

Further Education and Training Bill [HL]

COMMONS AMENDMENTS

[The page and line references are to Bill 75, the bill as first printed for the Commons]

After Clause 16

1 Insert the following new Clause –

“Intervention: England

Before section 57 of FHEA 1992, insert –

“56A Intervention: England

- (1) This section applies if the Learning and Skills Council for England is satisfied as to one or more of the matters listed in subsection (2) in the case of an institution in England within the further education sector; and it is immaterial whether or not a complaint is made by any person.
- (2) The matters are –
 - (a) that the institution’s affairs have been or are being mismanaged by the institution’s governing body;
 - (b) that the institution’s governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
 - (c) that the institution’s governing body have acted or are proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act;
 - (d) 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.
- (3) If this section applies the council may do one or more of the things listed in subsection (5).
- (4) If the council does one or more of those things, it must at the same time give the institution’s governing body a notice stating –

- (a) the matter or matters listed in subsection (2) as to which the council is satisfied;
 - (b) the reasons why the council is so satisfied;
 - (c) the reasons why the council has decided to do that thing or those things.
- (5) The council may –
- (a) remove all or any of the members of the institution’s governing body;
 - (b) appoint new members of that body if there are vacancies (however arising);
 - (c) give to that body such directions as it thinks expedient as to the exercise of their powers and performance of their duties.
- (6) The directions that may be given to a governing body under this section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.
- (7) Directions may be given to a governing body under this section despite any enactment making the exercise of a power or performance of a duty contingent on the body’s opinion.
- (8) The council may not direct a governing body under subsection (5)(c) to dismiss a member of staff.
- (9) But subsection (8) does not prevent the council, where it considers that it may be appropriate to dismiss a member of staff whom the governing body have power under their institution’s articles of government to dismiss, from giving the governing body such directions under this section as are necessary 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.
- (10) A governing body must comply with any directions given to them under this section.
- (11) An appointment of a member of a governing body under this section shall have effect as if made in accordance with the instrument of government and articles of government of the institution concerned.

56B Intervention policy: England

- (1) The Learning and Skills Council for England must –
- (a) prepare a statement of its policy with respect to the exercise of its powers under section 56A,
 - (b) keep it under review, and
 - (c) if it considers it appropriate in consequence of a review, prepare a revised statement of its policy.
- (2) When preparing a statement or revised statement of its policy, the council must –
- (a) undertake such consultation as it thinks appropriate;
 - (b) consider any representations made to it about the policy to be set out in the statement.

- (3) The Secretary of State may give the council guidance in relation to the exercise of its functions under subsections (1) and (2), and in particular in relation to the form and content of the policy.
- (4) It is the duty of the council to have regard to any guidance given to it under subsection (3).
- (5) The council must send a copy of the statement or revised statement prepared by it to the Secretary of State.
- (6) If the Secretary of State approves it he shall lay a copy of it before each House of Parliament.
- (7) The council must publish—
 - (a) the statement of its policy approved by the Secretary of State;
 - (b) where the Secretary of State approves a revised statement of its policy, the revised statement.
- (8) The council must have regard to the statement most recently published under subsection (7) in exercising, or deciding whether to exercise, any of its powers under section 56A in relation to an institution.

56C Directions

- (1) This section applies if—
 - (a) the Secretary of State is satisfied as to one or more of the matters listed in section 56A(2) in the case of an institution in England within the further education sector, and
 - (b) the Secretary of State is satisfied that the circumstances are such that it would be appropriate for the Learning and Skills Council for England to do one or more of the things listed in section 56A(5) in relation to the institution.
- (2) In such a case the Secretary of State may give to the council such directions as he thinks fit as to the exercise of the council's powers under section 56A.
- (3) Where the Secretary of State gives the council a direction under this section, he must at the same time give the council a notice stating the matter or matters listed in section 56A(2) as to which he is satisfied.
- (4) The council must comply with any directions given to it under this section.
- (5) Where the council does a thing listed in section 56A(5) in relation to an institution in compliance with a direction under this section—
 - (a) the council must give the institution's governing body a copy of the relevant notice under subsection (3), and
 - (b) the requirement to give a notice under section 56A(4) does not apply.”

“Intervention: Wales

- (1) Section 57 of FHEA 1992 (intervention) is amended as set out in subsections (2) to (4).
- (2) In subsection (2) (conditions for intervention), for paragraph (d) substitute –
 - “(d) they are satisfied 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.”
- (3) After subsection (5) insert –
 - “(5A) The directions that may be given to a governing body under this section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.”
- (4) After subsection (6) insert –
 - “(6A) The Welsh Ministers may not direct a governing body under subsection (5)(c) to dismiss a member of staff.
 - (6B) But subsection (6A) does not prevent the Welsh Ministers, where they consider that it may be appropriate to dismiss a member of staff whom the governing body have power under their institution’s articles of government to dismiss, from giving the governing body such directions under this section as are necessary 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.”
- (5) After section 57 of FHEA 1992 insert –

“57A Intervention policy: Wales

- (1) The Welsh Ministers must –
 - (a) prepare a statement of their policy with respect to the exercise of their powers under section 57,
 - (b) keep it under review, and
 - (c) if they consider it appropriate in consequence of a review, prepare a revised statement of their policy.
- (2) When preparing a statement or revised statement of their policy, the Welsh Ministers must –
 - (a) undertake such consultation as they think appropriate;
 - (b) consider any representations made to them about the policy to be set out in the statement.
- (3) The Welsh Ministers must lay before the National Assembly for Wales a copy of any statement or revised statement prepared by them under this section.
- (4) The Welsh Ministers must publish any statement or revised statement prepared by them under this section.
- (5) The Welsh Ministers must have regard to the statement most recently published under subsection (4) in exercising, or deciding

whether to exercise, any of their powers under section 57 in relation to an institution.””

Clause 17

3 Page 11, line 38, at end insert –

“() After subsection (2A) (as inserted by subsection (4)) insert –

“(2B) Where the Privy Council is considering whether to make an order under subsection (1) above specifying an institution as mentioned in subsection (1)(b) above, the Privy Council may not make the order unless –

- (a) the institution gives the Privy Council a statement setting out what it proposes to do as regards making arrangements for securing that any person granted an award under or by virtue of any power that would be conferred on the institution if the order were made (other than the power described in subsection (4A) below) has an opportunity to progress to one or more particular courses of more advanced study, and
- (b) the Privy Council considers that the proposals are satisfactory and are likely to be carried out.””

Clause 30

4 Page 20, line 8, at end insert –

“() Section (*Intervention: Wales*) comes into force in accordance with provision made by the Welsh Ministers by order.”

Clause 32

5 Page 20, line 29, leave out subsection (2)

Schedule 1

6 Page 22, line 23, at end insert –

- “
- (1) Section 57 (intervention) is amended as follows.
 - (2) In subsection (1), after “an institution” insert “in Wales”.
 - (3) In subsection (2) –
 - (a) in paragraph (a), for “the Secretary of State is” substitute “the Welsh Ministers are”;
 - (b) in paragraphs (b) and (c), for “he is” substitute “they are”.
 - (4) Omit subsection (3).
 - (5) In subsection (4), for “the Secretary of State” substitute “the Welsh Ministers”.
 - (6) In subsection (5) –
 - (a) for “He may” substitute “They may”;
 - (b) in paragraph (c), for “he thinks” substitute “they think”.
 - (7) In the heading, after “Intervention” insert “: Wales”.
- ”

Schedule 2

7 Page 23, line 26, at end insert –

| “Section 57(3).”

8 Page 23, line 39, at end insert –

“Education and Inspections Act | In Schedule 14, paragraph 18.”
2006 (c. 40)