



# Skills and Post-16 Education Act 2022

## 2022 CHAPTER 21

### PART 3

#### PROTECTION FOR LEARNERS

#### CHAPTER 1

##### REGULATION OF POST-16 EDUCATION OR TRAINING PROVIDERS

PROSPECTIVE

##### *Funding arrangements with post-16 education or training providers*

#### **19 List of relevant providers**

- (1) The Secretary of State may by regulations make provision—
  - (a) for the Secretary of State to keep a list of relevant providers in respect of relevant education or training who meet conditions specified in the regulations for being on the list in respect of that education or training;
  - (b) in connection with the keeping of the list.
- (2) “Relevant provider” means a post-16 education or training provider who is not—
  - (a) a school;
  - (b) a 16 to 19 Academy;
  - (c) an institution within the further education sector;
  - (d) a registered higher education provider who provides only higher education;
  - (e) the responsible body for an institution within any of paragraphs (a) to (d) when acting in its capacity as such;
  - (f) a local authority in England;
  - (g) a combined authority;

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- (h) the Greater London Authority.
- (3) “Relevant education or training” means education or training that falls within one or more of the following paragraphs—
- (a) further education;
  - (b) education or training provided by means of a further education course, or a module of a further education course, designated for the purposes of section 22 of the Teaching and Higher Education Act 1998;
  - (c) training for persons over compulsory school age which is funded by the Secretary of State under section 2 of the Employment and Training Act 1973;
  - (d) education or training for persons over compulsory school age provided as part of an approved technical education qualification or approved steps towards occupational competence;
  - (e) training for persons over compulsory school age provided in connection with an English statutory apprenticeship.
- (4) The Secretary of State may by regulations amend subsection (3) so as to add, vary or remove a category of education or training.
- (5) A condition may be specified in regulations under subsection (1)(a) only where the Secretary of State considers that specifying the condition in relation to a relevant provider may assist in preventing, or mitigating the adverse effects of, a disorderly cessation in the provision of education or training by the relevant provider.
- (6) Regulations under subsection (1) may—
- (a) specify different conditions in relation to different descriptions of relevant education or training;
  - (b) provide for a relevant provider to be on the list only in respect of one or more descriptions of relevant education or training;
  - (c) confer functions (including functions involving the exercise of a discretion) on the Secretary of State or any other person.
- (7) The conditions that may be specified include conditions—
- (a) relating to the relevant provider having a student support plan and making it available;
  - (b) relating to the relevant provider having insurance cover;
  - (c) for ensuring that persons having general control and management of, or legal responsibility and accountability for, the relevant provider are fit and proper persons to be involved in that activity;
  - (d) relating to the relevant provider giving access to, or providing, information (including information about persons for whom the relevant provider is, or has been, providing relevant education or training) to the Secretary of State;
  - (e) relating to the relevant provider taking action specified in directions given by the Secretary of State.
- (8) For the purposes of subsection (7)(a), a “student support plan” means a plan for supporting students in the event of a cessation in the provision of education or training.
- (9) Different conditions may be specified—
- (a) for being added to, or remaining on, the list;
  - (b) for different descriptions of relevant provider.
- (10) Regulations under subsection (1)(b) may, among other things, make provision—

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- (a) for the charging of fees in connection with entries on the list;
  - (b) about the procedure for applications to be added to, or remain on, the list;
  - (c) about the removal of entries from, or the restoration of entries to, the list;
  - (d) about appeals against decisions relating to the list;
  - (e) permitting or requiring the disclosure of information;
  - (f) about publication of the list.
- (11) The provision mentioned in subsection (10)(e) includes provision about information relating to—
- (a) persons for whom relevant education or training is or has been provided;
  - (b) persons having general control and management of, or legal responsibility and accountability for, a relevant provider.

#### Commencement Information

- II S. 19 not in force at Royal Assent, see [s. 36\(3\)](#)

## 20 Prohibitions on entering into funding arrangements with providers

- (1) If the Secretary of State makes regulations under [section 19\(1\)\(a\)](#) for the keeping of a list, the following provisions apply in relation to the making of funding arrangements while the regulations are in force.
- (2) A funding authority must not enter into relevant funding arrangements with a relevant provider unless—
- (a) the relevant provider is on the list in respect of the education or training to which the funding arrangements relate, and
  - (b) the funding arrangements include provision allowing the funding authority to terminate the funding arrangements if the relevant provider ceases to be on the list in respect of that education or training.
- (3) A funding authority must not enter into relevant funding arrangements with a post-16 education or training provider (“P1”) unless the funding arrangements include the provision in subsection (4).
- (4) The provision in this subsection is—
- (a) in the case of relevant funding arrangements that prohibit P1 from entering into a relevant sub-contract, provision allowing the funding authority to terminate the funding arrangements if P1 enters into a relevant sub-contract in breach of that prohibition, and
  - (b) in the case of relevant funding arrangements that allow P1 to enter into a relevant sub-contract, provision allowing the funding authority to terminate the funding arrangements if P1 enters into a relevant sub-contract with a relevant provider (“P2”) unless—
    - (i) P2 is on the list in respect of the education or training to which the relevant sub-contract relates, and
    - (ii) the relevant sub-contract includes provision allowing P1 to terminate the sub-contract if P2 ceases to be on the list in respect of that education or training.
- (5) Nothing in this section—

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- (a) may be relied on by a provider with whom a funding authority has entered into relevant funding arrangements as a reason for not carrying out the provider’s obligations under those arrangements, or
  - (b) limits the discretion of a funding authority not to enter into funding arrangements with a person where that person does not meet conditions of a scheme created by the funding authority in connection with the making of funding arrangements.
- (6) The following provisions apply for the interpretation of this section.
- (7) “Funding authority” means—
- (a) the Secretary of State;
  - (b) a local authority in England;
  - (c) a combined authority;
  - (d) the Greater London Authority.
- (8) “Funding arrangements” in relation to a funding authority and a provider are—
- (a) arrangements for a grant to be given by the funding authority to the provider for the provision of education or training wholly or mainly in England;
  - (b) an agreement for the funding authority to provide funding to the provider for the provision of education or training wholly or mainly in England.
- (9) The reference in subsection (8)(b) to an agreement for the funding authority to provide funding to the provider includes a reference to an agreement or arrangements between the funding authority and the provider by virtue of which amounts can or must be paid directly to the provider in accordance with provision in regulations made under section 22(1) of the Teaching and Higher Education Act 1998 (financial support for students) by virtue of section 22(2)(h) or (i) of that Act.
- (10) Funding arrangements are “relevant funding arrangements” if—
- (a) the education or training to which the arrangements relate is relevant education or training, and
  - (b) the arrangements have any other characteristics specified in regulations made by the Secretary of State.
- (11) A “relevant sub-contract”, in relation to relevant funding arrangements, is a contract—
- (a) for the provision of all or part of the education or training to which the relevant funding arrangements relate, and
  - (b) that has any other characteristics specified in regulations made by the Secretary of State.

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**Commencement Information**

**12** S. 20 not in force at Royal Assent, see [s. 36\(3\)](#)

**21 Funding arrangements: interpretation**

- (1) This section applies for the interpretation of sections [19](#), [20](#) and this section.
- (2) In those sections—

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“approved technical education qualification” and “approved steps towards occupational competence” have the same meanings as in section 100 of the Apprenticeships, Skills, Children and Learning Act 2009;

“combined authority” means a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;

“English statutory apprenticeship” has the meaning given by section 40A(3) of the Apprenticeships, Skills, Children and Learning Act 2009;

“further education” has the same meaning as in the Education Act 1996 (see section 2 of that Act);

“higher education” has the meaning given by section 579(1) of the Education Act 1996;

“institution within the further education sector” has the same meaning as in the Further and Higher Education Act 1992 (see section 91(3) of that Act);

“local authority in England” has the same meaning as in the Education Act 1996 (see sections 579(1) and 581 of that Act);

“post-16 education or training provider” means an institution or person who provides or intends to provide relevant education or training for persons over compulsory school age;

“registered higher education provider” has the same meaning as in Part 1 of the Higher Education and Research Act 2017 (see section 3(10) of that Act);

“relevant education or training” has the meaning given by section 19(3);

“relevant provider” has the meaning given by section 19(2);

“responsible body” means—

- (a) in relation to a school or a 16 to 19 Academy, the proprietor (within the meaning given by section 579(1) of the Education Act 1996);
- (b) in relation to an institution within the further education sector, the governing body (within the meaning given by section 90(1) of the Further and Higher Education Act 1992);
- (c) in relation to a registered higher education provider, the governing body (within the meaning given by section 85(1) of the Higher Education and Research Act 2017);

“school” has the same meaning as in the Education Act 1996 (see section 4 of that Act).

(3) In the following provisions, references to a provider include references to a person having general control and management of, or legal responsibility and accountability for, a provider—

- (a) section 19(7)(a), (b), (d) and (e);
- (b) section 20(2) to (4) where the reference is to entering into relevant funding arrangements, or a relevant sub-contract, with a provider;
- (c) section 20(5)(a);
- (d) section 20(8);
- (e) section 20(9).

#### Commencement Information

**I3** S. 21 not in force at Royal Assent, see s. 36(3)

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## 22 Regulations under section 19 or 20

- (1) Any power to make regulations under section 19 or 20 includes power to make consequential, supplemental, incidental, transitional or saving provision.
- (2) The provision that may be made in regulations by virtue of subsection (1) includes provision amending an Act (including this Act).
- (3) Before making the first regulations under section 19(1) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) Regulations under section 19 or 20 are to be made by statutory instrument.
- (5) A statutory instrument containing the following (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) regulations under section 19(1);
  - (b) regulations under section 19(4);
  - (c) regulations under section 19 or 20 that, by virtue of subsections (1) and (2), amend an Act.
- (6) Any other statutory instrument containing regulations under section 19 or 20 is subject to annulment in pursuance of a resolution of either House of Parliament.

### Commencement Information

**I4** S. 22 not in force at Royal Assent, see s. 36(3)

### *Further education in England: intervention*

## 23 Further education in England: intervention

- (1) The Further and Higher Education Act 1992 is amended as follows.
- (2) In section 56A (intervention: England)—
  - (a) in subsection (2), after paragraph (d) insert—
    - “(e) that the education or training provided by the institution did not, or does not, adequately meet local needs.”;
  - (b) after subsection (2) insert—
    - “(2A) For the purposes of subsection (2)(e), the Secretary of State must take into account any approved local skills improvement plan that applied to the institution when the education or training was provided.
    - (2B) An approved local skills improvement plan applies to an institution if the institution provides English-funded post-16 technical education or training that is material to a specified area and the plan is for that area.
    - (2C) Terms used in subsection (2A) or (2B) and in section 1 of the Skills and Post-16 Education Act 2022 have the same meaning in those subsections as in that section.”;
  - (c) in subsection (7)—

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- (i) in paragraph (b), after “section 27A(1)” insert “, or take such other steps specified in the direction as may be required.”;
  - (ii) after paragraph (b) insert—
    - “(c) a direction requiring a governing body to transfer property, rights or liabilities specified in the direction, and take any other steps specified in the direction in connection with the transfer in relation to property, rights or liabilities so specified.”;
  - (d) for subsection (7A) substitute—
    - “(7A) A governing body to which a direction is given requiring the body to make a resolution under section 27A(1)—
      - (a) is to be taken for the purposes of section 27A(1) to have complied with section 27 before making the resolution required by the direction, and
      - (b) must, unless the Secretary of State directs otherwise, exercise its powers under section 27B to transfer property, rights or liabilities on the dissolution date.”;
  - (e) after subsection (7A) insert—
    - “(7B) A direction under subsection (7)(c) requiring the transfer of property, rights or liabilities to a person specified in the direction may only be given with the consent of the person so specified.”;
  - (f) after subsection (9) insert—
    - “(9A) Before giving a direction for the transfer of property, rights or liabilities under subsection (7)(c), the Secretary of State must consult the Competition and Markets Authority.
    - (9B) Part 3 of the Enterprise Act 2002 does not apply in relation to a merger that will result or has resulted from a direction under this section.
    - (9C) The Secretary of State may give financial assistance (by way of grant, loan, guarantee or any other form) to any person in connection with the giving of a direction under this section.”
- (3) In section 56E (intervention by the Secretary of State: sixth form colleges)—
- (a) in subsection (2), after paragraph (d) insert—
    - “(e) that the education or training provided by the sixth form college did not, or does not, adequately meet local needs.”;
  - (b) after subsection (2) insert—
    - “(2A) For the purposes of subsection (2)(e), the Secretary of State must take into account any approved local skills improvement plan that applied to the sixth form college when the education or training was provided.
    - (2B) An approved local skills improvement plan applies to a sixth form college if the college provides English-funded post-16 technical education or training that is material to a specified area and the plan is for that area.
    - (2C) Terms used in subsection (2A) or (2B) and in section 1 of the Skills and Post-16 Education Act 2022 have the same meaning in those subsections as in that section.”;

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- (c) in subsection (7), after paragraph (b) insert—
- “(c) a direction requiring a governing body to transfer property, rights or liabilities specified in the direction, and take any other steps specified in the direction in connection with the transfer in relation to property, rights or liabilities so specified.”;
- (d) for subsection (7A) substitute—
- “(7A) A governing body to which a direction such as is mentioned in subsection (7)(b) is given—
- (a) is to be taken for the purposes of section 33O(1) to have complied with section 33N before making the resolution required by the direction, and
- (b) must, unless the Secretary of State directs otherwise, exercise its powers under section 33P to transfer property, rights or liabilities on the dissolution date.”;
- (e) after subsection (7A) insert—
- “(7B) A direction under subsection (7)(c) requiring the transfer of property, rights or liabilities to a person specified in the direction may only be given with the consent of the person so specified.”;
- (f) after subsection (9) insert—
- “(9A) Before giving a direction for the transfer of property, rights or liabilities under subsection (7)(c), the Secretary of State must consult the Competition and Markets Authority.
- (9B) Part 3 of the Enterprise Act 2002 does not apply in relation to a merger that will result or has resulted from a direction under this section.
- (9C) The Secretary of State may give financial assistance (by way of grant, loan, guarantee or any other form) to any person in connection with the giving of a direction under this section.”

#### Commencement Information

**I5** S. 23 in force at 28.6.2022, see s. 36(2)

## CHAPTER 2

### EDUCATION ADMINISTRATION AND ADMINISTRATION OF FURTHER EDUCATION BODIES

#### 24 Further education bodies in education administration: application of other insolvency procedures

In section 33 of the Technical and Further Education Act 2017 (application of other insolvency law), after subsection (2) insert—

- “(2A) Regulations under subsection (1) may in particular provide for any provision of the Insolvency Act 1986 to apply (with or without modifications) in relation to a further education body in connection with the education administration procedure created by this Chapter.



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(2B) Nothing in Schedule 3 or 4 limits the provision that may be made by virtue of subsection (2A), and provision made by virtue of that subsection may amend Schedules 3 and 4.”

#### Commencement Information

I6 S. 24 in force at 28.6.2022, see s. 36(2)

## 25 Further education bodies in education administration: transfer schemes

(1) The Technical and Further Education Act 2017 is amended as follows.

(2) In Schedule 2 (education administration: transfer schemes), after paragraph 6 insert—

“6A (1) A transfer scheme may not transfer property which is subject to a security (other than a floating charge) free of that security except—

(a) in accordance with an order of the court under paragraph 71 of Schedule B1 to the Insolvency Act 1986 as applied by Schedule 3 or 4, or

(b) where—

(i) an amount is attributed to the transfer of the property in the transfer scheme,

(ii) the secured creditor agrees with that amount, and

(iii) the secured creditor is paid that amount.

(2) In sub-paragraph (1), “floating charge” means a charge which is a floating charge on its creation.”

(3) In Schedule 3 (conduct of education administration: statutory corporations), in paragraph 19—

(a) for “sub-paragraph (1),” substitute “sub-paragraph (1)—

(a) after “dispose” there were inserted “(whether by way of a transfer scheme under Schedule 2 to the Technical and Further Education Act 2017 or otherwise)”, and”;

(b) the text from “the words” to the end of the paragraph becomes paragraph (b).

(4) In Schedule 4 (conduct of education administration: companies), after paragraph 17 insert—

“17A Paragraph 71 is to have effect as if in sub-paragraph (1), after “dispose” there were inserted “(whether by way of a transfer scheme under Schedule 2 to the Technical and Further Education Act 2017 or otherwise)”.”

#### Commencement Information

I7 S. 25 in force at 28.6.2022, see s. 36(2)

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