

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT FURTHER EDUCATION BODIES
(INSOLVENCY) REGULATIONS 2018

Wednesday 31 October 2018

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Sunday 4 November 2018

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The Committee consisted of the following Members:

Chair: GRAHAM STRINGER

† Beresford, Sir Paul (*Mole Valley*) (Con)
 † Bradley, Ben (*Mansfield*) (Con)
 † Brereton, Jack (*Stoke-on-Trent South*) (Con)
 Coyle, Neil (*Bermondsey and Old Southwark*) (Lab)
 † Creasy, Stella (*Walthamstow*) (Lab/Co-op)
 † Fletcher, Colleen (*Coventry North East*) (Lab)
 † Hands, Greg (*Chelsea and Fulham*) (Con)
 † Hayes, Helen (*Dulwich and West Norwood*) (Lab)
 † Marsden, Gordon (*Blackpool South*) (Lab)
 † Milling, Amanda (*Cannock Chase*) (Con)
 † Milton, Anne (*Minister for Apprenticeships and Skills*)

† Penrose, John (*Weston-super-Mare*) (Con)
 † Reynolds, Emma (*Wolverhampton North East*) (Lab)
 † Syms, Sir Robert (*Poole*) (Con)
 † Timms, Stephen (*East Ham*) (Lab)
 † Villiers, Theresa (*Chipping Barnet*) (Con)
 † West, Catherine (*Hornsey and Wood Green*) (Lab)

Yohanna Sallberg, Matthew Congreve, *Committee Clerks*

† **attended the Committee**

Fourth Delegated Legislation Committee

Wednesday 31 October 2018

[GRAHAM STRINGER *in the Chair*]

Draft Further Education Bodies (Insolvency) Regulations 2018

2.30 pm

The Minister for Apprenticeships and Skills (Anne Milton): I beg to move,

That the Committee has considered the draft Further Education Bodies (Insolvency) Regulations 2018.

It is a pleasure to serve under your chairmanship, Mr Stringer. The regulations were laid before the House on 5 September. Along with the education administration rules that are due to be laid before Parliament next week, they are the final part of the legislation needed to bring into force the new insolvency regime for the further education sector. I shall set out the context of further education insolvency before we discuss the detail of the regulations.

Further education and sixth-form colleges are statutory corporations governed by the Further and Higher Education Act 1992. They are exempt charities, with the Secretary of State as principal regulator. They enjoy a high degree of operational autonomy and are independent of Government. They appoint their own governors; they make commercial decisions; and they can borrow, invest and set up companies. In this way, FE bodies can develop high-quality provision that best meets local needs for the area they serve, whether that is apprenticeships for local businesses, support for students struggling with maths and English, the new T-levels, or in future the national retraining scheme.

Three things are particularly important to the financial resilience of the FE sector. First, we need a sufficiently funded sector. I am very aware that there are challenges, but they are not the subject of the debate. Secondly, the sector should have outstanding leadership. There are some exceptional and committed governors and principals in the college sector and I pay tribute to their work. We want every college to have great leaders, both principals and governing bodies. We have been supporting the sector so that it can improve and so that all colleges benefit from the great leadership they need in difficult times. We want leaders to spread best practice and provide mentoring to weaker colleges to help them to improve and strengthen. We have a group of national leaders of further education and are recruiting a group of national leaders of governance—experienced governors and clerks who will help to build up the expertise of other governing bodies.

Thirdly, a resilient sector is structured and organised effectively. The area review process that began in 2015 made great strides towards achieving that. In some cases, the reviews led to recommendations for structural change, which are being implemented. We have provided significant financial support to help colleges implement the changes through the restructuring facility. Since 2016, we have made more than £330 million available through that route to support major college restructuring, supporting

significant improvements to financial sustainability in the sector. The deadline for the restructuring facility has passed. We are considering the final applications and expect the final figure to rise significantly before the programme ends in March 2019.

Stephen Timms (East Ham) (Lab): I am listening carefully to the Minister. Does she accept that college funding has not increased in cash terms since 2013, and that that has made the likelihood of insolvency, which the regulations address, much greater?

Anne Milton: I am very aware of the issue of college funding. We are doing a piece of work on the FE structure to make sure that it is sustainable in future. As I have said, we have put significant amounts of money into FE to make sure that we get the structure and college mix right. We want to make sure that each college has the opportunity to make an independent offer to young learners and prove its financial sustainability. I am sure that, like other Members, the right hon. Gentleman will continue to make representations to the Chancellor ahead of the spending review in 2020.

We wanted to make sure that, once the area reviews were completed and the restructuring facility had closed, there was a new robust set of arrangements in place that recognised college autonomy, enabled FE leaders to manage their college finances and provided support for students in the event that something went wrong. In particular, we wanted to avoid a chaotic failure in the event that a college ran out of money. That was why we announced in 2016 plans to introduce an insolvency regime for the sector. The main provisions for the regime are in the Technical and Further Education Act 2017 and were debated in both Houses when it went through Parliament.

The legislation was introduced to address uncertainty on whether insolvency law applied to FE bodies. The new regime puts in place an orderly process for managing a college insolvency. It delivers a special administration regime known as education administration, which prioritises the protection of learner provision in the unlikely event that a college becomes insolvent.

The regime will give the Secretary of State the power to apply to court for an education administration order. That could happen either in response to an FE body facing insolvency proceedings or if the Secretary of State is persuaded that the FE body is insolvent and that applying to court for an education administration order is the best course of action. At the heart of education administration is the special objective to avoid or minimise disruption to the studies of existing students of the FE body as a whole while ensuring that the education administration is no longer than it needs to be, which is beneficial for both students and creditors. That is what we mean by the protection of learner provision. In contrast, when a business becomes insolvent, the purpose is to get the best deal for the creditors.

The 2017 Act applied certain provisions of insolvency law to the FE sector, subject to modifications that were set out in the Act and that are specified in the regulations we are debating. The regulations modify insolvency provisions in the Insolvency Act 1986 and other legislation to make them work effectively for further education bodies. The regulations are necessary to ensure that the insolvency regime for the FE sector functions properly.

A further piece of legislation will be needed before the special administration regime can be enacted—a statutory instrument setting out the rules that apply to the education administrator’s conduct of an education administration. That legislation will follow the negative procedure. I would be very happy to meet the hon. Member for Blackpool South to discuss the details in further depth.

The insolvency regime is designed to provide certainty to creditors and to the further education sector. It is not certain under the existing legislation what would happen if a college became insolvent. This regime clears that up. It includes the special administration regime to protect provision for existing learners at a college in financial distress. It will not exist as a mechanism to summarily close colleges. Rather, it will be a device to deal with extreme circumstances.

The insolvency regime will sit within a wider financial intervention system, providing a structured and measured approach to preventing and responding to failure. Leaders that manage their colleges effectively will be key to preventing financial distress. This wider system will start with the monitoring of colleges that are experiencing difficulty. If things get worse, there will be a wide range of intervention tools. The insolvency regime is the mechanism of last resort and we would expect it to be used only rarely. However, it will be used if necessary for an orderly process to manage financial distress and protect learner provision. It is important to stress that, when a college becomes insolvent, it will not necessarily lead to provision being closed. Indeed, in some cases, students may barely realise that there has been a change, but our hope would be that they ended up in a more financially resilient college.

The regulations modify provisions in the Insolvency Act 1986 and legislation made under those provisions so that they apply effectively to college corporations. That not only ensures that the regime works technically, but deals with practical issues. For example, as autonomous entities, FE bodies have the power to amend their instruments and articles—it is a bit like a company’s articles of association—following incorporation to better suit their operational needs. The regulations make provisions that might not be contained in those instruments and articles but that are necessary for managing insolvency proceedings. For example, if there is no provision for meetings of governors as required by insolvency legislation, the regulations provide it to ensure that insolvency proceedings can run smoothly.

The regulations also set out provisions for filing documents with Companies House so that insolvency procedures are transparent for further education corporations, as they are for companies. I have stressed the importance of strong leadership to improve financial resilience. Governors, as charity trustees, have responsibilities for good financial management and prudence in the colleges that they run. We are finalising the preparation of guidance for governors on their duties and liabilities, reminding them, through revised general guidance, of their responsibilities, and explaining the position on insolvency so that they are clear about how the legislation affects them and staff in the college.

Support is available through the Inspiring FE Governance service to help colleges to find people with the right skills to join their governing bodies, including chairs of finance committees. We are extending investment in leadership and governance development programmes,

including working with the Education and Training Foundation on a tiered programme of development for governors. That will include support on financial management duties and insolvency.

The regulations exempt student governors from certain offences and from duties that will be required of other college governors so that insolvency proceedings work effectively. It would be unlikely that student governors would have a meaningful say in decisions that gave rise to the offence, so it would not be right to expose them to liability.

More often than not, college articles exclude student governors under the age of 18 from voting on decisions about spending money and contracts. If they cannot have a say in financial decisions, they should not be liable for offences linked to those decisions. It would also be unreasonable to expect student governors to comply with some duties expected of other governors—for example, to prepare a statement of the affairs of the college corporation for an administrator or liquidator that included a summary of the corporation’s assets, liabilities and details of its creditors. However, all governors, including student members, will be expected not to make false statements when they make returns, and all governors are expected to co-operate with the insolvency practitioner to allow insolvency proceedings to be concluded efficiently.

Part 3 of the regulations modifies provisions of the Insolvency Act 1986 and the Insolvency (England and Wales) Rules 2016 as they apply to FE bodies that are statutory corporations. Part 4 applies provisions of other legislation relating to insolvency to FE bodies, subject to modifications. For example, the Land Registration Rules 2003 need to be modified in their application to FE bodies to allow references to “company” to include references to “statutory corporations”, which means that the provisions will operate correctly. That will enable the Land Registry to make an entry in the register that an administrator or liquidator has been appointed over a statutory corporation.

Similarly, part 5 modifies provisions of the Companies Act 2006, applied to statutory corporations by regulation 3, to ensure that they work effectively for FE bodies that are statutory corporations, allowing registration of key insolvency documentation with the registrar of companies.

Let me provide assurances about the process we have taken to get to this point. We carried out consultation on the policy adopted in the regulations to be certain that the insolvency regime delivers for the sector. We spoke to insolvency practitioners, lenders, colleges and organisations that represent the sector, including the Association of Colleges and the Sixth Form Colleges Association. We consulted in summer 2016 prior to the introduction of the Technical and Further Education Act 2017, and again as I described earlier. We have also worked closely with both Companies House and the Insolvency Service to ensure that the regulations are fit for purpose and that they do not depart from the standard approach to insolvency proceedings. The regulations apply to FE bodies and companies conducting designated further education institutions in England and Wales. Welsh Ministers are fully supportive of the approach taken in the development of this legislation.

The regulations contain the technical detail necessary to bring into force the FE insolvency regime, including education administration. They are required to deliver

[Anne Milton]

much needed protection of learner provision effectively in the unlikely event of an FE body becoming insolvent, and I commend them to the Committee.

2.46 pm

Gordon Marsden (Blackpool South) (Lab): It is a pleasure to serve under your chairmanship, Mr Stringer. Having taken through the Technical and Further Education Bill with the Minister's predecessor, the right hon. Member for Harlow (Robert Halfon), it is a great pleasure to return to an important part of that Bill and to have the opportunity to raise with her a few points on the insolvency regulations.

The Minister started her speech by providing the context for why the regulations are being brought forward at this time. I want to follow her in that process by quoting a note that the Association of Colleges has produced on the insolvency regulations. It is instructive to remember where we started, and the Minister alluded to the structure of FE colleges that has obtained since 1992. The AOC makes the point that the Minister has made: plans for the statutory college insolvency regime were announced in 2016 to coincide with the area review programme.

It is worth remembering what the AOC said about this situation, because it would seem rather curious to people outside this place—perhaps from time to time it seems rather curious to the Treasury as well, but that is another matter. According to the AOC,

“There are currently no clear rules about what would happen if a college ran out of money and the government did not stand behind it. When the Conservative Government transferred colleges out of local government in 1992, it created a new type of statutory corporation to run colleges but it did not make any rules for cases where a college ran out of money. Instead central government (via a succession of funding agencies) has ended up being the funder of last resort—to protect the college's students, courses and assets. This has meant that the banks have always been paid in full or been able to replace an old loan with a new one.”

If educational historians of the future were to look at that, they might think that it was a rather curious arrangement to have lasted for such a long time, but we are where we are.

The past two years have just increased the financial pressures faced by the leadership and staff of colleges. As the Association of Colleges has said:

“The outlook for the 266 colleges in England has deteriorated in the last 12 months...despite the widespread agreement that education and skills matter for the country's future.”

It says that the cost of recruiting and retaining the staff needed for high-quality academic and technical education is rising, but the Government have refused to acknowledge inflation in their funding decisions. As my right hon. Friend the Member for East Ham said earlier, the funding rates paid to colleges have been fixed since 2013. The relevance of that to the insolvency regulations is that it makes the guesstimate—that is all it can be—by the team in the Department for Education of how often they might be used a bit more dodgy. The hope that apprenticeships would provide more income has not been realised because of the falling numbers of apprentices, and where employers are training their staff, too many focus on older managers and find ways to use the levy to replace other costs.

Emma Reynolds (Wolverhampton North East) (Lab): Is it not the case that many colleges that rightly focus on technical education have a lot of up-front capital costs because they have to invest in the specialist equipment that is needed for the courses they offer?

Gordon Marsden: My hon. Friend makes an extremely good point, which illustrates the weaknesses of many of the Government's initiatives in this area. I will not stray into the institutes of technology, but it is the same principle: the Government think a lot about structures in terms of capital expenditure, but seem less ready to address the issues with equipment that she mentions and—this is, of course, a big bugbear with the sector—the funding of progression and salaries.

The explanatory memorandum states:

“There are currently 37 FE colleges that have a ‘published Notice to Improve for financial health’”.

However, the Department estimated last month that on “today's assumptions”, over the first 10 years of the insolvency regime, an additional 63 could—I am not saying that they will—

“meet the current triggers for a notice”.

The Department's document goes on to say that,

“as a central estimate, we believe 100 colleges will need to fully familiarise themselves with the insolvency procedures.”

Again, I stress that that does not mean that they are in imminent danger of insolvency; it is a precautionary measure.

In Government and in legislation, we have to plan and hope for the best, but have backstops for the worst. That is the purpose of the statutory instrument. The Department states that there could be a best case scenario of 80 colleges and a worst case scenario of 150 colleges being at risk. It is therefore slightly strange that paragraph 7.9 of the explanatory memorandum rather blandly states that

“in reality we expect that FE colleges entering insolvency would be a very rare event.”

That seems to be written more in hope than expectation.

This extremely worrying situation cannot come as a surprise because the Institute for Fiscal Studies found that spending on FE and skills fell by £3.3 billion in real terms between 2010 and 2017. Those cuts have been most severe in adult education. That is extremely relevant to the proposals because it is often forgotten that adult learners are an important part of the FE learner area. If that group no longer attends FE colleges in the numbers that it has historically, that puts additional pressures on courses and on the colleges' financial structures. The Sixth Form Colleges Association has said similar things about the shortfall for its students.

As David Hughes, the chief executive of the Association of Colleges said, while

“the regime being introduced in itself is not a bad thing, the problem is that it is likely to come into effect at an historic low point in college funding.”

I also agree with the University and College Union, which said in its briefing for this debate that the Government's focus on college insolvency, without considering some of the broader issues, sends the wrong message about the importance of FE. The focus on facilitating market exit in FE rather than strengthening the sector and investing in the necessary resources to

help institutions thrive sends a negative message to the public about the importance that the Government ascribe to the sector.

I want to ask several specific questions and make a number of observations that arise from the explanatory memorandum. Paragraph 10 talks about the consultation outcome. The Minister has already referred to the 30 formal responses that the Government received. Paragraph 10.3 states that in response to a question whether

“any specific modification to normal insolvency legislation were needed to allow it to apply effectively to FE and sixth form corporations”

there was

“strong support for the FE insolvency regime mirroring standard insolvency procedures for companies, which is the approach that we have taken.”

There is then a reference to several respondents saying there should be an interim moratorium.

In cold grey terms, those are of course some of the necessary things that the insolvency regime must include, but the difference between the companies that the memorandum uses for comparison and further education is that at least three groups of people are affected. One is the staff and the second is the creditors. Some of those are likely to be small business suppliers and others in the local supply chain, of which FE colleges are often a significant part. It is likely that they would be negatively affected by the insolvency proceedings. The third group is students and lecturers.

I appreciate that it is not an easy thing to include in a statutory instrument, but I appeal to the Minister and to the Department for Education in general to take account, when they consider how to take the matter forward, of those broader audiences. I ask them not simply to look at the question with the narrow scope that a bank might apply.

Paragraph 11 of the explanatory memorandum deals with guidance. It states:

“The Department will publish two sets of guidance before this instrument comes into force.”

It does not tell us when they will be published, and it would be helpful if the Minister could tell us—if not today, then by a note to members of the Committee. That is important, because she has talked about the support that the Government want to give, so as to have more experienced governors and clerks. She gave some examples, and I am pleased to hear that the Further Education Trust for Leadership will be involved in the process.

I am bound to say—and I think that it is also an issue in school governance—that at the moment, although it may change in future, the support that Governments of all hues have given governors in piling on to them various responsibilities, including difficult responsibilities for finance and insolvency, has not been commensurate with the extra time and effort involved, and the extra knowledge they are supposed to possess. I do not think it would be out of place if I were to ask the Minister what amounts of money or, for that matter, practical support from the Education and Skills Funding Agency or the Department, are going to be forthcoming on this occasion. I say that because the issue is important.

I want to touch on the special administration procedures. Concerns were expressed during the passage of the Technical and Further Education Act 2017 about how

long they would take. The Minister might be interested to know that her colleague who had responsibility for the Bill in the House of Lords showed, in Committee in March 2017, that he recognised that:

“Concerns have previously been expressed...about the time a special administration might take. I share these concerns. However speedily the special administration is concluded, it will be too long for those involved. Staff, students and creditors will want certainty about what will happen to them at the earliest opportunity.”—[*Official Report, House of Lords*, 1 March 2017; Vol. 779, c. GC215.]

Again, I ask the Minister whether such certainty, or those timescales, will appear in the sets of guidance. If they will not appear in the guidance, will she give the Committee some idea—perhaps through a note, after consulting her officials—of how long that period is likely to be?

These regulations have been deemed necessary. They would have been necessary under any circumstances, but they are particularly necessary because of the sector's fragility, which has been caused by the cuts that it has faced. I am sorry to say to the Minister—I know she would like not to be challenged on this today—that that was not helped by the Chancellor's complete failure on Monday to offer any sort of funding uplift to colleges or their staff. That is not to mention the disastrous advanced learner loans policy, for which more than 50% of the allocated funding has been unused and returned the Treasury. Not much of that has been distributed to the colleges that are in dire need of it.

I appreciate that the Minister feels strongly that FEs should have more funding. She has acknowledged that, and made that point again today. She may say, in attempting to erect an air-raid shelter over her Treasury colleagues, that some relief might come on the back of the Augar post-18 report, as a result of issues to do with the Office for National Statistics investigation on resource accounting and budgeting in higher education, which is expected in the new year. The reality, as the Minister just acknowledged, is that the comprehensive spending review will be the first opportunity to offer significant financial relief if the review recommends financial help to FE. That means, in the normal scheme of things, that none of that money will feed through to FE colleges until the academic year 2020-21.

In the meantime, it is fair to ask how many other colleges will slip into a fragile state that might—I stress the word “might”—produce the need for insolvency regulations. It is instructive, in that respect, to quote the FE commissioner, who has been called upon to look at a number of the country's biggest colleges, which are facing significant challenges as a result of funding cuts and the loans policy. These are simply examples; they demonstrate by no means the full extent of the fragility that has been exposed over the last 12 to 18 months. According to an intervention report from the FE commissioner, Northumberland College has undergone a cashflow crisis. The report says:

“After several years of growth, the college faces a substantial shortfall in income for 2017-18, which is forecast to fall short of the budget target.”

It warns that income is set to decline even further in the college in 2018-19. In July, the Northumberland *Chronicle* reported that more than 40 staff had taken voluntary redundancy after the college reduced the number of courses on offer.

[Gordon Marsden]

That is an inevitable consequence of the drip, drip, drip of funding cuts over recent years. To thrive and survive, most FE colleges rely on a diverse mixture of activities, and on money. Money comes from the adult education budget. If there is a shortfall, there are problems. It comes from apprenticeships. Similarly, if something does not take off, there are problems. There are trading activities, and colleges are increasingly reliant on the European social fund and other funding.

That brings us back to the statutory instruments we have debated over the past few weeks and the issue of replacing the European social fund. The Minister is very active in those areas, so perhaps she will say whether she has had more conversations with the Treasury about that since the Budget or before it.

Let me give another example of a college that is in dire straits. Birmingham Metropolitan College was rated in March last year as requiring improvement for the second time in March last year. It is one of the largest colleges in the country, with an income of £61.3 million, total debt for the year of £23.4 million and 16,000 learners. It has had a notice of concern for financial health since July 2015, when it received a visit from the further education commissioner. My third example has been raised on the Floor of the House and elsewhere by my hon. Friends who represent Hull constituencies. It is the dire financial straits in which Hull College has found itself since November 2016, when it was forced to request exceptional financial support from the Education and Skills Funding Agency after its bank withdrew support.

In the light of the things that I have described, the idea that this insolvency thing will be bedded in and called on fairly sparingly might need to be revisited. The Minister was very clear about the timescale for cutting off exceptional financial support for colleges once the insolvency regime is introduced. To be clear, is she saying that her Department will curtail that funding completely? Is she not concerned that, owing to the number of colleges at risk, withdrawing those funds so quickly could have a significant impact on a large number of colleges? What timescale does she envisage, if one has been envisaged, for a transition period between the implementation of the regime that the order will put into place—we all know that such changes do not take place overnight—and the cut-off of that last-resort funding?

The Minister will be pleased to know that I will not rehearse our long-standing criticisms and concerns about the area-based reviews that took place largely under her two predecessors. However, I was hoping that she might be able to tell us how those reviews had reduced the possibility of future financial failures. The statistics I have listed suggest a different picture. What assessment has she commissioned of the impact of the review or their contribution to reducing the possibility of insolvencies? If she has not commissioned an assessment, will she do so—preferably as an external examination, undertaken outside the Department?

I have talked about guidance. The order alludes to the position of students with special educational needs, about whom we have particular concerns. Given the Government's keenness to be seen to be doing the right thing on disability and equality issues, how does the

Minister intend to ensure that there is no disruption to the particular requirements of students with special educational needs in these circumstances, who often require tailored support?

It seems that, as always in these cases, the devil is in the detail. However, the detail is not always there in the memorandum. I raise with the Minister a fairly fundamental issue that we discussed to some degree during the passage of the Technical and Further Education Act 2017 but which does not, needless to say, find itself in these specifics terms today. A primary concern of the Opposition and other organisations, including the UCU, was that the Act basically allowed for the assets of an insolvent college to be handed over to private companies, as long as they were delivering education. Regulation 15, which deals with section 107—the distribution of a statutory corporation's property—goes into the detail of that, but it does not specify that the college assets that are taken over by a private company should serve the same cohort as the insolvent provider. The regulation reads as if it might allow a college's assets to be handed to a school or university, or to a much smaller and narrower education institution, possibly for significant profit, without placing any requirement on them to continue to deliver further education as opposed to initial or higher education.

Catherine West (Hornsey and Wood Green) (Lab): Does my hon. Friend agree that given some of the cowboys—for want of a better word—in the training industry, many of whom face allegations of corruption, it would be a dangerous state of affairs were any of those smaller companies to pick up the work of an FE college?

Gordon Marsden: My hon. Friend is absolutely right to flag that up. That would be of considerable concern. I will not mention particular issues, although readers of *FE Week* and other publications will have seen some of the references out there, but this is a serious issue that may be disadvantageous to local people in terms of choice. Nor is it simply hypothetical—there are examples of such jiggery-pokery. The Minister was not in the Department between 2011 and 2012. If she is not familiar with what happened then with the Apollo Group and various other organisations, I suggest she consults her officials, because those scandals embodied some of the issues to which my hon. Friend refers.

I do not want to take up too much more time, but let me finally discuss the banks. This issue is partly a result of cashflow problems and the banks removing investment from the sector. The 2018 report on college finances by the Association of Colleges provides more information about those issues, and we should be careful to ensure that the new college insolvency regime considers their consequences. There is an old saying that banks are institutions that lend people umbrellas when it is dry but take them away when it is raining. I am afraid that that is increasingly borne out, not just in banks' cavalier closure of local branches to the public but in their treatment of some FE and other learning institutions. FE is particularly exposed because, on the whole, colleges, for historical and operational reasons, do not have the resources or the reserves that many—although not all—higher education institutions have.

One of the problems with the Technical and Further Education Act and the statutory instruments that flowed from it is that they have little tie-in with the Higher

Education and Research Act 2017, which deals with the protection of students in the event of institutional failure. That is a pity, because one in 10 higher education students study in further education colleges.

The Government's plans are designed to change behaviour among college leaders and lenders. The UCU acknowledges that and does not criticise it, but states that that means colleges will be forced to aim at bigger surpluses, conserve cash, control staff costs and cut capital spending. As abstract things, those are all very prudent, but at a point at which the country faces difficult economic times, that is not really the response anyone wants from colleges—especially when it is not matched by the investment in the sector to which I referred.

Post-Brexit and post-automation, demand among young people for this type of education will rise, as will businesses' need for skilled staff. The challenge for the Government is to make sure that they match the backstop of the draft regulations with the positive investment that the FE sector desperately needs.

3.15 pm

Anne Milton: I hope that I can deal with all the issues that the hon. Gentleman has raised. If I miss anything out, I hope that hon. Members will let me know and I will come back to them, but I think I can answer most of the points that were made.

The hon. Gentleman made some important points. He pointed out that the situation colleges are in is due to legislation passed in 1992, when I was not a Member of Parliament. A long time has lapsed before anybody got round to dealing with this. The previous three Governments, one of which was Labour, did not address this. Although I was not in post when the area review process was kicked off, at that time sharp focus was put on the fact that an insolvency regime was needed for FE colleges, to make sure that the process was orderly and, critically, to make sure that learners were protected.

The hon. Gentleman mentioned the group of people who would be affected, including the staff. We think of teachers, but there are also ancillary staff and everybody else, and that is why this must be done in an orderly fashion.

Nothing has been more at the forefront of my mind in the time I have been dealing with FE colleges than the insolvency regime that is coming down the tracks. The number of colleges that have problems is not a guesstimate. I meet weekly with the FE team. I meet frequently and regularly with the FE commissioner and a great deal of his work has been directed at colleges that are not in trouble, but where the books suggest that there might be a problem. The idea of the FE commissioner's team is to get in early and give them the support they need in order to balance the books.

In a debate such as this, the danger is that we forget that there are some excellent colleges, so I asked my officials to obtain two examples. Walsall and York are both outstanding for financial management and quality. I am fully aware of the constraints on colleges and their funding, but it is possible to run a very successful college that is both financially sustainable and has very high-quality teaching. Of course, they need the money at the base, but strong leadership and management, along with strong governance, are critical.

I do not have the figures with me, but I mentioned that the Education and Training Foundation was doing a lot of work with governors. In some of the more successful colleges I have seen, getting in good employers, particularly from the local area, has been important to management success. They have the expertise for managing the finances. That close relationship between employers and colleges is important. I went to a college recently that was very pleased about the levy, as it is an income stream for colleges, but I was slightly distressed to hear the college leader say, "Well, it now means that we are starting to go out and talk to business." I thought, "You should have been talking to business 10 years ago." A lot of our reforms are making that relationship closer. In many ways, FE colleges are the anchor for all the reforms that we want to bring in in education and in improving skills and technical education.

I do not have the precise date on when the guidance will be published, but I am happy to let the hon. Gentleman know when I do. He also asked how long special administration will last, which I think will be on a case-by-case basis. Protection of learners is very important, as is staff employment in those colleges, because we do not have huge numbers of people queuing up to teach in FE. Finding them alternative posts will be important to the social and teaching capital of the sector.

The hon. Gentleman asked what will happen in this area, and learner protection is important. I was pleased that he and the hon. Member for Wolverhampton North East mentioned young people with special educational needs, who are often taught in colleges and achieve phenomenal results that are well above the original estimates of what they might be able to do at the beginning of their course. They are learners. That is why they will be at the top of the list for protection. The duty to ensure that they have ample and equal opportunity—the word "equal" is important—to go on and have fulfilling lives will be paramount.

The hon. Gentleman asked specifically whether the area reviews have been successful and whether I have commissioned any work. Work is ongoing. In fact, I met the FE commissioner today and our conversation went along those lines. We need to look back and ask what success there has been. Without doubt, there has been success. Of course, we cannot compel colleges to merge or to do anything.

Gordon Marsden: The Minister is being fair and looking at this issue in the round, for which I am grateful. I was making a specific point about whether the Department had done any analysis—I realise it may be too early—of the implications financially for the structures of the institutions, as well as asking about the broader aspects of how things were going.

Anne Milton: I should reassure the hon. Gentleman that I do not feel the need to erect an air-raid shelter over anybody, and certainly not Her Majesty's Treasury, which is quite good at looking after itself to be absolutely honest. I am not really in that business. However, it will be important to look back and ask what has worked and why. The problem is that the debate at the moment, not just in this House but among the public, is all about money. That is a mistake; it is not just about money. I know that the hon. Gentleman appreciates that. It is about what you do with the money. Good management and leadership are important in making these institutions work.

[Anne Milton]

The hon. Gentleman quoted the UCU, but it would be unfair to suggest that we have got to this moment without me or any of my predecessors being acutely aware of where FE colleges get their money and of the need to make sure that that is funded in future. We are doing several pieces of work. He referred to Philip Augar's review of post-18 education funding. FE colleges come into that remit. We are also looking at level 4 and 5 provision. A lot of universities are providing level 4 and 5 provision. Should that happen or would it be better done in FE colleges?

Sir Robert Syms (Poole) (Con): Clearly there are concerns about funding for FE colleges. One difficulty is that many of them have foreign students and under the current visa regime, if they change their course they have to go back to their country of origin and if they want to go on to university they have to go back to their country of origin. That does not help. When the Government publish the White Paper, I assume that the Ministers who have responsibility for FE will make representations to make the situation a little easier, because this is additional money for the sector that many colleges can earn. Bournemouth and Poole College earns about £1 million a year in such fees, so this is a way in which we could get more money into the sector.

Anne Milton: I hesitate to talk about joined-up Government because it never feels as joined up as it ought to be, but joining it up so that a decision about the visa rules does not have an adverse impact on the sector is critical, because having students on courses means financial income. We are doing quite a lot of work on that at the moment, as my hon. Friend might imagine.

I know that Hull has had huge problems; I have spoken to the hon. Member for Kingston upon Hull West and Hessle (Emma Hardy) about that. I would just say that money is going in; there is a danger of forgetting that when we look at the base rate of funding of further education colleges. The pot of money that the Treasury made available for the restructuring facility was £700 million, and a substantial amount of that will have been spent; that is important. We will also put in £500 million by 2020, with the full roll-out of T-levels.

On the subject of T-levels, we are putting in £20 million over the two years to March 2020 to support providers as they prepare for them. The hon. Member for Wolverhampton North East mentioned technical education; this is at the heart of that. We are also putting together a £20 million investment, including recently through Taking Teaching Further, which tries to get industry expertise into colleges. People with that expertise are often exactly the people we want teaching in FE colleges. There is quite a light regime regarding what qualifications people need in order to teach in an FE college—rightly so.

We need to inject people like that into the system. We are providing a maths premium and £38 million for the initial providers of T-levels, so that they can invest in the sort of equipment that is needed.

Catherine West: I thank the Minister for her generous approach to discussing this. Will she lay out the steps that her Department is taking to deal with poor practice? The National Audit Office has pointed out that there have allegedly been corrupt practices in the past. What is being done differently to avoid that with the training providers?

Anne Milton: I thank the hon. Lady for reminding me of the bit that I had left out: the issue around independent training providers and some of the problems there. There was learndirect, which was a quality issue, and recently of course there was 3aaa; that was not a quality issue—it was actually rated quite highly—but a financial issue.

I am a simple soul; I sometimes find it extraordinary that we cannot keep tabs on all this money that we give out, and it is so important. Experiences should teach us lessons that enable us to tighten the regime as we move forward, but it is important that we do not make things bureaucratic, or the costs of applying for, or getting, funding onerous, with disproportionate cost. There are a number of things going on in the Department—not all of which I can share with the hon. Lady—to ensure that we reflect on this issue. Certainly, after learndirect, I asked officials to go back and find out how they could have realised that this was going to happen. In any sector, a number of organisations wait like vultures for the pickings of Government spending. We always have to protect ourselves from that, keeping in mind that the learner is at the heart of this. We also have to make sure that every £1 of taxpayers' money gives £1 of value for learners.

It is disappointing to me—I am, of course, an advocate for this sector—that this debate is happening here. I would be interested to see whether, by the end of debate on the Budget at 5 o'clock tomorrow, there has been any mention of FE on the Floor of the House of Commons. I hear a great deal about schools and their concerns about funding. I rarely hear—except in obscure Committees such as this, or on one occasion in Westminster Hall—about FE. It is the squeaky wheel that gets the oil in this world, and if the wheel does not squeak, it is hard for me to make the case for the oil. I commend the regulations to the House.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Further Education Bodies (Insolvency) Regulations 2018.

3.29 pm

Committee rose.

