

# Apprenticeships, Skills, Children and Learning Bill

## SECOND READING DEBATE BRIEFING

### Delivering “Confidence in Standards”

The Apprenticeships, Skills, Children and Learning Bill, which will shortly have its Second Reading in the House of Commons, aims to deliver a new regulator, Ofqual, that will be the guardian of education standards.

Cambridge Assessment, Europe's largest assessment agency, is working to use its expertise to ensure that Government proposals achieve the goal of improved education for all. However, having closely assessed the detail of the Bill, we believe the below issues must still be addressed.

- **Accountability** - Parliamentary scrutiny and reporting requirements

It is vital that Ofqual is a transparent, consultative, consistent and accountable regulator - principles enshrined in the Better Regulation Executive's Principles of Good Regulation. As a Non Ministerial Body, it is accountable to Parliament. This means that the depth to which Parliament is able to scrutinise its performance is critical.

Currently, *Clause 162 - Annual and Other Reports* - sets out a duty to lay before Parliament and the Secretary of State an **annual report**. We believe significant safeguards must be added to this clause to ensure the appropriate level of accountability.

Vital questions must therefore be asked - how will the annual report be considered? Will there be debate on its content? What will the report contain and should criteria for its content be set in the legislation? What role will the DCSF Select Committee have in scrutinising not only its performance but also the appointments of key personnel (Chief Regulator, Chief Executive) - the quality of which the success of the regulator depends on. Should Ofqual have stated objectives at the beginning of the year and report against them? Should there be a requirement on Ofqual to report any direction given to it by the Secretary of State?

Additionally, in order for Ofqual to be truly transparent, it must fully **consult** with the sector it regulates. Is there not a case for *Clause 126 - General Duties* including a requirement for Ofqual to consult with a list of statutory consultees, representing a thorough cross section of the education community, a practice with longstanding precedent? This will ensure the right expertise, from those who have hands on

experience, informs the delivery of Ofqual's functions.

- **Independence** - powers of the Secretary of State

At the Labour Party conference in 2007 the Secretary of State, Ed Balls MP, announced that he intended to introduce a regulator that would be the guardian of educational standards. He stated that this regulator must be held at arms length from Government, based on the model of the Bank of England's Monetary Policy Committee.

We fully supported this statement. In order to secure public trust, most commentators recognise that it is essential that Ofqual is viewed as a *Regulator of Standards* and not merely as a Government agency. The best regulators look to create long-term trust and credibility by acting transparently, authoritatively and with integrity. Ofqual needs to have the capacity to do that.

However, there are a series of clauses in the Bill which explicitly allow the **Secretary of State to have decision making powers within Ofqual's remit**. For example, the power to determine many of the factors that affect the efficacy of a qualification, the power to appoint Ofqual's board and the power to set fee capping levels. Whilst we recognise that it is reasonable for the Secretary of State to hold a degree of power to ensure that the National Curriculum is successfully delivered, it is vital such powers are limited, transparent and that their use is fully scrutinised. **If that were not to be the case, the Secretary of State would have failed in his aim to establish an independent regulator.**

It should be noted that whilst the text of the Bill leaves such powers unchecked - seen specifically in *Clause 138 - Powers of the Secretary of State to determine minimum requirements*, the Explanatory Notes set out how these powers will be used. Paragraph 389, pg 69 in the Explanatory Notes state that these powers will only be used "in exceptional circumstances" and outlines plans for the development of a Memorandum of Understanding, which will

determine the use of these powers. We support these safeguards. **However, as they have no statutory obligation, it is vital they are now placed into the text of the Bill, to avoid the potential for misinterpretation and overuse.**

- **Duty to deliver qualifications on time**

The timeliness of the delivery of a qualification, its accreditation and critical decisions, is one of the most basic but important factors in the development process. It is crucial for teachers, colleges and schools to be able to prepare properly for new qualifications. Nobody wants to see a reoccurrence of the introduction of Curriculum 2000, which due to compressed timetables, saw courses starting before text books were printed. Indeed, the new A Level specifications containing the new A\* grade were delivered to schools before the actual mechanism for grading had been settled. Delays experienced early in the development process can cause significant problems later on when tasks have to be inappropriately hurried.

However, despite this, the Bill contains no duty on Ofqual to carry out its functions in a timely manner. We believe that this lies at the heart of Ofqual's role and should be included in *Clause 125 – Objective*. A question which could be asked is: whether this could best be carried out by taking the duty to deliver qualifications efficiently, and explicitly extending that duty to Ofqual itself?

- **Qualification design criteria - the heart of education standards**

It is, of course, right for the Government to determine the content that is to be taught in our schools. But, if standards are to be maintained, the design of qualifications must be carried out independently - at the heart of the 2002 A Level crisis lay a qualification design decision.

Qualification design criteria include: the number and weighting of units, the grading structure and the methods of assessment such as the split

between practical work and exams. They are far more important to the maintenance of standards than scrutinizing the annual marking session. Despite the gravity of this issue *Clauses 137 and 171*, which address the process of developing and accrediting a qualification, **do not clearly define where responsibility lies for carrying out this crucial role**. Questions that need to be asked are: who will develop criteria? Will this process be subject to Government intervention and therefore the pressures of policy

churn? What will the timetable for development be? And how early in the process will Ofqual be involved? We believe that the resolution of these issues would be best achieved through the inclusion of clear clauses addressing them on the face of the Bill.

Currently, *Clause 137 - Criteria for Accreditation*, states "Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate." **Consultation** must capture the expertise of all in the sector in order to ensure the qualification accreditation process is fair and fit for purpose. We believe that there is scope here for a list of statutory consultees - it should not be left to the regulator to pick and choose the voices it most wishes to hear.

Finally, given the importance of the qualification accreditation process, we believe that Clause 137 must contain a requirement to introduce a streamlined and robust **appeals mechanism** in order to secure good judgement. This will avoid the risk of unwieldy (and costly to the state) Judicial Review, and is the most effective way of ensuring smooth and effective functioning.

## • What is 'coherence'?

Clause 167 sets the QCDA's objective as "to promote quality and coherence in education..."

Coherence has become a keystone of the 'rationalisation' of the system. It would be useful to examine the concept and what different people mean by it. This would help QCDA to focus on the real work that needs to be done. There has never been an analysis of whether the system actually is 'incoherent'; nor any explanation as to why this matters; which form of 'coherence' would be best for England; whether it really

would lead to a better system; and whether it demands such a high priority.

'Coherence' is important as the concept is behind the drive to reduce the number of qualifications – despite the fact that other nations, such as Germany have similar numbers. It has also affected the day-to-day accreditation decisions such as those dealing with International GCSE and OCR Nationals. In the longer-term its ability to suppress innovation in qualification design must undermine Britain's ability to produce world-class qualifications.

## • Economic powers

It is imperative that best value for money is obtained for schools and colleges. The Bill contains (*clause 133*) a strong framework for ensuring financial stability in the qualifications system and powers to prevent potentially unscrupulous operators from exploiting it.

However, it should be noted that the qualifications system is a complex one in which a great many qualifications deemed desirable by students, teachers and parents (including most A Levels) operate at a cost to the Awarding Bodies that provide them. This cross subsidy is a great strength of the English system in which independent Awarding Bodies have the expertise - and educational mission - to supply a range of qualifications.