

## Example A

### Clause 138: power to determine minimum requirements for qualifications

*The indicative letter below, from the Secretary of State to the Chair of Ofqual, indicates how the Secretary of State might have applied the above power had the Bill been in force when diplomas were first introduced.*

February 2005

Dear Kathleen

#### MINIMUM REQUIREMENTS OF THE 14-19 DIPLOMA

Section 138 of the Apprenticeships, Skills, Children and Learning Act 2009 allows the Secretary of State to determine the minimum requirements for a specified qualification or description of qualifications. A minimum requirement must relate to the knowledge, skills or understanding which a person must demonstrate in order to gain the qualification.

In line with the Memorandum of Understanding we have agreed, and following our officials' discussions of these requirements, I am writing to notify you that I wish to make such a determination in relation to all 14-19 Diplomas. The minimum requirements in relation to knowledge, skills and understanding for all successful Diploma learners should be demonstrated by the following:

- Diploma Principal Learning in the relevant line and at the relevant level;
- A Project at the relevant level;
- Functional skills qualifications in English, maths and ICT at level 1 (Foundation Diploma) and level 2 (Higher and Advanced Diplomas); and
- Sufficient Additional and Specialist Learning qualifications, as defined in the criteria developed by QCDA.

I also require, as a minimum, that all Diploma learners should have gained Personal, Learning and Thinking Skills at the appropriate level, and the skills and experience from having done two weeks' work experience.

As officials have discussed, the QCDA will be drafting the detailed criteria for Diplomas, which will reflect the work of the Diploma Development Partnerships for each line of learning. I should be grateful if you would agree with the QCDA a timetable for development of these criteria, to provide you with enough time for adoption of the criteria and the awarding bodies with sufficient time to develop the specifications. I should like the qualifications to be available for first teaching by September 2008.

I am publishing this letter on the DCSF website in order to fulfil the requirement to publish the determination.

I am copying this letter to Barry Sheerman MP (Chair of the Children, Schools and Families select committee), to Chris Trinick (Chair of the QCDA), to John Denham MP (Secretary of State for Innovation, Universities and Skills), and to Jane Hutt and Caitríona Ruane (the relevant Ministers in the Welsh and Northern Ireland administrations).

ED BALLS MP

## **Example B**

### **Clause 126 General duties: subsection (6)**

*This subsection states that in performing its functions Ofqual must have regard to such aspects of government policy as the Secretary of State may direct. This note indicates how this power might be applied.*

A substantial proportion of the activity which Ofqual will be regulating is publicly funded and/or delivering Government policies, and, in the case of National Curriculum and Early Years Foundation Stage assessments, Ofqual will be regulating a statutory activity.

It is therefore appropriate that Ofqual should be aware of and have regard to the wider policies adopted by the Government, and should not be operating in isolation. It may sometimes be appropriate for the Government formally to ask Ofqual to have regard to certain aspects of government policy.

This provision is modelled on a similar provision in the legislation setting up Ofsted, as discussed below.

#### **How will the power be applied?**

Where necessary, the Secretary of State may write to the Chief Regulator to indicate an aspect (or aspects) of government policy to which Ofqual should have regard. As a matter of good practice, the Secretary of State would copy any such correspondence to the chair of the relevant select committees, which will hold Ofqual to account on Parliament's behalf.

In practice the existence of this clause in legislation may be sufficient to ensure that Ofqual has sufficient regard to government policy, without the need for the Secretary of State to act formally. The power provides an indication of how the relationship between the government and Ofqual should operate.

#### **What examples of policy might this power apply to?**

Where necessary, this power would be used in relation to strategic policy issues that affect qualifications or assessments. It might be used, for example, to specify that the Government wished to ensure that assessment was not unduly burdensome for schools. In this example, Ofqual would need to consider how it could regulate in a way that gave priority to minimising assessment burdens, and it would no doubt want to report to the relevant select committees on how it was doing that. This would not impinge on Ofqual's independence – it would not require it to regulate in a particular way, simply to be able to show that it had taken into account the Government's desire to minimise burden.

#### **How has this power been used in relation to Ofsted?**

The power mirrors the Secretary of State's power to require Her Majesty's Chief Inspector of Education, Children's Services and Skills – and by extension, the work of Office for Standards in Education, Children's Services and Skills (Ofsted) – to have regard to such aspects of government policy as the Secretary of State may direct.

## Specimen determination issued by the DSCF

The Secretary of State has never formally used this power. However, the existence of the power sets the expectation that Ofsted will have regard to the broad aims of government policy as it relates to their functions.

An example is the reforms to Ofsted's inspection processes following the publication of the government's *Five Year Strategy for Children and Learners* in 2004. The strategy aimed to create a new way of working with schools to provide robust support where it is needed most, whilst at the same time giving teachers and school leaders more time to focus on improving teaching and learning by reducing bureaucracy (the 'New Relationship With Schools').

As its functions formed part of the wider accountability regime, it was appropriate for Ofsted to reflect the aims of the Five Year Strategy by introducing a short-notice, sharper-focused inspection regime. This has been in place since September 2005.

The revisions to the inspection processes have not affected Ofsted's independence in inspecting and regulating schools.

Ofsted's requirement to have regard to aspects of government policy relates to wider strategic issues that relate to the care of children and young people, and in education and skills for learners of all ages. It would not be feasible for Ofsted to act in complete isolation from government policy and the work of the government and its partners.

EXAMINER

## **Example C**

### **Schedule 12: power to state other purposes in relation to the assessment arrangements**

*Schedule 12 (paragraph 25 (5) (2)) of the Bill provides the Secretary of State with the power to make an order stating other purposes in relation to the assessment arrangements for the National Curriculum and the early learning goals. It provides for this by amending the Education Act 2002 and Childcare Act 2006. This note indicates how this power might be applied.*

#### **The purpose of assessment**

As set out in existing legislation, the Government's main purpose of assessment is to ascertain what pupils have achieved in relation to the attainment targets for a key stage and the early learning goals. This purpose is defined in

- Section 76 of the Education Act 2002 in relation to National Curriculum assessment arrangements.
- Section 41 of the Childcare Act 2006 in relation to assessment arrangements for the early learning goals.

#### **How might the additional power be used?**

The Government's main purpose of the tests, as stated above, remains unchanged. The data might also be used to provide the Government, schools and parents with information about the attainment and progress of pupils, so that we can better support them to improve, for example in the way we deploy resources.

The Bill provides that Ofqual will be required to undertake the following functions in relation to National Curriculum (NC) and Early Years Foundation Stage (EYFS):

Clause 153: to keep NC and EYFS assessment arrangements under review.

Clause 155: if it appears to Ofqual that there is or is likely to be a significant failing in the assessment arrangements, Ofqual will be required to notify

- a) the Secretary of State; and
- b) any bodies responsible for developing, implementing or monitoring National Curriculum or Early Years Foundation Stage assessment arrangements.

Clauses 156 and 157: to prepare a regulatory framework for NC and EYFS assessments.