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Technical and Further Education Bill: Committee Stage Report

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Summary

The Bill

The *Technical and Further Education Bill 2016-17* was presented in the House of Commons on 27 October 2016 and the Second Reading debate took place on 14 November 2016.

The Bill implements proposals set out in the Government's *Post – 16 Skills Plan*, published in July 2016, which were developed in response to recommendations in the *Report of the Independent Panel on Technical Education* chaired by Lord Sainsbury. The Bill will rename and extend the remit of the Institute for Apprenticeships to cover college-based technical education in addition to apprenticeships.

Following on from the ongoing post-16 area reviews, part 2 of the Bill provides for the creation of an insolvency framework for further education (FE) corporations and sixth form colleges and creates a new special administration regime for FE corporations, sixth form corporations, and companies which run designated institutions in England and Wales.

Part 3 of the Bill contains measures on the provision of information by FE providers.

Committee Stage

The Committee Stage of the *Technical and Further Education Bill 2016-17* took place over ten sessions between 22 November and 6 December 2016. The first two sessions were evidence taking sessions and a range of spokespersons from the FE sector and financial institutions appeared before the Committee including from: the Association of Colleges; the Sixth Form Colleges' Association; Collab Group (formerly 157 Group); Ernst & Young; Lloyd's Banking Group; Santander; Barclays; the National Union of Students; the Learning and Work Institute; and Blackpool and The Fylde College. Lord Sainsbury of Turville and the Further Education Commissioner also appeared before the Committee.

10 amendments were agreed during Committee Stage; all were Government amendments and all were minor and technical in nature (the majority were to correct drafting errors or cross references).

Two Opposition amendments were negatived following divisions. One of the amendments would have required certain regulations made under the Bill to be subject to the affirmative resolution procedure; the other would have prevented an education administrator from transferring assets of an FE body to a private company where they considered that more than half of the funding for the acquisition of the asset came from public funds. A number of other non-Government amendments were withdrawn following debate.

The main areas of debate during Committee Stage included:

- On technical education:
  - The capacity of the Institute for Apprenticeships to perform the tasks assigned to it.
  - The representation of learners and apprentices on the board of the Institute for Apprenticeships.
  - The role of the Institute for Apprenticeships in promoting careers advice, widening access and participation, and reporting on the quality of apprenticeships.

  - The representation of students, trade unions and other stakeholders on the groups formed to set standards for occupations and on the groups approved to prepare apprenticeship assessment plans.

- On insolvency and the proposed special administration regime:
  - The financial position of the FE sector.
  - The impact of insolvency procedures on an institution being put into special administration.
  - The role of the Education Administrator including: the experience required for the role, consultation with stakeholders, and the groups of students to be taken into account by the Administrator.
  - Transfer schemes.

This paper considers the amendments tabled in the Public Bill Committee and examines the most significant issues that were debated. It does not cover in detail every amendment or every clause of the Bill.

1. The Bill

The *Technical and Further Education Bill 2016-17* was presented in the House of Commons on 27 October 2016, and received its Second Reading on 14 November 2016. The Bill and accompanying documents are available on the Parliament website at Technical and Further Education Bill 2016-17.

The Bill implements measures set out in the Government's *Post – 16 Skills Plan* which was published in July 2016; these proposals were developed in response to recommendations in the *Report of the Independent Panel on Technical Education* chaired by Lord Sainsbury. The Bill will extend the role of the Institute for Apprenticeships to cover classroom-based technical education in addition to apprenticeships. It also includes measures which support the Institute's establishment and proposed remit.

The further education (FE) measures in the Bill support the Government's ongoing area-based reviews of FE provision – these reviews aim to create a more financially resilient and stable FE sector. The results of the reviews may lead to mergers, or closures of some colleges. In the event that a college becomes insolvent in the future, the Bill will create a new insolvency regime. A consultation on an insolvency regime was launched in July 2016[1] and the Government's response to the proposals was published alongside the Bill.[2]

Additional measures in the Bill regarding FE information aim to ensure that the Secretary of State for Education continues to be provided with data on the FE sector following the devolution the Adult Education Budget to combined authorities.

The Bill is in four parts:

- **Part 1** renames the Institute for Apprenticeships the **"Institute for Apprenticeships and Technical Education**" and makes consequential changes. Schedule 1 extends the remit of the Institute for Apprenticeships and Technical Education to additionally cover college-based technical education.
- **Part 2** creates an **insolvency framework** for FE corporations and sixth form colleges and creates a new special administration regime for FE corporations, sixth form corporations, and companies which run designated institutions in England and Wales.
- **Part 3** extends the **statutory duty to provide information** on FE in the *Further and Higher Education Act 1992* to cover providers of FE who receive funding from the combined authorities.
- **Part 4** contains general provisions.

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1 Department for Business, Innovation and Skills, *Further Education and Sixth Form Colleges Consultation on Developing an Insolvency Regime for the Sector* July 2016

2 Department for Education, *Developing an Insolvency Regime for the FE and Sixth Form College Sector Government consultation response* October 2016

Four schedules to the Bill contain detail on some of the measures.

The following documents contain information which is relevant to the Bill:

- *Report of the Independent Panel on Technical Education*, April 2016.
- Department for Business, Innovation and Skills and Department for Education, *Post-16 Skills Plan*, July 2016.
- Department for Business, Innovation and Skills, *Further Education and Sixth Form Colleges Consultation on Developing an Insolvency Regime for the Sector*, July 2016.
- Department for Education, *Developing an Insolvency Regime for the FE and Sixth Form College Sector Government consultation response*, October 2016.
- Department for Education, *Technical and Further Education Bill: Impact Assessment*, October 2016.
- Department for Business, Innovation and Skills and Department for Education, *Technical education reform: assessment of equalities impact*, July 2016.
- Department for Education, *The Technical and Further Education Bill: factsheet*, October 2016.

Clause 1 and schedule 1 of the Bill extend to England only; clauses 2 to 38 and schedules 2 to 4 extend to England and Wales. A detailed table showing the territorial extent of clauses in the Bill is set out in Annex A of the Explanatory Notes on page 19.

The following Library briefing papers are of relevance to the Bill's provisions:

- CBP 7357, *Further Education: Post-16 Area Reviews*, 4 November 2016.
- CBP 7708, *Adult further education funding in England since 2010*, 16 September 2016.
- CBP 7523, *The Apprenticeship Levy*, 6 May 2016.
- CBP 03052, *Apprenticeships Policy, England 2015*, 8 March 2016.
- CBP 7305, *Traineeships*, 8 March 2016.

2. Second Reading debate

The Bill had its Second Reading in the House of Commons on 14 November 2016.

The Secretary of State for Education, Justine Greening, introduced the Bill saying that "most of our young people, often those from disadvantaged backgrounds will choose not to go to university, but to follow a less purely academic route."[3] She further argued that "the technical education route open to those young people for decades has often lacked sufficient quality and failed to offer a proper pathway into the world of work."[4] The Bill, she said, aimed to address these issues:

> The aim of the Bill is to ensure that there is a genuine choice between high-quality academic and technical education routes. The Government want to build on what exists in the further and technical education sector and steadily create a gold standard of technical education for the first time so that students can be confident that if they commit their time and effort to a course, they will be building towards a successful career. We will unlock those opportunities only by addressing the challenges facing further education. We need to get to the root causes of poor-quality provision, including weak employer engagement, ineffective training methods, the proliferation of qualifications that are not highly valued and, of course, institutions with uncertain finances.[5]

The Secretary of State additionally stated that the Bill's provisions on insolvency would end "uncertainty for all parties by putting in place a regime that allows for an orderly process in the very unlikely event of a college becoming insolvent".[6]

The Shadow Education Minister, Angela Rayner, stated that the Opposition did not intend to oppose the Bill's Second Reading but that "many questions remain[ed] for the Government to answer during its passage."[7] While the provisions on insolvency were necessary, she said, their necessity was in part due to underinvestment in the FE sector.[8] Ms Rayner also welcomed the proposals on the Institute for Apprenticeships, but expressed concern about a lack of detail, particularly concerning its structure, operation and staffing.[9]

A number of Members welcomed the focus on technical education but raised specific areas of concern. Tristram Hunt, for example, welcomed the Bill and its focus on technical and vocational qualifications but argued that it represented a "missed opportunity" to introduce a 14-19 framework.[10]

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3 HC Deb 14 November 2016, c41.
4 *Ibid,* c42.
5 *Ibid,* c43.
6 *Ibid,* c46.
7 *Ibid,* c47.
8 *Ibid,* c47.
9 *Ibid,* c49.
10 *Ibid,* c54.

Other Members used the debate to raise general policy issues and areas of broader concern in the FE sector. Issues raised included:

- The need to improve the maths skills of learners.[11]
- Widening participation in FE and the role of colleges in improving social mobility.[12]
- The need for good careers advice.[13]
- The importance of adult education and lifelong learning.[14]
- Apprenticeships policy and the apprenticeship levy.[15]
- The role of University Technology Colleges.[16]
- The skills gap and the need to increase productivity.[17]
- The funding difficulties faced by colleges and the impact of Area Reviews.[18]

"For too long technical and vocational education has been seen as the poor relation to academic education"

Karin Smyth MP (HC Deb 14 November 2016

Gordon Marsden wound up the debate for the Opposition with a wide-ranging speech which highlighted the decline in technical education at levels 4 and 5,[19] and the financial health of the FE sector.[20] He also emphasised the need for stakeholders, other than employers, to also be involved in the Institute for Apprenticeships and Technical Education:

> The skills plan consistently talks about the Institute for Apprenticeships and Technical Education being employer-led. That is precisely why FE colleges, other training providers and learners need to be an essential component of it.[21]

Mr Marsden said that the insolvency regime would be looked at closely in Committee and he would want to make sure that public assets were not "handed to private, for-profit companies as a result of an insolvency".[22] He also questioned the lack of reference in the Bill to promoting participation from disadvantaged groups.[23]

Robert Halfon, the Minister for Apprenticeships and Skills, closed the debate for the Government saying that the Bill was essential to improve skills:

> The Bill is vital because we face serious challenges: a chronic shortage of high-skilled technicians; acute skills shortages in science, technology, engineering and maths; and low levels of literacy and numeracy compared with other OECD countries.[24]

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11 HC Deb 14 November 2016, Kelvin Hopkins, Tristram Hunt, Nic Dakin, Justin Tomlinson.
12 *Ibid*, Angela Rayner, c49; David Rutley, c71.
13 *Ibid*, Tristram Hunt, c54.
14 *Ibid*, c57.
15 *Ibid*, Angela Rayner, c49; Peter Kyle, cc65-66.
16 *Ibid*, Justin Tomlinson, c52; Tristram Hunt, c55.
17 *Ibid*, Lucy Powell, c59.
18 *Ibid*, Nic Dakin, c62.
19 *Ibid*, C75.
20 *Ibid.*
21 *Ibid,* c76.
22 *Ibid.*
23 *Ibid,* c77.
24 *Ibid,* c78.

The Minister outlined what the Government was doing to improve maths skills and raise FE participation and he gave an overview of the health of the FE sector saying that "about 40 colleges" faced serious financial problems.[25] The Bill, he said, would improve skills and increase social mobility:

> The reforms in the Bill are fundamental to the Government's vision for a country that works for everyone. It will ensure that we improve the skills base in our country, that we increase our economic productivity, that we protect students, and that those from the most disadvantaged backgrounds have a chance to climb up the ladder of opportunity.[26]

"no FE or sixth-form college will close as a direct result of the Bill."

Robert Halfon, Minister for Apprenticeships and Skills (HC Deb 14 November 2016 c80)

The Bill's Second Reading was agreed without a vote.

25 HC Deb 14 November 2016, c80.
26 *Ibid,* c81.

3. Public Bill Committee

The Bill's Committee stage began with two evidence sessions on 22 November 2016. The evidence sessions were followed by line-by-line scrutiny of the Bill over a further eight sessions which concluded on 6 December 2016. The members of the Committee were as follows:

Chairs: Mr Adrian Bailey, Nadine Dorries

Edward Argar (Con)

Tracy Brabin (Lab)

Michelle Donelan (Con)

David Evennett (Con)

Robert Halfon, Minister for Apprenticeships and Skills (Con)

Kelvin Hopkins (Lab)

Mr Ranil Jayawardena (Con)

Mike Kane (Lab)

Mr Alan Mak (Con)

Gordon Marsden (Lab)

David Rutley (Con)

Naz Shah (Lab)

Henry Smith (Con)

Justin Tomlinson (Con)

Karl Turner (Lab)

Mr Shailesh Vara (Con)

The written evidence and transcripts of the Committee's sittings are available on the Parliament website at Technical and Further Education Bill 2016-17.

Clause numbers in this briefing refer to those from the Bill as first introduced in the House of Commons.

4. Committee Stage: detailed consideration of the Bill

4.1 Technical education (clause 1 and schedule 1)

Clause 1 renames the Institute of Apprenticeships as the "Institute for Apprenticeships and Technical Education" (IFATE). The clause also introduces schedule 1, which provides for the Institute's remit to be extended to cover college-based technical education.

Clause 1

No amendments were proposed to clause 1 but there was a lengthy clause stand part debate. Gordon Marsden stated that the Opposition were "very much in favour" of the IFATE but raised a number of concerns. In particular, he questioned whether the institute would have the necessary capacity to perform its tasks:

> We do not have a problem with the direction of travel of the institute or the long list of admirable things it is supposed to do, but we have a severe problem of confidence about believing that it is anywhere near having the ability to do it.[27]

Mr Marsden said that the recent machinery of Government changes and the implications of Brexit added to the concerns and stated that more information was needed about how the issue of capacity would be addressed.[28]

Robert Halfon stated the Government would "ensure that the institute has the skills and capacity to be responsible for technical education when its remit is extended in April 2018."[29] He additionally said that, through its engagement with employer panels, experts and employees, the IFATE would "draw on many more people" in addition to its core staff of 60.[30]

Other areas discussed more briefly during the debate on clause 1 included:

- The quality of apprenticeships.[31]
- The coverage of the proposed 15 technical education routes.[32]
- The relationship between the IFATE and other bodies, such as Ofsted and Ofqual.[33]

The clause was agreed without a division.

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27 PBC 24 November 2016 (morning), c78.
28 *Ibid*, c79 & cc84-5.
29 *Ibid*, cc71-2.
30 *Ibid*, c83.
31 *Ibid*, cc79-82.
32 *Ibid*, cc77-8 & c83.
33 *Ibid*, c86.

Schedule 1

No changes were made to schedule 1. Fifteen amendments were debated, one of which was negatived following a division, all the other amendments were either withdrawn, or debated in a group of amendments and not put to a decision.

A summary of the more significant issues raised is provided below. This does not cover all of the proposed amendments and is not intended as an exhaustive account of the debates held.

> The schedule seeks to extend the remit of the Institute for Apprenticeships to give it responsibility for implementing reforms that we believe will raise the quality of college-based technical education.
>
> Robert Halfon MP, PBC 24 November 2016 (afternoon), c108.

Equality of opportunity and participation

Gordon Marsden moved **amendment 9** that would require the IFATE to have regard to the need to promote equality of opportunity and access to participation in further and technical education. Mr Marsden argued that governance in this area "is relatively underdeveloped" compared to higher education and that it should consider what priority it would have in the IFATE. He noted that this was particularly important at a time when the Government was trying to increase apprenticeship numbers and achieve parity of esteem for technical education.[34]

Opposition **amendment 10** was discussed alongside amendment 9. The amendment would require the Government's apprenticeship targets to specify the proportion of apprenticeship starts for care leavers and people with disabilities. Mr Marsden stated that, although not specified in the amendment, white working class boys were also a category of leaners that "we should think carefully about."[35]

Justin Tomlinson highlighted the opportunities that apprenticeships can provide to disabled people but expressed caution about the use of targets. He said that he would "be more assured" if the Minister regularly raised this issue with IFATE representatives and MPs sought to hold relevant organisations to account.[36]

Kelvin Hopkins spoke in support of the amendments and he noted that having a job created a sense of worth. He argued that such amendments should be included in all bills relating to education, training and employment to ensure that the issue "becomes deeply embedded in our culture."[37]

In response, the Minister stated that on disabilities he was "wary of targets" and emphasised the complexities in this area. He said that he would reflect on the points made about representation, but noted that it is a "duty of the institute to represent everybody".[38]

Consultation requirements

Gordon Marsden moved **amendment 11** that would require the IFATE to consult with institutions, employers and students before making changes to the occupational routes in technical education. He stated

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34 PBC 24 November 2016 (afternoon), cc89-93.
35 *Ibid*, cc93-5.
36 *Ibid*, cc95-7.
37 *Ibid*, cc97-8.
38 *Ibid*, cc98-100.

that there was a balance to be struck between the bespoke skills needed for immediate jobs and the enabling skills needed for future employment. It was important, therefore, he argued, for a broad process of consultation.[39]

In response, the Minister stated that the "routes are based on evidence-based occupational maps, on which [the Government] have to consult widely." He argued that it was not necessary to consult on the routes separately but acknowledged that it would be necessary to keep the route structure under review and listen to feedback from stakeholders.[40]

Amendment 30, moved by Gordon Marsden, would make directions given to the IFATE by the Secretary of State subject to periodic review and consultation with specified groups, including organisations representing the teaching professions and students. Mr Marsden raised concerns that the discussion process appeared to be two-way between the Secretary of State and the IFATE and did not involve many stakeholders.[41]

Mr Halfon said that the direction power was included to allow for an overall strategic context guided by the Secretary of State and that directions were likely to concern changes to the education system as a whole – for example, changes to the length of the academic year or A-level reforms. He stated that "it is highly likely that the Secretary of State, when issuing a strategic direction, would have a full and thorough consultation" but that there may be cases when it is necessary to intervene quickly. He therefore argued that the limitation in the amendment was "neither necessary nor desirable."[42]

Board of the IFATE

Gordon Marsden moved **amendment 17** that would require the board of the IFATE to include at least one member:

- with recent experience of taking an apprenticeship or of representing apprentices; and
- with recent experience of taking a technical and further education course or of representing the interests of students on such courses

This was discussed alongside **amendment 32** that would make the appointment of the Chair and Chief Executive of the IFATE subject to a select committee confirmation hearing.

Mr Marsden highlighted the need for the IFATE to be broadly based and not simply employer-led; he stated that he could not overemphasise how important it was for its board "to include all the key components of apprenticeship creation and delivery."[43]

Kelvin Hopkins spoke in support of the amendments and argued that it was important that the IFATE board "gets feedback from someone who

> A board with no apprentice presence is as daft as it would have been in the Higher Education and Research Bill to have the office for students without a student representative.
>
> Gordon Marsden MP, PBC 29 November 2016 (afternoon), c142.

39 PBC 24 November 2016 (afternoon), cc100-1.
40 *Ibid,* cc101-2.
41 *Ibid,* cc133-6.
42 PBC 29 November 2016 (afternoon), cc139-41.
43 *Ibid,* cc141-4.

has been on the receiving end of the experience." Concerning amendment 32, Mr Hopkins argued that confirmation hearings had "improved the quality of appointments in recent years."[44]

The Minister agreed that the IFATE should "draw on the experiences of apprentices" but he said that there were concerns with stating that there should be an apprentice on the IFATE's board because the role required experience and carried governance responsibility. Mr Halfon stated that, to "square the circle", the Government expected the institute to invite apprentices to form an apprentice panel that would report directly to the board. The IFATE would, he added, ensure that the first panel was in place before the institute went live in April 2017.

Regarding amendment 32, the Minister stated that confirmation hearings were generally held for much larger organisations and that he did not think the amendment necessary as the appointments would be subject to appropriate scrutiny in line with public appointment rules.[45]

Mr Marsden stated that the proposed apprentice panel seemed "a positive and enlightened approach" that addressed many of the Opposition's concerns. He was less positive about the response to amendment 32 and stated that the Opposition reserved the right to return to it on Report.[46]

Stakeholder representation on groups formed to set standards

Schedule 1 provides for the IFATE to approve groups of persons to prepare standards for occupations. **A group of amendments (12, 28 and 13)**, introduced by Gordon Marsden, aimed to ensure that such groups "have relevant experience and that, where possible, students are included in the process."[47] The amendments would, among other things, require the IFATE to have regard to:

- group members between them having experience of a number of areas, including trade unions, representing students and providing apprenticeships; and
- broad representation and diversity among the groups, including gender and the representation of small and large employers.

Mr Marsden stated that it was essential "for the groups formed to set standards for the routes in technical and further education to have wide-ranging representation, including in key components of apprenticeship delivery and creation." He additionally raised Opposition concerns about the "potentially limited scope of the routes."[48]

The Minister said that he understood the concerns regarding the groups formed to develop the standards and agreed that the reforms "should be informed by a balanced and diverse range of industry professionals." He additionally stated, however, that it should be for the IFATE to

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44 PBC 29 November 2016 (afternoon), cc144-5.
45 *Ibid,* cc145-6.
46 *Ibid,* c147.
47 PBC 29 November 2016 (morning), c108.
48 *Ibid,* cc108-9.

manage the composition of the groups and "ensure that the right people are brought together to develop the standards."[49]

On the scope of the proposed routes, the Minister stated that the routes focused on occupations that required "the acquisition of a substantial body of technical knowledge" and that people who did not want to do one of the routes would have different options through the academic and applied general qualifications route.[50]

Stakeholder representation on groups approved to develop apprenticeship assessment plans

Amendment 15, moved by Gordon Marsden, would require the groups approved to prepare apprenticeship assessment plans to include representatives of a broad range of employers and at least one:

- relevant trade union official;
- person engaged in delivering relevant education at the level of the standard being assessed; and
- person who can represent the interests of students.

Mr Marsden argued that "it is fundamental to make sure that groups developing apprenticeship assessments have adequate representatives of all relevant stakeholders" and that "getting the tone right at the beginning" was crucial to getting stakeholder buy-in.[51]

Kelvin Hopkins spoke in support of the amendments and argued that the chief executives of some organisations might be reluctant to include in their structures people who were likely to challenge them.[52]

The Minister stated that the Government would shortly consult on draft guidance to the IFATE, which would provide advice on the composition of the groups. He said that he wanted to encourage the institute to "ensure that others, beyond employers, with relevant knowledge and experience are included" but also emphasised the need for it to have the flexibility to "respond differently to different sectors and ensure that the groups are representative."[53]

Mr Marsden stated that the Opposition would wait to see the draft guidance and could return to the matter at Report Stage. He withdrew the amendment.[54]

Regulations procedure

Under schedule 1, the Secretary of State may make regulations authorising the IFATE to charge fees for carrying out evaluations of apprenticeship assessments. Gordon Marsden moved **amendment 29** that would require such regulations to be subject to the affirmative procedure. This was grouped with two other Opposition amendments

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49 PBC 29 November 2016 (morning), cc115-20.
50 *Ibid*.
51 *Ibid*, cc123-5.
52 *Ibid*, cc125-6.
53 *Ibid*, cc126-7.
54 *Ibid*, c128.

that would require regulations laid under other parts of schedule 1 to be subject to the affirmative procedure.

Mr Marsden stated that the amendments were based on the principle that the process of regulation should be "as transparent and open as possible" for the first years when establishing a new organisation. He added that the affirmative procedure would make it easier for stakeholders to make representations and for the Government to identify if there were any areas of concern.[55]

The Minister argued that the negative procedure would allow changes, such as the fee levels, to be updated quickly if necessary. He additionally noted that regulations under the negative procedure could still be debated in Parliament if there was real demand.[56]

Mr Marsden stated that he still believed the affirmative procedure was the safer option and pushed the amendment to a vote. It was negatived by 8 votes to 5.[57]

New clauses

Three new clauses were discussed during the clause stand part debate on schedule 1:

- **New clause 3**, tabled by Gordon Marsden, would require the Secretary of State to report to Parliament annually on specified quality outcomes of completed apprenticeships, such as the average earnings of individuals one year after completing an apprenticeship.
- **New clause 4**, tabled by Tracey Brabin, would place a duty on the IFATE to promote careers advice and awareness of occupations.
- **New clause 5**, tabled by Gordon Marsden and Mike Kane, would require the IFATE to regularly consult on the development and progress of standards and assessment plans, and the delivery of apprenticeship end-point assessments.

In speaking to new clause 4, Tracey Brabin raised concerns about the lack of careers provision in colleges. She argued that she could not see how the Bill could achieve its aims of harnessing the talents of young people without a commitment to promote awareness of occupations and advise young people on how to get a job.[58]

On new clause 3, Gordon Marsden stated that, in broad terms, the Opposition supported the expansion of apprenticeship starts but argued that it was important to ensure a focus on high standards and "not simply a concentration on meeting target numbers."[59]

The Minister referred to each of the new clauses in turn:

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55 PBC 29 November 2016 (morning), cc128-31.
56 *Ibid,* cc131-2.
57 *Ibid,* cc132-3.
58 PBC 29 November 2016 (afternoon), cc148-50.
59 *Ibid,* cc150-4.

- On new clause 4, he agreed "that we have a problem with careers advice in our country" and stated that he was "looking at the whole issue from the beginning". He also argued that the Government had done substantive work in the area.[60]
- On new clause 3, he stated that the IFATE would be required to report annually on its activities and that the Secretary of State could ask it to report on anything she thought appropriate. He additionally stated that the Government expected the IFATE to make use of data on outcomes to explain its annual report, but that requiring the institute to publish all the information specified in the new clause could incorrectly suggest that it was responsible for all the outcomes.[61]
- On new clause 5, Mr Halfon stated that "the bodies and organisations listed in the new clause are already covered by the existing legislation, and the institute must have regard to them in all functions." He additionally said that the Government plans to publish a draft of a guidance document for the IFATE, which would ensure that the institute "consults all those with an interest when carrying out its functions."[62]

The schedule was agreed without a division. The new clauses were not put to a decision.

4.2 Part 2: insolvency regime for FE bodies

This section of the Paper covers the key issues debated at Committee Stage in respect of **Part 2** of the Bill. The insolvency provisions are highly technical, therefore, for ease of reference, the gist of each clause is first summarised in a text box before consideration is given to the debate.

By way of a summary, the insolvency provisions contained in **Part 2** (and **Schedules 3** and **4**) were considered in detail during the sixth, seventh and eighth sittings. Opposition amendments were largely probing amendments on how the new special administration regime (SAR) would work in practice. In particular, there was a long debate on **clause 22**, which sets out the general functions of the education administrator. There was only one division, namely amendment 7 to **clause 23**. This Opposition amendment sought to ensure that FE bodies with a track record of accruing assets publicly could not be transferred to a private company. Following a lengthy debate the amendment was pressed to a vote and defeated (8 votes to 5). Government amendments, which were minor and technical in nature, were all accepted without debate.

60 PBC 29 November 2016 (afternoon), cc155-7.
61 *Ibid,* cc157-8.
62 *Ibid,* c158.

Clause 2

Box 1: Clause 2: introduction

- **Clause 2** introduces the insolvency provisions contained in Part 2 and provides an overview.
- For the purposes of Part 2, an "FE body" is defined as further education (FE) corporations in England and Wales, sixth form college corporations in England, and companies in England and Wales which conduct FE institutions designated under section 28 of the *Further and Higher Education Act 1992*.

There was a long debate on clause 2, at the end of which, the clause was ordered to stand part of the Bill.

Opening this debate, Gordon Marsden said that it was important to reflect on the various factors that had given rise to the insolvency provisions of the Bill. Referring to the "searing report" produced by the National Audit Office (NAO) in 2015[63], he said that the FE sector had experienced a prolonged period of funding cuts, resulting in a decline in the financial health of the FE college sector since 2010-11 and a deficit in the sector for the first time in 2013.[64] He said that the Treasury had insisted on a robust insolvency scheme, "as part of the quid pro quo for the additional funding that has gone into the sector. That is the reason for the profusion of these clauses in the Bill".[65]

Speaking about the underlying financial weakness of the FE sector, Gordon Marsden highlighted evidence given by the FE Commissioner, in which he said that 82 or 84 colleges were in a merger position.[66] He also drew attention to the evidence of the Sixth Form Colleges Association (SFCA):

> It, too, mentioned courses having to be dropped as a result of funding pressures. Three quarters of colleges have limited the size of their study programmes and more than a third do not believe that next year's funding will be sufficient to provide the support for educationally or economically disadvantaged students."[67]

Given this financial picture, Gordon Marsden argued that it was important that the Bill's insolvency clauses were a real answer to the problem, "rather than something that sounds good on paper but does not do the business in practice."[68]

Robert Halfon, Minister for Apprenticeships and Skills, said that 80% of colleges were either good or outstanding, and 79% of adult FE students got jobs, moved to apprenticeships, or progressed to a top university. He added that some 59% of institutions were in good financial health and 52% were operating with a surplus.[69] Commenting specifically on the issue of funding he said:

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63 National Audit Office, *Overseeing financial sustainability in the further education sector*, July 2015.
64 PBC 29 November 2016 (afternoon), c162.
65 *Ibid.*
66 *Ibid,* c162-163.
67 *Ibid,* c163.
68 *Ibid.*
69 *Ibid.*

> Despite the funding pressures, we have protected the basic rate of funding at £4,000 per student for all types of providers until 2020. We know that the proportion of 16 to 18 year-olds in education or work-based learning is at a record high. We have maintained the funding for core adult skills participation budgets in cash terms at £1.5 billion. If you include the advanced learner loans and apprenticeships, the adult education budget will have increased in real terms by 30% by 2020.[70]

In giving the Government's position, the Minister said that the Department for Education planned to invest £7 billion in 2016-17 to fund education and training places for 16 to 19 year-olds. The area reviews would support those colleges that wanted to merge – no one would be forced to merge – and the Government would provide financial support where appropriate to help them do so.[71] However, once the area review recommendations had been implemented, the Government would no longer provide exceptional financial support to colleges that found themselves in financial difficulties:

> We will draw a line under what has become an implicit understanding from creditors and some educational institutions that those who fall into extreme financial difficulty will be able to rely on the taxpayer to make good the shortfall.
>
> The provisions in the Bill will send a clear message to colleges that, to deliver excellence in teaching and leadership, they need to ensure that they have strong and robust financial controls in place.[72]

Commenting directly on **Clause 2**, the Minister said that although it was the Government's view that college insolvency would be a rare thing, it could happen. For this reason, He said that Part 2 of the Bill was about protection, insurance, prudence and caution:

> That is at the heart of the Bill: protecting learners and ensuring that colleges are cautious about borrowing and banks are cautious and prudent about lending.[73]

Clauses 3-12: application of insolvency procedures

Box 2: Application of normal insolvency procedures to FE bodies

- **Clauses 5 to 6** (Chapter 2) applies normal insolvency procedures to FE colleges in England and Wales that are statutory corporations, and sixth form colleges' corporations in England. In effect, they provide for an insolvent FE and sixth form college corporation to be treated in a similar way to an insolvent company under the Insolvency Act 1986 (IA 1986).
- **Clause 5** applies four specific insolvency procedures, which currently apply to companies, to an FE and sixth form college corporation, namely: voluntary arrangements, ordinary administration, creditors' voluntary winding-up, and winding–up by the court.
- **Clause 5** also provides a power for the Secretary of State to modify or omit provisions in the relevant insolvency legislation which is applied by this clause, so that the insolvency legislation makes sense in the context of an FE and sixth form college corporation which has a different constitution to a company.

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70 PBC 29 November 2016 (afternoon), c164.
71 *Ibid,* c164.
72 *Ibid,* c165.
73 *Ibid,* c166.

- **Clause 5** also provides for the law relating to receivers and managers of property to be applied to those corporations, and for that law to be able to be modified as it is applied to those corporations (because they are different from companies).
- **Clause 6** provides a power for the Secretary of State to make regulations so as to apply any legislation which is about insolvency to FE and sixth form college corporations. This means that where there is legislation outside the IA 1986 which relates to insolvency, the legislation can be applied by secondary legislation to those corporations. There is also a power to amend or modify that legislation so that it makes sense for those corporations.
- It is important to note that **clauses 7 to 12** (Chapter 3) would provide restrictions on the use of normal insolvency procedures through its interaction with the education administration. It would ensure that the Secretary of State and the Welsh Ministers are given notice (14 days) of the use of those procedures and can then decide whether or not to initiate an education administration.

No amendments were tabled for **clauses 3 to 12** (predominantly contained within Chapters 2 and 3) and neither the Opposition Front Bench nor the Minister spoke to these clauses. All of the clauses were ordered to stand part of the Bill.

Cause 13: overview of the chapter

Box 3: Clause 13 – overview of the Special Administration Regime (SAR)

- **Clause 13** of the Bill provides an overview of the Special Administration Regime (SAR) for FE bodies (i.e. further education corporations, sixth form college corporations, and companies which run designated institutions in England and Wales).
- Under this SAR, an education administrator can be appointed by the court on the application of the Secretary of State, or for Wales, the Welsh Ministers, if an FE body is insolvent.

Speaking to **clause 13** of the Bill, the Minister confirmed that the SAR could be used when: "a further education body is unable to pay its debts or is likely to become unable to pay its debts". In other words, when an FE body is insolvent, based on the definition in the *Insolvency Act 1986* (IA 1986). An education administrator would be appointed by the court only on the application of the Secretary of State or Welsh Ministers, depending on where the FE body is based. Finally, the education administrator would be responsible for managing the FE's body: "affairs, business and property with a view to avoiding or minimising disruption to the studies of existing students".

Clause 13 was ordered to stand part of the Bill without any tabled amendments.

Clause 14: objective of education administration

Box 4: Clause 14 – Objective of education administration

Clause 14 is at the heart of the SAR and sets out the special (or "overarching") objective for the education administration, which is to avoid or minimise disruption to the studies of the existing students of the FE body. The stated aim of this SAR being to:

> "[…] provide an alternative to any normal insolvency procedure and create an orderly regime for students, creditors and others, with a special objective which provides some overarching protection for the studies of existing students."[74]

This means that the education administrator's primary focus is on the studies of existing students, in contrast to an ordinary administration where the administrator's primary focus is on rescuing the company or obtaining a better result for the creditors as a whole.

Amendments 1 and **2** to clause 14 were both probing amendments. The Opposition broadly welcomed the concept of this new insolvency regime, but wanted to probe further on some of its aspects.[75]

Amendment 1 sought to ensure that an appropriate assessment was made of any potential impacts on students, their education and the locality if an education administrator decided to put an FE body into a special administration.

Speaking to this amendment, Gordon Marsden drew attention to the fact that the education administrator would be given four options for supporting students to continue their education if their college became insolvent:

1. Selling assets to keep a college afloat;
2. bringing in another body to take on the functions of the college;
3. transferring students to another college; and
4. keeping the college going until existing students have completed their studies.

Gordon Marsden said that there were questions about which option the administrator would think best to pursue and about possible time frames.[76] He argued that the amendment would ensure that a full assessment is made of the impact of the administrator's decision on students and the local community, enabling any negative impacts to be appropriately mitigated.[77] He did not want the new SAR to become an over-bureaucratic, time-consuming process, but thought that a definitive assessment was needed somewhere in the process. The Opposition's main concerns were as follows:

- If the education administrator decided to keep a college going (i.e. option 4), there might be an exodus of staff which would impact on the quality of education offered to existing students.
- If the education administrator decided to sell off college assets to address the insolvency issues, or just to keep the college afloat

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74 Department for Education, *Developing an Insolvency Regime for the FE and Sixth Form College Sector – Government consultation response*, October 2016.
75 PBC 1 December 2016 (morning), c172.
76 *Ibid,* cc173-174.
77 *Ibid,* cc173-174.

(i.e. option 1), what protections would there be that resources integral to the students' studies would not be sold off?

- In circumstances where learners need to be transferred to another college (i.e. option 3), how close to their old college would the new college or facility need to be, since additional travel would be both costly and time consuming.

Gordon Marsden said there was already a risk of making some courses inaccessible to the less well-off.[78] He asked the Minister what financial support might be available to help such students continue their education at a new institution, since there was no reference to this in the Bill.[79]

Amendment 2 sought to ensure that (within the circumstances in which the process takes place) all relevant stakeholders are fully consulted about decisions taken by the education administrator in respect of the future of the institution. Commenting on the need for this amendment, Gordon Marsden said:

> It is important that the education administrator should consider representations from relevant stakeholders such as students and staff, as they have invested two or three years of their time and money in studying and their livelihoods will depend on the institution in question [...] The other group it is vital to consult are recognised trade unions at the FE body.[80]

Responding to both probing amendments, the Minister said that the Government already works closely with the AOC, the Sixth Form Colleges Association and the Collab Group and would continue to do so as it developed secondary legislation. He said that the TUC had welcomed the new safeguards that would enable students to complete their courses in the event of a college becoming insolvent. In addition, the Government had committed £12 million to Unionlearn.[81]

On the issue of funding, the Minister explained that under **Clause 25** the Secretary of State would have the power to fund special administration as long as the funding was for the purpose of achieving a special objective through either a grant or a loan.[82] Pushed further on this point, the Minister said that there was a substantial restructuring fund, of about £756 million. However, he emphasised that funding of a SAR would have to be done on a case-by-case basis.[83] He confirmed that all college staff would be subject to statutory legislation on terms of employment and so on.

The Minister reiterated that the aim of clause 14 was to act in the students' interest. The special objective could be achieved in a number of ways and the Government did not believe that 'one size fits all'. He said that creditors would get a fair deal, but one that was in the interests of students. Ultimately, it would be up to the education

78 PBC 1 December 2016 (morning), c175.
79 *Ibid,* c175.
80 *Ibid,* c177.
81 *Ibid,* c178.
82 *Ibid.*
83 *Ibid.*

administrator to decide how to proceed.[84] However, the Minister thought it inconceivable that the education administrator would take this decision without first consulting a wide range of stakeholders:

> Let me be clear: I and the Government would expect, in an appropriate case, the education administrator to liaise with the FE commissioner – that view was shared by the FE commissioner last week in his evidence – who might be able to advise the education administrator whom they should be speaking to in addition to staff, students, local authorities and the other providers. We would expect the EA, in seeking to fulfil the special objective to avoid or minimise disruption to students' studies, would seek to satisfy themselves that, as far as possible, the quality of the education or training that students have been receiving at the college is maintained. This may be achieved by transferring students to another provider or by continuing to teach them in the FE body until they complete their courses.[85]

The Minister said that he understood the concerns that amendment 1 sought to address in relation to additional transport-related costs for students in the event that they are transferred to another body. He would expect the education administrator to take travel distances into account when considering the transfer of students to another provider. Where possible, the administrator might take into account the generally used guideline of travel for learners of no more than 75 minutes to and from their place of study.[86]

Significantly, the Minister suggested that for those who are transferred, there may be scope for the education administrator to set up a scheme to cover some or more of the additional travel costs from the funding provided by the Secretary of State or Welsh Ministers under clause 25:

> Although there is no obligation on FE bodies to provide student transport, it is open for them to use the resources that are available to best support their students because […] disadvantage funding is not ring-fenced. Where students attract such funding, FE bodies can decide upon the most appropriate offer for their students. Often they do give those students free transport.[87]

Disagreeing with the need for amendment 2, the Minister said that the Government wanted to create "a fair and thorough process" rather than a rigid system that "ends up working against the interests of students by being drawn out and cumbersome."[88] He argued that the education administrator needed the flexibility to do what was right in the circumstances.[89] Ultimately, the education administrator could be challenged in court if he was failing to carry out his functions for the purposes of achieving the special objective or the objective relating to the creditors.[90]

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84 PBC 1 December 2016 (morning), cc179-181.
85 *Ibid,* c181.
86 *Ibid.*
87 *Ibid,* c182.
88 *Ibid.*
89 *Ibid.*
90 *Ibid.*

Amendments 1 and 2 were both withdrawn, but Gordon Marsden said that the Opposition may want to look again at this issue on Report. Clause 14 was ordered to stand part of the Bill.

Clause 15: Education Administration

Box 5: Clause 15 – Education Administration

An Education administration may only be commenced by an order made by the court. **Clause 15** sets out what is meant by an education administration order. In a nutshell, it is an order appointing a person to be the education administrator of the FE body. That person must be qualified to act as an insolvency practitioner.

As set out in **clauses 21** and **22**, an education administrator is a person who will manage the affairs, business and property of the FE body for the duration of the education administration and will act as an officer of the court. When carrying out functions in relation to a FE body, the education administrator is the agent of the FE body.

Amendment 34 to clause 15 was another probing amendment about the role of the education administrator. The amendment sought to ensure, so far as possible, that the education administrator had experience and knowledge of the FE sector – so decisions were not made exclusively in the context of insolvency but took into account the needs of students.

Speaking to this amendment, Gordon Marsden said that the Opposition had taken many of the AOC's concerns on board in drafting the amendment.[91] Specifically, it wanted the Minister to comment on the following issues:

- how experience and knowledge of the FE sector is to be gained by an insolvency practitioner appointed to act in an education administration;
- on the nature of the relationship between the administrator and the FE commissioner; and
- on the complexity of the landscape for financial oversight.[92]

The Minister explained that the key qualification of an education administrator (who must be an insolvency practitioner) would be their expertise with respect to a business or non-profit making organisation that is insolvent. He reiterated that the whole purpose of **Clause 15** was that the education administrator must fulfil the special objective of protecting the students. He thought it inconceivable that the education administrator would take decisions on how to meet the special objective without first having conversations with the range of key stakeholders. [93] Explaining how the interaction between the various stakeholders would work, the Minister said:

> Many insolvency practitioners come from big companies that have huge amounts of expertise in a range of fields, including education. The leadership team of the FE body would be in place

[91] PBC 1 December 2016 (morning), c183.
[92] There is currently a complex landscape for financial oversight. There are currently four different Government bodies with the role. They are the Education Funding Agency, the Skills Funding Agency, the FE commissioner and the transaction unit.
[93] PBC 1 December 2016 (morning), c185.

> to provide support on the day-to-day running of the college and information to assist the education administrator in his task of achieving the special objective. So would the Further Education Commissioner and Sixth Form College Commissioner and their teams, and officials in the Department for Education.[94]

Rejecting the need for the amendment, the Minister argued that to introduce unnecessary requirements as to the appointment of an education administrator would limit the pool of insolvency practitioners from which it could draw in the event that it needed to use the SAR.[95]

The amendment was withdrawn and clause 15 was ordered to stand part of the Bill. Clauses 16 to 21 were also ordered to stand part of the Bill without any debate.

Clause 22 – general functions of the education administrator

Box 6: Clause 22 – General functions of the education administrator

Clause 22 of the Bill sets out the general functions of the education administrator. It provides that, where an education administration order is in force, the education administrator manages the FE body's affairs, business and property. The governors are not automatically dismissed, but, on appointment, the education administrator takes over the management of the FE body.

This is a key role of the education administrator, and the functions must be carried out for the purpose of achieving the special objective, if possible. In pursuing the special objective, the administrator must in particular take into account the needs of existing students with special educational needs (SEN).

The education administrator must also, for far as it is consistent with the special objective, carry out the functions in a way that achieves the best result for the FE body's creditors as a whole. Where the FE body is a company, clause 22(4) requires the education administrator to carry out their functions in a way that achieves the best result for the company's creditors as a whole and, subject to that, the company's members as a whole.

The Opposition tabled a number of probing amendments in respect of **Clause 22** and there was a lengthy debate on how the education administrator would carry out his general functions in practice.

Amendments 3 and **4** both sought to ensure that the primary concern of the education administrator would be the special objective; that is minimising disruption to leaners.

Speaking to both amendments, Gordon Marsden said that it was important to state this definitively in the Bill.[96] He said that the Association of School and College Leaders (ASCL), in its written evidence to the Committee, had raised a number of questions about the primary concern of the education administrator, whilst the banks also had concerns about how the insolvency framework would work for them.[97]

The Minister confirmed that the statutory obligations that apply to colleges would transfer to the education administrator. Although Clause 5 and schedule 3 of the Bill would allow the education administrator to

94 PBC 1 December 2016 (morning), cc185-186.
95 *Ibid,* c186.
96 *Ibid,* c188.
97 *Ibid,* c190.

dissolve a statutory corporation if no property was left for the creditors', he said that this would usually be after students had had benefit protections from the special objective.[98]

Gordon Marsden said there was a risk that special educational needs (SEN) students might have to travel a long way to continue their education, creating additional difficulties. He asked the Minister to take that into account in published guidance notes.[99]

The Minister agreed to reflect on that point. However, he reiterated that there was already a special provision in the Bill to protect SEN students, and the education administrator would be additionally bound by the duties that apply to the college in relation to SEN students.[100] Furthermore, the administrator will be under the same obligations as the college in relation to the *Equality Act 2010*.[101] He said that when **clauses 14** and **22** are read together, it is clear that the education administrator's primary purpose is to achieve the special objective, which is to avoid or minimise disruption to the studies of the existing students of the FE body.[102]

Amendments 2 and 4 were both withdrawn.

Amendment 5 to **clause 22** would allow an education administrator who, under the eligibility outlined in clause 15, might not necessarily be an education specialist, to supplement his or her knowledge.

Speaking to this amendment, Gordon Marsden said that under **clause 22(1)** the education administrator would have substantial powers over the future of an FE body, its management and its students. Yet the Bill did not require the education administrator to know anything about the FE sector; under **clause 15**, they need only be an insolvency practitioner. He said that the NUS had been particularly anxious for the amendment to be tabled. Although it welcomed the Bill's insolvency provisions, the NUS thought it should be made clear in the Bill that the education administrator could seek advice.[103] For example, advice might be sought from chairmen or governors of FE bodies, or former FE commissioners.

Responding to the amendment, the Minister reiterated that it would be inconceivable that any education administrator would not consult key stakeholders, particularly the FE commissioner, student bodies, governors, parents and any relevant sponsor or other stakeholder involved with an insolvent college. Nevertheless, he agreed to reflect on the points made by the Opposition.

The amendment was withdrawn. The Opposition suggested that the Minister might also want to reflect on whether broader guidance notes

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98 PBC 1 December 2016 (afternoon), c193.
99 *Ibid,* c194.
100 *Ibid.*
101 PBC 1 December 2016 (afternoon), c194.
102 *Ibid*.
103 *Ibid,* c195.

should be published – ideally while the Bill was still progressing through the Commons – on some of the issues raised in respect of clause 22.[104]

Amendment 6 in **clause 22** would make provision for the needs of particular groups of existing students to be considered by an education administrator in pursuing the objective of an education administration. Again, this was a probing amendment.

Speaking to the amendment, Gordon Marsden argued that care leavers, parents, and "carers, carers of children, or young carers", as defined by the Care Act 2014, may be particularly vulnerable to disruption in their studies. The amendment was designed to signal to the education administrator the importance of taking those groups into account.[105]

Responding to the amendment, the Minister said that the special objective would require the education administrator to take action to avoid or minimise disruption to the studies of all existing students. To avoid students with special educational needs (SEN) being disproportionately affected by the insolvency of a college, the education administrator is required – as set out in **clause 22(3)** – to have particular regard to their needs. The Minister explained the Government's position as follows:

> We have had a lot of preliminary discussions about SEN students, because two thirds of care leavers are SEN students. We included provision for SEN in the Bill because of the particular difficulties such students face. There might be the need for specialist equipment or adaptations to teaching, or there might be a transport issue, and it is a requirement that the education administrator considers those in developing their proposals.[106]

With specific reference to clause 22(7), which refers to "special educational provision", and subsection (6), which refers to a student with special educational needs, the Opposition asked whether young carers or care leavers would automatically come within the scope of those clauses.

The Minister said they would not. However, he agreed to reflect on this issue. He said he needed more time to think about what might be done in the context of a college insolvency, to ensure that the Government lived up to its promise of being an effective corporate parent.[107] The amendment was withdrawn.

Following these probing amendments, Gordon Marsden drew attention to a couple of issues about **clause 22** that the ASCL and the Association of Employment and Learning Providers (AELP) had raised in their written evidence. Specifically, the ASCL has made the following point:

> FE and sixth form colleges were created as exempt charities by an Act of Parliament …. As such college corporations cannot resolve to remove their charitable status. ASCL …is concerned that applying aspects of the Insolvency Act that applies to companies

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104 PBC 1 December 2016 (afternoon), c196.
105 *Ibid,* c199.
106 *Ibid,* c194.
107 *Ibid,* c200.

> runs the risk of jeopardising that status. The Charities Commission does not appear on the list of those consulted … The primary duty of a corporation/governing body is to maintain the solvency of its college. Where it fails in that duty by negligence or worse, the Charities Commission has the power to investigate and bar governors/trustees from further service".[108]

The AELP made another point about the status of colleges following an education administration:

> […] this reclassification should be reviewed by the ONS. This is not merely a technical point. Some colleges have reportedly used their current 'independent' status to resist Area Review proposals which is well within their right. However, when AELP has argued that the Government is using a form of state aid to assist colleges … we have been told by the SFA that colleges are 'community assets' which justifies the further injection of public funding. The insolvency measures in the Bill would … appear to place colleges very much back in the public sector.[109]

The Opposition asked the Minister to address both issues.

The Minister confirmed that the Government had worked very closely with the Charity Commission during the development of the proposals in the Bill. On the specific issues raised by the ASCL and the AELP, he said:

> Charities that are companies and charitable incorporated organisations are all covered by insolvency legislation, and the *Company Directors Disqualification Act 1986* regime for disqualification applies to those organisations. The Charity Commission has been fully supportive of the approach that we have taken and sees it as being in line with the approach taken for trustees of charitable companies and charitable incorporated organisations.
>
> With regard to the AELP, the process of implementing a SAR would not automatically mean reclassification for an individual college, let alone the entire sector, because the Government would not be directly influencing the college's corporate policy.[110]

Clause 22 was ordered to stand part of the Bill.

Clause 23 and schedule 2 – transfer schemes

Box 7: Clause 23 – transfer schemes

Clause 23, with Schedule 2, gives the education administrator the power to make transfer schemes, which transfer the property, rights and liabilities of the FE body to another specified person or body.

Such schemes can be used to override some third party rights (For example, transferring a lease without the landlord's consent) in order to facilitate the transfer of students to another provider so as to achieve the special objective.

Amendment 7 to **Clause 23**, tabled by the Opposition, sought to ensure that FE bodies with a track record of accruing assets publicly, could not be transferred to a private company. There was a lengthy

[108] PBC 1 December 2016 (afternoon), c201.
[109] *Ibid.*
[110] *Ibid.*

debate on this amendment, followed by a **division**. The amendment was defeated 5 votes to 8.

Speaking to this amendment, Gordon Marsden said that Clause 23 raised some important issues about what would happen to the transfer of assets from a FE body to a private company. He referred to the Dissolution of Further Education Corporations and Sixth Form Colleges Corporations (Prescribed Bodies) Regulation 2012 and to information produced by the Department for Innovation and Skills (BIS)[111] on the dissolution of an FE corporation. This BIS document specified that assets should be transferred only to charitable bodies; "where the bodies are not charities then it must be transferred in accordance with the charitable purposes of the trust"[112] and provided a link to a list of prescribed bodies to which assets could be transferred, including sixth form colleges and governing bodies. It was on that point that the Opposition focused its remarks.

Gordon Marsden stated that many FE bodies had accumulated their estates (buildings etc.) as a result of financial funding or the ceding of lands by local authorities and other organisations. Apart from that, over the years large sums of public money had gone directly to support and build the estates of FE colleges. He explained the Opposition's concerns as follows:

> Given the genesis of those assets and their development over the years, we need to look with extraordinary care at any circumstances in which they might go into the private sector. Incidentally, that does not necessarily mean that we are saying that the bona fides of the private sector potential acquirers are bad. We simply recognise the fact that it would be the transfer of something that is largely of public value into the private sector without taking any account of the genesis and development.[113]

He also highlighted the fact that FE colleges do not only deliver further education; they also deliver higher education.[114]

Referring to a UCU document, Gordon Marsden said that the private equity funding sector was based on a relatively short-term view of providing management and initial capital to buy other companies and then taking them off the public share markets. He argued that it was a question not simply of whether it is a good thing to transfer a significant number of public sector assets to a private provider, "but of what the guarantees are, both financially and, more importantly, in terms of the nature of the body and the guarantees to the students and the people employed there".[115]

Reference was also made to the AOC view that, "private organisations should not be able to asset strip colleges' buildings and facilities, or pick and choose students or courses according to how much profit they

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111 Now the Department for Business, Energy and Industrial Strategy (BEIS).
112 PBC 1 December 2016 (afternoon), c202.
113 PBC 1 December 2016 (afternoon), c203.
114 *Ibid,* cc203-204.
115 *Ibid,* cc204-205.

might generate."[116] Gordon Marsden also highlighted an observation made by Unison that the Bill provides for the protection of students, but not the protection of staff.[117]

Summing up, Gordon Marsden said that the minimum the Opposition would like to see from the Government was a provision in the Bill that the education administrator may not transfer the assets of any FE body to a private company when more than half of the funding to acquire the assets came from public funds.[118] Kelvin Hopkins supported the amendment but thought that the Government should go further and prevent such transfers from happening altogether. He argued that it would be unacceptable to allow assets built up by the public sector over decades to be handed over to private speculators without any benefit to the public sector.[119]

Responding to the amendment, the Minister said that college insolvency was likely to be a very rare event, so the portion of public assets that might be transferred to a private sector company was likely to be small. The priority had to be protecting students. Such a transfer would be right if the education administrator was fulfilling his special objective and thought that it would protect the students.[120] On the technical point raised by the Opposition, the Minister said that on solvent dissolution, assets must go to a charity that has educational purposes. In insolvency in a SAR, transfers go to bodies prescribed in regulations, all educational, which can include private education providers or local authorities.

Explaining the intended impact of transfer schemes, the Minister said:

> […] transfer schemes are a feature of other special administrative regimes. They allow for assets to be transferred to another body without the agreement of a third party which would otherwise be necessary – for example, leases without the consent of the landlord. That means that the scheme can be used to prevent a third party from blocking a transfer that is intended to facilitate the achievement of the special objective. The special administration regime's delivery of the public policy objective – in this case the protection of students – should not be subject to third-party agreement. The education administrator will use a transfer scheme only if that is necessary to achieve the special objective.
>
> It is important to note that the Secretary of State must approve any such scheme before it is used. Even if the education administrator does not use a transfer scheme, it is open to the Secretary of State to challenge the administrator if he or she feels that the administrator is not performing his or her duty to protect students.[121]

By way of further clarification, the Minister said that the FE body itself could not be sold; it was a statutory body. If it became insolvent and

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116 PBC 1 December 2016 (afternoon), cc205-206.
117 *Ibid,* c206.
118 *Ibid.*
119 *Ibid*, cc207-208.
120 *Ibid,* c208.
121 *Ibid,* cc208-209.

had to close, the protection of students had to come first. Therefore, the sale of the asset would be to protect students first and creditors second.[122] He assured the Opposition that there would be no haemorrhaging of publicly funded assets to the private sector.[123]

Gordon Marsden highlighted the possible impact on an area of a transfer of public assets. He said that a college that had tens of millions of pounds' worth of assets built up in a particular area, and was crucial to the local community, could simply be forwarded on to a private provider.[124] He argued that the issue at stake was whether private providers should be allowed automatically to take on valuable assets that have been accrued via the public sector in the event of an insolvency.

When pressed to a vote, the amendment was defeated (5 to 8 votes). Clause 23 was ordered to stand part of the Bill. Schedule 2 was agreed to, and clause 24 was also ordered to stand part of the Bill.

Schedule 3: conduct of education administration - statutory corporations

Box 8: Schedule 3: Conduct of education administration: statutory corporations

Schedule 3 contains provisions about how an education administration is to be conducted where the FE body is a statutory corporation.

It does this by applying particular provisions of the IA 1986, including certain provisions of Schedule B1 to that Act which sets out the provisions in relation to an ordinary administration, and modifying them to make them work for an education administration of a FE body that is a statutory corporation.

Government **amendments 20** to **24** in **Schedule 3** were all minor and technical in nature, and made some general modifications to the provisions of the IA 1986 related to the SAR.

Amendment 20 and amendment 21 were intended to make it clear that, where the context requires, a reference to the director of a company in the insolvency legislation applied by Schedule 3 can be read as a reference to a person who is a member of the FE body or the principal of the relevant institution rather than both. Amendments 22 and 23 have a similar purpose in respect of an officer of a company.

All five amendments were agreed without debate.

Government **amendment 25** to **Schedule 3**, which corrects a cross-referencing error, was also agreed without debate. In brief, **clause 22** contains a requirement for the education administrator to carry out their functions to achieve the special objective and, so far as is consistent with the special objective, to do so in a way that achieves the best result for the FE body's creditors as a whole. Without amendment 25, creditors would be unable to challenge the way in which the education administrator carried out his duties, which was contrary to what the Government intended.[125]

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122 PBC 1 December 2016 (afternoon), c209.
123 *Ibid,* c210.
124 *Ibid.*
125 *Ibid,* c212.

Schedule 4: conduct of education administration – companies

Box 9: Schedule 4: Conduct of education administration - companies

Schedule 4 contains provisions about how an education administration is to be conducted where the FE body is a company.

It does this by applying particular provisions of the IA 1986 including certain provisions of Schedule B1 to that Act, which set out provisions relating to ordinary administrations for companies, and modifying them to make them work for an education administration of a company which is conducting an institution designated under section 28 of the *Further and Higher Education Act 1992*.

Government **amendments 26** and **27** in **Schedule 4,** both technical amendments, were agreed without debate. In their effect, the amendments were the same as amendments 24 and 25 to Schedule 3. It was necessary to make the amendments twice because Schedule 3 relates to FE bodies, which are statutory corporations, whereas Schedule 4 relates to those that are companies.

There was no debate, and clauses 25 to 29 of the Bill were ordered to stand part of the Bill.

Clause 30: education administration rules

Box 10: Clause 30: Education Administration Rules

Clause 30 applies the power to make rules under section 411 of the IA 1986.

The effect of this would be that the Secretary of State would have the power to make detailed procedural rules for an education administration in the same way that they are made for ordinary administration.

In the stand part debate on **clause 30,** Gordon Marsden highlighted the fact that the Government had not prepared draft regulations to accompany the Bill, instead, it sought to rely on a published policy statement. The Minister confirmed that regulations would be published, but it would take quite a long time given that there were many pages of insolvency legislation.[126]

Explaining the need for clause 30, the Minister said that it would modify the power to make rules under sections 4 and 1 of the IA 1986. It would allow detailed rules about the education administration for FE bodies to be made in the same way as they are for companies. However, the power would only permit rules to be made to give effect to the chapter of the Bill that establishes an SAR or FE bodies, and rules could not be made for any wider purposes. Clause 5 would deal with the rules needed for other insolvency procedures for FE colleges. It would apply the company insolvency rules and would allow the Government to modify them as necessary.

In answer to a question from the Opposition, about whether there would be consultation with the various stakeholders (the FE bodies, the AOC, the Collab Group and others) in the drafting of the new

[126] PBC 1 December 2016 (afternoon), c213.

education administration rules, the Minister confirmed that there would be full consultation all the way through.[127]

Clause 30, together with clauses 31 to 36 were all ordered to stand part of the Bill.

Clause 37: disqualification of officers

Box 11: Clause 37: disqualification of officers

Clause 37 would give the Secretary of State the power, in relation to FE corporations and sixth form college corporations, to make regulations that have the same or similar effect to the *Company Directors Disqualification Act 1986*.

This would mean that, like company directors, members (i.e. governors) of those corporations could be disqualified from acting as such in the future. In addition, the power would allow the Secretary of State to make provision so that when a person is disqualified as a director of a company they could also be prohibited from acting as a member of an FE corporation or sixth form college corporation.

Amendment 8 in **clause 37**, tabled by the Opposition, sought to ensure that a list of disqualified officers was made publicly available. It was another probing amendment.

The Minister said that wrongful[128] and fraudulent trading[129] are provisions of the insolvency law that would be applied to governors and others involved in running FE bodies that are statutory corporations, in the same way as they apply to directors of, and those who run, companies.

The Minister rejected the need for the amendment. He explained that there was already provision in the Company Directors Disqualification Act 1986 (CDDA) for a register of disqualification orders to be kept by the Secretary of State and for that register to be open to public inspection, and clause 37 would allow the Government to replicate provisions of the CDDA into an education administration.[130]

The amendment was withdrawn and clause 37 was ordered to stand part of the Bill.

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127 PBC 1 December 2016 (afternoon), c214.

128 'Wrongful trading' provisions, contained in section 214 of the Insolvency Act 1986, give the court a discretion to declare that a director of a company in insolvent liquidation or administration may be "liable to make such contribution (if any) to the company's assets as the court thinks proper". Such a declaration may be made if the court is satisfied that the director knew (or should have known) that, at some time before insolvency proceedings began, the company had no reasonable prospect of avoiding going into insolvent liquidation or administration; and once it had become clear to that director he or she did not take every step to minimise the potential loss to creditors that they should have taken.

129 Fraudulent trading is when a company carries on business operations with the intent of purposefully deceiving and defrauding its creditors.

130 PBC 1 December 2016 (afternoon), c216.

4.3 Further Education: information (clause 38)

Clause 38 provides for the provision of information to the Secretary of State by FE providers to continue following any devolution of the Adult Education Budget to combined authorities.

A Government amendment was agreed to remove subsection 2 of clause 38. This subsection provided for the duty to provide information to not include education for people aged under 25 with an Education, Health and Care Plan. The Minister explained that the clause as originally drafted inadvertently narrowed the scope of the duty on FE providers under the *Further and Higher Education Act 1992* and the amendment corrected this.[131]

4.4 New clauses 1 and 2

Kelvin Hopkins moved **new clause 1**, which would require FE bodies to include a person with professional financial qualifications in its senior management team. **New clause 2**, also moved by Mr Hopkins, would require FE bodies to seek to ensure that their governing bodies include at least two members with professional financial qualifications.

Mr Hopkins highlighted the importance of colleges being well managed in financial matters and argued that, "if one wants to avoid insolvency, the best thing to do is ensure that one has someone with the skills to ensure one does not get into that situation in the first place." In response, Mr Halfon stated that he was "wary of imposing such a measure" but would "commit to continue working with the sector to strengthen the financial acumen of governing bodies and the capability of financial directors." The new clauses were withdrawn.[132]

New clauses 3, 4 and 5 were debated in earlier groups of amendments and are discussed in section 4.1 of this briefing. None of the new clauses were put to a decision.

131 PBC 1 December 2016 (afternoon), cc216-7.
132 *Ibid*, cc217-20.

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