INTRODUCTION

1. These explanatory notes relate to the Further Education and Training Bill [HL] as introduced in the House of Lords on 20th November 2006. They have been prepared by the Department for Education and Skills 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.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND


SUMMARY

Part 1 – The Learning and Skills Council for England

4. The Bill makes provision to restructure the Learning and Skills Council for England (LSC). The LSC is the principal public body charged with planning and funding further education provision.

5. The Bill also places new duties on the LSC in relation to encouraging diversity and increasing choice in education and training, consulting employers and learners and carrying out specified functions in accordance with strategies formulated by (i) bodies specified by the Secretary of State, and (ii) a body chaired by the Mayor of London where the Secretary of State has made provision in regulations for such a body to be established.
6. Proposals in the Bill extend the powers of the LSC to design, develop and operate support services for persons and bodies involved in education or training and for educational institutions.

7. The Bill also clarifies the power of the LSC to form and invest in companies.

Part 2 – Further Education Institutions

8. The Bill transfers the power to incorporate further education institutions and to dissolve further education corporations from the Secretary of State for Education and Skills to the LSC. It also transfers to the LSC the Secretary of State’s existing powers of intervention (with some modifications), thereby enabling it to intervene in certain prescribed circumstances, including where a college is identified as underperforming or mismanaged.

9. The Bill enables the Secretary of State to make regulations requiring all college principals to achieve a stipulated leadership qualification before taking up a new post. At the moment, he can regulate only in relation to principals first appointed as such after commencement of the relevant provision in the Education Act 2002.

10. The Bill places a duty on further education institutions to have regard to guidance about consulting employers and learners.

11. The Bill clarifies the power of further education corporations to form or invest in companies and enables them to form or become members of charitable incorporated organisations. They may also use either power for the purpose of conducting an educational institution, with the consent of the LSC in relation to England and the Welsh Ministers in relation to Wales. This is currently not possible.

12. The Bill enables the Privy Council to grant further education institutions in England powers to award their own foundation degrees.

Part 3 – Industrial Training Levies

13. The Bill amends the Industrial Training Act 1982 to make it easier for Industrial Training Boards to demonstrate support for a levy proposal among employers in the relevant industry. It also requires that proposals for levy orders cover a three-year period, subject to certain exceptions.
Part 4 – Miscellaneous and General

14. The power of higher education institutions to form and invest in companies is clarified and there is a new power to form or become members of charitable incorporated organisations.

15. The Bill gives measure-making powers to the National Assembly for Wales in the field of education and training.

16. The Bill contains general provisions relating to regulations, commencement, extent, short title and other matters.

TERRITORIAL EXTENT

17. The Bill extends to England and Wales only with the following exceptions:
   - clauses 10 and 11, which extend to Scotland;
   - clauses 10 and 12, which extend to Northern Ireland;
   - clauses 23 and 24 and Schedule 1 which amend provisions extending to Scotland;
   - certain general provisions, which extend to the whole of the United Kingdom.

18. The Sewel Convention states that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. At Introduction this Bill contains provisions that require the consent of the Scottish Parliament. The provisions relate to how industrial training boards demonstrate consensus for their levy proposals; the general requirement that industrial training boards submit levy proposals covering three years, rather than one; and the power for the LSC to operate loans and shared services. If further provision that requires the consent of the Scottish Parliament is included following amendment, this consent will be sought in line with the Sewel Convention.

TERRITORIAL APPLICATION: WALES

19. The Bill contains provision amending the Government of Wales Act 2006 to confer legislative competence on the Assembly. The amendment will allow the Assembly to make Measures containing any provision that could be made by Act of Parliament, subject to the restrictions in the 2006 Act, in respect of certain matters in the field of education and training.
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20. For the sake of completeness, we also include here a list of all the provisions that apply to Wales in the Bill or which affects Wales and England differently.

21. The Secretary of State’s powers to direct removal of principals and senior post holders and to create and dissolve further education colleges will not be exercisable by the LSC in relation to Wales. These powers are currently exercisable by the Assembly and will in future be exercisable by the Welsh Ministers.

22. Consent for colleges in Wales to form or acquire an interest in companies or charitable incorporated organisations for the purpose of conducting an educational institution would be obtained from the Welsh Ministers (in England it would be from the LSC).

23. Further education colleges in Wales will be required to have regard to guidance from the Welsh Ministers about consulting learners and employers.

24. Provision amending the requirement that industrial training boards demonstrate consensus for their levy proposals solely by reference to “relevant organisations” would apply in Wales.

25. Provision generally requiring industrial training boards to submit levy proposals covering three years, rather than one, would also apply in Wales.

26. Provision enabling the Learning and Skills Council to operate loans and shared services would operate in Wales only with the consent of Welsh Ministers.

COMMENTARY

PART 1: THE LEARNING AND SKILLS COUNCIL FOR ENGLAND

Clauses 1, 2, 3, 4 and 5: The Council

Restructuring the Council

27. The LSC was established by the Learning and Skills Act 2000 (“the 2000 Act”) as a single body corporate. The 2000 Act placed the LSC under a duty to establish a committee of the LSC (to be called a local learning and skills council) for each area of England specified by the Secretary of State. The Act contained provisions about the members and staff of local councils, delegation of local council functions and the preparation of local council plans. The
Secretary of State specified 47 such areas of England in relation to which the LSC established 47 local councils.

28. The 2000 Act also placed the LSC under a duty to establish a young people’s learning committee and an adult learning committee.

29. The commitment to restructure the LSC was set out in the March 2006 White Paper ‘Further Education: Raising Skills, Improving Life Chances’.

30. Clause 1 reduces the minimum size of the LSC National Council from twelve to ten.

31. Clause 2 places the LSC under a duty to establish a committee, to be called a regional learning and skills council, for each area of England specified by the Secretary of State. The clause requires regional councils to perform such duties as the LSC specifies. The clause also provides for the LSC to be able to specify functions that regional councils must, or may, exercise outside their area.

32. The clause empowers the Secretary of State to make provision about regional councils in regulations. Regulations may make provision about the membership of regional councils, the appointment of the members, chairman and staff of a regional council, the conferring of authority to exercise functions, the payment of salaries and allowances of members and chairmen and the regulation by a regional council of its own procedure.

33. The LSC is required to prepare guidance in relation to each financial year for each regional council, including the objectives which a regional council should achieve in seeking to carry out its functions, and the budget for the regional council in that financial year. The first set of guidance must be prepared as soon as reasonably practicable after this clause comes into force.

34. Clause 3 abolishes the local learning and skill councils and, as a consequence, current statutory provision in relation to them.

**Strategy-making bodies**

35. Clause 4 (inserted section 24A) provides the Secretary of State with the order making power to authorise a body to formulate a strategy in relation to specified functions of the LSC for either the whole of England or a part of it, but not exclusively either Greater London or a part of Greater London, and keep the strategy under review. This will enable strategies to be set either for a specified area in England in relation to specified functions of the Council or in relation to a particular education and training theme for the whole of England, where a theme
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relates to a function of the Council. The Council will be under a statutory duty to carry out any function to which a strategy relates in accordance with that strategy (inserted section 24C).

36. The clause (inserted section 24B) provides that the Secretary of State may, by regulations, set up a body to formulate a strategy setting out how the specified LSC functions are to be carried out in Greater London. The regulations must provide for the body to consist of the Mayor of London and other members appointed by the Mayor in accordance with the regulations. They must also provide for the Mayor of London to be chairman of the body.

37. The clause also makes provision (in inserted sections 24A and 24B) for the Secretary of State to give directions and guidance in relation to the formulation and review of strategies to deal with matters such as: the form and content of the strategy; the updating of the strategy; the steps to be taken by the body, and matters to which the body is to have regard, when formulating or reviewing its strategy; and the consultation to be carried out when the body formulates or reviews its strategy.

38. In formulating and reviewing its strategy, an authorised body, or the body chaired by the Mayor in London, must have regard to any guidance, and act in accordance with any directions, given by the Secretary of State. The LSC can disregard the strategy of an authorised body, or that of the body chaired by the Mayor, if that strategy has not been prepared in accordance with the requirements set out in the guidance and directions concerning formulation or review. If provision in a strategy of an authorised body or the body chaired by the Mayor conflicts with the LSC’s strategy made in accordance with section 16 of the Learning and Skills Act 2000, the Council may disregard that provision in the body’s strategy. Where there is a conflict between provisions in the strategies of different authorised bodies, including the body chaired by the Mayor in London, the LSC may disregard relevant provision in one or both of the strategies. The LSC is not required to carry out its functions in accordance with a strategy in a manner that it considers might involve disproportionate expenditure or if the strategy is considered by the LSC to be unreasonable.

39. The Council may not carry out a function in accordance with a strategy if in doing so it would fail to comply with a duty imposed on it by or under any enactment. Examples of such statutory duties include: the duty of the Council in section 16(2) of the 2000 Act to have regard to its own strategy in exercising its functions; the Council’s duty in section 25(8) of the 2000 Act to comply with any directions given to it by the Secretary of State; and a condition of grant made under section 27(1) of the 2000 Act.

40. Where the LSC proposes not to, or does not, carry out a function to which a strategy relates the LSC must refer the matter to the Secretary of State and the body whose strategy it is may do so. Upon such a reference the Secretary of State may give such direction to the LSC as he thinks fit including a direction that a strategy be complied with to the extent specified in the direction.
Young people’s learning committee and adult learning committee

41. Clause 5 removes the requirement that the LSC must establish a young people’s learning committee and an adult learning committee, but the LSC retains its general power to establish such committees as it sees fit. This allows the flexibility, for example, for the LSC to set up a single group to advise on planning and funding for both young people and adults as a whole, should it so wish.

Clauses 6, 7, 8, 9, 10, 11, and 12: Functions of the Council

Duty on the LSC in relation to diversity and choice

42. Section 2 of the Learning and Skills Act 2000 imposes a duty on the LSC to secure the provision of facilities for education and training suitable to the requirements of 16-19 year-olds and section 3 imposes a similar duty in relation to persons aged 19 or more. Clause 6 provides that in performing those duties the LSC must act with a view to encouraging diversity in education and training and to increasing opportunities for individuals to exercise choice. This reflects commitments in the White Paper ‘Further Education: Raising Skills, Improving Life Chances’.

43. The LSC will be expected to make whatever changes are necessary in order to effect an increase in the type and number of providers in the post-16 education and training market and in the opportunities available to individuals.

Consultation with learners and employers

44. Clause 7 requires the LSC to have regard to guidance from the Secretary of State about consulting with learners, with people likely to become learners and with employers on the funding and provision of learning. The clause does not define consultation nor does it specify how or when consultation is to be delivered. These issues will be included in the guidance. The clause specifies that guidance must provide for the views of a learner or a prospective learner to be considered in the light of his age and understanding.

45. The background to this clause is a Government commitment in the March 2006 White Paper ‘Further Education: Raising Skills, Improving Life Chances’ to create a demand-led system of further education provision, whereby funding follows the choices of employers and learners.

Plans for academic years

46. Clause 8 provides that the LSC must make and publish a plan for each academic year, rather than for each of its financial years. An academic year runs from 1 August to the
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following 31 July. This brings the LSC planning year in line with the planning and delivery arrangements of key partners such as further education colleges.

Power to form or be involved in certain bodies corporate

47. Clause 9 amends the LSC’s current power to form or invest in companies, as set out in section 18 of the 2000 Act, to make it clear that the LSC can form any type of company, including companies limited by guarantee as well as companies limited by shares, with the consent of the Secretary of State.

48. Subsection (4) contains retrospective provision that ensures that companies limited by guarantee that have already been formed between 1 September 2000 and the date on which this clause comes into force were formed lawfully.

49. The clause also provides that the LSC’s power to form charitable incorporated organisations (a new form of body corporate created by the Charities Act 2006) is subject to the consent of the Secretary of State.

Provision of services

50. Clause 10 will extend the powers of the LSC to design, develop and operate support services to persons and bodies exercising education and training functions, in relation to those functions. The LSC’s current powers are in the 2000 Act. This provides that the LSC has powers and duties mainly in respect of post-16 education and training and in relation to England only. The powers are largely exclusive of higher education. These clauses will extend the powers of the LSC in this area to support higher education and to support learners under 16 and throughout the UK.

51. The provisions enable the LSC to offer support services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services, among others.

52. The LSC can provide these services to publicly-funded education and training providers (including schools and universities); publicly-funded institutions that have functions relating to the provision of education and training; and bodies specified by order (which may or may not be publicly funded).

53. The orders specifying additional persons or bodies may be made by the Secretary of State or, where a person or body has education and training functions only in Wales, Scotland or Northern Ireland, by the relevant devolved administration under subsection (8). Additional
organisations may be specified in orders made by the Secretary of State or the devolved administrations at a later date.

54. In Wales, Scotland and Northern Ireland, these services will be supplied only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service.

55. The LSC will need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

56. The LSC will not need the consent of the Secretary of State before making arrangements to provide support services to an eligible body in England only, because this process will be regulated via accountability mechanisms that are already in place and by which the LSC currently reports to the Department for Education and Skills (DfES). These mechanisms include quarterly Ministerial Performance Reviews and a joint DfES/LSC Performance Forum, which assess the LSC’s performance against criteria stipulated in the terms of an annual grant letter issued by the DfES.

57. An example of such a support service is the Managing Information Across Partners (MIAP) Programme, which will allow the LSC to manage the sharing of learner and learning data between learning and skills organisations, including higher education institutions and schools. This data, which includes information on participation and achievement, is currently held by a diverse range of owners. The LSC will manage the MIAP system on behalf of participating partners.

**Assistance with respect to employment and training**

58. Clause 11 widens the powers of the LSC to allow it to make arrangements in relation to Wales or Scotland for assisting persons to select, train for, obtain and retain employment. This would include arrangements for a loans scheme which would be available to learners undertaking either further or higher education. Consent of the devolved administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland and the consent of the Secretary of State will be required for arrangements made by those devolved administrations. An example of this type of scheme is Career Development Loans (CDLs). The CDL programme operates across England, Wales and Scotland. It is delivered through high street banks, who offer loans on a commercial basis to learners undertaking vocational learning, including some higher education courses. The interest on loans is paid by Government funds during the period of learning.

59. Clause 12 enables the LSC to take part in similar arrangements, including provision for loans to be made available to individuals who are undertaking further or higher education,
made by the Department for Employment and Learning in Northern Ireland. Consent of the Secretary of State is required for any such arrangements.

PART 2: FURTHER EDUCATION INSTITUTIONS
Clauses 13, 14, 15 and 16: Transferring powers to the LSC to establish and dissolve further education corporations.

60. The Government’s White Paper entitled ‘Further Education: Raising Skills, Improving Life Chances’ contained a commitment to eliminate inadequate provision across the learning and skills sector by 2008. The Government also undertook to bring about significant improvements in those providers perceived to be coasting.

61. The policy intention in England is to enable the LSC to intervene quickly where a college is underperforming, mismanaged or inadequate. As part of a package of measures, the power to incorporate and dissolve colleges will be transferred from the Secretary of State to the Learning and Skills Council. As far as Wales is concerned, these powers will be exercised by the Welsh Ministers.

62. Section 16 of the Further and Higher Education Act 1992 (‘the 1992 Act’) enables the Secretary of State by order to establish a body corporate to conduct a new or existing educational institution. Such a body is known as a further education corporation. Section 27 of the 1992 Act enables the Secretary of State to provide by order for the dissolution of further education corporations and the transfer of their assets and liabilities.

63. The provisions for the publication of proposals for the establishment and dissolution of further education corporations under sections 16 and 27 of the 1992 Act are set out in section 51 of the 1992 Act and in regulations made under that section, i.e. the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (England) Regulations (SI 2001/782).

64. Clause 13 transfers the power to incorporate further education institutions in England under section 16 of the 1992 Act to the LSC. In Wales the power will be exercised by the Welsh Ministers.

65. Clause 14 transfers the Secretary of State’s power to dissolve further education corporations in England under section 27 of the 1992 Act to the LSC. In Wales the power will be exercised by the Welsh Ministers.

66. Where it is proposed to dissolve a further education corporation, it may be necessary to transfer the property, rights and liabilities of a corporation to the LSC to achieve the best
outcome for an area. In such a case the LSC will need to seek the agreement of the Secretary of State before making such provision.

67. Clause 15 amends section 51 of the 1992 Act which requires the LSC, when making a proposal to the Secretary of State to establish or dissolve a further education corporation under section 16 or section 27, to publish the proposal in a prescribed form and consider any representations made on it. The amendment makes appropriate modifications to reflect the transfer of power to establish and dissolve further education corporations from the Secretary of State to the LSC and the fact that for institutions in Wales, this power will be exercisable by the Welsh Ministers. It will be necessary to make consequential amendments to the regulations made under section 51 (see paragraph 63).

68. Clause 16 allows the Secretary of State to give directions to the LSC, where he takes the view that it would be appropriate for the LSC to exercise its powers under section 16 or 27 (establishment and dissolution of further education corporations). Such a case may arise where alternative provision is required quickly to meet the needs of learners. The LSC must comply with any directions given to it under section 51A as inserted by this clause.

**Clauses 17 and 18: Intervention in further education institutions**

69. The policy intention is to ensure that the LSC has the statutory authority to deal with inadequate provision and to intervene rapidly in certain prescribed circumstances, such as where a college is identified as underperforming or its affairs have been or are being mismanaged.

70. Clause 17 inserts new sections 56A, 56B and 56C before section 57 of the 1992 Act, which have the effect of transferring the Secretary of State’s intervention powers (as set out in section 57), with modifications, to the LSC. This clause will apply to further education colleges in England only.

71. Inserted section 56A would empower the LSC to take remedial action in relation to an institution within the further education sector, in certain prescribed circumstances such as where there is evidence that the provider is failing to meet the needs of its learners or is performing significantly less well than might be expected. Under such circumstances, the LSC may do one or more of the following: remove members of the institution’s governing body; appoint new members of that body if there are vacancies; direct the governing body on how to exercise its powers and perform its duties. Such directions may include a direction to the governing body to dismiss specified senior post holders (where the governing body has the power to do so) and a direction requiring the governing body to make collaboration arrangements with another body (within the meaning of section 166 of the Education and Inspections Act 2006). A governing body must comply with any such directions.
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72. Inserted section 56B would require the LSC to prepare and publish a statement of its policy with respect to the exercise of its intervention powers under section 56A and keep it under review. The Secretary of State may give the LSC guidance in relation to its duty to prepare and publish a statement and the LSC must have regard to any such guidance. The LSC must have regard to its statement when exercising or deciding whether to exercise its powers under section 56A. The policy will explain how failing and underperforming provision will be identified and what action will follow.

73. Inserted section 56C enables the Secretary of State to direct the LSC to take action where he considers that the LSC has failed properly to exercise its powers of intervention under section 56A in the case of an underperforming college. The LSC must comply with any directions given under this section.

74. Whilst section 57 will continue to apply to Wales, clause 18 amends section 57 to make it clear that Welsh Ministers will be able to make a direction to the governing body of an institution requiring it to dismiss a senior post holder, or to enter into collaboration arrangements, mirroring the provisions set out in section 56A.

75. For completeness, we include here details of provisions under existing legislation that will enable the LSC to intervene in further education institutions.

76. Under existing legislation, the Secretary of State may by order establish a body corporate to conduct a new or existing institution (section 16, FHEA 1992). Under section 27 of that Act, he may by order dissolve a further education corporation. Clauses 13 and 14 will have the effect of transferring these powers to the LSC.

77. Current provisions for intervention by the Secretary of State are set out in section 57 of the FHEA. These powers, with some modifications, will be transferred to the LSC - see clauses 17 and 18.

78. Under section 27 of the Learning and Skills Act 2000, the Secretary of State has the power to fund the LSC by making grants which may be subject to conditions, including conditions on the funding of others by the LSC. Under section 6 of that Act, the LSC may impose conditions, when allocating its financial resources. If the conditions are not met, these resources may be withdrawn.

79. Under section 11 of the LSA 2000, the LSC may appoint up to two governors of the governing body of an institution. It may use this power where it considers there has been mismanagement at the institution, or where it has concerns over the quality of provision.
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Clause 19: Powers to award foundation degrees

80. Currently the Privy Council has a statutory power, under section 76 of the 1992 Act, to make orders that enable institutions providing higher education to grant one or both of two groups of awards. Institutions providing higher education can be given a power to grant awards to students who complete a course of study or a power to grant awards to students who complete a programme of research or both. These are commonly referred to as taught and research degree awarding powers respectively.

81. Currently, an institution wishing to award foundation degrees needs to enter into an arrangement with a university or institution with taught degree awarding powers. The institution will deliver the course and award the degree on the university’s behalf, but the university will validate the course and the award.

82. Clause 19 amends section 76, enabling the Privy Council to make orders granting further education institutions only the power to award foundation degrees only. In order to be granted this power, institutions would have to meet certain criteria, which will be drawn up and published. As with taught and research degree awarding powers, the Quality Assurance Agency for Higher Education will advise on whether an institution meets the criteria.

83. As a result of this provision, further education institutions providing courses leading to foundation degrees would be able to apply for powers to award foundation degrees themselves. This would remove their dependence on universities to validate their foundation degrees.

84. The provision in this clause applies to further education institutions in England as defined under section 91 of the 1992 Act. According to this definition, references to institutions within the further education sector are to institutions conducted by further education corporations and ‘designated institutions’. Section 28(4) of the 1992 Act lists the criteria that an institution must meet in order to be designated as a further education institution.

Clauses 20, 21 and 22: other provisions relating to further education institutions

Power to form or be involved in companies or charitable incorporated organisations

85. Section 19(4)(bb) of the 1992 Act sets out the powers of a further education corporation in relation to companies. Section 19(4A) prohibits further education corporations from forming or investing in companies for the purpose of conducting an educational institution.
86. Clause 20 amends section 19, clarifying the power of further education corporations to form or invest in all types of company and enabling them to do so for the purpose of conducting an educational institution, subject to the agreement of the LSC with respect to further education corporations in England and subject to the agreement of the Welsh Ministers with respect to further education corporations in Wales.

87. Subsection (6) contains retrospective provision that ensures that companies limited by guarantee that have already been formed between 1st April 2001 and the date on which this clause comes into force were formed lawfully.

88. The Charities Act 2006 created a new form of body corporate called charitable incorporated organisations (CIOS) which will be regulated by the Charities Commission. There is a new power in clause 20 for further education corporations to form, participate in forming or otherwise become members of charitable incorporated organisations, subject to the agreement of the LSC or the Welsh Ministers, as appropriate.

89. In considering requests to establish companies or charitable incorporated organisations for the purpose of delivering education, the LSC will look at whether the entity should be designated as part of the further education sector (under section 28 of the 1992 Act). Designated institutions are required to comply with all legislation appropriate to further education corporations.

90. This provision is intended to facilitate collaboration between further education corporations and schools, businesses, universities and other partners. The background to this clause is a Government commitment in the White Paper ‘Further Education: Raising Skills, Improving Life Chances’ to encourage new delivery models for further education provision in England.

**Consultation with employers and learners**

91. Clause 21 imposes a duty on the governing bodies of further education institutions in England to have regard to guidance from the Secretary of State and for the governing bodies of institutions in Wales to have regard to guidance from the Welsh Ministers, about consulting with learners, with people likely to become learners and with employers in connection with decisions which will affect them. The clause does not define consultation nor does it specify how or when consultation is to be delivered. These issues will be included in the guidance. The clause specifies that guidance must provide for the views of a learner or prospective learner to be considered in the light of his age and understanding.

92. The background to this clause is a Government commitment in the March 2006 White Paper ‘Further Education: Raising Skills, Improving Life Chances’ to create a demand-led
system of further education provision, whereby funding follows the choices of employers and learners.

Qualifications of principals of further education institutions

93. Clause 22 amends section 137 of the Education Act 2002 (‘the 2002 Act’). Existing legislation under section 137 allows the Secretary of State to make regulations requiring further education college principals first appointed after commencement of the provision in the 2002 Act to have achieved, or be working towards, a specified leadership qualification.

94. Clause 22 repeals the exemption from these regulations for persons appointed for the first time as principals before the commencement of the provision in the 2002 Act. The effect of this will be that all further education college principals in England will be covered by the regulations made under section 137, i.e. the exemption for any person in post at the commencement of section 137 no longer applies.

95. The repeal of this exemption applies to principals in England only, although section 137 of the 2002 Act applies to England and Wales.

96. This clause also inserts new subsection (2A) which provides that regulations made under subsection (1) of section 137 may limit the period of time a principal may be given to achieve the qualification. For the avoidance of doubt, this provision applies to England and Wales.

PART 3: INDUSTRIAL TRAINING LEVIES

Clauses 23 and 24: Amendments to the Industrial Training Act 1982

Levy proposals


98. The 1982 Act currently requires an Industrial Training Board (ITB) to demonstrate that a levy proposal has the support of organisations representing more than half the employers who are likely to be liable for levy payments and who together are likely to pay more than half the total amount of levy payable, before the Secretary of State imposes that levy on the industry. These representative organisations have traditionally taken the form of employer federations and trade associations. However, an increasing proportion of employers no longer
choose to be members of such organisations. This is making it difficult for ITBs to demonstrate support for a levy among employers within their industry, even where this support exists.

99. This clause amends the 1982 Act to allow support for levy proposals to be demonstrated by consulting more widely with employers, whether or not they are members of representative organisations. It allows the Secretary of State to make regulations about the detail of how support for levy proposals is to be demonstrated, including allowing a sample of employers to be consulted.

Three-Year Levy Orders

100. A levy order is an order issued by the Secretary of State requiring that employers in a given industry pay a levy, that the ITB for that industry collects and administers the levy and, if appropriate, that certain stipulated employers within the relevant industry will be exempt from the levy.

101. Current practice is for ITBs to make proposals for levy orders annually. However, levy rates have remained unchanged for a number of years.

102. Clause 24 requires ITBs who wish to submit proposals for levy orders to submit proposals for three-year levy orders to the Secretary of State. These proposals must specify up to three levy periods for each three-year period. There are certain exceptions to this. The levy is imposed in respect of the levy period.

103. The ITB submitting the proposal for a three-year levy order must also specify a base period for each levy period of the proposed order. A base period is usually a period covering a financial year (6 April to 5 April) prior to the beginning of a levy period. The emoluments and net payments for subcontract labour paid by employers during the base period are used as the basis for calculating the levies due as a consequence of passing the proposed levy order.

104. The first and second levy proposals made by an ITB do not need to cover a three-year period; they may specify one levy period. Subsequent levy proposals, if the ITB chooses to make them, must cover a three-year period, subject to certain exceptions.
PART 4 – MISCELLANEOUS AND GENERAL

Clause 25: Power of a higher education corporation to form companies or charitable incorporated organisations

105. The Charities Act 2006 created a new form of body corporate called charitable incorporated organisations (CIOs) which will be regulated by the Charities Commission. Clause 25 clarifies the power of higher education corporations to form or invest in companies and gives them a new power to form or become members of charitable incorporated organisations.

106. Subsection (4) contains retrospective provision that ensures that any companies limited by guarantee that have already been formed between 1 April 2001 and the date on which this clause comes into force were formed lawfully.

Clause 26: Powers of National Assembly for Wales

107. This clause makes amendments to Part 1 of Schedule 5 to the Government of Wales Act 2006 (GOWA 2006), so as to confer enhanced legislative competency on the National Assembly for Wales in specific subject areas. Section 94 of GOWA 2006 provides that a provision of an Assembly Measure is within the Assembly’s competence if it relates to (or is incidental or consequential on provision that relates to) one or more of the matters specified in Schedule 5. The list of twenty fields in which the Assembly currently exercises functions is set out in Part 1 of Schedule 5 to GOWA 2006, and each field will be divided into matters. Assembly Measures may include any provision that could be made by Act of Parliament, subject to specific restrictions set out in Part 2 of Schedule 5 to GOWA 2006.

108. Clause 26 introduces matters into Field 5, which is entitled “Education and Training”. These matters include:

   a) The provision of facilities for post-16 education or training.
   b) Provision about institutions concerned with the provision of further education, including provision for the establishment and dissolution of such institutions and bodies conducting such institutions.
   c) Collaboration in relation to the delivery of post-14 education.
   d) Financial resources for education or training provided by further education institutions, post-16 education or training, and research related to such education or training.
   e) Inspection of education or training provided by further education institutions, post-16 education or training, the training of teachers and
specialist teaching assistants for schools, and other services such as careers services.

f) The provision of advice and information and the carrying out of studies in relation to education or training provided by further education institutions, post-16 education or training, the training of teachers and specialist teaching assistants for schools, and other services such as careers services.

Clauses 27, 28, 29, 30, 31, 32 and 33: General provisions

109. Clauses 27, 30, 31, 32 and 33 contain general provisions, including: those relating to the exercise of powers to make orders and regulations; general interpretation provisions; commencement; extent of the Bill; and the short title of the Act.

110. Clause 28 introduces Schedule 1 which contains miscellaneous and consequential amendments.

111. Clause 29 introduces Schedule 2 which specifies the extent to which the enactments listed are to be repealed.

PUBLIC SECTOR FINANCIAL COST

112. It is not anticipated that any additional expenditure should fall on the Consolidated Fund or the National Loans Fund as a consequence of this Bill.

Part 1 – The Learning and Skills Council for England

113. Regional councils will incur costs, estimated most recently as being of the order of £1.8 million a year, but there will be savings from the ending of local learning and skills councils and the two committees of the national LSC. Once completed, the LSC’s total restructuring package will release up to £40 million per annum in savings, which will be ploughed back into supporting front-line activities.

114. The cost to the LSC of the duty to have regard to guidance about consulting learners and employers is difficult to ascertain. It depends on how the LSC chooses to perform consultation. For example, costs associated with a web-based consultation would be relatively minor. The LSC should build some costs into its budget as part of its strategy for improving the quality of provision. The cost to the Department for Education and Skills of providing guidance on consultation is estimated at about £80,000, on the basis of current projects issuing guidance to the sector.
115. The public sector cost of the duty on the LSC to encourage diversity in education and training and to increase opportunities for learners and employers to exercise choice is not yet clear. There may be an increase in administration costs for the LSC, but it will be hard to attribute costs specifically to this provision.

116. The provision in the Bill clarifying the power for the LSC to form companies limited by shares as well as companies limited by guarantee will not create any additional cost.

117. The duty on the LSC to comply with the strategies of bodies designated by the Secretary of State will not create significant additional public sector costs.

118. The provision in the Bill enabling the LSC to form companies limited by share as well as companies limited by guarantee will not create any additional cost.

119. However, the cost of implementing sharing of support services is significant. Upfront investment will be required to cover the transitional cost of change as well as the purchase of new technologies and the redesign of business process. Additionally, there will often be a lead time of one to two years from the time of investment until benefits from the change programme will start to flow.

120. Investment may be estimated as £129-315m for the further education sector and between £1.6 billion and £4 billion across the wider system. This range of investment assumes a payback period on investment of between eighteen months and three years.

121. Partnerships with the private sector may be established to minimise the upfront investment necessary for programmes of this scale.

122. Once it is clear what services the LSC will provide, a further, more detailed, analysis of the costs will be made.

**Part 2 – Further Education Institutions**

123. There will be no increased funding as a result of the provision in the Bill transferring the intervention powers of the Secretary of State in relation to failing or coasting providers and the powers to establish and dissolve further education corporations to the LSC. The LSC will incur certain additional costs in exercising the powers, but these costs are difficult to ascertain.

124. No additional funding is being made available for colleges wishing to use the powers provided in the Bill enabling them to form or invest in companies or charitable incorporated organisations.
125. The cost to further education institutions of the duty to have regard to guidance about consulting learners and employers is difficult to ascertain. See paragraph 114 above. The cost to the Department for Education and Skills of providing guidance on consultation is estimated at about £80,000, on the basis of current projects issuing guidance to the sector.

126. The power granted to the Secretary of State to regulate the qualifications of all college principals should not generate significant public sector financial costs. The costs for individuals to undertake the programme of training leading to the qualification and the costs of dismissing a Principal who does not achieve the qualification within the period of time to be specified by regulations made under section 137 of the 2002 Act will largely be met by the individual college.

127. No additional funding is being made available for further education institutions to award their own foundation degrees.

Part 3 – Industrial Training Levies


Part 4 – Miscellaneous and General

129. No additional funding is being made available for higher education institutions wishing to use the powers provided in the Bill enabling them to form or invest in companies or charitable incorporated organisations.

EFFECT OF THE BILL ON PUBLIC SECTOR MANPOWER

130. There are no public service manpower commitments arising from the Bill which would give rise to additional requirements. It is estimated that the overall effect of the Bill on public sector manpower will be negligible.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

131. The Regulatory Impact Assessment analyses the possible impact of the proposals in the Bill on business, charities, voluntary sector organisations and the public sector. A copy
These notes refer to the Further Education and Training Bill [HL] as introduced in the House of Lords on 20th November 2006 [HL Bill 6]

will be placed in the Library of both Houses. It will also be available online at www.dfes.gov/ria and in hard copy from the Department for Education and Skills.

132. The provisions in the Bill are focused on the public sector and are generally enabling in nature. Most proposals in the Bill will have little direct impact on business, charities and the voluntary sector. However, provisions amending the Industrial Training Act 1982 will have an impact on individuals and organisations in the private sector.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

133. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before second reading about the compatibility of the provisions of the Bill with the European Convention on Human Rights (as defined by section 1 of that Act).

134. Having considered the possible implications, the Secretary of State for Education and Skills believes that the Further Education and Training Bill [HL] will be fully compatible with the European Convention on Human Rights. There are some areas where it would be helpful to provide further comments for clarification, as follows.

Clause 10 – Provision of Services

135. Clause 10 will give to the LSC the power to develop systems for use by relevant bodies connected with education in connection with the exercise of their functions. This clause by itself does not give rise to any concerns about ECHR compatibility. However, it is likely that the first use of the power is to enable the LSC to develop a system for collating information about learners into a single record. Article 8 ECHR should therefore be considered.

136. The exercise of the power to provide support services under clause 10 will not be the reason for any additional collection of data or data-sharing. Data will only be shared in the new system with the consent of the individual concerned. Any data-sharing will therefore be ECHR compliant.

Clauses 17 and 18 – Intervention in further education institutions

137. Clause 17 inserts new sections 56A, 56B and 56C into the Further and Higher Education Act 1992. Under section 56A the LSC will be given the existing powers of the
Secretary of State (with some modifications) to intervene in the management of a further education institution where certain conditions are satisfied. Where those conditions are satisfied, the LSC will have a new power to give directions to the institution requiring its governing body to dismiss a senior post holder (section 56A(6)(a)). The governing body must comply with such a direction.

138. The termination of an individual’s contract of employment might give rise to a dispute over a “civil right or obligation”.

139. The power to give a direction does not restrict in any way the individual’s right to commence legal proceedings in an employment tribunal or any other court in relation to the termination of his employment contract.

140. In addition, the individual would have the right to apply for a judicial review of the LSC’s decision to give the direction to the institution. The provision itself does not contain any restriction on the individual’s access to a fair hearing.

141. The direction to dismiss would only relate to the individual’s current employment. It would not be a bar to employment of a particular type. The loss of employment would not by itself amount to an interference with respect for the person’s private life.

142. A dismissed employee might conceivably argue that their ability to earn future income was a possession and that therefore article 1, Protocol 1 was engaged. However, the loss of future income falls outside the scope of the article.

Clause 22 – Qualifications of principals of further education institutions

143. Section 137 of the Education Act 2002 enables the Secretary of State to make regulations requiring principals in further education institutions to have specified qualifications. Section 137(3) provides that any provision of regulations made under section 137(1) shall not apply to a principal who was appointed before the commencement of the provision. Clause 22 will repeal section 137(3) insofar as it applies to England. Any regulations made under section 137 will allow adequate time for the acquisition of the qualification.

144. The repeal of section 137(3) by itself does not give rise to ECHR issues. If an existing principal was required to have a new qualification, chose not to acquire that qualification and was then unable to continue to work in his profession, he might argue that the requirement was incompatible with article 8 ECHR and article 1 of the First Protocol. The arguments set out in paragraphs 141 and 142 are relevant. If it is the case that the principal chooses not to acquire the qualification, then it will of course be that choice which will prevent him from working as a principal, and not the requirement itself.
COMMENCEMENT

Clause 31

145. Subsection (1) specifies those provisions that come into force on the day on which this Act is passed. These include a number of general provisions such as provisions about orders and regulations; financial provisions; interpretation; commencement; extent; and the short title of the Act.

146. Subsection (2) specifies those provisions that come into force at the end of the period of two months beginning with the day on which this Act is passed. This includes provision securing measure-making powers for Wales.

147. Subsection (3) specifies that the remaining provisions in the Act will come into force in accordance with provision made by a commencement order.

148. Subsection (4) specified that, in relation to provision about the qualifications of college principals and provision about the powers of higher education corporations to form or be involved in certain bodies corporate, the commencing authority will be, in relation to Wales, the Welsh Ministers, and in any other case, the Secretary of State.

149. Subsection (5) specifies that the Secretary of State will make commencement orders bringing into force the remainder of the provisions referred to under subsection (3).
FURTHER EDUCATION
AND TRAINING BILL [HL]

EXPLANATORY NOTES

These notes refer to the Further Education and Training Bill [HL]
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[HL Bill 6]

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