

# Apprenticeships, Skills, Children and Learning Bill

## LORDS STAGES Briefing

### Clause 164 – Annual and other reporting

#### Issue: Transparency

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

While Cambridge Assessment broadly welcome the Government's wish to formally institute an independent Regulator of qualifications, we believe the Bill, as currently drafted, will fall short of delivering an independent, accountable and effective Ofqual.

There is extensive support from the public, Parliament and education stakeholders for transparency and accountability. The evidence for this is set out later in this paper but we believe these are powerful reasons why Peers should actively probe, query and persuade government on specific core issues.

#### **Need for accountability to Parliament**

We believe Clause 164; Annual and Other Reporting is not fit for purpose. As drafted, the Bill requires Ofqual to lay an annual report before Parliament and the Northern Ireland Assembly. However there is no specification on the actual content of the annual report.

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.

At the Commons Committee Stage Minister Sarah McCarthy-Fry rejected amendments to outline what should be within each annual report stating that she 'expected' and 'presumed' that select committees would play a 'key role' in holding Ofqual to account. However these comments have not, and cannot have, any legislative basis.

#### **Suggested Amendments**

Clause 164, pg 95, line 29, at end insert: against those objectives set out in section 125(1) and how it intends to fulfil these over the next 12 months.

Clause 164, pg 95, line 35 at end insert -"for debate by Parliament"

Clause 164, pg 95, line 37 at end insert "for debate by the Northern Ireland Assembly"

Clause 164 pg 95, line 33, at end insert-

(3A) If guidance was provided by the Secretary of State under section 133(7) (fee-capping) during the reporting period the annual report must include a description of that guidance

(3B) If any determinations by the Secretary of State under section 138(1) were in place during the reporting period, the annual report must include a description of that determination

(3C) Each annual report should contain a description of the nature and extent of any consultation undertaken by Ofqual with statutory consultees during the reporting period.

**Confidence cannot be built on basic expectations. Certainty is needed in the Bill in relation to Ofqual's annual reporting to Parliament.**

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### Enshrining the principles of better regulation

The Lords Stages provide an opportunity to look at best and established practice with regard securing maximum transparency and accountability.

During the Commons Stages of the Bill extensive sector representations and media coverage have indicated there is a strong public desire to ensure the regulator has greater autonomy from government and more accountability to Parliament. This is the publicly declared aim of the Secretary of State; Ed Balls MP:

*"It is an independent regulator of standards, it is independent of Ministers and it reports directly to Parliament."*

Commons Second Reading, Hansard 23 February 2009: Column 27

However, with significant powers being reserved for a Secretary of State in Clause 138: 'Powers to make minimum determinations', it should be a requirement, on the face of the Bill, that the details of any determination from a Secretary of State are fully recorded and documented in each annual report to Parliament.

The Better Regulation Executive's Principles of Good Regulation talk about transparent, consultative, consistent and accountable regulators. These principles, and the intention behind them, should be enshrined and captured in the Bill to ensure Ofqual is properly focused.

### Parliamentary Support

There is overwhelming cross-party *political support* for unequivocal Ofqual autonomy and accountability. A survey of 150 MPs<sup>1</sup>, 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
- ❖ that Parliamentary scrutiny is critical to making sure regulators are accountable and transparent.

### Educational Endorsement

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

- ❖ **ASCL** (Association of School & College Leaders) representing over 14,500 senior school & college leaders
- ❖ **ATL** (Association of Teachers & Lecturers) representing over 160,000 teachers across the UK
- ❖ **HMC** (Headmasters' and Headmistresses' Conference) representing 250 independent schools
- ❖ **NAHT** (National Association of Head Teachers) representing over 28,000 school & college leaders
- ❖ **NUT** (National Union of Teachers) representing over 292,000 teachers

### Ensuring Proper Parliamentary Scrutiny

There is an opportunity now for their Lordships to undertake thorough and detailed examination of the provisions within the Bill relating to Ofqual. It is disappointing the Government chose not to support amendments at Commons Committee Stage that sought to ensure proper scrutiny.

We urge their Lordships to take the opportunity in the Lords Stages of the Bill's passage to place reporting requirements upon Ofqual that will guarantee accountability and transparency of the regulator's activities.

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<sup>1</sup> Undertaken by ComRes for Cambridge Assessment, March 2009