

Apprenticeships, Skills, Children and Learning Bill

Wednesday 20 May 2009

Grand Committee from 3 June 2009



Cambridge Assessment welcomes the Government's intention to formally institute the Office of Qualifications and Examinations Regulation (Ofqual) as the independent regulator of qualifications. **However, as currently drafted the Bill will fall short of delivering an effective, accountable and independent Ofqual.**

During the House of Commons Stages of the Bill extensive sector representations and media coverage have indicated that there is a strong **public desire** to ensure the regulator has greater **autonomy from government** and more **accountability to Parliament**. This is the declared aim of the Secretary of State: *"It is an independent regulator of standards, it is independent of Ministers and it reports directly to Parliament."* (Second Reading, Hansard 23 February 2009: Column 27)

There is overwhelming cross-party **political 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 regulatory decisions to Parliament, that Parliament should play a key role in ensuring regulators operate independently from government and that Parliamentary scrutiny is critical to making sure regulators are accountable and transparent.

Most education **stakeholders are supportive** of the points raised in this briefing, including:

- ❖ ASCL – Association of School & College Leaders: represents over 14,500 senior school & college leaders
- ❖ ATL – Association of Teachers & Lecturers: represents over 160,000 teachers
- ❖ HMC – Headmasters' and Headmistresses' Conference: represents 250 independent schools
- ❖ NAHT – National Association of Head Teachers: represents over 28,000 school & college leaders
- ❖ NUT – National Union of Teachers: represents over 292,000 teachers

Public desire, Parliamentary support and education stakeholder opinion are powerful reasons why we believe Peers at both the forthcoming Second Reading and subsequent Lords proceedings should actively probe, query and persuade government on the following issues:

Key issues

Fairness – Criteria for Accreditation (Commons Clause 138)

- 138 allows Ofqual to make a 'saving or transitional provision' for a qualification ceasing to exist, but puts no obligation on Ofqual to use a delay mechanism. That would be **unfair to learners** leaving many without options and out of pocket.
- To avoid learners being disadvantaged the clause should **place a statutory duty** on Ofqual to provide an adequate transitional period.

Confidence in Standards – Power of SoS to determine Minimum Requirements (Commons Clause 139)

- This clause **reinforces public perceptions of ministerial interference** and undermines the shared aim of providing 'Confidence in Standards'.
- To ensure public confidence Ofqual must not be viewed as a government agency – we are calling for this **clause to be deleted** from the Bill.

Proportionality – Review of Activities of Recognised Bodies (Commons Clause 144)

- This clause gives Ofqual wide powers to investigate any matter – such as contact with Parliamentarians. It will lead to **regulatory creep** and will take Ofqual away from its core duty of maintaining standards.
- **Clarity is needed to define "connected activities"**.

Transparency & Accountability – Annual and other reports (Commons Clause 165)

- This requires Ofqual to lay Annual Reports before Parliament. No detail exists and the **Government**

¹ Undertaken by ComRes for Cambridge Assessment, March 2009

retains huge reserve powers.

- The Lords Second Reading provides an opportunity to look at best practice with regard to securing *maximum transparency and accountability*.

Timeliness

Timeliness lies at the very heart of Ofqual's ability to ensure a fit-for-purpose qualifications system. It is crucial that teachers, colleges and schools are able to prepare properly for new qualifications. Delays experienced early in the development process can cause significant problems later on when tasks have to be inappropriately hurried. However, the Bill as currently drafted contains no duty on the regulator to carry out its functions in a timely manner.

During the Commons Committee stage the Government rejected amendments to create and define a timeliness objective that would have ensured Ofqual had to carry out its functions in a manner that facilitated the delivery of qualifications on time. This included an amendment to require Ofqual to have regard to the timing of the exam cycle and the time that awarding bodies needed to develop qualifications.

Nobody wants to see a reoccurrence of the introduction of Curriculum 2000, where the new A Level specifications containing the new A* grade were delivered to schools before the actual mechanism for grading had been settled.

We believe that timeliness should be included in **Objectives (Commons Clause 126)**. The Bill already gives Ofqual a statutory efficiency objective, on behalf of the system in general. *Peers may wish to consider if the execution of this objective could best be carried out by explicitly extending that duty to the activities of Ofqual itself.*

Some points Peers may wish to probe:

- Bearing in mind the debacle around the introduction of Curriculum 2000 where, due to compressed timetables, courses started before text books were printed, surely the Minister will want to reassure the Lords that timeliness within the qualifications system is of the utmost importance to the Government?
- The Minister will appreciate exam boards need time to create and develop new qualifications, however, that is dependent on the timing of the exam cycle. What thoughts might the Government have (beyond merely asking) on making Ofqual build in time to its operations regarding awarding bodies' development work?

A separate short briefing note on timeliness is available to Peers upon request.

Fairness

During the Commons Committee stage the Government amended **Criteria for Accreditation (Commons Clause 138)** to give Ofqual retrospective power to remove accreditation from a qualification. This clause states that Ofqual may make a 'saving or transitional provision' about a qualification ceasing to be accredited.

We are concerned that as currently framed, this clause puts no obligation on Ofqual to use a delay mechanism; that could be unfair to learners and destabilising for awarding bodies. Firstly, there is potential for candidates who are on courses, or have made a decision to go on a certain course, to be left without any options. Secondly the need to maintain financial stability could lead to risk premiums being built into exam development costs by awarding bodies. In certain scenarios it may also lead to some courses being withdrawn by awarding bodies – so limiting choice for future candidates.

To avoid learners being disadvantaged we believe this clause should be amended to place a statutory duty on Ofqual to provide an adequate transitional period – a simple change from 'may' to 'must' could work.

Some points Peers may wish to probe:

- Perhaps the Minister may wish to inform the Lords under what circumstances Ofqual could decide not to make a 'saving or transitional provision' transition in relation to an accreditation?

A separate short briefing note on a transitional period is available to Peers upon request.

Autonomy from Government

To ensure public confidence in qualification standards it is essential that Ofqual is truly independent and, vitally, is not viewed as a government agency. However, there are a number of provisions within the current draft of the Bill which explicitly allow the Secretary of State to retain decision-making powers over core parts of Ofqual's remit.

These include the power to appoint Ofqual's board as in [Schedule 9](#) and the power to intervene in relation to fee-capping conditions as in [Commons Clause 133](#).

Of particular concern to everyone interested in rebuilding public confidence in the assessment system are the provisions of [Power of Secretary of State to determine minimum requirements \(Commons Clause 139\)](#). This clause – which would usher in sweeping powers – WILL allow the public to continue to perceive Departmental interference and undermine our shared aim of providing “Confidence in Standards”.

Some take the view that the Secretary of State should have a degree of power over exams. Many others contend that the Secretary of State will have utterly failed to establish an independent regulator and, more importantly, failed to win public trust and confidence if he goes beyond the powers he already has both in relation to the National Curriculum and funding.

It should be noted that whilst the actual text of the Bill leaves the powers unchecked, the Explanatory Notes set out how they should be used. The Explanatory Notes (Para 389, pg 69) state the powers should only be used “in exceptional circumstances” and that a Memorandum of Understanding on their use should be developed. However, these notes have no statutory force – meaning that the appropriate checks on how they should be used can be ignored, creating the potential for future misinterpretation and overuse. [This can only have a damaging affect on the standards debate.](#)

To avoid these significant dangers and to ensure public confidence, we believe that Commons Clause 139 should be deleted from the Bill.

Some points Peers may wish to probe:

- Perhaps the Minister may wish to reassure the Lords that any involvement by the DCSF Secretary will be made only in exceptional circumstances?
- The Minister may wish to clarify for the benefit of the Lords what would be regarded as exceptional circumstances?

A separate short briefing note on autonomy is available to Peers upon request.

Proportionality

There is broad acceptance that Ofqual should not be diverted from focusing on its core task of upholding standards. However, [Review of activities of recognised bodies \(Commons Clause 144\)](#) has the potential to give unfettered powers over unspecified areas to Ofqual that could take the regulator away from its core task of upholding standards.

The Bill's Explanatory Notes state that Ofqual can keep under review any “connected” activities of a recognised awarding body which may “impact on the credibility of the qualifications offered or the effective or fair operation of the qualifications system”. This appears reasonable and practical.

However, Awarding Bodies do a great deal more than design syllabuses, write questions, mark, grade and award qualifications. They undertake teacher training in both the UK and overseas, have marketing operations, huge IT and operating systems together with Finance and HR divisions – and, sometimes, very large overseas operations. Additionally, awarding bodies know that the currency of their qualifications depends on their credibility and will therefore protect that credibility themselves. They would thus be broadly receptive to measures that swiftly identify and address factors adversely impacting on confidence.

Clarification on what constitutes ‘connected activities’ is now needed. The Second Reading debate offers an opportunity to ensure that Ofqual will focus on investigating activities only where there are reasonable grounds and that it must have a direct and material impact on the credibility of the regulatory framework.

Some points Peers may wish to probe:

- The Minister may wish to inform the Lords of the Government's considered view of what connected activities are?
- The Minister may wish to assure the Lords that only activities deemed as directly or materially connected to the exam interests of an award body will be subject to this provision?

A separate short briefing note on the proportionate use of powers is available to Peers upon request.

Transparency & accountability

The issue of accountability is crucial for public confidence and trust. As a Non Ministerial Body, Ofqual is accountable to Parliament. This means that the depth to which Parliament is able to scrutinise the regulator's performance is critical.

Currently **Annual and other reports (Commons Clause 165)** requires Ofqual to lay annual reports before Parliament and the Northern Ireland Assembly. However, there is no specification on the content of the annual reports.

During the Commons Committee stage Minister Sarah McCarthy-Fry rejected amendments to outline what should be with each annual report stating that she 'expected' and 'presumed' that Select Committees would play a 'key role' in holding Ofqual to account. However, this has not, and cannot have, any legislative basis.

Confidence will not be built on general, undefined expectations. Certainty is needed in the Bill in relation to Ofqual's annual reporting to Parliament.

At the same time, with significant powers being reserved for a Secretary of State in Clause 139, it should be a requirement, on the face of the Bill, that the details of any determination from a Secretary of State are documented.

The Second Reading and subsequent Lords stages provide an opportunity to look at best and established practice with regards to securing maximum transparency and accountability. The Better Regulation Executive's Principles of Good Regulation provide a framework to secure transparent, consultative, consistent and accountable regulators. These principles, and the intentions behind them, should be enshrined and captured in the Bill to ensure Ofqual is properly mandated.

Some points Peers may wish to probe:

- Perhaps the Minister may wish to inform the Lords of the Government's considered view of what an Annual Report to Parliament from Ofqual will or should contain?
- During the Commons Committee stage, the Minister suggested select committees may implement 'procedures' on parliament's behalf to scrutinise Ofqual's work. The Minister may wish to offer thoughts to the Lords on what these procedures may be and how they might work in practice?

A separate short briefing note on annual reporting is available to Peers upon request.

Conclusion

Cambridge Assessment hopes that Peers will be conscious of the overwhelming cross-party political support among their parliamentary colleagues for unequivocal Ofqual autonomy and accountability and take the opportunity at the House of Lords stages of the legislation to agree a Bill that delivers a regulator that is independent, accountable and effective.

The opportunity to rebuild public confidence in the assessment and qualifications system is before the House of Lords – if Peers decide to grasp it.

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