

Apprenticeships, Skills, Children and Learning Bill

LORDS STAGES Briefing

Issue: Confidence in Standards

Clause 138 - Power of Secretary of State to determine minimum requirements in respect of knowledge, skills or understanding to obtain a qualification

Evolving Government thinking

The Government's thinking as to the rationale behind this Clause has been evolving.

1.

Initially, the Explanatory Notes said *"For example, it could be used to ensure that the content of GCSEs properly reflects the NC Key Stage 4 Programmes of Study, such as specifying which authors' works needed to be studied for someone to gain a GCSE in English."*

At this point Cambridge Assessment viewed the Clause as enabling the Secretary of State to pick up on learning that had been overlooked by the subject community, either because it was no longer in sympathy with the broader aims of society or out of step with a pedagogic approach favoured by Government. (e.g. in history, to ensure the assessment of theories relating to the British Empire or the place of the Labour Movement in 20th Century Britain; in geography, the assessment of theories of Immigration or the Counties of England.)

Although the Government has rejected this reading of the Clause ***the Clause as drafted still gives the Secretary of State those powers.*** [See [page two, third paragraph of Ministerial Response](#) found in the 'Confidence in standards' Viewpoint on Cambridge Assessment's website]

We remain convinced that the subject communities (consisting of teachers, academics, learned societies & other interested parties) plus vocational communities (largely drawn from business & teaching) are the best source of information as to what "knowledge, skills or understanding" are required of those in their specialism at various stages of their learning.

That said, we initially felt it was not unreasonable for the Government to hold a reserve power to ensure that its policy was delivered. We suggested amendments to ensure the powers were limited, transparent and that their use fully scrutinised by Parliament.

Amendments tabled, debated & withdrawn at Commons stages

Clause 138, page 83, line 24, before "make a determination" insert - "in exceptional circumstances". (As given in the Explanatory Notes)

Clause 138, page 83, line 34-35, delete from "publish" to the end and insert - "agree with Ofqual the circumstances in which he can use the power conferred by subsection (1), and publish arrangements".

Clause 138, Page 84, line 11 Add -

"(9) Ofqual shall include in its annual report a copy of the publication in (4) and how it responded."

New amendments - not considered at Commons stages

Publish advice received on a determination

Clause 138, Page 84, line 11 add - "The Secretary of State must take and publish advice on a determination from teaching representatives, subject communities, representatives of Higher Education, learned societies and business interests as appropriate; and explain how that advice is reflected in the determination."

Determine a minimum requirement by secondary legislation

Clause 138, pg 83, line 24 leave out "a determination" and insert "by order"

Clause 138, pg 83, line 27 leave out "a determination" and insert "an order"

Clause 138, pg 83, line 34 leave out sub-section (4)

Clause 138, pg 84, line 8 leave out sub-section (8)

Clause 254, pg 157, line 21, at end insert - "(dd) an order under section 138;"

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2.

The DCSF then published an [indicative determination](#) [see Specimen Determination found on the 'Confidence in standards' Viewpoint on the Cambridge Assessment website] which Cambridge Assessment tested against recent qualifications developments. We believed it cut directly across the Minister's words in the Commons; "...we will not be making determinations every five minutes" and "The first concern might be that Ministers should not make frequent changes to qualifications and therefore that determinations should be made only occasionally. I agree with that view. ...Ministers should not issue new determinations unless it is appropriate and necessary...."

It is clear that determinations of this type would be far from exceptional, their scope would extend well beyond essential minimum requirements, they would often directly or indirectly affect assessment design and standards, and they could create time pressure on qualifications development at the expense of quality. [A critique of the specimen determination](#) [see Critique of Specimen Determination found on the 'Confidence in standards' Viewpoint on the Cambridge Assessment website] in the form of a letter to the Secretary of State.

In the light of this, and the rejection at Commons Committee stage of all amendments seeking checks and balances, Cambridge Assessment felt that the deletion of the Clause would be in the best interests of good education.

Amendment tabled, debated and withdrawn at Commons stages

page 83, line 23, delete Clause 138

3.

The DCSF responded to the critique in early June – [see Ministerial Response found on the 'Confidence in standards' Viewpoint on the Cambridge Assessment website](#).

It is clear that, in creating an independent Ofqual, the Government can no longer ensure that the National Curriculum, especially at Key Stage 4, is examined. Thus, the new Explanatory Notes state "For example, it could be used to ensure that the content of GCSEs properly reflects the NC Key Stage 4 Programmes of Study, which they are intended to assess."

Cambridge Assessment believes there are better ways to connect an independent regulator with Government policy as expressed through the National Curriculum than through these unfettered powers. One of the most effective would be to add to the list of general duties (Clause 126) to which Ofqual must "have regard" in the performance of its functions.

New Amendment - not considered at Commons stages

Clause 126, pg 77, line 15, at end insert -

(i) the need to ensure that sufficient regulated qualifications assess the National Curriculum Key Stage 4 Programmes of Study, as is appropriate.

This proposed amendment would require Ofqual to consider whether it would be desirable to ensure that the content of certain individual regulated qualifications (such as GCSEs) assesses the National Curriculum Key Stage 4 Programmes of Study. This does not *require* Ofqual to ensure that any or all regulated qualifications assess the National Curriculum Key Stage 4 Programmes of Study; rather that it must simply consider whether in any particular case of a regulated qualification (such as GCSEs) it would be appropriate and desirable to do so (and assuming that in many cases Ofqual would not think it appropriate or necessary).

This approach may better achieve the three key objectives which Ministers have referred to in defending the continued inclusion of clause 138 and is consistent with the policy outlined in the Explanatory Notes (as amended by the Government on 7.5.09) to Clause 138:

- (i) 'legitimate ministerial interests' in qualifications is protected by requiring Ofqual to "have regard" to specific aspects of the National Curriculum (which is set by Ministers) when setting the content of appropriate regulated qualifications;
- (ii) however, that influence is properly balanced against the need to maintain the independence and credibility of qualifications regulation which is a matter for Ofqual; and

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(iii) any ministerial input/political influence over the content of regulated qualifications is managed transparently and on the face of the Bill through this mechanism of "having regard" to particular aspects of the National Curriculum.

Cambridge Assessment's overarching approach

- Cambridge Assessment broadly welcomed the Government's wish to formally institute an independent Regulator of qualifications.
- Our aim is to assist Parliament in giving the Secretary of State exactly what he wants – an independent regulator that provides confidence in standards
- To secure public confidence it is essential that Ofqual is viewed as an independent regulator of standards and not as a Government agency.
- The original White Paper pointed to the lack of public confidence stemming from a *perception* that standards were not being maintained. That grew from the perception that Ministers were intervening in standards.
- Clause 138 would allow the public to continue to perceive Departmental interference and undermine our shared aim of providing "Confidence in Standards".
- Every time Government intervenes in the qualifications system it becomes more difficult to hold existing standards – and so low confidence continues.
- The Secretary of State has extensive powers to direct education policy - through the National Curriculum, the QCDA and the funding regime.

Potentially educationally damaging

The impact of determinations relating to "knowledge, skills and understanding" (content) are not so separate from design criteria (assessment) as implied. Some examples are:

- If a minimum requirement is that all must know mental arithmetic then the Secretary of State has created a non-calculator paper (outwith the clause).
- If, in Business Studies, there is a minimum requirement to understand in some detail profit & loss accounts, these will have to be examined on paper which then squeezes out a knowledge of business plans which are best examined through coursework.
- If a large amount of remembered atomistic content is required (e.g. counties of England, MFL vocabulary, Latin and Greek conjugations) this will crowd out more stretching assessment requiring synthesis and the application of knowledge.
- Alternatively, multiple choice papers might be created for the atomistic content in order to allow for more stretching papers to be created. The minimum requirement has created multiple choice papers which may, or may not, be educationally useful.

Support

There is overwhelming cross-Party support for unequivocal Ofqual autonomy and accountability. A survey of 150 MPs¹, found over 90% of MPs agreeing: that a regulator should have a duty to report its key decisions to Parliament; that Parliament should play a key role in ensuring regulators operate independently from government; that Parliamentary scrutiny is critical to making sure regulators are accountable and transparent.

In the House of Commons Stages - most notably in Committee – points relating to the core themes of independence and transparency were made time and time again. Several votes were forced on these issues - regarded as crucial to sustaining public trust and confidence.

Most education stakeholders are supportive of the points raised in this briefing. This includes ASCL (Association of School & College Leaders), ATL (Association of Teachers & Lecturers), HMC (Headmasters' and Headmistresses' Conference), NAHT (National Association of Head Teachers) and the NUT (National Union of Teachers).

Extensive media coverage indicated a public desire to ensure the regulator is independent. Headlines included: "*Balls seeks power to dictate what textbooks GCSE and A-level students must study*"² and "*It is not the Government's job to hand out reading lists*"³. Indeed, a prominent think-tank⁴ even awarded Mr Balls the title "Reactionary of the Week".

¹ Undertaken by ComRes for Cambridge Assessment, March 2009

² *The Guardian*, 20th March 2009

³ *The Times, Leader*, 20th March 2009

⁴ Reform e-publication; 'The Week' 20th March 2009