

# SKILLS AND POST-16 EDUCATION BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as brought from the House of Lords on 26 October 2021 (Bill 176).

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

## Table of Contents

<b>Subject</b>	<b>Page of these Notes</b>
<b>Overview of the Bill</b>	<b>7</b>
<b>Policy background</b>	<b>10</b>
Skills for Jobs White Paper	11
Review of Post-16 Qualifications at Level 3 and Below in England	13
Review of Post-18 Education and Funding	14
<b>Legal background</b>	<b>15</b>
<b>Territorial extent and application</b>	<b>17</b>
<b>Commentary on provisions of Bill</b>	<b>20</b>
Part 1: Skills and Education for Work	20
Chapter 1: Education and Training for Local Needs	20
Local skills improvement plans	21
Clause 1: Local skills improvement plans	21
Clause 2: Designation of employer representative bodies	22
Clause 3: Removal of Designations	23
Clause 4: Interpretation	23
Further education institutions: duty in relation to local needs	24

Clause 5: Institutions in England within the further education sector: local needs	24
Chapter 2: Technical Education Qualifications, Apprenticeships, etc	25
Clause 6: Functions of the Institute: oversight etc.	26
Technical education qualifications	27
Clause 7: Additional powers to approve technical education qualifications	27
Clause 8: Functions of the Institute: availability of qualifications outside England	32
Clause 9: Technical education qualifications: co-operation between the Institute and Ofqual	32
Clause 10: Application of accreditation requirement in relation to technical education qualifications	33
Clause 11: Information sharing in relation to technical education qualifications	34
Clause 12: Technical education qualifications: minor and consequential amendments	34
Clause 13: Renumbering of provisions relating to technical education qualifications	35
Information about technical education and training	35

Clause 14: Amendments to section 42B of the Education Act 1997	35
Chapter 3: Lifelong Learning	38
Clause 15: Support for lifelong learning	39
Clause 16: Lifelong learning: amendment of the Higher Education and Research Act 2017	43
Clause 17: Universal credit conditionality	44
Clause 18: Lifelong learning: review	44
Part 2: Quality of Provision	45
Initial teacher training for further education	45
Clause 19: Initial teacher training for further education	45
Quality assessments of higher education	46
Clause 20: Office for Students: power to assess the quality of higher education by reference to student outcomes	47
Part 3: Protection for Learners	48
Chapter 1: Regulation of Post-16 Education or Training Providers	48
Funding arrangements with post-16 education or training providers	49
Clause 21: List of relevant providers	50
Clause 22: Prohibitions on entering into funding arrangements with providers	52
Clause 23: Funding arrangements: interpretation	55

Clause 24: Regulations under sections 21 or 22	56
Clause 25: Provision of opportunities for education and skills development	57
Further education in England: intervention	57
Clause 26: Further Education in England: intervention	57
Chapter 2: Education Administration and Administration of Further Education Bodies	60
Clause 27: Further education bodies in education administration: application of other insolvency procedures	61
Clause 28: Further education bodies in education administration: transfer schemes	62
Part 4: Miscellaneous and General	63
Chapter 1: Cheating Services Provided for Post-16 Students at English Institutions	63
Clause 29: Meaning of “relevant service” and other key expressions	64
Clause 30: Offence of providing or arranging a relevant service	68
Clause 31: Offence of advertising a relevant service	70
Clause 32: Offences: bodies corporate and unincorporated associations	70
Clause 33: Interpretation of Chapter	71

Chapter 2: Miscellaneous Provisions	71
16 to 19 Academies: designation as having a religious character	72
Clause 34: 16 to 19 Academy: designation as having a religious character	72
Institutions within the further education sector: procedure for designation	75
Clause 35: Institutions within the further education sector: designation	75
Higher education course fee limits: administration	76
Clause 36: Relevant date for purposes of fee limit for certain higher education courses	76
Chapter 3: General Provisions	77
Clause 37: Extent	77
Clause 38: Commencement	77
Clause 39: Short Title	78
<b>Commencement</b>	<b>79</b>
<b>Financial implications of the Bill</b>	<b>79</b>
<b>Parliamentary approval for financial costs or for charges imposed</b>	<b>81</b>
<b>Compatibility with the European Convention on Human Rights</b>	<b>82</b>
<b>Related documents</b>	<b>83</b>

<b>Annex A - Territorial extent and application in the United Kingdom</b>	<b>85</b>
Subject matter and legislative competence of devolved legislatures	86
<b>Annex B – Glossary</b>	<b>87</b>

## Overview of the Bill

1. The Skills and Post-16 Education Bill (“the Bill”) includes measures that:

- Provide for a statutory underpinning for local skills improvement plans, introducing a power for the Secretary of State for Education to designate employer representative bodies to lead the development of the plans with duties on providers to co-operate in the development of and then have regard to the plans;
- Introduce a duty for all further education corporations, sixth form college corporations and designated institutions to review how well the education or training provided by the institution meets local needs, and assess what action the institution might take to ensure it is best placed to meet local needs;
- Introduce additional functions to enable the Institute for Apprenticeships and Technical Education (“the Institute”) to define and approve new categories of technical qualifications that relate to employer-led standards and occupations in different ways, and to have an oversight role for the technical education offer in each occupational

route, including mechanisms to manage proliferation;

- Ensure that the Institute and the Office of Qualifications and Examinations Regulation (“Ofqual”) maintain a streamlined collaborative system for approval and regulation of technical qualifications;
- Strengthen a requirement on maintained schools, academies and pupil referral units in England to allow a range of education and training providers to access their pupils in order to inform pupils directly about approved technical education qualifications or apprenticeships;
- Introduce specific provision reflecting lifelong learning entitlement policy which aims to make it easier for adults and young people to study more flexibly - allowing them to space out their studies, transfer credits between institutions, and take up more part-time study;
- Enable the Secretary of State for Education to make regulations for the purpose of securing or improving the quality of Further Education (“FE”) initial teacher training;

- Put beyond doubt the Office for Students' ability to assess the quality of higher education providers in England, and make decisions on compliance and registration by reference to minimum requirements for quality;
- Enable the Secretary of State for Education to make regulations to provide for a list of post-16 education or training providers, in particular Independent Training Providers ("ITPs"), to indicate which providers have met conditions that are designed to prevent or mitigate risks associated with the disorderly exit of a provider from the provision of education and training;
- Extend statutory intervention powers applicable to further education corporations, sixth form college corporations and designated institutions under the Further and Higher Education Act 1992. This measure will enable the Secretary of State for Education to intervene where there has been a failure to meet local needs, and to direct structural change where that is required to secure improvement;
- Make it an offence for individuals and

organisations to provide or arrange, in commercial circumstances, contract cheating services for students at post-16 institutions, sixth forms and higher education providers in England, and the advertising by them of those services. This measure will help to safeguard the academic integrity and standards of post-16 and higher education in England and protect students from these cheating services;

- Enable the Secretary of State to designate a 16-19 academy as having a religious character and to make related regulations about the process for designation; and
- Make amendments to clarify and improve the operation of the FE insolvency regime for further education bodies, relating to the use of company voluntary arrangements, transfer schemes and the designation of institutions.

## **Policy background**

2. In addition to the following section, further policy background is included in the clause commentary.

3. The Bill forms the legislative underpinning for

the reforms set out in the Skills for Jobs White Paper and aims to improve the functioning of the skills and post-16 education system and support the introduction of a Lifetime Skills Guarantee. The Bill includes measures to address recommendations made in the Review of Post-18 Education and Funding, build on the aims of the Review of Post-16 Qualifications at Level 3 and below, and support implementation of the Government's reforms to technical education qualifications, such as the introduction of T Levels and higher technical qualifications.

## **Skills for Jobs White Paper**

4. A skills shortage in this country has limited the number of people working in important jobs such as engineering and health and social care. This has held the UK economy back, leaving the country less productive and less competitive compared to some international peers. It has also left people unable to realise their ambitions and fulfil their potential, wherever they live in the country. These problems have been exacerbated by COVID-19, which has hit the economy and disproportionately affected young people.
5. *The Skills for Jobs: Lifelong Skills for Opportunity and Growth* White Paper set out the Government's plan to reform the post-16

skills system and address these challenges. The White Paper set out five objectives:

- i. Putting employers at the heart of post-16 skills
- ii. Providing the advanced technical and higher technical skills the country needs
- iii. A flexible Lifetime Skills Guarantee
- iv. Responsive providers supported by effective accountability and funding
- v. Supporting outstanding teaching

6. The Bill is intended to support these objectives by introducing measures that affect individuals, providers, regulators, businesses and teachers. The range of measures aims to provide flexibility and protection for the learner, a skills system linked to employer-led standards, and high-quality training. The specific measures are detailed in the Bill Overview section of these notes.

7. The Bill is one part of the wider skills reform agenda and the Government is consulting separately on other aspects of the White Paper.

8. Additional measures in the Bill aim to improve the overall functioning of the skills

and post-16 education system. This includes providing improvements associated with the operation of the FE insolvency regime and making specific provision for the Office for Students' methods of assessing quality as part of its regulation of Higher Education (“HE”) providers in England.

## **Review of Post-16 Qualifications at Level 3 and Below in England**

9. In 2019, the Government launched a review of post-16 qualifications at level 3 and below. The review set out an ambition for a coherent technical education system with clear pathways to progress to specific occupations. The Government wants clear, high-quality progression routes to prestigious higher technical education that leads to skilled occupations with good economic outcomes. As part of this, every qualification will be high-quality, forming an effective system that will help students to make good choices. This moves away from the complexities and variable quality within the current system, with over 12,000 qualifications approved for funding for 16 to 19 year olds at entry level to level 3 and over 4,000 approved at level 3 alone.
10. The Government has held two consultations. The first consultation focused on the principles qualifications should adhere to in

order to receive public funding – this consultation closed in June 2019. The second consultation closed in January 2021. It asked for views on which qualifications at level 3, with the exception of GCSEs, A levels and Functional Skills, should be considered for funding approval in England for students aged 16 and over.

11. In July 2021, the Government published a response to the second consultation. This set out the types of qualifications that will be considered for funding in the new level 3 landscape alongside A levels and T Levels.
12. The Government's intention is that the Institute takes a leading role in approving level 3 technical qualifications that meet new quality criteria, are based on employer-led standards, and have evidence of employer demand. These criteria are being developed and will be published in late 2021.

## **Review of Post-18 Education and Funding**

13. In 2018, the Government launched the Review of Post-18 Education and Funding, which looked at how to ensure that post-18 education gives everyone a genuine choice between high-quality technical and academic routes, that students and taxpayers are getting value for money, and that employers can access the skilled workforce they need.

14. The Government's Interim Conclusion to the review addresses some of its key recommendations. The Government has delivered on several of these recommendations, including a new level 3 entitlement, investment in the further education estate, and increases to 16-19 funding. Measures in the Bill take further steps towards the implementation of the report's recommendations. These include introducing a lifelong loan entitlement from 2025, so that learning can be more flexible, and strengthening the link between qualifications and employer-led standards.
15. The Government is considering the recommendations made by the Augar panel carefully and plans to set out a full response to the Review of Post-18 Education and Funding in due course.

## **Legal background**

16. The following significant legislation is referenced by the Bill. Explanation on how previous legislation is referenced, if required, is given in the commentary on provisions in the Bill.
- i. Academies Act 2010
  - ii. Apprenticeships, Skills, Children and Learning Act 2009

- iii. Criminal Justice Act 1925
- iv. Education Act 1996
- v. Education Act 1997
- vi. Education Act 2002
- vii. Education Reform Act 1988
- viii. Employment and Training Act 1973
- ix. Further and Higher Education Act 1992
- x. Higher Education and Research Act 2017
- xi. Insolvency Act 1986
- xii. Magistrates' Courts Act 1980
- xiii. Serious Crime Act 2007
- xiv. Teaching and Higher Education Act 1998
- xv. Technical and Further Education Act 2017

## Territorial extent and application

17. Clause 37 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a bill can be different from its application. Application is about where a bill produces a practical effect.
18. All provisions of the Bill extend to England and Wales and, except where indicated below, apply only to England.
19. Clauses 11, 16(3), 37-39 and clause 15 in the Bill extend to Scotland and Northern Ireland, so far as it modifies provisions that extend there. Clause 10 extends to Northern Ireland also, but not to Scotland.
20. The provisions in clauses 15-16 and clauses 27, 28 and 34 also apply to Wales. Clause 15 applies to Wales, because it modifies section 22 of the Teaching and Higher Education Act 1998 in a manner which impacts on functions which have been devolved to the Welsh Ministers, and those which are exercisable concurrently by Welsh Ministers and the Secretary of State. So far as clauses 17, 18 and 25 relate to education and training, that education and training is not currently limited to education and training in England. The Government will set out its position, and

any associated implications on extent and application, of clauses 17, 18 and 25 in due course.

21. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the consent of the legislature concerned.
22. Clauses 27 and 28 deal with reserved matters. For clause 34, a legislative consent motion will not be required. A legislative consent motion will be required for clause 15 for Wales. A legislative consent motion will not be required in relation to clauses 15-16 in relation to Scotland and Northern Ireland nor for clause 16 in relation to Wales, because any application of section 83 of the Higher Education and Research Act 2017 (which clause 16 amends) is minor and unrelated to the substance of these provisions.
23. The Government will set out its position as to clause 25 in due course. It is not possible to say whether or not a legislative consent motion will be required for clause 17 and 18, as these were added by non-government amendments at Report stage in the House of Lords and the Government has not conducted an analysis on extent and application of these clauses.

24. See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. Where there is a 'N/A' in the table, this is where the Government has not made a devolution analysis as these amendments were tabled at Report stage in the House of Lords.

25.

## **Commentary on provisions of Bill**

### **Part 1: Skills and Education for Work**

#### **Chapter 1: Education and Training for Local Needs**

24. This chapter aims to create a framework to facilitate stronger employer and provider engagement in local skills systems. This framework will ensure employers have more influence over the skills system, which will assist providers to respond to employers' skills needs and reshape their offer. Employer representative bodies will work with employers, providers and local stakeholders to develop local skills improvement plans that set out the key changes needed to ensure technical education and training is more responsive to local labour market skills needs.

25. A new duty will ensure that all colleges and designated institutions regularly review the provision of education provision in an objective and holistic way, having regard to local needs, encompassing the needs of both learners and employers within a local area. Creating a statutory duty will strengthen accountability, and will ensure that aligning provision with local

needs is a priority for governing bodies.

## **Local skills improvement plans**

### **Clause 1: Local skills improvement plans**

26. This clause provides for local skills improvement plans, introducing duties on relevant providers to co-operate with designated employer representative bodies, to develop local skills improvement plans and have regard to the plans once they have been developed. Relevant providers are those that provide English-funded post-16 technical education or training that is material to a specified area in England.
27. Subsections (1), (2) and (3) provide that those relevant providers must co-operate with a designated employer representative body in the development of a local skills improvement plan for a specified area.
28. Subsection (4) sets out provisions for relevant providers to assist to keep plans under review and updated as required, and to have regard to the latest plan published by the Secretary of State when making decisions on relevant provision in the specified area.
29. Subsection (5) sets out that relevant providers should take account of guidance published by the Secretary of State in

developing local skills improvement plans.

30. Subsection (5A) sets out specific conditions that must be met in order for the Secretary of State to approve and publish a local skills improvement plan, including adaptation to climate change, the UK net zero target and meeting other environmental goals.
31. Subsection (6) sets out what a local skills improvement plan is and subsection (7) sets out what an approved local skills improvement plan is.

## Clause 2: Designation of employer representative bodies

32. This clause outlines how employer representative bodies will be designated by the Secretary of State to develop local skills improvement plans.
33. Subsection (1) sets out the criteria by which the Secretary of State will designate employer representative bodies to develop and keep local skills improvement plans under review. This includes having the capability to perform in an effective and impartial manner, being reasonably representative of employers within the specified area, and consenting to designation.
34. Subsection (2) provides for the Secretary of State to set appropriate terms and conditions

with subsection (5) providing for changes in terms and conditions.

35. Subsections (3) and (4) set out that the Secretary of State must notify the employer representative body of its designation and publish a notice before the designation takes effect. This includes what should be contained within the notice including name, area specified, effective date, and any terms and conditions.

### Clause 3: Removal of Designations

37. This clause enables the Secretary of State to remove the designation of an employer representative body and confirms the conditions for any removal. The conditions are failure to continue to meet the criteria for designation, non-compliance with the relevant guidance issued by the Secretary of State, and where the Secretary of State considers that the removal is necessary or expedient. The clause also sets out how a removal will take effect.
38. Subsections (2) (3) and (4) set out that a written notice must be published by Secretary of State when removing a designation and the information that should be contained within the notice.

### Clause 4: Interpretation

39. This clause outlines the definitions used within clauses 1, 2 and 3.
40. Subsection (1) enables the Secretary of State by regulation to add further providers to the definition of relevant providers.

## **Further education institutions: duty in relation to local needs**

### **Clause 5: Institutions in England within the further education sector: local needs**

41. This clause inserts a new section 52B into the Further and Higher Education Act 1992.
42. Subsection (1) of the new inserted section places a duty on governing bodies of general FE colleges, sixth form colleges and designated institutions (as described in Chapter II of Part 1 of the Further and Higher Education Act 1992) to keep under review how well the education or training provided meets local needs, and to consider what action the institutions might take to meet local needs better.
43. Subsection (2) of inserted section 52B requires the governing body to have regard to any guidance published by the Secretary of State for Education. To support the scrutiny of the clause during the passage of the Bill, the

Secretary of State for Education has published draft statutory guidance. It is intended that the final statutory guidance will be issued when the clause comes into force.

44. Subsection (3) of inserted section 52B requires the governing body to publish the review on its website.

## **Chapter 2: Technical Education Qualifications, Apprenticeships, etc**

45. This chapter extends and refines the existing statutory framework for the approval and regulation of technical education qualifications. The clauses introduce new functions for the Institute for Apprenticeships and Technical Education (“the Institute”) to support reforms set out in the Post-16 Qualifications Review and Skills for Jobs White Paper. The functions enable the Institute to approve a broader range of technical education qualifications and to keep under review the education and training within its remit to ensure the overall coherence of the system. In addition, these clauses embed the collaborative relationship between Ofqual and the Institute in exercising their respective functions in relation to technical education qualifications.
46. The clauses amend the Apprenticeships,

Skills, Children and Learning Act (“the 2009 Act”). That Act was amended by the Deregulation Act 2015 (in relation to the approved English apprenticeships reforms) and the Enterprise Act 2016 (to, among other things, establish the Institute). The Institute was established in April 2017 with apprenticeships functions. The Technical and Further Education Act 2017 then further amended the 2009 Act to extend the Institute’s remit to include technical education.

#### Clause 6: Functions of the Institute: oversight etc.

47. This clause amends the 2009 Act. Subsection (2) amends section ZA2(6) to include in the Institute’s remit other technical education and training which supports entry to occupations published under ZA10. This enables the Institute to play a role in relation to education and training which links to employer-led standards but does not lead to a qualification, including (under the Institute’s powers in Schedule A1 of the 2009 Act) publishing guidance on how such provision could align with employer-led standards.
48. Subsection (3) inserts new section ZA2A into the 2009 Act, which provides the Institute with an oversight function in relation to the technical education and training within its remit. It requires the Institute to keep under review such education and training, and the

effect of its functions on the range and availability of that education and training. In exercising this duty, the Institute will consider the overall coherence of technical education provision within the system to ensure that the range of apprenticeships, qualifications and other technical education is appropriate. The Institute may report matters arising to the Secretary of State.

49. Subsection (4) amends section ZA3 to state that the Institute's power to provide advice and assistance to the Secretary of State includes advice and assistance in relation to technical education qualifications.

## **Technical education qualifications**

### **Clause 7: Additional powers to approve technical education qualifications**

50. This clause amends the 2009 Act to provide the Institute with additional powers to approve technical education qualifications. Subsection (2) inserts new sections A2D1 and A2D2. Section A2D1 provides an overview of the scheme for approval of technical education qualifications by the Institute. It sets out two routes for approval of technical education qualifications by the Institute:
- i. The route under section A2D3 provides for qualifications that can lead to the award of

a technical education certificate by the Secretary of State and in relation to which copyright in relevant course documents can transfer to the Institute (for example, T Levels).

- ii. The other route (under new section A2D5 inserted by subsection (4)) provides for the approval of new categories of technical education qualification where the Institute does not consider it appropriate for these categories of qualification to be approved under A2D3. Qualifications approved under this route are those which do not lead to the award of a technical education certificate by the Secretary of State and in relation to which no copyright may transfer to the Institute on approval.

51. New section A2D2 provides for the Institute to specify the categories of technical education qualification in relation to England that will be approved under new sections A2D3 and A2D5. It sets out requirements for the Institute to publish information showing the categories and their associated requirements. For the categories of qualification approved under section A2D5, the Institute is also required to identify and publish information showing the test against which it

will approve qualifications within that category. The test must be one of the three tests set out in new section A2D5(3)-(5). Section A2D2(7) places a requirement on the Institute to consult prior to specifying the categories, including consultation with the Secretary of State and other appropriate persons (for example, employers).

52. Subsection (3) amends section A2D3 (as renumbered) of the 2009 Act as a consequence of the provision for the Institute to specify categories of technical education qualification.

53. Subsection (4) inserts new section A2D5 which gives the Institute the power to approve technical education qualifications falling within the categories that will not be approved under section A2D3. It sets out the circumstances in which the Institute may approve such qualifications, and the tests that it must apply. To be approved, a qualification must meet the employer demand test (A2D5(6)) as well as the appropriate test for its category (A2D5(3)-(5)). The tests under sections A2D5(3)-(5) provide for the approval of qualifications that relate to employer-led standards in different ways. They

set out the outcomes that must be attained when a person obtains the qualification. The outcomes are contained in employer-led standards or relate to occupations that are published by the Institute.

54. New sections A2D6 and A2D7 allow the Institute to make any arrangements that it considers appropriate to secure that technical education qualifications are available for approval. The sections provide the supplemental powers that the Institute needs to run its scheme of qualifications approval, including the ability to withdraw approval. Section A2D6(2a) requires that the Institute's power to withdraw approval does not apply to the withdrawal of level 3 courses for a period of four years beginning with the day on which the Act is passed. Additionally, the section provides that no student be deprived of the right to take two BTECs, Applied General Qualifications or a Diploma or an extended Diploma.

55. Section A2D6 (4) places a requirement on the Institute to publish the matters it will take into consideration when making decisions about approval and or withdrawal under either section A2D3 or new section A2D5. These criteria may differ depending on the category or occupation

that the technical education qualification relates to. New section A2D7 sets out requirements in relation to publication of information regarding approved qualifications. This includes information about how approved qualifications relate to occupations published under section ZA10(5). Under section A2D7 (3) the Secretary of State may make regulations authorising the Institute to charge fees in connection with approvals.

56. New section A2D8 places a duty on the Institute to review approved technical education qualifications at regular intervals and to publish information about when the reviews will occur. In conducting such reviews, the Institute will determine whether each qualification should continue to be approved, whether approval should be withdrawn, or whether qualifications should be revised.

57. New section A2D9 allows the Institute to impose a moratorium on the approval under A2D5 of qualifications of a particular kind, should it determine that there is an appropriate number of qualifications of that kind approved. It sets out a requirement for the Institute to consult the Secretary of State in relation to the introduction and ending of a

moratorium. The purpose of this power is to give the Institute an additional function to manage the proliferation of technical education qualifications.

58. Subsections (5) and (6) make amendments to the 2009 Act which are consequential on there now being more than one scheme for approval.

59. Subsection (7) inserts new section A12 which provides for interpreting chapter A1 of the 2009 Act.

### Clause 8: Functions of the Institute: availability of qualifications outside England

60. This clause inserts new section A2IB into the 2009 Act which allows the Institute to provide advice and assistance, and take steps it considers appropriate, in order that T Levels could be made available in areas of the UK other than England as well as internationally.

### Clause 9: Technical education qualifications: co-operation between the Institute and Ofqual

61. This clause inserts new section A2D11 into the 2009 Act which establishes a cooperative framework for the approval, regulation and other oversight of technical education qualifications falling within the functions of the

two bodies.

62. New subsection (1) requires Ofqual and the Institute to cooperate in exercising their respective statutory functions in relation to technical education qualifications.

63. New subsection (2) empowers either body to provide advice and assistance to the other, and requires either body to have regard to any advice and assistance it receives.

### Clause 10: Application of accreditation requirement in relation to technical education qualifications

64. This clause amends section 138 of the 2009 Act to ensure that individual technical education qualifications may not be subject both to accreditation by Ofqual and approval by the Institute under their respective powers in the 2009 Act.

65. Subsection (a) takes a qualification out of scope for accreditation by Ofqual if it is a technical education qualification that has been approved by the Institute, or if the Institute has notified Ofqual that approval is being considered but a decision has not yet been made.

66. Subsection (b) requires that where the Institute has notified Ofqual that an approval is being considered, it must also notify Ofqual of its decision.

## Clause 11: Information sharing in relation to technical education qualifications

67. This clause inserts new section 40AB into the 2009 Act. It supports effective collaboration between Ofqual and other bodies with functions in relation to technical education qualifications, by introducing information-sharing provisions similar to those relating to the Institute under section 40AA of the 2009 Act.
68. It empowers Ofqual to share information in relation to technical education qualifications with the Secretary of State, Ofsted and the Office for Students, as well as with other bodies that the Secretary of State may prescribe. It also allows these bodies to share technical education information with Ofqual.
69. This information sharing may support the technical education functions of Ofqual or the other relevant bodies.

## Clause 12: Technical education qualifications: minor and consequential amendments

70. This clause inserts new section ZA8A into the 2009 Act which ensures that there is a consistent interpretation of certain terms throughout the relevant chapters of the Bill.

Subsections (3) to (10) make a number of minor amendments to the 2009 Act and to other existing legislation to ensure that technical education qualifications approved under the new scheme are appropriately referenced alongside those approved under the existing scheme.

### Clause 13: Renumbering of provisions relating to technical education qualifications

71. This clause renumbers sections of the 2009 Act to ensure the numbering is easier to follow after insertion of new provisions.
72. Subsections (3) to (7) make minor amendments to the 2009 Act as a consequence of renumbering.
73. Subsection (8) clarifies that the renumbering does not alter the effect of anything done under a renumbered provision, and to clarify that references elsewhere to the previous provisions, should be taken as references to the renumbered provisions.

### Information about technical education and training

#### Clause 14: Amendments to section 42B of the Education Act 1997

74. This clause amends section 42B of the

Education Act 1997, inserted by section 2 of the Technical and Further Education Act 2017. This requires maintained schools, academies and pupil referral units in England to allow a range of education and training providers to access their pupils in order to inform pupils directly about approved technical education qualifications or apprenticeships. In practice, this means providers informing pupils in the school year in which the majority reach the age of 13 to the year in which the majority reach the age of 18 (typically school years 8-13) about the courses and qualifications that they offer.

75. Subsections (1) and (2) modify section 42B to specify that schools must give a representative range of education and training providers (including, where reasonably practicable, a university technical college) access to pupils on at least three occasions during each of the first, second and third key phases of their education.

76. Subsection (3) inserts new subsection (2A) which states that the school must ensure that all pupils meet a representative range of providers during each of the first and second key phases of their education. (The encounters during the third key phase are optional for pupils to attend).

77. Subsection (3) also requires schools to ask each provider to provide information to pupils that includes:

- i. information about the provider and approved technical education qualifications or apprenticeships that the provider offers;
- ii. information about the careers to which those technical education qualifications or apprenticeships might lead;
- iii. a description of what learning or training with the provider is like; and
- iv. response to questions from pupils about the provider or approved technical education qualifications and apprenticeships.

78. Subsection (3) also inserts new subsection (2B) which clarifies that access to providers must be for a reasonable period of time during the standard school day.

79. Subsection (4) specifies additional content of the policy statement that schools must prepare, publish and follow, setting out the circumstances in which a provider will be allowed access to pupils. It inserts new subsection (5)(aa) which requires schools to include in their policy statement a requirement to provide access to a representative range of education and training providers. This must include, where practicable, a university technical college.

80. Subsection (5) requires schools to set out in their policy statement the times at which access is to be given.
81. Subsection (6) requires schools to explain in their policy statement how they will meet the new legal requirements imposed under subsection (2A).
82. Subsection (7) defines the key phases of a pupil's education in which each provider encounter must take place. The first key phase is the school year in which the majority reach the age of 13 or 14 (typically school years 8 or 9). The second key phase is the school year in which the majority reach the age of 15 or 16 (typically school years 10 or 11). The third key phase is the school year in which the majority of pupils reach the age of 17 or 18 (typically school years 12 or 13). The provider encounters are to be held between 1 September and 28 February if for pupils in school years 9, 11 or 13.

### **Chapter 3: Lifelong Learning**

83. This chapter makes changes to primary legislation to make specific provision relating to the introduction of a Lifelong Loan Entitlement, to support reforms set out in the Skills for Jobs White Paper. It makes changes to the regulation-making powers of the Secretary

of State to provide student finance in order to make specific provision for funding of modules of higher education and further education courses and for prescribing an overall maximum amount of funding that learners can access, and to make clear that maximum amounts in relation to any loan or payment can be provided for on a basis other than academic year. They also amend the definition of “higher education course” for the purposes of the Higher Education and Research Act 2017 (“HERA 2017”) to make it clear that the regulatory regime provided for under Part 1 of HERA 2017 applies to modules of courses, where it is undertaken otherwise than as part of that course.

### Clause 15: Support for lifelong learning

84. This clause inserts new section 28A into the Teaching and Higher Education Act 1998 (“THEA 1998”) to make modifications to Chapter 1 of Part II of THEA 1998 which allows for financial provision for higher and further education.
85. Section 22(1) of THEA 1998 provides the Secretary of State with a wide regulation-making power to make regulations authorising or requiring him to make grants or loans for any prescribed purposes to eligible students in connection with their undertaking

higher or further education courses designated by or under regulations. Section 22(2)(a) to (k) then provides a non-exhaustive list of the matters which regulations made under section 22 may provide in particular.

86. Section 28 provides that “higher education courses” and “further education courses” have the meaning given by regulations made under section 22.

87. Clause 14 inserts new section 28A after section 28 of THEA 1998. New inserted section 28A modifies sections 22, 23 and 28 of THEA 1998 as follows:

- i. Subsection (1)(a) modifies section 22(1) of THEA 1998 to have effect as if to insert specific reference to modules of higher education and further education courses.
- ii. Subsection (1)(b) modifies subsections (2) to (3) and (4B) of section 22 of THEA 1998 so that references to “a higher education course or a further education course” have effect as if to include specific references to modules of a higher education course or further education course. Subsection (2) makes the equivalent modification to the reference in section 23(1)(b) to courses, and subsection (3) makes the equivalent modifications to the references in section

28(2) to “courses”.

- iii. Subsection (1)(c) modifies subsection (2) of section 22 of THEA 1998 to have effect as if to insert a new paragraph (ba) which makes specific provision for regulations made under section 22 to prescribe or provide for the determination of an overall maximum (“lifetime limit”) that may be available to learners over their lifetime.
- iv. Subsection (1)(d) modifies subsection (2) of section 22 of THEA 1998 to have effect as if there were inserted new paragraph (ca), allowing regulations to provide for two or more modules to be treated as a single module for a purpose of the regulations. A module or course will be funded only if it is designated.
- v. Subsection (1)(e) modifies section 22 of THEA 1998 to have effect that after subsection (2) there were inserted new subsections (2ZA) and (2ZB). New subsection (2ZA) enables the Secretary of State to define the meaning of “module” in relation to a higher or further education course in regulations, and provides some examples of what the definition may include.

- vi. New subsection (2ZB) makes clear that the Secretary of State's powers to prescribe maximum amounts in relation to loans or payments (as provided for under section 22(2)(b) of THEA 1998) can be provided for otherwise than in relation to an academic year.
  - vii. Subsection (1)(f) modifies section 22 of THEA 1998 to have effect that after subsection (2A) there were inserted new subsection (2B). This makes it clear that a life time limit in relation to a person provided for in subsection (2)(ba) may be amended by the Secretary of State.
  - viii. Subsection (2) provides that section 23 of THEA 1998, in so far as it relates to the Secretary of State's regulation making powers under section 22, has effect as if a reference in subsection (1)(b) to courses included a reference to modules of higher or further education courses.
  - ix. Subsection (3) provides that in subsection (2) of section 28 of THEA 1998 references to courses shall include modules, in so far as it confers a power exercisable by the Secretary of State.
88. Clause 14(2) has the effect that the references to "alternative payments" which are

to be treated as inserted by new section 28A(1) will not have effect until section 86 (2) of HERA 2017 come into force.

## Clause 16: Lifelong learning: amendment of the Higher Education and Research Act 2017

89. Clause 15 makes amendments to the Higher Education and Research Act 2017 to amend the definition of “higher education course” and to make other provision as to the regulation of modular study.
90. Subsection (1) amends section 9 (the mandatory transparency condition for certain providers) which creates a duty on registered higher education providers to provide to the Office for Students information about offers and acceptances, completion rates and attainment. This amendment is intended to reduce administrative burden on providers, by ensuring information sharing and/or publication requirements do not apply any more onerously in relation to modules than to full courses.
91. Subsection (2) amends section 83(1) of HERA 2017 to substitute a new definition of higher education course to mean a course of any description mentioned in Schedule 6 to the Education Reform Act 1988, or a module of such a course (if it is not undertaken as part of such a course).

92. Subsection (3) further amends section 85, to clarify the two categories of higher education course for the purpose of Part 1 of HERA 2017 are full courses and modules of full courses where they are undertaken other than as part of full courses. Together with the amendments to 83(1) these clarify that for the purposes of HERA 2017, there two categories of higher education course: a) full courses and b) modules of full courses, when taken other than as part of those courses, and have the explicit consequence of applying the OfS's regulatory powers to modular study.

#### Clause 17: Universal credit conditionality

93. This clause would require the Secretary of State to review Universal Credit conditionality rules with a view to ensuring that adults who are unemployed and in receipt of Universal Credit that enroll on an approved training course for a qualification that supports them towards sustainable employment do not lose their entitlement to Universal Credit.

#### Clause 18: Lifelong learning: review

94. This clause would require the Secretary of State to publish a report on the impact that funding restrictions have on the level of skills within England and Wales, both generally, and specifically in relation to Equivalent and Lower Qualification

Restrictions. The clause would require such a report to be laid annually before both Houses of Parliament. This clause would take effect one year after the commencement of either clause 14 or 15.

## **Part 2: Quality of Provision**

### **Initial teacher training for further education**

95. The Government aims to secure and improve the quality of initial teacher training for the FE sector “ITT (FE)” as committed to in the Skills for Jobs White Paper. This enabling clause will give the Secretary of State powers to introduce measures through secondary legislation, designed to improve the quality, of ITT (FE) provision. It is not intended to place requirements on trainee teachers, either individually or collectively.

### **Clause 19: Initial teacher training for further education**

96. This clause provides a power for the Secretary of State to make regulations to improve or secure the quality of initial teacher training for the FE sector in England “ITT (FE)”.

97. Subsection (1) enables the Secretary of State to make regulations to secure or improve the quality of ITT (FE) courses. Subsection (2) provides examples of measures that such

regulations may provide for.

98. Subsection 2(A) requires any regulations made under subsection (1) to include provision requiring ITT (FE) courses to include special educational needs awareness training that is relevant to FE teacher trainees in an institution.
99. Subsection (3) provides context for subsection (2)(c), relating to the Secretary of State's power to make regulations prohibiting the provision of specified ITT (FE) courses.
100. Subsection (4) contains general provision for regulations made under this power.
101. Subsections (5) and (6) provide that the first time regulations are enacted under this power, the affirmative procedure will apply, but subsequent regulations under this power will be made using the negative resolution procedure.
102. Subsection (7) provides definitions for key terms used in this clause.

## **Quality assessments of higher education**

103. This chapter makes explicit the ability of the Office for Students (OfS) to assess the quality of higher education provided by registered higher education providers in England by reference to student outcomes. It clarifies the OfS's ability to determine minimum

requirements for quality by reference to expected levels of student outcome which may apply to all English higher education providers in the same way, and makes clear that the OfS is not required to determine different minimum expected levels to take into account student characteristics and other specified matters.

## Clause 20: Office for Students: power to assess the quality of higher education by reference to student outcomes

104. This clause amends section 23 of HERA 2017, which makes provision for the assessment of the quality of and the standards applied to higher education by the Office for Students (OfS).
105. Subsection (4) provides that the OfS may take into account student outcomes when assessing the quality of higher education provided by a registered higher education provider.
106. Subsection (5) provides that student outcomes can be measured by any means that the OfS considers appropriate, including by reference to course continuation rates, completion rates, and progression of students to further study or employment.
107. Subsection (6) provides that

the OfS may determine and publish minimum expected levels for particular measures of student outcomes which all institutions are expected to meet.

108. Subsection (7) makes clear that the OfS is not required to determine and publish different levels to reflect differences in student characteristics, different institutions or types of institution, different subjects or courses, or any other such factor.

109. Subsection (8) provides that when considering the student outcomes of an institution, the OfS may take account of whether the institution has met the minimum expected outcome level which is applicable to it.

## **Part 3: Protection for Learners**

### **Chapter 1: Regulation of Post-16 Education or Training Providers**

110. These clauses enable the Secretary of State to make regulations to provide for a list of post-16 education or training providers, in particular Independent Training Providers (“ITPs”), to indicate which providers have met conditions that are considered to prevent or mitigate risks associated with the disorderly exit of a provider from the provision of education and training. Education or training

is funded by various funding authorities.

111. Regulations made under the clauses ensure that the relevant funding authorities may not enter into funding arrangements or allow sub-contracting with a relevant provider who is not on the list and that such funding arrangement and sub-contracts must allow for termination should a provider cease to be on the list. As indicated in the Skills for Jobs White Paper, the short notice exit of a provider from the provision of education or training can significantly disrupt the educational experience of many young people and adults.
112. The transfer to another provider can take time and can be extremely disruptive and increase the risk of learner disengagement, as complex cases can take over 12 months to find a new provider. These provisions are intended to ensure that there is a consistent set of requirements placed on providers in order to protect learners and public funds, even where the education or training is funded by local commissioning bodies or through subcontracts from directly funded providers.

## **Funding arrangements with post-16 education or training providers**

## Clause 21: List of relevant providers

113. This clause provides the Secretary of State with a power to make regulations in relation to the keeping of a list of certain post-16 education or training providers which meet specified conditions (see subsection (7) for examples). The Secretary of State can also make provision in connection with the keeping of the list.
114. Subsection (2) sets out that providers which will need to be on the list are those which will provide relevant education or training for those over compulsory school age and these subsections list the provider types which would be excluded from a requirement to be on the list.
115. Subsection (3) confirms the types of education and training in scope of the legislation, which includes further education (Adult Education Budget funded provision, 16-19 study programmes and any other further education), apprenticeships, traineeships and provision eligible to be funded through loans for designated further education courses. A certain description of education or training may fall into more than one category.
116. Subsection (4) states the Secretary of State may by regulations add, vary or remove a

category of education or training in order that new or emerging types of training not covered by the current definitions can be captured, or categories can be removed or changed where they are no longer relevant to the type of training currently funded. The categories which may be specified are limited by the definition of "post-16 education or training provider" in clause 23(2) which sets out that those providers who must be on the list will provide relevant education or training to persons over compulsory school age.

117. Subsection (5) states that a condition (for being on the list) may only be specified if the Secretary of State considers that it may assist in preventing or mitigating the adverse effects of a disorderly cessation in the provision of education or training (i.e. a disorderly provider exit).

118. Subsection (6) clarifies that regulations may specify different conditions for different types of education or training and provide that a provider can have separate list entries for different types of education or training. It also sets out that regulations can provide that the Secretary of State, or any other person, can be allocated a function such as the exercise of a discretion. For example, this could be used to determine

whether certain conditions have been met.

119. Subsections (7) to (9) set out examples of the conditions that may be specified in regulations in order for a provider to be on the list. They also clarify that different conditions may be specified for being added to or remaining on the list or in relation to different descriptions of relevant provider.

120. Subsection (10) sets out the conditions that may be introduced in regulations to help maintain or keep the list, such as the imposition of fees for being added to the list, the procedure for applications, provision about removal or restoration to the list, appeals, provision allowing or requiring the disclosure of information, and provision about publication of the list.

121. Subsection (11) clarifies that information mentioned in subsection (10)(e) may relate to those who receive the education or training, or those with controlling, managerial or legal responsibility for the training providers.

## Clause 22: Prohibitions on entering into funding arrangements with providers

122. Subsection (1) provides that this clause applies if the Secretary of State makes regulations

under clause 21(1)(a) and only prospectively. Subsection (2) prohibits a funding authority from entering into relevant funding arrangements with a provider not on the list. It also sets out that funding authorities must not enter into such funding arrangements unless those arrangements include provisions enabling the funding authority to terminate the agreement if the provider ceases to be on the list. Subsections (3) and (4) makes similar provision in relation to funding arrangements where there is use of subcontractor(s) and those sub-contractors are not on the list, or cease to be on the list. Subsection (4) also sets out that where relevant funding arrangements prohibit sub-contracting, funding authorities must not enter into those funding arrangements unless those arrangements include provisions allowing the funding authority to terminate the agreement if a relevant sub-contract is entered into in breach of that prohibition.

123. The provision in subsections (2) to (4) is to ensure that where a provider ceases to be on the list or enters into prohibited sub-contracting arrangements, the funding authority can take action to terminate funding arrangements in an orderly way, for example by ensuring, if

appropriate, that learners are transferred to another provider before the arrangements come to an end.

124. Subsection (5) sets out that a provider may not rely on anything in clause 22 as a reason for not carrying out their obligations under a funding agreement. This means that a provider's obligations under a funding agreement would remain valid and a funding authority could continue to enforce those obligations if a provider was not on the list. Subsection (5) also clarifies that clause 22 does not limit a funding authority's ability to set conditions of funding relating to a separate scheme (for example, conditions of funding which require apprenticeships training providers to be on the Register of Apprenticeship Training Providers).
125. Subsections (7) to (11) provide interpretation for clause 22.
126. Subsection (7) confirms the funding authorities whose funding arrangements are within the scope of clause 19.
127. Subsections (8), (9) and (10) set out the type of funding arrangements between a provider and funding authority in scope of clause 22. This includes grant arrangements and contracts for the provision of education or

training wholly or mainly in England (which may include public services contracts which fall under the Public Contract Regulations 2015). The arrangements must relate to the provision of the categories of relevant education or training within the meaning of clause 21(3). The Secretary of State may also specify any other characteristics that the arrangements must have in order to be within scope of the provision in clause 22, which might include de minimis provision for example.

128. Subsection (11) provides a definition for a relevant sub-contract in scope of clause 22. The characteristics of the subcontract can also be further specified in regulations by the Secretary of State.

### Clause 23: Funding arrangements: interpretation

129. This clause provides interpretation for clauses 21, 22 and 23.
130. Subsection (2) provides definitions for key terms used in clauses 21, 22 and 23.
131. Subsection (3) clarifies that references to a provider in relevant places in clauses 21 and 22 include references to a person having general control and management of, or legal responsibility and accountability for a provider. This is included to ensure that the correct legal person (and the funding arrangements that they are party to) are caught

by the obligations under regulations made under clause 21 and by the funding prohibitions in clause 22.

## Clause 24: Regulations under sections 21 or 22

132. This clause sets out miscellaneous provision relating to the regulations which may be made under clauses 21 or 22.

133. Subsections (1) and (2) give the power for regulations under clauses 21 or 22 to make consequential, supplemental, incidental, transitional or saving amendments, including to primary legislation and including this Bill.

134. Subsection (3) confirms that before making regulations to set up the list for the first time, the Secretary of State must carry out a consultation.

135. Subsection (4) and (5) set out that the regulations are to be made by statutory instrument and which regulations will require the affirmative resolution procedure. These include those under clause 21(1) in relation to specifying conditions and making provision in relation to the keeping of the list, regulations under clause 21(4) which allows the application of the scheme to additional or varied categories of education and training and any regulations which amend an Act of Parliament. Subsection (6) provides that any other regulations made under clauses 21 or

22 will be by way of a negative resolution procedure.

## Clause 25: Provision of opportunities for education and skills development

136. Subsection (1) aims to give all people in England the legal right to free education on an approved course for their first qualification up to and including level 3, regardless of the learner's age.

137. Subsection (2) would ensure providers (such as FE colleges or independent training providers, among others) are guaranteed funding for the learners included in subsection (1), at a rate determined by the Secretary of State.

138. Subsection (3) intends to require employers in receipt of apprenticeship funding to spend at least two thirds of that funding on learners who begin apprenticeships at Level 2 or Level 3 before the age of 25.

## Further education in England: intervention

### Clause 26: Further Education in England: intervention

139. The Secretary of State has intervention powers under the Further and Higher Education Act 1992, which can be used where there is serious failure including mismanagement, underperformance, and

failure to discharge a statutory duty. This clause strengthens these existing powers so that intervention action can also be taken where the education or training provided by an institution fails to adequately meet local needs. This clause will also enable the Secretary of State to issue a direction to a governing body, requiring it to make a structural change such as a merger. These provisions are needed so that the Government can intervene to secure improvement where that is not possible through other means.

140. This clause amends the statutory intervention powers in section 56A of the Further and Higher Education Act 1992 that apply to further education colleges, designated institutions, and certain other bodies. It also amends the statutory intervention powers that apply to sixth form colleges, in section 56E of the Further and Higher Education Act 1992.

141. Subsection (2)(a) extends the circumstances in which the Secretary of State may use the powers to include cases where the education or training provided by an institution is failing or has failed to adequately meet local needs. Under subsection (2)(b), new sections 56A(2A) to (2C) provide that for the purposes of new subsection

56A(2)(e), the Secretary of State must take into account any approved local skills improvement plan that applied to the institution when the education or training was provided.

142. Where the conditions for the use of the statutory intervention powers are met, subsection (2)(c)(i) amends section 56A(7)(b) of the Further and Higher Education Act 1992, in so far as it applies to a direction requiring the governing body of a designated institution (rather than a further education corporation) to dissolve itself. Subsection (2)(c)(ii) enables the Secretary of State to direct the governing body in respect of the transfer of property, rights or liabilities, for example to effect a merger, when one institution is dissolved and its activities are transferred to another body.

143. Subsection (2)(d) applies in cases where the Secretary of State directs the dissolution of the governing body (which is already possible under the existing powers). It requires the governing body of an FE corporation to transfer property, rights or liabilities on the dissolution date (as permitted under section 27B of the Further and Higher Education Act 1992 in the case of a voluntary dissolution), unless the Secretary of State directs otherwise.

144. Subsection (2)(e) requires that where

another party – such as a merger partner – is named in a direction under subsection (2)(c), this can only be done with the agreement of that party.

145. Subsection (2)(f) sets out that before making a direction for the transfer of property, rights or liabilities, the Secretary of State must consult the Competition and Markets Authority in respect of competition effects. The merger control provisions set out in Part 3 of the Enterprise Act 2002 would not apply in these cases. The Secretary of State is able to provide financial assistance in connection with a direction. This could include, for example, loans, grants, guarantees, or any other form of financial assistance.

146. Subsection (3) makes the same amendments to section 56E of the Further and Higher Education Act 1992. These provisions relate to intervention powers in respect of sixth form college corporations, which closely mirror those for further education college corporations.

## **Chapter 2: Education Administration and Administration of Further Education Bodies**

147. There is ambiguity in the Technical and Further Education Act 2017 as to whether a Company Voluntary Arrangement (a specific rescue procedure, hereafter referred to as

a “CVA”), can be used as a mechanism to exit education administration. Since the legislation came into force, a court decision made during the West Kent and Ashford College education administration confirmed that education administrators have the power to propose a CVA as a mechanism to exit education administration. This chapter proposes amendments that will remove the risk of any case law being overturned. This would therefore allow the Secretary of State for Education, via regulations, to ensure education administrators may explicitly use CVAs, and to clarify that nothing in the Technical and Further Education Act would prevent an education administrator proposing a CVA.

148. This chapter also seeks to remove further ambiguity in the transfer scheme provisions of the Technical and Further Education Act 2017 as to the treatment of secured creditors when compared to their rights in normal administration, per paragraph 71 of Schedule B1 to the Insolvency Act 1986.

### Clause 27: Further education bodies in education administration: application of other insolvency procedures

149. This clause amends section 33 of the Technical and Further Education Act 2017 to

extend the Secretary of State's existing power to make regulations applying insolvency legislation (with modifications) to FE bodies.

150. Inserted subsection (2A) makes provision that regulations under section 33(1) may provide for any provision of the Insolvency Act 1986 to apply (with modifications) regarding an FE body in education administration.

151. Inserted subsection (2B) makes provision to clarify that nothing in Schedules 3 or 4 to the Technical and Further Education Act 2017 limits the provision that may be made by regulations under subsection (2A). It expressly states the regulations may amend Schedules 3 and 4, which set out the conduct of education administration for statutory corporations and companies respectively. By being able to amend these schedules, the Secretary of State would be able to ensure they explicitly allow the use of Company Voluntary Arrangements.

### Clause 28: Further education bodies in education administration: transfer schemes

152. This clause amends Schedule 2, 3 and 4 to the Technical and Further Education Act 2017 to clarify that, where a transfer scheme looks to transfer assets subject to secured creditor's rights free of that security, a transfer

scheme may only be made upon either consent of the secured creditor in relation to the amount attributed to the secured asset over which the lender holds security and payment of that amount or a court order (i.e. subject to paragraphs 71 of Schedule B1 of the Insolvency Act 1986, with modifications).

153. This amendment confirms the Government's response to the technical consultation for the Insolvency regime for further education and sixth form colleges and the Technical and Further Education Act 2017 in June 2018: see page 16, Question 4 ([Insolvency regime for further education and sixth form colleges](#)).

## **Part 4: Miscellaneous and General**

### **Chapter 1: Cheating Services Provided for Post-16 Students at English Institutions**

154. Chapter 1 contains provisions relating to new offences in England and Wales criminalising individuals and organisations which provide or arrange, in commercial circumstances, contract cheating services for students at post-16 institutions, sixth forms and higher education providers in England, and the advertising by them of those services.

## Clause 29: Meaning of “relevant service” and other key expressions

155. Subsection (1) confirms that the definitions in this clause apply throughout the chapter, in relation to the offence.

156. Subsection (2) defines ‘relevant service’. In order for an individual or body to be liable under the offence, they must complete all or some of the student’s work such that the work would not be considered the work of the student. This allows for generally accepted study support such as tutors, proof reading and ordinary teaching practices not to be covered by the offence, as even with the provision of such services the work would generally still be considered to have been completed by the student personally (taking into account the ordinary meaning of that phrase – see the extended meaning in relation to a relevant assignment at subsection (8)).

157. Subsection (3) sets out what completing all or part of an assignment on behalf of a student includes. This includes circumstances where a student is provided with material in connection with the assignment which the student could use in completing the assignment or part of it (subsection (3)(a)) which has either been prepared specifically in connection with the assignment (subsection 3(b)(i)) or has not been

published generally (subsection 3(b)(ii)). This covers, for example, both specific, bespoke pieces of work and stock essays, and work which is written, dictated or copied.

158. Subsection (4) (a) creates a presumption that where a student seeks the provision of a ‘relevant service’, material provided as a result will be viewed as being provided in connection with the assignment (which is relevant for the purposes of subsection (3)). This means that, for example, where a student chooses an essay from a menu of available stock essays, this would be caught (provided the essays are not published generally (see further below)). So, the provider need not in fact know about the assignment or what it is in order to meet the test in subsection (3).

159. Subsection (4)(b) sets out what is considered to be ‘material published generally’. This is material which is available publicly and free of charge, for example study aids on websites such as BBC bitesize; also material that is published widely for purchase and educational use, and which includes other educational or training material, such as revision guides. The offering of a menu of available essays which must be paid for, for example, would not be considered material published generally since it does not include

other educational or training material.

160. In order for the offence to be committed, the relevant service must be provided, or arranged, ‘in commercial circumstances’. Subsection (5) sets out the conditions in which ‘commercial circumstances’ apply. This covers both an organisation or individual which is providing or arranging the cheating services in the course of their business and an individual who works independently who has been commissioned to provide the cheating services by a person acting in the course of their own business, or by a person acting in the course of their employer’s business. This allows for freelancers to be captured as well as employees of cheating services and those running those companies.

161. Subsection (6) defines the ‘student’ to whom it is an offence to provide the services. That is those undertaking a relevant course at a post-16 institution or sixth form in England. Clause 33 defines ‘post-16 institution’ as a higher education provider, an institution within the further education sector, a 16-19 academy and any other institution or person, other than a school, that is principally concerned with the provision of education or training suitable to the requirements of pupils who are over compulsory school age. Sixth form is also

defined in clause 33. Subsection (6)(b) makes clear that the offence also applies to services provided to private candidates (including, for example, students who are home-schooled) who are entered for a regulated qualification in England.

162. In order for the offence to be committed, subsection (7) provides that the assignment must be a relevant assignment. This subsection defines 'relevant assignment' for the purposes of the offence. For an assignment to be in scope, it needs to be one that the student is required to complete by themselves as part of either the course they are on (for example a module in a chosen university course) or as part of a piece of work that leads to their overall final qualification. This drafting allows for homework to be in scope of the offence but excludes pieces of work that students have proactively decided to undertake themselves. It also allows for an assignment to be in scope of the offence where the assignment has been chosen by the student from a range of assignments set.

163. Subsection (8) makes clear what is meant by the requirement that the student must complete a relevant assignment 'personally'. It includes the ordinary meaning, which is completing the assignment with assistance

which is generally permitted, such as tutoring and legitimate proof-reading or copy-editing, and it has the extended meaning provided for in this subsection which is to include the circumstance where the assignment is completed with any assistance which is specifically permitted as part of the assignment (for example, where in relation to a specific assignment, a student is allowed assistance with writing due to injury, or where a dissertation specifically allows for input by a tutor on a first draft). It further sets out that for the purposes of this chapter, that specific assistance is ‘permitted assistance’.

164. Subsection (9) explains that further definitions can be found in clause 33.

### Clause 30: Offence of providing or arranging a relevant service

165. Subsection (1) provides that it is an offence for a person to provide or arrange for another person to provide, in commercial circumstances, contract cheating services for a student in relation to a relevant assignment. The definitions in clause 29 make clear who exactly falls within scope of the offence and the circumstances that need to be fulfilled for it to be committed. It is for the prosecution to prove the elements of the offence beyond reasonable doubt.

166. Subsection (2) provides that the offence is summary only and punishable by a fine. Subsections (3) and (4) set out the defences that applies to this offence. The burden of proving, in relation to any of the matters in subsection (4), that they did not know and could not with reasonable diligence have known of the matter is on the defendant. Depending on the facts of the individual case, what the defendant might need to be able to show that they could not have known, even with reasonable diligence, may be that the student would or might use material they provided in completing all or part of the assignment, that the student was required to complete the assignment personally or that the service provided was not specifically permitted.
167. Subsection (5) sets out that a statement set out in a standard term in a written contract or arrangement, whereby a student commits to not using the work provided in a way that amounts to the offence, or about the circumstances of the assignment, is not sufficient to show the due diligence has been done.
168. Subsection (6) makes clear that a student who commissions a provider to complete work in a way that falls under the offence will not be liable for an offence of encouraging, assisting,

aiding or abetting the substantive offence.

### Clause 31: Offence of advertising a relevant service

169. Subsection (1) provides that an offence is committed if a person advertises the relevant service to students.

170. Subsection (2) makes clear that in order for the offence to be committed the advertisement does not need to be advertised solely to its target audience. The advertisement might not be seen by its target demographic, but the offence lies in the fact of advertising the relevant service.

171. Subsection (3) sets out the exact circumstances that must be fulfilled for the advertising offence to be committed. The offence is only committed if the person who is offering the service, or describing or presenting themselves as capable of providing it, or capable of arranging for another to provide the service, makes the arrangements for the advertisement for these things.

172. Subsection (4) provides that this is a summary only offence punishable by a fine.

### Clause 32: Offences: bodies corporate and unincorporated associations

173. Subsections (1) and (2) enable certain individuals to be prosecuted in limited

circumstances where offences are committed by bodies corporate.

174. Subsection (3) provides that where an offence has been committed by an unincorporated body, proceedings for offences should be brought in the name of the body and not its members.

175. Subsection (4) provides that any fine imposed on conviction of an unincorporated body should be paid out of the funds of the body.

176. Subsection (5) provides that if an unincorporated body is charged with an offence under these provisions, certain procedural rules apply in the same way as they do to incorporated bodies.

177. Subsection (6) enables certain individuals to be prosecuted in limited circumstances where offences are committed by unincorporated bodies which are not partnerships.

178. Subsection (7) enables partners to be prosecuted in limited circumstances where offences are committed by partnerships.

### **Clause 33: Interpretation of Chapter**

179. This clause sets out the definition of certain terms which are used in this Chapter.

## **Chapter 2: Miscellaneous Provisions**

## **16 to 19 Academies: designation as having a religious character**

### **Clause 34: 16 to 19 Academy: designation as having a religious character**

180. This clause inserts new sections 8A and 8B into the Academies Act 2010.

181. For new inserted section 8A, ‘Designation of a 16 to 19 academy as having a religious character’:

- i. Subsection (1) allows the Secretary of State to designate by order a 16 to 19 academy as having a religious character.
- ii. Subsection (2) sets out that the Secretary of State may only designate the academy where the academy proprietor meets the requirements set out in section 12(2) of the Academies Act 2010.
- iii. Subsection (3) requires that the order designating a 16-19 academy with a religious character specifies the religion or religious denomination with which the academy is to be designated.
- iv. Subsection (4) provides for the Secretary of State to make regulations which set out the procedure to be followed in designating 16-19 academies with a religious

character, and specifying the religious denomination.

- v. Subsection (5) states that an order designating a 16 to 19 academy as having a religious character under this section is to be made by a statutory instrument which is not subject to parliamentary procedure.

182. For new inserted section 8B, 'Constitution of Academy proprietor, collective worship and religious education':

- vi. Subsection (1) makes clear that the articles of association for a 16-19 academy designated as having a religious character must enable a majority of directors of the academy proprietor to be appointed for the purposes of securing the designated religious character of the institution and, where a trust deed is in place, ensuring that the academy follows it.
- vii. Subsection (2) provides for the academy proprietor to conduct the 16-19 academy designated as having a religious character in a way which reflects the specified religion or religious denomination and in accordance with a relevant trust deed.
  - i. Subsections (3) and (4) require an academy proprietor running a 16-19 academy designated with a religious

character to ensure it provides at least one open act of collective worship a week which pupils attending the academy are free to attend. This act of collective worship must follow the practices of the specified religion or religious denomination and comply with any relevant trust deed.

- i. Subsections (5) and (6) require the academy proprietor running a 16-19 academy designated with a religious character to ensure that it provides religious education for all pupils who wish to receive it at a time or times which are convenient for a majority of full-time pupils to attend.
- ii. Subsection (7) sets out that the religious education provided can take the form of a course of lectures or classes or single lectures or classes occurring regularly. They may also include courses or study which leads to an examination or a qualification.
- iii. Subsection (8) sets out that the religious education provided must reflect the requirements of any trust deed and not be contrary to the traditions of the specified religion or religious denomination
- iv. Subsection 9 makes clear that the references to pupil in this section means a

person receiving education at the 16-19 academy. It also sets out that references to “trust deed” including any document (other than the articles of association) which regulates the constitution, maintenance, management or conduct of the academy.

## **Institutions within the further education sector: procedure for designation**

### **Clause 35: Institutions within the further education sector: designation**

183. This clause amends sections 28 and 89 of the Further and Higher Education Act 1992 to change the mechanism by which the Secretary of State can designate educational institutions in England as falling within the statutory further education sector. It would allow the Secretary of State to designate an institution by means of an administrative order that must be published, rather than by statutory instrument as is currently required.

184. Subsection (2) makes provision to clarify the appropriate authority to make designation orders in relation to educational institutions in each of Wales and England, as this is a devolved matter.

185. Subsection (3)(a) makes provision to allow the Secretary of State to make designation orders under section 28 of the Further and

Higher Education Act 1992 by administrative order rather than by statutory instrument. It also makes the same provision regarding the existing power under section 29(1)(b) of the Further and Higher Education Act 1992 to exempt certain institutions from the requirements of section 29 of said Act. This is because any exemption under section 29 (1)(b) must be included in any designation order made under section 28.

186. Subsection (3)(b) makes provision to require any such administrative orders be published.

187. Subsection (3)(c) makes provision for transitional arrangements. These arrangements would mean existing orders under section 28 and 29(1)(b), made by statutory instrument prior to this legislation coming into force, could not be revoked or amended by administrative order. A further statutory instrument would need to be made to revoke or amend these designation orders.

## **Higher education course fee limits: administration**

### **Clause 36: Relevant date for purposes of fee limit for certain higher education courses**

188. This clause amends paragraph 3(3) of Schedule 2 to HERA 2017. Certain tuition fee

limits for academic years of higher education courses depend on whether the provider had a high-level quality rating (currently a Teaching Excellence and Student Outcomes Framework rating) on a particular date. This new clause changes that date, in relation to higher education providers without an Access and Participation Plan, to 1 January in the calendar year in which the academic year begins from 1 January in the previous calendar year, thereby correcting an error in the existing legislation.

## **Chapter 3: General Provisions**

### **Clause 37: Extent**

189. This clause states the territorial extent of the provisions in the Bill.

190. Subsection (1) states that the Bill extends to England and Wales.

191. Subsections (2) and (3) state that the following clauses extend also to Scotland and Northern Ireland: clauses 11, 16(3), 37 – 39 and clause 15 in so far as it modifies sections 22 and 23 of the Teaching and Higher Education Act 1998 as those sections extend to Scotland and Northern Ireland respectively. Clause 10 extends to Northern Ireland also but not to Scotland.

### **Clause 38: Commencement**

192. This clause states when the provisions in

the Bill will come into effect.

193. Subsection (1) lists the provisions that will come into force on the day on which the Act is passed.

194. Subsection (2) lists the provisions that will come into force two months after the Act is passed.

195. Subsections (3) and (4) state that, other than the clauses listed in subsections (1) and (2), the Act comes into force on such day (or days) as appointed by regulations made by the Secretary of State and different days may be appointed for different purposes.

196. Subsection (5) states that the Secretary of State may make transitional or saving provision in connection with the coming into force of any provision of this Act by way of regulations.

197. Subsection (6) states that the power to make regulations under subsection (5) includes power to make different provision for different purposes.

198. Subsection (7) states that the regulations made under this clause are to be made by statutory instrument.

### Clause 39: Short Title

199. This clause states that the Act may be cited as the Skills and Post-16 Education Act 2021.

## **Commencement**

200. Clause 38 provides for the commencement of the provisions in the Bill.
201. Clauses 37, 38 and 39 will come into force on the day the Act is passed.
202. Clauses 1 to 5, 20 and 26 to 36 will come into force on the day the Act is passed.
203. The remaining provisions of the Act will come into force on a day (or days) to be appointed by the Secretary of State in regulations.

## **Financial implications of the Bill**

204. Financial implications of the Bill include the additional administration costs for certain measures, including:
  - The administrative costs of designating employer representative bodies to produce local skills improvement plans or designating institutions as being within the further education sector;
  - The administrative costs of writing guidance associated with measures in the Bill, including local skills improvement plans and the duty for further education institutions to

keep their provision and structure under review in relation to local needs;

- The administrative costs for the Institute to use the additional powers to approve technical education qualifications, fulfil its new functions on oversight, and other associated measures;
- The administrative costs for introducing regulations under the powers in the Bill, including the lifelong loan entitlement, initial teacher training for further education, and the list of post-16 education or training providers.

205. These costs will be funded from within the departmental budget in the usual way.

206. Clause 25 also provides for all people in England to have the legal right to free education on an approved course for their first qualification up to and including level 3, regardless of the learner's age. It also ensures providers are guaranteed funding for the learners included in subsection (1) at a rate determined by the Secretary of State. There will be both additional administration and delivery costs associated.

207. There will be further costs associated with the delivery of measures that will be brought about in secondary legislation. A financial assessment will be made when considering

this secondary legislation.

208. Further information on the financial costs and benefits of the Bill can be found in the accompanying impact assessment, which is linked in the related documents section of these notes.

## **Parliamentary approval for financial costs or for charges imposed**

209. A money resolution is required for the Bill:

- There is potential new expenditure by the Secretary of State under various provisions of the Bill. This includes clauses 1 to 4, under which funding may be provided for the development of local skills improvement plans. Clauses 19 (initial teacher training in further education) and clauses 21 to 24 (list of relevant providers) confer powers to make regulations which could themselves require expenditure out of public funds. Clause 25 (provision of opportunities for education and skills development) would create costs for the delivery of the level 3 entitlement and associated funding for providers.
- There are also provisions in the Bill which may lead to increases in public expenditure under other Acts, including under clauses 6 to 13 (new functions conferred on the

Institute may require public expenditure), clause 9 (additional expenditure by Ofqual arising from new co-operation function), clause 15 (support for lifelong learning), clause 17 (universal credit conditionality) to the extent that it might require additional expenditure and clause 26 (intervention in further education).

210. A ways and means resolution is required for the Bill:

- The Bill provides authorisation for the charging of fees. Clause 7 confers a power to make regulations authorising the Institute to charge fees for approving qualifications and clause 21 confers a power to make regulations for the charging of fees to a relevant provider for being included on the list of relevant providers.

## **Compatibility with the European Convention on Human Rights**

211. The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, the Secretary of State for Education has made the following statement under section 19(1)(a) of the Human Rights Act 1998: “in my view the provisions of the Skills and Post-16 Education Bill are compatible with the Convention rights”.

212. The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: this memorandum is available on the Government website.

## Related documents

213. The following documents are relevant to the Bill and can be read at the stated locations:

- [Impact Assessment](#)
- [Delegated Powers Memorandum; Supplementary Delegated Powers Memorandum](#)
- [Skills for Jobs White Paper - Skills for jobs: lifelong learning for opportunity and growth - GOV.UK \(www.gov.uk\)](#)
- [Independent panel report to the Review of Post-18 Education and Funding \(publishing.service.gov.uk\)](#)
- [Post-18 education and funding review: interim conclusion - GOV.UK \(www.gov.uk\)](#)
- [Review of post-16 qualifications at level 3 in England Policy Statement – GOV.UK](#)
- [Statutory Guidance \(Draft\): review how well the education or training provided meets local needs](#)

- [Insolvency regime for further education and sixth form colleges.](#)
- [Academies Act 2010](#)
- [Apprenticeships, Skills, Children and Learning Act 2009](#)
- [Criminal Justice Act 1925](#)
- [Education Act 1996](#)
- [Education Act 1997](#)
- [Education Act 2002](#)
- [Education Reform Act 1988](#)
- [Employment and Training Act 1973](#)
- [Further and Higher Education Act 1992](#)
- [Higher Education and Research Act 2017](#)
- [Magistrates' Courts Act 1980](#)
- [Insolvency Act 1986](#)
- [Technical and Further Education Act 2017](#)
- [Serious Crime Act 2007](#)
- [Teaching and Higher Education Act 1998](#)

## Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
<b>Part 1</b>							
Clauses 1-5	Yes	No	No	No	No	No	No
Clauses 6-9	Yes	No	No	No	No	No	No
Clause 10	Yes	No	No	No	No	No	No
Clause 11	Yes	No	No	No	No	No	No
Clauses 12-13	Yes	No	No	No	No	No	No
Clause 14	Yes	No	No	No	No	No	No
Clauses 15-16	Yes	Yes	Yes	In part	No	In part	No
Clause 17	Yes	Yes	N/A	No	No	No	No
Clause 18	Yes	Yes	N/A	No	No	No	No
<b>Part 2</b>							
Clause 19	Yes	No	No	No	No	No	No
Clause 20	Yes	No	No	No	No	No	No
<b>Part 3</b>							
Clauses 21-24	Yes	No	No	No	No	No	No
Clause 25	Yes	Yes	N/A	No	No	No	No
Clause 26	Yes	No	No	No	No	No	No
Clause 27	Yes	Yes	No	No	No	No	No
Clause 28	Yes	Yes	No	No	No	No	No
<b>Part 4</b>							
Clauses 29-33	Yes	No	No	No	No	No	No
Clauses 34	Yes	No	No	No	No	No	No
Clause 35	Yes	Yes	Yes	No	No	No	No
Clause 36	Yes	No	No	No	No	No	No

*These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as brought from the House of Lords on 26 October 2021 (Bill 176)*

## Subject matter and legislative competence of devolved legislatures

214. Clauses 1-9, 12-13, 14, 19-24, 26, 29 to 36 extend to England and Wales and apply to England, but do not apply anywhere else. Corresponding provisions could be made by a devolved legislature on these subject matters. There are ongoing discussions with devolved administrations on these matters as the Bill passage progresses.

215. Clauses 17 and 18 extend and apply to England and Wales; it is unknown at this stage whether correspondence provision could be made by a devolved legislature. These clauses were added at Report stage in the House of Lords. Clause 25 extends and applies to England and Wales. Corresponding provision could be made by a devolved legislature on this subject matter. As mentioned earlier in this note, the Government will set out its position, and any associated implications on extent and application, of clauses 17, 18 and 25 in due course.

## Annex B – Glossary

**Advanced Learner Loan (ALL).** An Advanced Learner Loan helps eligible adults (aged 19 and above) with the costs of a course at a college or training provider in England. Further information can be found on GOV.UK. Qualifications for which an individual can take a loan out are known as “qualifications approved for ALL”. They can be found

at: <https://www.qualifications.education.gov.uk/>

**Advanced Level.** Any qualification at level 3, they include A Levels, the T Level technical qualification, level 3 NVQs, and level 3 National Diplomas. Apprenticeships can also be delivered at advanced level.

**Advanced Technical Education.** Refers to technical education that is delivered at level 3, this includes level 3 apprenticeships, T Levels, level 3 NVQs, and some Level 3 National Diplomas. This is the same level as A Levels.

**Apprenticeship.** An apprenticeship is a job that combines practical training with study. These can be provided from intermediate level (level 2) to professional level (levels 6&7). See “A guide

to apprenticeships” [A guide to apprenticeships.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101441/a-guide-to-apprenticeships.pdf).

**Higher Technical Qualification.** This refers to a level 4-5 Higher Technical Qualification that gains approval from the Institute where its content aligns with the Institute’s employer-led standards.

**Awarding organisations.** Refers to individual organisations recognised by Ofqual that design, develop, and certificate qualifications but are not themselves education providers.

**Degree Apprenticeship.** An apprenticeship delivered at level 6 or 7, equivalent to an undergraduate or postgraduate degree.

**Degree Level.** Any qualification at level 6 or 7. Level 6 includes a full undergraduate degree (may be degree with honours/bachelor’s degree), or a graduate diploma. Level 7 includes a master’s degree, postgraduate diploma, and a level 7 diploma. Apprenticeships can also be delivered at levels 6 and 7.

**Education and Skills Funding Agency (ESFA).** The ESFA is an executive agency sponsored by the Department for Education. It is responsible for funding education and skills for children, young

people and adults. See the ESFA website for more information.

**Employer-led standards.** Set out the knowledge, skills and behaviours (KSBs) required for an occupation. Also known as occupational standards. Employer-led standards enable assessment of whether an individual has achieved the KSBs needed to be competent in an occupation. They are developed by groups of employers and approved by the Institute for Apprenticeships and Technical Education. They currently form the basis of the T Level technical qualification and apprenticeships.

**Further education college (FEC).** Refers to institutions conducted by further education corporations. Further education colleges offer a variety of courses from entry level through to higher level qualifications.

**Further Education Provider.** An education or training organisation that is approved to deliver further education to students.

**Higher level.** Any qualification at levels 4 and 5. Apprenticeships can also be at higher level.

**Higher technical education (HTE).** Refers to technical education provided at levels 4 and 5.

**Institute for Apprenticeships and Technical Education (Institute).** The Institute is an executive non-departmental public body, sponsored by the Department for Education. It approves and publishes the employer-led standards for occupations (and their associated apprenticeship assessment plans), approves technical education qualifications, and advises government on funding for each standard. [Home / Institute for Apprenticeships and Technical Education](#)

**Intermediate level.** Any qualification at level 2, including GCSEs (Grades A\*-C/9-4), level 2 NVQ. Apprenticeships can also be at intermediate level.

**Level (L).** Refers to the 9 qualification levels in England, Wales and Northern Ireland. [What qualification levels mean: England, Wales and Northern Ireland - GOV.UK \(www.gov.uk\)](#)

**Level 2.** Also known as Intermediate level. Level 2 qualifications include GCSEs (Grades A\*-C/9-4) and level 2 Technical Award. Apprenticeships can also be delivered at Intermediate level.

**Level 3.** Also known as Advanced level. Level 3 qualifications include A Levels, T Levels, Pearson BTECs, and Cambridge Technicals. Apprenticeships can also be delivered at Advanced level.

**Levels 4 and 5.** Also known as higher level. Level 4 includes Certificate of higher education, level 4 diploma, and higher national certificate. Level 5 includes, diploma of higher education, foundation degree, higher national diploma. Apprenticeships can also be delivered at higher level.

**Levels 6 and 7.** Also known as degree level. Level 6 includes a full undergraduate degree (may be degree with honours/bachelor's degree), and a graduate diploma. Level 7 includes a master's degree, postgraduate diploma, and a level 7 diploma. Apprenticeships can also be delivered at degree level.

**Lifelong Loan Entitlement.** A funding provision, enabling people to access four years' worth of student loan funding across further and higher education providers throughout their lifetime.

**Local skills improvement plans.** Local skills improvement plans will set out the key changes required to skills provision in a local area to make provision more responsive to labour market skills needs.

**Occupational Standards.** Occupational Standards is a term often used to refer to employer-led standards. They contain a list of the skills, knowledge and behaviours an apprentice will need

to have learned by the end of their apprenticeship. Apprenticeships based on employer-led standards have replaced apprenticeship frameworks as part of reforms to raise the quality of apprenticeships. The standards are developed by groups of employers and the Institute for Apprenticeships and Technical Education is responsible for approving and publishing the employer-led standards and the related assessment plans.

**Office for Students (OfS).** The OfS is a non-departmental public body and is the independent regulator of higher education in England. [Home - Office for Students](#)

**Office of Qualifications and Examinations Regulation (Ofqual).** The Office of Qualifications and Examinations Regulation (Ofqual) regulates qualifications, examinations, and assessments in England. Ofqual is a non-ministerial government department with jurisdiction in England. [Ofqual - GOV.UK \(www.gov.uk\)](#)

**T Level.** A T Level is a programme of study at level 3 containing a qualification which is based on employer-led standards, as well as a significant industry placement and other components. T Levels offer an alternative to A Levels and are aligned with work-based technical education also provided at

level 3 through apprenticeships. T Levels are being introduced in phases from September 2020.

**Technical education.** Technical education encompasses any education or training, such as qualifications and apprenticeships, that focuses on progression into skilled employment and requires the acquisition of both a substantial body of technical knowledge and a set of practical skills valued by industry. Technical education covers provision from level 2 (the equivalent of GCSEs at A\* to C or 9 to 4) to higher education (level 6), but it differs from A Levels and other academic options in that it draws its purpose from the workplace rather than an academic discipline.

**Traineeships.** A traineeship is a skills development programme that includes a work placement. Traineeships help 16 to 24 year olds - or 25 year olds with an education, health and care (EHC) plan - get ready for an apprenticeship or job if they don't have the appropriate skills or experience. It can last from six weeks up to one year.



# **SKILLS AND POST-16 EDUCATION BILL [HL]**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as brought from the House of Lords on 26 October 2021 (Bill 176).

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