



Restricted Priority Qualifications Policy

Consultation Analysis Report

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Executive Summary

The purpose of the Restricted Priority Qualifications Policy is to provide guidance to awarding bodies and other interested parties of the rationale for the restriction of priority qualifications and the process for the restriction of qualifications. To help us achieve our statutory aims, Qualifications Wales may restrict the number of versions of priority qualifications that are eligible for publicly funded learning programs in Wales.

As the power to restrict is granted by the Qualifications Wales Act 2015, consultation on the draft policy focused on the rationale and process by which Qualifications Wales may choose to restrict priority qualifications. The policy explains in more detail the two ways in which we can apply a restriction. We can either commission one or more awarding bodies to develop a new qualification, or we can decide which qualification(s) to approve from those submitted to us by awarding bodies.

We invited comment from awarding bodies and others on the proposed policy through an online questionnaire which was open for a period of five weeks from 13 May to 17 June 2016. Access to the consultation document, including indicative process diagrams and the draft policy, was provided on the Qualifications Wales website.

We received a total of 12 responses to the consultation, 10 of which were sent on behalf of an organisation and 2 of which were incomplete and anonymous.

Following the comments received, several amendments have been made to the policy which are outlined in the consultation response. These amendments include providing clarification on:

- The interpretation of 'inconsistency between different forms of the same qualification'
- The process to ensure that objections to a restriction will not prejudice the outcome of the selection or commissioning process
- The rationale for the use of either the commissioning or selection route
- The process followed at the end of a restriction
- The meaning of 'oversight' of the work of the commissioned body
- The routes for appeal of a selection or commissioning decision
- That sufficient time will be made available to prepare a bid application
- That only selected or commissioned awarding bodies will be able to offer restricted qualifications as "Approved"
- Cross references to other policies.

In addition to amendments to the policy, we have also considered comments relating to the process for the restriction of qualifications and more general comments that fall outside of the scope of this consultation. Where appropriate, a response has been outlined in the consultation analysis. We received one response after the consultation closed which has not been included in the consultation analysis. As the late response referenced the process for the restriction of qualifications rather than the policy itself, these comments are being considered in the development of the process for the restriction of qualifications.

Overview of Consultation

Qualifications Wales invited public comment on the draft Restricted Priority Qualifications Policy for a period of five weeks from 13 May to 17 June 2016. We sought comment specifically on how well the draft policy explained the rationale and processes for the restriction of priority qualifications.

Indicative process diagrams illustrating the two different routes for the restriction of priority qualifications were provided in the consultation document as a means of aiding the understanding of how Qualifications Wales may restrict qualifications in the future.

In total, there were 12 responses to the consultation, 10 of which were sent on behalf of an organisation and 2 of which were incomplete and anonymous. Those 2 responses have been included in the analysis to allow for the broadest possible input. IP addresses have been checked to avoid duplication of responses.

One response was received in Welsh and has been translated for analysis by a contracted translation provider.

Six responses are from awarding bodies and one from a membership organisation representing over 110 awarding bodies in the vocational sector. Three responses are from representatives of employers, schools and other public bodies.

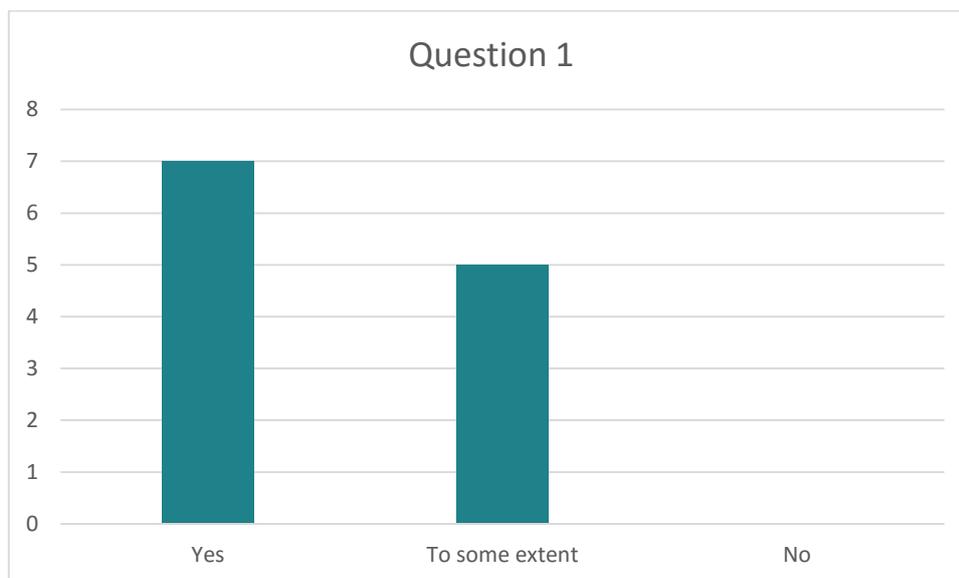
On average, the tick box questions were answered by approximately 90% of respondents while approximately half of respondents provided additional comments.

Consultation Analysis

For each consultation question, the following analysis presents the number of responses received for each question and a summary of responses. Where appropriate a response has been provided, shown in italics.

Question 1: Does the policy explain why Qualifications Wales would restrict priority qualifications?

There were 12 responses to this question, 10 of which were submitted on behalf of an organisation and 2 from anonymous sources. Additional comments were provided by 6 of the respondents.



Summary of feedback

Respondents raised the following key points about the content of the policy:

- The policy clearly sets out that Qualifications Wales has the legal power to restrict qualifications in Wales.
- The policy clearly outlines the basis and options for restricting priority qualifications.
- A fuller explanation of what is meant by ‘avoiding inconsistencies between different forms’ would be useful.

The policy refers to section 14(4) of the Act. This provides the explanation that the different forms could be “by reference to the level of attainment indicated by different forms of the same qualification, or otherwise”. This has been added to the policy and a footnote included to clarify that these issues could relate to content or assessment methodology.

- It would be useful to have further information on the criteria that Qualifications Wales uses to underpin decisions on whether it is 'satisfied' that it is desirable to restrict priority qualifications (point 2 of the policy).

Examples are provided in point 4 of the policy of situations in which Qualifications Wales may consider a restriction of a priority qualification.

- Given the perceived resource that would be required by an awarding body to develop a qualification that may then not be selected, through the selection process, it was felt that not many awarding bodies would be able or willing to undertake because of the financial implications.

It is the expectation that, for the selection process, an existing qualification would be considered, rather than requiring a new qualification to be developed. We will seek to allow a period of approval that provides awarding bodies with enough time to prepare an application. The policy has been updated to reflect this (point 21).

- The availability of assessment through the medium of Welsh should not be influenced by the economic viability for awarding bodies (as set out in the 2nd bullet of point 4 of the policy).

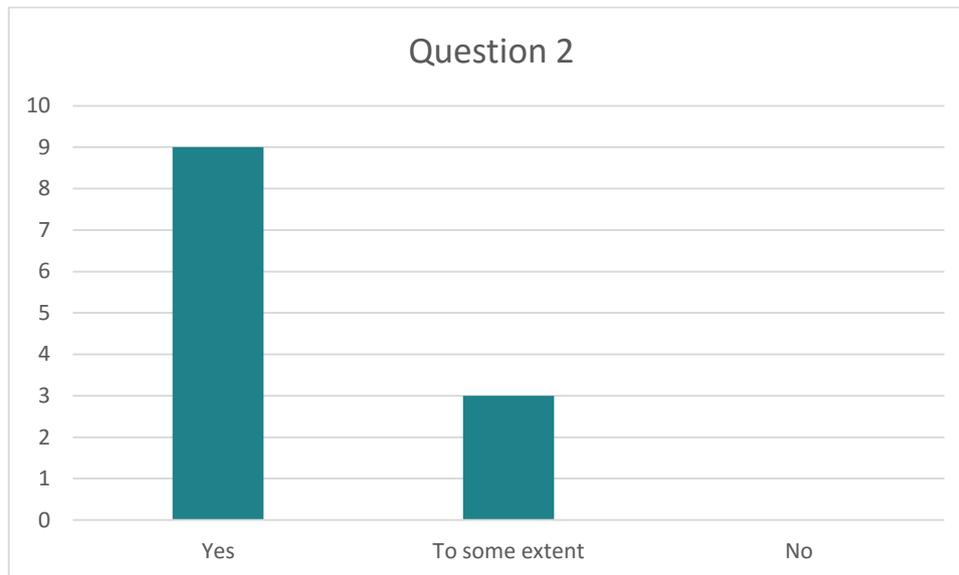
Qualifications Wales is committed to the promotion and facilitation of the use of the Welsh language, including through the availability of assessment arrangements that provide for assessment through the medium of the Welsh language. This is outlined in legislation through the Qualifications Wales Act 2015 and the actions that Qualifications Wales will be taking forward to support this commitment is available on the Qualifications Wales website (<http://qualificationswales.org/media/1819/regulatory-welsh-medium-and-bilingual-qualifications-policy.pdf>). As stated in the Regulatory Welsh-medium and Bilingual Qualifications policy, we will normally require approved qualifications both through the medium of English and Welsh. The word 'normally' has been included as there may be a small number of approved qualifications that should not be available through the medium of both languages. For example, GCSE Welsh or GCSE English Language which are specifically testing each language. We are aware that there are perceived barriers by awarding bodies to offering qualifications through the medium of Welsh, and many have indicated that, as competitive organisations, the financial viability of the provision of qualifications through the medium of Welsh is a major consideration. We will continue to work with them to further understand the challenges and consider how they could be addressed. Reference to the Regulatory Welsh-medium and Bilingual Qualifications policy has been added to the Restriction policy (point 32).

- The policy indicates the length of time of a restriction; it would be useful for the policy to also state what the process will be, following the period of up to 5 years, when a qualification ceases to be subject to restrictions.

Point 12 of the policy has been amended to outline that, 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 we will follow the process outlined in points 6-12 of the policy: the choice of awarding body will again be subject to open, fair and transparent competition.

Question 2: Does the policy explain how Qualifications Wales will use the commissioning route to bring into effect a restriction to a priority qualification?

There were 12 responses to this questions, 10 of which were submitted on behalf of an organisation and 2 from anonymous sources. Additional comments were provided by 4 of the respondents.



Summary of feedback

Respondents raised the following key points about whether the policy explains how the commissioning route will be used to bring into effect a restriction to a priority qualification:

- It needs to be clear in the policy why the commissioning route would be a preferred route for the restriction of qualifications.

The policy has been amended (points 14-19) to clarify that 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 it is nevertheless desirable to impose a restriction.

- Clarity should be provided about the ability of awarding bodies to formally appeal or challenge the results of the commissioned route and the process by which awarding bodies could make this appeal.

The Concession Contracts Regulations 2016 provide unsuccessful bidders with an opportunity to 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

policy has been amended to include wording to this effect (points 15, 16, 22 and 23).

- The policy should be clear that any representations made by awarding bodies do not impact or prejudice their chances of being commissioned or selected. It was raised whether different teams will handle representations and the selection/commissioning decisions.

Point 9 of the policy states that where an awarding body has raised objections to the proposed restriction this will not prejudice the outcome of any subsequent commissioning or selection process. The policy has been amended to state that Qualifications Wales will manage this by ensuring separation of duties for staff involved where appropriate.

- Further information should be provided on the meaning of Qualifications Wales having 'close oversight of the work of the commissioned awarding body'.

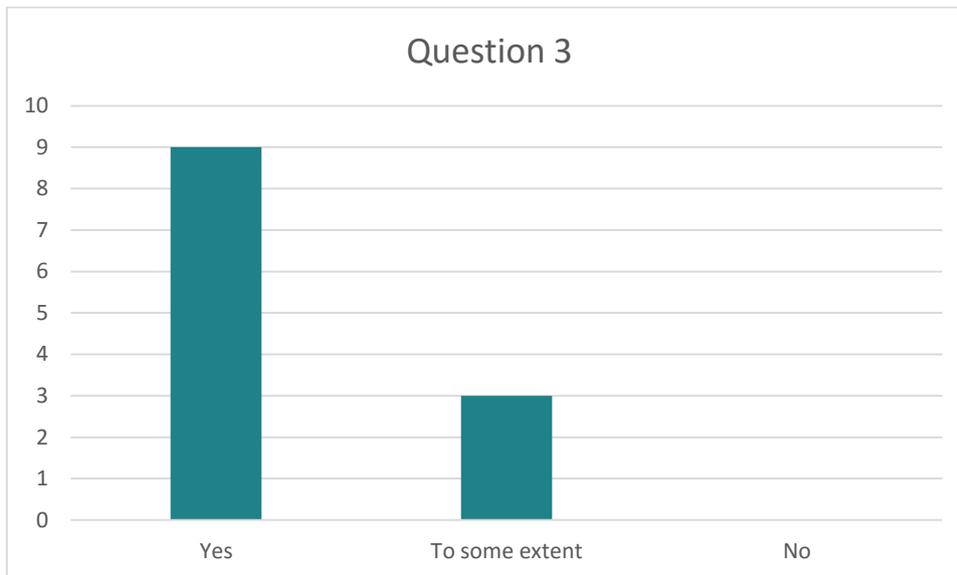
The policy has been amended in point 15 to clarify that close oversight will take the form of close contract management as well as involvement with key decisions about content and assessment methodology.

- It should be clarified whether the selection route will also involve restricting the awarding organisation to deliver the qualification or if when the qualification is selected this would this allow any awarding body to offer the qualification.

The policy has been amended in point 24 to state that only selected 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.

Question 3: Does the policy explain how Qualifications Wales will use the selection route to bring into effect a restriction of a priority qualification?

There were 12 responses to this questions, 10 of which were submitted on behalf of an organisation and 2 from anonymous sources. Additional comments were provided by 4 of the respondents.



Summary of feedback

The following comments were raised by respondents in regards to whether the policy explains how the selection route will bring into effect a restriction of a priority qualification:

- It should be made clear how Qualifications Wales would make a decision between two or more awarding bodies that achieve the same marks in the evaluation stage of the selection process.

The criteria for the evaluation of bids will be transparent and will be provided to awarding bodies in the specification for the preparation of bids. The full process for the evaluation will be outlined in the specification.

- A clear, formal and transparent appeals procedure should be included in the policy.

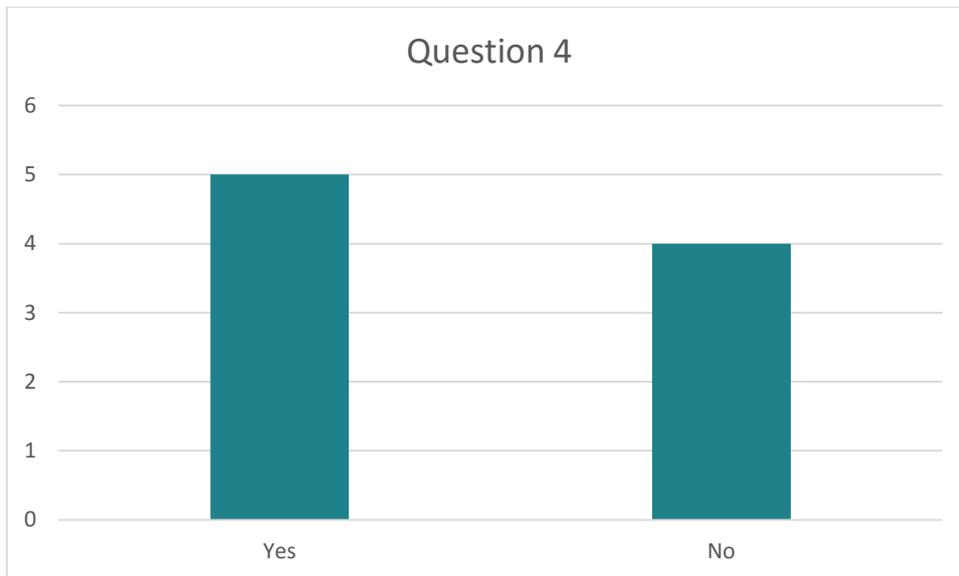
Awarding bodies may appeal the selection decision through our Regulatory Appeals Policy within 20 working days of the notification of the decision. Awarding bodies also have the right to appeal a revocation or variation of a determination to restrict through the Regulatory Appeals Policy. The policy has been amended to outline this right of appeal under points 23 and 31.

- The inclusion of minimum timescales would provide assurance to awarding bodies that they will have a fair and reasonable opportunity to engage in any future selection processes.

The policy has been amended in point 22 to note that Qualifications Wales will seek to allow a period of approval that provides awarding bodies with enough time to prepare an application.

Question 4: Would any of the stages described in the policy result in any consequences (intended, or unintended) for opportunities for learners to use the Welsh language?

There were 9 responses to this question, 8 of which were submitted on behalf of an organisation and 1 from an anonymous source. Additional comments were provided by 9 of the respondents.



Summary of feedback

Respondents raised the following key points in relation to whether the Restriction policy would result in any consequences for opportunities for learners to use the Welsh language:

- There is the risk that, by offering qualifications and assessments through the medium of Welsh and / or bilingually, the costs of translation and external verifier visits would be transferred on to centres.

Qualifications Wales is aware of this issue. As indicated in the Regulatory Welsh-medium and Bilingual Qualifications Policy - Action Plan, we currently make some grant funding available to support awarding bodies to deliver qualifications through the medium of Welsh. In restricting qualifications, we will always consider the most effective way to address the needs of learners wishing to take their qualifications through the medium of Welsh and, where possible, take further steps to support this.

- There were concerns that for some low uptake, specialist qualifications, the availability of experts in both the technical content and the medium of Welsh may be limited.

Qualifications Wales is aware of this issue. However, the restriction of qualifications mean that Welsh medium assessors are focused on only one

version of a qualification and that scarce resources are not divided between a number of different versions.

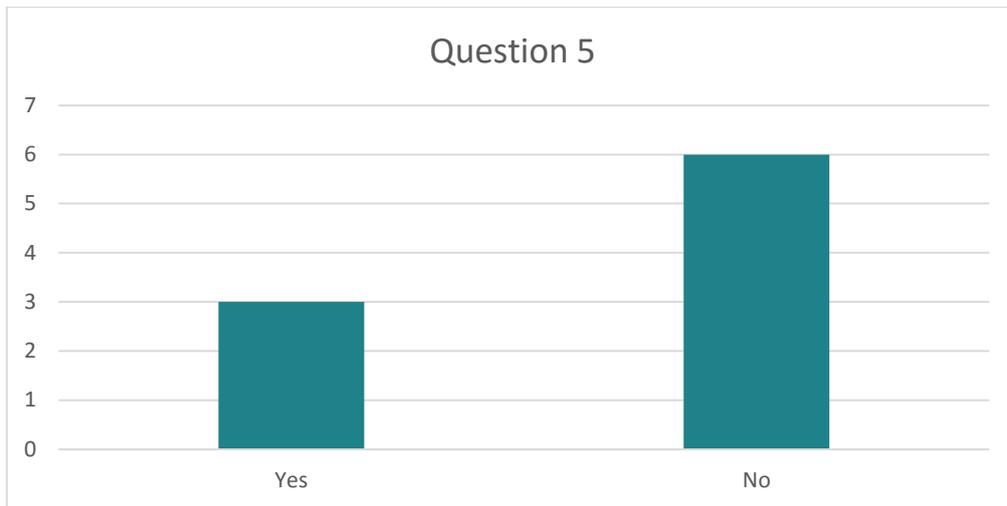
- The importance of the Welsh language should be emphasised more and referred to in the principles of the policy. If it is not 'visible' in the policy an unintended outcome of unequal status or access could result.

A reference to the Regulatory Welsh-medium and Bilingual Qualifications Policy will be included in the final version of the Restriction policy.

- The Regulatory Welsh-medium and Bilingual Qualifications policy, published in May 2016, clarifies what is expected of awarding bodies in relation to the Welsh language. Therefore, in adhering to that policy, it is unlikely that any awarding body that is commissioned or selected would operate in a way that limited learners' opportunity to use the Welsh language.

Question 5: Would any of the stages described in the policy result in consequences (intended, or unintended) for protected groups under the Equality Act 2010¹?

There were 9 responses to this question, 8 of which were submitted on behalf of an organisation and 1 from an anonymous source. Additional comments were provided by 6 of the respondents.



Summary of feedback

The following point was made in relation to how the Restriction policy would result in consequences for protected groups under the Equality Act 2010:

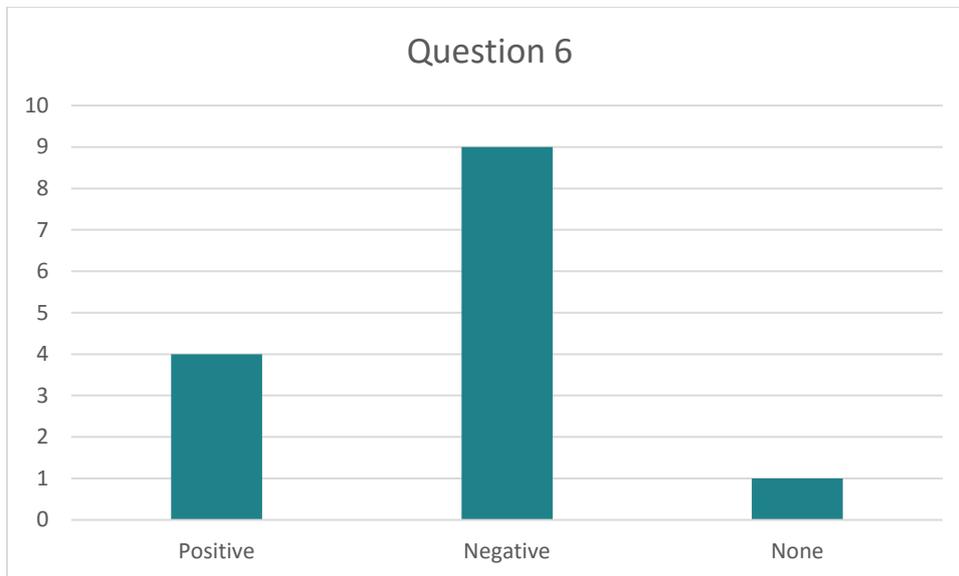
- Qualifications Wales should consider including the requirement for awarding bodies to undertake equality impact assessments for learners, as part of the qualification criteria.

This will be considered as part of the development of the qualification criteria process.

¹ Protected characteristics, as defined in the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

Question 6: Are there any positive and/or negative consequences on individuals or organisations that may result from the various stages described in the policy that you would like to bring to our attention?

There were 10 responses to this question, 9 of which were submitted on behalf of an organisation and 1 from an anonymous source. Respondents could tick more than one box for this question. Additional comments were provided by 9 respondents.



Summary of feedback

Respondents provided the following key comments in relation to any positive or negative consequences on individuals or organisations that may result from the stages described in the policy:

- Awarding bodies that are commissioned or selected may be better able to forecast their market size for the next 5 years, therefore providing some stability for a small number of awarding bodies in specific markets. This may have a negative impact on other areas of the qualifications market in Wales.
- Reducing the number of awarding bodies (especially those leading to occupational competence or regulated professions) may enable greater consistency in outputs and outcomes.
- There may be increased burden on centres if they have to seek approval from a greater number of awarding bodies. Centres may choose to cease provision of certain qualifications where these are only a small part of their overall offer to learners. Smaller niche sectors and breadth of provision may suffer.

Qualifications Wales will set a requirement for selected or commissioned awarding bodies to develop a communications and engagement plan for centres which will include the supply of resources and in particular support

available to centres. We will be looking for awarding bodies to identify how they will provide support to all centres and minimise disruption to those centres who need to change the awarding body they work with.

- The bidding process may favour larger awarding bodies that have the resources to invest in training of staff and preparation of bids.

Qualifications Wales is intending to further engage with awarding bodies on the bidding process for the restriction of qualifications, including the potential for awarding bodies to engage in joint bids to counter any potential negative impacts on the resources of awarding bodies.

Qualifications Wales has adopted the Wales Procurement Policy and incorporated processes which aim to use processes that are SME (Small and Medium Enterprises) friendly.

- Risk of a negative perception by employers and other stakeholders of legacy qualifications achieved by learners prior to the introduction of a restriction. There needs to be consideration of messaging around what restriction will mean for legacy qualifications so that learners are not disadvantaged.

In points 18, 28 and 29 the policy outlines that there will be transitional arrangements for legacy qualifications to ensure that learners who have already started courses leading to legacy qualifications are not unfairly disadvantaged. Qualifications Wales will require commissioned or selected awarding bodies to develop and implement an effective communications and engagement plan for learners and other stakeholders.

- In response to the ability of Qualifications Wales to revoke or vary the determination to restrict, there should be safeguards for suppliers such as a notice period for those who have acted in good faith.

Point 30 of the policy outlines the steps to be taken in the event that Qualifications Wales decides to revoke or vary a determination where the objectives of the determination have altered or are not being met. This will include notifying 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), the consideration of any representations made to it by those persons in respect of the proposal and the publication of a determination. The policy has been amended to include under point 31, a right to appeal the revocation or variation for awarding bodies through our Regulatory Appeals Policy within 20 working days of the notification of the determination.

Question 7: Any other comments on the content of the policy

Comments to this question were provided by 5 respondents.

Summary of feedback

Respondents raised the following key points about the content of the policy:

- The development of approval criteria should include suppliers early on in the process in addition to experts and stakeholders.

We agree that experts and stakeholders are key to the development of approval criteria process. This will be reflected in our processes whereby consultation with stakeholders will take place prior to award of the contract. To reflect fair procurement processes and to ensure there is no particular advantage, commissioned awarding bodies will not be involved until after the award of the contract.

- It was advised that Qualifications Wales appoints two or three awarding bodies who may jointly develop qualifications.

As outlined in the general principles and point 5 of the policy, Qualifications Wales will determine the number of forms of the qualification to restrict. The process will clarify that awarding bodies may also submit joint bids.

- Smaller awarding bodies could be excluded from supporting learners in Wales as the procurement process will favour the larger awarding bodies.

*As outlined in point 22 of the policy, Qualifications Wales will exercise its functions in accordance with the scheme and applying the principles of transparency, non-discrimination, equal treatment and proportionality. We will seek to allow a period of approval that provides awarding bodies with enough time to prepare an application.
Qualifications Wales has adopted the Wales Procurement Policy and incorporated processes which aim to use processes that are SME (Small and Medium Enterprises) friendly.*

Other Comments

In addition, a number of other points were raised that were not within the scope of the consultation. These are outlined in brief below:

The power to restrict (this was considered in the consultation to the Qualifications Wales Act 2015)

- Restriction would impact on choice for the consumer
- Increased risk of a single provider failing to deliver quality or standards
- The power to restrict will disadvantage centres and the wider awarding body marketplace
- Restricting the market might lead to employers/providers, especially those operating across borders, favouring and delivering un-regulated provision
- Lack of competition between awarding bodies may drive down standards
- Potential for a large amount of Welsh Government funding to be spent in England if contracts are consistently awarded to UK awarding bodies

Health and Social Care (a separate consultation will take place to discuss potential restriction of some health and social care qualifications and these points will be taken into account)

- A concern that health and social care expertise that currently exists in Wales may be lost
- A concern that the knowledge and expertise of awarding bodies should form part of the criteria for selection as well as experience
- The risks of reduction in social mobility and portability, including the impact on cross border employers

Qualifications Wales Consultation Process (feedback received will be considered in the development of the internal consultation guide)

- Consultation period should be longer than 5 weeks
- Word versions of the consultation form should be available
- Consultation submissions should be accepted through Word and Survey Monkey

Welsh-Medium and Bilingual Qualifications (feedback received will inform the next review of the Regulatory Welsh-medium and Bilingual Qualifications (W-MBQ) Policy in November)

- Specific queries in relation to the wording of the W-MBQ policy