

## The Education Bill 2011 – Regulatory Changes

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### *Introduction*

1. This paper covers the changes to the regulatory framework for education which the *Education Bill 2011* (“**the 2011 Bill**”) will, if passed, introduce. These changes are part of the Coalition’s general ‘bureaucracy-busting’ drive, and fall into the part memorably described by Francis Maude as the ‘bonfire of the quangos’.
2. The headline point is that various bodies are to be abolished (at least in England) but their *functions* are going to be diverted to other people or bodies elsewhere. The exercise is largely one in political reform rather than law reform.
3. It is clear from the long title to the 2011 Bill which regulatory bodies are to be scrapped. The 2011 Bill is “*A Bill to...abolish the General Teaching Council for England, the Training and Development Agency for Schools, the School Support Staff Negotiating Body, the Qualifications and Curriculum Development Agency and the Young People’s Learning Agency for England.*”

### **Quango abolition**

#### (i) GTCE

4. The first, and perhaps the most high-profile, of the regulatory bodies to be abolished then is the *General Teaching Council for England* (“**GTCE**”). This was established by section 1 of the *Teaching and Higher Education Act 1998*. Its purpose was, broadly, to be for teachers what the General Medical Council is for doctors. It is though, in the view of Ministers, not fit for that purpose.
5. Clause 7 of the 2011 Bill has the effect of abolishing the GTCE and preserving the GTCW(ales). From henceforth the body corporate will only be able to exercise its current functions under the 1998 Act in relation to Wales.
6. Clause 8 gives the Secretary of State the regulatory functions of the GTCE. It does so by inserting sections 141A to 141E into Part 8 of *Education Act 2002* (“**EA 2002**”) and adding a Schedule 11A. So section 141B will allow the Secretary of State to consider allegations of unacceptable professional misconduct, conduct that may bring the profession into disrepute, or the commission of a relevant

offence. If, after investigation, he finds there is a case to answer, he “must decide whether to make a prohibition order in respect of the person”.

7. Section 141C places a duty on the Secretary of State to keep a teachers’ ‘barred list’ which will be open to inspection by the public. Interestingly, the barred list will include both those prohibited from teaching by the Secretary of State pursuant to section 141B and also those NQTs who have failed their induction year (see clause 9). There will no longer be a general register of all those entitled to teach in maintained schools, non-maintained special schools and pupil referral units.
8. Sections 141D and E provide that employers of teachers (including supply teachers) who have been dismissed for ‘serious misconduct’ ‘must consider’ whether to refer the case to the Secretary of State. Unlike at present there is to be no *duty* to refer such cases.
9. Schedule 11A places a duty on the Secretary of State to make detailed regulations about the exercise of his new powers. It maintains the current arrangement whereby an appeal against inclusion on the barred list may go to the High Court but no further.
10. Clause 9 gives the Secretary of State the GTCE’s functions with regard to teachers’ induction periods (currently in section 19 THEA 1998) and otherwise largely maintains the status quo. It does so by inserting sections 135A to 135C into EA 2002.
11. Clause 12 and Schedule 3 are quite interesting. Schedule 3 provides the Secretary of State with a discretionary power to make a staff transfer scheme (a familiar feature of much recent ‘reform’ legislation) which will allow “designated employees” of GTCE to become employees of the Secretary of State. It is a statutory way around TUPE, and, if used, will avoid the difficulties seen in ***Law Society v Secretary of State for Justice*** [2010] IRLR 407.
12. The GTCE recently submitted evidence to the Public Bill Committee on those parts of the 2011 Bill described above.<sup>1</sup>

(ii) TDA and SSSNB

13. The *Training and Development Agency for Schools* (“**TDA**”) is abolished by clause 14 of the 2011 Bill. It has been quite short-lived, having been established by

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<sup>1</sup> See [http://www.gtce.org.uk/publications/edubill\\_sub0211/](http://www.gtce.org.uk/publications/edubill_sub0211/)

section 74 of *Education Act 2005* (“**EA 2005**”) (though it had a previous existence as the Teacher Training Agency). Sections 74 to 84 of and Schedule 13 to EA 2005 are repealed.

14. Clause 15 makes amendments to Part 2 of *Education Act 2002* and Part 3 of EA 2005 in order to give the Secretary of State (and the Welsh Ministers) power to carry out the functions which the TDA used to carry out (particularly with regard to the TDA’s funding responsibilities under section 78 EA 2005 – the Secretary of State’s power to give financial assistance under section 14 EA 2002 is expanded to encompass teacher training).
15. Clause 17, which gives effect to Schedule 5, again provides for a power in the Secretary of State to make a staff transfer scheme and a property transfer scheme.
16. There are few real reforms here. In effect all that is going to happen is that the TDA will close its doors as an NDPB and re-open them as an executive agency of the DfE.
17. The *School Support Staff Negotiating Body* (“**SSNB**”) (not really a ‘regulatory’ body) really will have been short lived if clause 18 of the 2011 Bill becomes law. It was established by section 227 of the *Apprenticeships, Skills, Children and Learning Act 2009* (“**ASCLA 2009**”) which only came into force on January 12<sup>th</sup> 2010. It was established to develop a national pay and conditions framework for school support staff in maintained schools. The Coalition government, in a move not at all popular with the unions, has decided that it would prefer pay and conditions to be set locally.

(iii) Ofqual and the QCDA

18. By virtue of clause 21 and Schedule 6, the chief executive of Ofqual (established by Part 7 ASCLA 2009) is to be appointed by Order in Council and is to be known as the ‘Chief Regulator of Qualifications and Examinations’ (currently the chair of Ofqual is known by that title).
19. Clause 22 amends and extends the ‘qualifications standards objective’ which is one of Ofqual’s objectives as set out in section 128 ASCLA 2009. The point of the objective is to ensure that those qualifications which Ofqual regulates (all those up to A-Level, not degrees which are regulated by the *Quality Assurance Agency*) give ‘a reliable indication of knowledge, skills and understanding’. The amendment

will, in effect, introduce an element of international comparison to the objective. Ofqual will have to ensure that English (and some Northern Irish) qualifications compare with those from around the world.

20. Clause 23 abolishes the *Qualifications and Curriculum Development Authority* (“**QCDA**”), formerly known as the *Qualifications and Curriculum Authority* and established (or rather continued) by Part 8 of ASCLA 2009. The QCDA had one objective which was to “promote quality and coherence in education and training in England”. Its abolition was a key part of the Conservative party’s manifesto at the last election and in May 2010 the Secretary of State wrote to the Chair to inform him of its abolition. It had only opened as the QCDA in April 2010.
21. This is an area in which it appears that certain functions are to be discontinued at a governmental level, though it is unclear precisely which. It had appeared to be the Secretary of State’s intention that responsibility for the 14-19 diploma would pass to the exam boards themselves<sup>2</sup>, however clauses 28-29 do away with the diploma entirely. What is clear is that greater control over the National Curriculum is from henceforth to vest in the Secretary of State.
22. Paragraph 15 of Schedule 7 to the 2011 Bill (given effect by Clause 24) replaces section 96 EA 2002. Under section 96, before the Secretary of State makes orders or regulations relating to the National Curriculum he has to refer the proposals to QCDA which then carries out a consultation and produces a report with advice and recommendations on the proposals. The new section 96 places a duty on the Secretary of State to consult before and after publication of his draft proposals. It is then open to him to make the proposed order or regulations “with or without modifications”.
23. There is again a power in Schedule 8 to the 2011 Bill for the Secretary of State to make staff and property transfer schemes.

(iv) YPLA

24. The last regulatory body to be axed by the 2011 Bill is the *Young People’s Learning Agency for England* (“**YPLA**”), another creation of ASCLA 2009. It also opened in April 2010. Clause 62 repeals sections 60 to 80 of, and Schedule 3 to, ASCLA 2009, and thereby abolishes YPLA.

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<sup>2</sup> See <http://www.tes.co.uk/article.aspx?storycode=6046290>

25. YPLA exists to fund and support the delivery of training for all 16-19 year olds, and for those up to the age of 25 who are subject to a learning difficulty assessment. In that regard it had responsibility for, amongst other things, the now-scraped Education Maintenance Allowance. It also has certain responsibilities in relation to Academies, the main one of which is, in their own words, to ensure there is “a stable platform for the expansion of the academies programme” (see sections 77-79 ASCLA 2009). This means that they manage funding and support for open academies.
26. YPLA is to suffer a similar fate to TDA in that it will close its doors as an NDPB and become an executive agency of the DfE. This was foreshadowed in the White Paper *'The Importance of Teaching'*. The new body which will obviously be subject to direct Ministerial control, will be called the 'Education Funding Agency'. Its responsibilities will, so far as I can tell, be broadly the same as those of YPLA.
27. There may well not be very many job losses however. Clause 64 gives effect to Schedule 16 which contains the same power for the Secretary of State to make a staff and property transfer scheme allowing the transfer of contracts of employment and property to himself or another 'permitted transferee'.

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