



MEMORANDUM TO THE BUSINESS, INNOVATION AND SKILLS
SELECT COMMITTEE

Post-Legislative Assessment of the Further Education and Training Act
2007

Presented to Parliament
by the Secretary of State for Business, Innovation and Skills
by Command of Her Majesty

November 2012



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MEMORANDUM TO THE BUSINESS, INNOVATION AND SKILLS SELECT COMMITTEE

Post-Legislative Assessment of the Further Education and Training Act 2007

Introduction

1. This memorandum provides a preliminary assessment of the Further Education and Training Act 2007 (FETA) and has been prepared by the Department for Business, Innovation and Skills for submission to the Business, Innovation and Skills Select Committee. It will be published as part of the process set out in the document *Post Legislative Scrutiny – the Government’s Approach* (Cm 7320).

Background and objectives of the Further Education and Training Act 2007

2. The FETA received Royal Assent on 23 October 2007. Its main purpose was to implement proposals contained in the White Paper, *Further Education: Raising Skills, Improving Life Chances* (Cm 6768, March 2006), which set out proposals for the reform of the further education (FE) sector: reforming FE corporations so that they could effectively equip young people and adults with the skills for productive, sustainable employment in a modern economy; targeting public funding on priority areas, following the needs of learners and employers, and backed by stronger strategic planning at regional and local level; and providing stronger levers to improve quality and tackle failure.
3. The FETA also made provision for the restructuring of the Learning and Skills Council for England (LSC), amending parts of the Learning and Skills Act 2000 (LSA) under which the LSC had been established, so that it could operate more effectively in partnership at the regional level; and providing flexibility to adapt its structure to meet future needs.
4. The FETA also gave the Secretary of State powers to specify areas of England for which new strategy-making bodies would be set up with responsibility for putting in place a strategy that would set out how the LSC should carry out its functions in that area.
5. It also transferred powers of intervention, with modifications, from the Secretary of State to the LSC, enabling it to take remedial action in the case of failing FE corporations, in certain prescribed circumstances, by for example: removing all or any members of the governing body and appointing new members; directing a governing body to collaborate with another institution; and directing a governing body to consider the case for dismissal of a member of staff, where the LSC considered it appropriate to do so. It strengthened the role of FE corporations in providing higher education (HE) by allowing them to award their own foundation degrees, removing their dependency on HE institutions for validation.

Structure of the Further Education and Training Act 2007

6. The FETA is divided into four parts:

- Part 1 made provision for the restructuring of the Learning and Skills Council (LSC), and amended or removed a number of legal requirements relating to its membership and committee structure. It also placed new duties on the LSC to promote choice and diversity; consult employers and learners; and carry out its functions in accordance with strategies formed by new strategy-making bodies.
 - Part 2 transferred the power to open (incorporate) and close (dissolve) FE corporations and the powers of intervention (with modifications) from the Secretary of State to the LSC, and placed certain duties and requirements on FE corporations.
 - Part 3 updated the process by which industrial training boards can demonstrate support for training levy proposals.
 - Part 4 contained miscellaneous and general provisions, including clarifying certain powers of higher education corporations and the National Assembly for Wales.
7. FETA extends to England and Wales only with the following exceptions:
- Section 11 and 12, which relate to the provision of services by the LSC, which extend to Scotland
 - Sections 11 and 13, which relate to the provision of assistance by the LSC, which extend to Northern Ireland
 - Sections 24 and 25, and certain provisions in Schedules 1 and 2, which relate to industrial training levies, which amend enactments extending to Scotland
 - Certain general provisions, which extend to the whole of the UK.

Commencement

8. The provisions of FETA were commenced during 2007 and 2008 (see Annex A for the entire implementation timetable). Further to the commencement provisions of section 32 of FETA, the following commencement orders have been made:
- The Further Education and Training Act 2007 (Commencement No. 1 and Transitional Arrangements) Order 2007 (2007 No. 3505)
 - The Further Education and Training Act 2007 (Commencement No. 1) (Wales) Order 2007 (2007 No. 3565)
 - The Further Education and Training Act 2007 (Commencement No. 1) (England) Order 2008 (2008 No. 313)
 - The Further Education and Training Act 2007 (Commencement No. 2) (Wales) Order 2008 (2008 No. 983)
9. The only sections of FETA that have **not** been brought into force are:
- Section 10, which amended an existing power of the Secretary of State to direct the LSC, so that the Secretary of State could direct the LSC in relation to the establishment and dissolution of further education corporations; and
 - Sections 14 to 16, which transferred the powers to establish and dissolve a further education corporation from the Secretary of State to the LSC.

10. These sections were not commenced because of proposed changes to the funding system set out in the White Paper *Raising Expectations: enabling the system to deliver* (Cm 7348 March 2008) and were repealed through the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA), which also abolished the LSC.

Content of FETA

11. Set out below is an overview of the main areas of FETA and an assessment of how particular measures have been operating.

Part 1: the Learning and Skills Council for England (sections 1 to 13)

12. **Sections 1 and 2** reduced the minimum size of the LSC National Council from twelve to ten people; placed a requirement on the LSC to establish regional learning and skills councils for each area of England that the Secretary of State specifies; and allowed the LSC National Council to delegate duties and powers to the regional councils. **Section 3** abolished the local learning and skills councils and repealed the associated legislation, including removing the requirement on the LSC National Council to prepare and consult on guidance for the local councils and to approve local plans.
13. **Section 4** allowed the Secretary of State to establish bodies (but not for Greater London or part of Greater London) to be responsible for setting strategies for how the LSC should carry out its functions in that area; and required the Secretary of State to establish a body for Greater London to be responsible for setting strategies for how the LSC should carry out its functions in Greater London. The LSC was placed under a duty to carry out those functions.
14. **Section 5** removed the requirement for the LSC to establish a young people's learning committee and an adult learning committee. **Sections 6 to 8** placed new duties on the LSC to encourage diversity in education and training and to increase opportunities for individuals to exercise choice; to have regard to guidance from the Secretary of State about consulting with learners and employers, and required the LSC to make and publish a plan for each academic year. **Section 9** clarified the LSC's power to form or invest in companies. **Section 10** allowed the Secretary of State to direct the LSC in relation to the establishment and dissolution of FE corporations. This section was not commenced and was repealed through ASCLA.
15. **Section 11 to 13** extended the powers of the LSC to provide services and assistance for persons and bodies involved in education or training and for educational institutions in the devolved administrations. This section enabled the LSC to offer services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services to publicly-funded training providers, FE corporations and others. In Wales, Scotland and Northern Ireland, these services were to be supplied only with the consent of the respective devolved administrations.
16. Although the provisions within the FETA were successful in enabling the LSC to operate more effectively in partnership at the regional level; and provided flexibility to adapt its structure to meet future needs, it was decided that in order to respond more effectively to the education and skills needs of young people, adult learners and employers, more radical changes to the planning and funding structures were required, reflecting the very different needs of young people and adults. As a result,

the White Paper *Raising Expectations: enabling the system to deliver* (Cm 7348 March 2008) set out proposals to create an integrated approach to the delivery of all Children's Services from ages 0-19, and these proposals were implemented through the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA). Consequently, a new non-departmental public body, the Young People's Learning Agency for England, was set up in 2010 to work with local education authorities. For adults, section 82 of ASCLA established a new statutory office holder - the Chief Executive of Skills Funding - responsible through the Skills Funding Agency (an agency established by administrative means) for the management and allocation of funding to colleges and other providers based on demand from adults and employers.

17. Through the ASLCA, sections 1, 2, and 4 to 13 of FETA were repealed. Sections 4, 6, 7, 9, and 11 to 13 were re-enacted, with modifications, in ASCLA. The Education Act 2011 removed the Secretary of State's powers to establish strategy-making bodies (section 4) because under the commitment to deregulate the FE system, we are encouraging strategic bodies like Local Enterprise Partnerships and Local Authorities to develop effective working relationships with the further and higher education sectors - equal partnerships between bodies with a shared interest in transforming the local economy - rather than relationships based on control by one over the others.
18. Further changes to the Skills Funding Agency were announced through a Written Statement in the House of Commons and the House of Lords on 20 December 2011, following a review of the statutory post of Chief Executive of Skills Funding and the Skills Funding Agency which was carried out in November 2011. The review reflected the Government's commitment to regularly review its key delivery bodies and the wider Public Bodies Reform Programme which is seeking to radically increase the transparency and accountability of all public services. The purpose of the review was to ensure that the right structure is in place to support a strong and flexible FE and skills system which is driven by the needs of learners and employers. The review, which involved consultation with other departments such as Cabinet Office, HMT and DfE and key stakeholders, concluded that the governance and accountability of the Skills Funding Agency would be significantly strengthened by enabling it to operate as a conventional executive agency, through the powers of the Secretary of State, rather than through a separate statutory post holder. It therefore recommended that the statutory post of Chief Executive of Skills Funding should be removed. We intend to make this change as soon as Parliamentary time allows.

Part 2: Further Education Institutions (sections 14 to 23)

19. The Further and Higher Education Act 1992 (FHEA) gave the Secretary of State the power to establish (incorporate) and close (dissolve) FE corporations, and a duty to publish proposals before incorporating or dissolving a FE corporation. **Sections 14 to 16** of FETA transferred these powers to the LSC.
20. **Section 17** of FETA transferred the power to intervene in FE corporations (with some modifications) from the Secretary of State to the LSC. This enabled the LSC, and then in turn the Chief Executive of Skills Funding, to intervene where there was evidence of failure or poor performance. This power was never used by the LSC or the Chief Executive of Skills Funding and under the Education Act 2011 these powers were transferred, with modifications, back to the Secretary of State.

21. **Section 18** amended the intervention powers for FE corporations in Wales, and required Welsh Ministers to prepare a statement about how they will use these powers. Welsh Ministers have never used this power.
22. **Section 21** of FETA enabled FE corporations to form or invest in companies for the purpose of conducting an educational institution. This section also allowed FE corporations to form, participate in forming or otherwise become members of charitable incorporated organisations, a new form of body corporate created by the Charities Act 2006. These provisions facilitated collaboration between FE corporations and schools, businesses, universities, and other partners. FE corporations could only use these powers with the consent of the LSC, and later the Chief Executive of Skills Funding. Through the Education Act 2011, we removed the requirement for consent, therefore enabling corporations to decide for themselves with whom and when they form partnerships. **Section 26** made similar provisions for Higher Education Institutions, but these institutions do not require prior consent from either the Secretary of State or the Higher Education Funding Council for England.
23. **Section 22** placed a duty on FE corporations in England to have regard to guidance about consulting employers and learners; and **section 23** enables the Secretary of State to make regulations requiring all college principals to achieve a stipulated leadership qualification before taking up a new post.
24. In November 2010 the Government published *Skills for Sustainable Growth* (URN 10/1274) which set out the vision for skills and how the FE and skills system would need to reform. The vision brings together the necessity for businesses to continue to invest in training and skills of their workforce while recognising several key areas will continue to need government support. In November 2011, *New Challenges New Chances* (URN 11/1380) set out the reform programme required to deliver this vision, deregulating the FE system so that it can be more responsive, flexible and better meet the needs of learners and employers. As noted above, the Education Act 2011 made a number of changes to legislation affecting FE corporations. It transferred the powers to dissolve a FE corporation from the Secretary of State to the corporation; removed the requirement for FE corporations to seek consent before forming or investing in education companies; transferred the intervention powers from the Chief Executive of Skills Funding, back to the Secretary of State; and removed the duty around consulting with employers and learners, and constraints on borrowing and forming companies for educational purposes. We have also revoked the regulations that required all new FE corporation principals to undertake specific qualifications.
25. **Section 19** of FETA enabled the Privy Council to grant further education institutions in England powers to award their own foundation degrees, subject to certain restrictions. Foundation degree-awarding powers enable institutions to respond more quickly and effectively to employer need, to respond to skills challenges, and to allow those institutions that can meet the appropriate criteria to contribute to overall growth in foundation degree provision. These changes recognise the role that FE corporations play in the delivery of foundation degrees. To date, two successful applicants, New College Durham Corporation and Newcastle College Corporation, have been granted Foundation Degree Awarding Powers. They are shortly to commence their first self-validated foundation degree programmes, with the first student cohort expected to graduate in summer 2014. A further three applications are currently under scrutiny.

26. In response to concerns in Parliament during the passage of the Bill, the government agreed to report to Parliament on this policy within four years after the commencement of section 19 (**section 20** of FETA). David Willetts' letter of 3 May 2012 to the BIS Select Committee set out the progress to date on foundation degree-awarding powers and explained that because there has been only a limited take up to date of the power to award foundation degrees, we cannot make a wider evaluation of the impact of these powers at this point. A copy of his letter is attached in Annex B of this memorandum.

Part 3: Industrial Training Levies

27. Industrial Training Boards (ITBs) bring representatives from industry together to oversee training in its industry, set standards, and provide information, advice and guidance. There are currently three ITBs covering the Construction, Engineering Construction and Film industries. (Note: the Film Industry Training Board is not yet operational). ITBs pay grants to those employers who undertake training, financed through a levy on companies in its industry. Part 3 of FETA introduces provision to make it easier for an ITB to demonstrate support for a levy proposal among employers in the relevant industry. These changes enable ITBs to consult directly with employers, whether or not they are members of representative employer organisations. It also enables proposals for levy orders to cover a three-year period, subject to certain exceptions.

Preliminary assessment of FETA

28. Although the legislative changes relating to the LSC streamlined its governance structure, given the later changes made through the ASCLA 2009, these improvements were short term. Similarly many of the changes made in respect of FE corporations through FETA have been removed through or affected by the Education Act 2011, which has deregulated FE corporations so that they can be more locally responsive. The changes made around foundation degree awarding powers and ITBs remain in place and will be further evaluated in due course.

29. In conclusion, our preliminary assessment is that whilst a significant proportion of FETA has been repealed, amended or re-enacted with modifications through the Apprenticeships, Skills, Children and Learning Act 2009 and the Education Act 2011, much of the vision set out through FETA, to ensure that the FE system was shaped to be responsive and flexible to the needs of learners, employers and the local community, remains a priority. This Government is taking forward an FE reform plan to deliver this vision through *New Challenges New Chances*.

Annex A: Implementation Timetable

| Section | Implementation | Current Position |
|---------|---|--|
| Part 1 | | |
| 1 | SI 2008/313 brought this section into force on 21 February 2008 | Repealed through the Apprenticeships, Skills, Children and Learning Act 2009 |
| 2 | SI 2007/3505 brought this section into force on 31 January 2008 to the extent that it inserted sections 18A(2) to (4) into the Learning and Skills Act 2000; and S1 2008/313 brought the rest of the section into force on 1 September 2008 | Repealed through the Apprenticeships, Skills, Children and Learning Act 2009 |
| 3 | SI 2008/313 brought this section into force on 21 February 2008 | This section abolished local LSCs and repealed associated legislation |
| 4 | SI 2008/313 brought this section into force on 21 February 2008 | Re-enacted, with modifications, through the Apprenticeships, Skills, Children and Learning Act 2009. Re-enacted provision repealed by the Education Act 2011 |
| 5 | SI 2008/313 brought this section into force on 21 February 2008 | This section repealed the duty to establish a young people's learning committee and an adult learning committee |
| 6 | SI 2007/3505 brought this section into force on 23 December 2007 | Repealed through the Apprenticeships, Skills, Children and Learning Act 2009 |
| 7 | SI 2007/3505 brought this section into force on 23 December 2007 | Repealed through the Apprenticeships, Skills, Children and Learning Act 2009 |
| 8 | SI 2007/3505 brought this section into force on 23 December 2007 | This section amended section 15 of the Learning and Skills Act 2000, which was repealed through the ASCLA 2009 |
| 9 | Section 32 of FETA brought this section into force on Royal Assent | Repealed through the Apprenticeships, Skills, Children and Learning Act 2009 |
| 10 | Not brought into force | |
| 11 | SI 2007/3505 brought this section into force on 23 December 2007 | Re-enacted, with modifications, through the Apprenticeships, Skills, |

| | Section | Implementation | Current Position |
|---------------|----------------|--|---|
| | | | Children and Learning Act 2009 |
| | 12 | SI 2007/3505 brought this section into force on 23 December 2007 | Re-enacted, with modifications, through the Apprenticeships, Skills, Children and Learning Act 2009 |
| | 13 | SI 2007/3505 brought this section into force on 23 December 2007 | Re-enacted, with modifications, through the Apprenticeships, Skills, Children and Learning Act 2009 |
| Part 2 | | | |
| | 14 | Not brought into force | |
| | 15 | Not brought into force | |
| | 16 | Not brought into force | |
| | 17 | SI 2007/3505 brought this section into force on 23 December 2007 to the extent that it inserted section 56B into the Further and Higher Education Act 1992, and brought the remainder of the section into force on 18 April 2008 | Re-enacted, with modifications, through the Apprenticeships, Skills, Children and Learning Act 2009. Re-enacted provision through the Education Act 2011. Powers now reside with Secretary of State |
| | 18 | Welsh SI 2007/3565 brought section 18(5) into force on 23 December 2007, and sections 18(1) to (4) into force on 18 April 2008 | Remains in force |
| | 19 | SI 2007/3505 brought this section into force on 1 May 2008 | Remains in force |
| | 20 | SI 2007/3505 brought this section into force on 1 May 2008 | Remains in force |
| | 21 | Section 32 of FETA brought this section into force on Royal Assent | Amended by the Education Act 2011, removing the requirement for prior consent |
| | 22 | SI 2007/3505 brought this section into force on 23 December 2007 in relation to England | Repealed by the Education Act 2011 |
| | 23 | SI 2007/3505 brought this section into force on 23 December 2007 in relation to England | Remains in force |
| Part 3 | | | |
| | 24 | SI 2007/3505 brought this section into force on 2 March 2008 | Remains in force |
| | 25 | SI 2007/3505 brought this section into force on 2 March 2008 | Remains in force |
| Part 4 | | | |
| | 26 | Section 32 of FETA brought this section into force on Royal Assent | Remains in force |

| Section | Implementation | Current Position |
|----------------|---|-------------------------|
| 27 | Section 32 of FETA brought this section into force two months after Royal Assent | Remains in force |
| 28 | Section 32 of FETA brought this section into force on Royal Assent | Remains in force |
| 29 | See Schedule 1 | Remains in force |
| 30 | See Schedule 2 | Remains in force |
| 31 | Section 32 of FETA brought this section into force on Royal Assent | Remains in force |
| 32 | Section 32 of FETA brought this section into force on Royal Assent | Remains in force |
| 33 | Section 32 of FETA brought this section into force on Royal Assent | Remains in force |
| 34 | Section 32 of FETA brought this section into force on Royal Assent | Remains in force |
| Sch. 1 | SI 2007/3505 brought paragraphs 6, 7, 8, 10, 11 and 13 of this schedule into force on 23 December 2007; paragraphs 12 and 15 into force on 31 January 2008; paragraphs 1 to 5 into force on 2 March 2008; and paragraphs 14 and 16 into force on 21 February 2008 | Remains in force |
| Sch. 2 | SI 2007/3505 brought into force the repeal of section 15(2) of the Learning and Skills Act 2000 on 23 December 2007. SI 2008/313 brought into force the repeal of section 19 to 24 of, and Schedule 2 to, the same Act, and the repeals in relation to Schedule 3 of that same Act, the repeal of section 209 of the Education Act 2002 and the repeal in relation to section 18 of the Children Act 2004 on 21 February 2008 | Remains in force |

Annex B:

The Rt Hon David Willetts MP letter regarding Section 20 of the Further Education and Training Act 2007, 3 May 2012

Mr Adrian Bailey MP
House of Commons
London
SW1A 0AA

3 May 2012

Dear Adrian,

**REPORT PURSUANT TO SECTION 20 OF THE FURTHER EDUCATION
AND TRAINING ACT 2007**

Further Education Colleges (FECs) have played a key role since the introduction of foundation degrees in 2000. Foundation degrees integrate academic and work-based learning, and are developed in partnership with employers. FECs teach more than half of the students enrolled on foundation degree programmes, offering flexible modes of delivery to learners who might not otherwise have considered undertaking a Higher Education qualification; many of whom are employed whilst studying. To date, all foundation degrees – including those taught exclusively in FECs – have been awarded by validating universities.

In recognition of the role that the FE sector plays in the delivery of foundation degrees, and of the quality of higher education delivered in FECs, the Further Education and Training Act 2007 introduced legislation allowing institutions in the Further Education sector to apply to the Privy Council for Foundation Degree Awarding Powers (FDAPs), which would allow those colleges to validate their own courses and award foundation degrees to their own students without the need to refer to a university. The policy intention behind these legislative measures was to enable FECs to respond more quickly and effectively to employer need; to respond to skills challenges and to allow those institutions that can meet the appropriate criteria to contribute to overall growth in foundation degree provision

During the passage of the Bill, Parliament secured a commitment to a future report on the effects of awarding FDAPs to the FE sector. That commitment, which subsequently became Section 20 of the same Act, requires that a report on the effects of Section 19 be laid before the House within four years of coming into force on 1 May 2008.

The commitment to report on the effects of Section 19 was intended to address concerns raised in both Houses about the potential for rapid expansion of foundation degree awarding powers to a great number of FECs. Parliament sought assurance that there would be proper controls on process and that the quality and reputation for excellence of our world-class higher education system would be maintained. The Government of the day agreed to an independent review after a period of four years, which would report to Parliament on the general operation of FECs and their ability to award their own foundation degrees.

I hope that the concerns raised at the time of the passing of the Act have long since been allayed by the evidence-based process established by the Quality Assurance Agency. Its comprehensive and robust criteria are based on the established and proven criteria and process for full Taught Degree Awarding Powers. To date, only four colleges have made applications that have progressed to the QAA's Advisory Committee on Degree Awarding Powers. Two applications did not meet the evidentiary requirements and were not recommended to proceed to the detailed scrutiny stage. The QAA inform me that two further applications are currently under scrutiny and two more have been submitted for consideration.

The successful applicants, New College Durham and Newcastle College, have been granted FDAPs for a fixed six-year period beginning 1 August 2011, Newcastle College's first self-validated foundation degree programme will commence in the 2012/13 academic year, with the first cohort expected to graduate in summer 2014. New College Durham has also recently confirmed the validation of their first foundation degree programme.

Given the very limited evidence, it is not possible at this stage to comment on the other issues raised during the passing of the Act – i.e. the use that colleges have made of the new powers; the extent to which the new powers have stimulated innovation in the provision of foundation degrees; how partnerships between further education colleges and higher education institutions have developed as a result of colleges seeking or acquiring the ability to award foundation degrees; or whether the new powers have led, or will lead, to changes in the distribution of foundation degree students between providers in different sectors.

It is also too soon to establish the extent to which the policy intent has been met. I therefore propose that there is no justification in committing public funds to an independent review.

However, work is underway within the Department for Business, Innovation and Skills, working in collaboration with the QAA, to review the process for considering applications by colleges for the right to award foundation degrees. Any proposed changes to the process will require careful consideration against the need to maintain the high standard of quality established by the QAA before being enacted through non-legislative measures.

I further note that some of the recommendations set out in Professor Sir Tim Wilson's Review of university/business collaboration allude to the provision of foundation degrees and foundation degree awarding powers. Government will be responding to the Wilson Review in due course.

I am copying this letter to the Library of the House.

A handwritten signature in black ink that reads "David Willetts". The signature is written in a cursive style with a large, sweeping initial "D".A second handwritten signature in black ink that reads "David". This signature is also in a cursive style with a large, circular initial "D".

THE RT HON DAVID WILLETTS MP



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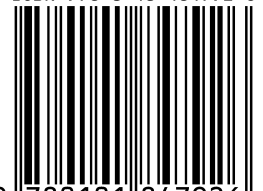
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