

TECHNICAL AND FURTHER EDUCATION BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Technical and Further Education Bill as brought from the House of Commons on 10 January 2017 (HL Bill 88).

- These Explanatory Notes have been drafted 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

Subject	Page of these Notes
Overview of the Bill	4
Policy background	4
Technical Education: the Institute for Apprenticeships and Technical Education	4
Further Education Bodies in England and Wales: Insolvency etc	5
Further Education: Information	5
Legal background	5
Territorial extent and application	7
Commentary on provisions of Bill	8
Part 1: Technical Education	8
Clause 1: The Institute for Apprenticeships and Technical Education	8
Part 2: Further Education Bodies: Insolvency etc.	8
Chapter 1: Introduction	8
Clauses 2 to 4: Overview, "Further Education Body"; Other Key Definitions	8
Chapter 2: Application of Normal Insolvency to Statutory Corporations	8
Clause 5: Application of normal insolvency procedure	8
Clause 6: Application of other insolvency law	9
Chapter 3: Restrictions on Use of Normal Insolvency to Statutory Corporations	9
Clauses 7 – 12: Making of ordinary administration orders; Administrator appointments by creditors etc.; Winding-up order; Voluntary winding up; Enforcement of security; Interpretation of Chapter	9
Chapter 4: Further Education Bodies: Special Administration	9
Clause 13: Overview of Chapter	10
Clause 14: Objective of education administration	10
Clause 15: Education administration order	10
Clause 16: Application for education administration order	10
Clause 17: Grounds for making an education administration order	10
Clause 18: Powers of the court on hearing an application	11
Clause 19: Appointment of two or more administrators	11
Clause 20: Duty to dismiss ordinary administration application	11
Clause 21: Status of education administrator	11
Clause 22: General functions of education administrator	11
Clause 23: Transfer schemes	11
Clause 24: Conduct of administration	11
Clause 25: Grants and loans where education administration is made	12
Clause 26: Indemnities where education administration order is made	12
Clause 27: Indemnities: repayment by further education bodies etc.	12
Clause 28: Guarantees where education administration order is made	12
Clause 29: Guarantees: repayment by further education body etc.	12
Clause 30: Education administration rules	12
Clause 31: Application of other insolvency law	12
Clause 32: Modification of this Chapter under the Enterprise Act 2002	13
Clause 33: Interpretation of Chapter	13

These Explanatory Notes relate to the Technical and Further Education Bill as brought from the House of Commons on 10 January 2017 (HL Bill 88)

Chapter 5: Trust Property held by Sixth Form College Corporations	13
Clause 34: Trust property held by sixth form college corporations	13
Chapter 6: Restrictions on Other Dissolution Procedures	13
Clause 35: Restrictions on dissolution of further education corporations	13
Clause 36: Restrictions on dissolution of sixth form college corporation	13
Chapter 7: Disqualification of Officers	13
Clause 37: Disqualification of Officers	13
Part 3: Further Education: Information	13
Clause 38: Duty to provide information relating to further education	13
Part 4: General	14
Clause 39: Power to make transitional provision to Clause 45: Short title	14
Schedules	14
Schedule 1: The Institute for Apprenticeships and Technical Education	14
Schedule 2: Education administration: transfer schemes	17
Schedule 3: Conduct of education administration: statutory corporations	17
Schedule 4: Conduct of education administration: companies	17
Commencement	18
Financial implications of the Bill	18
Parliamentary approval for financial costs or for charges imposed	18
Compatibility with the European Convention on Human Rights	19
Related documents	19
Annex A – Territorial extent and application in the United Kingdom	20
Minor or consequential effects	22
Subject matter and legislative competence of devolved legislatures	22

Overview of the Bill

- 1 This Bill takes forward policies relating to Technical and Further Education which support the government's social mobility agenda and seek to help boost the country's productivity by addressing skill shortages and ensuring high quality technical education.
- 2 The Technical Education (TE) measures in the Bill focus on supporting the implementation of the reforms to post-16 TE which were set out in the Skills Plan (published in July 2016). It takes forwards provisions which extend the Institute for Apprenticeships' remit to cover classroom-based TE in addition to apprenticeships. It also includes measures which support the Institute's establishment and remit regarding apprenticeships.
- 3 The Further Education (FE) measures introduce a FE insolvency regime which seek to ensure the financial resilience of FE and sixth form colleges, and build on the ongoing area-based reviews of the sector. The regime follows a consultation that was launched in July 2016. There is also an additional measure regarding FE information which ensures the continued provision of information on FE to the Secretary of State after functions and budget for adult education have been transferred to combined authorities.

Policy background

- 4 In addition to the below further policy background is included in each clause commentary.

Technical Education: the Institute for Apprenticeships and Technical Education

- 5 In the Government's view, reforming the skills system is crucial to the economic success of this country and to improving the life chances of millions of people.
 - a. An independent panel, chaired by Lord Sainsbury, undertook a review of the post-16 skills system and advised Government on measures which could improve technical education in England. The panel found that, despite a number of improvements made during the last Parliament, serious flaws remain. It also found that the system is over-complex with a confusing array of courses and qualifications that are insufficiently linked to the world of work and the needs of employers. The Government accepted the Panel's recommendations and published a Post-16 Skills Plan setting out its vision for the reformed system.
 - b. These provisions seek to extend the remit of the new "Institute for Apprenticeships" to cover college-based technical education in addition to apprenticeships, and to rename it accordingly as the "Institute for Apprenticeships and Technical Education".
 - c. The Institute will oversee employer-led reforms and bring together its apprenticeships and wider technical education functions in one place. It is intended to put employers at the heart of the skills system, ensuring that technical education courses and apprenticeships undertaken by individuals develop the knowledge, skills and behaviours that meet the needs of employers and improve overall productivity.
- 6 It is intended that the Institute will support the Government's commitment to delivering 3 million high quality apprenticeship starts in England by 2020. It will help regulate the quality of standards and assessment plans, ensuring a sustainable, employer-led governance arrangement to uphold high quality apprenticeships.

- a. The Secretary of State will retain strategic oversight of the technical education reforms and will have responsibility for the overall national system. The Institute will have wide-ranging autonomy for ensuring that employers agree the content of both apprenticeships and college-based technical education.

Further Education Bodies in England and Wales: Insolvency etc

- 7 This Bill will establish an insolvency framework for FE and sixth form colleges. Provisions on this are set out through seven chapters in the Bill.
 - a. The first chapter outlines the contents of the other chapters on the insolvency regime measures, and provides relevant definitions of key terms.
 - b. Chapter 2 applies normal insolvency procedures to FE colleges in England and Wales that are statutory corporations, and sixth form colleges' corporations in England. In doing so, it will allow insolvent colleges to be treated in a similar way to insolvent companies.
 - c. The third chapter provides restrictions on the use of normal insolvency procedures through its interaction with the education administration. It ensures that the Secretary of State and the Welsh Ministers are given notice of the use of those procedures and can then decide whether or not to initiate an education administration.
 - d. Chapter 4 creates a special administration regime for FE bodies, and sets out the main features of the regime including the special objective which is to avoid or minimise disruption to the studies of the existing students of the FE body.
 - e. Chapter 5 clarifies that trust property held by certain sixth form college corporations cannot be used by the education administrator to meet the claims of creditors in the event the corporation is wound up under the Insolvency Act 1986 and must instead be transferred to the trustees of the sixth form college.
 - f. The sixth chapter places restrictions on other dissolution procedures, by preventing FE bodies from taking action to dissolve the college where either normal insolvency or education administration procedures are already in train, preventing them from disrupting those procedures.
 - g. Chapter 7 is a power to make provision in regulations which is the same as or similar to that in the Company Directors Disqualification Act 1986 so as to allow for the disqualification of governors of FE and sixth form college corporations.

Further Education: Information

- 8 This Bill will also include a measure concerning information in Further Education.
 - a. It will amend existing legislation to ensure that after devolution of further education functions (and the adult education budget) to a combined authority, FE providers and others will continue to submit the relevant information to the Secretary of State.

Legal background

- 9 The legislation relating to the existing policy is set out in a combination of primary and subordinate legislation. The current provisions are in the following primary legislation and related subordinate legislation:

These Explanatory Notes relate to the Technical and Further Education Bill as brought from the House of Commons on 10 January 2017 (HL Bill 88)

- a. Company Directors' Disqualification Act 1986
- b. Further and Higher Education Act 1992
- c. The Apprenticeships, Skills, Children and Learning Act 2009 (as amended by Deregulation Act 2015 and the Enterprise Act 2016)
- d. Insolvency Act 1986

10 Further legal background is included in the background to the clauses.

Territorial extent and application

- 11 Clause 43 sets out the territorial extent of the Bill, that is, the jurisdictions of which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 12 The Bill extends to England and Wales only, save for Part 1, Schedule 1, in so far as it amends Part 1A of the Apprenticeships, Skills, Children and Learning Act 2009 (information) which extends to Scotland and Northern Ireland.
- 13 The Bill applies to England and Wales save in respect of Part 1 which applies to England only.
- 14 There are no significant devolution issues.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Part 1: Technical Education

Clause 1: The Institute for Apprenticeships and Technical Education

- 16 Clause 1 gives the Institute for Apprenticeships the new name the “Institute for Apprenticeships and Technical Education” and makes consequential changes. The clause refers to Schedule 1 which makes further provision about the Institute.

Part 2: Further Education Bodies: Insolvency etc

Chapter 1: Introduction

Clauses 2 to 4: Overview, "Further Education Body"; Other Key Definitions

- 17 Part 2 of the Bill applies insolvency procedures to further education corporations and sixth form college corporations and establishes a special administration regime for them and for companies which conduct further education institutions designated under section 28 of the Further and Higher Education Act 1992.
- 18 Chapter 1 introduces the provisions by providing an overview. It defines what is meant by “further education body” to which the insolvency regime in the Bill will apply. This is defined as further education corporations in England and Wales, sixth form college corporations in England and Wales and companies in England and Wales which conduct further education institutions designated under section 28 of the Further and Higher Education Act 1992. It also defines other key terms.

Chapter 2: Application of Normal Insolvency to Statutory Corporations

- 19 This chapter applies normal insolvency procedures to further education corporations and sixth form college corporations.

Clause 5: Application of normal insolvency procedure

- 20 Clause 5 provides for insolvent further education and sixth form college corporations to be treated in a similar way to insolvent companies under the Insolvency Act 1986. The clause applies four specific insolvency procedures, which apply to companies, to further education and sixth form college corporations: voluntary arrangements, ordinary administration, creditors’ voluntary winding up, and winding up by the court.
- 21 This clause also provides a power for the Secretary of State to modify or omit provisions in the relevant insolvency legislation which is applied by this clause, so that the insolvency legislation makes sense in the context of a further education and a sixth form college corporation, which has a different constitution to a company. The sort of modifications or omissions which may be made include those which are necessary to deal with the interaction between the insolvency procedures applied by the clause and the special administration regime which is established by Chapter 4 of this Part. So, for instance, the power can be used to translate references to “company” to “further education body” and references to “directors” to “members” (governors). The power can also be used to omit provisions, such as those relating to floating charges, which cannot be granted by a further education or sixth form college corporation.

- 22 The clause also provides for the law relating to receivers and managers of property to be applied to those corporations and for that law to be able to be modified as it is applied to those corporations, because they are different from companies.

Clause 6: Application of other insolvency law

- 23 Clause 6 provides a power for the Secretary of State to make regulations so as to apply any legislation which is about insolvency to further education and sixth form college corporations. This means that where there is legislation outside the Insolvency Act 1986 which relates to insolvency, that legislation can be applied, by secondary legislation, to those corporations. There is also power to amend or modify that legislation so that it makes sense for those corporations.

Chapter 3: Restrictions on Use of Normal Insolvency to Statutory Corporations

Clauses 7 – 12: Making of ordinary administration orders; Administrator appointments by creditors etc.; Winding-up order; Voluntary winding up; Enforcement of security; Interpretation of Chapter

- 24 Chapter 3 makes provisions which ensure that the Secretary of State or, for Wales, the Welsh Ministers, are given notice before a normal insolvency procedure is commenced in relation to a further education body (which means a further education corporation or a company which runs an institution designated under s.28 of the Further and Higher Education Act 1992), so that the Secretary of State, or, for Wales, the Welsh Ministers, have an opportunity to consider whether to apply to the court for a special administration order. This allows 14 days for consideration.
- 25 This chapter includes provision creating a moratorium on security. It ensures that no-one can take a step to enforce security over a property of a further education body without giving 14 days' notice to the Secretary of State, or for Wales, the Welsh Ministers. This gives the Secretary of State and Ministers the opportunity to apply for an education administration order where appropriate; if this happens, a moratorium will apply (see paragraphs 43 and 44 of Schedule B1 to the Insolvency Act 1986 (as it is applied and modified by Schedules 3 and 4 to the Bill, so that it works for further education bodies)).

Chapter 4: Further Education Bodies: Special Administration

- 26 This chapter includes provisions which create a special administration regime for further education corporations, sixth form college corporations and companies which run designated institutions in England and Wales.
- 27 It allows an education administrator to be appointed by the court if a further education body is insolvent, on the application of the Secretary of State or, for bodies in Wales, Welsh Ministers.
- 28 This provides an alternative to any normal insolvency procedure and creates an orderly regime for students, creditors and others, with a special objective which provides some overarching protection for the studies of existing students.
- 29 This chapter sets out the objective of the administration, the grounds on which an education administration order can be made, the powers of the court on hearing the application, and the functions and status of the administrator. It sets out a spending authority under which the Secretary of State, or, for Wales, Welsh Ministers, can make grants or loans, or agree to indemnities or enter into guarantees, for the purpose of achieving the objective of the education administration.

Clause 13: Overview of Chapter

30 This clause is self-explanatory.

Clause 14: Objective of education administration

- 31 Clause 14 is at the heart of the special administration regime and sets out the overarching (or “special”) objective for the education administration.
- 32 The objective of an education administration is to avoid or minimise disruption to the studies of the existing students of the further education body as a whole, and to ensure that it becomes unnecessary for the body to remain in education administration for that purpose. This means that the education administrator’s primary focus is on the studies of existing students, in contrast to an ordinary administration where the administrator’s primary focus is on rescuing the company or obtaining a better result for the creditors as a whole.
- 33 By existing students we mean a person who: a) is a student at the college when the administration order is made, or b) has accepted a place on a course at the college when the administration order is made.
- 34 This clause also sets out the ways the education administrator could achieve the objective including rescuing the further education body as a going concern, transferring some or all of its undertakings to another body, keeping it going until existing students have completed their studies, or making arrangements for existing students to complete their studies at another institution. There may be other options available to the education administrator in a particular instance, and this subsection is not intended to limit the actions an education administrator might take to achieve the objective.

Clause 15: Education administration order

- 35 An education administration may only be commenced by an order made by the court. Clause 15 sets out what is meant by an education administration order. It is an order appointing a person to be the education administrator of the further education body. That person must be qualified to act as an insolvency practitioner in relation to the further education body.
- 36 As set out in clauses 21 and 22, an education administrator is a person who will manage the affairs, business and property of the further education body for the duration of the education administration and will act as an officer of the court. When carrying out functions in relation to a further education body, the education administrator is the agent of the further education body.

Clause 16: Application for education administration order

- 37 Clause 16 provides that only the Secretary of State, or for Wales Welsh Ministers, can apply for an education administration order. It also requires the authority making the order to notify the further education body and any other person specified in rules. These might include the person who it is proposed will act as the education administrator or the supervisor of a voluntary arrangement relating to the further education body.

Clause 17: Grounds for making an education administration order

- 38 Clause 17 states that an education administration order can only be made if the court is satisfied that the further education body is unable, or likely to become unable, to pay its debts (within the meaning of section 123 of the Insolvency Act 1986). An education administration order cannot be made if the further education body has already entered into ordinary administration or has gone into liquidation.

Clause 18: Powers of the court on hearing an application

- 39 Clause 18 lists the powers of the court on hearing the education administration application. The court can grant or dismiss the application, but can also make other orders, including restricting the powers of the further education body. Subsection (3) specifies when an education administration order comes into force.

Clause 19: Appointment of two or more administrators

- 40 Clause 19 provides for what the court order must set out if more than one education administrator is appointed.

Clause 20: Duty to dismiss ordinary administration application

- 41 If the court makes an education administration order then clause 20 requires the court to dismiss any outstanding application for ordinary administration in relation to that body.

Clause 21: Status of education administrator

- 42 Clause 21 provides that the education administrator is an officer of the court, and that, in carrying out functions in relation to a further education body, the education administrator acts as its agent. This is an important provision for understanding the role of the education administrator, and should be read together with the functions of the education administrator which are set out in clause 22.

Clause 22: General functions of education administrator

- 43 Clause 22 provides that, where an education administration order is in force, the education administrator manages the further education body's affairs, business and property. The governors are not automatically dismissed, but, on appointment, the education administrator takes over the management of the further education body. This is a key role of the education administrator, and the functions must be carried out for the purpose of achieving the special objective, if possible. In pursuing the special objective, the administrator must in particular take into account the needs of existing students with special educational needs.
- 44 The education administrator must also, so far as it is consistent with the special objective, carry out the functions in a way that achieves the best result for the body's creditors as a whole (subsection (3)). Where the further education body is a company, subsection (4) requires the education administrator to carry out their functions in a way that achieves the best result for the company's creditors as a whole and, subject to that, the company's members as a whole.

Clause 23: Transfer schemes

- 45 Clause 23, with Schedule 2, gives the education administrator the power to make transfer schemes, which transfer the property, rights and liabilities of the further education body to another specified person or body. Such schemes can be used to override some third party rights, e.g. transferring a lease without the landlord's consent, for example, in order to facilitate the transfer of students to another provider so as to achieve the special objective.

Clause 24: Conduct of administration

- 46 Clause 24 provides that Schedules 3 and 4 apply, with modifications, provisions of the Insolvency Act 1986 which relate to ordinary administration. The effect of those Schedules is to make a special administration for further education bodies, as far as possible, mirror an ordinary administration, but there are necessary modifications because, firstly, a further education corporation is different from a company and, secondly, because a special administration has a different objective to an ordinary administration.

Clause 25: Grants and loans where education administration is made

- 47 Clause 25 gives the Secretary of State, or for Wales the Welsh Ministers, the power to make grants or loans to the further education body for the purposes of achieving the special objective. A grant or loan can be made on any terms that are considered appropriate, including making the grant or loan repayable, with or without interest. The terms must specify how the loan and any interest are to be repaid on vacation of office by the education administrator.

Clause 26: Indemnities where education administration order is made

- 48 Clause 26 enables the Secretary of State, or for Wales the Welsh Ministers, to agree to indemnify the education administrator, and other related persons against liabilities incurred and/or loss or damage sustained in connection with the education administrator exercising their functions. The Secretary of State must lay a statement of the agreement to grant the indemnity before Parliament as soon as possible after agreeing to grant it.

Clause 27: Indemnities: repayment by further education bodies etc.

- 49 Clause 27 sets out what happens if the Secretary of State makes a payment under an indemnity. The Secretary of State can require the further education body to repay that sum. The Secretary of State must lay a statement before Parliament in the event that a payment has to be made under an indemnity agreed to under clause 26. Similar powers and obligations apply to the Welsh Ministers.

Clause 28: Guarantees where education administration order is made

- 50 Clause 28 enables the Secretary of State, or for Wales the Welsh Ministers, to give guarantees in relation to the borrowings of a further education body in education administration. The Secretary of State must lay a statement of the guarantee before Parliament as soon as possible after giving it and Welsh Ministers must lay a statement before the Welsh Assembly.

Clause 29: Guarantees: repayment by further education body etc.

- 51 Clause 29 allows that if sums are paid out by the Secretary of State under a guarantee this clause requires that the further education body must pay the Secretary of State: a) such amounts in or towards the repayment to the Secretary of State of those sums as the Secretary of State may direct; and b) interest on amounts outstanding at such rates as the Secretary of State may direct.
- 52 The Secretary of State must lay a statement relating to that sum before Parliament as soon as possible after the end of the financial year in which the sum is paid out; and after the end of each subsequent financial year until the education body has discharged the liability (including interest). Similar provisions are made by this clause for Welsh Ministers.

Clause 30: Education administration rules

- 53 Clause 30 applies the power to make rules under section 411 of the Insolvency Act 1986. The effect of this is that the Secretary of State has the power to make detailed procedural rules for an education administration in the same way that they are made for ordinary administration.

Clause 31: Application of other insolvency law

- 54 Clause 31 gives the Secretary of State the power to make regulations so as to apply legislation relating to insolvency to a further education body that is in education administration.
- 55 The Enterprise Act 2002 amends the Insolvency Act 1986 and contains powers to make consequential amendments to other legislation.

Clause 32: Modification of this Chapter under the Enterprise Act 2002

- 56 The Enterprise Act 2002 amends the Insolvency Act 1986 and contains powers to make consequential amendments to other legislation. This clause extends the scope of those powers to making amendments to Chapter 4 of this Bill if that were to be necessary in the future.

Clause 33: Interpretation of Chapter

- 57 This clause sets out definitions of the terms used in this Chapter.

Chapter 5: Trust Property held by Sixth Form College Corporations

Clause 34: Trust property held by sixth form college corporations

- 58 Clause 34 provides that, if a sixth form college corporation to which section 33J of the Further and Higher Education Act 1992 applies is being wound up under the Insolvency Act 1986, any property held by the corporation on trust must be transferred to the trustees of the relevant college and cannot be used by the education administrator to meet the claims of creditors.
- 59 This clause protects the position under Section 33J of the Further and Higher Education Act 1992 which provides that a sixth form college specified in an order made under the Further and Higher Education Act 1992 must be conducted in accordance with any trust deed related to it.

Chapter 6: Restrictions on Other Dissolution Procedures

Clause 35: Restrictions on dissolution of further education corporations

- 60 Clause 35 amends the Further and Higher Education Act 1992 to prevent the dissolution under that Act of further education corporations that are already subject to normal insolvency procedures or in education administration. This will stop governors from resolving to dissolve a further education corporation where the corporation is in education administration, or in one of the other insolvency procedures which is applied to further education corporations by the Bill.

Clause 36: Restrictions on dissolution of sixth form college corporation

- 61 Clause 36 mirrors clause 35 for sixth form college corporations.

Chapter 7: Disqualification of Officers

Clause 37: Disqualification of Officers

- 62 This clause gives the Secretary of State the power, in relation to further education corporations and sixth form college corporations, to make regulations that have the same or similar effect to the Company Directors Disqualification Act 1986. This will mean that, like company directors, members (i.e. governors) of those corporations can be disqualified from acting as such in the future and the power allows the Secretary of State to make provision so that when a person is disqualified as a director of a company they can also be prohibited from acting as a member of a further education corporation or sixth form college corporation.

Part 3: Further Education: Information

Clause 38: Duty to provide information relating to further education

- 63 Clause 38 amends section 54 of the Further and Higher Education Act 1992 in respect of England to ensure that the Secretary of State can obtain information from providers of further education who receive funding from combined authorities.

- 64 The purpose of the changes is to ensure that following any transfer from the Secretary of State to a combined authority of statutory functions relating to the provision of further education, the Secretary of State can continue to obtain information about further education from providers of further education who will, from then onwards, receive funding from a combined authority rather than from the Secretary of State.
- 65 This will enable the continuation of current arrangements to gather data on further education in England and will enable the gathering and publication of consistent and comparable data on the operation of the further education system across England, as has been the case before any transfer of functions and funding to combined authorities.
- 66 Clause 38 also sets out the unchanged arrangements in respect of Wales.

Part 4: General

Clause 39: Power to make transitional provision to Clause 45: Short title

- 67 These clauses are self-explanatory.

Schedules

Schedule 1: The Institute for Apprenticeships and Technical Education

- 68 This Schedule amends the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). That Act is 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 for Apprenticeships). The Institute is expected to be established in April 2017 with apprenticeships functions. This Schedule would extend the Institute’s remit to include technical education. This includes approved technical education qualifications (see section A2DA) and the additional components that a person may need to take in order to progress into employment (see section A2DB), together referred to in these explanatory notes as ‘technical education’.
- 69 Sections ZA2 – ZA5 are extended to include technical education. Under section ZA2, the Institute must have regard to certain matters when performing its functions. These include the reasonable requirements of employers and students, and to ensure good value for money and the quality of the education or training provision approved by the Institute. The Institute must also have regard to other matters set out by the Secretary of State in a notice. There will no longer be a requirement that the notice is given annually because more frequent notices may be needed following the expansion of the Institute’s functions. Each notice must be laid before Parliament.
- 70 The scope of sections ZA3, ZA4 and ZA5 are also extended to include technical education. The Secretary of State may require the Institute to provide advice and assistance in relation to apprenticeships or other education or training. The Secretary of State may also require the Institute to take on new functions through conferral or delegation powers.
- 71 New section ZA9 enables the Secretary of State to specify broad groups of occupations, which may also be referred to as ‘routes’. This provides a framework for grouping together occupations where there are shared training requirements. New section ZA10 requires the Institute to map occupations in relation to the routes identified by the Secretary of State under ZA9 and to publish that information. Each occupational map will group together occupations with similar knowledge, skills and behaviours and which the Institute considers are appropriate for an apprenticeship or technical education.

- 72 New section ZA11 requires the Institute to publish standards for occupations which the Institute considers appropriate, and for each standard to describe the occupation and the outcomes which a person will be expected to attain to successfully achieve the standard. The standards must be drafted by a group of persons who have been approved by the Institute. The Institute may commission a group of persons to draft a standard if it considers that a standard would not otherwise be available. The Institute can provide advice and guidance to the group of persons charged with preparing the standard. The Institute must publish the criteria to be used in deciding whether to approve or reject a group who wish to develop a standard, and the criteria to be used to approve or reject the standard itself. It may also take into account other matters outside the published criteria in individual cases where appropriate. The Institute must also publish information to show how the standard relates to the occupational map.
- 73 The definition of “approved English apprenticeship” in section A1 of the 2009 Act is amended so that it is based on standards approved under ZA11 for such occupations as the Institute considers appropriate. The effect of this is that previous references to apprenticeship standards are replaced by the new standards.
- 74 Section A2 is amended so as to make explicit that it only applies to apprenticeship assessment plans. It makes equivalent provision in relation to plans as applies in relation to standards under ZA11. Unlike standards, assessment plans only relate to apprenticeships. Paragraph 12 repeals section A2A (preparation of apprenticeship standards and plans) because most of that section is reproduced within new section ZA11 and amended section A2.
- 75 Approved English apprenticeship standards and plans published by the Institute under section A2 of the 2009 Act before this Schedule comes into force are to be treated as having been approved and published as standards (under new section ZA11) and plans (under amended section A2(6)) (see paragraphs 31 and 32 of the schedule).
- 76 Section A2B is amended to allow the Secretary of State to authorise the Institute to charge fees for evaluating apprenticeship assessments. The regulations may prescribe restrictions such as the amount of the fees, or a maximum amount the Institute may charge. The purpose of evaluating apprenticeship assessments is to quality assure the assessment of outcomes (which are set out in the standard to which the assessment plan relates) including to the reliability and consistency of assessments.
- 77 All apprenticeships under standards must be assessed by an 'End Point Assessment', which evaluates how well the apprentice has acquired the knowledge, skills and behaviours set out in the relevant apprenticeship standard. The purpose of evaluating apprenticeship assessments is to ensure all organisations which offer them are delivering comparable, consistent and high quality assessments.
- 78 Employers and others who develop apprenticeship standards must set out who will carry out this quality assurance process in relation to each standard, and how they will do it. Following the establishment of the Institute for Apprenticeships, such persons will be able to ask the Institute to fulfil this function. Other options available to them include Ofqual, professional bodies and others. Some or all of the bodies that carry out this function may charge for doing so.
- 79 New section A2DA allows the Institute to approve technical education qualifications in relation to one or more occupations for which there is a published standard. A qualification may only be approved if a person taking that qualification would demonstrate that they have attained as many of the outcomes in the standard as can reasonably be expected by undertaking a course of education.

- 80 Under section A2DA, the Institute may make any appropriate arrangements for ensuring that the qualifications are available to be approved. This may include entering into contracts with other persons and requiring such conditions as the Institute sees fit. The approval process will include the transfer of copyright for relevant course documents to the Institute (see new section A2IA). The Institute must determine what those documents are (if any). It must also be satisfied that persons who it thinks are entitled to rights or interests in those documents agree to the transfer of copyright. Even if the Institute does not meet that requirement, the failure does not invalidate the approval of the qualification (assuming the Institute did not know that the person did not agree to the transfer). If a person's right or interest is transferred to the Institute without agreement, the Institute must only pay appropriate compensation if needed. It is expected that payment of compensation would be highly unlikely to arise in practice. The Institute may withdraw approval of a qualification. The Institute may also modify an approved qualification without having to withdraw the approval and reapprove it. The Institute must publish details of approved qualifications and withdrawn qualifications, indicating the occupation or occupations to which each qualification relates.
- 81 New section A2DB allows the Institute to set out additional education, types of training or other components to assist a person in progressing into employment. These may include other qualifications or a work placement, for example. The Institute must publish details of these additional requirements. The Institute may make further determinations under this section which could replace earlier determinations. A person who has completed a technical education qualification and the additional steps may be eligible to receive a technical education certificate (see new section A3A).
- 82 New section A2DC allows the Secretary of State to direct the Institute in relation to new sections A2DA and A2DB. The Institute must act in accordance with the directions (see section ZA8). This is to ensure that the Secretary of State has the necessary oversight in relation to technical education qualifications as recommended by the independent Sainsbury Panel.
- 83 New section A2HA requires the Institute to maintain a list of approved technical education qualifications. The list must indicate the standard or standards to which each qualification relates as well as the additional education, types of training or other steps that a person may need to undertake in order to progress into employment and to be awarded a technical education certificate under A3A. The Institute must ensure that the list is available free of charge.
- 84 New section A2IA gives the Institute ownership of copyright in technical education course documents (determined by the Institute under section A2DA(4)). The rights transfer to the Institute at the point where the Institute approves the qualification. A2IA(3) gives the Institute the power to assign or grant a licence of the copyright to another person. This may include an organisation with whom the Institute has entered into arrangements under section A2DA.
- 85 The amendments to section A2I ensure that transfer of copyright in standards and assessment plans to the Institute applies to the new standards and plans in the same way as it did for the previous standards and plans. New section A3A allows the Secretary of State to issue a certificate to any person who has completed a technical education qualification and any other steps determined under A2DB. The Secretary of State may make regulations: to require an application to be made in a particular way before a certificate is issued; about the supply of copies of certificates; authorising the charging of a fee for issuing a certificate or supplying a copy of it.
- 86 New section 40AA establishes data sharing gateways between the Institute and Ofsted, Ofqual and the Office for Students so that Ofsted, Ofqual and the Office for Students can work with the Institute by sharing information, in relation to England, about apprenticeships or other education or training.

- 87 Section 100 of the 2009 Act is extended to apply to technical education by new subsection 100(1B). This allows for technical education courses to be eligible for public funding by the Secretary of State under that section. This is without prejudice to the Secretary of State using any other of the Secretary of State's funding powers under other enactments.
- 88 Paragraph 33 allows the Secretary of State to make regulations to treat anything the Secretary of State has done prior to the commencement of the legislation to be treated, on or after commencement, as done by the Institute. For example, this would include any work undertaken by the Secretary of State (or a person acting on behalf of the Secretary of State) in connection with convening employer panels to set standards, the approval of these standards, and any agreements entered into with persons who will develop a technical education qualification to meet these standards, may be treated as being done by the Institute. The regulations may also modify the amendments to the 2009 Act. An example of the modifications is given in the paragraph, that if the regulations provide for a group of persons convened by the Secretary of State to be treated as convened by the Institute under section ZA11(6), the regulations may disapply the conditions in section ZA11(6)(a) and (b) in relation to the convening of that group. Any other modifications may be specified too. This power comes into force on the day on which the Act is passed.

Schedule 2: Education administration: transfer schemes

- 89 This Schedule provides that the education administrator may make a transfer scheme, as provided for in clause 23. Any transfer scheme is subject to the consent of the transferee and the approval of the Secretary of State, or, for Wales, the Welsh Ministers. There is also power to modify the scheme, but only if the education administrator and the transferees agree.
- 90 The scheme can only be used to transfer property, rights and liabilities to persons or bodies prescribed in regulations made under section 27B of the Further and Higher Education Act 1992. They are the same as those prescribed persons or bodies to whom property, rights and assets can be transferred in the event that a further education or sixth form corporation makes a resolution for dissolution under that Act.
- 91 The transfer scheme can transfer property, rights, and liabilities that could not otherwise be transferred, that is, without the agreement of third parties, thereby effectively allowing their rights to be overridden and allows for the transfer of property which is acquired, or rights and liabilities arising after the transfer scheme has been made.

Schedule 3: Conduct of education administration: statutory corporations

- 92 This Schedule contains provisions about how an education administration is to be conducted where the further education body is a statutory corporation.
- 93 It does this by applying certain provisions of the Insolvency Act 1986, including certain provisions of Schedule B1 to that Act which sets out the provisions in relation to an ordinary administration, and modifying them to make them work for an education administration of a further education body that is a statutory corporation.

Schedule 4: Conduct of education administration: companies

- 94 This Schedule contains provisions about how an education administration is to be conducted where the further education body is a company.
- 95 It does this by applying certain provisions of the Insolvency Act 1986 including certain provisions of Schedule B1 to that Act which set out provisions relating to ordinary administrations for companies, and modifying them to make them work for an education administration of a company which is conducting an institution designated under section 28 of the Further and Higher Education Act 1992.

Commencement

- 96 Paragraph 33 of Schedule 1 and Part 4 of this Bill would come into force on the day on which the Bill is passed.
- 97 The other provisions of the Bill would come into force on such day as the Secretary of State may by regulations appoint.

Financial implications of the Bill

- 98 An impact assessment is being prepared for the whole Bill and will be available at www.gov.uk. This covers the implications on private sector bodies and local authorities which derive from this Bill.
- 99 We will be publishing any required new burdens assessments when the Bill receives Royal Assent. Our expectation, however, is that none of the measures in the Bill will affect local authorities' burdens. The Bill is not expected to have any direct impact on public sector manpower.
- 100 The majority of measures in the Bill have no regulatory impact on business. There is, however, one measure that is within scope of the better regulation framework. This measure relates to the devolution of the Adult Education Data Requirement and has an estimated equivalent annual net direct cost to business (EANDCB) of zero. This has been verified by the Regulatory Policy Committee. This is a qualifying regulatory provision that will be accounted for under the business impact target.
- 101 Any other additional costs arising from provisions in this Bill will be funded by HM Government, and will be considered as part of the normal Budget and Spending Review process.

Parliamentary approval for financial costs or for charges imposed

- 102 A money resolution and a ways and means resolution for the Bill were passed by the House of Commons on 14 November 2016. There is potential expenditure by the Secretary of State under various provisions of the Bill. In particular, Clause 16 confers power on the Secretary of State to apply for an education administration order and there may be associated administrative costs. More significantly, clauses 25, 26 and 28 confer powers on the Secretary of State to provide financial assistance.
- 103 There may also be additional expenditure by the Secretary of State under paragraph 13 of Schedule A1 to the Apprenticeships, Skills, Children and Learning Act 2009 (financial assistance to the Institute for Apprenticeships). Clause 1 and Schedule 1 significantly extend the functions of the Institute and this is likely to give rise to an increase in financial assistance under that paragraph of that Act.
- 104 The amendment made by paragraph 14(4) of Schedule 1 allows the Secretary of State to make regulations authorising the charging of fees for carrying out evaluations about the quality of apprenticeship assessments. The amendment made by paragraph 24 of that Schedule allows the Secretary of State to make regulations authorising the charging of fees for issuing a technical education certificate or supplying a copy of it.

Compatibility with the European Convention on Human Rights

105 Lord Nash, Parliamentary Under-Secretary of State for Education, has made the following statement: “In my view, the provisions of the Technical and Further Education Bill are compatible with the Convention rights.”

Related documents

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

- Educational Excellence Everywhere White Paper-
<https://www.gov.uk/government/publications/educational-excellence-everywhere>
- Post-16 Skills Plan-
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536043/Post-16_Skills_Plan.pdf
- Apprenticeships, Skills, Children and Learning Act 2009-
<http://www.legislation.gov.uk/ukpga/2009/22/contents>
- Further and Higher Education Act 1992-
<http://www.legislation.gov.uk/ukpga/1992/13>
- Consultation document for developing an insolvency regime for the further education sector – <https://www.gov.uk/government/consultations/developing-an-insolvency-regime-for-the-further-education-and-sixth-form-sector>
- Insolvency Act 1986- <http://www.legislation.gov.uk/ukpga/1986/45/contents>
- Company Directors Disqualification Act 1986-
<http://www.legislation.gov.uk/ukpga/1986/46/contents>

Annex A – Territorial extent and application in the United Kingdom

This Bill extends to England and Wales only, save for:

- Schedule 1 regarding the amendment of Part 1A of the Apprenticeships, Skills, Children and Learning Act 2009 (information) which extends to Scotland and Northern Ireland because the amended part so extends, although the amendment is of no practical effect in Scotland, Northern Ireland (or Wales) and therefore this Schedule applies to England only.

The Bill applies to England only, save for:

- Part 2 and Part 3, all of which apply to England and Wales (see further detail below)¹:

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
1 Clause 1	Yes	No	No	No	Yes	Yes	Yes	No
2 Clause 2	Yes	Yes	No	No	No	Yes	Yes	No
Clause 3	Yes	Yes	No	No	No	Yes	Yes	No
Clause 4	Yes	Yes	No	No	No	Yes	Yes	No
Clause 5	Yes	Yes	No	No	No	Yes	Yes	No
Clause 6	Yes	Yes	No	No	No	Yes	Yes	No
Clause 7	Yes	Yes	No	No	No	No	Yes	No
Clause 8	Yes	Yes	No	No	No	No	Yes	No
Clause 9	Yes	Yes	No	No	No	No	Yes	No
Clause 10	Yes	Yes	No	No	No	No	Yes	No
Clause 11	Yes	Yes	No	No	No	No	Yes	No
Clause 12	Yes	Yes	No	No	No	No	Yes	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 13	Yes	Yes	No	No	No	No	Yes	No
Clause 14	Yes	Yes	No	No	No	No	Yes	No
Clause 15	Yes	Yes	No	No	No	No	Yes	No
Clause 16	Yes	Yes	No	No	No	No	Yes	No
Clause 17	Yes	Yes	No	No	No	No	Yes	No
Clause 18	Yes	Yes	No	No	No	No	Yes	No
Clause 19	Yes	Yes	No	No	No	No	Yes	No
Clause 20	Yes	Yes	No	No	No	No	Yes	No
Clause 21	Yes	Yes	No	No	No	No	Yes	No
Clause 22	Yes	Yes	No	No	No	No	Yes	No
Clause 23	Yes	Yes	No	No	No	No	Yes	No
Clause 24	Yes	Yes	No	No	No	No	Yes	No
Clause 25	Yes	Yes	No	No	No	No	Yes	No
Clause 26	Yes	Yes	No	No	No	No	Yes	No
Clause 27	Yes	Yes	No	No	No	No	Yes	No
Clause 28	Yes	Yes	No	No	No	No	Yes	No
Clause 29	Yes	Yes	No	No	No	No	Yes	No
Clause 30	Yes	Yes	No	No	No	No	Yes	No
Clause 31	Yes	Yes	No	No	No	No	Yes	No
Clause 32	Yes	Yes	No	No	No	No	Yes	No
Clause 33	Yes	Yes	No	No	No	No	Yes	No
Clause 34	Yes	Yes	No	No	No	No	Yes	No
Clause 35	Yes	Yes	No	No	No	Yes	Yes	No
Clause 36	Yes	Yes	No	No	No	Yes	Yes	No
Clause 37	Yes	Yes	No	No	No	Yes	Yes	No
3								
Clause 38	Yes	Yes	No	No	Yes	Yes	Yes	No
4								
Clause 39	Yes	Yes	No	No	No	No	Yes	No
Clause 40	Yes	Yes	No	No	No	No	Yes	No
Clause 41	Yes	Yes	No	No	No	No	Yes	No
Clause 42	Yes	Yes	No	No	No	No	Yes	No
Clause 43	Yes	Yes	No	No	No	No	Yes	No

These Explanatory Notes relate to the Technical and Further Education Bill as brought from the House of Commons on 10 January 2017 (HL Bill 88)

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 44	Yes	Yes	No	No	No	No	Yes	No
Schedule 1	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 2	Yes	Yes	No	No	No	No	Yes	No
Schedule 3	Yes	Yes	No	No	No	Yes	Yes	No
Schedule 4	Yes	Yes	No	No	No	No	Yes	No

Minor or consequential effects²

None

Subject matter and legislative competence of devolved legislatures

107 The Department considers the provisions that are identified as being within the legislative competence of the National Assembly for Wales to be so because they relate to one of the subjects listed under the headings in Part 1 of Schedule 7 to the Government of Wales Act 2006, namely "Education and Training" and do not fall within any of the exceptions specified in that Schedule.

108 The Department considers the provisions that are identified as being within the legislative competence of the Scottish Parliament to be so because they relate to education, which is not a reserved matter under Schedule 5 to the Scotland Act 1998. The Department also considers that the Scottish Parliament has legislative competence to make provision equivalent to certain provisions which relate to insolvency of business associations which are public bodies established by an enactment, because this is also not a reserved matter under Schedule 5 of that Act (by virtue of an exception to the reservation contained in the definition of "business associations" in C2 which applies to further education and sixth form colleges which are public bodies created by or under an enactment).

109 The Department considers the provisions that are identified as being within the legislative competence of the Northern Ireland Assembly to be so because they relate to education or insolvency, both of which are transferred matters under the Northern Ireland Act 1998 (not being either excepted matters under Schedule 2 to that Act or reserved matters under Schedule 3 to that Act).

² References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

TECHNICAL AND FURTHER EDUCATION BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Technical and Further Education Bill as brought from the House of Commons on 10 January 2017 (HL Bill 88).

Ordered by the House of Lords to be printed, 10 January 2017

© Parliamentary copyright 2017

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS

These Explanatory Notes relate to the Technical and Further Education Bill as brought from the House of Commons on 10 January 2017 (HL Bill 88)