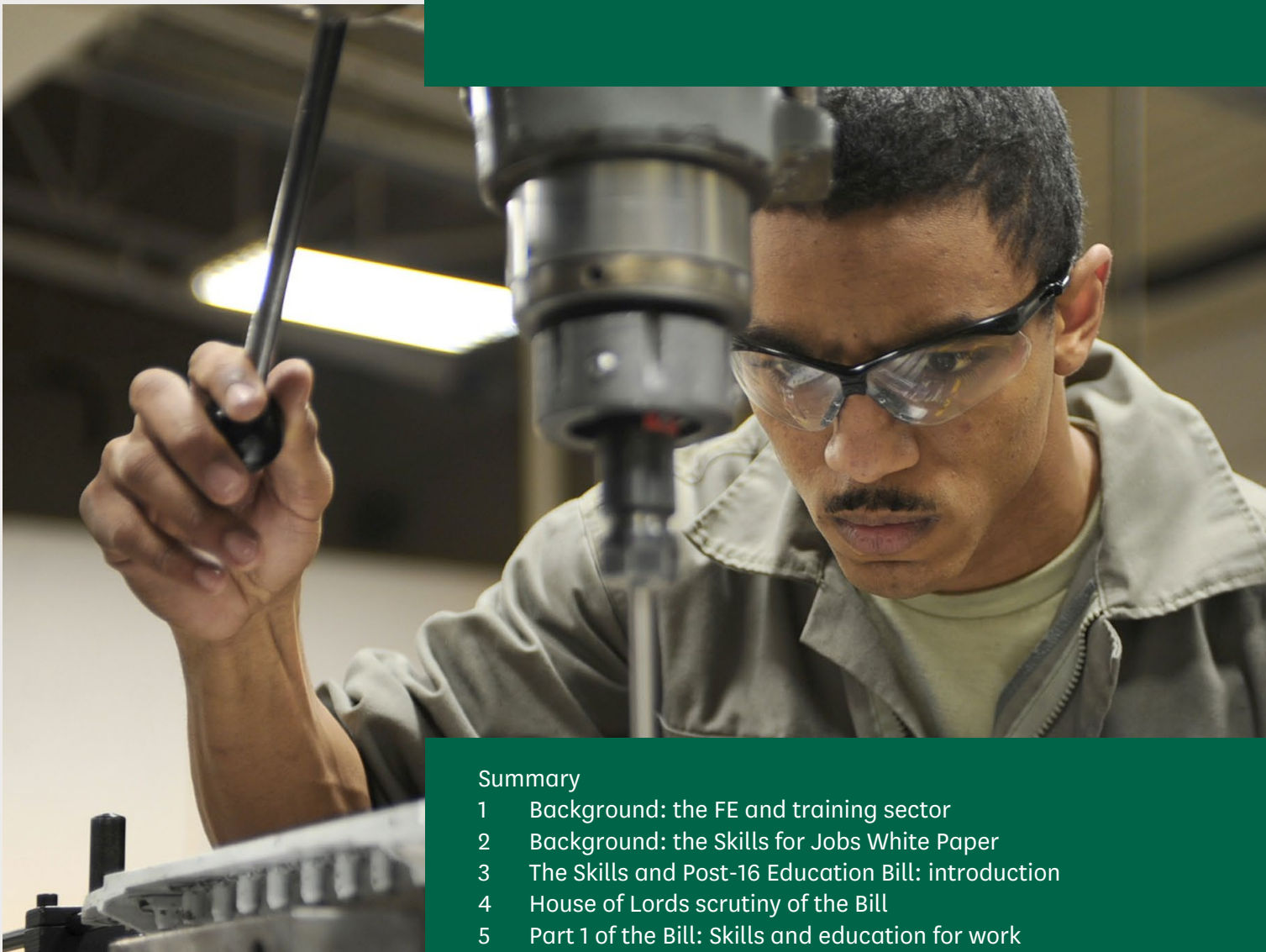


By Sue Hubble,
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Paul Bolton
9 November 2021

Skills and Post-16 Education Bill [HL]



Summary

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- 2 Background: the Skills for Jobs White Paper
- 3 The Skills and Post-16 Education Bill: introduction
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- 10 Commentary

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Summary

The Skills and Post-16 Education Bill was introduced in the House of Lords on 18 May 2021 and passed its third reading on 25 October 2021. The Bill received its first reading in the House of Commons on 26 October 2021.

The Bill forms the legislative underpinning for reforms set out in the Department for Education (DfE) White Paper, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#) (January 2021). It also includes measures to address some of the recommendations of the [Review of Post-18 Education and Funding \(the Augar Review\)](#) which was published in May 2019.

The briefing follows the outline of the Bill as brought from the House of Lords and introduced to the House of Commons. It is not intended to be an exhaustive clause-by-clause analysis.

The Bill

The Bill currently has four parts and 36 substantive clauses.

Part 1: Skills and education for work

- Chapter 1 (clauses 1-5) sets out provisions which aim to **tailor education and training to meet local needs through the creation of local skills improvement plans** and the involvement of employer bodies.
- Chapter 2 (clauses 6-14) sets out provisions which aim to **increase the role of the Institute for Apprenticeships and Training in the provision of technical qualifications and to improve careers advice**.
- Chapter 3 (clauses 15 to 18) sets out provisions to **support lifelong learning through the introduction of the Lifelong Loan Entitlement**.

Part 2: Quality of provision

- Clauses 19 and 20 set out provisions relating to **initial teacher training in the FE sector and the assessment of HE provision using student outcomes and minimum standards**.

Part 3: Protection of learners

- Chapter 1 (clauses 21 to 26) relates to the **regulation of post-16 education and training and the process of intervening in further education providers**.

- Chapter 2 (clauses 27 and 28) sets out provisions on the **insolvency regime for FE providers**.

Part 4: Miscellaneous and general

- Chapter 1 (clauses 29 to 33) sets out new offences **criminalising cheating services for post-16 students in England**.
- Chapter 2 (clauses 34 to 36) sets out provisions on the **designation of 16 to 19 academies with a religious character** and other educational institutions in the further education sector.
- Chapter 3 (clauses 37 to 39) sets out the bill's extent, commencement, and short title.

Territorial extent

The provisions of the Bill apply to England. Provisions in clauses 15-16 and clauses 27, 28 and 34 also apply to Wales. Clauses 11, 16(3), 37-39 and clause 15 in the Bill extend to Scotland and Northern Ireland, so far as it modifies provisions that extend there. Clause 10 extends to Northern Ireland also, but not to Scotland.

Further reading

The Department for Education has published the following accompanying documents:

- [Skills and Post-16 Education Bill \[HL\] Explanatory Notes](#)
- [Skills and Post-16 Education Bill Policy Summary Notes, November 2021](#)
- [Skills and Post-16 Education Bill Updated Impact Assessment, October 2021](#)

Memoranda have also been published on the Bill for the following committees: [Joint Committee on Human Rights](#) and [House of Lords Delegated Powers and Regulatory Reform Committee \(DPRRC\)](#). A [supplementary memorandum for the DPRRC](#) has also been published for the Government's Lords amendments.

The following library briefing papers also provide relevant information:

- [FE White Paper: Skills for Jobs for Lifelong Learning for Opportunity and Growth, 28 January 2021](#)
- [Further education funding in England, 30 April 2021](#)
- [Level 3 qualifications reform: What's happening to BTECs?, 30 July 2021](#)

1 Background: the FE and training sector

1.1 The post-16 FE sector in England

The further education (FE) sector in England is large and diverse with a wide range of public and private providers and significant numbers of students. The sector includes general post-19 colleges, sixth form colleges, specialist colleges, community learning organisations and independent training providers. An Association of Colleges' publication stated that in May 2021 there were 234 colleges in England.¹ These colleges teach all levels of education from basic life skills courses up to higher technical and degree level courses. 1 million adults and 652,000 young people aged 16-18 train or study in colleges, and a further 188,000 undertake apprenticeships.² Total college income is around £6.4 billion, and colleges employ 105,000 full-time equivalent staff, 50,000 of whom are teaching staff.

The FE sector has often been considered as overlooked, straddling the space between the higher profile schools and higher education (HE) sectors. The sector has faced reduced funding over many years and the number of FE learners has fallen.

The [Independent Panel Report \(the Augar report\)](#) to the Government's [Post-18 education and funding review](#) (May 2019) contained an overview of the FE sector and issues around funding and student support.

1.2 Adult learners in the FE sector

In 2019/20, 1.75 million adult learners aged 19+ took part in some form of funded FE or skills training in England. Within this figure, 0.88 million were on classroom-based education and training courses, 0.58 million on adult apprenticeships, and 0.36 million on (non-formal) community learning courses. These courses cover a very wide range of academic levels:³

- 34% were on courses below level 2 (equivalent to a GCSE) or with no level;
- 33% at level 2;

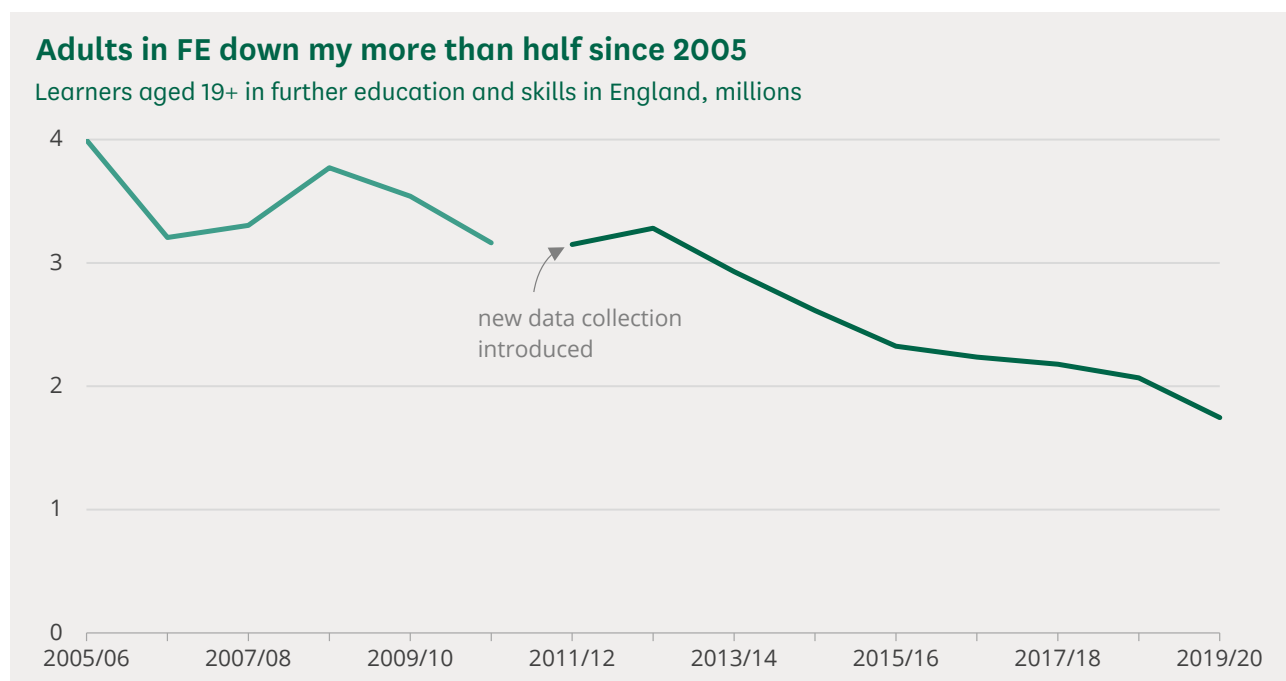
¹ Association of Colleges, [College Key Facts 2021/22](#).

² Ibid.

³ DfE, [Further education and skills](#).

- 23% at level 3 (equivalent to an A-level);
- 10% at level 4 (such as a Higher National Certificate) or higher.

The trend in the total number of adult learners is shown in the chart below. There is a break in this series,⁴ but even with this break it is clear numbers have fallen over time from just below 4 million in 2005/06 to below 2 million in the latest figures. Data on the first three quarters of 2020/21 show a further drop in numbers; down by 11% compared to the same period in 2019/20. Within this total there were even larger falls in learners studying at or below level 2 (17-18%), but an increase in those studying at level 4 or higher (25%).⁵



Source: [Further education and skills: November 2020](#), DfE

Since 2011/12, the number of learners on classroom-based education and training has fallen by 42%, community learning by 48%, and adult apprenticeships by 5%. The largest fall in numbers by level of course was in those studying at 'full level 2'.⁶ Here, numbers fell by 82%, or around 850,000, between 2011/12 and 2019/20.

There are likely to be a wide range of factors behind this decline in FE students, including cuts in funding for some courses, increased complexity in funding rules (including loans for FE), and the ongoing increased 'competition' from the HE sector. According to the Institute for Fiscal Studies (IFS), an economic thinktank, spending on adult education has fallen by

⁴ This is thought to have reduced counts of learner numbers by around 2%.

⁵ DfE, [Further education and skills 2020/21](#).

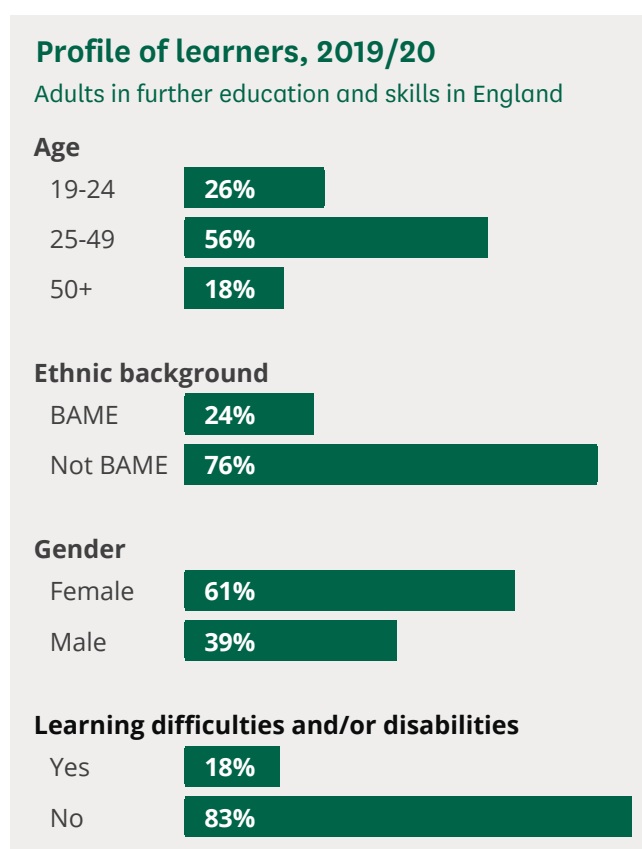
⁶ When the full range, or 'width', of course aims a learner is taking are considered together, 'full level 2' means that they are equivalent to five or more GCSEs.

nearly two-thirds in real terms since 2003/4, and about half since 2009/10.⁷ This fall was said to be mainly driven by the removal of public funding from some courses and a resultant drop in learner numbers.

Analysis of adult participation in FE and training shows that before the first national lockdown on 23 March 2020, numbers were already down by 14% on the same period in 2018/19. From lockdown to the end of the academic year, participation was down by 44%.⁸

Learner characteristics

The following chart looks at the characteristics of learners across the whole education and skills sector.



Source: [Further education and skills: November 2020](#), DfE

Learners on just classroom-based education and training courses were somewhat more likely to be female (64% of all learners) than learners from the whole sector. They were also more likely to be from BAME backgrounds (32%). Nearly three-quarters of learners on community learning courses were female.

⁷ Institute for Fiscal Studies, [2020 annual report on education spending in England](#), 3 November 2020.

⁸ DfE, [Further education and skills: November 2020](#), (additional analysis).

1.3

Apprenticeships and traineeships

Apprenticeships

Incentives to encourage employers to take on apprentices and trainees were announced as part of the [Plan for Jobs](#) document the Government published in July 2020.

The Government announced it will pay employers in England £2,000 for every new apprentice they hire who is aged under 25, and £1,500 for every apprentice they hire who is aged 25 and over.⁹ These payments will be provided for any apprentice employed from the start of August 2020 to the end of March 2021.¹⁰ The Government currently provides £1,000 to employers for every apprentice they take on who is either aged between 16 and 18, or aged between 19 and 24 and has previously been in care or has an Education, Health, and Care plan. The new payment will be in addition to this. The Government has also announced it will make £2.5 billion available to support apprenticeships in 2021-22.¹¹

Traineeships

A traineeship is an education and training programme with work experience whose focus is on helping young people become ready for work or an apprenticeship.¹² They were previously only available to people aged 16-24 who were qualified below level 3, but eligibility is going to be expanded to include those with level 3 qualifications.¹³ The maximum duration of traineeships has also been increased to 12 months, rather than six months. They can be as short as six weeks.¹⁴

Further reading

Library briefing [Coronavirus: Getting people back into work](#), 11 December 2020, has more information on the initiatives regarding apprenticeships and traineeships announced in the Plan for Jobs.

⁹ HM Treasury, [Plan for Jobs](#), 8 July 2020, p8.

¹⁰ ESFA/DWP, '[Plan for Jobs' skills and employment programmes: information for employers](#), 10 December 2020.

¹¹ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, p21.

¹² Gov.uk, [Find a traineeship](#).

¹³ HM Treasury, [Plan for Jobs](#), 8 July 2020, p9.

¹⁴ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, p24.

2 Background: the Skills for Jobs White Paper

The Post-16 Skills and Education Bill forms the legislative underpinning for reforms set out in the Department for Education (DfE) White Paper, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#) (January 2021). It also includes measures to address some of the recommendations of the [Independent Panel Report to the Review of Post-18 Education and Funding \(the Augar report\)](#) (May 2019).

2.1 Skills for jobs White Paper

On 21 January 2021, the Government published the FE White Paper [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#).¹⁵ A Department for Education (DfE) press release provided an overview of the White Paper and included comments from the British Chambers of Commerce, the Association of Colleges, and the chief executives of various companies.¹⁶

The White Paper outlined proposals to raise the esteem of FE and to “realign” the post-16 system around the needs of employers by increasing skills provision. The plans aim to rebalance the FE and skills sector to help the country recover from the Covid pandemic and to respond to skills gaps and new opportunities arising from leaving the European Union. The White Paper also set out proposals on lifelong learning, intended to ensure that people can learn the skills they need to get jobs and have fulfilling lives.

The key measures in the White Paper included:

- Business groups, including Chambers of Commerce, working alongside colleges to develop tailored skills plans to meet local training needs. This would be supported by a £65 million Strategic Development Fund to put the plans into action and establish new College Business Centres to drive innovation and enhanced collaboration with employers.
- Giving employers a central role in designing almost all technical courses by 2030, to ensure that the education and training people receive is directly linked to the skills needed for real jobs.

¹⁵ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021.

¹⁶ DfE press release, [Pioneering reforms to boost skills and jobs](#), 21 January 2021.

- Boosting the quality and uptake of Higher Technical Qualifications to provide the skills many employers say they need and that can lead to higher wages. Introducing newly approved qualifications from September 2022 supported by a Government-backed brand and quality mark.
- Changing the law so that from 2025 people can access flexible student finance to train and retrain throughout their lives, supported by funding in 21/22 to test ways to boost access to more modular and flexible learning.
- Overhauling the funding and accountability rules, so funding is better targeted at supporting high quality education and training that meets the needs of employers. Introducing new powers to intervene when colleges are failing to deliver good outcomes for the communities they serve.
- Launching a nationwide recruitment campaign to get more talented individuals to teach in FE and investing in high quality professional development, including a new Workforce Industry Exchange Programme.¹⁷

A number of the White Paper proposals, such as the Lifetime Skills Guarantee (see section 5.3), had previously been trailed in announcements or consultation documents:

- Prime Minister, [Skills speech at Exeter College](#), 29 September 2020
- DfE, [Reforming Higher Technical Education Government consultation response](#), July 2020
- The [Independent Panel Report \(the Augar report\)](#) to the Government's [Post-18 education and funding review](#), May 2019
- DfE, [Education Secretary FE speech with Social Market Foundation](#), 9 July 2020

Further information on the White Paper proposals is provided in the detailed commentary on the Bill's provisions below (sections 5 to 8).

2.2 Government response to the Augar report

In addition to the Skills for Jobs White Paper, on 21 January 2021 the Government published an [interim conclusion](#) to their review of post-18 education and funding which was launched in February 2018.¹⁸ The Interim

¹⁷ "[Skills for Jobs White Paper is launched - Sector Response](#)", FE news, 21 January 2021.

¹⁸ DfE, [Interim conclusion of the review of post-18 education and funding](#), 21 January 2021.

conclusion responded to some of the recommendations included in the review's [Independent Panel Report \(the Augar report\)](#).¹⁹

The Library Briefing [The Post-18 Education Review \(the Augar Review\) recommendations](#) (30 May 2019), set out the conclusions of the Augar report.

¹⁹ [Independent panel report to the Review of Post-18 Education and Funding](#), 30 May 2019.

3

The Skills and Post-16 Education Bill: introduction

The Skills and Post-16 Education Bill was introduced in the House of Lords on 18 May 2021 and passed its third reading on 25 October 2021. The Bill received its first reading in the House of Commons on 26 October 2021.

As mentioned, the Bill forms the legislative underpinning for reforms set out in the DfE's Skills for Jobs White Paper and also includes measures to address some of the recommendations of the Augar Report.

The Bill aims to improve the functioning of the skills and post-16 education system. It also supports the introduction of the Lifetime Skills Guarantee, [announced by the Prime Minister in a speech in September 2020](#). The Bill, as brought from the House of Lords and introduced in the House of Commons, has four parts and 36 substantive clauses.²⁰

Part 1: Skills and education for work

- Chapter 1 (clauses 1-5) aims to **tailor education and training to meet local needs through the creation of local skills improvement plans** and the involvement of employer bodies.
- Chapter 2 (clauses 6-14) aims to **increase the role of the Institute for Apprenticeships and Training in the provision of technical qualifications and improve careers advice**.
- Chapter 3 (clauses 15 to 18) includes provisions to **support lifelong learning through the introduction of the Lifelong Loan Entitlement**.

Part 2: Quality of provision

- Clauses 19 and 20 set out provisions relating to **initial teacher training in the FE sector and the assessment of HE provision using student outcomes and minimum standards**.

Part 3: Protection of learners

- Chapter 1 (clauses 21 to 26) relates to the **regulation of post-16 education and training and the process of intervening in FE providers**.

²⁰ Note that clause numbers are liable to change as the Bill progresses through Parliament and is amended.

- Chapter 2 (clauses 27 and 28) sets out provisions related to the **insolvency regime for FE providers**.

Part 4: Miscellaneous and general

- Chapter 1 (clauses 29 to 33) sets out new offences **criminalising cheating services for post-16 students in England**.
- Chapter 2 (clauses 34 to 36) sets out provisions on the **designation of 16 to 19 academies with a religious character** and other educational institutions in the further education sector.
- Chapter 3 (clauses 37 to 39) sets out the Bill's extent, commencement, and short title.

Territorial extent

The provisions of the Bill apply to England. Provisions in clauses 15-16 and clauses 27, 28 and 34 also apply to Wales. Clauses 11, 16(3), 37-39 and clause 15 in the Bill extend to Scotland and Northern Ireland, so far as it modifies provisions that extend there. Clause 10 extends to Northern Ireland also, but not to Scotland.

4 House of Lords scrutiny of the Bill

The Bill was introduced in the House of Lords on 18 May 2021. Transcripts of the House of Lords stages are available on Parliament website at: [Skills and Post-16 Education Bill \[HL\]](#).

The clause numbers in this section reflect [the Bill as introduced in the House of Lords](#).

4.1 Second reading debate

The second reading debate was on [15 June 2021](#). Over 50 peers spoke in the debate, including former Education Secretaries, Ministers, and university vice-chancellors and chancellors. Virtually all speakers welcomed the Bill. The debate lasted six hours.

Baroness Berridge, then-Parliamentary Under Secretary of State at the DfE, introduced the Bill. She outlined the case for the Bill by noting the “forgotten 50% of people who do not go to university” and the challenges facing the country caused by Covid and Brexit.²¹ She said the country needed a “resilient highly skilled workforce”, with skills provision offered in people’s home towns that met their needs. Furthermore, she said there should be parity of esteem between further and higher education.

Baroness Berridge explained the Bill would put employers at the heart of the system and lead “people towards great jobs”. She said:

“[The Bill] aims to provide a framework for ensuring that skills and post-16 education leads people towards a great job. That is why we are creating a statutory underpinning for local skills improvement plans, which we will shortly be trailblazing in some local areas. By putting employers and their representative bodies at the heart of the post-16 skills system, we are focusing on meeting local skills gaps and prioritising training in growth sectors. This will ensure that employers have the skills they need to drive growth in local areas; it will support opportunities for learners to get good jobs and help the existing workforce to retrain.”²²

Baroness Berridge also said the Bill would reform the technical education system by giving the Institute for Apprenticeships and Technical Education (IfATE) powers to approve new categories of technical qualification and giving a statutory footing to the collaborative relationship between the IfATE and

²¹ [HL Deb 15 June 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1791.](#)

²² [Ibid.](#), c1792.

Ofqual. She said this would make the system “high quality, stable and coherent.”²³

She said the “major plank” of the Bill was the introduction of the Lifelong Loan Entitlement (LLE) as part of a flexible lifetime skills guarantee:

“This measure will be rolled out from 2025 and will give all adults access to the equivalent of four years of student loans for higher-level study at levels 4 to 6. The loans will be able to be used flexibly, full time or part time, for modules or full qualifications and for provision in colleges or universities. At the moment, maximum amounts for funding are set in relation to an academic year. The Bill will make it clear that maximum loan amounts can be set in other ways. The Government will consult on the details of the lifelong loan entitlement, including on how best to support students with the living costs of study, and whether equivalent and lower qualifications restrictions should be amended to support retraining and stimulate provision.”

“The ambition is to replace the two existing systems that offer Government-financed loans to learners studying at levels 4 to 6 with the single LLE system. These two existing systems of higher education student finance and advanced learner loans provide funding support for different types of courses. The lifelong loan entitlement aims to create a simpler and clearer system, but it will require extensive operational changes to the student finance system and the types of course available, which is why it will be rolled out from 2025. It is the step change in the system that will give people the opportunity to upskill, retrain and reskill, providing the alternative to the notion that a standard three-year degree is the only route to success and giving people the flexibility to change their future.”²⁴

Baroness Wilcox responded for the Opposition and outlined some of her concerns with the Bill, including:

- the lack of collaboration across sectors on the face of the Bill;
- the inadequacy of the Bill to tackle the scale of skills challenges;
- the overt emphasis on an employer-led approach to developing local skills plans;
- the exclusion of Metro mayors, combined authorities, and local enterprise partnerships;
- the lack of support for courses below level 3;
- absence of detail on the LLE and the long lead time for its introduction;
- lack of detail on equivalent or lower-level qualifications;
- the power of the Secretary of State to select or sack employer representative bodies;

²³ Ibid.

²⁴ Ibid.

- the role of the IfATE in the approval of qualifications.²⁵

The ensuing debate covered many of these areas of concern.

Another major area of concern which was highlighted by many speakers during the debate was the lack of careers advice in the Bill. Lord Watson, for example, said:

“The White Paper stressed the importance of good careers education in schools, a point made in today’s debate by the noble Lord, Lord Storey, and the noble Baroness, Lady Morgan of Cotes, yet the Bill does not mention that either.”²⁶

Other speakers flagged up the lack of maintenance support,²⁷ and support for part-time students.²⁸

4.2 Committee stage

The [committee stage](#) took place over four days: 6, 15, 19, and 21 July 2021. Baronesses Berridge and Penn spoke on behalf of the Government. **No amendments were made to the Bill** (of the [115 amendments tabled](#), 83 were ultimately not moved for debate and the remaining 32 were withdrawn after debate). The majority of those who spoke welcomed the Bill and its aims. Many of the amendments tabled sought to clarify the detail of the Bill’s provisions.

Local Skills Improvement Plans

The first two days in committee were focused on debating amendments to clause 1 of the Bill on Local Skills Improvement Plans (LSIPs). Lord Lucas moved the first grouped amendment which aimed to ensure the needs of students were included in the plans. Lords Lucas and Storey raised a number of questions during the debate about how LSIPs would work in practice, including who would be involved in their formulation and who would be accountable for decisions.²⁹ Baroness Bennet raised a concern that the Government’s focus on employers failed to explain how LSIPs would improve an area.³⁰

Other amendments in the group related to:

- the input of self-employed people and SMEs in plans

²⁵ [HL Deb 15 June 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1795 to 1797.](#)

²⁶ [HL Deb 15 June 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1874.](#)

²⁷ Lord Bichard c1800, Baroness Blackstone c1840 and Lord Bradley c1851.

²⁸ Baroness Janke c1823 and Baroness Lane Fox c1827.

²⁹ [HL Deb 6 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1189, 1209-10.](#)

³⁰ *Ibid.*, c1190.

- distance learning
- attainment gaps
- special educational needs
- careers guidance
- the relationship with national strategies
- and the role of FE colleges.

Baroness Berridge responded by saying the Bill was a framework and would provide flexibility, with FE colleges being ‘central’ to the formulation of LSIPs. She also assured the committee the Bill did not exclude any level of qualification and level 1 and 2 qualifications could be included in plans.³¹ Furthermore, she said the expectations on stakeholder engagement would be set out in statutory guidance informed by evidence from the trailblazers running in 2021-22.³²

Another group of amendments moved by Baroness Hayman focussed on environmental sustainability. They sought to ensure LSIPs had regard to net-zero emissions and biodiversity targets.³³ She said:

“I find it extraordinary that the Bill, which could and should form the basis of a cross-cutting, long-term skills and education strategy to support the Government’s commitment to net zero, contains not a single mention of the relevance of climate and nature considerations.”³⁴

Baroness Berridge reassured the committee that statutory guidance issued under clause 1 would reflect zero carbon goals and the biodiversity agenda.³⁵

During the second day, further amendments were moved to clarify details of LSIPs, including: cooperation between bodies, information on skills gaps, and the review of plans. In most cases the Government gave the same response – details would be set out in statutory guidance.

Institute for Apprenticeships and Technical Education

The role of the IfATE was raised in amendments to clause 6 by Lords Blunkett, Baker, and Willets. The amendments aimed, among other things, to clarify the role of the IfATE in defunding qualifications. Baroness Berridge assured the committee the withdrawal of approval of qualifications would be separate from the funding decision which would rest with the Secretary of State.³⁶

³¹ Ibid., c1215.

³² Ibid., c1219.

³³ [Amendments 3, 9, and 25 on the marshalled list.](#)

³⁴ [HL Deb 6 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1225.](#)

³⁵ Ibid., c1246.

³⁶ [HL Deb 15 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c2049.](#)

Lifelong learning

Support for lifelong learning in clauses 14 and 15 was briefly debated in relation to two groups of amendments.³⁷ Liberal Democrat peer Lord Addington and Labour peer Baroness Wilcox put forward their parties' alternatives to the Government's plans, outlining the benefits of "skills wallets" and a "job promise plan".³⁸

Several amendments to clause 15 were tabled by the Government (91A, 91B, 91C, 99C, 99D) that aimed at better facilitating the Lifelong Loan Entitlement and more flexible modular provision.³⁹ They clarified that there will be two types of higher education courses: full courses and modules. They also limited the data collection requirements of the Office for Students (OfS), the higher education regulator in England, with respect to modules. Amendment 91A was ultimately withdrawn, and 91B and 91C were not moved for debate. Baroness Berridge said the Government would review these amendments and table them again at report stage with further amendments.⁴⁰

Responding to the concerns expressed by peers during the committee stage, Baroness Berridge emphasised the Bill was a "framework", and details relating to LSIPs, Employer Representative Bodies, and the LLE would come later in regulations and guidance.⁴¹ It was also made clear that the detail of certain provisions, including those relating to lifelong learning and the ability of the OfS to use student outcomes and minimum standards in assessments, remained subject to current and future consultations.⁴² With regards to the concerns over funding the Bill's proposals, Baroness Berridge highlighted recent Government investment in further education.⁴³

The Bill passed to its committee stage unamended.

4.3

Report stage

The report stage of the Bill took place on the 12 and 21 October. The Government tabled a number of significant amendments for inclusion in the Bill. An outline of the policies underpinning these amendments was set out in a DfE document, [Skills and Post-16 Education Bill Supplementary policy notes October 2021](#).

³⁷ [Amendments 91 to 99 on the marshalled list](#).

³⁸ [HL Deb 21 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c295-300](#).

³⁹ *Ibid.*, c302.

⁴⁰ *Ibid.*, c319.

⁴¹ [HL Deb 6 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1215](#).

⁴² [HL Deb 15 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c2076-77](#); [HL Deb 21 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c301, 316](#).

⁴³ [HL Deb 6 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c1219](#).

On the [first day](#) of report a number of Government amendments were agreed without a vote, the substantive amendments were:

- Amendment 1 to ensure Chapter 1 of Part 1 of the Bill applies only in relation to post-16 technical education or training that is English-funded.
- Amendment 6 to allow the Secretary of State to approve and publish a local skills improvement plan (LSIP) only if satisfied the skills, capabilities, or expertise required in relation to jobs that support climate goals have been considered in the development of the plans.

Three other non-Government amendments were agreed on a vote:

- Amendment 11 provides that employer representative bodies (ERBs) should develop LSIPs in partnership with local authorities, mayoral combined authorities, and further education providers to ensure they reflect the needs of learners, employers, and the local community. This amendment was endorsed by the Local Government Association and the Association of Colleges. It was agreed by 193 votes to 186.
- Amendment 29 prevents the IfATE from withdrawing approval of established level 3 courses, including BTECs, for four years to ensure T levels are fully embedded and acceptable to students, employers, and universities. This amendment was agreed by 155 votes to 150.
- Amendment 31 provides that no student would be deprived of the right to take two BTECs, AGQ, or a Diploma or an extended Diploma. This amendment was agreed by 148 votes to 129.

On the [second day](#) of report stage, several Government amendments were agreed which would provide “technical underpinning for the LLE and make minor corrections.”⁴⁴ The amendments agreed would:

- clarify the meaning of ‘module’ in the Teaching and Higher Education Act for the purposes of making loan regulations;
- clarify that a module of a “full course” is itself a category of higher education course for the purposes of Part 1 of the Higher Education and Research Act 2017 (HEAR). The Government noted that it is not the policy intention to fund modules that are not component parts of whole courses;⁴⁵
- reduce the potential burden on providers to provide or publish information in relation to modules under Section 9 of HERA;
- correct an error in legislation that could prevent a timely link between TEF awards and a provider’s fee limit.

⁴⁴ Amendments 37 to 39, 54 to 59, 68, 69 and 71 to 75.

⁴⁵ [HL Deb 21 October 2021 \[Skills and Post-16 Education Bill \[HL\] c312\]](#).

Baroness Barran, the Government spokesperson, said other details of the LLE would be included in a consultation, which would be followed by further primary legislation.⁴⁶

Three other substantive Government amendments were agreed to deal with technical careers advice in schools, cheating services in higher education, and academisation of Catholic sixth form colleges:

- Amendment 35 will ensure that providers of technical education and apprenticeships are given reasonable access to pupils in secondary schools in England to provide information about technical education and apprenticeships. Pupils would have to meet with providers on at least two occasions.
- Amendments 53 to 57 inserted a new chapter into the Bill “Cheating services provided for post-16 students in English institutions”. These amendments will make so-called “essay mills” illegal by making it a criminal offence in England and Wales to provide, arrange, or advertise cheating services to students at a post-16 institution in England.⁴⁷
- Amendment 58 will ensure when existing sixth-form colleges with a religious character convert to academies, they retain their religious character and associated freedoms and protections. It will also enable new and existing 16 to 19 academies to be designated with a religious character in the future.⁴⁸

Five non-Government amendments were agreed on a vote:

- Amendment 35A would ensure that Section 2 of the Technical and Further Education Act 2017 on access to technical careers advice (commonly known as the Baker Clause), is legally enforceable. This amendment was passed by 180 votes to 130.
- Amendment 45 would allow adult learners to claim universal credit. This amendment was passed by 166 votes to 150.
- Amendment 45A would require the Secretary of State to publish an annual report on the impact on re-skilling of funding restrictions on those who wish to pursue a qualification at a level equivalent to or lower (ELQ) than one they already hold. The amendment was passed by 160 votes to 150.
- Amendment 46 would require students of initial teacher training FE courses to undertake special needs awareness training. The amendment was passed by 169 votes to 147.

⁴⁶ Ibid.

⁴⁷ [HL Deb 21 October 2021 \[Skills and Post-16 Education Bill \[HL\] c369](#).

⁴⁸ Ibid.

- Amendment 50 would give individuals of any age in England the legal right to free education on an approved course for their first qualification up to and including level 3 (A level or equivalent). It would also set a minimum limit for employers in receipt of apprenticeship funding to spend at least two thirds on learners who begin apprenticeships at level 2, or level 3 before the age of 25.. The amendment was passed by 126 votes to 116.

4.4

Third reading

The Bill had its [third reading in the House of Lords](#) on 25 October. It passed unamended and entered the House of Commons on 26 October.

5 Part 1 of the Bill: Skills and education for work

This and the following sections of the briefing relate to the Bill as introduced in the Commons (ie as amended by the House of Lords).

5.1 Introduction

It has frequently been suggested that current skills training does not meet the needs of employers, and that employers should be more involved with the design and delivery of courses. There are also concerns that skills provision should be better aligned with local needs. There is currently a skills shortage at higher technical levels in many sectors and training providers and local organisations have been encouraged to work together to fill these skills gaps. It has been argued by some that the UK should adopt a ‘German-style’ vocational training system to address these issues and to raise the esteem of technical training and increase employer involvement.

Part 1 of the Bill comprises three chapters:

- Chapter 1 (clauses 1-5) sets out provisions to involve employer bodies in the tailoring of skills improvement plans to local skills needs.
- Chapter 2 (clauses 6-14) aims to increase the role of the Institute for Apprenticeships and Training (IfATE) in the provision of technical qualifications and improve careers advice.
- Chapter 3 (clauses 15 to 18) set outs provisions to support lifelong learning through the introduction of the Lifelong Loan Entitlement

5.2 Chapter 1: Education and training for local needs

Background

The post-16 education and training system can be complicated for employers to navigate and this can negatively impact on employer input into skills provision. Baroness Alison Wolf addressed this issue in a report, [Fixing a Broken Training System \(2015\)](#), which suggested a greater use of Chambers of

Commerce in FE provision. Chambers of Commerce are central to Germany's dual system of apprenticeship training, acting as a "one-stop-shop" for employer engagement. The Government has previously discussed adopting a more "German-style" system of technical education. The precise role of Chambers of Commerce in the FE sector was discussed in an article in FE news: [Will England take inspiration from Germany's chambers of commerce?](#), 2 October 2020:

Skills for Jobs White Paper proposals

The proposals in the Skills for Jobs White Paper aimed to ensure that the provision of technical education and training would be better aligned to employers' needs. To achieve this, the paper proposed increasing employer involvement in the skills system in the following ways:

- Giving employers a central role working with further education colleges, other providers, and local stakeholders to develop new Local Skills Improvement Plans (LSIPs) which shape technical skills provision so that it meets local labour market skills needs.
- Piloting LSIPs in Trailblazer local areas, exploring an approach where they are led by accredited Chambers of Commerce and other business representative organisations in collaboration with local providers; and engaging employer and provider groups to ensure the most effective models of employer representation before wider rollout.
- Making Strategic Development Funding available in 2021/22 in a number of pilot areas to support colleges to reshape their provision to address local priorities agreed with local employers.
- Ensuring Government has up-to-date and expert advice on the labour market and national skills gaps from the Skills and Productivity Board.
- Aligning most post-16 technical and higher technical education and training to employer-led standards set by the Institute for Apprenticeships and Technical Education (IfATE), so skills provision meets skills need.
- Continuing to improve and grow apprenticeships, so more employers and individuals can benefit from them as part of the Lifetime Skills Guarantee.
- Improving the quality of traineeships, to better support young people to transition to apprenticeships and other occupations.
- Continuing to support participation in English, maths, and digital training to meet employers' needs and supporting people to progress in employment or further study.
- Inviting proposals through the Strategic Development Fund to establish College Business Centres within further education colleges to work with

employers in a designated sector on business development and innovation.⁴⁹

1 Local Skills Improvement Plans

Local Skills Improvement Plans (LSIPs) will provide a framework to help colleges and other providers reshape provision to ensure it is responding to local labour market skills needs.

On 15 July 2021, the Government [announced](#) the names of the first eight "trailblazer" areas: the West of England, Cumbria, South Yorkshire, Kent, Leicestershire, Tees Valley, Lancashire and Sussex. Chambers of Commerce and other business representative organisations in these areas will work with local providers to develop LSIPs. They will be backed by £4 million of funding.

LSIPs will build on the work that Mayoral Combined Authorities and Local Enterprise Partnerships have done through their establishment of Skills Advisory Panels.

To support these changes, the Government will set up a new Strategic Development Fund to facilitate changes to provision that have been endorsed by local employers. The Fund will offer capital and revenue funding to help colleges respond to locally agreed priorities

Evidence from the new Skills and Productivity Board will be made available to local areas when they are developing their Local Skills Improvement Plans.⁵⁰

Governing bodies of colleges that provide post-16 technical education or training will have to consider LSIPs when making decisions on their provision. In July 2021, the DfE published [draft statutory guidance](#) for providers.⁵¹ The guidance sets out key principles to enable governing bodies of institutions within the further education sector to comply with their new duty to review provision in relation to local needs, as proposed in the Skills and Post-16 Education Bill.

The Bill (clauses 1-5)

Local Skills Improvement Plans

This chapter of the Bill creates a framework to facilitate stronger employer and provider involvement in local skills systems. It aims to create a system

⁴⁹ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, p13.

⁵⁰ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, pp15-19.

⁵¹ DfE, [Review how well the education or training provided meets local needs](#), July 2021.

that can be influenced by employers and which assists providers to respond to employers' needs.

Clause 1 provides for Local Skills Improvement Plans. It places duties on local providers to cooperate with designated employer representative bodies to develop LSIPs and to have regard to these plans once they have been made. These plans must be reviewed and must take into account guidance from the Secretary of State.

A Government amendment to clause 1 agreed at report stage in the Lords ([amendment 6](#)) provided that LSIPs would only be approved if, during development, they gave sufficient consideration to the skills, capabilities, or expertise required for jobs related to combatting climate change and supporting other environmental goals.

An amendment to clause 1 tabled by Lord Watson ([amendment 11](#)) was also agreed at report stage. It states LSIPs must be developed by an employer representative body in partnership with local authorities and local post-16 education providers. LSIPs must also consider social and economic development strategies in the local area and long-term national needs which may not apply to local employers.

Clause 2 outlines how the Secretary of State will designate employer representative bodies and sets out criteria for designation. Designated bodies should have the capacity to be effective and impartial and they should be reasonably representative of the employers within a specified area. The Secretary of State must inform bodies of their designation.

Clause 3 contains provisions to enable the Secretary of State to remove designation of an employer representative body.

Clause 4 contains definitions and interpretations.

A number of [Government amendments](#) agreed at report stage in the Lords clarified that the duties in Part 1 chapter 1 only apply to English-funded post-16 technical education or training (funded wholly or partly by the Secretary of State, a combined authority, the Greater London Authority, or a local authority in England).

Further education institutions: duty in relation to local needs

Clause 5 inserts a new section 52B into the Further and Higher Education Act 1992. It will place a duty on FE colleges, sixth form colleges, and designated institutions to keep under review how well their education and training provision meets local needs.

5.3

Chapter 2: Technical education qualifications, apprenticeships etc

Technical Education

The UK has a longstanding problem with the comparatively low take up of higher-level technical qualifications (level 4 and 5 courses). This has led to skills gaps in some areas.

Level 4 and 5 qualifications sit between A Levels and an undergraduate degree. Examples include: foundation degrees, Certificates of Higher Education (CertHE), Diplomas in Higher Education (DipHEs), Higher National Certificates (HNCs), and Higher National Diplomas (HNDs).

Library briefing [Level 4 and 5 education](#) (4 November 2019) discusses the issues:

Take-up and skills gaps

Evidence suggests that the take-up of Level 4 and 5 qualifications is low in England compared to other countries. Around 10% of all adults aged 18-65 hold a level 4-5 qualification as their highest, compared to around 20% in Germany and 34% in Canada. Take-up of Level 4 and 5 qualifications is also low compared to other levels of education. Around 4% of 25 year olds in England hold a Level 4 or 5 qualification as their highest qualification, compared to nearly 30% for both Level 3 (e.g. A Levels) and Level 6 (e.g. undergraduate degree). The numbers enrolling on Level 4 and 5 qualifications is also in decline and fell by 63% between 2009-10 and 2016-17 (from around 510,000 to approximately 190,000).

There is evidence, however, of un-met demand for higher level technical skills and it is suggested that skills gaps at the higher technical level may be contributing the UK's "productivity gap".

The Augar report analysed technical and vocational education and stated:

"England needs a stronger technical and vocational education system at sub-degree levels to meet the structural skills shortages that are in all probability contributing to the UK's weak productivity performance. Improved funding, a better maintenance offer, and a more coherent suite of higher technical and professional qualifications would help level the playing field with degrees and drive up both the supply of and demand for such courses."⁵²

On 8 July 2019, the DfE launched a consultation on [Higher Technical Education](#). The Government response to the consultation, [Reforming Higher Technical Education](#) (July 2020), set out the following proposals:

- Create prestigious qualifications that meet employer needs by working with the IfATE to introduce a new national approval scheme. From 2023,

⁵² [Independent panel report to the Review of Post-18 Education and Funding](#), 30 May 2019, p9.

where level 4-5 technical qualifications fail to meet standards, action will be taken to reduce the funding available for them.

- Providers offering high-quality higher technical courses will have access to industry standard facilities and equipment, teachers with relevant industrial experience and pedagogical expertise, and close links to employers.
- More popular and prestigious choice of courses. Raise the profile and understanding of the best higher technical education courses through a Government-backed brand, a communications campaign and improvements to information, advice and guidance.⁵³

A number of these proposals were included in the Skills for Jobs White Paper.

Equality for technical education in careers advice in schools

The [Technical and Further Education Act 2017](#) contains a legal duty known as the ‘Baker Clause’. It states schools in England must ensure there is:

“an opportunity for a range of education and training providers to access registered pupils during the relevant phase of their education for the purpose of informing them about approved technical education qualifications or apprenticeships.”

The DfE provides guidance on careers advice in a document [Careers guidance and access for education and training providers, July 2021](#). On pages 35-38, it sets out the actions providers should take to comply with the Baker Clause. More information is available in the Library briefing, [Careers guidance in schools, colleges and universities \(England\)](#), 22 January 2021.

On 16 June 2021, Mark Jenkinson presented the [Education \(Careers Guidance in Schools\) Bill](#), which would extend the duty to provide careers guidance in schools. When [announcing the Bill](#), Mr Jenkinson said the Bill would extend the requirements to provide careers guidance to children in year 7, and also implement the proposals in the Skills for Jobs White Paper. Both the Government and Opposition have expressed their support. The Bill is due to have its report stage in the House of Commons on 14 January 2022.⁵⁴

Skills for Jobs White Paper proposals

The White Paper made proposals which aimed to improve and increase provision of higher technical qualifications and to offer progression routes. The paper made the following specific proposals in the area of advanced technical and higher technical skills:

⁵³ Department for Education, Reforming Higher Technical Education Government consultation response July 2020, pp3-4.

⁵⁴ UK Parliament, Parliamentary Bills, [Education \(Careers Guidance in Schools\) Bill](#).

- Use the new £2.5 billion National Skills Fund to enhance the funding to support adults to upskill and reskill. This will include an offer, backed by £95 million in 2021-22, for all adults to achieve their first full advanced (level 3) qualification as part of the Lifetime Skills Guarantee.
- Expand the flagship Institutes of Technology programme to every part of the country by the end of this Parliament, to spearhead the increase in higher-level technical skills in Science, Technology, Engineering and Maths.
- Continue to roll out T Levels to prepare students for entry into skilled employment or higher levels of technical study, including apprenticeships.
- Reform higher technical education (levels 4 and 5) with a new approval system based on employer-led standards.
- Create clear progression routes for students towards the higher-level technical qualifications that employers need.

The White Paper also contained plans to strengthen the statutory requirement around careers advice. The Government committed to:

- A new minimum requirement about who is to be given access to which pupils and when.
- Tougher formal action against non-compliance.
- Government-funded careers support for schools to be made conditional on Baker Clause compliance.⁵⁵

The Government also said it would require schools to provide independent careers guidance from year seven, bringing it in line with the [Gatsby Benchmarks](#) (a framework for careers provision). The White Paper also promised updated careers guidance setting out what the Government expects from secondary schools (as statutory guidance) and colleges (as a requirement for funding).⁵⁶

The Bill (clauses 6 to 14)

This chapter of the Bill aims to extend and improve the existing statutory framework for the approval and regulation of technical qualifications. Clauses 6 to 13 amend provisions in the [Apprenticeships, Skills, Children and Learning Act 2009](#). They create new functions for the Institute for Apprenticeships and Technical Education (IfATE) and would enable it to

⁵⁵ DfE White Paper, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, p47.

⁵⁶ Ibid.

approve a broader range of technical education qualifications and keep the system as a whole under review.

The chapter also aims to improve pupils' access to information about technical education qualifications or apprenticeships. Clause 14 amends section 42B of the Education Act 1997, inserted by section 2 of the Technical and Further Education Act 2017.

Functions of the Institute for Apprenticeships and Technical Education

Clause 6 extends the IfATE's remit to include other technical education and training which supports entry to occupations. Subsection (3) gives the IfATE an oversight function in relation to education and training and requires it to keep this under review. In exercising its duty, the IfATE must consider the coherence of provision and ensure that the range of qualifications is appropriate. The IfATE may report matters to the Secretary of State and give advice.

Technical education qualifications

Clause 7 gives the IfATE power to approve technical qualifications via two routes. It would also allow the IfATE to specify the categories of technical education qualification that would be approved via the new routes, subject to tests and consultation. The IfATE would also have the power to withdraw approval of a technical education qualification.

An amendment tabled by Lord Watson ([amendment 29](#)) was agreed at report stage. It would prevent the IfATE from withdrawing approval of established level 3 courses, including BTECs, for four years. An amendment tabled by Lord Baker ([amendment 31](#)) was also agreed that would prevent a student being deprived of the right to take two BTECs, Applied General Qualifications, or a Diploma or an extended Diploma.

Clause 8 would allow the IfATE to facilitate T levels being made available in areas of the UK other than England and internationally.

Clause 9 concerns cooperation arrangements between the IfATE and the Office of Qualifications and Examinations Regulation (Ofqual) in relation to technical education qualifications.

Clause 10 aims to ensure that individual technical qualifications may not be subject to approval by Ofqual and the IfATE. It would take technical education qualifications out of scope for accreditation by Ofqual if they had been approved by the IfATE.

Clause 11 concerns information sharing by or with Ofqual.

Clause 12 contains minor and consequential amendments to the 2009 Act to ensure consistent interpretation of certain terms. Clause 13 would re-number sections of the 2009 Act.

Information about technical education and training

Clause 14 requires schools in England to allow a range of education and training providers (including, where reasonably practicable, a [university technical college](#)) to inform pupils directly about technical education qualifications or apprenticeships. This access to pupils must be on at least three occasions between the ages of 13 and 18-years-old.

This clause was added to the Bill in the House of Lords at report stage, after [amendments 35 and 35A](#), tabled by the Government and Lord Baker, were agreed.

5.4

Chapter 3: Lifelong Learning

Background

The Government has stated in policy papers, including their [Industrial Strategy](#),⁵⁷ that the country needs to increase productivity and to raise skill levels among the workforce. The Industrial Strategy stated an ambition to allow people to improve their skills throughout their lives, which would increase their earning power and increase their opportunities for better jobs.

On 29 September 2020, the Prime Minister gave a [speech at Exeter College](#) in which he announced a new Lifetime Skills Guarantee and loans for higher technical courses:

“Through our Lifetime Skills Guarantee,

we’ll upgrade Further Education colleges across the country with huge capital investment;

we’ll expand apprenticeships, making it easier to get a high quality apprenticeship, and connect them better to local employers who know where the jobs of the future are going to emerge;

we’ll fund free technical courses for adults equivalent to A level, and extend our digital boot camps;

we’ll expand and transform the funding system so it’s as easy to get a loan for a higher technical course as for a university degree, and we’ll enable FE colleges to access funding on the same terms as our most famous universities;

and we’ll give everyone a flexible lifelong loan entitlement to four years of post-18 education — so adults will be able to retrain with high level technical courses, instead of being trapped in unemployment.”⁵⁸

⁵⁷ HM Government, [Industrial Strategy: Building a Britain fit for the future](#), November 2017.

⁵⁸ Prime Minister, [PM’s skills speech](#), 29 September 2020.

2 Lifetime Skills Guarantee

The Lifetime Skills Guarantee was launched in April 2021. DfE press release, [Hundreds of free qualifications on offer to boost skills and jobs](#), 1 April 2021 gives an overview of the scheme.

The Government is allocating £95 million in the 2021-22 academic year to provide funding for all adults to achieve their first full level 3 qualification. Around 400 funded courses, in a variety of lengths are available. A list of courses is available at GOV.UK [List of free level 3 qualifications available to eligible adults](#). The list of eligible qualifications and sector-subject areas will be kept under review to ensure the offer responds to changing labour market needs.

This initiative will be funded under the [National Skills Fund](#). A Department for Education [consultation on the National Skills Fund](#) is seeking views on the current offers funded through the National Skills Fund and views on meeting critical skills needs; the consultation closed on 17 September 2021. The Government is yet to respond.

A Lifelong Loan Entitlement (LLE) was recommended by the Augar report and endorsed by a [House of Lord's report](#), which recommended “funding for modules or credit where a full degree is not required.”⁵⁹

On 26 August 2021, the Government [announced](#) universities and further education colleges would be [invited to bid](#) for a share of £2 million to create new ‘short courses’ across five subject areas: STEM, healthcare, digital innovation, education, and supporting Net Zero.⁶⁰ The trial will be part of the LLE and will also see the introduction of new ‘flexible’ student loan arrangements.

Current skill levels among adults

Part of the Lifetime Skills Guarantee includes a funded offer for all adults to achieve their [first full advanced \(level 3\) qualification](#).⁶¹

In 2020, an estimated 13.5 million adults of working age did not have a level 3 (equivalent to A level) or higher qualification. This was 39% of those aged 16-64. The highest rates were in the 16-19 age group where many would still be studying. Rates were around 30% for those in their 20s and 30s, rising to around 36% for those in their 40s and 47% for those aged 50-64. The following table gives a full breakdown of estimated qualification levels.

⁵⁹ House of Lords Economic Affairs Committee, [Treating students fairly: the economics of post-school education](#), 2018.

⁶⁰ Department for Education, [Short university courses to provide flexible training](#), 25 August 2021.

⁶¹ A first full level 3 qualification is equivalent to an advanced technical certificate or diploma such as a BTEC, or two full A levels

Qualification levels in England 2020

Highest qualification of 16-64 year olds by NVQ level

	Number (millions)	Percentage
Level 4+	14.9	42.8
Level 3	5.9	17.1
Trade apprenticeships	0.9	2.7
Level 2	5.4	15.5
Level 1	3.4	9.9
Other	2.0	5.9
No qualifications	2.2	6.2

Source: Annual population survey, ONS (via www.nomisweb.co.uk)

London had the smallest proportion of adults who were not qualified to level 3 (or higher) at 29%, followed by the South East at 36%. The highest rates were in the North East at 45% and the West Midlands at 43%.⁶²

Take-up of loans for further education

A key element of the Lifetime Skills Guarantee is the Lifelong Loan Entitlement. This would support the equivalent of four years of post-18 education from 2025. The uptake of existing loans for further education has been modest, especially compared with higher education loans, and has fallen in recent years.

Advanced Learner Loans were introduced in 2013/14 for learners aged 24 and older on full level 3 and level 4 courses. They were extended to learners aged 19-23 on courses at these levels and all those aged 19 and older on level 5 and 6 courses. The table below gives trends in take-up. This has fallen in recent years with fewer loans for level 3 courses. The value of loans awarded fell by 23% in cash terms between 2016/17 and 2019/20.

Advanced learner loan take-up, England

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
<i>Number of learners with loans</i>						
Level 3	70,700	89,000	110,200	99,500	97,600	86,400
Level 4+	4,800	6,300	9,100	9,900	10,300	9,900
Total	75,400	95,000	119,000	109,000	107,300	95,800
<i>Value of loans awarded (£ million)</i>						
	148.8	195.2	236.2	208.0	200.3	182.4

Source: [Further education and skills: November 2020](#), DfE

⁶² Annual population survey, ONS (via www.nomisweb.co.uk).

To put these figures in context, more than one million home higher education students took out a student loans in 2019/20 with a total value of almost £17 billion.⁶³

Skills for Jobs White Paper

The Skills for Jobs White Paper set out proposals to implement the Lifetime Skills Guarantee:

- Implementing a flexible Lifelong Loan Entitlement equivalent of four years of post-18 education from 2025.
- As a pathway towards the Lifelong Loan Entitlement, we will stimulate the provision of high-quality higher technical education (levels 4 and 5), as we work towards making it as easy to get a student finance loan for an approved Higher Technical Qualification as it is for a full-length degree.
- Introduce pilots to stimulate higher technical education and incentivise more flexible and modular provision.
- Determine how we can best stimulate credit transfer between institutions and courses.
- Consult on the detail and scope of the Lifelong Loan Entitlement in 2021.
- Improve how teaching is delivered so that it is more accessible, with the use of digital and blended learning.
- Provide clear information about career outcomes through occupational maps, wage returns data and ensuring providers give pupils information about all options.

The White Paper stated that the Government would consult on the scope and detail of the LLE in early 2021. This would include:

“views on objectives and coverage, together with aspects such as the level of modularity (i.e. the minimum number of credits a course will need to bear), how to incentivise and enable effective credit transfer, and whether Equivalent and Lower Qualifications (ELQ) restrictions should be amended to facilitate retraining and stimulate provision.”

Baroness Barran confirmed on 21 October 2021 during the report stage of the Bill in the House of Lords that details of the LLE would be included in a consultation, which would be followed by further primary legislation.⁶⁴

The Government intends that the LLE will ultimately be the primary route of funding for advanced technical and degree level qualifications (levels 4-6),

⁶³ Student Loans Company, [Student Support for Higher Education in England 2020](#).

⁶⁴ [HL Deb 21 October 2021 \[Skills and Post-16 Education Bill \[HL\] c312\]](#).

including modular provision. In 2021/22, the Government intends to fund trials of modular high-quality technical provision.⁶⁵

The Bill (clauses 15 to 18)

Lifelong Loan Entitlement (LLE) and funding for modules of study

This chapter makes provision for the introduction of a Lifelong Loan entitlement (LLE). It amends the regulation-making powers of the Secretary of State to allow student finance to be provided for modules of higher education and further education courses. It also allows the Secretary of State to prescribe an overall maximum amount of funding that learners could access and specify time periods for such loans.

Clause 15 inserts a new section 28A into the Teaching and Higher Education Act (THEA) 1998, which allows for financial provision for higher and further education. Subsections (1)(a) and (b) will allow funding to be provided for modules of a higher education course or a further education course.

Subsection (1)(c) makes provision for regulations to be made under section 22 of the THEA 1998 to provide for the determination of an overall maximum (“lifetime limit”) that may be available to learners over their lifetime.

Clause 16 amends section 83(1) of the Higher Education and Research Act (HERA) 2017 to substitute a new definition of higher education course and make provision for the regulation of modular study.

Clause 17 would require the Education Secretary to review Universal Credit conditionality rules to ensure adults who are unemployed and who enrol for a qualification do not lose their entitlement to the payment. This clause was added to the Bill in the House of Lords at report stage, after [amendment 45](#), tabled by the Lord Bishop of Durham, was agreed.

Clause 18 would require the Education Secretary to publish an annual report on the impact on skill levels of funding restrictions for those who wish to pursue a qualification at a level equivalent to or lower than one they already hold. This clause was added to the Bill in the House of Lords at report stage, after [amendment 45A](#), tabled by Lord Watson, was agreed.

⁶⁵ Office for Students, [Higher education short course trial](#).

6

Part 2 of the Bill: Quality of provision

Part 2 of the Bill contains two clauses. **Clause 19** aims to improve the quality of initial teacher training for the FE sector. **Clause 20** confirms the ability of the Office for Students (OfS), which regulates higher education in England, to assess higher education providers (HEPs) using student outcomes and minimum standards.

Background

FE teacher training

In 2007, the Government required all FE teachers appointed from 1 September of that year to hold or acquire a teaching qualification.⁶⁶ Following growing dissatisfaction with the new system, however, and an [independent review of the FE and skills workforce in 2012](#),⁶⁷ the requirement was revoked in 2013.⁶⁸ Nevertheless, the majority of current FE teachers hold a teaching qualification.⁶⁹ Information on teaching qualifications in the FE sector is [set out on the website of the Education and Training Foundation](#).

Anecdotal evidence suggests FE providers are not always confident in the ability of their newly trained staff following their initial teacher training.⁷⁰ A [survey by the Department of Education](#) in 2019 of 3,694 current and recent FE teachers and leaders, showed 185 had left the sector over the previous year.⁷¹ 25% of this group said better training would have made them less likely to leave.⁷²

In July 2021, an [independent review of the initial teacher training \(ITT\) market](#) published recommendations aimed at enabling consistently high-quality training.⁷³ The DfE launched a [consultation](#) to seek the sector's views on the review's recommendations, which closed on 22 August.⁷⁴ The Government has yet to respond to the consultation.

⁶⁶ [The Further Education Teachers' Qualifications \(England\) Regulations 2007](#).

⁶⁷ Department for Business, Innovation & Skills, [Professionalism in further education: final report of the independent review panel](#), October 2012.

⁶⁸ [The Further Education Teachers' Qualifications \(England\) \(Revocation\) Regulations 2013](#).

⁶⁹ Department for Education, [College staff survey 2018 main report](#), November 2018, p10.

⁷⁰ DfE, [Skills and Post-16 Education Bill Impact Assessment](#), May 2021, p61.

⁷¹ DfE, [College Staff Survey 2019 follow-up](#), September 2020, p41.

⁷² Ibid.

⁷³ DfE, [Initial teacher training \(ITT\) market review report](#), July 2021.

⁷⁴ DfE, [Initial teacher training \(ITT\) market review: recommendations. Government consultation](#), July 2021.

The OfS and quality assessments

The [Higher Education and Research Act \(HERA\) 2017](#) established the OfS as the regulator for HE in England. Its aim is to deliver choice and competition in the sector, and to protect the interests of students and taxpayers by ensuring the best possible outcomes for their respective investment.

In his [annual guidance letter](#) to the OfS in February 2021, then-Secretary of State for Education Gavin Williamson said one of his highest priorities, and one that reflected the Government’s “levelling up agenda”, was the improvement of quality and standards in HE through a “robust enhanced regulatory regime.”⁷⁵

The Education Secretary also made clear his support for an [OfS consultation](#), launched in November 2020, on the regulator’s plans for more challenging registration conditions tied to student outcomes.⁷⁶ HEPs must register with the OfS if they want to benefit from, among other things, public grant funding. To remain registered, the OfS proposed all HEPs would have to meet minimum baselines to ensure more students complete their courses and go on to graduate-level work or higher-level study.⁷⁷ The OfS consultation is discussed in a [Wonkhe article](#),⁷⁸ and the OfS’ analysis of responses is available on its website.⁷⁹

Skills for Jobs White Paper proposals

Chapter 5 of the White Paper was dedicated to “supporting outstanding teaching.” It noted new investment in 2021/22 would take total spending on the FE workforce to over £65 million and made several related pledges. These included:

- Launching a national recruitment campaign, particularly targeted at those with experience in industry.
- Reforming training so it is based on employer-led standards.
- Improving professional development to support teaching and staff progression.
- Facilitating relationships between employers and providers.
- Supporting apprenticeships teachers and lecturers with a tailored professional development offer.

⁷⁵ Secretary of State, [Guidance to the Office for Students \(OfS\) — Secretary of State’s strategic priorities](#), 8 February 2021.

⁷⁶ OfS, [Consultation on regulating quality and standards in higher education](#), 17 November 2020.

⁷⁷ OfS press release, [Regulator plans tougher minimum standards in higher education](#), 17 November 2020.

⁷⁸ “[OfS consults on minimum outcomes in every subject](#)”, Wonkhe, 17 November 2020.

⁷⁹ OfS, [Consultation on regulating quality and standards in higher education: Analysis of responses](#), 20 July 2021.

- Introducing comprehensive workforce data collection.⁸⁰

The White Paper had little to say about the role of the OfS in relation to assessing HE provision, only that the Government was determined to avoid the proliferation of low-quality courses and would support the regulator as it developed a new quality framework.⁸¹

The Bill (clauses 19 and 20)

Initial teacher training for further education

Clause 19 would give the Secretary of State the power to regulate the quality of initial teacher training for the FE sector in England if required changes or improvements could not be achieved through non-legislative means.

An amendment tabled at report stage by Lord Addington ([amendment 46](#)) would ensure there is sufficient training for special educational needs (SEN) awareness on initial teacher training courses for FE staff.

Quality assessments of higher education

Clause 20 would amend HERA 2017 to put the existing powers of the OfS to consider student outcomes and minimum requirements when assessing the quality of HE provision on a statutory footing.

The OfS would be able to use whatever measure it deemed appropriate in considering student outcomes, including course continuation rates, completion rates, and progression to further study or employment. The regulator may also determine and publish standards that apply across all English HEPs, without needing to account for differences in student characteristics, subjects, or types of institution.

⁸⁰ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, pp60-8.

⁸¹ *Ibid.*, p41.

7 Part 3 of the Bill: Protection for learners

Part 3 of the Bill comprises eight clauses organised in two chapters. It is concerned with protecting learners and funding authorities from the consequences of a failing FE provider.

Chapter 1 (clauses 21 to 26) sets out funding conditions to mitigate the risks of a provider exiting the sector and provisions for intervening in providers that are actively failing. Chapter 2 (clauses 27 and 28) clarifies the application of insolvency legislation to FE institutions.

7.1 Chapter 1: Regulation of post-16 education or training providers

Background

A National Audit Office (NAO) report published in September 2020 [analysed the financial health of the FE sector](#), and showed that funding constraints and uncertainty presented significant challenges to colleges' financial sustainability.⁸² Between November 2014 and March 2019, 36 FE colleges with severe cashflow problems received a total of £253 million in exceptional financial support from the Government. In the 2019/20 academic year, there were 64 unplanned exits of post-16 education and training providers from the sector.⁸³ These events can be disruptive for the educational experience of learners and can incur costs to the Government.

In July 2020, the [report of the independent review of college financial oversight](#), or Ney Review, was published. It called for a more “proactive and preventive” approach to dealing with financial failure and said colleges needed “to embrace the principles of governance, stewardship and transparency.”⁸⁴

A [Register of Apprenticeship Training Providers \(RoATP\)](#) was launched by the Government in March 2017 to ensure the quality of publicly funded apprenticeship provision. Providers wanting to join the register must meet criteria that include a minimum Ofsted rating and experience within the sector in which they hope to deliver training. A review of providers on the

⁸² National Audit Office, [Financial sustainability of colleges in England](#), September 2020, p8.

⁸³ DfE, [Skills and Post-16 Education Bill Impact Assessment](#), May 2021, p166.

⁸⁴ [Report of the independent review of college financial oversight](#), July 2020, p13.

Register using more stringent entry criteria began in May 2021. The last review cost £1.2 million and took nearly two years to assess 3,500 providers.⁸⁵

Skills for Jobs White Paper proposals

Chapter 4 of the Skills for Jobs White Paper was concerned with “responsive providers, supported by more effective accountability and funding.”⁸⁶ It promised a consultation “in spring 2021” on proposals for reforming the FE funding and accountability systems. The White Paper also detailed several additional pledges:

- Introduce new powers for the Secretary of State for Education to intervene in providers not delivering effectively or fulfilling promises for local skills provision
- Strengthen the governance of colleges by placing specific requirements on FE providers
- Invest in the college estate
- Improve sub-contracting practices

The [consultation on FE funding and accountability](#) ran between 15 July and 7 October 2021.

The Bill (clauses 21 to 26)

Funding arrangements with post-16 education or training providers

Clauses 21 to 24 concern a new power for the Secretary of State to make regulations to establish and maintain a list of relevant FE and training providers.

Providers on the list would have to meet conditions considered necessary to mitigate the risk and fallout of a disorderly exit from the sector. These conditions may include, among other things: insurance cover, having fit and proper managers, and a student support plan in case of a cessation of activities. The regulations would prohibit providers not on the list from receiving funding from central or local authorities, and from agreeing sub-contracting arrangements with other providers.

Clause 25 would give individuals of any age in England the legal right to free education on an approved course for their first qualification up to and including level 3 (A level or equivalent). It would also set a minimum limit for employers in receipt of apprenticeship funding to spend at least two thirds on learners who begin apprenticeships at level 2, or level 3 before the age of 25.

⁸⁵ DfE, [Skills and Post-16 Education Bill Impact Assessment](#), May 2021, p164.

⁸⁶ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, pp48-59.

This clause was added to the Bill in the House of Lords at report stage, after [amendment 50](#), tabled by Lord Clarke, was agreed.

Further education in England: intervention

Clause 26 would amend the [Further and Higher Education Act 1992](#) to strengthen the intervention powers of the Secretary of State when an education, or training provider is failing.

In addition to mismanagement, underperformance, and failure to discharge a statutory duty, action could also in future be taken when a provider does not “adequately meet local needs.” In such cases, the Secretary of State would have the power to require structural change, including potentially a merger, in order to secure improvement.

7.2

Chapter 2: Education administration and administration of further education bodies

Background

The [Technical and Further Education Act 2017](#) set out the framework for an insolvency regime for FE and sixth-form colleges in England and Wales. Following a [consultation on the technical detail](#), the new regime came into effect on 31 January 2019.⁸⁷ Aspects of commercial insolvency law now apply to FE providers, which means that colleges can fail and be put into an insolvency process. In such situations, the DfE can appoint an education administrator and they will have a duty to protect the learning provision of students and realise assets for the benefits of creditors. The insolvency process is part of the Government’s wider college oversight regime, which aims to improve financial resilience and quality in colleges.⁸⁸

Two colleges, Hadlow College and West Kent and Ashford College, went through the new insolvency process between April 2019 to May 2020, at a gross cost of nearly £27 million. A further £15 million was spent in this period to provide emergency funding to five colleges in serious financial difficulty which the ESFA had decided to handle outside the insolvency regime. According to a National Audit Office report, the ESFA recognises the cost and effort of handling colleges in education administration may limit the number of colleges able to enter the insolvency process.⁸⁹

The Bill (clauses 27 and 28)

Clause 27 amends section 33 of the Technical and Further Education Act 2017. It extends the Secretary of State’s existing powers to make regulations

⁸⁷ [The Further Education Bodies \(Insolvency\) Regulations 2019](#).

⁸⁸ DfE, [Further education bodies: insolvency guidance](#), January 2020, pp7-8.

⁸⁹ National Audit Office, [Financial sustainability of colleges in England](#), September 2020, p45.

applying provisions of insolvency legislation to an FE body in education administration. This clause confirms existing case law precedent that a Company Voluntary Arrangement (a specific rescue procedure) may be used as a mechanism to exit education administration.

Clause 28 concerns asset transfers and transfer schemes. It makes transfer schemes subject to provisions in the [Insolvency Act 1986](#), with modifications.

8 Part 4 of the Bill: Miscellaneous and general

Part 4 of the Bill contains three chapters of clauses relating to miscellaneous and general clauses:

- Chapter 1 sets out new offences criminalising cheating services for post-16 students in England.
- Chapter 2 contains provisions on the designation of 16 to 19 academies with a religious character, the designation of other educational institutions in the further education sector, and the administration of tuition fee limits.
- Chapter 3 sets out the bill's extent, commencement, and short title.

8.1 Chapter 1: Cheating services provided for post-16 students at English institutions

Background

For several years, HEPs have been concerned about students using the services of so-called “essay mills”, which are organisations that provide students with ready-made essays and course assignments for a fee. These commercial entities exist to gain financially by encouraging students to cheat. Some of these organisations are based in the UK, but others are global businesses.

In 2017, the Quality Assurance Agency (QAA) published information and guidance for HEPs on essay mills and contract cheating (where students recruit a third party to undertake their assignments): [Contracting to Cheat in Higher Education](#). An updated version of the guidance was published in June 2020: [Contracting to Cheating Higher Education How to Address Essay Mills and Contract Cheating 2nd edition](#).

How big is the problem?

A systematic review of 71 student surveys on cheating in higher education going back to 1978 found contract cheating was self-reported by a historic

average of 3.5% of students.⁹⁰ This figure was shown to be increasing significantly over time. In studies from 2014 to 2018 the percentage of students admitting to paying someone else to do their work was 15.7%.

The review suggested the data was likely to underestimate levels of contract cheating, as students who engaged in cheating would be less likely to participate in surveys about cheating. In 2019, a report by Factcheck said many universities were unable to give accurate numbers of students who had cheated.⁹¹ A response to a written question in the House of Lords also said “it is impossible to quantify exactly how widespread the use of essay mills is.”⁹²

Calls for reform

In September 2018, more than 40 university vice-chancellors wrote to the Government calling for legislation to target essay mill companies. They said:

“Legislation will not be a magic bullet; it is, however, a vital part of the broader package of measures. Legislation would, amongst other advantages, shut-down UK-based essay mills; prevent the advertising of their services near campuses and in public places such as the London Underground; enable the removal of essay mills from search engine findings and prevent UK-based companies from hosting online advertisements for essay mills.”

[...]

“Essay mills have no place in UK Higher Education. With New Zealand, Ireland, Australia and 17 US states all having introduced or introducing a ban, it is time for the UK to also take the necessary action to demonstrate that the UK is not a safe haven for Essay Mills to do business, and so to safeguard the reputation of the UK Higher Education sector.”⁹³

On 10 February 2021, Chris Skidmore MP introduced a Ten-Minute Rule Bill to ban essay mills.⁹⁴ During the debate, he said there were “at least 932 sites in operation in the UK, up from 904 in December 2020, 881 in October 2020 and 635 back in June 2018.”

Lord Storey Private Members Bill

On 24 May 2021, Lord Storey presented a Private Members Bill in the House of Lords, the [Higher Education Cheating Services Prohibition Bill](#). Information on the Bill and accompanying documents are on the Parliament website at [Higher Education Cheating Services Prohibition Bill \[HL\]](#).

The Bill has one clause which would make it an offence to provide or advertise cheating services for higher education assessments in England. The Bill also

⁹⁰ P.M. Newton, [How Common Is Commercial Contract Cheating in Higher Education and Is It Increasing? A Systematic Review](#), *Frontiers in Education*, August 2018.

⁹¹ Factcheck, [Universities catch less than one per cent of ‘bought in’ essays, own records suggest](#), May 2019.

⁹² [PQ HL11247 \[Students: Plagiarism\], 17 December 2020](#).

⁹³ Russell Group, [Call for ban on essay mills](#), 27 September 2018.

⁹⁴ [Essay Mills \(Prohibition\) 10 February 2021](#).

prohibits the advertising of these services. It passed its [second reading on 25 June 2021](#).

A House of Lords briefing paper, [Higher Education Cheating Services Prohibition Bill \[HL\], 16 June 2021](#), gives an overview of the Bill and includes background information.

The Bill (clauses 29 to 33)

The Bill will make it a criminal offence to provide, arrange, or advertise contract cheating services for financial gain to post-16 students in England. The offences can be committed in England and Wales. This chapter was added to the Bill in the House of Lords at report stage, after [amendments 53 to 57](#), tabled by the Government and Lord Storey, were agreed.

Clause 29 sets out what constitutes contract cheating and other important terms.

Clause 30 states providing, or arranging for another person to provide, contract cheating services is an offence punishable by a fine.

Clause 31 states advertising contract cheating services is an offence punishable by a fine.

Clause 32 sets out how offences committed by bodies corporate and unincorporated associations will be dealt with.

Clause 33 sets out the definition of certain terms used in the chapter.

The chapter is discussed in a Wonkhe article, [How will new laws on essay mills work?](#), 19 October 2021.

8.2

Chapter 2: Miscellaneous provisions

16 to 19 Academies: designation as having a religious character

Background

Sixth form colleges (SFCs) are treated differently to schools with regards to VAT. As a result, several SFCs have converted to academies to benefit from the different VAT regime that allows academies to reclaim the tax. Catholic SFCs, however, of which there are 14 across England, say they are prevented from converting to academies because their religious character, which is protected under the [Further and Higher Education Act 1992](#), would not be maintained under current Government rules. They suggest colleges would lose protections in areas of curriculum, acts of worship, and governance.

The Association of Colleges has said the conversion deal, articles of association and funding agreement necessary for academisation may not be sufficiently customised to meet the requirements of SFCs.⁹⁵ The director of the Catholic Education Service, Paul Barber, believes “because academisation legislation for SFCs was developed separately from schools, the same safeguards given to schools were omitted for Catholic SFCs.”⁹⁶

The issue has been raised in several parliamentary questions,⁹⁷ and was the subject of a debate on 5 March 2019.⁹⁸ It is also discussed in an article in FE Week, [Catholic sixth-form colleges demand academisation protection](#) (13 April 2018).

Lord Touhig committee stage amendment

During the committee stage of the Skills and Post-16 Education Bill in the House of Lords, Lord Touhig moved [amendment 86](#), which would have granted the Secretary of State the power to allow sixth-form college corporations to convert to academies without losing their current statutory protections.

Baroness Berridge responded for the Government and acknowledged there was a problem with Catholic SFCs wanting to convert to academies. She said:

“we remain keen to take action to facilitate all sixth-form colleges, including those with a designated religious character, to convert to academies [...] we would look at all legislative opportunities to see how this can best be done. We are committed to making this happen at the earliest opportunity.”⁹⁹

The Bill (clause 34)

Clause 34 amends section 8 of the [Academies Act 2010](#). It provides for a new section 8A which would allow the Secretary of State to designate a 16 to 19 academy as having a religious character. A new section 8B sets out some obligations for the running of a 16 to 19 academy with a religious character, including the opportunity for all pupils to attend religious education and at least one open act of collective worship a week.

This clause was added to the Bill in the House of Lords at report stage, after [amendment 58](#), tabled by the Government, was agreed.

⁹⁵ Association of Colleges, [Briefing Academy conversion – advice for SFCs](#), July 2016.

⁹⁶ “[Time to close the loophole that harms Catholic SFCs](#)”, FE Week, 22 April 2018.

⁹⁷ [PQ 127097 \[Sixth Form Colleges: Catholicism\]](#), 20 February 2018; [HC Deb 4 February 2019 \[Topical Questions\]](#), c21.

⁹⁸ [HC Deb 5 March 2019 \[Catholic Sixth-form Colleges\]](#).

⁹⁹ [HL Deb \[Skills and Post-16 Education Bill \[HL\]\]](#), 19 July 2021 c94.

Institutions within the further education sector: procedure for designation

Background

As part of the process of exiting education administration, an institution might need to be transferred from an FE college or sixth form corporation to a company. The Secretary of State would immediately need to designate the institution for it to remain part of the FE sector. Currently this requires a statutory instrument, which can take time to be enacted and means insolvency cases can take longer to be resolved.

The Bill (clause 35)

Clause 25 amends sections 28 and 89 of the [Further and Higher Education Act 1992](#) to allow the Secretary of State to designate educational institutions in England through a published administrative order, rather than a statutory instrument.

This clause was added to the Bill in the House of Lords at report stage, after [amendment 58](#), tabled by the Government, was agreed.

Higher education course fee limits: administration

The Bill (clause 36)

Clause 36 amends paragraph 3(3) of Schedule 2 to HERA 2017. It corrects an error in existing legislation that concerns a date relevant for determining tuition fee limits for higher education courses at certain providers.

This clause was added to the Bill in the House of Lords at report stage, after [amendment 59](#), tabled by the Government, was agreed.

8.3

Chapter 3: General provisions

Chapter 3 sets out the bill's extent, commencement, and short title.

The Bill (clauses 37 to 39)

Extent

Clause 37 sets out the Bill's territorial extent. The Bill extends to England and Wales. Clauses 11, 14-15, and 26-28 also extend to Scotland and Northern Ireland, and clause 10 to Northern Ireland.

9

Reaction to the Bill

Association of Colleges (AoC)

The AoC Chief Executive, David Hughes, has made several statements as the Bill has progressed through Parliament. When it was introduced in the House of Lords on 18 May 2021, he welcomed the focus on further education, but also called for adequate long-term funding. He said:

“Today’s legislation is confirmation that colleges will be central to the country’s economic recovery. For too long the snobbery towards further education has meant it’s been neglected and the Skills and Post 16 Education Bill is a chance to put that right. I hope the government continues to step up and throws its full support behind the college sector as we approach the spending review later this year. The only way to bring ambitious and wide-reaching legislation to life is with fair and long-term funding from the Chancellor to back it up.” [...]

“We look forward to working with the government to help deliver the skills and lifelong learning to build a stronger economy, redress long standing regional inequalities and make the transition to a net zero carbon economy.”¹⁰⁰

On 6 July, he wrote an article calling for a “skills and education system that is fit for the future.”¹⁰¹ Following the first day of report stage in the House of Lords on 12 October 2021, he highlighted the importance of amendments on LSIPs and level 3 qualifications. He said:

“Peers voted in favour of three significant amendments which would improve the Bill. These amendments, and more to be discussed next week came from all sides of the house. Peers rightly noted that Local Skills Improvement Plans must be co-developed with colleges, local government, elected mayors, employers and others.” [...]

“Likewise, the successful amendments on taking more time before any qualifications are de-funded shows that the government must work with the college sector to create a new roll out plan ensure T levels are a success, whilst not inadvertently disadvantaging thousands of already disadvantaged students. The Government’s own impact assessment warns of the damage the proposals could have by leaving many young people with limited or no routes to progress into work or higher education.”¹⁰²

¹⁰⁰ Association of Colleges, [Skills and Post-16 Education Bill presented in Parliament - AoC responds](#), 18 May 2021.

¹⁰¹ “[We can all support the aims of the Skills and Post-16 Education Bill, but the details need work](#)”, Wonkhe, 6 July 2021.

¹⁰² Association of Colleges, [Key amendments secured in Skills Bill debate in House of Lords](#), 13 October.

After the second day of report stage (21 October), he welcomed the amendment that sought to ensure adults claiming Universal Credit did not lose the payment if they enrolled for a qualification. He said:

“Cutting Universal Credit whilst blocking people’s ability to train and upskill their way into good jobs is just plain wrong at any time, but when employers are crying out for people with skills then it is even more baffling. We should be removing barriers to access, not adding to them, helping to make the labour market more effective.”

“This is an important moment as the House of Lords rejects the government’s muddled approach and forces them to think again. We need an urgent review into the system to make sure that the welfare and skills systems are working in tandem.”¹⁰³

Institute for Apprenticeships and Technical Education

Speaking ahead of the Bill’s second reading in the House of Lords, the Chief Executive of the Institute for Apprenticeships and Technical Education, Jennifer Coupland, highlighted the importance of employers in skills provision. She said:

“There is no longer just one road to career success, we want everyone to be able to switch on the sat nav at any stage in life and choose a new destination. Putting employers at the very heart of decision making to help meet local skills needs will help to pave the road ahead. The Institute is looking forward to playing an even bigger role with employers to build a unified skills system that delivers on this ambitious roadmap for change.”¹⁰⁴

Association of Employment and Learning Providers (AELP)

Chief Executive of the AELP, Jane Hickie, also said it was vital employers were able to shape local skills provision. She also expressed concerns about LSIPs being used to allocate funding. She said:

“AELP welcomed the employer-informed approach of the white paper and is therefore generally comfortable with the direction of travel that the bill is pursuing, providing that it preserves the employer demand-led principles that successive governments have adopted since the 2006 Leitch review and which are now firmly embedded in the provision of apprenticeships.”

“AELP hopes that LSIPs are not being set up by the DfE as a trojan horse which then act as decision-makers over how funding is allocated locally. Nor should they become closed shops for favoured colleges and providers because they then become another supply-side mechanism which could interfere in genuine demand for skills expressed by employers and learners. ITPs [Independent Training Providers] are renowned for their responsiveness in meeting the

¹⁰³ [“Key Universal Credit amendment secured in Lords debate on The Skills and post-16 Education Bill”](#), FE News, 21 October 2021.

¹⁰⁴ [“Skills and Post-16 Education Bill: The sector reacts”](#), TES, 19 May 2021

demand for skills from their local SMEs [small and medium-sized enterprises], also implicitly acknowledged by the impact assessment document which says that the employer representative bodies point to difficulty in accessing support from colleges. So nothing in this bill should get in the way of well-established ITP responsiveness.”¹⁰⁵

Federation of Awarding Bodies (FAB)

Tom Bewick, Chief Executive of the FAB, believes the Bill centralises the delivery of post-16 education to an extent that will prove detrimental. He said:

“The bill, as currently drafted, places too much power in the hands of the secretary of state. It is top-down and overly centralised. For example, the sign-off of local skills improvement plans should be a reserve power of last resort. Instead, all local areas will have to submit plans for sign-off directly to the Department for Education. We need a skills system that promotes higher-trust working, and part of that is about empowering local civic leaders to do the right thing by their local communities, including college principals. It is very hard to see how the current bill does anything other than perpetuate the low-trust working culture that has come to symbolise the relationship between those operating at the front line and officials in the bureaucracies.”¹⁰⁶

MillionPlus

MillionPlus is a membership organisation for universities. They released a statement following the Bill’s first reading in the House of Lords that called for more detail about its provisions. It said:

“Ahead of Second Reading (15 June), there is much in this Bill that, in theory, has the ability to bring about positive change. Whether it is supporting the FE sector whilst not doing down our world-class higher education institutions, or tackling mature and part-time study, this Bill can address concerns the education sector has had for many years. However, for this to happen the legislation needs to be considered, well thought-through, and not simply rhetoric or nice ideas that will not translate into practicable policy.”

“Much greater detail is needed on many parts of this Bill before the sector can have the confidence needed to fully support it [...] We strongly believe that removing benchmarking undermines much of what the rest of the Bill is pushing for, and this should therefore be re-assessed, and we want to see a Bill that is consistent in its messaging, collaborative in its approach, and with the students of today and tomorrow as its focus.”¹⁰⁷

MillionPlus also published a briefing ahead of the Bill’s second reading in the House of Lords, which [detailed some of their concerns](#) about the proposed legislation.¹⁰⁸

Further responses from the sector are given in the following news articles:

¹⁰⁵ [“Skills and Post-16 Education Bill: The sector reacts”](#), TES, 19 May 2021.

¹⁰⁶ Ibid.

¹⁰⁷ MillionPlus, [Skills and Post-16 Education Bill](#), 10 June 2021.

¹⁰⁸ MillionPlus, [Parliamentary briefing: Skills and Post-16 Education Bill](#), 10 June 2021.

- [“The Skills and post-16 Education Bill and £83 million Post-16 Capacity fund launched - Sector Reaction”](#), FE News, 18 May 2021.
- [“Skills and Post-16 Education Bill: The sector reacts”](#), TES, 19 May 2021.

10

Commentary

One of the main concerns raised about the Bill has been its lack of detail, particularly with regards to the proposed Lifelong Loan Entitlement. During debate in the House of Lords, it was frequently stressed by the Government that the Bill was a framework and that details would be fleshed out later in regulations and guidance. There are also a number of consultations and policy trials relating to the Bill's provisions that will feed into future developments.

Other concerns raised about the Bill include how it will affect the qualification landscape, its implementation timeline, the employer-led focus of many of its provisions, and the long-term funding of post-16 education.

10.1

Lifelong loan entitlement

The Lifelong Loan Entitlement is intended to be a flagship element of the Skills and Post-16 Education Bill, it was recommended by the Augar report and originally announced in September 2020 as part of the [Prime Minister's skills speech](#). The Government's aim is for it to be as easy to get a student finance loan for an approved Higher Technical Qualification as it is for a full-length degree.¹⁰⁹

During the Bill's progress in the House of Lords, however, the lack of detail on the LLE was repeatedly criticised, particularly because it would be a major change to the student finance system.

In response to criticism, the Government said the Bill was a framework and promised more detail would be forthcoming in amendments tabled at committee and report stage. During the Bill's report stage, however, Baroness Barran said the Government intended [to consult on the "ambition, objectives and coverage" of the LLE](#), before bringing further primary legislation at a later date setting out how it will work. Some information was given on the content of the consultation:

"We intend to seek views on our ambition, objectives and coverage. This will include aspects such as but not limited to: the level of modularity —this will cover the minimum number of credits a course will need to bear to be eligible for funding; maintenance support; how to support quality provision and flexible learning; how to incentivise and enable effective credit transfer; and

¹⁰⁹ DfE, [Skills for Jobs: Lifelong Learning for Opportunity and Growth](#), January 2021, p39.

whether restrictions on previous study should be amended to facilitate retraining and stimulate high-quality provision”.¹¹⁰

The planned rollout date of the LLE remains 2025.

The ‘ELQ rule’

The equivalent or lower-level qualification (ELQ) rule means most students qualified to level 4 are unable to access public funding to study a qualification at an equivalent or lower level. The issue is discussed in an FE Week article, “[Calls grow for reform of ELQ rules](#)”, 9 October 2021.

During the Bill’s committee stage in the House of Lords, Lord Johnson tabled a probing amendment (92) to highlight the impact of the ELQ restriction on retraining and lifelong learning:

“The obvious trouble is that the ELQ rule not only constrains student choice about how best to retrain if they already have a qualification but treats tertiary education—post-18 education—as a one-off event, rather than as part of a process of lifelong learning in a world in which people can expect to have multiple careers over their working lives. Keeping it will therefore make a nonsense of the entire lifelong loan entitlement.”¹¹¹

During report stage in the House of Lords, Lord Watson tabled [amendment 45A](#), which was agreed and added to chapter 3 of the Bill as clause 18. It requires the Education Secretary to publish an annual report on the impact on skill levels of the ELQ funding restrictions.

10.2

The qualification landscape

Level 3 qualification reform

Following a consultation in 2019/20 on qualifications at level 3 and below in England, the Government announced plans to make A Levels and [T Levels](#) (their technical alternative), the main qualifications at age 16. Funding for other current post-GCSE options, including most BTECs, will be removed by 2025.

The reforms have prompted a significant response from the sector. The [Protect Student Choice campaign](#) (a coalition of 21 organisations representing students and teachers) organised a letter to the Secretary of State for Education Nadhim Zahawi, which was signed by 118 MPs and peers, calling for a rethink.

During the Bill’s report stage in the House of Lords, amendments 29 and 31, which sought to protect BTECs, were agreed. They form part of clause 7 of the

¹¹⁰ [HL Deb 21 October 2021 \[Skills and Post-16 Education Bill \[HL\]\] c311.](#)

¹¹¹ [HL Deb 21 July 2021 \[Skills and Post-16 Education Bill \[HL\]\], c.302-3.](#)

current Bill. Another amendment, No 33 tabled by Lord Willetts, would have prevented the Education Secretary from removing funding for a technical qualification without public consultation and the consent of the relevant employer representative bodies.¹¹² This amendment was lost on an equal vote 135 to 135 (parliamentary procedure means votes must receive a majority to be agreed).

The Government's reforms to technical qualifications, their implications, and reaction from the sector are discussed in the Library Insight [Level 3 qualifications reform: What's happening to BTECs?](#), 30 July 2021.

Lower-level qualifications

The Bill is aimed at raising the skill levels of the population, but it is focused on qualifications at level 3 and above. Many adults, however, do not even hold a level 2 qualification and it has been found that increasing skills at this level can have a significant effect on an individual's employment potential and lifetime earnings.¹¹³

The Augar report said, "full Level 2 qualifications yield some of the highest increases in earnings",¹¹⁴ and recommended that "full funding for the first 'full' Level 2 qualification, for those who are 24 and over and who are employed should be restored."¹¹⁵

10.3

Timescale for implementation of proposals

Speakers in the House of Lords questioned the long lead time for the implementation of the Bill's proposals.

The universities minister Michelle Donelan has said the Government will be trialling loan-funded access to tuition fees for certain modules at certain English institutions from 2022 ahead of the Lifelong Loan Entitlement launching in 2025.¹¹⁶

¹¹² The amendment is discussed in an article written by former education secretaries Lords Blunkett and Baker: "[The UK government's skills bill is a disaster for young people](#)", The Guardian, 13 October 2021.

¹¹³ Department for Education, [The economic value of key intermediate qualifications: estimating the returns and lifetime productivity gains to GCSEs, A levels and apprenticeships](#), December 2014.

¹¹⁴ [Review of Post-18 Education and Funding, May 2019](#), p124.

¹¹⁵ Ibid p54.

¹¹⁶ "[Donelan says Lifelong Loan Entitlement trials will begin 2022](#)", University Business, 21 April 2021.

10.4

Employer-led focus

Local Skills Improvement Plans will give employers a central role in skills provision in local areas. The move to an employer focus from a student focus was raised by some speakers during the Bill's Lords stages:

“This cut to the heart of the Local Skills Improvement Plan (LSIP) approach, which would see employers as the central arbiter of what provision is needed locally (though the bill doesn't explicitly say what local means). Some speakers queried why the student was no longer at the heart of the system, others doubted the agency of current local industry to predict the needs of a rapidly changing local economy, and yet others queried whether there was a role for a national skills strategy with links to work on the industrial strategy.”¹¹⁷

The Association of Colleges (AOC) have also said there needs to be wider input into LSIPs:

“as well as the employer voice, there needs to be balancing input from students, trade unions, community organisations, colleges and other education providers. With that mix the LSIPs would be able to better reflect the nuanced mix of need, demands and aspirations for an area. Achieving that then leads to the need to include universities and schools as well as colleges in both the local planning and delivery arrangements as well as the accountabilities. The collaboration should be used to deepen partnerships across the education and skills landscape; to coordinate information, advice and guidance; develop clear pathways/progression between providers; offer better employer support across innovation and skills; and help education play its wider role in building healthy, connected communities.”¹¹⁸

Role of Chambers of Commerce

The Bill will give Chambers of Commerce a leading role in the skills system, but it has been suggested that these bodies are “not close enough to industry” to do this.¹¹⁹ There are 43 chambers across England which comprise groups of local businesses, with varying levels of staff. They typically offer their members opportunities for networking as well as advice on legal matters, health and safety and tax.

However a report by the British Chambers of Commerce in May 2021, found that across England there were examples of Chambers of Commerce “proactively convening employers and skills stakeholders to improve communications, coordination and address local skills issues.”¹²⁰ With regard to LSIPs, it has been suggested that Chambers of Commerce have the ability

¹¹⁷ “[The Skills and Post-16 Bill enters the Lords](#)”, Wonkhe, 15 June 2021.

¹¹⁸ “[We can all support the aims of the Skills and Post-16 Education Bill, but the details need work](#)”, Wonkhe, 6 July 2021.

¹¹⁹ “[FE white paper: Employer casts doubt on chambers of commerce leading role](#)”, FE News, 11 March 2021.

¹²⁰ British Chambers of Commerce, [Report of the Workplace Training and Development Commission](#), May 2021, p32.

“to convene employers of all sizes and sectors, together with a wide range of skills providers and economic stakeholders, to discuss and agree local priorities.”¹²¹

10.5 Long-term funding

The FE sector has experienced a prolonged period of under investment. Stakeholders such as the AOC have said increased funding and long-term planning will be needed to make the proposals in the Bill work, but also that funding for FE should not be increased at the expense of the HE sector:

“to persuade both Treasury and employers to invest more, in this year’s spending review and over the long term. Employers invest less in education and training in the UK than they do in other OECD countries, but the challenges of finding skilled recruits post-Brexit and because of the pandemic might see that change. The risk for universities is that funding is literally moved across to colleges, rather than more overall being invested. By working together on a joined-up system colleges and universities will be able to find their unique and vital parts to play with the investment they need to thrive.”

An article in FE Week, [Spending review 2021: What the chancellor announced for FE and skills](#) (27 October 2021), summarised the skills and post-16 education funding commitments announced in the [Autumn 2021 budget and spending review](#). This funding covers the rest of this parliament and includes:

- an additional £1.6 billion for 16-19-year-old education;
- £554 million from the National Skills Fund for “retraining and upskilling opportunities for adults”;
- £560 million for a [new adult numeracy programme, Multiply](#);
- £2.8 billion in capital investment by 2024-25;
- increasing apprenticeships funding to £2.7 billion by 2024-25.¹²²

¹²¹ “[FE white paper: Employer casts doubt on chambers of commerce leading role](#)”, FE News, 11 March 2021.

¹²² Treasury, [Autumn Budget and Spending Review 2021](#), October 2021, p97.

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