



Department
for Education

Skills and Post-16 Education Act 2022

Impact Assessment

July 2022

Contents

Introduction	5
Overall Act Impact Assessment	7
Impact Assessment (IA)	7
Summary: Intervention and Options	7
RPC Opinion	7
Summary: Analysis & Evidence Act Overview	9
Measure 1: Lifelong Loan Entitlement (LLE)	42
Measure 2: Statutory underpinning for local skills improvement plans	43
Measure 3: Duty on colleges and designated institutions in relation to local needs	70
Measure 4: Statutory Further Education intervention powers	87
Measure 5: Approval and Regulation of Technical Qualifications	99
Measure 6: Improvements to the FE insolvency regime	117
Measure 7: List of post-16 education or training providers	128
Measure 8: FE teacher training system reform	139
Measure 9: Office for Students (OfS) quality assessments	149
Measure 10: Careers information	155
Measure 11: Essay mills	167
Measure 12: Designation of 16-19 academies as having a religious character	189
Measure 13: Office for Students' Publication Power	196

Table of Figures

Figure 1: Highest level achieved by age 25 – England, cohort that undertook GCSEs in 2004/05	12
Figure 2: Adult FE and Skills participation in England.....	14
Figure 3: Median annualised earnings one year after study for Full level 3 FE & Skills aims achieved in academic year 2017/18 by SSA Tier 2.....	15
Table 1: Impact of achieving an FE qualification after 3 to 5 years	19
Table 2: Net Present Value of qualifications started in 2018/19 for learners aged 19+	20
Table 3: Net Benefit (2019 prices, 2020 Present Value), £m	27
Table 4: Approach to classification	29
Table 5: Business Impact Target (£m, 2019 prices, 2020 Present Value)	30
Table 6: Size of providers delivering FE in academic year 2019/20.....	31
Table 7: Description of expected costs and benefits associated with measure 2 by stakeholder group.....	54
Table 8: Summary of methodology used for calculating estimated costs for measure 2.....	56
Table 9: Inputs and assumptions used for calculating estimated costs for measure 2.....	61
Table 10: Sensitivity analysis of estimated monetised costs, benefits and net present value of measure	64
Table 11: Estimated monetised costs and benefits to business of measure 2.....	65
Table 12: Description of impact on protected characteristics of measure 2	67
Table 13: Main costs and benefits by stakeholder	75
Table 14: Overview of costs and benefits to discounted options.....	76
Table 15: Methodology overview	77
Table 16: Detail of assumptions.....	80
Table 17: Impact Assessment Calculator Output.....	83
Table 18: Impact Assessment Calculator Output – Direct Cost to Business	83
Table 19: Use of statutory powers benefits and costs assumptions.....	95
Table 20: Impact Assessment Calculator Output – Business Impact Target Score	114
Table 21: IA Calculator Outputs – headline NPV	115
Table 22: Costs and Benefits by Stakeholder	135
Table 23: Equalities impact of 64 providers with an unplanned exit in 2019/20	137
Table 24: Learners affected by unplanned exit in 2019/20 by funding source	137
Table 25: Schools potentially in scope.....	162
Table 26: Estimated number of pupils potentially within scope, 2020/21	163

Figure 4: Price of essay as per UK essays article.....	183
Table 27: Assumptions used to estimate the annual incidence of contract cheating (at post-16 only) used for the lost profit estimates.....	186

Introduction

1. In January 2021, the Government set out its intention to reform the skills and further education (FE) system through the *Skills for Jobs: Lifelong Learning for Opportunity and Growth White Paper*.¹ The reforms aim to ensure that further education supports people to get the skills the economy needs throughout their lives, wherever they live in the country. Working on post-16 skills, the core mission is to increase productivity, support growth industries, and give individuals more opportunities to progress in their careers. This forms part of the Lifetime Skills Guarantee, outlined by the Prime Minister in September 2020,² which aims to help everyone to get the skills they need at each stage of their life.

2. The Skills and Post-16 Education Act forms the legislative underpinning for the reforms set out in the Skills for Jobs White Paper. It will improve how the post-16 skills system functions and support the Prime Minister's vision to introduce a Lifetime Skills Guarantee. The measures include:

- a. supporting the lifelong loan entitlement (LLE) to make it easier for adults and young people to study flexibly - allowing them to space out their studies, transfer credits between institutions, and take up more part-time study (see annex 1);
- b. providing a statutory underpinning for local skills improvement plans as part of the Skills Accelerator, introducing a power for the Secretary of State to designate employer-representative bodies (ERBs) to lead the development of local skills improvement plans with associated duties on providers to co-operate and have regard to local skills improvement plans (see annex 2);
- c. a duty for all further education corporations, sixth form college corporations and designated institutions to keep their provision under review to ensure that they are best placed to meet the needs of the local area and consider what action they might take (including action which might be taken with one or more other educational institutions) (see annex 3);
- d. extending statutory intervention powers applicable to further education corporations, sixth form college corporations and designated institutions under the Further and Higher Education Act 1992. This measure will allow the Secretary of State to intervene in circumstances where an institution was failing to adequately meet local needs (see annex 4);
- e. introducing additional functions to enable the Institute for Apprenticeships and Technical Education (the Institute) to define and approve new categories of technical qualifications that relate to employer-led standards in many ways, and to have an

¹ Skills for Jobs: Lifelong Learning for Opportunity and Growth (publishing.service.gov.uk)

² PM's skills speech: 29 September 2020 - GOV.UK (www.gov.uk)

oversight role for the technical education offer in each occupational route, including mechanisms to manage and maintain a streamlined qualifications system. The legislation will also embed consultation and collaboration between the Institute and Ofqual for the approval and regulation of technical qualifications (see annex 5);

f. making amendments to clarify and improve the operation of the FE insolvency regime for further education bodies, relating to the use of company voluntary arrangements and transfer schemes, as well as to the related process of designating institutions as within the statutory FE sector (see annex 6);

g. enabling the Secretary of State to make regulations to provide for a list of certain providers of post-16 education or training, particularly Independent Training Providers (ITPs) (see annex 7);

h. enabling the Secretary of State to make regulations for the purpose of improving or securing the quality of FE initial teacher training (see annex 8);

i. making clear that the Office for Students (OfS) can assess the quality of higher education provided, and make decisions on regulatory intervention and registration by reference to minimum expectations of student outcome (see annex 9);

j. making amendments to the Education Act 1997, so that all pupils will have mandatory encounters with providers of approved technical education qualifications or apprenticeships (see annex 10);

k. making it a criminal offence to provide, arrange or advertise contract cheating services for financial gain to students taking a qualification at a post-16 institution or sixth-form in England or enrolled at a higher education provider in England (see annex 11);

l. providing the Secretary of State for Education with an order-making power to enable the designation of 16-19 academies as having a religious character. It also provides for Secretary of State to make regulations about the procedures relating to the designation. In addition, it sets out the freedoms and protections that the designation provides (see annex 12); and

m. providing the OfS with an explicit power to publish information about its compliance and enforcement activity in relation to higher education providers. In addition, the measure protects the OfS from defamation claims, if it announces and investigation or publishes regulatory decisions (see annex 13);

3. The measures in the Act, alongside the wider reforms set out in the Skills for Jobs White Paper, will help to create a strengthened and unified post-16 education and skills system that will benefit individuals, the economy, and the nation. The COVID-19 pandemic has had a fundamental impact on the way the post-16 education sector operates, which is causing providers to rethink the way they deliver education. The

implementation of this ambitious legislation will support post-16 skills providers to contribute to economic recovery and growth.

Overall Act Impact Assessment

<p>1. Title: Skills and Post-16 Education Act Impact Assessment IA No: DfE127</p> <p>RPC Reference No: RPC-DFE-5064(1) Lead department or agency: Department for Education Other departments or agencies: N/A</p>	<p>Impact Assessment (IA)</p> <p>Date: 04/05/2022</p> <p>Stage: Development/Options</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Primary Legislation</p> <p>Contact for enquiries: Skills.BillTeam@education.gov.uk</p>
<p>Summary: Intervention and Options</p>	<p>RPC Opinion:</p>

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target (BIT) Status Qualifying provision
-£171.6m	-£165.9m	£17.8m	
<p>What is the problem under consideration? Why is Government action or intervention necessary?</p> <ul style="list-style-type: none"> The skills system is vital for helping people into good jobs and giving employers the skills, they need to grow. It is also key to addressing societal challenges such as COVID-19 recovery and achieving net zero by 2050 . The skills system generates significant value but faces several key challenges. A high number of people leave full-time education with low skills and there is evidence of an undersupply of higher technical skills (i.e., level 4-5). Participation in lifelong learning is low and declining. A high volume of learning is done in subjects with low economic value. 			

<p>What are the policy objectives of the action or intervention and the intended effects?</p> <ul style="list-style-type: none"> This act aims to create a strengthened and unified post-16 education and skills system that better meets skills needs. Specifically, it will do this by: <ul style="list-style-type: none"> Giving employers a leading role in setting standards, the design of qualifications and shaping local provision in collaboration with colleges and other providers. Better aligning the FE and higher education (HE) funding systems, so that people can train and learn flexibly throughout their lives. Improving accountability and governance to support providers and learners better. Championing excellent teaching in further education. Ensuring that qualifications are of a high standard.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Without primary legislation many of the desired reforms could not be introduced.
- Primary legislation is the most stable way of ensuring change can be enacted by shoring up powers for regulators.
- Individual alternative options against each measure are covered in the Annex.

Is this measure likely to impact on international trade and investment?		No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes	
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
Will the policy be reviewed? Subject to Post-Implementation Review If applicable, set review date:					

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the costs, benefits, and impact of the leading options.

Signed by the responsible Minister:



Date:

04/05/2022

Summary: Analysis & Evidence

Act Overview

Description: Aggregated impact of Act measures

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time	Net Benefit (Present Value (PV)) (£m)		
2019	2020	10 years	Low: -289.7	High: -75.6	Best Estimate: -171.6

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	37.0	5.1	75.6
High	144.8	19.6	289.7
Best Estimate	96.4	10.4	171.6

Description and scale of key monetised costs by 'main affected groups'

Cost of producing local skills improvement plans to employer-representative bodies (ERBs) (£25m), FE providers (£10m), and local stakeholders (£1m). Cost to FE providers of having due regard to local skills improvement plans (£0.5m). Cost to statutory FE colleges to comply with duty to review provision in line with local needs (£5m). Cost to employers of familiarising with new qualifications (£15m). Cost to Awarding Organisations of new Institute qualification approval fee (£4m) and additional qualification development to meet approval criteria (£45m). Cost to employers of familiarisation with a new student finance system and the processing of new loans under the lifelong loan entitlement (£5m). Foregone profit for essay mill companies following criminalisation of providing or advertising cheating services (£70m). Essay mills will be aware that they are facilitating cheating and therefore the costs to these businesses of stopping this unethical practice are a necessary impact of the legislation. All costs are Present Value over 10 years – total may differ due to rounding.

Other key non-monetised costs by 'main affected groups'

(i) the cost to FE providers of changing provision or structure if they identify a need to do so when complying with the duties to have due regard to local skills improvement plans and to review local needs; (ii) cost to providers, employers, Exchequer if new reserve powers for college intervention are used; (iii) cost to learners of more stretching technical qualifications being harder to attain. Note that the assessment does not quantify the costs or benefits of enabling powers (LLE, initial teacher education regulation, list of post-16 providers of education or training); more full assessments will be provided in future Impact Assessments. The exception is the cost to employers of familiarisation with a new student finance system and the processing of new loans due to the lifelong loan entitlement where the assessment provides an initial estimate.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not monetised	Not monetised	Not monetised
High	Not monetised	Not monetised	Not monetised
Best Estimate	Not monetised	Not monetised	Not monetised

Description and scale of key monetised benefits by ‘main affected groups’

The assessment does not present monetised estimates of the benefits. The Government expects the act to deliver considerable benefits – as set out below – that outweigh the quantified costs but cannot quantify by how much learner numbers might increase, what changes in the subject mix might be observed in specific local areas, or the economic benefits from reducing cheating. The negative net present value (NPV) reflects the fact that the assessment has only quantified costs rather than the costs outweighing the benefits.

Other key non-monetised benefits by ‘main affected groups’

The overarching benefit from the act is to improve the extent to which the skills system meets employer and learner needs. The Government expects this to lead to (i) better jobs for learners whose training is valued more by employers and (ii) improved productivity for employers who have access to an improved skills supply. This will also improve value for money of public spending on skills. The assessment estimates that learning in adult FE in 2018/19 generated £26bn of lifetime economic value. Only a very modest improvement in the quality of training or the number of people participating is required to generate benefits that comfortably outweigh the costs of the Act.

Key assumptions/sensitivities/risks

3.5%

Discount rate (%)

(i) Cost of producing local skills improvement plans is uncertain, subject to outcome of initial Trailblazer period, and will vary by local area. Costs based on funding for Local Enterprise Partnerships and Skills Advisory Panels (SAPs), as well as time committed by providers to SAPs. (ii) The time FE providers already spend reviewing their provision in line with local needs – assumption based on Ofsted rating as proxy for good governance. (iii) Cost of redeveloping existing qualifications to meet new criteria – while the estimate is based on Awarding Organisation responses to an Ofqual consultation, this assumption has the biggest impact on total Act NPV. (iv) the number of essay mill businesses and their level of profit.

BUSINESS ASSESSMENT (Act Overview)

Direct impact on business (Equivalent			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 17.8	Benefits: 0	Net: 17.8	
			88.9

Case for change

The importance of skills

4. The skills system is a key driver of individual life-chances and economic growth. For learners, training leads to good jobs. Two thirds of the 1.1 million learners who achieved a Government-funded FE learning aim in the academic year 2017/18 went on to sustained employment.³ A full level 3 classroom-based qualification leads to a 16% increase in earnings 3 to 5 years after completion and a 4-percentage point increase in the employment rate.⁴ In HE, the average net lifetime return to undergraduate degrees is around £100,000.^{5 6}

5. For the economy, the skills system generates considerable value - £26bn of lifetime benefits from adult FE in academic year 2018/19 alone⁷ – as well as directly supporting productivity. Improvements in skills directly accounted for around a fifth of productivity growth before the financial crisis,⁸ while also enabling other drivers of productivity; for example, the country needs skilled people to increase innovation and benefit from capital investment.

6. Furthermore, the skills system has a key role in addressing the varied challenges and opportunities the country faces. This includes the impact of the coronavirus pandemic which has hit the economy and disproportionately affected workers and young people, with under-25s accounting for two thirds of the total drop in employment.⁹ There is also a need to adapt the economy and society to achieve net zero by 2050. Additionally, exiting the European Union and the new opportunities this brings will impact the structure of the economy.

7. The skills system is key to addressing all the challenges and opportunities of the Government's levelling up agenda because it provides the skills to meet changing employer demand and support people into good jobs.

¹ DfE (2020) Further education: outcome-based success measures

⁴ DfE (2021), Measuring the Net Present Value of Further Education in England 2018/19

⁵ Net lifetime return is the sum of the increase (or decrease) in earnings associated with attending university at each age, plus the value of maintenance loans received and minus the value of any student loan repayments and taxes paid, all discounted. No impact on benefit receipt is included.

⁶ IFS, The impact of undergraduate degrees on lifetime earnings, February 2020, Annex C, The impact of undergraduate degrees on lifetime earnings (publishing.service.gov.uk) The mean net lifetime return is £130k for men and £100k for women.

⁷ See Table 2

⁸ BIS (2015); UK Skills and Productivity in an International Context;

<https://www.gov.uk/Government/publications/uk-skills-and-productivity-in-an-international-context>; page 19

⁹ ONS March 2021 Earnings and employment from Pay As You Earn Real Time Information, UK; Figure 14.

Key challenges

8. While the skills system delivers considerable value, it has three key weaknesses:
- A high volume of people leave full-time education with low skills, and there is evidence of an undersupply of higher technical skills (i.e., level 4-5);
 - participation in lifelong learning is low and declining; and
 - a high volume of learning is done in subjects with low economic value.

A high volume of people leave full-time education with low skills, and there is evidence of an undersupply of higher technical skills (i.e., level 4-5)

9. The skills system excels at equipping young people with degree-level qualifications: a third of the cohort that undertook GCSEs in 2004/05 achieved a level 6 or above by the age of 25.¹⁰ However, 37% achieved a level 2 as their highest qualification and only 4% achieved level 4-5 – the higher technical skills in particular shortage. Other countries deliver more higher technical skills: only 10% of all adults aged 20 to 45 hold a level 4-5 qualification as their highest qualification compared to around 20% of adults in Germany, and 34% in Canada.¹¹

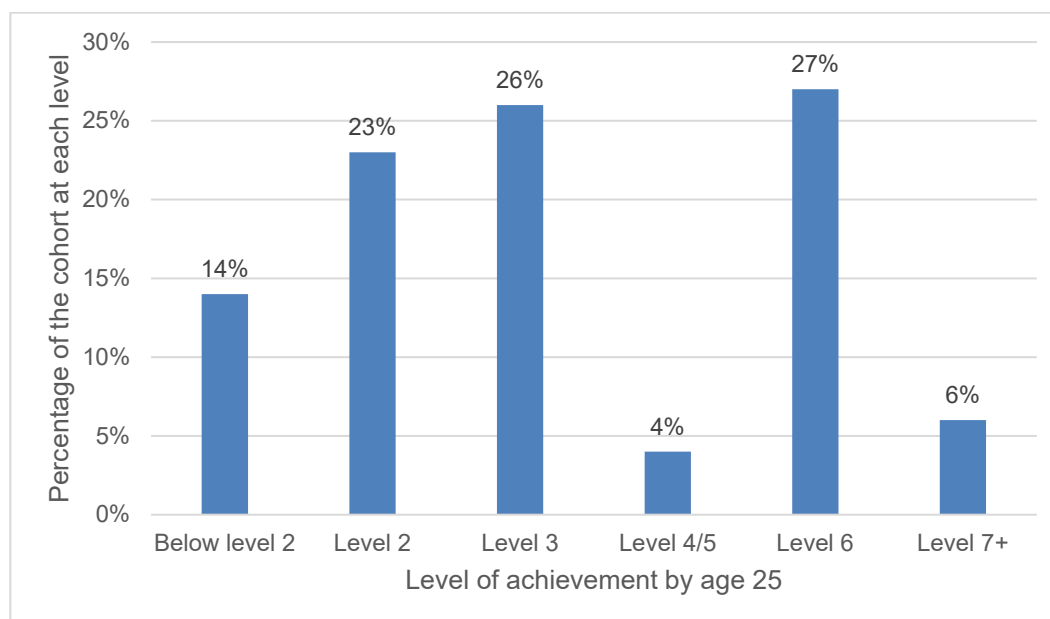


Figure 1: Highest level achieved by age 25 – England, cohort that undertook GCSEs in 2004/05¹²

¹⁰ Error! Hyperlink reference not valid.

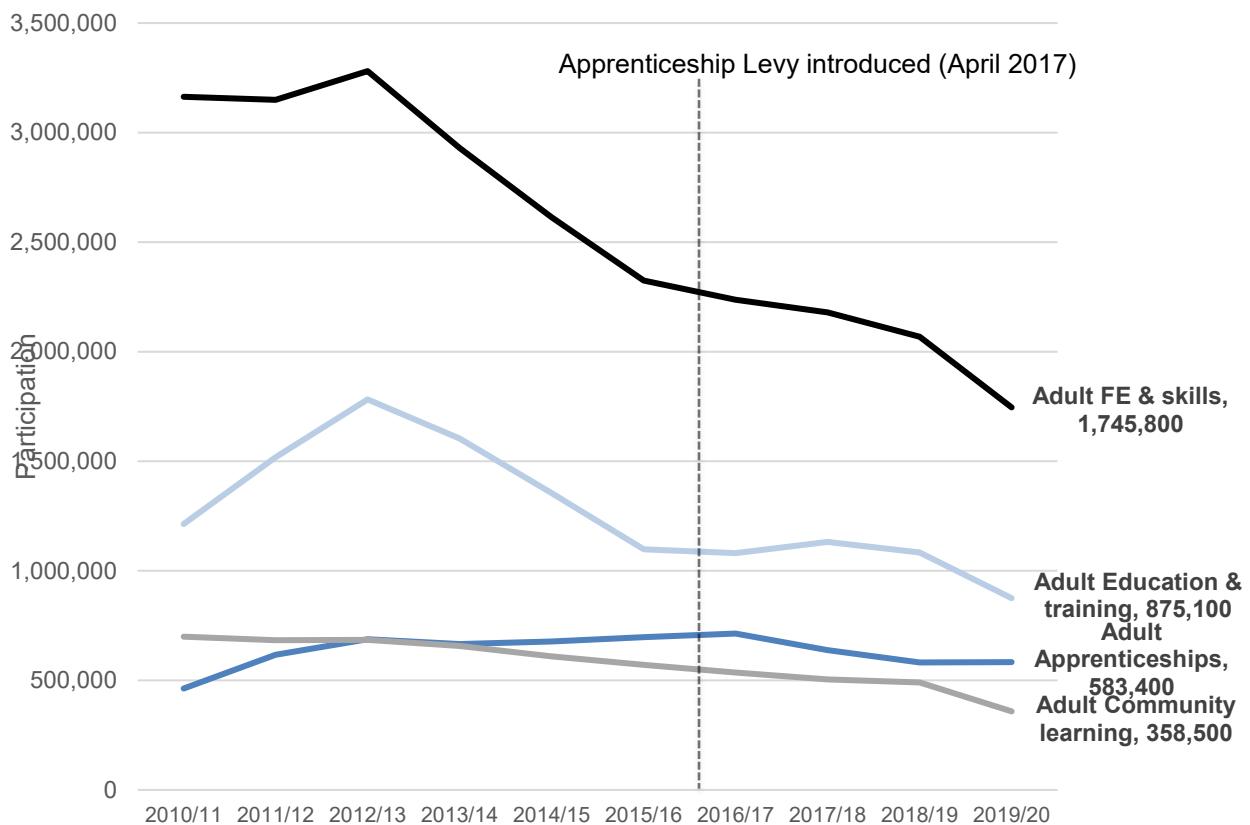
¹¹ OECD Reviews of Vocational Education and Training: Skills beyond School Synthesis Report (OECD, 2014).

¹² DfE (2018), Post-16 education: highest level of achievement by age 25.

10. This is despite the clear benefits to higher level technical education. Men with a higher technical (level 4) qualification earn on average £5,100 more at age 30 than those with a degree (level 6).¹³ For women achieving a higher technical (level 5) qualification, the difference is £2,700. Higher technical qualifications could offer a better route for some graduates, a third of whom (at working-age) are not in high-skilled employment.¹⁴ Furthermore, a key issue within this is that the Higher Technical Qualifications landscape is crowded and confusing. In 2016/17, there were over 4,000 qualifications available at levels 4 and 5, with no national assurance of which qualifications provide the skills employers need.¹⁵

Participation in lifelong learning is low and declining

11. Adult participation in publicly-funded learning has declined over the past decade – but employment patterns are changing fast with shorter job cycles and longer working lives requiring many people to reskill and upskill.¹⁶ Figure 2 shows a drop in adult participation in FE from 3.2m in 2010/11 to 1.7m in 2019/20.



¹³ Post-18 Education: Who is Taking Different Routes and How Much do they Earn? (Centre for Vocational Education Research, 2020).

¹⁴ DfE (2019) Graduate labour market statistics

¹⁵ DfE (2019), Review of level 4-5 qualification and provider market

¹⁶ Independent Panel Report to the Review of Post-18 Education and Funding (May 2019))

Figure 2: Adult FE and Skills participation in England¹⁷

12. More flexibility is needed to support lifelong learning. The student finance system offers substantial investment at the start of a young person's career, but it needs the flexibility to support training among the current workforce as well as the flow of young people entering the labour market: 80% of the workforce of 2030 are already in work today.¹⁸

A high volume of learning is done in subjects with low economic value

13. Figure 3 ranks Full level 3 classroom-based FE and Skills subject areas by earnings one year after completion. The subjects with the largest take-up are often subjects with below average earnings outcomes. In HE, while the average net lifetime returns¹⁹ to undergraduate degrees is around £100,000, approximately 15% of women and 25% of men are not expected to benefit financially from attending higher education.²⁰

14. One of the effects of this is the prevalence of skills shortages. In 2019, employers were unable to fill a quarter of all vacant positions (214,000 vacancies) because they could not find people with the right skills.²¹ More specifically, there has been an acute shortage in Construction and Manufacturing and the Skilled Trades, where skills shortage vacancies amounted to 36% and 48% of all vacant positions, respectively. There is also a broader shortage of technician-level STEM (Science, Technology, Engineering and Maths) skills because of low volumes of people leaving education with high-quality technical skills over the last 20 years.²² More broadly, digital skills are required across a wide range of jobs²³ but 52% of the workforce do not have essential digital skills for work.²⁴

¹⁷ Individualised Learner Record accessed on Explore Education Statistics portal

¹⁸ Industrial Strategy Council (2019), UK Skills Mismatch 2030

¹⁹ Net lifetime return is the sum of the increase (or decrease) in earnings associated with attending university at each age, plus the value of maintenance loans received and minus the value of any student loan repayments and taxes paid, all discounted. No impact on benefit receipt is included.

²⁰ IFS, The impact of undergraduate degrees on lifetime earnings, February 2020, Annex C, The impact of undergraduate degrees on lifetime earnings (publishing.service.gov.uk) The mean net lifetime return is £130k for men and £100k for women.

²¹ DfE (2020), Employer Skills Survey 2019

²² Delivering STEM (science, technology, engineering, and mathematics) skills for the economy (National Audit Office 2018), p.21

²³ No Longer Optional: Employer Demand for Digital Skills (Burning Glass Technologies and Department for Digital, Culture, Media & Sport, 2019)

²⁴ Lloyds Bank UK Consumer Digital Index 2020 (Lloyds Bank, 2020).

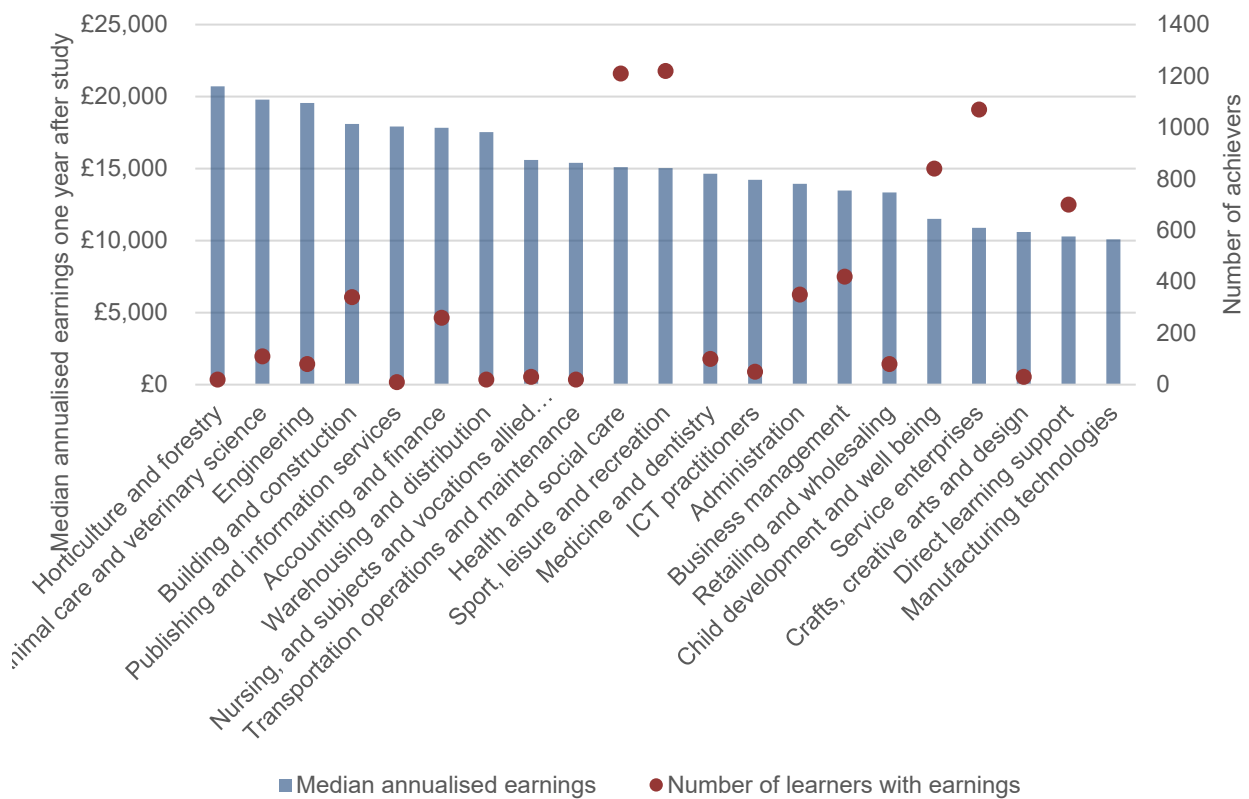


Figure 3: Median annualised earnings one year after study for Full level 3 FE & Skills aims achieved in academic year 2017/18 by SSA Tier 2²⁵

The need for action

15. As a result of these issues, the Government is seeking to reform further education and the skills system, as has been set out in the Skills for Jobs White Paper.²⁶ The reforms aim to give employers a central role in setting standards, and in the design of qualifications, as well as in identifying skills gaps and shaping local provision in collaboration with colleges and other providers. This will help employers to gain the skilled and productive workforces they need to compete at top international levels. Improving the quality of training is also a key focus, so that people can be confident they are receiving the best education and training.

16. To lay the foundation of these changes, the Government has passed primary legislation to place these reforms on a legislative footing. This justifies Government intervention in these areas, as opposed to any other type of non-

²⁵ DfE (2020) Further education: outcome-based success measures

²⁶ Skills for Jobs: Lifelong Learning for Opportunity and Growth (publishing.service.gov.uk)

Government-led resolutions. The annexed impact assessments outline the rationale for primary legislation for each measure in the Act.

Policy objectives of the act

17. The measures in the act lay the legislative foundations for the Government's FE reform and align with the aims of the Skills for Jobs White Paper. The act measures are intended to enhance skills throughout the country by improving the flexibility and quality of FE and higher technical education, while better meeting the needs of employers and learners.

18. In particular, the measures seek to:

- a. better align the FE and HE funding systems so that people can train and learn flexibly throughout their lives. The act will support this through supporting the introduction of the LLE;
- b. place employers at the heart of the system by improving productivity and plugging skills gaps through education and training and helping people into jobs that match the needs of local areas. The local skills improvement plan provisions demonstrate the Government's commitment to giving employers a key role in influencing technical education and training. Additionally, providers in the statutory FE sector will be placed under a duty to review their provision against local needs and consider what actions they might take;
- c. ensure that providers and learners are supported by effective accountability, governance, and intervention through the OfS quality measure and by granting powers to the Secretary of State through the list of post-16 providers of education or training measure. The measures will extend the powers for the Secretary of State to intervene in the event of failure in the statutory FE sector. They will also improve the insolvency process for the small number of providers in the statutory FE sector which enter insolvency proceedings; and
- d. champion excellent teaching in FE through an enabling power in the FE teacher training measure and ensure that all available qualifications are of a high standard.

19. Several of the measures in the act introduce enabling powers, some of which allow the Government to later introduce regulations. In these areas, there will not be a measurable impact directly from the act itself. This document presents an initial assessment of the rationale for and impact of these measures and presents quantified estimates of costs and benefits where possible. However, the precise policy is subject to being set out in these regulations, and where appropriate will provide a fuller assessment of impacts when the regulations are laid.

20. The wider set of powers in the act and their relevant measures are as follows:

- a. **The Lifelong Loan Entitlement:** Modifying existing regulation-making powers in primary legislation to make specific provision for student finance in respect of modules of courses;
- b. **Statutory Further Education intervention:** Powers for the Secretary of State to intervene in the statutory FE sector in circumstances where there is failure to meet local needs, and for the Secretary of State to direct structural change (such as mergers) where use of statutory powers has been triggered;
- c. **Technical Education qualification regulation:** The power for the Institute to charge fees to Awarding Organisations (AOs) for qualification approval is an enabling power for regulations to be made by the Secretary of State;
- d. **Insolvency regime:** The power for the Secretary of State to amend legislation to expressly provide for Company Voluntary Arrangements (CVAs) to be available in education administration;
- e. **Teacher training quality:** The enabling clause will allow the Secretary of State to make secondary legislation to regulate initial teacher training courses in the FE sector as deemed necessary;
- f. **List of post-16 education or training providers:** The power for Secretary of State to make regulations to set up a list of providers who meet certain conditions.

21. However, there are some changes that will be directly introduced by the passing of the Act. These include the following parts of the listed measures:

- a. **Local skills improvement plans:** The duty on providers to co-operate with ERBs, and the duty placed on providers to have due regard to local skills improvement plans when making decisions about the provision of post-16 technical education and training;
- b. **The duty placed on colleges and designated institutions to keep provision under review** and consider what actions they might take to align provision with local needs;
- c. The measure **improving the FE insolvency regime** brings minimal direct change to the process of education administration, cementing existing policy on transfer schemes into legislation for those providers which enter education administration;
- d. **The Institute and new categories of technical qualification:** The Institute will be given the power to define new qualification categories, approve qualifications in these categories, review the efficacy of approved qualifications and where appropriate withdraw their approval;

- e. **The Institute and Ofqual:** This measure will require these two bodies to cooperate with one another when exercising their functions with respect to technical qualifications and will create a single approval gateway for technical qualifications;
 - f. **OfS quality assessments:** The clarification of the OfS's methods of assessing quality as part of its regulation of higher education providers in England;
 - g. Making amendments to the Education Act 1997, via the Skills and Post-16 Education Act, so that all pupils will have **mandatory encounters with providers of approved technical education qualifications or apprenticeships**;
 - h. Making it a **criminal offence to provide, arrange or advertise contract cheating services** for financial gain to students taking a qualification at a post-16 institution or sixth-form in England or enrolled at a higher education provider in England;
 - i. Providing the Secretary of State with an order-making power to **enable the designation of 16-19 academies as having a religious character**. It also provides for Secretary of State for Education to make regulations about the procedures relating to the designation. In addition, it sets out the freedoms and protections that the designation provides;
 - j. Providing the **OfS with an explicit power to publish information** about its compliance and enforcement activity in relation to higher education providers. In addition, the measure **protects the OfS from defamation claims**, if it announces an opening of an investigation or publishes regulatory decisions.
22. The specific impacts of these measures have been measured individually in the annexes.

Benefits and costs

The value of the skills system

23. Post-16 education gives learners the skills they need to secure well-paid employment and employers the talent required for growth and productivity.
24. Table 1 presents estimates of the average causal impact of achieving an FE qualification on a learner's wages and likelihood of being in employment three to five years after completion – after accounting for a wide range of other factors like the learner's prior attainment and socio-economic background.

Provision	Increase in earnings p.a.	Increase in employment rate
Below level 2 (incl. English and Maths)	5%	1ppt
English and Maths*	4%	0.6ppt
Full level 2	9%	3ppt
Full level 3 (loan and grant funded)	16%	4ppt
Level 2 Apprenticeship	12%	4ppt
Level 3 Apprenticeship	13%	3ppt
Level 4/5 Apprenticeship	22%	4ppt

*Note: the premia for English & Maths come from 2015 publication: Further education: comparing labour market economic benefits from qualifications gained (Bibby et. al., 2014)

Table 1: Impact of achieving an FE qualification after 3 to 5 years

25. The assessment uses this analysis as the basis for the estimates of the total economic value created by starting an FE qualification. Table 2 presents these estimates from learning started in academic year 2018/19: the wage, employment, and productivity benefits net of the public funding and opportunity cost of training. Estimates are presented of the value generated per learner and per pound of public investment.

Provision	NPV per start	NPV per £ of Government funding	NPV per £ of total cost	Total NPV (£bn)
Below Level 2 (incl. English and Maths)	£12,000	£29	£14	£6
Full level 2	£39,000	£21	£6	£1
Full level 3 (loan and grant funded)	£82,000	£31	£9	£5
Level 2 Apprenticeship	£42,000	£17	£6	£4
Level 3 Apprenticeship	£48,000	£14	£5	£6
Level 4/5 Apprenticeship	£73,000	£25	£7	£4

Table 2: Net Present Value of qualifications started in 2018/19 for learners aged 19+27

26. This assessment estimates that publicly funded FE training started in the academic year 2018/19 will generate around £26 Action of economic value over the rest of the learners' working lives.

27. In HE, the Institute for Fiscal Studies (IFS) estimates that the average net lifetime return to undergraduate degrees is around £100,000.^{28 29}

28. The skills system delivers a wide range of supplementary benefits, from the wellbeing impacts of learning³⁰ and the community contribution of local FE colleges as anchor institutions³¹ to the provision of skills to help meet a wide range of challenges such as supporting levelling up in local areas across the country and caring for an aging population.

²⁷ DfE (2021), Measuring the Net Present Value of Further Education in England 2018/19

²⁸ Net lifetime return is the sum of the increase (or decrease) in earnings associated with attending university at each age, plus the value of maintenance loans received and minus the value of any student loan repayments and taxes paid, all discounted. No impact on benefit receipt is included.

²⁹ IFS, The impact of undergraduate degrees on lifetime earnings, February 2020, Annex C, The impact of undergraduate degrees on lifetime earnings (publishing.service.gov.uk) The mean net lifetime return is £130k for men and £100k for women.

³⁰ See e.g., DfE (2021) Decision Making of Adult Learners Below Level 2

³¹ See e.g. Independent Commission on the College of the Future (2020), The English College of the Future

29. While FE generates strong labour market returns overall, there is significant variation by subject. A key goal of the Skills for Jobs White Paper reforms and the act is to increase the alignment between the subjects that learners study and the subjects that employers value. Figure 3 of the case for change shows: (i) the range in earnings outcomes *between* subjects; (ii) the range of earnings outcomes *within* a given subject; and (iii) that the subjects with the largest take-up are often subjects with below average earnings outcomes. This assessment presents raw earnings rather than earnings premia (as in Table 2) because this allows greater granularity.

30. Returns vary notably in HE as well. Approximately 15% of women and 25% of men are not expected to benefit financially from attending HE. In contrast, the top 10% of women with the highest returns are expected to gain more than £350,000 on average, and for men the top 10% are expected to gain more than £700,000 on average – far more than the £100,000 average lifetime return.³²

The value of the Act

31. The overarching aim of the act is to improve how far the skills system meets employer and learner needs. The Government expects this to create significant benefits:

- a. Better jobs for learners whose training is valued more by employers;
- b. improved productivity for employers who have access to an improved skills supply; and
- c. Improved value for money for public investment in the skills system.

32. The policies enabled by the act form an overall package that delivers these benefits in different ways:

- a. Creating a flexible student finance system that enables training across an individual's lifetime; and
- b. giving employers a stronger role in deciding provision to improve alignment with local needs;
- c. safeguarding the quality of the learning experience through regulating the provider base, reinforcing the role of the OfS, and amending the insolvency regime;

³² IFS, The impact of undergraduate degrees on lifetime earnings, February 2020, Annex C, The impact of undergraduate degrees on lifetime earnings (publishing.service.gov.uk) The mean net lifetime return is £130k for men and £100k for women.

- d. reforming technical qualifications to make them easier to navigate and give them clearer labour market currency; and
 - e. improving initial teacher education for the FE workforce.
33. The Government expects the act to increase the value of the skills system through a range of different mechanisms. The Government expects:
- a. More people to take part in learning – driven by the LLE, greater alignment of provision to employer needs from local skills improvement plans, and the greater labour market currency of reformed technical qualifications;
 - b. learners to choose more valuable training – driven by the better alignment between the courses offered by providers and the needs of employers through local skills improvement plans and the new duty on statutory FE colleges to review provision with respect to local needs; and
 - c. better outcomes from training – driven by reformed technical qualifications with greater labour market currency, improved regulation of initial teacher education, and strengthened college intervention and insolvency regimes.
34. Using the NPV framework set out above, these three mechanisms would, respectively, increase the number of learners, shift the composition of learning to higher NPV subjects, and increase the NPV from a given form of learning.
35. It is important to note that, in several cases, the act creates enabling powers that, while necessary, are not in themselves sufficient to deliver the policy outcomes. Instead, future secondary legislation or wider non-legislative changes would be required, as part of the Government’s broader plan to reform the post-16 skills system.

Impacts by stakeholder group

36. This section presents an overview of the key benefits and costs to different stakeholders. The annexed assessments of individual measures provide more detail.

Learners

37. The core benefit to learners is improved employment outcomes – better jobs – through training that better meets the needs of employers. This will be enabled by:
- a. Courses on offer locally better matching employer needs following the articulation of needs through local skills improvement plans and the duties

on providers to consider local needs when reviewing provision. As set out in the case for change, there are well-documented shortages in technical skills as well as STEM and digital skills;

- b. making the technical qualifications market easier to navigate and giving qualifications greater rigour and labour market currency. For example, there are more than 12,000 different qualifications funded in England at level 3 and below;³³
- c. better access to learning across an individual's lifetime through a more flexible student finance system; and
- d. higher quality provision due to, for example, improved initial teacher education and regulation of the provider base.

38. School pupils will benefit from improved careers advice – enabled by the information on technical options measure. Post-16 and HE students will be encouraged to develop their knowledge and skills in academic writing, independent research, and critical thinking, following the criminalisation of essay mills. In doing so, they will become more confident, accomplished learners. The legislation will also have positive impacts on students who do not cheat, as all students will now be assessed on their own work.

39. The sole identified cost is that the introduction of more stretching technical qualifications may make achievement harder, although this is outweighed by the increased benefit to the value of the technical qualifications.

Employers

40. The benefit to employers is increased output and productivity from access to an improved supply of skills. This is enabled by:

- a. Better alignment of local provision to employer needs by giving employers greater say through local skills improvement plans. The Government expects this to help employers meet the skills shortages documented in the case for change;
- b. technical qualifications that are based on employer-led standards and sit within a framework that is easier to navigate; and
- c. improvement in the rigour of technical qualifications meaning that new recruits are better equipped for skilled employment.

³³ Consultation - Review of post-16 qualifications at level 3 in England: Second Stage Oct 2020 (education.gov.uk)

41. The principal cost to employers will be the time spent understanding new technical qualification categories when recruiting and, with respect to the LLE, time spent on familiarisation with changes to the student finance system and on processing new loans.

42. Legislation to criminalise cheating services reduces the risk of students/graduates entering the workforce without the knowledge, skills and/or knowledge to practise. Employers will have fewer mismatches while recruiting which will boost productivity and savings through reduced cost of staff turnover in cases where graduates are found not to have the required skills.

Providers

43. The Government expects the act to enable efficiency savings for providers. A coordinated process for articulating local employer needs — i.e., local skills improvement plans – and a streamlined technical qualifications landscape will make it easier for providers to plan their provision.

44. Providers in the statutory FE sector, ITPs, and HE institutions delivering FE will face costs relating to the need to engage in the production of local skills improvement plans, to have due regard to these plans when planning provision, and the costs of: (i) reviewing new technical qualifications; (ii) introducing delivery of new qualifications; and (iii) adapting provision if existing qualifications are removed.

45. Furthermore, specific measures applying to the statutory FE sector will create a labour cost in reviewing provision with respect to local needs – and associated costs of changing either if improvements are identified.

46. Future regulation of the provider market – e.g., a list for providers – will lead to familiarisation and administrative costs, but providers will also benefit from greater clarity on the standards they need to attain.

47. With regards to the LLE, providers may face reduced tuition fee income and costs associated with the changing nature of provision.

48. The measures regarding intervention in the statutory FE sector – the new threshold for intervention and the power for the Secretary of State to direct structural change (such as mergers) – as well as the insolvency regime applicable to the statutory FE sector would also incur benefits and costs if utilised. These are considered in the relevant impact assessment.

49. Finally, the new proposals will mean that FE providers will benefit from increased access to schools for careers provision, faith sixth forms will be able to convert to faith-designated academies, and FE and HE providers will benefit from a reduction in the provision of essay mill cheating services.

Awarding Organisations

50. The reforms to technical qualifications will generate costs for AOs. They will need to familiarise themselves with new regulatory requirements for technical qualifications, as well as reviewing their existing qualifications against the new requirements and revising where necessary. Finally, they will need to pay a fee for submitting new qualifications for approval should regulation be made to enable this power.

Employer Representative Bodies

51. ERBs which take on the role of leading the development of local skills improvement plans will benefit from being able to articulate and represent the needs of their members directly to providers. Producing these plans will incur a cost to ERBs.

Cheating services providers

52. Providers offering cheating services will lose annual revenue because of this reform as students at English HE and post-16 providers cease to use their illegal services. The providers of these services should always have been aware that their actions constituted cheating and that provision of these services was unethical. It may be that additional legitimate services they offer (e.g., proof reading) are allowed to continue, in which case they will also face costs associated with due diligence checks and adapting their service.

Summary of quantified impacts of the Act

53. The preceding section enumerates the range of costs and benefits the Government expects to be generated by the measures in the Skills and Post-16 Education Act. This section summarises the impacts that have been quantified.

54. This assessment presents quantified estimates of the economic costs associated with the following measures:

- a. introducing local skills improvement plans;
- b. introducing a duty on providers in the statutory FE sector to review provision to best meet local needs;
- c. reform to technical qualifications;
- d. introducing the LLE (direct cost to business only); and
- e. criminalising the provision and advertising of cheating services ('essay mills').

55. This assessment accounts for the possibility of double-counting across these estimates. The only significant overlap arises from the duty for providers to have due regard to local skills improvement plans and the duty for statutory FE colleges to review their provision in line with local needs. The time spent by statutory FE colleges reviewing the local skills improvement plans will contribute to their fulfilment of the second duty. This assessment has adjusted estimates of the time taken by statutory FE colleges to comply with these duties accordingly. See the impact assessments for each measure set out in the Annex for further details.

56. This assessment does not present quantified estimates of the costs generated by other measures or for the benefits created by the act as a whole. This is for a number of reasons:

- a. Where the act claims powers to pave the way for future secondary legislation, the detail of policy changes will be set out in later regulation, including on some occasions following consultation. This applies to the measures relating to the LLE, the regulation of initial teacher education, and regulation of FE providers. The Government will provide assessments of the impact at a later stage – when specific policy changes are made – or alongside future consultations. In this impact assessment, the Government focus is on describing the impacts of the measures and setting out a proportionate analysis of the benefits and costs to inform debate. In the specific instance of the LLE, the assessment presents estimate of the direct cost to business – although this assessment will be further developed in the impact assessments that the Government develops as it works towards roll-out from 2025;
- b. several measures put in place as contingency arrangements for eventualities that: (i) are hard to predict – if they occur at all; and (ii) have costs and benefits that are entirely dependent on the complex particulars of individual circumstances. This applies to the changes to the insolvency regime and the statutory FE sector intervention measures. In these areas, proportionate analysis is to describe the impacts rather than attempting to quantify;
- c. the OfS measures are to ensure that the existing regulatory regime operates as intended. Shoring up existing powers does mean that its regulatory regime will be enforced and so there is an implication for providers in terms of work either necessary to ensure they remain above that threshold or to engage in any investigation. However, this burden is already captured in estimates of the regulatory burden when the framework

was first designed³⁴ and this measure ensures that it will operate as intended. Where the detail of any regulatory proposals has the potential to impact on regulatory burden the OfS will be required to undertake its own assessment; and

- d. the principal benefits to a range of measures relate to the better alignment between local skills supply and local skills demand. The Government expects this to generate significant value and – as set out above – the Government has considerable evidence regarding the value generated by FE but does not have the evidence to enable this assessment to quantify by how much learner numbers might increase or what changes in the subject mix might be observed in specific local areas.

57. Table 3 summarises quantified outputs. It is important to note that the negative NPVs are a product of not quantifying the benefits rather than a judgement that the costs outweigh the benefits. In particular, the estimates for the LLE cover only the direct cost to businesses of adapting to changes in the PAYE loan repayment system and consequently do not reflect the overall impact of the policy.

Provision	Best estimate	Low	High
Local skills improvement plans	-37.2	-86.5	-14.4
Duty on colleges in relation to local needs	-4.6	-8.3	-4.5
Technical qualification reform	-55.8	-90	-28.1
LLE (direct cost to business only)	-5.1	-10.0	-3.4
Essay mills	-68.9	-94.9	-25.1

Table 3: Net Benefit (2019 prices, 2020 Present Value), £m³⁵

³⁴ Securing student success: Regulatory framework for higher education in England - impact assessment (publishing.service.gov.uk)

³⁵ Note that totals may not match values in the respective annexes where the present value base year has been revised to enable consistent comparison across measures

58. The appraisals of each measure are set out in the Annex.

59. The Government expects the act to create notable costs for cheating service providers, FE providers, AOs, ERBs, and employers – with a total of c.£170 million over a decade for the quantified measures. However, the Government expects this to be small relative to the overall benefit to the act. As set out above, the skills system currently delivers significant value with strong wage, employment and productivity returns to training. For example, it is estimated that £26bn of lifetime economic value – net of the costs incurred - was created by all the publicly-funded FE qualifications started by those aged 19 and over in academic year 2018/19 (see Table 2). The rationale behind many of the measures in this act is to improve the degree to which the supply of skills through the FE system better meets employer demand – to build on this significant economic contribution. Even a modest increase in learner numbers or improvement in labour market outcomes would far outweigh the costs associated with this act. Measures to improve the quality and integrity of qualifications – including criminalising the provision and advertising of essay cheating services – will further add value to the skills system.

Direct cost to business

Approach to classification

60. The act creates direct costs to a range of private sector organisations: statutory FE providers, ITPs, HE Institutions, employer representative bodies, AOs, and cheating services.

61. While FE colleges are classified as non-profit institutions serving households (NPISH) by the ONS³⁶, they are principally publicly-funded. The National Audit Office (NAO) find that 78% of the revenue of FE colleges comes from public sources.³⁷

62. This assessment splits the cost to statutory FE colleges and Designated Institutions into a portion that impacts their private sector, business activities (22% using revenue source as a proxy) and a portion that impacts their public sector, publicly-funded activities (78%) – as per the NAO report.

63. The same principle could apply to ITPs and HE Institutions. However, in the absence of firm data regarding their revenue sources, the Government has

³⁶ Public sector classification guide and forward work plan - Office for National Statistics (ons.gov.uk) – under “Former CG organisation”

³⁷ Financial sustainability of colleges in England (nao.org.uk) (2020), paragraph 1.1

decided to take the conservative approach of treating all their activity as “business” for the purposes of the equivalent annual net direct cost to business and Business Impact Target scoring.

64. As per the preceding section, the assessment quantifies the direct business impact of the local skills improvement plans, duty on colleges in relation to local needs, the reform to the technical qualification market, and the introduction of the lifelong loan entitlement. It does not quantify costs associated with the other act measures. This is for the reasons set out above: i.e., that quantification would be disproportionate or that the Government will provide more full Impact Assessments in future alongside consultation or secondary legislation.

65. The approach to classification is summarised in Table 4.

Organisation	Business Impact Target classification
Statutory FE colleges	22% of costs and benefits are within scope
Independent Training Providers	In scope
Higher Education Institutions	In scope
Awarding Organisations (AOs)	In scope
Employer Representative Bodies	In scope
Cheating services	In scope
Local stakeholders (i.e., local authorities and LEPs)	Out of scope

Table 4: Approach to classification

Estimated costs

66. Table 5 summarises quantified direct costs to business – following the same approach as set out in the preceding section. As noted previously, the negative NPSV estimates reflect that the assessment is not able to monetise the benefits from the Act, rather than that the costs outweigh the benefits.

	Net Present Social Value	Business net present value	Net direct cost to business per year	Business Impact Target score
Local skills improvement plans	-37.2	-35.1	4.1	20.4
Duty on colleges in relation to local needs	-4.6	-1.0	0.1	0.6
Technical qualification reform	-55.8	-55.8	5.0	25.0
LLE (direct cost to business only)	-5.1	-5.1	0.6	2.9
Essay Mills	-68.9	-68.9	8	40.1

Table 5: Business Impact Target (£m, 2019 prices, 2020 Present Value)³⁸

Small and micro business assessment

FE providers

67. The act creates burdens for FE providers. Generally, FE providers are private businesses or non-profit institutions. The impact of public funding on their status with respect to the Business Impact Target is set out in the preceding section.

68. Table 6 maps the FE provider base by provider type and provider size. This is for learning delivered in academic year 2019/20.

69. The table is based on matching provider data from the Individualised Learner Record (ILR) to business data from the Office for National Statistics Inter-Departmental Business Register (IDBR) to obtain information on number of employees. Only providers that had at least one active learning aim in the ILR for 2019/20 academic year are included and the name and post code information for

³⁸ Note that totals may not match values in the respective annexes where the present value base year has been revised to enable consistent comparison across measures

these providers has been cleaned and matched to equivalent company/trade name and post code information in the IDBR.

70. The assessment can match three quarters of providers; i.e., it is able to find employer size data for three quarters of the FE provider base. This is a sufficiently high match rate to enable the Government to estimate the proportion of providers of different types who are small or micro businesses.

Provider Type	Number of providers	Number matched to business data	Match Rate	Number of matched providers by size (number of employees)		
				Small (0-49)	Medium (50-249)	Large (250+)
All	1,910	1,460	76%	530	240	700
General FE College	170	160	95%	0	10	150
Other Public Funded*	360	280	78%	10	20	260
<i>of which: HE Organisations</i>	100	90	95%	c	C	90
Private Sector Public Funded**	1,300	950	74%	520	180	250
Sixth Form Colleges	50	40	83%	c	20	20
Special Colleges***	30	30	100%	c	10	20

* e.g., Local authorities and HE institutions

**i.e., Independent Training Providers

***Agriculture and Horticulture & Art Design and Performing Arts, Specialist Designated College Notes:

1. This analysis is based on matching provider data from Individualised Learner Record (ILR) to business data from the Inter-Departmental Business Register (IDBR).

2. ILR provider name and post code were fuzzy matched to IDBR company/trade name and post code, with match rates shown in table for each provider type.

3. Only providers that had at least one active aim in ILR data for 2019/20 academic year are included.

4. Numbers have been rounded to the nearest 10 with values less than 3 suppressed with a "c". Percentages have been rounded to the nearest per cent

Table 6: Size of providers delivering FE in academic year 2019/20

71. The Government estimates that 55% of ITPs ('private sector public funded' in Table 6) are small businesses – 520 of the 950 ITPs delivering training in 2019/20 for which this assessment has matched employee data had 49 or fewer employees.

72. This is the central estimate, and it assumes that the providers the Government is unable to match have the same size distribution as the matched providers. In fact, it is possible that those unmatched providers are more likely to be small businesses. There are three reasons for not being matched: (i) discrepancies in the spelling of the business name, (ii) an inaccurate address, or (iii) the provider is not in the IDBR because they are not VAT or PAYE registered. It is probable that this third reason is related to provider size. However, the Government is not able to test this.

73. The introduction of local skills improvement plans is the only set of act measures that will create regulatory impacts for ITPs. The specific act measures are:

- a. A duty for providers to co-operate with designated ERBs to develop local skills improvement plans (in accordance with issued statutory guidance); and
- b. a duty for providers to have due regard to local skills improvement plans when considering their post-16 technical education and training offer.

74. ITPs are a key part of the FE infrastructure, delivering technical education and skills, including specialist provision to young people and adults. Local skills improvement plans will consider the totality of technical skills provision and ITPs will bring crucial, unique knowledge and experience to help address skills gaps. Inclusion of ITPs will support and encourage greater collaboration and collaborative solutions between them, FE Colleges, and HE Institutions.

75. In summary, it would not be reasonable to exempt ITPs, regardless of their size, due to the unique local and technical skills perspective they will provide in the development of local skills improvement plans. The burdens because of the act measures will be minor as these providers will not be required to implement the local skills improvement plans, as they will retain autonomy over their actions. As a result, the benefits of including ITPs outweigh expected costs – see a full summary in the annexed individual impact assessment.

Higher education providers

76. The introduction of the LLE will have impacts on HE providers – in addition to the FE providers identified above. The Government is consulting on the LLE

and will work with analysts and policy specialists to update the impact assessment as we work towards roll-out from 2025. At this stage, the following Higher Education Statistics Agency (HESA) data relating to the size of HE providers. Most HE providers are large employers. Whilst it is possible that any reduction in fee income or administrative costs associated with the policy could have a disproportionate effect on small and micro providers, these represent a small proportion of the HE sector.

77. In 2019/20, of the 165 English providers for which HESA data³⁹ was available:

- a. 110 (67%) were large (250 or more employees);
- b. 32 (19%) were medium (50 or more employees); and
- c. 23 (14%) were small (fewer than 50 employees).

Awarding Organisations

78. The reform to the technical qualifications landscape will impact AOs. The Government does not have data regarding the number of employees in different AOs. However, the market consists of a small number of large organisations, and a long tail of much smaller organisations. The two largest organisations – out of a total of around 160 – accounted for over 60% of all certifications awarded in 2019/20.⁴⁰ Consequently, the Government expects the act to impact small AO businesses – as set out in Measure 5 of the Annex.

Essay Mills

79. UK Top Writers listed 1002 writing services providers⁴¹. It should be noted that there are significant uncertainties around this figure as there are no official statistics on the number of such providers. It is unknown where these businesses are located, their size and whether they only provide services to English HE students. It is likely that some writing services will be small businesses. They should be aware that they should not be offering cheating services in any case.

³⁹ HESA, Table 1 - HE staff by HE provider and activity standard occupational classification 2014/15 to 2019/20

⁴⁰ Annual Qualifications Market Report 2019/20 (publishing.service.gov.uk)

⁴¹ Best Essay Writing Services (September 2021) | UK Top Writers

Equalities impacts

80. In line with the Government's legal duties and its commitment to equalities, care has been taken to ensure that the legislation is informed by assessments of their impacts for those from protected characteristics. This legislation takes place against the backdrop of the COVID-19 pandemic, which the evidence suggests has disproportionately impacted some in society, particularly those with certain protected characteristics⁴².

81. Under section 149 of the Equality Act 2010 the three aims of the Public Sector Equality Duty to which public sector bodies, including Government departments, must pay 'due regard' in their work are:

- a. preventing unlawful discrimination for those sharing any of the nine 'protected characteristics;'
- b. promoting equality of opportunity for those sharing protected characteristics; and
- c. fostering good relations between those sharing protected characteristics and those who do not.

82. The protected characteristics are race, sex, disability, sexual orientation, age, gender reassignment, religious/other belief, pregnancy/maternity and, for the purpose of the duty not to discriminate, marriage/civil partnership.

83. Many measures in the act will not have a direct impact on equalities. This is because most measures introduce enabling powers which will allow regulation to be laid later. This is the case for the LLE, improvements to the insolvency regime (setting out rules for CVAs), FE teacher training system reform and regulation of FE providers (including ITPs). For these measures, assessment of the equalities impact on such groups will be conducted and considered as appropriate at the time of formulation of any such secondary legislation.

84. However, aspects of the statutory underpinning for local skills improvement plans, the statutory FE sector duty to review provision in relation to local needs, and the measure concerning approval and regulation of technical qualifications measures, all introduce direct changes through the duties they place on providers. Direct changes may also be associated with the Secretary of State's last resort power to direct structural change (should it be exercised) contained in the statutory FE sector intervention powers measure. The measure improving the FE

⁴² See for example Resolution Foundation (2021), Long Covid in the Labour Market p.26 for differential employment impacts by age, gender, and ethnicity.

insolvency regime brings minimal change to the process of education administration, only cementing existing policy into legislation for those providers which enter education administration and speeding up the designation process to benefit those providers who use the designation process as part of their exit from insolvency. The impact of these measures on people with protected characteristics is considered in aggregate below.

Assessment against each protected characteristic

85. The Government anticipates that, overall, the measures in the act will have a positive benefit on learners, including those with protected characteristics. This is due to:

- a. improved employment outcomes through technical education and training that better meets the needs of employers, as established through local skills improvement plans;
- b. improved employment outcomes because of better matching between available courses and skills needs of local areas because of the duty on colleges and designated institutions to review their provision in relation to local needs;
- c. reduced disruption to learners if a FE provider is failing or not meeting thresholds in existing legislation through improved intervention powers for the Secretary of State; and
- d. better meeting of the needs of individuals by ensuring that qualifications are high quality, rigorous and led by employer standards through the approval and regulation of technical qualifications measures.

86. The sole identified cost is that the introduction of more stretching technical qualifications may make achievement harder.

87. The figures below, illustrate the breakdown of those with protected characteristics participating in FE and skills in England, as well as how their outcomes from learning compare to those without protected characteristics. The below shows that people from BAME backgrounds and females are over-represented in FE and skills compared to the working adult population whereas those with learning difficulties and/or disabled people are slightly under-represented. For age, those under 50, and particularly those aged 19-24 participate at proportionately higher levels in FE and skills compared to those over 50.

88. None of the provisions in the act result in direct discrimination against people with any of the protected characteristics. The Government has considered whether the provisions will have a disproportionate impact on people with protected characteristics in the analysis below.

Race

89. Figures for 2020/21 (August to January) show that 24.1% (266,500) of those participating in FE and skills in England were from BAME backgrounds.⁴³ According to 2011 census data, 20.2% of the population of England was from an ethnic background other than White British and 14.6% were from non-White backgrounds.⁴⁴ As proportionally more people from minority ethnic backgrounds participate in FE and skills in England, they are slightly more likely to be affected by the impacts outlined in this report.

90. Sustained positive destination figures for 2017/18 (the latest year of data) show that 72.9% of BAME completions/achievements in FE progressed to employment or further learning one year after completion. This compares to 76.1% of not BAME completions/achievements. The 2017/18 average median earnings one year after completion for BAME completions is £17,109, compared to £17,610 for not BAME completions.⁴⁵

Sex

91. Figures for 2020/21 (August to January) show that females accounted for 59.2% (691,100) of those participating in FE and skills in England.⁴⁶ Within the general population of England in mid-2019, 50.6% of people were female, indicating that a slightly higher proportion of females participate in FE and skills in England and thus the Government expects females to be slightly more affected by the impacts outlined in this report.⁴⁷

92. Sustained positive destination figures for 2017/18 (the latest year of data) show that 74.4% female completions/achievements in FE progressed to employment or further learning one year after completion. This compares to 73.6% of male completions/achievements. The 2017/18 average median earnings one year after completion for female completions/achievements is £15,891, compared to £19,348 for males.⁴⁸

⁴³ Further education and skills, Academic Year 2020/21 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

⁴⁴ ONS - 2011 Census (KS201EW)

⁴⁵ Further education: outcome-based success measures, Academic Year 2017/18 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk) table ND01, data covers England.

⁴⁶ Further education and skills, Academic Year 2020/21 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

⁴⁷ Population estimates for the UK, England and Wales, Scotland, and Northern Ireland - Office for National Statistics (ons.gov.uk)

⁴⁸ Further education: outcome-based success measures, Academic Year 2017/18 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk), table ND01, data covers England

Disability

93. Figures for 2020/21 (August to January) show that 16.4% (185,100) of those participating in FE and skills in England declared a learning difficulty and/or disability.⁴⁹ According to 2011 census data, 17.6% of the population of England has an activity limiting health problem or disability.⁵⁰ This indicates that the measures outlined in this report are very slightly less likely to affect people with a disability than the general population as a slightly smaller proportion of participants in FE and skills have a disability than the general population of England.

94. Sustained positive destination figures for 2017/18 (the latest year of data) show that 68.2% of completions/achievements with a learning difficulty and/or disability progressed to employment or learning one year after completion. This compares to 72.3% of completions/achievements with no learning difficulty and/or disability. The 2017/18 average median earnings one year after completion for those with a learning difficulty and/or disability is £16,804, compared to £17,338 for those with no learning difficulty and/or disability.⁵¹

Sexual orientation

95. The Government does not currently have data on the participation of people in FE and skills broken down by sexual orientation. The Government have considered the measures in the act and do not anticipate any specific impacts on those with this protected characteristic.

Age

96. Figures for 2020/21 (August to January) show that 31.4% (366,700) of learners participating in FE were aged 19-24, 55.2% were 25-49 (644,100) and 13.4% (157,000) were aged 50+.⁵² According to ONS data, in 2018 7.4% (4,169,087) of the population of England were aged 19-24, 33.1% (18,510,830) were aged 25-49 and 37.3% (24,806,721) were aged 50+.⁵³ These figures indicate that those under 50, and particularly those aged 19-24 are likely to be slightly more affected by the impacts outlined in this report because they participate at proportionately higher levels in FE and skills.

⁴⁹ Further education and skills, Academic Year 2020/21 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

⁵⁰ Disability in England and Wales - Office for National Statistics (ons.gov.uk)

⁵¹ Further education: outcome-based success measures, Academic Year 2017/18 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk) table ND01, data covers England.

⁵² Further education and skills, Academic Year 2020/21 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

⁵³ UK population pyramid interactive - Office for National Statistics (ons.gov.uk)

97. Sustained positive destination figures for 2017/18 (the latest year of data show that 78.0% of 18 and under completions/achievements progress onto employment or further learning. This compares to 74.4% of 19–24-year-olds, 75.3% of 25-49-year-olds, and 70.3% of completions/achievements for those 50 and over. The 2017/18 average median earnings one year after completion for under 18s is £13,853, for 19-24 is £17,048, for 24-29 is £17,845, and for over 50s is £19,096.⁵⁴

Gender reassignment

98. The Government does not currently have data on the participation of people in FE and skills broken down by gender reassignment status. The Government has considered the measures in the act and do not anticipate any specific impacts on those with this protected characteristic.

Religious/ other belief

99. The Government does not currently have data on the participation of people in FE and skills broken down by religious or other beliefs. The Government has considered the measures in the act and do not anticipate any specific impacts on those with this protected characteristic.

Pregnancy/ maternity

100. The Government does not currently have data on the participation of people in FE and skills broken down by pregnancy or maternity status. The Government has considered the measures in the act and do not anticipate any specific impacts on those with this protected characteristic.

Marriage/ civil partnership

101. The Government does not currently have data on the participation of people in FE and skills broken down by marital status. The Government has considered the measures in the act and do not anticipate any specific impacts on those with this protected characteristic.

102. The equalities impact assessments of individual measures are included in the Annex.

⁵⁴ Further education: outcome-based success measures, Academic Year 2017/18 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk) table ND01, data covers England

The Family Test

103. The act is expected to have an overall positive impact on families. Increasing access to flexible modes of study/training is likely to:

- a. enable people to better balance training/education and play a full role in family life, including any parenting and caring responsibilities;
- b. benefit those going through significant life transitions including adoption, fostering, bereavement, the onset of a long-term health condition, new caring responsibilities, pregnancy, and the birth of a child because modules could be spread over a person's lifetime instead of being condensed into a single period; and
- c. offer those who have been made redundant the opportunity and financing to upskill.

104. No impact is expected on family formation (including committed couple relationships), couple separation or those families most at risk of deterioration of relationship quality and breakdown, although better access to training and education might alleviate some of the stressors affecting those people in the longer-term as they should be better able to participate in skilled workforces, attain higher earnings.

Monitoring and evaluation

105. The act will introduce changes across the skills system. The Government has an established approach to monitoring and evaluating how well the skills system is working and the value it is generating. The Government will consider the impact of the act through these existing products.

106. The monitoring and evaluation activity draws on a range of data sources and evidence products. These include but are not limited to:

- a. Individualised Learner Record – Official statistics and in-house analysis of administrative data on starts and completions. This shows who is doing training, in what areas and subjects, and at which providers;
- b. Longitudinal Educational Outcomes (LEO) – This data source combines the administrative data on what learning is happening with data on education history, employment status and earnings, and DWP welfare data;
- c. Outcome-based Success Measures - This annual publication uses the Longitudinal Educational Outcomes dataset to set out the labour market outcomes one, three, and five years after completing training;
- d. Employer Skills Survey - A biennial survey of employers on a range of skills-related issues including skill needs, investment in training, and attitudes towards apprenticeships;

- e. Labour market returns estimates – rigorous econometric estimates of the causal impact of training on learner employment and earnings, controlling for a wide range of factors;
- f. Skills Index - This annual publication calculates the overall value of the skills supplied by the FE system and how this has changed over time. The index is affected by the number of people achieving qualifications and by changes in the average value of achievement.

107. For apprenticeships, there are several additional products:

- a. Apprenticeship Service – detailed information regarding apprentice and employer user journeys;
- b. Apprenticeships by Industry Characteristics – the Department for Education (DfE) links its administrative data to other Government data on employers (IDBR) to show which employers and sectors are using apprenticeships;
- c. Apprenticeship Evaluation Survey - A biennial, representative survey of 5,000 apprentices (current and completed) and 4,000 employers that asks a range of questions about motivations, experiences, and impacts of doing and offering apprenticeships.

108. The Government will evaluate the effectiveness of the T Level programme during and after rollout. The programme evaluation strategy includes the use of existing data collections via the ILR and Schools Census and plans to add a suite of new questions to the Employer Skills Survey and British Attitudes Survey to collect awareness and perceptions data from learners, parents, and employers. A Technical Education Learner Survey will track the experiences and outcomes of the first T Level cohorts and will be followed up by the Longitudinal Education Outcomes (LEO) data set to measure T Level learners' progression into skilled employment.

109. The Government is working to improve the quality and quantity of data available on the FE workforce, including trainees and new entrants. This academic year the Government is introducing a new Education and Skills Funding Agency (ESFA)-led FE workforce data collection, which will become mandatory from AY 2021/22. This does not include all Initial Teacher Education trainees within its scope but will provide the Government with greater insight on the number of new entrants joining the FE teaching profession each year, their qualifications and whether they are undertaking any in-service training. In the future the Government may wish to collect more data on trainees (and have requested that the enabling clause should provide the facility to mandate this).

110. Additionally, there are several assessments and consultations taking place contemporaneously and subsequently to the passage of the act. These will involve further evidence-gathering, which will be used to enhance the assessment of the impact of the act. The Government will work with stakeholders to develop the

details of future regulation and monitor delivery progress. These assessments and consultations include:

- a. a consultation on the LLE which launched in February 2022 which will provide an opportunity to develop the evidence base further and test underlying assumptions. A more thorough assessment of the impacts will be conducted as the Government works towards rollout from 2025;
- b. A consultation on funding and accountability in further education ran from the 15 July 2021 to the 7 October 2021. This proposed new accountability structures for further education providers and will help to underpin delivery of local skills improvement plans. A second consultation, building on the feedback received from the previous consultation, is being launched in spring 2022. This will set the proposed system out in more detail and gather evidence to inform further development of the reforms;
- c. The OfS has reviewed and consulted on how it regulates quality and standards alongside the passage of the Act.

111. The Government will seek to undertake a Post-Implementation Review to assess the effectiveness of the legislation, subject to Parliamentary agreement on the measures in the Act, after it has been implemented and operational for a period.

Measure 1: Lifelong Loan Entitlement (LLE)

112. The Skills and Post-16 Education Act LLE analysis is the same as the analysis included in [Lifelong Loan Entitlement: Impact Assessment](#), published February 2022.

113. [The Lifelong Loan Entitlement: Impact Assessment](#) will be updated as development of the LLE progresses to reflect any policy decisions made following the consultation and further design work.

Measure 2: Statutory underpinning for local skills improvement plans

What is the problem under consideration? Why is Government action or intervention necessary?

114. The FE sector has a leading role to play in delivering the skills and enabling the innovation that England needs.

115. It is a diverse and complex sector including, but not limited to, FE Colleges, Sixth Form Colleges, and Independent Training Providers (ITPs), delivering academic, technical, and vocational provision to both younger learners (16-18s), including through Apprenticeships and the new T Levels, and to adults (mainly people aged 25-49).

116. The analysis of the challenges within the FE system are informed by the findings of the Augar Report, Ney Review and 2020 Skills Commission, it points to three main challenges which the Government seeks to address, which are:

1) Mismatches between technical skills and meeting labour market and economic need

117. In some areas, there is mismatch between the technical skills of learners and those required by the labour market,⁵⁵ with an overall offer which is below the skills level needed by local economies.⁵⁶

118. Skills gaps are still a concern for many sectors of the economy and some individual employers. The 2020 Employer Skills Survey suggests that skills shortage vacancies accounted for 22% of all vacancies in the UK, and that 1.27 million staff lacked full proficiency for their role, amounting to 4.4% of the UK workforce.⁵⁷ In addition to these skills gaps, the survey also reported a steady increase since 2011 of the proportion of the workforce who have underused skills and qualifications.

119. Take-up of higher technical education is low in England, despite evidence that these skills are valued by the labour market. Only 4% of 25-year-olds hold a level 4 or level 5 qualification (HE/FE – higher technical) as their highest level,⁵⁸

⁵⁵ Ney (2019) - Report of the independent review of college financial oversight

⁵⁶ No stone unturned in pursuit of growth (publishing.service.gov.uk)

⁵⁷ Skills Commission: England's Skills Puzzle: Piecing together further education, training and employment, 25 February 2020, p.22-23.

⁵⁸ DFE (2018); Post 16 Education Pathways

contributing to skill mismatches in a range of sectors, including IT, construction, health, and social work.⁵⁹ These are the types of skills that need to be delivered in greater numbers.

120. The skills learners gain from FE have a critical role to play in supporting incremental innovation that drives up demand for technical skills, improves how employers make use of the technical skills of their workforce,⁶⁰ and increasing the potential for better jobs. FE's potential to support the creation of new businesses and stimulate innovation, particularly as the country emerges from the Coronavirus pandemic, remains clear and local skills improvement plans intend to bring out the key changes needed in the technical skills landscape.

2) It is difficult to engage effectively with employers

121. The 2020 Skills Commission Inquiry highlighted that although generally employers felt positive about the direction towards greater employer involvement, employers still struggle to engage with the complex landscape of FE and skills.⁶¹ This difficulty is apparent for Small and Medium-sized Enterprises (SMEs) who, in the absence of formal channels, had little collective influence over provision.⁶² A lack of local levers to tailor skills provision to local market need was described as a 'one-size-fits-all model', ill-suited to the diversity of England's regional economies and communities.

122. Discussions with the British Chambers of Commerce, Federation of Small Business, and Confederation of British Industry similarly point to the difficulty that SMEs in particular face in accessing support from colleges.⁶³ As local skills improvement plans will articulate the needs of local employers, the plans will provide a unique opportunity to use their experience and expertise to make strategic links between providers and employers.

3) The need for stronger collaboration between providers

123. Skills are central to driving up productivity and social mobility, delivering benefits to individuals, employers, Government, and wider society. Individuals benefit through wage increases and by increasing their likelihood of remaining in

⁵⁹ Employer Skills Survey 2019 - The survey suggested there were 214,000 vacancies which employers were unable to fill because they could not find people with the right skills. There is a particularly high density of these skills-shortage vacancies in Construction and Manufacturing (where 36% of vacancies could not be filled in 2019), and Skilled Trades (48%)

⁶⁰ No stone unturned in pursuit of growth (publishing.service.gov.uk)

⁶¹ Skills Commission: England's Skills Puzzle: Piecing together further education, training and employment, 25 February 2020, p.9

⁶² *Ibid.*

⁶³ Interviews conducted in July 2020

employment. Employers benefit from better-skilled employees that enhance their productivity and allow them to be more profitable.⁶⁴

124. Technical skills ‘cold spots’ mean that some people with the ability and desire to undertake technical learning find it difficult to do so. In the North of England, East of England, and Cornwall under 20% of learners have access to an FE college within 10km.⁶⁵ There is evidence of significant variation in value-added returns by institution.^{66 67} Costs of level 4 and 5 provision also show large variation in spend per learner depending on whether the course is under or over capacity.⁶⁸

125. This landscape partly forms recommendation 4.7 in the Augar Review of Post-18 Education and Funding.⁶⁹ It outlines the need for the Government to develop procedures to ensure that (as part of a collaborative network) there is an efficient distribution of level 3, 4 and 5 provision within reasonable travel-to-learn areas, to enable strategic investment and avoid counterproductive competition between providers.⁷⁰

What are the policy objectives and the intended effects?

126. The key policy objectives of local skills improvement plans are to:

- a. Enable employers to clearly articulate the priority strategic changes they think are required to technical skills provision in a local area to make it more responsive to the skills needs;
- b. enable a process whereby providers respond better collectively to the labour market skills needs in their area; and

127. The Government’s policy objective is to give localities greater freedom to reshape skills provision so that it better meets the needs of employers to drive growth in the local economy. This will ensure that people are able to get good jobs and make progress in their careers.

128. The combination of powers and duties within the act measures will provide the infrastructure and act as a strong signal to the sector that employers have a stronger voice in shaping skills provision, adding weight to local skills improvement plans (intention A and B and the primary Government objective), and looking to

⁶⁴ BIS (2016); Understanding the Further Education Market in England, p. 91

⁶⁵ *Ibid.*

⁶⁶ CVER (2019); The Value Added of FE Colleges in England and Returns to Subject Areas

⁶⁷ DfE (2017); Identifying Variation in Learner Outcomes by FE Provider

⁶⁸ DfE (2017); The costs of providing levels 4 and 5 in further education

⁶⁹ Augar, Philip et al. (2019); Independent panel report to the Review of Post-18 Education and Funding

⁷⁰ *Ibid.*, p. 136

ensure providers support, take account and respond to these plans - influencing behavior and holding parties to account. Co-development of local skills improvement plans ensures traction with local stakeholders, a more collaborative process that provides a greater understanding of and reflects an accurate picture of the local skills landscape that delivers relevant changes in provision.

129. To frame this policy intent in legislation, the act measure focuses on:

- a. giving the Secretary of State the ability to designate employer-representative bodies (ERBs) to develop local skills improvement plans, ensuring ERBs have regard to written guidance and providing them with the necessary influence to develop local skills improvement plans;
- b. requiring providers to co-operate with the ERB in developing the local skills improvement plan and have due regard to this when considering their technical education and training offer; and

What policy options have been considered, including any alternatives to regulation?

Regulation via Skills and Post-16 Education Act (chosen option):

130. The mixture of powers (for the Secretary of State) and duties (on providers) will provide a comprehensive framework to statutorily underpin local skills improvement plans in legislation.

131. The act's measures focus on giving local skills improvement plans a statutory underpinning by:

- a. granting powers to the Secretary of State to designate ERBs to lead the development of local skills improvement plans in a specified local area in accordance with statutory guidance;
- b. placing a duty on providers to co-operate with designated ERBs to develop local skills improvement plans; and
- c. requiring providers to have regard to the local skills improvement plans when considering their training and education offer.

'Light' regulation via Skills and Post-16 Education Act:

132. A lighter regulation option would be to introduce powers in primary legislation for the Secretary of State to solely designate ERBs to develop local skills improvement plans for a local area via a Notice. In practice, this would involve publishing the designation of a ERB on the Gov.uk website. This would be

supplemented with non-statutory guidance providing the framework for the expected focus/development of local skills improvement plans.

133. However, this option would have made it less likely to address local mismatches (where they exist) between skills demand and supply as the sole legislative focus would be on ERBs rather than to encourage collaboration between ERBs and providers. This power has been included within the preferred option, but it has been supplemented by other duties to ensure that additional legislative signals are given to local skills improvement plans to secure better overall outcomes for learners, providers, and local employers.

Do nothing option:

134. This option would have meant that a national ‘roll-out’ of local skills improvement plans would not be underpinned in the Skills and Post-16 Education Act. This option is likely to have undermined the FE sector’s confidence in the plans – legislating for local skills improvement plans provides the infrastructure and sends a strong signal that these plans will exist after the pilot Trailblazers.

Evidence base underpinning the proposals

135. The evidence base for the proposed act’s measures is primarily built on qualitative sources stemming from a combination of:

- a. clear problem diagnosis and logic chain between spend and outcomes (e.g., evidence that the sector is failing to deliver the skills local employers need); and
- b. international evidence.

136. Where the evidence for regulation is less developed, findings from the 2021 Skills Accelerator Trailblazers will be utilised to bolster the rationale to specifically regulate using the Skills and Post-16 Education Act.

137. Noting international evidence, analysis has focussed on countries with strong employer-led skills systems, such as Germany and the Netherlands. In both countries, a national network of Chambers of Commerce represents employers and works closely with further education providers to co-design and co-deliver curricula.

Case study: German Chambers of Commerce

Chambers of Commerce are central to Germany’s dual system of apprenticeship training, acting as a “one-stop-shop” for employer engagement. Each of the 132 chambers has specialist advisers who verify the capacity of companies and ability of trainers to train, alongside advising apprentices. They also register training contracts

between the apprentice and employer, supervise workplace training, assess trainers, and conduct intermediate and final course examination. Across the country, around 300,000 skilled workers train apprentices and 180,000 volunteer to test apprentices' practical skills.

The effectiveness of this is clear. Employers recoup 69% of their total cost of training through apprentices' practical contribution to firms (2017/18), and opinion polls consistently show 70% of companies are satisfied with the Chambers.⁷¹

While the Government is not proposing to make membership of Chambers of Commerce compulsory, as it is in the German system, this remains a good example of how employer engagement can drive training.

Case Study: Ireland's Regional Skills Fora

Improving channels and opportunities for employers to have their say and actively contribute to local skills development is a key feature of Ireland's National Skills Strategy 2025.⁷² The Regional Skills fora, set up in 2016, are helping to foster stronger links between employers and to strengthen further and higher education and training provision as part of regional responses.

The Skills Fora provide a number of key benefits to local employers and act as a single point of contact with the skills system. They generate more robust labour market information and analysis of employer needs to inform training and provide a ready structure for employers to become more involved in the skills system in promoting employment roles and opportunities for career progression in their sectors.

When the West Region Skills Forum identified that there was a skills gap and lack of progression routes in cyber security in Galway and Mayo, they worked with local employers and international IT company Hewlett Packard Enterprise to address the problem. They completed a mapping exercise to spot gaps in the skills system and worked to deliver new courses by local education providers.

138. The below list demonstrates the primary qualitative sources that have provided evidence, with specific evidence about employer engagement in England's skills systems drawing from the Skills Commission Report, Ney Review, and Industrial Strategy Council Report. See below:

- a. Competition issues in the FE sector; BIS (2013);

⁷¹ The 69% is the cost of the apprentice wages in training and sundry costs versus their productive contribution to the firm, the monetary value of their work
<https://www.bibb.de/veroeffentlichungen/de/publication/show/16551>

⁷² https://www.education.ie/en/Publications/Policy-Reports/pub_national_skills_strategy_2025.pdf

- b. Understanding the Further Education Market in England; BIS (2016);
- c. The costs of providing levels 4 and 5 in further education; DfE (2017);
- d. College Staff Survey; DfE (2018);
- e. Post 16 Education Pathways; DfE (2018);
- f. Higher technical education: the current system and the case for change; DfE (2019);
- g. Independent panel report to the Review of Post-18 Education and Funding; Augar (2019);
- h. Review of the level 4-5 qualification and provider market; DfE (2019);
- i. UK skills mismatch in 2030; Industrial Strategy Council (2019); and
- j. Skills Commission: England's Skills Puzzle: Piecing together further education, training, and employment (2020).

Key risks and assumptions

Risks

139. The Government has considered several identifiable risks which are outlined below:

- a. **COVID-19** - The socio-economic impacts of COVID-19 brings risks with the difficulty to predict what post-COVID delivery will need to look like in the England FE skills system. However, it is reasonable to assume that skills shortages will continue to exist in the same broad sector areas, even though overall volumes may be less predictable depending on factors such as the speed of economic recovery and geographical recovery. For that reason, this has been identified as an acceptable risk;
- b. **Non-compliance** - As FE Providers are private institutions, the duties on providers to have due regard to local skills improvement plans when considering their technical education offer and to co-operate with ERBs will use existing powers to ensure compliance. The principal routes for dealing with non-compliance will be through funding, accountability, and intervention levers; putting local skills improvement plans in legislation will make this easier to do; and
- c. **Geography** - There is currently no set definition of a functional economic area in legislation. So, when ERBs are designated to develop a local skills improvement plan, the local area will be specified in the designation.

Assumptions

140. **Further education funding and accountability reforms** – these reforms, which were set out in the Skills for Jobs White Paper and in the recent funding and accountability public consultation, should support compliance in relation to the duties placed on providers. Specifically, the reforms aim to strengthen provider accountability for responding to labour market need, as a key part of delivering positive outcomes for their students and the local area.⁷³ This will underpin delivery of local skills improvement plans and inform non-compliance measures.

Summary and preferred option with description of implementation plan

141. The below provides a breakdown of the preferred option to regulate and the benefits of doing so, followed with a broad timeline of regulation implementation.

Statutory Powers for Secretary of State

142. The intention is to give the Secretary of State statutory powers within primary legislation to:

- a. Designate ERBs to produce local skills improvement plans in specified local areas (specified when designation occurs);
- b. Issue statutory guidance to ERBs and providers that they would need to have due regard to in developing local skills improvement plans; and
- c. Add additional providers to the current core group upon whom duties will be placed through regulations.

143. These powers would:

- a. Give the Secretary of State the ability to designate ERBs, based upon a set criteria (outlined in the Act) linked to being capable of acting in an effective and impartial manner, being reasonably representative of employers operating in the specified area as well as consenting to be designated. Making clear that local skills improvement plans are to be

⁷³ Skills for Jobs: A New Further Education Funding and Accountability System; Skills for Jobs: Lifelong Learning for Opportunity and Growth (publishing.service.gov.uk)

developed in accordance with statutory guidance;⁷⁴

- b. Help the Secretary of State to consider local skills improvement plans as a factor if/as required when exercising their duties (i.e., in making funding and intervention decisions); and
- c. Not second guess the findings from the Trailblazers in terms of which ERBs are best placed to lead the development of local skills improvement plans in different parts of the country.

144. The Secretary of State will designate an ERB through a Notice - like the designation structure in the Higher Education Research Act 2017 (HERA). This will be a publication on the Gov.uk website, which sets out which ERBs have responsibility for developing a local skills improvement plans in a defined area, which could be updated periodically.

145. The Secretary of State will also be able to remove a designation for non-compliance or if an organisation no longer meets the criteria, meaning that the entity would no longer be responsible for developing a local skills improvement plan.

Statutory Duty on FE Providers

146. The act will also include a duty on providers to develop the relevant local skills improvement plan in co-operation with the designated ERB and to have due regard to local skills improvement plans when considering their technical education or training offer.

147. When referring to providers, there are a 'core group' of providers with the potential to subsequently add additional providers via regulations (secondary legislation). The core group are:

- a. Statutory FE providers – FE Colleges, Sixth Form Colleges, Designated Institutions (FE institutions designated under section 28 of the Further and Higher Education Act 1992);
- b. Independent Training Providers (ITPs); and
- c. Higher Education Institutions (specifically level 4/5 technical FE provision).

⁷⁴ As FE colleges and other providers will be involved in supporting ERBs to develop local skills improvement plans, the Government will need to make sure that the statutory guidance applies to ERBs and Providers.

148. The act makes it clear to providers that employers will have a stronger voice in shaping skills provision and that providers will be held to account for responding to the local skills improvement plans. It will also ensure that providers will work with an ERB in developing a local skills improvement plan.

149. In terms of dealing with ‘non-compliance,’ the principal routes will be through existing funding, accountability, and intervention levers; putting local skills improvement plans onto a statutory footing will make this easier to do. As local skills improvement plans become more embedded, the Government would want to go further than this. Responses from the public consultation on FE funding and accountability reforms will help the Government to define how best to do this within the context of the broader reforms proposed.

Timelines for Legislation

150. The Government intends for the measures to enter into force after Royal Assent. This will occur after the Skills Accelerator Trailblazers have completed their work so that lessons learnt inform the rollout of local skills improvement plans.

Costs and benefits

Regulation via Skills and Post-16 Education Act (chosen option):

151. The Government expects the preferred option to have the following impacts. Those in italics are ‘direct’ i.e., an immediate consequence of the legislation.

Stakeholder	Costs	Benefits
ERBs	<ul style="list-style-type: none"> • <i>Familiarisation time (i.e., learning about their new role).</i> • <i>Production of local skills improvement plans:</i> <ul style="list-style-type: none"> ○ <i>Staff time.</i> <p><i>Non-labour costs e.g., commissioning new research, requiring access to existing research.</i></p>	<p>1. <u>Short-term:</u> ERBs can capably articulate skills needs of an area. <u>Long-term:</u> Employers (specifically their members) get the skills pipeline of learners they need to drive productivity.</p> <p>2. <u>Short-term:</u> ERBs are publicly designated to produce local skills improvement plans, increasing the opportunity of collating the views of local employers who are not currently engaged in skills systems. <u>Long-term:</u> Enhanced prestige amongst similar organisations and with employers.</p>
Providers	<ul style="list-style-type: none"> • <i>Familiarisation time (i.e., learning about their new regulatory duties).</i> • <i>Production of local skills improvement plans:</i> <ul style="list-style-type: none"> ○ <i>Staff time.</i> • <i>Reviewing provision in line with local skills improvement plans</i> <ul style="list-style-type: none"> ○ <i>Staff time.</i> <p>Any other costs associated with adapting provision (e.g., repurposing buildings, investing in equipment, recruiting new staff).</p>	<p>1. <u>Short-term:</u> Providers continue to strengthen and expand relationships with employers through ERBs whilst developing local skills improvement plans. <u>Long-term:</u> Increased awareness of developing local skills needs within a local area.</p>
Local stakeholders (e.g., Mayoral Combined Authorities (MCAs))	<ul style="list-style-type: none"> • Production of local skills improvement plans (voluntary) <ul style="list-style-type: none"> ○ Staff time. 	<p>1. <u>Short-term:</u> Provide local stakeholders (e.g., local authority/MCAs) skills perspectives during local skills improvement plan development. <u>Long-term:</u> More accurate picture of local skills needs in a local area; enhanced collaboration between providers, ERBs and local stakeholders.</p>

Employers	In-direct involvement – ERBs will articulate their needs proportionally.	<p>1. <u>Short-term:</u> Skills supply better meets employer needs. <u>Long-term:</u> Improved labour, productivity, and economic outcomes.</p>
Learners	Non applicable.	<p>1. <u>Short-term:</u> Provision better aligns with local employment opportunities; potentially providing increased technical provision choice for learners. <u>Long-term:</u> Potential improved employment outcomes.</p>

Table 7: Description of expected costs and benefits associated with measure 2 by stakeholder group

‘Light’ regulation via Skills and Post-16 Education Act:

152. One option is to introduce powers for Secretary of State, without any supplementary duties. However, this option does not address the three main challenges which the Government seeks to overcome.

153. With regards to the above table, this option would have partially removed the benefits and costs to providers as the duties on providers would not be applied. However, in practice, ERBs that were designated to develop a local skills improvement plan would still likely engage with local providers, requiring any costs but also providing the same benefits.

Do nothing option:

154. This option would mean that, in the specific case of legislation, there are no monetised costs and benefits because of measures in the Skills and Post-16 Education Act.

Approach to quantitative impact assessment

What the Government can and cannot quantify

155. This assessment provides quantitative estimates for the economic costs created by the local skills improvement plan act measures. Specifically, it estimates:

- a. The ‘familiarisation’ cost of time spent reviewing the regulations and accompanying guidance;

- b. The cost of producing local skills improvement plans – to ERBs, providers, and local stakeholders (such as local authorities/MCAs);
- c. The cost to providers of reviewing provision with due regard to the local skills improvement plans.

156. This assessment is unable to quantify the benefits generated by improving the alignment between skills supply and employer demand. As set out in the overarching impact assessment, the Government expects these benefits to be considerable given: (i) the value generated by the FE system currently; (ii) the significant defects to the system identified by the rationale for intervention; and (iii) the logic for how the measures can address these defects – illustrating considerable scope for this value to increase further.

157. As set out in the overarching impact assessment, the Government has considerable evidence regarding the value to individuals, employers, and society from FE training. However, the assessment does not yet have a basis for linking local skills improvement plans policy to specific estimates of increased participation in training or shifts in take-up between subject areas. The Government expects this to occur but cannot estimate by how much or in what subject areas – especially given the dependence on local economic contexts.

Methodology

158. The calculations follow the following simple formulae:

Cost	Calculation
Familiarisation cost	<p>Cost to providers = hours spent familiarising x hourly labour cost x number of providers</p> <p>Cost to local stakeholders = hours spent familiarising x hourly labour cost x number of local authorities</p>
Cost to produce local skills improvement plans	<p>Cost to ERBs = number of local skills improvement plans x Unit cost</p> <p>Cost to providers = hours spent contributing to local skills improvement plans x hourly labour cost x number of providers</p> <p>Cost to local stakeholders = hours spent contributing to local skills improvement plans x hourly labour cost x number of local authorities</p>
Cost of “due regard” duty	Cost to providers = hours spent reviewing x hourly labour cost x number of providers x displacement factor. ⁷⁵

Table 8: Summary of methodology used for calculating estimated costs for measure 2

159. The full range of inputs and assumptions used for these calculations is presented in the following table.

160. The Government has reasonable data to underpin the labour cost per hour assumptions. This assessment uses a rough estimate of funding for Local Enterprise Partnerships and Skills Advisory Panels as the starting point for the estimated cost to ERBs of producing local skills improvement plans. Likewise, this assessment uses an indication of the time spent contributing to SAPs as the basis for estimating the time commitment for providers and local stakeholders in contributing to the production of local skills improvement plans. These are the most reasonable comparators available.

⁷⁵ Many providers already review provision in line with local employer needs. Reviewing local skills improvement plans will displace some of this activity. Therefore, it is important to exclude this displaced activity from the cost calculations to arrive at the additional cost to providers.

161. However, the Government must make a judgement of the likely level of activity required to produce local skills improvement plans and comply with the duty. This is inherently uncertain because of the substantial scope for ERBs, providers and local stakeholders to all take different approaches in different areas.

162. In many areas, the assumptions made reflect modelling assumptions rather than policy commitments.

Assumption	Values Central	Low	High	Explanation
(a) Number of local skills improvement plans	38	-	-	Basis: Number of Local Enterprise Partnerships in England. Geography of local skills improvement plans yet to be determined but current LEP geography is a reasonable assumption for modelling purposes only
(b) How often does an area need to produce a local skills improvement plan?	Every 3 years	-	-	As set out in the Skills for Jobs White Paper
(c) Number of providers in scope of duty to (i) be involved in production of local skills improvement plan and (ii) have due regard to the local skills improvement plan	1664	-	-	Source: Individualised Learner Record 2019/20 Basis: Number of providers delivering publicly funded FE & Skills with at least one active learner in 2019/20. FECs (171); ITPs (1295); Higher Education Institutions: (98); Schools: (21); Sixth Form Colleges (53); Special Colleges (26)
(d) Labour cost - providers - input into development of local skills improvement plans	£37,800 p.a. for 1 Full Time Equivalent	-	-	Source: ESFA College Accounts 2019/20. Average labour costs per 1 FTE in a statutory FE college.
(e) Labour cost - providers - Familiarisation time & complying with review duty	£102,000 p.a. for 1 Full Time Equivalent	-	-	Source: ESFA College Accounts 2019/20. Average Senior Management labour costs per 1 FTE in a statutory FE college. This is appropriate for reviewing provision in line with duty given strategic decision-maker required for this exercise. Likewise reviewing legislation and determining its implications for the provider. Assume input into local skills improvement plans (assumption d) would be someone of mid-level seniority, in contrast.
(f) Labour cost - Local stakeholders	£22 per hour	-	-	Source: ONS Annual Survey of Hours and Earnings 2019 Table 14.5a Median Hourly Pay (Gross). Figure based on most relevant occupations. Benchmarks: (i) SOC 242 £21.90 (Business, Research and Administrative Professionals); (ii) SOC 2 £21.11 (Professional Occupations); (iii) SOC1 £21.11 (Managers, directors, and senior officials). Note that ASHE 2019 is used to avoid distorting effects of COVID-19.

(g) Cost of producing a local skills improvement plan - to Employer Representative Body (labour and non-labour costs e.g., commissioning research)	£200,000	£100,000	£500,000	<p>Benchmark: The assessment has two comparators it can use to base a unit cost estimate. Firstly, Local Enterprise Partnerships (LEPs), whose remit and interest includes skills, receive a £500,000p.a. grant from MHCLG to fund their operations on the condition of leveraging at least £250,000 of funding from the LEP Partners (i.e., total funding of at least £750,000). Secondly, Skills Advisory Panels (SAPs), which are sub boards within LEPs, receive a £75,000 grant to fund their activities. Rationale: The Government expects the production of local skills improvement plans to cost notably less than the operational costs incurred by LEPs given the significantly broader scope of LEP activities. Noting that local skills improvement plans do not replicate SAPs or directly replace them, SAPs are a better comparator given their narrower focus (compared to a LEP as a whole). However, the £75,000 grant understates the ‘true’ cost of SAPs as SAPs draw heavily on the wider activity and support of LEPs of which they are a part of. Our central, low, and high assumptions are judgements that reflect reasonable unit costs of local skills improvement plans given these benchmarks.</p>
(h) Time providers will spend engaging in developing local skills improvement plans	90 hours	10 hours	120 hours	<p>Central: qualitative insight from Skills Advisory Panels. This is an indicative estimate of the time commitment per annum provided by the Skills Advisory Panels Programme team within the Department for Education. How local skills improvement plans are produced is to be determined and will depend on the choices of the lead ERB, but they are likely to involve sessions and workshops with providers that may be analogous to SAP meetings. Low: Some Business Representative Bodies might use deliberately light touch model e.g., where providers need only attend one or two workshops with minimal preparatory requirements. 10 hours of work selected to reflect this. High: Production of local skills improvement plans could well be more involved than SAPs; +33% to reflect this</p>

(i) Time local stakeholders will spend engaging in developing local skills improvement plans	70 hours	-	90 hours	Expected to be slightly less time than by lead providers. For modelling purposes, assume 3/4s the time required by providers. Local authorities are likely to participate in the process to support local skills improvement plans but will require less external preparation time as LAs are often already involved in articulating their priorities for local skills e.g., via LEPs and SAPs. However, it does not present a low scenario like providers. The low scenario for providers reflects limited involvement by providers in the production of local skills improvement plans but the Government expects MCAs to be more extensively involved.
(j) Time providers will spend having due regard to local skills improvement plans	7 hours	2 hours	40 hours	Central: requirement is to have "due regard" - i.e., the provider needs to demonstrate that they have reviewed the local skills improvement plan - plus time to consider current curriculum considering this. The local skills improvement plan is likely to be a short strategy, so a reasonable modelling assumption is that review will take approximately one day. High: upward adjustment to reflect that the local skills improvement plan might be reviewed by multiple people in a provider with follow-up discussions about implication for provision (assume 1 working week + 3h meeting) Low: adjustment down to reflect that the local skills improvement plan may have limited relevance to some providers and a brief review is sufficient to confirm this
(k) Non-wage labour costs multiplication factor	100/82	-	-	Source: Eurostat Hourly Labour Costs 2019 Purpose: gross hourly pay figures from the ASHE - used above - do not include the non-wage costs incurred to employers (i.e., employer NICs and pension contributions). The assessment uses this Eurostat data to scale wage costs up to an estimate of total labour costs. This does not arise for college labour costs data as that is explicitly total labour cost, not just pay.

(I) Displacement factor: How much of "due regard" time would providers do anyway? I.e., to reflect reviewing local skills improvement plans displacing activity that would already occur	80%	50%	85%	<p>Central: use the proportion of FE providers rated by Ofsted as 'Good' or 'Outstanding' as a proxy for what proportion of providers already undertake similar reviews - and for whom reviewing the local skills improvement plan will displace existing activity. As of 31 August 2020, 81% of FE providers rated good or outstanding⁷⁶ High: use Association of Colleges 2020 Innovation in FE colleges survey - this gives an estimate of the proportion of colleges engaging with local chambers, local authorities, and MCAs, and/or LEPs on local business growth and innovation. Low: judgement to reflect uncertainty regarding displacement and that while the Government expects most providers to already carry out some review, this duty might require them to invest more time in carrying out the review.</p>
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Table 9: Inputs and assumptions used for calculating estimated costs for measure 2

⁷⁶ Main findings: further education and skills inspections and outcomes, as at 31 August 2020 - GOV.UK (www.gov.uk) – Figure 3.

Counterfactual

163. Setting a clear counterfactual is important for considering the net, 'additional' impacts of a policy. The Government defines the counterfactual for the different cost drivers estimated in this assessment.

Costs of producing local skills improvement plans

164. The Government take the approach of assuming that no adjustments are needed to the gross costs of familiarisation with, and production of local skills improvement plans to arrive at the additional cost. This is because local skills improvement plans are: (i) a new product, so there is no deadweight activity that already delivers a local skills improvement plan; and (ii) they are designed to complement and supplement the existing local skills analysis and planning activity – so minimal displacement or substitution of existing activity.

Costs to providers of having due regard to local skills improvement plans

165. However, there is a need to adjust the gross costs of complying with the duty to have due regard to local skills improvement plans when reviewing provision. This is because the Government expects this duty to displace some existing activity and that many providers already review how far their technical education offer reflects local employer needs. There is not a direct measure of how many providers already carry out such reviews. Consequently, as set out above, the assessment uses the proportion of colleges with Ofsted ratings of Good or Outstanding as a proxy for general 'good governance' – where alignment with local needs is likely to be considered – as well as survey evidence from the Association of Colleges regarding what proportion of colleges engage with their local authorities or other local economic actors to consider how to support business growth – a proxy of how aligned a provider is with local employer needs. In the central estimate counterfactual, providers with a Good or Outstanding Ofsted rating already review provision with respect to local needs while providers who are Inadequate or Require Improvement do not.

Using Trailblazers to improve the assessment

166. As set out above, there is considerable uncertainty regarding several key assumptions for the estimate costings.

167. The Skills for Jobs White Paper set out plans to launch local skills improvement plans in Trailblazer local areas. A key aim of the Trailblazers is to test how best local skills improvement plans can be designed and delivered

to ensure the plans and the process is robust and best serves the aims of aligning technical skills provision with local employer needs.

168. Lessons from the Skills Accelerator Trailblazers running in 2021-22 will inform future policy development and the wider rollout of local skills improvement plans across England. Similarly, the Skills Accelerator Trailblazers are likely to provide a view of the costs incurred by ERBs, providers and other stakeholders. This will test the current assumptions and provide additional evidence.

Classification of costs for the Business Impact Target

169. The assessment views each of the quantified costs as a direct impact of the legislation. It follows the approach set out in the overarching Impact Assessment: it uses the split in revenue between public and private sources to divide the cost of FE colleges into that portion that reflects a cost to the private sector business operations of the college (22%) and that portion that reflects a cost to the public sector, public funded operations of the college (78%). The impact on over providers is classified as within scope (i.e., private business).

Cost estimates

170. At present the following outputs of the Impact Assessment Calculator for the local skills improvement plan measure as a whole. Note that these are estimates of the total cost only and do not capture any of the benefits.

171. The headline central estimate is that complying with the local skills improvement plan duties may cost between £15m and £85m over a 10-year period. The Government expects two thirds of this cost to fall on ERBs and one third on FE providers. However, the costs in any local area might vary depending on the approach taken by the ERB and the particulars of the local context.

Economic costs

172. The following NPV outputs are presented in 2019 prices and 2020 present value for consistency across the Impact Assessment.

Net Benefit (Present Value (PV)) (£m)			
Low:	-86.5	High:	-14.4
		Best Estimate	-37.2

Costs	Total Transition (constant price)	years	Average Annual (excl. Transition, constant price)	Total Cost (present value)
Low	0.2		1.7	14.4
High	3.3		9.6	86.5
Best Estimate	0.7		4.2	37.2

Benefits	Total Transition (constant price)	years	Average Annual (excl. Transition, constant price)	Total Benefit (present value)
Low	0.0		0.0	0.0
High	0.0		0.0	0.0
Best Estimate	0.0		0.0	0.0

Direct impact on business (Equivalent Annual) £m:			
Costs:	4.1	Benefits	0.0
		Net:	4.1

Table 10: Sensitivity analysis of estimated monetised costs, benefits, and net present value of measure

Direct cost and benefits to business

Cost of Option (2019 prices, 2020 present value)			
Total Net Present Social Value	Business Net Present Value	Net direct cost to business per year	Business Impact Target Score

-37.2	-35.1	4.1	20.4
Appraisal Period (Years)	10		

Table 11: Estimated monetised costs and benefits to business of measure 2
Impact on small and micro businesses

173. Please refer to the ‘small and micro business assessment’ section in the overarching Impact Assessment for an impact summary of the relevant act measures on small and micro businesses.

174. The introduction of local skills improvement plans will create new regulations for ITPs.

175. ITPs are a key part of the FE infrastructure, delivering technical education and skills, including specialist provision to young people and adults. Local skills improvement plans will consider the totality of technical skills provision and ITPs will bring crucial, unique knowledge and experience to help address skills gaps.

176. Inclusion of ITPs will support and encourage greater collaboration and collaborative solutions between them, FE Colleges, and Higher Education Institutions. If ITPs are not included, there is potential that the Government would be unable to maximise the benefits of including a wider set of providers and criticism that ITPs have not been considered as per findings with the Ney Review.

177. The duty to ‘have regard’ to local skills improvement plans requires providers to understand the local skills improvement plan and have regard to it when developing its provision offer. Providers will continue to retain autonomy over business decisions as they consider the local skills improvement plan outcomes relevant to their business and technical education offer. Providers that deliver nationally, in more than one, and/or across multiple areas like ITPs can consider relevant local skills improvement plans and make decisions as to how best to contribute towards the priorities and needs outlined. This mitigates the burdens on providers including ITPs.

Equalities and wider impacts

Equality Impact Assessment

178. Further development to better align technical FE provision to deliver the skills needed to boost local economies, allowing it to be more strategically planned and delivered to meet employers' skills needs resulting in better outcomes for learners, as per the Secretary of State's duty under Section 11 of the Education Act 1996.

179. The Government is legislating to put the employer leadership of local skills improvement plans on a statutory footing, strengthening the voice of employers in local skills systems across the country. The Government will engage employer and provider groups across the country to ensure that the model of employer representation used in each local area is the most effective in supporting local skills systems.

180. This equality impact assessment focuses on the employer leadership (and the ERBs that convene these) and providers that will be impacted because of the Skills and Post-16 Education Act measures with the likelihood of completing further equality assessments once the regulations have been laid.

Background on ERBs, local skills improvement plans and the plans' interaction with providers and learners:

181. Employer engagement throughout the development of local skills improvement plans will help colleges and other providers to strengthen relationships and partnerships with employers, represented via an ERB. This will help to shape local skills provision, so it provides learners with the best chance of securing meaningful employment, as well as upskilling the existing workforce.

182. FE providers will not be bound to implement recommendations in the local skills improvement plan and therefore will have no bearing on determining how providers will behave in relation to persons with protected characteristics. As a result, it is likely that a greater element of courses/training choice will be available to learners which will allow students more independent choice to decide what will be best for them.

Equalities Summary

Impact on protected characteristics	Will there be a negative impact on people who share protected characteristics identified above?	Justification of conclusion of analysis	Conclusion	Review date of equality conclusion
<p>No – all protected characteristics have been assessed as no direct impact.</p>	<p>A remodelling of skills provision in the FE system in urban areas, which currently have duplicate provision in local areas, could potentially result in more technical skills being offered to students.</p> <p>There could be constraints on over-subscribed courses, but this is unlikely as FE providers will keep popular courses running (as there is still a need for these) but instead increase the course offer to learners more widely.</p>	<p>The initial conclusion is based upon intended outcomes.</p> <p>The initial pilot Skills Accelerator will enable the Government to identify if a local skills improvement plans, adopted by an ERB, is having a negative equality impact and seek to address these.</p>	<p>To conclude, there is no impact on protected characteristics because of the scope of a local skills improvement plan.</p>	<p>Once the initial Skills Accelerator pilot has concluded.</p>

Table 12: Description of impact on protected characteristics of measure 2

Wider Impacts

Indirect Stakeholders

183. The overall policy intent with local skills improvement plans is to give localities greater freedom to reshape skills provision so that it better meets the

needs of employers to drive growth in the local economy. This will ensure that people are able to get good jobs and make progress in their careers.

184. **Learners** – It is intended that learners (or consumers) of technical provision in participatory FE institutions are positively impacted because of securing better jobs within their local area. The results of the piloted Skills Accelerator, with a view to longer-term outcomes, will be a source of evidence to test the success of this policy intention.

185. **Mayoral Combined Authorities** – MCAs are important players in local skills systems which is why the Skills for Jobs White Paper makes clear that they will be engaged in the development of local skills improvement plans. This will give MCAs the opportunity to influence the wider post-16 skills system beyond their devolved adult education functions, drawing on their expertise on the local skills system and future skills needs. The Government is not removing any of the devolved powers, or any other functions, that MCAs currently have, including their responsibility for delivering certain adult education functions.

186. **Employers** – ERBs will engage their membership and reach out beyond their membership to a range of private and public employers in the area, other ERBs, and sector bodies, as well as centres of innovation. Thus, it is intended that the overarching ERB will be the ‘first-mover’ in engaging other employers, whether they be members or non-members, to take the onus (and potential burdens) away from individual employers. There will not be a requirement to engage every employer in the local area and the ERB can use reasonable judgement when seeking to build a transparent, fair representation of employer local skills needs.

187. Placing a duty directly on employers was discounted as this would be burdensome on employers, impractical and costly to implement and monitor compliance.

Monitoring and Evaluation

188. Considering the potential benefits of local skills improvement plans, the Government is keen to start realising these as soon as possible. In April 2021, the Government announced the Skills Accelerator programme where ERBs were invited to express an interest in leading local skills improvement plan Trailblazers. Successful applicants worked closely with local providers to co-create the first local skills improvement plans.

189. The Government has commissioned an evaluation for the Skills Accelerator programme to capture learning that will inform future policy development and the wider rollout of local skills improvement plans across the country. This evaluation will aim to understand how ERBs are implementing employer-led local skills planning and what stakeholders think is working well or less well, for whom and why.

Measure 3: Duty on colleges and designated institutions in relation to local needs

What is the problem under consideration? Why is Government action or intervention necessary?

190. Better alignment between FE provision and local needs is a key objective underpinning the reforms set out in the Skills for Jobs White Paper – as set out in the Case for Change section to this impact assessment. The Government’s objective is to strengthen the way that colleges plan their provision, and to ensure that where there are structural barriers to meeting local needs these are also identified and addressed. Under the current legal framework colleges do not need to consider local needs beyond those currently served by their institution.

191. Placing this duty on those in the statutory FE sector will mean that no matter how well a college is currently performing it will from time to time review its current offer against future local needs and consider what actions it could take (including action which might be taken with one or more other educational institutions) that might enable local needs to be met more effectively. The Secretary of State will publish statutory guidance to support governing bodies in complying with the duty.

192. When considering local needs, it is important that governing bodies consider all factors, including those beyond their individual institutions such as: the offer of other providers; demographics; or local employment patterns, and review their provision accordingly. Where that is working well at present, the Government wants it to continue. However, experience of area reviews⁷⁷ and FE Commissioner reports⁷⁸ demonstrates that for some governing bodies, the equivalent activities have been less effective, leading to an insular or short-term approach, and which have not taken account of the wider interests of learners (not all of whom will attend their institutions) and the needs of employers in an area. Some governing bodies have also been reluctant to address the structural barriers that may exist, which can limit choices for learners and responsiveness to employers.

⁷⁷ Area Review reports

⁷⁸ FE Commissioner reports

What are the policy objectives of the action or intervention and the intended effects?

193. The Government's objective is to strengthen the way that colleges plan their provision, and to ensure that where there are structural barriers to meeting local needs these are also identified and considered. Structural barriers can include over/under supply – both at subject level and institutional level; the economies of scale required to deliver a broad curriculum; under-utilised facilities; and local rivalries between institutions.

194. The new duty, and the supporting statutory guidance, will ensure that all colleges regularly review their provision in an objective and holistic way, having regard to wider current and future needs of a local area and those of its learners and employers. These reviews will help drive changes to local provision and structures where these are needed to provide a robust learning offer that meets the current and future needs of learners and employers, including the needs set out in the local skills improvement plan.

195. Governing bodies will be able to take a flexible and proportionate approach to carrying out the reviews, integrated with their core strategic and business planning approaches. The statutory guidance will provide advice on the approach they should take, including who governing bodies should work with in undertaking these reviews.

196. Success will be different in different areas and will vary dependent on the nature of current provision and how it is delivered within an area, and the barriers that may exist at present to responding effectively to local needs.

197. Whilst for some providers local employment will be the destination for a large proportion of their learners, for others the main destination maybe HE. Some providers will also have specialist provision focused on regional and national need, alongside more locally-oriented provision. In those cases, local needs will be only one consideration when reviewing provision.

198. Where provision is already aligned to local needs and equipped to meet future needs, there may not be significant change following the review. In other areas the reviews should lead to actions, including addressing some of the structural barriers that may exist at present, enabling greater alignment with local needs. The Government would expect these reviews to lead to more collaboration between colleges and greater engagement with employers, improving the quality of local provision and resulting in more people entering skilled employment.

What policy options have been considered, including any alternatives to regulation?

199. **Do nothing:** evidence gained from the existing college oversight regime⁷⁹ and the associated intervention activities demonstrates that doing nothing could result in provision that fails to effectively meet local needs in some areas, due to the absence of effective strategic planning processes, and other structural barriers that providers may face. Experience has also shown that as well as resulting in a poor offer for learners, this can lead to declining learner numbers, and can put at risk the financial sustainability of institutions - leading to an increase in intervention activity by the ESFA and the FE Commissioner. By doing nothing the Government would not signal to colleges the importance it places on meeting local needs.

200. The Government has considered **re-running an area review process**. The Area Review process was a time-limited one-off programme, with 37 reviews undertaken in five waves, between September 2015 and March 2017, with different areas running them at different times. The Area Review process was voluntary and incentives on colleges to participate were limited, leading to a model that was only partially effective in generating alignment with local needs. The disadvantage of re-running a similar process would be that it would not improve or align with the strategic planning processes within colleges and would be a less proportionate and a less targeted approach.

201. The Government could request that **the FE Commissioner team undertake Local Provision Reviews**.⁸⁰ There would be resource constraints under this model as the FE Commissioner team is not set up to undertake reviews at every college. Resources would be diverted from those colleges with the greatest need for the expert support of the Commissioner's team. Again, the incentives for colleges to participate would be limited and levers could only be applied to those colleges already in intervention. Reviews would need to be undertaken on a rotational basis, which could potentially lead to reviews not happening at the most appropriate time. It would also fail to drive sustainable improvement in colleges' own strategic planning processes.

⁷⁹ Issued notices to improve

⁸⁰ FE Commissioner local provision reviews are a flexible intervention that can make recommendations on the best way of achieving long term sustainable provision in a local area, looking at neighbouring provision to examine structural solutions for securing long term provision.

202. Placing a **statutory duty on colleges** to keep their provision under review to best meet local needs will ensure that they are accountable for how the reviews are carried out. It also means that those in the statutory FE sector can undertake reviews as and when appropriate and not dependent on wider timetables. These reviews could identify actions leading to structural change, at which point the governing body could request FE Commissioner support.

203. Therefore, the Government believes that placing a duty on governing bodies to undertake reviews, specifying who they should engage with and how often they should carry out the reviews through guidance, is the best way to deliver the desired outcomes.

Rationale and evidence

204. This document provides a quantitative assessment of the burden placed on providers by this duty. The key sources of uncertainty for this appraisal are:

- a. How much labour time is required to carry out such a review – uncertain both because the Government does not have data on how long providers spend on such activities and because of the considerable flexibility available to colleges in determining how to approach the review; and
- b. How much of this review activity is already undertaken – i.e., ‘deadweight’ with respect to both the proportion of providers that already review how far their provision and structure align with local needs, and the extent to which such reviews fulfil the new duty.

205. This assessment presents a range of estimates based on high, low, and central estimates for these two parameters (see methodology section below). While uncertain, these estimates give a reasonable assessment of the plausible scale of the cost burden on colleges.

206. In developing this policy, the Government has considered the evidence from intervention activity arising from the existing college oversight policy. In cases where the FE Commissioner⁸¹ or the ESFA have intervened to support colleges facing failure (both quality and financial), there is evidence that for some colleges the lack of compulsion to consider wider learner and employer

⁸¹ FE Commissioner reports

needs beyond their institutional boundaries has been detrimental. This view is broadly supported by the Independent Commission on the College of the Future⁸², which calls for greater collaboration between colleges and other post-16 providers.

Key risks and assumptions

Risks

207. **Colleges undertake the reviews poorly** – to mitigate this the Government will provide statutory guidance, utilise existing support arrangements as set out in ‘College Oversight: Support and Intervention’ guidance, and look at how good practice can be shared across the sector. In cases where there was a serious failure in respect of how the review had been carried out, the Secretary of State would be able to consider intervention under the existing statutory powers.

208. **Colleges fail to work with others when it is appropriate** - to mitigate this the Government will be providing statutory guidance setting out who colleges should consider engaging with, the guidance will actively encourage joint working as part of reviews. The work that colleges will be doing together in developing local skills improvement plans will also support more collaborative behaviours.

Summary and preferred option with description of implementation plan

209. The preferred option is to place a duty on all governing bodies to keep their provision under review to ensure that they are best placed to meet the needs of the local area.

210. The duty will be given effect by primary legislation.

211. The Government anticipates that FE providers will require time to become familiar with the associated statutory guidance and this duty will form part of college planning from academic year 2022/23.

⁸² The English college of the future report

212. The Government will publish statutory guidance within two months of Royal Assent being granted.

Costs and benefits

213. The Government expects its preferred option to have the following principal impacts:

Stakeholder	Cost	Benefit
FE colleges	<p>Time spent familiarising with the duty and guidance.</p> <p>Time spent reviewing provision and structure against local needs.</p> <p>Cost of changing provision/structure if improvements are identified.</p>	<p>A more attractive offer for learners, helping to sustain enrolment numbers and therefore income.</p> <p>Mitigation of structural barriers to provision that meets local needs.</p> <p>Improvement in strategic planning by colleges.</p>
Employers		Improved output and productivity from access to improved local skills supply.
Learners		Improved employment outcomes from training better matched to local employer demand.
Government	Time spent preparing guidance, monitoring, and evaluation.	Reduction in intervention activity.

Table 13: Main costs and benefits by stakeholder

Discounted options	Cost	Benefit
Do nothing	Provision fails to meet local needs in some areas.	
Re-run Area Reviews	HMG central co-ordination (e.g., establishing areas and setting timetables).	Some improvement in output and productivity for employers able to access to improved local skills supply.

	College leadership time required to support participation in reviews.	Some improvement in employment outcomes for learners benefiting from training matching local employer demand.
FE Commissioner to undertake reviews	An expansion of the FE Commissioner team.	Some improvement in output and productivity for employers able to access to improved local skills supply. Some improvement in employment outcomes for learners benefiting from training matching local employer demand.

Table 14: Overview of costs and benefits to discounted options

Approach to quantitative assessment

What the assessment can and cannot quantify

214. This assessment provides quantitative estimates for the direct costs to providers of complying with the duty:

- a. Labour cost of time spent familiarising with the duty and guidance; and
- b. Labour cost of complying with the duty.

215. This assessment does not attempt to estimate the quantitative cost of subsequent follow-up reform to a college's provision or structure. This is because the cost is entirely dependent on the nature of the actions identified, changes required, the college's particular circumstances, and the nuances of the local skills system. The cost will vary significantly on a case-by-case basis where reform is required.

216. This assessment is unable to quantify the benefits generated by improving the alignment between skills supply and local needs. As set out in the overarching impact assessment, the Government expects these benefits to be considerable given: (i) the value generated by the FE system currently; (ii) the significant defects to the system identified by the rationale for intervention; and (iii) the logic for how the measures can address these defects – illustrating considerable scope for this value to increase further.

217. As set out in the overarching impact assessment, the Government has considerable evidence regarding the value to individuals, employers, and society from FE training. However, there is no basis for linking this duty to specific estimates of increased participation in training, shifts in take-up between subject areas, or improvements in training quality. The Government expects this to occur but cannot estimate by how much or in what subject areas – especially given the dependence on local economic contexts.

Methodology

218. The calculations follow the following simple formulae:

Cost	Calculation
Familiarisation cost	Cost to colleges = hours spent familiarising x hourly labour cost x number of colleges
Cost of complying with duty	Cost to colleges = hours spent reviewing x hourly labour cost x number of colleges x deadweight factor ⁸³

Table 15: Methodology overview

219. The inputs and assumptions used to calculate the cost of undertaking the reviews is presented in the following table.

⁸³ Many providers already review provision in line with local needs and will therefore already comply with the duty. In this instance, the cost of complying with the duty is deadweight. Therefore, it is important to exclude this deadweight activity from the cost calculations to arrive at the additional cost to colleges.

Assumption	Scenarios Central	Low	High	Source
(a) Number of statutory colleges	235	-	-	Basis: At December 2021, there were 220 college corporations (174 FECs and 46 SFCs) and 15 designated institutions Note: duty applies to FE corporations specifically, not 'colleges'; there is a discrepancy between this, and provider base numbers used in the costing of the LSIPs policy and for the act small and micro business assessment. In both instances this is because of the need for comparable data across the provider base, not just the statutory FE sector.
(b) How often does a college need to review?	At least once every 3 years	-	-	Statutory guidance will set out that colleges will undertake these reviews at least once every three years.
(c) Labour cost - providers	£102,000 p.a. for 1 FTE	-		Source: ESFA College Accounts 2019/20. Rationale: Average senior management labour costs per 1 FTE in a statutory FE college.
(d) Hours to familiarise with duty & guidance	7 hours	2 hours	35 hours	Guidance will be brief. Central: c.1 day of work to review and familiarise. Low: scenario of 2 hours reflects proportionate review for colleges already operating extensively in this space. High: scenario c.5 days' work reflects time required in colleges not already complying - where more extensive review and discussions within the college may be required

(e) Hour's work to comply with duty	105 hours (15 days)	-	210 hours (30 days)	<p>Benchmark: Data on Structure and Prospects Appraisals (SPA) has been used as an anchor. Full assessment takes 30 days of work with day rates for FEC deputy £700 and FEC advisors £600 => c.£20,000. Central: The Government expects the time spent on the duty to be significantly less than SPA because (i) the review is a precursor to commissioning a full SPA and (ii) SPA focuses on structure which is more complex than provision. Therefore, the central estimate assumes it will take half the time (15 days); it also assumes labour costs equivalent to those of colleges rather than FEC day rates (c.£450 per day for a member of senior management, as per assumption (c) rather than £600-700). High: assume colleges do in fact undertake a full 30-day SPA-size review with in-house labour; Interaction with LSIPs: there will be a degree of overlap between this duty and the requirement to have due regard to LSIPs. To avoid double counting, the time providers are expected to spend reviewing LSIPs has been deducted from these assumptions - see the relevant annex.</p>
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(f) Deadweight factor - how much of this do colleges already do?	80%	50%	85%	Central: use proportion of colleges with Ofsted Good/Outstanding ratings as a proxy for the proportion of colleges already complying with the duty - as a measure of 'good governance'. As of 31 August 2021, 80% of FE colleges rated good or outstanding. High: use Association of Colleges 2020 Innovation in FE colleges survey. This gives the proportion of colleges engaging with local chambers, local authorities, and/or LEPs on local business growth and innovation. This is a further proxy for the extent to which colleges already carry out such reviews. Low: judgement to reflect uncertainty regarding deadweight and that while most colleges are expected to already carry some form of review, this duty might require them to invest more time in carrying out the review.
(g) Hours spent complying with LSIPs duty (to be deducted from (e) to avoid double counting)	7 hours	2 hours	40 hours	See methodology for LSIPs costings

Table 16: Detail of assumptions

220. There is reasonable data to underpin the labour cost per hour assumptions. However, the estimate for the time taken to review provision in line with the duty is speculative and based on policy judgement. The assumptions made are for the purposes of modelling the costs only and do not amount to guidance to colleges. Furthermore, the Government does not have quantitative data on how many colleges already review their provision sufficiently to comply with this duty – i.e., the level of deadweight – and therefore this assessment relies on proxies for estimating the deadweight factor.

Counterfactual

221. As set out above, the Government expects that many colleges already review how far their provision meets local needs; in other words, compliance with the duty will not incur additional costs. There is no direct measure of how many colleges already carry out such reviews. Consequently, this assessment uses the proportion of colleges with Ofsted ratings of Good or Outstanding as a proxy for general ‘good governance’ – where alignment with local needs is likely to be considered – as well as survey evidence from the Association of Colleges regarding what proportion of colleges engage with their local authorities or other local economic actors to consider how to support business growth – a proxy of how aligned a college is with local employer needs. In the central estimate, this assessment assumes that Good and Outstanding colleges already comply with this duty and incur no additional costs, while colleges who are Inadequate/Require Improvement do not comply and therefore incur additional costs.

Classification of costs for the Business Impact Target

222. Statutory FE sector bodies are the only organisations who face direct costs from this duty. As set out in the overarching impact assessment, 78% of the cost ascribed to FE colleges is attributed to “public” organisations whilst the other 22% is attributed to private businesses. This is in proportion to the split of FE college revenue between public and private sources.

Cost estimates

223. The following tables set out the high-level costing outputs from the IA Calculator. The Government expects the preferred option to create an economic cost of between £5m and £8m for the statutory FE sector over a ten-year period.

224. The NPV estimates are negative because this assessment has only quantified the costs – no benefits are quantified. As set out above, the Government expects the duty to deliver significant benefits from improving the extent to which statutory FE providers meet local needs.

Economic cost

225. The following NPV outputs are presented in 2019 prices and 2020 present value.

		Net Benefit (Present Value (PV)) (£m)	
Low:	-8.3	High:	-4.5
		Best Estimate	-4.6

	Total Transition (constant price)	years	Average Annual (excl. Transition, constant price)	Total Cost (present value)
Costs				
Low	0.0		0.5	4.5
High	0.5		0.9	8.3
Best Estimate	0.1		0.5	4.6

	Total Transition (constant price)	years	Average Annual (excl. Transition, constant price)	Total Benefit (present value)
Benefits				
Low	0.0		0.0	0.0
High	0.0		0.0	0.0
Best Estimate	0.0		0.0	0.0

Direct impact on business (Equivalent Annual) £m:

Costs: 0.1	Benefits: 0.0	Net: 0.1
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Table 17: Impact Assessment Calculator Output

226. As set out in the earlier discussion of costs and benefits, the non-monetised benefits include:

- a. An improved offer for learners, including through mitigation of structural barriers, helping to sustain enrolment numbers and therefore income for colleges;
- b. Improved employment outcomes for learners from provision better matched to local employer demand;
- c. Improved output and productivity for employers from access to improved local skills supply;
- d. Improvement in strategic planning capability and performance within colleges, supporting more effective management and leadership; and
- e. Reduction in intervention activity and associated costs for Government and the taxpayer.

Direct cost to business

227. The following table presents the direct cost to business for the BIT. As set out above, this is a proportion of the costs incurred by statutory FE colleges.

Cost of Option (2019 prices, 2020 present value)			
Total Net Present Social Value	Business Net Present Value	Net direct cost to business per year	Business Impact Target Score
-4.6	-1.0	0.1	0.6
Appraisal Period (Years)	10		

Table 18: Impact Assessment Calculator Output – Direct Cost to Business

Impact on small and micro businesses

228. The Government does not believe that this duty creates any significant cost burdens for small and micro businesses. As set out in the Act-wide small and micro business assessment, most FE colleges are large employers.

Equalities and wider impacts

229. FE colleges, sixth form colleges and designated institutions deliver a range of 16-19 vocational and technical education, Higher Technical Education, adult skills, and apprenticeships training. These providers educate individuals who share various protected characteristics under the Equality Act 2010 and employ a diverse workforce.

230. Governing bodies of FE colleges, sixth form colleges and designated institutions are subject to the Public Sector Equalities Duty and will need to have regard to that when reviewing their provision under the new duty.

Learners

231. Of the 1,640,300 adult learners participating in 2020/21⁸⁴:

- a. Females account for 60.8% (997,300). Within the general population of England in mid-2019, 50.6% of people were female;
- b. Learners aged 19-24, 25-49, and 50 and over accounted for 28.0% (459,590), 57.2% (938,760) and 14.7% (241,560) respectively. According to ONS data, in 2018 7.4% (4,169,087) of the population of England were aged 19-24, 33.1% (18,510,830) were aged 25-49 and 37.3% (24,806,721) were aged 50+;
- c. Learners declaring themselves as Black, Asian, or other minority ethnic groups (BAME) represented 26.3% (430,910). According to 2011 census data, 19.5% of the population of England and Wales was from an ethnic background other than white British and 14% were from non-white backgrounds⁸⁵; and
- d. Those declaring a learner learning difficulty and/or disability (LLDD) account for 15.8% (259,200). According to 2011 census data, 17.6% of the population of England has an activity limiting health problem or disability.

232. The policy objective of this duty is to place a requirement on governing bodies to consider whether their provision and structure could be better aligned to local needs. As a result of this, the provision made available to learners should

⁸⁴ Further education and skills, Academic Year 2020/21 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

⁸⁵ Population of England and Wales - GOV.UK Ethnicity facts and figures (ethnicity-facts-figures.service.gov.uk)

become better aligned to their needs and more responsive to the skills local employers need.

233. Colleges have existing legal obligations in relation to learners with special educational needs or disability (SEND) (including an obligation to consider any differential impacts on disabled people when carrying out their functions), but these do not include at present any obligation to regularly review how well provision meets local need of learners with SEND at an aggregate level. By creating a requirement for such reviews (through Clause 5, as explained in the statutory guidance) the Government is actively advancing the interests of learners with SEND by ensuring that the overall needs of learners with SEND are regularly reviewed.

234. As the needs of all learners with shared protected characteristics will be considered as part of the reviews, the duty to review will support the delivery of equal opportunities to all. For example, if a review finds low participation in adult provision by learners who share a particular religion, this may prompt the college to take action to address the disparity.

235. Reviews are also expected to help colleges identify any potential beneficial structural changes. Such a change could help limit the financial deterioration of a college, helping ensure the availability of relevant local provision.

Workforce

236. The 2018 college staff⁸⁶ survey shows:

- a. There are approximately 66,970 teachers and leaders in FE colleges;
- b. the age and gender profiles for teachers and leaders were skewed towards women and those aged between 45 and 59. Teachers tended to be younger, with 16% of teachers aged under 35 compared with nine per cent of leaders;
- c. most of the teachers and leaders in colleges were white, with only small proportions of BAME staff (6% teachers, 4% of leaders, 9% principals). ONS estimates 14% of the general population were BAME; and
- d. around one in seven (15%) teachers and 14% of leaders said that they had a disability.

⁸⁶ College Staff Survey 2018 (publishing.service.gov.uk)

237. The Government does not hold data on non-teaching workforce.

238. The policy objectives of this duty will lead to provision and structures aligned to local needs, which will help make colleges more financially resilient and maintain the provision. The Government therefore sees no detrimental impact on the workforce either as a whole or on groups of individuals who share protected characteristics.

Monitoring and Evaluation

239. The ESFA will continue to be responsible for ongoing operational oversight of the statutory FE sector.

240. As part of the response to the Dame Mary Ney⁸⁷ report, DfE is introducing annual strategic conversations with all colleges – these reviews will form part of those conversations.

241. FE Commissioner activity (intervention assessments, diagnostic assessments) will also provide evidence for compliance with the duty (although it should be noted this will be a small number of colleges).

242. Governing bodies will publish the outcomes of their reviews on their websites. This publication will also set out any endorsement/confirmation from key stakeholders.

⁸⁷ Dame Mary Ney report

Measure 4: Statutory further education intervention powers

What is the problem under consideration? Why is Government action or intervention necessary?

243. Where there is serious failure in a FE provider, it is important that the Government can intervene effectively and decisively to secure improvement, protecting the interests of learners, employers, and the taxpayer.

244. The Government needs to have a role because of the essential role colleges play in ensuring people have access to the training and qualifications they need to get good jobs to support the labour market and contribute to economic stability and growth.

245. At present, the terms of college funding agreements allow the Secretary of State to intervene. In addition, statutory intervention powers are set out in the Further and Higher Education Act 1992. These powers apply to FE corporations, sixth form college corporations, designated institutions and certain other bodies that provide FE (other than institutions within the higher education sector).

246. The legislation sets out the circumstances⁸⁸ in which the powers can be exercised, and the actions that the Secretary of State can take. In those circumstances, the Secretary of State can remove or appoint members of the governing body. The Secretary of State can also give directions to the college as he or she considers necessary, relating to the exercise of its powers and performance of its duties including requiring them to make collaboration arrangements (as defined in the Education and Inspections Act 2006), or to resolve to dissolve the governing body.

247. At present, those powers cannot be exercised in circumstances where there has been a failure to meet local needs and cannot be used to direct structural change including mergers. More widely, existing intervention arrangements can take a long time, are costly and can leave learners in uncertain situations for lengthy periods. These concerns were set out in reports from Public Accounts

⁸⁸ The circumstances include mismanagement by the governing body; failure to discharge a statutory duty; the governing body acting unreasonably with respect to their statutory functions; significant underperformance; and failure to provide an acceptable standard of education and training.

Committee⁸⁹, National Audit Office⁹⁰ and Dame Mary Ney, all of which make a case for change and recommendations for improvements.⁹¹

248. Our proposals will extend the existing intervention powers, enabling the Secretary of State to:

- a. exercise their statutory intervention powers in circumstances where education or training provided by an institution is failing, or has failed, to adequately meet local needs; and
- b. direct structural changes (such as mergers) where use of the powers has been triggered under any of the thresholds in the legislation.

249. The legislation will also exempt any structural changes directed by the Secretary of State from the Competition and Markets Authority statutory merger control regime provided for in the Enterprise Act 2002.

What are the policy objectives and the intended effects?

Policy objective

250. The policy objective is to ensure that where there is serious failure in a FE provider, Government can intervene effectively and decisively to secure improvement, protecting the interests of learners, employers, and the taxpayer. This will help ensure that all colleges are well managed, financially resilient, and adaptable to change, and the sector is able to successfully meet the needs of learners and employers.

251. The Government are seeking to strengthen existing statutory powers for the Secretary of State to intervene in individual colleges to bring about changes within a local area where there is evidence of failure to meet local needs. In practice, most intervention activity is expected to continue to be undertaken through the administrative processes set out in the College Oversight: Support and Intervention guidance.⁹² The guidance will be updated to include a new intervention trigger of failure to deliver local needs, alongside existing triggers related to quality and finance. The statutory intervention powers play a significant role in underpinning intervention activity undertaken through the administrative

⁸⁹ Managing colleges' financial sustainability - Public Accounts Committee - House of Commons (parliament.uk)

⁹⁰ Financial sustainability of colleges in England (nao.org.uk)

⁹¹ Report of the independent review of college financial oversight - GOV.UK (www.gov.uk)

⁹² College oversight: support and intervention - GOV.UK (www.gov.uk)

arrangements and are an effective tool if improvement is not achieved through other means.

252. Where agreement has not been possible through other means and there are no alternatives to secure improvement, the Secretary of State will be able to decide to intervene using the statutory powers, including through directing structural change including mergers.

Intended effects

253. New powers will enable the Secretary of State to intervene where the education or training provided by an institution is failing, or has failed, to adequately meet local needs.

254. The action that the Secretary of State can take where any of the circumstances for statutory intervention have been met will be enhanced to enable the Secretary of State to direct structural change. As with the existing statutory powers, it is expected that statutory intervention would be used as a last resort, where it has not been possible to secure agreement to the changes required to bring about improvement. However, new statutory powers are expected to strengthen Government's ability to secure the co-operation of governing bodies, reducing the time that colleges spend in intervention, securing improvement for learners, and reducing calls on taxpayer support.

255. The indicators of success will be:

- a. Colleges spending less time in intervention;
- b. colleges making improvements without the need for Government intervention; and
- c. Government's ability to call governing bodies to account where there is failure to shape provision, so it is viable, sustainable and delivers quality education and skills to meet local needs.

What policy options have been considered, including any alternatives to regulation?

Do nothing

256. Under the option the Government would continue with the current arrangements and rely on the existing administrative (non-statutory) intervention arrangements set out in the College Oversight guidance.

257. This option would have a number of significant limitations, particularly an inability to realise the benefits that will come out of statutory option. The ability to

intervene effectively and secure improvement rapidly would be limited, including in circumstances in which there was a failure to meet local needs.

Non-regulatory options

258. Under this option the Government would strengthen the support for college governing bodies to independently take action to improve, without changing the intervention approach.

259. Government already offers a range of support measures for college improvement. These include the College Collaboration Fund, National Leaders of Governance, and National Leaders of Further Education. The Skills for Jobs White Paper also announced the creation of a strategic development fund to support colleges in responding to local needs. In some cases, colleges have also voluntarily proposed structural change where they have identified this will result in the area's educational and skills needs being better met.

260. However, during the area review programme that some governing bodies were reluctant to take the action required to address weaknesses in their structure and provision. Some have subsequently required intervention, including for example a FE Commissioner-led Structure and Prospects Appraisal (SPA) to make a recommendation for structural change for example mergers. Relying entirely on a non-regulatory approach would not be effective in addressing cases where there has been a failure by the governing body.

Preferred option

261. The preferred option is to strengthen existing intervention powers under Further and Higher Education Act 1992. This will be through a new intervention trigger based on a failure of statutory FE providers to adequately meet local needs, and new legal powers to direct structural change, such as mergers.

262. These powers are intended only to be used as a last resort where it has not been possible to achieve the required improvement by other means. Government's aim is to support colleges without the need for intervention and are particularly keen to see fewer colleges in intervention going forward.

263. The reforms will strengthen the support and advice that the Government provide to college governors and leaders through guidance, training, and information, plus the introduction of annual strategic conversations with all FE colleges, sixth form colleges and designated institutions. Employer-led local skills improvement plans will set out the key changes needed to make technical skills training more responsive to employers' skills needs, supported through the strategic development fund. In addition, a new duty on colleges to keep their provision under review, supported by statutory guidance, will help all colleges to

be clearer about the expected alignment with local needs. All these activities should act as a catalyst to high quality and locally responsive provision, helping to ensure that directive action should not need to be exercised.

Rationale and evidence

264. The approach taken in this impact assessment is to: (i) set out evidence regarding current college intervention activity; and (ii) describe the benefits and costs associated with the new powers. This assessment does not attempt to quantify the impacts for three key reasons:

- a. Whilst the existing statutory intervention powers have never been used, this legislation is both adding a new trigger for statutory intervention i.e., where an institution in failing to adequately meet local needs, and enhancing the action that SoS can take i.e., to include direct structural change (such as mergers). The Government does not therefore have a basis for estimating how frequently these enhanced powers would be used. However, the expectation is that circumstances of serious failure would be rare;
- b. while this assessment can describe the types of benefits and costs incurred, their precise nature and their value would depend heavily on the precise details of a given college and local area; and
- c. the Government expect the existence of the powers to impact college activity even if they are not used, because it is expected that where there is failure, governing bodies will act more quickly and consent to change rather than risk statutory intervention. However, there is not sufficient evidence to identify the scale of this impact.

265. The DfE has published research examining the impact of college mergers in FE.⁹³ This analysis found that on average, there was no statistically significant effect of mergers on a range of outcomes – such as profits, staff costs, learner achievement rates. However, the analysis also demonstrates the high degree of variation of college performance after merger (due to a range of factors e.g., the underlying reason for the merger). This reinforces the second reason for not providing quantified impacts – the extent to which the impacts vary on a case-by-case basis.

⁹³ The impact of college mergers in Further Education (publishing.service.gov.uk)

Key risks and assumptions

266. This assessment has identified the following key risks in a scenario where the Secretary of State exercises these new intervention powers:

- a. **Availability of merger partners:** for structural change to be effective, there must be a suitable partner available willing to take on responsibility for the activities of the college that has failed. This assessment has identified that the main risk to directing structural change is the potential lack of strong college governing bodies that are willing, are capable and have capacity to take on the activities of the other college including associated assets and liabilities. The introduction of annual strategic conversations with all colleges will help the department to identify colleges with capacity to expand and what support governing bodies need; and
- b. **Competition:** structural change involving colleges with overlapping catchments may reduce competition, which may have an adverse impact on the quality and/or the diversity of the education offer. Before directing a structural change, the impacts on competition will be assessed to ensure that any adverse impacts are outweighed by the other benefits. As part of this assessment the Secretary of State will be legally obliged to consult with the Competition and Markets Authority (CMA), prior to directing any merger. The Secretary of State would consider any advice from the CMA on the potential impact on competition alongside other relevant factors. In cases where the Secretary of State issues a direction, the merger control arrangements set out in the Enterprise Act 2002 would not apply.

Summary and preferred option with description of implementation plan

267. Primary legislation will give the Secretary of State the power to take intervention action where an FE college corporation, sixth form college corporation or designated institution fails to adequately meet local needs.

268. In addition, where an institution has met one or more the statutory intervention triggers, the legislation will also allow the Secretary of State to issue a direction requiring a governing body or bodies of institutions to make structural change - including for example merger with another institution, conversion to academy status, or transfer of provision to another institution.

269. The statutory intervention powers provided for in legislation are last resort powers. The Government envisage powers only being used following an intervention under the administrative powers, where it has not been possible to

secure consensual agreement from the governing body to the change needed. Most intervention activity will continue to be undertaken through the administrative processes set out in the College Oversight guidance, which will be updated to reflect the policy changes set out in the White Paper.

270. As part of their current inspection framework, Ofsted considers how the curriculum offers learners the knowledge and skills that reflect the needs of the local and regional context. The Government is working with Ofsted to explore how they might strengthen this aspect of their inspections, considering the future role of local skills improvement plans.

271. The department will be responsible for ongoing operation and enforcement of the new arrangements.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

272. Where intervention is needed, it would be expected that in all cases this will continue to be implemented through the administrative processes set out in the college oversight guidance, based on consensual agreement. That includes cases where structural change is required to secure improvement. The Government expects that the new powers would therefore only be used very rarely.

273. Structural change and specifically mergers have been a key feature of the FE college sector for many years. They have been delivered to date without the Secretary of State needing to use existing statutory intervention powers. For example, the area reviews which commenced in September 2015 resulted in significant restructuring of the college sector including 57 mergers, 23 academy conversions, three FE Colleges transferred to become designated institutions wholly owned subsidiaries of universities, and several colleges undertook standalone restructures. The Government provided £433m from the Restructuring Facility to support the delivery of area review recommendations where these could not be self-financed.

274. The most recent annual report of the FE Commissioner published in December 2021⁹⁴ reported the Commissioner's activity between August 2020 and July 2021. This noted that the outcomes of five structural reviews were implemented, this resulted in four college mergers, and one college becoming a

⁹⁴ DfE external document template (publishing.service.gov.uk) December 2021

higher education institution. In term of additional cost to Government to deliver these changes, two of the college mergers needed restructuring financial support.

275. Having new powers in place, together with changes to the college oversight guidance, will make clear our expectation that Government will take action to safeguard the interests of learners, employers, and the taxpayer where there is failure to meet local needs.

276. The Government is also strengthening the support available for colleges, for example through the strategic development fund and annual strategic conversations. The Government therefore expects the key benefit to be that where changes are required to secure improvement, this will happen more consistently without the need for intervention. Where this does not happen, and where the existing administrative intervention processes are not sufficient to bring about improvement, new powers will enable the Government to act more quickly and decisively to secure improvement in an expected small number of cases.

277. As noted above, some historic data is available on additional funding that has been provided by central Government to support structural changes undertaken through a voluntary process. Funding where provided is on case-by-case basis and at the minimum cost to Government needed to secure improvements, so may not cover the full cost to the colleges involved. Given these limitations and given the expectation that statutory intervention powers would only be used as a last resort, it would not be appropriate to use historic costs Government support for mergers as the basis for estimating the costs of the preferred option.

278. A specific assessment has not been made on the monetised and non-monetised costs and benefits of having new powers for the use of statutory intervention in the rare circumstances that this might be used. However, where mergers are directed, the benefits and costs are likely to be as summarised in the table below.

	Cost	Benefits
FE colleges	<p>Cost associated with delivering structural change including consultation, due diligence, working with key stakeholders, communications, and quality improvements:</p> <ul style="list-style-type: none"> o Staff time and specialist support i.e., legal advice o Non-labour costs e.g., ICT systems and branding, restructuring, cost associated with turnaround /improvements 	<p>Efficiencies and savings from increased economies of scale for example: leadership, back-office, and recruitment costs.</p> <p>Mergers of good with weaker colleges enables the sharing and spread of good and effective practice improving use of resources, assets, and staff, to raise the quality of provision.</p>
Learners	<p>Potential impact on travel costs, for example where the curriculum delivery changes as a result of structural change.</p> <p>Potential decrease in competition and choice of provider.</p>	<p>Provision that is more responsive to local learner needs, including through ability to offer a greater range of curriculum options on a sustainable basis.</p> <p>More rapid delivery of improvement leading to higher quality provision, and better educational and employment outcomes.</p>
Central Government	<p>Administrative cost and resources associated with reviewing and assessing structural change proposal and ongoing monitoring of cases subject to a structural change direction.</p>	<p>Reduction in administrative resource required for intervention, due to faster resolution of cases.</p> <p>Reduction in cost of support for colleges in intervention.</p> <p>More colleges managed by strong and effective leaders, better use, and value of central or local Government funding provision will be joined up and more targeted to meet local needs.</p>

Table 19: Use of statutory powers benefits and costs assumptions

Direct costs and benefits to business calculations

279. The Government does not believe that there are any direct costs to FE colleges from these powers. The act is creating powers for the Secretary of State to intervene – if required – rather than creating a new burden on colleges.

Impact on small and micro businesses

280. Statutory intervention proposals are last resort powers and are therefore likely to be used very rarely. The Government do not believe that the introduction of new powers will have any significant cost burdens for small and micro businesses. As set out in the overarching Small and Micro Business Assessment, many FE colleges are medium or large employers.

Equalities and wider impacts

281. FE colleges, sixth form colleges and designated institutions deliver a range of 16-19 vocational and technical education, higher technical education, adult skills, and apprenticeships training. These providers educate individuals from groups with protected characteristics under the Equality Act 2010 and employ a diverse workforce.

282. As set out in the overarching impact assessment for the Act, statistical data from related to the demographic characteristics of further education and skills learners was published in March 2021. This reported on the make-up of the 1,168,100 adults participating in Government funded FE and skills (including apprenticeships). The data available indicates that some groups with shared protected characteristics under the Equality Act 2010 are disproportionately represented in further education. For example, FE students are more likely to be from an ethnic minority, to have a learning difficulty or disability, or to be female than the wider population.

283. As set out in the overarching impact assessment, statistical data is also available from the 2018 college staff survey. This data reported on the demographic make-up of approximately 66,970 teachers and leaders in FE colleges. No statistical data is available on the demographic make-up of the governing bodies of further education colleges, designated institutions and sixth form colleges.

284. Proposals to strengthen existing intervention powers under Further and Higher Education Act 1992 would enable the Secretary of State to intervene and direct structural change. Any change to provision will impact on learners, the college workforce, leaders, and governors. However, existing directive powers have never been used and the expectation going forward the powers would only be used where there was no other alternative to secure necessary improvements.

285. The main consideration is whether having the powers in place and using them to direct structural change could have a disproportionate impact on learners and members of the FE workforce with specific protected characteristics.

286. Structural change such as mergers or disaggregation of provision can help limit the financial deterioration of weaker colleges and the college sector as whole. This has helped to turnaround provision improving quality, sustainability and viability of weaker colleges and therefore provide better outcomes for learners and stability for staff reducing inequalities and advancing opportunities.

287. Where there is failure, and it has not been possible to secure improvement through the administrative processes set out in the college oversight guidance, new powers will enable the Secretary of State to direct structural change such as a merger. Where this happens, a college governing body would transfer property, rights, and liabilities to another college. This will allow the continuation of provision for a range of learners, including those with protected characteristics.

288. In most instances, structural change takes place without closure or significant loss of provision for learners. The greater efficiencies and financial resilience associated with structural change can play a key role in sustaining a broad curriculum offer that meets local needs. However, where there are unavoidable changes to provision this could result in learners needing to travel further to access some courses and result in some workforce relocation which could negatively impact on persons with shared protected characteristics. Most structural change is expected to take place without the need for statutory intervention, therefore the impact on learners and the workforce associated specifically with strengthening existing powers is assessed as minor. In line with their legal duty, college corporations and designated institutions will need to consider impacts on groups with shared protected characteristics when implementing any changes.

289. Workforce changes arising from mergers or disaggregation of provision would mean that staff teams with differing experiences come together including across wider geographical area, this is likely to result in a spread of good practice in teaching and learning and enhanced career and professional development opportunities. Bringing different institutions together would enhance opportunities to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. However, any restructuring of provision may lead to changes that result in some staff being displaced or changes to job roles. Employment laws including the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), protects employees' rights when the business of a college transfers to another entity, these protections reduce the risk of unlawful discrimination or adverse impact on staff members with a shared protected characteristic.

290. Demographic data available on the make-up of the college sector workforce indicates that most of the teachers and leaders in colleges are white, only a small proportion of leaders are BAME (4% of leaders and 9% principals) and only 14% of leaders said that they had a disability (2018 college staff survey). Expanding/changing college groups are likely to lead to improved career opportunities, support better retention of college workforce, expand opportunities for middle leaders and create a stronger pipeline of sector leaders. Over time these arising opportunities are likely to improve equality of opportunity between persons who share a relevant protected characteristic and persons who do not share.

Monitoring and Evaluation

291. The ESFA will be responsible for ongoing operation and enforcement of the new proposals. The overall framework for the use of intervention powers including assessment and monitoring is set out in the published College Oversight guidance. In any exceptional case in which these powers were used, their impact would be monitored through these existing arrangements. The FE Commissioner and the ESFA would work together to ensure that there are coherent monitoring arrangements in each case. The monitoring arrangements will depend on the individual case but could involve:

292. Periodic progress meetings between the FE Commissioner, the ESFA and the college and other strategic partners to monitor progress against the action plan.

293. A formal “stocktake” assessment conducted by the FE Commissioner which could lead to advice on any further action needed to secure continued improvement.

Measure 5: Approval and Regulation of Technical Qualifications

What is the problem under consideration? Why is Government action or intervention necessary?

294. The Government is reforming post-16 qualifications at level 3 and below to ensure that all qualifications have a distinct purpose, are high-quality and support progression to positive outcomes. Many employers struggle to find people with the skills that they need, and these gaps will be exacerbated as the pace of technological change continues, the economy adjusts following the COVID-19 pandemic, and we work towards building a green economy. The Government response to the second-stage consultation set out the types of qualification at level 3 that will be considered for public funding approval alongside A levels and T Levels.⁹⁵

295. To ensure that technical qualifications better meet the skills needs of the economy, many technical qualifications will be aligned to employer-led occupational standards. However, the system does not currently have the mechanisms to ensure the reforms can be delivered such that they deliver high-quality, rigorous qualifications that meet employers' and individuals' needs, and avoid proliferation and a 'race to the bottom' on quality, as identified by previous reviews of the skills market.

296. Both Ofqual and the Institute have key roles to play in assuring the quality of technical qualifications. But the current statutory framework for approval and regulation of technical qualifications has scope for unnecessary duplication, and inconsistency between the two bodies with potential impact on the quality of the qualifications and the burden on AOs. With the extension in the scope of the Institute's approval powers in this Act, the risks of duplication and inconsistency are increased.

What are the policy objectives and the intended effects?

297. The proposals aim to provide the mechanisms needed to support the implementation of the future qualification landscape as set out in the Government response to the second-stage consultation of the post-16 qualifications review at

⁹⁵ Review of post-16 qualifications at level 3: second stage - GOV.UK (www.gov.uk)

level 3, particularly around ensuring quality and avoiding proliferation. The proposals help to achieve this through four key elements;

- a. By giving the Institute powers to determine new qualification categories and approve qualifications against associated criteria in the future, the Government will ensure the qualifications offer is consistently high quality. Putting the mechanisms in place to ensure the qualifications market delivers high quality technical qualifications based on employer-led standards and employer demand will provide clear and high-quality routes into skilled occupations as well as the best preparation for future careers;
- b. by giving the Institute powers that could allow it to charge for approval and to manage proliferation, the Government will ensure that the future qualification landscape is clear and straightforward for users to understand and that the market does not become bloated in any part. This will avoid a return to the proliferation identified in previous assessments of the technical qualifications market;
- c. by reviewing the ongoing performance and efficacy of qualifications, and by withdrawing approval as necessary, the Government will ensure that the qualifications that are approved by the Institute remain fit for purpose; and
- d. by clarifying roles and responsibilities, the Government will promote effective collaboration between Ofqual and the Institute and reduce the scope for duplication of processes and functions.

What policy options have been considered, including any alternatives to regulation?

298. The Government has considered the following options in relation to new technical qualification categories and criteria:

- a. The Government could do nothing and continue to allow the technical qualifications market to continue to operate with few controls on quality or numbers. However, this would not meet the policy objective for technical qualifications to be based on employer-led standards or for a streamlined qualifications offer;
- b. it would be possible to restrict AO entry to the technical qualifications market, building on Ofqual's power to restrict the market by setting a higher bar than currently exists in respect of both AOs and individual qualifications. Again, it is unlikely that this would meet the policy objective for qualifications to be based on employer-led standards;

- c. the Government could introduce single licensing for all approved qualifications whereby only one AO is permitted to deliver each qualification against employer-set content, as per the model used for T Levels. However, the Government believe there is benefit to having a range of qualifications covering similar content available in some parts of the market, particularly for adults who may have a variety of learning aims and needs; and
- d. alternatively, the Government could introduce quality requirements for technical qualifications which would see technical qualifications needing to demonstrate alignment with employer-led standards. The reforms to apprenticeships and the introduction of T Levels, delivered under the auspices of the Institute, have been well-received by employers, young people, and adults. As a result, the Government know what works: employer-led design and development of provision, with a focus on the competence needed for specific occupations.

299. The Government has considered the following approaches to securing effective collaborative oversight by the Institute and Ofqual of technical qualifications:

- a. Do nothing – so that the two bodies exercise their existing functions independently without an overarching framework to promote effective collaboration and reduce scope for duplicated activity. With the two organisations acting independently the risk would remain high that AOs would be subject to additional, potentially confusing regulatory burdens and that the quality and reputation of technical qualifications would be undermined by overlaps, duplication, and conflicting decision-making;
- b. a non-statutory, administrative collaboration framework, within which the two bodies agree voluntarily to exercise their existing statutory powers and functions in ways that minimise duplication, inconsistency, and burdens on AOs. Such a framework addresses the immediate need for coherent, collaborative processes. Whilst effective administrative collaboration is a requirement, it a purely voluntary approach has a residual risk of instability and re-emergence of inefficient practices in the longer term; and
- c. legislation to refine the existing statutory framework to remove or reduce the longer-term scope for these negative impacts. This would set a statutory framework and expectations in relation to collaboration and remove the most significant potential sources of overlap and duplication of functions. In doing so it would reinforce the longer-term stability of the administrative arrangements by reducing scope for the quality and effectiveness of the collaboration to drift over time.

Summary and preferred option with description of implementation plan

300. The introduction of new categories of technical qualifications with associated quality criteria will enable the Institute to approve technical qualifications that meet the criteria for the category. The reforms will result in a technical education system that is stable, coherent, and high quality, ensuring that the skills needs of business and industry are met. The reformed system will provide clear progression pathways and deliver the outcomes learners need to move into skilled jobs or further technical training.

301. In November 2021, the Government announced an additional year before the level 3 reforms are implemented. This means that the first set of reformed qualifications will be taught from academic year 2025-26.

302. Subject to the Secretary of State publishing regulations, the new powers would allow the Institute to charge a fee as part of the qualification approval process. Additionally, the Institute will have the power to introduce a moratorium on the approval of further qualifications where there is evidence of proliferation, and a requirement to review approved qualifications, withdrawing their approval where they are no longer performing as expected.

303. Streamlined collaboration in approval and regulation of technical qualifications should be secured through an effective administrative framework to be agreed between Ofqual and the Institute, underpinned by legislation to:

- a. ensure cooperation between the two bodies when they exercise their functions in relation to technical qualifications; and
- b. put in place a single statutory approval gateway for technical qualifications through the Institute's approval powers.

Key risks and assumptions

304. This section outlines some of the key risks to the success of the policy itself, and some of the key assumptions this assessment has made to monetise the costs.

Key Policy Risks

305. Burden on AOs – given the additional costs to AOs associated with the new measures, there is a risk that the increased financial burden on AOs, could cause some financial difficulty and in extreme cases could lead to AOs leaving the qualifications market. The additional year the Government has announced before the reforms to qualifications are implemented will give AOs more time to prepare for the changes. The Government will continue to assess the risk to AOs of the

qualification reform package more broadly, as part of the post-16 qualifications review, to help to identify and mitigate against risks to AOs.

306. Employer Buy-In – if employers do not value the qualifications, for example if the approval criteria do not successfully ensure qualifications are rigorous and deliver the skills demanded by employers, then the proposals are unlikely to deliver the intended effects outlined. However, the review of post-16 qualifications highlights the importance of aligning qualifications in the future system against occupational standards. This should help to ensure employers have confidence in the qualifications.

Key Assumptions

307. Some assumptions made in this assessment are largely unevidenced. Uncertainty has been reflected using ranges. However, it is important to flag the risk in the estimates, particularly where evidence has been limited. This section details some of the assumptions that have been made:

- a. Approval fee – For the purposes of this impact assessment, it is assumed a potential approval fee range of £420 to £1,140. The assumed range is based on internal costs associated with the approval of qualifications for the 16-19 Performance Tables, and estimations of some internal costs associated with the approval of a limited number of Higher Technical Qualifications (HTQs) within a single occupational route. The assumed range is indicative only and is subject to change as approvals processes are established and a robust methodology is designed for the determination and application of approval fees.
 - i. Assumptions around the potential impact of size of qualifications, efficiency savings and economies of scale have been applied to the HTQ costs to derive the suggested upper limit provided here. These are based on estimations and projections relating to aspects of the process. The Performance Table qualification approval costs have been taken as the lower limit.
 - ii. The detail of the approvals process for technical qualifications is in early stages of development. Should the Secretary of State publish regulations for the Institute to charge approval fees, the approach to determining the appropriate level for the fees will only then be formed based on the approvals process and refined overtime.
 - iii. There are a number of other factors that may influence the design of an approval fee model, including the volume of different types of technical qualification the Institute will approve. It has not been possible to take account of such factors ahead of the final design and implementation of the reforms.

b. Familiarisation time - estimates of the familiarisation time taken for providers (1-3 hours), AOs (2-10 hours) and employers (15-60 minutes) to understand the new categories and approval criteria, are largely unevidenced. They are based on internal conversations around best estimates and vary across different groups to reflect variation in the required time commitment to understand the approval criteria and qualification groupings. A range is also used to help reflect the uncertainty around these estimates.

i. Note, familiarisation costs relate to understanding the qualification categories, and (particularly for AOs) the approval criteria. They do not relate to understanding the content of the individual qualifications available.

c. Phased introduction of reforms – as was outlined in qualifications review, and more recently a written policy statement, the reforms will be introduced in a phased approach. For the purposes of this assessment, it is assumed that the impacts will either (i) occur over a three-year period, or (ii) where they are recurring, reach steady-state over a three-year period. It is assumed the rate of implementation of the reforms is equal across this three-year period.

d. Treatment of education providers - education providers consist of both private and public sector entities. However, only those operating in the private sector contribute towards the EANDCB, and as such it is necessary to assess them separately. Based on the breakdown of provider types presented in the overarching SAMBA section, the definition of private and public providers are as follows;

i. Private Education Providers

- Private Sector Public Funded Providers (e.g., ITPs) – c.1,300
- HE Organisations – c.100
- FE Colleges – c.35
 - Note, while FE colleges operate in the publicly funded space, some also operate in the private sector. As detailed previously, 22% of FE college income is from private sources, so it is assumed 22% of FE colleges operate in the private sector to account for this.

ii. Public Education Providers

- Sixth Form Colleges – c.50
- Special Colleges – c.30
- Other Public Funded (excluding HE Organisations) – c.260
- FE College – c.135

- As noted above, this represents the 78% of FE college income that is public funded.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

308. Below outlines the costs and benefits for the preferred option.

Businesses

309. For clarity, this section focuses on impacts on AOs, education providers operating in the private sector (as outlined in the previous section), and other private sector employers.

Costs

310. The measures will increase costs for some businesses in both the short and long term.

Awarding Organisation Familiarisation Costs

311. A direct cost is that AOs will have to spend time familiarising themselves with the new qualification categories and regulatory systems, and what these mean for the qualifications they produce. This will require an employee to spend time reviewing the new measures, at a cost to the individual companies. These one-off costs are estimated to occur over the first three years of the appraisal period, and to be worth in total around c.£6,000-£30,000, with a central estimate of **c.£18,000**. This figure is calculated by multiplying the following assumptions together;

- a. The number of affected AOs; assumed to be 136, based on the number of AOs delivering ESFA approved qualifications, which are not A/AS Levels, GCSEs, Project, or Extension Award qualifications;
- b. time taken to familiarise; it is assumed this is between 2 and 10 hours, with a central estimate of 6 hours. This is unevidenced, based on internal conversations around best estimates, and varied across different groups to reflect variation in the required time commitment to understand the approval criteria and qualification groupings. The range used reflects the uncertainty around the precise value;
- c. hourly cost; it is assumed this is £17.89. This is based on the average salary for an AO account manager as per the EDU salary survey (2016), an assumption of a 40-hour working week, adjusted to 2019 prices; and
- d. non-wage labour costs; It is assumed this is a 22% uplift, based on Eurostat estimates for 2019. This covers additional labour cost such as employers NI

and pension contributions. This assessment uses this Eurostat data to scale wage costs up to an estimate of total labour costs.

312. These costs are then divided by three and assumed to occur in each of the first three years of appraisal, to reflect the phased introduction of the reforms. This results in an annual cost of between c.£2,000 and c.£10,000, with a central estimate of c.£6,000.

Additional Qualifications Development Costs

313. A second direct cost faced by AOs, is that they will have to spend more time and resources on ensuring their qualifications meet the relevant criteria to meet approval by the Institute. It is estimated this recurring cost will occur in each year of the appraisal period and could be between c.£2.9m-£8.8m, with a central estimate of **c.£5.9m per year** in steady-state. This figure is calculated by multiplying the following assumptions together;

- a. The number of qualifications subject to approval each year; it is assumed this is 737. This is based on the number of new qualifications introduced at level 3 and below between May 2019 and May 2020 (1,842), scaled down proportionally by the potential rationalisation of the qualification market at level 3 as part of the qualifications review (60%⁹⁶);
- b. it should be noted this only covers qualifications at level 3 and below, and so is an underestimate – although most qualifications are covered by these levels;
- c. additional cost to develop or redevelop qualifications; it is assumed this is between £4,000 and £12,000, with a central estimate of £8,000. These assumptions are based on AO reported costs, through responses to Ofqual’s consultation around changes in the approach to regulating Technical Award qualifications at KS4;⁹⁷
- d. a range of figures were provided amongst the responses. However, the central estimate is assumed to be a combination of reported costs on adjustment of assessment (c.£2,000 per qual), producing an assessment strategy document (£3,000 per qual), additional assessor training (£3,000 per qual);
- e. it is not yet clear the precise additional work the AOs will need to undertake to ensure qualifications meet the new approval criteria, and as such these

⁹⁶ Review of post-16 qualifications at level 3 in England: Second Stage (education.gov.uk)

⁹⁷ Regulating Performance Table Qualifications (publishing.service.gov.uk)

costs may not perfectly reflect the work required. However, it is believed they are broadly indicative, and use a range to reflect the uncertainty; and

- f. as the unit cost figure represents the total costs required for additional redevelopment of a qualification, it is already net of non-wage labour costs. We do not apply them again here, to avoid double counting.

314. In the first year of appraisal, it is assumed 1/3 of the annual steady-state costs will be experienced, increasing to 2/3 in the second year, and the full value from the third year onwards. This is to reflect the phased introduction of the reforms.

315. One limitation of the approach taken, is the assumed distribution of these costs. It is assumed that the costs are even over each year of the appraisal period, reflecting the number of qualifications introduced each year, revised down to account for rationalisation in the future landscape. However, it is expected that AOs to face more of these costs upfront, as initially AOs will have to resubmit most non-defunded qualifications. Equally, it is expected the AOs would see a decrease in the number of qualifications submitted on an annual basis, as the reformed system lends itself to a greater level of stability.

316. Due to the uncertainty on the future introduction of qualifications, and varied implementation timelines for reform across different qualification types and levels, the Government believe this is a proportionate approach towards the estimation of these costs. The Government believe these estimates give a fair reflection of costs over the appraisal period.

Approval Fee Costs

317. Additionally, AOs also potentially face a fee for submitting their qualification to the Institute for approval. This is the cost to the Institute for the additional labour required to review qualifications against the approval criteria, which is in turn passed onto AOs as an approval fee. It is estimated that this recurring cost will occur in each year of the appraisal period and could cost between c.£309,000-£839,000 annually in steady-state. This figure is calculated by multiplying the following assumptions together:

- a. The number of qualifications subject to approval each year; It is assumed this is 737. This is based off the number of new qualifications introduced at level 3 and below between May 2019 and May 2020 (1,842), scaled down proportionally by the rationalisation of the qualification market modelled at level 3 as part of the qualifications review (60%);
- b. it should be noted this only covers qualifications at level 3 and below, and so is an underestimate – although most qualifications are covered by these levels; and

- c. approval fee – For the purposes of this impact assessment, it is assumed an approval fee range of £420 to £1,139. More detail around the figures can be found in the earlier ‘Risks and assumptions’ section. The assumed range is indicative only and is subject to change as the approvals process is established and a robust methodology is designed for the application of approval fees.

- i. As the unit cost figure represents the total costs required for additional redevelopment of a qualification, it is already net of non-wage labour costs. This assessment does not apply them again here, to avoid double counting.

318. In the first year of appraisal, it is assumed 1/3 of the annual steady-state costs will be experienced, increasing to 2/3 in the second year, and the full value from the third year onwards. This is to reflect the phased introduction of the reforms.

319. As with the development costs faced by AOs, while these costs are presented as consistent annual recurring costs, the Government would expect them to be disproportionately felt at the start of the appraisal period. This is because at this point AOs will have a significant number of qualifications to resubmit existing qualifications to meet approval criteria, thus resulting in significant initial costs, which are expected to reduce over the appraisal period. However, as with development costs, the Government still believe the approach to be proportionate.

Private Education Provider Familiarisation Costs

320. Finally, education providers who operate in the private sector, will incur familiarisation costs, and contribute towards the EANDCB. These costs come from requiring an employee to spend time reviewing the new measures, and what they mean for the qualifications they offer, representing a labour cost to the providers. It is estimated that this one-off cost will occur over the first three years of the appraisal period and could total between c.£38,000-£114,000, with a central estimate of **c.£76,000**. This figure is calculated by multiplying the following assumptions together:

- a. The number of affected private providers; assumed to be 1,437, based on the number of private sector providers delivering VTQs in the ILR in 2019/20;
- b. note, as familiarisation costs relate to understanding the qualification categories and their approval criteria, rather than the content of the qualification itself, this assessment looks at the number of affected providers, not qualifications;

- c. time taken to familiarise; it is assumed this is between 1 and 3 hours. This is based on internal conversations around best estimates and varies across different groups to reflect variation in the required time commitment to understand the approval criteria and qualification groupings. The range used reflects the uncertainty around the precise value;
- d. hourly cost; it is assumed this is £22. This is based on the average salary for an FE teacher delivering advanced teaching and training levels, as per Prospects (2019), and an assumption of a 35-hour working week;
- e. non-wage labour costs; It is assumed this is a 22% uplift, based on Eurostat estimates for 2019. This covers additional labour cost such as employers NI and pension contributions. This assessment uses this Eurostat data to scale wage costs up to an estimate of total labour costs; and
- f. these costs are then divided by three and assumed to occur in each of the first three years of appraisal, to reflect the phased introduction of the reforms. This results in an annual cost of between c.£13,000 and c.£38,000, with a central estimate of c.£25,000.

Employer Familiarisation Costs

321. Employers are likely to have to incur labour costs through having an employee familiarising themselves with the new qualification categories, to understand what will be most applicable to their needs when recruiting. It is anticipated that this would typically only occur when employers were looking to recruit, rather than immediately following the implementation of the measures. As such, these costs will be one-off for each employer, however these will be quantified as recurring costs, to reflect employers incurring these costs at different times.

322. It is estimated these recurring costs occur in each year of the appraisal period and could be between c.£964,000-£3.85m, with a central estimate **c.£1.93m per year** in steady-state. This figure is calculated by multiplying the following assumptions together:

- a. The number of affected employers per year; assumed to be 137,912, based on the number of KS5 student entering employment in 2018/19. It is assumed each student is employed by a different employer, which is likely to overestimate the number of affected employers per year. However, by only focusing on KS5 students entering employment, and not including adult students entering employment, it is underestimating the total number of VTQ learners entering employment, potentially leading to an underestimate of the number of affected employers per year;
- b. time taken to familiarise; The Government assume this is between 15 and 60 minutes. This is based on internal conversations around best estimates

and vary across different groups to reflect variation in the required time commitment to understand the approval criteria and qualification groupings. The range used reflects the uncertainty around the precise value;

- c. hourly cost; it is assumed this is £22.92. This is based on the average salary for an account manager, as per Prospects (2020), an assumption of a 37-hour working week, adjusted to 2019 prices;
- d. non-wage labour costs; it is assumed this is a 22% uplift, based on Eurostat estimates for 2019. This covers additional labour cost such as employers NI and pension contributions. This assessment uses this Eurostat data to scale wage costs up to an estimate of total labour costs; and
- e. in the first year of appraisal, it is assumed 1/3 of the annual steady-state costs will be experienced, increasing to 2/3 in the second year, and the full value from the third year onwards. This is to reflect the phased introduction of the reforms.

Benefits

Avoidance of Double Regulation

323. The inclusion of measures within the option to ensure effective collaboration between the Institute and Ofqual, has the benefit of mitigating against risk that qualifications be subject to double regulation. This could occur if a qualification were submitted to both Ofqual's accreditation process, as well as the Institute's approval process or subject to different, uncoordinated regulatory requirements. This would potentially incur additional labour costs to AOs, in spending time understanding the relative requirements of each process, ensuring the qualification met these, and potential additional approval costs.

324. However, by clearly outlining the relationship and responsibility distribution between both organisations, and ensuring qualifications are only subject to one process, this means a reduction to the potential costs of compliance set out above for AOs, by reducing the potential for duplication, inconsistency, and double regulation.

Reduced Qualification Selection Time

325. One indirect benefit that will affect private education providers is reduced time/resource spent identifying the relevant qualifications to shape their curriculum. Clearly defined qualification categories and a more streamlined selection of high quality, rigorous qualifications, should remove the confusion associated with proliferation of the qualifications market. It is not possible to monetise this benefit, due to uncertainty over the frequency with which providers would revise their qualification offering.

Employer Skills Match Time

326. An indirect benefit for private employers, is that by ensuring a clear, streamlined qualifications market, it should be less resource intensive to find the appropriate skills in the labour market. This means they can spend less time paying employees to review applications, and conduct interviews, providing a saving to businesses. Similarly, this could also reduce the number of unsuitable hires (i.e., representing a bad skills match), which present additional costs to businesses through lost investment in training.

327. Due to the significant uncertainty around future employment and recruitment rates, as well as around the precise reduction in recruitment time, it is not possible to monetise this benefit here.

Improved Productivity

328. A further indirect benefit for private employers, is that because of students entering the labour market with qualifications that have better equipped them with skills, they should see an increase in productivity. This should in turn lead to an increase in profits for private employers.

329. Due to uncertainty around the precise future Institute approval categories, and the scale of improvement delivered by the improved qualifications, it is not currently possible to monetise this benefit. However, as shown by NPV figures earlier in the overarching impact assessment, there are clear and significant returns to education, and as such the Government would expect this to present a significant benefit.

Students

330. The impacts of the broader ongoing qualifications reform, including the introduction of new quality criteria, is considered in detail as part of the review of post-16 qualifications.⁹⁸ These are briefly considered below.

Costs

Reduction in Attainment

331. Some students are likely to experience a cost in terms of lower earnings, as more qualifications that are more rigorous are also likely to be harder to achieve. This is likely to result in some students obtaining lower levels of attainment than previously, and potentially lower earnings.

332. However, this is partially mitigated against by the fact that qualifications across all levels are expected to become more rigorous. As such, students who

⁹⁸ Review of Post-16 Qualifications at level 3: Second stage - Department for Education - Citizen Space

achieve lower levels in the future are likely to be better off following the introduction of the measures, than they would be if they achieved those levels now. While T Levels do not form part of this assessment, a further partial mitigation is the removal of the English and maths exit requirement from T Levels, which should help to ensure more students are able to access and complete high-quality level 3 education.

333. It is not possible to monetise this recurring cost, due to the significant uncertainty around the scale of the increase in challenge across qualifications at all levels, its impact on overall student attainment, and on future earnings.

Reduction in Qualification Choice

334. A further potential cost for students, could emerge from a reduction in choice. By having a more streamlined qualifications system, this reduction in the range of qualifications available could lead to some students being unable to study the type of qualification, or subject area, that they would have otherwise chosen. However, this would depend on the precise detail of the future qualification categories and given the nature of this cost it is not possible to monetise this here.

Benefits

Improved Skills/Productivity

335. Students who can achieve at the same level of study are likely to see improvements in their skills and productivity as they enter the labour market. This in turn should lead to improved employability and earnings. It has not been possible to monetise this impact at this stage, however the Government would expect these benefits to be significant.

Public Sector

Costs

336. Government, or more specifically public education providers, are also likely to incur some costs.

Public Education Providers Familiarisation Costs

337. Like businesses, education providers operating in the public sector (as outlined previously) are likely to incur some direct costs because of having to familiarise themselves with the new qualification categories. This will be necessary to inform their qualification offering. It is estimated these one-off costs will occur over the first three years of the appraisal period and could total be between c.£13,000-£38,000, with a central estimate of c.£25,000. This figure is calculated by multiplying the following assumptions together:

- a. The number of affected providers; assumed to be 473, based on the number of public sector providers delivering VTQs in the ILR in 2019/20;

- b. note, as familiarisation costs relate to understanding the qualification categories and their approval criteria, rather than the content of the qualification itself, this assessment looks at the number of affected providers, not qualifications;
- c. time taken to familiarise; it is assumed this is between 1 and 3 hours. This is based on internal conversations around best estimates and vary across different groups to reflect variation in the required time commitment to understand the approval criteria and qualification groupings. The range used reflects the uncertainty around the precise value;
- d. hourly cost; it is assumed this is £22. This is based on the average salary for an FE teacher delivering advanced teaching and training levels, as per Prospects (2019), and an assumption of a 35-hour working week;
- e. non-wage labour costs; It is assumed this is a 22% uplift, based on Eurostat estimates for 2019. This covers additional labour cost such as employers NI and pension contributions. This assessment uses this Eurostat data to scale wage costs up to an estimate of total labour costs; and
- f. these costs are then divided by three and assumed to occur in each of the first three years of appraisal, to reflect the phased introduction of the reforms. This results in an annual cost of between c.£4,000 and c.£13,000, with a central estimate of c.£8,000.

Benefits

Reduced Qualification Selection Time

338. One indirect benefit that will affect education providers is reduced time/resource spent identifying the relevant qualifications to shape their curriculum. Clearly-defined qualification categories and a more streamlined selection of high quality, rigorous qualifications, should remove the confusion associated with proliferation of the qualifications market. It is not possible to monetise this benefit, due to uncertainty over the frequency with which providers would revise their qualification offering.

Productivity Spill-overs

339. A further indirect benefit to Government, will be higher tax revenue, as a spill-over result from the increased productivity experienced by individuals and employers. This has not yet been able to monetise this, however we will attempt to as the estimates are developed the for individual and business productivity benefits.

Direct costs and benefits to business calculations

340. The below direct costs to business all contribute towards the EANDCB calculations. It is expected that the sum of these costs will result in a net direct cost to business per year of c.£5m over the 10-year appraisal period;

- a. Awarding Organisation Familiarisation Costs;
- b. Additional Qualification Development Costs; and
- c. Private Education Provider Familiarisation Costs

Cost of Option (2019 prices, 2020 present value)			
Total Net Present Social Value	Business Net Present Value	Net direct cost to business per year	Business Impact Target Score
-55.8	-55.8	5.0	25
Appraisal Period (Years)	10		

Table 20: Impact Assessment Calculator Output – Business Impact Target Score

341. The following NPV outputs are presented in 2019 prices and 2020 present value for consistency across the IA.

		Net Benefit (Present Value (PV)) (£m)	
Low:	-90	High:	-28.1
		Best Estimate	-55.8

Costs	Total Transition (constant price)	years	Average Annual (excl. Transition, constant price)	Total Cost (present value)
Low	7.6		2.6	28.1
High	30.4		7.6	90

Best Estimate	15.2		5.1	55.8
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Benefits	Total Transition (constant price)	years	Average Annual (excl. Transition, constant price)	Total Benefit (present value)
Low	0.0		0.0	0.0
High	0.0		0.0	0.0
Best Estimate	0.0		0.0	0.0

Direct impact on business (Equivalent Annual) £m:			
Costs:	5.0	Benefits:	0.0
		Net:	5.0

Table 21: IA Calculator Outputs – headline NPV

Impact on small and micro businesses

342. It is expected that the proposals will have an impact on small businesses.

343. The direct costs to AOs discussed above, are likely to impact businesses of all sizes. The market consists of around 160 AOs, and features a small number of large organisations, and a long tail of much smaller organisations. The two largest organisations account for over 60% of all certifications awarded in 2019/20.⁹⁹

344. Familiarisation costs are not expected to scale with business size, and as such they are likely to have a disproportionate impact on the smaller AOs. However, it is also worth highlighting that these costs are expected to be small, and one-off costs, it is not expected that they will have a significant impact.

345. Costs relating both to the reform of qualifications to meet future approval criteria, and the fee charged to go through the approval process, are likely to scale with AO size as they relate to the number of qualifications offered.

⁹⁹AQMR 2019_20 (publishing.service.gov.uk)

346. However, it is still possible that small business could face disproportionate costs, as they are less likely to be able to cross-subsidise profit from larger qualifications to pay for others, and to take advantage of additional economics of scale, and the potential savings these bring.

Equalities and wider impacts

Equalities Impact Assessment

347. An equalities impact assessment, highlighting the impacts of planned changes to the qualifications landscape at level 3, has been published as part of the Post-16 Qualifications Review second-stage consultation.¹⁰⁰ This outlines the broader impact of the reforms, including the introduction of new quality criteria.

Monitoring and Evaluation

348. The Institute will monitor the efficacy of qualifications it has approved. AOs will be expected to provide data and evidence demonstrating how a qualification continues to meet its intended purpose. Enrolment and progression data will also be monitored as evidence of the demand for and efficiency of qualifications.

349. The new arrangements will be monitored through oversight powers that will require the Institute to ensure that the combination of technical qualifications, apprenticeships and other provision within an occupational route is coherent and appropriate. The Institute will provide advice to the Secretary of State of Education, which may influence decisions about where additional qualifications are needed and whether sectors should be prioritised.

350. The effectiveness and efficiency of the Institute's and Ofqual's collaborative oversight of technical education qualifications will be monitored through their internal governance structures and through the DfE's ongoing policy and delivery oversight for technical education.

¹⁰⁰ Review of post-16 qualifications at level 3 in England: Second Stage (education.gov.uk), Annex A, pp. 21-29.

Measure 6: Improvements to the FE insolvency regime

What is the problem under consideration? Why is Government action or intervention necessary?

351. The legislation sets out to clarify certain parts of the FE insolvency regime regarding Company Voluntary Arrangements (CVAs) and Transfer Schemes, and the associated process to create a designated institution – as set out in separate legislation – the latter of which is slow and inflexible.

Company Voluntary Arrangements:

352. The current legislative framework (TFEA) is unclear as to whether CVA can be used as part of an education administration. There is ambiguity in TFEA as to whether an education administrator of insolvent providers in the statutory FE sector can use a CVA as a mechanism to exit education administration. Whilst there is case law to allow the use of CVAs in this scenario (in line with the legislation for normal insolvency), it is possible this could be overturned in future.

Transfer Schemes:

353. The current legislative framework (TFEA) is unclear whether security in an education administration transfer scheme is treated to the same extent as in normal insolvency. TFEA is unclear that where a transfer scheme is used in an education administration, the consent of the secured creditor or a court order would be required to use a transfer scheme to transfer secured assets free of the security (i.e., the secured asset would be treated the same as it would be in a normal insolvency). Whilst there is non-statutory guidance that will treat secured creditors as if they had those protections, the Government is using this opportunity to legislate to expressly state this.

Designated Institutions:

354. The current legislative framework (FHEA) requires a Statutory Instrument to be made to designate an institution. FHEA does not set out a swift and flexible process by which institutions can be designated as falling within the statutory FE sector, a mechanism that could form part of the process of exiting insolvency and otherwise dealing with FE bodies in financial difficulty. Currently, creating a new designated institution requires the making of a Statutory Instrument, a process which takes a number of months, and which needs to have the date upon which the designation would take place specified significantly in advance. This complicates and could delay the process of exiting from insolvency (where the use of a DI is considered appropriate), imposing a longer period of disruption on learners and staff at the insolvent provider, and generating extra costs for the

taxpayer (through the need to provide additional financial support to the insolvent provider to enable it to carry on offering provision and paying an education administrator's fees).

355. The Government is best placed to resolve these issues - as the problems are with processes as set out in primary legislation (TFEA and FHEA), they can only be resolved through further legislation.

What are the policy objectives of the action or intervention and the intended effects?

356. The Government intend to clarify parts of legislation in the FE insolvency regime (or give we the power to do so via secondary legislation) and improve the associated designation process. This will:

- a. Explicitly allow for the use of CVAs as part of an education administration;
- b. Clarify that in an education administration, a transfer scheme cannot be proposed which would transfer secured assets without either a court order or the consideration attributed to the asset being agreed by the secured creditor; and
- c. Allow the Secretary of State to designate an institution as being within the statutory FE sector using an Administrative Order, rather than requiring the use of a Statutory Instrument.

What policy options have been considered, including any alternatives to regulation?

357. The option set out as **the Government's proposal** does not introduce new regulation, it clarifies or modifies existing processes set out in legislation (or would give the Government the power to do so via secondary legislation). It would:

- a. Give the Secretary of State the power to explicitly allow for the use of CVAs as a mechanism to exit an education administration;
- b. Clarify that in an education administration, a transfer scheme cannot be proposed which would transfer secured assets without either a court order or the consideration attributed to the asset being agreed by the secured creditor; and
- c. Allow the Secretary of State to designate an institution as being within the statutory FE sector using an Administrative Order, rather than requiring the use of a Statutory Instrument.

358. The Government has chosen this option because it is believed it would:

- a. Cement case law into primary legislation that Education Administrators of insolvent statutory FE providers can use a CVA as a mechanism to exit education administration;
- b. Clarify any uncertainties between what happens to secured assets in a transfer scheme in an education administration as opposed to normal insolvency, thereby reassuring lenders to the sector; and
- c. Shorten and increase the flexibility of the process by which institutions can be designated as falling within the statutory FE sector, a mechanism that could form part of the process of exiting education administration.

359. The option of **doing nothing at all to the FE insolvency regime** (TFEA) was considered but ruled out as there may not be another legislative opportunity for some time if our current non-legislative solutions prove ineffective (for instance, if existing case law allowing the use of CVAs as part of the FE insolvency regime were to be overturned).

Company Voluntary Arrangements

360. The option of **doing nothing in relation to CVAs** was considered. This would involve relying on case law which states that a CVA can be used to exit education administration. However, cementing this in case law mitigates the risk of the judgment being overturned (though this is very unlikely), which would result in legal costs should a challenge to case law be brought. It is worth noting that only two further education bodies have entered education administration and is expected to use this infrequently.

Transfer Schemes

361. The option of **doing nothing in relation to transfer schemes** was considered. This would leave potential conflict on the treatment of secured creditors between the transfer provisions of TFEA and the Insolvency Act. This is because the Government provided a response to the technical consultation for TFEA in June 2018 that secured creditors would not be treated any differently in the transfer scheme of TFEA as they would do under the Insolvency Act which provided the banks with assurance. However, clarifying this in legislation will leave less ambiguity around the theoretical ability for the Secretary of State to consent to an education administrator's proposal to use a transfer scheme to transfer secured assets free from security and without consideration to the secured creditor.

Designated Institutions:

362. The option of **doing nothing in relation to the creation of designated institutions** was considered. The Government rejected this option, as the benefits of providing a direct mechanism for Parliamentary scrutiny (through the process of

making Statutory Instruments) of this rarely-used and minor administrative procedure were not felt to outweigh the significant benefits to relevant insolvency cases of increasing the speed and flexibility of the designation process. The minister would remain accountable to Parliament in relation to the new administrative orders, any designations would still be public knowledge as there would be a requirement for orders to be published, and any decision felt to be unreasonable would be able to be challenged through judicial review.

363. The option of **speeding up the creation of FE corporations rather than designated institutions** was considered. This option would require amendment of the FHEA through primary legislation, to allow FE corporations to be created by administrative order rather than by statutory instrument. The Government rejected it for the following reasons:

- a. There are additional factors (relating to charity status and governance) that must be considered when creating a new FE Corporation. These considerations mean that the process is inherently slower than the equivalent process for creating a new designated institution. Accordingly, making it easier to create FE Corporations would not deliver the desired outcome of the measure, which is to improve and speed up the FE insolvency process; and
- b. Unlike the creation of a designated institution (which is primarily an administrative procedure, used to enable the transfer or reclassification of existing provision), the creation of a new FE Corporation (such as a National College) can be politically significant, and the Government believe it is therefore important that this process retains Parliamentary scrutiny.

Rationale and evidence

364. Insolvency is rare for providers in the statutory FE sector, and likely to remain so. Prior to the introduction of the FE insolvency regime (covering providers in the statutory FE sector – approximately 221 college corporations and 13 designated institutions) on 1 April 2019, no provider in the statutory FE sector had been placed into an insolvency process. The formal insolvency of a college corporation had theoretically been possible since colleges were incorporated by the FHEA in 1992.

365. When the FE insolvency regime came into effect in 2019, it clarified that certain providers within the statutory FE sector could be placed into insolvency (this had previously been the Government's policy position, but was not stated in the relevant legislation), and created an additional form of insolvency process, specific to the statutory FE sector – education administration. An insolvent college corporation or company conducting a designated institution could then enter either the normal insolvency process (which prioritises the interests of creditors) or

education administration (an insolvency regime specific to FE which has a special objective to prioritise the interests of existing learners).

366. Since 1 April 2019, only two college corporations (run by one management team as part of a single “group”) have been placed into insolvency; both entered education administration. These insolvencies did not involve a transfer scheme, a CVA or the creation of a new designated institution. If the insolvency of a provider in the statutory FE sector were to involve an education administration using either the transfer scheme or CVA in the future, these would take place under the same terms as the Government has embedded in legislation, only based on non-statutory guidance and case law respectively instead.

367. Accordingly, the evidence available to support any proposed legislative changes to improve the FE insolvency process is only theoretical, and this Impact Assessment instead focuses on trying to illustrate the impacts in an insolvency scenario where these measures become relevant.

368. There are other, non-insolvency, uses for the legislative process of creating a Designated Institution. These would also be affected by the Government’s proposal to change this process from requiring a Statutory Instrument to requiring an Administrative Order. Since 1992, relevant non-insolvency uses of this process have taken place seven times:

- a. Twice in 1993 to enable education providers that existed before the FHEA to enter the new statutory FE sector, and thereby enabling them to receive Government funding;
- b. Once in 2006 to enable the (re)designation of the one provider which had been designated as an unincorporated organisation in 1993, but had since decided to incorporate; and
- c. Three times in 2018 and once in 2021 to enable the creation of FE institutions that are wholly-owned subsidiaries of universities (“HE/FE designation”).

369. Whilst the legislative process used for these three purposes would be affected by the Government’s proposed change, any impact would be incidental. The Government envisage no significant benefit as either timescales are unable to be compressed due to other considerations (as with HE/FE designations), or do not envisage a repeat of the relevant scenario (the transfer of education providers into the statutory FE sector, or (re)designation to allow for the incorporation of formerly unincorporated designated institutions). As such, this impact assessment focuses on the process in relation to its use in insolvency.

Key risks and assumptions

Risks:

370. This assessment has not identified any significant risks associated with the Government's proposals, which are as follows:

- a. The Government is taking the power to embed existing case law in relation to CVAs;
- b. the Government is embedding assurances into legislation in relation to transfer schemes; and
- c. The Government is making minor administrative simplification changes in relation to designated institutions.

Assumptions:

371. It is assumed that the insolvency regime for the statutory FE sector will continue to operate if the sector were to be reclassified as being part of the public sector. Were this not to be the case, the Government's proposals may no longer provide any significant benefit if there were to be no users of the insolvency process to benefit from the changes.

372. It is assumed that insolvency will remain a possibility for providers in the statutory FE sector in serious financial difficulty, in line with current Government policy. Were this not to be the case, the Government's proposals would no longer provide any significant benefit as there would be no users of the insolvency process to benefit from the changes.

373. It is assumed that there will be no desire to bring a significant number of new or existing education providers (such as ITPs) into the statutory FE sector as Designated Institutions, in line with current Government policy. Were this to change, the Government's proposals would provide additional benefit by reducing the administrative burden associated with enacting this process through Statutory Instruments.

Summary and preferred option with description of implementation plan

374. The preferred option would:

- a. Give the Secretary of State the power to explicitly allow by regulations for the use of CVAs as a mechanism to exit an education administration;
- b. Clarify that in an education administration, a transfer scheme cannot be proposed which would transfer secured assets free of the security

without either a court order or the consideration attributed to the asset being agreed by and paid to the secured creditor; and

- c. Allow the Secretary of State to designate an institution as being within the statutory FE sector using an Administrative Order, rather than requiring the use of a Statutory Instrument.

375. The preferred option would be given effect through amendments to primary legislation (and subsequent secondary legislation in relation to CVAs). This would change the TFEA in relation to CVAs and Transfer Schemes, and the FHEA in relation to the creation of designated institutions. The Government has brought these changes into effect through the Skills and Post-16 Education Act (and subsequent secondary legislation in relation to CVAs).

Company Voluntary Arrangements:

376. To clarify the rules of education administration with regards to the use of CVAs, the act amends primary legislation to extend an existing power under section 33 in the TFEA to give the Secretary of State the power to amend Schedules 3 and 4 of the TFEA relating to CVAs by statutory instrument. The Government has taken this approach as the appropriate method to make, these technical amendments to clarify the legislative position. This change to legislation is in line with case law and therefore would not require further arrangements to be made with regards to operation or enforcement, apart from amendment of the Education Administration Rules in relation to operation of CVAs in education administration. The power to make regulations under section 33 will come into force 2 months after Royal Assent.

Transfer Schemes:

377. The clarification of the rules around transfer schemes will come into effect 2 months after Royal Assent. There would not be transitional arrangements. Changes to legislation on transfer schemes are in line with a statement of assurance from the Secretary of State and therefore would not require further arrangements to be made with regards to operation or enforcement.

Designated Institutions:

378. The change to the process of designating institutions will come into effect 2 months after Royal Assent. There would not be transitional arrangements and this change would not require further arrangements to be made with regards to operation or enforcement.

379. As the legislative proposals in relation to CVAs and transfer schemes would only cement existing policy, the legislative proposal in relation to designated

institutions is minor, and the insolvency process for providers in the statutory FE sector is very rarely used, and do not feel it would be practical or beneficial to have a pilot or trial implementation period.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

380. It is expected these mechanisms to be utilised very rarely (as they have not been used before in the two previous cases of education administration).

381. In an insolvency scenario where these measures are relevant, they would lead to the following benefits:

- a. As these measures set out to simplify, clarify and cement into legislation processes that can already be used, the amendments could enable a shorter insolvency process (DI item) and save time resulting in lower administration costs;
- b. providing confidence to education administrators that a CVA can be used as a mechanism to exit education administration. However, as CVAs can already be used under case law, it would be mitigating the risk of this being overturned and associated legal challenges that would result in cost and disruption, though this is unlikely;
- c. more broadly, the transfer scheme measure will be clarifying the protections of commercial lenders' secured assets. It is expected this benefit to be negligible given the existing guidance. As at 18/19 commercial lenders lend c. £1bn to the FE sector and are a key stakeholder.
- d. a shortened process to create designated institutions should enable a shorter insolvency process for some of those providers who enter insolvency where a transfer to a DI is appropriate, resulting in lower administration costs; and
- e. more broadly, TFEA itself has benefits which include minimising the costs of disorderly closure and ensuring, where possible, that there are arrangements for existing learners to complete their courses, so the value of learning is not lost. These amendments seek to provide further clarity as to how this regime works, and to allow it to function with minimal disruption.

382. This assessment does not attempt to quantify these impacts because:

- a. It is impossible to predict how frequently these measures will be used;
- b. it is difficult to monetise the benefits from a scenario where these measures are used because it is so dependent on the individual circumstances of a particular insolvency; and

- c. further analysis would be disproportionate given the small scale of the impacts.

Direct costs and benefits to business calculations

383. Insolvency processes are very rarely used in the statutory FE sector (and designated institutions would only be used in a subset of these cases – and have not been used in either education administrations which have taken place so far), and the changes are a combination of a minor administrative simplification and embedding existing case law/assurances into legislation.

Impact on small and micro businesses

384. The Government does not believe this measure will have a quantifiable or significant impact on small or micro businesses. It will apply to the administrative procedures used in relation to insolvent FE College Corporations, Sixth Form College Corporations and companies conducting DIs, the vast majority of which would fall under the categories of “medium” or “large” businesses (see the Act-level “Small and micro business assessment,” above). As it is important from a policy perspective that there is only one consistent insolvency procedure (and associated designation procedure) for all providers in the statutory FE sector, there is no scope to exempt/provide mitigations for businesses of a certain size.

Equalities and wider impacts

385. It is not believed the Government’s proposals will have quantifiable/significant wider impacts as these are procedural legislative changes to the insolvency regime and related legislation to provide clarity for providers in the statutory FE sector. The Government has assessed the measure and do not anticipate any specific impacts on those who share any protected characteristic.

Monitoring and Evaluation

386. It would not be proportionate to individually monitor and evaluate the minor administrative changes the Government is proposing.

387. The DfE and ESFA will continue to review and evaluate the wider FE intervention and oversight regime, including the FE insolvency regime, as part of its normal operating and working procedures

Glossary

388. As this is a complex area, it may be helpful to have an explanation of the key terms as follows:

- a. The **FE insolvency regime** is a special insolvency regime for FE bodies, as an alternative to the normal insolvency regime open to regular limited companies. It was introduced by the Technical and Further Education Act 2017 (TFEA);
- b. under TFEA, **FE bodies** in England are FE corporations (which run general FE colleges), sixth-form college corporations (which conduct sixth-form colleges) and companies conducting designated FE institutions. In Wales FE bodies are further education corporations and companies conducting designated FE institutions;
- c. the **statutory FE sector** is the name used for the three types of FE provider specified in the Further and Higher Education Act 1992 (FHEA) over which the Secretary of State has statutory intervention powers. It is made up of general FE colleges, sixth-form colleges, and designated institutions.
- d. a **Designated Institution (DI)** is an institution that has been designated by the Secretary of State as falling within the statutory FE sector. The Secretary of State designates an institution using a statutory instrument made under section 28 of FHEA. A DI is usually conducted (run) by a company. In some circumstances, it may be desirable to transfer an institution within the statutory FE sector from an insolvent FE body to a new, solvent, company as part of the process of exiting from insolvency proceedings; to ensure this institution remained within the statutory FE sector, it may then need to be designated;
- e. a **Company Voluntary Arrangement (CVA)** is a procedure which allows a company or corporation in insolvency proceedings to come to a voluntary arrangement with its creditors over the payment of debts. CVAs can be used as an exit route from normal administration, as set out in regular insolvency legislation. CVAs can currently be used as an exit route from education administration under the FE insolvency regime, as confirmed by case law;
- f. a **transfer scheme** is a plan to transfer specified property, rights, and liabilities (including those which could not ordinarily be transferred) from one legal entity to another. It cannot be used in normal insolvency proceedings, but can be used by an education administrator if approved by the Secretary of State in cases of education administration and if required to meet the learner protection special objective of an education administration;
- g. **education administration** is a key part of the FE insolvency regime. It is a form of insolvency proceeding that can be used by FE bodies if requested by the Secretary of State and approved by a court. It is different to normal insolvency proceedings in that the administrator appointed to run the FE

body (known as an education administrator) has a special objective to protect the interests of existing learners (by minimising disruption to their studies), whereas a normal administrator's first objective is to protect the interests of creditors; and

- h. **security** is a right that creditors may have to sell or possess assets owned by a debtor, to protect the repayment of debt (like a mortgage).

Measure 7: List of post-16 education or training providers

What is the problem under consideration? Why is Government action or intervention necessary?

389. The Government wants to ensure learners are protected in cases of training providers who cease to deliver education and training, and that there are a consistent set of requirements placed on providers to protect learners and public funds. The provision of post-16 education or training is commissioned by various funding bodies and is often subcontracted. As a result, there is a wide variation in the range of obligations and requirements currently imposed on providers. The measure is intended to ensure that there is a consistent set of requirements placed on providers to protect learners and public funds, even where the education or training is funded by local commissioning bodies or through subcontracts from directly funded providers. This policy focuses on independent training providers (ITPs) and institutions such as Schools, FE Colleges, Academies and local authorities are out of scope. There were 64¹⁰¹ unplanned provider exits in the academic year 2019/20, of which 60 were ITPs. There are delays in the current system finding a new provider and the affected learner experience varies from provider to provider. Legislation will address gaps in these requirements and make the legal position clear to the sector. Legislation will also provide powers for the Government to prevent such issues arising.

What are the policy objectives and the intended effects?

390. Legislation will give the Secretary of State the power to make regulations to set up a scheme to list certain providers of post-16 education or training. There were 3737 providers in 2019/20, with approximately 73% being ITPs. This total differs from the headline presented in the overarching act Small and Micro Business Assessment. It includes providers across all funding streams directly delivering ESFA funded provision, subcontractors declared by providers directly delivering as well as providers that have registered an intention of delivering apprenticeships but did not deliver training. The scheme could make being on the list compulsory for providers in scope and being on the list would require those providers to meet certain conditions which would mitigate against unplanned and chaotic exit from provision. In secondary legislation it is expected to see a

¹⁰¹ Unplanned provider exits have been determined as providers directly delivering ESFA funded provision that has ended and resulted in the transfer of learners to alternative providers or a provider teaching out learners.

requirement for a learner protection plan or provider exit plan, insurance arrangements made and maintained by provider to cover associated exit costs, fit and proper person requirements and the provision of and access to information by the Secretary of State including learner records and financial information, in addition to the payment of a fee for registration to cover the administrative cost of maintaining the register. The OfS also place requirements for exit plans for HE provision.

391. **To mitigate financial risk in relation to a provider exiting:** ITP failures incur costs to Government, for example administrative costs in resourcing learner transfers or writing off Advanced Learner Loans. In the current system there are instances where providers would take a learner and receive no additional funding. This makes it difficult to place some affected learners with alternative providers and this brings with it the risk that the learner may disengage and then fail to complete their learning.

392. **Ensure greater oversight at a national level:** This would include post-16 ESFA funded training, provision transferred to combined authorities and any relevant provision funded by local authorities. Given that those commissioners of education and training may or may not have similar protections in place for the provision that they fund, it is also believed that the risk of short notice and chaotic exits from the provision of education and training could be mitigated by ensuring that the providers are financially stable and run by appropriate personnel. The measure is intended to ensure that there is a consistent set of requirements placed on providers to protect learners and public funds, even where the education or training is funded by local commissioning bodies or through subcontracts from directly funded providers.

393. **Putting some clauses of ESFA funding agreements/contracts on a statutory footing:** Current protection arrangements are included in funding agreements. Adding this to legislation will make the legal position clear to the sector and place it on a statutory footing, providing more powers to prevent such issues arising again.

394. Indicators of success would be a reduction in providers unexpectedly exiting the market, a reduction in administrative costs to Government on managing unexpected exits (such as the number of personnel and time spent managing provider exits and finding alternative providers) and reduction in impact on the learner when a provider unexpectedly exits (time to find a suitable new provider). The Government will quantify this as part of the impact assessment for secondary legislative measures.

What policy options have been considered, including any alternatives to regulation?

395. The Government's policy objectives are long-term and sector-wide. Interventions proposed through secondary legislation by way of conditions for being on the relevant list (which will be a prerequisite to funding) such as, provider exit plans, insurance and 'fit and proper persons' requirements will improve transparency and fairness within the sector. Government's approach will be targeted and based on the level of risk to learners helping ensure actions are proportionate. When considering alternatives to regulation the Government identified much of this provision would be achievable through contractual or grant conditions, but there is a particular wish to achieve the policy through legislation of this nature. The varying terms across agreements make requirements complex to understand for providers. For example, there are a range of agreements including ESFA Education and Skills agreements, Apprenticeship Agreements, Contract for Services Adult Education Budget (Procured), Contract for Services Procured Non-Levy, Contract for Services European Social Fund.

396. Another reason for considering legislation rather than strengthening agreements is that it would not enable oversight of all relevant provision as devolved funding is out of scope of contractual or grant conditions with providers directly (as ESFA is not the contracting authority). Legislation will ensure there is consistency and oversight of the relevant providers. For example, in the academic year 2019/20 there were 282 providers that had an allocation with an MCA. 40 out of 282 had relationships with more than one MCA.

Alternatives to regulation have been considered including self-regulation and do nothing:

397. Whilst the sector is adaptive, for example with Apprenticeship Reform, legislation in these circumstances would establish a baseline for all relevant providers and enable Government to apply mechanisms across all provision to prevent providers which do not comply with relevant conditions receiving public funding. There is an overarching aim to protect the interests of learners.

398. There are provisions in ESFA agreements and contracting arrangements that reduce risk. However, these are complex and vary by agreement leading to inconsistencies. The extent to which clauses have been adhered to is unclear. Legislation would make the legal position clear to the sector and give more powers/oversight to prevent such issues arising.

399. A regulatory approach would give consistency in the approach taken by ESFA and devolved areas, as devolved areas currently set their own conditions.

400. If registration was voluntary, providers may not take up registration and devolved areas may choose not to rely on this. This would lead to further

uncertainty on what conditions are applicable to providers depending on whether the provider is registered/not registered and whether the devolved area is using this – adding further complexity to the current setup.

Rationale and evidence

401. The Government is introducing primary legislation which will not have a direct impact on providers or learners. It is the scheme introduced in secondary legislation, and the conditions for being on the list that will be contained within those regulations that will impact. An assessment has therefore been taken on the current landscape with consideration of some of the secondary measures likely to be introduced.

Key risks

402. A perception that this could have been changed by tightening existing funding agreements and funding rules. Whilst this is true for ESFA funded provision albeit being complex - without regulation, central Government would not have direct oversight of provision funded through the functions which are transferred to the combined authorities and that which is funded by local authorities.

403. Whilst this is not a risk because of introducing measures, the longer-term impact of COVID-19 on financial sustainability could lead to more providers ceasing their provision of education or training unexpectedly in the future. It may also make it more difficult / attractive to take on learners that have been displaced. Also, COVID-19 will bring about its own socio-economic impacts which are less predictable. This may impact on measuring success of the policy in terms of reducing the number of unplanned provider exits in the short to medium term.

404. There is a risk that central Government and devolved Government is not joined-up in sharing information that affects effective measures. It will be important to build relationships and introduce secondary legislation or guidance setting out roles and responsibilities with respect to reporting and sharing of information.

Summary and preferred option with description of implementation plan

405. The preferred option is to include a power in the Act, allowing the Secretary of State to make regulations to set up a list of providers of certain post 16 education and training (primary legislation). The power should enable the Secretary of State to include by way of conditions for being on the list (secondary legislation), any provision that he sees fit for the purpose of regulating relevant providers, to mitigate risks associated with the disorderly exit of a provider from the provision of education and training to

protect learners and public money. Imposing conditions through secondary legislation will leave sufficient flexibility and scope to test with the provider base to ensure a balance between regulatory burden and protection for learners and public funds. The Government proposes to consult on the specific requirements of the scheme prior to making regulations.

406. ESFA would be responsible for ongoing operation and enforcement of the new arrangements on behalf of the Secretary of State.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

407. There will be administrative costs associated with maintaining a registration scheme. For example, the cost of refreshing the Register of Apprenticeship Training Providers (RoATP) was £1,218,000 and involved 19 staff across a range of grades from G6 to EO in just under two years, and the assessment of over 3500 providers. There was also a finance team reviewing financial statements. The Government does not anticipate that the list will require a similar level of resource. The level of resource required will be determined by the conditions introduced through secondary legislation. The costs for assessing applications may be less than 50% in comparison to RoATP but ongoing maintenance costs are likely to be higher which will include engagement and information sharing with MCAs/LAs who will be dependent on information sharing.

408. Length of time to complete an application to the RoATP varied between 4 days to 2 weeks depending on the experience of the training provider. Again, the proposed registration scheme is likely to require less documentation.

409. The Government will wait until the secondary legislation stage to provide an estimation of administration costs for Government and the administrative cost to providers. The cost of insurance and sharing information are likely to be areas incurring most cost for providers. In terms of insurance, it is anticipated this to be professional indemnity insurance, which is typically set up to cover: breach of duty, civil liability, breach of contractual liability that is not caused by negligence, contractual liability, and legal costs.

410. At this stage, this impact assessment describes the key costs and present available evidence from similar schemes – e.g., the RoATP. This assessment does not present quantified estimates of the impacts at this stage as the policy detail will be set out in future regulation – at which stage there will be a better understanding of the impacts and present an updated impact assessment.

Direct costs and benefits to business calculations

411. Introducing a power in the act that will allow the Secretary of State to make regulations to set up a list of certain providers of post-16 education and

training will not incur direct costs to business. Providers will not be required to apply to be on the list until secondary legislation setting out conditions is introduced. This will influence the scope and costs.

412. The introduction of secondary legislation will increase costs for businesses in the short term, although this would be expected to reduce over time when providers build systems and processes to reflect requirements. There would continue to be ongoing costs with respect to a registration fee and payment of insurance. Currently, the intervention measures taken, and engagement varies by ESFA funding stream and can vary by combined authority. A consistent and clear set of expectations will avoid duplication for providers and enable them to plan their delivery accordingly, in turn this should lead to an efficiency in costs in the longer term. For example, not having to vary exit plans for each funding authority they contract with and the provisions in place to access and share information being similar across central and devolved Government. The Government will impact assess alongside the introduction of secondary legislation in the future. The additional costs because of secondary legislation are likely to be:

- a. **Payment of a fee** for being on the list – completing one process may result in less administrative costs depending on what provision the provider delivers;
- b. **insurance costs** – most providers will have cover; the cost will be dependent on the liabilities Government expects to be covered;
- c. **provisions of student exit plans** - diligent providers will have robust plans in place. Other providers may incur costs to meet the required standard whilst smaller providers may not have these plans in place; and
- d. **provision of and access to information by the Secretary of State** – this is expected to include learner records and financial information. Depending on requirements this is an area that will incur most costs depending on the provider's infrastructure.

413. As set out above, the Government will consider these impacts more fully in a future impact assessment.

Impact on small and micro businesses

414. Future measures are likely to have a significant impact on small or micro businesses from a resource and cost perspective. About half of ITPs are small businesses and these will be most affected, please refer to cost benefit table below. These measures will ensure alignment with other education sectors and ensure there is a clear and consistent approach. Consistency and clarity will avoid duplication for providers and allow them to plan their delivery accordingly, which in

turn should lead to an efficiency in costs in the longer term. The Government will assess impact in more detail when developing specific regulatory measures introduced through secondary legislation. One consideration will be whether to exempt small businesses from a fee. Small businesses would not be exempt from registration as the Government want to ensure coverage across all ITPs to ensure learner interests are protected.

Equalities and wider impacts

Background information

415. In the 2019/20 academic year there were 3737 providers in total, of which:
- a. 1109 directly delivered training;
 - b. 881 directly delivered training and delivered training as a subcontractor;
 - c. 1447 delivered training as a subcontractor only; and
 - d. 300 were seeking to deliver apprenticeship training directly and did not deliver any training.

Note:

- This estimate includes providers who did not deliver any training in 2019/20.
- The total provider estimate differs from the act Small and Micro Business Assessment because the scope here is much broader: including subcontractors and providers not delivering any training.
- The Register of Training Organisations has been decommissioned so only the RoATP was used to determine those in category D.
- In the 2019/20 academic year there were 64 unplanned exits.¹⁰² This included 60 ITPs.

¹⁰² Unplanned provider exits have been determined as providers directly delivering ESFA funded provision that has ended and resulted in the transfer of learners to alternative providers or a provider teaching out learners.

Costs and benefits

Stakeholder	Costs	Benefits
Providers	<ul style="list-style-type: none"> • Direct costs as articulated above because of secondary legislation. • Time to familiarise new regulatory requirements – will vary by provider including size and experience. • Administration costs – staff time. • Infrastructure costs to allow access. For example, provisions to store non electronic records or setting up secure servers to hold information. 	<ul style="list-style-type: none"> • Clearer understanding of what is expected. • Increase efficiencies in longer term, as consistent set of requirements. • Some providers may improve reputation with employers and learners by having to comply with new regulatory requirements.
Employers	<ul style="list-style-type: none"> • An increase in administrative costs for providers (due to secondary legislation) may be passed on to employers in the context of apprenticeships – meaning greater proportion spent per apprentice for levy paying employers. • Potential increase in administrative costs for employer providers in the short term– <i>registration, staff time etc.</i> 	<ul style="list-style-type: none"> • Less disruption to employees where they are apprentices. • Clearer understanding of what to expect when a provider unexpectedly exits. • Less disruption to business when a provider unexpectedly exits.
Local Government (local authorities, LEPs, MCAs etc)	<ul style="list-style-type: none"> • Potential increase in administrative costs – checking registration, aware of compliance issues or sharing information on issues they are experiencing etc. 	<ul style="list-style-type: none"> • Secondary legislation may provide clarity on provider expectations. • Reduce level of risk depending on their assurance / vetting arrangements. • Less disruption from provider exits due to policy. • Less opportunity for inconsistency between authorities.
Learners	<ul style="list-style-type: none"> • None. 	<ul style="list-style-type: none"> • Less likely to disengage or fail to complete learning. • Clearer understanding of what to expect when a provider unexpectedly exits.

Table 22: Costs and Benefits by Stakeholder

Equalities Impact Assessment

416. The Government has reviewed protected characteristics identified through ILR which include age, ethnicity, disability, race, and sex. This is not an equalities impact assessment of the policy the Government is introducing as this will be determined by the measures introduced in secondary legislation however it reflects the current system. The table below covers protected characteristics and compares averages from providers that unexpectedly exited in the 2019/20 academic year, against averages for all providers and ITPs. The percentages highlighted in orange indicate where the percentage of learners is higher for providers that exited in comparison to all providers and all ITPs, the percentages highlighted in purple indicate where the percentage of learners is lower.

Information sources:

417. Learner information is pulled from the ILR 2019/20 R14 (full year of learner participations).

418. This includes all types of providers such as ITPs, FE colleges, higher education institutions, academies, local authorities.

419. Rurality is matched in at a postcode level to learner home postcode and delivery postcode.

420. Deprivation is matched in at the learner/delivery Lower Layer Super Output Area.

Methodology:

421. Data is aggregated at provider level for all providers.

422. Each provider is summarised by the proportion of learners meeting certain requirements i.e., proportion of learners that are male, proportion of learners declaring at least one learning difficulty/disability.

423. In the case of deprivation, the percentage is the proportion of learners living in a lower super output area with a deprivation decile of 1 or 2.

424. Averages are calculated across ITPs only and across all providers for all metrics i.e., average proportion of male learners in ITPs.

Group average indicator	Percentage of students	Percentage of students	Percentage of delivery in a	Percentage of students with	Percentage of BME students	Percentage of students aged	Percentage of students aged	Percentage of students aged	Percentage of female	Percentage of male students
All providers in 2019/20	28%	14%	7%	19%	32%	30%	18%	52%	55%	45%
ITPs in 2019/20	30%	13%	10%	15%	28%	16%	26%	57%	52%	48%
Providers that exited in 2019/20	36%	9%	9%	11%	33%	7%	20%	73%	63%	37%

Table 23: Equalities impact of 64 providers with an unplanned exit in 2019/20

Apprenticeships	16-19	Adult	ESF	Advanced Learner Loan	Other, including non-ESFA funded	Total
7891	423	3334	0	1169	89	12906

Table 24: Learners affected by unplanned exit in 2019/20 by funding source

426. Out of the 12,906 learner entries reported, there are 74 learners that have more than one Funding Model so are double counted.

427. The analysis highlighted:

- a. Students aged 25+ were the only age group where the percentage of unplanned provider exits was higher than the percentage of the cohort.
- b. The proportion of female students affected by unplanned provider exits was higher than the percentage of the cohort.
- c. The proportion of students identified as BME or in the top 20% most deprived areas was higher when reviewing unplanned provider exits.
- d. Providers that unexpectedly exited in 2019/20 delivered less to residents in rural areas.

Monitoring and Evaluation

428. Unable to determine currently. The Government will undertake a full impact assessment when forming secondary legislation which will look at the impact of each condition and totality.

Measure 8: FE teacher training system reform

What is the problem under consideration? Why is Government action or intervention necessary?

429. The quality of initial teacher training (ITT) is an essential ingredient in ensuring the quality of teaching in the FE sector. This, in turn, is a key determinant of outcomes for learners. It is therefore vital that the ITT system for FE is of consistently high quality, based on clear standards, and provides training that prepares new teachers to be proficient in their roles.

430. The Government has, until recently, adopted a 'hands off' approach to FE workforce policy, including any intervention in the FE ITT system. Currently there is no legislative or regulatory infrastructure in place and therefore little focus on the coordinated improvement of the quality of FE ITT on offer. This contrasts starkly with teacher training for the school sector, where Government plays a direct role in assuring quality standards, and policy in recent years has aimed at driving continuous improvement. The Government's engagement with a range of ITT and FE providers has highlighted that practice across the system is not uniformly good, and that the FE ITT offer is very fragmented, difficult to navigate and not always based on sufficiently clear quality standards, meaning that the quality assurance processes in place are not consistent across all FE ITT. It is therefore right that Government should take action to drive improvement in the system.

431. The existing qualifications for FE teacher training are out of date (having been created in 2013) and are due for revision. This work is currently being undertaken by a group of sector representatives, coordinated by the Education and Training Foundation (ETF).

432. DfE does not routinely collect data specifically on FE ITT providers or those who are undertaking and completing ITT courses. There are a range of data sets which provide information about FE ITT, which tend to focus on sectors or routes through ITT, but there are gaps and fragmentation in the data. It has been determined that now is the time for Government to take a more active role in challenging the status quo and providing better oversight of the initial teacher education system, ensuring that public funding goes only to high-quality provision based on clear employer-led standards. It is vital that FE providers, and those individuals undertaking training, are confident in the quality of ITT.

433. The Government encourages the sector itself to take ownership of and responsibility for the quality of teacher training for FE. The Government is therefore working closely with the sector to bring about the improvements to quality that are so important to improving teaching in FE settings and continue to gather evidence on the case for intervention where needed. However, it is clear

that a step change in FE ITT quality is needed, which is why the Government is taking measures in legislation to introduce new powers which would allow the Secretary of State to take a more active role in securing and improving the quality of FE ITT provision, complementing, and supplementing other non-legislative interventions that are already in train.

What are the policy objectives of the action or intervention and the intended effects?

434. Without excellent teachers, the Government's ambitions for the transformation of skills provision cannot be fully realised. The FE sector is a powerful driver for the Government's "levelling up" agenda and will play a critical role in supporting the recovery of the economy after COVID-19, not least by ensuring a flow of high-quality trained individuals into the workforce. FE ITT is critical to supplying teachers to the workforce with an estimated 5000+ trainee teachers completing level 5 (or higher) qualifications each year¹⁰³. This provision is delivered by both higher and further education providers, and much is publicly funded (mainly via student finance).

435. The Government is taking action to address a basic lack of clarity about expectations for teaching proficiency in FE, taking an approach that roots teacher training firmly in an employer-defined occupational standard that will equip trainees to become highly proficient teachers, and that will enjoy the same currency and recognition across the FE sector that the Teachers' Standards have in schools.

436. The Government has worked with the Institute for Apprenticeships and Technical Education (IfATE) and a re-convened Trailblazer Group tasked with redeveloping the occupational standard for FE teaching. The Government has steered this group to take account of the changing policy landscape, in particular key developments such as the proposed Higher Technical Education (HTE) reforms. A refreshed Learning and Skills Teacher apprenticeship at level 5, based around the new occupational standard for FE teaching, was approved at the end of September 2021 and is now in use. The next step will be to redevelop the core ITT qualification for FE (currently the level 5 Diploma in Education and Training), so that it too is based on the new occupational standard. This work is being led by the sector, but the Government is providing support and stewardship to ensure

¹⁰³ Data on FE ITT trainees is incomplete, this estimate is derived from information relating to AY20/21, it uses a combination of Ofsted data on university trainees on FE ITT programmes, Student Finance England data for numbers of student loans for DET courses delivered at awarding body accredited centres and confirmed starts on the Learning and Skills Teacher Apprenticeship

that new qualifications are available to all AOs and HE providers as they are currently.

437. Going forward, the Government anticipates having a standards-based approach to FE ITT in which applicants will be able to choose from an apprenticeship or a qualifications-based route, both of which will lead to the same high-quality outcome based on a universal standard. In future, only high-quality ITT provision based on clear employer-led standards will be eligible for public funding. This measure gives the Government powers needed to bring greater coherence and quality assurance to the system, underpinning the non-legislative steps the Government is already taking with statutory provisions, available for use when deemed necessary.

438. These reforms to FE ITT will have benefits for the wider FE sector. Students (many of whom are disadvantaged and/or have SEND) will experience more high-quality teaching based on an occupational standard, which includes an explicit requirement for teachers to 'actively promote equality of opportunity and inclusion by responding to the needs of all students' (and details the knowledge, skills and behaviours required to do so). This high-quality teaching is one of the principal factors determining achievement rates, leading to better employment outcomes, and levelling up of opportunity. Trainee FE teachers will be more likely to receive a high-quality training experience that in turn supports them to be effective teachers and be retained by the sector. Employers will see students emerging from FE who are better equipped to do their jobs, leading to a better skilled industry workforce. Employers will also develop further mutually supportive relationships with FE providers to share human capital and ensure that teaching is industry-standard. Providers will be able to recruit high-quality teachers who are better equipped to deliver technical education reforms.

What policy options have been considered, including any alternatives to regulation?

439. When proposing the inclusion of this enabling clause, the Government has identified four options for varying degrees of intervention, as set out below.

Option 1

440. The Government will leave the sector to drive these reforms independently. However, there is no single body or organisation with overall responsibility for the FE ITT sector and there are concerns that simply expecting reform to happen organically, by consensus within the sector, will not address the deep-seated and complex issues that have been identified with the FE ITT system.

Option 2

441. Work collaboratively with stakeholders to revise the qualifications, but in this scenario the Government would underpin this with strengthened common qualification requirements and increased oversight. This would allow the Government to be more directive in terms of the content covered, assessment approach and delivery requirements for the qualifications and act where standards are not met. A key risk to this approach is the over-prescription of course content by Government on the face of legislation, which might unnecessarily constrain the professional judgement and expertise of those working in the sector. Although this approach would provide controls on the qualification, it does not ease restrictions on which providers can offer them. However, we would anticipate that increased requirements on the qualification, combined with an expanded regime of inspection by Ofsted for FE ITT providers announced in the White Paper, would drive an organic improvement in the overall provider market.

Option 3 (Preferred option)

442. In this option the Government would also work collaboratively with the sector to redevelop FE ITT, but in addition would also have a new power in legislation that would allow the Secretary of State to take more direct action, if needed, to drive quality improvement. If sector-led reform is deemed to be inadequate, or proceeding at too slow a pace, the additional statutory power could be invoked to take targeted action aimed at driving quality improvement. This is a clear signal to the sector that ministers are willing to intervene further, with legislative levers, if the Government does not see the sector itself driving improvements to the quality and coherence of ITT. Legislative provisions could also be used to underpin and strengthen non-legislative measures where appropriate (one example might be to issue statutory guidance in support of the delivery of new qualifications developed by the sector). We would not expect this power to come into immediate effect with Royal Assent; rather it would be commenced separately when an assessment of the impact of non-legislative work has been conducted and concludes that the additional statutory powers are needed or desirable.

Option 4

443. Use an enabling clause in the Skills and Post-16 Education Act to give the Secretary of State powers to make secondary legislation to regulate the FE ITT sector immediately from Royal Assent. The primary power would allow us to make provisions in secondary legislation to, for example:

- a. Require providers of FE ITT to be regulated and approved by the Secretary of State;

- b. require providers of FE ITT to have regard to guidance issued by the Secretary of State with a view to improving the quality of FE ITT courses; or
- c. put in place an infrastructure to monitor whether standards are being met and intervene where they are not.

Rationale and evidence

444. This impact assessment is focused on the rationale for securing the power to regulate FE ITT through the Skills and Post-16 Education Act. This is because the clause is being included as an enabling power that would be activated later through commencement regulations should it be deemed necessary or appropriate to do so. This means there will be no immediate or direct impacts on the sector from the introduction of this primary legislation. Any potential impact will come from the introduction of future secondary legislation, to be made at a point when there is evidence of need and impact. There are a range of options for the scope of regulations within the clause (subsection 2) and at present the Government is unable to say which, if any, of these (or other) measures will need to be adopted and when. Separate impact assessments for these measures would be provided at the time of their introduction via secondary legislation.

445. As noted in the section above, the complexity and incompleteness of available data means it is difficult to establish the exact size and profile of the sector. This assessment has undertaken internal analysis to improve understanding of the numbers of providers and trainees but have found no reliable way of doing so.

446. The Government is working to improve the quality and quantity of data available on the FE workforce, including trainees and new entrants. A new ESFA-led FE workforce data collection was introduced in academic year 2020/21 and became mandatory in A/Y 2021/22. This does not include all ITT trainees within its scope but will provide the Government with greater insight on the number of new entrants joining the FE teaching profession each year, their qualifications and whether they are undertaking any in-service training. In the future the Government may wish to collect more data on trainees (and the enabling clause gives the Government the facility to mandate this, if deemed necessary and appropriate).

447. These incremental improvements to the evidence base will mean that the Government should be in a much better position to assess the impact of any future secondary legislation relating to this clause at the point which it is introduced.

Key risks and assumptions

448. There is a risk that the sector may perceive this clause as an attempt to regulate the FE teaching profession (e.g., specify minimum qualifications FE teachers must hold), or to replicate measures being taken in relation to teacher

training for schools (via the ITT Market Review). This is not the case: this measure gives enabling powers to safeguard the quality of ITT for FE teachers, so that employers and trainees can be assured that it provides the best possible outcomes for those who undertake it.

Summary and preferred option with description of implementation plan

449. The Government is proceeding based on option 3: this allows the Government to drive as much reform as possible through non-legislative means, using an enabling clause in the act as a marker of intent. If this approach does not work, the clause, once passed, will allow the Government to put option 4 into operation at a later date as a contingency measure.

450. Option 1 risks failing to eliminate some of the poor practice currently seen in the sector. The sector recognises the need for change, but it has failed to take any steps to secure this to date. Those areas that most need to reform and improve their practice may be the least likely to comply with this sector-led approach. Stronger intervention is needed on the Government's part.

451. The Government has worked hard to build strong relationships with stakeholders working with them to achieve this as outlined in option 2 but are concerned that there is still a possibility that this approach could fail. The ability to increase oversight is limited to ITT qualification content and delivery. The Government may need wider powers to require providers of FE ITT to revise and improve their practice.

452. The Government assess that option 4 goes beyond what is required at present. As noted above, the Government has a good working relationship with the sector and feel it is better to work through non-legislative means as far as is possible and use a regulatory approach as a back-up measure, designed to strengthen and consolidate non-legislative reform where possible.

453. Under option 3 the Government will proceed according to the following estimated timetable:

- a. September 2021: agree occupational standard for teaching in FE;
- b. AY2021/22: Launch the revised FE teaching apprenticeship (Learning and Skills Teacher);
- c. AY2021/22: Redevelop the core ITT qualification for FE;
- d. AY2021/22: Alongside sector-led re-development of FE ITT qualifications, work to define Departmental expectations for the delivery of new qualifications, with a focus on quality improvement for publicly-funded provision;

- e. AY2022/23: Redevelopment and accreditation of qualifications by AOs and HE providers. Publish Departmental expectations for qualification delivery as a guide to requirements for access to public funding; and
- f. AY2023/24 (earliest – subject to confirmation): Launch revised qualifications; ensure these are eligible for relevant public funding streams.

454. The Government will review progress against this plan on a regular basis and assess whether further controls are required, based on emerging evidence. Should these be deemed necessary then the enabling clause will be activated through commencement regulations.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

455. This measure is being included as an enabling power that would be activated later through commencement regulations should it be deemed necessary and appropriate to do so. This means there will be no immediate or direct impact on the sector from the introduction of this primary legislation. As such there are no costs or benefits to monetise. These will be considered and assessed when secondary legislation is brought forward in the future.

Direct costs and benefits to business calculations

456. As previous section, this clause is being included as a reserve power that would be activated later through a commencement order should it be deemed necessary to do so. This means there will be no direct impacts on the sector from the introduction of this primary legislation. There will be no new burdens on business. These will be considered and assessed when secondary legislation is brought forward in the future.

Impact on small and micro businesses

457. Unable to determine currently. The Government will undertake relevant procedures to ensure full impact is assessed at the point any secondary legislation is implemented.

458. There is currently no analysis available on the size of ITT providers in terms of the numbers of people they employ.

Equalities and wider impacts

459. There is currently no single, reliable data source that covers the characteristics of staff working on ITT provision and trainees. The information falls across a number of different sources, which this assessment has used to inform this analysis.

460. Improving the quality of teaching should have a positive impact on all students including those groups with shared protected characteristics.

Staff delivering FE ITT in Colleges

461. There is no data available on staff involved in the delivery of ITT in colleges as a discrete group. In its absence, a reasonable fallback position is to assume that the composition of this group is reflective of wider staffing. The most reliable sources on this are the College Staff Survey¹⁰⁴ (CSS) and the Education and Training Professionals (ETP) survey¹⁰⁵, which cover teachers and leaders of General FE and Specialist FE Colleges, ITPs, SFCs and Adult & Community Learning (ACL) respectively.

Staff delivering FE ITT in HEPs (Higher Education Providers)

462. As with colleges, there is no data available on staff involved in the delivery of ITT in HEPs as a discrete group. In its absence, a reasonable fallback position is to assume that the composition of this group is reflective of wider staffing. The most reliable source on this is the HESA Staff Record. This is collected for all HEPs on annual basis. The most recent data available at the time of drafting covers the 2019-20 staff record covering the 2018/19 academic year.

Trainees undertaking FE ITT in all settings

463. There is limited data available on FE ITT trainees and the data that is available is not very recent, though DfE is looking to identify new sources and refresh data where possible. The best source currently available is the ITT in FE data report prepared and published by the Education and Training Foundation in April 2018.¹⁰⁶

464. These data sets provide the following information about teachers and trainees with shared protected characteristics in the FE Workforce:

Age & Gender

FE staff

¹⁰⁴ College staff survey: 2018 - GOV.UK (www.gov.uk) - 199 FE were colleges invited to take part – 92% of those had at least one member of staff engage with at least one of the three constituent surveys. This is a high institutional cooperation rate when measured against online surveys of a census nature which receive 10% response rate.

¹⁰⁵ The education and training professionals survey - GOV.UK (www.gov.uk) - 582 providers took part in the organisation-level survey, giving an overview of their staff numbers and contractual composition, deployment across programme and subject areas, and recruitment issues. This represents 50% of the population of ESFA-funded providers in the relevant sub-sectors, comprising of 473 ITPs, 78 ACL providers and 31 SFCs. For the online survey, 1,303 individual members of teaching staff and/or leaders took part.

¹⁰⁶ Initial-Teacher-Education-in-Further-Education-15.16-Published-April-2018.pdf (et-foundation.co.uk)

- a. In FE colleges there are more female than male teachers. The largest grouping of teachers was women aged between 45 and 59 (20%). Teachers/tutors working in Sixth Form Colleges (SFCs) tend to be at the younger end of the age spectrum with a higher proportion of staff aged up to 34 (30%) compared with teaching staff in ITPs (20%). In contrast, ITPs have more teaching staff aged 55 and over (26%), however less for teachers/tutors in SFCs (18%). Both provider types employ more women than men: SFCs (64%) and ITPs (63%);

HEP staff

- b. as in FE colleges, there are more female (54%) than male (46%) academic staff. In terms of age, the highest proportion of staff are employed in the 31-35 and 36-40 age brackets (15% in both groups); and

ITT Trainees

- c. around 60% of FE ITT learners in 2015/16 were women, which is broadly in line with the FE/HE workforce gender profile. The average age of FE ITT learners is 37.

Ethnicity & Nationality

FE staff

- a. Most of the teachers in colleges were white, only a small proportion (6%) were BAME. Most teachers (95%) described themselves as British; and
- b. the ETP tells a similar story with more than nine in ten staff working in independent training providers (ITPs) and sixth form colleges (SFCs) who described themselves as white/white British (93% and 92% respectively);

HEP staff

- c. most academic staff in HEPs were white (76%); 15% came from other ethnicities. No data is collected on nationality; and

ITT Trainees

- a. the profile is more like HEP staff as 84% of trainees were white, with the remaining 18% coming from other ethnicities.

Disability

FE staff

- a. The CSS and the ETP asked teachers whether they had any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more. Around one in seven (15%) teachers in FE colleges said that they had a disability. Around one in six staff working for ITPs and a similar proportion working for SFCs said that they had a disability (17% and 18% respectively), and around one in seven for staff working in SFCs (15%);

HEP Staff

- b. 4% of academic staff are known to be disabled; and

ITT Trainees

- c. 12% of ITT trainees in 2015/16 declared they had a disability.

465. Across all data sets there is no further evidence related to other protected characteristics.

466. This clause is being included as an enabling power that would be activated later through commencement regulations should it be deemed necessary to do so. This means that there is no measure against which an impact can currently be assessed.

467. The plans for the wider ITT reform (outside of the Act) should not adversely impact any protected characteristic, and the design of the programme should support equality of opportunity. The above data suggests that FE teacher trainees and trainers are a diverse group. Overall, the purpose of this work is to bolster ITT and improve the content so that all those who access it are best able to deliver high quality training. The Government will seek to continue to make teacher training as accessible as possible (for example, by putting apprenticeship and qualification-based routes on a par in terms of accessibility and outcomes). It is for ITT providers to ensure that their staff and trainees can access training in a manner which is compliant with equality law.

Monitoring and Evaluation

468. Unable to determine currently. The Government will undertake relevant procedures to ensure full impact is assessed at the point any secondary legislation is implemented. As noted above the Government is implementing measures to improve the quality and quantity of data available on the FE workforce. This means that there will be an improving evidence base which can be used to assess and monitor the impact of measures introduced in the future through this clause.

Measure 9: Office for Students (OfS) quality assessments

What is the problem under consideration? Why is Government action or intervention necessary?

Summary

469. Regulating quality in HE in England is a key function of the OfS. The OfS already regulates based on absolute student outcomes. This measure is a technical measure which will put beyond doubt the ability for the OfS to make assessments of quality against minimum numerical thresholds which will inform decisions about where, when, and how to make regulatory interventions with OfS registered providers and inform decisions on new OfS registration applications. This measure also makes clear that the minimum expectations of quality can be set by reference to absolute performance data on outcomes which apply across **all** English HE providers. In setting these minimum expectations, absolute data will be just one factor that the OfS considers when making assessments on quality, alongside other qualitative and situational factors. The OfS will take a provider's wider context into account, including student characteristics where appropriate, when making a final decision about a provider's performance.

470. Intervention is necessary to ensure all students are entitled to the same minimum level of quality. It puts beyond doubt the OfS's ability to express minimum requirements for quality without reference to "benchmarked" indicators and without assessment of an individual provider by reference to the outcomes it would expect from providers in a similar position (e.g., courses, socioeconomic intake) which could risk entrenching disadvantage into the regulatory system. The OfS may, however, should it wish, consider benchmark values when considering the wider context of a provider's performance.

Overview

471. The aim behind the Higher Education Research Act 2017 (HERA) was to create a single market-based regulator, the OfS, that would focus on delivering more choice and competition in the HE sector and protecting the interests of students and taxpayers by ensuring students are able to achieve the best possible outcomes and value for money on their investment in higher education.

472. Regulating quality in HE is a key function of the OfS. The technical measure (which serves to ensure minimum expectations of quality in the sector) will support the OfS in its ability to act and reduce the potential risk to students of choosing a course which offers low quality/ poorer student outcomes. In doing so, the

measure serves to protect the interests and outcomes of students, including those from disadvantaged backgrounds.

473. To be registered, and continue to be registered, as a higher education provider in England with the OfS, providers must meet certain prescribed measures of quality. Quality includes the quality of course design and delivery, the quality of students' academic experience and the support provided to them, and the **outcomes** students achieve. In relation to student outcomes, the OfS applies a set of minimum requirements for quality for all providers by reference to absolute performance data. If a provider falls below these minimum expectations, then this triggers further consideration by the OfS. If, after examining the case further (by applying judgement and context), the OfS concludes that a provider applying to register does not meet the necessary quality requirements, it may decide not to register a provider or to take regulatory action, including sanctions, where it is an existing registered provider.

474. This measure makes it expressly clear in primary legislation that the OfS may continue to use this approach and apply minimum expectations to all providers which can be set by reference to absolute student outcomes and, will put beyond doubt that the OfS is able to regulate in line with these minimum expectations when making assessments on quality as one factor alongside applying judgement and context.

475. In practice the measure will not affect the OfS's current approach but put beyond doubt existing powers to ensure the OfS can achieve its regulatory objectives, enabling the OfS to improve quality across the HE sector and ensure all students are entitled to the same minimum level of quality.

What are the policy objectives and the intended effects?

476. A priority for this Government and an important manifesto commitment is to drive up quality and standards in HE, and to tackle pockets of low-quality provision, which is a fundamental part of its levelling-up agenda.

477. The Government fully supports the OfS aim to ensure that decisions on regulatory intervention and registration can be made in relation to minimum expectations of quality which apply across the whole of English HE provision and the OfS should be able to use the full range of its powers and sanctions where quality of provision is not high enough. Every student, regardless of their

background, has a right to expect a minimum standard of education that is likely to improve their prospects in life.¹⁰⁷

478. This measure aims to put beyond doubt the OfS's existing powers and allow it to meet Government ambitions in tackling low quality.

What policy options have been considered, including any alternatives to regulation?

Option 0 – Do nothing.

479. Retain the existing legislation and rely on the current OfS consultation on its overall regulatory approach to quality and the way in which it uses metrics and context when making quality assessments. This approach will not put beyond doubt the OfS's ability to regulate at a time when the Government need the OfS to be taking robust regulatory action on quality.

Option 1 - introduce primary legislation (preferred).

480. This technical measure will put beyond doubt that the OfS can apply minimum expectations to all providers by reference to student outcomes measured in absolute terms. In setting these minimum expectations, absolute data will be just one factor that the OfS considers when making assessments on quality, alongside other qualitative and situational factors.

481. This measure aims to make expressly clear the ability of the OfS to assess and regulate English HE provision by enabling the OfS to improve quality across the HE sector.

Rationale and evidence

482. This measure protects the existing approach by the OfS in assessing quality by reference to student outcomes. Thus, there is no impact from this measure expected on HE providers.

483. The OfS is currently consulting on its overall approach to quality, including consideration of whether to raise the minimum expectations of the quality of student outcomes. The OfS will be responsible for implementing the changes, and therefore will consider the impacts if any changes to the framework are introduced.

¹⁰⁷ Student outcomes vary by student characteristics: Differences in student outcomes (Office for Students).

Where the detail of any regulatory proposals has the potential to impact on regulatory burden the OfS will consider this in its decisions.

Expected level of business impact

484. This policy will apply to all those applying to register as HE providers with the OfS and all HE providers registered with the OfS. As of February 2022, there were 420 higher education providers on the OfS register. There is no impact on HE providers for this measure as it is technical in nature. The OfS is already regulating based on absolute outcomes, so in practice the measure will not affect the OfS's current approach, and it is assumed providers are familiar with this. The intention is to put beyond doubt the OfS's powers, so the OfS can act in future to improve outcomes for students where there are pockets of low-quality provision.

485. This measure puts beyond doubt the OfS's existing powers and means that the OfS's regulatory regime for student outcomes will continue to be enforced. There is an implication that providers will need to take the actions necessary to ensure they meet requirements for quality or to engage in any intervention. However, this burden is already captured in estimates of the regulatory burden when the framework was first designed, and this measure ensures that it will operate as intended. Where the detail of any regulatory proposals has the potential to impact on regulatory burden the OfS will consider this in its policy decisions.

Key risks and assumptions

486. No risk and assumptions as no change to the current approach is being introduced.

Summary and preferred option with description of implementation plan

487. The Government wish to proceed with option 1 and have put forward a technical measure which makes it expressly clear that the OfS can apply minimum expectations to all providers which can be set by reference to absolute student outcomes and put beyond doubt that the OfS is able to regulate in line with these minimum expectations when making assessments on quality as one factor alongside applying judgement and context.

488. In practice the measure will not affect the OfS's current approach but put beyond doubt existing powers, enabling the OfS to improve quality across the HE sector and to ensure all students obtain the same minimum level of quality. It will also support the OfS's regulatory objective to ensure all students from all backgrounds, are able to progress into employment, further study and fulfilling lives, and their qualifications hold value over time.

489. This measure aims to put beyond doubt the ability of the OfS to assess and regulate English HE provision by enabling the OfS to improve quality across the HE sector.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

490. This measure puts beyond doubt the OfS's existing approach and does not introduce any change. This means there will be no direct impacts on the sector from the introduction of this primary legislation. As such there are no costs or benefits to monetise.

Direct costs and benefits to business calculations

491. This measure does not have any direct costs and benefits to business as it is technical in nature. The OfS is already regulating based on absolute outcomes, so in practice the measure will not affect the OfS's current approach. The OfS is currently consulting on its overall approach to quality, including consideration of whether to raise the minimum expectations of quality. The OfS will be responsible for implementing the changes, and therefore will need to consider the impact of any changes as part of its policy decision-making.

Impact on small and micro businesses

492. This measure does not have any impact on people with small and micro businesses as it is technical in nature. The OfS is already regulating based on absolute outcomes, so in practice the measure will not affect the OfS's current approach. The OfS is currently consulting on its overall approach to quality, including consideration of whether to raise the minimum expectations of quality. The OfS will be responsible for implementing the changes, and therefore will need to consider the impact of any changes as part of its policy decision-making.

Equalities and wider impacts

493. As part of the introduction of the regulatory framework, the OfS, carried out an equality impact assessment and assessed the impact of conditions B1, B2, B3, B4 and B5 as positive.¹⁰⁸ This measure protects the existing approach by the OfS in assessing quality by reference to student outcomes (condition B3). The

¹⁰⁸ OfS 2018.09 Equality impact assessment: Regulatory framework for higher education (officeforstudents.org.uk)

approach was examined as part of the impact assessment of the regulatory framework for higher education.¹⁰⁹

494. The OfS is currently consulting on its overall approach to quality, including consideration of whether to raise the minimum expectations of quality. The OfS will be responsible for implementing the changes, and therefore will need to consider the impact of any changes as part of its policy decision-making.

Monitoring and Evaluation

495. The OfS is already regulating based on absolute outcomes, and in practice the measure will not affect the OfS's current approach but put beyond doubt existing powers. The current approach relates to the OfS's objective of ensuring that all students from all backgrounds receive a high-quality academic experience, and their qualifications hold their value over time in line with sector-recognised standards.

496. The OfS is responsible for the implementation of its regulatory framework and its day-to-day operation. The OfS has a duty to prepare an annual report on its performance and the operation of the framework.

¹⁰⁹ - Securing student success: Regulatory framework for higher education in England - impact assessment (publishing.service.gov.uk), paras 136 to 141

Measure 10: Careers information

What is the problem under consideration? Why is Government action or intervention necessary?

Summary

497. Careers information helps students to choose their pathways, improve their life opportunities and contribute to a productive and successful economy.

Current provider access legislation

498. Provider access legislation was introduced in 2018.¹¹⁰ This law requires all state-funded secondary schools to ensure that there is an opportunity for a range of technical education and training providers to access pupils in year 8-13 for the purpose of informing them about approved technical education qualifications or apprenticeships.

499. The Government knows that more needs to be done to correct the imbalance between the amount of information between academic and technical pathways that young people receive.

500. Provider Access Legislation has been in force for three years, yet pupils continue to lack opportunities to meet with a sufficient range of providers. For example, only 37% of schools and colleges achieve the 'provider encounters' Gatsby Benchmark which requires encounters with the full range of providers of academic and technical options.¹¹¹

501. A January 2019 report by the Institute for Public Policy Research found that only 40% of schools were complying with the Provider Access Legislation requirement to publish a provider access statement.¹¹² Furthermore, 70% of FE providers said that it is difficult to access schools in their area, and only 30% said that the situation had improved in the year since the introduction of the Provider Access Legislation.

502. Small numbers of pupils in year 8+ reported (in 2019) that their schools had provided them with the opportunity to learn about vocational or technical options

¹¹⁰ <https://www.legislation.gov.uk/ukpga/1997/44/section/42B>

¹¹¹ <https://resources.careersandenterprise.co.uk/resources/encounters-higher-and-further-education-practical-ideas-achieving-gatsby-benchmark->

¹¹² <https://www.ippr.org/research/publications/the-baker-clause-one-year-on>

from FE colleges (38%), from apprenticeship providers (32%), from university technical colleges (UTCs) (25%), and from Studio Schools (5%).¹¹³

503. In years 9 and 10, most young people reported that they were spoken to about GCSEs (95%) and A levels (53%). Far fewer reported being spoken to about BTECs (45%) and vocational choices (15%).¹¹⁴

Why is Government best placed to resolve the issue? Could the issue be resolved without intervention?

504. The current legislation leaves much to the school's discretion in how exactly they choose to follow the legislation, but many do not follow the spirit in which the law was intended. All state funded schools are required to allow access to providers of technical qualifications or apprenticeships for them to provide information to the pupils. Some schools handpick the pupils which means not all pupils get the information and some schools do not give providers enough time to see the students.

505. To help schools to fulfil their legal obligations, the Government has funded the Careers & Enterprise Company (CEC) to roll out a careers infrastructure nationally. This includes Careers Leader training, to enable the development of careers programmes in schools, and Careers Hubs, to support collaboration and sharing of good practice. Further Government-funded resources, to help schools to deliver meaningful encounters with education and training providers for their pupils, include Uni Connect, the Apprenticeships Support and Knowledge for Schools and Colleges (ASK) programme and a practical guide for schools, 'Encounters with further and higher education: Practical ideas for achieving Gatsby Benchmark 7'.¹¹⁵

506. This support has led to improvements but there is still some way to go before there is full compliance with the provider access legislation. The Government wants to go further to address this.

507. On 21 January 2021, the Government *published Skills for Jobs: Lifelong Learning for Opportunity and Growth*. The Government announced a three-point-plan to enforce the Provider Access Legislation:

¹¹³https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/786040/survey_of_pupils_and_their_parents_or_carers-wave_5.pdf

¹¹⁴ https://www.youthemployment.org.uk/dev/wp-content/uploads/2019/05/2019-Youth-Employment-UK-Report_FINAL-1.pdf

¹¹⁵ [1445_bm7_final.pdf \(careersandenterprise.co.uk\)](https://www.careersandenterprise.co.uk/1445_bm7_final.pdf)

- a. Create a more specific set of minimum legal requirements for provider access to pupils, specifying who is to be given access to which pupils and when (which is now being introduced through the Skills and Post-16 Education Act);
- b. take tougher formal action against non-compliance with the Provider Access Legislation; and
- c. Make Government-funded careers support for schools conditional on compliance with the provider access legislation.

508. The Government is seeking to strengthen the existing Provider Access Legislation to make it clearer what the requirement to allow access to providers of technical education or apprenticeships should mean in practice. Increased clarity on what state funded schools need to deliver should make compliance easier. The Skills and Post-16 Education Act will strengthen the existing legislation so that every pupil meets providers to learn about technical options and inform decisions about their next steps. This measure will also ensure that all encounters are meaningful for pupils by establishing new minimum legal requirements about their duration and expectations about content.

509. As schools have interpreted and implemented the legislation in their own way it has proved difficult to monitor compliance robustly - this legislative change will make it easier. At consultation, the Government will propose a clear, transparent, and consistent process that has a clear escalation process built in. In some circumstances, the Government will also consider issuing a direction to force schools to comply in the event of serious/repeated cases of non-compliance. The process for monitoring and evaluation will be covered in the updated statutory guidance. Strengthening the legislation and updating the statutory guidance with examples of good practice will assist schools to know what is expected of them to achieve compliance and will ensure all pupils are included. The statutory guidance will give clear examples and will also explain the consequences of non-compliance. The Government remains committed to consulting on this updated statutory guidance that will underpin the new duty.

Description of options considered

Option 0 – do nothing

510. The Government has evidence that more needs to be done to ensure young people receive information about approved technical qualifications and apprenticeship pathways. If the Government do not make these changes, then some young people will not be given the information about their options regarding approved technical qualifications and apprenticeships. If young people do not have

information on the range of options, they may not be able to make good career/transition decisions. This could result in young people not in Education, Employment or Training (NEET), them deciding they later decide to change and/or a lower uptake of technical education or apprenticeships.

Option 1 (Non regulatory)

511. The Government has already implemented a number of non-regulatory solutions to improve compliance. The Government fund the CEC to support schools, provide training, and share resources/good practice with schools. Drawing on research findings and discussions with schools, providers and key stakeholders, the Government is already sending clear messages (including through a ministerial letter to all secondary school head teachers) about the importance of the Provider Access Legislation and the need for all schools to take action to comply. The Government has intervened directly to enforce compliance, including through letters to schools and multi-academy trust (MATs) in response to specific complaints of repeated refusal to engage with any providers. However, there is evidence which suggested the level of compliance remains low which is why the Government is now looking to strengthen the existing legislation.

Option 2 - Strengthen the primary legislation

512. This is the Government's preferred option as previous non regulatory attempts to improve compliance have failed to make a marked improvement. The Government want to strengthen the legislation through the Skills and Post-16 Education Act to make it clearer what the requirement to allow access to providers of technical education or apprenticeships should mean in practice. This option was announced in the Skills for Jobs white paper. Creating a more specific set of minimum legal requirements for provider access to pupils, specifying who is to be given access to which pupils and when, will clarify what is expected of schools and will make it easier for the department to monitor compliance.

Option 3 – Secondary legislation

513. The Government has the option to use the regulation making power in the original provider access legislation to make provision as to who is to be given access to pupils, which pupils they will be given access to, how this will happen and when. The Government has discounted this option as they want to put more detail into the primary legislation to make the requirements for compliance more specific whilst keeping the option for the Secretary of State for Education to also have the power to set out further detail in secondary legislation of the provider encounter in each key phase. Putting this into primary legislation signals the importance the Government places on ensuring that all young people get to hear about their options in technical qualifications and apprenticeships.

Option 4 – Strengthen the statutory guidance

514. The Government has the option to strengthen the statutory guidance to make it clearer how schools could comply with the legislation. The Government has discounted this option because the current approach leaves too much to the statutory guidance and schools' interpretation of the law. The statutory guidance already specifies what is needed to comply with the law as it currently stands so cannot go any further in terms of what schools 'must' do. The Government wants to put the requirements into the legislation and will update the statutory guidance to reflect this change.

Policy objective

515. The Government wants to make sure that there are opportunities for providers of technical education and apprenticeships to access year 8-13 pupils for the purpose of informing them about approved technical education qualifications and apprenticeships. Schools must allow providers to have a reasonable amount of time to meet the pupils and ask providers to give all pupils 'career-focussed' experiences, which will include:

- a. sharing information about both the provider and the approved technical education qualification and apprenticeships that the provider offers;
- b. explain what career routes those options could lead to;
- c. provide insights into what it might be like to learn or train with that provider; and
- d. answer questions from pupils.

516. The indicators of success for this policy will be an increase in the number of schools complying with the law and an increase in young people saying they have had this information.

517. The Government is still looking at ways of monitoring compliance and enforcement, but this will be explained in the underpinning statutory guidance which will be published before the strengthened legislation comes into force.

518. Providing young people with better information about technical education and apprenticeship options will better enable them to choose training and career paths that better suit them. This will also help address local and national skills needs and reduce the likelihood of becoming NEET.

Summary and preferred option with description of implementation plan

519. The Government's preferred option is to strengthen the legislation through the Skills and Post-16 Education Act. The current statutory guidance explains how schools can meet the statutory requirements, but it has been left at the discretion

of the schools to decide how to adhere to the legislation. As a result, not all schools have followed the legislation in the spirit it was intended so the Government has now decided to strengthen it. By strengthening the legislation schools will know what they need to do to comply with the legislation. The Government will publish underpinning statutory guidance and examples of good practice for the schools to follow.

520. The arrangements will come into effect during the academic year 22/23. The department will be monitoring compliance and is responsible for enforcement of the new arrangements.

Assessing the impact of the preferred option

Impact on stakeholders

521. The Government expects the legislation to have the following impacts.

Stakeholder	Benefits	Costs
Schools	Greater clarity on what they need to do to comply with the law.	Familiarisation with new law Adding careers sessions to timetable
Providers of approved technical qualifications and apprenticeships	Increased enrolments and associated revenue	Familiarisation with new law Delivering careers sessions
Pupils	Improved information about study and career options enables pupils to make more appropriate transitions – thereby leading to improved wellbeing and better labour market outcomes	Opportunity cost of time spent on careers session as opposed to another lesson.

Counterfactual

522. Schools are already under a legal duty to provide access to providers of technical education and apprenticeships. This measure will make the requirements more specific in a bid to increase compliance with the existing Provider Access Legislation. The Government expects many schools to already be compliant with no changes needed; i.e., no impact from this measure. At the other end of the spectrum, some schools may currently offer no such careers sessions and so compliance with the legislation will require the provision of six new sessions between year 8 and year 13. Many schools sit between these positions.

523. The survey evidence presented above substantiates this position – with a significant minority of pupils receiving careers advice relating to technical

education options, and with most FE providers stating that it is difficult to access schools in their area. Furthermore, evidence from the CEC indicates that only approximately a third of schools are compliant with Gatsby benchmark 7 – relating to careers advice from a range of providers of academic and technical options. However, this evidence does not correspond directly to the quantity and nature of careers advice provided by schools; i.e., how many sessions are offered, to which pupils, and delivered by whom; nor to the requirements of the existing or amended Provider Access Legislation as Benchmark 7 includes e.g., HE visits. Therefore, a key uncertainty is how many, and how far, schools already comply with the requirements placed by the Skills and Post-16 Education Act.

524. It is important to note that schools are already under a legal duty to provide access to providers of technical education and apprenticeships. As such, any additional costs incurred from adding sessions to timetables to meet the specific requirements of this measure are in fact the costs of following good practice already being displayed by other schools.

Proportionate approach to analysis

525. There are three key sources of uncertainty that preclude a robust quantitative assessment of the impact of the measure:

- a. How much careers provision is already happening in schools that would meet the requirements of the measure, as described above;
- b. degree of displacement/substitution, and the wide variety of ways in which schools can comply with the legislation – while some schools may choose to ‘add’ sessions to the timetable to comply with the requirements, many schools will absorb the new sessions into their existing timetables. The careers sessions could replace existing careers classes, classes for specific subjects, or other time e.g., assemblies and free periods. This impacts the ability to cost the measure, in, because the principal cost relates to what pupils and teachers would be doing if they were not providing the required careers sessions – and this can vary considerably; and
- c. the marginal benefits of careers advice. There is a range of evidence that supports the benefits of careers advice to pupils – some of which is set out below. However, the Government do not have robust estimates of the causal impact of an additional careers session, with a particular type of provider, on pupils’ future career choices and labour market outcomes. This impacts the Government’s ability to quantify the benefits of the legislation in particular.

526. The evidence presented above provides a robust basis for the Government’s assessment that compliance with the Provider Access Legislation is

low, and that further efforts to reinforce the law is warranted. However, the Government is not able to provide a robust, quantitative estimate of (i) precisely how many visits from providers of technical education and apprenticeships, required under the Provider Access Legislation, are provided to pupils at present, (ii) by how much this would increase with the measure, or (iii) the costs and benefits of this latter.

527. Consequently, the approach taken in this IA is to estimate the number of schools, providers of approved technical qualifications and apprenticeships, and pupils impacted to give a sense of scale for the measure, and to provide a qualitative assessment of the costs and benefits, drawing on the evidence available.

Impact on schools

528. In 2020/21, there were over 4,800 state-funded secondary schools, state-funded special schools, and pupil referral units in England. Note that the latter two figures include the total number of institutions irrespective of whether they provide secondary education; therefore, not all will be in scope of the legislation.

Table 25: Schools potentially in scope

	Number of schools, 2020/21
State-funded secondary	3,458
State-funded special school	1,005
Pupil referral unit	348
Total	4,811

Source: Explore Education Statistics

529. The principle direct impacts on schools will be the cost of familiarisation with the new requirements and adding the required careers sessions to the timetable.

530. It is likely that these costs will be modest.

531. While schools will need to familiarise themselves with the updated requirements, the measure represents a refinement and clarification to the existing law, rather than a substantial new requirement with which schools will be unfamiliar.

532. The Government expects the ‘timetabling’ costs to be modest. In a given academic year, compliance with the measure would require timetabling two sessions for each of years 8 or 9, 10 or 11, and 12 or 13. In most cases, this can be absorbed within existing timetables and existing resources.

Impact on pupils

533. Schools will have flexibility in when to provide the required careers sessions across key stages 3 to 5. Consequently, providing a precise estimate of the number of pupils within scope of the regulation is challenging. To give a sense of scale, the Government can look at the number of pupils in years 8, 10, and 12 in 2020/21. On this basis, in 2020/21 the measure would have applied to close to 1.5 million pupils.

Table 26: Estimated number of pupils potentially within scope, 2020/21

Pupil headcount, 2020/21			
	Year group 8	Year group 10	Year group 12
State-funded secondary	623,072	578,853	231,262
State-funded special school	13,436	12,474	6,431
Pupil referral unit	734	2,952	321
Total	637,242	594,279	238,014

Source: Explore Education Statistics

534. There will be an opportunity cost for pupils. The time spent on visits from providers of technical education and apprenticeships to comply with the act could be spent otherwise e.g., further lessons for a particular subject, or an enrichment activity. This is likely to be a negligible cost because compliance with the measure will require only a single lesson per key stage, and this is highly unlikely to impact attainment.

535. The principal benefit to the proposed changes will fall to pupils. The act will provide for pupils to receive balanced information on the range of opportunities from both academic and technical pathways. This will enable pupils to make better-informed transitions and choose education paths that are better suited to them. For pupils who are better suited to a technical path – and would otherwise have chosen an academic path, or to proceed straight to employment – this could lead to improved well-being and labour market outcomes. A literature review by the Education Endowment Foundation¹¹⁶ finds that, while there is a degree of postcode lottery with respect to the quality of careers advice varying across schools, most studies investigating the impact of careers education find that it leads to improved educational outcomes, economic outcomes, and social outcomes.

¹¹⁶ Careers education | EEF (educationendowmentfoundation.org.uk)

Impact on Providers of approved technical qualifications and apprenticeships

536. Finally, as set out in the main body of the Skills and Post-16 Education Act Impact Assessment, in academic year 2019/20 there were 1,910 FE providers who might be indirectly impacted by the legislation. Some of these providers will have the opportunity to deliver careers sessions in schools.

537. For such providers, there will be a cost incurred in delivering sessions to pupils in schools. However, the regulation does not place any duties on FE providers to provide sessions, and this cost may be outweighed by the considerable opportunity to increase student enrolments.

Direct costs and benefits to business calculations

538. The direct impacts of the legislation will fall on schools – as the institutions that need to act to comply with the law. The legislation will only apply to publicly funded schools, and as public-sector bodies, they are excluded from the Business Impact Target and EANDCB methodology. The legislation will not apply to independent schools or FE colleges – education organisations that are in scope of the Business Impact Target.

Risks and assumptions

539. The Government has evidence to show that not all schools are complying with the current legislation as not all young people say they have heard about the technical education and apprenticeship options available to them.

540. It is assumed that by strengthening the law and publishing updated statutory guidance more schools will comply.

541. It is assumed this change in the law will result in an increase in young people applying to do either a technical qualification or apprenticeship at key transition points.

542. It is assumed that this change in the law may result in less people becoming NEET after they leave school as they are aware of other options available to them.

543. In terms of risks, schools may say that this results in an increased burden on them. The Government is strengthening the legislation to outline who providers should see, when and what should be covered in that encounter. The Government will mitigate this by providing updated statutory guidance and case studies outlining good practice.

Impact on small and micro businesses

544. The direct impacts of the measure fall on the public sector, i.e., publicly-funded schools. Some of the indirect impact on providers of technical education and apprenticeships will fall on small businesses. As set out in the Small and Micro Business Assessment for the act, in 2019/20 there were at least 520 Independent Training Providers with fewer than 50 employees delivering FE in England.

545. The Government assess that the regulation does not create a disproportionate burden on these private providers. They are not placed under any duty to engage with schools in the provision of careers advice. Further, they may have the opportunity to realise potentially significant benefits from increased learner numbers.

Equalities and wider impacts

546. As the department for Education is a public body, the Government must comply with the public sector equality duty in section 149(1) of the Equality Act 2010.

547. In developing these proposals to strengthen the existing Provider Access legislation, the Government has considered the impact on persons who share protected characteristics.

548. The Government is required to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Equality Act 2010.
- b. improve equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

549. This assessment has considered whether any of the Government's proposals might impact (positively or negatively) on students who share protected characteristics. For the purposes of the public sector equality duty, the 'protected characteristics' are disability, race, age, religion or belief, pregnancy or maternity, sex, sexual orientation, and gender reassignment.

550. The Government has not identified any aspects of its government-proposed changes to strengthen the Provider Access legislation that would have a negative impact on students who share particular protected characteristics. All students

who are in year 8 to year 13 will benefit from having contact with providers of approved technical education and apprenticeships to enable them to have information to help them to make an informed choice about further study or training.

Monitoring and Evaluation

551. Current monitoring includes feedback from the CEC (via self-assessment through the Compass+ digital tool) on the numbers of schools saying they are achieving the Gatsby benchmark 7, feedback from the Association of Employment and Learning Providers (AELP) and the Association of Colleges (AoC) and any specific complaints that come into the department from individual training providers to complain they cannot get access to a local school.

552. Despite strong encouragement by the department to come forward, the number of complaints from providers has been extremely low. This is due to:

- a. Lack of awareness. Providers are unclear where to address their complaint and what process to follow;
- b. lack of time. Where providers are aware of individual school complaint processes, they often do not have time to pursue them, particularly if provider access problems are across a geographical area and involve several schools; and
- c. concerns about provider-school relationships. Providers are reluctant to risk further damage to relationships with local schools by raising their concerns.

553. The strengthened law will introduce a clear minimum set of requirements for compliance with the legislation, making it much easier to identify non-compliant cases and take appropriate action. The Government is working on the details of a new monitoring and evaluation plan.

554. This includes, designing a clear, transparent, and consistent process that involves the right organisations and has a clear escalation process built in. This also includes considering, in some circumstances, a legal direction to the school to force compliance in the event of serious/repeated cases of non-compliance. The process for monitoring and evaluation will be covered in the updated statutory guidance which will be subject to consultation and published before the strengthened legislation comes into force.

555. The Government can foresee no circumstances or changes in the market or sector that would require changes to the preferred option.

Measure 11: Essay mills

What is the problem under consideration? Why is Government action or intervention necessary?

556. There is growing concern in Government and among higher education providers about students' use of essay mills. The use of plagiarised assignments threatens to undermine the reputation of the country's education system. Students who cheat may enter the workforce without the requisite skills, knowledge, and competence. This could result in lost output to the economy because their productivity may be lower, as well as impose additional costs on employers to address skills gaps and training needs.

557. Government intervention is required to criminalise the provision and advertising of cheating services to ban their operation and to underpin wider activity to stop students using such services. Essay mills are facilitating cheating and putting the futures of students who use them at risk. Students may receive also penalties from their education provider. Their practice is unethical, and intervention therefore is justified. Costs to suppliers of these services are a necessary and fair impact of the legislation.

What are the policy objectives and the intended effects?

558. The aim of this policy is to safeguard the academic integrity and standards of post-16 and higher education in England. The legislation will make it a criminal offence to provide, arrange for another person to provide, or advertise contract cheating services for financial gain to students taking a qualification at a post-16 institution or sixth-form, enrolled at a higher education provider in England or entered to sit an exam for a regulated qualification in England. It will enable prosecution of individuals and bodies committing these offences (or a substantial part of the offence) in England and Wales. It will send a clear message that contract cheating services are illegal, discouraging essay mills from targeting students and seeking to limit ban their operation.

What policy options have been considered, including any alternatives to regulation?

Option 0 – Do nothing.

559. The higher education sector takes a number of actions that seek to tackle the problem of essay mills, including:

- Guidance for providers¹¹⁷ on how to solve the threat of ‘contract cheating’ produced by the Quality Assurance Agency for Higher Education (QAA) and Universities UK.
- Guidance published by the National Union of Students (NUS) to alert students to the consequences of contract cheating, sending a clear message that these services are not legitimate.¹¹⁸
- PayPal has committed to working with businesses associated with essay-writing services to ensure its platform is not used to enable deceptive and fraudulent practices in education.
- A new generation of plagiarism detection software focused on authorship investigation which will provide universities with data-backed insight into whether students are doing their own work.
- QAA successfully lodged a complaint to the Advertising Standards Authority against the essay writing company UK Essays.¹¹⁹
- Over 180 institutions have pledged to implement the QAA’s Academic Integrity Charter’s principles and commitments, this includes working with staff and students and, in collaboration across the sector, to promote academic integrity, and act against academic misconduct.
- The Academic Integrity Collective¹²⁰ is a collaboration of more than 20 student unions across the UK, raising awareness amongst students of the importance of academic integrity and lobbying universities, social media providers, internet providers, search engines and Government to do more to tackle the problem of essay mills.

560. This has shone a spotlight on the problem of essay mills but so far has achieved only limited success given the activity is not illegal.

Option 1: Skill and Post-16 Education Act measure that makes it an offence to provide or advertise cheating services to students enrolled at post-16 and higher education providers in England.

¹¹⁷ Academic Integrity (qaa.ac.uk)

¹¹⁸ <https://www.nusconnect.org.uk/articles/a-degree-of-risk>

¹¹⁹ All Answers Ltd - ASA | CAP

¹²⁰ SU Officers are waging war against essay mills | Wonkhe

561. The act would make it a criminal offence for a person to provide, or arrange for another person to provide, in commercial circumstances, a service completing all or part of an assignment for a student such that the assignment could not be considered to have been completed personally by the student. It is also an offence to advertise such a service.

Option 2: Non-legislative options considered:

562. Further support the sector, for example, increasing the amount of Government communications and ministerial engagement on the issue of essay mills. However, as this option would build upon and enhance similar activity that has been previously undertaken, the Government expects that it would have limited impact.

Summary and preferred option with description of implementation plan

563. Option 1 as set out above is the preferred option.

564. The advertising or selling of essay writing services will become an offence in summer 2022. The Government anticipates prosecutions are likely to begin in 2023. An enforcement body is not specified on the face of the act and therefore the police and Crown Prosecution Service (CPS) will lead on investigations and prosecutions.

Problem under consideration and rationale for intervention

565. Academic misconduct takes a wide variety of forms including contract cheating (when a third party, typically an essay mill, completes work for a student which is passed off by the student as their own work). The House of Commons Innovation, Universities, Science and Skills Committee looked at the issue of plagiarism in its report in 2009. It found that opportunities for plagiarism have risen exponentially since 2003, both in terms of material available on the internet and through the development of a writing services market for students.¹²¹

566. There is growing concern in Government and among higher education providers about students' use of essay mills. There is also evidence online of essay mill websites targeting post-16 students. Research commissioned by Ofqual

¹²¹ <https://publications.parliament.uk/pa/cm200809/cmselect/cmdius/170/170i.pdf>

in 2014 indicated that some students were purchasing A Level essays online.¹²² Whilst most students do not cheat, those that do miss the opportunity to learn the skills associated with researching and formulating written work, making them less prepared for future employment. If a student is caught, they also put at risk their academic education and future employment prospects.

567. This also impacts on employers. Students who cheat may enter the workforce without the requisite skills, knowledge, and competence. This could result in lost output to the economy because their productivity may be lower, as well as impose additional costs on employers to address skills gaps and training needs. A growing prevalence of essay mills risks undermining public confidence in qualifications being an accurate signal of ability and threatens the world class reputation of the higher education sector.¹²³ In some cases where students enter professions without the relevant skills, they may also pose a danger to themselves or service users.

568. A report from the Quality Assurance Agency for Higher Education (QAA) estimated the number of essay mills to be in excess of 1,000¹²⁴, noting that it is difficult to provide an accurate estimate due to the nature of the operations of these businesses ranging “*from UK-based organisations registered at Companies House with offices and permanent staff, to one-person operations with minimal infrastructure beyond a computer operating off-shore.*”¹²⁵ Students who engage in contract cheating are also less likely to volunteer to participate in surveys about cheating. A Freedom of Information request made by FactCheck¹²⁶ found that 58 higher education institutions reported a combined total of between 278 and 316 cases of contract cheating in 2017-18¹²⁷ which they averaged to be 5 to 6 cases per institution. The numbers indicate only how many students were caught; the numbers of students who plagiarise and are not discovered may well be higher.

569. There is limited evidence available on the prevalence of contract cheating in the UK, therefore evidence is from international settings and focused on HE. The

¹²² [ARCHIVED CONTENT] Cheating risk from online essays - Ofqual (nationalarchives.gov.uk)

¹²³ The Office for Students agree that essay mills are problematic in their recent blog. <https://www.officeforstudents.org.uk/news-blog-and-events/blog/trouble-at-mill-protecting-students-from-contract-cheating/>

¹²⁴ https://www.qaa.ac.uk/docs/qaa/guidance/contracting-to-cheat-in-higher-education-2nd-edition.pdf?sfvrsn=6197cf81_24

¹²⁵ https://www.qaa.ac.uk/docs/qaa/guidance/contracting-to-cheat-in-higher-education-2nd-edition.pdf?sfvrsn=6197cf81_24

¹²⁶ FactCheck: universities catch less than one per cent of ‘bought in’ essays, own records suggest – Channel 4 News

¹²⁷ 58 institutions out of 99 could say how many contact cheats they caught in the last year. A further 66 did not respond.

QAA in its report on plagiarism in HE states that research on the scale of essay mill use was limited to academics and journalists looking at a relatively small number of cases,¹²⁸ but found that for UK providers instances of academic offences was estimated at around 0.7 per cent of students, noting that this could not be broken down to see how many were specifically students submitting essays bought from custom essay writing services. A 2018 paper in *Frontiers in Education* estimated that a historic average of 3.5% of students engaged in contract cheating in HE worldwide. From 2014 this had increased to around 15.7%.¹²⁹ The latter figure is derived based on a meta-analysis of 12 studies of varying quality and designs from ten countries (including Australia, Saudi Arabia, and Ghana), none of which were from, or likely to be representative of, the UK.¹³⁰

570. Cheating devalues the hard work of students who succeed on their own merit; can lure students away from investing the effort needed to develop the skills and knowledge required by the qualifications they gain; and can provide misleading signals to employers about the knowledge, understanding and abilities of those they recruit. Government intervention is required to criminalise cheating services to reduce their prevalence in post-16 and higher education in England and underpin wider activity to reduce the number of students accessing such services. Legislation to criminalise essay mills activity is in line with the manifesto commitment to improve the quality and standards of higher education, which includes upholding academic integrity.

Rationale and evidence

571. This impact assessment sets out estimates of the expected additional costs and benefits of this measure in the Skills and Post-16 Education Act. The impact assessment draws upon available evidence, from international settings, to enable analysis to be undertaken in an evidence-based way. To address the significant uncertainties in the analysis a range of estimates (low-, central- and high-cost estimates) have been provided.

572. Available data and evidence are also presented within the problem under consideration section to demonstrate the scale of the issue.

128 The Quality Assurance Agency (2016). *Plagiarism in Higher Education*. Plagiarism in Higher Education (qaa.ac.uk)

129 <https://www.frontiersin.org/articles/10.3389/feduc.2018.00067/full>

130 https://www.frontiersin.org/files/Articles/410255/feduc-03-00067-HTML-r1/image_m/feduc-03-00067-t001.jpg

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Option 0 (“Do nothing”)

573. Under this option, cheating services continue to operate, and the costs and benefits would remain unchanged. Essay mills will continue to earn revenues from the provision of cheating services while employers and the economy will bear the costs of employing graduates without the requisite knowledge, skills, and training.

Option 1 (Preferred Option)

574. These proposals will impact on a variety of different groups including:

- a. **Cheating services providers** – providers offering cheating services will lose annual revenue because of this reform, as students at English HE and post-16 providers cease to use their illegal services. However, the providers should always have been aware that their services constituted cheating and that provision of these services was unethical. It may be that additional legitimate services they offer (e.g., proof reading) continue, in which case they will also face costs associated with due diligence checks and adapting their service.
- b. **Tuition support services** – these companies may need to check or adapt their offer to students to ensure what they are offering is legal. familiarisation costs have not been calculated as the providers of these services should already understand what constitutes legitimate help, as opposed to cheating.
- c. **Advertising businesses** – which provide advertising services for essay writing services will also lose some revenue, though some should already have been aware or at least suspected that they could have been advertising on behalf of cheating services.
- d. **Students** – students are aware that the use of essay mills is already considered a form of cheating. The legislation will encourage students to cease commissioning illegal cheating service products. Those who were tempted to cheat may now invest greater time and effort in developing and improving their academic written skills as well as wider learning skills such as independent research and critical thinking. In doing so, they will become more confident, accomplished learners. It is possible that some students who may have become reliant on essay mills could drop out of their courses or fail to achieve their qualifications. However, the Government expects education providers to seek to ensure all pupils and students have access to the support they need to succeed on their course, without the need to use essay mills.

By creating a level playing field in which all students are assessed based on their own work, students who have not cheated may perceive that their

performance is now being assessed on a fairer basis than before, with each student's individual effort properly recognised and rewarded.

- e. **Student Unions** – already promote academic integrity and raise awareness amongst students regarding dangers of essay mills but this work is currently undermined as the activity is not illegal. Criminalising essay mills activity will strengthen and support their work.
- f. **Post-16 providers** – Administrative staff/tutors may choose to update their guidance to make clear that essay mill services are now illegal, but the legislation does not place a duty on them to do so. They will need to inform the awarding organisation about any use of essay mills, as is current process.
- g. **HE providers** – may choose to revise their academic misconduct regulations, policies, and procedures to make clear to students and staff that contract cheating services are illegal. The Government expects that existing guidance will already set out procedures for addressing student cheating, which includes the use of essay mills. Legislation will strengthen provider communications on this issue and discourage students from using essay mill services. It will have a positive impact in raising the prominence and importance of tackling this issue, both within individual HE providers and across the HE sectors, to maintain their reputation and value of degrees.
- h. **Awarding organisations (AOs) and representative bodies (such as the Joint Council for Qualifications)** – may wish to make small updates to guidance to post-16 providers. Existing guidance already sets out that use of essay mills is malpractice and against AO rules and this legislation will strengthen that position. Legislation will have a positive impact on maintaining the value of qualifications.
- i. **Office of Qualifications and Examinations Regulation (Ofqual)** – the independent statutory regulator of qualifications in England may wish to update guidance to ensure AOs/providers are aware of new legislation although the legislation does not place a duty on them to do so. Ofqual may also collect information on incidences of malpractice involving essay mills as part of malpractice data collection they already undertake.
- j. **Office for Students** – the statutory regulator for HE in England (the OfS) is working with other interested parties, through the UK Standing Committee for Quality Assessment and other relevant channels, to find the most effective routes to tackling the threat of essay mills across the higher education sector. This multi-faceted sector-led approach has the potential to reinforce, and be reinforced by, new legislation. Whilst the legislation does not place any new duties on the OfS, they would expect to reflect, within information and guidance issued to students and providers, that this activity is now illegal.

- k. **Quality Assurance Agency (QAA) for Higher Education** - In its capacity as a membership organisation, the QAA, with the support of the Academic Integrity Advisory Group, has published information and guidance to help protect the academic integrity of HE, including how to tackle the threat of contract cheating. Whilst the legislation does not place any new duties on the QAA, they may choose to update their guidance to ensure HE providers are aware of the legislation. The QAA have reported that they intend to renew their campaign to stop advertising paid for by essay mills once the legislation has passed. Given their expertise in the field, they may also play an advisory role to stakeholders such as the CPS and police on the type and extent of essay mill activity in the UK.
- l. **Employers** – legislation reduces the risk of students/graduates entering the workforce without the requisite knowledge, skills and/or competence for the job. Employers will have fewer mismatches while recruiting which will boost productivity and savings through reduced cost of staff turnover in cases where graduates are found not to have the required skills.

575. In line with Better Regulation Guidance, compliance with measures is assumed, thus any financial costs of litigation are excluded from cost estimates as this would be considered a 'sanction.' Detailed assumptions and workings are set out in this Annex.

Cost to cheating services providers:

One off cost: Familiarisation and Advertising

576. It is anticipated that there will be familiarisation costs to these businesses in the first year following the implementation of the policy. The total cost is estimated to be around £9,000 (across all essay writing companies and in the first year only).

Advertising

577. The advertising activity of essay mills can involve paid advertising on search engines, social media, and online advertising platforms; purchasing advertising space on local advertising hoardings and public transport; distributing flyers and business cards on campuses; using social media accounts to target students who say they are struggling with assignments; and in some cases, mailing lists from providers have been obtained by essay mills and used for direct emails.

578. There will be a one-off cost to essay writing businesses to stop their advertising activity. For the purposes of this impact assessment, it is assumed this will be equal to essay writing services taking down their websites, which has been estimated to cost a grand total of around £19,000, (across all essay writing businesses and in the first year only).

579. Additional costs of ceasing essay mills advertising have not been estimated, as there is little information on the current extent of such activity amongst essay writing providers.

Ongoing costs

580. The legislation will make essay mills illegal. This is likely to result in a loss of profit for those unethical essay mill businesses that currently provide this service to post-16 and HE students.

581. It is unclear how these businesses will respond to the introduction of legislation. Possible behavioural responses include a) businesses shut down to comply with new law; b) businesses change their operating model to comply with the legislation i.e., withdraw cheating services to students enrolled at institutions in England and refocus on offering other types of academic support services which are legal or c) businesses move their location and/or only offer services to students enrolled in institutions outside England. Emerging evidence from Ireland and Australia, where similar legislation was introduced in 2019 and 2020, indicates that some essay mills have voluntarily withdrawn their services to students in those jurisdictions.¹³¹

582. For the purposes of this Impact Assessment, it is assumed complete compliance, that is, no businesses will break the law. Calculating lost profit is difficult for the following reasons:

- a. Uncertainty around the number and size of essay mill businesses in existence. It is difficult to determine exactly how many cheating service providers are currently in operation, who owns these sites or where they are based. They can range from UK-based organisations registered at Companies House with offices and permanent staff, to websites or individuals operating with minimal infrastructure off-shore; and
- b. variation in the price of essay writing services which depends on level of study, time constraints, length of coursework and degree classification mark of work.

583. The estimate of lost profit from HE students over the ten-year appraisal period is ~£80.7m with a low estimate of around ~£6m¹³². The central estimate of lost profit from post-16 student/learners over the ten-year appraisal period is

¹³¹ Essay mills quit Australia as UK falls behind but Covid a threat | Times Higher Education (THE)

¹³² In 2019 prices, not discounted. ONS population growth estimates have been used as a proxy for HE student population. Principal projection - UK population in age groups - Office for National Statistics (ons.gov.uk)

~£25.3m with a low estimate of ~£5.4m. The assumptions underpinning this estimate can be found in this Annex.

584. Actual profit lost is more likely to be the lower end of the range of estimates as businesses would adapt their models and continue to operate providing services within the law.

Cost to advertising business providers:

Ongoing costs

585. The legislation will make essay mills illegal. Advertising businesses that have had essay mill suppliers as clients will lose some or all their custom and accordingly the profit that was generated from it, either in part or in full.

586. The Government considers it unethical to advertise services which assist cheating and jeopardise the futures of students, who may receive penalties from their education provider should this be discovered, and intervention therefore to be justified.

587. This impact on advertising businesses has not been calculated as there is limited information on the current extent of any advertising activity among essay writing providers.

Benefits

588. Similar legislation has been recently introduced in Ireland (2019) and Australia (2020). From early indications, legislation appears to have led to some “big name” essays mills, as well as lots of smaller sites, ending their operations in Australia. A court has also recently ordered Australia's largest internet providers to block access to an academic cheating service¹³³. This decision supports the Australian regulators ongoing work to reduce the risk posed by commercial academic cheating services to student interests and the reputation and standing of Australian higher education. The Irish regulator has also indicated that legislation has provided a useful sector-specific directive that cheating services are illegal¹³⁴

Students

589. The main benefit to students is that those who may have been tempted to cheat may now invest greater time and effort in developing and improving their academic written skills, as well as wider learning skills such as independent

¹³³ TEQSA successful in Federal Court action to block access to cheating website | Tertiary Education Quality and Standards Agency

¹³⁴ National Academic Integrity Network (qqi.ie)

research and critical thinking. In doing so, they will become more confident, accomplished learners.

590. Students who work hard to complete their own work will also benefit given their peers, who may previously have used an essay mill, will now be writing their own assignments. By creating a level playing field, in which all students are assessed based on their own work, students who have not cheated may perceive that their performance is now being assessed on a fairer basis than before, with each student's individual effort properly recognised and rewarded.

HE and post-16 providers

591. Legislation to criminalise essay writing services has a positive impact on providers in maintaining their reputation regarding their academic standards and the value of their qualifications.

Employers

592. Reduces the risk of graduates entering the workforce without the requisite knowledge, skills, or training for the job. This reduces the likelihood of employers investing in additional training to upskill graduates to address the skills gap. It may also save any additional administrative costs employers may face in recruitment processes to test graduate skills.

Wider sector

593. There is a benefit to the wider education sector in that criminalising essay mills, would lead to students gaining qualifications on their own merit which would protect the reputation and integrity of the post-16 and higher education sector as a whole.

594. Criminalising essay mills will help ensure students invest properly in developing the skills they need for the labour market and will maintain public confidence in qualifications. Whilst this assessment cannot monetise these benefits, the Net Benefit (Present Value) of the policy would be positive.

Direct costs and benefits to business calculations

595. This policy will apply to all essay mill businesses with the main direct cost of profits foregone from the prohibition of providing essay services, familiarisation with the new regulation and the cost to essay mill companies associated with removing any advertising of their services to comply with the law.

596. The EANDCB is estimated to be £8.6m per year (2019 prices, 2022 PV base year). There are uncertainties and sensitivities around this estimate, as it depends on the behavioural response of essay mills to the legislation.

Risks and assumptions

Risks

597. QAA contract cheating guidance highlights the two main factors why students cheat are opportunity and motivation. This legislation will send a clear message that contract cheating services, selling essays (and other types of work) to students, are not legal, acting as a strong deterrent to those operating these reprehensible services and dissuading students from using these services. It will serve as a tool to enhance the work already taking place to promote the importance of academic integrity and deter, detect, and address incidents of cheating.

598. However, there may be an unintended consequence from imposing this ban in that cheating service providers may move to be located outside England and Wales and/or offer their services to a different market. There is therefore a risk that legislation to criminalise the advertising and provision of cheating service fails to have a positive impact in reducing the number of students in England that use such services.

Assumptions

599. For costs related to cheating services providers, there are uncertainties around the number of businesses, their size and location all of which makes it difficult to accurately estimate the total amount of profit which they could lose because of this legislation. The full list of assumptions is outlined in the cost calculation details alongside this impact assessment.

600. Estimates of lost profit are made further uncertain due to the variation in the price of a purchased essay, limited evidence on UK student demand for essay writing services and international survey evidence is not likely to be representative to England. The Government has assumed that post-16 students and students at HE providers in England as the target population and used different evidence sources to produce estimates, providing a range of figures varied by the assumed price of an essay and the cost of producing that essay. These are based on averages, and it is likely that some writing services will produce an essay for a lower or higher price. The assumptions used for HE and post-16 are stipulated in the cost calculations details.

601. There will be a one-off cost to essay writing businesses to stop their advertising activity. For the purposes of this impact assessment, it is assumed this will be equal to essay writing services taking down their websites. Any additional costs of desisting advertising activity relating to essay mills have not been estimated as there is little information on the current extent of any advertising activity amongst essay writing providers.

602. The full list of assumptions is outlined in the cost calculation details alongside this impact assessment

Impact on small and micro businesses

603. As of September 2021, UK Top Writers listed 1,002 writing services providers.¹³⁵ There are significant uncertainties around this figure as there is no official statistics on the number of such providers. It is unknown where these businesses are located, their size and whether they only provide services to English HE and post-16 students. Some writing services will be small businesses, so this ban could have a disproportionate effect on these businesses. It is unethical to provide and advertise services which facilitate cheating and intervention is therefore justified.

Equalities and wider impacts

604. As is the case now, the Government expects education providers to seek to ensure that all pupils and students have access to the support they need to progress and succeed on their course of study, so that they do not feel they need to turn to essay mills. This legislation does not have any impact on the need to eliminate discrimination, improve equality of opportunity or foster good relations between persons who share a relevant protected characteristic and those who do not (section 149(1) Equality Act 2010).

Wider impacts

605. The Government do not think there will be any impact on individuals or organisations that have not been captured above. Any impacts on the Justice System are captured separately in a Justice Impact Test (JIT). There may be an unintended consequence from imposing this ban in that cheating service providers may move to be located outside England and Wales and/or offer their services to a different market.

Monitoring and Evaluation

606. The purpose of this intervention is to safeguard academic integrity and standards of post-16 and higher education in England and to protect students from accessing cheating services. As education providers and students are the first line

¹³⁵ Best Essay Writing Services (September 2021) | UK Top Writers

of defence in tackling the problem of contract cheating, the Department for Education will work alongside the QAA, the Office for Students, Ofqual and other HE and post-16 sector bodies, including student representatives, to develop a collaborative approach to monitoring and evaluating the impact of legislation. The Government expects this will include a basket of quantitative and qualitative indicators. For example, this could include:

- a. The Department for Education monitoring trends on how many essay mills appear to be targeting their services at students in England;
- b. collecting data on the number of investigations and prosecutions with CPS input, to capture instances of non-compliance with the law and action taken by advertisers to remove essay mill advertising; and
- c. conducting a survey of students on whether they are more or less likely to purchase an essay from an essay writing service now that those providers are illegal, and other relevant indicators informed by feedback and outcomes from broader sector-led enhancement activity.

Cost calculations details

Costs to Essay Mill companies

One off cost: Familiarisation

607. It is anticipated that there will be familiarisation costs to businesses in the first year following the implementation of the policy. This is estimated to be around £9,000 in total.

608. To estimate these direct costs, the Government has made the following assumptions:

- One person per business would spend 30 mins to read and familiarise themselves with the new regulation.
- As of September 2021, UK Top Writers listed 1,002 writing services providers¹³⁶. It should be noted that there are significant uncertainties around this figure as there is no official statistics on the number of such providers. It is unknown where these businesses are located, their size and whether they only provide services to students in England.

¹³⁶ Best Essay Writing Services (September 2021) | UK Top Writers

- It has been assumed that someone in each business will need to become familiar with the new legislation.
- The ONS publish annual estimates of earnings for employees in the UK by four-digit Standard Occupational Classification (SOC)¹³⁷. In 2019, the median hourly earnings for the SOC code 3412 Authors, writers and translators were £15.53. This has been uplifted by an additional 22% to account for employer on-costs, such as National Insurance Contributions, in line with RPC guidance¹³⁸ resulting in an hourly wage of £18.95.
- Assuming one employee in each business reads the new regulation for thirty minutes results in a total familiarisation cost to business for of around £9,000.

Advertising

609. There will be a one-off cost to essay writing businesses to stop their advertising activity. For the purposes of this impact assessment, it is assumed this will be equal to essay writing services taking down their websites, which has been estimated would in total cost around £19,000.

- As of September 2021, UK Top Writers listed 1,002 writing services providers¹³⁹. It should be noted that there are significant uncertainties around this figure as there is no official statistics on the number of such providers. It is unknown where these businesses are located, their size and whether they only provide services to students in England.
- It has been assumed that someone in each business will be responsible for taking their website down and that this would take 1 hour to complete.
- The ONS publish annual estimates of earnings for employees in the UK by four-digit Standard Occupational Classification (SOC)¹⁴⁰. In 2020, the median hourly earnings for the SOC code 3412 Authors, writers and translators were £15.53. This has been uplifted by an additional 22% to account for employer on-costs, such as National Insurance Contributions, in line with RPC guidance¹⁴¹ resulting in an hourly wage of £18.95.

¹³⁷ Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics (ons.gov.uk)

¹³⁸ RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf (publishing.service.gov.uk)

¹³⁹ Best Essay Writing Services (September 2021) | UK Top Writers

¹⁴⁰ Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics (ons.gov.uk)

¹⁴¹ RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf (publishing.service.gov.uk)

- Assuming one employee in each business spends one hour to remove the company website, the total cost to business is estimated to be around £19,000.

Ongoing costs

Lost profit calculation relating to HE: assumptions

610. The QAA in its report on plagiarism in HE states that research on the scale of essay mill use was limited to academics and journalists looking at a small number of cases¹⁴². It found that for UK providers instances of academic offences was estimated at around 0.7 per cent of students¹⁴³, noting that this could not be broken down to see how many students were specifically submitting essays bought from custom essay writing services. This is taken as the low estimate as it may be the case that some students that submit essays from essay mills are not caught. A 2018 paper in *Frontiers in Education* estimated that, based on worldwide studies, a historic average of 3.5% of students engage in contract cheating, and from 2014 this increased to around 15.7%. However, given this is based on international studies, this assessment instead takes 0.7% in the QAA report and double this proportion for the central and high scenario.

611. There were 2,076,465 students enrolled at higher education providers in England in 2019/20¹⁴⁴ and it is assumed students do not cheat more than once per year. The purchase price of an essay will vary depending on the level of education, type of essay (part of a module vs dissertation), deadline and the experience of the writer¹⁴⁵. The following information is taken from the UK essays website¹⁴⁶.

Price per 1,000 Words	2:1 / Merit	First / Distinction
£10-£50	Too low	Too low
£50-£100	OK	Too low
£100-£150	OK	Too low
£150-£200	OK	OK
£200-£250	Too high	OK
£250-£350	Too high	OK
£350+	Too high	Too high

142 The Quality Assurance Agency (2016). *Plagiarism in Higher Education*. Plagiarism in Higher Education (qaa.ac.uk)

143 Based on Universities face student cheating crisis | The Times

144 Table 1 - HE student enrolments by HE provider 2014/15 to 2019/20 | HESA

145 Price Calculator | BuyEssay

146 Guide to Buying an Essay | UKEssays

Figure 4: Price of essay as per UK essays article.

612. For the central and high estimate, it is assumed that the essay is 3,000 words, at a 2:1 degree classification which would cost the student an estimated £450 (£150¹⁴⁷ per 1,000 words x 3). For the low estimate it is assumed that the essay is 2,000 words at a 2:1 degree classification level which would cost the student an estimated £150 (£75¹⁴⁸ per 1,000 words x 2)¹⁴⁹ and are £107 for the low estimate and £161 for the central and high estimates. This is based on the average earnings for a 2:1 undergraduate essay and a postgraduate essay at master's degree level, for each of the word limits assumed in the scenario. Profit per essay is therefore assumed to be £43 in the low scenario and £290 in the central and high scenario.

613. The estimate of lost profit from HE students over the ten-year appraisal period is ~£80.7m with a low estimate of ~£6m.¹⁵⁰

Additional lost profit calculations relating to post-16 contract cheating only: evidence and assumptions

614. There are no reliable studies available that estimate the prevalence of contract cheating at post-16 in England, but it is known that some UK essay mill companies advertise post-16 services. Although plagiarism is not synonymous with contract cheating, the Government also know from Ofqual statistics that a (small) number of plagiarism malpractice incidents are identified each year. A review by Underwood (2006), commissioned by the Qualifications Curriculum Authority, also underscored that cheating in schools was an issue.¹⁵¹ London Economics (2014)¹⁵² undertook a piece of mystery shopper research, focusing on A level English and history essays, and found that UK essay mills services offered A level writing services.¹⁵³ The same report also found that as well as offering undergraduate and postgraduate essay writing and coursework services: Custom

¹⁴⁷ This is the midpoint between £100 and £200.

¹⁴⁸ This is the midpoint between £50 and £100.

¹⁴⁹ Freelance Writing Jobs at UKEssays.com

¹⁵⁰ In 2019 prices, not discounted. ONS population growth estimates have been used as a proxy growing, HE student population. Principal projection - UK population in age groups - Office for National Statistics (ons.gov.uk)

¹⁵¹ 1206_JeanUnderwood_qca-Digital-technologies-in-exams-_report.pdf (publishing.service.gov.uk)

¹⁵²

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/605551/0914_LELondonEconomics-mystery-shopping-exercise-of-web-sites-that-offer-a-range-of-support-services-to-students.pdf

¹⁵³ For example, UK Essays claimed to have over 4,000 researchers and that history and English GCSE A levels were core subject areas, and that they had "loads of researchers in these subjects" and that write about 300 A level essays per month in history (p.4).

Essays were providing A level and GCSE services; UK Essays were providing NVQ level 2, A level and GCSE; UK Essay Writing Services were providing

615. GCSE and A level services. And there is evidence online that essay mills are continuing to offer to write post-16 students' essays for them. Credibly estimating the lost profit to essay mills companies through lost sales to post-16 students however requires the following elements.

616. *An estimate of the price of an essay mills product.* For the low and medium estimates, it is assumed that an essay cost ~£164 (2014 prices) which is simply the average of three quotes from three different essay mill providers to write a 2,000-word A level history essay (London Economics, 2014). For the high estimate, it is assumed that an essay mills product is £220 (2014 prices), which was the quoted cost of a history A level essay by UK Essays, as identified by the same study.

617. *The cost to an essay mills company to produce such a product.* For the low, medium, and high estimates it is assumed to be ~£57. This is based on a simple assumption that it takes 3 hours of time for an essay mills company to produce this work (i.e., including pre-sales, writing the essay, and after-sales service) and it costs £18.95 per hour to the essay mills company. The Government is also assuming here that the essay mills company do not need to complete any additional research into the topic. The latter figure is the median hourly earnings for the SOC code 3412 Authors, writers, and translators in 2019 from a relevant ONS publication¹⁵⁴ which was uplifted by 22%¹⁵⁵ to account for non-wage labour costs in line with RPC guidance.¹⁵⁶

618. *An estimate of the number of contracts cheating incidents that take place each year at post-16.* The table below sets out the assumptions used to derive these which are quite different between the low, medium, and high scenarios. The low, medium, and high estimates of lost profit to essay mills companies due to loss of post-16 sales uses strong assumptions informed by limited and highly uncertain evidence. The very wide range between the high and low estimates partly reflects this significant uncertainty. Sources of uncertainty include the following. Firstly, as stated, there is little research on contract cheating in post-16 settings in England so all figures should be interpreted with this in mind. Secondly, establishing a

¹⁵⁴ Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14 - Office for National Statistics (ons.gov.uk)

¹⁵⁵ RPC_short_guidance_note_-_Implementation_costs__August_2019.pdf (publishing.service.gov.uk)

¹⁵⁶ Note that this could have used a uplift of 30% instead to account for non-wage costs as recommended by the Better Regulation Executive at the Cabinet office (2005); see <http://regulatoryreform.com/wp-content/uploads/2015/02/UK-Standard-Cost-Model-handbook.pdf>

sensible assumption on the number of incidences of contract cheating at post-16 is challenging to do with real credibility; the complexity of the qualifications market means that the number of students that are taking a course where it is theoretically possible to contract cheat on a non-examined assessment (NEA) is unknown. To know this would require intricate knowledge of all post-16 qualifications NEAs. Note that this assessment has assumed that students that contract cheat will purchase a piece of work only where the outcome impacts the final grade. Therefore, NEA, but not homework, is considered here.¹⁵⁷ Finally, estimates of the proportion of students/learners that would contract cheat, and the number of times the average student would choose to do so, if it were possible, are extremely uncertain. Studies that attempt to estimate the prevalence of cheating are based on international evidence, HE, or cheating more generally rather than contract cheating. The central estimate of lost profit from post-16 student/learners over the ten-year appraisal period is ~£25.3m with a low estimate of ~£5.4m.¹⁵⁸

619. The low, medium, and high estimates of lost profit to essay mills companies due to loss of post-16 sales uses strong assumptions informed by limited and highly uncertain evidence. The very wide range between the high and low estimates partly reflects this significant uncertainty. Sources of uncertainty include the following. Firstly, as stated, there is little research on contract cheating in post-16 settings in England so all figures should be interpreted with this in mind. Secondly, establishing a sensible assumption on the number of incidences of contract cheating at post-16 is challenging to do with real credibility; the complexity of the qualifications market means that the number of students that are taking a course where it is theoretically possible to contract cheat on a non-examined assessment (NEA) is unknown. To know this would require intricate knowledge of all post-16 qualifications NEAs. Note that this assessment has made the assumption that students that contract cheat will purchase a piece of work only where the outcome impacts the final grade. Therefore, NEA, but not homework, is considered here.¹⁵⁹ Finally, estimates of the proportion of students/learners that would contract cheat, and the number of times the average student would choose to do so, if it were possible, are extremely uncertain. Studies that attempt to estimate the prevalence of cheating are based on international evidence, HE, or cheating more generally rather than contract cheating. The central estimate of lost

¹⁵⁷ Note however that the legislation defines 'assignment' as an *examination and any piece of work*, therefore the provision of homework assignments, is also covered by the offence, as well as NEA.

¹⁵⁸ In 2019 prices, not discounted

¹⁵⁹ Note however that the legislation defines 'assignment' as an *examination and any piece of work*, therefore the provision of homework assignments, is also covered by the offence, as well as NEA.

profit from post-16 student/learners over the ten-year appraisal period is ~£25.3m with a low estimate of ~£5.4m.¹⁶⁰

Table 27: Assumptions used to estimate the annual incidence of contract cheating (at post-16 only) used for the lost profit estimates

Assumption	Narrative and assumption explanation
<p>Low scenario: This low scenario simply assumes that the total incidence of contract cheating is around 4,400 every year. This is the number of incidents of malpractice (for multiple reasons) reported by Ofqual across their GCSE, AS and A level malpractice stats (2019 year)¹⁶¹ and their malpractice stats in vocational and technical qualifications (2019/20 year).¹⁶²</p>	<p>The incidence of malpractice in the Ofqual GCSE, AS and A level malpractice stats (2019 year)¹⁶³ and vocational and technical qualifications malpractice stats (2019 to 2020 year)¹⁶⁴ was 3,040 penalties (to students) and 1,381 penalties, respectively. This is a total of 4,421 reported incidents. This number of incidents could be deemed an <u>overestimate</u> given that a) malpractice stats refer to malpractice rather than solely contract cheating; and b) the malpractice stats are based on a population that includes pre-16 pupils too (e.g., GCSE pupils taking exams in year 11). It could, however, be an <u>underestimate</u> as contract cheating is difficult to detect so actual incidence will be higher than reported malpractice. The fact that essay mills organisations purport to provide work that is 100% original so plagiarism free (London Economics, 2014)¹⁶⁵ supports this rationale. Note that percentage of reported malpractice penalties that were categorised as ‘plagiarism’ was extremely low for GCSE, AS, and A level (2% of penalties) but was the most common type of malpractice (35% of penalties) for VTQs. This difference reflects the different types of assessment used in VTQs.</p>

¹⁶⁰ In 2019 prices, not discounted

¹⁶¹

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/864504/Malpractice_for_GCSE_AS_and_A_level_summer_2019_exam_series_3.pdf

¹⁶²

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/1012975/VTQ_malpractice_2019_20.pdf

¹⁶³

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/864504/Malpractice_for_GCSE_AS_and_A_level_summer_2019_exam_series_3.pdf

¹⁶⁴

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/1012975/VTQ_malpractice_2019_20.pdf

¹⁶⁵

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/605551/0914_LELondonEconomics-mystery-shopping-exercise-of-web-sites-that-offer-a-range-of-support-services-to-students.pdf

<p>Central scenario: This scenario simply assumes that annual incidence of contract cheating is equal to 0.7% of the total Government funded learners in FE excluding HE (inc. schools).</p>	<p>The 0.7% assumption comes from the QAA's report on plagiarism in HE settings, rather than post-16, and states that research on the scale of essay mill use was limited to academics and journalists looking at a relatively small number of cases.¹⁶⁶ They found that for UK HE providers instances of academic offences was estimated at around 0.7 per cent of students, noting that this could not be broken down to see how many were the result of students submitting essays bought from custom essay writing services. The estimated number of contract cheating incidents at post-16 is therefore assumed to be 0.7% of the total learners (excluding HE). The population of total learners is significantly over 2.7 million. This can be estimated from published statistics based on participation stats (covering 16–18-year-olds)¹⁶⁷ and FE and skills stats (covering adult learners).¹⁶⁸</p> <p>There are factors that could mean this figure is an <u>underestimate</u>. Firstly, a student could contract cheat more than once across multiple courses (and NEAs within a course) over the duration of a single year, meaning the number of contract cheating instances would be higher than simply 0.7% of students/learners. In addition, there are wider estimates on the prevalence of contract cheating that are much higher than the 0.7% used here. For example, a review commissioned by the Qualifications and Curriculum Authority by Underwood (2006)¹⁶⁹ cites international survey evidence by Dr Donald McCabe on US high school students that 15% of students had obtained a term (module) paper from the Internet.¹⁷⁰ The International Center for Academic Integrity (ICAI) reports statistics from McCabe's wider surveys, based on 70, 000 high school students at over 24 high schools in the US, that 58% of high school students admitted to plagiarism.¹⁷¹</p> <p>It is, however, more plausible that this is a significant <u>overestimate</u>. Firstly, it may be unlikely that a student contract cheats more than once considering evidence from a mystery shopper exercise undertaken in the UK for English and history A level. This evidence suggested that the quality of the work produced by essay mills companies is variable and often far below the standard which is commissioned by the student</p>

166 T <https://www.qaa.ac.uk/docs/qaa/quality-code/plagiarism-in-higher-education-2016.pdf>

167 '2. Participation in education and apprenticeships by institution and qualification type' from 'Participation in education, training, and employment', Permanent data table – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

168 'Further education and skills - participation by provider type' from 'Further education and skills', Permanent data table – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

169 1206_JeanUnderwood_qca-Digital-technologies-in-exams-_report.pdf (publishing.service.gov.uk)

170 This high figure reported by Underwood (2006) is from the US and high school students may have more coursework (where contract cheating can occur) than most post-16 students/learners in the UK

171 Facts and Statistics (academicintegrity.org)

	<p>(London Economics, 2014).¹⁷² Secondly, only a proportion of students complete a post-16 qualification/pathway that have a NEA that a student could feasibly contract cheat on (as explained above, students may use essay mills to purchase homework assignments not pertaining to the qualification grade, but have not based assumptions on this given it is likely to be rare). For example, many A levels do not have NEAs¹⁷³ and not all A level NEAs are conducive to contract cheating.¹⁷⁴ The same is true for other qualifications such as VTQs. Although coursework is common for VTQs,¹⁷⁵ it is not possible to contract cheat¹⁷⁶ for a NEA which assesses a competence in a practical skill in person for example e.g., a physical demonstration of an assessed skill pertaining to music or engineering, unless by securing the services of a proxy student.</p>
<p>High scenario: The same assumptions on incidence of contract cheating are used as the central scenario.</p>	<p>As described above. The difference from the central scenario is simply the assumption on the cost of a piece of work commissioned to an essay mills company. See main body for information on this.</p>

¹⁷²

https://assets.publishing.service.gov.uk/Government/uploads/system/uploads/attachment_data/file/605551/0914_LELondonEconomics-mystery-shopping-exercise-of-web-sites-that-offer-a-range-of-support-services-to-students.pdf

¹⁷³ Summary of changes to AS and A levels from 2015 - GOV.UK (www.gov.uk)

¹⁷⁴ GCE subject-level conditions for 2021 - GOV.UK (www.gov.uk)

¹⁷⁵ Post 16 options | National Careers Service

¹⁷⁶ It is theoretically possible to cheat in such an assessment if someone else claims to be the examinee, but this is very unlikely, and no evidence was found that this was advertised as a service on essay mills' websites.

Measure 12: Designation of 16-19 academies as having a religious character

What is the problem under consideration? Why is Government action or intervention necessary?

620. At present it is not possible for existing Sixth Form Colleges with a religious character to convert to become academies and retain their religious character.

621. This inability to convert and maintain a religious status acts as an obstacle to academisation for these providers. For example, for most Sixth Form Colleges with a religious character the occupation of their site is dependent on that character being retained and as such academisation would be infeasible.

622. Government action is necessary as this issue can only be resolved with primary legislation. The Government is seeking to provide the Secretary of State with a power to designate new and existing 16-19 academies with a religious character to encourage such academisation.

623. This is in line with Government policy that all Sixth Form Colleges can convert to become academies.

What are the policy objectives and the intended effects?

Policy Objectives

624. To increase the number of currently existing religious Sixth Form Colleges that convert to academies. The Government aims for all 14 current colleges with a religious character to become academies, however, it is up to the colleges and their respective dioceses to decide to convert and the timescales of any conversion.

625. Faith bodies choose to establish religious 16-19 academies from the start, rather than local authority A maintained colleges. The Government aims for all new colleges with a religious character to be established as academies, rather than local authority-maintained institutions once the proposed primary legislation comes into force.

626. Both these objectives underpin the wider Government objective to ensure all Sixth Form Colleges can become academies. As is outlined in the Monitoring and Evaluation section, the department will measure success against these objectives by monitoring how many existing colleges with a religious character convert to become academies and how many new and existing 16-19 academies apply to be designated with a religious character after the legislative change is made.

What policy options have been considered, including any alternatives to regulation?

627. The only policy option that will allow Sixth Form Colleges to retain their religious character after academisation is to pass new primary legislation; regulation is required as no existing powers exist in this area. To cater for all faiths, a general power is needed that enables a 16-19 academy to be designated with any faith character.

628. The alternative option is Do Nothing: do not introduce new legislation. Under this option, there would be no change to the barriers to Sixth Form Colleges to retain their religious character after academisation and that would remain a significant disincentive to them becoming academies. In addition, some or all the current sixth form colleges are likely to have trust deeds which require them to have a religious character to operate on their sites. Therefore, they could only convert to become academies prior to the legislation being passed if they were able to have access to a new site.

629. There are no further policy options that will allow the department to achieve the desired outcomes; as such, the Government will consider new legislation and Do Nothing only.

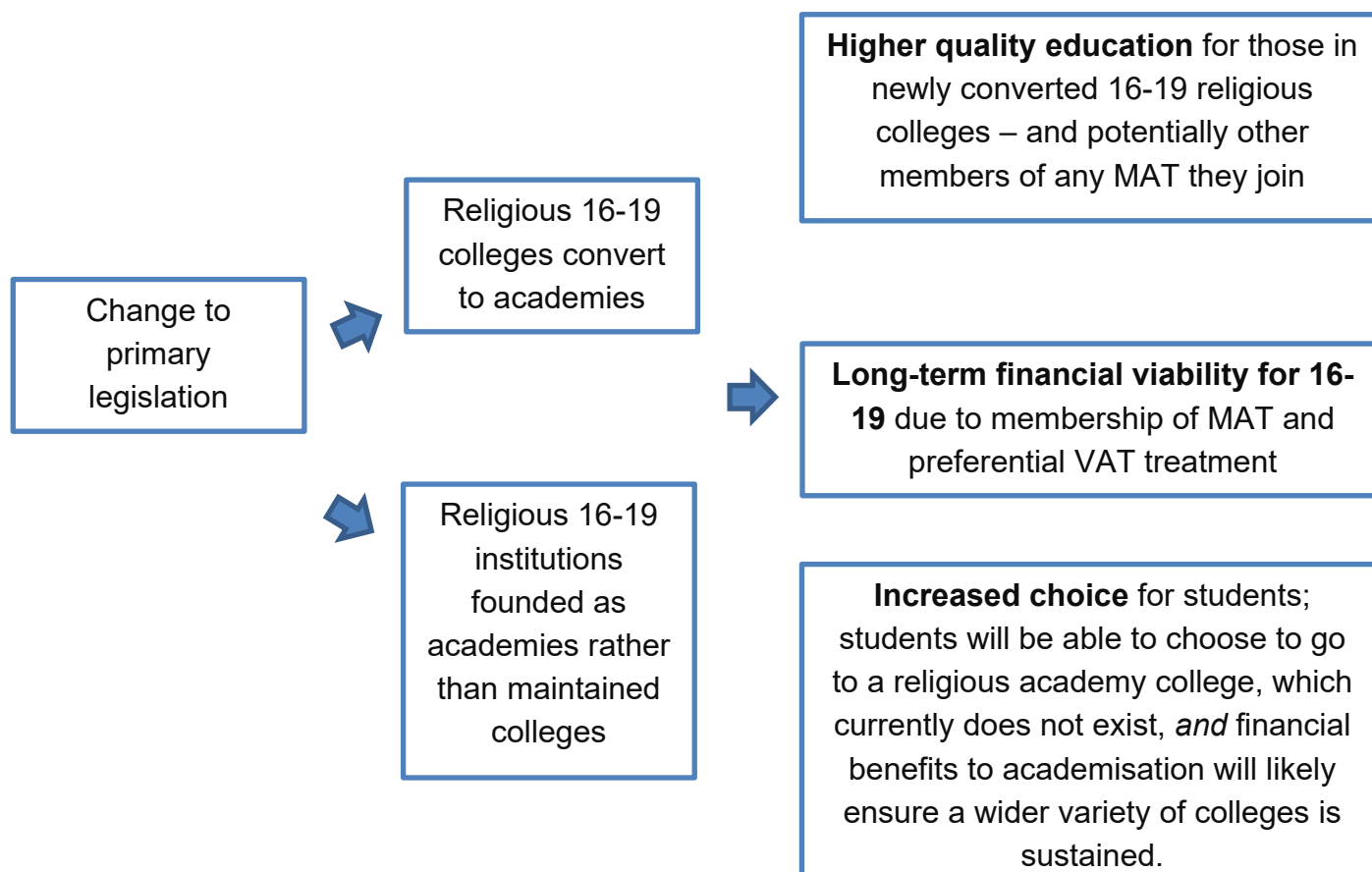
Problem under consideration and rationale for intervention

630. There have been calls for an equal opportunity to become 16-19 academies from Sixth Form Colleges with a religious character and their representative bodies: the Catholic Education Service and the Sixth Form Colleges Association.

631. The Government has a high level of certainty that most of the affected Sixth Form Colleges wish to become academies from direct engagement with them and their representative organisations. Given their need to maintain a religious character to continue to operate on diocese-owned land and buildings prevents conversion, they have lobbied heavily for a change to the act since non-religious Sixth Form Colleges were given the ability to become academies. The Government has limited evidence of the extent to which other faith providers wish to establish 16-19 academies though it is anticipated that there is likely to be some given the significant interest they have displayed in wishing to open new academy schools through the Free Schools programme.

632. As such, the Government has designed legislation to enable the conversion of Sixth Form Colleges with a religious character to convert to become academies and provide, in the future, the ability for faith groups (who can already open schools, including those with post-16 provision) to open 16-19 academies designated with a religious character relevant to their faith.

Theory of change



Rationale and evidence to justify the level of analysis used in the IA (proportionality approach)

633. The Government has not provided a full monetised cost-benefit analysis. This is due to the scale and nature of the impact, which make a full CBA disproportionate.

634. **Scale:** Only 14 sixth form colleges with a religious character currently exist.

635. **Nature:** The impact falls on Sixth Form Colleges which are outside the scope of the Business Impact Target and 16-19 academies will be deemed public sector institutions. In addition, given the small numbers of institutions which are impacted, a full quantification of costs would be disproportionate.

636. Nevertheless, the Government has outlined the expected costs and benefits associated with conversion of religious colleges below.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

637. There are minimal costs associated with passing the legislation itself. However, the intended impact of the legislation is that colleges then choose to

convert to academies. This conversion process involves costs and benefits to the colleges.

638. Costs:

- a. **Legal costs:** Legal costs are incurred by individual 16-19 institutions due to the new legal documentation required. The exact costs to the individual institutions are not possible to calculate (but will be small and in most cases should be covered by the conversion grant).
- b. **Grant costs:** The costs to the department are the £25,000 conversion grant which will be payable to each college when they apply to become an academy. **This grant should cover in whole or in part the legal costs to the individual institutions.** If all 14 existing Sixth Form Colleges with a religious character became academies, this would total £350,000 grant cost to the Department.

639. Benefits:

- a. **Increased educational standards in existing 16-19 colleges** that convert *if the colleges are currently low performing*. By contrast, existing evidence suggests that Good or Outstanding 16-19 colleges that choose to convert in general maintain a good performance but do not improve further; the Government expects this also to be true of current Sixth Form Colleges with a religious character
- b. **Long term financial viability of existing sixth form colleges.** Catholic sixth form colleges have cited a desire to become academies due to preferential treatment in relation to VAT and the ability to benefit from the economies of scale that comes with joining a multi-academy trust.
- c. **Increased choice for students.** Students will be able to choose to go to a religious academy college, which currently does not exist, *and* financial benefits to academisation will ensure a wider variety of colleges is sustained. There is no way to put a monetary value on this widened choice to students.
- d. **Strategic alignment with the education system.** This policy encourages colleges with a religious character to become academies, in line with the general direction of institutions away from local authority control. Without this legislative change and may lose the provision of the existing religious colleges or may have to run a more costly system with dedicated administrative arrangements for a small number of institutions.

640. Given the small scale of the costs, and the high value associated with even small increases in educational standards across many students and time, the

Government expects the benefits to exceed costs; indeed, these colleges are unlikely to choose to convert to an academy unless they believe the benefits outweigh the costs.

Direct costs and benefits to business calculations

641. The amendment will only impact public sector organisations. There are no direct costs and benefits to business.

Risks and assumptions

Assumptions

642. **Assume lack of legal pathway to convert and retain religious character is the major obstacle to academisation;** as such, colleges will convert following new legislation.

643. **Assume colleges with a religious character that choose to become academies will join strong MATs;** otherwise, limited benefits from academisation.

Uncertainties

644. The Government does not have evidence on (i) how many faith organisations will come forward to establish faith designated 16-19 academies, and (ii) the long-term impact from conversion to academies (for both 16-19 institutions/Sixth Form Colleges in general, and specifically those with a religious character).

Equalities and wider impacts

645. The 16-19 academies measure will be beneficial on religion or belief grounds, as it will enable faith colleges to retain their religious designation, and therefore freedoms, should they become an academy. To ensure parity for all faiths, the Government has ensured that it is possible for all faiths to seek a religious designation for a 16-19 academy.

646. The Government does not anticipate any other equalities impacts from this measure.

Impact on small and micro businesses

647. The amendment will only impact public sector organisations.

Summary and preferred option with description of implementation plan

648. **The preferred option is to pursue new primary legislation** and the associated secondary legislation which it will enable.

649. There will be no transitional arrangements (as they are not needed) and the legislation will be enacted as soon as the Government is able to lay regulations following Royal Assent.

650. The Government intend to bring these arrangements into effect as soon as possible after Royal Assent and once the Government is able to lay regulations. It is anticipated this should be in summer 2022 and that the first designation of 16-19 academies with a religious character could take place in the autumn of 2022.

651. The religious designation process will be led by the faith policy team in the Department for Education.

652. The Government does not anticipate any piloting or trialling. As soon as the legislation is in place, it will be open to all relevant institutions.

Monitoring and Evaluation

653. To assess whether the legislation increases academisation of existing Sixth Form Colleges with religious character, the Government will monitor:

- a. The number of existing Sixth Form Colleges with a religious character that apply to convert to become academies.
- b. Whether these colleges maintain their religious designation
- c. Why any colleges do not bring forward applications; if colleges do not bring forward applications, the department will want to engage with them directly to understand what remaining barriers are preventing them from applying for conversion.

654. To assess whether this academisation increases the performance of these Colleges, **the department will monitor how Sixth Form academies with a religious character perform.** For those institutions which have converted their educational performance and financial health will be monitored by the department and its agencies.

655. Academies are under regular monitoring and evaluation from the Education and Skills Funding Agency (ESFA) and Regional School Commissioners (RSCs). They already have processes in place for managing Sixth Form Colleges who have already converted to become academies and the Government anticipates that this will be effective for Sixth Form Colleges with a religious character. Advice on specific issues relating to the religious character of these institutions will be provided to the ESFA and RSCs from the faith policy team in the Department.

656. The Government does not anticipate that any new data collections will be required to assess whether the policy has been successful.

657. The policy is entirely permissive, and the Government does not envisage that there will be circumstances or changes in the sector which would require the policy to be reviewed.

Measure 13: Office for Students' Publication Power

What is the problem under consideration? Why is Government action or intervention necessary?

658. The Office for Students (OfS) is the independent regulator of higher education in England. Whilst the OfS has the power to investigate higher education providers, it does not have an express power to publicly announce investigations or to publish the findings from these investigations. This measure will give the OfS an express power to do so, and additionally ensure that the OfS is protected from potential defamation claims, should these arise following any publication.

659. It is important, and in the public interest, that the OfS can publish information, where it is investigating higher education providers for potential breaches of conditions placed upon them by the regulator. The OfS should be transparent about such work, showing the public, the higher education sector, and students that it is intervening when necessary, and consequently providing confidence in the higher education and regulatory system for students, the public and the taxpayer.

660. Publication by the OfS of notices, decisions and reports will become increasingly important as the OfS scales up its work on driving out low quality higher education, and also in due course on protecting freedom of speech and academic freedom.

What are the policy objectives of the action or intervention and the intended effects?

661. The OfS regulates higher education providers to ensure that they maintain the high standards required by their registration conditions which allow them to be included in the OfS register and, where relevant, to receive public funds. The OfS also regulates other important aspects of higher education, including degree-awarding powers and the use of university title. Its full suite of powers came into force in August 2019.

662. The Government believes it is important to improve and maintain the quality and standards in higher education which students and the public expect and deserve. The Government also want to maintain the worldwide reputation of the English higher education sector. The Government has introduced this measure because it will increase transparency in relation to the actions of the regulator. This, in turn, will increase the confidence of all in the quality and integrity of the sector, and in the OfS's regulation and enforcement role.

663. At the moment, where the OfS has concerns that a higher education provider has potentially breached one of its registration conditions, it may take action to investigate the provider. However, it does not have an explicit power to announce the opening of an investigation or to publish the final outcome. Nor does it have the explicit power, for example, to publish other regulatory decisions such as on the use of university title or the grant of degree-awarding powers.

664. Although this will be an explicit power, it will be a discretionary one. There may be reasons in certain cases where it would not be appropriate to publish information – for example, when deciding whether to publish, the OfS will have regard to whether publication would seriously and prejudicially affect the interests of an individual or body.

665. It is important, and in the public interest, that the OfS can publish information regarding its compliance and enforcement functions. This information will become increasingly important as the OfS scales up its work on driving out low quality higher education, and also in due course on protecting freedom of speech and academic freedom under the Higher Education (Freedom of Speech) Act.

666. Other regulators, such as the Competition and Markets Authority and Ofsted, have similar powers and protections. The Government are seeking a power that reflects those of other regulators to be as consistent as possible across the statute book.

667. The Government believe there will be little additional burden on the sector because of this change as the investigations and other regulatory activity already take place – the change made by the measure is that the OfS will have an express power to publish information in relation to this work.

668. The regulatory work of the OfS should be visible, showing the sector, students, and the public that it is intervening when necessary, and consequently providing confidence in the higher education and regulatory system.

What policy options have been considered, including any alternatives to regulation?

669. There are few policy alternatives to legislation as the OfS is an independent regulator established by statute and its powers are accordingly set out in statute.

670. **Option 0:** Do nothing: Existing OfS action relating to enforcement and compliance is maintained, where investigations can take place, but these are not necessarily known to the public or students or known in the sector.

671. **Option 1:** Provide the OfS with an explicit power to publicly announce investigations of higher education providers and to publish the findings from these investigations and provide for protection from potential defamation claims.

672. **Option 2:** a) the OfS ask the relevant higher education provider to announce the investigation; b) the OfS ask another regulator with relevant powers and defamation protection to announce joint investigations.

673. Option 2 carries risk in that the OfS would not have control over the announcement, and it is unlikely to be tenable as anything other than an exceptional or emergency measure. Therefore, it is not a preferred option.

Rationale and evidence to justify the level of analysis used in the impact assessment rating (proportionality approach)

674. This measure is primarily about publication of notices, reports and decisions and there is therefore limited impact on the OfS of this measure. There could be an impact on the reputation of higher education providers or individuals, should it be announced that they are being investigated; however, as the identity of these providers/individuals and the reasons for the investigation(s) are unknown, it is not possible to provide quantified assessment of impact, particularly with regards to reputation which is difficult to quantify. Therefore, a proportionate, qualitative assessment has been undertaken.

Summary and preferred option with description of implementation plan

675. The preferred option is option 1. The decision to use this power will depend on the nature of the publication and the sensitivity of the matter in hand.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

676. **Option 1:** This measure will provide the OfS with an explicit power to publicly announce investigations of HE providers and to publish the findings from these investigations, and protection from potential defamation claims.

677. There will be some administrative burdens for the OfS to draft and publish notices, reports, and decisions on the internet, but these costs are assumed to be small and therefore disproportionate to monetise. Impact on business is described in the next section.

678. The benefits of being transparent about the OfS's work on enforcement and compliance to the public and students is greater than this administrative cost as it provides confidence in the regulatory system and strengthens the reputation of the higher education sector.

Direct costs and benefits to business calculations

679. There are no additional burdens on any business from this measure. As of 11 February 2022, there were 420 higher education providers in England registered with the OfS.¹⁷⁷ Impacts such as the cost of facilitating an investigation are not considered in this assessment as the OfS already has investigatory powers. There could be a direct negative impact on the reputation of a provider from simply announcing an investigation, if the OfS decides to do so (the power is discretionary). These costs only arise because providers are judged to be in non-compliance with the relevant conditions of registration. If they were fully meeting all the requirements, then an investigation would not be necessary, and these costs would not arise.

680. The OfS must consider whether publication would seriously and prejudicially affect the interests of the provider. Estimating this cost is complex, dependent on the provider in question, and therefore disproportionate to calculate. Costs to providers arising from reputational damage (for example, losing donations and difficulties with student recruitment) are indirect costs and therefore not considered further. These impacts are likely to be minimal if the duration of the investigation is short and the outcome of the investigation is positive.

Impact on small and micro businesses

681. There are no additional burdens on any business from this measure. Given the main impact on higher education providers is potential reputational damage, it is possible that the impact of announcing an investigation into a small higher education provider with a strong reputation (for example, some specialist providers) may be disproportionate. The below section sets out the mitigations for this.

Key risks and assumptions

682. It is assumed that announcing investigations will not incur additional significant costs to the OfS as these will be administrative (drafting and uploading notices, reports, or decisions). It is assumed that reports will have previously been written for investigations so the cost of producing these has not been included.

683. For the impact on higher education providers where an investigation is announced, it is assumed that there could be a direct negative impact on the

¹⁷⁷ Guide to the OfS Register - Office for Students

reputation of a provider from simply announcing an investigation, if the OfS decides to do so.

684. Risks are mitigated as the power to announce is discretionary. When deciding whether to publish, the OfS must take specified factors into account, including considering whether an announcement might be damaging to providers, students, and other individuals, as well as the public interest. An announcement with malicious intent would not have defamation protection.

685. If the OfS terminates an investigation without making any finding or taking any further action, the OfS must publish a notice stating that fact. This is an additional safeguard for bodies and individuals identified in the announcement of the investigation.

Equalities and wider impacts

686. In line with other public and regulatory bodies, the OfS is subject to the public sector equality under the Equality Act 2010. That is the duty to have due regard to the need to:

- a. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- b. improve equality of opportunity between people who share a protected characteristic (such as race and disability) and those who do not; and
- c. foster good relations between people who share a protected characteristic and those who do not.

687. This means that, where the OfS is considering the publication of information, it may be necessary for the OfS to consider the matters set out in the public sector equality duty. By way of example, the OfS may need to have due regard to whether the information it plans to publish could have a positive or negative impact on people with protected characteristics.

688. The public sector equality duty applies in addition to other important and relevant factors the OfS may have a duty to have regard to, such as those expressly set out in the measure and the OfS's general duties in section 2 of the Higher Education and Research Act 2017.

689. While the public sector equality duty and other duties would not prevent the OfS from publishing information, they would help to ensure that the OfS reaches an informed view on the benefits and drawbacks of publishing information in the context of the legitimate aims it is seeking to achieve.

Monitoring and Evaluation

690. The OfS will monitor the effect of any publication made under the power – since the power is discretionary effective monitoring will depend on the number of cases that are investigated, it may wish to alter its approach if required. The OfS will also be vigilant regarding unforeseen additional costs arising from this measure.