

TECHNICAL AND FURTHER EDUCATION ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Technical and Further Education Act 2017 (c. 19) which received Royal Assent on 27 April 2017.

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

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Overview of the Act

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

Policy background

- 4 In addition to the below further policy background is included in the commentary on individual provisions.

Technical Education: the Institute for Apprenticeships and Technical Education

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

- d. It is intended that the Institute will support the Government's commitment to delivering 3 million high quality apprenticeship starts in England by 2020. It will help regulate the quality of standards and assessment plans, ensuring a sustainable, employer-led governance arrangement to uphold high quality apprenticeships.
- e. The Secretary of State will retain strategic oversight of the technical education reforms (see section A2DC) and will have responsibility for the overall national system. The Institute will have wide-ranging autonomy for ensuring that employers agree the content of standards for both apprenticeships and college-based technical education.

Further Education Bodies in England and Wales: Insolvency etc.

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

Other Provision to do with Further Education

- 7 This Act also includes measures concerning information in Further Education, and the inspection of careers provision in FE institutions.
- 8 It amends existing legislation to ensure that after devolution of further education functions (and the adult education budget) to a combined authority, FE providers and others will continue to submit the relevant information to the Secretary of State.

Legal background

- 9 The legislation relating to the existing policy is set out in a combination of primary and subordinate legislation. The current provisions are in the following primary legislation and related subordinate legislation:
 - a. Company Directors' Disqualification Act 1986
 - b. Further and Higher Education Act 1992
 - c. The Apprenticeships, Skills, Children and Learning Act 2009 (as amended by the Deregulation Act 2015 and the Enterprise Act 2016)
 - d. Insolvency Act 1986.
- 10 Further legal background is included in the commentary on the individual provisions.

Territorial extent and application

- 11 Section 46 sets out the territorial extent of the Act, that is, the jurisdictions of which the Act forms part of the law. The extent of an Act can be different from its application. Application is about where an Act produces a practical effect.
- 12 The Act extends to England and Wales only, save for section 46 (the extent provision) and section 6 so far as it relates to section 426 of the Insolvency Act 1986. These provisions extend to England and Wales, Scotland and Northern Ireland.
- 13 Any amendment or repeal made by the Act has the same extent as the enactment amended or repealed.
- 14 The Act applies to England and Wales save in respect of Part 1 and section 41, which apply to England only.
- 15 There are no significant devolution issues.
- 16 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Act

Part 1: Technical Education

Section 1: The Institute for Apprenticeships and Technical Education

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

Section 2: Information about technical education: access to English schools

- 18 Section 2 requires maintained schools, academies and pupil referral units in England to allow a range of education and training providers access to their pupils in order to inform pupils directly about approved technical education qualifications or apprenticeships. In practice this will mean each provider informing pupils in school years 8 to 13 about the courses and qualifications they offer.
- 19 Under subsections (3) to (7), the school must prepare, publish and follow a policy statement which sets out the circumstances in which a provider will be allowed access to pupils. Subsection (8) gives the Secretary of State a regulation-making power to make further provision if sufficient numbers of schools fail to comply with the duty.

Part 2: Further Education Bodies: Insolvency etc.

Chapter 1: Introduction

Sections 3 to 5: Overview, "Further Education Body"; Other Key Definitions

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

Chapter 2: Application of Normal Insolvency to Statutory Corporations

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

Section 6: Application of normal insolvency procedures

- 23 Section 6 provides for insolvent further education and sixth form college corporations to be treated in a similar way to insolvent companies under the Insolvency Act 1986. The section applies four specific insolvency procedures, which apply to companies, to further education and sixth form college corporations: voluntary arrangements, ordinary administration, creditors’ voluntary winding up, and winding up by the court.

- 24 This section also provides a power for the Secretary of State to modify or omit provisions in the relevant insolvency legislation which is applied by this section, so that the insolvency legislation makes sense in the context of a further education and a sixth form college corporation, which has a different constitution to a company. The sort of modifications or omissions which may be made include those which are necessary to deal with the interaction between the insolvency procedures applied by the section and the special administration regime which is established by Chapter 4 of this Part. So, for instance, the power can be used to translate references to “company” to “further education body” and references to “directors” to “members” (governors). The power can also be used to omit provisions, such as those relating to floating charges, which cannot be granted by a further education or sixth form college corporation.
- 25 The section also provides for the law relating to receivers and managers of property to be applied to those corporations and for that law to be able to be modified as it is applied to those corporations, because they are different from companies.

Section 7: Application of other insolvency law

- 26 Section 7 provides a power for the Secretary of State to make regulations so as to apply any legislation which is about insolvency to further education and sixth form college corporations. This means that where there is legislation outside the Insolvency Act 1986 which relates to insolvency, that legislation can be applied, by secondary legislation, to those corporations. There is also power to amend or modify that legislation so that it makes sense for those corporations.

Section 8: Records etc.

- 27 Section 8 allows the Secretary of State to make regulations to ensure that there is a workable system for filing and record keeping for insolvent further education bodies that are statutory corporations and for further education bodies in education administration. The power allows the Secretary of State to make regulations which apply certain provisions of the Companies Act 2006 (“the 2006 Act”) to further education bodies, with or without modifications.
- 28 Under subsection (3)(b), the power can also be used to confer power on the Registrar of Companies to make rules about documents, as the Registrar can under the 2006 Act. This enables an accessible public record of insolvency procedures, including the special administration regime established by the Act, for FE colleges which are not companies and are therefore not currently subject to any part of the company registration

Chapter 3: Restrictions on Use of Normal Insolvency Procedures

Sections 9 - 14: Making of ordinary administration orders; Administrator appointments by creditors etc.; Winding-up order; Voluntary winding up; Enforcement of security; Interpretation of Chapter

- 29 Chapter 3 makes provisions which ensure that the Secretary of State or, for Wales, the Welsh Ministers, are given notice before a normal insolvency procedure is commenced in relation to a further education body (which means a further education corporation or a company which runs an institution designated under s.28 of the Further and Higher Education Act 1992), so that the Secretary of State, or, for Wales, the Welsh Ministers, have an opportunity to consider whether to apply to the court for a special administration order. This allows 14 days for consideration.

- 30 This chapter includes provision creating a moratorium on security. It ensures that no-one can take a step to enforce security over a property of a further education body without giving 14 days' notice to the Secretary of State, or for Wales, the Welsh Ministers. This gives the Secretary of State and Ministers the opportunity to apply for an education administration order where appropriate; if this happens, a moratorium will apply (see paragraphs 43 and 44 of Schedule B1 to the Insolvency Act 1986 (as it is applied and modified by Schedules 3 and 4 to the Act, so that it works for further education bodies)).

Chapter 4: Further Education Bodies: Special Administration

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

Section 15: Overview of Chapter

- 35 This section is self-explanatory.

Section 16: Objective of education administration

- 36 Section 16 is at the heart of the special administration regime and sets out the overarching (or "special") objective for the education administration.
- 37 The objective of an education administration is to avoid or minimise disruption to the studies of the existing students of the further education body as a whole, and to ensure that it becomes unnecessary for the body to remain in education administration for that purpose. This means that the education administrator's primary focus is on the studies of existing students, in contrast to an ordinary administration where the administrator's primary focus is on rescuing the company or obtaining a better result for the creditors as a whole.
- 38 By existing students, we mean a person who: a) is a student at the college when the administration order is made, or b) has accepted a place on a course at the college when the administration order is made.
- 39 This section also sets out the ways the education administrator could achieve the objective including rescuing the further education body as a going concern, transferring some or all of its undertakings to another body, keeping it going until existing students have completed their studies, or making arrangements for existing students to complete their studies at another institution. There may be other options available to the education administrator in a particular instance, and this subsection is not intended to limit the actions an education administrator might take to achieve the objective.

Section 17: Education administration order

- 40 An education administration may only be commenced by an order made by the court. Section 17 sets out what is meant by an education administration order. It is an order appointing a person to be the education administrator of the further education body. That person must be qualified to act as an insolvency practitioner in relation to the further education body.
- 41 As set out in sections 23 and 24, an education administrator is a person who will manage the affairs, business and property of the further education body for the duration of the education administration and will act as an officer of the court. When carrying out functions in relation to a further education body, the education administrator is the agent of the further education body.

Section 18: Application for education administration order

- 42 Section 18 provides that only the Secretary of State or, for Wales, Welsh Ministers, can apply for an education administration order. It also requires the authority making the order to notify the further education body and any other person specified in rules. These might include the person who it is proposed will act as the education administrator or the supervisor of a voluntary arrangement relating to the further education body.

Section 19: Grounds for making an education administration order

- 43 Section 19 states that an education administration order can only be made if the court is satisfied that the further education body is unable, or likely to become unable, to pay its debts (within the meaning of section 123 of the Insolvency Act 1986). An education administration order cannot be made if the further education body has already entered into ordinary administration or has gone into liquidation.

Section 20: Powers of the court on hearing an application

- 44 Section 20 lists the powers of the court on hearing the education administration application. The court can grant or dismiss the application, but can also make other orders, including restricting the powers of the further education body. Subsection (3) specifies when an education administration order comes into force.

Section 21: Appointment of two or more administrators

- 45 Section 21 provides for what the court order must set out if more than one education administrator is appointed.

Section 22: Duty to dismiss ordinary administration application

- 46 If the court makes an education administration order, then section 22 requires the court to dismiss any outstanding application for ordinary administration in relation to that body.

Section 23: Status of education administrator

- 47 Section 23 provides that the education administrator is an officer of the court, and that, in carrying out functions in relation to a further education body, the education administrator acts as its agent. This is an important provision for understanding the role of the education administrator, and should be read together with the functions of the education administrator which are set out in section 24.

Section 24: General functions of education administrator

- 48 Section 24 provides that, where an education administration order is in force, the education administrator manages the further education body's affairs, business and property. The governors are not automatically dismissed, but, on appointment, the education administrator takes over the management of the further education body. This is a key role of the education administrator, and the functions must be carried out for the purpose of achieving the special objective, if possible. In pursuing the special objective, the administrator must in particular take into account the needs of existing students with special educational needs.
- 49 The education administrator must also, so far as it is consistent with the special objective, carry out the functions in a way that achieves the best result for the body's creditors as a whole (subsection (3)). Where the further education body is a company, subsection (4) requires the education administrator to carry out their functions in a way that achieves the best result for the company's creditors as a whole and, subject to that, the company's members as a whole.

Section 25: Transfer schemes

- 50 Section 25, with Schedule 2, gives the education administrator the power to make transfer schemes, which transfer the property, rights and liabilities of the further education body to another specified person or body. Such schemes can be used to override some third party rights, e.g. transferring a lease without the landlord's consent, for example, in order to facilitate the transfer of students to another provider so as to achieve the special objective.

Section 26: Conduct of administration

- 51 Section 26 provides that Schedules 3 and 4 apply, with modifications, provisions of the Insolvency Act 1986 which relate to ordinary administration. The effect of those Schedules is to make a special administration for further education bodies, as far as possible, mirror an ordinary administration, but there are necessary modifications because, firstly, a further education corporation is different from a company and, secondly, because a special administration has a different objective to an ordinary administration.

Section 27: Grants and loans where education administration is made

- 52 Section 27 gives the Secretary of State, or for Wales the Welsh Ministers, the power to make grants or loans to the further education body for the purposes of achieving the special objective. A grant or loan can be made on any terms that are considered appropriate, including making the grant or loan repayable, with or without interest. The terms must specify how the loan and any interest are to be repaid on vacation of office by the education administrator.

Section 28: Indemnities where education administration order is made

- 53 Section 28 enables the Secretary of State, or for Wales the Welsh Ministers, to agree to indemnify the education administrator, and other related persons against liabilities incurred and/or loss or damage sustained in connection with the education administrator exercising their functions. The Secretary of State must lay a statement of the agreement to grant the indemnity before Parliament as soon as possible after agreeing to grant it.

Section 29: Indemnities: repayment by further education bodies etc.

- 54 Section 29 sets out what happens if the Secretary of State makes a payment under an indemnity. The Secretary of State can require the further education body to repay that sum. The Secretary of State must lay a statement before Parliament in the event that a payment has to be made under an indemnity agreed to under section 28. Similar powers and obligations apply to the Welsh Ministers.

Section 30: Guarantees where education administration order is made

- 55 Section 30 enables the Secretary of State, or for Wales the Welsh Ministers, to give guarantees in relation to the borrowings of a further education body in education administration. The Secretary of State must lay a statement of the guarantee before Parliament as soon as possible after giving it and Welsh Ministers must lay a statement before the Welsh Assembly.

Section 31: Guarantees: repayment by further education body etc.

- 56 Section 31 allows that if sums are paid out by the Secretary of State under a guarantee this section requires that the further education body must pay the Secretary of State: a) such amounts in or towards the repayment to the Secretary of State of those sums as the Secretary of State may direct; and b) interest on amounts outstanding at such rates as the Secretary of State may direct.
- 57 The Secretary of State must lay a statement relating to that sum before Parliament as soon as possible after the end of the financial year in which the sum is paid out; and after the end of each subsequent financial year until the education body has discharged the liability (including interest). Similar provisions are made by this section for Welsh Ministers.

Section 32: Education administration rules

- 58 Section 32 applies the power to make rules under section 411 of the Insolvency Act 1986. The effect of this is that the Secretary of State has the power to make detailed procedural rules for an education administration in the same way that they are made for ordinary administration.

Section 33: Application of other insolvency law

- 59 Section 33 gives the Secretary of State the power to make regulations so as to apply legislation relating to insolvency to a further education body that is in education administration.

Section 34: Modification of this Chapter under the Enterprise Act 2002

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

Section 35: Interpretation of Chapter

- 61 This section sets out definitions of the terms used in this Chapter.

Chapter 5: Trust Property held by Sixth Form College Corporations

Section 36: Trust property held by sixth form college corporations

- 62 Section 36 provides that, if a sixth form college corporation to which section 33J of the Further and Higher Education Act 1992 applies is being wound up under the Insolvency Act 1986, any property held by the corporation on trust must be transferred to the trustees of the relevant college and cannot be used by the education administrator to meet the claims of creditors.
- 63 This section protects the position under Section 33J of the Further and Higher Education Act 1992 which provides that a sixth form college specified in an order made under the Further and Higher Education Act 1992 must be conducted in accordance with any trust deed related to it.

Chapter 6: Restrictions on Other Dissolution Procedures

Section 37: Restrictions on dissolution of further education corporations

- 64 Section 37 amends the Further and Higher Education Act 1992 to prevent the dissolution under that Act of further education corporations that are already subject to normal insolvency procedures or in education administration. This will stop governors from resolving to dissolve a further education corporation where the corporation is in education administration, or in one of the other insolvency procedures which is applied to further education corporations by the Act.

Section 38: Restrictions on dissolution of sixth form college corporation

- 65 Section 38 mirrors section 37 for sixth form college corporations.

Chapter 7: Disqualification of Officers

Section 39: Disqualification of Officers

- 66 This section amends the Company Directors Disqualification Act 1986 so that it applies to further education bodies that are statutory corporations. This will mean that, like company directors, members (i.e. governors) of those corporations can be disqualified from acting as such in the future and from being company directors, and that persons disqualified as a director of a company can be prohibited from acting as a member of a further education body which is a statutory corporation.

Part 3: Other Provision to do with Further Education

Section 40: Information for Secretary of State about further education

- 67 Section 40 amends section 54 of the Further and Higher Education Act 1992 in respect of England to ensure that the Secretary of State can obtain information from providers of further education who receive funding from combined authorities.
- 68 The purpose of the changes is to ensure that following any transfer from the Secretary of State to a combined authority of statutory functions relating to the provision of further education, the Secretary of State can continue obtain information about further education from providers of further education who will, from then onwards, receive funding from a combined authority rather than from the Secretary of State.
- 69 This will enable the continuation of current arrangements to gather data on further education in England and will enable the gathering and publication of consistent and comparable data on the operation of the further education system across England, as has been the case before any transfer of functions and funding to combined authorities.
- 70 Section 40 also sets out the unchanged arrangements in respect of Wales.

Section 41: Careers advice in further education institutions: Ofsted inspection

- 71 Section 41 provides that when Ofsted inspects a further education institution, it must comment in its inspection report on the careers guidance provided to students at that institution who are under 19, or to students who are 19 to 25 years old, and for whom an Education, Health and Care Plan is maintained.

Part 4: General

Section 42: Power to make transitional provision to Section 48: Short title

72 These provisions are self-explanatory.

Schedule 1: The Institute for Apprenticeships and Technical Education

- 73 This Schedule amends the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”). That Act is amended by the Deregulation Act 2015 (in relation to the approved English apprenticeships reforms) and the Enterprise Act 2016 (to, among other things, establish the Institute for Apprenticeships). The Institute was established in April 2017 with apprenticeships functions. This Schedule extends the Institute’s remit to include technical education. This includes approved technical education qualifications (see section A2DA) and the additional components that a person may need to take in order to progress into employment (see section A2DB), together referred to in these explanatory notes as ‘technical education’.
- 74 Sections ZA2 – ZA5 are amended to include technical education. Under section ZA2, the Institute must have regard to certain matters when performing its functions. These include the reasonable requirements of employers and students, and to ensure good value for money and the quality of the education or training provision approved by the Institute. The Institute must also have regard to other matters set out by the Secretary of State in a notice. There will no longer be a requirement that the notice is given annually because more frequent notices may be needed following the expansion of the Institute’s functions. Each notice must be laid before Parliament.
- 75 Sections ZA3, ZA4 and ZA5 are also amended to include technical education. The Secretary of State may require the Institute to provide advice and assistance in relation to apprenticeships or other education or training. The Secretary of State may also require the Institute to take on new functions through conferral or delegation powers.
- 76 New section ZA9 enables the Secretary of State to specify broad groups of occupations, which may also be referred to as ‘routes’. This provides a framework for grouping together occupations where there are shared training requirements. New section ZA10 requires the Institute to map occupations in relation to the routes identified by the Secretary of State under ZA9 and to publish that information. Each occupational map will group together occupations with similar knowledge, skills and behaviours and which the Institute considers may be appropriate for an apprenticeship or technical education.
- 77 New section ZA11 requires the Institute to publish standards for occupations which the Institute considers appropriate, and for each standard to describe the occupation and the outcomes which a person will be expected to attain to successfully achieve the standard. The standards must be drafted by a group of persons who have been approved by the Institute. The Institute may commission a group of persons to draft a standard if it considers that a standard would not otherwise be available. The Institute can provide advice and guidance to the group of persons charged with preparing the standard. The Institute must publish the criteria to be used in deciding whether to approve or reject a group who wish to develop a standard, and the criteria to be used to approve or reject the standard itself. It may also take into account other matters outside the published criteria in individual cases where appropriate. The Institute must also publish information to show how the standard relates to the occupational map.

- 78 The definition of “approved English apprenticeship” in section A1 of the 2009 Act is amended so that it is based on standards approved under section ZA11 for such occupations as the Institute considers appropriate. The effect of this is that previous references to apprenticeship standards are replaced by the new standards.
- 79 Section A2 is amended so as to make explicit that it only applies to apprenticeship assessment plans. It makes equivalent provision in relation to plans as applies in relation to standards under ZA11. Unlike standards, assessment plans only relate to apprenticeships. Paragraph 12 repeals section A2A (preparation of apprenticeship standards and plans) because most of that section is reproduced within new section ZA11 and amended section A2.
- 80 Approved English apprenticeship standards and plans published by the Institute under section A2 of the 2009 Act before this Schedule is in force are to be treated as having been approved and published as standards (under new section ZA11) and plans (under amended section A2(6)) (see paragraphs 33 and 34 of the schedule).
- 81 Section A2B is amended to allow the Secretary of State, by making regulations, to authorise the Institute to charge fees for evaluating apprenticeship assessments. The regulations may prescribe restrictions such as the amount of the fees, or a maximum amount the Institute may charge. The purpose of evaluating apprenticeship assessments is to quality assure the assessment of outcomes (which are set out in the standard to which the assessment plan relates) including to the reliability and consistency of assessments.
- 82 The policy intention is that all apprenticeships under standards are to be assessed by an 'End Point Assessment', which evaluates how well the apprentice has acquired the knowledge, skills and behaviours set out in the relevant apprenticeship standard. The purpose of evaluating apprenticeship assessments is to ensure all organisations which offer them are delivering comparable, consistent and high quality assessments.
- 83 Employers and others who develop apprenticeship standards must set out who will carry out this quality assurance process in relation to each standard, and how they will do it, or the Institute will not approve the arrangements. The Institute may carry out the quality assurance itself or approve plans for others to do it. For example, Ofqual, professional bodies or others.
- 84 New section A2DA allows the Institute to approve technical education qualifications in relation to one or more occupations for which there is a published standard. A qualification may only be approved if a person taking that qualification would demonstrate that they have attained as many of the outcomes in the standard as can reasonably be expected by undertaking a course of education.
- 85 Under section A2DA, the Institute may make any appropriate arrangements for ensuring that the qualifications are available to be approved. This may include entering into contracts with other persons and requiring such conditions as the Institute sees fit. The approval process will include the transfer of copyright for relevant course documents to the Institute (see new section A2IA). The Institute must determine what those documents are (if any). It must also be satisfied that persons who it thinks are entitled to rights or interests in those documents agree to the transfer of copyright. Even if the Institute does not meet that requirement, the failure does not invalidate the approval of the qualification (assuming the Institute did not know that the person did not agree to the transfer). If a person's right or interest is transferred to the Institute without agreement, the Institute must only pay appropriate compensation if needed. It is expected that payment of compensation would be highly unlikely to arise in practice. The Institute may withdraw approval of a qualification. The Institute may also modify an approved qualification without having to withdraw the approval and reapprove it. The Institute must publish details of approved qualifications and withdrawn qualifications, indicating the occupation or occupations to which each qualification relates.

- 86 New section A2DB allows the Institute to set out additional education, types of training or other components to assist a person in progressing into employment. These may include other qualifications or a work placement, for example. The Institute must publish details of these additional requirements. The Institute may make further determinations under this section which could replace earlier determinations. A person who has completed a technical education qualification and the additional steps may be eligible to receive a technical education certificate (see new section A3A).
- 87 New section A2DC allows the Secretary of State to direct the Institute in relation to new sections A2DA and A2DB. The Institute must act in accordance with the directions (see section ZA8). This is to ensure that the Secretary of State has the necessary oversight in relation to technical education as recommended by the independent Sainsbury Panel.
- 88 New section A2HA requires the Institute to maintain a list of approved technical education qualifications. The list must indicate the standard or standards to which each qualification relates as well as the additional education, types of training or other steps that a person may need to undertake in order to progress into employment and to be awarded a technical education certificate (see section A3A). The Institute must ensure that the list is available free of charge.
- 89 New section A2IA gives the Institute ownership of copyright in technical education course documents (determined by the Institute under section A2DA(4)). The rights transfer to the Institute at the point where the Institute approves the qualification. A2IA(3) gives the Institute the power to assign or grant a licence of the copyright to another person. This may include an organisation with whom the Institute has entered into arrangements under section A2DA.
- 90 The amendments to section A2I ensure that transfer of copyright in standards and assessment plans to the Institute applies to the new standards and plans in the same way as it did for the previous standards and plans. New section A3A allows the Secretary of State to issue a certificate to any person who has completed a technical education qualification and any other steps determined under A2DB. The Secretary of State may make regulations: to require an application to be made in a particular way before a certificate is issued; about the supply of copies of certificates; authorising the charging of a fee for issuing a certificate or supplying a copy of it.
- 91 New section 40AA allows for information sharing between the Institute and other quality bodies and vice versa (in particular Ofsted, Ofqual and the future Office for Students). In addition, the Secretary of State may make regulations to allow the Institute to share information for a specified purpose with other persons not stated on the face of the Act and vice versa. The intention is that nothing in the new section authorises the Institute to provide information contrary to a statutory provision (in particular the Data Protection Act 1998) but that the Institute may provide information under the section notwithstanding any other restriction. New section 40AA is complementary and without prejudice to the other powers for the Institute to share information.
- 92 Section 100 of the 2009 Act is amended to apply to technical education by the insertion of new subsection (1B). This allows for technical education courses to be eligible for public funding by the Secretary of State under that section. This is without prejudice to the Secretary of State using any other of the Secretary of State's funding powers under other enactments.
- 93 Paragraph 35 allows the Secretary of State to make regulations for anything the Secretary of State has done prior to the commencement of the legislation to be treated, on or after commencement, as done by the Institute. For example, any work undertaken by the Secretary of State (or a person acting on behalf of the Secretary of State) in connection with convening employer panels to set standards, the approval of these standards, and any agreements

entered into with persons who will develop a technical education qualification to meet these standards, may be treated as being done by the Institute. The regulations may also modify the amendments to the 2009 Act. An example of the modifications is given in the paragraph, that if the regulations provide for a group of persons convened by the Secretary of State to be treated as convened by the Institute under section ZA11(6), the regulations may disapply the conditions in section ZA11(6)(a) and (b) in relation to the convening of that group. Any other modifications may be specified too. This power comes into force on the day on which the Act is passed.

Schedule 2: Education administration: transfer schemes

- 94 This Schedule provides that the education administrator may make a transfer scheme, as provided for in section 25. Any transfer scheme is subject to the consent of the transferee and the approval of the Secretary of State, or, for Wales, the Welsh Ministers. There is also power to modify the scheme, but only if the education administrator and the transferees agree.
- 95 The scheme can only be used to transfer property, rights and liabilities to persons or bodies prescribed in regulations made under section 27B of the Further and Higher Education Act 1992. They are the same as those prescribed persons or bodies to whom property, rights and assets can be transferred in the event that a further education or sixth form corporation makes a resolution for dissolution under that Act.
- 96 The transfer scheme can transfer property, rights, and liabilities that could not otherwise be transferred, that is, without the agreement of third parties, thereby effectively allowing their rights to be overridden and allows for the transfer of property which is acquired, or rights and liabilities arising after the transfer scheme has been made.

Schedule 3: Conduct of education administration: statutory corporations

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

Schedule 4: Conduct of education administration: companies

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

Commencement

- 101 Paragraph 35 of Schedule 1 and Part 4 of this Act come into force on the day on which the Act is passed.
- 102 The other provisions of the Act come into force on such day as the Secretary of State may by regulations appoint.

Related documents

103 The following documents are relevant to the Act and can be read at the stated locations:

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

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?
Part 1 Sections 1 and 2	Yes	No	No	No
Part 2 Sections 3 to 39	Yes	Yes	No	No
Part 3 Section 40 Section 41	Yes Yes	Yes No	No No	No No
Part 4 Sections 42 to 48	Yes	Yes	No	No
Schedule 1 Schedules 2 to 4	Yes Yes	No Yes	No No	No No

Annex B - Hansard References

104 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	27 October 2016	Volume 616, Col.442 Bill 82 as introduced
Second Reading	14 November 2016	Volume 617, Col.41
Public Bill Committee: 1st Sitting	22 November 2016	Column 1
Public Bill Committee: 2nd Sitting	22 November 2016	Column 35
Public Bill Committee: 3rd Sitting	24 November 2016	Column 65
Public Bill Committee: 4th Sitting	24 November 2016	Column 87
Public Bill Committee: 5th Sitting	29 November 2016	Column 105
Public Bill Committee: 6th Sitting	29 November 2016	Column 137
Public Bill Committee: 7th Sitting	1 December 2016	Column 169
Public Bill Committee: 8th Sitting	1 December 2016	Column 191
Report and Third Reading	9 December 2016	Volume 619, Col.70 Bill 108 as amended in Committee
House of Lords		
Introduction	10 January 2017	Volume 777 HL Bill 88 as introduced
Second Reading	1 February 2017	Volume 778, Col.1207
Grand Committee: 1st Sitting	27 February 2017	Volume 779, Col.38GC
Grand Committee: 2nd Sitting	27 February 2017	Volume 779, Col.94GC
Grand Committee: 3rd Sitting	1 March 2017	Volume 779, Col.210GC
Report	27 March 2017	Volume 782, Col.360 and Volume 782, Col.458 HL Bill 107 as amended in Committee
Third Reading	4 April 2017	Volume 782, Col.994 HL Bill 119 as amended on Report
Commons Consideration of Lords Amendments	19 April 2017	Volume 624, Col.713 Lords amendments to the Bill
Lords Consideration of Commons Amendments	25 April 2017	Volume 782, Col 1272 Commons Reasons and amendments
Royal Assent	27 April 2017	HC Volume 624, Col 1230 HL Volume 782, Col 1528

These Explanatory Notes relate to the Technical and Further Education Act 2017 (c. 19) which received Royal Assent on 27 April 2017

Annex C - Progress of Bill Table

105 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2				Clause 2	Clause 3
Section 3	Clause 2	Clause 2	Clause 2	Clause 3	Clause 4
Section 4	Clause 3	Clause 3	Clause 3	Clause 4	Clause 5
Section 5	Clause 4	Clause 4	Clause 4	Clause 5	Clause 6
Section 6	Clause 5	Clause 5	Clause 5	Clause 6	Clause 7
Section 7	Clause 6	Clause 6	Clause 6	Clause 7	Clause 8
Section 8				Clause 8	Clause 9
Section 9	Clause 7	Clause 7	Clause 7	Clause 9	Clause 10
Section 10	Clause 8	Clause 8	Clause 8	Clause 10	Clause 11
Section 11	Clause 9	Clause 9	Clause 9	Clause 11	Clause 12
Section 12	Clause 10	Clause 10	Clause 10	Clause 12	Clause 13
Section 13	Clause 11	Clause 11	Clause 11	Clause 13	Clause 14
Section 14	Clause 12	Clause 12	Clause 12	Clause 114	Clause 15
Section 15	Clause 13	Clause 13	Clause 13	Clause 15	Clause 16
Section 16	Clause 14	Clause 14	Clause 14	Clause 16	Clause 17
Section 17	Clause 15	Clause 15	Clause 15	Clause 17	Clause 18
Section 18	Clause 16	Clause 16	Clause 16	Clause 18	Clause 19
Section 19	Clause 17	Clause 17	Clause 17	Clause 19	Clause 20
Section 20	Clause 18	Clause 18	Clause 18	Clause 20	Clause 21
Section 21	Clause 19	Clause 19	Clause 19	Clause 21	Clause 22
Section 22	Clause 20	Clause 20	Clause 20	Clause 22	Clause 23
Section 23	Clause 21	Clause 21	Clause 21	Clause 23	Clause 24
Section 24	Clause 22	Clause 22	Clause 22	Clause 24	Clause 25
Section 25	Clause 23	Clause 23	Clause 23	Clause 25	Clause 26
Section 26	Clause 24	Clause 24	Clause 24	Clause 26	Clause 27
Section 27	Clause 25	Clause 25	Clause 25	Clause 27	Clause 28
Section 28	Clause 26	Clause 26	Clause 26	Clause 28	Clause 29
Section 29	Clause 27	Clause 27	Clause 27	Clause 29	Clause 30
Section 30	Clause 28	Clause 28	Clause 28	Clause 30	Clause 31
Section 31	Clause 29	Clause 29	Clause 29	Clause 31	Clause 32

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Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 32	Clause 30	Clause 30	Clause 30	Clause 32	Clause 33
Section 33	Clause 31	Clause 31	Clause 31	Clause 33	Clause 34
Section 34	Clause 32	Clause 32	Clause 32	Clause 34	Clause 35
Section 35	Clause 33	Clause 33	Clause 33	Clause 35	Clause 36
Section 36	Clause 34	Clause 34	Clause 34	Clause 36	Clause 37
Section 37	Clause 35	Clause 35	Clause 35	Clause 37	Clause 38
Section 38	Clause 36	Clause 36	Clause 36	Clause 38	Clause 39
Section 39	Clause 37	Clause 37	Clause 37	Clause 39	Clause 40
Section 40	Clause 38	Clause 38	Clause 38	Clause 40	Clause 41
Section 41					Clause 42
Section 42	Clause 39	Clause 39	Clause 39	Clause 41	Clause 43
Section 43	Clause 40	Clause 40	Clause 40	Clause 42	Clause 44
Section 44	Clause 41	Clause 41	Clause 41	Clause 43	Clause 45
Section 45	Clause 42	Clause 42	Clause 42	Clause 44	Clause 46
Section 46	Clause 43	Clause 43	Clause 43	Clause 45	Clause 47
Section 47	Clause 44	Clause 44	Clause 44	Clause 46	Clause 48
Section 48	Clause 45	Clause 45	Clause 45	Clause 47	Clause 49
Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1	Schedule 1
Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2	Schedule 2
Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3	Schedule 3
Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4	Schedule 4

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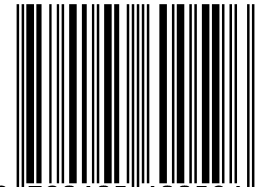
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