

A Question of Regulation

A study of the regulation of qualifications in England

William David Blacklock

Institute of Education, University of London

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Abstract

This thesis considers whether there is a case for the regulation of qualifications in England. It draws on regulatory theory to develop an original conceptual model for regulation incorporating five important public interest objectives: control of systemic risk; quality; information asymmetry; value for money; and planning deficit. The model is used to evaluate the case for regulation. Interviews with officials responsible for regulatory policy, and representatives of those organisations subject to regulation, provide evidence that allows an assessment of whether they understand and support the regulatory functions appropriate to qualifications, the value of such regulation and possible alternatives. The study reviews how other regulatory arrangements in education and training inform the evaluation of the case for regulation. The thesis also surveys the basis for the regulation of financial services to see if lessons can be learnt for the regulation of qualifications from a non-educational context. The thesis concludes that a case can be made for the regulation of qualifications but that such a case needs to go back to first principles rather than depend on the current inadequate legislative basis. There is a clear case for regulation to address the issues of systemic risk and quality and standards and these were identified in my empirical findings as the two most important objectives. As far as the issues of information asymmetry and value for money are concerned there is justification for regulation in principle although in practice the case does not appear to be very strong. However, the case for central planning of the qualifications system is not clear and further justification would need to be made for before regulation could be justified to achieve this objective. Finally, the key issues of regulatory balance and the impact of economic globalisation are discussed in relation to the future direction of regulatory policy.

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Chapter 1 – Introduction

In 1911, the Consultative Committee on Examinations in Secondary Schools argued that ‘examinations should be subjected to most stringent regulations as to their number, the age at which they are taken, and their general character’ (Board of Education, 1911, p.103). When describing the variety of examinations that had grown up by the beginning of the 20th century, the Committee observed that:

the system is the result of practically independent action. It is the outcome of a varied succession of unconnected accidents, in which owing to the disinclination or inability of the State to superintend the work at its beginning, there has been no single co-ordinating force at work.

The report of the committee recommended that:

The existing multiplicity of external examinations (including those of Universities, and professional and other bodies), the claims of which at present so frequently interfere with the best work of schools should be reduced by concerted action (Board of Education, 1911, p.104).

Almost a century later, and five years after the Qualifications and Curriculum Authority was established to ‘superintend’ the qualifications system, over 100 awarding bodies continue to offer almost 3,500 awards.

This thesis considers whether a coherent and sustained case can be made for the regulation of public qualifications. Qualifications signal in a public way acquisition of certain knowledge and skills and are crucial achievements in the lives of many people. Individuals can use qualifications to differentiate themselves in the labour market and can thereby increase their status in society. Academic qualifications function as passports to higher education, to the limited number of places available in medical or law schools or to potentially high-earning jobs in business. Studies such as those carried out by the Centre for the Economics of Education (Dearden et al, 2000) suggest that those who gain such qualifications enjoy greater potential earnings over their lifetime. Even some vocational qualifications, which are often seen as the poor relations of academic awards, deliver some gain to the individual in terms of financial return.

Given the kind of advantages that qualifications can offer, the need to ensure the quality and status of those qualifications becomes a major issue. The quality of the procedures used to achieve the independent validation of these qualifications needs to command public confidence. Government is bound to take an interest in such a high profile activity,

particularly as it underwrites it financially. Even so, there has been little discussion as to whether a case can be made for regulation as the most appropriate mechanism for addressing issues of public interest raised by the ways in which the qualifications system in England currently operates. The annual appeal in both the general and educational press to protect ‘standards’, when the results of public examinations are published, is a symptom of public concern that confidence in the value of qualifications is maintained. Some observers argue that guarding the quality and standards of qualifications, and the assessment arrangements on which they are based, attract naturally the attention of governments and regulatory agencies:

Assessment is characterised by elaborate processes to safeguard the reliability of the scores obtained. Furthermore, it is dominated (at least in the UK) by external agencies, again designed to safeguard the ‘gold standard’ of the public examination (Lambert and Lines, 2000, p.192).

In addition to such social concerns over quality and standards, there are economic concerns over competition between the providers of qualifications and the cost of the qualifications system. The continuing existence of so many different qualifications offered by such a wide range of awarding bodies may be an indication of healthy competition. One may argue that such competition encourages higher standards and better customer service. One may also argue that it promotes cost-effectiveness and value for money. Alternatively, one may see the many competing awards as evidence of oversupply, confusing duplication and a threat to quality especially if awarding bodies cut costs and allow quality to suffer as a result. The significant expense incurred by the taxpayer - in terms of the payment of qualification fees from the public purse - is a matter of concern.

Qualifications, whether academic, vocational or professional, are developed and marketed by awarding bodies. The costs of qualifications - whether it be registration and certification fees for individuals or moderation and verification fees for the providers of education and training programmes – are significant and the state underwrites the cost of the majority of such qualifications through the mechanisms of its new central funding agency - the Learning and Skills Council. The costs of the services of the awarding bodies have been criticised by some commentators:

Examinations are expensive. In 1999 it was estimated that GCSEs alone cost £90 million to organise and run, while entry fees constitute a high proportion of any school or college’s budget. The examinations industry is by any measure large scale (Lambert & Lines, 2000, p.27).

In view of the rising costs of qualifications, the provision of qualifications has been one service that has become subject to ever-tighter regulation:

Further central interventions in certification and assessment have involved the stipulation of courses and qualifications that may receive funding in colleges and government initiatives to reform the traditionally independent examination and certification bodies (Green, Wolf & Leney, 1999, p.101).

In examining whether a case can be made for the regulation of qualifications this thesis draws on research which distinguishes between economic and social regulation. For the purpose of this study such a sharp distinction may not be helpful and it may be more useful to see economic and social regulation within an overall spectrum of activity with efficiency goals on one side and equity goals on the other. Economic regulation deals primarily with issues such as the management of competition in the private sector, the privatisation of monopoly suppliers - in the utilities sector, for example - and the introduction of 'internal markets'. The aim of such regulation is to secure a high level of efficiency through the use of specific incentives, a more responsive service to consumers and better value for money. Social regulation deals primarily with public interest issues such as quality and safety. The aim of such regulation is to secure a degree of protection for the individual. Hughes compares the purposes of economic and social regulation:

with the former aimed at encouraging business and other economic actors to undertake certain activities and to avoid other activities. Social regulation is usually seen as attempting to protect the interests of citizens and consumers, especially concerning quality standards, safety levels, and pollution controls (Hughes, 1994, p.89).

In terms of the justification for the regulation of qualifications the arguments for regulation are evenly balanced. The economic regulation of competition to encourage greater efficiency and value for money in the supply of qualifications may need to assume as important a profile as the more familiar calls for social regulation of quality and standards.

It is vital to remember also that a powerful argument exists that regulation should be used to safeguard the public interest only in cases where other non-regulatory mechanisms are not sufficient to correct deficiency or failure. Howard Davies set out this argument just prior to the establishment of the Financial Services Authority:

we agree with those critics who argue that regulation, or any form of official intervention, is only justified in the presence of a substantial market imperfection, and where the cure is not worse than the original disease (FSA, 1998a).

If we share this view we need to identify what might constitute ‘substantial market imperfection’ in the qualifications system in order to consider whether a case can be made for regulation. Essentially, therefore, we need to find a way of determining whether there are possible justifications for regulation on social grounds and whether there are possible justifications for regulation on economic grounds. If we find that there are justifications for regulation there will be a need to evaluate whether these are strong enough to overcome the argument that ‘the cure is worse than the disease’ and that overall the benefits of regulation are likely to outweigh the possible costs.

The regulatory landscape in education and training

The Education Act 1997 set up the Qualifications and Curriculum Authority in order to pursue certain goals in relation to the curriculum, assessment, and qualifications. The Act created QCA as a major part of the overall regulatory framework for education and training in England. The establishment of this new body is set against the background of the significant growth, particularly in the last decade, in the powers assumed by central government to regulate education and training. The establishment of QCA is typical of the push towards more high profile regulation across the public sector. The structural reform underlying these changes marks a major extension of the influence of central government in its search to give a greater guarantee of standards of product and delivery in public services.

In addition to the Qualifications and Curriculum Authority, other key organisations are involved in the direction and control of education and training for those aged 16 and above:

1. Department for Education and Skills (DfES);
2. Learning and Skills Council (LSC);
3. Office for Standards in Education (OFSTED); and
4. Adult Learning Inspectorate (ALI).

Other regulatory mechanisms at a local level are applied by bodies such as local education authorities with their responsibilities for managing schools; local Learning and Skills Councils in the funding and coordination of sixth form and further education colleges and

private training providers; and Government Offices and Regional Development Agencies with their planning and reporting functions.

Two important parameters govern the research. The study focuses on public qualifications designed for those aged 16 and over and not national curriculum assessment. Also, following devolution, key legislation applies to education and training in England only and the thesis cannot offer any comment on Scotland, Northern Ireland or Wales. In the field of academic qualifications such as GCSEs and 'A' Levels, competition exists between the three so-called 'unitary bodies'. Following the government's public consultation on 'Guaranteeing Standards' (DfEE, 1996a) these bodies were created by the rationalisation of a number of vocational awarding bodies and academic examinations boards. The origins of the latter can be traced back to the university matriculation boards. They are large organisations, two of which employ over 500 staff. However, there is a much larger group of smaller organisations which function in the vocational qualifications market, where competition has been exacerbated recently by new entrants eager for a share of public funding. Some enjoy charitable status and others have a Royal Charter that allows them to promulgate their educational responsibilities.

The greatest proportion of the income for most of these awarding bodies comes from the charges they make to individuals who take their qualifications. In turn, the charges the awarding bodies make for their services including:

the devising, administering, verifying or certifying the qualification; setting or moderating examinations for the purposes of the qualification; registering, assessing and examining candidates (Learning and Skills Act, 2000)

are subsidised by the state through the provisions of the relevant legislation. The 'qualifications industry' for those aged 16 and above is big business:

In spring 2001, 6,373,000 or 17% of all people of working age were studying toward a qualification in the UK (Office of National Statistics, 2002).

In 1999/2000 there were 5,683,000 entries for the General Certificate of Secondary Education (GCSE) examinations and 890,700 entries for the General Certificate of Education (GCE). In the same year, achievements in vocational qualifications included 454,000 National Vocational Qualifications (NVQs), 117,000 General National Vocational Qualifications (GNVQs) and 502,000 other vocational qualifications (Office of National Statistics, 2001).

In order to deliver this large and increasing number of examinations and to award the resulting qualifications, there are a number of categories of organisations that share the common description of ‘awarding body’. We have mentioned the three ‘unitary’ awarding bodies for academic qualifications:

1. Oxford, Cambridge and Royal Society of Arts Examinations Board (OCR);
2. Assessment and Qualifications Alliance (AQA);
3. Edexcel.

The City and Guilds of London Institute (C&G) set up in 1878, is the largest vocational awarding body. These four bodies together are estimated to have a combined annual turnover of over £300 million.

The other types of awarding body that serve the market for occupational or vocational qualifications are remarkably diverse and include those:

- a) set up to serve a particular market such as business and commercial services – for example, the London Chambers of Commerce and Industry Examinations Board (LCCI EB);
- b) specific to a particular activity such as dance, music or drama – for example, Trinity College of Music (TCM);
- c) specific to a particular industrial sector such as engineering – for example, Engineering and Marine Training Authority Awards Limited (EAL);
- d) Former regional bodies serving mainly the further education sector, some of them derived from the 19th century tradition of mechanics institutes – such as the Awarding Body Consortium (ABC) that can trace its beginning back to the 1876 Union of Lancashire and Cheshire Institutes (ULCI);
- e) Professional bodies such as the Royal Society of Chemistry, the Institution of Civil Engineers, the Chartered Institute of Library and Information Professionals, and the Royal College of Nursing. These latter bodies, however, offer higher level or professional qualifications very few of which are likely to be considered for accreditation by QCA.

Definition and purposes of a qualification

QCA has been established with specific powers to regulate qualifications. However, despite this significant development there is little discussion or research to help us understand more easily why regulation by QCA is needed or to suggest measures against which we can judge whether such regulation will achieve its goals, or not. The lack of discussion of the purposes of the regulation of qualifications is perhaps surprising given the importance attached to the achievement of qualifications, particularly those that are seen as ‘high stake’ such as the major academic public examinations.

In the case of the introduction of the new inspection regime for schools and the establishment of the Office for Standards in Education (OFSTED), there has been informed discussion, indeed controversy, over the aims of regulation and whether such intervention works in practice. However, in education increasing regulation has been accepted with less consideration and debate, because government has mobilised public opinion in support of regulation as the preferred solution and because regulation has become such an integral and unquestioned part of every day life in education. However, even if regulation has become such a natural part of education and training, its aims are not often understood.

The absence of any sustained intellectual justification for the theory and practice of regulation of qualifications is notable when one compares the open debates that took place prior to the establishment of the Financial Services and Markets Act 2000. This kind of intellectual debate is important if we are to go back to first principles and ask the question ‘Why regulate?’ A consideration of first principles needs a number of definitions beginning with a definition of regulation itself. The definition I use in the thesis is drawn from the work of Baldwin & Cave but adapted for my own purposes. It is that regulation can be defined as:

the application of a set of rules or regulations, which have a basis in law, by a public body established to monitor and promote compliance with those rules in the public interest (Baldwin & Cave, 1999).

We need also to suggest a definition of a qualification as the object of regulation, together with the principal purposes of a qualification, so we can consider more clearly the case for regulation. For the purpose of this study, my definition of a ‘public qualification’ is a qualification that can be taken by any individual and is not subject to pre-requisites such as membership of a private organisation or professional body. Generally speaking, but not

in all cases, such a qualification will be attempted after a course of learning offered within the public education and training system. The costs of the qualification – those charged by the organisation that provides the course of education or training and those charged by the organisation that awards the qualification – would normally be covered by the state for those under the age of nineteen. Some costs are covered for those over the age of nineteen – although individuals and employers are expected to make a contribution - and awarding body costs are covered if the qualification has accredited status. The definition of such a qualification in the relevant legislation is given as:

any academic or vocational qualification authenticated or awarded by an outside person except an academic qualification at first degree level or any comparable or higher level (Education Act 1997 S 24 (6) (a)).

In order to help develop the definition the thesis draws on several commentators including Broadfoot (1979) and Dore (1997). One particularly helpful source is the work of Goldstein & Lewis (1996) with its focus on assessment:

It is useful to distinguish three principal purposes or functions of assessment. The first is to certify or qualify individuals by discriminating among them; for example on the basis of a test, examination or teacher grading. The second is to assist in the learning process by providing an understanding of what someone has learnt so that remediation and further learning may take place. The third use is for making inferences about the functioning of institutions, enterprises or systems (Goldstein & Lewis, 1996, p.2).

Lord Mackay, in the recent ‘Review of the Regulation of School and Vocational Examinations’, focuses on what he sees as the main purpose of a qualification:

The system of external qualifications in England is one that has a variety of uses. For example: it is used as a means of university entrance, it is used to compare schools, it is used as a criterion for gaining employment, although many employees would have additional tests or requirements before engaging a particular employee. But surely the main use of external qualifications is to provide the individual holder of the qualification with an independent validation of his/her standard of skill, competence and knowledge of the subject matter concerned (Edexcel, 2001, p.3).

Drawing from these and other sources a detailed definition of a qualification can be developed as follows:

1. A mark of formal recognition of achievement;
2. Based on a demonstration of attainment of specified outcomes;
3. Dependent on defined assessment requirements;
4. Awarded by the issue of a certificate.

Moreover, where the achievement of such formal recognition is supported by public funds the certificate must be:

5. Issued by a body authorised for that purpose;
6. Subject to monitoring and public reporting.

In addition, three principal purposes for a qualification have been identified, as follows:

1. Supporting Learning
 - Support learning by setting goals and measuring outcomes in a reliable and valid manner for the individual to confirm acquisition of knowledge and skills within either an educational framework or within a training environment to support individual and/or workforce development
2. Providing Information
 - Provide an indicator of individual achievement in a public and formal way
 - Support selection procedures either for higher education or employment by providing standardised information on the success of candidates
 - Inform state policy with regard to economic performance by setting and monitoring targets for qualifications as a proxy for educational or skills achievement
3. Ensuring Accountability
 - Provide indicators of success by the individual or provide institutions and state agencies with data against which value for money can be measured.

Structure and methodology

Chapter 1 serves as an introduction to the thesis. I examine briefly the regulatory landscape within which QCA sits and describe some of the pertinent features of the ‘qualifications market’. A definition of a qualification is established to allow us to understand the object of regulation. I identify the principal purposes of qualifications. An overview of the structure of the thesis is provided. The methodology for the research includes first a discussion of the general theory and purpose of regulation before asking why and how regulation might be applied to qualifications.

In Chapter 2, I set out a wide theoretical base for regulation both within and outside education and training, with reference to a number of leading commentators in the field. Several of these sources are studies of economic regulation, particularly where government has intervened to control private suppliers. A spectrum of regulation is identified taking into account efficiency goals on the one hand and equity goals on the other. There is an exploration of the historical perspective of the regulation of qualifications in order to help set this study in context.

In Chapter 3, drawing on a study of general regulatory literature, the thesis sets out a new conceptualisation of a theoretical model for regulation. Five key objectives covering social and economic regulation are identified. This model is then used during the remainder of the thesis as a benchmark to interrogate the case for regulation, examine the current regulatory arrangements and gauge the views of key stakeholders in the qualifications system. The model is used as a general framework to evaluate whether overall a case can be made for the regulation of qualifications.

In Chapter 4, I examine the details of the legislation which established QCA. A study of sources such as the 1997 legislation, debates in parliament and expressions of views in the public domain or by interest groups forms a primary basis for the research. Official publications such as Command Papers and Acts of Parliament are examined and discussed. The secondary rules, administrative criteria, and codes of practice developed to underpin the regulatory regime are also examined. Announcements and policy statements, speeches and publications from the bodies involved in the regulation of education, but particularly the Qualifications and Curriculum Authority, are evaluated in order to identify key issues and underlying concerns. I reiterate the theoretical model for regulation and match where similar objectives for the regulation of qualifications exist for QCA and where they do not. A detailed exegesis of QCA's published material allows me to assess whether a clear and coherent view of its regulatory functions can be articulated. A preliminary assessment is made of the progress of QCA in relation to the model's objectives.

In Chapter 5, the views of stakeholders in the current qualifications system are examined to assess whether they share a clear view of the purposes of regulation generally and, in particular, in respect of qualifications. Interviews are carried out with those policy makers in both the civil service and non-departmental public bodies involved in the establishment

and operation of regulation of qualifications. The interviews focus on the general theories of regulation to ascertain whether there is a degree of consensus on what regulation might achieve in principle and in practice. Respondents were then asked to consider the purposes of qualifications and agree whether they view regulation as the most appropriate way of reinforcing those purposes in support of the public interest. The empirical data captures the perspectives of government officials, officers of the regulator and awarding body staff and allows me to determine the degree of support for the regulatory objectives set out in the model of regulation. Questions are asked as to whether alternative approaches are viewed as being more appropriate and desirable. Textual analysis of the interviews is carried out to determine the degree of consensus and whether there are significantly differing views and, if so, the reasons for this.

In Chapter 6, a study of official documents, policy statements, and national debates is undertaken. Policy considerations that led to the establishment of the Learning and Skills Council will be reviewed including the detail of the debate in the House of Lords, government policy consultations and the views of a range of commentators. Regulatory arrangements for education and training post - 16, including the Learning and Skills Council (LSC), the Office for Standards in Education (OFSTED) and the Adult Learning Inspectorate are examined. Through a review of the debates that preceded the Learning and Skills Act 2000 and through an analysis of other key documents I evaluate the aims of the new arrangements, benchmark regulatory activity against the theoretical model.

The regulation of financial services is undergoing major change with the recent establishment of the FSA. Chapter 7 offers a detailed examination of the aims of financial services regulation in order to provide material on which to base possible comparisons. The aim of this chapter is to develop an appreciation of the work of another regulator in order to gain a fresh perspective on the regulation of qualifications. Like QCA and LSC, the FSA is a new organisation formed from a merger of previously existing regulators and a study of the FSA throws light on differing approaches to regulation matched against the theoretical model, providing a useful comparison between the ways in which FSA and QCA carry out their roles.

In Chapter 8 I conclude whether a case can be made for the regulation of qualifications.

Chapter 2 – Literature Review

Introduction

There are many studies that focus on the theory and practice of both economic and social regulation. A large number of articles and books were published on the subject of economic regulation following the often controversial privatisation of public utilities and the deregulation policies applied by government in the 1980s. More recently, interest has grown in the area of social regulation particularly regulation in the public sector.

However, very little of the literature dealing with the issue of regulation examines the theories of regulation of education or the practical effects of regulation on education.

Within the field of educational research one has to search for studies of, or even references to, regulation and the way regulation impinges on education.

In one sense, regulation happens all the time in education whether it is based on the outcomes of the rolling programme of education legislation – almost one education bill was put through parliament each year in the late 1980s and early 1990s – or whether it is characterised as bureaucracy and administrative arrangements of the system. The Education Reform Act 1988 regulated the curriculum on the grounds that children were owed what was described as an entitlement to cover all the main subjects. Statutory assessment has been in place since then and the importance of the outcomes of the national programme of tests is significant. Following the Education Reform Act commentators examined the effects of the introduction of the National Curriculum on the work of teachers and the achievements of children, although this is not my primary concern here. From 1992 onwards, the new pressures brought about by the establishment of OFSTED and its more radical policies on the inspection of schools instigated much public debate. However, commentary on OFSTED tends to concentrate rather less on the theoretical justification of regulation than on the practical effects of the inspection regime on schools and teachers. Little of this work is set within regulation theory or draws from comparative studies of models of regulation. Within the constraints of this review of the literature therefore, I propose to look at the theory of regulation as set out by leading commentators in the field, develop a brief historical perspective of the regulation of education and training and examine the literature that deals directly with the regulation of qualifications.

Theories of regulation

Generally speaking, the theories on regulation pertinent to this study reflect the rational-legal model of regulation exemplified by Max Weber in his *Essays in Sociology* (Gerth & Mills, 1970). Hughes identifies the six principles set out in Weber's model of bureaucracy (Hughes, 1994, p.22):

- official areas of activity or interest, ordered by administrative regulations;
- hierarchical authority;
- written documentation;
- expert training;
- full time officials;
- general rules of management.

These principles underpin perhaps the most recognisable approach to the establishment of regulatory regimes. Although the arrangements for regulation are important - and a number of studies to which I refer here in Chapter 2 focus on such arrangements - a more interesting question is why the decision to regulate is taken in the first place.

Understanding Regulation: Theory, Strategy and Practice (Baldwin & Cave, 1999) introduces 'the major practical and theoretical issues central to a study of regulation' (Baldwin & Cave, 1999, p.1) and covers the main approaches to regulation from both legal and economic points of view. As they introduce their work, the authors comment on the importance of regulation for a whole range of disciplines. However, despite the major impact of regulation on education there is no mention of this field in their work. In Part 1 of the study, Baldwin and Cave discuss the different kinds of regulatory strategies in use across a range of activity, the types of organisation that take on responsibility for regulation and the purposes of regulation. The text outlines the administrative, functionalist and institutionalist models of regulation and deals with public interest and public choice theories. In Part 2 there are more detailed discussions on a series of issues in relation to the utilities and other regulatory sectors including monopolies, competition, efficiency and quality. In an early section of the study, the authors deal with the key questions of 'why regulate':

Many of the rationales for regulating can be described as instances of 'market failure'. Regulation in such cases is argued to be justified because the uncontrolled market place will, for some reason, fail to produce behaviour or results in accordance with the public interest (Baldwin & Cave, 1999, p.10).

This will be a primary focus for the thesis in that we will examine possible justifications for regulatory intervention, from both social and economic viewpoints, in relation to specific objectives in order to decide whether there is a strong enough case for the regulation of qualifications.

A significant number of studies of regulation are linked to programmes of privatisation of state industries. Regulatory agencies were established by government to oversee the privatised utilities including OFTEL in 1984 (Telecommunications), OFGAS in 1986 (Gas), OFFER in 1989 (Electricity), OFWAT in 1990 (Water) and ORR in 1993 (Rail). Many works focus on the regulation of banking and financial services. The area of financial services offers some interesting parallels to the regulation of education when one considers the purpose of regulation in relation to products such as insurance, savings schemes or pensions. Later in the thesis I will examine the achievements of the Financial Services Authority (FSA) to throw light on how one might move from the theoretical question of whether and how regulation might be justified to the practical question of whether and how regulation actually is justified, and in what respects. Other relevant works include *The Politics of Regulation* (Francis, 1993) and *Regulation: Legal Form and Economic Theory* (Ogus, 1994) both of which cover the spectrum of social and economic regulation. The work of Francis, Ogus and others is drawn on in the discussions of regulation that underpin the creation of a model in Chapter 3 for evaluating whether a case for regulation can be justified in relation to particular objectives. Francis explores a range of theories of regulation including public interest, interest group and public choice theories. Like Hughes (Hughes, 1994), Francis draws a useful distinction between economic and social regulation:

Traditional definitions of regulation concentrated on what is described as economic regulation – that is, a response to market failure defined as the absence of competition and characterised by higher prices and fewer goods that would occur in a competitive market. In the last several decades, a distinction has developed between more traditional economic regulation and what is described as social regulation – the protection of the consumer-citizen from the unwanted and unexpected, be it air pollution, airline crashes or contaminated food (Francis, 1993, p. 6).

In his study, Francis looks at a number of case studies in the domain of social regulation, focussing on environmental and health risks, financial markets and the care of life and

health. He underlines the importance in the analysis of any regulatory regime of making a clear justification for regulation, referring to the study on politics and regulation carried out by Wilson who argues that:

The politics of regulation cannot be understood in the absence of the justifications advanced for a specific regulatory endeavour. Justification is remarkably important in understanding both regulation and regulatory change in a variety of areas (Wilson, 1980, p. 354).

However, as I argue in Chapter 4 and throughout the thesis, such justification is not commonly found in the case of the regulation of qualifications.

One of the key justifications for regulation that Francis identifies is risk:

Much regulation today is advanced as reducing risk. Risk intertwines objective and subjective dimensions. There is wide agreement that certain activities and products are correlated with dangerous consequences. In other areas there is much less agreement about the magnitude and severity of the risk. It is this mixture of the objective and subjective that makes risk regulation so politically controversial but ensures it is always demanded (Francis, 1993, p. 17).

One of the underpinning themes of the general model of regulation used to evaluate the case for the regulation of qualifications is risk either to the system, to the individual or to the state either in social and economic terms. The empirical data set out in Chapter 5 shows that there are differing views about the possible risks of not regulating qualifications. The key to managing risk is determined by the way that the level or seriousness of any particular risk is perceived and, based on that perception, the regulatory approach chosen to address the risk. One might address the risk prescriptively and tightly if it was felt to be serious but one might regulate less tightly if the risk assessment were less negative. The proportionality of regulation can be designed on the basis of an effective risk assessment and this is discussed both in relation to the general model of regulation and, in practice, the regulatory regimes such as the one established by the Financial Services Authority examined in Chapter 7.

Ogus sets out his arguments on regulation in his work on *Regulation: Legal Form and Economic Theory* (Ogus, 1994):

The aim of this book is, then, to classify and explain regulatory forms and to evaluate their capacity and record of achievement in meeting public goals. Regulation is fundamentally a politico-economic concept and, as such, can best be understood by reference to different systems of economic organisation and the legal forms which maintain them (Ogus, 1994, p.1).

Ogus distinguishes between public and private interest theories of regulation as he looks back through the history of regulation from the Tudor and Stuart periods to the impact of

the European Union on regulatory policy. Essentially, he sees two forms of economic organisation – the market system and the collectivist or public system. He argues that in the market system regulation is normally facilitative, private and decentralised. By contrast, he proposes that regulation in the collectivist or public system is directive, in the public domain and centralised. This is a pertinent distinction in that the evaluation of the case for the regulation of qualifications shows that the current regulatory regime draws heavily from the latter paradigm.

In *The Regulatory Challenge* (Bishop et al, 1995) a number of fields of regulation are examined including higher education, financial services and broadcasting. In particular, McEldowney's chapter on key issues for the future for law and regulation traces the development of twentieth century regulation and, in doing so, helps throw light on the development of regulation of education relevant for this study:

Historically the regulation and scrutiny of industry in Britain had developed from nineteenth century. Legal powers were first granted through Private Acts of Parliament in return for statutory responsibilities assumed by the industries. A wide range of powers were enjoyed by [such] regulators, invariably a statutory framework would set the general shape and scope of the individual Board or inspectorate. Additionally, codes of practice, circulars, directions, rules, regulations were all included as part of that legal framework (McEldowney in Bishop et al, 1995, p.410).

Political, constitutional and legal issues play a significant part in how regulation is established and applied. In *Regulation and Public Law* Baldwin & McCrudden, whilst noting that 'agencies have a porcupine-like quality within government' set out the general expectations placed on a regulator. These expectations were that the regulator would base its actions on clear legislative authority; be accountable within the law for its actions; apply due process to its decisions; develop and apply expertise in its chosen field; and operate efficiently (Baldwin & McCrudden, 1987, pp35 - 40) much in line with the legal-rational approach set out by Weber earlier in this chapter. They also note

the increasing practice of regulation by administrative rather than statutory rules instead of relying on primary legislation enforced by officials, an increasing number of regulatory regimes now rely heavily on codes of practice, guidance and circulars, often of indeterminate legal status (Baldwin & McCrudden, p.27).

As public bodies in England can have their regulatory decisions appealed through the courts it seemed sensible to examine the principles on which such a review might depend. A number of legal issues surrounding the topic of regulation were considered and there are two useful books on judicial review: *The Judge over your Shoulder* (Treasury Solicitor's Department, 1987) and *Judicial Review: a practical guide* (Clayton &

Tomlinson 1993). It became clear that there were three possible grounds for review including illegality (acting outside the law), irrationality (taking unreasonable decisions) and procedural impropriety (whether a person has been given a fair hearing). The basic question for public bodies would be: ‘What power or discretion has been conferred and has it been exceeded?’ (Treasury Solicitor’s Department, 1987). There is also a key text that describes the legal background to the work of a public body in *Constitutional & Administrative Law* (Stevens, 1996). Specifically relating to education but mainly to schools there is *Law and Education: regulation, consumerism and the education system* (Harris, 1993).

Government and regulation

Hood and others focus on regulation inside government and the increasing number of public bodies involved in such activity:

a typical public organisation faces a collection of waste-watchers, quality police, sleaze-busters, and other ‘regulators’. Some of those oversight organisations, in the UK at least, are common to the public and private sectors (for instance data-protection and safety-at-work regulators). But many are specific to public bodies, in the form of distinctive systems of audit, grievance-handling, standard-setting, inspection and evaluation (Hood et al, 1999, p.4).

One of the key arguments made by Hood and his colleagues is that far from new approaches to public management resulting in ‘bonfires of regulation’, or in any cutting back of the regulatory state, what has resulted is an increasing dependence on administrative rules. This ‘administrative approach’ to regulation usually involves detailed rules and procedures, centralised inspection regimes and public reporting of the outcomes of such inspection in order that comparisons can be made and conclusions drawn by the users of public services.

However, one key concern for Hood and his colleagues is a general trend they identify in regulation, and particularly in the regulation of education and training:

More generally, the regulatory regime of the 1990s differed in style from that operating in the middle years of the century, in that the perception by politicians of a ‘secret garden’ of education experts shielding schools from public accountability and scrutiny was replaced by a more open and adversarial kind of oversight (Hood et al, 1999, p.146).

Certainly, the rhetoric of regulation is an issue we will come across several times in this study where we find that regulation can be a fiercely contested domain. The establishment of the inspection regime applied by the Office for Standards in Education (OFSTED) is one such contested area and Hood notes five features of the regime: (i) it is an oversight

and compliance regime; (ii) there was a sharp increase in resources for the application of the regime; (iii) ‘relational distance’ was introduced between the regulator and those regulated to reduce the possibility of professional capture; (iv) inspection procedures were standardised and set down in great detail; and (v) the issue of school standards was given prominence in the mind of the public.

Other significant literature of relevance deals with the structures of government and power, and how the various agencies within the modern bureaucratic state interrelate. These works include *The Political Economy of Public Administration* (Horn, 1995) and the collection of studies in *Modern Systems of Government – Exploring the role of bureaucrats and politicians* (Farazmand, 1997). Other texts relating to the role of government in regulation or to the policy process include *Public Management & Administration: an introduction* (Hughes, 1994), and *The Policy Process in the Modern State* (Hill, 1997). These offer the opportunity to see the establishment of regulatory bodies within an overall social and political context where administrative and legal relationships between governments and agencies, between agencies themselves and, finally, between agencies and their stakeholders form the basis for agreement and action. In view of this social and political context, government itself took an increasing interest in the practice of regulation and in September 1997 established the Better Regulation Task Force. The *Principles of Good Regulation* (Better Regulation Task Force, 2000) sets out to establish a common approach to regulatory policies across government departments and seeks to establish a common set of principles for the business of regulating:

Regulation may be widely defined as any government measure or intervention that seeks to change the behaviour of individuals or groups. Government regulations can promote both the rights and liberties of citizens and impose restrictions on their behaviour. Whilst recognising that there are differences about the levels of intervention, all governments should seek to ensure that regulations are necessary, fair, effective, affordable and enjoy a broad degree of public confidence. To achieve all of this, good regulations and their enforcement should meet the following five principles:

- *Transparency*
- *Accountability*
- *Proportionality*
- *Consistency*
- *Targeting*

(Better Regulation Task Force, 2000, p.2)

It is important to note, however, that the Task Force is less concerned here about the justification for regulation than the importance of issues such as the clarity, proportionality and affordability of regulation once it is applied. The ‘Principles of Good

Regulation' are about **how best** to regulate not about the arguments which actually justify regulation in the first instance. The 'Principles' concern themselves with how one might regulate and how much it might cost and do not offer any general conceptual framework for looking at underlying general justifications for regulation.

Regulation and qualifications

Ainley and Corney argue that:

the first effort to create a unified system of education and training goes back to Elizabethan times. The 1563 Statute of Artificers (repealed in 1814) was the only legislation to deal exclusively with training for work until the Industrial Training Act became law in 1964 (Ainley & Corney, 1990, p.8).

Perry also notes that concern about the lack of skills available to underpin the economic competitiveness of the country goes back to the introduction of the first statutory apprenticeship (Perry, 1976). In his detailed history of the evolution of British manpower policy, he traces the development of vocational and industrial training through from the Statute of Artificers in 1563 to the Industrial Training Act in 1964. He identifies how voluntary societies played their part in the formalisation of the recognition of vocational training and provides two examples of this voluntary movement both of which are pertinent to the discussions in this thesis. On the one hand he describes how the RSA (the Royal Society for the encouragement of Arts, Manufactures and Commerce founded in 1755) affiliated with 220 Regional Unions of Mechanics Institutes to take under their wing their 90,000 members and turned itself into an examining body in the process (Perry, 1976). He also describes how comparisons between the quality of technical education amongst Britain's chief competitors caused great concern among the City of London Livery Companies and led them to establish a new institute:

In 1878 [five of the livery companies] – the Clothworkers, Mercers, Drapers, Fishmongers and Goldsmiths - endowed a new foundation, the City and Guilds of London Institute for the Advancement of Technical Education. In the following year the Institute took over the technical examinations from the Royal Society of Arts, which henceforth confined itself to examinations in commercial and clerical subjects (Perry, 1976, p.23).

Studies that are specifically focused on the regulation of qualifications are rare, despite the fact that the 'issue' of qualifications goes back to the beginning of the twentieth century. The *Report of the Consultative Committee of the Board of Education on Examinations in Secondary Schools* balanced the positive effects of examinations on both pupils and teachers with their potentially negative effect.

As Sutherland notes:

By the early twentieth century the structures of formal education in English society were punctuated at every stage by examinations. There were examinations for entry to secondary schools; examinations during and at the end of secondary schooling; examinations at university. So many bodies jostled to provide secondary schools in England and Wales with examinations that in 1911 the Board of Education's Consultative Committee launched an investigation into them and recommended substantial rationalisation and reduction (Sutherland, 2001, p.53).

The Report of the Board of Education recommended the establishment of the Secondary Schools Examinations Council which eventually came into being in 1917. In respect of the external examining bodies, the new Council was asked to assume responsibility for controlling the proliferation and ensuring the quality of qualifications. One of the first primary references to the regulation of qualifications is in *From Voluntarism to Regulation - Awarding Bodies in English Education and Training: A case study of City and Guilds* (Bush, 1993) - a monograph written by a member of staff of the City and Guilds of London Institute. In the last decade of the twentieth century, the qualifications of the vocational awarding bodies were being brought under regulation for the first time and Bush cites what she perceives as the growing trend of government intervention as 'unprecedented'. She traces the origins of vocational education and training through to the establishment of the City and Guilds of London Institute in 1878 and its award of a Royal Charter in 1900. She observes that government's awareness of vocational education and training was extremely limited until the Industrial Training Act of 1964. This legislation led to the creation of Industrial Training Boards, bodies which were given greater responsibility for defining the education and training needs of employers within industry sectors. From that time she traces the development of what she terms the 'new vocationalism', the growing influence of both the Employment Department and the Manpower Services Commission and eventually the creation of the National Council for Vocational Qualifications in 1986. She argues that these interventions have led to tensions which it will be difficult to resolve:

EVBs [Examining and Validating Bodies] are now increasingly required to operate on a competitive basis within a common, centrally determined framework rather than provide their own alternative provision. There is a tension between the aims to rationalise and standardise awarding bodies while relying on market principles where differences between what is on offer is fundamental to 'consumer' choice (Bush, 1993, p.5).

More recently, the Centre for the Study of Regulated Industries, commissioned by Edexcel – one of the largest unitary awarding bodies - has published a study on the *Regulation of the Qualifications System for GCSEs, A' Levels and GNVQs* (Centre for the

Study of Regulated Industries, 1998). The study sets out to recommend key principles for QCA's regulatory work and to evaluate the relevance of approaches to regulation in the utility, financial and accountancy sectors in order to establish the optimal characteristics of the regulatory framework for qualifications. The study argues both that regulation should be efficient and effective and that 'systems of regulation should be designed to ensure the greatest possible reliance on self-regulation' (CRI, 1998, p.vii). The Edexcel Foundation commissioned the report in order to apply pressure on the developing policies of the newly established regulator. The report is relevant to this study in that it outlines the background for the regulation of qualifications, makes useful comparison of different approaches to regulation and identifies some similar purposes for regulation. However, it was too soon for the authors of the report to study QCA's emerging thinking on regulation and the report's primary focus therefore is more directed to the principles of regulation and what might be termed 'good practice' than to an examination of possible justifications for regulation. However, the report does posit four possible objectives for regulation in attempting its analytical framework for regulation. The four objectives include rectification; standards; value for money; and the need for innovation, responsiveness and choice. Notably, however, the report argues for a minimalist approach to how to regulate rather than setting out arguments in principle for and against regulation.

As a mark of its continuing concern, Edexcel commissioned a further report on the regulation of qualifications in 2001. The report was written by Lord Mackay and its primary emphasis was

the extent to which the regulatory system can assist a particular awarding body, to provide a service in which the public have confidence and in which the needs of our country: in manufacturing, in the service industries, in education, in Government and of the candidates sitting the examinations as well as the general public, can be met (Edexcel, 2001, p.1).

In the report, Lord Mackay noted that the objectives of regulation were not clearly set out in the legislation that had established QCA and his examination of the regulatory system suggests a number of possible objectives. Some fall into the area of social regulation - including ensuring public confidence in the system and the maintenance of quality and standards. Other objectives fall into the area of economic regulation – including a review of charging structures and cost efficiencies and the adequate resourcing of awarding bodies:

All of these are matters of economic regulation which would certainly be important in other fields and it seems to me would be important in this field also (Edexcel, 2001, p.22).

Finally, there is a brief account of the ‘examinations industry’ in *Understanding Assessment: purposes, perception, practice*:

This industry is crucial, given governments that have increasingly engaged in centralising both the academic and vocational curricula, because summative, high-stakes assessment has been seen as a way of measuring overall teaching standards as well as student achievement (Lambert & Lines, 2000, p.22).

The authors provide a historical overview from early examples of assessment in China, through the nineteenth century to the present day. They reflect on the view that the ideology of merit replaced patronage as a key to progression in society. They discuss arguments both for and against a single awarding body, touch on vocational qualifications and comment on the increasing reliance on external assessment to raise standards.

Conclusion

This chapter has provided a broad review of literature on the theory and practice of regulation. Key texts have offered theoretical perspectives drawn from both regulatory traditions, that of economic regulation and that of social regulation. Other sources have provided information on the history and background of the development of the qualifications system. Very little of the literature offers a broad conceptual framework for addressing why one should regulate. Some of the sources do describe broad justifications for regulation – either social or economic - and some offer principles to encourage proportionality in regulation. However, there is little insight into possible justifications for the regulation of qualifications and one report suggests that the establishment of clearer objectives for the regulation of qualifications is necessary. This means that a new approach is needed and a fresh contribution to our understanding of this subject. As my principal interest is in whether a case can be made for the regulation of qualifications, we need to derive a model of regulation that we can use as a tool to examine this case. The model will be used to determine whether there are possible justifications for regulation on social grounds and possible justifications for regulation on economic grounds and will be based on the risk theory outlined by Francis earlier in this chapter.

Chapter 3 – A model for regulation

The paucity of literature on either the theory or practice of the regulation of qualifications is perhaps surprising given that a regulatory body has existed in one form or another for the purpose of controlling qualifications since 1917. This vacuum makes the development of an original model of regulation important. The advantages of such a model are that it allows us to establish both a language and the parameters for intellectual debate and provides a basis for evaluating the case for the regulation of qualifications, taking related theoretical and practical issues into consideration. As we have seen, a limited number of studies on the regulation of qualifications has been produced recently, notably the monograph by Bush (1993) and the report for Edexcel on regulation by the Centre for Regulated Industries (1998). These recent studies focus more closely on the practice of regulation not on the theoretical underpinning of regulation – on the how and not the why. However, the report commissioned from Lord Mackay of Clashfern by Edexcel (Edexcel, 2001) goes some way to answering why one might wish to regulate qualifications and to suggesting possible objectives for regulation. The report notes that the purposes of regulation are not clearly set out in the legislation that established QCA and one of Lord Mackay's key recommendations is that this is necessary:

there is no express provision in the Education Act 1997 which sets out the objectives of the examination system in respect of which the QCA has regulatory functions. I consider that it would be of prime importance to set out in greater detail in statute than does the Act of 1997 which precisely the objectives to be attained by the regulator are (Edexcel, 2001, p.9).

The development of a theoretical model for regulation, which we can apply to evaluate the case for the regulation of qualifications, is useful and timely therefore. Drawing in part from the Edexcel report, the model sets out a number of key objectives that could justify regulatory activity. These objectives include social objectives intended primarily to ensure the protection and rights of the user or consumer; and economic objectives relevant to the efficient provision and delivery of services in publicly funded contexts. Each of the key objectives in the model is discussed with reference to relevant regulatory theory.

In line with Francis (1993), cited earlier in Chapter 2, each objective is designed to address a potential risk which the market may not be interested in correcting and which could therefore call for regulatory intervention:

Regulation can be seen to be centrally concerned with the control of risks – be these of illnesses caused by exposure to carcinogens or of inadequate utility services, or of losses caused by incompetent financial advice. To see regulation in terms of risk control adds moreover, to our understanding of regulatory decisions, methods, and priorities. It does so by exposing a number of difficulties attending the management of uncertainties and the construction of regulatory questions and answers (Baldwin & Cave, 1999, p. 138).

The model tests the case for regulation against relevant legislation and public debate, studied in detail in relation to QCA, the LSC and the FSA; against current examples of administrative arrangements developed for regulation; and against the expectations of those involved in the regulation of qualifications, particularly those who work for the awarding bodies that comprise the regulated industry.

In summary therefore the model draws from the Mackay report (Edexcel 2001) and deals with possible justifications for regulation in the form of objectives that can be tested through research and the analysis of empirical data. The model takes forward the distinction drawn by Baldwin & Cave (1999) and others between social and economic regulation. Finally, the model of regulation is developed to address five key objectives based on the risk theory outlined by Francis (1993). The first of these objectives can be construed as cutting across the fields of social and economic regulation, the second and third fall within the sphere of social regulation, the fourth within economic regulation and the fifth mainly but not exclusively in the field of social regulation. I noted, for example, in Chapter 1 that public confidence and quality and standards (Lambert & Lines, 2000) are important issues for the qualifications system; the availability of a range of information on qualifications is important in relation to the purposes of a qualification we also described in Chapter 1; value for money is a matter of concern (Gravatt, 1996) given the increasing costs to the state of examination fees; and the Board of Education in 1911 pointed up the dangers of a lack of a ‘single coordinating force’ particularly relevant to concerns over the uncontrolled development of qualifications by competing awarding bodies (Sutherland, 2001).

Objective 1 is designed to address **systemic risk**.

The objective would be to ensure the least risk to the probity, financial stability, and capability of the organisations that function within the system.

Objective 2 is designed to address any potential **quality deficit**.

The objective would be to ensure the least risk to quality and standards and to ensure that these are established by all such organisations and to ensure the necessary infrastructure is

in place for achieving such quality and standards.

Objective 3 is designed to address **information asymmetry**.

The objective would be to ensure the risk that the necessary information on the individual products available and on the system as a whole is not available to the public.

Objective 4 is designed to address the question of **value for money**.

The objective would be to avoid that risk that the objectives of economy and efficiency in the operation of the system and the effective use of public money are not pursued.

Objective 5 is designed to address a **planning deficit**.

The objective would be to reduce the risk of confusing provision and duplication by encouraging rational planning and coordination of the system.

In this chapter I shall take each of these objectives in turn and discuss them in more detail.

The regulatory model

Objective 1 – to avoid systemic risk

Although the issue of systemic risk has been most evident in the financial services sector it is in fact a much more generally applicable one. Here I characterise the control of systemic risk as involving both social and economic regulatory considerations whether it is to do with the maintenance of public confidence in the system or the reduction of financial loss caused by moral hazard. Systemic risk relates to situations where the failure of one provider could lead to a collapse of others to such an extent that the entire system is at risk and a corresponding collapse in confidence is the result. As Mayer notes in his essay on the lessons learnt from the regulation of financial services:

A prima-facie case for regulation exists where the functioning of one part of the financial system is essential to the system or to the economy as a whole, and where interlinkages exist between the performance of different financial institutions (Mayer in Bishop et al, 1995, p. 145).

The definition of systemic risk is based on a situation where an initially localised development initiates a chain of events that have the potential to undermine the entire system. In this situation, a default by a major player can cause significant problems for a number of counterparts thereby risking major damage to and loss of confidence in the system as a whole. In the banking sector a number of steps can be taken by the regulatory authorities to minimise the danger of systemic risk and we note some of these in the

chapter on the Financial Services Authority later in the thesis. Systemic risk is to do with organisational capability and financial soundness. The possibility that collapse in one part of the market will have a knock on effect on other organisations within the system or result in system wide failure is one justification for regulation. The issue of public confidence is an important social issue and one which is pertinent to the regulation of qualifications and the organisations that award them.

Associated with systemic risk is the challenge of ‘moral hazard’ whereby an organisation indulges in risk because it knows that government support, or a safety net, is likely to be provided. In other words, if an organisation felt that its business would be bailed out because government could not stand by and watch it fail with the consequent impact on potentially thousands of individuals, then the business might indulge in unreasonable risk as a matter of course:

Moral hazard can be constrained - and systemic risk minimised - by regulation and supervision. Once governments provide a safety net, they must implement regulations to limit the amount of risk (Mishkin, 2000).

The control of systemic risk in order to reduce moral hazard is an important issue for economic regulation but is also relevant in an evaluation of the case for the regulation of a qualifications system in which is invested significant amounts of public money.

Objective 2 – to ensure quality and standards

This is probably the key social justification for regulation and as such is a recurrent and important issue in discussion of regulatory matters. There are two key aspects to quality and standards – the first being product quality and the second standards of service. For product quality one can have the concept of a ‘kite mark’, or warranty mark, to signal that the product has been verified and also that the procedures for developing or producing that product have been monitored usually to some external standard or set of criteria:

It would be nice to be able to report success in UK regulatory policy in the field of product quality. Indeed, there do seem to be a number of reasons for optimism. Among these is the development, for an increasing range of products, of British Standard quality standards which signify, not only that the design is able to deliver the performance, but also that quality-control mechanisms are in force in their manufacture to ensure that faults are reasonably rare (Bishop et al, 1996, p.207).

Product quality can also be determined by regulations for such factors as content or composition, purity and strength such as those that govern the wines and spirits trade or for food products including packaging regulations to ensure hygiene and to provide

information for the consumer. The idea of legislation to ensure the protection of the individual goes back to one of the first examples of ‘consumer law’. The Assize of Bread and Ale (1266) regulated the weight of the Farthing Loaf, and the quantity of a Penny of Ale in relation to the cost and quality of their constituent ingredients.

The quality of specific products can be difficult for the individual ‘consumer’ to determine objectively. An individual making a purchase, or even the supplier responsible for its sale, may know very little about the procedures and systems for its quality assurance. In the acquisition, or ‘purchase’, of a product much is taken on trust and it is difficult for individuals or intermediaries to evaluate objectively the quality of the award. A regulatory agency would be one way of checking, on behalf of the consumer, for indicators of quality within the mechanisms used to design or manufacture the products or the procedures used to deliver services to the public. Especially if there is insufficient information the consumer may not know enough about the product to demand the highest standards of quality. Any regulatory agency would need to ensure that the ‘manufacturers’ operate recognised quality assurance procedures, as well as having expert and trained staff, effective administration systems and audit capability. Standards of service can also be regulated and penalties for non-compliance levied on the providers of such services:

We believe that the regulators should ensure high qualitative and quantitative standards of service for the utilities. They should also encourage best practice on investment to ensure appropriate long-term levels of quality of service and have adequate sanctions to ensure compliance, where that is required’ (DTI, 2000).

The issue of quality and standards is clearly of relevance to qualifications and will be addressed in Chapter 4.

Objective 3 – to ensure provision of information

As Francis has argued, regulation can also be designed to ensure that individuals are given a range of relevant information on characteristics such as design, availability and price to encourage them to make an ‘informed’ rather than ‘uninformed’ choice. Francis identifies the relationship between the ‘producer’ and the ‘consumer’ as being a key issue – whether it is an industry’s relationship with its consumers, the power of professionals against the relative powerlessness of the client or patient, or the knowledge and experience of the provider against the purchaser:

There is an asymmetrical relationship in many financial transactions between the provider and the consumer. The provider’s knowledge is both technical and broad, and the consumer’s is limited and episodic (Francis, 1993, p.189).

This asymmetry is a key issue to be considered when evaluating whether regulation is justified. However, when we consider the issue of informed choice it is helpful to know whether the consumer is free to make a choice ‘to buy’ or ‘not to buy’ - in a market for luxury goods for example - or whether they ‘must buy’ as in the case of food. The requirement to have information about the product is greater in the latter example. In addition, it is important to know whether the purchaser makes the choice instead of a surrogate who is already familiar with the market and the products on offer. Where there is a range of products to buy with differing characteristics, regulation can ensure informed choice but can go further by mandating the design and characteristics of the product in question so that the differentiation is less marked:

Should the state protect its citizens simply by providing them with information . . . or should that state adopt the more interventionist strategy of making the choice for the consumer by prescribing the terms and conditions governing how a product may be consumed or an activity performed (Francis, 1993, p.3).

Here a consumer might need to know less about the product and more about the producer to enable them to make an informed choice between similar products offered by different providers. Where significant funds are invested either by the state or by individuals, information on price, or comparative pricing, can be essential:

Regulation, by making information more extensively accessible, accurate and affordable, may protect consumers against information inadequacies and the consequences thereof and may encourage the operation of healthy, competitive markets’ (Baldwin & Cave, 1999, p.12).

Regulation can be designed to support increased public awareness of a system of delivery as a whole, the products, and services within the system and how they relate to their needs. The design and development of products or services can be made more transparent and the degree of public understanding can therefore increase, so that any proliferation of products is not necessarily overwhelming. For example, the Financial Services Authority (FSA) has indicated that an increase in public awareness is one of its regulatory goals:

General financial literacy will be improved through programmes to help individuals acquire the skills and knowledge they need to be better-informed consumers of financial services. The FSA will provide, or help others provide, generic information and advice to consumers (e.g. comparative tables) and will encourage others to improve the availability and quality of their advice (FSA, 2000a).

The requirement for the provision of information can also ensure that competition is more effective and can empower consumers in making an informed choice:

For a competitive market to function well, buyers must have sufficient information available to evaluate competing products. They must identify the range of buying alternatives and understand the characteristics of the buying choices they confront (Breyer, 1982, p.26).

If a justification for regulatory activity is the need to re-assure consumers by providing, or requiring the provision of, such information as they make their choice in a competitive market, this is an issue which is relevant to a study of qualifications.

Objective 4 – to ensure efficiency and value for money

This is a key economic justification for regulation and is particularly relevant to modern societies with a large public sector or where there is deep-seated integration of the public and private sectors and where very little, therefore, can be seen as a ‘pure’ market situation. Investment in public services is both significant and recurrent, which is why testing for value for money may be seen as such an important regulatory mechanism in the eyes of government. The National Audit Office sets out recognised definitions in *State Audit in the European Union* (NAO, 1999) of value for money and these may be helpful when developing our regulatory model:

- economy - defined as minimising the cost of resources used for an activity having regard to appropriate quality;
- efficiency - defined as the relationship between output, in terms of goods, services or other results, and the resources used to produce them;
- effectiveness - defined as the extent to which objectives have been achieved and the relationship between the intended effects and actual effects for an activity.

Regulation to control price-by-price limits becomes a consideration as efforts are sought to increase efficiencies that lead to greater value for money. Within such a market, however, it may be appropriate for the regulatory agency to ensure that value for money is achieved through monitoring and audit. Publishing the outcomes of such scrutiny can provide measures of efficiency whether through league tables or other comparative rankings. If value for money is about the need to secure the greatest outputs relative to the investment made in the public service, then intervention on price can also form part of a regulatory structure. This approach would particularly apply to a quasi-market where state control and intervention is a more likely feature and where the taxpayer, through the government, pays directly or indirectly for the services in question. Nevertheless, regulation can be used to manage, direct, and control public funding, and the linking of

that funding to efficiency indicators could be used to bring greater pressure to bear on those providing a service. In this way, the market situation would bear more of a resemblance to the economic regulation of a collectivist or public system described by Ogus (1994) in Chapter 2 where regulation is likely to be directive and centralised. This objective is relevant in principle, therefore, to a study of the regulation of qualifications because the necessary fees are largely paid for through public institutions not private individuals.

Objective 5 – to plan and organise

This is a justification for regulation that can span both economic and social domains although it is here presented more in the former domain than the latter. Where the organisation of products, services or activities could lead to a better match between supply and demand or where standardisation of such ‘goods’ may be felt necessary. If this kind of regulation is used to plan and organise it may need to be framed with longer-term achievements in mind rather than short term objectives. Environment and transport are sectors where useful examples of planning regulations are used to achieve both social and economic benefits. Land-use planning is another example:

Our overall objective is to create a fair and efficient land-use planning system that represents regional differences and promotes development which is of a high quality and sustainable. The planning system plays an important role in shaping and protecting the quality of our towns, cities and the countryside. Development plans provide the framework within which effective development control can operate’ (DETR, 2000).

Planning enquiries, such as the one for Terminal Five at Heathrow Airport, can be major exercises and are established on a regulatory basis in an attempt, amongst other things, to secure participation by stakeholders and consent to the outcomes of the planning exercise, although in reality there will always be those who choose to withhold their agreement to the outcomes of such a regulatory process.

However, rationalisation or co-ordination to prevent anarchic and inefficient use of common or limited resources is more closely linked to economic regulation. The steps that regulators have taken to regulate mobile telephony licensing systems are a good example of this regulatory activity. The standardisation of product systems and allocation of wireless frequencies through licensing arrangements are intended to provide a more efficient approach overall. Depending on one’s definition of rationalisation, such a process might be viewed as a way of reducing the number of suppliers in order to make

the system more transparent. On the other hand, rationalisation might mean greater co-ordination and planning to stimulate on social policy grounds services in areas in which there is no suitable provision. Baldwin recognises that rationalisation and co-ordination are legitimate goals for regulation, securing efficient production where transaction costs prevent the market from obtaining network gains or efficiencies of scale:

centralised regulation holds the advantage over individual private law arrangements where the information can be more efficiently communicated through public channels and economies of scale can be achieved by having one public agency responsible for upholding standards (Baldwin & Cave, 1999, p.15).

Whether we locate the justification for planning and organising in either the economic or social sphere of regulation there are some issues relevant to the regulation of qualifications whether it be to stimulate the overall efficiency of the qualifications system or to encourage the provision of qualifications for minority interest groups.

Conclusion

In this chapter we have developed an original model for regulation, incorporating five key objectives, designed to be used as an analytical tool for evaluating the case for the regulation of qualifications. The model is informed by the conclusions of the Mackay report (Edexcel 2001) and deals with possible justifications for regulation in the form of objectives that can be tested through analysis of empirical data developed in Chapter 5 and in the research on regulation in other contexts in Chapters 6 and 7. The model takes forward the distinction drawn by Baldwin & Cave (1999) locating the key objectives in relation to theories of social and economic regulation. Finally, the model of regulation is developed to address these five key objectives based on the risk theory outlined in the study on justifications for regulation by Francis (1993). As we have seen, the first of these objectives can be construed as cutting across the fields of social and economic regulation, the second and third fall within the sphere of social regulation, the fourth within economic regulation and the fifth mainly but not exclusively in the field of social regulation. The model is not exhaustive and it is not necessarily the only possible model but it does offer a general and generalisable frame of reference for an evaluation of the case for the regulation of qualifications. As part of this evaluation I look most closely next at the work of QCA.

Chapter 4 – QCA and the case for regulation

The establishment of the new regulator

At the centre of the regulatory arrangements sits the Department of State - the Department for Education and Skills (DfES), formerly the Department of Education and Employment which was itself the result of a merger in 1996 between the Department of Education and the Department of Employment. Through the Department, government has given a statutory remit to a number of non-departmental public bodies (NDPBs) with remits for regulating the provision and quality of education and training. These organisations lie outside the immediate sphere of government but not beyond its ultimate control and direction. Although they may appear to be independent and are promoted as such, both by themselves and by government, in reality these NDPBs are subject to the requirements of ministers and officials. NCVQ and SCAA – the predecessor bodies to QCA - each had its specific remit:

- The National Council for Vocational Qualifications (NCVQ) was established in 1986 following the White Paper ‘Education and Training – Working Together’. It was only when NCVQ began to accredit the first National Vocational Qualifications (NVQs), that awarding bodies found that, for the first time, they were required to submit these qualifications for accreditation by an outside body.
- The School Curriculum and Assessment Authority (SCAA) reaches back through several predecessor bodies (Aldrich, 2001) to the Secondary Schools Examinations Council (1917). SCAA was formed in 1993 through a merger of its own two predecessor bodies. These were the National Curriculum Council (NCC) and the School Examinations and Assessment Council (SEAC) both established by the 1988 Education Reform Act. SCAA’s role was to take charge of the national curriculum and national curriculum assessment. However, it also assumed responsibility, in relation to what the Act defined as ‘school examinations and assessment’, of the arrangements for regulating the development and approval of syllabuses for the General Certificate of Secondary Education (GCSE) and General Certificate of Education (GCE).

- The Qualifications and Curriculum Authority (QCA) established in 1997 through a merger of NCVQ and SCAA as a single regulatory body for the whole range of public qualifications in England.
- The Office for Standards in Education (OFSTED) was established by the Schools Act in 1992 and is responsible for monitoring standards in maintained schools. OFSTED enjoys the status of a non-ministerial department of state and its function can be traced back to the first appointment of Her Majesty's Inspectors for Schools following an Order in Council on 10 August 1840 (Maclure, 1986). The scope of OFSTED was increased significantly by the Learning and Skills Act 2000.
- The Adult Learning Inspectorate (ALI) was established by the Learning and Skills Act 2000 with the remit to inspect and report on the quality of provision of education and training for those in the workplace and for those older than 19.
- The Learning and Skills Council (LSC) was established in 2001, replacing the Further Education Funding Council (FEFC) which had existed for only nine years before it was wound up.

Common across these bodies is an increasing centralisation of power and a sharper and more directive regulatory stance. As Hood notes:

the expanding part of modern government, the argument goes, is regulation - a much used word rarely defined with precision, but broadly denoting the use of public authority (often in the hands of specialised agencies) to set and apply rules and standards (Hood et al, 1999, p.3).

My main focus however is on QCA which was established in 1997 'to advance education and training with a view to promoting quality and coherence' (Education Act, 1997). The Act gave QCA certain powers in relation to the regulation of qualifications, amongst other more general responsibilities for education and training. The Authority is based in central London and currently has a staff of over 600. Public expectations of the new 'super-regulator' were high when it was first set up. Shortly after the establishment of the new body, Dr. Nick Tate, the then Chief Executive of QCA, encouraged those expectations when he was interviewed for the Times Education Supplement. He insisted that the new QCA was going to be more than the sum of its parts, with its huge new powers to regulate education:

QCA is more than a merger. We are bringing together the staff, but to create an organisation which has very different powers. I'm very keen that QCA is a pretty tough regulator and I'm keen that we come down like a ton of bricks on awarding bodies that are not maintaining an appropriate level of quality assurance. Employers want to know that the quality of qualifications is good. (Russell, 1997).

It is important to consider the objectives set out for QCA in the Act itself:

The functions conferred on the Qualifications and Curriculum Authority by this Part shall be exercised for the purpose of advancing education and training; and the Authority shall exercise their functions with a view to promoting quality and coherence in education and training in relation to which they have functions under this Part (Education Act, 1997).

However, only the detail of the Act can determine what this overall aim means in practice. Sections 23 and 24 of the 1997 Act are the most important in terms of this study, the key difference being that the former sets out functions with respect to pupils of compulsory school age at maintained schools and the latter sets out functions with respect to external qualifications post-16. There are functions common to both Sections 23 and 24 of the Act. Apart from the general functions such as ‘to keep under review’ certain issues or to ‘advise the Secretary of State on such matters as he may refer to them or as they may see fit’ there are the following identical functions across both sections of the Act expressed with either reference to the curriculum or to qualifications:

1. research and development;
2. publication and dissemination of information;
3. supporting high-quality provision; and
4. advising on appropriateness of provision for public funding.

One might expect that an important new regulator like QCA would have enjoyed the benefit of new legislation based on explicit regulatory objectives. However, there did not appear to be any real intellectual argument preceding the legislation as to why a new approach to regulation was needed and why a new body like QCA was thought to be the right instrument for the job. Sections 23 and 24 as the parts of the legislation most immediately relevant to this study are not new. Section 23 - the part of the Act referring to curriculum and assessment - is set out in exactly the same terms as Section 245 of the 1993 Act in relation to curriculum and assessment with respect to pupils of compulsory school age at maintained schools in England. In effect, Section 245 (1993) has been transposed to Section 23 (1997). QCA's responsibilities do now include two new areas of work: ‘the function of developing learning goals and related materials for children who

are receiving nursery education' and certain functions in relation to baseline assessment but other than these the regulatory regime remains static. Section 24 of the 1997 Act has its basis in the government White Paper *Working Together: Education and Training* (DfEE, 1986) and formed the basis for the establishment of the National Council for Vocational Qualifications. The requirements placed on NCVQ included the responsibility to:

- secure arrangements for quality assurance;
- design and implement a new national framework for vocational qualifications.

These requirements appear in the 1997 Act less than ten years later as the broad aim of:

advancing education and training with a view to promoting quality and coherence (Education Act, 1997).

Figure 1 and Figure 2, below, compare the parallel functions of SCAA and QCA and NCVQ and QCA, which are almost exactly the same in certain cases.

The regulatory powers that QCA are required to exercise are the continuance of powers given previously to SCAA and NCVQ. As Breyer points out:

those fashioning new regulatory schemes tend to copy old ones (Breyer, 1982, p.6).

Education Act 1993 (S 245) – SCAA	Education Act 1997 (S 23) – QCA
Overall Aim For the purposes of advancing education	Overall Aim Advancing education and training With a view to promoting quality and coherence
Keep under review all aspects of the curriculum for maintained schools in England and all aspects of school examinations and assessment	Keep under review all aspects of the curriculum [with respect to pupils of compulsory school age at maintained schools in England] and all aspects of school examinations and assessment
Advise the Secretary of State on such matters concerned with the curriculum for maintained schools in England or with school examinations and assessment as he may refer to them or as they may see fit	Advise the Secretary of State on such matters concerned with the curriculum for such schools or with school examinations and assessment as he may refer to them or as they may see fit
Advise the Secretary of State on, and, if so requested by him, assist him to carry out, programmes of research and development for purposes connected with the curriculum for maintained schools in England or with school examinations and assessment	Advise the Secretary of State on, and, if so requested by him, assist him to carry out, programmes of research and development for purposes connected with the curriculum for such schools in England or with school examinations and assessment
Publish and disseminate, and assist in the publication and dissemination of, information relating to the curriculum for maintained schools in England or to school examinations and assessment	Publish and disseminate, and assist in the publication and dissemination of, information relating to the curriculum for such schools in England or to school examinations and assessment
Make arrangements with appropriate bodies for auditing the quality of assessments made in pursuance of assessment arrangements	Make arrangements with appropriate bodies for auditing the quality of assessments made in pursuance of assessment arrangements
Advise the Secretary of State on the exercise of his powers under section 5(1) of the Education Reform Act 1988 (approval of external qualifications)	So far as relevant to schools, carry out the functions conferred by section 24 (2) (h) and (l).
Advise the Secretary of State on other matters connected with the provision of education in maintained schools in England, or in non-maintained special schools there, as the Secretary of State may specify by order, and carry out such ancillary activities as the Secretary of State may direct.	

Figure 1 - Comparison of the Education Act 1993 (SCAA) and the Education Act 1997 (QCA)

White Paper 1986 (S 5.15) – NCVQ	Education Act 1997 (S 24) – QCA
Overall Aim Promoting Vocational Education and Training By securing arrangements for quality assurance and designing and implementing a new national framework for vocational qualifications	Overall Aim Advancing education and training With a view to promoting quality and coherence
Undertake or arrange to be undertaken research and development where necessary to discharge these functions	To advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with such qualifications
Accredit the provision of approved certifying bodies	Develop and publish criteria for accreditation of such qualifications and to accredit, where they meet such criteria, any such qualification submitted for accreditation
Collect, analyse and make available information on vocational qualifications and secure the operation of an effective, comprehensive and dependable database	Publish and disseminate, and assist in the publication and dissemination of, information relating to such qualifications
Design, monitor and adapt as necessary the new NVQ Framework	Keep under review all aspects of such qualifications
Promote the interests of vocational education and, in particular of vocational qualifications and to disseminate good practice	To provide support and advice to persons providing courses leading to such qualifications with a view to establishing and maintaining high standards in the provision of such courses

Figure 2 - Comparison of the White Paper 1986 (NCVQ) and the Education Act 1997 (QCA)

The remit letter (DfEE, 1997) from David Blunkett, then Secretary of State for Education and Employment, to Sir William Stubbs the Chairman of the Qualifications and Curriculum Authority defines the role and responsibilities of QCA in greater detail. The letter is intended to provide ‘broad guidance on the responsibilities, priorities and main tasks of the Authority’. One might have expected that the remit letter would form the basis for organisational arrangements that constituted more than just “NCVQ plus SCAA”. However, whatever additional direction is provided by the minister, the basis for QCA’s activities does not appear to have moved forward since 1993 or even 1986 in the case of vocational qualifications.

The theme of quality across qualifications post-16 was a particular area of interest outlined in the 1997 remit letter which asks QCA to:

‘Ensure that quality, rigour and consistent standards apply across a readily understood framework;

Ensure the quality and consistency of both GCSE and GCE examinations within and between examination boards and over time;

Make regular scrutinies of the GCSE and GCE examining boards and continue with the rolling programme of five year standards reviews as recommended in the report ‘Standards in Public Examinations 1975 to 1995’;

Offer advice on how best to take forward the Government’s commitment to supporting broader A levels, underpinned by rigorous standards and key skills;

Offer advice about whether the proposed contribution of external assessment to grading will be sufficient;

In upgrading NVQs it [QCA] should ensure that quality in assessment is rigorously pursued (DfEE, 1997).

The 1997 remit letter also shows that ministers had in mind a number of issues not reflected in the legislation. They ask, for example, that each qualification be placed within an overall framework in order that relationships between them, where they existed, could be made clear. The use of a ‘readily understood framework’ (DfEE, 1997) was meant to encourage public understanding of the system. What is not clear is why the opportunity was not taken to develop these requirements within the objectives set out for the new regulator in the legislation. As we shall see later, the arguments that preceded both the Financial Services Act and the Learning and Skills Act guaranteed serious debate about the regulatory objectives of the two regulators concerned and led to a clearer exposition of the requirements they would be expected to meet.

Both SCAA and NCVQ as QCA’s predecessor organisations developed key regulatory documents in support of their aims. The SCAA publications included the *GCSE Mandatory Code of Practice* (SCAA, 1997a) and the *GCE A & AS Code of Practice* (SCAA, 1997b). The mandatory code for GCSEs in schools and the non-mandatory code for A and AS levels concentrated mainly on the procedures for examinations, including the appointment and responsibilities of awarding body personnel, and the protocols for assessment including standardisation and marking. SCAA’s purpose was to ensure the maintenance of the ‘gold standard of public examinations’ described by Lambert & Lines as it aimed to:

promote quality and consistency in the examining process across all examining boards to ensure that grading standards are constant in each subject across different examining boards, between different syllabuses in the same subject, and from year to year (SCAA, 1997a).

NCVQ's two key publications were the *NVQ Criteria and Guidance* (NCVQ, 1995a) and the *Awarding Bodies Common Accord* (NCVQ 1995b). The former set out the accreditation criteria against which submissions from awarding bodies for the accreditation of National Vocational Qualifications (NVQs) were judged:

This publication provides essential guidance for those involved in developing and administering NVQs. It is the basis on which NCVQ judges submissions for accreditation. Therefore, while it is intended to be of use to a wide audience, it is particularly aimed at awarding bodies seeking accreditation of awards as NVQs (NCVQ, 1995a, p.4).

The latter publication was a result of detailed and protracted negotiation with awarding bodies. Its primary purpose was to set out common principles to which the awarding bodies could conform and it codified the ways in which assessment arrangements for NVQs were established and operated.

QCA's arrangements for regulation are set out in '*A Guide to the Arrangements for the Statutory Regulation of External Qualifications in England, Wales and Northern Ireland*' (QCA, 2000), hereinafter referred to as the 'Arrangements'. The first challenge in developing the 'Arrangements' is the fact that the Act requires the establishment of criteria for qualifications but does not specifically refer to the role of awarding bodies or how QCA might regulate them directly as the providers of qualifications. The regulatory arrangements therefore, set out criteria for qualifications as the mainstay of the regime and then attempt to support these criteria with a common code of practice for awarding bodies. A second challenge for QCA is that it has to deal with a range of various types of qualification with differing designs and 'traditions', for example between the external and formal assessment requirements for school GCEs and the competence based, workplace assessment requirements of NVQs. To address this issue, QCA established common criteria across all qualifications and then additional criteria specific to particular categories of qualifications such as GCSEs and GCEs, GNVQs, NVQs and other vocationally related qualifications. The code of practice was established as common for all awarding bodies, regardless of which category of qualification they might offer.

The process of establishing the criteria and codes of practice was evolutionary rather than revolutionary and built to a great extent on documentation published by the predecessor bodies. The ministerial remit letter does ask QCA to build on the work of both SCAA and

NCVQ and to draw together existing arrangements rather than suggesting a review from first principles. SCAA and NCVQ had published a range of documents such as the *Codes of Practice* for GCSEs and A' Levels or the *Common Accord for Awarding Bodies* for NVQs (NCVQ, 1995b). The first three years of QCA were spent drawing all of these together into one overall consistent approach. This evolutionary approach to regulation was intended to build on the achievements of its predecessor bodies. A sharper and more radical approach to the regulation of qualifications did not appear to be on the agenda. In addition, as noted previously, the detail of the administrative arrangements or tertiary rules tended to become more important than the broad parameters of the Act. Baldwin defines administrative criteria such as those published by QCA as 'tertiary rules', that is not primary legislation, regulations or statutory instruments but codes, criteria or rules that draw from a statutory basis:

Tertiary rules may be particularly useful for administrators. The courts appear to be reluctant to construe such rules in a manner that creates due process rights for individuals but, where 'intra vires', will concede their status as legitimate foundations for the exercise of discretionary power (Baldwin, 1995, p.7).

For QCA, some of these features included: ministerial guidance and remit letters; accreditation criteria and codes of practice; recognition of awarding bodies and letters of accreditation that bind the awarding bodies to certain conditions; scrutiny and post accreditation audit activity required as a condition of accreditation; and the levy of a £10 certificate fee on each NVQ issued and the possibility of intervention in the fees charged by an awarding body. In addition, the Learning and Skills Act established further regulatory complexity in relation to the approval of qualifications for funding.

The model for the regulation of qualifications

Taking into account both the regulatory landscape of qualifications and the principal purposes for qualifications set out earlier, we can explore whether deficiencies exist for qualifications that might be so serious as to justify the need for regulation. For example, situations may arise which threaten to undermine public confidence in the qualifications system, which pose risks to the quality and trustworthiness of individual qualifications and which may restrict 'consumer choice' because of lack of information. In addition, from an economic standpoint the qualifications system may not function as efficiently as it might to achieve value for money relative to the contribution made to the system from the public purse and, finally, the market may not function overall in a rational and helpful

way in support of national priorities. Of course, wherever any of these situations exist regulation may not be the answer. The market – even a quasi-market - may provide correctives to any or all of these deficiencies. In addition, we should also expect the individual user of the qualifications system to take some responsibility for his or her decisions. The information available for the consumer of the product may not be extensive but this does not in itself exempt the public from the rule of ‘caveat emptor’. The regulatory solution should not and cannot be expected to provide an absolute safeguard. However, if we can analyse the work of QCA through the model developed in Chapter 3 we can evaluate the strength of the case for the regulation of qualifications, provided the eventual benefits outweigh the associated costs. If we apply the general model and the five key objectives for regulation specifically to the regulation of qualifications it should be possible to identify - by examining the Act, the original ministerial remit and the *‘Arrangements for the Statutory Regulation of Qualifications’* (QCA, 2000) – which of these regulatory objectives apply to QCA and which do not. As stated earlier, the 1997 Education Act sets out the broad aims of QCA’s work as achieving ‘quality and coherence’. The ratcheting up of quality is certainly one of the objectives of regulation in the model although it is necessary to examine the definition of ‘quality’ more precisely in terms of provision, service or control. The goal of ‘coherence’ on the other hand is less clear but could imply securing either efficiency of provision or more effective communication through the conceptualisation of a qualifications ‘framework’ or both. It is important however, to take a view of the whole of the regulatory infrastructure as we take each of the model’s objectives in turn:

Objective 1 – to avoid systemic risk

There may be a potential for failure in the current qualifications system that may have an adverse effect on the probity or stability of the system as a whole thus adversely affecting the confidence and expectations of the users of the system. If there is the danger of such a failure in the probity and stability of the current awarding arrangements then we have a problem of ‘systemic risk’. In this case one might wish to justify regulatory measures of a prophylactic nature to ensure that the organisation(s) concerned did not fail. Further, in the event of such failure, measures would be needed to support continuing provision for candidates who had already made a commitment to a qualification.

This objective does appear to be part of the rationale for QCA in that the ‘Arrangements’ begins by setting QCA’s work clearly within the public interest arena and asserts that where ‘market failure’ exists such rectification as is required will be provided through a regulatory solution with the declaration that:

statutory regulation is used to safeguard the public interest where other mechanisms - including awarding bodies’ own quality assurance arrangements - would not be sufficient (QCA, 2000).

However, the ‘Arrangements’ says little about the issue of systemic risk or of the danger of public confidence being undermined by instability or failure of awarding bodies. Lord Mackay identifies the question of systemic risk in his report, although he did not describe it in that way. He argues for regulation to focus on the awarding body’s capability of discharging its functions, including whether it has the resources – both human and financial – to fulfil its obligations:

The consequences of an awarding body not being able to fulfil its obligations to the candidates entered with it is so disastrous that this responsibility must be a vital part of QCA’s function. It is important that the regulator has the statutory power to have the economic circumstances of the awarding body in their consideration and I believe the powers granted to the regulator should expressly deal with this matter. The statute should also contain clear powers for the QCA to deal with any default on the part of an awarding body (Edexcel, 2001, p.23).

It is perhaps surprising that little is said about ‘systemic risk’ in the ‘Arrangements’, especially given recent cases of awarding body ‘non-performance’:

1. The Road Transport Industry Training Board Services Limited (RTITBSL) where a number of the awarding body’s senior staff organised the issue of invalid qualifications in order to gain access for their own benefit to government training funds running to several million pounds. This case led to a trial that resulted in a number of convictions for fraud.
2. The failure by Edexcel to provide effective support for public examinations under its control during the summer of 2001 leading to considerable public disquiet and the awarding body put under special measures by the regulator.
3. QCA declined to continue the accreditation of the qualifications of the Association of Industrial Truck Trainers Vocational Qualifications Limited (AITT VQ Ltd) on the grounds of lack of long-term financial stability. The curtailment of accreditation led to the collapse of the awarding body. The collapse put five hundred candidates at risk and left them dependent on the goodwill of other

organisations. QCA had no powers to intervene directly to support the candidates. The fees already paid to the awarding body were not recovered and had to be paid again from public funds. This particular case constitutes an example of ‘moral hazard’. The managers of the organisation took risks because they believed that government support would naturally be forthcoming in the case of any failure. They also anticipated correctly that any penalties would be difficult for the authorities to apply.

However, the legal advice QCA received was that its powers extended only to the accreditation of qualifications and not the direct regulation of the organisations that provided those qualifications. In contrast, other regulators such as the Financial Services Authority (FSA) discharge their functions in relation to the industry they regulate to include a determination of the competence and probity of providers. The Financial Services Act provides the Authority with powers to authorise, investigate and discipline bodies and individuals that offer financial products and services. In its Plan and Budget for 2000/2001 the FSA sets out its plans for the corporate authorisation of firms:

We authorise only those firms considered to be fit and proper at the time of authorisation, and appearing likely to remain so in the future. In this way we aim to safeguard investors, depositors and other consumers. This contributes to confidence in financial markets (FSA, 2000a).

The FSA requires, amongst other things, a provider:

- not to engage in activities unrelated to their core function lest their ability to deliver and develop that core function is undermined;
- to reduce the risks to their balance sheets by overexposure to a range of risks or by development of new untried products;
- to ensure the availability of sufficient amounts of capital reserves as a cushion against short term losses thus ensuring long term financial stability.

In the absence of any explicit regulatory powers that allow QCA to require a specific level of financial stability and competence of an awarding body, the success of its regulatory endeavours rests on two possible sets of inducements. First, if an awarding body does not ensure that its qualifications, and its procedures for supporting those qualifications, conform to the accreditation criteria or codes of practice, QCA can choose not to continue to offer accreditation (or re-accreditation) for that organisation’s qualifications. Second, such post-accreditation monitoring powers as it does have depend on audit and scrutiny

processes ‘including cyclic reviews and investigations focusing on consistency and standards in particular subjects or sectors across awarding bodies and over time’, or ‘reporting publicly on the outcomes of post-accreditation work’ (QCA, 2000) although any requirement to report on individual providers is not explicit.

The *Arrangements for the Statutory Regulation of External Qualifications* set out the requirements for an awarding body. The most relevant demands – as far as addressing systemic risk are concerned – are those to do with the expertise, capacity, organisation, management and governance of the awarding body. The accreditation criteria require each awarding body to be ‘recognised’ by QCA before it is allowed to submit any qualifications for consideration. To date, QCA has ‘recognised’ through the application of its accreditation procedures 110 awarding bodies each of which has, or is about to, achieve accreditation for one or more qualifications. However, the recognition of such bodies was based almost entirely a ‘desk exercise’ approach with little note taken of the financial strength or the long term stability of the organisation. It is possible, therefore, that the pressures of operating in a regulated system may prove too be too demanding for a range of bodies and some failures will result and such failures may undermine public confidence in the system as a whole.

Objective 2 – to ensure quality and standards

There may a shortfall in the arrangements for ensuring the quality and standards and the reliability of the procedures that support the quality of qualifications and the procedures which support them to such an extent that the value of those qualifications becomes suspect. The subjective reaction of both the public and politicians to any perceived diminution of quality and standards in qualifications is crucial. QCA sets its work on quality and standards in the ‘public interest’ domain:

The public has a legitimate interest in the continuing availability of high-quality qualifications that are fit for purpose, command public confidence and are understood both by those who take them and those who use them. That interest extends to the proper maintenance of consistent standards across awarding bodies and over time (QCA, 2000).

The issue of ‘quality and standards’ is likely to be the one uppermost in people’s minds in any consideration of the regulation of qualifications because of the high stakes nature of securing entry into education and employment by gaining relevant awards as well as the political sensitivities around any possible perception of ‘falling standards’ in assessment and awarding. However, any consideration of ‘quality and standards’ in qualifications is

not without its difficulties: what is quality and how is it defined? More particularly what are ‘standards’ and how are they maintained? As Baldwin argues:

Regulators generally find it easier to regulate price than quality. Price has the great advantage of being (in certain markets at least) both one-dimensional and objectively measurable. Quality, on the other hand, is harder to pin down. It has many dimensions, some of which typically rest upon subjective evaluations by the purchaser or consumer; and in many cases the true quality of a product only comes to light some time after it has been consumed. In some cases it never comes to light. This is unfortunate, since in many markets customers appear to attach more importance to quality than to price (Baldwin & Cave, 1999, p.250).

The need to ensure quality and standards is set out in the QCA’s ‘*Arrangements for the Statutory Regulation of External Qualifications*’ in terms of the:

specified processes and procedures required to ensure high quality, consistency and rigorous standards in assessment and awarding [of qualifications] (QCA, 2000).

In this instance, the establishment of such processes and procedures is achieved by the regulator setting out in detail the procedures by which awarding bodies must deliver their qualifications. QCA established mandatory codes of practice as specific mechanisms to govern how awarding bodies managed the business of carrying out assessment of candidates in such a way that the outcomes of the process could be construed as valid and reliable in order to maintain public trust. The ‘codification’ by QCA of the processes and procedures used by awarding bodies is a common feature of other regulatory systems. The ‘Arrangements’ document also requires awarding bodies to apply: ‘systematic arrangements for ensuring comparability over time, across options and, where appropriate, across qualifications’ (QCA, 2000) on the grounds that such an open and detailed prescription of quality assurance and quality control arrangements encourages greater confidence in the system. However, the danger of allowing quality and standards to slip is greater in the absence of any real penalties that might be applied by the regulator.

As Mager points out:

in the learning market, learners/consumers lack an effective market sanction against poor quality providers. For example, learners do not get their money back or a credit note if they fail a qualification or are dissatisfied with the quality of a course (Mager et al, 2001, p.7).

There is a difference in the way in which academic and vocational qualifications have been regulated possibly because the latter were not seen as so ‘high stake’ as GCSE and GCE examinations. Academic qualifications have been subject to such arrangements for some time but vocational qualifications, other than National Vocational Qualifications (NVQs), have not been regulated until recently. Schedule 2 of the Further and Higher

Education Act 1992 classified qualifications according to their use and Schedule 2(a) was used to categorise those with a vocational intent. The purpose of the legislation, however, was to determine whether qualifications would be funded centrally through the Further Education Funding Council rather than through a local education authority or other body. Inclusion on the Schedule guaranteed funding and therefore it acted as a regulatory spur to awarding bodies in ensuring that qualifications met certain basic criteria as to their design and purpose. Once these qualifications came within QCA's regulatory remit these basic criteria were overtaken by more demanding requirements including that of the inclusion of externality in the assessment arrangements for the award of a certificate. Use of external assessment for vocational qualifications was seen as a key element in ensuring higher quality. At the insistence of ministers, external assessment had always played a key role in academic awards and the proportion of internal assessment or coursework was strictly limited often counting for only 20% of the total award.

Excluding NVQs, most of which already enjoyed accredited status conferred by NCVQ, QCA has now put through the process of accreditation over 3,000 qualifications. The submission of each qualification has been scrutinised against the published criteria. In addition to the process of accreditation, predecessor codes of practice were updated for both the general and occupational categories of qualifications. The *Codes of Practice* (QCA, 1999) for GCSE and GCE A Level were made mandatory and the *Awarding Bodies Common Accord* (NCVQ, 1995b) became the mandatory *NVQ Code of Practice* (QCA, 2002a). These codes of practice spell out the processes and procedures required for assessment and awarding. For vocational qualifications, however, which have provided QCA with its most difficult regulatory challenge, no code of practice has yet been published for the large number of organisations many of which have relatively little experience in these areas. Post-hoc quality measures for accredited qualifications include auditing of awarding bodies and, so far, only two major awarding body monitoring reports have been published: one on Edexcel and one on AQA.

Objective 3 – to ensure the provision of information

The qualifications market may not function effectively, failing to provide as much clear and unbiased information about individual products or services and the system in which they are found as to limit customer awareness or choice. The remit for QCA here is:

to publish and disseminate, and assist in the publication and dissemination of, information relating to such [external] qualifications (Education Act, 1997).

QCA sets out its intention to require the provision of such information as would be useful for users of the qualifications system. For example, QCA requires the awarding body to submit a ‘specification of the required knowledge, skills and understanding [for each qualification] which is accurate, up-to-date and clearly indicative of the intended coverage and depth’ (QCA, 2000, p.9) along with other related details to cover rationale, content, and assessment and reporting arrangements amongst others. In the framework of NVQs developed by NCVQ, precise details of every qualification were available, including details of the design and structure of the qualifications, individual unit coverage, assessment arrangements and, where relevant, details of units common across qualifications and awarding bodies. Publication of details of General National Vocational Qualifications (GNVQs) was established on the same basis.

However, a degree of care needs to be taken when comparing the qualifications system with other systems such as financial services. Often the ‘consumer’, or end user of the qualification, is not the direct purchaser of the ‘product’ and does not use his or her money to pay for the qualification. An intermediary body such as a school or college is more likely to make the choice as to which awarding body to use. However, increasingly for adult users of the system, individuals may be able to choose which qualifications they wish to follow and from which providers and they will be more likely to pay for themselves or use financial support from an employer to do so. For QCA Ministers made their wishes clear:

Rationalisation is a major challenge. Even carefully constructed and soundly based qualifications must suffer if the public do not understand the system. I am looking to QCA to make significant inroads into the confusing array of unregulated qualifications that we have at present (DfEE, 1999).

The process of accreditation employed by QCA is designed to ensure that the awarding body provides an appropriate degree of information about its qualifications to its customers and to the general public. The criteria require, in summary, the awarding body to provide for each qualification: a title which is concise, distinctive, clearly indicative of content, and located at an appropriate level within the national framework; a rationale setting out broad aims and objectives; a full specification; and details of assessment arrangements. In this respect QCA is doing the bare minimum in that it has plans for the title and level of the qualification to be made available in a public database accessible

through its website. However, full details of the qualifications themselves are still available only from the awarding bodies. Moreover, there are no systematic arrangements yet in place for those using the qualifications system to check or compare an awarding body's fees and other charges for their services. This lack of information makes the end-user of the system much more dependent on intermediaries such as colleges or training providers who may often act in their own financial interests instead of to the benefit of the individual candidate.

Objective 4 – to secure efficiency and value for money

There may be insufficient incentives for the qualifications market to function in economic terms as effectively as possible to deliver value for money despite support from significant public expenditure. Along with the issue of systemic risk the issue of regulation to secure efficiency and value for money from the industry it regulates does not feature significantly in the Education Act 1997 or in QCA's subsequent regulatory arrangements. Financial issues come up in only one place in the Act and they relate to the fees charged by awarding bodies:

Where it is carrying out any functions under this Part the Authority accredit or approve any qualification, they may do so on such terms (including terms as to payment) and subject to such conditions as they may determine. Those conditions may in particular include conditions placing a limit on the amount of the fee that can be demanded in respect of any award or authentication of the qualification in question (Education Act 1997, S26 (4) (a)).

We must note, however, that this power to impose any of these conditions can be used only after obtaining the consent of the Secretary of State.

There are no powers, and as far as we can see no plans for any powers, that would allow an investigation into the efficiency of the qualifications 'industry'. One might argue that the mechanism of capping the fees that a provider can charge to its users is a possible way of injecting greater efficiency into the company's mode of operation. The 'Retail Price Index (RPI) minus x' formula applied in 1984 to utility price increases charged by companies such as British Telecom comes to mind although at the time the use of the formula had as many detractors as supporters. As Baldwin and Cave note the 'RPI minus x formula':

is now used widely throughout the world in the energy, telecommunications, transport, and water industries, and applied both to privatised utilities and to public sector firms (Baldwin & Cave, 1999, p.226).

QCA includes as one of its objectives the promotion of public confidence in the:

quality, rigour, cost effectiveness [my emphasis] and consistency of standards within and across qualifications through processes of accreditation, monitoring and follow-up which are efficient, effective and fair (QCA, 2000, p.3).

However, QCA is finding it difficult to address the issue of cost-effectiveness in the absence of any financial data relating to the operation of the awarding bodies or their qualifications. Awarding bodies are not required to lodge their published annual accounts or their business plans with QCA. Exempt charities, such as one of the major ‘unitary bodies’, do not even have to publish their accounts for public inspection. Under the current regulatory arrangements, it is likely to be difficult for any ‘value for money’ analysis to take place let alone to demonstrate that the qualifications system delivers value for money in relation to the amount of public funds invested in it.

Objective 5 – to plan and organise

The qualifications market may be deemed dysfunctional in that the overall organisation of the system may not meet national priorities as determined by government and separate bodies competing in the marketplace may not be able to support a strategic approach to the qualifications system without external intervention. The regulatory arrangements which establish and which have been promulgated by QCA do not specify this purpose as clearly as some others although the requirement to plan and organise might be interpreted as coming within the overall aim of ‘coherence’ within the responsibilities the Act gives to QCA. However, the ministerial guidance does set out the need for the ‘development’ of individual qualifications and discrete groups or categories of qualifications as well as the creation of a national framework of qualifications.

The agenda set by government was to encourage the rationalisation of large numbers of formerly unregulated vocational qualifications and those other qualifications where the overlap and duplication was evident. This desire to rationalise provision was expressed as far back as 1911 in the report of the Consultative Committee on Examinations in Secondary Schools; again in 1986 in the Review of Vocational Qualifications; in 1999 in ministerial directives to QCA; and most recently in December 2001 in consultation documents published by QCA. When describing the number and variety of examinations which had grown up by the beginning of the 20th century, the Dyke Acland Report recommended that:

the existing multiplicity of external examinations (including those of Universities, and professional and other bodies), the claims of which at present so frequently interfere with the best work of schools should be reduced by concerted action (Board of Education, 1911, p.104).

The Review of Vocational Qualifications chaired by Oscar De Ville came to a similar conclusion after its work. The Review led to the establishment of the National Council for Vocational Qualifications (NCVQ) which set out rationalisation of existing arrangements as a priority task:

The present arrangements for vocational qualifications are complex and confusing. In some occupational areas there are many qualifications and the relationships between them are not understood by employers or those seeking training. In others there is a lack of suitable qualifications and access is unnecessarily restricted in some areas (NCVQ, 1987, p.3).

NCVQ first introduced the concept of the National Qualifications Framework – or NQF - (Annex 3) in order to locate individual NVQs at particular levels in a progressive framework. QCA established three categories, or groupings of qualifications. These are general (academic), vocationally related (such as City and Guilds awards) and occupational (NVQs and professional qualifications). Whether such a categorisation is actually helpful or not is still open to question. However, it is argued that the NQF now functions to support regulation of all qualifications in a number of ways:

- As an organisational tool that allows qualifications to be located at particular levels and in particular categories;
- As a way of providing information on qualifications, for example whether they might be deemed to be at equivalent levels, or whether progression is possible from one to the other;
- As a planning tool, to assist in the process of ensuring the framework is coherent in terms of assessing where there is oversupply or where there may still be the need for qualifications to meet new demands.

In addition, QCA has established a Rationalisation Task Group to review the progress it was achieving towards:

reducing duplication, filling gaps and ensuring that qualifications meet the needs of individuals, society and economy with a reliance on industry training organisations and awarding bodies' capacity to identify need, and on removal from the framework of qualifications that suffer from very low take-up (QCA, 2001).

Conclusion

There were high expectations of QCA as a new body when it was first set up. From an examination of the Education Act 1997, the legislation which gives QCA its powers in relation to qualifications, we can see it is constructed mainly from previous legislation designed for predecessor bodies. Its first Chief Executive wanted it to be a ‘tough regulator’ but there was an inadequate statutory basis for effective action. Nevertheless, an examination of the current situation shows that there is a potentially strong case for regulation to minimise the possibility of ‘systemic risk’. Reducing the risk to quality and standards also appears to be justified, although the way in which QCA approaches this objective is dependent on the kinds of administrative codes described in Chapter 2 by Baldwin & McCrudden (1987). The need to ensure information is available to users of the qualifications system is justified in principle by the research, although in practice we can see that information is available from a range of sources. The question here is what value can be added by regulation insisting that a central coordinated source of that information is established by the regulator, especially as this objective is one of the clearest in the legislation. The issue of value for money is referred to in QCA’s remit only in very specific and limited terms and as far as the research shows there is no strong evidence that this provides a strong justification for regulation at present. Moreover, the issue of planning and coordination does not present a clear justification for regulation although QCA has done some interesting work in this area as can be manifested in Annex 2 of the thesis. Finally, we can examine further whether there is a case for regulation by seeking the views of those directly involved in such regulatory activity. Critical to the success of the regime would be the degree to which those bodies subject to regulation understood, and assented to, the approach QCA took in discharging its responsibilities, and an examination of their views follows in the next chapter.

Chapter 5 – Interviews

Given the limited research on the policy and practice of the regulation of qualifications, it seemed to be important to determine whether the objectives embedded in the proposed model of regulation could be validated by analysing the views of those directly involved in the regulatory process. This would provide the opportunity to ascertain whether the principal stakeholders had a clear view of which regulatory objectives might justify and/or actually did justify the regulation of qualifications by the QCA. Even if the chosen respondents agreed they could support the five general objectives of regulation in principle it might be the case that they did not feel it necessary for a central government agency such as QCA to discharge such objectives in relation to the qualifications system.

Two possible approaches to the collection of data were considered: - the use of questionnaires and the use of interviews. However, what was needed to test the model was as detailed a set of views as possible of a qualitative rather than quantitative nature. The collection of such empirical data offered the possibility of a detailed exploration of those objectives where major disagreement over the purposes of regulation might evidence itself and identify how fundamental such disagreement might be. Francis notes that ‘regulation engenders conflict’ (Francis, 1993, p.259) and the interviews would show whether the objectives of the regulation of qualifications was liable to generate conflict or consensus. Although there might be agreement that certain purposes could be supported as part of a general model of regulation it was possible – even likely - that the prospect of one or more of those specific purposes being applied by a central government agency specifically in relation to qualifications might not be welcome.

A desirable, and probably necessary, condition for effective regulation is that those involved in regulation find themselves in a position to support its aims. Increasing distrust on the part of those subject to the impact of regulation has led government and regulators to seek to provide greater justification for their work. In the recent proposals for the modernisation of utility regulation, for example, it was made clear that the purpose and methods of regulation had to be explained widely and accepted in particular by those subject to such regulation:

Making regulation open and accountable is critical to ensuring that decisions are, and are seen to be, fair, and that the regulatory framework is accepted by all stakeholders and has long-term stability (DTI, 2000).

The collection of empirical data through interviews could test whether respondents viewed the current approach to regulation as ‘open and accountable’ and whether they felt they could offer their full support for the process.

The selection of interview respondents was designed to obtain views from three principal perspectives – from government, from the public agency responsible for regulation and from the regulated bodies. Inevitably the number of interviews was limited by the small number of respondents who could involve themselves meaningfully in the research.

Accordingly, individuals from the following stakeholders were invited to be interviewed:

- The Department for Education and Skills - officials at policymaking level in **government** responsible for the development of legislation, regulatory policy and the implementation of such policy;
- The Qualifications and Curriculum Authority - officials at the **regulatory body** who had to codify the purposes of regulation and ‘apply the rules’;
- The **awarding bodies** - personnel in senior positions in the organisations that are subject to regulation.

These three principal groups are the most important because they are closest to the issues of regulation pertinent to this study and they are able to provide an informed and considered perspective. Other groups, organisations or individuals have legitimate views on regulation in this field notably those who take qualifications and others with stake in the qualifications system such as parents or employers. However, it was felt that widening the proposed data collection in this way would go beyond the scope of this thesis. Even with the three principal perspectives, the number of respondents available for interview was restricted. In such a specialised area as regulation there were few individuals who would be likely to have in-depth relevant knowledge or expertise. For example, perhaps only one or two key staff in any awarding body had the experience and background to comment in detail on the objectives of regulation. After some consideration it was decided to focus the collection of empirical data on those involved in the policy and practice of regulation on a day to day basis. In total, fourteen interviews took place.

To provide the perspective from central government, four respondents at Divisional Manager and Team Leader level at the Department for Education and Skills (DfES) were invited to take part in the research. Two of these individuals were from the headquarter

offices of the DfES in Sanctuary Buildings in London who were involved originally with the drafting of the legislation that established QCA and are now responsible for oversight of the implementation of regulatory policy for qualifications. The other two departmental officials were Divisional Managers from the offices of the DfES in Moorfoot, Sheffield each of whom in turn had held responsibility for the disbursement of the annual budget for QCA and to whom the Accounting Officer of QCA had to report. Five respondents were chosen to provide the perspective of the regulatory body. These were individuals who had been closely involved in the development and implementation of QCA's regulatory policy, who had day to day contact with awarding bodies and who were most likely to be aware of the impact of the regulatory regime. Two had been involved in the deliberations over the legislative foundation for the establishment of QCA during the debates on the 1997 Education Act. Others had been responsible for the specification and publication of the *Arrangements for the Statutory Regulation of External Qualifications* (QCA, 2000) and the implementation and application of the regulatory infrastructure. To determine the views of those subject to regulation, five senior managers of the following awarding bodies were chosen to represent the views of those subject to regulation:

- One from each of the three major awarding bodies - Assessment and Qualifications Alliance (AQA), Edexcel Foundation (Edexcel) and the Oxford, Cambridge and RSA Board (OCR). These are the so-called 'unitary bodies' involved in the provision of a range of mainly academic but also some vocational qualifications;
- One from the major vocational awarding body – the City and Guilds of London Institute (C&G);
- One from a smaller awarding body with a specialised market niche where there might be concern that the weight of the demands of the new regulatory regime might be felt to be less appropriate.

The advantages afforded by this approach included access to data and to views not normally available in the public domain. The fact that the researcher was part of the small group of individuals closely involved in the regulation of qualifications brought such advantages. However, the importance of the epistemological challenge could not be underestimated. On the one hand the findings from the interviews had the potential to

increase and deepen the understanding of the issues surrounding regulation and could provide both significant validation of the model of regulation and commentary on the practice of regulation. On the other hand, there was a range of perspectives held by the interviewees and the researcher. Would the interviewees represent their own personal points of view or their views as officials of the organisation that employed them; would the researcher adopt a scholar's paradigm, an interpretative perspective or an institutionalist perspective? In all cases, the interviewees were asked to regard the researcher as a researcher not as a regulator but there was still a possibility that they would not put their whole trust in the situation.

The interview questions were made available in advance, sent out with the invitation to participate in the research. The decision was taken to use a semi-structured interview and each of the fourteen interviews was conducted according to the questions set out in Annex 1. Individuals were advised that, as far as possible, they should represent the views of the organisation for which they worked. The respondents were asked firstly to discuss the definition of a qualification to determine whether agreement could be reached on a common specification. Then, the five objectives of regulation as set out in the model – systemic risk; quality and standards; the provision of information; efficiency and value for money; and planning and organising – were described to the respondents. They were asked first whether they accepted in principle the case for each of the individual objectives of regulation and, if so, why. They were then asked whether they agreed that these objectives could apply to the regulation of qualifications specifically and whether QCA should be responsible for the discharge of such regulatory responsibilities. It was possible to identify (a) areas of agreement or disagreement on the objectives of regulation set out in the model; and (b) areas of agreement or disagreement on whether achieving the objectives was an acceptable regulatory function for QCA. Where opposing perspectives could be discerned, these are highlighted.

Each interview was designed to last approximately one hour. However, a strict time limit was not applied and I encouraged broader discussion in order to gain as detailed a picture as possible of the issues in hand. Each interview was taped and detailed notes taken concurrently and, in most cases, a verbatim transcript was also subsequently made. A detailed analysis of the tapes, notes and transcripts was carried. The interview data from each respondent was analysed and key words and phrases were noted to provide the basis

for the identification of thematic patterns and cross references. These patterns and references were then applied to each interview and consolidated through coding each interview.

A matrix was developed which showed each respondent, individually and in their groups, against the five key objectives articulated in the model of regulation. Figure 3 provides a summary of the responses to the interviews and highlights the areas of agreement and disagreement among respondents. An analysis of the coherence of views within each group and between groups was carried out within the matrix. This showed that, except in a small number of instances, there was support in principle for the five key objectives of regulation exemplified in the model that had been developed for the thesis. However, it was equally clear that for certain regulatory objectives support for the regulation of qualifications by QCA was not thought to be desirable even by government officials and the regulatory body's own staff, for example, in the area of efficiency and value for money. This overview of the preliminary findings of the interviews formed the basis for a more detailed interrogation of each respondent's views which is set out after Figure 3.

Analysis of Responses to Question 2 - The following key objectives in regulation have been identified. Which do you feel are the most important and why: A. To Protect from risk? B. To secure quality and standards? C. To inform? D. To secure efficiency and value for money? E. To plan and organise? Would you agree that we can apply each of these objectives to the regulation of qualifications?

Purpose of Regulation →	Risk			Quality			Inform			Efficiency			Planning		
	General Purpose	Purpose for QCA	Agreement	General Purpose	Purpose for QCA	Agreement	General Purpose	Purpose for QCA	Agreement	General Purpose	Purpose for QCA	Agreement	General Purpose	Purpose for QCA	Agreement
AB1 AQA	✓	✓	Y	✓	✓	Y	✓	✗	N	✓	✗	N	✓	✗	N
AB2 EDX	✓	✗	N	✓	✗	N	✓	✗	N	✓	✗	N	✗	✗	Y
AB3 OCR	✓	✓	Y	✓	✓	Y	✓	✗	N	✓	✗	N	✓	✗	N
AB4 C&G	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✗	N	✓	✗	N
AB5 MIN	✓	✗	N	✓	✓	Y	✓	✗	N	✓	✗	N	✓	✗	N
Total AB	5	3		5	4		5	1		5	0		4	0	
R1 RA	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✓	Y	✗	✗	Y
R2 JH	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✗	N	✗	✗	Y
R3 KW	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✗	N	✓	✓	Y
R4 BK	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✗	N	✓	✓	Y
R5 MC	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✓	Y
Total R	5	5		5	5		5	5		5	3		3	3	
G1 SB1	✓	✓	Y	✓	✓	Y	–	–		✓	✓	Y	–	–	
G2 SB2	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✗	N	–	–	
G3 MF1	✓	✓	Y	✓	✓	Y	✓	✗	N	✓	✗	N	✓	✓	Y
G4 MF2	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✓	Y	✓	✓	Y
Total G	4	4		4	4		3	2		4	2		2	2	
TOTAL	14	12		14	13		13	8		14	5		9	5	

Figure 3 - Summary of Interview Responses

Notes:

Analysis of interviews by interviewee and their attributions. Responses are analysed in terms of whether respondents agree that the objective is a proper regulatory function and, secondly, whether the objective is an acceptable regulatory purpose for QCA in regulating qualifications? Where there is agreement between these views this is indicated by a ‘Y’ in the third column.

Definition of a qualification

One interviewee from an awarding body was emphatic that a definition of a qualification, however hard it was to agree, needed to be achieved:

It's one of the questions I keep asking. If you are the body responsible for regulating qualifications can you tell me what a qualification is? If you don't know what a qualification is how can you regulate it? And I have never had a clear answer from QCA.

For some of those interviewed the difficulty in developing a definition stemmed from the limited description of a qualification in the Act itself as:

any academic or vocational qualification authenticated or awarded by an outside person (Education Act, 1997).

However, reactions to the definition proposed in the thesis ranged from general acceptance on the most part to criticism that the definition was an ideal and did not reflect the situation that pertained currently. If we can remind ourselves of the proposed definition set out in Chapter 1, it was suggested that:

A qualification is evidence of formal recognition of achievement based on:

- 1. Demonstration of attainment of specified standards;*
- 2. Following an appropriate programme of learning;*
- 3. Including defined assessment requirements;*
- 4. Awarded by the issue of a certificate by an authorised body; and*
- 5. Subject to monitoring by the authorised body and, if required, to public reporting.*

All interviewees recognised the need for formal recognition of attainment although one pointed out that the use of 'mark of public recognition' might be an improvement. There was major disagreement during the interviews about the use of 'specified standards'. The majority felt that 'specified outcomes' would be a better way of expressing this part of the definition given especially that 'standards' was a contested term. Most respondents rejected the second part of the definition, arguing that it was not always necessary for anyone to follow a programme of learning before submitting themselves for examination. It was accepted that many individuals would follow a programme of learning if they were in formal education but that this should not be a requirement. The need for 'defined assessment requirements' was generally accepted and it was felt to be important that anyone submitting themselves for assessment should know clearly what was expected from them, the kind of assessment methods being used and that the determination of the

outcomes of such assessment should be rigorously controlled and monitored by the awarding body. The consensus continued as far as the award of a certificate was concerned but most people pointed out that the concept of an ‘authorised body’ and the requirement for ‘public reporting’ belonged only within a regulated sector and would not and should not apply to all qualifications across the board.

If we took these views on board the resulting definition would look something like this:

A qualification is:

1. *Formal recognition of achievement;*
2. *Based on a demonstration of attainment of specified outcomes;*
3. *Dependent on defined assessment requirements; and*
4. *Marked by the award of a certificate.*

Several respondents noted that it would be crucial to consider any definition of a qualification alongside the purpose and rationale for such a qualification before one could properly begin to develop an intellectual justification for the regulation of such an entity.

One departmental official made an interesting aside during the discussion on the definition of a qualification by comparing the situation in Germany with the situation in England. In his view, in Germany a qualification was more of a ‘skillset’ based on someone having undertaken a certain education and training programme. In other words, that to be ‘qualified’ meant that one had progressed successfully through the system whereas the ‘Anglo-Saxon’ view was that a qualification had to be a ‘credential’.

Objective 1 – to avoid systemic risk

All fourteen respondents agreed with this objective in principle. However, two awarding bodies did not agree that it was relevant to the regulation of qualifications. During the interview some respondents were unclear as to the need for protection against systemic risk but were more assertive about the need to protect the interests of the state or of the individual users of the qualifications system. The protection of public confidence and public investment were the two key issues uppermost in the minds of officials from the Department for Education and Skills. The issue of systemic risk was recognised explicitly by one senior official: ‘this is a matter of public confidence in the [qualifications] system as a whole’. In a system where the majority of costs are underwritten by the state there seemed to be no recognition of the danger that the state might be called on to intervene to

minimise the knock-on effects of awarding body failure. The protection of the public purse was given emphatic support by another official who felt that it was important that regulation existed to protect the investment – either in terms of money or in terms of time and effort - made by an individual in achieving a qualification. One of the regulatory body’s staff indicated that ‘where there was public subsidy there was a need for arrangements for formal overview’. He also saw confidence in the system as a whole as an important issue and he argued that the regulator had the responsibility of securing public trust, citing the example of the strict regulations for public safety laid down for airlines by the Civil Aviation Authority.

The links between the different objectives of regulation set out in the theoretical model were explored as the interviews proceeded. The staff of the regulatory body and, to a greater extent the staff of the awarding bodies, viewed the protection of the rights of the individual user of the system as a more important issue than protection of the interests of the state against systemic risk. The regulators saw a role for regulation in providing a guarantee for an individual that any risk in engaging with an awarding body would be minimised. However, the awarding bodies argued that regulation would not be necessary if they did their job properly. They felt that, as long as they ensured the appropriate levels of quality and transparency, there would not be a need for regulation of qualifications to deal with ‘systemic risk’. Five awarding bodies agreed in principle that the need to address systemic risk was a legitimate purpose for regulation but two indicated that risk reduction should not be a role for QCA on the grounds that market forces would ensure that organisations avoided risk.

Objective 2 – to ensure quality and standards

All the respondents agreed that ensuring quality and standards was a legitimate one for regulation in general terms and all the respondents except for one of the awarding bodies agreed that it was a key purpose for the regulation of qualifications. The need to ensure quality and standards was seen by all respondents as a clear regulatory purpose although everyone recognised that the definitions of ‘quality’ and, in particular ‘standards’ needed to be discussed carefully. Interestingly, everyone agreed that ‘quality’ was a baseline measure or a threshold issue and that beyond the regulator requiring minimum requirements for quality there should be limited prescription in the way an awarding body’s systems operated. The concept of a baseline measure for quality was also held to

be critical by the awarding bodies as such a measure, in their view, would provide a level regulatory playing field amongst competing organisations. If an awarding body wished to build on that baseline measure, then the only constraint should be whether consumers would be willing to support a qualification exceeding minimum requirements in the event that the award took longer or cost more. Interestingly, one interviewee from one of the three large unitary bodies felt that the qualifications marketplace was not subject to real competitive pressures as far as the costs of qualifications were concerned:

it's a very restricted market place with a limited number of providers and the products they provide are broadly similar and therefore the key is the quality of service they provide rather than the cost – the awarding body charges are not a determinant.

Some observations were offered as to what might constitute 'quality' in a qualification and an aggregation of those observations resulted in the following attributes being identified:

1. up to date specification and design based on advice from 'experts' from a particular field;
2. relevant content and coverage within that specification incorporating valid and reliable assessment arrangements, including sound methods for agreeing how a candidate's overall performance might be reported;
3. credible outcome in terms of a public record that commanded public confidence; and,
4. where possible, providing progression to further learning or other qualifications as appropriate.

Some of these attributes are shared with the definition of a qualification offered in this thesis and we can deal with the reaction of the interviewees to that proposed definition shortly.

Quality of service was felt to be a key issue and all interviewees recognised that if consumers paid for a service they were entitled to demand an appropriate level of performance from an awarding body. The awarding bodies agreed that it was useful to have a published statement that indicated the levels of service that the consumer might expect. However, both they and the regulatory staff were silent on the issue of whether there might be any penalties for failing to secure these levels of service. Two awarding body representatives suggested that an approach which involved sanctions and penalties

might be suitable for consideration only if the current application of the regulatory system adopted a ‘lighter touch’. They felt that quality of service needed to include an assurance that appeals and claims against the results of assessment would be addressed and that the availability of an avenue for those who were not satisfied with the outcome of their appeal was ensured. The respondents agreed that appeals against assessment decisions were dealt with specifically in QCA’s ‘Arrangements’ but also pointed out that there was no indication of what intervention the regulator might take if a candidate remained unhappy with the outcome:

An awarding body must provide and publish information on its appeal arrangements. The arrangement must provide for appeals to be made against assessment decisions and, where appropriate, other decisions affecting centres and individual candidates. The published arrangements must explain how an unresolved appeal can be put to independent review (QCA, 2000).

The ‘Arrangements’ did require that ‘an awarding body must designate a single, named point of accountability’ as a point of reference for the regulator as well as to make it easier for consumers to find an avenue through which to pursue their grievance. The interviewees from the awarding bodies recognised that consumer rights legislation and such initiatives as the Citizen’s Charter were also available to police relationships between providers and consumers although there had been no resort to either of these mechanisms. Awarding bodies indicated they were happy to conform to the requirement for an awarding body to publish for those who use its services a ‘customer service statement’ to cover quality of service, points of contact, fee structures and performance and feedback arrangements.

Objective 3 – to ensure the provision of information

All of the responses agreed that ensuring the provision of information was a key regulatory purpose, including all five of the awarding bodies. However, as far as the regulation of qualifications was concerned four of the awarding bodies felt that the responsibility for the actual provision of information should be left to providers without the intervention of a regulatory body such as QCA. On the issue of information asymmetry the staff from both the department and the regulatory body agreed that it was their role, and not just the role of the bodies they regulated, to ensure the provision of information, in order to allow users of the system to make a considered choice of provision, routes to other qualifications and progression opportunities. It was observed that, as well as the information being made available, it also had to be made accessible –

it would not be in the public interest if there was an overload of information but no way of helping individuals to understand that information and get the most out of it to meet their needs. This view was supported by one of the awarding body respondents who suggested that, if uncontrolled and unfiltered, the volume of information could be so vast as to be useless and that there was a need to help people understand that information.

Interestingly, the same respondent suggested that more work needed to be done to provide information to help people understand the aims of the regulatory system better to allow them to judge whether it was meeting its goals. All the awarding bodies agreed that, if the regulator was involved in ensuring the flow of information, care should be taken to ensure that the information provided was made available in a transparent and neutral way. The awarding bodies wanted a 'level playing field' without any bias on the part of the regulator.

As far as the awarding bodies were concerned, they acknowledged that they needed to provide information not just on their qualifications but also on their systems so that people had confidence in the procedures that underpinned the award of a qualification. As one awarding body representative put it:

The days of the secret black box have gone and the modern customer is more sophisticated and requires a level of service that includes a full explanation of what's going on including mark breakdowns, component weightings, actual marks, the results of the moderation process, scaled marks, grade boundaries and scripts back on request. It's part of a modern customer's expectations from other parts of their daily life and it's very much a bottom up pressure.

Other awarding body personnel, even from the smaller organisations, agreed with this view. They were sure that if they were perceived to be reluctant to provide information on both the details of the qualifications themselves and on the procedures on which they depended the result would be a lack of confidence in their quality and competence. One argued that the need for the regulator to address the issue of information asymmetry was no longer relevant as the market would force the provision of such information anyway. The awarding body respondents felt that QCA's attempts to standardise the titling conventions for qualifications, for example, went beyond its remit.

Objective 4 – to secure efficiency and value for money

The establishment of regulation to encourage greater efficiency was recognised by all respondents as being justified in principle and often necessary, especially in cases where public money was involved. All five of the awarding bodies, however, viewed attempts to

measure or encourage efficiency as not being a suitable purpose for the regulation of qualifications. Also, notably, three of the five respondents from the regulatory body agreed with their view as did two out of the four government officials who were interviewed.

One departmental official questioned how easy such greater efficiency would be to achieve as a result of regulatory activity. Both regulatory and awarding body staff felt that there was more scope for the markets to encourage greater efficiency through competition between providers. Three possible barriers to the effective functioning of the qualifications market were discussed:

- first, in the case of the major public examinations offered by the three unitary bodies, the market did not appear to be price sensitive and any competitive spur would be through the quality of customer service not what was charged in the way of examination fees;
- second, the difficulty of agreeing benchmark measures for what might constitute efficiency and value for money other than post-hoc audit required by the regulator or other body such as the National Audit Office;
- third, the potential clash of economic and social goals in that awarding bodies might choose to cross subsidise qualifications in order to support those with a smaller number of candidates which in themselves would always be economically inefficient.

In addition, one of the members of the regulatory body's staff saw that there might be scope for the regulator to provide comparative information on fees for qualifications, or even to intervene through price capping in order to encourage efficiency. Some saw this as the sharp edge of regulatory activity, making the providers justify fees and costs and thereby delivering a benefit to the consumer.

The view of one departmental official was that the issue of efficiency was certainly important and that one possible regulatory function in this respect would be to establish a CAT standard of the kind used in the financial services sector in order that awarding bodies would conform to basic 'value for money' criteria:

Anyway, an awarding body can't put something on sale without restrictions and if the issue of efficiency is not being addressed by market forces within the qualifications marketplace then some regulatory intervention will be required.

However, as an alternative view, one awarding body felt that there was always the danger that:

in any of the areas we've talked about that if the purpose for regulation is not clearly identified that the implementation of the regulation becomes a greater burden than the benefit it seeks to bring and if in order to go and spend wisely a fiver you have to spend ten quid because of the regulatory requirements then the benefits of that regulation are soon dissipated and there is always the need to keep a balance between burden and benefit.

Objective 5 – to plan and organise

None of the five awarding bodies agreed that planning and organising should be an issue for the regulation of qualifications and, perhaps surprisingly, two of the staff from the regulatory body agreed with this view. When describing the number and variety of examinations which had grown up by the beginning of the 20th century the Dyke Acland Report commented that:

'the system is the result of practically independent action. It is the outcome of a varied succession of unconnected accidents, in which owing to the disinclination or inability of the State to superintend the work at its beginning, there has been no single co-ordinating force at work' (Board of Education, 1911, p.30).

During the interviews the awarding body representatives made it clear that the prospect of a 'single co-ordinating force' was not welcome. One organisation strongly felt that 'planning and organising' was not a legitimate objective for the regulation of qualifications and argued that, provided basic standards of quality had been set by the regulator, bodies should be allowed to compete on their own merits. Even one of the QCA interviewees warned of the dangers of over-planning and the danger of stifling competition and innovation as a result. Another member of the regulatory body's staff, however, saw planning as being a key instrument in protecting the public purse in preventing wasteful subsidisation of product proliferation as well as being a key factor in achieving the 'coherence' set out in the Education Act 1997 as one of QCA's primary goals. Departmental officials appeared to be keener on the need for planning and organising the system of qualifications in line with government policy to have fewer qualifications, greater articulation and accessibility between those qualifications and, greater parity of esteem between academic and vocational awards.

Two models for 'planning and organising' were recognised by the majority of interviewees – the first being the model of a national framework which has defined levels and categories into which each qualification has to fit in order to gain accreditation. This model is currently being used by QCA with five levels and three categories (Annex 3).

The other model – strongly promoted by one departmental official – was that used in the telecommunications industry for allocating bandwidths to radio broadcasting or mobile telephony. The official saw the organisation of providers and their products as being a key issue crucial to the public interest and argued that the only debate was around how loose or how tight the planning regulations would be. He saw the limited commodity of bandwidth in telecommunications as a useful comparison given the complexity of the qualifications system. In his view the ‘noise’ or ‘interference’ created by unrestrained competition between awarding bodies was not conducive to encouraging public understanding of, and therefore support for, the qualifications system. He felt that the twin regulatory pressures of demanding quality standards for awarding bodies and the kind of ‘planning and organising’ strategy applied in telecommunications industry would reduce significantly the number of ‘operators’ and improve public understanding of the system immeasurably. One awarding body did agree that this kind of approach could have value in some sectors:

Regulating telecommunications bandwidths – such as issuing licenses for mobile phone operators, for example - is a perfectly sensible idea and has an identified need and a clear purpose. If we've got ten licence holders at the moment it's probably nine too many. It's a necessary thing to be done, it's pretty well received by the public and it's an area where I don't mind the licences generating millions of pounds for the public exchequer

but the respondent did not accept this approach as being acceptable for qualifications.

Alternatives to regulation

The awarding bodies had the most to say when they were asked to consider possible alternatives to regulation. However, in each case the view was that there had to be some regulation – ‘public credibility requires a regulator and an unregulated system would be seen as unacceptable’. The arguments were about whether the current approach to regulation was appropriate and which regulatory functions were acceptable.

One awarding body respondent pointed out that regulation of qualifications 25 years ago was not evident:

There was some monitoring of A level syllabuses nominated for vetting but there was no notion of an accreditation framework and mainstream qualifications did not suffer because of lack of regulation.

Despite this view, however, the same respondent felt that it would not be possible not to have a regulated system – ‘the public expects things to be regulated and controlled and institutions are anxious to be above suspicion and they want to be subject to monitoring

for that purpose'. Another awarding body interviewee accepted grudgingly that regulation was a fact of life:

public qualifications exist in a highly politicised environment – and yes there is a need for regulation because qualifications are central to the issue of public confidence in an education and training system.

However, despite the reluctant acceptance of the need for regulation, the awarding bodies felt that a lighter regulatory touch would be preferable and suggested two main ways in which this could happen. The majority of awarding bodies suggested a greater use of self-regulation and conformity to codes of practice instead of what they perceived as the current more interventionist and prescribed approach. Also, there was a great deal of concern that the regulatory process had become too complicated and too expensive - and that it would be better if regulation was directed at an organisational level rather than at a product level:

The benefits don't outweigh the costs, not only in terms of real costs but also in opportunity costs. The development cycle for a new qualification is two to four years which is quite unacceptable for some sectors that require a sharper slicker system with less bureaucracy. Regulation has been a huge step backwards especially for vocational qualifications because of a lack of understanding of their purpose. Regulation costs an awarding body a major proportion of turnover - out of an annual budget for qualifications development of £5M approximately £2M a year is wasted on meeting regulatory requirements out of a total turnover of £60M. Unnecessary overheads like these are not a proper regulatory function. The regulator should have a big stick for the awarding body if it steps out of line. Regulation should not be at the level of an individual qualification but at an organisational level.

Awarding bodies accepted that organisations needed to be checked against requirements for governance, resources and quality assurance but they felt that provided such requirements were met the regulators should allow greater leeway over product offerings instead of subjecting each qualification submission to detailed interrogation. One awarding body suggested the following:

a much simpler, four-component model for regulation based on: 1) a legislative framework with sound laws; 2) a regulatory body whose function is to provide broad criteria and post-hoc audit; 3) an awarding body to design and administer qualifications; and 4) the end user.

Both the unitary and vocational awarding bodies proposed that there might be a case for thinking differently about the regulation of occupational and vocational qualifications instead of the regulator adopting a 'one size fits all' approach to all qualifications:

I can see there is a purpose behind the regulation of qualifications – I can also see that the purpose can be quite different between those general qualifications which are predominantly in the interest of the school system on the one hand and qualifications which are for vocational, occupational purposes and for working life for adults and I'd like to think about those two sets of qualification types and the purposes of regulation – two separate considerations. For school based education and training the regulation of qualifications in some form is appropriate. For adults and the world of work there is the need for some means of sensible strategic provision which is co-ordinated and controlled sensibly but which is in its needs and purposes significantly different from that as required for general qualifications predominantly aimed at schools. Regulation is required although its purpose is so significantly different that we need to understand the clarity of what the purpose of such regulation.

The awarding body most closely identified with vocational qualifications went further than this to suggest that perhaps to expect one regulatory body to deal with the whole spectrum of provision ranging from schools based curriculum, assessment and qualifications through to vocational and occupational qualifications was unrealistic:

There is such public expenditure and public interest invested in the schools system that the needs of vocational and occupational qualifications for adults will always remain at the back and that's exactly where they are at the moment.

It turned out that what was being suggested was that these qualifications should escape the burden of regulation and be placed closer to those employer based organisations that had a direct stake in their success and that could work directly with interested awarding bodies.

The views of the departmental officials were particularly relevant to the issue of whether there were alternatives to regulation and in all cases they saw no alternative. One official did construct a hypothetical case for discussion during the interview based on what might be the views of such diverse individuals as Adam Smith and John Marks to the effect that the free market would ensure that only high quality qualifications survived and those that were useless would wither on the vine. One of the QCA staff suggested a similar approach in order to answer the question 'Why regulate?':

In terms of that starting point it might be a good idea to produce a narrative which describes a unregulated system with its attendant strengths and weaknesses to give a base point from which one can evaluate the arguments – imagine what 'no regulation' would be like.

However, discussions with departmental officials centred mainly on how to regulate not whether to regulate. 'The case has been made and regulation is the agreed strategy' was one quite forthright view. The question seemed to be how to strike a balance within the regulated system with one extreme being the scenario of only one awarding body – 'an elegant and neat solution but possibly not practicable' - and the other of 'letting a

thousand flowers bloom' within a market driven system. Another official echoed the views of the awarding bodies in a discussion of whether regulation would be more effectively directed at an organisational level with less intervention at a product level. However, he felt that there would need to be a trade-off and one possible approach might be to adopt strict licensing conditions for a limited number of awarding bodies but then correspondingly allow the number of qualifications to be unrestricted as long as certain minimal requirements in terms of titling and level were met. The bottom line however was that whether one regulated providers or their provision the regulator must have the power to 'chuck out qualifications that were not serving the public interest'.

Conclusion

In summary, the analysis of the interviews showed that there was agreement that the objectives of regulation identified in the theoretical model were all valid in general to a greater or lesser degree. There was far less agreement by the representatives of those bodies subject to the current regime for the regulation of qualifications on whether each objective was valid in respect of the regulation of qualifications. It was agreed that there were justifications for the maintenance of public confidence through protection against systemic risk and that regulation could be used to underpin the quality and standards of qualifications. However, they did not agree that regulation is necessary to ensure the provision of information, on the grounds that they will provide that as a matter of course and that it is available from a range of other sources anyway. They viewed issues such as value for money and planning and organisation as not being sufficient justifications for regulation by a qualifications regulator such as QCA. The respondents argued that where regulation was applied it could be less prescriptive and detailed, providing the stability of the awarding body arrangements could continue to be subject to overview. Those who raised objections to regulation were concerned about the significant cost of regulation and that the little value added to the qualifications system was not proportionate to the deficiencies in the system which might have led to the calls for regulation in the first place.

The strongest consensus centred on the two regulatory objectives of ensuring quality and standards and providing information principally to the 'consumer'. There were different views on the issue of 'protection' depending on the priorities of the organisation for whom the interviewee worked. There was no consensus on the two issues of ensuring

efficiency and value for money and on the need for planning and organising – these two purposes were supported strongly by the department of state, reasonably fully by the regulatory body (although there was clearly an internal debate to be pursued within the regulator) but not thought to be as appropriate for the qualifications market by the awarding bodies.

Generally speaking three key points were made that regulation should:

- have a ‘lighter’ touch;
- be directed at an organisational level, rather than at individual qualifications;
- adopt different regimes for different groups of qualifications such as those occupational and vocational qualifications designed to support workforce development.

We have seen how perceptions vary on the need for regulation of. In the next chapter we look at the work of other regulators in education including the Learning and Skills Council, the Office for Standards in Education and the Adult Learning Inspectorate in order to provide a basis for comparison.

Chapter 6 – Other regulatory arrangements

In Chapter 6, we examine other regulatory arrangements for education and training, focusing on the Learning and Skills Council (LSC), the Office for Standards in Education (OFSTED) and the Adult Learning Inspectorate (ALI). The LSC, established by the Learning and Skills Act 2000, is the body responsible for the planning and funding of post-16 education and training. Through a review of the debates that preceded the Learning and Skills Act 2000, and through an analysis of key documents, we evaluate the aims of the regulatory functions of the new bodies against the model of regulation developed in Chapter 3. This chapter offers further validation of the appropriateness of the model as an essential tool in analysing and discussing regulation by applying it to a different context. We consider the arguments made for and against the establishment of the LSC and its new powers in order to determine where there appears to be a sustained case for regulation and whether the regulatory objectives seem well conceived. We also look at the roles of OFSTED and ALI in relation to their remit for inspection of provision. In the light of these new arrangements we also re-examine the functions of QCA to see what a comparison can tell us in terms of an overall regulatory rationale for education. The findings of Chapter 4 point up the problems caused for regulation by an unclear remit or an unsatisfactory legislative basis. It would be especially helpful to determine whether there are ways in which justification can be argued more effectively or whether we encounter the same general difficulties.

Background

In June 1999, the Government published its White Paper, *Learning to Succeed – a new framework for post-16 learning* (DfEE, 1999). The ensuing Bill proposed reforms:

to modernise and simplify arrangements for the planning, funding, delivery and quality assurance of post-16 education and training other than higher education (Learning and Skills Bill, Explanatory Notes).

The Act itself established a new Non-Departmental Public Body (NDPB) designated the Learning and Skills Council (LSC). What is striking about the establishment of the Learning and Skills Council is its scope and its potential influence when viewed in comparison with the preceding regulatory arrangements. The LSC incorporates three major structural mechanisms that were previously separate. These mechanisms were the

Further Education Funding Council for England (FEFCE), the Training and Enterprise Councils (TECs) and certain responsibilities undertaken by Local Education Authorities. In addition to its increased scope of responsibility, the impact of the LSC is significant with 47 local Learning and Skills Councils, a budget of £7.3 billion, and almost 5,000 staff at both national level and at local level to cover the requirements of 6 million learners.

In conjunction with the new arrangements for planning and funding to be taken forward by the Learning and Skills Council, the other major regulatory mechanism set out in the Act is ‘rigorous and independent national inspection’ to ensure quality and standards in the provision of education and training. Previously, two organisations - the Further Education Funding Council and the Training Standards Council - employed their own inspectorates for further education and work-based training respectively. These arrangements were wound up by the Act and, instead, the Government extended across further education the functions of the Office for Standard in Education (OFSTED). OFSTED was established by the Schools Act 1992 for the purpose of monitoring standards in maintained schools. However, the Learning and Skills Act 2000 has extended OFSTED’s remit to include secondary education offered in further education institutions; further education for those aged between 16 and 19 funded by either the LSC or Local Education Authorities; and other education and training to be specified by the Secretary of State but particularly including training of or for teachers and lecturers. The Learning and Skills Act 2000 also established the Adult Learning Inspectorate (ALI) for the inspection principally of further education for those older than 19 funded either by LSC or by an LEA and employer based training for anyone older than 16 funded wholly or in part by LSC. The Act gives both OFSTED and ALI the remit to review:

the quality of education and training;

the standards achieved by those receiving that education and training; and

whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money (Learning and Skills Act, 2000).

Rationales for regulation

As Wilson has noted, discussion of the arguments made on behalf of a particular regulatory endeavour is crucial to a political analysis of regulation (Wilson, 1980). Through a review of the debates that preceded the Learning and Skills Act 2000 and

through an analysis of the Council's key documents we evaluate the aims of the new arrangements and benchmark regulatory functions against our theoretical model of regulation. The development of the LSC was another step towards centralisation by government - in effect ensuring for government greater 'control and oversight' through its closer influence on policies and systems. Throughout the LSC's *Prospectus* what comes across is the move towards consistency and conformity. There may be 47 local Learning and Skills Councils but policy and funding formulae will still be determined nationally by the LSC under the direction of the Secretary of State. The *Prospectus* describes joint working between LSC and DfEE at all levels:

DfEE will retain responsibility for policy and strategy development and Ministers will continue to 'own' the National Learning Targets and to be accountable to Parliament for their delivery. The Secretary of State will set out his policy priorities for the LSC through an annual letter of direction (DfEE, 2000a, p.16).

The changes discussed during the debate on the Learning and Skills Bill in the House of Lords were intended to encourage achievement at both an individual and general level thereby paving the way for greater productivity for the country. Baroness Sharp of Guildford refers to the 'challenges that new technologies and the knowledge based economy will pose and of the need to upgrade skills and educational achievements' (HL Deb (1999-2000) 608 Col. 889). She goes on to describe what she views as some of the current reasons for the poor economic performance of Britain in relation to its competitors, referring back to the 1880s when 'Britain's poor performance compared with the then newly industrialising countries of Germany and the United States was blamed on poor levels of education and training' (HL Deb (1999-2000) 608 Col. 889). Increasing those levels of education and training was seen as a priority for the emerging Learning and Skills Council by peers across the parties in the House of Lords. This argument was highlighted by David Blunkett, then Secretary of State for Education and Employment, in the foreword to the *Learning to Succeed* White Paper:

The skills needs of the future will be different from those of today and it is clear that we will not keep pace with the modern economies of our competitors, if we are unable to match today's skills with the challenge of the developing information and communication age of tomorrow. As labour markets change, we must develop a new approach to skills, and to enabling people, and businesses, to succeed (DfEE, 1999).

We can pick up the theme of the 'skills agenda' in the Secretary of State's remit letter of 9 November 2000 (DfEE, 2000b) to Bryan Sanderson, Chairman of the LSC, in which

Blunkett echoes the 1998 Green Paper *The Learning Age* (DfEE, 1998) when he argues that learning is the key to prosperity: ‘Investment in human capital will be the foundation of success in the knowledge-based global economy of this new millennium’ (DfEE, 2000b). The most compelling rationale for regulation, at least as far as politicians are concerned, is to address the challenge set out in the report by the Office of National Statistics and reported by the Financial Times:

The productivity gap between Britain and its rivals widened last year, according to the UK government’s independent statistical agency. Gross domestic product per British worker was 24 per cent below the average of the other Group of Seven large economies in 2000, according to the ONS – compared with a 1999 gap of just below 23 per cent. The transatlantic gulf was particularly large, with the average British Worker 42 per cent less productive than the average US worker (Adams & Turner, 2001).

It was argued that the establishment of the LSC would be in the business of ‘equipping individuals for the skills and knowledge-based economy of the 21st century’ (HL Deb (1999-2000) 608 Col. 877). The ‘added value’ claimed for the structural reform was highlighted in the debate in the House of Lords when Baroness Blackstone argued that:

employers and individual learners can rightly expect a more straightforward system and a better service. At present, some 250 different bodies within at least three different systems are responsible for work-based learning and further education. . . . the Bill will do away with the incoherence and duplication from which we have suffered in the past (HL Deb (1999-2000) 608 Cols. 878-879).

In the LSC’s remit letter from David Blunkett as Secretary of State, he continues this argument that the current systems for supporting education and training strategies are fragmented and encourage ‘duplication, confusion and bureaucracy’. He indicated that the integration of functions and harmonisation of systems provided by the establishment of the LSC would allow the possibility of focussing on raising standards and therefore higher quality:

Funding learning is a key task for the Council. By integrating the planning and funding of Further Education, work-based provision, adult and community learning and, from April 2002, school sixth form provision, into a single system, the Council will increase transparency and simplicity and reduce the bureaucracy that has led to inefficiency (DfEE, 2000b).

Regulatory objectives

If we look at the aims of regulation identified in our theoretical model and examine the regulatory functions the LSC set out in legislation and in other documents we can see how those functions compare with the model and whether they offer more coherence and clarity than in the case of QCA. The model for regulation included the requirements:

- to protect;
- to secure quality of standards and service;
- to inform;
- to secure efficiency and value for the expenditure of public money; and
- to organise, including planning, managing and prioritising.

We can see the aims of the Learning and Skills Council highlighted in the first of its Corporate Plans (LSC, 2001) in which it sets out its policy and operational priorities. This Plan sets out a strategic framework for the operations of the LSC through to 2004 covering the key tasks of:

- Raising participation and achievement by young people;
- Increasing demand for learning by adults and equalising opportunities through better access to learning;
- Raising skills levels for national competitiveness;
- Improving the quality of education and training delivery; and
- Improving effectiveness and efficiency.

When the roles LSC, OFSTED and ALI are taken together, the Learning and Skills Act 2000 reflects three of the functions of regulation identified in the model:

- Quality and standards: principally using OFSTED and ALI as the mechanisms for inspecting and reporting on quality of provision;
- Efficiency: maximising the contribution that education and training can make to the economic performance of business and the general economy by removing structural barriers and introducing a more responsive learning market;
- Planning: extending the participation of young people in education and training by identifying routes and pathways, using achievement targets and establishing funding incentives to meet those targets; and increasing the engagement of adults in learning (set out in the Act as those who are 19 and above).

These are the key elements to the government's approach to the regulation of the provision of post-16 education and training and we can look at each of them in turn.

Quality and standards

Possibly the most controversial part of the Learning and Skills Bill, if the length of the debate on this one issue in the House of Lords is an indicator, was the intention for the Office for Standards in Education (OFSTED) to assume functions for inspecting provision for 16 to 19 year olds in further education as well as schools. The anxiety over whether the further education sector is performing adequately in terms of quality and standards is seen in the new arrangements proposed for inspection. Baroness Blackstone, in the House of Lords, set out the government's intentions when she heralded 'the creation of a comprehensive, rigorous and independent regime for post-16 learning' in a way that implied that the previous regimes had not displayed such characteristics. Prior to the Learning and Skills Act 2000, the Further Education Funding Council had provided inspection functions through its Further Education Inspectorate. The Training Standards Council had inspected all publicly funded work-based training. Post-16 OFSTED inspected school sixth forms and LEA provision other than schools and the youth service. However, under the Learning and Skills Act OFSTED will assume the primary responsibility for quality and standards. Section 57 of the Bill deals with the Chief Inspector's extended remit, which is to include inspecting, advising and reporting on pupils of compulsory schools age in schools or colleges; further education; and training of or for teachers or lecturers. This extension of the responsibilities of Her Majesty's Chief Inspector (HMCI) was not welcome in the further education sector, which had been used to the more collegiate approach of the Further Education Inspectorate. However, the White Paper *Learning to Succeed* (DfEE, 1999) was particularly blunt in identifying the reasons for a new approach. These included:

'too much poor practice among private training providers and others; substantial room for improvement in many sixth forms, especially smaller ones; significant curricular or managerial weaknesses in too many FE colleges. (DfEE, 1999).

In the *Common Inspection Framework for Inspecting Post-16 Education and Training* published jointly by OFSTED and the Adult Learning Inspectorate the purposes of inspection are set out as being to:

give an independent public account of the quality of education and training;
help bring about improvement;
keep the Secretary of State, the LSC and the Employment Service informed; and
promote a culture of self-assessment leading to continuous self-improvement.

(OFSTED/ALI, 2001).

The Framework then sets out seven key areas – with explicit criteria – against which the outcomes of inspection will be benchmarked. The arguments put forward are very much of the control and compliance model of regulation with ‘rigorous and independent external inspection’ backed up by the direct threat for ‘the capacity for intervention to be applied in inverse proportion to success’. As we shall see however, the arguments are in part also about efficiency, on the one hand and public confidence on the other.

The government placed great emphasis in this part of the Learning and Skills Bill on inspection, public reporting on the outcomes of inspections and the requirements for action plans. These require a provider to prepare an action plan following the publication of an inspection report, indicating the action, and the timing of the actions, he proposes in the light of the findings within the report. There is a regulation-making power to govern publication and dissemination of the plans (Learning and Skills Bill, Explanatory Notes, p.21). The requirement for this degree of public openness for inspection reports and action plans is now a major feature of regulation generally with the strategy of school league tables being the most high profile and widely contested example in education. Within the inspection regime proposed for post-compulsory education the plans are for inspectors to have no connection with the college that could undermine their objectivity; for ‘transactions’ between those inspected and the inspectors to be made public instead of being kept private and for providers to commit themselves to signing up to measurable plans for improvement. Second, the independence and status of the Office for Standards in Education (OFSTED) as a non-ministerial department of state, separate from the Learning and Skills Council is an important issue and it is a move that echoes the significance attached at the time to the independence of OFSTED and its inspection arrangements from local education authorities and their inspection arrangements.

The debate in the House of Lords focused on the difference in style of inspection between OFSTED and the Further Education Inspectorate. The difference was portrayed, in broad terms, as being between the ‘observational’ approach of OFSTED with its ‘achievement oriented ethos’ and the evaluative role of the Further Education Inspectorate in which self-inspection played a major role. This difference can be identified through a comparison of the inspection guidance issued at the time by OFSTED and the FEFC and the annual reports of the respective Chief Inspectors. In terms of approaches to regulation,

the emphasis of OFSTED can be seen as one of control and oversight and the emphasis of the FE Inspectorate as partnership supported by self-regulation.

Efficiency

The rationale put forward for the establishment of the LSC was based on the belief that greater skills and productivity for Britain in relation to other competitor countries can be achieved by greater and more efficient investment in education and training. Efficiency is thus defined as the opportunity of maximising the contribution that education and training can make to the economic performance of business and the general economy by removing structural barriers and introducing a more responsive learning market. This approach was based on the requirement to secure the greatest outputs relative to the investment made in the public service by the taxpayer. Although hostility to state intervention was typical of the nineteenth century, by the later part of that period the growing concern about Britain's economic position in the world overcame such hostility:

The Department of Science and Art owed its origins to the growing awareness of the possible danger of England losing her industrial supremacy and to the belief that this might be brought about by the absence of an effective system of technical education for the industrial artisan (Roderick & Stephens in Inkster, 1985, p.66).

The legislative and regulatory reform that led to the establishment of the LSC was put forward on the grounds of structural efficiency. The major structural changes to the previous arrangements debated during the passage of the Learning and Skills Bill were justified as providing greater efficiency and delivering better value for money on the one hand and generating improved economic performance by responding to learner need on the other:

The Learning and Skills Council (LSC) will be taking on a great deal, becoming responsible for the fragmented functions delivered currently by the FEFC, local education authorities and TECs. We also expect the LSC to take a fresh and creative approach to learning in the 21st century, unfettered by the barriers of the present system. (HL Deb (1999-2000) 608 Col. 880).

In its Briefing for March 2002, LSC argues that its establishment:

represents a unique, focused and efficient new approach to planning, funding and developing post-16 education and training in this country. Despite the enormity of our Government remit, the Learning and Skills Council is saving taxpayers money – an estimated £72 million a year in cash terms on what was spent before. To carry out the job we are now doing would have cost around £290 million a year under the old system. Our running costs are £218 million a year (LSC, 2002, p.1).

Aldrich, however, views the search for value for money as undermining the goal of an overall vision of excellence in education:

The historical record shows that in modern times central government intervention in education matters has been promoted largely by a concern for the efficient use of public funds. Vision has been sorely lacking, and in consequence central governments in England, both those of the nineteenth century and of the twentieth, have failed to generate a shared ethos of excellence through national education (Aldrich, 1996, p.93).

Mager et al argue that the wrong efficiency measures can place serious constraints on the providers of education and training particularly in the employment sector:

In order to measure use of public funds, measurable outcomes such as qualifications are used as a proxy for measuring learning. Therefore publicly funded provision must lead to a qualification. Providers cite this as a major constraint. While employers are concerned to develop a capable workforce, the pressure on institutions is to deliver qualifications – outcomes that are readily amendable to measurement demonstrating good use of public funding to the Treasury (Mager et al, 2001, p.9).

They go on to argue that it will be difficult to find the right balance between the planning arrangements that the LSC will need to establish to meet its strategic aims and the desired efficiency inherent in an open competitive learner driven market (Mager et al, 2001).

Planning

Broadly speaking, the planning and organising function of the LSC can be broken down into three main categories: targeting; funding; and resource management. The LSC outlines five areas of its work where it will use targets to provoke activity and provide for measures of success: participation; employer engagement; achievement for young people; achievement for adults; and quality and satisfaction. It anticipates that the key to successful targets lies in the setting of realistic targets, accurate data management and measurement tools and access to a range of regulatory incentives or penalties to ensure compliance. It is clear from their corporate plan that the LSC intends to hold provider institutions accountable for their performance at a local level. There will be:

minimum requirements to track progress across the system nationally. At local level we shall want to mine the data more extensively, and to investigate in different ways. For example, local LSCs will wish to be able to analyse participation, completion and success rates by provider institutions, taking account of intake characteristics. These data should link directly to our quality and satisfaction measures (inspection results and user feedback). (LSC, 2001).

LSC emphasises the importance of targets not just as a mechanism to stimulate activity and to measure achievement but also as a way of determining a potentially difficult balance between using its regulatory functions to ensure it meets strategic needs at national and local levels as well as satisfying consumer-led demand for education and training provision:

Until now, the national targets [previously the responsibility of the National Advisory Council for Education and Training Targets or NACETT] have been largely top-down, reflecting national policy needs. This may be the right starting point, but it is not the whole story. To deliver national targets we need to build local engagement and ownership. We should like to give long-term advice to Government which integrates top-down with bottom-up. Our targets should deliver our national vision, but they also reflect the sum of local needs. Such targets would engage people at all levels, and the prospect of achieving them would be much greater (LSC, 2001).

The November 2000 remit letter for the LSC sets out key directives for funding policy. An analysis of these directives, together with an examination of the proposed funding methodologies, should help us gain a clearer view of the scope and impact of LSC's regulatory objectives and the ways in which it intends to achieve them. The claim made in the remit letter from the Secretary of State to the chairman of the new Council is that the introduction of an integrated funding regime across further education, work-based provision, adult and community learning and school sixth form colleges 'will increase transparency and simplicity' (DfEE, 2000b). Blunkett asks the LSC to create a regime which functions to support diversity within a coherent national framework. In effect, funding policies and methodologies will be set centrally but, in the main, funding allocation will be delegated to a local level across the 47 local Learning and Skills Councils and 'driven by the needs of the customers of education and training, not by central design or existing routes'. Amongst the directives, Blunkett requires the LSC to give special attention to the transitional arrangements for funding school sixth forms, establishing Local Initiatives Funds, and addressing social disadvantage, equality and inclusion. Significantly, the remit letter distinguishes between 'learning which leads to qualifications and learning which does not, but which still offers value and progression' (DfEE, 2000b).

However, the arrangements established by the LSC create a tension between freedom and constraint that will need to be addressed carefully as the new organisation goes forward. As Robinson points out in *Learning to Succeed (DfEE, 1999)* this tension is caused by two apparently conflicting principles that:

The system must be learner driven and responsive to the needs of individuals, businesses and communities; and the system must respond to the strategic needs of the economy and national, regional and local skills agenda.

The first principle appears to signal clearly the desire to have a learning market driven by the needs of the learner, while the second principle appears to indicate that this market will be overlaid by a planning apparatus.

Now of course all markets are in practice subject to some form of regulation and sometimes other forms of intervention, so that the pure market model exists nowhere outside of economic textbooks. However, few markets in western economies are overlaid with a planning apparatus (Robinson in Mager et al, 2001, p.15).

Finally, there are some explicit social policy goals set out in the LSC Corporate Plan:

Evidence suggests that those whose need is greatest – those with low educational attainment and earning low wages – get least access to training. We will target our workforce development strategies especially towards such groups, tackling deficits of basic skills and encouraging progression to higher skills and qualifications (LSC, 2001).

These goals were reflected in the White Paper *Learning to Succeed* (DfEE, 1999) and during the debates in the House of Lords. This issue was also discussed during the preparation of *Access for All? A survey of post-16 participation*, the eighth report of the Education and Employment Select Committee (1999). Although it was recognised that social policy such as closing the gap between the educational ‘haves’ and the ‘have-nots’ was essentially a matter of balance for the regulator, nevertheless the Select Committee members felt that inclusivity needed to be a key achievement for the new body which should ensure that the skills agenda did not squeeze out other policies:

The balance which has been struck in Learning to Succeed needs to be adhered to, otherwise there is a risk of the skills and labour markets agenda making a disproportionate claim on the resource base for learning, to the detriment of the learning, personal development and social exclusion agenda (Education and Employment Select Committee, 1999).

Summary

It is clear that government was attracted to the potential offered by the Learning and Skills Act to increase overall structural efficiency by pulling together the responsibilities of a range of predecessor bodies. In the debates in parliament, the most compelling rationale for regulation appeared to be the need to address the perceived skills and productivity gap between the UK and its competitors. In order to support this goal, the LSC’s main objectives are planning, and securing the cost-effective provision, of education and training. There is clear justification for these two regulatory objectives. In addition, the importance of quality and standards is recognised as a key factor. Significantly, the regulatory functions of achieving quality and standards are given to OFSTED and ALI, both of these organisations being independent of the LSC. The previous model of the Further Education Funding Council (FEFC) which had its own inspectorate within the FEFC was not carried forward into the new arrangements on the grounds that inspection would be more effective if greater distance and objectivity were established between the

separate functions of funding provision, of inspecting the quality of such provision. In giving the latter function of inspection and reporting on quality of provision to OFSTED and ALI the government hoped to establish greater objectivity and authority to the views of the inspectorates. In the next chapter we look outside the field of education and training to the financial services sector to evaluate the case for regulation.

Chapter 7 – The Financial Services Authority

The aim of this chapter is to look beyond the world of education and training to develop an appreciation of the work of another regulator in order to gain a new perspective on regulation. For this purpose I have chosen the Financial Services Authority (FSA) which has been established to regulate financial products and services - ostensibly a very different field of endeavour. Like QCA, the FSA is a new organisation; the issues raised by its establishment are topical and important; and it is a body formed from a merger of previously existing regulators. Although I intend to examine the FSA and discuss some of the intellectual justifications made for its establishment my purpose is not to carry out an evaluation of the FSA itself. Rather, using the theoretical model of regulation developed earlier, an examination of the FSA will assist in throwing light on the approach to regulation in the financial sector and provide a comparison between FSA and QCA. In so doing it will help, especially, to shed light on how one might move from the theoretical question of whether and how regulation might be justified with reference to some or all of the five regulatory objectives to the practical question of whether and how regulation actually is justified, and in what respects. The chapter reviews in detail the arguments made in support of regulation of financial services and markets both in the debate on the Bill in the House of Lords and in speeches and documents published by FSA. During the debate on the Financial Services and Markets Bill members of the legislature recognised that regulation had to have a clear justification and clear parameters possibly more clearly than so than in the case of the Education Bill in 1997 that led to the establishment of QCA.

The establishment of the Financial Services Authority

The Financial Services and Markets Bill (FSMB) was published in draft form for consultation in June 1999 and was introduced in the House of Lords on 10 February 2000. The legislation proposed the creation of a new organisation - the Financial Services Authority (FSA) - to regulate financial services and markets. The financial services subject to the new regulatory powers employed by the FSA include pensions, life assurance, savings schemes, insider dealing, money laundering and 'even interest free credit schemes offered by double glazing salesmen' (Financial Times, 2001) involving 800 larger businesses directly and 750 indirectly and dealing with 34,000 predominantly

small businesses in total, and 13,000 mutual organisations (Better Regulation Task Force, 1998). The intention was to bring together nine existing regulatory mechanisms, including the Securities and Investments Board (SIB) from which the FSA was first developed, and merge them and their functions into the new Authority. The scope of this single organisation, now the Act has passed into law, is extensive and covers a wide range of responsibilities inherited from the previous bodies. These bodies include the Building Societies Commission, the Friendly Societies Commission, the Investment Management Regulatory Organisation (IMRO), the Personal Investment Authority (PIA), the Registrar of Friendly Societies and the Securities and Futures Authority. Added to these responsibilities, the FSA is taking on responsibility for banking supervision from the Bank of England and insurance legislation from Her Majesty's Treasury. Moreover, additional powers have been handed to the FSA and include, amongst other new responsibilities, the regulation of professional firms carrying out investment business, a new authorisation and disclosure scheme for mortgage lenders and the United Kingdom listing authority taking over from the London Stock Exchange. On 1 December 2001 the Financial Services Authority became one of the most powerful regulatory bodies in the world.

The FSA appears to be taking its role very seriously as far as consultation is concerned, with some twenty-one documents published by the time the Joint Committee on Financial Services and Markets had published its report in March 1999. However, an issue picked up on in the early consideration of the Bill was that of the likely reliance by the FSA on secondary legislation, rules or other guidance not referred to specifically in the legislation. The House of Lords Delegated Powers and Deregulation Committee prepared a memorandum for the Joint Committee to address the issue of the relative sparseness of information in the Bill itself as to how the FSA would actually go about its work on a day to day basis. As the Joint Committee report noted at the time:

A further problem relates to the skeleton nature of the draft Bill - many of the ultimate provisions will depend on the content of the delegated legislation, some of which has not yet been drafted. We accept this general approach, which balances the certainty of a statutory framework against the flexibility needed to regulate a fast-moving industry (Joint Committee on Financial Services and Markets, 1999).

To some extent, as we have already seen with QCA and LSC, this reliance on secondary legislation, administrative rules or guidance is typical of how a regulator has to work.

The objectives of the Financial Services Authority

If we look at the possible aims of regulation identified in the theoretical model of regulation we discussed earlier we can evaluate where the regulatory objectives of the FSA overlap or diverge. The model included the requirements to:

- protect;
- secure quality of standards and service;
- inform;
- secure efficiency and value for the expenditure of public money; and
- organise, including planning, managing and prioritising.

The purposes of the Financial Services Authority are set out in the Act in terms of four regulatory objectives, which are to:

- maintain confidence in the UK financial system;
- promote public understanding of the financial system;
- secure the appropriate degree of protection for consumers; and
- reduce the scope for financial crime.

Importantly, these four objectives are subject to certain considerations which the Act makes explicit such as:

the principle that a burden or restriction which is imposed on a person, or the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction (Financial Services and Markets Act, 2000).

Proportionality is a key issue for the FSA and the plans laid out in its key publications indicate that it is not expecting to attempt to impose a ‘zero failure’ regime with the attendant penalties that would carry, but rather to encourage an approach based on risk assessment.

Looking at the objectives set out in the legislation, the FSA’s first task is to secure and maintain confidence in financial markets in order to prevent any possible threats to savings and investments. Secondly, the FSA intends to ensure such protection by direct regulation of investment providers. Thirdly, the FSA plans to tackle the issue of asymmetric information, requiring providers to publish a range of information on

products and services to allow the consumer to make an informed and therefore safer choice of investment. The direct regulation of providers therefore is supported by improving general financial literacy on the part of the public and ensuring that information and advice is made available to consumers. The aims of the FSA align with the first three regulatory aims set out in our theoretical model.

- ensuring confidence in the financial markets to minimise systemic risk;
- regulating providers of financial services to ensure minimum quality and standards;
- ensuring information is available to an increasingly financially literate consumer.

However, the remaining two aims of securing efficiency/value for money and organising/planning remain outside the remit of the FSA as it regulates a free and highly competitive market in financial products and services. It is worth noting that there exists a particular objective for the FSA in reducing the scope for financial crime including money laundering, fraud or dishonesty and criminal market misconduct such as insider dealing. Steps to reduce criminal activity are not something we examine in this study. However, one might wish to consider in further research whether measures to reduce the risk of unscrupulous individuals exploiting the system for private financial advantage would be useful even in the qualifications system.

In a speech at the Henry Thornton Lecture which he delivered on 4 November 1998 at the City University Business School, Howard Davies, the then newly designated Chairman of the Financial Services Authority, set out the case for regulation of financial services and markets and the need to identify the expected benefits of such regulation. Davies criticises regulation where it ‘imposes a burden without delivering any improvement on the free-market outcome’ and argued for the development of:

a clearer view of the general case for regulation of financial markets, and an intellectual approach to assessing whether that case is met in relation to a particular set of institutions, or set of products. We also need a way of explaining that intellectual approach to the key constituencies, notably in Parliament (Davies, 1998).

Davies set out a rationale for the regulation of financial services in his speech, identifying two major issues that the new regulator will need to address: systemic risk and asymmetric information.

Systemic risk

As we have seen, the recognition of the potential for such risk is addressed by the statutory objective of the FSA to ensure public confidence in the stability of the financial system. In Davies' view there is:

a public policy case for the prudential supervision of institutions, especially banks with their important maturity transformation role, to ensure they are soundly capitalised and correspondingly less vulnerable to "runs" and other market shocks (Davies, 1998).

However, he also argued that there can be no perfect protection and that any zero-failure regime 'would be excessively burdensome' both for the regulator and for those who are regulated. He felt that unrealistic expectations on the part of either Parliament or consumers should not be encouraged. In his in a speech on *Financial Regulation and the Law* to the Chancery Bar Association in their spring lecture on 3 March 1999 Howard Davies had already set out the way that he intended the FSA to act when he made it clear that enforcement and supervision had to be put into context:

By far the greater part of the efforts of the regulatory authorities is devoted to prophylactic supervision - work designed to ensure that financial institutions have the systems and processes in place to minimise the risks of any contravention of regulatory requirements (FSA, 1999).

Asymmetric information

This issue is linked to the second and third statutory objectives set out in the Bill for the FSA to protect consumers and to promote the public understanding of the benefits and risks of financial products. Davies underlined the importance of these objectives for the Authority in his speech at the launch of the FSA on 28 October 1997:

This is what many would rightly regard as the red meat of our task. Setting the balance between protecting consumers, and requiring a degree of caveat emptor, will not be easy. We hope to ensure, through the architecture of the FSA, that we strike that balance appropriately in different markets (FSA, 1997).

Davies acknowledged that a major purchase of a long term investment and savings product was likely to have a direct impact on the life chances of the person buying it - whether the product was a savings plan, a pension, a life assurance policy or a mortgage. The arguments put forward by the FSA for regulation include the right of the consumer to depend on both the soundness of the provider and, as far as is possible, the likely outcome of their investment. However, Davies makes it clear that the FSA wanted a situation where the consumer understands the implication of the contract he or she agrees with the provider, including the level of service in relation to the charges made; and recognises the

nature and performance of the product being bought. He attributes the challenge that the consumer faces in choosing an appropriate financial product as being due to the complexity of the product and to the difficulty in working out reliable indicators of good value.

Davies makes a comparison between the purchase of a financial product such as a personal pension with that of a recognised consumer durable - in this case, a washing machine:

There is little likelihood of repeat purchase in the case of a personal pension, if a guarantee is available it is typically low value, it is not easy to understand how it works. It is not easy to understand what a personal pension delivers, there is no information on reliability, the price is opaque and the product cannot be tested. But the opposite is true of a washing machine, at least in principle (FSA, 1998b).

The comparison between the two examples given by Davies deserves some analysis. One might argue that the consumer would not normally expect to be interested in the design, internal workings and operation of either the pension or the washing machine. For the most part the consumer would depend on the supplier of the product providing some sort of reassurance that the product is well designed and therefore, as a result, will deliver the outcomes desired. However, a product such as a washing machine usually functions over a much shorter period of time than a pension or a mortgage and the impact of non-performance is likely to be less great. In addition, there is almost always a warranty or guarantee from either the manufacturer or supplier as required by consumer legislation in the general retail sector. Indeed, consumers are generally encouraged to 'know their rights' when it comes to buying products in the high street.

Expenditure on a pension or other investment plan can be much more significant, particularly long-term, and the failure of a money purchase pension or an endowment mortgage, for example, can have a significant impact on the consumer. To make the situation worse there is almost always very little comeback against the provider in the absence of any guarantee of performance, and even then it can be a battle to prove that the product or its sale have been faulty. Consumers can be much less aware of their position when it comes to pensions, life assurance policies and other financial products. In situations, therefore, where there is no warranty for the return on an investment and where a consumer is likely to be less aware of their rights the regulator has two important functions, those of direct control of the provider or product and the education of the

consumer so that he or she can make better informed decisions about their purchases of financial products. This issue was dealt with at the FSA launch conference:

[the area of public understanding] is very closely linked to the issue of consumer responsibility. Whilst it is intellectually attractive to say that individual consumers must carry some responsibility for their own financial decisions, and that perfect protection against risk would be associated with highly imperfect and sclerotic markets, there is a need for continued efforts to raise the understanding among consumers of the nature of the financial products offered to them (FSA, 1997).

In this way, the FSA employs its regulatory tools to ensure the timely supervision of a firm or bank – in terms of the regulatory aim of providing for protection of the consumer - and to promote developments in respect of minimum requirements for charges, access and transparency for some of the more common financial products such as Individual Savings Accounts (ISAs). However, it also acknowledges the issue of ‘asymmetric information’ and the necessity of educating consumers of financial products and services to decrease the possibility of poor purchasing decisions - education for financial capability - and the need for it functions directly as a source of consumer information and advice.

Concerns about the FSA

The centralisation of regulatory power into one organisation is a phenomenon seen in other sectors, especially education, and one that some people feared might lead to either over-regulation or even abuse of power by the regulator. Nevertheless there did seem to be general cross-party support, as expressed by Lord Saatchi when he opened the debate for the opposition in the House of Lords, for the move to establish ‘an overarching financial services authority’. Prominent in the responses to the draft Bill was the issue of accountability and whether the new FSA would become too powerful and would work within a regulatory regime which did not include suitable checks and balances:

We do not underestimate the ability or intensity with which Parliamentary Committees can grill regulators from time to time. But in the last resort, a determined FSA Board could, in bald terms, legislate, tax and fine without any remedy or let by Parliament or Government, short of a new Act of Parliament or contrived sacking of the whole Board (Better Regulation Task Force, 1998).

Some of the concerns expressed in the debate relate to the question of the role of the head of the new organisation combining as it does the functions of Chairman and Chief Executive. In the opening debate in the House of Lords on 21 February 1999 this issue was raised several times by a number of peers. Lord Burns, chair of the Joint Committee on Financial Services and Markets that scrutinised the draft Bill, expressed his ‘longer term preference’ for the post of Executive Chairman (the combined Chair and Chief

Executive functions combined) to be split into two posts filled by different people - those of non-executive Chairman and Chief Executive in order to 'limit the power of and focus on a single individual' (HL Deb (1999-2000) 610 Col. 30). On balance, however, the feeling in the House of Lords seemed to be to leave the role unchanged whilst indicating that some review of the situation might be necessary in the longer term. Lord Burns indicated as much in the debate when he indicated that his understanding of the Bill was that it 'provides flexibility in the governance of the FSA and allows for the structure to be changed as issues develop'.

Certainly the 'architecture of accountability', a phrase used in the introduction to the FSA Plan & Budget 2000/01, is something that was considered carefully from a number of perspectives. During the passage of the Bill through Parliament it was agreed that a legal basis should be established for the Financial Services Consumer Panel and a Practitioner Forum - the intention is for these panels to be independent from the Authority, although their costs are to be met from fees raised by FSA levies:

The 2000/01 budget for the Consumer Panel is £0.6m (1999/2000 budget - £0.5m) and for the Practitioner Forum is £0.2m (1999/2000 budget - nil). The costs of the Consumer Panel include the costs of FSA staff who support the Panel's work, the costs of the Panel's independent research and the fees and expenses of the Panel members. The costs of the Practitioner Forum are to meet the costs of an independent survey of the industry's views of the FSA and the publication of an annual report (FSA, 2000a).

Other measures to ensure accountability include new arrangements for the independent investigation of complaints against the FSA and a committee of non-executive directors ('NedCo') to keep under review the activities of the FSA and a mechanism whereby the Treasury may commission an independent person to carry out a review of the 'economy, efficiency and effectiveness' with which the Authority has carried out its role and that the reviewer will have enforceable powers in relation to access to documents and records.

Approach of the FSA to regulation

In January 2000, the FSA published its key consultation document - *A New Regulator for a New Millennium*. A press release from the FSA on 21 January 2000 describes the new regulatory approach as being 'proactive and preventative', as recognising the limits of regulation and relying on the key responsibilities of firms' own management and of consumers themselves:

We will operate a transparent new framework for identifying and addressing the most important risks to firms, markets and consumers - and we will identify each year a number of key regulatory themes for priority attention by managers and regulators. There will be less routine monitoring, particularly of small, low-risk firms. We aim to create an environment which encourages firms to manage their own risks better and thereby reduce the burden of regulation on themselves (FSA, 2000b).

The new approach is given in more detail in the Plan & Budget 2000/2001 (FSA, 2000). This sets out an impressive array of regulatory tools. A number of activities are designed to underpin the requirements for the FSA to maintain confidence and to find ways in which to strengthen consumer protection. These activities include, amongst other things, corporate authorisation, approval of individuals (some 175,000 are estimated), industry training, supervision of firms and markets (including the development of a single model of risk to apply across all authorised firms) and enforcement. In connection with the need to promote public understanding of the risk and benefits of financial products, and to encourage consumers to become more aware of their own responsibilities, the FSA 'toolkit' includes plans for consumer education (including education for financial capability), adult learning programmes and consumer support provided through publications, a website, campaigns, advisory services, research, the provision of comparative information, the setting up of the Financial Ombudsman Service and the operation of a financial services compensation scheme.

These two documents show how the new regulator intends to carry out its statutory responsibilities to link those statutory responsibilities explicitly to the principles of good regulation. The FSA accepts that 'zero failure' is not possible to achieve in terms of market failure and sets out its role as being to minimise any such failures. The principle of proportionality appears to be followed in the way FSA plans to act. The Better Regulation Task Force describes how its definition of proportionality might be achieved - 'the impact on all of those affected by the regulation should be clearly identified, establishing the right balance between risk and cost; without unnecessary demands being put on those regulated' (Better Regulation Task Force, 1999). Echoing this principle, the FSA argues that:

a [zero failure] regime would be excessively burdensome for regulated firms and would not accord with the statutory objectives and principles. It would be likely to damage the economy as a whole and would be uneconomic from a cost-benefit point of view; it would stifle innovation and competition; and it would be inconsistent with the respective responsibilities of firms' management and of consumers for their own actions (FSA, 2000b, p.7).

The FSA also sets out its strategy for improving general financial literacy and the quality of information and advice available to customers recognising that, whilst consumers generally have to take responsibility for their decisions, some groups of vulnerable and inexperienced consumers may need special targeting. In the introduction to the FSA Plan & Budget 2000/2001 the focus of the new Authority is ‘implementing a risk-based approach to regulation, focusing attention on the key threats to the achievement of our statutory objectives’.

The progress of the FSA

In ‘Building the New Regulator – Progress Report 1’ (FSA, 2000c) the Authority sets out the steps it is taking to establish fully the regulatory framework for which it is responsible before it assumes its full powers as the single regulator for financial services. The document reaffirms the principal aims of regulation as set out in the Act and in its own earlier publications but indicates the likely constraints on its actions. In particular, it reminds us of the need for it to act proportionately, for it to recognise that the organisations providing financial services have an obligation to monitor their own management and, above all, for the FSA to use its own resources efficiently and economically through the use of prioritisation and risk assessment. The balanced approach taken by the FSA depends on making a sensible evaluation of the risk involved in a particular product or in a particular provider and then choosing appropriate regulatory tools to address both consumer-oriented and industry wide activities and firm- and exchange-specific activities. This risk-based approach to the regulation of financial business changes the emphasis in the regulation of financial services in comparison to the activities of the previous separate regulatory mechanisms. First, the risk-based approach is meant to integrate and simplify these different approaches. Second, the publication of a risk-based model is intended to make the job of prioritising the FSA’s goals more transparent. And, third the approach is intended to direct the regulatory activities of the FSA to targets where the most benefit can be gained rather than subjecting all providers and all products to a blanket scrutiny:

‘A new regulator for a new millennium’ - describes how we propose to take the statutory objectives and the principles of good regulation in the Bill, and to translate them into regulatory activities. It also outlines a new and transparent operating framework within which the Board will set priorities, and which will allow consumers and practitioners to influence the allocation of resources and the intensity of regulatory effort (FSA, 2000b).

The risk assessment model proposed by the FSA is described in its policy document *A New Regulator for a New Millennium*, which sets out the Authority's operating framework. The framework for risk assessment and prioritisation - both for a firm-specific risk and for a product-related industry-wide risk - is described in terms of a process to follow and a set of criteria for the measurement of both impact and probability. The framework is described as 'the bridge linking the statutory objectives and our regulatory activities'. It includes the stages of risk identification, risk assessment and prioritisation (by using the impact and probability model), the choice of regulatory response through a validation panel and peer review, the allocation of resources and the use of appropriate tools and an evaluation of the outcomes of the regulatory activity.

This move from blanket regulation of the kind experienced in other sectors is seen as ground breaking by the FSA:

A number of possible responses to a given risk may be available. The FSA will use the principles of good regulation to help evaluate which is the most appropriate. Over time, performance evaluation will help build understanding of the most effective way to combine different regulatory tools to address specific roles. Increasing emphasis will be given to consumer-oriented or industry wide activities wherever possible; this will mark a significant shift away from the current practice, which focuses mainly on firm-specific activities (FSA, 2000b).

The risk assessment approach to regulation as described here is linked to the use of individual regulatory tools targeted in a focused way at specifically defined problems. For example, the FSA describes the introduction of a new product to be marketed to the general public and indicates the demand for an emphasis on consumer-oriented and industry-wide activities as opposed to firm-specific activities.

Summary

In this chapter we have examined the establishment of the FSA and reviewed the case for regulation with the aid of our theoretical model. There is a strong case for regulation for controlling systemic risk and stimulating the provision of information about financial products either by pressure on providers or by encouraging consumers to become financially literate. We noted the concerns expressed during the debates in Parliament on the legislation that established the new Authority in particular the anxiety over the degree of power that the new body would assume and the potential cost of regulation. However, the FSA has acknowledged the market-driven sensitivities of the financial sector by taking a proportionate approach to regulation through the use of risk assessment and by leaving

other matters such as value for money and planning to the market itself. In this way they can argue that the cure is likely to be less problematic than any likely cost. Bearing in mind the views of those subject to QCA's regulatory regime it would seem likely that they would support the kind of approach taken by the FSA.

Chapter 8 - Conclusions

I began this thesis by asking whether a coherent and sustained case can be made for the regulation of qualifications. Drawing on a study of general regulatory literature I set out a new conceptualisation of a theoretical model for regulation with five key ‘public interest’ objectives covering both social and economic regulation. The model was used to interrogate the case for regulation, examine the current regulatory arrangements and gauge the views of key stakeholders in the qualifications system. From the research I conclude that there is a clear case for the regulation of qualifications to address the issue of systemic risk and the issue of quality and standards. As far as the two issues of information asymmetry and value for money are concerned there is a justification for regulation in principle although in practice the strength of the case does not appear to be compelling. A case is not made for the central planning of the qualifications system and it is not clear what such an objective would achieve or what value it would add.

A recurring theme that sprang from the research was the argument that it was incumbent on the regulator to justify the need for regulation beyond reasonable doubt and that the regulator ought to refrain from regulating where regulation was not necessary because the market could address successfully any deficiency. The lack of intellectual justification for the theory and practice of regulation of qualifications is compared to the debate that took place prior to the establishment of the FSA. Lord Bagri commented in a debate in the House of Lords on the establishment of the legislation that set up the Financial Services Authority:

the onus must always be on the regulator to justify the specific need for and the cost of regulation in terms of the benefits delivered. We must do all we can to overcome the regulatory moral hazard problem that the perceived risk to regulators is under regulation. Over-regulation has little downside for the regulator although it has substantial and negative effects both on the regulated industry and its customers (HL Debate (1999-2000) 610, Col 58).

The case for regulation

Looking at each of the five major objectives for regulation identified in Chapter 3 I can take each in turn to examine whether there is a justification for the regulation of qualifications. The evidence can now help us decide, for each of the five objectives in turn, and for the model overall, whether a clear case can be made in principle and in practice for regulation. For each of the five objectives in the model of regulation we

applied the following tests:

- Is there in principle, a risk, deficiency or market failure present that cannot be addressed satisfactorily other than by intervention from outside the market by the state?
- Is there a sound theoretical basis provided by the literature for the particular objective in question that would make us confident in proceeding?
- Can we see other examples of where the particular regulatory objective has been addressed in other regulatory regimes?
- Can those who set up the regulatory regime make a convincing case for regulation?
- Do those who are subject to regulation support the objective in question and if they do not are they protecting their own interests or do they have wider concerns?

The argument is made that the issue of **systemic risk** is an important justification for regulation because of the potential damage to public confidence and trust in the qualifications system caused by the failure of an awarding body (or bodies) having an effect upon the whole system. If it is likely that such an event might bring the system as a whole into disrepute then the risk is recognised as being a reason for regulation by both Mayer (1995) and Mishkin (2000). As we have noted, the control of systemic risk is one of the primary goals of the Financial Services Authority (FSA) in its endeavours to maintain public confidence in the probity and financial stability of providers of financial services. Those responsible for the regulation of qualifications put forward a clear argument for why public confidence in the system needs to be maintained and the majority of awarding body respondents agreed that steps to minimise systemic risk should be a matter for the regulator. Throughout the thesis, the most emphatic arguments were made in support of the need to protect public confidence by ensuring the integrity of the qualifications system. One respondent saw the ‘health & safety’ of the qualifications system as being of crucial importance to the rights of the individual whose achievements might be damaged if the system as a whole fell into disrepute. Other departmental officials viewed the control of systemic risk as being essential for the protection of the public purse and the key gain in maintaining the smooth running of the system.

The reduction of risk to **quality and standards** is an important feature of regulation. The

literature on regulation identifies quality as a primary issue usually in connection with the protection of the safety and the rights of the consumer. The issue of quality and standards is addressed by both OFSTED and ALI in their inspection activities. The reports they publish on the outcomes of their research provide critical evidence on the way quality and standards are achieved in the provision of education and training. Their track record in making their reports publicly available is strong. Cogent arguments in support of this regulatory objective were made by those responsible for regulation and the objective was supported by the majority of awarding body respondents.

The need to provide **clear and accessible information** to the user of the system is a relevant consideration. The risk to the ‘consumers’ is that they have to buy a service or product blind. The more significant the purchase – an endowment pension as opposed to a motor car, for example – the more important it is that sufficient information is available. In the case of a qualification, an individual can be prepared to invest significant effort, underwritten by both personal or subsidised financial investment, and intervention to ensure information is available to assist intelligent decision making is a key consideration. Several commentators indicated that regulation could address the problem of asymmetric information and could make up for market failure. The issue of ‘asymmetric information’ is addressed by the FSA. It recognises both the necessity of acting as a central source of consumer information and advice and of educating consumers to become more aware and ‘intelligent’ when they purchase financial services. The FSA has developed comparative data on the costs and benefits of a wide range of financial products to enable informed choices to be made in the market for financial services. In the case of qualifications, details of accredited qualifications are currently available from awarding bodies, the LSC and the DfES but not from QCA. All departmental and regulatory body staff felt that provision of information to support what might be termed ‘consumer choice’ was an important objective for regulation but the majority of the awarding body respondents did not feel it was necessary for the regulator to intervene. In principle, therefore, the problem of information asymmetry is a relevant objective for regulation in order to ensure that consumers have an informed choice. However, information is available from a range of sources and one has to ask, in the circumstances, whether the arguments provide sufficient justification for going one step further and regulating for a central source of comparative data in order to inform the users of the system.

Value for money is a critical issue for regulation and the potential for driving down costs and for ensuring fee levels remain reasonable must be an important consideration. The risk without regulation is that the need to secure value for money and the greatest outputs relative to the investment made in the public service is ignored by the industry as it has only the impetus to maximise the money it makes from the sale of its products and services. The wider programme of public sector reform identifies a concern that bodies fail to perform as effectively as possible in relation to the public investment made in them. The application of public management theory to the question of efficiency is a key issue in some regulatory theory (Hood et al, 1999). The views of respondents on the issue of value for money/ efficiency were mixed. There was some debate about how and whether it would be possible to achieve this objective in a ‘quasi-market’ funded mainly by the taxpayer. One official put forward the view that if market failure resulted in poor value for money in the qualifications system then the adoption of a publicly promoted CAT standard – a set of easily understood minimum requirements - for qualifications might address that failure. Although there were mixed views from those involved in the design and application of regulation, none of the industry respondents supported this as a legitimate role for the regulator. There were some strong views in government that as the state funded the system by paying for courses and examination fees and that as costs were rising, some kind of regulatory control has to be contemplated. However, whether the industry is attempting to protect its own financial interests rather than giving priority to the users of the system and provide high quality is a key issue which it would take further research to determine. On balance there is not a strong justification for regulation in terms of this objective but continuing significant investment in the system means that ways in which value for money can be achieved will remain a key issue.

The research shows that **planning** is a contentious issue. Baldwin suggests that coordination by a central agency can be a useful and necessary regulatory mechanism although he is clear that such coordination should be intended to assist a market to function effectively rather than put constraints on the operation of the market:

It is noteworthy that this rationale for regulation is based more on the desire to enable effective action to take place than on the need to prohibit undesirable behaviour (Baldwin & Cave, 1999, p.15).

Those responsible for regulation policy did not make a convincing case for action in regard of this objective and none of the awarding body respondents felt that this was a

legitimate justification for regulation. Planning and coordinating the qualifications system was strongly supported by departmental officials most concerned with the success of government policy initiatives and these officials found it difficult to understand how planning could not be an objective for the regulator to meet. Some interview respondents argued that the concept of a national framework to organise qualifications would be useful but this would be at the ‘soft’ end of regulation. One departmental official argued that it would be preferable if a small number of bodies were allocated ‘bandwidth’ in the system in the same way as licenses are granted for mobile telephone operators and this would be at the ‘hard’ end of regulation. On balance though, there is limited justification for planning and coordination of the qualifications system, although there might be gains if such activity were to be carried out in a cooperative way incorporating consultation with and involvement by key stakeholders.

Implications for regulation

I have argued that one can make a coherent case for not only the theoretical need but the practical desirability of the regulation of qualifications on at least two grounds – control of systemic risk and ensuring quality and standards. The case for regulation on other grounds is less strong or not easily argued. Given these findings, it is possible to develop a brief evaluation of the general implications of these findings for the future direction of regulatory policy in England.

As seen in the earlier discussions in the thesis, the awarding body respondents argued that the balance of costs and benefits of regulation, in their view, was a major issue. They felt strongly that the costs of regulation outweighed the potential benefits of regulation. The awarding body staff argued that regulation might be applied in less prescriptive and detailed ways, providing the stability of the awarding body arrangements could continue to be subject to overview. Their objections to regulation were based on the belief that regulation added little value to the current functioning of the qualifications system and that regulation currently was not proportionate to the deficiencies in the system which might have led to the calls for regulation in the first place. In other words, at present, the cure was felt to be worse than the disease and the costs of regulation outweighed any potential benefits. However, there is no published work on a cost benefit analysis of the regulation of qualifications and this would be a logical next step for research on this topic.

Whatever regulatory objectives are in place, one key question for the future must be that of how an appropriate balance of regulation is determined. In order to function effectively, a regulatory regime must strike such a balance between achieving the support of partners affected by regulation and the effective pursuit of regulatory objectives. Should one always aim for zero risk in a regulated environment without the support of the regulated industry or, as in the case of the FSA, should one design regulation to reduce risks to an acceptable level taking into account the burden and cost of regulation? Lord Haskins, chairman of the Better Regulation Taskforce, set out his views in an article in the Financial Times where he argued that ‘the Task Force’s main objective is to improve the quality and quantity of state regulation’ (FT, 2000). In the article he argues in a similar vein to Howard Davies on the undesirability of ‘zero risk option’:

Rather than embark on the impossible task of reducing all risk (whether it be in transport or in food supply) should we not concentrate on providing our well-educated citizens with the necessary information to enable them to make their own risk assessments? It is foolish to give unpasteurised milk to the very young and the very old; but for most people such a product, supplied by a reputable producer, is an acceptable low risk option’ (FT, 2000).

As far as the regulation of qualifications is concerned steps will have to be taken to decide on the balance between the regulatory overkill likely if one aims for the ‘zero risk option’ and the danger of regulatory failure if a lighter touch does not instil public confidence. The following points were made by the awarding body representatives during the interviews. These were that regulation should not extend beyond the two objectives of minimising systemic risk and protecting quality and standards and:

- have a ‘lighter’ touch;
- be directed at an organisational level, rather than at individual qualifications;
- adopt different regimes for different groups of qualifications dependent on the purpose of those qualifications.

Normally, such calls for less or self-regulation are viewed with caution. The danger of regulatory capture is described by Francis:

The regulated industry has self-protection as its core concern. It commands the information and resources to articulate and defend its interests. Regulators simply lack an independent basis for judgement and gradually become the allies of the industry. Regulators come to incorporate the industry’s judgment that regulation is about maintaining market stability for existing firms (Francis, 1993, p. 27).

It is a major challenge for a regulator to remain independent and authoritative and, at the same time, adopt a balanced approach to the industry it seeks to regulate.

A potential challenge for regulation is that it may become more difficult to regulate successfully if major international and commercial organisations take an interest in the operation of a qualifications system which has until now been dominated by small and medium sized bodies often established on a charitable or voluntary basis. The dangers of the effects of economic globalisation impinging further on national systems of education and training are noted by Green:

Governments no longer have the power to determine their national systems – as the national state becomes a marginal force in the new world order so education becomes an individualized consumer good delivered in a global market and accessed through satellite and cable links (Green, 1997, p. 3).

The entry into the qualifications market of large commercial companies responsible only to their worldwide shareholders and a board of directors in New York, for example, must be a distinct possibility. A number of these companies are already major forces in the provision and operation of testing and assessment systems, particularly in the United States. As we have seen the current basis for the regulation of qualifications in England does not have strong foundations and is not well conceived and may not withstand the dual challenges of commercialism and globalisation. Taken together, the issues of the balance of regulation and the impact of globalisation will be key drivers on the future direction of regulatory policy. They make it important that a consideration of why and how qualifications are regulated should be high on the national agenda.

The thesis began by referring to the work of the Board of Education whose 1911 report recommended

the establishment of an Examinations Council . . . to bring order to the present confusion. It would replace a multiplicity of standards by unity of control. It would set up, in lieu of the present bewildering variety of examinations and certificates, a clear and progressive series of tests and awards, under the supervision of a body which would be authorised by the State, representative of educational experience and associated with (though not administratively controlled by) the Board of Education (Board of Education, 1911, p. 133).

It is striking that, over 90 years later, the same issues of lack of clarity, uncertainty over standards and the question of the degree of control by the state remain major concerns. The high stakes nature of qualifications, their continuing role as a dominant feature of education and training and their increasing cost all make the regulation of qualifications a matter of urgent public debate to which I hope this work can contribute.

Annex 1 - Purpose of Regulation

What do you feel are the main general issues in regulation? The following key purposes in regulation have been identified. Which do you feel are the most important and why?

- To protect
- To secure quality and standards
- To inform
- To secure efficiency and value for money
- To plan and organise

Would you agree that we can apply each of these purposes to the regulation of qualifications?

QUALIFICATIONS

Please look at this definition of a qualification. Do you agree with the definition and, if not, what changes would you suggest?

A qualification is evidence of formal recognition of achievement based on:-

- Demonstration of attainment of specified standards -
- Following an appropriate programme of learning -
- Including defined assessment requirements -
- Awarded by the issue of a certificate by an authorised body -
- Subject to monitoring by the authorised body and, if required, to public reporting.

REGULATION OF QUALIFICATIONS

From the evidence you have seen, do you believe that benefits of regulation of qualifications outweigh the costs of regulation or not? Please explain.

In your view are there alternative approaches to the regulation of qualifications and, if so, could you describe them?

Annex 2 – Rationalisation of qualifications

Rationalisation by Qualification Category, Type and Level

Category & type of qualification	Baseline year (as at 31 December 1999 unless otherwise stated)			Current position (as at 31 May 2001)		
	Titles	Qualifications (titles x awarding bodies)	Specifications (titles x awarding bodies x variants)	Titles	Qualifications (titles x awarding bodies)	Specifications (titles x awarding bodies x variants)

Occupational

NVQ level 1	78	158	158	71	131	131
NVQ level 2	305	543	543	286	466	466
NVQ level 3	300	575	575	279	498	498
NVQ level 4	128	276	276	114	246	246
NVQ level 5	11	45	45	12	10	10
NVQ TOTAL*	822	1597	1597	762	1381	1381

General

GCE A/AS level	99	275	477	78	175	186
GCSE	120	362	457	75	180	216
Other (e.g. Graded music)	28 (2000)	50	not known	11	23	542**

Vocationally-related

Vocational A level	14	42	42	14	42	42
GNVQ (Found. & Intern)	26	78	78	26	78	78
Other (e.g. Childcare)	1743	1743	1743	84	84****	84

Other

Entry Level	⁽¹⁹⁹⁸⁾ 29	76 ⁽¹⁹⁹⁸⁾	75 ⁽¹⁹⁹⁸⁾	55	79	162
Key Skills	12	550	550	12	204****	204

* Some NVQ titles span more than one level

** This work is ongoing.

*** In December 1999, the accreditation of vocationally related qualifications had just begun. The figure in the table therefore originates from the qualifications listed under Schedule 2a at the time. Accreditation continues, and the current round of accreditation is planned for completion in Autumn 2001.

**** The new Key Skills Qualifications were introduced in August 2000.

Annex 3 – the National Qualifications Framework

In accordance with national policy, the regulatory authorities will establish a clear, coherent and inclusive national qualifications framework in which accredited qualifications are grouped according to purpose and level of demand. Qualifications will be considered for accreditation in relation to three broad categories (general, vocation-related/vocational and occupational) and a series of levels of attainment. Qualifications may incorporate the characteristics of more than one category and some may span more or less than one level, provided that the overall purpose and function of each constituent of it is clear. QCA, ACCAC, CCEA, SQA and QAA are working closely together in the interest of coherence to determine the shape of the national qualifications framework at higher levels. General qualifications include GCSE (in which grades G to D are at foundation level and grades C to A* are at intermediate level) and GCE (both AS and A level are at advanced level). Vocational qualifications include GNVQs at foundation, intermediate and advanced levels. Occupational qualifications include NVQs at levels 1 to 5. Other provision which meets the applicable accreditation criteria is admissible to the framework. The framework is represented below as a diagram. Accredited qualifications will normally be listed by category and level. Key skills at appropriate levels can be built into qualifications across the framework and also certificated as free-standing qualifications. The structure and representation the framework will be kept under review (QCA, 1999).

THE NATIONAL QUALIFICATIONS FRAMEWORK			
Categories	General qualifications	Vocation-related / Vocational qualifications	Occupational qualifications
Levels of attainment	<i>attest to attainment in a subject</i>	<i>attest to attainment in a vocational area</i>	<i>attest to attainment of competence in the workplace</i>
Higher level/5	<i>The characteristics of qualifications at higher levels are under discussion</i>		
Higher level/4			
Advanced level/3			
Intermediate level/2			
Foundation level/1			
Entry level	Entry level qualifications can provide a basis for progression to qualifications across the framework at foundation level		

Increasing occupational focus

Bibliography

Legislation

Assize of Bread and Ale 1266.

Statute of Artificiers 1563.

Industrial Training Act 1964.

Education Act 1989 s.253 (New Zealand).

Education Reform Act 1988 (c.40), London: HMSO.

Further and Higher Education Act 1992 (c.13), London: HMSO.

Education (Schools) Act 1992 (c.38), London: HMSO.

Education Act 1993 (c.35), London: HMSO.

Education Act 1997 (c. 44), London: HMSO.

Financial Services and Markets Act 2000 (c.8), London: HMSO.

Learning and Skills Act 2000 (c.21), London: HMSO.

References

- Adams, C. & Turner, D. (2001) 'Blow to Hope as Productivity Gap Widens'. **Financial Times**. 18 October 2001.
- Ainley, P. & Corney, M. (1990) **Training for the Future: the rise and fall of the Manpower Services Commission**. London: Cassell.
- Aldrich, R. (ed) (1996) **Education for the Nation**. London: Cassell.
- Aldrich, R. (2002) **A Century of Education**. London: Routledge Falmer
- Australian National Training Authority (2002) **A Bridge to the future: Australia's National Strategy for Vocational Education and Training 1998 – 2003**. Brisbane: ANTA
- Australian Qualifications Framework Advisory Board (2002) **Australian Qualifications Framework: Implementation Handbook**. Carlton, South Vic: AQFAB
- Baldwin, R. (1995) **Rules and Government**. Oxford: Oxford University Press.
- Baldwin, R. (2000) **Is regulation right?** London: Centre for Analysis of Risk & Regulation.
- Baldwin, R. & Cave, M. (1999) **Understanding Regulation**. Oxford: Oxford University Press.
- Baldwin, R. & McCrudden, C. (1987) **Regulation and Public Law**. London: Weidenfeld and Nicolson.
- Better Regulation Task Force (1997) **Better Regulation Guide**. London: Cabinet Office.
- Better Regulation Task Force (1998) **Response to the draft Financial Services and Markets Bill**. [Internet] Available from <http://www.cabinet-office.gov.uk/regulation/PressNotices/1998/021198.htm> (Accessed 2 November 1998).
- Better Regulation Task Force (1999) **Self-Regulation: interim report** (unpublished).
- Better Regulation Task Force (2000) **Principles of Good Regulation**. London: Cabinet Office.
- Bishop, M., Kay, J. & Mayer, C. (eds) (1995) **The Regulatory Challenge: privatization and regulation**. Oxford: Oxford University Press.

Board of Education (1911) **Report of the Consultative Committee on Examinations in Secondary Schools**. Cd. 6004, London: HMSO.

Breyer, S. (1982) **Regulation and its Reform**. London: Harvard University Press

Broadfoot, P. (1979) **Assessment. Schools and Society**. London: Methuen .

Bush, C. (1993) **From Voluntarism to Regulation - Awarding Bodies in English Education: A case study of City and Guilds**. London: Institute of Education.

Butterworth, G. & Butterworth, S. (1998) **Reforming Education: the New Zealand experience, 1984 – 1996**. Palmerston North, NZ: Dunmore Press.

Cave, M., Dodsworth, R., & Thompson, D. (1995) ‘Regulatory Reform in Higher Education in the UK: incentives for efficiency and product quality’ in Bishop et al **The Regulatory Challenge**. Oxford: Oxford University Press, pp.85-118.

Centre for the Study of Regulated Industries (1998) **Regulation of the Qualifications System for GCSEs, ‘A’ levels and GNVQs**. London: CIPFA.

Clayton, R. & Tomlinson, H. (1993) **Judicial Review: a practical guide**. London: Longman.

Dearden, L. (2000) **The Returns to Academic and Vocational Qualifications in Britain**. London: Centre for the Economics of Education, London School of Economics.

Department of Employment (1986) **Working Together: Education and Training**. Cmnd.9823 London: HMSO.

DETR (Department of Environment Transport and the Regions) (2000) **Land-Use Planning**. [Internet] Available on: <http://www.planning.detr.gov.uk/index.htm> (accessed on 18 April 2001).

DfEE (1986) **Working Together: Education and Training**. Cm. 9823. London: Department for Education and Employment.

DfEE (1996) **Guaranteeing Standards**. London: Department for Education and Employment.

DfEE (1997) **Remit Letter from the Secretary of State for Education to the Chairman of the Curriculum and Qualifications Authority, 13th October 1997**. London: Department for Education and Employment.

- DfEE (1998) **The Learning Age**. London: Department for Education and Employment.
- DfEE (1999) **Learning to Succeed: a new framework for post-16 learning**. (Command. 4392, 1999) London: The Stationery Office.
- DfEE (2000a) **The Learning and Skills Council Prospectus: learning to succeed**. London: Department for Education and Employment.
- DfEE (2000b) **Remit Letter from the Secretary of State for Education and Employment to the Chairman of the Learning and Skills Council, 9 November 2000**. London: Department for Education and Employment.
- Dore, R. (1997) **The Diploma Disease – education, qualification and development**. London: Institute of Education.
- DTI (2000) **A Fair Deal for Consumers: Modernising the Framework for Utility Regulation**. [Internet] London: Department of Trade and Industry. Available from: <http://www.dti.gov.uk/urt/fairdeal/index.htm>.
- Edexcel (2001) **Report into the Regulation of School and Vocational Examinations in England**. London: Edexcel.
- Education and Employment Select Committee (1999) **Access for All? A survey of post-16 participation. Eighth report of the Education and Employment Select Committee**. London: HMSO.
- Farazmand, A. (ed) (1997) **Modern Systems of Government: Exploring the role of bureaucrats and politicians**. London: Sage.
- Fitz, J. & Halpin, D. (1994) 'Ministers and mandarins: educational research in elite settings' in G. Walford (ed) **Researching the Powerful in Education**. London: UCL Press.
- Francis, J. (1993) **The Politics of Regulation: a comparative perspective**. Oxford: Blackwell.
- FSA (1997) Speech by Howard Davies, Chairman. Financial Services Authority Launch Conference, 28 October 1997. [Internet] London: Financial Services Authority. Available on: <http://www.fsa.gov.uk/pubs/speeches/sp02.html> [Accessed on 20 December 2001].

FSA (1998a) **Financial Services Regulation: Enforcing the new regime.** London: Financial Services Authority.

FSA (1998b) **Why Regulate?** Henry Thornton Lecture, 4 November 1998 at City University Business School [Internet] London: Financial Services Authority. Available on: <<http://www.fsa.gov.uk/pubs/speeches/sp19.html>> [Accessed on 30 June 2002].

FSA (1999) **Financial Regulation and the Law.** Speech to the Chancery Bar Association, 3 March 1999. [Internet] London: Financial Services Authority. Available on <<http://www.fsa.gov.uk/pubs/speeches/sp23.html>> [Accessed on 30 June 2002].

FSA (2000a) **Plan and Budget 2000/2001.** London: Financial Services Authority.

FSA (2000b) **A New Regulator for the New Millennium.** London: Financial Services Authority.

FSA (2000c) **Building the New Regulator – Progress report 1.** London: Financial Services Authority.

Gerth, H.H. & Mills, C.W. (eds) (1970) **From Max Weber. Essays in Sociology.** London: Routledge & Kegan Paul.

Goldstein, H. & Lewis, T. (1996) **Assessment: problems, developments and statistical issues.** Chichester: John Wiley.

Gravatt, J. (1996) **Funding Learning or Funding Awarding Bodies? Colleges and the qualifications cartel.** London: Lewisham College.

Green, A. (1997) **Education, globalization and the nation state.** Basingstoke: Macmillan.

Green, A., Wolf, A. & Leney, T. (1999) **Convergence and Divergence in European Education and Training Systems.** London: Institute of Education.

Hancher, L. & Moran, M. (eds) (1989) **Capitalism, Culture and Economic Regulation.** Oxford: Oxford University Press.

Harris, N. (1993) **Law and Education: regulation, consumerism and the education system.** London: Sweet & Maxwell.

Hill, M. (1997) **The Policy Process in the Modern State.** London: Prentice Hall.

HL Deb (1999-2000) 608, col. 877.

HL Deb (1999-2000) 608, col. 878-879.

HL Deb (1999-2000) 608, col. 880.

HL Deb (1999-2000) 608, col. 889.

HL Deb (1999-2000) 610, col. 30.

HL Deb (1999-2000) 610, col. 58.

Hood, C., Scott, C., James, O., Jones, G. & Travers, A. (1999) **Regulation inside Government**. Oxford: Oxford University Press.

Horn, M.J. (1995) **The Political Economy of Public Administration: Institutional choice in the public sector**. Cambridge: Cambridge University Press.

Hughes, O. (1994) **Public Management and Administration: an introduction**. Basingstoke: Macmillan.

Joint Committee on Financial Services and Markets – First Report. (1998-99)
London: HMSO.

Lambert, D. & Lines, D. (2000) **Understanding Assessment: purposes, perception, practice**. London: Routledge Falmer.

LSC (2001) **Strategic Framework to 2004: Corporate plan**. Coventry: Learning and Skills Council.

LSC (2002) **Briefing**. Coventry: Learning and Skills Council.

Mackintosh, J. (2001) 'Financial Police Prepare for a Firmer Hand' **Financial Times**, 6 July 2001.

Maclure, J. (ed) (1986) **Educational Documents: England and Wales 1816 to the present day**. London: Methuen.

Mager, C. & Robinson, P. et al (2001) **The New Learning Market**. London: FEDA.

Mayer, C. (1995) 'The regulation of financial services: lessons from the UK for 1992' in Bishop et al, **The Regulatory Challenge**. Oxford: Oxford University Press, pp. 138 – 159).

McEldowney, J. (1995) 'Law and Regulation: current issues and future directions' in Bishop et al, **The Regulatory Challenge**. Oxford: Oxford University Press, pp.408-422.

- Mishkin, F.S. (2000) 'Securing a safety net against economic free fall'. **Financial Times**, 6 June.
- National Audit Office (1999) **State Audit in the European Union**. London: National Audit Office.
- NCVQ (1987) **The National Council for Vocational Qualifications in England, Wales and Northern Ireland: Its purposes and aims**. London: HMSO.
- NCVQ (1995a) **NVQ Criteria and Guidance**. London: National Council for Vocational Qualifications.
- NCVQ (1995b) **Awarding Bodies Common Accord**. London: National Council for Vocational Qualifications.
- NZQA (2000) **Qualifications Framework**. Auckland, NZ: New Zealand Qualifications Authority.
- NZQA (2002) **Annual Report 2000/2001**. Auckland, NZ: New Zealand Qualifications Authority.
- Office of National Statistics (2002) **Education Statistics**.
- OFSTED and Adult Learning Inspectorate (2001) **Common Inspection Framework for Inspecting Post-16 Education and Training**. London: OFSTED and ALI.
- Ogus, A. (1994) **Regulation: Legal Form and Economic Theory**. Oxford: Oxford University Press.
- Perry, P. (1976) **The Evolution of British Manpower Policy: from the Statute of Artificers 1563 to the Industrial Training Act 1964**. Portsmouth: Grosvenor Press.
- QCA (1999) **GCSE and GCE A/AS Code of Practice**. London: Qualifications and Curriculum Authority.
- QCA (2000) **Arrangements for the Statutory Regulation of External Qualifications in England, Wales and Northern Ireland**. London: Qualifications and Curriculum Authority.
- QCA (2002a) **NVQ Code of Practice**. London: Qualifications and Curriculum Authority.
- QCA, (2002b) **The Regulatory Authorities' Annual Report to Ministers on the Rationalisation of Qualifications**. London: QCA

- Robinson, P. (2001) 'Education and Training as a learning market' in C. Mager & P. Robinson, **The New Learning Market**. London: FEDA, pp.15-26.
- Roderick, G. & Stephens, M. (1985) 'Mechanics' Institutes and the State' in I. Inkster, **The Steam Intellect Societies – essays on culture, education and industry circa 1820 – 1914**. Nottingham: University of Nottingham, pp.60-72.
- Royal Commission on Technical Inspection** (C. 3981, 1884) London: HMSO.
- Russell, B. (1997) 'Ready with his Tons of Bricks'. **Times Education Supplement**, 3 October 1997, [Internet] Available from: <<http://www.tes.co.uk>> [Accessed 16 May 1999].
- Schools Curriculum and Assessment Authority (1997a) **GCSE Mandatory Code of Practice**. London: SCAA.
- Schools Curriculum and Assessment Authority (1997b) **GCE A & AS Code of Practice**. London: SCAA.
- Stevens, I. (1996) **Constitutional and Administrative Law**. London: Pitman.
- Sutherland, G. (2001) Examinations and the Construction of Professional Identity: a case study of England 1800 – 1950. **Assessment in Education: Principles, Policy & Practice**, 8 (1) March, pp. 51 – 64.
- Treasury Solicitor's Department (1987) **The Judge over your Shoulder**. London: Cabinet Office.
- Wilson, J. (1980) **The Politics of Regulation**. New York: Basic Books.
- Wolf, A. (2002) 'Qualifications and Assessment' in R. Aldrich, R. (ed) **A Century of Education**. London: Routledge Falmer, pp.206-227.
- Wringe, C. (1994) 'Markets, Values and Education' in D. Bridges & T. McLaughlin (eds) **Education and the Marketplace**. London: Falmer Press.