

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### TECHNICAL AND FURTHER EDUCATION BILL

*Eighth Sitting*

*Thursday 1 December 2016*

*(Afternoon)*

---

#### CONTENTS

CLAUSES 22 to 23 agreed to.  
SCHEDULE 2 agreed to.  
CLAUSE 24 agreed to.  
SCHEDULE 3 and 4 agreed to, with amendments.  
CLAUSES 25 to 37 agreed to.  
CLAUSE 38 agreed to, with amendments.  
CLAUSES 39 to 45 agreed to.  
New clauses considered.  
Bill, as amended, to be reported.  
Written evidence reported to the House.

---

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Monday 5 December 2016**

© Parliamentary Copyright House of Commons 2016

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chairs:* † MR ADRIAN BAILEY, NADINE DORRIES

† Argar, Edward (*Charnwood*) (Con)  
 † Brabin, Tracy (*Batley and Spennings*) (Lab)  
 Donelan, Michelle (*Chippenham*) (Con)  
 † Evennett, David (*Lord Commissioner of Her Majesty's Treasury*)  
 † Halfon, Robert (*Minister for Apprenticeships and Skills*)  
 † Hopkins, Kelvin (*Luton North*) (Lab)  
 † Jayawardena, Mr Ranil (*North East Hampshire*) (Con)  
 † Kane, Mike (*Wythenshawe and Sale East*) (Lab)  
 Mak, Mr Alan (*Havant*) (Con)

† Marsden, Gordon (*Blackpool South*) (Lab)  
 † Rutley, David (*Macclesfield*) (Con)  
 † Shah, Naz (*Bradford West*) (Lab)  
 † Smith, Henry (*Crawley*) (Con)  
 † Tomlinson, Justin (*North Swindon*) (Con)  
 Turner, Karl (*Kingston upon Hull East*) (Lab)  
 † Vara, Mr Shailesh (*North West Cambridgeshire*) (Con)

Kenneth Fox, Marek Kubala, *Committee Clerks*

† **attended the Committee**

## Public Bill Committee

Thursday 1 December 2016

(Afternoon)

[MR ADRIAN BAILEY *in the Chair*]

### Technical and Further Education Bill

#### Clause 22

##### GENERAL FUNCTIONS OF EDUCATION ADMINISTRATOR

*Amendment proposed (this day):* 3, in clause 22, page 10, line 6, leave out “for the” and insert “with the primary”.—(*Gordon Marsden.*)

*This amendment would ensure that the primary concern of the education administrator is the special education administration objective, that is minimising disruption to learners.*

2 pm

*Question again proposed,* That the amendment be made.

**The Chair:** I remind the Committee that with this we are discussing amendment 4, in clause 22, page 10, line 7, leave out “(if possible)”.

*This amendment would ensure that the primary concern of the education administrator is the special education administration objective, that is minimising disruption to learners.*

**The Minister for Apprenticeships and Skills (Robert Halfon):** I will answer one or two of the questions asked by the hon. Member for Blackpool South. If I understood correctly, he was asking about safeguarding. I assure him that the statutory obligations that apply to colleges will transfer to the special administrator during the special administration period.

The hon. Gentleman mentioned one bank. To clarify, the chap from Santander, Gareth Jones, told the Committee in evidence:

“On the Bill and the proposed insolvency regime, we are actually supportive of the clarity that they provide.”

He also said that

“we are still...looking to grow our exposure to the sector and grow our lending book.”—[*Official Report, Technical and Further Education Public Bill Committee, 22 November 2016; c. 38, Q41.*]

Later, he said:

“From a risk perspective, when we assess the underlying risk of a transaction, there has always been that uncertainty and we have had to make assumptions in the background. If the Bill is passed, the certainty it will provide is positive for us.”—[*Official Report, Technical and Further Education Public Bill Committee, 22 November 2016; c. 41, Q46.*]

Different banks have different views on the issue.

Clause 5 and schedule 3 allow the education administrator to dissolve a statutory corporation if no property is left for the creditors’ book, which will usually be after students have had benefit protections from the special objective. The hon. Gentleman will know that there is a special provision in the Bill to protect students with special educational needs, which is important. The education

administrator is additionally bound by the duties that apply to the college in relation to SEN students. There is no protection at the moment—nothing.

**Gordon Marsden (Blackpool South) (Lab):** This relates to the point we discussed earlier. It is not so much about cost as about distance. The Minister said earlier that the provisions currently allow students to transfer on the basis of up to 75 minutes’ travel time. This cannot be included in the Bill—we are all planning for the worst and hoping for the best—but it should be taken into account that if, for the sake of argument, a college with a significant number of SEN students goes insolvent, it might be possible to ensure that any transport provided is disability friendly. If a college with a relatively small number of SEN students goes insolvent and those students have to travel a fairly long way, it would create additional difficulties. I am not asking for anything to be put in the Bill, but I ask him to take that into account in the guidance notes.

**Robert Halfon:** I will reflect on that important point, but the Bill makes it clear that the administrator has to protect not only students, but special needs students. The administrator will be under the same obligations as the college in relation to the Equality Act 2010. That is an important part of the Bill.

My hon. Friend the Member for North East Hampshire said that clause 14 is one of the most important in the Bill. Clause 22 is equally important, and it should be considered not in isolation, but in conjunction with clause 14. It is the backbone of the special administrative regime and distinguishes it from ordinary administrative processes. While clause 14 enshrines the overriding purpose of the special administrative regime—the protection of students through the special objective—clause 22 gives the education administrator the power to manage the FE body’s affairs, business and property, and it places a requirement on the education administrator to carry out their functions for the purpose of achieving that objective.

Clause 14 makes it clear that student protection is the primary purpose of the special administrative regime. Reading clauses 14 and 22 together makes it clear that the education administrator’s primary purpose is to achieve the special objective. I hope that explanation reassures the hon. Member for Blackpool South and that he will agree to withdraw the amendment.

**Gordon Marsden:** I am grateful for the Minister’s remarks and for our short exchange on the situation for SEN students. I am particularly grateful to him for emphasising the relationship between clauses 14 and 22. It is important that he has stated in Committee the primary purpose of the education administrator; if in future there are any doubts or concerns about the interpretation of the clause, that will be an important point. I thank him for his response and I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Gordon Marsden:** I beg to move amendment 5, in clause 22, page 10, line 7, at end insert—

“(2A) The education administrator may, in performing his or her functions for the purpose of achieving the objective of the education administration, request information, advice or guidance

from practitioners with an understanding of education regarding the management of a further education body.”.

*This amendment would allow an education administrator who, under the eligibility outlined in clause 15, might not necessarily be an education specialist to supplement his or her knowledge.*

The amendment pursues an issue that we have already discussed, but in the context of the experience or knowledge of higher education that the education administrator will need. The Minister and I had a useful exchange about the capacity of the education administrator to reach out, either within an organisation or peripherally to it. The amendment would allow an education administrator who meets the eligibility guidelines outlined in clause 15, but might not necessarily be an education specialist, to supplement his or her knowledge.

Our friends in the National Union of Students were particularly anxious for the amendment to be tabled, and we have taken their points on board. As the Minister will know, the NUS has welcomed the provisions that relate to insolvency, but it, too, is nervous—well, “nervous” is perhaps the wrong word, but it is certainly concerned. It believes that the process should be underlined as strongly as possible and that, in the twists and turns of what will inevitably be a fraught and taut process for all concerned, the administrator should be able to take further advice, even if he or she has some past experience. The amendment would make it clear that the educational administrator may seek that advice.

The Bill does not require the person appointed to deal with the college’s insolvency to know anything about colleges or the FE sector; under clause 15, they need only be an insolvency practitioner. We do not dissent from that, because we have already had a conversation about it and we are entirely reassured by the points that the Minister has made. However, the education administrator will have substantial powers over the future of an education body and its students, and indeed over the education body’s management, as clause 22(1) sets out.

Bearing in mind that the period of time for which they might have to manage the FE body’s affairs will be somewhat elastic, it would seem sensible to ensure that the administrator can get advice from people who actually know how to run an FE body. Better still, obviously, would be to have an administrator who was either very close to or within the FE sector. That was the intention behind amendment 34. After all, the Bill is designed to recognise that context, which is why it includes the education objective and entitles learners to continue their studies. Amendment 5 would just ensure that the Bill makes that provision and allows the education administrator access to whatever information and advice they may need to fulfil their duties. I am sure that the Minister wishes that to be the case. We suggest that it is a fairly obvious point—the Association of Colleges and the NUS think so—but it is not obvious in the Bill currently.

Without straying beyond the narrow lines of the amendment, I merely say to the Minister that there are many options for practitioners who could be called upon with an understanding of further education management. That could include chairmen or governors of FE bodies, former FE commissioners, or perhaps even retired people from those areas or from awarding bodies. Will the Minister give us some further details about whom he imagines an education administrator might wish to consult? Whatever avenue he wants to go

down to assure us in that respect, it is important that the administrator has the advice of experts to make the correct call.

**Kelvin Hopkins** (Luton North) (Lab): I will be very brief. I support my hon. Friend. One of the problems for the FE sector and, even more, for sixth-form colleges is that the whole sector has been bedevilled by decisions being made by people who are unfamiliar with those sectors. Many people involved in politics have come through a school or university environment; they have not been through further education. Many areas do not have sixth-form colleges, so people are not quite sure what they are. It is important that we have people with knowledge of the sector—educationally and organisationally—to make judgments on these matters. I just wanted to support my hon. Friend with those few words.

**Robert Halfon**: I appreciate the amendment. I raised these issues in the previous sitting. I go back to the quotation from Stephen Harris, the insolvency expert, who said that

“it is worth standing back and recognising that insolvency practitioners are not train drivers, or people who spend their life in the railway or the London Underground”—[*Official Report, Technical and Further Education Bill Public Bill Committee*, 22 November 2016; c. 46, Q60.]

Those people are expert insolvency practitioners, but many have some kind of educational link or work for a company that has a good link with and expertise in education.

It would be inconceivable that any education administrator would not consult—I strongly expect them to—key stakeholders, particularly the FE commissioner, student bodies, governors, parents and any relevant sponsor or other stakeholder involved with an insolvent college. That is expected as a matter of course, but I will reflect on what the hon. Member for Blackpool South said. On those grounds, I hope that he is happy to withdraw the amendment.

2.15 pm

**Gordon Marsden**: I have heard what the Minister has said and I will be happy to withdraw the amendment. I have just one observation at this stage, as we have had two or three conversations on these sorts of issues. He said he would reflect on the matter. He might want to reflect on whether it would be useful, for the assistance of all the bodies concerned, if at some point—ideally while the Bill is still in the House of Commons—we were to have broader guidance notes on some of the issues that we have raised today. It would therefore all be in one place from which those bodies could take comfort and reassurance. Having said that, I am more than happy to beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Gordon Marsden**: I beg to move amendment 6, in clause 22, page 10, line 10, leave out “have special educational needs” and insert—

- “(a) have special educational needs;
- (b) are care leavers;
- (c) are parents;
- (d) are carers, carers of children, or young carers, as defined by the Care Act 2014; and,
- (e) have other particular needs that may be determined by the appropriate national authority.”

*This amendment would make provisions for the particular needs of additional groups of existing students to be considered by an education administrator in pursuing the objective of an education administration.*

Having touched on the issues of special needs, we want to probe a little further and more broadly beyond what has been said. The Minister has already given strong assurances on the general issue of special educational needs, but he will be aware of particular circumstances affecting some categories of people who take the big step, given their experiences, of engaging with further education. I am sure that everyone would agree that we do not want those groups of people, in particular, to be disadvantaged, and we certainly do not want them to suffer more disadvantage than students ordinarily would in the circumstances.

I accept that lists can be invidious, but we feel that care leavers, parents, and

“carers, carers of children, or young carers, as defined by the Care Act 2014”

are three groups that may be particularly vulnerable to disruption in their studies, as we have discussed. The amendment is designed to signal to the administrator the importance of taking those groups into account.

**Kelvin Hopkins:** Earlier my hon. Friend made a point about distance of travel. Groups such as parents and those with caring responsibilities will definitely be affected by travel over longer distances. I am sure that he has that in mind.

**Gordon Marsden:** My hon. Friend is right. He has read not only my mind, but my postbag. Only half an hour before coming here I received an email from Unison, which raised some of those issues with respect to its members who fit into one or two of the categories in question. It made precisely that point about distance, which I was anxious to make in my exchange with the Minister about the education maintenance allowance. It was not simply about cost; it was also about time.

**Tracy Brabin (Batley and Spennings) (Lab):** I have spent time with care leavers and foster families in Kirklees, and they are an incredibly vulnerable group of people with a lot of chaos in their lives. They are five times less likely to get five good GCSEs and eight times more likely to be excluded from school, and obviously they are less likely to go to university or, we assume, start an apprenticeship. They need extra support, and so do their families. Certainly, when they are moved around, which sometimes happens, they need extra support with transport and so on.

**Gordon Marsden:** I am grateful to my hon. Friend for underlining that point and giving that practical example of a personal issue. Perhaps I can be forgiven for mentioning that the shadow Secretary of State, my hon. Friend the Member for Ashton-under-Lyne (Angela Rayner), has herself strongly expressed how crucial further education was to her during her teens. She said on Second Reading that she would not have been there to present our view on the Bill had she not had that experience, when she was in that vulnerable situation as a teenager.

There are groups of people who must particularly be thought about in this context. We discussed care leavers on another occasion, and the difficulties that many of them face, but it seems particularly appropriate to discuss

them again in the context of the amendment. In their apprenticeship funding proposals last month, the Government recognised that apprentices aged 19 to 24 who had previously been in care, or who had had a local authority education, health and care plan, might need extra support. The majority of respondents to their survey supported that—more than twice as many providers agreed with the proposal than disagreed. The Government have pledged in the proposals to give extra funding to employers who take on someone who was previously in care or had a local authority education, health and care plan. We applaud that as a good start, but it is important to think about legislating further and to guarantee that other necessary steps are taken to ensure that access and opportunity are available to care leavers.

Looked-after children often achieve less highly at GCSE, as my hon. Friends have noted, partly because they may have a chaotic family background or a history of abuse. The Special Educational Consortium stated in written evidence that young people who have a care plan at age 15 are more than twice as likely not to be in education, employment or training at 18. Barnardo’s said:

“These young people often leave school with few or no qualifications and need alternative options outside of the school environment if they are to achieve their potential. Some need provision that allows them to catch up on what they have missed. These young people also often want the option of practical-based learning that clearly links to a real job.”

While we are on the subject of care leavers, how does the Minister envisage the proposals to support apprentices, and the proposals that we would like to see taken on board more generally in respect of care leavers, linking up with the work done in the children’s services section of the Department for Education? In particular, what discussions has he had about the Bill with his hon. Friend the Minister for Vulnerable Children and Families, the hon. Member for Crewe and Nantwich (Edward Timpson), or his officials? I have credited him before for the assiduousness with which that part of the Department introduced the responsibility up to the age of 25.

The amendment also includes parents and carers, who for numerous reasons might be particularly affected by changes to their study arrangements. They may have particular arrangements for their children or dependants that might not be addressed by simply transferring them to another college. What happens if the college to which they are transferred is not as near to their children’s school? What if the new institution’s timetabling disrupts routines for those they care for, or their ability to be there for their children? What if potential increases in travel costs negatively affect the carefully planned budgets of those with caring responsibilities, affecting both their access to education and the care that they can provide to their own children and loved ones?

There will be others with particular needs, which is why the amendment has flexibility built into it to accommodate them. For all those reasons, the education administrator’s decisions must be carefully thought through, so we feel that it is important to require the administrator to do so. I know that there is a school of thought that says any decent education administrator, given the background, qualifications, empathy and pastoral issues to which the Minister referred, would do so, but I do not think that it reflects doubt about the good intentions of particular people in particular circumstances to say

that they might be beset by a series of difficult decisions and priorities, probably within a relatively constrained period of time. It does not indicate that people would not think about the groups concerned. It is important in that pressurised situation that they are reminded of the importance of those particular groups. That is the basis on which we have brought forward the amendment.

As my hon. Friends have said, those groups already face challenges and barriers to education that it can be difficult for others even to imagine. I can imagine some of it. That is not from the perspective of being a teacher or tutor in further education, but from my perspective of having been a part-time course tutor with the Open University for nearly 20 years. I do not think I had many care leavers, but I certainly had people who were carers and who came into other distinct categories. I marvelled at the determination with which they took forward their studies under some trying and difficult circumstances. I believe that our proposal is the right thing to do, and I would welcome the Minister's thoughts on whether the Bill needs to say rather more about the particular needs of these groups of students.

**Robert Halfon:** I am going to do the opposite to the hon. Gentleman: I will talk about the broad thrust and then answer the specific issues. I thank him again for his thoughtful contribution. I have already explained that we are introducing protection for students in the unlikely event that their college or provider becomes insolvent. The special objective will require the education administrator to take action to avoid or minimise disruption to their studies, by whatever means they consider appropriate.

However, the Government recognise that the education administrator might find it harder to find, or will need to think more carefully about, suitable alternative provision for those students with special educational needs, compared with the general student body. We do not want those students to be disproportionately affected by the exceptional event of college or provider insolvency, which is why we have placed a requirement on the education administrator—set out in clause 22(3)—to have particular regard to their needs.

We have had a lot of preliminary discussions about SEN students, because two thirds of care leavers are SEN students. We included provision for SEN in the Bill because of the particular difficulties such students face. There might be the need for specialist equipment or adaptations to teaching, or there might be a transport issue, and it is a requirement that the education administrator considers those in developing their proposals.

**Gordon Marsden:** Will the Minister give way?

**Robert Halfon:** I will answer the hon. Gentleman's points. If he wants to raise a different point, I am happy to answer it, but I ask him to have faith in me. I have tried to answer questions as much as I can all the way through.

**Gordon Marsden:** I am not suggesting that the Minister has not.

**The Chair:** Order. I would be grateful if Members confined themselves to the established procedures for interventions, rather than carrying out conversations.

**Robert Halfon:** I need to set this important issue in context. We already make good special provision available for post-16 education. Care leavers are a priority group for access to the vulnerable student bursary, which provides financial assistance. Care leavers receive yearly bursaries of up to £1,200—it is pro rata for part-timers. As care leavers, their eligibility for that support will not change, even if they are transferred to another provider as part of a college insolvency.

Alongside the vulnerable student bursary is the 16 to 19 bursary fund, which I discussed earlier. It is a discretionary fund targeted at young people and allocated to schools, colleges and training providers, which make awards to students. It is up to the college to define eligibility criteria, because it will know the needs of its students best. It is targeted support at a local level.

I am pleased to say that the Government have changed the law to improve how young carers and their families are identified and supported. For the first time, young carers have the right to an assessment of their need, no matter who they care for, the type of care they provide or how often they provide it. The assessment will consider their educational needs and will not be affected in the scenario where the student has to transfer college providers.

In answer to the specific question about care leavers, as the hon. Member for Blackpool South has pointed out, at this stage we have not included the requirement for the education administrator to take account of the needs of care leavers. As I have said, it is an issue that I will reflect on seriously.

2.30 pm

**Gordon Marsden:** The Minister has been very helpful, and I appreciate that, but before he concludes, I have a definitional question that I think relates to what he has been saying. Subsection (7) refers to “special educational provision” and subsection (6) refers to a student with “special educational needs”. I have heard everything he has said about young carers, but is it his understanding that young carers or care leavers would automatically come under those categories? I know this is a narrow point, but it is quite important, because it influences whether further definition is necessary in the Bill.

**Robert Halfon:** No. It applies only to what is classed in statutory terms as an SEN student. That is why I have acknowledged that college insolvency is disruptive, especially to SEN students and care leavers. By the way, I should say that it was very gracious of the hon. Gentleman to mention the apprentice funding to make sure that care leavers are employed as apprentices, which is something I care deeply about. I am glad that he acknowledged that funding.

I want more time to reflect on what more might be done in the context of a college insolvency, to ensure that the Government live up to their promise of being an effective corporate parent. I will reflect on that.

**Gordon Marsden:** I am grateful to the Minister for that and for his promise to reflect on this issue and on the catch-alls in the clause as drafted. I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Question proposed.* That the clause stand part of the Bill.

**Gordon Marsden:** Briefly, we have had some useful exchanges on the amendments, which I have been content to withdraw. I am broadly very pleased and satisfied with the points the Minister has made.

However, as I have said before, if this process—the Bill, the new institute, the new insolvency clauses—is to be a success, it is incumbent upon us to take as large a group of people from across the stakeholders with us as possible. I want to refer to a couple of issues that the Association of School and College Leaders and the Association of Employment and Learning Providers have raised in their written evidence. As the Minister knows, the ASCL in particular is quite critical of part 2 of the Bill because it thinks it is the result of rushed consultation. That is for others to judge, but the point it makes in its written evidence, which I would like a response to, is this:

“FE and sixth form colleges were created as exempt charities by Act of Parliament... As such college corporations cannot resolve to remove their charitable status. ASCL...is concerned that applying aspects of the Insolvency Act that applies to companies runs the risk of jeopardising that status. The Charities Commission does not appear on the list of those consulted...The primary duty of a corporation/governing body is to maintain the solvency of its college. Where it fails in that duty by negligence or worse, the Charities Commission has the power to investigate and bar governors/trustees from further service.”

If the Minister is able to, I would ask him to address that issue from the ASCL.

The AELP makes another point about the status of colleges. It believes that

“this reclassification should be reviewed by the ONS. This is not merely a technical point. Some colleges have reportedly used their current ‘independent’ status to resist Area Review proposals which is well within their right. However, when AELP has argued that the Government is using a form of state aid to assist colleges...we have been told by the SFA that colleges are ‘community assets’ which justifies the further injection of public funding. The insolvency measures in this Bill would...appear to place colleges very much back in the public sector.”

It says that this has become a “murky area”.

Those are two specific observations from two important stakeholders in the area. In the context of the clause, given everything else that we have been talking about in terms of the general function of the educational administrator, I would be grateful if the Minister would comment on those points.

**Robert Halfon:** I will give a brief response. The Charity Commission does not appear in the list of respondents because it did not submit a formal written response. However, we worked very closely with it during the development of the proposals in the Bill.

Charities that are companies and charitable incorporated organisations are all covered by insolvency legislation, and the Company Directors Disqualification Act 1986 regime for disqualification applies to those organisations. The Charity Commission has been fully supportive of the approach that we have taken and sees it as being in line with the approach taken for trustees of charitable companies and charitable incorporated organisations.

With regard to the AELP, the process of implementing a SAR would not automatically mean reclassification for an individual college, let alone the entire sector, because the Government would not be directly influencing the college’s corporate policy.

*Question put and agreed to.*

*Clause 22 accordingly ordered to stand part of the Bill.*

### Clause 23

#### TRANSFER SCHEMES

**Gordon Marsden:** I beg to move amendment 7, in clause 23, page 10, line 31, at end insert—

“(2) The education administrator may not transfer assets of any further education body to a private company where he or she considers that more than half of the funding of the acquisition of the asset came from public funds.”.

*This amendment would ensure further education bodies with a track record of accruing assets publicly, could not be transferred to a private company.*

We come to an amendment that is longer than the clause it seeks to amend. That might suggest that the amendment is otiose, but I do not think it is; I think the clause ought to have been expanded a little more—but then I would say that. I want to focus some attention, at a certain length, on this issue. On our side of the Committee, that raises some really big issues about what would happen to the transfer of assets from a further education body to a private company.

Information produced by the Department for Business, Innovation and Skills on the dissolution of an FE corporation specified that assets should be transferred only to charitable bodies:

“The Secretary of State and the CESF are concerned with the appropriate use of those capital assets that have been acquired/developed/redeveloped with public funding and the conditions for their transfer and usage...FE corporations are advised to undertake early discussions with the Skills Funding Agency to identify the relevant assets and any potential repayment of some, or all of the associated grant or proceeds of sale...The regulations include a requirement that the FE Corporation publish the proposed arrangements for the transfer of the property, rights and liabilities of the FE Corporation...*The Dissolution of Further Education Corporations and Sixth Form Colleges Corporations (Prescribed Bodies) Regulations 2012*”—

that would have been an interesting secondary legislation Committee to sit on—

“lists the bodies to which an FE Corporation can transfer its property rights and liabilities upon its dissolution. It is expected that all transfers should be made to charitable bodies, and for the purpose of education.”

It is on that point that I want to focus my remarks on the amendment. The document continues:

“Where the bodies are not charities then it must be transferred in accordance with the charitable purposes of the trust.”

It then links to a whole list of prescribed bodies to which assets could be transferred, including sixth-form colleges and governing bodies.

The point I start from is that to say it is “expected” that all transfers should be made to charitable bodies is not the same as saying it is “required”.

**Kelvin Hopkins:** My hon. Friend makes a good point. Is the stronger case not that such properties should be transferred back to local authorities? That is where the property came from in the first place.

**Gordon Marsden:** My hon. Friend makes an interesting point, and possibly opens up a new area for policy discussion in certain political parties. The reality of the

situation is that in practical terms most local authorities would struggle to take on those responsibilities at the moment, but he is absolutely right to make the point—I will expand on it—on the genesis of the assets.

Given the genesis of those assets and their development over the years, we need to look with extraordinary care at any circumstances in which they might go into the private sector. Incidentally, that does not necessarily mean that we are saying that the bona fides of the private sector potential acquirers are bad. We simply recognise the fact that it would be the transfer of something that is largely of public value into the private sector without taking any account of the genesis and development.

I want to explain why I think this issue is so important. When colleges were incorporated in 1992, it took them formally outside the aegis of local authorities, as my hon. Friend the Member for Luton North said, but we have to take into account that that asset base of building in many cases was built up with local authority support and funding over a 20 or 30-year period.

The Minister has visited my local college, Blackpool and The Fylde College. I think he went to the Bispham campus, which is right at the other end of town and not in my constituency. When he arrived, the Bispham campus no doubt looked nice and shiny and new, but it did incorporate—I am not sure how much it still incorporates—buildings and elements that go right back to the 1950s and 1960s. Indeed, when the Building Colleges for the Future process was taking place in the 2000s, that was one of the arguments for demolishing that building and relocating it in the centre of town. It did not happen for a variety of reasons. At the time I was rather annoyed that it did not happen, but nevertheless I am just illustrating the point that many of the buildings that we are talking about have accreted their estate either on an active financial basis or by the ceding of lands by local authorities and other organisations.

Apart from that, over the years since then large sums of public money have often gone directly to support and build the estates of FE colleges. In the 2000s, the then Labour Government brought forward the major programme of Building Colleges for the Future. Despite the fact that the programme was curtailed and certain places, including my own, missed out on the final stages, it was a commitment of literally hundreds of millions of pounds—other Members in the House got their completely new college and everything that went with it—and that is without taking account of the other areas of non-private sector funding. Sometimes that was through very complex relationships that might involve lottery-associated bids. Sometimes it was through the significant sums of money put in under the old regional development agencies. As I know well, having shadowed the regional growth funds in my previous portfolio, sometimes it was through regional growth fund developments, and sometimes there are offshoots of European structural funds. It is important to remember all of that.

2.45 pm

It is worth remembering that FE colleges do not only deliver FE; they also deliver higher education. I hope there would be very few of these cases, because by and large one would hope that FE colleges with a strong HE capacity are at a lower risk of going into insolvency. However, one cannot assume that it would not happen. We are therefore not just dealing with implications for

FE students; we are also potentially dealing with implications for HE students in an FE college, as well as the impact that might have in the HE sector.

I am sure that the Minister does not need me to make the point—I certainly made it on a number of occasions to the Minister for Universities, Science, Research and Innovation when we were debating the Higher Education and Research Bill—that around 10% to 12% of total HE provision is delivered by FE colleges. It is reasonable therefore that in addressing this issue, we look at some of the things that have gone wrong in the past.

There are particular concerns about what has happened in the past four to five years. Hon. Members who were in the House between 2010 and 2015 may remember the significant controversy about the injection of private equity into schools, academies and, to some extent, universities. That included the FE sector. In 2012 the University and College Union produced a very important report entitled “Public service or portfolio investment? How private equity funds are taking over post-secondary education”. It surveyed the impact of private equity takeovers in other public services in the UK, as well as in the HE and FE sector.

The report said that the private training market was extremely active, as it continues to be, in the adult vocational training market and it is capturing a growing share of Government funding in the area. It said that there were a handful of private equity funds whose investment platforms are very much focused on that area and have consequently won significant sums of money from the Government. At the time, that list included companies such as Close Brothers Private Equity, Marwyn, Bridgepoint Capital and Sovereign Capital. The UCU made the following point:

“Thanks to the government’s Education Act 2011, it is now possible for further education corporations to dissolve themselves and form companies limited by guarantee. This would make it easier for private equity funds to invest in them or buy them out entirely.”

I accept that the private sector might wish proactively to instigate such a situation. However, we have to take into account the insolvency process. Let us say, for example, that there is not an easy option for an education administrator considering a local college to which students might be transferred. Even if the various issues we have talked about make it far more likely that that provision will continue, it may be done on the spot to benefit disadvantaged groups. The point I am making is that there may be circumstances in which the education administrator feels that they have to turn to private sector options. One cannot ban the principle that they should be allowed to consider that option. However, given everything else that I have said, the process needs to be looked at very carefully.

There are those who say that the private equity funding sector, although no doubt it can be extremely profitable and useful, is based on a relatively short-term view of providing management and initial capital to buy other companies and then taking them off the public share markets. This is the assessment of the UCU document:

“The private equity firm, typically, makes money by charging commission fees on these transactions. Private equity funds typically look to sell on their companies within a period of three to seven years.”

I hope that the relevance of that to the amendment is reasonably clear. It is a question not simply of whether it is a good thing to transfer a significant number of

public sector assets to a private provider, but of what the guarantees are, both financially and, more importantly, in terms of the nature of the body and the guarantees to the students and the people employed there, if such organisations use the insolvency to take on those colleges.

Ministers, officials and whoever else may talk about the guarantees for staff under TUPE, for example, but I am sure Members know that TUPE does not offer protection forever and a day. I am afraid that we in the Blackpool area have had bitter experience of that over a significant number of years. A large number of people used to be employed in the civil service, but in recent years a lot of them have been outsourced and TUPE-ed into other organisations, which have then passed them on to someone else, at which point their automatic rights and security of tenure almost become extinguished. I am sure most Members in this room, whatever their reflections upon it, have had similar experiences. That is an important issue to take into account when considering this amendment.

As I said, this issue caused an enormous amount of controversy and difficulty in 2012. The Government had to do some cleaning up, if I can put it that way, after those warnings and the issues with colleges and HE providers. That is reflected in the guidelines in BIS's information sheet on the dissolution of an FE corporation, which I quoted from earlier.

People might say, "Okay, there are lots of blunders and concerns, but haven't they all been cleared up?" To be frank, no, they have not been cleared up at all. Over the past two years, Committees of this House have continually expressed concerns about the process and the checks that have been carried out when public money has gone into private providers. Proper quality checks are often not in place. In December 2014 the Public Accounts Committee severely quizzed officials from BIS about why private providers were allowed to engage in untrammelled expansion without proper quality checks. In February 2015 the Public Accounts Committee published a report that said that BIS had repeatedly ignored advice from the Higher Education Funding Council for England about vast sums of public money going to for-profit colleges without due process and consideration.

In case the Minister or the Government think that those are concerns of the past, we were reminded of them as recently as July last year, when the sector publication *FE Week* produced an article about a leaked Government report that indicated that colleges could be sold off to the private sector. It said:

"A draft document seen by *FE Week*, called 'Framework for due diligence in the FE sector following area reviews', looks ahead to a post-area review world for colleges. The most worrying section was titled 'Acquisition of an FE college by a private sector organisation'. It reads: 'Private sector organisations such as private training providers may be interested in the acquisition of FE colleges. They may have different benchmarks and parameters as to what is acceptable in terms of both curriculum and financial performance of the college involved.'"

The document—bear in mind, it came from BIS—also raised questions about the impact of private sector involvement on colleges' VAT exemptions:

"Not all providers are exempt from VAT and collaborative arrangements with non-empt providers could have a significant impact financial models. Mergers, joint ventures and other collaborative arrangements could alter the status of the provider. This needs to be investigated."

When asked about that, the then chief executive of the Association of Colleges, Martin Doel, said:

"Private organisations should not be able to asset strip colleges' buildings and facilities or pick and choose students or courses according to how much profit they might generate".

Of course, he was talking of a situation in which there might be a proactive attempt by companies to acquire colleges, possibly as part of a long-term strategy. I am raising it in the context of a situation of potential insolvency of a college for which, frankly, there are no other takers, and these institutions pop up.

It is interesting that, when *FE Week* approached a number of private equity firms for comment on the document, including Montagu Private Equity, which took over the College of Law in 2012—it had previously been a charitable institution—Sovereign Capital, Silverfleet Capital and LDC, none wanted to comment. Hon. Members can read what they like into that, but it says to me that these issues have not gone away, and the fact that there is nothing in the Bill to strengthen those procedures is worrying.

Just in passing—actually, no; it is a very important point—Unison observed in the email I previously referred to that in the insolvency procedures there are lots of provisions for the protection of students, but no mention, as far as it can see, for the protection of staff. It also asks an open question that the Minister may want to try to answer: are we to assume that people will be made redundant, or that in those circumstances they would be TUPE-ed to a different provider? That would not be a long-term guarantee in the way I previously discussed.

Too often in the past, stable doors on problems in the FE sector have been closed after the horses have bolted—horses that have lost the public purse tens of millions of pounds and caused problems and sometimes personal disasters for some of those working or studying in colleges. We believe that there needs to be firm and robust provision in the Bill to limit the opportunity for some of those private providers to get rich quick without taking any account of the publicly inherited assets.

For the avoidance of doubt—I want the Minister to be clear about this—we are not saying that we would oppose any private sector takeover of a college in those circumstances. We are saying that the education administrator will have to make a judgment as to whether that should be a bid of last resort. Whatever the circumstances, the fact that those colleges have had substantial sums of money in the past must be taken into account. Assessments must be done properly, and if the education administrator cannot guarantee that the assets of any FE body transferred to a private company are less than half of the funding of the acquisition of the assets, he may not transfer them.

3 pm

That 50% figure is probing. It is not necessarily one that we would stick with, but the minimum we would like to see from the Minister is an assurance that that basic principle that the education administrator may not transfer the assets of any FE body to a private company when more than half of the funding to acquire the assets came from public funds should be placed in the Bill in some shape or form. If it is not, we do not believe—nor do others—that the Bill safeguards us from a repeat of some of the things that happened in 2012.

Without taking us outside the scope of the amendment, the cloudiness of some arrangements in the private sector using public funding are not unique to this country. They have also been seen in other countries with FE-type institutions, notably Australia and the United States, and they are issues on which Baroness Wolf has waxed lyrical in concern and criticism.

I want to leave the Minister in no doubt that the point we are making is based on what has happened in the past. There is an old saying, “once bitten, twice shy,” and in this instance we should be very shy of allowing private providers simply to come in and acquire a significant amount of publicly acquired assets in a case of insolvency without us looking carefully and extracting some price in return.

**Kelvin Hopkins:** I strongly support my hon. Friend’s case. This is something that I am alarmed about. The reality was that, at incorporation, hundreds of thousands of acres and hundreds of buildings were transferred without charge from the local authority and incorporated in bodies that still seemed to be essentially in the public sector and were still largely funded by it—sixth-form colleges are entirely funded by the public sector. The idea that they could be sold off to speculators for profit, with development value acquired and millions of pounds made, is completely unacceptable. If anyone ought to have that asset, it is the public sector: either local authorities or a central Government Department. If they so choose to sell land off, at an appropriate value—if it has planning permission for housing or whatever—that development value should accrue to the public purse as well.

I have some experience and, as always, knowledge of what has been happening recently. Indeed, one college had a large area of land associated with it that had been a sports field that was still used for sports but was also a local leisure amenity. The principal wanted to sell that land off for housing development, making a vast amount of profit, and the implication was that he might have benefited personally. He was known to be assiduous in making sure his pocket was well filled. I think he managed to pay himself the highest salary of any college principal in the country even though his was not one of the largest colleges. Be that as it may, he eventually left in some disgrace and the college is now recovering, but selling off land for personal profit was a temptation that clearly affected him.

The principal was also building an academy chain by getting schools to become academies and then trying to get them into his ambit. It is interesting that two of the schools had land attached, and when, some way through the deal, it was decided that he could have the schools but not the associated land, he lost interest in getting them into his academy chain. It was clear that he was interested in the land associated with those schools, not in the education of the children, the success of schools or whatever. When big money is involved, college principals and others involved in college life can be tempted by the prospect of substantial personal financial gain. That has to be guarded against, and the way we do that is by ensuring that the assets stay in the public sector and that any benefit, financial or otherwise, accrues to the public sector.

The amendment therefore goes some way towards what I would like to see, and I will certainly support it should my hon. Friend the Member for Blackpool South

press it to a vote, but I think we ought to go further and ensure that those kinds of practices cannot happen. We are talking about public assets, built up by the public sector over decades, if not scores of years or generations, and to see them simply handed over to private speculators without any benefit to the public sector is absolutely unacceptable.

We have to separate out capital assets from revenue costs. Revenue costs become too great if students disappear or the college is not being run efficiently and so on. We can deal with that. Capital assets, on the other hand, should be treated as precious and retained for the public sector and for public benefit; they should not be for the benefit of property speculators who could make millions, if not billions, out of such assets across the country, if allowed to do so.

With those few words, I express my strong support for the amendment. I hope that at some point the Government will recognise this issue so that we can go further and make the principles behind the amendment even stronger in legislation, whether in this Bill or in others.

**Robert Halfon:** I thank the Opposition for the amendment and the hon. Member for Luton North for his contribution. I will make a couple of general points before I go on to the specifics.

As has been observed, and I repeat, without the Bill there is no protection for students or from the seizure of college assets. The hon. Gentleman talked about hundreds of millions in government funding, but the general point is that college insolvency is likely to be a very rare event, so the portion of government assets that might transfer to a private sector company is likely to be small. The priority, as I say, has to be protecting students. Such a transfer is right if the education administrator is fulfilling his special objective and believes that it protects the students if he has the ability to do so.

On solvent dissolution, assets must go to a charity that has educational purposes. In insolvency in a special administrative regime, transfers go to bodies prescribed in regulations, all educational, which can include private education providers, or, as the hon. Gentlemen will be pleased to know, local authorities. As the FE Minister, I always have colleagues coming to me with suggestions about how the local authority might be involved with the FE college.

The Bill is not about private providers; it is about statutory bodies and companies that run designated FE institutions—that is, designated by the Secretary of State. For independent training providers offering provision to those with advanced learner loans, there must be a register of training organisations, they must have at least satisfactory financial health, they must pass capacity and capability requirements, and they have to have evidence of, and a track record in, education and skills delivery.

To go back to the question asked by the hon. Member for Batley and Spen, transfer schemes are a feature of other special administrative regimes. They allow for assets to be transferred to another body without the agreement of a third party which would otherwise be necessary—for example, leases without the consent of the landlord. That means that the scheme can be used to prevent a third party from blocking a transfer that is intended to facilitate the achievement of the special objective. The special administration regime’s delivery

[Robert Halfon]

of the public policy objective—in this case the protection of students—should not be subject to third-party agreement. The education administrator will use a transfer scheme only if that is necessary to achieve the special objective.

It is important to note that the Secretary of State must approve any such scheme before it is used. Even if the education administrator does not use a transfer scheme, it is open to the Secretary of State to challenge the administrator if he or she feels that the administrator is not performing his or her duty to protect students.

**Kelvin Hopkins:** A thought occurs to me. If charitable organisations were brought into play, would it not be possible for assets to remain publicly owned but be allocated to such organisations on a rental basis rather than an ownership basis?

**Robert Halfon:** We are looking at cases of insolvency. We have the protection of students at heart, but we also want to be fair to creditors. I am passionate about the Bill because I believe it assures the protection of students, but I acknowledge that we have to be fair to creditors as well, and I do not think that would be the case if we did what the hon. Gentleman suggests, although in an ideal world that would of course be a lovely thing to be able to do.

The FE body itself cannot be sold. It is a statutory body. If it is insolvent and must therefore close, the protection of students must come first; the sale of the asset would be to protect students first and creditors second.

**Gordon Marsden:** I am listening carefully to the Minister. He has just said that the FE body cannot be sold and the assets must be dealt with in the way that he has described. The problem is that this is not necessarily a question of the FE body being sold. For the sake of argument, to take the example that my hon. Friend the Member for Luton North used, there may be an asset with substantial land attached that was originally a public asset, and that could be disposed of as part and parcel of the process of trying to resolve an insolvency without that actually involving the dissolution of the FE body. I am not a lawyer, but it seems to me that there is nothing in principle to stop that happening. In those circumstances, a part-asset could be transferred that was not the whole of the FE body but perhaps represented tens of millions of pounds of value.

**Robert Halfon:** The assets currently are not publicly owned; they are owned by the FE body, which has significant operational independence, and are for the educational purposes of the FE body. Valuable land that is sold in the way that the hon. Gentleman describes has to be sold for the purpose of the special objective. I am involved at the moment in a case where an institution wants to sell for housing land that is, in my view, meant to be for FE use. He probably knows the case. We are clear that that land is for the educational purposes of the students. That is our belief.

I have covered most of the hon. Gentleman's points. I would not be so down on private providers; there are examples of good private providers. Let us take the example of SEN students, whom we talked about earlier. It may be better for those students if the education

administrator were able to transfer the students and facilities to a private body if that was the only one available. That would minimise the disruption to them, and their studies could continue uninterrupted at the same location. Sometimes, to have the private sector involved is a good thing, as long as private organisations, as I say, are properly inspected and registered and have a good record of education. I hope that I have been able to assure the hon. Gentleman that there will be no haemorrhaging of publicly funded assets to the private sector and he will agree to withdraw his amendment.

3.15 pm

**Gordon Marsden:** The Minister has been characteristically courteous. If I were able to take his reassurance as the end of the matter, I would, but unfortunately it is not the end of the matter. I will make a few brief points.

The Minister says that the proportion of public assets that might be disposed of to the private sector in the event of a college insolvency as a total is very small, percentage-wise. We could trade figures on what that percentage might be, but none of us knows. The fact of the matter is that it is about the area where that happens and the impact there. A college that has tens of millions of pounds' worth of assets built up in a particular area and is crucial to the local community may be basically forwarded on to a private provider.

I accept what the Minister said; we are not saying that all private providers are bad or are leeches, but that is not the issue at stake. The issue at stake is whether private providers should be allowed automatically to take on valuable assets that have been accrued via the public sector in the event of an insolvency. The Minister said himself that it is not about private providers, but he also said that transfers could include private education providers.

In terms of real-life events, private providers are well equipped normally with lawyers and accountants. Who will monitor the detail of this? Will it be a slightly harassed education administrator? Will it be officials in the Minister's Department? I doubt it.

**Kelvin Hopkins:** As a member of a local authority many years ago, I saw the representatives of a town shopping centre—an asset that was owned by the council but rented on a long-term basis—who were skilled financial advisers, run rings around the local authority treasurers, who just could not cope with the power ranged against them. We have to be very careful, because when big money is involved, companies will get the best brains to ensure they win.

**Gordon Marsden:** My hon. Friend is absolutely right. If it were not for the track record of problems in the FE sector over the past three to four years that I have described, we might be more sanguine, but this is a really important principle that should be established on the face of the Bill. I am afraid that on this occasion, I will not withdraw the amendment and will press it to a vote.

*Question put, That the amendment be made.*

*The Committee divided: Ayes 5, Noes 8.*

**Division No. 2]**

**AYES**

Brabin, Tracy  
Hopkins, Kelvin  
Kane, Mike

Marsden, Gordon  
Shah, Naz

**NOES**

Argar, Edward	Rutley, David
Evennett, rh David	Smith, Henry
Halfon, rh Robert	Tomlinson, Justin
Jayawardena, Mr Ranil	Vara, Mr Shailesh

*Question accordingly negated.*

*Clause 23 ordered to stand part of the Bill.*

*Schedule 2 agreed to.*

*Clause 24 ordered to stand part of the Bill.*

**Schedule 3**

CONDUCT OF EDUCATION ADMINISTRATION:  
STATUTORY CORPORATIONS

**Robert Halfon:** I beg to move amendment 20, in schedule 3, page 33, line 4, leave out “and”.

*This amendment and amendment 21 are intended to make it clear that, where the context requires, a reference to the director of a company in the insolvency legislation applied by Schedule 3 can be read as a reference to a person who is a member of the further education body or the principal of the relevant institution rather than both. The purpose of amendments 22 and 23, which relate to references to an officer of a company, is similar.*

**The Chair:** With this it will be convenient to discuss Government amendments 21 to 23.

**Robert Halfon:** The amendments are minor and technical in nature, and are intended to address a minor drafting error relating to general modifications to the provisions of the Insolvency Act 1986 related to the special administrative regime. These general modifications are set out in a table in paragraph 2 of schedule 3. Schedule 3 applies to further education bodies that are statutory corporations. Paragraph 2 makes general modifications to the provisions of the Insolvency Act 1986 relating to administration to apply them to FE bodies in special administration.

The effect of the two modifications currently leads to uncertainty about which post the relevant person should hold or have held in order for the provision to apply to that person. The minor error we identified was that, in short, we have used “and” when we should have used “or”. In more detail, as drafted, the general modifications provide that “director” is to mean “(a) member...and (b) principal”. We want the director to be “(a) member...or (b) principal”, unless the context requires otherwise.

Similarly, as drafted, the modifications in the table provide that “officer” is to mean “(a) member...(b) clerk...(c) chief executive...and (d) any senior post holder”. We want “officer” to mean “(a) member...(b) clerk...(c) chief executive... or (d) any senior post holder”, unless the context requires otherwise. These are minor and technical amendments and I hope the Committee agrees to them.

I have always wanted to read an amendment like that. *[Laughter.]*

*Amendment 20 agreed to.*

*Amendments made:* 21, in schedule 3, page 33, line 6, at end insert “, or

(c) if the context requires, both of the above.”.

*See Member’s explanatory statement to amendment 20.*

Amendment 22, in schedule 3, page 33, line 14, leave out “and”.

*See Member’s explanatory statement to amendment 20.*

Amendment 23, in schedule 3, page 33, line 17, at end insert “, or

(e) if the context requires, all of the above.”.—(*Robert Halfon.*)

*See Member’s explanatory statement to amendment 20.*

**Robert Halfon:** I beg to move amendment 24, in schedule 3, page 36, line 10, leave out “(3)” and “insert “(4)”.

*This amendment corrects a cross-reference.*

**The Chair:** With this it will be convenient to discuss Government amendment 25.

**Robert Halfon:** We have been clear that although the purpose of the education administration is to avoid or minimise disruption to students’ studies, the special objective is not to be pursued without regard to the interests of creditors. Clause 22, which we have previously discussed, contains a requirement for the education administrator to carry out their functions to achieve the special objective and, so far as is consistent with the special objective, to do so in a way that achieves the best result for the FE body’s creditors as a whole.

If creditors, the Secretary of State or Welsh Ministers believe that the education administrator is not acting in accordance with this requirement, the amendment made by paragraph 21 of schedule 3 to paragraph 74 of schedule 1B to the Insolvency Act 1986 allows them to apply to the court claiming that the education administrator is not carrying out their functions in accordance with requirements set out in clause 22. However, there is an error in the cross-referencing. The reference should be to sections 22(2) and 22(4), not sections 22(2) and 22(3).

Without the amendment, creditors would be unable to challenge the way in which the education administrator was carrying out their functions, which is not what we intend. I hope the Committee agrees that the amendment is necessary for the provisions to function effectively, and that it will agree to accept it.

*Amendment 24 agreed to*

*Amendment made:* 25, in schedule 3, page 36, line 34, leave out “(3)” and “insert “(4)”.—(*Robert Halfon.*)

*This amendment corrects a cross-reference.*

*Schedule 3, as amended, agreed to.*

**Schedule 4**

CONDUCT OF EDUCATION ADMINISTRATION: COMPANIES

**Robert Halfon:** I beg to move amendment 26, in schedule 4, page 44, line 6, leave out “(4)” and “insert “(5)”.

*This amendment corrects a cross-reference.*

**The Chair:** With this it will be convenient to discuss Government amendment 27.

**Robert Halfon:** The amendments are the same in effect as amendments 24 and 25, which we have just made to schedule 3. You will be pleased to hear, Mr Bailey, that I do not propose to take the Committee through the changes again. I am sure that once was enough. It is necessary to make the amendment twice because schedule 3 relates to FE bodies, which are statutory corporations, and schedule 4 relates to those that are companies.

*Amendment 26 agreed to.*

*Amendment made:* 27, in schedule 4, page 44, line 32, leave out “(3)” and “insert “(5)”—(*Robert Halfon.*)

*This amendment corrects a cross-reference.*

*Schedule 4, as amended, agreed to.*

*Clauses 25 to 29 ordered to stand part of the Bill.*

### Clause 30

#### EDUCATION ADMINISTRATION RULES

3.30 pm

*Question proposed,* That the clause stand part of the Bill.

**Gordon Marsden:** I rise to speak very briefly about this clause and clause 37, both of which I want to put in the context of the broad policy statement that we have been given on part 2 of the Bill, which is pertinent to many of the questions that we and people in the sector have been asking about the capacity of the DFE and the institute to expand the remit of the Bill. That is no less true in the context of the insolvency proceedings than it is in the remainder of the Bill.

Page 4 of the policy statement says that it has not been possible to prepare draft regulations during the passage of the Bill—I feel somewhat conflicted about this, because part of me is rather glad that we did not have to consider the regulations, which may, and I quote, run to hundreds of pages in total. Instead, the Government have prepared a series of detailed notes describing every delegated power and setting out how they plan to use them. According to the Government, it was not possible to produce the full list of the regulations for us now. I say gently that they will have to be produced at some point, even if not for the delectionation of members of this Committee. Does that not raise questions about the capacity of the Department? What happens when the Bill becomes an Act? Who will have the capacity to draft the regulations then? I hope the Minister does not think that is an entirely flippant comment. The assurances we have been given about capacity throughout the passage of the Bill do not appear to be piecing together.

**Robert Halfon:** I assure the hon. Gentleman that the regulations will be published; the problem is that there are many pages of insolvency legislation. That is why we were unable to publish them in time for the Committee and why we issued the policy statement. They will be published, but it takes quite a long time.

**Gordon Marsden:** I entirely understand that. I was not suggesting that people are slothing on the job; I was merely making the reasonable point that the Bill necessarily involves a lot of administrative time—I put it no stronger than that—and that raises in my mind some ongoing

concerns about the capacity, either of the Department or of some of its institutions, to take some of these things forward. I will leave it at that.

**Kelvin Hopkins:** I just want to say that I am deeply disappointed that we cannot discuss the regulations in detail. Perhaps I am alone in that.

**Gordon Marsden:** All I can say is that my hon. Friend is a shining example to us all. He shames us deeply.

Let me make my own brief and pathetic response to clause 30, in the context of the Stakhanovite task that my hon. Friend has just suggested we undertake. I have a practical question for the Minister. On clause 31, the policy note talks about the way in which the power will be used to make decisions. For simplicity, I say to the Minister that although I am making this point specifically about clause 30—it affects chapter 4, which is very important because it is the special administration chapter—my question is generic and may be relevant to other clauses as well. It is very straightforward. When these revised instruments and regulation-making powers are brought forward, will there be consultation in any shape or form with the various stakeholders—FE bodies, the Association of Colleges, the Collab Group and others?

That is not for the sake of consultation itself. There have been occasions in the past, although I am not suggesting in this particular Department or area, when the lack of such consultation on detailed regulations between representative bodies—it normally has to be done at that level—and officials from the Department has produced anomalies that subsequently have to be rectified. It would be interesting to hear if the Minister can offer any reassurance on that.

**Robert Halfon:** I thank the hon. Gentleman for his remarks. On Tuesday, the hon. Member for Luton North suggested that he might have been a banker, and today he talks about being an expert on delegated legislation on insolvency. I believe the latter more than the former. Knowing the kind of person he is, he is probably about the only person who could get his head round all the different delegated powers.

The clause modifies the power to make rules under sections 4 and 1 of the Insolvency Act 1986. It allows detailed rules about the education administration for FE bodies to be made in the same way as they are for companies. The power only permits rules to be made to give effect to the chapter of the Bill that establishes an SAR or FE bodies, and the rules cannot be made for any wider purpose. Clause 5 deals with the rules needed for other insolvency procedures for FE colleges. It applies the company insolvency rules and allows us to modify them as necessary.

To answer the question from the hon. Member for Blackpool South, there has been a significant amount of consultation already, and there will be full consultation all the way through. We have to; these things cannot be done without it. I want to reassure him that that will absolutely happen. On those grounds, I hope the clause is acceptable to the Committee.

*Question put and agreed to.*

*Clause 30 accordingly ordered to stand part of the Bill.*

*Clauses 31 to 36 ordered to stand part of the Bill.*

**Clause 37**

## DISQUALIFICATION OF OFFICERS

**Gordon Marsden:** I beg to move amendment 8, in clause 37, page 18, line 14, at end insert—

“(1A) The Secretary of State must ensure the list of disqualified officers is made publicly available.”

*This amendment would ensure that a list of disqualified officers was publicly available.*

The amendment is fairly straightforward, so I will not detain the Committee long. Again, we hope that these situations will be very rare, and we certainly hope it will be very rare that people are disqualified as a result of them. However, if disqualified people are involved, the principle of transparency is extremely important. This is a probing amendment, to find out how this might be effective.

Perhaps it is worth mentioning what the explanatory notes say about clause 37:

“This clause gives the Secretary of State the power, in relation to further education corporations and sixth form college corporations, to make regulations that have the same or similar effect to the Company Directors Disqualification Act 1986. This will mean that, like company directors, members (i.e. governors) of those corporations can be disqualified from acting as such in the future and the power allows the Secretary of State to make provision so that when a person is disqualified as a director of a company they can also be prohibited from acting as a member of a further education corporation or sixth form college corporation.”

I repeat that we all hope and assume that these occurrences will be irregular. However, would it not be logical for the list of disqualified officers to be made publicly available, to ensure transparency and to allow colleges to easily assess applicants to their own corporations in the future?

**Kelvin Hopkins:** I support the amendment. In my experience of life, it is often the rogues who are most plausible and we have to have lists of people to make sure that people do not get through the net, move to a different part of the country and take up a job, before we find out that they have twice been a rogue, not just once.

**Robert Halfon:** The disqualified officers to whom the amendment refers are those members of an FE body that is a statutory corporation who have been disqualified by the court on the grounds that they have been found liable by the court of wrongful or fraudulent trading or other similar offences under the Insolvency Act 1986 as applied by the Bill. Wrongful and fraudulent trading are provisions of insolvency law that will be applied to governors and others involved in running FE bodies that are statutory corporations in the same way as they apply to directors of, and those who run, companies. That is the purpose of the amendment.

It is right that a list is kept of those individuals who have been disqualified and that such a list is available to the public, so that it is evident which individuals should not be appointed as governors of colleges in the future. However, there is no need to provide for that specifically in the Bill. There is provision in the Company Directors Disqualification Act 1986 for a register of disqualification orders to be kept by the Secretary of State and for that register to be open to inspection—as we continue to refer to that Act, I propose that we use its acronym, the CDDA.

Clause 37 will allow us to replicate provisions of the CDDA; therefore it already allows us to achieve what hon. Members seek with the amendment. I have made it clear that I intend to consult on secondary legislation made under the Bill. That includes regulations made under clause 37, so it will be transparent that we will include a provision in regulations that is the same as, or similar to, the provision that exists in the CDDA, modifying it as necessary to make it work effectively for disqualified members of college corporations. On those grounds, I hope that the hon. Member for Blackpool South will feel able to withdraw the amendment.

**Gordon Marsden:** I thank the Minister for that explanation of the procedure and situation. I am satisfied and beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

*Clause 37 ordered to stand part of the Bill.*

**Clause 38**INFORMATION FOR SECRETARY OF STATE ABOUT  
FURTHER EDUCATION

**Robert Halfon:** I beg to move amendment 18, in clause 38, page 18, line 38, leave out subsection (2).

*This amendment removes the restriction on the Secretary of State obtaining information for purposes connected with the education of certain people aged under 25. The way that section 54 of the Further and Higher Education Act 1992 is currently framed allows that information to be obtained so the amendment preserves this aspect of the current law.*

**The Chair:** With this it will be convenient to discuss Government amendment 19.

**Robert Halfon:** The purpose of the amendment is to rectify a problem that we have identified with the drafting of clause 38 that means that it does not fully meet our policy intent. Amendment 19 is consequential on amendment 18 and simply renumbers subsections.

Our aim is to ensure that the Government can maintain our current system of receiving data from further education providers after certain further education functions are devolved to some combined authority areas in England, which is due to happen from 2018. A key element of the statutory foundation for the further education data system is set out in section 54 of the Further and Higher Education Act 1992, which clause 38 amends. Section 54 imposes a duty on various bodies to provide information to the Secretary of State. Due to its specific reference to functions of the Secretary of State, that duty would cease to apply to some FE provision, as certain functions would have been transferred from the Secretary of State as part of devolution. The intention of clause 38 is to reframe the statutory basis to overcome that problem and enable comprehensive continuation of the current system of gathering information on further education.

We are not seeking to narrow or broaden the scope of education provision or types of learners covered by the duty. Clause 38(2) was drafted because we considered that the learners it describes—those aged 19 to 25 who have an education, health and care plan—were not captured by the duty under section 54. However, after further scrutiny, we have realised that for apprenticeship

[Robert Halfon]

provision, such learners are in fact in scope of the current duty. Therefore, by including the subsection we were inadvertently narrowing the scope of the duty. That is not our intention, so we are seeking to remove subsection (2).

3.45 pm

**Gordon Marsden:** I thank the Minister for that explanation, in particular on subsection (2), which I had circled and was going to ask him about. He has now answered the question, so we have no problems with the clause. Indeed, it is very important, at a time when the Government continue to embark on devolution initiatives in this area, that a national database should be maintained.

The only observation that I would make—I think this view would be shared by a number of my colleagues—is that the process that is going ahead is somewhat piecemeal and somewhat curious in its restrictions. Some of us might like to see rather more rapid action, and rather broader and more ambitious ways of ensuring that, in the future, not simply adult skills but a much broader range of issues are devolved. However, that is outside the scope of the Government's amendment and the clause, which we are very happy to support.

*Amendment 18 agreed to.*

*Amendment made:* 19, in clause 38, page 19, line 9, leave out “(4)” and insert “(3)”.—(Robert Halfon.)

*This amendment is consequential on amendment 18.*

*Clause 38, as amended, ordered to stand part of the Bill.*

*Clauses 39 to 45 ordered to stand part of the Bill.*

### New Clause 1

#### FURTHER EDUCATION BODIES: SENIOR MANAGEMENT

“A further education body shall be required to include in its senior management team a person or persons with professional financial qualifications having specific responsibility for oversight of financial management in the body.”—(Kelvin Hopkins.)

*Brought up, and read the First time.*

**Kelvin Hopkins:** I beg to move, That the clause be read a Second time.

**The Chair:** With this it will be convenient to discuss new clause 2—*Further education bodies: governing bodies*—

“A further education body shall seek to ensure that its governing body includes a minimum of two members with professional financial qualifications.”

**Kelvin Hopkins:** It is a pleasure to rise to speak to these new clauses, which I drafted myself and are borne of my own experience in college governance and teaching. That is particularly the case for new clause 1, which is about having internal experts with professional qualifications who would suffer severe reputational damage if they did not make sure that the college accounts and financial matters were all in order.

When I was chair of governors of what was then Luton College of Higher Education—it became the University of Luton and then the University of Bedfordshire

—the principal decided that the accounts were not really up to scratch, and so spent a summer going through every detail of the college's finances. He found many thousands of pounds unaccounted for, which he was then able to use to the benefit of the college. He happened to be a graduate in mathematics, which meant that he was at least numerate and could deal with accountancy, but accountancy is a specific skill.

As a student, I was taught economics by a former Treasury official whose next-door neighbour was an elderly lady who wanted him to deal with her accounts. He had to explain that an economist is not an accountant; it is a very precise skill and not something that one can just pick up at will. My closest university friend was a professor of accountancy. I know only too well that accountancy is a professional skill that needs great minds. I also understand that some of the people with the highest IQs in our country are accountants. Clearly accountants are important people, and it is important to have them involved.

At Luton Sixth-Form College, one of the deputy principals is a qualified chartered accountant. She is a superb member of staff who makes absolutely sure that all the forecasts and all the financial details are under control. We have been guided by her for many years now. It makes us feel at ease. We know that the finances are well under control, well understood and thoroughly explained to us on all occasions. Many years ago, before she was employed, I was on the finance and general purposes committee, and I remember the problems I had just getting to grips with it, and I am a numerate person with a degree that includes economics and maths. It was difficult stuff, but we had some good accountants on the governing body.

This is an important issue. If one wants to avoid insolvency, the best thing to do is ensure that one has someone with the skills to ensure one does not get into that situation in the first place, and that alarm bells are rung. As governors and politicians and Government Members, we are all well aware of what the problems are. If a principal is wilful and wants to do things beyond what they should be doing, and they have a weak financial adviser without professional qualifications, they will get away with it. There is also the question of competence; a principal may not be competent at dealing with accountancy.

Accountancy is extremely important. It sounds very boring, but I am glad that accountants are there. I would not want to have the responsibility of making decisions on financial matters without the advice of serious professionals. I have no doubt that some members of the Committee are qualified in accountancy. I am not asking Members to put their hands up, but they are about.

I have been a governor of Luton Sixth-Form College for 23 years continuously. I was also a governor there for two years in a previous period. I have been comforted by the fact that we have always had at least two qualified accountants on the governing body who can question and check the accounts and assure us that they are right, that we are not making mistakes, and that the college is in good financial order, especially when we are under pressure. We are under financial pressure; there has been the VAT issue, which I will not go into now, but we have debated it on many occasions. It is a great comfort and reassurance that we have professionals sitting on the governing body who can look at an account,

make sense of it, and ensure that we are doing the right thing. It is not just a question of numeracy, which I have; it is about the specific skill of accountancy.

New clauses 1 and 2 would make a very valuable addition to the Bill. I hope that the Government will accept them or build requirements of that kind into the Bill to ensure that colleges are well governed and well managed in financial matters.

**Gordon Marsden:** I congratulate my hon. Friend on speaking to the new clause with his customary insight and from past experience, which are powerful advocates for the mechanisms he proposes. There are not many vehicles in the House for the regular praising of accountants. I am tempted to say that if we were in the middle ages and my hon. Friend, with the passing of years, were to pass away, he might be subject to a posthumous cult of the patron saint of accountants. The serious point is that everything my hon. Friend said is valid. Whether what he proposes is done in a formal way, as he suggests, or by strong direction, the Government would do well to take on board his proposals.

**Robert Halfon:** I thank the hon. Member for Luton North for the new clauses and for his wise contributions throughout the Committee. Rather than the role of banker, I think he has taken on the role of the Gandalf of the technical education and further education sector. There will therefore be no danger of his passing as the hon. Member for Blackpool South described.

The hon. Member for Luton North has tabled two important new clauses. In an ideal world it would be a good thing if all or even some members of governing bodies had important financial qualifications, but I remind him that the head of Blackpool and The Fylde College, when asked about that, said:

“I am thinking of the unintended consequences. It is very easy to say that we can dictate exactly the constitution of a governing body, but if we are looking at further education corporations across the country, some of them are very different. My own, for example, is an outstanding college.”—

I have seen it for myself, and it certainly is—

“We are very strong financially...we benefit from the mix and balance that we have on the board: we benefit from our business community and from two very able students on the board. I am hesitant about mandating exactly what that board would look like, because it varies by college. If, for example, I were a land-based college, I might want a slightly different mix, so I am hesitant about fully supporting that.”—[*Official Report, Technical and Further Education Public Bill Committee*, 22 November 2016; c. 60, Q80.]

When I asked her about the best way to achieve what she had done, she said what is needed is an expert to manage finances: not necessarily, dare I say it, someone with an educational background—we were talking about the education administrator earlier—but someone with a good understanding of finances. Where colleges are doing better even with all the financial pressures, I suspect that is because they have brilliant financial teams as well as the brilliant leadership of the principals and the advice of the governing body.

It is the governing body of the college that is best placed to ensure that effective management is in place that meets the needs of the college, but it must be the principal who puts her team in who has the day-to-day responsibilities. When colleges fail, as the hon. Gentleman will know, the proper intervention system is in place, with the education commissioner and suchlike.

The introduction of the insolvency regime will change a lot of this anyway, and it will serve to emphasise the importance of sound financial management. Although the Government are committed to the protection of learners, corporations are ultimately responsible for ensuring the financial health of their institutions.

I am wary of imposing such a measure, but I have a lot of genuine sympathy with the hon. Gentleman's intentions. I commit to continue working with the sector to strengthen the financial acumen of governing bodies and the capability of financial directors. That will protect the interests of not only the colleges, learners and employers in the local communities but the taxpayer, which is incredibly important. On that basis, I hope the hon. Gentleman will withdraw the motion.

**Kelvin Hopkins:** I thank the Minister for his assurances and for his acceptance of the points I have made, if not of the new clauses. Even if nothing arrives in the Bill, I hope that guidance to colleges will, in one form or another, make sure that proper financial governance and financial management takes place so that insolvency is avoided at all possible costs.

**Robert Halfon:** I should have said that we are lucky in the sense that we have the Association of Colleges, the Collab Group and the Education and Training Foundation, and all those organisations are doing everything they can to improve financial leadership in colleges up and down the country.

**Kelvin Hopkins:** I beg to ask leave to withdraw the motion.

*Clause, by leave, withdrawn.*

4 pm

**Robert Halfon:** On a point of order, Mr Bailey. As we have reached the end of the Bill—in Committee, at least—I would like to put several things on the record. First, I thank the Opposition for the incredibly thoughtful and serious way in which they have dealt with the Bill. Where I have said that I will reflect on things, I really mean that. I particularly congratulate my opposite number, the hon. Member for Blackpool South, given that he has just come out of another huge Bill; he did this Bill almost straightaway. His capacity for knowledge is extraordinary. What the hon. Member for Batley and Spennings said about careers is particularly important, and I also thank the hon. Member for Luton North for his contributions.

May I also thank you and your team, Mr Bailey, and my Government colleagues, who have been incredibly helpful and supportive? Finally, I mentioned capacity—over the past couple of weeks, the incredible officials and many others have worked day and night to get this Bill to the House and into Committee, and I am hugely grateful to them.

**Gordon Marsden:** Further to that point of order, Mr Bailey. May I associate myself with the Minister's thanks to you and Ms Dorries? You have chaired fairly and lightly. I also thank your team—particularly the Public Bill Clerks, to whom the Opposition are always indebted, given that we do not have the Government's resources.

[Gordon Marsden]

May I thank my own superb team for everything that they have done? I am sorry that my on-the-ball Whip, my hon. Friend the Member for Kingston upon Hull East, is unable to be with us today, but he is at the forefront of industrial progress celebrating Siemens wind farms finally coming to fruition in his constituency, so he has a good excuse. I am grateful to all of my team, in which we have two relatively new Members—particularly my hon. Friend the Member for Batley and Spen—and I thank my hon. Friend the Member for Wythenshawe and Sale East for deputising.

I also thank the Minister and his team. He has been generous and prepared to listen and think carefully and constructively, and we welcome that. We look forward to some of the amendments we have withdrawn perhaps re-emerging in further information from him before Report stage. We are delighted to have taken part in this process and grateful for his contributions and constructively.

*Bill, as amended, to be reported.*

4.3 pm

*Committee rose.*

**Written evidence reported to the House**

TFEB 12 Association of Colleges

TFEB 13 Pearson

TFEB 14 Paul H Brinklow

TFEB 15 Natspec

TFEB 16 National Society of Apprentices

TFEB 17 Paul Milton

