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## BRIEFING PAPER

Number 7941, 21 April 2017

# Technical and Further Education Bill: Lords amendments and Ping Pong

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## Summary

The [Technical and Further Education Bill 2016-17](#) was introduced in the House of Commons on 27 October 2016. Among other things, the Bill implements proposals set out in the Government's [Post – 16 Skills Plan](#), published in July 2016, which were developed in response to recommendations in the [Report of the Independent Panel on Technical Education](#) chaired by Lord Sainsbury.

The Bill will:

- rename the Institute for Apprenticeships and extend its remit to cover college-based technical education in addition to apprenticeships;
- create an insolvency framework for the further education (FE) sector and establish a new special administration regime for FE corporations, sixth form corporations, and companies which run designated institutions in England and Wales; and
- ensure that the provision of information to the Government by FE providers will continue following any devolution of the Adult Skills Budget to combined authorities.

Further background information on the Bill (as introduced to the Commons) is provided in Library Briefing 7752, [Technical and Further Education Bill](#).

This briefing paper provides information on amendments made to the Bill during its progress through the House of Lords. The paper has been updated to additionally include a summary of consideration of Lords amendments by the House of Commons on 19 April 2017.

The Bill was presented in the House of Lords on 10 January 2017 and the Second Reading debate took place on 1 February 2017. The Lords Committee Stage of the Bill took place over three days between 22 February 2017 and 1 March 2017. The Report Stage took place on the 27 March 2017 and the Third Reading was on 4 April 2017. The Commons considered the Lords amendments on 19 April 2017.

## Lords Amendments

Three Opposition new clauses were agreed relating to **technical education**:

- To ensure that providers of technical education will have a right to go into schools to inform pupils about technical education qualifications and apprenticeships. The new clause was accepted by the Government and had cross-party support. It was agreed without a division.
- A requirement for Ofsted to take into account the careers advice available to students when inspecting FE providers. The new clause was agreed following a division.
- To make Child Benefit payable in respect of young people under 20 undertaking statutory apprenticeships, and to extend the Higher Education Bursary to care leavers taking apprenticeships. The new clause was agreed following a division.

Government amendments were also agreed to ensure that data sharing arrangements “remain fit for purpose” given that the bodies that the Institute for Apprenticeships is likely to need to share information with are expected to change over time.

In relation to part two of the Bill on the **insolvency framework**, a number of Government amendments were agreed at Committee Stage without divisions, including:

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- To provide that there is an accessible public record of documents relating to an FE body's insolvency.
- To ensure that the "needs of care leavers are provided for in the event that the FE body they attend enters educational administration."
- To close a potential loophole in the Bill relating to the disqualification of governors of FE corporations or sixth form college corporations.
- To ensure that courts in the different parts of the UK can cooperate if needed in the event of an FE body's insolvency or the disqualification of a governor of an FE body.

A non-government amendment was also agreed at Report Stage relating to the functions of the Education Administrator. The amendment was intended to remove perceived doubts concerning the operation of the special objective, under which the primary focus of an Education Administrator will be on the studies of existing students. This is in contrast to an ordinary administration where the administrator's primary focus is on rescuing the company or obtaining a better result for the creditors as a whole. The Government accepted the amendment and it was agreed without a division.

No amendments were made to the part of the Bill relating to the provision of information by FE providers to the Government.

### **Ping Pong**

When the Bill returned to the Commons on 19 April 2017 the House accepted all but two of the Lords amendments without division.

The Lords amendment providing for Child Benefit to be payable to apprentices was disagreed to following a division. The amendment concerning Ofsted taking into account careers advice when inspecting FE providers was disagreed to but a Government amendment in lieu was agreed. The Minister, Robert Halfon, stated that the Government's amendment contained drafting changes to make sure that the amendment proposed by the Lords achieves its intended effect.

The House of Lords is scheduled to consider the Commons amendments to the Bill on 25 April 2017.

# 1. Technical Education

## 1.1 Support for apprentices

At Report Stage, Lord Watson moved amendment 1 which inserted a new clause into the Bill requiring the Secretary of State to pass regulations making young people undertaking apprenticeships a 'qualifying young person' for the purposes of Child Benefit. The new clause would also require the regulations to extend the Higher Education Bursary to care leavers undertaking apprenticeships.

### Box 1: Background: Child Benefit and the Higher Education Bursary

Currently, Child Benefit can continue to be paid for a young person aged 16, 17, 18 or 19 if they meet the criteria to be considered a 'qualifying young person'. A person can be classed as a 'qualifying young person' if they are in full-time non-advanced education or if they are in approved training. Courses or education provided by an employer as part of a job contract are not classed as full-time non-advanced education or approved training. As a result families do not receive Child Benefit in respect of a young person who is undertaking an apprenticeship.

Care leavers entering higher education before the age of 25 are entitled to a one-off Higher Education Bursary of £2,000 from their local authority. The duty to provide the bursary is placed on local authorities by section 23C(5A) of the *Children Act 1989*. The details of the bursary, including the amount to be paid, is set out in the *Children Act 1989 (Higher Education Bursary)(England) Regulations 2009*.

Lord Watson argued that apprentices are "treated like second-class citizens" and are "denied thousands of pounds in financial support available to college or university students." He added that in some cases "parents may prevent young people taking up apprenticeships because the economic consequences for the family of loss of benefit payments in various forms could be considerable."<sup>1</sup> The system must be changed, he said, "so that apprenticeships and students are treated equally, and there is genuine parity of esteem between all educational and apprenticeship routes."<sup>2</sup>

A number of other peers spoke in support of the amendment and raised the same concern about young people potentially being deterred from undertaking apprenticeships because of the financial implications.<sup>3</sup>

The Minister, Lord Nash, stated that one of the core principles of the Government's reforms is that an apprenticeship is a genuine job and, as such, they are treated accordingly by the benefits system. He further argued that undertaking an apprenticeship at minimum wage would pay more than five times the maximum Child Benefit rate and, therefore, the apprentice's parents were not eligible for Child Benefit for supporting them.

Regarding extending the Higher Education Bursary to apprentices, the Minister stated that it was not correct to equate an apprenticeship to

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<sup>1</sup> HL Deb 27 March 2017, [cGC360](#).

<sup>2</sup> HL Deb 27 March 2017, [cGC360-1](#).

<sup>3</sup> For example, Baroness Cohen, [cGC362-3](#); Baroness Wolf, [cGC363](#), Lord Storey, [ccGC365-6](#).

being in higher education where a student is making a substantial investment in their education. An apprenticeship, in contrast, he said, is a real job and those undertaking them earn a wage. The Government's focus would, he said, be on ensuring that there were incentives for employers to recruit care leavers as apprentices.<sup>4</sup>

Lord Watson rejected the Minister's arguments and countered that there were not currently sufficient safeguards in place to ensure that apprentices and their families did not lose out when a young person took up an apprenticeship. He pushed amendment 1 to a vote and it **was agreed by 244 votes to 190.**

### Consideration of Lords amendments (19 April 2017)

The House of Commons disagreed with Lord Watson's amendment 1. The Minister, Robert Halfon, stated that the amendment engaged financial privilege and would cost more than £200 million per year by 2020-21. He argued that apprenticeships are jobs and are treated as such in the benefit system, before outlining the support currently available for apprentices:

One of the core principles of an apprenticeship is that it is a job, and it is treated accordingly in the benefit system. It is a job that offers high-quality training and that widens opportunities. Moreover, more than 90% of apprentices continue into another job on completion. Most apprentices are paid above the minimum wage. The 2016 apprenticeship pay survey showed that the average wage for all level 2 and 3 apprentices was £6.70.

[...]

The apprenticeship programme already supports low-income groups. The funding system gives targeted support to the participation of care leavers, and this year we are making £60 million available to training providers to support take-up by individuals from disadvantaged areas. We are committed to ensuring that high-quality apprenticeships are as accessible as possible to people from all backgrounds. We will take forward the Maynard recommendations for people with learning difficulties and our participation target for black and minority ethnic groups.

With regard to the amendment's suggestion of a bursary for care leavers, I understand that some young people have greater challenges to overcome. That is why we are providing £1,000 to employers and training providers when they take on care leavers who are under 25. We will also pay 100% of the cost of training for small employers who employ care leavers. There is scope for apprenticeships to benefit social mobility even more. We are working across Government to use the apprenticeship programme to extend opportunities.<sup>5</sup>

Responding for the Opposition, Gordon Marsden, stated that he did not recognise the £200 million figure and contended that excluding apprenticeships from the definition of approved education and training provided "a severe financial disincentive for young people to enter into an apprenticeship as opposed to other routes of education." He argued that the Government should "reflect on the situation of apprentices

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<sup>4</sup> HL Deb 27 March 2017, [cc368-9](#).

<sup>5</sup> HC Deb 19 April 2017, [cc713-4](#).

who live with parents and whose families could lose out by more than £1,000 a year through not being able to access child benefit, and could lose more than £3,200 a year under universal credit." This would, he said, "inevitably have a negative effect on the family income in circumstances where the household budget is not covered by the earnings in an apprentice's salary, given that the apprentice minimum wage is barely over £3 an hour."<sup>6</sup>

The decision was put to a vote and the House agreed to disagree with the Lords amendment by 298 votes to 182.

## 1.2 Information about technical education: access to English schools

Lord Baker moved amendment 11 during Grand Committee which inserted new clause 2 into the Bill. The amendment had been accepted by the Minister and was drafted by the parliamentary draftsmen.

The new clause amends the *Education Act 1997* to provide that the proprietor of a school in England must ensure that there is an opportunity for a range of education and training providers to access pupils during the relevant phase of their education, for the purpose of informing them about approved technical education qualifications or apprenticeships. Lord Baker explained that the purpose of the amendment was to:

ensure that providers of technical training and apprenticeships will have the right to go into local schools and explain to students at different levels and of different ages exactly what they have to offer. The ages will be 13, 16 and 18.<sup>7</sup>

Lord Baker added that the new clause would give "all young people the chance to hear directly from providers of apprenticeships and technical qualifications" and would be of particular benefit to University Technical Colleges (UTCs) which recruit learners at 14 years of age. He argued that "many schools resist anybody who comes in and tries to persuade a pupil to go on another course. It is a loss of money—about £5,000 a head—and they are very hostile".<sup>8</sup>

Several speakers spoke to say that "UTCs were a force for good", and that they were in favour of the new clause.<sup>9</sup>

Lord Nash said that the new clause would:

strengthen the Bill by promoting technical education and apprenticeship opportunities more effectively so that young people can make more informed and confident choices at important transition points.<sup>10</sup>

The amendment received cross party support and was **agreed without a division**.

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<sup>6</sup>

<sup>7</sup> HL Deb 22 February 2017 [cGC53](#).

<sup>8</sup> *Ibid*, [cGC54](#)

<sup>9</sup> Baroness Morris *Ibid* [cGC60](#) and Lord Hunt [cGC72](#)

<sup>10</sup> HL Deb 22 February 2017, [cGC70](#)

On 19 April 2017 the Commons agreed to the amendment without a division. The Minister, Robert Halfon, stated that the amendment would “strengthen the Bill by ensuring that young people hear much more consistently about the merits of technical education routes and recognise them as worthy career paths.”<sup>11</sup>

### 1.3 Information sharing

Schedule 1 of the Bill inserts a new section 40AA into the *Apprenticeships, Skills, Children and Learning Act 2009* to establish “data sharing gateways” between the Institute for Apprenticeships, Ofsted, Ofqual and the Office for Students, so that they can share information about apprenticeships or other education and training.

Government amendment 33, agreed in Grand Committee, amended the proposed section 40AA to provide the Secretary of State with the power to prescribe in regulations persons whom the Institute for Apprenticeships could disclose information to, or who could disclose information to the Institute. Lord Nash stated that the amendment would make sure that the data sharing gateway “remains fit for purpose” given that the bodies that the Institute is likely to need to share information with are expected to change over time.

Government amendment 35, also agreed at Committee Stage, provided that the regulations made under section 40AA would be subject to the affirmative procedure. Lord Nash stated that he was “absolutely mindful of the need to ensure full parliamentary scrutiny each time the Section 40AA power is used.”<sup>12</sup>

The amendments were agreed to without division by the Commons on 19 April 2017.

### 1.4 Careers Advice

Lord Storey moved amendment 17 at Report Stage, which provided for a new clause to be inserted into the Bill requiring Ofsted to take into account the careers advice made available to students when carrying out inspections of FE colleges. Introducing the amendment, Lord Storey argued that careers advice should be part of the establishment of good FE providers and stated that the amendment “highlights the importance of careers education in further education.”<sup>13</sup>

Lord Aberdare, among others, spoke in support of the amendment and contended that a reason for the patchy provision of careers advice in colleges was the “lack of any real incentive” for them to improve their offer.<sup>14</sup>

In response, Lord Nash agreed that careers advice is “a vital part of the role that every school and college must play in preparing students for the workplace” but argued that the amendment was unnecessary

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<sup>11</sup> HC Deb 19 April 2017, [c715](#).

<sup>12</sup> HL Deb 27 February 2017, [cGC150](#).

<sup>13</sup> HL Deb 27 March 2017, [cGC402](#).

<sup>14</sup> *Ibid*, [cc402-3](#).



because the quality of careers advice was already considered by Ofsted when conducting inspections:

First, in judging leadership and management, inspectors take account of the extent to which learners receive thorough and impartial careers guidance to enable them to make informed choices about their current learning and future career plans. Secondly, in judging the quality of teaching, learning and assessment, inspectors consider how far learners are supported to develop their employability skills, including appropriate attitudes and behaviour for work. Thirdly, in judging students' personal development, behaviour and welfare, inspectors consider how learners benefit from purposeful work-related learning, including external work experience. Finally, in judging outcomes, inspectors consider information about students' destinations and the acquisition of the qualifications, skills and knowledge that will help them to progress.<sup>15</sup>

Lord Storey stated that he did not feel that the Minister had gone far enough given the importance of careers education and pushed the amendment to a vote. **The amendment was agreed by 223 votes to 185.**<sup>16</sup>

### Consideration of Lords amendments (19 April 2017)

The House of Commons disagreed with the Lords amendment (now referred to as Lords amendment 6) but agreed, without division, to Government amendment (a) in lieu of it. The Minister, Robert Halfon, spoke in support of the Lords amendment and stated that the Government had proposed an amendment in lieu in order to make drafting changes:

Lords amendment 6 signals our determination to ensure that every FE student has access to good-quality, dedicated careers advice, which I know this House supports. That is vital if we are to tackle the skills gap and ensure that we make opportunities accessible to everyone. We have proposed some drafting changes to the amendment to ensure that it achieves its intended effect. The amendment makes it clear that in its inspection report Ofsted must comment on the quality of a college's careers provision. I urge hon. Members to accept the amendment. FE colleges are engines of social mobility, and this is our chance to ensure that students from all backgrounds can access the support they need to get on the ladder of opportunity and to benefit from the best skills education and training.<sup>17</sup>

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<sup>15</sup> HL Deb 27 March 2017, [cc407-8](#).

<sup>16</sup> As above, [cc410-3](#).

<sup>17</sup> HC Deb 19 April 2017, [cc714-5](#).

## 2. Insolvency

### 2.1 Records

Government amendment 36, moved in Grand Committee, inserted a new clause into the Bill providing the Secretary of State with the power to make regulations requiring, among other things, that documents relating to the insolvency of FE bodies be delivered to the registrar of companies.

The Minister, Lord Nash, stated that the amendment was needed to ensure that there would be an accessible public record of documents relevant to a FE body's insolvency:

...we have tabled this amendment to ensure that should an FE body become insolvent, there will be an accessible public record of documents relevant to the insolvency procedure for that body. FE bodies that are statutory corporations are exempt charities and not companies. As such, they are not subject to filing requirements with any particular regulatory body, although they are required to keep audited accounts and to publish them, for example on their websites.

When the Bill was originally drafted, it was thought that we could rely upon certain provisions of the Companies Act 2006 so that an insolvency practitioner could file documents required by the court as part of any insolvency procedure, including education administration. However, it is now clear that specific provision is needed within the Bill to ensure that an accessible and workable file for insolvent FE bodies may be created and managed by the registrar. This amendment therefore creates a new clause to provide for exactly that and allows the Secretary of State to make regulations relating to the delivery of documents about the insolvency of FE bodies to the registrar, about the registrar's function of keeping records of information within those documents and about the publication of and public access to such records or information.<sup>18</sup>

The amendment was agreed without division.

### 2.2 Protection for care leavers in the event of a college insolvency

Moved in Grand Committee, Government amendments 48 to 55 made changes to schedule 3 and 4 of the Bill and aim to ensure that the "needs of care leavers are provided for in the event that the FE body they attend enters educational administration". The amendments fulfil a commitment given by the Minister for Apprenticeships and Skills during the Committee Stage of the Bill in the House of Commons.

Lord Nash explained how the amendments would work:

This amendment supports the delivery of this commitment. It ensures that support and advice is available to those who need it, by adding the director of children's services in local authorities—or in combined authorities where relevant—to the list of those to whom the education administrator is required to send a copy of

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<sup>18</sup> HL Deb 27 February 2017, [cc152GC-154GC](#).

the proposals for dealing with the insolvent college. In this way, the local authority will receive formal notification of what is happening and can trigger the necessary action by personal advisers.<sup>19</sup>

Baroness Garden said that she warmly welcomed the amendments and said that it was “reassuring to have the director of children’s services included in the Bill”.<sup>20</sup>

## 2.3 Disqualification of officers

Clause 37 of the Bill gives the Secretary of State power, in relation to FE corporations and sixth form college corporations, to make regulations that have the same or similar effect to the *Company directors Disqualification Act 1986 (CDDA)*. This will mean that, like company directors, members (i.e. governors) of those corporations can be disqualified from office. In addition, the power allows the Secretary of State to make provision so that when a person is disqualified as a director of a company they can also be prohibited from acting as a member of a FE corporation or sixth form college corporation.

Government amendment 58, moved in Grand Committee, replaced clause 37 with a new version. The amendment removes the power to replicate the CDDA and instead applies it in full to FE bodies in England and Wales. Lord Nash explained that this was to close a potential loophole in the clause as originally drafted:

This allows the court to disqualify any governors whom it finds liable to wrongdoing, not only from being governors but also from being company directors. In so doing, it fully prevents them from being able to repeat, in a different way, the mistakes they have made potentially at the expense of another FE body. This was not possible with the original drafting of the clause, which allowed us to replicate the CDDA but not fully apply it. The amendment closes a potential loophole in the legislation and more fully protects learners at FE bodies from the actions of any governor who chose to act recklessly.<sup>21</sup>

The amendment was agreed without a division.

## 2.4 Cooperation between courts

Clause 5 of the Bill provides for normal insolvency procedures to be available for FE colleges in England and Wales that are statutory corporations, and for sixth form colleges’ corporations in England.

Government amendment 65, moved in Grand Committee, amended clause 43 (concerning the extent of the Bill) to provide for clause 5 to extend to all the different parts of the UK, in so far as it relates to section 426 of the *Insolvency Act 1986*.

Lord Nash made clear that this did not mean that the FE insolvency regime would apply to FE bodies in Scotland and Northern Ireland.

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<sup>19</sup> HL Deb 1 March 2017 [cGC231](#)

<sup>20</sup> Ibid [cGC232](#)

<sup>21</sup> HL Deb 1 March 2017 [cGC241](#).

Rather, the amendment was, he said, ensure co-operation between the courts of the different parts of the UK:

This means that courts in different jurisdictions might be asked to co-operate on a particular case, for example over the enforcement of a charge where assets are located in a different part of the UK to the location of the insolvent FE body; or, in the case of governor disqualification, preventing a governor disqualified in England or Wales becoming a governor in another part of the UK.<sup>22</sup>

The amendment was agreed without division.

### 2.5 Function of the education administrator

Clause 24 of the Bill (as agreed following the Lords Grand Committee) set out the general functions of the education administrator. Clause 24(2) provided that “the education administrator must carry out his or her functions for the purpose of achieving the objective of the education administration (if possible).”

#### **Box 2: Background: the Special Objective**

The Bill provides for the creation of a new special administration regime – education administration – for FE corporations, sixth form corporations, and companies which run designated institutions in England and Wales. Under the special administration regime (SAR), an education administrator can be appointed by the court on the application of the Secretary of State, or for Wales, the Welsh Ministers, if an FE body is insolvent.

Clause 16 of the Bill (as agreed following Lords Grand Committee) provides that the SAR would be governed by a “special objective” focused on avoiding and minimising disruption to the studies of existing students. This means that the education administrator’s primary focus would be on the studies of existing students, in contrast to an ordinary administration where the administrator’s primary focus is on rescuing the company or obtaining a better result for the creditors as a whole.

At Report Stage, Lord Stevenson moved amendment 10, which removed the words “(if possible)” from clause 24(2). Responding for the Government, the Minister, Lord Nash, set out the concern behind the amendment and stated that he was happy to accept it:

I understand the noble Lord’s concern about the drafting of subsection (2), that the inclusion of the words “if possible” may be considered to cast doubt on the special objective. As he indicated, I can assure noble Lords that is not our intention. I have reflected on the noble Lord’s amendment. The regime that we are introducing is one which places students at the heart of further education, but does not demand that the education administrator achieves the impossible; nor does it disregard the interests of creditors. The words “if possible” in Clause 24(2) were intended to clarify this position, but I understand the noble Lord’s concerns that they might have the opposite effect. Let me be clear that our position remains unchanged and I am satisfied, on the advice of my lawyers, that their deletion would have no substantive effect on the application of the regime. I am therefore delighted to accept the amendment.<sup>23</sup>

<sup>22</sup> HL Deb 1 March 2017, [cGC241](#).

<sup>23</sup> HL Deb 27 March 2017, [c409](#).

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