

Written evidence submitted by City & Guilds Group (TFEB 05)

Introduction

About the City & Guilds Group

1. The City & Guilds Group is a global leader in skills development. Its purpose is to enable people and organisations to develop their skills for personal and economic growth. City & Guilds Group partners with more than 300 companies to develop the skilled workforces that they need, and invests in learning technologies to help people learn whenever and wherever they can.
2. The City and Guilds of London Institute is a registered charity with a social purpose of aiming to change people's lives through skills. It is not a corporate advancing commercial interests. Backed by a Royal Charter (granted in 1900 by Queen Victoria), The City and Guilds of London Institute has more than 135 years' worth of experience in making sure that people are prepared to contribute to successful businesses and thriving economies. Through the work of the City & Guilds Group and its international presence, it is an ambassador for the United Kingdom overseas and a major component of UK PLC.

The genesis and nature of Part One (and Schedule One) of the Technical and Further Education Bill (the "Bill")

3. The Bill, and part of its contents, was proposed by the Post-16 Skills Plan (the "Skills Plan"). The conclusions of the Skills Plan were, in turn, based on the evidence and conclusions of the Report of the Independent Panel on Technical Education (the Sainsbury Report). These two documents were published simultaneously on 6 July 2016 with little, if any, prior consultation.
4. The Skills Plan stated (at paragraph 8.2) that the detail of how the Secretary of State will implement the reforms proposed in it would be published later in the year. This was to allow "*greater clarity and stability*". Other than a consultation on developing an insolvency regime for further education (which was not explicitly dealt with in the Skills Plan), there has been no further elaboration of the detail of the proposals in the Skills Plan until the publication of the Bill.
5. The Bill proposes fundamental changes to the present qualifications system as currently regulated by Ofqual. In particular it appears to seek to give effect to the intention set out in the Skills Plan to dramatically reduce the current number of Ofqual regulated qualifications and Awarding Organisations ("AOs").
6. As there was no further consultation regarding the role of the newly created Institute of Apprenticeships & Technical Education ("IATE") in reducing the number of qualifications and AOs, there is a great deal of uncertainty for the City & Guilds Group regarding the fundamentally reformed future of regulated qualifications.
7. For these reasons, we urge careful scrutiny of the Bill by the Committee.

Summary

8. The City & Guilds Group fully supports the Government's policy drive to improve the skills of the UK workforce and improve the transition for those entering employment from education and training. We see much merit in the Post-16 Skills Plan, and look forward to continuing to work with the Government and the new IATE to improve the quality and esteem of vocational and technical education in the UK.

9. This written evidence focusses exclusively on Part One and Schedule One of the Bill. This is because they are the briefest sections of the overall Bill but, beyond the headline renaming of the IATE, contain some potentially far reaching and radical changes to the design, delivery and ownership structure of vocational qualification provision in England.

Part One and Schedule One: General comments

The proposed role of the IATE

10. We welcome the renaming of the Institute of Apprenticeships to include Technical Education and believe this may bring greater coherence and indication of progression opportunities, by having oversight for all 'institution-based' and 'work-based' technical and professional education. We note that no definition is provided of "technical education qualification".

The respective future roles of Ofqual and the IATE

11. The Bill is unclear about the future role of Ofqual. If its current major role in the regulation of AOs and qualifications is to be diminished then this should be done properly, openly and with full transitional provisions. Additionally any such provisions should seek to avoid the risk of any overlap or gaps arising in terms of the remit of the two organisations.
12. We would raise a note of caution about creating the apparently stark binary system of education under two governing agencies (Ofqual and the IATE, for academic and technical education respectively). There should be options for 'mixed economy' study and equal opportunity to engage with, for example, work-based Apprenticeships or higher education study at higher levels.
13. We would also seek to understand the future role of Ofqual in Vocational & Technical Education if the IATE will in future 'approve' technical qualifications? The Bill makes reference to information and data sharing but we would caution against any system which could lead to confusion around responsibility and ownership of the regulation of quality assurance.

Proposed reform timetable

14. We would also caution against the speed of transition of duties given that the IATE is not yet operational and will have much work to cover embedding Apprenticeship reform on top of the Technical Education reform. It appears that 2018 is an ambitious timetable to assume full responsibility for all Technical Education as well as Apprenticeships at a time of significant change within both.

Transfer of copyright

15. The Bill makes provision for the transfer of copyright for 'relevant course documents' to the IATE (in Schedule 1, paragraph 15 (proposed section A2DA(4))). This is a significant proposal and not one that was canvassed in the Skills Plan. As drafted, it is unclear whether AOs retain any copyright in potentially key documents relating to a qualification once ownership transfers to the IATE. It is further proposed (in Schedule 1, paragraph 23 (proposed section A2IA **Transfer of copyright relating to technical education qualifications**)) that the IATE may assign or grant a licence to another person in the copyright transferred to the IATE.

16. These important provisions regarding the ownership of intellectual property in qualifications are very unclear. As many AOs will operate outside of England and export their current qualifications overseas, this lack of clarity will have an impact on the development of qualifications.
17. In both General Academic studies and Higher Level studies there is no attempt for the Government to own the copyright for qualifications and we would caution that this could have a disproportionate impact on the vocational qualifications market in the UK.
18. We would propose that IATE owned copyright is more appropriately applied at the level of national standards, allowing AOs to retain their copyright in qualification and assessment material design.

Technical education certificates

19. The Bill makes provision for the Secretary of State to issue a technical education certificate to a person if it appears to the Secretary of State that the person has obtained an approved technical education qualification (at Schedule 1, paragraph 24 (proposed section A3A **Power to issue technical education certificate**)). This is a significant proposal and not one that was canvassed in the Skills Plan.
20. This proposal potentially removes any continuing link between the AO and the qualification that it has produced. Through the Bill we would seek clarity on the relationship between the issuing of the proposed certificates and the qualification certificates issued by AOs. Again, government issuing of certificates is not common procedure at qualification level in any other area of the education and training system and would appear to bestow unnecessary cost, duplication and complexity on to the Department for Education and/or IATE.

Exclusive licences for the development of tech levels

21. The Skills Plan (at paragraph 3.6) proposed the granting of exclusive licences for the development of tech levels following a competitive bidding process. It was suggested that these exclusive licences, leading to a single qualification in respect of each route (or “occupational category”) would be in respect of level 2 and 3 qualifications only. Paragraph 3.12 of the Skills Plan refers to the IATE maintaining a “*register of technical qualifications at levels 4 and 5 which are eligible for public subsidy*”.
22. A major gap in the Bill is that this restriction of the scope of the only exclusive licence per route structure which is proposed in the Skills Plan is not reflected in the Bill.
23. The only reference to the proposal to enter into a competitive bidding process in respect of exclusive licences in the Bill appears to be at Schedule 1, paragraph 15 (proposed section A2DA(2) **Approved technical education qualifications**) which refers to the IATE’s power to “*make any arrangements that it considers appropriate*” to secure the availability of suitable technical education qualifications. This is another significant gap between the Skills Plan and the provisions of the Bill which, if enacted as currently drafted, will create a great deal of uncertainty and potentially impact on innovation and quality.
24. Further to this main issue, we would also guard against an approach that could lead to a potential build up of a strongly-established position in each licensed route and qualification and which could impact on future competitive interest in the Technical and Professional qualifications market not only on the initial tendering process but also when it comes to

retendering. As well as concerns raised as part of two select committee inquiries^{1 2} into the General Qualifications market, we would also reference the recent NAO³ and PAC⁴ inquiries and the Competition & Markets Authority⁵ scrutiny of rail franchising, in the context of their concerns around competition and value for money as a public service delivery model.

25. As Ofqual highlighted in its advice to Government when similar reforms were proposed around the English Baccalaureate Certificates, structural change at a time of significant qualification reform could lead to greater instability and also delays to the delivery of the proposed qualifications – “it will in our view elongate the timeframe for new qualifications and lead to unintended consequences, for example, unduly costly qualifications and too limited a choice of providers in future.”⁶
26. We would also suggest the current licensing proposals, in the Skills Plan and through the Bill, carry similar risks as a way of simplifying choice and improving consistency of provision within the technical and professional education market.

Rebalancing the VQ market

27. By transferring copyright of “*relevant course documents*” to the IATE, the Bill effectively moves from a market-led model to one where Government, through re-regulation, assumes greater control over the vocational awarding market. We understand that, for the purposes of the Skills Plan, this is necessary to support the transition at retendering stage, where the Government retains copyright ownership for the purpose of re-licensing to new provider(s). However, we are concerned about the impact this could have on competition and value for money at the point of retendering (see 24 above).
28. The current mixed market model is not perfect. However, it supports and encourages investment and innovation by AOs, and so we would caution against a policy which might have the unintended consequence of acting as a disincentive to either.

¹ <http://www.parliament.uk/documents/commons-committees/Education/EIGHTH-REPORT-GCSEs-to-ECBs-Reform-HC-808.pdf>

² <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/141/141.pdf>

³ <https://www.nao.org.uk/report/reform-of-the-rail-franchising-programme/>

⁴ <http://www.publicfinance.co.uk/news/2016/02/pac-warns-waning-interest-rail-franchises>

⁵ <https://www.theguardian.com/business/2016/mar/08/competition-regulator-backs-scrapping-of-rail-franchises>

⁶ <http://www.bbc.co.uk/news/uk-21363396>

Schedule One - Detailed comments

Schedule One of the Bill	Subject within the Bill	Clarification sought and/or summary of proposed amendment
Paragraph 7 (proposed section ZA9)	Occupational categories and groups	<p>The Secretary of State’s determination of categories of occupation is of fundamental importance to the regulatory scheme proposed by the Bill.</p> <p>It is a considerable gap in the drafting not to, at least, provide for guidance from the Secretary of State on how such determinations shall be made.</p>
Paragraph 7 (proposed section ZA10)	Mapping of occupational groups	<p>How would this work with the associated single licensee model? If the single licensee could not accommodate addition occupations (as allowed for in proposed section ZA10(4)) should there be a reserve power for the IATE to appoint additional licensees/AOs?</p>
Paragraph 7 (proposed section ZA11)	Standards	<p>Standards should be set at a higher level than this to avoid inefficient and inflexible solutions, given that qualifications that follow these standards may become required for certain occupations. The occupation profiles could then be derived from the National Occupational Standard.</p>

Paragraph 7 (proposed section ZA11(2)(b))	Standards	Some of these features require more than employer expertise and that is clear from the quality of assessment plans emerging from Trailblazers.
Paragraph 11 (proposed amendment to section A2)	Apprenticeship standards and assessment plans	<p>The proposals in this paragraph were not fully canvassed in the Skills Plan.</p> <p>Neither the IATE nor the employer groups are currently equipped with the expertise or capacity to do this. The employer groups currently perform 'functional analysis' for occupations and define the skills, competences and behaviours required, an expert assessment body works with them to craft a</p> <p>valid, reliable and viable assessment plan. The IATE currently ensures that this fits with: categories; the priorities of the labour market; the wider needs of the economy; and to ensure that the overall quality assurance mechanisms are in place to safeguard public money and the learner.</p>
Paragraph 11 (7)	Apprenticeship standards and assessment plans	We would emphasise under this provision that there needs to be a strong mix of expertise to ensure quality
Paragraph 11 (9) (a)	Apprenticeship standards and assessment plans	There should always be a need to do this so does this refer to where an existing plan might need revision?

Paragraph 11 (10) (a)	Apprenticeship standards and assessment plans	We are concerned that with the IATE not yet operational that there will not be the in-house expertise and resource to achieve this. We highlight this concern with regard to similar challenges with Technicals at KS4 and KS5.
Paragraph 14 (3)	Evaluations	Does this refer to the overarching quality assurance role in Apprenticeships? If so we would propose that this could be more effectively overseen by Ofqual as this is where the statutory power (and expertise) currently lies.
Paragraph 15 (proposed section A2DA)	Approved technical education qualifications	This appears to be in conflict with Ofqual's current role and its publishing of the Regulated Qualifications Framework ("RQF").
Paragraph 15 (proposed section A2DA(4)(b))	Transfer of copyright	Transfer of copyright should not be a prerequisite for inclusion. We would propose that copyright should only be transferable at the level of 'standards'. The IP in qualifications and all related documentation should reside with the AO and all development costs should be met by them.
Paragraph 15 (proposed section A2DA(5)(b))	Transfer of copyright	This is an unclear piece of drafting which does not make clear when compensation would be payable. Therefore, compensation should be payable where any copyright has been transferred (even where there is agreement to transfer).

<p>Paragraph 15 (proposed section A2DA(10))</p>	<p>Publishing approved qualifications</p>	<p>This needs careful consideration in connection with the role of the ‘approved’ technical qualification alongside or within Apprenticeship programmes. Where no qualification is mandated an employer is free to choose whatever qualification they want included in their programme and can use Apprenticeship Levy funds to pay for that as it is part of their programme. We would caution against the unintended consequences for employer choice within Apprenticeships if the IATE is advocating specific technical options.</p> <p>The interaction between what qualifications are available to an employer when it is spending from its Apprenticeship Levy Digital Account and the provisions relating to Technical Qualifications is not clear from the Skills Plan or the Bill.</p>
<p>Paragraph 15 (proposed section A2DB(4))</p>	<p>Additional steps towards occupational competence</p>	<p>We would assume this only applies to any mandated qualification or accreditation content? As above, an employer retains the right to ask for whatever they want to be included in their Apprenticeship Levy training programme.</p> <p>This is a very wide power with no provision for the publication of guidance on its exercise.</p>

Paragraph 21 (proposed section A2HA(1))	List of technical education qualifications	<p>Will this list be separate to the existing RQF or any other lists of qualifications? If not, what are the arrangements relating to the existing RQF? As the Skills Plan makes clear, there are currently around 1,800 qualifications at levels 4 and 5 on Ofqual's register of regulated qualifications (paragraph 3.15). If the list in proposed section A2HA is a replacement for the RQF system then there ought to be clear transitional arrangements in place now.</p> <p>If the A2HA list is parallel to the RQF, will this not add an additional level of complexity rather than simplifying the system?</p>
Paragraph 21 (proposed section A2HA(2))	List of technical education qualifications	What is the principal purpose of this list? There should be greater clarity in the Bill on this.
Paragraph 24 (proposed section A3A)	Power to issue technical education certificate	Clarification is needed as to purpose of issuing certificates if these are alongside the qualification award. This does not currently happen with GCSE, A Levels or Degrees. We would propose that the AO issues certificates that could also carry the IATE's logo.

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