



Education Answers briefing No 7

THE TECHNICAL AND FURTHER EDUCATION BILL 2016

SUMMARY

This briefing sets out LBMW's initial views and reactions to this Bill ([download here](#)). It is subject to clarification and review as the Bill passes through parliament ([details here](#)). We advise clients to read the Explanatory Notes to the Bill ([download here](#)) though even these do not in (in our view) quite set out its full potential impact. References in **bold** are to the **clauses** of the draft Bill or the **paragraphs** of Schedules to the Bill as appropriate.

DETAIL

PART 1: TECHNICAL EDUCATION

1. This part is short, consisting of only one clause. However there is a substantial relevant schedule (**Schedule 1**) and the effects are in fact quite far reaching.
2. **1(1)** might lead one to suppose that the purpose of the clause was simply to change the name of the Institute. However this is very far from being the case. **Schedule 1** makes many more changes, the effect of which is to bring "Technical Education" under the remit of the Institute. "Technical Education" (although capitalised in some of its appearances in the draft) is not especially defined in the Bill, but the Explanatory Notes say that the term refers to approved technical qualifications. We assume that they mean the education that would lead to such qualifications. The Notes also say that the Bill extends the remit of the Institute for Apprentices to cover classroom based Technical Education in addition to apprenticeships. It is consequently very clear that technical education in 6th Form Colleges now comes under the Institute but (as further noted below) the wording permits of the interpretation that the same could be true of technical education within secondary maintained schools and secondary phase academies. Against this supposition, paragraph 5b of the Notes refers more explicitly to "college-based technical education". This issue as to the intended scope of the Institute needs probing in debate.
3. We wonder therefore whether the Bill is not an initial step towards both (a) further legislation in due course to enable the creation of selective technical schools (whether

as maintained schools or as academies) and (b) the oversight by the Institute of technical streams in all secondary schools who choose to create them. We stress that this surmise is speculative but the wording of the Bill at least bears that interpretation. Such a step would make sense alongside the creation of new grammar schools (or selective streams in schools) as already envisaged by the Prime Minister and at present under consultation.

4. **Schedule 1** amends sections inserted into the Apprenticeships, Skills, Children and Learning Act 2009 by the Enterprise Act 2016 which have not yet been commenced. This reflects we presume rapidly developing government policy. The changes are as follows:
 - a. **Paragraph 2** amends sZA2 (which at the moment refers only to apprenticeships, as do all the sections cited here) to include “technical education qualifications” and “steps towards occupational competence”. Both are surely capable of very wide construction not restricted to the FE phase.
 - b. **Paragraph 3** amends sZA3 to include “other education or training”.
 - c. **Paragraph 4** amends sZA4 to include “technical education qualifications” and “steps that people may take towards becoming competent to work in occupations”.
 - d. **Paragraph 5** amends sZA5 in the same way as sZA4.
5. There is no mention of any specific educational phase in this **schedule** and we wonder therefore whether it may not be intended as mooted above to comprehend potentially Technical Education in every phase in any educational institution except Higher.
6. We note also that it has already been announced that the Chief Executive of the Education Funding Agency is also to be the Interim Chief Executive of the Institute as now expanded. This suggests a close link between the purposes, styles and procedures of the two agencies.
7. This potential encroachment of the Institute into the world of academies and maintained schools is not immediately apparent from the Bill or its Explanatory Notes. No doubt more information will emerge as Parliament debates the Bill. At any rate there is more to **clause 1** than at first meets the eye.
8. Other changes brought about as a consequence of **Schedule 1** include:
 - a. The determination by the Secretary of State of categories of occupations.
 - b. A duty on the Institute to map and group occupations into those categories.
 - c. A similar duty to publish standards for occupations.
 - d. A power for the Institute to approve “technical education qualifications” (not limited to apprenticeships).
 - e. A power for it to determine “other steps”.
 - f. A power for the SoS to give the Institute directions.
 - g. Powers for the Institute to list approved qualifications and to grant certificates.
9. Cumulatively this amounts to a substantially new national system for technical education focussed on the Institute. Whether it is intended to be restricted only to the FE phase needs to be explored.

PART 2: FURTHER EDUCATION BODIES: INSOLVENCY ETC

10. **2** sets out an overview of the first chapter of PART 2.
11. **3** defines a further education body for the purposes of the Bill. It is designed to bring a variety of differently constituted bodies within the purview of the Insolvency Act 1986 and other relevant legislation. In practice all bodies providing Further Education will be covered, including 6th Form Colleges.
12. It also creates the SoS (or Welsh Ministers as appropriate) as the “appropriate national authority” in relation to any further education body however constituted.
13. **4** adds further definitions including one for a “designated further education institution”, which is more restricted than a further education body. However the legislation in general refers to “further education bodies” and thus encompasses the wider group.
14. **5** begins the second chapter of PART 2 and makes the insolvency provisions available to companies that have been created under the Companies Act in principle available to all further education bodies and **6** allows the SoS substantial room for future regulations in relation to this. Such regulations would be subject to affirmative resolution by parliament and hence open to greater scrutiny and debate.
15. **7** however immediately amends the normal procedures to insert a major role for the SoS (acting through the Institute) through the creation by the court on the application of the SoS of education administration orders and a range of other interventions set out in **8,9, 10, and 11**. While the role of the court is not removed (only it may grant an order and it has the discretion to refuse), in practice the action is primarily in the hands of the SoS and then the appointed “education administrators”. It is made more difficult for third parties (such as creditors) to take or enforce action in their own interests.
16. **Chapter 4** sets all of this out in detail and emphasises that the primary aim is not the interests of the company or of the creditors but of the existing students. The administrator takes control of the company and its assets (but not assets of trustees) and can take steps to rescue it, to transfer all or part of its undertakings or to wind it down. Only the SoS may apply for the administration order that enables this, but the order is an order of the court and the administrator its officer. The SoS may make grants or loans and may provide for the latter to be recovered from the company. The SoS may also provide indemnities or guarantees that are also in principle recoverable from the company.
17. Trustees will be glad to note that their property is not in any way affected by these procedures and further that **34** provides that any property held on trust by the corporation itself for the purposes of the college may not be used to ease any insolvency but must be transferred to the trustees.
18. **35 and 36** prevent companies escaping all of this by simply dissolving themselves.

19. **37** enables the directors/governors/members of these companies to be disqualified from so acting in the future. This is a substantial and real penalty about which current directors/governors/members should take advice. It seems that such disqualifications would be for the SoS to determine, as is already the case with academy directors. This will be subject to regulations under the negative procedure and is an area that will need watching.
20. PART 3 ensures that providing information remains a duty of relevant bodies, including maintained schools. "Relevant bodies" does not include any separate trustees there may be.
21. PART 4 includes various technical issues.

CONCLUSIONS

The Bill substantially extends the role of the Institute and appears to link it closely to the EFA. By bringing Technical Education under the purview of the Institute, it gives the Institute an immediately clear role in respect of 6th Form Colleges and potentially (subject to clarification in debate) in respect of maintained schools and academies. If this were the effect it would make an overlap with the EFA understandable. It is a nationalisation of significant functions and also impinges appreciably on areas that at the moment are exclusively the prerogative of the courts, restricting the ability of private parties to act through the courts. It carries significant implications for the present directors/governors/members of the affected bodies in respect of their future conduct and exposure to censure. The insolvency procedures it enables for FE institutions might form a basis in due course for similar arrangements for academies, but this is not hinted at in the Bill as it stands. Site trustees and their assets are not directly affected.

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