

## Skills and Post-16 Education Bill

<b>Lead department</b>	Department for Education
<b>Summary of proposal</b>	The Government propose to introduce a series of measures that will help to reform the provision of, and access to, further education (FE). The proposals cover: improved alignment between the needs of potential employers and the courses or qualifications offered; changes to the regulatory and governance systems overseeing the FE sector; and amending the constraints on access to student finance.
<b>Submission type</b>	Impact assessment (IA) – 22 April 2021
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	2022
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DfE-5064(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	13 May 2021

### RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The IA is fit for purpose. It provides a robust assessment of the impact of measures that will be introduced as part of the Skills and Post-16 Education Bill (the Bill). The IA also provides a broader assessment of the potential impacts resulting from measures that will be introduced via secondary legislation.

### Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision	Qualifying regulatory provision
<b>Equivalent annual net direct cost to business (EANDCB)</b>	£10.1 million	£10.1 million <i>(2019 prices, 2020 pv)</i>

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). The RPC ratings are fit for purpose or not fit for purpose.

<b>Business impact target (BIT) score</b>	£50.5 million	£50.5 million
<b>Business net present value</b>	£-106.4 million	
<b>Overall net present value</b>	£-112.5 million	

## RPC summary

<b>Category</b>	<b>Quality</b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The EANDCB calculation is fit for purpose. For the qualifying measures at this stage, the RPC is able to verify these figures for the purposes of the business impact target.
Small and micro business assessment (SaMBA)	<b>Green</b>	The SaMBA sets out the scope of the businesses that would be affected by the proposed measures. For each measure, the IA estimates the potential impact on small and micro businesses (SMBs) and, where appropriate, discusses the necessity and feasibility of exemption or mitigation. The Department also commits to further assessment of measures that will be brought forward through secondary legislation.
Rationale and options	<b>Weak</b>	The Department presents a clear set of arguments to support the need for the proposed measures and provides supporting evidence. However, the IA does not provide clear evidence to support its claim of a current market failure in matching skills to industry needs. The IA discusses a number of options; however, the breadth of options considered, in particular the presence of non-regulatory options, is not consistent across the various measures. It could be improved by including a clearer discussion of the different options considered.
Cost-benefit analysis	<b>Satisfactory</b>	The RPC acknowledges the difficulty of monetising the benefits due to uncertainty as to how they would be realised. However, the IA would benefit from including some analysis to illustrate the potential benefits identified. The RPC welcomes the sensitivity analysis for measure 1.
Wider impacts	<b>Weak</b>	The IA gives substantial consideration to the equalities impacts of the measures. However, it could also include similar levels of discussion of impacts on competition, innovation and, to a lesser extent, the environment.
Monitoring and evaluation plan	<b>Satisfactory</b>	The Department commits to a post-implementation review (PIR) of the measures proposed in the Bill. The IA discusses alignment with current monitoring plans and data gathering being carried out by the Department. Specific aspects of evaluation are discussed under the different measures.

## Summary of proposal

The IA states that provision of a skilled workforce is a key driver of long-term prosperity and growth, both for individuals and the country overall. It also states that, currently, too many people leave the education system with low skills; specifically, a low proportion of people leave further education (FE) with higher level technical qualifications (levels 4 and 5) in comparison to other nations. Participation in lifelong learning in the UK is low and declining, increasing the importance of attaining skills early in life. The benefit to individuals of holding higher qualifications, in terms of earning capability, is well documented.

In addition to this negative impact on individuals, inadequate skills formation also makes it harder for businesses to maintain appropriately-skilled workers. The Department believes the courses and qualifications currently provided do not align with the needs of local business and the overall profile of UK industry.

The Bill aims to reform the FE system to improve the provision of skills and individuals' ability to obtain them. It includes nine measures, some of which will have a direct impact, and others will be brought in through secondary legislation under delegated powers (see Annex A for details).

The most-affected stakeholder groups will be learners, businesses, employer representative bodies (ERBs), providers and awarding organisations. For learners, the impacts are primarily benefits, such as better access to, and better provision of, technical education, which should improve lifetime earning potential. However, it is noted that prospective students could view these technical courses as more difficult to complete. Also, students' choices could be limited (in terms of mobility) by the approach of developing courses to align with local area needs and strengths.

For employers (including businesses and ERBs), the beneficial impacts are identified as improved access to skilled labour and addressing skills gaps or shortages. This focus will be improved by the, possibly burdensome, requirement for ERBs to collaborate on the design of some of the new FE system features being proposed.

Meanwhile, providers and awarding organisations are expected to benefit from improved efficiencies resulting from the measures, potentially offset by the costs of developing and administering new courses and qualifications and further costs relating to the regulation of the FE system.

## EANDCB

The IA provides separate EANDCB figures for three of the measures to be implemented through primary legislation; Local Skills Improvement Plans (LSIPs), the duty on FE colleges and the approval and regulation of new qualifications. These are estimated to have EANDCBs of £4.1 million, £0.1 million and £5.3 million, respectively. The main costs are familiarisation costs, costs associated with the development of local skills plans, the costs for providers of actively considering the implications of new local skills plans on their curriculum, the cost of compliance with the duty on FE colleges and the cost of developing new qualifications. (See Annex B for more details on the impacts of each measure).

The Department estimates that businesses will bear 22 per cent of the costs to FE providers, reflecting the split in publicly vs privately-funded FE colleges. The Department uses National Audit Office' figures for FE revenue to approximate the proportion of private FE colleges, which it treats as businesses.

In addition, three measures are judged to present an EANDCB of zero, due to their technical nature or because they do not introduce new requirements: FE intervention powers, improvements to the FE insolvency regime and an Office for Students quality assessment.

With one exception, the IA does not estimate EANDCBs for the measures to be introduced through secondary legislation. Impact assessments for these measures should be submitted to the RPC for verification in due course, in line with the RPC's guidance<sup>2</sup> on primary and resultant secondary legislation IAs.

The exception is the LLE, for which the Department has included an initial EANDCB estimate of £0.6 million for this measure. The RPC welcomes the submission of this early estimate, but recognises that this figure could be subject to revision as part of future impact assessments for secondary legislation.

The IA does not seek to monetise the benefits of the proposals and provides justification for not doing so at this stage. The IA could be improved by providing, for illustration, a rough indication of the scale of these potential benefits. The IA notes that businesses are likely to benefit primarily from increased productivity. The EANDCB does not include improvements in labour productivity because that would be an indirect impact of these measures. The RPC is, therefore, able to verify the EANDCB even though the benefits to business are not monetised.

The IA identifies correctly the likely impacts of each proposed measures and whether these are direct or indirect. The IA provides individual EANDCB calculations for individual measures and for the Bill overall. The RPC finds these to be sufficient for validation at this stage.

The baseline position and counterfactuals used are clearly identified and supported by evidence. More broadly, the IA describes key assumptions of the analysis, and supports them with evidence.

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<sup>2</sup> <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>

## SaMBA

The IA includes an overall SaMBA for the Bill and touches upon the impacts on SMBs for each measure. The RPC considers the SaMBA analysis fit for purpose.

The scope of SMBs that may fall within scope of the measures is clearly presented. The Department does not consider exemption to be an option, because including all businesses is seen as important to the policy's success. For the measures identified as having a potentially disproportionate cost to SMBs, the IA states that they account for a small enough segment of the higher education sector for mitigation to not be necessary.

The impacts on SMBs of measures to be enacted through secondary legislation will be assessed when that legislation is brought forward.

## Rationale and options

The IA presents a range of arguments for intervening, namely that skill levels and participation in lifelong learning are currently too low. It notes that the UK delivers fewer higher-level technical qualifications compared to other countries and that many qualifications are not in the right, or most impactful, subjects. These arguments are supported by appropriate evidence including, where appropriate, comparisons to skills provision in other countries.

The primary intention behind many of the measures in the Bill is to create a more-efficient allocation of resources through an improved linkage between the provision of skills and the needs of industry. However, the IA does not provide clear evidence to support its claim of a current market failure in matching skills to industry needs. The IA could be improved through providing clear evidence as to how the current provision of skills is insufficient to meet industry needs. In particular, the IA should consider why on-the-job training, such as apprenticeships, is not seen as an appropriate way of aligning the skill needs of employers and the provision to learners. Further consideration should be given to whether the engagement with industry, in the design of local skills plans, will be effective in improving the skills provision and alignment, while not cutting off some areas of the labour market through reduced mobility.

The IA could discuss in more detail the improvement in the employment prospects of young people. In particular it could explore the potential impact on individuals who are not in education, employment or training and the potential wider societal impacts from reducing the number of individuals in this category.

Previous policy interventions have sought to improve the provision of FE and its effectiveness in ensuring employers have a sufficiently-skilled workforce. The IA could explain how successful these prior policies have been and how the lessons learnt from their implementation and success have been used to inform the proposals in the Bill.

The quality of the options proposed across the different measures varies. For some measures, no non-regulatory option is included for consideration. The IA could benefit from more-consistent explanation of why non-regulatory options or other forms of intervention were not considered for specific measures.

## Cost-benefit analysis

The IA has tried to monetise the costs of the options considered where the Department believes it to be proportionate to do so. The calculations included are well-evidenced and the assumptions underpinning the analysis are justified. However, as mentioned above, the IA would be improved through an attempt to monetise some of the benefits it identifies, even if this were only illustrative as a result of uncertainty relating to outcomes. For example, the Department has included evidence relating to the potential benefits to learners of FE qualifications. This evidence, or similar, could be used for sensitivity analysis to illustrate the number of new qualifications gained that would be necessary for the Bill costs and benefits to break even. This analysis would provide a clearer understanding of the scope of what the policy may achieve and would also help to justify the assertion that the benefits will outweigh the costs of implementation. The IA could also be strengthened through the inclusion of discussion of the indirect impacts on other businesses that might be affected, such as private tutors or online skills providers.

The RPC welcomes the inclusion of sensitivity analysis for the LLE (measure 1), exploring the significance of uncertainty regarding the number of businesses affected. This type of supplementary analysis is indicative of what the Department could have undertaken more systematically to illustrate potential benefits.

## Wider impacts

The IA provides a comprehensive assessment of the equalities impacts, looking at the potential effects across protected characteristics for the different measures.

However, the IA could provide similar assessments of competition, innovation and environmental impacts. Given the involvement of business in shaping local skills improvement plans, the RPC would expect some analysis of the impacts on competition between sectors and firms seeking to tailor these plans to their specific needs and the consequences for the local economies in which they operate. Furthermore, despite discussion of productivity in the rationale section, the IA does not analyse the impacts of these policies on innovation. Lastly, with the focus of these measures and policies on technical qualifications, the IA could discuss the potential for these measures to increase activity in industrial sectors and how this may affect the environment and possibly the move towards net-zero on greenhouse gas emissions.

## Monitoring and evaluation plan

The Department commits to a broad range of monitoring and evaluation (M&E) practices to establish the effectiveness of the measures proposed and have committed to undertaking a PIR for the measures included in the Bill. The M&E plan could be strengthened through discussion of how it will support implementation of the proposed measures and that they are adapting to reflect a likely changeable future landscape.

The IA discusses supporting the M&E process by making use of existing frameworks that monitor the effectiveness of the education system. Furthermore, where necessary or appropriate, the Department intends to refine its data collection methods to support these actions and to seek to understand how other existing policies and M&E plans can be used to support this evidence gathering.

The IA discusses M&E for each of the measures included within the Bill. For these, the Department sets out the specific aspects relating to each measure, which will form the focus of a specific M&E plan for that measure. The RPC would welcome a clear explanation in the IA of how the M&E plans for the separate measures will be integrated and how more-efficient M&E can be undertaken, through areas such as shared-evidence usage or overlapping outcomes.

### Regulatory Policy Committee

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC Gov UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc).



## Annex A: Summary of measures included in the Bill

<b>Measure</b>	<b>Direct impact*</b> or delegated power <i>* those listed in <b>bold</b> are measures with direct impact, which will be implemented through primary legislation.</i>	<b>EANDCB estimate by the Department (£ million)</b>	<b>Implementation date</b>	<b>To be validated at this stage?</b>
1 – Lifelong loan entitlement (LLE)	a. Delegated powers for Secretary of State (SoS)	0.6	2025	Yes, however subject to further revision with secondary legislation
2 – Local skills improvement plans	<b>a. Duty on providers to co-operate with ERBs – direct impact</b> <b>b. Duty on providers to have regard to local skills improvement plans – direct impact</b>	4.1	2022	Yes
3 – Duty on colleges	<b>a. Duty on colleges and designated institutions in relation to local needs – direct impact</b>	0.1	2022	Yes
4 – FE intervention powers	a. Delegated powers for SoS	0 (no impacts)	Powers will be gained after Royal Assent (2022) and only exercised if/when required (i.e. a college is deemed failing).	Yes
5 – Approval and regulation of technical qualifications (TQs)	a. Power for Institute to charge fees – enabling power. b. Institute power to take steps to make TQs available outside	5.3	2023	Yes

	<p>England - power requires actions from devolved institutions so no direct impact.</p> <p>c. Institute power for moratorium on new quals -power.</p> <p><b>d. Institute power to define new quals categories, approve and review/withdraw – direct impact</b></p> <p><b>e. Requirement for Institute and Ofqual to co-operate with each other and single approval gateway for TQs – direct impact.</b></p>			
6 – Improvements to FE insolvency regime	<p>a. SoS power to designate institutions as within statutory FE sector by admin order – power</p> <p>b. CVA rules – 2ry legislation</p> <p>c. Secured assets position in transfer scheme – power.</p> <p><b>d. Education administrations process (transfer schemes policy coming into legislation) – minimal direct change</b></p>	0	2022	Yes
7 – Regulation of FE providers	<p>e. Registration scheme for providers – power, needs secondary legislation.</p>	-	Consultation (expected to take approx. 12-18 months) will take place following commencement,	No (assess impacts at secondary legislation stage)

			and secondary legislation will follow that.	
8 – FE teacher training reform	f. Reserve power to regulate the sector if necessary.	-	2021/22	No (at secondary legislation stage if needed)
9 – OfS quality assessment	<b>g. Clarifying existing metrics to OfS assessment of HEI status – direct change.</b>	0 (no impacts – technical change)	Commencement two months after Royal Assent but OfS policy is dependent on consultations.	Yes

## Annex B: Summary of impacts for measures implemented in the Bill

<b>Measure</b>	<b>EANDCB estimate by the Department (£ million)</b>	<b>Impacts identified by the Department</b>	<b>RPC assessment of the identification of impacts</b>
1 – Lifelong loan entitlement (LLE)	0.6	<p><u>Monetised Costs</u> The Department has identified that providers will face initial familiarisation costs. Also, it is expected that familiarisation costs will continue in a reduced form for the duration of the policy. In addition, on-going administrative costs for employers have been identified.</p> <p><u>Non-Monetised Costs</u> The IA discusses the cost to providers of increased student loans being paid. However, the rate of this is unknown, so has not been monetised.</p> <p><u>Benefits</u> The Department outlines that the main benefit is to students, who will be able to access finance and have more flexible choice in which courses they can take.</p>	The RPC welcomes the early estimate of the impacts of this measure, despite the intention for it to be refined in further impact assessment, when being introduced through secondary legislation.

<p>2 – Local skills improvement plans (LSIP)</p>	<p>4.1</p>	<p><u>Monetised</u> <u>Costs</u> The Department has identified that local authorities, FE colleges (both public and private) and other providers will face familiarisation costs. There will be on-going, on a three-yearly basis, costs for business representative organisations to develop the LSIPs.</p> <p><u>Non-Monetised</u> <u>Costs</u> Reduction in choice of study for students and increased difficulty in attainment from shift towards more technical subjects.</p> <p><u>Benefits</u> Better alignment between skills that are required by industry and those being provided through FE. The benefits that have been identified for this measure are improvements to skill levels and then productivity, neither of these are monetised. Impacts on productivity would be indirect, therefore out of scope for inclusion in EANDCB calculations.</p>	<p>The RPC is happy with the Department's assessment of the impacts for this measure.</p>
<p>3 – Duty on colleges</p>	<p>0.1</p>	<p><u>Costs</u> The Department has identified that FE colleges (both public and private) will face familiarisation costs. In addition, there are ongoing costs occurring every three years for these FE colleges to comply with this new duty.</p>	<p>The RPC is happy with the Department's assessment of the impacts for this measure.</p>

		<p><i>Benefits</i></p> <p>The benefits that have been identified for this measure are improvements to skill levels and then productivity, neither of these are monetised. Impacts on productivity would be indirect, therefore out of scope for inclusion in EANDCB calculations.</p>	
4 – FE intervention powers	0 (no impacts)	The Department states that, where intervention is needed, there will be impacts. However, as this is simply to provide the Secretary of State with the power to intervene, there is no immediate impact.	The RPC is happy that the potential impacts of this measure have been considered accordingly and the decision for there to be no impacts to be appropriate.
5 – Approval and regulation of technical qualifications	5.3	<p><u><i>Monetised</i></u></p> <p><i>Costs</i></p> <p>The Department has identified that local authorities, FE colleges (both public and private) and other providers will face familiarisation costs. Additionally, there will be ongoing costs for Additional Qualification Development and the approval fee for new qualifications. The latter of these two ongoing costs is counted as an indirect cost to business.</p> <p><u><i>Non-monetised</i></u></p> <p><i>Costs</i></p> <p>The impact on student choice as well as increased difficulty in attainment, associated with greater focus on technical qualifications.</p>	The RPC is happy with the Department's assessment of the impacts for this measure.

		<p><i>Benefits</i> The benefits that have been identified for this measure are improvements to skill levels and then productivity, neither of these are monetised. Impacts on productivity would be indirect, therefore out of scope for inclusion in EANDCB calculations.</p>	
6 – Improvements to FE insolvency regime	0	<p><i>Benefits</i> The Department expects, in the very rare occasions that these mechanisms are used, to provide simplify the insolvency system and enable shorter processes to take place. It will also provide confidence and clarity to parties involved.</p> <p>The Department has not attempted to quantify these impacts, due to how infrequent cases are expected to be and the disproportionality in undertaking such analysis.</p>	The RPC is happy that the potential impacts of this measure have been considered accordingly and the decision for there to be no impacts to be appropriate.
7 – Regulation of FE providers	-	The Department expects there to be administrative costs (for both government and providers) in maintaining a regulatory scheme. The full impacts will be explored when secondary legislation is introduced.	The RPC is happy with the Department’s assessment of the impacts for this measure at this time and would welcome any further assessment when secondary legislation is introduced.
8 – FE teacher training reform	-	The impacts of this will be considered when secondary legislation is introduced.	The RPC is happy with the Department’s assessment of the impacts for this measure at this time and would welcome any further assessment when secondary legislation is introduced.

9 – OfS quality assessment	0 (no impacts – technical change)	The Department highlights that this measure looks at refining the current OfS system and does not involve any changes. Therefore, there will be no impact from regulation.	The RPC is happy that the potential impacts of this measure have been considered accordingly and the decision for there to be no impacts to be appropriate.
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