority Qualifications**

26. Approval criteria for restricted priority qualifications, whether commissioned or selected, will be developed by Qualifications Wales with close involvement by experts and stakeholders. The development of approval criteria for commissioned restricted priority qualifications may also take into account matters which may have been discussed and resolved with the commissioned awarding body during the development of the qualification.
27. Approval criteria and rules about submitting qualifications for approval, whether commissioned or selected, will be published.

#### **Transitional arrangements for legacy qualifications**

28. Transitional arrangements may be implemented where withdrawal of approval or revocation of designation is made on the basis that the qualification or description of qualification concerned is now restricted.
29. Such arrangements will be made in accordance with the requirements and timescales outlined in Sections 27 (*Withdrawal of approval*) and 32 (*Revocation of section 29 designations*) of the Act and have regard to the need to avoid prejudice to persons who are seeking, or might reasonably be expected to seek to obtain the form of qualification. As such transitional arrangements will enable registered learners to complete their qualification and may mean that existing forms of the qualification continue following the determination of a restriction for the purposes of enabling learners to complete their qualification. Such arrangements will have a

clearly defined end date and will not be available to new learner registrations from the 1 September falling in the year after the decision to revoke has been made.

### **Revocation or variation of a restricted priority qualification**

30. Qualifications Wales may (in accordance with the terms of any agreement between Qualifications Wales and the Awarding Body) revoke or vary a determination of a restricted priority qualification where for instance it has come to our attention that the objectives of the determination have altered or are not being met. In such cases Qualifications Wales will, before publishing any determination to revoke or vary:

- notify each recognised body, and any other parties that Qualifications Wales considers might reasonably be expected to have an interest in the proposed determination, of the proposal (including the rationale for the proposal).
- consider any representations made to it by those persons in respect of the proposal.

31. Awarding bodies may appeal against the revocation or variation through our Regulatory Appeals Policy within 20 working days of the notification of the determination.

### **Related Policies**

32. This policy makes reference to:

- the Priority Qualifications List and to the criteria used in the approval of qualifications. The Priority Qualifications List can be found [here](#). Approval criteria will be published from time to time as appropriate.
- assessment through the medium of Welsh. The Welsh Medium and Bilingual Policy - <http://qualificationswales.org/media/1819/regulatory-welsh-medium-and-bilingual-qualifications-policy.pdf>
- the Regulatory Appeals policy - <http://qualificationswales.org/media/1897/160625-v20-regulatory-appeals-policy-eng.pdf>
- the Concessions Contracts Regulations 2016 - [http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi\\_20160273\\_en.pdf](http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi_20160273_en.pdf)