



Department
for Education

Skills and Post-16 Education Bill

Policy Summary Notes

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Skills and Post-16 Education Bill: Overview

What is the purpose of the Bill?

- To legislate for landmark reforms that will transform post-16 education and training, boost skills and get more people into work as set out in the government's Skills for Jobs White Paper, helping the nation to build back better.
- To deliver on the ambition to bring close together the further and higher education systems.
- To support the Prime Minister's new Lifetime Skills Guarantee, as part of the blueprint for a post-16 education system that will ensure everyone, no matter where they live or their background, can gain the skills they need to progress in work at any stage of their lives.
- To increase productivity, support growth industries and give individuals opportunities to progress in their careers.
- To put beyond doubt the Office for Students' ability to regulate in relation to minimum requirements for quality.

What are the main benefits of the Bill?

- Offering adults across the country the opportunity to retrain throughout their lives through the Lifetime Skills Guarantee, helping them to gain in-demand skills and open up further job opportunities.
- Realigning the system around the needs of employers so that people are trained for the skills gaps that exist now and in the future, in sectors the economy needs, including construction, digital, clean energy and manufacturing.
- Improving the quality of training available by making sure that providers are better run, qualifications are better regulated, and that providers' performance can be effectively assessed.

What are the main elements of the Bill?

- To put employers at the heart of the post-16 skills system through the Skills Accelerator, by enabling employers and providers to collaborate to develop skills plans aimed at ensuring local skills provision meets local needs.
- To introduce the Lifelong Loan Entitlement, which will give individuals access to the equivalent of up to four years' worth of student loans for level 4–6 qualifications that they can use flexibly across their lifetime, at colleges as well as universities.
- To strengthen the system of accountability by extending existing powers for the Secretary of State for Education to intervene where colleges have failed to meet

local needs, to direct structural change where required to secure improvement, and by amending the regulation of post-16 education and training providers to ensure quality.

- To put beyond doubt the ability of the Office for Students to determine minimum requirements for quality by reference to absolute performance levels for student outcomes, and to use these when it makes decisions on registration and compliance.



Skills and Post-16 Education Bill: Lifelong Loan Entitlement

The government is legislating to provide express legislative underpinning to support the introduction of a Lifelong Loan Entitlement (LLE) from 2025, as part of its Lifetime Skills Guarantee.

What is the government’s policy objective?

The government wants to make it easier for adults and young people to study more flexibly - allowing them to space out their studies, transfer credits between institutions, and take up more part-time study. To do so, the government aims to create a more efficient and streamlined funding system which makes it easier for students to navigate the options available and encourages provision to meet the needs of people, employers and the economy better. The government wants to encourage learners to undertake technical qualification and to broaden options beyond the default option of a full-time three-year university degree.

Why is legislation needed?

The current student finance system is underpinned by primary and secondary legislation. The government seeks to modify existing regulation-making powers in primary legislation to make specific provision for student finance in respect of modules of courses.

What is the effect of the legislation?

The proposed legislation modifies the existing regulation-making powers in the Teaching and Higher Education Act (THEA) 1998 so as to:

- make specific provision for funding of modules of higher education and further education courses, and the setting of an overall limit to funding that learners can access over their lifetime,
- make clear that maximum amounts for funding can be set other than in relation to an academic year.

It also amends the definition of “higher education course” in the Higher Education Research Act (HERA) 2017 to include a module of a course of any description mentioned in Schedule 6 to the Education Act 1988, whether or not undertaken as part of such a course. This is to make clear that the higher education regulatory regime provided for under Part 1 of HERA applies to modules of courses.

The government intends to bring forward further amendments at Committee stage, including any adjustments to HERA to reflect modular provision, and any other consequential amendments.

The government plans to lay the necessary underpinning secondary legislation in Parliament by summer 2024, in order to introduce the LLE in 2025. The government aims to therefore commence these provisions by order at that time.

The government will consult on the detail and scope of the LLE this year.

How will this work in practice?

The LLE will provide individuals with a loan entitlement to the equivalent of four years of post-18 education to use over their lifetime. People will be able to use this loan for modular learning as well as full years of study to create a flexible system that responds to learner needs.

The intention is for the loan to be available for study at higher technical and degree levels (levels 4 to 6) regardless of whether they are provided in colleges or universities. It will make it easier for people to study more flexibly - allowing them to space out their studies over their lifetime, transfer credits between institutions, and participate in more part-time study.

The government will consult on the detail and scope of the LLE this year. This will set out proposals for how the government proposes to introduce this reform. It will seek views on objectives and coverage, together with aspects such as the level of modularity, how to incentivise and enable effective credit transfer, and whether Equivalent and Lower Qualifications (ELQ) restrictions should be amended to facilitate retraining and stimulate provision. The government will continue to engage with representative bodies and individual providers and will design an LLE that puts user need at its core.

Key questions and answers

Why is it important to introduce a Lifelong Loan Entitlement?

The LLE will support learners to study throughout their lives and aims to transform post-16 study. It will deliver greater parity between further and higher education.

The current student finance system encourages people towards a three-year full-time degree at the expense of lifelong learning. The LLE will support the creation of a truly flexible skills system, allowing people to build up learning over time.

It will also create a more efficient and streamlined funding system, make it easier for students to navigate the options available and encourage provision to better meet the needs of people, employers and the economy.

When will the Lifelong Loan Entitlement be introduced and what are next steps?

The LLE will be introduced from 2025. In the Skills for Jobs White Paper, the government set out the steps it plans to take over the coming years to support its full delivery. The government will consult on the detail and scope of the Lifelong Loan Entitlement this year, setting out proposals for how we introduce this reform.

As a pathway towards the LLE, the government will test how to stimulate the provision of high-quality higher technical education (level 4 and 5) and introduce pilots to incentivise flexible and more modular types of provision.

What will happen to the Advanced Learner Loan system?

The government is clear that the LLE will fund post-18 education at levels 4-6. The government will shortly consult on the detail of the LLE. This will inform the final policy design and will help shape the student finance system across further education and higher education, where offers such as Advanced Learner Loans exist.

Will maintenance support be included within the Lifelong Loan Entitlement?

The government will shortly consult on the detail of the LLE, including on how to support students to engage in lifelong learning.

What if I've already taken out a student loan – will I be entitled to further funding?

The government will shortly consult on the detail of the LLE. This will inform the final policy design, including eligibility criteria.

What else is the government doing?

As part of the pathway towards the Lifelong Loan Entitlement, the government will:

- Stimulate the provision of high-quality higher technical education (level 4 and 5).
- Introduce pilots to test how to incentivise more flexible and modular types of provision.
- Examine the fee limits that apply to different qualifications at higher levels to ensure value for money for the learner and the taxpayer, including looking to reduce funding for non-approved higher technical qualifications from 2023.



Skills and Post-16 Education Bill: Statutory underpinning for local skills improvement plans

The government is legislating to place local skills improvement plans on a statutory footing. Local skills improvement plans will be employer-led and will set out the key changes needed in a local area to make technical education and training more responsive to employers' skills needs. They will be created by employers and providers working together, in consultation with key local stakeholders. The intention is to give employers, through employer representative bodies such as accredited Chambers of Commerce, a stronger voice in shaping local skills systems.

What is the government's policy objective?

To ensure post-16 technical education and training is better aligned to employers' skills needs. To achieve this, employer engagement is required throughout the skills system, from identifying skills needs to developing the training and qualifications to meet them. That is why the government is introducing the Skills Accelerator, including local skills improvement plans, which will support the government's Plan for Growth. This is part of a transformational approach to tackling long-term problems to deliver growth and create high-quality jobs across the country.

Why is legislation needed?

To create and embed a clear and binding framework to give employers more influence in shaping local skills systems and hold providers to account in responding to employers' skills needs so that post-16 technical education and training is more responsive to the skills needs of local labour markets.

The Bill measures focus on:

- Providing powers to the Secretary of State for Education to designate employer representative bodies to lead the development of local skills improvement plans in a specified local area in accordance with government guidance.
- Placing duties on providers to co-operate with employer representative bodies in developing the plans and once developed, to have regard to these plans when considering their training and education offer.

In addition, the Secretary of State for Education will have the ability, through regulations, to add additional providers to the group upon whom duties are placed.

What is the effect of the legislation?

Secretary of State for Education Powers

The powers will enable the Secretary of State for Education to:

- designate or redesignate employer representative bodies to lead the development of local skills improvement plans, based on criteria. These criteria include being capable of developing and keeping under review a local skills improvement plan in an effective and impartial manner, being reasonably representative of employers in the area and consenting to be designated,
- issue guidance to support the development of the plans, and
- have explicit regard to local skills improvement plans when exercising their powers (i.e. funding decisions, contracting and intervention measures).

Provider Duties

Introducing duties on providers will ensure:

- that providers co-operate effectively with employer representative bodies to develop local skills improvement plans and agree actionable priorities; and
- that relevant changes are implemented by providers in order to align their provision more closely to the skills needs of employers.

How will this work in practice?

Local skills improvement plans, as part of the Skills Accelerator, will support stronger direct collaboration between employers and providers so that the post-16 technical education and training provision offered in a local area meets the skills needs of employers.

Plans for implementation will be informed by evidence from the Skills Accelerator Trailblazers being piloted in 2021-22 where we will test, in a small number of local areas, how employers and providers can best work together to reshape local skills provision.

The success of the plans will depend upon the sustained and effective engagement between providers and employers, with employers convened and represented through established local employer representative bodies.

Key questions and answers

What are local skills improvement plans?

Local skills improvement plans will set out key changes needed in a local area to make post-16 technical education and training more responsive to employers' skills needs. They will be created by employers, convened by an employer representative body, providers and other key local stakeholders. Employers will articulate a credible and evidence-based assessment of skills needs, which providers will be empowered to respond to.

How do local skills improvement plans relate to the Skills Accelerator?

The Skills Accelerator brings together local skills improvement plans and the strategic development fund first announced in the Skills for Jobs White Paper. It forms a central part

of the government's landmark reforms that will realign the post-16 education system around the current and future skills needs of employers, so that people are trained with relevant skills to get good jobs.

How will the Skills Accelerator make a difference in FE?

The Skills Accelerator will put employers at the heart of identifying skills needs and helping to shape post-16 technical education and training through close working with colleges and other providers. This will help learners secure meaningful employment and upskill the existing workforce. As a result, employers will have the skills they need to support productivity growth in their local area, create jobs and build industries of the future.

What else is the government doing?

- Reforming Department for Education funding and accountability systems to support providers better in their role. This is aligned to proposals for a Spring 2021 consultation which will set out (amongst other things) how to introduce new accountability structures to underpin the delivery of local skills improvement plans.
- Making Strategic Development Funding available as part of the Skills Accelerator in 2021-22 in pilot areas to support colleges to reshape their provision to address local priorities that have been agreed with local employers.
- Placing a duty on colleges and designated institutions in relation to local needs.



Skills and Post-16 Education Bill: Duty on colleges and designated institutions in relation to local needs

This measure will place a duty for all colleges and designated institutions to keep their provision under review to ensure that they are best placed to meet the needs of the local area.

What is the government's policy objective?

To ensure that the provision of further education is fully aligned to local needs, across all colleges and designated institutions.

Why is legislation needed?

Creating a statutory duty will ensure that aligning provision with local needs is a priority for the governing body of the relevant providers, alongside their other statutory duties, and strengthens accountability for this aspect of their performance.

What is the effect of the legislation?

The legislation will create a new duty on governing bodies of further education colleges, sixth-form colleges, and designated institutions. The Secretary of State for Education will issue statutory guidance to support governing bodies in fulfilling the new duty. Governing bodies will need to have regard to the statutory guidance.

How will this work in practice?

From time to time, at least once every three years, governing bodies of colleges and designated institutions will need to make an assessment of how well the education or training provided by the institution meets the needs in the local area, reflecting both learner and employer-related needs, and consider whether there are changes to its provision or to its structure that would better meet those needs.

The contents of local skills improvement plans will be an important reference point for colleges and designated institutions that are providers of technical education. When complying with this duty, governing bodies of colleges and designated institutions will also have to consider other areas of their curriculum (vocational, academic, higher education), and links between their provision and that offered by other providers. They will also consider whether changes in local organisational arrangements – for example stronger collaborative arrangements with other providers – would support a better response to local needs.

The statutory guidance will provide governing bodies with the flexibilities they need, for example in relation to exercising discretion about how to conduct the review, allowing them to incorporate this duty into normal business and strategic planning cycles. Statutory guidance will set out principles governing bodies will need to follow when reviewing their provision under the new duty and will reference evidence that should be considered. The guidance will also set out the persons or organisations that the governing bodies will want to work with while reviewing provision and in developing appropriate actions.

Colleges will be expected to publish the outcome of reviews on their websites.

Key questions and answers

Does the duty introduce new burdens on colleges?

- The approach that will be set out in the draft guidance is flexible and proportionate. It provides the freedom for governing bodies to determine how they should approach complying with the new duty.
- The government is confident that governing bodies will be able to comply with the duty without significant or excessive burdens. The government believes there is good practice available within the sector that demonstrates how this can be done.

What is meant by local needs?

- The governing body of the institution will be responsible for assessing what the local needs are in the context of their institution, having regard to the guidance issued by the Secretary of State for Education. That would include, for example, the needs of learners and employers in the local geographic area served by the college.
- Where there is an approved local skills improvement plan in place which providers are obliged to have regard to, the plan will be the key point of reference.

If colleges are already reviewing their provision in relation to local needs, why place a duty on them?

- The government wants all colleges to focus on, and take account of, the wider interest of learners (not all of whom will attend their institutions) and the needs of employers in an area.

What else is the government doing?

- Placing a duty on FE providers and other providers to have regard to local skills improvement plans.
- Introducing annual strategic conversations with all governing bodies.
- Enabling the Secretary of State for Education to exercise his statutory intervention powers where there has been a failure to meet local needs.



Skills and Post-16 Education Bill: Statutory FE Intervention Powers

The government is proposing legislation to strengthen existing intervention powers under Further and Higher Education Act 1992, to enable the Secretary of State for Education to intervene where there has been a failure to meet local needs, and to direct structural change where that is required to secure improvement. Use of these powers is envisaged only as a last resort, where improvement has not been possible through other means.

What is the government's policy objective?

In cases where there has been serious failure, it is important that the government is able to intervene effectively and decisively to secure improvement, protecting the interests of learners, employers, and the taxpayer. This includes cases in which there is a failure to adequately meet local needs, and cases where the best way of securing improvement is through a merger or other structural change.

Why is legislation needed?

The Secretary of State for Education currently has intervention powers under the Further and Higher Education Act 1992. The legislation sets out the circumstances in which the powers can be exercised, and the actions that the Secretary of State for Education can take.

The circumstances include: mismanagement by the governing body; failure to discharge a statutory duty; the governing body acting unreasonably with respect to their duties; significant underperformance; and failure to provide an acceptable standard of education and training.

In those circumstances, the Secretary of State for Education can issue a direction to the governing body as considered necessary in relation to the performance of its duties (which may include a direction requiring the governing body to dissolve itself); and the Secretary of State for Education can remove or appoint members of the governing body.

To deliver the government's policy objective, primary legislation is needed to extend the existing statutory powers.

What is the effect of the legislation?

The measures seek to amend the existing intervention powers, enabling the Secretary of State for Education to:

- exercise their intervention powers in circumstances where the education provided by the institution is failing, or has failed to, adequately meet local needs; and
- direct structural changes (such as mergers), through a direction to transfer property, rights or liabilities, where the circumstances (set out in the legislation) that may trigger the use of the powers exist.

Where the institution has to have regard to a local skills improvement plan the Secretary of State for Education must take into account the local skills improvement plan in making an assessment of whether the institution has failed to meet local needs.

Before making a direction the Secretary of State must consult the Competition and Markets Authority in respect of competition effects. The legislation will exempt any mergers directed by the Secretary of State for Education from the Competition and Markets Authority's statutory merger control regime provided for under Part 3 of the Enterprise Act 2002.

How will this work in practice

The government expects that most intervention activity will continue to be undertaken through the administrative processes set out in the published guidance ("College Oversight: Support and Intervention"). That guidance will also be updated to enable intervention where there has been a failure to meet local needs.

In exceptional cases where it is not possible to secure improvement through those processes, the Secretary of State for Education would be able to intervene using the statutory powers. Where a structural change such as a merger is considered necessary to secure improvement, the Secretary of State for Education could give the governing body a direction to transfer its property, rights or liabilities to another body. Responsibility for complying with the direction and implementing the change would rest with the governing body.

Key questions and answers

Does this mean that more colleges are going to end up in scope of intervention?

- The government wants to reduce the number of colleges in intervention, and to reduce the time that colleges spend in intervention.
- It is important that the Secretary of State is able to act quickly and decisively where that is required to secure improvement, rather than leaving underperformance unchallenged.
- The government only expects these intervention powers to be used in exceptional circumstances, where it has not been possible to achieve the required improvement by other means.

What else is the government doing?

- Placing a new duty on corporations and designated institutions in relation to reviewing how well their provision meets local needs.
- Introducing local skills improvement plans.
- Strengthening intervention processes and taking steps to ensure colleges and designated institutions spend less time in intervention.



Skills and Post-16 Education Bill: Approval and regulation of Technical Education Qualifications

The government is legislating to extend and refine the existing statutory framework for the approval and regulation of technical education qualifications.

The legislation will allow the Institute for Apprenticeships and Technical Education (the Institute) to approve a broader range of technical education qualifications. This supports reforms set out in the post-16 qualifications review and in the Skills for Jobs White Paper, ensuring that the majority of technical education is linked to employer-led standards by 2030.

The legislation will also embed the collaborative relationship between the Institute and the Office of Qualifications and Examinations Regulation (Ofqual) for the approval and regulation of technical education qualifications. This will streamline and reinforce the long-term stability of the technical education qualification regulatory framework.

What is the government's policy objective?

To deliver a reformed technical education system that is stable, coherent and high quality. This will ensure that the skills needs of business and industry are met. It will provide clear progression pathways and deliver the outcomes learners need to move into skilled jobs or further technical training.

Why is legislation needed?

Aligning different types of technical qualifications and provision to employer-led standards requires legislation to extend the Institute's powers. Legislation is also needed to ensure the long-term stability of the collaborative relationship between Ofqual and the Institute in exercising their respective powers in relation to technical education qualifications.

What is the effect of the legislation?

The measures will give the Institute:

- An oversight function in relation to technical education and training.
- The ability to specify new categories of technical education qualification and associated requirements.
- The ability to approve technical education qualifications in the new categories.
- The ability to advise, assist and publish guidance in relation to linking non-qualifications-based provision to employer-led standards.

- The scope to charge fees in relation to the approval of technical education qualifications.
- The ability to review approved qualifications and where appropriate withdraw approval.
- The ability to issue a moratorium on approval of new qualifications of a particular kind where it determines that there is an appropriate number.
- The ability to take steps such that T Levels could be made available in countries outside England.

This measure will give the Secretary of State for Education:

- The ability to direct the Institute in relation to its new functions.
- The ability to allow the Institute to charge fees, by regulations.

In addition, this measure will support effective quality assurance and regulation of technical education qualifications by:

- Creating explicit obligations on the Institute and Ofqual to co-operate when exercising their respective functions in relation to technical education qualifications.
- Creating a single statutory approval gateway for the approval of technical education qualifications by the Institute by taking technical education qualifications out of scope for separate statutory accreditation by Ofqual.
- Amending Ofqual's information sharing powers to support the effective regulation of technical education qualifications.

How will this work in practice?

In practice, this means that the Institute will have an oversight role to ensure the system of technical education and training within its remit is coherent. It will have a categorisation and approval function for a broader range of technical education qualifications in addition to T Levels and Higher Technical Qualifications.

There will be scope for the Institute to manage the number of qualifications that are approved. This will include the ability to issue a moratorium on approving new qualifications of a particular kind (e.g. in a particular occupational area, level and category), subject to consultation and in agreement with the Secretary of State for Education. Subject to the outcome of the second-stage consultation of the post-16 qualifications review, the first tranche of approved technical education qualifications at level 3 will be available to learners from 2023 at the earliest under current proposals. The Secretary of State for Education will determine whether technical education qualifications at this level should be approved for funding following Institute approval.

Through regular reviews of approved qualifications, the Institute will determine whether a qualification should continue to be approved, whether it requires revision, or whether approval should be withdrawn. This will ensure that qualifications remain available where they continue to meet the criteria against which they were approved.

In addition, the Institute will have a role in advising on the relationship between non-qualifications-based provision (such as traineeships and skills bootcamps) and employer-led standards.

Ofqual and the Institute currently share the regulatory and oversight responsibilities for technical education qualifications through voluntary collaboration. The legislation will not change how this works in practice but will future-proof the stability of the collaborative relationship between the two bodies.

Key questions and answers

Why are these reforms necessary when there are a number of existing technical and vocational qualifications that are not aligned to standards but valued by employers?

The current technical education landscape consists of large numbers of competing qualifications that are difficult to navigate and variable in quality. The government's proposals in the Skills for Jobs White Paper and post-16 qualifications review aim to develop a high-quality, streamlined technical education offer that is recognised by employers and learners, and gives greater coherence to the skills system.

Managed by the Institute, employer-led standards are developed by groups of employers and set out the knowledge, skills and behaviours required for an individual to be fully competent in an occupation. We are legislating to enable the Institute to approve a broader range of qualifications so that the majority relate to standards. Delivering the skills that employers need is crucial to our future prosperity. While many existing qualifications are high quality, we need a system that will ensure that students and employers have confidence in every technical qualification.

What does this mean for current technical and vocational qualifications such as BTECs and Applied General Qualifications (AGQs)?

As part of the post-16 qualifications review, the government has set out an ambition that T Levels and A Levels should be the qualifications of choice at level 3 for 16 to 19 year olds, with a limited range of other high-quality qualifications alongside. Proposals were consulted on to remove funding approval from qualifications that overlap with A levels and T Levels. The government recognises that there are concerns about the removal of qualifications that are well established, such as AGQs. The government is considering responses to the review's second-stage consultation and will publish a response in due course.

Will the legislation result in Ofqual taking a step back from assuring the quality of technical qualifications?

No. Ofqual will continue to be involved at all stages of the lifecycle of technical education qualifications, including recognition of awarding organisations that want to deliver technical education qualifications, advising the Institute on the quality of proposed technical education qualifications before they are approved, and regulating them in live delivery to ensure that standards are maintained. The legislation will provide a statutory framework within which Ofqual and the Institute collaborate closely in the development, approval and delivery of the qualifications whilst reducing the risks of overlaps in accountability and the

duplication of processes. By embedding this arrangement in law, the legislation will underpin long-term stability in the two bodies' collaborative oversight of technical education qualifications.

Why is there the need to legislate or involve the Institute to enable the delivery of T Levels outside England?

The Institute's statutory remit for technical education and training is limited to England. The Institute manages the contracts with T Level awarding organisations and owns the copyright for T Level technical qualification documents. Ultimately, it is for other countries and the relevant regulatory bodies to put in place arrangements for the delivery of T Levels in their nations. But it is likely that the Institute would also need to take steps to facilitate this and potentially to cooperate with these other bodies in relation to the continued regulation of the qualifications - as such, this measure proposes explicit provision is made for this in the legislation.

The Secretary of State for Education is ambitious for T Levels to be made available outside of England to ensure these high-quality programmes are an option for any markets that may wish to deliver them – both in Scotland, Wales and Northern Ireland and outside of the UK. Awarding organisations with T Level contracts are likely to benefit from the delivery of T Levels in other nations, and it would increase the currency of the brand for students and employers. This legislation would lay the initial foundations to make T Levels available outside of England. The Government will engage with awarding organisations and other stakeholders in developing the detail of the policy.

How much will the Institute charge for approval?

Approval fees would be charged on a cost-recovery basis. Any approach designed would be proportionate and take into account the impacts on the market to ensure the range of approved qualifications meets the needs of employers and learners, including qualifications in niche areas. The intention is that fees will not be considered until the reforms to technical qualifications at level 3 have been implemented. The Secretary of State for Education will need to publish regulations for the Institute to charge fees. Such regulations will set out the parameters for approval fees.

Why is a moratorium power needed?

The government's reforms aim to streamline the technical qualification landscape and ensure a high-quality offer which meets the skills needs of the economy. The Institute's approvals process and the government's proposals to defund qualifications that overlap with T Levels and A levels are designed to manage the proliferation of qualifications. The moratorium power is an additional lever the Institute would apply to targeted areas, should it be necessary as a backstop. The Institute will be required to consult the Secretary of State for Education before introducing a moratorium. All awarding organisations would have the same opportunity to put forward qualifications for consideration.

What else is the government doing?

- The second-stage consultation of the post-16 qualifications review closed in January 2021, and the government response is expected in due course.
- The call for evidence on post-16 study at level 2 and below closed in February 2021. The government is considering the evidence and will set out further proposals for consultation in 2021.
- The government plans to consult on the National Skills Fund with the aim of helping adults learn valuable skills that prepare them for the economy of the future.



Skills and Post-16 Education Bill: Improvements to the FE insolvency regime

As part of its commitment to reforming further education (FE), the government is legislating to improve the operation of the FE insolvency regime.

What is the government's policy objective?

The current education administration regime, underpinned by the Technical and Further Education Act 2017, works as intended. This is evidenced by two successful education administrations to date. These measures refine a functioning system to ensure that the FE insolvency regime and associated processes work both efficiently and effectively, protecting the interests of all stakeholders – including learners, creditors and taxpayers.

Why is legislation needed?

The FE insolvency regime and associated processes are underpinned by legislation. An education administration is a special form of administration only available to insolvent providers in the statutory FE sector with the special objective (under Section 16 of the Technical and Further Education Act 2017) to protect learners and avoid or minimise disruption to studies. Where considered appropriate, the associated process of designating an institution as part of the statutory FE sector (under section 28 of the Further and Higher Education Act 1992) can form part of the process of exiting education administration or otherwise dealing with a FE body in financial difficulty. To provide further clarity as to how the FE insolvency regime works, and to allow it to function with minimal disruption, the government proposes technical amendments to these pieces of legislation.

What is the effect of the legislation?

These are technical amendments to the FE insolvency regime and the associated designation process. This measure proposes to:

- Shorten and increase the flexibility of the process by which institutions can be designated as falling within the statutory FE sector, a mechanism that can form part of the process of exiting education administration or otherwise dealing with a FE body in financial difficulty;
- Clarify that in an education administration, a transfer scheme (which an Education Administrator may propose, subject to the Secretary of State for Education's approval, to transfer assets and activities to another Further Education Body if

required to meet the learner protection special objective of an education administration) which would transfer secured assets without either a court order or the consideration attributed to the asset being agreed by the secured creditor, cannot be proposed;

- Cement case law into legislation that education administrators of insolvent providers in the statutory FE sector can use a specific rescue procedure (known as a Company Voluntary Arrangement, or 'CVA', which is available in normal insolvency) as a mechanism to exit education administration and achieve its special objective – to protect learners. The government proposes to extend the Secretary of State for Education's existing powers to make regulations applying insolvency legislation (with modifications) to FE bodies with respect to CVAs. This would allow the Secretary of State for Education, via regulations, to ensure education administrators explicitly may use CVAs, and to clarify that nothing in the Technical and Further Education Act (TFEA) would prevent an education administrator proposing a CVA.

How will this work in practice?

In practice, this measure proposes to:

- Allow the Secretary of State for Education to designate an institution as being within the statutory FE sector using an administrative order, which can be enacted relatively quickly, rather than requiring the use of a statutory instrument. This is important because this mechanism can form part of the process of exiting education administration. When an institution conducted by an insolvent corporate entity is transferred to a solvent company as part of the process of exiting administration, the Secretary of State for Education needs to be able to immediately designate the institution (if not already designated) in order to ensure it remains within the statutory FE sector. This proposed change would therefore reduce the amount of time involved in resolving insolvency cases where the use of a designated institution is considered appropriate;
- Clarify that in an education administration, a transfer scheme which would transfer secured assets free of that security without either a court order or the consideration attributed to the asset being agreed by the secured creditor, cannot be proposed. Similar protections are available to secured creditors in normal administration and during the TFEA consultation, the Department for Education publicly confirmed these would apply in an education administration. Education administrators may use the TFEA transfer scheme to transfer a provider's property, rights and liabilities (including those which could not otherwise be transferred) to another entity as one option to exit an education administration and achieve its special objective);
- Explicitly allow for the use of CVAs (a statutory proposal to creditors to repay some or all of their debts over a period of time, which is available in normal insolvency) as a mechanism to exit an education administration. Like the transfer scheme, a CVA is one option available to an education administrator to exit an education administration and achieve its special objective.

Key questions and answers

Why did you introduce an insolvency regime?

The government believed a process was needed to deal with providers in the statutory FE sector that became insolvent.

The introduction of the regime clarified the unspecified legal position of further education bodies, provided an orderly process for creditors, and protected the interests of learners.

Who does the FE insolvency regime apply to?

All 'further education bodies' as defined in the TFEA 2017 – namely, in England, FE corporations, sixth-form college corporations, and companies conducting (such as those running or managing) designated FE institutions (all of which fall within the statutory FE sector). In Wales, these are FE corporations in Wales and companies conducting designated further education institutions in Wales.

FE providers that do not fall within the definition above and which are companies continue to be subject to existing corporate insolvency law.

Why are you making big changes to the insolvency regime?

These proposed changes are a combination of two relatively technical changes to clarify what is understood to be the original policy intention of TFEA, and a small change to the related designation process. They will allow providers in the statutory FE sector to exit education administration more quickly in certain circumstances, while also embedding existing case law and a public assurance from the Secretary of State for Education into legislation.

How often are you expecting to use these powers?

Infrequently. The government considers all available options for providers in the statutory FE sector in financial difficulty. The introduction of the education administration regime has meant that insolvency is now an additional option for the government to consider. Since the introduction of the FE insolvency regime on 1 April 2019, only two further education bodies have entered into education administration.

The government wants providers to manage themselves effectively to avoid ever becoming insolvent. But where colleges enter serious difficulty and run out of money, insolvency must be considered alongside the other available options.

The government's overriding objective is to make sure that learners are protected and have access to high-quality education and training provision, while securing best value for money for the taxpayer.



Skills and Post-16 Education Bill: List of post-16 education or training providers

This measure will enable the Secretary of State for Education to make regulations to provide for a list of post-16 education or training providers, in particular independent training providers (ITPs). To be on the list, providers will be required to meet conditions which are designed to protect learners by preventing or mitigating the risks of provider failure.

What is the government's policy objective?

The government wants to ensure that all learners are protected if providers cease to provide education or training. Where other regulatory mechanisms are not in place, the government also wants to ensure that there is a consistent set of requirements placed on providers to protect learners and public funds, even where funded by local commissioning bodies or through subcontracts from directly funded providers.

Currently, there is a risk that short notice exits of providers can significantly disrupt the experience of many young people and adults. This can be from delays in finding a new provider, difficulty in accessing learner files and insufficient planning of what happens next in these circumstances.

Why is legislation needed?

As indicated in the Skills for Jobs White Paper, the short notice exit of a provider from the provision of education or training can significantly disrupt the educational experience of many young people and adults. The transfer to another provider can take time and can be complex. This increases the risk of learner disengagement.

The provision of post-16 education or training is commissioned by various funding bodies and is often subcontracted. As a result, there is a wide variation in the range of obligations and requirements currently imposed on providers. The proposals in the Bill are intended to ensure that there is a consistent set of requirements placed on providers to protect learners and public funds, even where the education or training is funded by local commissioning bodies or through subcontracts from directly funded providers.

What is the effect of the legislation?

This measure gives the Secretary of State for Education the power to make regulations to set up a list of relevant providers that meet conditions specified in the regulations. The conditions that may be specified are those which may assist in preventing or mitigating the effects of unplanned provider exit. The Secretary of State may also, by regulations, make

arrangements for the keeping of the list (for example in relation to appeals, the procedure for applications, fees etc).

The measure provides that if such regulations are made, a relevant funding arrangement (or sub-contract) for the provision of certain categories of education or training can only be entered into if the provider of that education or training is on the list. That funding arrangement (or sub-contract) must also include provision allowing the funding authority (or lead provider) to terminate the arrangements if the provider ceases to be on the list. This will apply to funding arrangements made irrespective of the funding body - so will apply equally to arrangements made by Mayoral Combined Authorities, the Greater London Authority, Local Authorities and the Secretary of State for Education.

Certain types of provider, which are considered already to be subject to sufficient levels of regulation, are not required to be on the list. These are, for example, those falling within the statutory FE sector, 16-19 providers and a registered higher education provider that only provides higher education.

The regulation-making power will be commenced by order following Royal Assent.

How will this work in practice?

The government proposes to consult on the specific requirements of the scheme prior to making the regulations, but the power to make regulations includes a non-exhaustive list of the types of conditions for being on the list that might be provided. These conditions could include:

- A requirement for a student support plan. This would cover the arrangements the provider has made for learners to be able to continue their learning if the provider is unwilling or unable to continue to deliver the specific course/ apprenticeship that the learner has enrolled on. This may be due to a number of reasons such as closure of the provider, failure to meet quality standards, or a business decision by the provider.
- A requirement for insurance, or equivalent, arrangements. For example, this might cover the costs of finding replacement provision for learners or include the costs of remedial teaching where the learner has not progressed as far in their course/ apprenticeship as would be expected based on the amount of funding already paid to the provider.
- A "fit and proper persons" requirement - both for providers to put in place in relation to their own management personnel, but also for no provider to be allowed on to the list where a person in any management or control capacity is, in the opinion of the Secretary of State for Education, not a fit and proper person.
- Allowing for the provision of and access to information by the Secretary of State for Education, including learner attainment and progress records (for smooth transfer of learners) and financial information which will allow judgements to be made about how likely a provider is to exit.
- A requirement for the provider to notify the Secretary of State for Education of any changes in respect of any conditions of registration.

- Requirements for the provider to take action specified in directions given by the Secretary of State for Education, which may become necessary if the provider seems to be at high risk of ceasing provision.

The government will ensure that the conditions imposed through the regulations are appropriate and proportionate in order to manage the risk of provider failure. The regulations will also impose other requirements around the procedure for maintaining the list, such as the payment of fees, removal of entries from the list and publication of the list.

The Secretary of State for Education will be required to consult on the first set of regulations before they are laid in Parliament, which will help ensure that the list, associated conditions and arrangements are appropriate.

Key questions and answers

How does this measure protect learners in the event of ITP or other FE provider failure?

This measure will provide assurance to learners about the organisation that is delivering their education or training and will ensure, through the student support plans, there is clarity on how to complete their course if their training provider unexpectedly closes or stops delivering their course. It also mitigates the risk of an unplanned or chaotic exit from the provision of education and training which is disruptive to learning.

What is the scope of providers that this power could apply to?

Certain providers of the education and training in scope are excluded from the requirement to be on the list, already being subject to a sufficient level of regulation or not being the intended target of this additional scrutiny. These include the statutory FE sector and 16-19 academies. Any other provider of the relevant education and training will be in scope – primarily independent training providers.

The measure will also include provision for the Secretary of State for Education to introduce regulations that amend the scope of post-16 education or training provider that is covered in future, should new types of post-16 education and training provision emerge.

What is the scope of powers this provides to the Secretary of State for Education?

This provides the Secretary of State for Education with the power to make regulations to set up a list of providers which meet certain specified conditions. The Secretary of State will then keep the list which is set up by the regulations and will decide when to allow a provider to be on, or be removed from, the list depending on whether they meet or no longer meet the conditions.

Why are you creating new costs/ burdens for providers, and making it harder for new entrants to the market?

These proposed powers will ensure alignment with other parts of the education sector and ensure there is a clear and consistent approach. Consistency and clarity will avoid

duplication for providers and allow them to plan their delivery accordingly, which should lead to efficiency in costs in the longer term.



Skills and Post-16 Education Bill: FE initial teacher training system reform

The government proposes to take steps to improve the quality and consistency of initial teacher training for the further education (FE) sector. This will complement programmes that are already in place to improve the quality and supply of teachers in the FE sector, which is critical to securing good outcomes for students.

Currently, the government does not regulate or set standards for the teacher training system in FE (commonly known as FE Initial Teacher Training (ITT)), and there is no primary legislation that enables this to happen. The government is legislating now to create a reserve power to be able to manage better and shape the market for the provision of FE ITT, ensuring quality standards.

This power will not place any new requirements on trainee teachers or existing teachers to obtain specific qualifications, or carry out certain training, to be eligible to teach in the FE sector. Decisions about the training and qualifications of individual teachers will remain a matter for individual employers.

What is the government's policy objective?

The government wants to ensure that the FE system has enough suitably trained and qualified teachers to deliver high quality outcomes for all learners. Improving the quality and consistency of ITT for the FE sector will play a key part in achieving that ambition.

Why is legislation needed?

Legislation is needed to provide the government with reserve powers to ensure a consistently high-quality initial teacher training offer in FE. There is some outstanding ITT in parts of the FE sector, based on clear quality standards and supporting well-structured career development opportunities. One example of this is the 'Taking Teaching Further' programme, which supports FE providers to recruit and train individuals with industry experience as FE teachers. But practice across the system is not uniformly good, and the ITT offer is too fragmented, difficult to navigate and not always based on sufficiently clear quality standards.

The government is taking a more active role in challenging the status quo and providing better oversight of the ITT system, ensuring that public funding goes only to high-quality provision based on clear employer-led standards. The government is first working collaboratively with the sector to address this through non-legislative means.

However, at present, the government has a very limited number of levers with which to drive change and improvement in the FE ITT system. This proposed legislation will give the government an additional means of implementing the reforms should a regulatory approach be deemed more necessary in the future.

What is the effect of the legislation?

An enabling clause will provide the Secretary of State for Education with a reserve power to make regulations which would introduce specific measures relating to the quality of FE ITT if needed. For example, this could include regulations designed to place certain conditions on providers of FE teacher training. This would put teacher training for the FE sector on a similar footing to teacher training for schools, which is already underpinned by legislation with statutory functions for the Secretary of State for Education.

The legislation will not place any requirements on new or existing FE teachers to hold a prescribed qualification, or to have completed specific training, in order to teach in the sector. The government has no plans to introduce teacher-level regulation for FE.

The clause will not come into effect with Royal Assent. It will be commenced at a later date, should it be required, through a commencement order. The government does not intend to make regulations under the enabling clause straight away. The ability to do so is an option to fall back on should it be determined that reforms cannot be achieved through a non-legislative approach.

How will this work in practice?

The government will work closely with the FE sector to bring about the improvements to quality that are so important to improving teaching in further education settings. The government believes reform is needed, and this clause provides the Secretary of State for Education power to take such steps as deemed necessary to secure the quality of teacher training for FE. If the sector does not make progress through non-legislative means, the government will be able to make secondary legislation to take a more active role in regulating the provision of initial teacher training.

Key questions and answers

Does this mean you are bringing in minimum qualification requirements for teachers?

No. This enabling clause is intended to give the Secretary of State for Education powers to manage and control the provision of FE ITT. It will not place specific requirements on trainee or serving FE teachers, either individually or collectively.

Does this imply that the ITT qualifications currently funded through public money are poor in quality?

No. The government knows there is some outstanding ITT in parts of the FE sector, based on clear quality standards and supporting well-structured career development opportunities. Programmes that attract public funding, such as Taking Teaching Further, give participants an opportunity to acquire a recognised, high-quality qualification accompanied by

appropriate support. These measures would allow the government to ensure that public money is only available to FE ITT provision that meets a specified quality standard in the future, if determined necessary.

What is the government doing to support the teaching of SEND in FE?

The government has a range of schemes to support FE providers to attract high-quality individuals into the teaching profession in the FE sector in certain defined subject areas. This includes Further Education Initial Teacher Education (FE ITE) bursaries to support pre-service training of teachers in priority areas including SEND. The government is also funding an in-service training grants programme to support those training in-service to teach maths, English and SEND. In Academic Year 20/21, 24% of bursaries and 73% of grants were awarded were for teaching SEND.

Other schemes include work-based learning through personalised study programmes for all young people aged 16-19 or up to the age of 25 if the young person has an EHC plan and structured programmes through supported internships.

Why is Department for Education taking an additional interest in FE teacher training, and what will this additional scrutiny mean for FE ITT providers?

The government believes that the FE ITT system could be much better than it is and that the sector recognises this as well. The government is well placed to take a more active role in challenging the status quo and providing better oversight of the teacher training system, ensuring that public funding goes only to high-quality provision based on a clear employer-led standard. These changes will help to ensure that the system is able to support wider changes, for example T Levels. Providers will continue to have a responsibility for ensuring that their programmes meet required quality standards if they wish to access public funds for their provision. FE ITT provision will continue to be inspected by Ofsted, as at present.

Does this mean there will be fewer providers of FE ITT?

The government is not looking for FE ITT to be delivered by a predetermined number of providers, but rather to ensure providers that offer it, do so at the highest quality. The ability to make secondary legislation, if required, would shore up the system and protect learners against inadequate provision. This ensures that trainees who undertake FE ITT can be confident that the training they receive is of the highest quality and prepares them well for their career in teaching; similarly, employers will be confident that they can recruit new teachers who have experienced good quality training.

How do these proposed changes align with the Initial Teacher Training (ITT) market review for school teachers?

The government is not seeking to replicate the reforms taking place in the schools ITT system. The FE sector is different and will have its own specific requirements for the training of teachers. However, officials within the Department for Education are working together to ensure a coherent relationship between our reforms in the two sectors.

Will this mean Ofsted no longer has to inspect the provision of ITT for the FE sector?

No. Ofsted has confirmed that future inspections will now cover all publicly-funded further education initial teacher education, not just that validated by universities. This is an important first step in driving up quality and enabling potential staff and employers to identify the best training available.

What else is the government doing?

The government will work with the sector to ensure that providers can recruit, retain, and develop the teaching staff they need to deliver the best possible education to young people and adults. This is underpinned by significant new investment in 2021-22, taking total spending on the FE workforce to over £65 million. The government will:

- Launch a national recruitment campaign to communicate the opportunities in FE teaching and support prospective applicants to get started on their careers – including experienced industry experts and high-potential graduates.
- Support the reform of ITT so it is based on employer-led standards, is driven by quality, and offers attractive and accessible training routes, underpinned by financial incentives for trainees in priority areas.
- Drive the provision of high-quality professional development to improve the quality of teaching and support progression for teaching staff.
- Enable a strong relationship between employers and providers, so that industry experts can move easily into teaching, and teaching staff can maintain up-to-date knowledge of their sectors.
- Support teachers and lecturers delivering apprenticeships with a tailored professional development offer.
- Introduce comprehensive workforce data collection.

Initial teacher training plays a key part in building both the supply and quality of teachers for the FE sector. That is why the government is improving ITT so that all publicly-funded initial training will be rooted in employer-led standards. A revised employer-led standard for FE teaching is currently being developed by a group of sector employers, and the government anticipates a clear benchmark for teaching quality will be set by September 2021. Based on this new standard, the government will support the redevelopment of FE ITT qualifications, so that they too are based on the same clear set of standards-based outcomes.



Skills and Post-16 Education Bill: Office for Students (OfS) quality assessments

This measure aims to make expressly clear the ability of the Office for Students (OfS), to assess quality as part of its regulation of higher education providers in England for certain matters. It puts beyond doubt the OfS's ability to determine minimum requirements for quality and to use these when it makes decisions on registration and compliance. The minimum requirements for quality can be set by reference to absolute performance levels for student outcomes which apply across all English higher education providers. In setting, and assessing in relation to, these minimum requirements, absolute data will be just one factor that the OfS considers. The OfS will also continue to consider appropriate context and make rounded judgements.

What is the government's policy objective?

The government's policy objective is to put beyond doubt the OfS's ability to determine minimum requirements for quality by reference to absolute performance data as one factor alongside consideration of a provider's context before reaching a rounded judgement. For example, the OfS is able to consider the relative proportions of full-time and part-time students at a provider, or the extent to which the provider is offering modular provision.

Why is legislation needed?

This technical amendment is required to put beyond doubt that the OfS can determine minimum requirements to be used in the regulation of quality. The outcomes that the OfS may consider include:

- **Continuation rate:** the proportion of students who continue from their first year of study to their second year.
- **Completion rate:** the proportion of students that receive a higher education qualification at the end of their study.
- **Progression to further study or highly skilled employment:** the proportion of students that progress to professional or managerial employment or postgraduate study following the end of their study.

This amendment will confirm the OfS's existing regulatory approach and place this on a legislative basis to put beyond doubt the ability of the OfS to continue to regulate in this way.

What is the effect of the legislation?

The measure proposes to amend the Higher Education and Research Act 2017 to make clear that the OfS has the ability to determine requirements for absolute student outcomes and to use these when it makes quality assessments. The legislation will take effect from 6 April 2022, subject to parliamentary timetable and Royal Assent.

How will this work in practice?

The OfS is already regulating based on absolute outcomes. In practice the amendment will not affect the OfS's current approach but will put beyond doubt its ability to continue to operate in this way. The OfS is currently consulting on its overarching regulatory approach to quality and standards. The OfS carried out a stage 1 consultation between November 2020 and January 2021, aiming to bring more clarity generally to its approach and to focus on identifying those providers that represent the greatest risk to students (those that are performing below, or close to, minimum standards of quality) and anticipates minimum regulation for high quality providers. The OfS will carry out a stage 2 consultation in spring/summer 2021 on the indicators that it proposes to use across higher education providers and on the way in which it proposes to take the context of a provider into account as it makes its regulatory judgements. This consultation will not affect the detail of the amendment.

Key questions and answers

Does this mean the OfS will regulate quality solely on the basis of absolute outcomes?

No. While it is important that the OfS can set requirements by reference to absolute outcomes and use these when making quality assessments, this is just one factor the OfS will consider. The OfS will continue to consider appropriate context and make rounded judgements.

Why absolute and not benchmarked outcomes?

The government firmly believes that every student, regardless of their background, has a right to expect the same minimum standard of quality that is likely to improve their prospects in life. The government does not accept that students from underrepresented groups should be expected to accept lower quality, including weaker outcomes, than other students. Making allowances and benchmarking for factors such as whether or not students have been disadvantaged is unfair on those students.

Does this disincentivise the recruitment of disadvantaged students?

No. Many higher education providers have proved that it is possible to deliver good outcomes for disadvantaged students. The government believes that it is preferable to incentivise such providers instead of making allowances for those providers that recruit students without providing the support necessary for them to successfully complete their studies. It should also be noted that the OfS requires many providers to comply with a

regulatory condition (A1) that requires compliance with an agreed access and participation plan, which will include targets for recruitment of disadvantaged students.

Does this approach undermine government ambitions for more flexible and lifelong learning?

No. The government and the OfS are working closely together as part of the development of the Lifelong Loan Entitlement. The OfS' quality measures are designed to be flexible and are effectively used by the OfS across a diverse provider base and across different courses e.g. part-time courses. The OfS is currently consulting on its approach to regulating quality and standards, which includes consideration of modular and flexible provision.

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