

FURTHER EDUCATION AND TRAINING BILL [HL]

INFORMAL MEMORANDUM ON COMMONS AMENDMENTS

Introduction

1. This Informal Memorandum relates to the Commons amendments to the Further Education and Training Bill [HL], as brought from the House of Commons on 13 July 2007.
2. The Department for Innovation, Universities and Skills has prepared this Informal Memorandum on the Commons amendments to the Bill. It is available to Members of the House of Lords from the Lords Printed Paper Office and a copy will be placed in the Library of the House. The Informal Memorandum is also available via the Department's website at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/>.
3. This Informal Memorandum is intended to help inform debate on the Commons amendments. It does not form part of the Bill and has not been endorsed by Parliament.
4. Like the Commons amendments, this Informal Memorandum refers to Bill 75, the Bill as first printed for the Commons. References in this Informal Memorandum to the "original Bill" are to HL Bill 6, ie the Bill as introduced in the Lords on 20 November 2006.
5. This Informal Memorandum needs to be read in conjunction with the Commons amendments and the text of the Bill. It is not, and is not meant to be, a comprehensive description of the effect of the Commons amendments.
6. All the Commons amendments were in the name of the Minister ie Government amendments.

Commentary on Commons Amendments

Commons Amendments 1, 2, 4, 6, 7, 8

7. Commons amendments 1 and 2 reinstate modified versions of clauses 17 and 18 of the original Bill, which were removed by the House of Lords.

England

8. Commons amendment 1 is a modified version of clause 17 of the original Bill. It inserts new sections 56A, 56B and 56C before section 57 of the Further and Higher Education Act 1992 ("the 1992 Act"). The effect of these sections is to transfer the Secretary of State's intervention powers (as set out in section 57), with modifications, from the Secretary of State to the Learning and Skills Council for England (LSC). This clause will apply to further education colleges in England only. Inserted section 56A empowers the LSC to take remedial action in relation to an institution within the further education sector in certain prescribed circumstances, such as where there is

evidence that the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform or is failing, or likely to fail, to give an acceptable standard of education or training. The ground for intervention in section 56A(2)(d), namely that “the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform”, replaces the existing ground in order to allow the LSC’s judgement to be informed by evidence of under-performance other than that provided by an inspection by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills.

9. Where the prescribed circumstances apply, the LSC may do one or more of the following: remove all or any of the members of the institution’s governing body; appoint new members of that body if there are vacancies; and direct the governing body on how to exercise its powers and perform its duties. Such directions may include a direction requiring a governing body to make collaboration arrangements with another body (within the meaning of section 166 of the Education and Inspections Act 2006). A governing body must comply with any directions given to it by the LSC under section 56A.

10. The original Bill did not include the requirement for the LSC to notify an institution’s governing body about the action it takes under section 56A. Section 56A(4), as set out in Commons amendment 1, provides that where the LSC does one of the things listed in paragraph 9 above, it must at the same time give the institution’s governing body a notice stating which of the prescribed circumstances it considers applies, the reasons for this and the reasons why it has decided to take the specific action that it is taking.

11. The original Bill included a power for the LSC to direct a governing body (where they have power under their institution’s articles of government) to dismiss a member of staff. Section 56A(8), as inserted by the new clause added by Commons amendment 1, provides that the LSC may not direct a governing body to dismiss a member of staff. However, section 56A(9), as inserted by the new clause, provides that, where the LSC thinks that it may be appropriate to dismiss a member of staff (where the governing body have the power to do so), it may give directions to the governing body to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.

12. Section 56B, as set out in Commons amendment 1, differs from the original Bill. As well as requiring the LSC to prepare and publish a statement of its policy with respect to the exercise of its intervention powers under section 56A, keep it under review and, if it considers it appropriate as a result of a review, prepare a revised statement of its policy, section 56B also provides that, when preparing a statement or revised statement, the LSC must undertake such consultation as it thinks appropriate and consider any representations made to it about the policy to be set out in the statement. The Secretary of State may give the LSC guidance in relation to its duty to prepare and review its statement and the LSC must have regard to any such guidance. Another new requirement is that the LSC must send a copy of any statement or revised statement to the Secretary of State. If he approves the statement, he shall lay a copy of it before each House of Parliament and the LSC must publish the statement or revised statement approved by the

Secretary of State. The LSC must have regard to its latest statement when exercising or deciding whether to exercise any of its powers under section 56A. The original Bill did not provide for the LSC to undertake consultation on a draft statement or revised statement, nor for statements to be submitted to the Secretary of State for approval and laid before each House of Parliament.

13. Inserted section 56C enables the Secretary of State to direct the LSC to take action where he considers that the LSC has failed properly to exercise its powers of intervention under section 56A. The LSC must comply with any directions given under this section. Section 56C(3), as inserted by the new clause added by Commons amendment 1, provides that where the Secretary of State makes such a direction, he must give the LSC a notice stating the triggers in section 56A(2) as to which he is satisfied. Under section 56C(5) the LSC, when complying with such a direction, must give the institution's governing body a copy of the notice given by the Secretary of State.

Wales

14. Clause 18 of the original Bill replaced the Welsh Ministers' current power (in section 57(2)(d)) to intervene when a report prepared by Her Majesty's Chief Inspector of Education and Training in Wales regarding the institution indicates that the institution has serious weaknesses or is failing or likely to fail to give an acceptable standard of education, with a power to intervene where the Welsh Ministers are satisfied that "the institution is performing significantly less well than it might in all the circumstances reasonably be expected to perform". This mirrors the new criterion for England. The original Bill also amended section 57 to provide a power for Welsh Ministers to direct a governing body to make collaboration arrangements with another body (within the meaning of section 166 of the Education and Inspections Act 2006); and to direct a governing body (where it has power under its institution's articles of government) to dismiss a member of staff.

15. As regards the last of these powers, section 57(6A), as set out in Commons amendment 2, provides that the Welsh Ministers may not direct a governing body to dismiss a member of staff. However, inserted section 57(6B) provides a power for Welsh Ministers, where they consider that it may be appropriate to dismiss a particular member of staff whom a governing body have the power under their institution's articles of government to dismiss, to direct that governing body to secure that the procedures applicable to the consideration of the case for dismissal are given effect to in relation to that member of staff.

16. The original Bill did not require the Welsh Ministers to prepare a statement with respect to the exercise of their intervention powers under the 1992 Act. Commons amendment 2 provides that the Welsh Ministers must prepare a statement of their policy with respect to the exercise of their intervention powers, keep the statement under review and, if they consider it appropriate, prepare a revised statement. Commons amendment 2 further provides that, when preparing a statement or revised statement, Welsh Ministers must undertake such consultation as they think appropriate and consider any representations made to them about the policy to be set out in

the statement. It also provides that Welsh Ministers must lay any statement or revised statement before the National Assembly for Wales.

17. Commons amendments 6, 7 and 8 set out changes made necessary by Commons amendments 1 and 2. They make changes to Schedules 1 and 2 to the Bill. Commons amendment 4 provides that the provision in relation to intervention in Wales will come into force by means of an order made by Welsh Ministers.

Commons Amendment 3

18. Commons amendment 3 provides that in order to grant foundation degree-awarding powers to a further education institution in England, the Privy Council must first have received a statement from that institution setting out how it proposes to secure opportunities for progression to at least one course of more advanced study for any person awarded one of its foundation degrees. The Privy Council will also need to consider that these proposals are satisfactory and are likely to be carried out before it can grant foundation degree-awarding powers.

Commons Amendment 5

19. This is a technical amendment removing the “privilege amendment” made by the Lords, i.e. provision inserted on the Bill’s introduction into the House of Commons, which related to charges on the people and public funds.

Public Sector Financial Cost and Public Sector Manpower Implications

20. It is not anticipated that any additional expenditure should fall on the Consolidated Fund or the National Loans Fund as a consequence of these amendments.

21. There will be no additional funding as a result of the provision transferring the intervention powers of the Secretary of State in relation to unsatisfactory further education providers. The LSC may incur certain additional costs in exercising the powers, but these costs are difficult to ascertain.

22. No additional funding is being made available for further education institutions to award their own foundation degrees.

23. There are no public service manpower commitments arising from the amendments which would give rise to additional requirements. It is estimated that the effect on public sector manpower will be negligible.

Regulatory Impact

24. An addendum to the updated Regulatory Impact Assessment for the Bill, which covers this Bill, considers the possible impact of Commons amendments 1, 2, 4, 6, 7 and 8 on business, charities, voluntary sector organisations and the public sector. A copy will be placed in the Library of the House and the document will also be available at <http://www.dfes.gov.uk/publications/furthereducationandtrainingbill/>.

European Convention on Human Rights

25. Commons amendment 1 inserts new sections 56A, 56B and 56C into the 1992 Act. Commons amendment 2 amends section 57 and inserts section 57A into the 1992 Act. Under section 56A, the LSC will be given the existing powers of the Secretary of State (with some modifications) to intervene in the management of a further education institution in England where certain conditions are satisfied. The same conditions must be satisfied before the Welsh Ministers' powers of intervention under section 57 in relation to a further education institution in Wales can be exercised. Where those conditions are satisfied, both the LSC and the Welsh Ministers will have a new power to give the governing body such directions as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of a member of staff are put into effect, provided that the governing body have the power under their institution's articles of government to dismiss that member of staff and that the LSC or the Welsh Ministers, as appropriate, consider it may be appropriate to dismiss that person. For the avoidance of doubt, subsection (8) of section 56A makes it clear that the LSC may not direct a governing body to dismiss a member of staff. Subsection (6A) of section 57 clarifies the same point in relation to the Welsh Ministers' powers of direction. The decision to dismiss a member of staff, where such a direction has been given, will rest with the governing body.

26. Where a direction by the LSC or the Welsh Ministers in these circumstances leads to the termination of an individual's contract of employment, this might give rise to a dispute over a "civil right or obligation".

27. The power to give such a direction does not restrict in any way the individual's right to commence legal proceedings in an employment tribunal or any other courts in relation to the termination of his employment contract.

Department for Innovation, Universities and Skills
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