

Consultation questions

The Explanatory Memorandum prepared by the Welsh Government describes the Bill's main purposes in the following terms:

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.

The Bill is intended to address the four main limitations of the current system. These are outlined in the Explanatory Memorandum as:

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

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.

Question 1 – Is there a need for a Bill for the purposes outlined above?

We support the establishment of an independent regulatory body for Wales to drive forward the strategic development of qualifications and strengthen the oversight of the qualification system in Wales. Whilst Welsh Government is currently the organisation charged with ensuring the effectiveness of qualifications and the qualification system, QW would be *solely* dedicated to that aim.

If you believe there is a need for the Bill, what are the main issues that need to be resolved?

The legislation will provide a permissive framework within which QW will be able to implement the policy that has informed the provisions of the Bill. As a general comment we feel that there are good safeguards in place to require QW to act reasonably, with regard to having fair and transparent processes and maintaining an open dialogue with both WG and external stakeholders. A transparent relationship with awarding bodies is particularly important given the powers with relation to priority and restricted priority qualifications and the longer term intention of QW to become an awarding body.

There is however a general lack of a requirement to consult as well as inconsistency in when consultation is required which needs to be addressed. The Assembly will in any case need to be rigorous in its oversight to ensure that these safeguards are being used effectively.

There are two key issues that need to be resolved, the lack of consistency and clarity about QW's requirement to consult and the degree to which QW

can charge awarding bodies for the exercise of its functions.

1. Consultation

Whilst we do not wish to see unnecessary consultation for its own sake, we have the following concerns:

- 1.1 There is inconsistency about the areas that QW will be required to consult on. QW is only required to publish a statement about the circumstances in which it will consult [section 42 (3)].
- 1.2 There is nothing in the Bill that requires QW to consult on its initial or revised recognition criteria or provide for a smooth and managed transition. This will be essential to maintain stability for awarding bodies, centres, employers and learners and to establish effective working relations between QW and its stakeholders. As a minimum there should be a requirement to notify and consider representations as in section 14 (7) relating to restricted priority qualifications.
- 1.3 Whereas there is a requirement to notify and consider representations when determining restricted priority qualifications, there is no such requirement related to determining priority qualifications [section 13].
- 1.4 In determining minimum requirements for qualifications, Welsh Ministers are required to consult QW but can determine whether to consult any other bodies, such as awarding bodies [section 21(4)].
- 1.5 QW is not required to consult on its policy statements [section 42].

2. Power to charge awarding bodies

- 2.1 We fundamentally disagree with the power of QW to charge awarding bodies for regulatory activity [section 44] which as defined includes recognition and approval. These are key activities which should be funded by the grant from WG. As we and FAB stated in our response to *Our qualifications, our future* (Q6), “while it is reasonable that the costs of the awarding body function (once it is established) should be chargeable to those purchasing qualifications in the market place, it is not appropriate for the regulatory function to be chargeable to awarding bodies. This could result in restriction of practice for some awarding bodies”.

- 2.2 We feel it would be reasonable to charge awarding bodies for interventions over and above normal recognition and approval, for example where QW provided additional advice and guidance to enable an awarding body to become compliant but wholly inappropriate to charge for the recognition function or the approval of qualifications. Such chargeable services should come under the provision of consultancy service [section 40].
- 2.3 We note that QW would need Ministerial approval for a charges scheme and that such approval would take account of the financial impact on awarding bodies.
- 2.4 Whilst we accept QW should be able to apply monetary penalties [section 34], we do not consider it appropriate for QW to be able to recoup the costs of applying sanctions [section 36], as this is a core regulatory function that should be paid for by the grant from WG.
- 2.5 The following additional issues need to be further considered. We have included supporting explanation in other sections of our response as indicated below.
- 2.5.1 The nature of legislation makes it difficult for the Bill to fully reflect and safeguard the wider policy objectives that are set out in the Explanatory Memorandum. We have some concerns therefore about how the broader policy objectives will be protected longer term, although we accept that they will change in line with WG policy changes and the experience of implementing the legislation.
- 2.5.2 The explanatory memorandum makes several references to the aim of retaining a competitive market, particularly in vocational qualifications [M. 87, 252, 254]. This repeats the policy intention stated in *Our qualifications our future*. Whilst supporting the aim of having demand rather than supply led market, we share some of the concerns that FAB has set out in its response about the inherent risks to healthy competition. We have proposed an addition to the eight matters in our answer to question 4.
- 2.5.3 It is clearly in the interest of efficiency and the retention of a

competitive market that QW works collaboratively with other qualification regulators in the UK where it does not conflict with it carrying out its duties. The Explanatory memorandum identifies the need to work with other regulators on programmes for review [M 95–96] and gives regulators as the single example for section 47. We would like the permission to work with another person in section 47 to be expanded to include a duty to work with other qualification regulators where that is in the best interest of stakeholders in Wales.

How significant is this issue? (Please select one option)

<i>1 - This is a key, urgent problem.</i>	<input checked="" type="checkbox"/> Both, the main issues raised above
<i>2 - This is a problem that needs to be addressed.</i>	<input type="checkbox"/>
<i>3 - This is a minor problem</i>	<input type="checkbox"/>
<i>4 - Not a problem.</i>	<input type="checkbox"/>

Question 2 – Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum?

We are unclear what the stated objectives (as opposed to main purpose) are as these are not stated explicitly in the memorandum as far as we can determine.

If not, how do you think the Bill should be amended to take account of this?

How significant is this issue? (Please select one option)

<i>1 - This is a key, urgent problem.</i>	<input type="checkbox"/>
<i>2 - This is a problem that needs to be addressed.</i>	<input type="checkbox"/>

<i>3 - This is a minor problem</i>	
<i>4 - Not a problem.</i>	
Question 3 – Are the sections of the Bill as drafted appropriate to bring about the purposes described above?	
The Bill delivers on the purposes provided that the issues raised elsewhere in our response are appropriately addressed.	
If not, what changes do you believe need to be made to the Bill?	
How significant is this issue? (Please select one option)	
<i>1 - This is a key, urgent problem.</i>	
<i>2 - This is a problem that needs to be addressed.</i>	
<i>3 - This is a minor problem</i>	
<i>4 - Not a problem.</i>	
Question 4 – Has the Welsh Government correctly identified the four main limitations of the current arrangement, and will the two principal aims the Bill sets for Qualifications Wales, as well as the eight matters which it must have regard when exercising its functions, effectively address these limitations?	
We agree that the four main limitations and the two aims are correct and appropriate. We agree that the eight matters listed are ones to which QW should pay regard. We note this is a non exhaustive list and assume therefore that Welsh Ministers may identify others in time. We assume that the eight matters will be ones that QW will be required to evidence in its annual report.	
As with question 3 we agree the Bill should deliver if the matters we have raised are addressed.	

If you believe there are problems in this area, how do you think they could be resolved?

We propose that two additional matters should be added, in line with our response to question 1:-

- to have regard to retaining a healthy competitive qualifications market where it can be demonstrated that this is in the interest of stakeholders in Wales.
- a duty to work with other qualification regulators where that is in the best interest of stakeholders in Wales.

How significant is this issue? (Please select one option)

1 - This is a key, urgent problem.

2 - This is a problem that needs to be addressed.

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3 - This is a minor problem

4 - Not a problem.

Question 5 – What are your views on the proposals for determining ‘priority qualifications’ and, within these, ‘restricted priority qualifications’?

We have no objection to the principle of identifying priority and restricted qualifications as long as there is clear evidence of that this is the most effective way to achieve the broader aims of the Bill. The FAB response has identified some other options that may be more appropriate in some circumstances and some of the risk if the process is not applied wisely.

It is essential that transparent and fair processes apply so that no awarding body with the desire and capacity to offer such qualifications will be prevented from being considered and that effective evaluation and review is in place.

We expressed our concern in our response to *Our qualifications, our future* section 5, about the lack of transparency in the relationship between WG and WJEC with relation to the restriction of the Welsh Baccalaureate.

“It is essential for the credibility of QW that open and transparent processes operate when new qualifications are being commissioned and developed

and when decisions are being taken about how open or closed the market for any particular group of qualification is going to be. We expect that the details of the current relationship between WG/QW and WJEC will be put in the public domain and that stakeholders, including awarding bodies, are involved in the development of the criteria to determine how future closed markets will be determined.”

We are not aware that the information we requested has been put in the public domain and we hope that that will now happen.

The explanatory memorandum makes reference to WG officials having already engaged with *“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’”*.

We are not aware of any such discussion but we will welcome the opportunity to be involved in the further discussion of all matters relating to the implementation of priority and restricted priority qualifications.

As the Access Validating Agency for Wales we need to draw to your attention the unique position of the AHE Diploma which is a level 3 qualification regulated by the Quality Assurance Agency (QAA) and therefore one that will not be approved by QW. The qualification is offered by all the FE colleges in Wales. Although the primary target audience is learners 19 and over, there is no official lower age limit stipulated by QAA and the qualification can be suitable for learners 18 and under in special circumstances. The Bill will need to accommodate a mechanism for approval of the AHE Diploma that does not prevent it being publically funded in appropriate circumstances. I have alerted Julie Farmer, Acting Head of Access at QAA, to this anomaly and both she and Agored Cymru can provide further information if required.

If you think there are problems in this area, how do you think they could be resolved?

The introduction of fair and transparent processes between QW and awarding bodies should include the provision of information about any pre-existing restricted qualification arrangements.

The requirement to consider representations from awarding bodies should be included for the determination of priority qualifications (see question 1).

An appropriate mechanism needs to be agreed to approve the AHE Diploma for public funding in Wales for learners 18 and under.

How significant is this issue? (Please select one option)

1 - This is a key, urgent problem.

2 - This is a problem that needs to be addressed.

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3 - This is a minor problem

4 - Not a problem.

Question 6 – What are your views on the commissioning type process Qualifications Wales would undertake under the Bill, in respect of restricted priority qualifications?

We welcome the intention to develop a fair, open and transparent process and time limited outcomes.

If you believe there are problems in this area, how do you think they could be resolved?

We hope that FAB and JCQ as the representative bodies for awarding bodies will be fully consulted in the preparation of the commissioning process.

How significant is this issue? (Please select one option)

1 - This is a key, urgent problem.

2 - This is a problem that needs to be addressed.

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3 - This is a minor problem

4 - Not a problem.

Question 7 – How will the Bill change what organisations do currently and what impact will such changes have, if any?

We look forward to the opportunity to engage fully with QW as it starts work in September.

The FAB response has identified the potential impact on its members generally.

If you believe there are problems in this area, how do you think they could be resolved?

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How significant is this issue? (Please select one option)

<i>1 - This is a key, urgent problem.</i>	
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<i>2 - This is a problem that needs to be addressed.</i>	
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<i>3 - This is a minor problem</i>	
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<i>4 - Not a problem.</i>	
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Question 8 – What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

We have nothing further to add here to the potential barriers identified in the FAB response.

If you believe there are problems in this area, how do you think they could be resolved?

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How significant is this issue? (Please select one option)

<i>1 - This is a key, urgent problem.</i>	
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<i>2 - This is a problem that needs to be addressed.</i>	
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<i>3 - This is a minor problem</i>	
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<i>4 - Not a problem.</i>	
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Question 9 – Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales?

We have no comment to make.

Question 10 – What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.

Power to impose monetary penalties

We welcome the recognition that the figure of 10% of total turnover could be excessive and the consideration of a methodology for reaching a more proportionate approach.

Question 11 – What are your views on the financial implications of the Bill?

In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

We note that the establishment of QW is the most expensive of the three options considered. We expect to see clear evidence over time that the cost is proportionate to the additional benefits that are achieved.

Whilst we accept the need for QW to raise some of its own income through commercial activities, we have commented in question 1 about our objection to it charging, even on a cost recovery basis, for any of its core regulatory functions.

Question 12 – Are there any other comments you wish to make about specific sections of the Bill?

We have no further comments to add.