



Department
for Education

Insolvency regime for further education and sixth-form colleges

Government technical consultation

Launch date 18 December 2017

Respond by 12 February 2018

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1. Ministerial foreword

I am very happy to be writing with an update on our work to introduce an insolvency regime for further education colleges, and to invite responses to this consultation on our current policy proposals.

A strong, resilient and consistently high quality further education sector is essential to ensuring that everyone in our society is empowered to succeed. Area Reviews, supported by the Restructuring Facility, have made great strides in supporting colleges to be more financially sustainable so that they can deliver the skills the economy needs, and support social mobility.

However, we recognise that some colleges may face financial difficulties in the future and we cannot rule out the possibility, however small, that a college could become insolvent. We therefore introduced primary legislation in the Technical and Further Education Act 2017 to create an insolvency regime for further education and sixth form colleges. This will apply existing insolvency procedures to further education bodies, and will also introduce a special administration regime called education administration which will protect learner provision. Our goal is to have the necessary legislation in force to allow the regime to be in place in late 2018.

Alongside the insolvency regime, we are also strengthening our intervention and monitoring of colleges, including through earlier intervention from the FE Commissioner, as prevention is key to minimising instances of insolvency and the associated costs. While we would expect instances of insolvency to be exceptional and uncommon, we must ensure that an orderly process is in place to deal with colleges that become insolvent once Area Review implementation is complete.

The insolvency regime also highlights the important role that Governors play in creating a high-quality and resilient FE sector. Governors already have vital fiduciary duties in their capacity as charity trustees and the changes within the FE insolvency regime will bring them into line with the approach taken with governors of academies in England and also for the trustees of charitable companies and charitable incorporated organisations.

The insolvency regime not only improves the value for money of our response to financial failure in colleges, but also ensures we protect educational provision so that young people and adults can gain the skills they need to get on in the world of work.

I encourage everyone with an interest in further education to feed in their views.

The Rt Hon Anne Milton MP

Minister of State for Skills and Apprenticeships and Minister for Women

2. Introduction

2.1 Why we're consulting

This consultation document seeks to clarify the insolvency provisions that were established by the Technical and Further Education Act 2017¹ ('the 2017 Act') for further education and sixth form colleges, outline the technical detail of the insolvency regime that will be included in secondary legislation, and set out proposals as to how colleges at risk of or in insolvency will be dealt with in practice. This will mean that where a college is in severe financial difficulties and there is no alternative viable solution for managing the college out of that situation, then the expectation is that the college will enter into insolvency proceedings. We expect such scenarios to be rare and we have also outlined in this consultation our plans to further improve the monitoring and support available to FE corporations where they are in financial difficulty.

We agreed last year that we would consult further on our policy proposals for the introduction of the insolvency regime. The 2017 Act has already set the main parameters for the regime, and so this consultation is about how the regime is implemented in practice within these parameters. Our policy proposals are still under development, so the consultation provides a broad opportunity for respondents to provide comments on areas that they believe need to be addressed or need to be clearer, areas that they do not agree with or circumstances that we need to ensure we have catered for within the regime. These comments will help to inform our continued policy development.

In relation to areas where our policy thinking is more advanced, we have also included specific questions on which we would welcome views.

A glossary of some common terms used in this document is included at Annex 1.

2.2 Who this is for

- Further education colleges, sixth form colleges, designated institutions and their representative organisations
- Insolvency practitioners, their practices and regulatory compliance firms
- Local authorities/combined authorities
- Financial institutions
- Others with an interest in further education
- Others with an interest in insolvency law and procedures

¹ [Technical and Further Education Act 2017](#)

2.3 Issue date

The consultation was issued on 18 December 2017.

2.4 Enquiries

If your enquiry is related to the policy content of the consultation you can contact the FE Insolvency team by email at FEinsolvency.Consultation@education.gov.uk.

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: consultation.unit@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

2.5 Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

2.6 The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in Spring 2018.

3. About this consultation

This consultation document seeks to clarify the insolvency provisions that were established by the Technical and Further Education Act 2017 ('the 2017 Act') for further education and sixth form colleges, outline the technical detail of the insolvency regime that will be included in secondary legislation, and set out proposals as to how colleges at risk of or in insolvency will be dealt with in practice.

We would like to hear your views on our proposals.

3.1 Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If, for exceptional reasons, you are unable to use the online system (for example because you use specialist accessibility software that is not compatible with the system), please copy the consultation response form (at Annex C) into a Word document, complete and send it to us by email or post.

By email: FEinsolvency.Consultation@education.gov.uk

By post: FE Insolvency Team, Department for Education, Level 1, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT.

3.2 Deadline

The consultation closes on 12 February 2018.

The online system will be closed for responses at 11.45pm on 12 February 2018. We will endeavour to ensure that any responses received by email or post after this time will still be seen by the appropriate policy officials. However, we cannot guarantee that these will be included in the analysis of consultation responses or that they will be taken into account in subsequent development work.

4. Summary

4.1 Background

1. There are currently 288 colleges in England as at September 2017² (comprising further education colleges, sixth form colleges, land-based colleges, art, design and performing arts colleges and specialist designated institutions). There are a further 14 further education colleges in Wales³. The vast majority of further education colleges and sixth form colleges are statutory corporations incorporated under the Further and Higher Education Act 1992. They are also exempt charities, regulated by the Secretary of State for Education⁴ acting as Principal Regulator through a Memorandum of Understanding with the Charity Commission.
2. The Further Education (FE) sector operates autonomously; colleges have freedoms and flexibility to take operational decisions and are independent in their financial decision-making. They respond to the needs of learners, employers and their local economy, providing a range of provision, including higher education provision and apprenticeships, as well as 16-18 year old and adult learning.
3. The contribution of the FE sector has never been so important, and therefore Government must support the sector to deliver these outcomes. Our ambition is for a strong and viable FE sector, comprised of a range of providers that deliver a set of high quality learning opportunities for all their local learners. At its core, this means colleges that are financially sustainable and resilient so that they can invest in learning and respond to changing demands.
4. Realising this ambition for a resilient, consistently high quality sector requires building on existing areas of individual strength, of which there are many, but it also requires rising to new challenges.
5. Work to achieve this ambition is already well underway. In 2015, we started a programme of locally led Area Reviews across England, with the key objective of facilitating structural changes to deliver further education institutions that are financially viable, sustainable, resilient and efficient, and which provide maximum value for public investment.
6. A Restructuring Facility was made available to support colleges to implement recommendations of Area Reviews, and a system of Exceptional Financial Support (EFS) offers those colleges with immediate financial problems that have exhausted all other funding options (and that recognise the need for change) an opportunity to move on to a sustainable footing. The Restructuring Facility is available up to March

² [Association of Colleges 'Key Facts 2017-18'](#)

³ [Colleges Wales](#)

⁴ In Wales, this function is carried out by the Welsh Ministers.

2019, and applications should be submitted by September 2018⁵. Once implementation of the Area Review recommendations is complete, EFS will also no longer be made available to colleges⁶.

7. Last year the Government set out proposals for the introduction of an insolvency regime for the sector⁷, recognising that there was merit in having a specific insolvency regime clearly applying to FE and sixth form college corporations, and also that learner provision should be protected if a college were to be in severe financial distress.
8. Legislation was brought forward in November 2016 and the Technical and Further Education Act 2017 (the 2017 Act) received Royal Assent on 27 April 2017. The 2017 Act clarifies that normal insolvency procedures will apply to FE bodies in England and Wales (with modifications to be made in relation to those that are statutory corporations). This regime was established to provide clarity within the law on what would happen in the unlikely event of a further education or sixth form college becoming insolvent and to provide orderly winding-up provisions similar to those available to companies and other organisations in the UK. The Act also expressly protects learner provision for existing students in insolvent colleges by introducing a special administration regime for the sector, known as an education administration.
9. The Government is now preparing draft secondary legislation to implement the 2017 Act and bring the insolvency regime fully into force. This secondary legislation will modify insolvency law as necessary to apply it effectively to colleges, set out regulations about the filing of insolvency records regarding colleges, and set out insolvency rules for an education administration – such as procedures of court or other rules to be followed by insolvency practitioners (IPs) appointed to manage an insolvent college (who, in the case of an education administration, will be known as education administrators).
10. Alongside preparations for the introduction of the insolvency regime, the Government is also planning how improved monitoring and intervention by the Education and Skills Funding Agency (ESFA) and the FE Commissioner and his team in England will help to identify and support colleges in financial distress. These improved processes are to ensure that where such cases are identified they are dealt with efficiently and effectively to protect learner provision and minimise disruption to those affected by the college's position. The emphasis will be on offering early intervention to support colleges, in order to further strengthen financial resilience and sustainability where weaknesses are identified.

⁵ [Restructuring Facility Guidance for applications, November 2017](#)

⁶ [FE College Financial Intervention and Exceptional Financial Support, September 2017](#)

⁷ [Developing an insolvency regime for the further education and sixth form sector](#)

11. Similar arrangements apply in Wales with the Department for Education and Skills (Wales) ('DfES') operating an Institutional Review scheme (although, following mergers over recent years in Wales, the FE sector is much smaller in scale and so the risk is proportionally less).
12. Where it is clear that a college is in severe financial distress and there is no alternative viable solution for managing the college out of that situation, the expectation is that the college will enter into insolvency proceedings.
13. This consultation document seeks to explain the insolvency provisions already established by the 2017 Act, outline our proposals for the technical detail of the regime that will be set out in secondary legislation, and set out practical proposals for dealing with colleges at risk of or in insolvency.

4.2 Scope

14. The insolvency regime will apply to colleges in England and Wales.
15. While education is a devolved matter for Wales, insolvency law is not. It was originally envisaged that the scope of the insolvency regime would only apply to further education and sixth form colleges in England. However, the Government's consultation on the insolvency regime in summer 2016 made clear that the legislation could also be applied to colleges in Wales and sought views on doing this. Welsh Ministers requested that the provisions of the proposed insolvency regime should extend to colleges in Wales as well as England, and UK Ministers agreed.
16. The 2017 Act therefore gives Welsh Ministers the power to make operational decisions on whether or not to apply to the Court for a special administration regime to be ordered for an insolvent college in Wales, and to make further operational decisions relating to an education administration for an insolvent college in Wales. (However, it should also be noted that the powers in the 2017 Act to make regulations about insolvency rest with the Secretary of State, as these powers are not devolved to Wales).
17. The 2017 Act defines the term 'appropriate national authority' in this context to mean the Secretary of State when in relation to a further education body in England; and the Welsh Ministers when in relation to a further education body in Wales. We will therefore use the term 'appropriate national authority' in this document.

4.3 Timings for implementation

18. Secondary legislation is required to implement the insolvency regime. Subject to the consultation outcome, we will seek to introduce measures to legislate when Parliamentary time allows. Our goal is to have the necessary legislation in force to allow the regime to be in place in late 2018.

5. FE insolvency provisions in the 2017 Act and the proposed secondary legislation

5.1 FE insolvency provisions in the 2017 Act

19. The Technical and Further Education Act 2017 ('the 2017 Act') applies provisions of the Insolvency Act 1986 and other insolvency-related legislation to further education bodies and provides the Secretary of State with the power to make secondary legislation modifying existing insolvency legislation so that it applies appropriately and effectively to those bodies.
20. The 2017 Act also introduces a special administration regime applicable to FE bodies, to be known as an education administration. This has a particular objective of ensuring the protection of learner provision at an insolvent FE body.
21. For the purposes of the insolvency regime, further education bodies are defined in the 2017 Act as: further education college corporations in England and Wales; sixth form college corporations in England; and companies conducting designated further education institutions in England and Wales. Companies conducting designated further education institutions are already subject to normal insolvency law; the 2017 Act therefore also applies the provisions relating to education administration to those companies.
22. The 2017 Act provides a number of specific powers which allow Parliament to make secondary legislation to deal with:
 - the modification of normal insolvency law to apply it to FE and sixth form colleges which are statutory corporations (section 6);
 - the application and modification of other insolvency-related legislation that might also need to be applied to college corporations in a similar way as it is applied to companies (section 7);
 - the filing of records in relation to insolvent FE and sixth form college corporations at Companies House (section 8);
 - the creation of rules for the detailed practical and process provisions in relation to education administration (section 32); and
 - the application and modification of legislation about insolvency which may be relevant for FE bodies in the context of education administration (section 33).
23. We currently anticipate requiring secondary legislation covering three areas in order to implement the insolvency regime. These are:
 - Regulations modifying existing insolvency legislation and relevant insolvency-related legislation to apply it to FE and sixth form colleges which are statutory corporations;
 - A set of rules for education administration;
 - Regulations to enable the filing of records in relation to insolvent college corporations at Companies House.

24. The approach being taken to develop the secondary legislation is similar to that taken to developing the provisions in the 2017 Act. Where possible, the legislation in relation to education administration will follow the updated Insolvency (England and Wales) Rules 2016, adapted to make them appropriate for education administration.
25. The 2017 Act has also created a regime for the disqualification of college governors by modifying the Company Directors Disqualification Act 1986 to apply to further education bodies. Secondary legislation is not required in order to implement these provisions, which will come into force alongside the other components of the insolvency regime. However, in the Government's response to last year's consultation we agreed to provide guidance for governors on their duties and liabilities under insolvency law, and we will ensure that this is provided ahead of the insolvency regime coming into force.

5.2 Regulations modifying existing insolvency legislation to apply it to FE bodies

26. The existing insolvency procedures that will apply to FE bodies are set out in section 6 of the Act. These are:

- voluntary arrangements (specifically a Company⁸ Voluntary Arrangement);
- administration;
- creditors' voluntary winding up;
- winding up by the court; and
- receivership.

The conduct of these normal procedures are as set out in the Insolvency Act 1986 and will be modified as necessary in order to apply effectively to FE bodies.

A **Company Voluntary Arrangement**, or **CVA**, is an arrangement between a college and its creditors that may, subject to creditor approval, compromise creditors' debts and thereby allow the college to avoid liquidation.

Administration is a rescue procedure that provides for a number of possible outcomes: the college could be reorganised (including via a CVA – see above), it could be transferred as a going concern in its entirety or in part, or the administrator could wind the college up. (It should be noted that this is a separate process to the special administration regime of education administration that we are implementing).

⁸ It should be noted that the 2017 Act confirms the definition of "company" as a company within the meaning of the Companies Act 2006. The process of modifying normal insolvency legislation to apply to FE colleges will therefore see the term 'company' replaced by the term 'further education body' wherever appropriate. However, we confirmed in the Government response to the summer 2016 consultation that we would not be amending the name of this insolvency procedure and hence would be continuing to use its official title of 'Company Voluntary Arrangement' even when it applies to colleges, as it is a recognised and well-understood term.

Creditors' voluntary winding up, also known as Creditors' Voluntary Liquidation (CVL), will be a procedure instigated by an insolvent college, whereby the college members (governing body) voluntarily bring the business to an end by appointing a liquidator (a liquidator may also be appointed by creditors). The assets of the insolvent college are sold, and the proceeds are distributed to the creditors.

Winding up by the court (also known as Compulsory Liquidation) is where the court is petitioned to wind up the college and then may make an order for winding up and appointing a liquidator. There could be a number of possible applicants, including the college itself – but we would expect (as is currently the case in most cases of compulsory liquidation of companies) that the petitioner will be a creditor for an unpaid debt.

Receivership will only apply in terms of fixed charge receivership, as FE bodies are unable to create floating charges. Those creditors with fixed charges will continue to be able to appoint a receiver, but any such appointment will be subject to the Secretary of State's power to apply for an education administration order; in the event that the court were to make such an education administration order, any receiver would be required to vacate office.

27. Different procedures may be needed depending on the particular case. For example, in a situation where the education administrator has fulfilled the special objective but has been unable to rescue a college as a going concern and the college remains insolvent, the education administration may be brought to an end and the college placed into a normal insolvency procedure. In very limited circumstances, it might also be more appropriate for an insolvent college to be dealt with through an existing normal insolvency procedure rather than an education administration – for example, if protection of learner provision was not an issue.
28. Restrictions are placed on the use of these normal insolvency procedures by an FE body to ensure that they do not interfere with education administration or prevent an application for an education administration order being made. The restrictions ensure that the appropriate national authority is given notice of the use of normal insolvency procedures and has 14 days to decide whether or not to initiate an education administration instead.
29. These restrictions also apply to initiating existing insolvency proceedings through the enforcement of security that may be held by a creditor, such as a mortgage held over a building. Once an education administration application has been made, a moratorium exists over a wide range of creditor enforcement procedures. This means that creditors can only enforce their security or take other enforcement action with the permission of the court (or, following an education administration order being made, with the consent of the education administrator).
30. Where a college corporation is subject to normal insolvency procedures or in education administration, it is now prevented (through sections 37 and 38 of the Act) from using normal dissolution procedures available to it through the Further and Higher Education Act 1992. This is to ensure the proper conduct of the insolvency procedure for the benefit of creditors and, in the case of education administration, learners.

Question 1: When considering the normal insolvency procedures outlined above (Company Voluntary Arrangement, administration, creditors' voluntary winding up, winding up by the court and receivership), are there any specific modifications that you believe are required in order to apply them effectively to FE bodies? Please provide explanations for any of these.

5.3 Education Administration Rules

Education administration

31. The Act creates a special administration regime for FE bodies, to be known as 'education administration', and sets out the main features of the regime. The education administration regime will be applicable to college bodies that are statutory corporations and those that are companies.

32. Section 16 of the Act sets out the objective of education administration (sometimes referred to as the 'special objective'):

16. Objective of education administration

(1) The objective of an education administration is to—
(a) avoid or minimise disruption to the studies of the existing students of the further education body as a whole, and
(b) ensure that it becomes unnecessary for the body to remain in education administration for that purpose.

(2) The means by which the education administrator may achieve that objective include—
(a) rescuing the further education body as a going concern,
(b) transferring some or all of its undertaking to another body,
(c) keeping it going until existing students have completed their studies, or
(d) making arrangements for existing students to complete their studies at another institution.

33. An existing student is a student who is already in attendance on a course at the college in question, or who has accepted a place on a course at the college, when the education administration order is made (section 35(1) of the Act).

34. The education administrator must, in pursuing the objective of the education administration, take into account the needs of existing students who have special educational needs (section 24(3) of the Act) – also sometimes referred to as SEND (special educational needs and disability) students.

35. There is also a requirement in the 2017 Act (para 13 of Schedule 3 and para 12 of Schedule 4) for the education administrator to send a copy of their proposals to the director of children's services at the local authority/combined authority in whose area the relevant FE body is based (and to any other directors of children's services that the education administrator deems appropriate). This ensures that the director of children's services is formally notified of the education administrator's proposals and

can take appropriate action (through their network of Personal Advisors) to provide support for any existing students affected by the proposals who are care leavers.

36. Where possible, the provisions for an education administration will follow the Insolvency (England and Wales) Rules 2016, adapted to make them appropriate for education administration. They will also take into account relevant provisions made in special administration regimes in other sectors (such as the postal and energy sectors).

Decision to proceed to education administration

37. While any creditor of a college can apply to a court for an ordinary insolvency process to start, the 2017 Act states that only the appropriate national authority can apply to court for an insolvent college to be put into education administration, with the objective of ensuring learner protection.

38. There are two routes by which the appropriate national authority might decide to apply for an education administration order:

- The appropriate national authority deciding, based on their own evidence base, that the college is insolvent (or likely to become so), that no other form of intervention might help the college's long-term future, and that the best solution is therefore to put the college into an education administration so learner provision at the college can be protected; or
- In response to an ordinary insolvency application. A normal ordinary process cannot commence unless notice has been given to the appropriate national authority, a period of 14 days has elapsed since that notice, and there is no outstanding education administration application (the appropriate national authority has that period of 14 days to decide whether to make an education administration application).

39. On hearing the application, the court may make an education administration order and appoint a licensed insolvency practitioner (IP) as an education administrator. (Section 20 of the 2017 Act sets out the powers of the court in relation to an education administration application).

Duty to dismiss ordinary administration applications

40. Section 9 of the Act provides that if a creditor makes an ordinary administration application, a court must dismiss the application if an education administration order is in force or has been made in relation to the FE body.

Education administrator

41. The education administrator must be a licensed insolvency practitioner (IP). The education administrator may be nominated by the appropriate national authority, but is appointed by the court and is an officer of the court. On appointment the education administrator is the agent of the college, responsible for the management of the college from that point forward.

42. Section 24 of the Act sets out the functions of the education administrator as:

- being the person responsible for managing the insolvent college's affairs, business and property;
- having to conduct the administration to achieve the objective of protecting learner provision for existing students, and (so long as it is consistent with that) in a way that achieves the best result for the further education body's creditors as a whole; and
- needing in particular to take into account the needs of students who have special educational needs, when pursuing the objective of protecting learner provision.

43. Although the education administrator is appointed by the court, the IP who is appointed will be proposed by the appropriate national authority in the education administration application. We therefore intend to carry out a procurement exercise to create a 'pre-approved' panel of IPs who can be proposed as education administrators.

Education Administrator's proposals

44. The education administrator must be a licensed insolvency practitioner, but will not necessarily be an expert in the further education sector. Where specific advice on particular matters is needed, the education administrator will consult with relevant experts. This is no different from what happens in a normal administration, where an IP is unlikely to be an expert in the field of a company over which they are appointed.

45. The proposals will set out how the education administrator will achieve the special objective of learner protection, including giving due consideration to existing students with special educational needs.

46. The education administrator will keep progress under review, and we are proposing that the education administrator will be required to submit progress reports at six-monthly intervals. The education administrator has the power to revise their proposals at any point if they identify that there is a better or more effective way of achieving the special objective.

47. Where an FE body is delivering HE provision then this will also be within the scope of the proposals that the education administrator develops. Many FE bodies deliver HE and in order to gain Approved or Approved (fee cap) status from the Office for Students (OfS), the FE body will need to have a Student Protection Plan (SPP) in place. The purpose of both the SPPs and the special objective of education administration is to provide greater protection to existing students, and FE bodies will need to take into consideration and if necessary align their SPPs with learner protection measures in the event of an education administration.

Conduct of education administration

48. Schedule B1 of the Insolvency Act 1986 ('Schedule B1') sets out provisions relating to ordinary administrations for companies. Schedules 3 and 4 of the 2017 Act amend

Schedule B1 by making specific modifications for education administration. Schedule 3 applies to statutory corporations, and Schedule 4 to companies.

Challenge to education administrator's conduct

49. When an FE body or company is in education administration, the appropriate national authority (or a creditor) may apply to the court to claim that the education administrator is not carrying out their functions in accordance with the amendments made to Schedule B1 by paragraph 21 of Schedule 3 and paragraph 19 of Schedule 4 of the 2017 Act.

End of education administration

50. The education administration ends once the learner protection special objective has been achieved. The appropriate national authority (or the education administrator with the consent of the appropriate national authority) can apply to the court for the education administration to cease to have effect from a specific time (see the modifications of Schedule B1 made by paragraph 23 of Schedule 3 and paragraph 21 of Schedule 4 of the 2017 Act).

51. Paragraph 76 of Schedule B1 provides that the appointment of an administrator will end after one year unless extended by the court. This paragraph has not been included within Schedules 3 and 4 of the 2017 Act, so an education administration will not automatically end after one year. However, an education administration will still be time-bound to the extent that the special learner protection objective applies only to existing students, who by definition will be a fixed body of learners who will leave/complete their studies over time. Hence, when the special objective has been achieved or is no longer relevant, it is no longer necessary for a college to remain in education administration.

Transfer schemes

52. In the course of managing the college's business and property, the education administrator has the power to make transfer schemes, which transfer some or all of the property, rights and liabilities of the college to one or more persons or bodies prescribed for the purposes of section 27B(1) or 33P(1) of the Further and Higher Education Act 1992 ('the transferee') in pursuit of the special objective.

53. The bodies were prescribed in the Dissolution of Further Education Corporations and Sixth Form College Corporations (Prescribed Bodies) Regulations 2012 and are:

1. A further education corporation.
2. A sixth form college corporation.
3. The governing body of a designated institution (for the purposes of Part I).
4. The governing body of a school maintained by a local authority (within the meaning of section 20 of the School Standards and Framework Act 1998).

5. A local authority.
6. A person concerned with the running of an Academy (within the meaning of section 1 of the Academies Act 2010).
7. A university receiving financial support under section 65.
8. A higher education corporation.
9. The governing body of a designated institution (for the purposes of Part II).
10. A body corporate established for purposes which include the provision of educational facilities or services of any description.
11. A person who is in receipt of a grant or eligible to receive grant under regulations made under section 485 of the Education Act 1996, for the purposes of, or in connection with, the provision, or proposed provision, of educational services.
12. A person who is in receipt of financial assistance under section 14 of the Education Act 2002 for, or in connection with, the provision, or proposed provision, of education or of educational services.

A more limited set of prescribed bodies under section 27B(1) applies to Wales under the Dissolution of Further Education Corporations (Publication of Proposals and Prescribed Bodies) (Wales) Regulations 2014.

54. These transfer schemes can override some third party rights and so can be used to make transfers that might not otherwise happen. They also allow for the transfer of property which is acquired, or rights or liabilities that have arisen after the transfer scheme has been made. For example, to achieve the special objective of protecting learner provision, the education administrator might need to transfer a lease for a property without the landlord's consent, in order to effectively manage the transfer of students from a college in education administration to another provider.
55. Schemes are subject to the consent of the transferee and approval by the appropriate national authority.

Trust property held by sixth form college corporations

56. Some sixth form colleges in England own property that is held in trust under section 33J of the Further and Higher Education Act 1992. The 2017 Act provides that if such a sixth form college corporation is insolvent and is being wound up under the Insolvency Act 1986, then this type of property held in trust cannot be used by the education administrator to meet the claims of creditors and must, instead, be transferred to the relevant trustees in accordance with the terms of the trust deed (see section 36 and Schedule 2 of the 2017 Act).

Funding an education administration and guarantees and indemnification

57. The 2017 Act includes a flexible funding power which allows the appropriate national authority to decide, on a case by case basis, options for funding an education administration. Where funding is being provided, there is also flexibility in the form of that funding, whether it should be in the form of a grant or loan and, if a loan, the terms of that loan and the priority of its repayment. This allows the funding model

that is most appropriate to each situation in order to achieve the best outcome in relation to the objective of the education administration. All funding decisions will be subject to value for money considerations.

58. The 2017 Act includes protections for IPs taking on the role of the education administrator as it enables them to be indemnified against liabilities and losses sustained while carrying out their duties in respect of an insolvent college. It also sets out that the college can be expected to repay any payment made under an indemnity. Similarly, the 2017 Act enables guarantees to be given relating to funds borrowed during an education administration and sets out how they should be repaid by the insolvent college.

Question 2: Who do you believe should be specified to receive:

- a. Notice of an education administration application;
- b. Notice of an education administrator's appointment;
- c. A copy of the education administrator's proposals?

Please provide justification for your answers.

Question 3: Is there any specific information that you would expect the education administrator's proposals to contain? Please provide an explanation for your answer.

Question 4: Do you have any other comments or views on the process of education administration?

5.4 Filing of records in relation to insolvent college corporations at Companies House

59. In the case of FE colleges that are statutory corporations, there is currently no legal requirement for them to be registered with Companies House. However, if a college becomes insolvent, it will be necessary for an insolvency practitioner or education administrator to file the necessary papers as a public record of the insolvency.

60. Section 8 of the 2017 Act 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.

61. The power can also be used to confer powers 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 education administration regime established by the 2017 Act, for FE colleges which are not companies and are therefore not currently subject to any part of the company registration.

62. It is not our intention to require all college corporations to register with Companies House or routinely file documents with them. These filing requirements would only

apply to insolvent FE bodies and would commence as part of an insolvency procedure.

63. Our intention is that the filing process for insolvent FE bodies will replicate, as far as possible, the current system for companies. This will make for a straightforward and well-recognised system which is familiar to IPs. Companies House will need some extra information in addition to the first filing, as the FE corporations would not be previously registered. Companies House are also currently working on the logistics of how they will display FE college insolvency papers in a public facing register. The details of this will be confirmed in advance of the regime coming into force.

Question 5: Do you have any comments about how the filing process could work for FE bodies?

5.5 Governor liabilities and disqualification

64. Section 39 of the Technical and Further Education Act 2017 modifies the Company Directors Disqualification Act 1986 ('the CDDA') to apply it to governors of further education colleges and sixth form colleges. 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 would be prohibited from acting as a member of a further education body which is a statutory corporation.

65. We previously consulted on whether or not to apply the provisions of the CDDA to FE colleges that are statutory corporations, as part of the question on governor liabilities in the consultation on the FE insolvency regime, and we concluded that it was appropriate to bring these provisions into the FE insolvency regime.

66. This means that the court will have the power to disqualify (or the Secretary of State the right to accept a disqualification undertaking from) college governors found responsible for wrongdoing in respect of the management of a college. The disqualification has the effect of banning the individual from acting as a governor and as a director of a company. This is in line with the approach taken with governors of academies in England and also for the trustees of charitable companies and charitable incorporated organisations. It means that we have applied the full directors' duties regime as a deterrent to misconduct within the sector.

67. All college governors already have fiduciary duties in their capacity as charity trustees to do everything within their power to ensure that the college corporation which they serve remains solvent. The deterrent and incentive effects of the disqualification regime are intended to ensure that FE bodies are run in a financially prudent way to protect creditors, staff and students, as well as taxpayers' money.

68. It is important to recognise that company directors are not disqualified under the CDDA as an automatic consequence of the insolvency of a company, and this will also be the case with governors or senior management of colleges. Disqualification proceedings are only commenced where there is evidence of wrongdoing, and an individual's explanation of the situation should always be sought in any investigation.

The availability of disqualification should not inhibit people from taking up such positions, but it does act as a deterrent to poor management.

69. Secondary legislation is not required in order to implement these provisions of the CDDA, which will come into force alongside the other components of the insolvency regime. However, in the Government's response to last year's consultation we agreed to provide guidance for governors on their duties and liabilities under insolvency law, and we will work with key stakeholders to ensure that this is provided ahead of the insolvency regime coming into force.

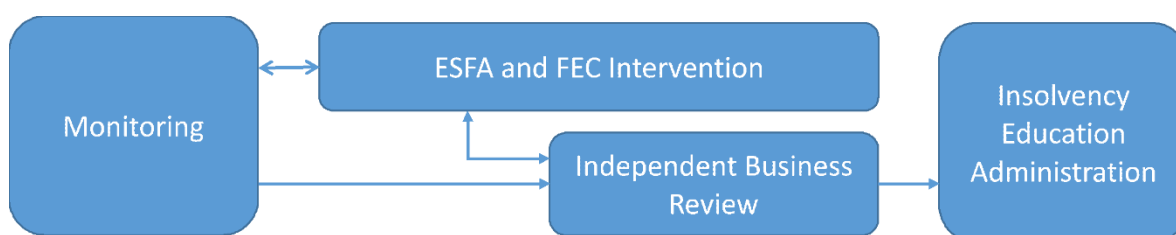
Question 6: What particular aspects or issues would you find it useful for the guidance for governors to cover?

6. Proposals for how the insolvency regime will work in practice

6.1 The process

70. Alongside the introduction of the insolvency regime, we have been developing proposals for how the insolvency regime would align with the system of monitoring and intervention undertaken by the Department for Education for colleges in England.

71. The simple flow diagram below sets out how we expect the insolvency regime could work in practice:



6.2 ESFA and FE Commissioner monitoring and intervention

72. The Department for Education already operates a system of intervention, operated through the Education and Skills Funding Agency (ESFA) and the office of the Further Education Commissioner (FEC) for colleges in England.

(Note that a similar regime operates in Wales but this is not the responsibility of ESFA, nor do Wales have an FEC role; so the process in relation to Welsh colleges is likely to align with the system of monitoring and intervention undertaken in Wales. This process is not set out explicitly here).

73. The role of the FEC has recently been expanded so that, through Diagnostic Assessments, he can work with colleges where there are early signs of problems in respect of their quality to strengthen governance, leadership and financial management to support rapid improvement. ESFA operates an early intervention regime, which provides challenge and support to colleges whose financial health is barely satisfactory or is weakening over time. Monitoring and earlier intervention will become increasingly important in the context of insolvency, and the ESFA and the FEC will continue to work with colleges to identify signs of financial distress, act quickly to support colleges to improve their financial health and financial resilience and, ultimately, seek to avoid insolvency.

74. ESFA includes in its risk assessment approach (informed through data and intelligence) a flag for cases where a college's financial health is found to be declining and potentially could be inadequate. In this case ESFA will take early

intervention action. In addition, information on financial performance is provided back to all colleges through ESFA's financial dashboards to help governing bodies identify where there may be issues.

75. Where a college's financial health is assessed as inadequate, it enters formal intervention and ESFA issues a Notice to Improve that sets out the actions the college must take to improve its financial health. The FEC may also assess the college's leadership and governance and make recommendations for further actions.
76. The Department and ESFA are considering how they can strengthen early monitoring and intervention even further to help colleges avoid financial failure, and in the context of the insolvency regime.

Question 7: Do you have views on how monitoring and intervention can be further improved to identify cases of financial distress and work with those colleges to improve their financial position and avoid insolvency? (Please be clear whether you are responding in relation to colleges in England or colleges in Wales).

Question 8: How could ESFA and FEC work with and support colleges in England to help them self-identify financial difficulties at an early stage?

6.3 Office for Students (OfS)

77. Where an FE body delivers HE and wants to be registered in the Approved categories then they will be required to have a Student Protection Plan (SPP) in place. SPPs will form part of the conditions of registration that will be required by the OfS, alongside other initial and ongoing conditions including quality, governance and financial sustainability. The requirements of, and scrutiny by, the OfS in relation to HE delivered by FE bodies will also need to be factored into any overall assessment of the FE body that will be undertaken.

6.4 Independent Business Review (IBR)

78. It is standard practice in most insolvencies of a reasonable scale (and where there has been a trigger such as breach of covenant or an unanticipated funding need) that an Independent Business Review (IBR) is carried out, by an insolvency practitioner, ahead of any insolvency procedure commencing. If a college is in early intervention or formal intervention at the point that an IBR is required, the intervention would normally continue while the IBR is being undertaken.
79. We expect that contracting and receiving advice on an IBR for a college could take around 6-10 weeks. The IBR would look at the financial and strategic position of the college itself and would also set this in the context of local and/or regional market and economic conditions – consulting the Combined Authority, local authority, the local enterprise partnership (LEP) and other stakeholders in order to consider cost-

effective solutions. This process concludes with a report and usually a number of options as to the possible way forward for the college.

80. The IBR would be for the benefit of the party who commissioned it. The report would not be in the public domain, but we would expect that some of the information would be shared with relevant stakeholders.
81. Where the appropriate national authority has commissioned an IBR, it may provide funding to the college if it is required to protect learner provision during that period. That funding may come with certain requirements to undertake activities to improve the financial position of the institution. However, we would ideally seek to undertake the IBR before emergency funding of this nature was required.

Question 9: Do you have views on how the Independent Business Review process for an FE college should work, and who should be consulted?

6.5 The role of the Charity Commission

82. Most FE colleges are also exempt charities. The appropriate national authority (the Secretary of State for Education for colleges in England and Welsh Ministers for colleges in Wales) is their Principal Regulator, and has a range of powers (both statutory and non-statutory). However, the Charity Commission also has a number of regulatory powers which it can use at the request of (or after consulting with) a Principal Regulator (including but not limited to opening an inquiry under section 46 of the Charities Act 2011, known as a “Statutory Inquiry”). Hence there is an additional intervention option in some cases, for an FE college to be referred to the Charity Commission if there are potentially serious concerns about the running of that college as an exempt charity. Even if an administrator is in place in relation to an exempt charity, the Principal Regulator may still wish to take concurrent action and refer it to the Charity Commission for consideration.
83. The Charity Commission may not exercise its power to institute a Statutory Inquiry into an exempt charity unless requested to do so by the Principal Regulator, but the Commission may open monitoring and operational cases without a request from the Principal Regulator, and can take action to disqualify trustees or issue an official warning to protect the sector.
84. The statutory and non-statutory powers are outlined in the [Memorandum of Understanding](#) between the Charity Commission and the Department for Education. A similar [Memorandum of Understanding](#) exists between the Charity Commission and Welsh Ministers.
85. We would expect that any decision to refer an FE college to the Charity Commission would be taken on an individual case-by-case basis.

7. Impact assessments

7.1 Regulatory impact assessment

86. We have completed an impact assessment for the introduction of this policy. The impact assessment is reproduced at Annex 2 of this document.

7.2 Economic assessment

87. We have revisited the economic assessment undertaken for the previous insolvency consultation (which was carried out in summer 2016) in the context of the proposed secondary legislation and are content that it is still applicable and fit for purpose.

The economic assessment is available at section 9 (pages 32-36) of [the 2016 consultation document](#).

7.3 Equalities analysis

88. We have revisited the equalities analysis undertaken for the previous insolvency consultation (which was carried out in summer 2016) in the context of the proposed secondary legislation and are content that it is still applicable and fit for purpose.

The economic assessment is available at Annex 4 (pages 42-43) of [the 2016 consultation document](#).

7.4 Family test

89. We have reviewed the Family Test and we do not consider that this will have significant impacts on families within the UK; this measure should benefit learners that are affected by colleges that enter insolvency by ensuring continuity of provision.

7.5 Justice Impact Test

90. We expect that we will be required to carry out the Justice Impact Test (JIT) as we are bringing new bodies (i.e. colleges) into the insolvency regime, which will have an impact on the court system.

The JIT will be completed following the consultation and when our policy proposals have been finalised.

Question 10: Do you have any further comments on any aspects of our proposals (including our impact or equalities assessments)?

8. Summary of consultation questions

Question 1: When considering the normal insolvency procedures outlined above (Company Voluntary Arrangement, administration, creditors' voluntary winding up, winding up by the court and receivership), are there any specific modifications that you believe are required in order to apply them effectively to FE bodies? Please provide explanations for any of these.

Question 2: Who do you believe should be specified to receive:

- a. Notice of an education administration application;
- b. Notice of an education administrator's appointment;
- c. A copy of the education administrator's proposals?

Please provide justification for your answers.

Question 3: Is there any specific information that you would expect the education administrator's proposals to contain? Please provide an explanation for your answer.

Question 4: Do you have any other comments or views on the process of education administration?

Question 5: Do you have any comments about how the Companies House filing process could work for FE bodies?

Question 6: What particular aspects or issues would you find it useful for the guidance for governors to cover?

Question 7: Do you have views on how monitoring and intervention can be further improved to identify cases of financial distress and work with those colleges to improve their financial position and avoid insolvency? (Please be clear whether you are responding in relation to colleges in England or colleges in Wales).

Question 8: How could ESFA and FEC work with and support colleges in England to help them self-identify financial difficulties at an early stage?

Question 9: Do you have views on how the Independent Business Review process for an FE college should work, and who should be consulted?

Question 10: Do you have any further comments on any aspects of our proposals (including our impact or equalities assessments)?

9. What happens next?

This consultation will run for eight weeks, with a closing date of 12 February 2018.

The Government will consider the consultation responses and these will be used to help inform further policy development of the insolvency regime.

The Government will publish a response in due course, setting out how it intends to proceed in the light of the responses received.

The Government response will be published on the consultation page on Citizen Space and on www.gov.uk.

Annexes:

Annex 1: Glossary of terms

Annex 2: Regulatory Impact Assessment

Annex 3: Consultation Response Form

Annex 1: Glossary of terms

| Term | Explanation |
|-------------------------------|--|
| Administration | Insolvency procedure that may be used to rescue a company (college) as a going concern or produce a better result than an immediate winding-up |
| Administrator | Insolvency practitioner appointed by the court or directly by a floating charge-holder or college governors |
| College governor | As members of the college governing bodies, governors collectively set the college's strategic direction, hold the Principal to account for a college's performance and ensure that the college's budget is properly managed |
| Company Voluntary Arrangement | Procedure where college comes to a binding arrangement with its creditors for the settlement of debts |
| Compulsory Liquidation | Insolvency procedure commenced by court order (winding-up order) usually after the filling of a petition by a creditor |
| Creditor | A person owed money |
| Education administration | A special administration regime relating to FE bodies with a special objective to protect learner provision |
| Education administrator | An insolvency practitioner appointed to take control of the affairs, business and property of a failed college who is obliged to secure the continuity of education and training services in line with the special administration objective |
| Exempt Charity | An institution established for charitable purposes exempt from registration and regulation by the Charity Commission. They have a Principal Regulator instead; this is the Secretary of State for Education for FE and sixth form colleges in England, and Welsh Ministers in the case of FE colleges in Wales |

| Term | Explanation |
|--|--|
| Existing student | An “existing student”, in relation to a further education body that is in education administration, means a person who (a) is a student at the relevant institution when the administration order is made, or (b) has accepted a place on a course at the relevant institution when the administration order is made |
| Further and Higher Education Act 1992 | Primary legislation which made changes in the funding and administration of further education and higher education within England and Wales, including removing FE colleges from local government control |
| Further education corporation / sixth form corporation | Further education and sixth form corporations are statutory corporations which provide education and training to learners aged 14 and over in England |
| Insolvency | Cash Flow Insolvency: the state of being unable to pay the money owed, by a person or company, on time Balance Sheet Insolvency: where liabilities of a person or company are greater than their assets |
| Insolvency practitioner | A person (generally an accountant or solicitor) qualified and authorised to act as an insolvency office-holder, for example acting as an administrator or liquidator |
| Insolvency Act 1986 | Primary legislation governing corporate insolvency of companies in Great Britain and individuals in England and Wales |
| Liquidation (winding-up) | Process in which assets are realised (e.g. sold) and distributed to creditors. A business will usually close down when a company (college) goes into liquidation. Winding up may be commenced by court order or voluntarily by company members (in the case of colleges this would be by governors) |
| Liquidator | A person or insolvency practitioner, appointed to take control of a failed college and realise assets for the benefit of creditors |

| Term | Explanation |
|-------------------------------|--|
| Preferential creditor | A class of creditor, specified in law, which is paid before the claims of any floating charge-holders and ordinary unsecured creditors. The main categories of preferential debts are certain amounts due to employees and contributors to occupational pension schemes |
| Restructuring Facility | Financial support available to colleges to help implement the recommendations of the Area Reviews |
| Special administration regime | Alternative insolvency arrangements to the administration procedures set out in the Insolvency Act 1986. Special administration regimes are based on the process of administration, but with modifications aimed, for example to secure the continuity of essential public service if a supplier fails |
| Secured creditor | A creditor holding security, for example a fixed or floating charge, over assets in respect of monies owed |
| Unsecured creditor | Creditors who do not hold security in respect of monies owed to them. Claims may be either preferential or ordinary |
| Voluntary Liquidation | Winding up commenced by a resolution of a college's governors where the college is insolvent |

Annex 2: Regulatory Impact Assessment

| Regulatory Triage Assessment | |
|--|-----------------------------------|
| Title of measure | Further Education Insolvency |
| Lead Department/Agency | DfE |
| Expected date of implementation | Late 2018 |
| Origin | Domestic |
| Date | 17/11/17 |
| Departmental Triage Assessment | Trivial/mechanical (out of scope) |
| Rationale for intervention and intended effects | |
| <p>A proportion of Further Education ('FE') colleges have fallen into financial difficulty for a variety of reasons. In response, in 2015 a programme of Area Reviews was launched across England. Area Reviews (supported by funding through the Restructuring Facility (RF)), will reduce the possibility of a future financial failure in some weak colleges, but it does not remove it altogether. While we would expect such instances to be exceptional and uncommon, we must ensure that a process is in place to deal with colleges that become unable to pay their debts once Exceptional Financial Support and the RF come to an end.</p> | |
| Viable policy options (including alternatives to regulation) | |
| <p>Statutory Instruments.</p> <p>Other approaches were considered prior to the Bill stage but it was decided that a legislative approach would be most appropriate. Please see page 13 from the Consultation on Developing an Insolvency Regime for the Sector (Further Education and Sixth Form Colleges)⁹ that set out the rationale for a legislative approach. This remains relevant for the Statutory Instruments.</p> <p>When FE colleges were taken out of Local Authority control in 1992, it was not specified whether or how they should be subject to insolvency procedures. The Technical and Further Education Act 2017 has therefore introduced an insolvency regime for FE and sixth form colleges in order to provide certainty in the event that a college becomes insolvent, to facilitate an orderly process for creditors and to put in place a process that can protect the interests of learners.</p> <p>The Act applies normal company insolvency law to FE and Sixth Form college corporations. It also sets out provisions for a Special Administration Regime for FE bodies, with the special</p> | |

⁹ [Consultation on developing an insolvency regime for the FE sector](#)

objective of learner protection. This allows for an insolvent college to be put into a process known as education administration, so that learning provision for existing students at the college can be protected while the financial future of the college is assessed and is resolved (in one of a number of ways). This is collectively referred to here as the FE Insolvency Regime.

Insolvency represents a better value for money approach to dealing with financial failure than the current system. The introduction of the regime will also send an important signal to the sector of the importance of strong and effective financial management. It also gives encouragement that, where required, colleges should participate in the current restructuring programme to get their college in a financially resilient position while support is still available through the RF.

The insolvency regime for colleges should be in force in late 2018 following introduction of secondary legislation.

Initial assessment of impact on business

The regime provides certainty in the event that a college becomes insolvent, to facilitate an orderly process for creditors and to put in place a process that can protect the interests of learners. The Insolvency SIs will place little additional regulatory duty or burden on FE colleges.

There will be some one-off **COSTS** associated with FE colleges familiarising themselves with the insolvency regime once it comes into force. FE colleges deliver 20% of their business as privately funded education¹⁰. We have estimated this would amount to a total of £ 57,000 for the public and private parts of FE colleges in the “most likely” scenario (38 FE colleges). However only the private element part is in scope for better regulation assessment for which the costs are **£11,400**.

We have also undertaken sensitivity analysis and in a “medium case” scenario the costs for the private element part are £30,000 and in a “worst case” scenario the costs for the private element part are £60,000.

Please find workings and assumptions here:

Number of colleges in scope:

Note: We would expect instances of college insolvency to be exceptional and uncommon. The figures used here are simply an estimate (solely for the purposes of this impact assessment) of the numbers of colleges which may need to familiarise themselves with the new regime, and are not any sort of estimate or forecast of the numbers of colleges which may be at risk of insolvency.

There are 38 FE colleges (as at 16/11/2017) that have a financial notice to improve and so we would expect that these colleges would need to ensure they were familiar with the

¹⁰ DfE analysis of FE College accounts

insolvency regime procedures. Specifically they would need to know the details of the SIs. We believe that 38 is the most likely scenario.

Other colleges may need to familiarise themselves with the insolvency procedures as their financial position changes. We have therefore undertaken some sensitivity analysis.

We assume that in a “medium case” scenario the number of colleges needing to familiarise themselves with the SIs could be 100.

We assume that in the “worst case” scenario the number of colleges needing to familiarise themselves with the SIs could be 200.

Finally other colleges will simply need to be aware of existence of the new regime i.e. know that a FE insolvency regime has been put in place and know the high level details rather than knowing the details of the SIs. We assume that this will be minimal and be picked up by normal course of business. Therefore we have not quantified this as it is disproportionate.

Hourly rate and number of hours needed:

FE colleges are likely to engage a private sector legal firm for this. Legal costs for insolvency are close to accountancy firm’s rates for insolvency. We have estimated costs based on published information for Austin Reed insolvency (Alix Partners) (2016)¹¹ and JE Beale plc insolvency (KPMG)¹².

We assume that 3 hours will be needed to read the SIs. We assume that 1 further hour is then needed to have a briefing meeting with the governors and senior leadership. These assumptions are based on the size of the SIs and the estimated time needed to read them. Furthermore we have sense checked these assumptions with an industry expert. We don’t believe it is proportionate to find evidence to substantiate these assumptions.

1h meeting with partner at £450 per hour + 1h research by partner at £450 per hour + 2h research by solicitor at £300 per hour = £1,500 per college. We have considered the cost for the governor but because this is minimal we have excluded it here as would be disproportionate to calculate it.

Calculation:

Most likely scenario (38 FE colleges):

£1,500 multiplied by 38 FE colleges in scope = £57,000 total costs for colleges (private and public part). When we apportion this to the private element of FE colleges this becomes. £57,000 apportioned for 20% = **£11,400**

Medium case scenario (100 FE colleges):

£1,500 multiplied by 100 FE colleges in scope = £150,000 total costs for colleges (private and public part). When we apportion this to the private element of FE colleges this becomes. £150,000 apportioned for 20% = £30,000.

¹¹ [Austin Reed insolvency from proposals filed at Companies House](#)

¹² [J E Beale Proposed Voluntary Arrangement](#)

Worst case scenario (200 FE colleges):

£1,500 multiplied by FE 200 colleges in scope = £300,000 total costs for colleges (private and public part). When we apportion this to the private element of FE colleges this becomes. £300,000 apportioned for 20% = £60,000.

To note we don't know when the costs of familiarisation are likely to accrue, so discounting would not be appropriate. In this case, we use the nominal figure which is a conservative assumption as discounting would reduce the present value cost.

There may be **BENEFITS** to colleges to the introduction of the insolvency regime:

1. The insolvency regime will provide a strong incentive for colleges to improve the day to day financial management of FE colleges and therefore improve their financial health. As the steps each college will take to improve its financial management / financial health will vary depending on their individual circumstances, it is not possible to quantify the benefits derived from this.
2. It will incentivise colleges to make tough decisions and restructure when it is required to improve financial stability. Again it is not possible to quantify this as this will vary from college to college.
3. Should a college become insolvent the FE insolvency regime will enable insolvency to be dealt with in a much quicker, efficient and effective way than is the case with the current arrangement. It is however not possible to quantify this as it will depend on the specific circumstances.

Attempting to monetise these benefits would be disproportionate to the cost of the policy.

BIT status/score

n/a

Rationale for Triage rating

The costs for the "most likely", "medium case" and "worst case" scenarios all fall well below the new £5,000,000 threshold and therefore the regulatory change qualifies for self-certification".

Departmental signoff (SCS): 14/11/17

Economist signoff (senior analyst): 17/11/17

Better Regulation Unit signoff: 17/11/17

Annex 3: Consultation Response Form

Name:

Organisation:

Address:

Telephone:

Email:

Respondent type (please tick):

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- College
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association
- Other (please specify)

Question 1: When considering the normal insolvency procedures outlined above (Company Voluntary Arrangement, administration, creditors' voluntary winding up, winding up by the court and receivership), are there any specific modifications that you believe are required in order to apply them effectively to FE bodies? Please provide explanations for any of these.

Comments:

Question 2: Who do you believe should be specified to receive:

- a. Notice of an education administration application;
- b. Notice of an education administrator's appointment;
- c. A copy of the education administrator's proposals?

Please provide justification for your answers.

Comments:

Question 3: Is there any specific information that you would expect the education administrator's proposals to contain? Please provide an explanation for your answer.

Comments:

Question 4: Do you have any other comments or views on the process of education administration?

Comments:

Question 5: Do you have any comments about how the Companies House filing process could work for FE bodies?

Comments:

Question 6: What particular aspects or issues would you find it useful for the guidance for governors to cover?

Comments:

Question 7: Do you have views on how monitoring and intervention can be further improved to identify cases of financial distress and work with those colleges to improve their financial position and avoid insolvency? (Please be clear whether you are responding in relation to colleges in England or colleges in Wales).

Comments:

Question 8: How could ESFA and FEC work with and support colleges in England to help them self-identify financial difficulties at an early stage?

Comments:

Question 9: Do you have views on how the Independent Business Review process for an FE college should work, and who should be consulted?

Comments:

Question 10: Do you have any further comments on any aspects of our proposals (including our impact or equalities assessments)?

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you provide an email address and tick the box below.

Please acknowledge this reply



Department
for Education

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