Technical and Further Education Bill

Delegated Powers Memorandum

Department for Education
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Introduction

A. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee (the “Committee”) to assist with its scrutiny of the Technical and Further Education Bill (“the Bill”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected. The memorandum reflects the Bill as at introduction to the Lords on 10 January 2017. It was introduced into the Commons on 27 October 2016.

Purpose and effect of the Bill

Technical Education

B. To implement and support the reforms announced in the Skills Plan, this Bill will extend the remit of the Institute for Apprenticeships to cover technical education, not just apprenticeships. It will also take forward technical measures that establish data-sharing gateways between the Institute and relevant bodies, and allows the Institute to charge for the costs involved with evaluating apprenticeship assessments.

Further Education Bodies: Insolvency etc.

C. This Bill will establish an insolvency regime for Further Education and sixth form colleges. This will allow for an orderly process for managing any possible cases of insolvency for colleges in the future. The regime represents the interests of taxpayers and creditors, and also protects learners at insolvent colleges by ensuring continuity of provision for existing students.

Further Education: Information

D. The Bill will ensure that further education providers continue to provide relevant data to the Secretary of State after the devolution of the Adult Education Budget to combined authorities.

Delegated Powers

E. Paragraph 27 of Guidance for Departments on the role and requirements of the Committee outlines what this Memorandum should cover in the following terms:

“[The memorandum should identify every provision for delegated legislation in the bill. Given that powers to give directions, issue codes of practice, etc. can be delegated legislative powers, to the extent that they are in a particular bill, the memorandum should cover them as well. Where a power is considered not to be legislative in character, the memorandum should explain fully why this is thought to be the case.”

F. Accordingly, this Memorandum has been divided into two parts. Part A identifies and explains every provision for delegated legislation in the Bill. Part B identifies powers that are not considered to be legislative in character, and explains why.
Part A: Delegated powers

1 Institute for Apprenticeships and Technical Education

1.1 The Institute for Apprenticeships and Technical Education provisions extend the remit of the Institute for Apprenticeships (“the Institute”) to include technical education and make provisions about its functions extending to technical education. This includes amending Chapters ZA1, A1, and 1A of the Apprenticeships, Skills, Children and Learning Act 2009 (“ASCLA 2009”) to include technical education.

1.2 “Technical education” includes technical education qualifications approved under A2DA and additional steps towards occupational competence as may be determined by the Secretary of State under new section A2DB.

1.3 In most cases the following delegated powers are an expansion of existing powers in the Enterprise Act 2016 to reflect the expansion of the Institute’s functions to technical education. (Schedule 4 to that Act will insert those powers into the ASCLA 2009 after that legislation is commenced.)

1.4 There are, however, some powers in relation to technical education where there is a different approach to technical education than for apprenticeships. These additional powers are intended to give effect to the oversight functions of the Secretary of State recommended by the Sainsbury Panel (see in particular section A2DC).

Clause 1 & Schedule 1

Summary of Power: Extension of an existing power to enable the Secretary of State to set out matters to which the Institute must have regard when performing its functions in relation to technical education as set out in sections AD2A and A2DB

Power conferred on: Secretary of State

Power exercised by: Notice

Parliamentary Procedure: Lay before Parliament

Context and Purpose

1.5 The purpose of section ZA2(2) is to enable the Secretary of State by notice to require the Institute to have regard to certain matters when the Institute is performing its functions.

1.6 Section ZA2(1) sets out the matters that the Institute must have regard to in performing its functions, so far as relevant and subject to any notice given by the Secretary of State under subsection (2). Under section ZA2(2) the Secretary of State may give a notice in writing to the Institute setting out other matters to which the Institute must have regard when performing its functions.
1.7 Whilst the core matters to which the Institute must have regard are stated on the face of the Bill in section ZA2(1), it is anticipated that the notice procedure will be used to give policy steers to the Institute, for example, to set out matters concerning the wider government policy context. In this regard, it should be noted that the Institute has a duty to ‘have regard’ to the matters set out in such a notice when performing their functions.

1.8 The Schedule will omit sections ZA2(3) and (4) with the result that the Secretary of State may give a notice under subsection (2) more than once in any financial year. Subsection (7) provides that a notice does not apply in relation to functions that are delegated by directions under new section ZA4 or conferred by regulations under section ZA5, unless the regulations or directions provide for them to apply in relation to the functions. Where such directions or regulations so provide, subsection (8) sets out matters which the directions or regulations may provide, namely: provision for any education or training to which the functions relate to be treated as within the Institute’s remit for the purposes of section ZA2 and provision for subsection (1) and any notice under subsection (2) to apply in relation to functions with such modification as the Secretary of State thinks fit.

1.9 Subsection (9) provides that the Secretary of State must publish a notice under subsection (2) in such manner as the Secretary of State thinks fit and lay a copy of it before Parliament.

Justification for taking the power

1.10 The power of the Secretary of State to give a notice to the Institute setting out other matters to which the Institute must have regard when performing its functions is additional to those core matters explicitly set out in subsection (1) to which the Institute must already have regard when performing its functions. It is considered necessary to enable the Secretary of State to provide policy steers to the Institute on additional matters to which it must have regard. It is the Department’s view that this provides flexibility for such delegation more frequently than Parliament can be expected to legislate by primary legislation.

1.11 The omission of subsections (3) and (4) is intended to harmonise the notice giving provisions for apprenticeships and technical education. The change is necessary (i) having regard to the strategic steers needed from the Secretary of State as recommended in the Sainsbury Report, and (ii) due to the increased complexity of the institute’s operations as a result of its new technical education functions, not least the potential number of technical education qualifications required resulting in the potential need for the Secretary of State to ask the Institute to have regard to different matters at different times. For example, several technical education qualifications will be approved and arrangements entered into with organisations to deliver these qualifications throughout the year. This provision does not affect the independence of the Institute because the Institute only has to have regard to the recommendations in the notice and would not have to comply with them in accordance with section ZA2(2).

Justification for the procedure
1.12 The Department considers that it is sufficient that the Secretary of State must lay a copy of a notice under subsection (2) before Parliament. In addition to this, section ZA6 provides that the Institute must prepare an annual report, which the Secretary of State must lay before Parliament. Further, section ZA6(2) provides that annual report must include a description of what the Institute has done as a result of any notice given by the Secretary of State under section ZA2(2). As a result, Parliament has the opportunity to see not only the notice, but also what the Institute has done as a consequence of that notice. Parliament accepted this justification for the power in relation to the Institute’s functions in relation to approved English apprenticeships during the passage of the Enterprise Act 2016. Paragraph 2 is an extension of the power to reflect the wider remit of the Institute rather than an entirely new power.

**Clause 1 & Schedule 1**

*Summary of Power:* Extension of an existing power to enable the Secretary of State to delegate functions to the Institute in relation to technical education

*Power conferred on:* Secretary of State

*Power exercised by:* Direction

*Parliamentary Procedure:* None

1.13 The purpose of paragraph 4 is to amend section ZA4 to enable the Institute to exercise technical education functions as well as apprenticeship functions of the Secretary of State delegated to it by the Secretary of State.

1.14 Section ZA4(1) provides a power for the Secretary of State by direction to delegate to the Institute any of the Secretary of State’s functions relating to apprenticeships and technical education in relation to England. Section ZA4(2) provides that the functions can be delegated to any extent and subject to any conditions that the Secretary of State specifies in the direction.

1.15 The purpose of this power to delegate is to ensure that when the Secretary of State considers that the Institute is ready to take on any of the Secretary of State’s functions and it is considered appropriate to delegate them, the Secretary of State can do so. Given that the Institute has just been set up and the provision bringing it into force have not yet been commenced, it is not possible at this stage to say what further functions of the Secretary of State might be delegated to the Institute, however it is important to acknowledge that it is considered that the core functions to be exercised by the Institute have been set out in section ZA2.

1.16 Section ZA4(3) would include a reference to the newly inserted section 100(1B) to be consistent with the existing reference to 100(1A), and to ensure that there is no doubt as to the matters which may be delegated. In particular, as with apprenticeships, it is made express that (i) matters in relation to the funding, in relation to England, of technical education qualifications, and (ii) steps that
people may take towards becoming competent to work in occupations, are capable of being delegated. Other functions of the Secretary of State that may be delegated, in relation to technical education are the issuing of a certificate under section A3A and the determination of categories into which occupations may be placed under section ZA10.

1.17 ZA2(7) provides that ZA2(1) and a notice given under ZA2(2) do not apply in relation to functions that are delegated by directions under new section ZA4, unless the directions provide for them to apply in relation to the functions. Where such directions so provide, subsection (8) sets out matters which the directions may provide.

1.18 Section ZA8 states that the Institute must comply with such a direction and the direction must be in writing.

Justification for taking the power

1.19 It is considered that the core functions of the Institute have been explicitly set out by the Enterprise Act 2016 and the amendments in this Bill to extend those functions to technical education. The power of the Secretary of State by direction to delegate to the Institute any of the Secretary of State’s functions relating to apprenticeships and technical education is necessary to provide flexibility, so it can be used when it is needed to ensure that where the Secretary of State considers the Institute can undertake additional delegable functions, such functions can be readily delegated to the Institute. This provides flexibility for such delegation more frequently than Parliament can be expected to legislate by primary legislation and is consistent with the powers to delegate under Chapter A1 of the ASCLA 2009 (inserted by the Deregulation Act 2015) and with the existing provision, in relation to apprenticeships, enacted by the Enterprise Act 2016.

Justification for the procedure

1.20 The Department considers that no Parliamentary procedure is required, given this is a delegation of functions of the Secretary of State, it is not a conferral as is the case with section ZA5(1), and is limited to a delegation of the Secretary of State’s functions. As a delegation the Institute acts on behalf of the Secretary of State and is subject to directions and conditions by the Secretary of State. Parliament accepted this justification for the power in relation to the Institute’s functions in relation to apprenticeships in relation to England during the passage of the Enterprise Act 2016. Paragraph [4] would be an extension of the power to reflect the wider remit of the Institute.

Clause 1 & Schedule 1

Summary of Power: Extension of an existing power to enable the Secretary of State to confer functions on the Institute for Apprenticeships

Power conferred on: Secretary of State
Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative procedure

Context and Purpose

1.21 Paragraph 5 extends the remit of section ZA5 (Conferral of further functions on the Institute by regulations) to technical education. This will enable the Institute to exercise technical education functions as well as apprenticeship functions conferred on it by the Secretary of State.

1.22 As such, this power is wider than the delegation power in new section ZA4 since it is not limited to functions which the Secretary of State holds and, by virtue of being a conferral, it has the effect that the Institute exercises conferred functions on their own account and does not exercise them on behalf of the Secretary of State as would be the case if they were delegated.

1.23 Such conferral will ensure that when the Secretary of State considers the Institute is ready to take on such functions relating to both apprenticeships and technical education and it is considered appropriate to confer them, the Secretary of State can do so. Given that the provisions setting up the Institute has yet to come into force, it is not possible at this stage to say what further functions might be given to the Institute.

1.24 Section ZA2(7) provides that section ZA2(1) and a notice given under section ZA2(2) do not apply in relation to functions that are conferred by regulations under new section ZA5, unless the regulations provide for them to apply in relation to the functions. Where such regulations so provide, subsection (8) sets out matters for which the regulations may provide.

1.25 Section ZA5(2) states that a function conferred by such regulations may include the exercise of a discretion by the Institute.

Justification for taking the power

1.26 The extension of the existing power of the Secretary of State to confer functions on the Institute so that it applies to technical education is necessary to align with the conferral powers already available to apprenticeships, taking into account the recommendation that the approaches for apprenticeships and technical education are to be harmonised so far as possible, and to make sure that the existing power remains workable in relation to apprenticeships. For example, the reforms will mean that standards will relate both to apprenticeships and technical education.

Justification for the procedure

1.27 The Department considers that the affirmative procedure is appropriate given the functions which can be conferred on the Institute are not limited to those the Secretary of State holds (which is the case in respect of section ZA4(10)), and are conferred, rather than delegated, so that the Institute exercises those conferred function on their own account. This justification was accepted by
Parliament in relation to the existing provision during the passage of the Enterprise Act 2016, and in our view the same procedure should apply in relation to the extended power. The affirmative procedure is provided for in section 262(6) of the ASCLA 2009, and will provide Parliament with the appropriate opportunity for scrutiny.

Clause 1 & Schedule 1

Summary of Power: Extension of an existing power that enables the Secretary of State to give directions to the Institute on matters to be included in annual and other reports

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

1.28 Section ZA6(1) sets out that the Institute must prepare an annual report. Subsection (2)(c) provides that an annual report is a report which includes such other provision as the Secretary of State may direct. The Secretary of State must lay a copy of this report before Parliament. Section ZA2(6)(b) and (c) extends the Institute’s remit to technical education.

1.29 In addition, under subsection (5), the Secretary of State may direct the Institute to send to the Secretary of State a report on any matter relating to its functions.

1.30 The powers to direct are considered necessary to enable the Secretary of State and Parliament to see how the Institute is carrying out, for example, the functions which are already provided in the Bill in relation to technical education and those which are subsequently given to it. Such information will assist the Secretary of State, for example, in forming views as to whether it is appropriate to delegate further matters to the Institute and whether there are matters on which a notice should be given under new section ZA2(2).

1.31 Section ZA8 provides that the Institute must comply with such a direction and the direction must be in writing.

Justification for taking the power

1.32 The power of the Secretary of State to require the Institute to include such other provision as the Secretary of State may direct in the Institute’s annual report (which must be laid before Parliament), and the power to direct the Institute to report to the Secretary of State on any matter relating to its functions, are both necessary to provide flexibility, so that they can be used when they are needed. For example, it is expected that the power will be used on at least an annual basis to ensure that the information required in annual reports is responsive to current needs. This provides flexibility for such delegation more frequently than Parliament can be expected to legislate by primary legislation. Where it is already clear what an annual report should contain, this is explicitly stated in
sections ZA6(2)(a) and (b).

Justification for the procedure

1.33 The Department considers that no Parliamentary procedure is required given that, in relation to a direction under subsection (2)(c), Parliament will see the resulting annual report, given the requirement in subsection (4) for the Secretary of State to lay a copy of the annual report before Parliament. In respect of the power of the Secretary of State to direct the Institute to send to the Secretary of State a report on any matter relating to its functions under subsection (5), it is not considered necessary that a Parliamentary procedure is required in respect of that direction, given that, whilst a report under subsection (5) does not have to be laid before Parliament, the annual report which must be laid before Parliament must include a description of what the Institute has done during the year, and, where subsection (2)(c) is exercised, will include such other provisions as the Secretary of State may direct.

Clause 1 & Schedule 1

Summary of Power: This power enables the Secretary of State to give directions to the Institute where the Institute fails to discharge duties

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

1.34 Section ZA7(1) sets out that, where the Secretary of State is satisfied that the Institute has failed to discharge a duty imposed on it by or under the ASCLA 2009, or has acted or is proposing to act in an unreasonable way in exercising any function, the Secretary of State can give the Institute such directions as the Secretary of State considers appropriate. This is extended to include technical education following the extension of the remit of the Institute under section ZA2(6)(b) and (c).

1.35 Section ZA8 provides that the Institute must comply with such a direction and the direction must be in writing.

Justification for taking the power

1.36 The extension of the power of the Secretary of State to direct the Institute under section ZA7 to apply to technical education as well as apprenticeships is necessary to align the power, in view of the Institutes broader remit, and as with the existing power to provide flexibility, so it can be used when it is needed to remedy, mitigate, prevent or minimise any of the effects of, amongst other things, a failure to discharge a duty. This provides the flexibility for such direction more frequently and more immediately than Parliament could be
expected to legislate by primary legislation.

**Justification for the procedure**

1.37 The Department considers that no Parliamentary procedure is required in respect of this power to direct, given its nature for dealing with specific issues, for example, where the Institute has acted in an unreasonable way.

1.38 However, section ZA6 (Annual and other reports), provides in subsection (1) that the Institute must prepare an annual report and under (2)(c) it must contain such other provisions as the Secretary of State may direct. Section ZA6(4) provides that the Secretary of State must lay a copy of that report before Parliament. This provides scope for matters in section ZA7 which are the subject of directions to be included in the annual report laid before Parliament. Parliament accepted this justification for the power in relation to the Institute’s functions in relation to approved English apprenticeships during the passage of the Enterprise Act 2016.

**Clause 1 & Schedule 1**

*Summary of Power:* Power for the Secretary of State to make regulations authorising the Institute to charge fees for the evaluation of apprenticeship assessments under section A2B(1) of the ASCLA 2009

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative procedure

**Context and Purpose**

1.39 Section A2B of the ASCLA 2009 (to be inserted by Schedule 4 to the Enterprise Act 2016 on a day to be appointed) provides for the evaluation of the quality of apprenticeship assessments.

1.40 The Institute must secure that evaluations are carried out out of the quality of apprenticeship assessments provided by persons in relation to apprenticeship assessment plans published under section A2. To comply with that duty the Institute may carry out the evaluations of the assessments itself or it may approve or make arrangements for other persons to carry out the evaluations. Those other persons may charge for carrying out the evaluations. But the Institute does not have a similar power to charge. That creates an asymmetry where evaluations of assessments could be paid for by the Institute, and ultimately the taxpayer, in relation to some assessment plans but not others.

1.41 It follows that the purpose of the provision is for the Institute to be able to charge fees to persons for carrying out evaluations of assessments under section A2B(1) or connected purposes only if, and to the extent that, the charging of the fee is authorised by regulations made by the Secretary of State. The regulations may prescribe restrictions such as the fees, or the maximum amount of the fees,
the Institute may charge. The fee, or the maximum amount of the fee, may be different in different cases.

Justification for taking the power

1.42 The Government considers that the delegation is justified having regard to the context and purpose of the provision set out above. In particular, the amount of the fee is likely to be adjusted over time to reflect, among other things, the changing costs of evaluating assessments for the Institute and in relation to particular plans. The cost of evaluating an assessment may vary between assessment plans with the result that it may be appropriate to charge different fees for different assessment plans. Not least as the Institute is not yet established, it is not yet known exactly what would be required for the evaluation of the assessments and how much that would cost. Accordingly, it is not known what an appropriate fee, or maximum fee, would be in relation to a particular plan or plans.

1.43 Assessment plans are themselves kept under review and periodically updated, including in relation to their assessment arrangements so it is expected that even after the maximum fee is ascertainable, it will need to be adjusted over time. It follows that the amount of a fee which may be charged in relation to the evaluation of an assessment is likely to need to be adjusted more frequently than Parliament can reasonably be expected to legislate by primary legislation.

Justification for the procedure

1.44 The Government considers that a statutory instrument subject to the negative procedure is appropriate for this measure. It is noted that the extent of fees charged by other persons for evaluating assessments, who would provide an alternative to the Institute evaluating the assessments, need not be set out in a statutory instrument. The fee in this case would, however, be charged by the Institute, a body performing functions on behalf of the Crown, and authorised by the Secretary of State.

1.45 The procedure selected is consistent with the procedure to be followed under section A3 of the ASCLA 2009 for charging for the issuing of apprenticeships certificates or supplying copies of them. It is considered that the negative procedure provides a sufficient level of Parliamentary scrutiny, having regard to the frequency with which the charge is likely to be updated, and to ensure fee levels can be updated relatively quickly if necessary.

Clause 1 & Schedule 1

Summary of Power: power for the Secretary of State to give directions to the Institute in connection with the exercise by the Institute of any function under or for the purposes of certain sections relating to technical education

Power conferred on: Secretary of State

Power exercised by: Direction
Parliamentary Procedure: None

Context and Purpose

1.46 New Section A2DC would be inserted into ASCLA 2009 by paragraph 15 of Schedule [1] to the Bill. It provides for the Secretary of State to give directions to the Institute where the Institute is exercising any of its functions for the purposes set out in sections A2DA and A2DB. These include the approval of a qualification, the determination of an additional step, entering into arrangements to secure the qualification is available for approval, the withdrawal of a qualification and their publication requirements.

Justification for taking the power

1.47 The creation of the power of the Secretary of State to direct the Institute under section A2DC is necessary to provide flexibility, so it can be used when it is needed to give effect to, amongst other things, a national policy initiative. By way of example, initiatives may include (i) a national requirement for all qualifications taken by 16-18 year old students to include a specific core skill or knowledge, (ii) a provision for all qualifications to meet specific requirements defined by employers (for example, a set of core employability skills), or (iii) when the Secretary of State needs to exercise strategic oversight (for example to reflect changes to other parts of the system such as a change in the structure of A levels, or a change in the length of the academic year, both of which could necessitate a bearing on the shape of technical education provision).

1.48 This flexibility is needed because it is important for the Secretary of State to retain strategic oversight as recommended by the Sainsbury Panel. This includes the ability for the Secretary of State to ensure that her wider policy responsibilities are given effect to, including those required under section 10 of the Education Act 1996 and other legislation. Given the high proportion of students, particularly those aged 16 to 18, who currently undertake some form of technical education (which we expect to continue), it is important for the Government to have overall control where necessary.

Justification for the procedure

1.49 The Department considers that no Parliamentary procedure is required in respect of this power to direct, given that the intention is for the Secretary of State to retain the oversight which this power provides for. At present there would be no procedure as regard to the exercise by the Secretary of State of equivalent policy responsibilities, and it is considered that any new restriction would be unduly obstructive, particularly if the Secretary of State had to act quickly. An alternative approach may undermine the Secretary of State’s policy-making function and oversight of the Institute.

1.50 However, section ZA6 (Annual and other reports) provides in subsection (1) that the Institute must prepare an annual report, and under (2)(c), that it must contain such other provisions as the Secretary of State may direct. Section ZA6(4) provides that the Secretary of State must lay a copy of that report before
Parliament. This provides scope for matters in section A2DC which are the subject of directions to be included in the annual report laid before Parliament. Parliament accepted this justification for the power in relation to the Institute’s functions in relation to approved English apprenticeships in section ZA7 (the power of the Secretary of State to give directions to the Institute where the Institute fails to discharge duties) during the passage of the Enterprise Act 2016. The Secretary of State is prohibited from directing the Institute in relation to a specific qualification or step which ensures that the power is limited to being used for matters of general importance and necessity.

**Clause 1 & Schedule 1**

*Summary of Power:* power to make provision, in relation to technical education, about applications for certificates, supply of copies of certificates, and authorising the charging of fees

*Power conferred on:* Secretary of State

*Power exercised by:* Regulations made by Statutory Instrument

*Parliamentary Procedure:* Negative procedure

**Context and Purpose**

1.51 Section A3A of the ASCLA 2009 provides for the Secretary of State to issue a technical education certificate. The Secretary of State may issue a certificate to any person who has completed a technical education qualification approved under section A2DA and any other steps determined under section A2DB. Section A3A(2) enables the Secretary of State to make regulations (i) to require an application to be made in a particular way before a certificate is issued, (ii) about the supply of copies of certificates, and (iii) authorising the charging of a fee for issuing a certificate or supplying a copy of it.

**Justification for taking the power**

1.52 The Government considers that the powers are justified having regard to the context and purpose of the provision set out above. Whilst the Institute is not yet in operation it is currently envisaged that many students undertaking a college course will need to find skilled employment at the end of it or move on to higher level of study, giving weight to the importance of the certificate.

1.53 If a fee is introduced the amount is likely to be adjusted over time to so it follows that it will need to be adjusted more frequently than Parliament can reasonably be expected to legislate by primary legislation. Not least, as the Institute is not yet established, flexibility is needed to prescribe the most appropriate process for each qualification and additional steps taking into account all the relevant considerations, including any advice from the Institute and others on what the process should be. Once the Institute comes into force it will also be possible to delegate the functions to the Institute under section ZA4, or to any other person under section A4.
Justification for the procedure

1.54 The Government considers that a statutory instrument subject to the negative procedure is appropriate for these purposes. The procedure selected is consistent with the procedure to be followed under section A3 of the ASCLA 2009 for charging for the issuing of apprenticeships certificates or supplying copies of them (see Apprenticeship Certificate (England) Regulations 2016, SI 2016/458). It is also appropriate for introducing a requirement for the application to be made in a particular way if, once the Institute comes into operation, it appears expedient or cost efficient for administrative purposes.

1.55 It is considered that the negative procedure provides a sufficient level of Parliamentary scrutiny, having regard to the frequency with which the charge or administrative arrangements (if imposed) may be updated and to ensure fee levels or an application process can be updated relatively quickly if necessary.

Clause 1 & Schedule 1

Summary of Power: Power for the Secretary of State to make regulations to provide for anything done by the Secretary of State before the commencement day to be treated, on and after that day, as done by the Institute under a provision of the ASCLA 2009, as amended by this Act

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

1.56 Paragraph 33 provides for transitional arrangements. This provision is necessary to allow for any work undertaken by the Secretary of State, or the work in relation to Pathfinders (this is the name to be given for the pilot programmes which will trial reforms) carried out on the Secretary of State’s behalf, to be treated as though they were undertaken by the Institute. Regulations may also provide for that Act (as so amended) to have effect with specified modifications in relation to the thing treated as done by the Institute (for example, 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).

Justification for taking the power

1.57 The Government considers that it is essential for the Institute to be able to take on work done by the Secretary of State in relation to the reforms to avoid duplication and cost. In order to implement the reforms effectively within the desired timeframe work must start now by Pathfinders before the Institute is established and takes on technical education functions. It will also avoid
disruption for institutions and students who take up new approved qualifications under Pathfinders and ensure they can be certificated under the provisions in this Bill.

Justification for the procedure

1.58 The Government considers that a statutory instrument subject to the negative procedure is appropriate for this measure. This is an essentially administrative transitional provision to allow for the work having been undertaken by the Secretary of State to continue by the Institute.

1.59 It is considered that the negative procedure provides a sufficient level of Parliamentary scrutiny, having regard to the necessity to hand over this work to the Institute at reasonably short notice. It is also noted that these are essentially transitional provisions, for which no statutory procedure need apply, and that it will be essential to ensure that the regulations are in place to provide continuity for learners and institutions.

Clause 1 & Schedule 1

Summary of Power: this power is in section A2DA(4) to be inserted into the ASCLA 2009 to enable the Institute to determine the documents relating to the technical education qualification to which it considers section A2IA should apply (transfer of copyright)

Power conferred on: The Institute for Apprenticeships and Technical Education

Power exercised by: Determination

Parliamentary Procedure: None

Context and Purpose

1.60 The purpose of the power is to enable the Institute to determine the documents relating to the qualification to which it considers that section A2IA (transfer of copyright) should apply (if any). The right of interest in any copyright in those documents transfers from the person to the Institute at the time the approval of the qualification is given.

1.61 The Institute may only approve a qualification if it is satisfied that each person (other than the Institute) who it thinks is entitled to a right or interest in any copyright in those documents agrees to the right or interest being transferred to the Institute (see section A2IA).

1.62 The assumption is that most if not all of the documents related to the qualifications they approve will be subject to the statutory copyright transfer. However it is up to the Institute to determine exactly what the documents are.

Justification for taking the power

1.63 The power of the Institute to determine these documents is necessary to
facilitate the approvals process. The persons interested in the determination are those who the Institute thinks are entitled to a right or interest in the copyright of the affected document because the transfer of copyright results as a consequence of the approval of the qualifications. Those persons will be made aware of the Institute’s determination to enable them to enter into arrangements under subsection (2) for a technical education qualification to be approved. In particular, in addition to the determination, there is a statutory requirement that the Institute is satisfied that each of the persons the Institute thinks is so entitled agrees to the transfer.

1.64 Because the documents relevant to each technical education qualification may vary in each case it is the Department’s view that this power provides flexibility for the Institute to agree them having regard to the particular arrangements the Institute is entering into, including any contractual agreements. That flexibility is also necessary to ensure that the appropriate consents are secured and that the rights of third parties are respected. Under subsections (6) and (7) the Institute may take into account the likelihood a person is willing to enter into arrangements in making a determination and the Institute may revise a determination before giving an approval to reflect any changes under the arrangements. Importantly if the Institute fails to obtain the relevant consent (other than in bad faith) the failure does not invalidate the approval. If a person’s right or interest is transferred to the Institute without agreement, the Institute must only pay appropriate compensation if needed.

1.65 Furthermore the potential number of technical education qualifications required will result in the potential need for the Institute to have regard to different documents at different times. For example, several technical education qualifications will be approved and arrangements entered into with organisations to deliver these qualifications throughout the year.

Justification for the procedure

1.66 The Department considers that it is sufficient that the Institute determines the documents and is satisfied that each person who it thinks is entitled to a right or interest in the documents agrees to the approval, but that no specific procedural provisions are needed. It may be necessary for the Institute to move quickly to revise determinations having regard to changes in contractual arrangements and to ensure that the approvals are made within a reasonable time. It may also be noted that under subsections (10) and (11), the Institute must publish with the information published under section ZA10(5) in relation to the occupations, information indicating that a technical education qualification has been approved (or withdrawn) in respect of them. In addition the person who the Institute thinks is entitled to a right or interest in the copyright should be aware of the consequences of approval because it is set out in the primary legislation.
2 Further Education Bodies: Insolvency Etc

Clause 5

Summary of power: This power has to be read in the context of the express application by the Bill, to Further Education (“FE”) bodies, of “relevant insolvency legislation” that is, certain provisions of the Insolvency Act 1986 and legislation made under it and all of which provisions are listed on the face of the Bill. This power allows modifications or omissions in the application of that “relevant insolvency legislation” in relation to a further education body that is a statutory corporation.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative procedure where the regulations repeal or amend a provision of an Act. Any other regulations are subject to the negative procedure.

Context and Purpose

2.1 There is legal uncertainty as to whether the Insolvency Act 1986 applies to further education bodies. We are proposing to legislate to resolve this doubt by expressly applying certain parts of the Insolvency Act 1986 and legislation made under it to further education bodies. The purpose of the power is to permit the Secretary of State, by regulations, to modify or omit certain parts of the Insolvency Act 1986 and any subordinate legislation made under those parts.

Justification for taking the power

2.2 We make clear on the face of the Bill which of the existing insolvency procedures will apply to further education bodies. The provisions of the Insolvency Act 1986, and of secondary legislation made under it, are drafted to regulate companies registered under the Companies Acts which have shareholders and directors. The power to make regulations allows us to modify those provisions so that they work for further education bodies which are not companies, but are rather different from companies as they do not have shareholders or directors, but instead are statutory bodies established under the Further and Higher Education Act 1992. The power is narrow as it is only a power to modify or omit, only in relation to the insolvency procedures listed on the face of the Bill and it will be used narrowly simply to make the well-known provisions of the Insolvency Act 1986 work for further education bodies.

2.3 There is therefore little scope for surprises: the secondary legislation will be substantially similar to the existing insolvency regime for companies, which is familiar to stakeholders and we consider that to do otherwise would create unduly lengthy Bill provisions.

Justification for the procedure
2.4 The affirmative procedure is suitable where this power is used to repeal or amend primary legislation on insolvency so as to make it work for further education bodies.

2.5 The negative procedure is suitable where this power is to be used for any other type of regulations.

Clause 6

Summary of power: In consequence of the express application of certain provisions of the Insolvency Act 1986 or regulations made under clause [5], this is a power to apply other legislation about insolvency to FE bodies that are statutory corporations and to amend or modify that legislation insofar as it applies to FE bodies that are statutory corporations.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative procedure where the regulations apply, amend or modify a provision of an Act. Other regulations are subject to the negative procedure.

Context and Purpose

2.6 The Bill applies certain parts of the Insolvency Act 1986, and legislation made under those parts, to further education bodies and allows us, in a separate power, to modify that legislation so that it works for further education bodies. Once this has been done, it is possible that provisions of other legislation about insolvency (that is, other than the Insolvency Act 1986 and legislation made under it) also need to be applied to further education bodies. So the purpose of the power is to permit the Secretary of State to make regulations providing for any legislation about insolvency to apply to a further education body and to allow the Secretary of State to amend or modify legislation about insolvency as it applies to a further education body.

Justification for taking the power

2.7 The Bill provisions expressly apply insolvency procedures to further education bodies and clause [5] provides a power which permits amendment of the Insolvency Act 1986 and legislation made under it so as to work for further education bodies, which are different from companies to which the Insolvency Act 1986 primarily applies. However, it is possible that provisions of other legislation about insolvency (that is, other than the Insolvency Act 1986 and legislation made under it) also need to be applied to further education bodies to make the whole regime work and so we are taking this power at clause [6] to allow the application of such legislation to further education bodies and to allow the amendment or modification of such legislation for the same purpose.

2.8 There is little scope for surprises as any secondary legislation made under this power will be substantially similar to legislation which already applies to
companies and is familiar to stakeholders. We consider that to do otherwise would create unduly lengthy Bill provisions.

Justification for the procedure

2.9 The affirmative procedure is suitable where this power is used to apply, amend or modify primary legislation about insolvency to apply to further education bodies.

2.10 The negative procedure is suitable where this power is to be used for any other regulations.

Clause 30

Summary of power: This applies, for the purpose of giving effect to the Bill provisions on a special administration regime for further education bodies, the power to make rules under section 411 of the Insolvency Act 1986.

Power conferred on: The Lord Chancellor with the concurrence of the Secretary of State for Education, and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice.

Power exercised by: Rules

Parliamentary Procedure: Negative procedure

Context and Purpose:

2.11 We are establishing in primary legislation a special administration regime for further education bodies. The substantive law on this is set out on the face of the Bill. This power allows detailed procedural rules to be made in relation to the education administration.

2.12 Subsection (1) applies the power to make rules under section 411 of the Insolvency Act 1986 for the purpose of giving effect to the Chapter in this Bill which establishes a special administration regime for FE bodies, so that detailed rules for an education administration can be made in the same way that they are for a normal administration.

2.13 Examples of the rules which may be made under such a power are rules relating to how the administrator is to be appointed by the court (the witness statement, the form of application, the contents of the application and witness statement, the filing of the application, its service, how service is to be effected, proof of service, the hearing, notice of the order), the process of administration (notice and advertisement of administrator’s appointment, administrator’s appointment), meetings and reports, expenses of the administration, the remuneration of the administrator, the ending of the administration, replacement of the administrator. Essentially, therefore, these are the detailed rules for the procedures of the administration.

2.14 There is little scope for surprises as the intention is that the rules will, in general,
follow the pattern of the rules made for other special administration regimes – there is no policy reason for the rules to do anything more than this and the power only permits rules to be made for the purposes of “giving effect” to the Chapter in this Bill which establishes a SAR for FE bodies so the rules cannot be made for any wider purpose. There will be no novel content in the rules and they will mirror and adapt rules already made for other special administration regimes.

**Justification for taking the power**

2.15 The power is taken so as to permit all of the detailed rules relating to the procedure for the Special Administration Regime, including Court rules, to be set out in secondary legislation, rather than on the face of the Bill, which would be very lengthy if we were to include all of the detailed rules of procedure on its face (there around 130 rules in relation to ordinary administration). This approach also provides the flexibility to deal with adjustments which may need to be made to the procedures.

2.16 The matters which will be included in the rules are matters which are generally well-understood in regard to insolvency and the management of administration procedures by the court. Some examples are set out above.

2.17 The provisions that are set out on the face of the Bill cover all the key bespoke provisions which establish a special administration regime. The power will be used to make the detailed rules for the functioning of the regime. Those rules will be substantially similar to provisions that already apply in other special administration regimes and are well understood by insolvency practitioners, other stakeholders and the Courts.

**Justification for the procedure**

2.18 The negative procedure is suitable as this power is intended to be used to make rules for the running of an education administration. These rules include a limited number of matters which might be described as substantive law, such as rules relating to the order of priority for payment of the expenses of an education administration (e.g. the remuneration of the administrator) and rules relating to mutual dealings and setting-off sums due between the insolvent entity and creditors, but are otherwise largely procedural. The types of procedural rules to be made pursuant to the power will be substantially similar to rules which apply in other special administration regimes and are familiar to insolvency practitioners, banks, and other stakeholders. We have set out above some examples of the types of matters which will be included in the rules.

2.19 The existing powers under section 411 of the Insolvency Act 1986 are subject to the negative procedure and this is the procedure which is applicable where rules are made in other special administration regimes (for example, section 73(3) of the Postal Services Act 2011 and section 101(5) of the Housing and Planning Act 2016). The chosen procedure is consistent with this.

2.20 We are excluding the obligation to consult the Insolvency Rules Committee: there are precedents for this in the case of the special administration regimes for
banking, postal services, the water industry and railways. The requirement is disappplied on the basis that the intention is that the education administration rules will be modelled closely on the existing rules for an ordinary administration (on which the Insolvency Rules Committee has been consulted) with only such modifications as are necessary to adapt them to a further education context. The Insolvency Rules Committee was consulted on the rules for an energy administration under the Energy Act 2004 as they were the first set of rules to be made in respect of a special administration regime based on the new administration procedures introduced into the Insolvency Act 1986 by the Enterprise Act 2002. In these circumstances, a full and formal consultation with the Insolvency Rules Committee as regards the rules for further education administration does not seem appropriate.

Clause 31

**Summary of power:** Bill provisions create a special administration regime and this is a power, in the context of the creation of a SAR, to provide for other legislation about insolvency (i.e. other than the Insolvency Act 1986 and legislation made under it) to apply to further education bodies and the power to amend or modify that legislation as it applies to further education bodies.

**Power conferred on:** Secretary of State

**Power exercised by:** Regulations made by Statutory Instrument

**Parliamentary Procedure:** Affirmative procedure where the regulations apply, amend or modify a provision of an Act. Any other regulations are subject to the negative procedure.

**Context and Purpose**

2.21 It is possible that as a consequence of establishing a special administration regime for further education bodies, there is a need to apply other insolvency legislation to those bodies, or to amend, or modify other insolvency legislation in so far as that legislation is relevant to the creation of an education administration regime.

**Justification for taking the power**

2.22 Most legislation about insolvency is drafted to regulate companies registered under the Companies Acts which will usually have shareholders and directors. We are taking this power so that we can modify legislation about insolvency so that it works for further education bodies which are not companies, but are rather different from companies as they do not have shareholders or directors, but instead are statutory bodies established under the Further and Higher Education Act 1992. The power is narrow as it is only a power to amend or modify and it will be used narrowly simply to make legislation about insolvency work for further education bodies and only where this is in consequence of the establishment of the special administration regime for further education bodies.
2.23 There is little scope for surprises as any secondary legislation made under this power will be substantially similar to legislation which already applies to companies and is familiar to stakeholders. We consider that to do otherwise would create unduly lengthy Bill provisions.

Justification for the procedure

2.24 The affirmative procedure is suitable where this power is used to apply, amend or modify primary legislation about insolvency to or for further education bodies.

2.25 The negative procedure is suitable where this power is to be used for any other regulations.

Clause 32

Summary of power: Extends an existing power to modify and apply enactments under sections 248 and 277 of the Enterprise Act 2002.

Power conferred on: Secretary of State

Power exercised by: Regulations to make consequential amendments

Parliamentary Procedure: Negative procedure

Context and Purpose

2.26 This is a limited power to make consequential amendments to the provisions in this Bill where these arise as a result of the exercise of an existing power to modify enactments which is in the Enterprise Act 2002.

2.27 The Enterprise Act 2002 made substantial changes to the regime for ordinary administration and inserted Schedule B1 into the Insolvency Act 1986 which sets out provision in relation to the administration of companies. In that context section 248 of the Enterprise Act 2002 allows the Secretary of State to modify any enactment in consequence of the new regime and section 277 of the Enterprise Act 2002 allows the Secretary of State to make supplementary, incidental or consequential provision for the purposes of, or in consequence of, or for giving full effect to, the Enterprise Act.

2.28 The power in the Bill provides, in effect, that where the existing Enterprise Act 2002 powers to make amendments to primary legislation are exercised, the Secretary of State may make consequential modifications to the legislation relating to an education administration.

Justification for taking the power

2.29 This is essentially a power to make only consequential amendments to the provisions in this Bill about administration where these are considered appropriate as a result of the exercise of an existing power to modify enactments

Justification for the procedure

2.30 The negative procedure is suitable as this power is a narrow one which is only for the purposes of permitting consequential amendments.

2.31 The existing powers to make these types of consequential amendment in the Enterprise Act 2002 are subject to the negative procedure. The chosen procedure is is therefore consistent with this, particularly given that the amendments are purely consequential on the exercise of an existing power to modify enactments in the Enterprise Act 2002.

Clause 37

Summary of Power: This power should be read in the context of the application of insolvency procedures to further education bodies that are statutory corporations. This is a power to make provisions, in relation to further education bodies that are statutory corporations, which are the same, or similar to, the provisions in the Company Directors Disqualification Act 1986 (the CDDA) which relate to companies. The power allows the Secretary of State to make provision to ensure that if someone has been disqualified under the CDDA, this has the same or similar effect in relation to being a governor of a further education corporation or sixth form college corporation.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative procedure

Context and Purpose

2.32 We are applying certain parts of the Insolvency Act 1986 and legislation made under it to further education corporations and sixth form college corporations. The purpose of the power is to allow the Secretary of State to make regulations to make provisions relating to governors of further education bodies that are statutory corporations that are the same or similar to those which relate to directors of companies under the CDDA.

Justification for taking the power

2.33 The provisions of the CDDA apply to directors of companies but do not apply to governors of further education bodies that are statutory corporations. The directors’ disqualification regime is a key component of corporate insolvency and ensures the protection of creditors and maintains creditor confidence. It is appropriate that similar protections exist for creditors of further education bodies that are statutory corporations.

2.34 The power also provides that the Secretary of State may provide for a disqualification of a director under the CDDA to have the same or a similar
effect in relation to membership of a further education body that is a statutory corporation. This will allow the Secretary of State to ensure that someone who is disqualified as a director can also be disqualified from being a governor of a further education body that is a statutory corporation.

2.35 There is little scope for surprises in the exercise of this power. The CDDA sets out a well-established regime of directors’ duties that is familiar to stakeholders. The power allows the Secretary of State to apply equivalent or similar provisions to further education bodies that are statutory corporations.

Justification for the procedure

2.36 The negative procedure is appropriate as the power does not amend primary legislation and will establish a regime which is comparable to one which already exists in primary legislation.

Schedule 3 – statutory corporations (time)

Summary of power: By virtue of paragraph 1(3)(a) of Schedule [3] to the Bill, paragraph 110 of Schedule B1 to the Insolvency Act 1986 is applied and this contains a power for the Secretary of State to amend provisions of Schedule B1 which relate to time periods.

Power conferred on: Secretary of State

Power exercised by: Order

Parliamentary procedure: Negative procedure

Context and Purpose

2.37 We are establishing in primary legislation a special administration regime for further education bodies (an education administration). The provisions of the Bill apply certain parts of the Insolvency Act 1986, with modifications, to the education administration of a further education body that is a statutory corporation. Paragraph 1(3)(a) of Schedule [3] applies paragraph 110 of Schedule B1 to the Insolvency Act 1986 to an education administration for further education bodies that are statutory corporations. The purpose of paragraph 110 is to permit the Secretary of State to make an Order amending a provision that requires anything to be done within a specified period of time, prevents anything from being done after a specified time, or requires a specified minimum period of notice to be given.

Justification for taking the power

2.38 The power allows the Secretary of State to modify rules relating to specified time periods and specified minimum periods of notice so that they work for education administration. Not only does education administration concern further education bodies, which are different from companies, but the special objective of an education administration is different from the objective of an
ordinary administration and may require different time periods for the conduct of the administration. The power is narrow as it applies only to provisions which require something to be done within a specified period of time, prevent something from being done after a specified time, or require a specified minimum period of notice. As applied by paragraph 1(3)(a) of Schedule [3], the power can only be used in relation to the education administration of a further education body that is a statutory corporation and cannot be used more widely. It is intended that the power will be used narrowly to apply the provisions of ordinary administration in a way that works for education administration.

Justification for the procedure

2.39 The negative procedure is suitable as the power is intended to be used to make an Order relating to time periods and, as such, is narrow and administrative in nature.

2.40 The existing power in paragraph 110 of Schedule B1 to the Insolvency Act 1986 is subject to the negative procedure and the chosen procedure is consistent with this.

Schedule 3

Summary of power: Power for the Secretary of State to amend paragraph 1(3)(a) of Schedule [3] so as to add to the list of provisions of Schedule B1 which apply in an education administration and to amend the Schedule [3] so as to further modify Schedule B1 for the purposes of an education administration for FE bodies that are statutory corporations.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative procedure

Context and Purpose

2.41 We are establishing in primary legislation a special administration regime for further education bodies. The provisions of the Bill apply certain parts of the Insolvency Act 1986, with modifications, to the education administration of a further education body that is a statutory corporation. Paragraph 1(3)(a) of Schedule [3] applies, with modifications, certain paragraphs of Schedule B1 to the Insolvency Act 1986 to an education administration. The purpose of this power is to permit the Secretary of State to make Regulations to add further paragraphs of Schedule B1 to the list of applicable paragraphs in paragraph 1(3)(a) or to amend Schedule [3] so as to add further modifications.

Justification for taking the power

2.42 The power allows the Secretary of State to apply further provisions in Schedule B1 to the Insolvency Act 1986 to the education administration regime for
further education bodies that are statutory corporations to ensure that the education administration regime functions effectively. To this end, the Secretary of State may also, under this power, add further modifications to those already set out in Schedule [3]. The power is narrow as it applies only to the provisions in Schedule B1 to the Insolvency Act 1986, which concern the conduct of an administration, and the power can only be used in relation to the education administration of a further education body that is a statutory corporation and cannot be used more widely.

2.43 There is little scope for surprises as the power merely permits the application of existing elements of the ordinary administration regime set out in Schedule B1 to the Insolvency Act 1986, which is familiar to stakeholders. The power to add further modifications would be used narrowly in order make education administration work for further education bodies that are statutory corporations.

Justification for the procedure

2.44 The affirmative procedure is suitable as the power can be used to apply further provisions to the education administration, with or without further modifications.

Schedule 4 – companies (time)

Summary of power: By virtue of paragraph 1(3)(a)of Schedule [4] to the Bill, paragraph 110 of Schedule B1 to the Insolvency Act 1986 is applied and this contains a power for the Secretary of State to amend provisions of Schedule B1 which relate to periods of time.

Power conferred on: Secretary of State

Power exercised by: Order

Parliamentary procedure: Negative procedure

Context and Purpose

2.45 We are establishing in primary legislation a special administration regime for further education bodies (an education administration). The provisions of the Bill apply certain parts of the Insolvency Act 1986, with modifications, to the education administration of a further education body that is a company. Paragraph 1(3)(a) of Schedule 4 applies paragraph 110 of Schedule B1 to the Insolvency Act 1986 to an education administration for further education bodies that are companies. The purpose of paragraph 110 is to permit the Secretary of State to make an Order amending a provision that requires anything to be done within a specified period of time, prevents anything from being done after a specified time, or requires a specified minimum period of notice to be given.

Justification for taking the power

2.46 The power allows the Secretary of State to modify rules relating to specified
time periods and specified minimum periods of notice so that they work for education administration. The special objective of an education administration is different from the objective of an ordinary administration and may require different time periods for the conduct of the administration. The power is narrow as it applies only to provisions which require something to be done within a specified period of time, prevent something from being done after a specified time, or require a specified minimum period of notice. As applied by paragraph 1(3)(a) of Schedule [4], the power can only be used in relation to the education administration of a further education body that is a company and cannot be used more widely. It is intended that the power will be used narrowly to apply the provisions of ordinary administration in a way that works for education administration.

Justification for the procedure

2.47 The negative procedure is suitable as the power is intended to be used to make an Order relating to time periods and, as such, is narrow and administrative in nature.

2.48 The existing power in paragraph 110 of Schedule B1 to the Insolvency Act 1986 is subject to the negative procedure and the chosen procedure is consistent with this.

Schedule 4 – companies

Summary of power: Power for the Secretary of State to amend paragraph 1(3)(a) of Schedule 4 so as to make further provisions of Schedule B1 apply in an education administration and to amend the Schedule so as to further modify Schedule B1 for the purposes of an education administration for FE bodies that are companies.

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative procedure

Context and Purpose

2.49 We are establishing in primary legislation a special administration regime for further education bodies. The provisions of the Bill apply certain parts of the Insolvency Act 1986, with modifications, to the education administration of a further education body that is a statutory corporation. Paragraph 1(3)(a) of Schedule [3] applies, with modifications, certain paragraphs of Schedule B1 to the Insolvency Act 1986 to an education administration. The purpose of this power is to permit the Secretary of State to make Regulations to add further paragraphs of Schedule B1 to the list of applicable paragraphs in paragraph 1(3)(a) or to amend Schedule [3] so as to add further modifications.

Justification for taking the power
2.50 The power allows the Secretary of State to apply further provisions in Schedule B1 to the Insolvency Act 1986 to the education administration regime for further education bodies that are companies to ensure that the education administration regime functions effectively. To this end, the Secretary of State may also, under this power, add further modifications to those already set out in Schedule [4]. The power is narrow as it applies only to the provisions in Schedule B1 to the Insolvency Act 1986, which concern the conduct of an administration, and the power can only be used in relation to the education administration of a further education body that is a company and cannot be used more widely.

2.51 There is little scope for surprises as the power merely permits the application of existing elements of the ordinary administration regime set out in Schedule B1 to the Insolvency Act 1986, which is familiar to stakeholders. The power to add further modifications would be used narrowly in order make education administration work for further education bodies that are companies.

Justification for the procedure

2.52 The affirmative procedure is suitable as the power can be used to apply further provisions to the education administration, with or without further modifications.

3 General

Clause 39

Summary of power: Power to make transitional provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: No procedure

Context and purpose

3.1 This power allows the Secretary of State to make transitional or saving provision in support of the wider contents of the Bill taking effect.

Justification for taking the power

3.2 This order-making power is necessary to make technical transitional provisions which would be too detailed to appear on the face of the Bill in connection with the commencement of any of the Bill’s provisions.

Justification for the procedure

3.3 The power would be used to make the technical provisions needed for transition, and no Parliamentary procedure is considered to be necessary.
Clause 40

Summary of power: Power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Where regulations relate to primary legislation the procedure is affirmative, where they relate to secondary legislation the procedure is negative.

Context and purpose

3.4 This power allows the Secretary of State by regulations to make consequential changes to other legislation so that it takes account of new framework created by the wider contents of this Bill. Regulations under this section may amend, repeal or revoke any provision made by or under an Act passed before this Act or in the same Session.

Justification for taking the power

3.5 This power is necessary to ensure that the changes made to the law by the Bill are reflected in other legislation which refers to or is dependent on provisions repealed or amended by the Bill.

Justification for the procedure

3.6 The procedure strikes an appropriate balance between the need to secure a quick and smooth transition between an old and a new regime and to ensure that changes made by this Bill are reflected in other legislation, and the need to respect Parliamentary involvement where an Act of Parliament is to be amended.

Clause 44

Summary of power: Commencement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: No procedure

Context and purpose

3.7 This clause deals with the commencement of the provisions in the Bill. It provides that the provisions in the Bill come into force on such day as the Secretary of State may by regulations appoint. Different days may be appointed for different purposes.
Justification for taking the power

3.8 It is common practice for the provisions in a Bill to be commenced in this way.

Justification for the procedure

3.9 As is the convention, no Parliamentary procedure is considered to be necessary.
Part B: Powers not considered to be legislative in character

4 Certain powers to give directions

Clause 1 & Schedule 1

Summary of power: Certain powers of direction that are extended to technical education

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: No procedure

Context and Purpose

4.1 Paragraph 4 of Chapter A1 covers remuneration of non-executive members of the Institute. In particular, 4(6) provides that the Institute must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to the provision of pensions, allowances or gratuities under section 1 of the Superannuation Act 1972 payable to or in respect of non-executive member in the sums payable out of money provided by Parliament under the 1972 Act.

4.2 Paragraph 7(6) (Committees) of Chapter A1 enables the Secretary of State can direct the Institute to review the structure of Institute Committees and the scope of the activities of each Institute committee.

4.3 Paragraph 11(2) of Chapter A1 enables the Secretary of State to provide directions regarding statements of accounts that the Institute must comply with, concerning the information to be contained in it, the manner in which such information is to be presented or the methods and principles according to which the statement is to be prepared.

Justification for taking the power

4.4 Taking into account paragraph 27 of Appendix 4 to the Committee’s 7th Report of Session 2014 – 2015, whilst the powers outlined in paragraph 61 above are powers of direction, the Department does not consider them to be legislative in character for the purposes of the Delegated Powers Memorandum. This is because paragraphs 4(6) and 11(2) of Chapter A1 deal with financial arrangements which are administrative in nature and, for example, do not deal with matters such as delegating functions on the Institute or imposing requirements on how the Institute should exercise or report on the nature of the exercise of those functions. Paragraph 7(6) is not considered to be legislative in character since it deals with the individual administrative workings of the Institute, it does not for example, require any change to or addition to the functions that are exercisable by the Institute or the way in which such functions are exercised.
Justification for the procedure

4.5 The Department does not consider these powers to be legislative in character for the reasons set out above.

Department for Education

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