

Apprenticeships, Skills, Children and Learning Bill

LORDS STAGES Briefing

Clause 143: Review of Activities of Recognised Bodies

Issue: Proportionality

In the House of Commons stages - most notably at Committee Stage – points relating to the core themes of independence, transparency and efficiency were made many times. 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.

Unnecessary & creeping regulation

Clause 143; 'Review of Activities of Recognised Bodies' contains all that is necessary for regulatory creep and gives unfettered powers over unspecified areas that take Ofqual 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.

Suggested Amendments

Clause 143, pg 86, line 18 leave out "keep under review" and insert "investigate any reasonable concerns regarding the".

Clause 143, pg 86, line 20 leave out "is connected or otherwise relevant to" and insert "directly and materially impacts"

Clause 143, pg 86, line 21 leave out paragraph (a) and insert -(a) the effective and fair operation of the qualifications system

Clause 143, pg 86, line 23 at beginning insert "the credibility of"

Awarding Bodies undertake teacher training in both the UK and overseas. Larger organisations have marketing operations, huge IT and operating systems, Human Resources, Finance - and large overseas operations. Smaller organisations have links to industry bodies while many also have own-brand qualifications and overseas operations. Naturally, as with all sectors, it is possible to envisage occasions where activities might be undertaken that impact on the credibility of the system.

Nevertheless, clarity is needed to define "connected activities". This clause will give Ofqual wide powers to investigate anything it wishes, including:

- Programmes of Parliamentary briefings on potential regulatory failure
- Details of sensitive commercial agreements & contracts, which if disclosed by Ofqual, could damage an Awarding Body's commercial position
- Research identifying problems with the system and the causes of those problems

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- Marketing plans; the QCA sought to see Awarding Body Diploma marketing plans (before anyone knew exactly what a Diploma would look like)
- Media engagement, especially where an awarding body was not 'toeing the line'.

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.

However, clarification on what is covered by the Clause 144 is needed. Cambridge Assessment suggest the amendments above which would seek 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 which Ofqual oversees.

Better, not more, regulation

There are many other examples in regulator legislation where regulator investigations have to be triggered on the basis of either a complaint or evidence coming to their attention. For example, section 25 of the Competition Act 2000 allows for the Director of the OFT to conduct an investigation into breach of competition law if there are "reasonable grounds for suspecting competition law infringements".

We consider that the Principles of Better Regulation - transparent; accountable; proportionate; consistent and targeted - are more appropriately met through these suggested amendments. They would ensure Ofqual has a power to investigate that is based on risk; ensuring that resources are targeted at activities of genuine concerns. This would avoid the danger that, by reviewing the whole range of awarding body activities, the regulator de-prioritises the need to maintain standards.

Parliamentary Support

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
- ❖ 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 Proportionality

We urge their Lordships to take the opportunity in the Lords Stages of the Bill's passage to secure clarity from government on the intended nature of 'connected activities' and expected scope of any Ofqual investigatory activity on them.

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¹ Undertaken by ComRes for Cambridge Assessment, March 2009