

SKILLS AND POST-16 EDUCATION BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as introduced in the House of Lords on 18 May 2021 (HL Bill 5).

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

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Overview of the Bill

1 The Skills and Post-16 Education Bill (“the Bill”) includes measures that:

- Provide for a statutory underpinning for local skills improvement plans, introducing a power for the Secretary of State for Education to designate employer representative bodies to lead the development of the plans with duties on providers to co-operate in the development of and then have regard to the plans;
- Introduce a duty for all further education corporations, sixth form college corporations and designated institutions to review how well the education or training provided by the institution meets local needs, and assess what action the institution might take to ensure it is best placed to meet local needs;
- Introduce additional functions to enable the Institute for Apprenticeships and Technical Education (“the Institute”) to define and approve new categories of technical qualifications that relate to employer-led standards and occupations in different ways, and to have an oversight role for the technical education offer in each occupational route, including mechanisms to manage proliferation;
- Ensure that the Institute and the Office of Qualifications and Examinations Regulation (“Ofqual”) maintain a streamlined collaborative system for approval and regulation of technical qualifications;
- Introduce specific provision reflecting lifelong learning entitlement policy which aims 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;
- Enable the Secretary of State for Education to make regulations for the purpose of securing or improving the quality of Further Education (“FE”) initial teacher training;
- Put beyond doubt the Office for Students’ ability to assess the quality of higher education providers in England, and make decisions on compliance and registration by reference to minimum requirements for quality;
- 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 indicate which providers have met conditions that are designed to prevent or mitigate risks associated with the disorderly exit of a provider from the provision of education and training;
- Extend statutory intervention powers applicable to further education corporations, sixth form college corporations and designated institutions under the Further and Higher Education Act 1992. This measure will 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; and
- Make amendments to clarify and improve the operation of the FE insolvency regime for further education bodies, relating to the use of company voluntary arrangements, transfer schemes and the designation of institutions.

Policy background

- 2 In addition to the following section, further policy background is included in the clause commentary.
- 3 The Bill forms the legislative underpinning for the reforms set out in the Skills for Jobs White Paper and aims to improve the functioning of the skills and post-16 education system and support the introduction of a Lifetime Skills Guarantee. The Bill includes measures to address recommendations made in the Review of Post-18 Education and Funding, build on the aims of the Review of Post-16 Qualifications at Level 3 and below, and support implementation of the Government's reforms to technical education qualifications, such as the introduction of T Levels and higher technical qualifications.

Skills for Jobs White Paper

- 4 A skills shortage in this country has limited the number of people working in important jobs such as engineering and health and social care. This has held the UK economy back, leaving the country less productive and less competitive compared to some international peers. It has also left people unable to realise their ambitions and fulfil their potential, wherever they live in the country. These problems have been exacerbated by COVID-19, which has hit the economy and disproportionately affected young people.
- 5 The *Skills for Jobs: Lifelong Skills for Opportunity and Growth* White Paper set out the Government's plan to reform the post-16 skills system and address these challenges. The White Paper set out five objectives:
 - i. Putting employers at the heart of post-16 skills
 - ii. Providing the advanced technical and higher technical skills the country needs
 - iii. A flexible Lifetime Skills Guarantee
 - iv. Responsive providers supported by effective accountability and funding
 - v. Supporting outstanding teaching
- 6 The Bill is intended to support these objectives by introducing measures that affect individuals, providers, regulators, businesses and teachers. The range of measures aims to provide flexibility and protection for the learner, a skills system linked to employer-led standards, and high-quality training. The specific measures are detailed in the Bill Overview section of these notes.
- 7 The Bill is one part of the wider skills reform agenda and the Government is consulting separately on other aspects of the White Paper.
- 8 Additional measures in the Bill aim to improve the overall functioning of the skills and post-16 education system. This includes providing improvements associated with the operation of the FE insolvency regime and making specific provision for the Office for Students' methods of assessing quality as part of its regulation of Higher Education ("HE") providers in England.

Review of Post-16 Qualifications at Level 3 and below in England

- 9 In 2019, the Government launched a review of post-16 qualifications at level 3 and below and held a consultation. The second of two consultations closed in early 2021; this covered qualifications at level 3 that are approved for funding for providers in England for students aged 16 and over, with the exception of GCSEs, A levels and Functional Skills.
- 10 The review set out an ambition for a fully coherent technical education system with clear pathways for progression to specific occupations and clear, high-quality progression routes to prestigious higher technical education that lead to skilled occupations with good economic outcomes.
- 11 The Government's intention is that the Institute takes a leading role in approving level 3 technical qualifications that meet new quality criteria, are based on employer-led standards, and have evidence of employer demand.

Review of Post-18 Education and Funding

- 12 In 2018, the Government launched the Review of Post-18 Education and Funding, which looked at how to ensure that post-18 education gives everyone a genuine choice between high-quality technical and academic routes, that students and taxpayers are getting value for money, and that employers can access the skilled workforce they need.
- 13 The Government's interim conclusion of the reviews addresses some of its key recommendations. The Government has delivered on several of these recommendations, including a new level 3 entitlement, investment in the further education estate, and increases to 16-19 funding. Measures in the Bill take further steps towards the implementation of the report's recommendations. These include introducing a lifelong loan entitlement, so that learning can be more flexible, and strengthening the link between qualifications and employer-led standards.
- 14 The Government will set out a full response and final conclusion to the Review of Post-18 Education and Funding at the next Comprehensive Spending Review.

Legal background

- 15 The following significant legislation is referenced by the Bill. Explanation on how previous legislation is referenced, if required, is given in the commentary on provisions in the Bill.
 - i. Apprenticeships, Skills, Children and Learning Act 2009
 - ii. Education Act 1996
 - iii. Education Act 1997
 - iv. Education Act 2002
 - v. Employment and Training Act 1973
 - vi. Further and Higher Education Act 1992
 - vii. Higher Education and Research Act 2017
 - viii. Insolvency Act 1986
 - ix. Teaching and Higher Education Act 1998

Territorial extent and application

- 16 Clause 26 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law of. The extent of a bill can be different from its application. Application is about where a bill produces a practical effect.
- 17 All provisions of the Bill extend to England and Wales and, except where indicated below, apply only to England.
- 18 Clauses 11, 14 and 15 in the Bill extend to Scotland and Northern Ireland.
- 19 The provisions in clauses 14-15 and clauses 23-25 also apply to Wales. Clause 14 applies to Wales, because it modifies section 22 of the Teaching and Higher Education Act 1998 in a manner which impacts on functions which have been devolved to the Welsh Ministers, and those which are exercisable concurrently by Welsh Ministers and the Secretary of State.
- 20 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the consent of the legislature concerned.
- 21 For clauses 23 and 24 these are reserved matters. For clause 25, it has been agreed a legislative consent motion will not be required. It is anticipated that a legislative consent motion will be required for clause 14 for Wales. It is not currently considered that a legislative consent motion will be required in relation to clauses 14 and 15 in relation to Scotland and Northern Ireland.
- 22 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Skills and Education for Work

Chapter 1: Education and Training for Local Needs

- 23 This chapter aims to create a framework to facilitate stronger employer and provider engagement in local skills systems. This framework will ensure employers have more influence over the skills system, which will assist providers to respond to employers' skills needs and reshape their offer. Employer representative bodies will work with employers, providers and local stakeholders to develop local skills improvement plans that set out the key changes needed to ensure technical education and training is more responsive to local labour market skills needs.
- 24 A new duty will ensure that all colleges and designated institutions regularly review the provision of education provision in an objective and holistic way, having regard to local needs, encompassing the needs of both learners and employers within a local area. Creating a statutory duty will strengthen accountability, and will ensure that aligning provision with local needs is a priority for governing bodies.

Local skills improvement plans

Clause 1: Local skills improvement plans

- 25 This clause provides for local skills improvement plans, introducing duties on providers to co-operate with designated employer representative bodies to develop local skills improvement plans and have regard to the plans once they have been developed.
- 26 Subsections (1), (2) and (3) provide that relevant providers must co-operate with a designated employer representative body in the development of a local skills improvement plan for a specified area.
- 27 Subsection (4) sets out provisions for relevant providers to assist to keep plans under review and updated as required, and to have regard to the latest plan published by the Secretary of State when making decisions on relevant provision in the specified area.
- 28 Subsection (5) sets out that relevant providers should take account of guidance published by the Secretary of State in developing local skills improvement plans.
- 29 Subsection (6) sets out what a local skills improvement plan is and subsection (7) sets out what an approved local skills improvement plan is.

Clause 2: Designation of employer representative bodies

- 30 This clause outlines how employer representative bodies will be designated by the Secretary of State to develop local skills improvement plans.
- 31 Subsection (1) sets out the criteria by which the Secretary of State will designate employer representative bodies to develop and keep local skills improvement plans under review. This includes having the capability to perform in an effective and impartial manner, being reasonably representative of employers within the specified area, and consenting to designation.
- 32 Subsection (2) provides for the Secretary of State to set appropriate terms and conditions with subsection (5) providing for changes in terms and conditions.
- 33 Subsections (3) and (4) set out that the Secretary of State must notify the employer

representative body of its designation and publish a notice before the designation takes effect. This includes what should be contained within the notice including name, area specified, effective date, and any terms and conditions.

Clause 3: Removal of Designations

- 34 This clause enables the Secretary of State to remove the designation of an employer representative body and confirms the conditions for any removal. The conditions are failure to continue to meet the criteria for designation, non-compliance with the relevant guidance issued by the Secretary of State, and where the Secretary of State considers that the removal is necessary or expedient. The clause also sets out how a removal will take effect.
- 35 Subsections (2) (3) and (4) set out that a written notice must be published by Secretary of State when removing a designation and the information that should be contained within the notice.

Clause 4: Interpretation

- 36 This clause outlines the definitions used within clauses 1, 2 and 3.
- 37 Subsection (1) enables the Secretary of State by regulation to add further providers to the definition of relevant providers.

Further education institutions: duty in relation to local needs

Clause 5: Institutions in England within the further education sector: local needs

- 38 This clause inserts a new section 52B into the Further and Higher Education Act 1992.
- 39 Subsection (1) of the new inserted section places a duty on governing bodies of general FE colleges, sixth form colleges and designated institutions (as described in Chapter II of Part 1 of the Further and Higher Education Act 1992) to keep under review how well the education or training provided meets local needs, and to consider what action the institutions might take to meet local needs better.
- 40 The Secretary of State for Education will publish guidance for governing bodies on how to carry out the review. Subsection (2) of inserted section 52B requires the governing body to have regard to that guidance.
- 41 Subsection (3) of inserted section 52B requires the governing body to publish the review on its website.

Chapter 2: Technical Education Qualifications etc

- 42 This chapter extends and refines the existing statutory framework for the approval and regulation of technical education qualifications. The clauses introduce new functions for the Institute for Apprenticeships and Technical Education (“the Institute”) to support reforms set out in the Post-16 Qualifications Review and Skills for Jobs White Paper. The functions enable the Institute to approve a broader range of technical education qualifications and to keep under review the education and training within its remit to ensure the overall coherence of the system. In addition, these clauses embed the collaborative relationship between Ofqual and the Institute in exercising their respective functions in relation to technical education qualifications.
- 43 The clauses amend the Apprenticeships, Skills, Children and Learning Act (“the 2009 Act”). That Act was amended by the Deregulation Act 2015 (in relation to the approved English apprenticeships reforms) and the Enterprise Act 2016 (to, among other things, establish the Institute). The Institute was established in April 2017 with apprenticeships functions. The Technical and Further Education Act 2017 then further amended the 2009 Act to extend the Institute’s remit to include technical education.

Functions of the Institute for Apprenticeships and Technical Education

Clause 6: Functions of the Institute: oversight etc.

- 44 This clause amends the 2009 Act. Subsection (2) amends section ZA2(6) to include in the Institute's remit other technical education and training which supports entry to occupations published under ZA10. This enables the Institute to play a role in relation to education and training which links to employer-led standards but does not lead to a qualification, including (under the Institute's powers in Schedule A1 of the 2009 Act) publishing guidance on how such provision could align with employer-led standards.
- 45 Subsection (3) inserts new section ZA2A into the 2009 Act, which provides the Institute with an oversight function in relation to the technical education and training within its remit. It requires the Institute to keep under review such education and training, and the effect of its functions on the range and availability of that education and training. In exercising this duty, the Institute will consider the overall coherence of technical education provision within the system to ensure that the range of apprenticeships, qualifications and other technical education is appropriate. The Institute may report matters arising to the Secretary of State.
- 46 Subsection (4) amends section ZA3 to state that the Institute's power to provide advice and assistance to the Secretary of State includes advice and assistance in relation to technical education qualifications.

Technical education qualifications

Clause 7: Additional powers to approve technical education qualifications

- 47 This clause amends the 2009 Act to provide the Institute with additional powers to approve technical education qualifications. Subsection (2) inserts new sections A2D1 and A2D2. Section A2D1 provides an overview of the scheme for approval of technical education qualifications by the Institute. It sets out two routes for approval of technical education qualifications by the Institute:
 - i. The route under section A2D3 provides for qualifications that can lead to the award of a technical education certificate by the Secretary of State and in relation to which copyright in relevant course documents can transfer to the Institute (for example, T Levels).
 - ii. The other route (under new section A2D5 inserted by subsection (4)) provides for the approval of new categories of technical education qualification where the Institute does not consider it appropriate for these categories of qualification to be approved under A2D3. Qualifications approved under this route are those which do not lead to the award of a technical education certificate by the Secretary of State and in relation to which no copyright may transfer to the Institute on approval.
- 48 New section A2D2 provides for the Institute to specify the categories of technical education qualification in relation to England that will be approved under new sections A2D3 and A2D5. It sets out requirements for the Institute to publish information showing the categories and their associated requirements. For the categories of qualification approved under section A2D5, the Institute is also required to identify and publish information showing the test against which it will approve qualifications within that category. The test must be one of the three tests set out in new section A2D5(3)-(5). Section A2D2(7) places a requirement on the Institute to consult prior to specifying the categories, including consultation with the Secretary of State and other appropriate persons (for example, employers).
- 49 Subsection (3) amends section A2D3 (as renumbered) of the 2009 Act as a consequence of the provision for the Institute to specify categories of technical education qualification.

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- 50 Subsection (4) inserts new section A2D5 which gives the Institute the power to approve technical education qualifications falling within the categories that will not be approved under section A2D3. It sets out the circumstances in which the Institute may approve such qualifications, and the tests that it must apply. To be approved, a qualification must meet the employer demand test (A2D5(6)) as well as the appropriate test for its category (A2D5(3)-(5)). The tests under sections A2D5(3)-(5) provide for the approval of qualifications that relate to employer-led standards in different ways. They set out the outcomes that must be attained when a person obtains the qualification. The outcomes are contained in employer-led standards or relate to occupations that are published by the Institute.
- 51 New sections A2D6 and A2D7 allow the Institute to make any arrangements that it considers appropriate to secure that technical education qualifications are available for approval. The sections provide the supplemental powers that the Institute needs to run its scheme of qualifications approval, including the ability to withdraw approval and (section A2D6 (4)) a requirement to publish the matters it will take into consideration when making decisions about approval and or withdrawal under either section A2D3 or new section A2D5. These criteria may differ depending on the category or occupation that the technical education qualification relates to. New section A2D7 sets out requirements in relation to publication of information regarding approved qualifications. This includes information about how approved qualifications relate to occupations published under section ZA10(5). Under section A2D7 (3) the Secretary of State may make regulations authorising the Institute to charge fees in connection with approvals.
- 52 New section A2D8 places a duty on the Institute to review approved technical education qualifications at regular intervals and to publish information about when the reviews will occur. In conducting such reviews, the Institute will determine whether each qualification should continue to be approved, whether approval should be withdrawn, or whether qualifications should be revised.
- 53 New section A2D9 allows the Institute to impose a moratorium on the approval under A2D5 of qualifications of a particular kind, should it determine that there is an appropriate number of qualifications of that kind approved. It sets out a requirement for the Institute to consult the Secretary of State in relation to the introduction and ending of a moratorium. The purpose of this power is to give the Institute an additional function to manage the proliferation of technical education qualifications.
- 54 Subsections (5) and (6) make amendments to the 2009 Act which are consequential on there now being more than one scheme for approval.
- 55 Subsection (7) inserts new section A12 which provides for interpreting chapter A1 of the 2009 Act.

Clause 8: Functions of the Institute: availability of qualifications outside England

- 56 This clause inserts new section A2IB into the 2009 Act which allows the Institute to provide advice and assistance, and take steps it considers appropriate, in order that T Levels could be made available in areas of the UK other than England as well as internationally.

Clause 9: Technical education qualifications: co-operation between the Institute and Ofqual

- 57 This clause inserts new section A2D11 into the 2009 Act which establishes a cooperative framework for the approval, regulation and other oversight of technical education qualifications falling within the functions of the two bodies.
- 58 New subsection (1) requires Ofqual and the Institute to cooperate in exercising their respective statutory functions in relation to technical education qualifications.

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- 59 New subsection (2) empowers either body to provide advice and assistance to the other, and requires either body to have regard to any advice and assistance it receives.

Clause 10: Application of accreditation requirement in relation to technical education qualifications

- 60 This clause amends section 138 of the 2009 Act to ensure that individual technical education qualifications may not be subject both to accreditation by Ofqual and approval by the Institute under their respective powers in the 2009 Act.
- 61 Subsection (a) takes a qualification out of scope for accreditation by Ofqual if it is a technical education qualification that has been approved by the Institute, or if the Institute has notified Ofqual that approval is being considered but a decision has not yet been made.
- 62 Subsection (b) requires that where the Institute has notified Ofqual that an approval is being considered, it must also notify Ofqual of its decision.

Clause 11: Information sharing in relation to technical education qualifications

- 63 This clause inserts new section 40AB into the 2009 Act. It supports effective collaboration between Ofqual and other bodies with functions in relation to technical education qualifications, by introducing information-sharing provisions similar to those relating to the Institute under section 40AA of the 2009 Act.
- 64 It empowers Ofqual to share information in relation to technical education qualifications with the Secretary of State, Ofsted and the Office for Students, as well as with other bodies that the Secretary of State may prescribe. It also allows these bodies to share technical education information with Ofqual.
- 65 This information sharing may support the technical education functions of Ofqual or the other relevant bodies.

Clause 12: Technical education qualifications: minor and consequential amendments

- 66 This clause inserts new section ZA8A into the 2009 Act which ensures that there is a consistent interpretation of certain terms throughout the relevant chapters of the Bill. Subsections (3) to (10) make a number of minor amendments to the 2009 Act and to other existing legislation to ensure that technical education qualifications approved under the new scheme are appropriately referenced alongside those approved under the existing scheme.

Clause 13: Renumbering of provisions relating to technical education qualifications

- 67 This clause renumbers sections of the 2009 Act to ensure the numbering is easier to follow after insertion of new provisions.
- 68 Subsections (3) to (7) make minor amendments to the 2009 Act as a consequence of renumbering.
- 69 Subsection (8) clarifies that the renumbering does not alter the effect of anything done under a renumbered provision, and to clarify that references elsewhere to the previous provisions, should be taken as references to the renumbered provisions.

Chapter 3: Lifelong Learning

- 70 This chapter makes changes to primary legislation to make specific provision relating to the introduction of a Lifelong Loan Entitlement, to support reforms set out in the Skills for Jobs White Paper. It makes changes to the regulation-making powers of the Secretary of State to provide student finance in order to make specific provision for funding of modules of higher education and further education courses and for prescribing an overall maximum amount of

funding that learners can access, and to make clear that maximum amounts in relation to any loan or payment can be provided for on a basis other than academic year. They also amend the definition of “higher education course” for the purposes of the Higher Education and Research Act 2017 (“HERA 2017”) to make it clear that the regulatory regime provided for under Part 1 of HERA 2017 applies to modules of courses, whether or not undertaken as part of such a course.

Clause 14: Support for lifelong learning

- 71 This clause inserts new section 28A into the Teaching and Higher Education Act 1998 (“THEA 1998”) to make modifications to Chapter 1 of Part II of THEA 1998 which allows for financial provision for higher and further education.
- 72 Section 22(1) of THEA 1998 provides the Secretary of State with a wide regulation-making power to make regulations authorising or requiring him to make grants or loans for any prescribed purposes to eligible students in connection with their undertaking higher or further education courses designated by or under regulations. Section 22(2)(a) to (k) then provides a non-exhaustive list of the matters which regulations made under section 22 may provide in particular.
- 73 Section 28 provides that “higher education courses” and “further education courses” have the meaning given by regulations made under section 22.
- 74 Clause 14 inserts new section 28A after section 28 of THEA 1998. New inserted section 28A modifies sections 22, 23 and 28 of THEA 1998 as follows:
 - i. Subsection (1)(a) modifies section 22(1) of THEA 1998 to have effect as if to insert specific reference to modules of higher education and further education courses.
 - ii. Subsection (1)(b) modifies subsections (2) to (3) and (4B) of section 22 of THEA 1998 so that references to “a higher education course or a further education course” have effect as if to include specific references to modules of a higher education course or further education course. Subsection (2) makes the equivalent modification to the reference in section 23(1)(b) to courses, and subsection (3) makes the equivalent modifications to the references in section 28(2) to “courses”.
 - iii. Subsection (1)(c) modifies subsection (2) of section 22 of THEA 1998 to have effect as if to insert a new paragraph (ba) which makes specific provision for regulations made under section 22 to prescribe or provide for the determination of an overall maximum (“lifetime limit”) that may be available to learners over their lifetime.
 - iv. Subsection (1)(d) modifies subsection (2) of section 22 of THEA 1998 to have effect as if there were inserted new paragraph (ca), allowing regulations to provide for two or more modules to be treated as a single module for a purpose of the regulations. A module or course will be funded only if it is designated.
 - v. Subsection (1)(e) modifies section 22 of THEA 1998 to have effect that after subsection (2) there were inserted new subsections (2ZA) and (2ZB). New subsection (2ZA) enables the Secretary of State to define the meaning of “module” in relation to a higher or further education course in regulations, and provides some examples of what the definition may include.
 - vi. New subsection (2ZB) makes clear that the Secretary of State’s powers to prescribe maximum amounts in relation to loans or payments (as provided for under section 22(2)(b) of THEA 1998) can be provided for otherwise than in relation to an academic year.

- vii. Subsection (1)(f) modifies section 22 of THEA 1998 to have effect that after subsection (2A) there were inserted new subsection (2B). This makes it clear that a life time limit in relation to a person provided for in subsection (2)(ba) may be amended by the Secretary of State.
- viii. Subsection (2) provides that section 23 of THEA 1998, in so far as it relates to the Secretary of State’s regulation making powers under section 22, has effect as if a reference in subsection (1)(b) to courses included a reference to modules of higher or further education courses.
- ix. Subsection (3) provides that in subsection (2) of section 28 of THEA 1998 references to courses shall include modules, in so far as it confers a power exercisable by the Secretary of State.

75 Clause 14(2) has the effect that the references to “alternative payments” which are to be treated as inserted by new section 28A(1) will not have effect until section 86 (2) of HERA 2017 come into force.

Clause 15: Lifelong learning: amendment of the Higher Education and Research Act 2017

- 76 This clause amends section 83(1) of HERA 2017 to substitute a new definition of higher education course to mean a course of any description mentioned in Schedule 6 to the Education Reform Act 1988, or a module of such a course (whether or not undertaken as part of such a course).
- 77 The Government intends to bring forward amendments in relation to this clause including consequential amendments to HERA 2017, by committee stage.

Part 2: Quality of Provision

Initial Teacher Training for Further Education

- 78 The Government aims to secure and improve the quality and consistency of initial teacher training for the FE sector “ITT (FE)” as committed to in the Skills for Jobs White Paper. This enabling clause will give the Secretary of State powers to introduce measures through secondary legislation relating to the quality, management and delivery of ITT (FE) provision. It is not intended to place requirements on trainee teachers, either individually or collectively. This clause gives ministers reserve powers to bring about required changes and improvements to the current system if they cannot be achieved through non-legislative means.

Clause 16: Initial teacher training for further education

- 79 This clause provides a reserve power for the Secretary of State to make regulations to improve or secure the quality of initial teacher training for the FE sector in England “ITT (FE)”.
- 80 Subsection (1) enables the Secretary of State to make regulations to secure or improve the quality of ITT (FE) courses. Subsection (2) provides examples of measures that such regulations may provide for.
- 81 Subsection (3) provides context for subsection (2)(c), relating to the Secretary of State’s power to make regulations prohibiting the provision of specified ITT (FE) courses.
- 82 Subsection (4) contains general provision for regulations made under this power.
- 83 Subsections (5) and (6) provide that the first time regulations are enacted under this power, the affirmative procedure will apply, but subsequent regulations under this power will be made using the negative resolution procedure.

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84 Subsection (7) provides definitions for key terms used in this clause.

Quality Assessments of Higher Education

85 This chapter makes explicit the ability of the Office for Students (OfS) to assess the quality of higher education provided by registered higher education providers in England by reference to student outcomes. It clarifies the OfS's ability to determine minimum requirements for quality by reference to expected levels of student outcome which may apply to all English higher education providers in the same way, and makes clear that the OfS is not required to determine different minimum expected levels to take into account student characteristics and other specified matters.

Clause 17: Office for Students: power to assess the quality of higher education by reference to student outcomes

86 This clause amends section 23 of HERA 2017, which makes provision for the assessment of the quality of and the standards applied to higher education by the Office for Students (OfS).

87 Subsection (4) provides that the OfS may take into account student outcomes when assessing the quality of higher education provided by a registered higher education provider.

88 Subsection (5) provides that student outcomes can be measured by any means that the OfS considers appropriate, including by reference to course continuation rates, completion rates, and progression of students to further study or employment.

89 Subsection (6) provides that the OfS may determine and publish minimum expected levels for particular measures of student outcomes which all institutions are expected to meet.

90 Subsection (7) makes clear that the OfS is not required to determine and publish different levels to reflect differences in student characteristics, different institutions or types of institution, different subjects or courses, or any other such factor.

91 Subsection (8) provides that when considering the student outcomes of an institution, the OfS may take account of whether the institution has met the minimum expected outcome level which is applicable to it.

Part 3: Protection for Learners

Chapter 1: Regulation of Post-16 Education or Training Providers

92 These clauses enable the Secretary of State to make regulations to provide for a list of post-16 education or training providers, in particular Independent Training Providers ("ITPs"), to indicate which providers have met conditions that are considered to prevent or mitigate risks associated with the disorderly exit of a provider from the provision of education and training. Education or training is funded by various funding authorities.

93 Regulations made under the clauses ensure that the relevant funding authorities may not enter into funding arrangements or allow sub-contracting with a relevant provider who is not on the list and that such funding arrangement and sub-contracts must allow for termination should a provider cease to be on the list. 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.

94 The transfer to another provider can take time and can be extremely disruptive and increase the risk of learner disengagement, as complex cases can take over 12 months to find a new provider. These provisions are intended to ensure that there is a consistent set of requirements placed on providers in order to protect learners and public funds, even where the education

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as introduced in the House of Lords on 18 May 2021 (HL Bill 5)

or training is funded by local commissioning bodies or through subcontracts from directly funded providers.

Funding arrangements with post-16 education or training providers

Clause 18: List of relevant providers

- 95 This clause provides the Secretary of State with a power to make regulations in relation to the keeping of a list of certain post-16 education or training providers which meet specified conditions (see subsection (7) for examples). The Secretary of State can also make provision in connection with the keeping of the list.
- 96 Subsection (2) sets out that providers which will need to be on the list are those which will provide relevant education or training for those over compulsory school age and these subsections list the provider types which would be excluded from a requirement to be on the list.
- 97 Subsection (3) confirms the types of education and training in scope of the legislation, which includes further education (Adult Education Budget funded provision, 16-19 study programmes and any other further education), apprenticeships, traineeships and provision eligible to be funded through loans for designated further education courses. A certain description of education or training may fall into more than one category.
- 98 Subsection (4) states the Secretary of State may by regulations add, vary or remove a category of education or training in order that new or emerging types of training not covered by the current definitions can be captured, or categories can be removed or changed where they are no longer relevant to the type of training currently funded. The categories which may be specified are limited by the definition of "post-16 education or training provider" in clause 20 (2) which sets out that those providers who must be on the list will provide relevant education or training to persons over compulsory school age.
- 99 Subsection (5) states that a condition (for being on the list) may only be specified if the Secretary of State considers that it may assist in preventing or mitigating the adverse effects of a disorderly cessation in the provision of education or training (i.e. a disorderly provider exit).
- 100 Subsection (6) clarifies that regulations may specify different conditions for different types of education or training and provide that a provider can have separate list entries for different types of education or training.
- 101 Subsections (7) to (9) set out examples of the conditions that may be specified in regulations in order for a provider to be on the list. They also clarify that different conditions may be specified for being added to or remaining on the list or in relation to different descriptions of relevant provider.
- 102 Subsection (10) sets out the conditions that may be introduced in regulations to help maintain or keep the list, such as the imposition of fees for being added to the list, the procedure for applications, provision about removal or restoration to the list, appeals, provision allowing or requiring the disclosure of information, and provision about publication of the list.
- 103 Subsection (11) clarifies that information mentioned in subsection (10)(e) may relate to those who receive the education or training, or those with controlling, managerial or legal responsibility for the training providers.

Clause 19: Prohibitions on entering into funding arrangements with providers

- 104 Subsection (1) provides that this clause applies if the Secretary of State makes regulations under clause 18(1)(a) and only prospectively. Subsection (2) prohibits a funding authority from entering into relevant funding arrangements with a provider not on the list. It also sets

out that funding authorities must not enter into such funding arrangements unless those arrangements include provisions enabling the funding authority to terminate the agreement if the provider ceases to be on the list. Subsections (3) and (4) makes similar provision in relation to funding arrangements where there is use of subcontractor(s) and those sub-contractors are not on the list, or cease to be on the list. Subsection (4) also sets out that where relevant funding arrangements prohibit sub-contracting, funding authorities must not enter into those funding arrangements unless those arrangements include provisions allowing the funding authority to terminate the agreement if a relevant sub-contract is entered into in breach of that prohibition.

- 105 The provision in subsections (2) to (4) is to ensure that where a provider ceases to be on the list or enters into prohibited sub-contracting arrangements, the funding authority can take action to terminate funding arrangements in an orderly way, for example by ensuring, if appropriate, that learners are transferred to another provider before the arrangements come to an end.
- 106 Subsection (5) sets out that a provider may not rely on anything in clause 19 as a reason for not carrying out their obligations under a funding agreement. This means that a provider's obligations under a funding agreement would remain valid and a funding authority could continue to enforce those obligations if a provider was not on the list. Subsection (5) also clarifies that clause 19 does not limit a funding authority's ability to set conditions of funding relating to a separate scheme (for example, conditions of funding which require apprenticeships training providers to be on the Register of Apprenticeship Training Providers).
- 107 Subsections (7) to (11) provide interpretation for clause 19.
- 108 Subsection (7) confirms the funding authorities whose funding arrangements are within the scope of clause 19.
- 109 Subsections (8), (9) and (10) set out the type of funding arrangements between a provider and funding authority in scope of clause 19. This includes grant arrangements and contracts for the provision of education or training wholly or mainly in England. The arrangements must relate to the provision of the categories of relevant education or training within the meaning of clause 18(3). The Secretary of State may also specify any other characteristics that the arrangements must have in order to be within scope of the provision in clause 19, which might include de minimis provision for example.
- 110 Subsection (11) provides a definition for a relevant sub-contract in scope of clause 19. The characteristics of the subcontract can also be further specified in regulations by the Secretary of State.

Clause 20: Funding arrangements: interpretation

- 111 This clause provides interpretation for clauses 18, 19 and 20.
- 112 Subsection (2) provides definitions for key terms used in clauses 18, 19 and 20.
- 113 Subsection (3) clarifies that references to a provider in relevant places in clauses 18 and 19 include references to a person having general control and management of, or legal responsibility and accountability for a provider. This is included to ensure that the correct legal person (and the funding arrangements that they are party to) are caught by the obligations under regulations made under clause 18 and by the funding prohibitions in clause 19.

Clause 21: Regulations under sections 18 or 19

- 114 This clause sets out miscellaneous provision relating to the regulations which may be made under clauses 18 or 19.
- 115 Subsections (1) and (2) give the power for regulations under clauses 18 or 19 to make consequential, supplemental, incidental, transitional or saving amendments, including to primary legislation and including this Bill.
- 116 Subsection (3) confirms that before making regulations to set up the list for the first time, the Secretary of State must carry out a consultation.
- 117 Subsection (4) and (5) set out that the regulations are to be made by statutory instrument and which regulations will require the affirmative resolution procedure. These include those under clause 18(1) in relation to specifying conditions and making provision in relation to the keeping of the list, regulations under clause 18(4) which allows the application of the scheme to additional or varied categories of education and training and any regulations which amend an Act of Parliament. Subsection (6) provides that any other regulations made under clauses 18 or 19 will be by way of a negative resolution procedure.

Further education in England: intervention

Clause 22: Further Education in England: intervention

- 118 The Secretary of State has intervention powers under the Further and Higher Education Act 1992, which can be used where there is serious failure including mismanagement, underperformance, and failure to discharge a statutory duty. This clause strengthens these existing powers so that intervention action can also be taken where the education or training provided by an institution fails to adequately meet local needs. This clause will also enable the Secretary of State to issue a direction to a governing body, requiring it to make a structural change such as a merger. These provisions are needed so that the Government can intervene to secure improvement where that is not possible through other means.
- 119 This clause amends the statutory intervention powers in section 56A of the Further and Higher Education Act 1992 that apply to further education colleges, designated institutions, and certain other bodies. It also amends the statutory intervention powers that apply to sixth form colleges, in section 56E of the Further and Higher Education Act 1992.
- 120 Subsection (2)(a) extends the circumstances in which the Secretary of State may use the powers to include cases where the education or training provided by an institution is failing or has failed to adequately meet local needs. Under subsection (2)(b), new sections 56A(2A) to (2C) provide that for the purposes of new subsection (2)(e), the Secretary of State must take into account any approved local skills improvement plan that applied to the institution when the education or training was provided.
- 121 Where the conditions for the use of the statutory intervention powers are met, subsection (2)(c)(i) amends section 56A(7)(b) of the Further and Higher Education Act 1992, in so far as it applies to a direction requiring the governing body of a designated institution (rather than a further education corporation) to dissolve itself. Subsection (2)(c)(ii) enables the Secretary of State to direct the governing body in respect of the transfer of property, rights or liabilities, for example to effect a merger, when one institution is dissolved and its activities are transferred to another body.
- 122 Subsection (2)(d) applies in cases where the Secretary of State directs the dissolution of the governing body (which is already possible under the existing powers). It requires the governing body of an FE corporation to transfer property, rights or liabilities on the

dissolution date (as permitted under section 27B of the Further and Higher Education Act 1992 in the case of a voluntary dissolution), unless the Secretary of State directs otherwise.

123 Subsection (2)(e) requires that where another party – such as a merger partner – is named in a direction under subsection (2)(c), this can only be done with the agreement of that party.

124 Subsection (2)(f) sets out that before making a direction for the transfer of property, rights or liabilities, the Secretary of State must consult the Competition and Markets Authority in respect of competition effects. The merger control provisions set out in Part 3 of the Enterprise Act 2002 would not apply in these cases. The Secretary of State is able to provide financial assistance in connection with a direction. This could include, for example, loans, grants, guarantees, or any other form of financial assistance.

125 Subsection (3) makes the same amendments to section 56E of the Further and Higher Education Act 1992. These provisions relate to intervention powers in respect of sixth form college corporations, which closely mirror those for further education college corporations.

Chapter 2: Education Administration and Administration of Further Education Bodies

126 There is ambiguity in the Technical and Further Education Act 2017 as to whether a Company Voluntary Arrangement (a specific rescue procedure, hereafter referred to as a “CVA”), can be used as a mechanism to exit education administration. Since the legislation came into force, a court decision made during the West Kent and Ashford College education administration confirmed that education administrators have the power to propose a CVA as a mechanism to exit education administration. This chapter proposes amendments that will remove the risk of any case law being overturned. This would therefore allow the Secretary of State for Education, via regulations, to ensure education administrators may explicitly use CVAs, and to clarify that nothing in the Technical and Further Education Act would prevent an education administrator proposing a CVA.

127 This chapter also seeks to remove further ambiguity in the transfer scheme provisions of the Technical and Further Education Act 2017 as to the treatment of secured creditors when compared to their rights in normal administration, per paragraph 71 of Schedule B1 to the Insolvency Act 1986.

Clause 23: Further education bodies in education administration: application of other insolvency procedures

128 This clause amends section 33 of the Technical and Further Education Act 2017 to extend the Secretary of State’s existing power to make regulations applying insolvency legislation (with modifications) to FE bodies.

129 Inserted subsection (2A) makes provision that regulations under section 33(1) may provide for any provision of the Insolvency Act 1986 to apply (with modifications) regarding an FE body in education administration.

130 Inserted subsection (2B) makes provision to clarify that nothing in Schedules 3 or 4 to the Technical and Further Education Act 2017 limits the provision that may be made by regulations under subsection (2A). It expressly states the regulations may amend Schedules 3 and 4, which set out the conduct of education administration for statutory corporations and companies respectively. By being able to amend these schedules, the Secretary of State would be able to ensure they explicitly allow the use of Company Voluntary Arrangements.

Clause 24: Further education bodies in education administration: transfer schemes

131 This clause amends Schedule 2, 3 and 4 to the Technical and Further Education Act 2017 to clarify that, where a transfer scheme looks to transfer assets subject to secured creditor’s rights

free of that security, a transfer scheme may only be made upon either consent of the secured creditor in relation to the amount attributed to the secured asset over which the lender holds security and payment of that amount or a court order (i.e. subject to paragraphs 71 of Schedule B1 of the Insolvency Act 1986, with modifications).

- 132 This amendment confirms the Government's response to the technical consultation for the Insolvency regime for further education and sixth form colleges and the Technical and Further Education Act 2017 in June 2018: see page 16, Question 4 ([Insolvency regime for further education and sixth form colleges](#)).

Part 4: Miscellaneous and General

Chapter 1: Institutions within the Further Education Sector: Procedure for Designation

- 133 After transferring an institution from an FE college corporation or a sixth form college corporation to a company, as may happen as part of the process of exiting education administration, the Secretary of State would need to immediately designate the institution for it to remain within the statutory FE sector. This clause allows the Secretary of State to carry out such a designation through use of an administrative order rather than a statutory instrument, because administrative orders can be made and enacted more quickly than statutory instruments, reducing the amount of time involved in resolving insolvency cases.

Clause 25: Institutions within the further education sector: designation

- 134 This clause amends sections 28 and 89 of the Further and Higher Education Act 1992 to change the mechanism by which the Secretary of State can designate educational institutions in England as falling within the statutory further education sector. It would allow the Secretary of State to designate an institution by means of an administrative order that must be published, rather than by statutory instrument as is currently required.
- 135 Subsection (2) makes provision to clarify the appropriate authority to make designation orders in relation to educational institutions in each of Wales and England, as this is a devolved matter.
- 136 Subsection (3)(a) makes provision to allow the Secretary of State to make designation orders under section 28 of the Further and Higher Education Act 1992 by administrative order rather than by statutory instrument. It also makes the same provision regarding the existing power under section 29(1)(b) of the Further and Higher Education Act 1992 to exempt certain institutions from the requirements of section 29 of said Act. This is because any exemption under section 29 (1)(b) must be included in any designation order made under section 28.
- 137 Subsection (3)(b) makes provision to require any such administrative orders be published.
- 138 Subsection (3)(c) makes provision for transitional arrangements. These arrangements would mean existing orders under section 28 and 29(1)(b), made by statutory instrument prior to this legislation coming into force, could not be revoked or amended by administrative order. A further statutory instrument would need to be made to revoke or amend these designation orders.

Chapter 2: General Provisions

Clause 26: Extent

- 139 This clause states the territorial extent of the provisions in the Bill.

140 Subsection (1) states that the Bill extends to England and Wales.

141 Subsections (2) and (3) state that the following clauses extend to Scotland and Northern Ireland: clauses 11, 15, 26 – 28 and clause 14 in so far as it modifies sections 22 and 23 of the Teaching and Higher Education Act 1998 as those sections extend to Scotland and Northern Ireland respectively.

Clause 27: Commencement

142 This clause states when the provisions in the Bill will come into effect.

143 Subsection (1) lists the provisions that will come into force on the day on which the Act is passed.

144 Subsection (2) lists the provisions that will come into force two months after the Act is passed.

145 Subsections (3) and (4) state that, other than the clauses listed in subsections (1) and (2), the Act comes into force on such day (or days) as appointed by regulations made by the Secretary of State and different days may be appointed for different purposes.

146 Subsection (5) states that the Secretary of State may make transitional or saving provision in connection with the coming into force of any provision of this Act by way of regulations.

147 Subsection (6) states that the power to make regulations under subsection (5) includes power to make different provision for different purposes.

148 Subsection (7) states that the regulations made under this clause are to be made by statutory instrument.

Clause 28: Short Title

149 This clause states that the Act may be cited as the Skills and Post-16 Education Act 2021.

Commencement

150 Clause 27 provides for the commencement of the provisions in the Bill.

151 Clauses 26, 27 and 28 will come into force on the day the Act is passed.

152 Clauses 1-5, 17 and 22-25 will come into force two months after the Act is passed.

153 The remaining provisions of the Act will come into force on a day (or days) to be appointed by the Secretary of State in regulations.

Financial implications of the Bill

154 Financial implications of the Bill include the additional administration costs for certain measures, including:

- The administrative costs of designating employer representative bodies to produce local skills improvement plans or designating institutions as being within the further education sector;
- The administrative costs of writing guidance associated with measures in the Bill, including local skills improvement plans and the duty for further education institutions to keep their provision and structure under review in relation to local needs;

- The administrative costs for the Institute to use the additional powers to approve technical education qualifications, fulfil its new functions on oversight, and other associated measures;
- The administrative costs for introducing regulations under the powers in the Bill, including the lifelong loan entitlement, initial teacher training for further education, and the list of post-16 education or training providers.

155 These costs will be funded from within the departmental budget in the usual way.

156 There will be further costs associated with the delivery of measures that will be brought about in secondary legislation. A financial assessment will be made when considering this secondary legislation.

157 Further information on the financial costs and benefits of the Bill can be found in the accompanying impact assessment, which is linked in the related documents section of these notes.

Parliamentary approval for financial costs or for charges imposed

158 This section will be completed when the Bill transfers from the House of Lords to the House of Commons.

Compatibility with the European Convention on Human Rights

159 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Baroness Berridge, the Parliamentary Under Secretary of State (Minister for the School System), has made the following statement under section 19(1)(a) of the Human Rights Act 1998: “in my view the provisions of the Skills and Post-16 Education Bill are compatible with the Convention rights”.

160 The Government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill’s provisions with the Convention rights: this memorandum is available on the Government website.

Related documents

161 The following documents are relevant to the Bill and can be read at the stated locations:

- [Skills for Jobs White Paper - Skills for jobs: lifelong learning for opportunity and growth - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/white-papers/skills-for-jobs)
- [Independent panel report to the Review of Post-18 Education and Funding \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/94421/independent-panel-report-to-the-review-of-post-18-education-and-funding)
- [Post-18 education and funding review: interim conclusion - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94421/post-18-education-and-funding-review-interim-conclusion)
- [Insolvency regime for further education and sixth form colleges.](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94421/insolvency-regime-for-further-education-and-sixth-form-colleges)
- [Apprenticeships, Skills, Children and Learning Act 2009](https://www.gov.uk/government/legislation/act-2009-2009-07-22)
- [Education Act 1996](https://www.gov.uk/government/legislation/act-1996-1996-07-02)
- [Education Act 1997](https://www.gov.uk/government/legislation/act-1997-1997-07-02)
- [Education Act 2002](https://www.gov.uk/government/legislation/act-2002-2002-07-02)
- [Employment and Training Act 1973](https://www.gov.uk/government/legislation/act-1973-1973-07-02)
- [Further and Higher Education Act 1992](https://www.gov.uk/government/legislation/act-1992-1992-07-02)
- [Insolvency Act 1986](https://www.gov.uk/government/legislation/act-1986-1986-07-02)
- [Technical and Further Education Act 2017](https://www.gov.uk/government/legislation/act-2017-2017-07-02)
- [Higher Education and Research Act 2017](https://www.gov.uk/government/legislation/act-2017-2017-07-02)
- [Teaching and Higher Education Act 1998](https://www.gov.uk/government/legislation/act-1998-1998-07-02)

Annex A – Territorial extent and application in the United Kingdom

162 The territorial extent of all provisions in the Bill is England and Wales save for clauses 11, 14 and 15 which extend to Scotland and Northern Ireland. Subject to the following, all clauses apply to England only. Clauses 23-25 relating to insolvency and designation apply to England and Wales only. Clauses 14-15, relating to a lifelong loan entitlement, apply to England and Wales. The information provided is the view of the UK Government.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the Senedd?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Part 1								
Clauses 1-5	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 6-9	Yes	No	No	No	Yes	Yes	Yes	No
Clause 10	Yes	No	No	No	Yes	Yes	Yes	No
Clause 11	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 12-13	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 14-15	Yes	Yes	In part	In part	Yes	No	No	Yes
Part 2								
Clause 16	Yes	No	No	No	Yes	Yes	Yes	No
Clause 17	Yes	No	No	No	Yes	Yes	Yes	No
Part 3								
Clauses 18-21	Yes	No	No	No	Yes	Yes	Yes	No
Clause 22	Yes	No	No	No	Yes	Yes	Yes	No
Clause 23	Yes	Yes	No	No	No	No	No	No
Clause 24	Yes	Yes	No	No	No	No	No	No
Part 4								
Clause 25	Yes	Yes	No	No	Yes	Yes	Yes	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Minor or consequential effects²

163 The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

Clause 14: Support for lifelong learning

164 Clause 14 has minor or consequential effects in Scotland and Northern Ireland because it modifies section 22 of the Teaching and Higher Education Act 1998 which in part extends to those administrations for the purpose of applying those provisions where a recipient of a loan made under the law of England and Wales has moved to Scotland or Northern Ireland.

Clause 15: Lifelong learning: amendment of the Higher Education and Research Act 2017

165 Clause 15 has minor or consequential effects in Scotland and Northern Ireland because it amends the definition of “higher education courses” which, by virtue of section 83 of HERA 2017 can be traced through to the definition of English higher education provider – a term used in section 79 of HERA 2017. Section 79 requires any body providing services to an English higher education provider to provide certain information to the Secretary of State. It extends to Scotland and Northern Ireland.

Subject matter and legislative competence of devolved legislatures

166 Clauses 1 to 9, 12 to 13, and 16 to 22 extend to England and Wales and apply to England, but do not apply anywhere else. Corresponding provisions could and have, been made by a devolved legislature on these subject matters.

167 Clause 25 extends and applies to England and Wales, and does not apply anywhere else. Corresponding provision could be made by a devolved legislature.

² References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Annex B – Glossary

Advanced Learner Loan (ALL). An Advanced Learner Loan helps eligible adults (aged 19 and above) with the costs of a course at a college or training provider in England. Further information can be found on GOV.UK. Qualifications for which an individual can take a loan out are known as “qualifications approved for ALL”. They can be found at: <https://www.qualifications.education.gov.uk/>

Advanced Level. Any qualification at level 3, they include A Levels, the T Level technical qualification, level 3 NVQs, and level 3 National Diplomas. Apprenticeships can also be delivered at advanced level.

Advanced Technical Education. Refers to technical education that is delivered at level 3, this includes level 3 apprenticeships, T Levels, level 3 NVQs, and some Level 3 National Diplomas. This is the same level as A Levels.

Apprenticeship. An apprenticeship is a job that combines practical training with study. These can be provided from intermediate level (level 2) to professional level (levels 6&7). See “A guide to apprenticeships” [A guide to apprenticeships.pdf \(publishing.service.gov.uk\)](#).

Higher Technical Qualification. This refers to a level 4-5 Higher Technical Qualification that gains approval from the Institute where its content aligns with the Institute’s employer-led standards.

Awarding organisations. Refers to individual organisations recognised by Ofqual that design, develop, and certificate qualifications but are not themselves education providers.

Degree Apprenticeship. An apprenticeship delivered at level 6 or 7, equivalent to an undergraduate or postgraduate degree.

Degree Level. Any qualification at level 6 or 7. Level 6 includes a full undergraduate degree (may be degree with honours/bachelor’s degree), or a graduate diploma. Level 7 includes a master’s degree, postgraduate diploma, and a level 7 diploma. Apprenticeships can also be delivered at levels 6 and 7.

Education and Skills Funding Agency (ESFA). The ESFA is an executive agency sponsored by the Department for Education. It is responsible for funding education and skills for children, young people and adults. See the ESFA website for more information.

Employer-led standards. Set out the knowledge, skills and behaviours (KSBs) required for an occupation. Also known as occupational standards. Employer-led standards enable assessment of whether an individual has achieved the KSBs needed to be competent in an occupation. They are developed by groups of employers and approved by the Institute for Apprenticeships and Technical Education. They currently form the basis of the T Level technical qualification and apprenticeships.

Further education college (FEC). Refers to institutions conducted by further education corporations. Further education colleges offer a variety of courses from entry level through to higher level qualifications.

Further Education Provider. An education or training organisation that is approved to deliver further education to students.

Higher level. Any qualification at levels 4 and 5. Apprenticeships can also be at higher level.

Higher technical education (HTE). Refers to technical education provided at levels 4 and 5.

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as introduced in the House of Lords on 18 May 2021 (HL Bill 5)

Institute for Apprenticeships and Technical Education (Institute). The Institute is an executive non-departmental public body, sponsored by the Department for Education. It approves and publishes the employer-led standards for occupations (and their associated apprenticeship assessment plans), approves technical education qualifications, and advises government on funding for each standard. [Home / Institute for Apprenticeships and Technical Education](#)

Intermediate level. Any qualification at level 2, including GCSEs (Grades A*-C/9-4), level 2 NVQ. Apprenticeships can also be at intermediate level.

Level (L). Refers to the 9 qualification levels in England, Wales and Northern Ireland. [What qualification levels mean: England, Wales and Northern Ireland - GOV.UK \(www.gov.uk\)](#)

Level 2. Also known as Intermediate level. Level 2 qualifications include GCSEs (Grades A*-C/9-4) and level 2 Technical Award. Apprenticeships can also be delivered at Intermediate level.

Level 3. Also known as Advanced level. Level 3 qualifications include A Levels, T Levels, Pearson BTECs, and Cambridge Technicals. Apprenticeships can also be delivered at Advanced level.

Levels 4 and 5. Also known as higher level. Level 4 includes Certificate of higher education, level 4 diploma, and higher national certificate. Level 5 includes, diploma of higher education, foundation degree, higher national diploma. Apprenticeships can also be delivered at higher level.

Levels 6 and 7. Also known as degree level. Level 6 includes a full undergraduate degree (may be degree with honours/bachelor's degree), and a graduate diploma. Level 7 includes a master's degree, postgraduate diploma, and a level 7 diploma. Apprenticeships can also be delivered at degree level.

Lifelong Loan Entitlement. A funding provision, enabling people to access four years' worth of student loan funding across further and higher education providers throughout their lifetime.

Local skills improvement plans. Local skills improvement plans will set out the key changes required to skills provision in a local area to make provision more responsive to labour market skills needs.

Occupational Standards. Occupational Standards is a term often used to refer to employer-led standards. They contain a list of the skills, knowledge and behaviours an apprentice will need to have learned by the end of their apprenticeship. Apprenticeships based on employer-led standards have replaced apprenticeship frameworks as part of reforms to raise the quality of apprenticeships. The standards are developed by groups of employers and the Institute for Apprenticeships and Technical Education is responsible for approving and publishing the employer-led standards and the related assessment plans.

Office for Students (OfS). The OfS is a non-departmental public body and is the independent regulator of higher education in England. [Home - Office for Students](#)

Office of Qualifications and Examinations Regulation (Ofqual). The Office of Qualifications and Examinations Regulation (Ofqual) regulates qualifications, examinations, and assessments in England. Ofqual is a non-ministerial government department with jurisdiction in England. [Ofqual - GOV.UK \(www.gov.uk\)](#)

T Level. A T Level is a programme of study at level 3 containing a qualification which is based on employer-led standards, as well as a significant industry placement and other components. T Levels offer an alternative to A Levels and are aligned with work-based technical education also provided at level 3 through apprenticeships. T Levels are being introduced in phases from September 2020.

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as introduced in the House of Lords on 18 May 2021 (HL Bill 5)

Technical education. Technical education encompasses any education or training, such as qualifications and apprenticeships, that focuses on progression into skilled employment and requires the acquisition of both a substantial body of technical knowledge and a set of practical skills valued by industry. Technical education covers provision from level 2 (the equivalent of GCSEs at A* to C or 9 to 4) to higher education (level 6), but it differs from A Levels and other academic options in that it draws its purpose from the workplace rather than an academic discipline.

Traineeships. A traineeship is a skills development programme that includes a work placement. Traineeships help 16 to 24 year olds - or 25 year olds with an education, health and care (EHC) plan - get ready for an apprenticeship or job if they don't have the appropriate skills or experience. It can last from six weeks up to one year.

SKILLS AND POST-16 EDUCATION BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Skills and Post-16 Education Bill [HL] as introduced in the House of Lords on 18 May 2021 (HL Bill 5).

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