

INSTITUTE FOR APPRENTICESHIPS AND TECHNICAL EDUCATION (TRANSFER OF FUNCTIONS ETC) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Institute for Apprenticeships and Technical Education (Transfer of Functions etc) Bill [HL] as introduced in the House of Lords on 9 October 2024 (HL Bill 38).

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
The case for Skills England	3
Legal background	3
Territorial extent and application	4
Commentary on provisions of Bill	5
Clause 1: Transfer of functions	5
Clause 2: Transfer of property etc	5
Clause 3: Abolition	5
Clause 4: Preparation of standards	5
Clause 5: Preparation of apprenticeship assessment plans	5
Clause 6: Reviews	5
Clause 7: Examinations by independent third parties	6
Clause 8: Accreditation of technical education qualification	6
Clause 9: Power to make consequential provision	6
Clause 10: Extent	6
Clause 11: Commencement	6
Clause 12: Transitional and saving provision	6
Clause 13: Short Title	7
Schedule 1	7
Schedule 2	7
Schedule 3	7
Commencement	8
Financial implications of the Bill	8
Parliamentary approval for financial costs or for charges imposed	8
Compatibility with the European Convention on Human Rights	8
Environment Act 2021 Section 20 Statement	8
European Union (Withdrawal) Act 2018	9
Related documents	9
Annex A – Territorial extent and application in the United Kingdom	10
Subject matter and legislative competence of devolved legislatures	10

These Explanatory Notes relate to the Institute for Apprenticeships and Technical Education (Transfer of Functions etc) Bill [HL] as introduced in the House of Lords on 9 October 2024 (HL Bill 38).

Overview of the Bill

- 1 The Institute for Apprenticeships and Technical Education (Transfer of Functions etc) Bill [HL] will:
 - Abolish the Institute for Apprenticeships and Technical Education (“IfATE”) and repeal parts of the Apprenticeship, Skills, Children and Learning Act 2009 relating to its general duties;
 - Transfer statutory functions from IfATE to the Secretary of State;
 - Amend some of the functions to be transferred;
 - Enable a scheme to be made to transfer IfATE’s property, rights and liabilities to the Secretary of State;
 - Make transitional arrangements to ensure that existing approvals by IfATE of qualifications, standards and apprenticeship assessments will continue to have effect as if made by the Secretary of State; and
 - Make amendments to other Acts which are necessary as a consequence of the provisions of this Bill.

Policy background

- 2 This Bill forms part of the Government’s wider reforms to further education (FE) and provides further legislative underpinnings required to deliver the 2024 manifesto commitment to establish Skills England, a new Arm’s Length Body of the Department for Education (DfE).
- 3 It is the Government’s intention that Skills England will be an Executive Agency of the DfE, which will bring together existing functions, including statutory functions currently held by IfATE, into a single organisation. This Bill will enable this by:
 - Transferring functions from IfATE to the Secretary of State.
 - Amending some of these functions as they are transferred by:
 - Removing the duty to publish reviews of occupational standards and apprenticeship assessment plans at regular intervals, to enable flexibility to review standards according to priorities and employers’ needs.
 - Providing the option for each standard and apprenticeship assessment plan to be prepared by the Secretary of State rather than by a ‘group of persons’ (such as a group of key employers), where this is deemed necessary or appropriate, and does not risk undermining quality.
 - Providing the option for each standard and apprenticeship assessment plan to be approved without the Secretary of State making arrangements for the carrying out of an evaluation by an independent third party, where this is deemed necessary or appropriate and does not risk undermining quality, for example where a profession is regulated, and the apprenticeship assessment plan simply sets out that regulator’s requirements.

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- Allowing the Secretary of State to grant an exception which allows Ofqual – which regulates qualifications, examinations and assessments in England – to determine whether to exercise its accreditation power for technical qualifications in England (as it can for other types of qualifications).
- Repealing statutory functions for the purpose of abolishing IfATE.
- Making transitional arrangements to ensure continuity of approved qualifications and standards, and for the transfer of functions from IfATE to the DfE by:
 - Creating a power to make a transfer scheme to transition assets, liabilities and contracts from IfATE to DfE.
 - Creating a power to make consequential amendments to other legislation to remove and/or replace IfATE with the Secretary of State where appropriate.

The case for Skills England

- 4 Skills England is intended to bring about a clearer, more data-driven, more joined-up and more responsive skills system, to help deliver a more productive workforce. It is a key element of the government’s mission to improve access to opportunities.
- 5 This Bill therefore makes the necessary legislative changes as relates to apprenticeships and technical qualifications, as part of the broader plan for Skills England (the remainder of which is not reliant on this Bill). The Bill is a necessary condition for delivering on the government’s manifesto commitment to establish Skills England as a vehicle for driving growth and opportunity.

Legal background

- 6 The Bill is a piece of amending legislation. It amends the Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”).

Territorial extent and application

- 7 Education is devolved under all three of the devolution settlements.
- 8 Clause 10 sets out the territorial extent of this Bill. The extent of a piece of legislation refers to the jurisdiction (or jurisdictions) in which it forms part of the law. The extent of a Bill can be different from its application. Application concerns where a Bill produces a practical effect.
- 9 The Bill extends to England and Wales save for Clause 8 which extends to England and Wales, and Northern Ireland; and Clauses 9 to 13 and Schedules 1 and 3 which extend to England and Wales, Scotland and Northern Ireland. The Bill applies to England only.
- 10 Any amendment or repeal made by the Bill has the same extent as the enactment amended or repealed.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature will be sought for the amendment.

Commentary on provisions of Bill

Clause 1: Transfer of functions

- 12 This clause introduces Schedule 1 which transfers statutory functions from IfATE to the Secretary of State and makes minor and consequential amendments.

Clause 2: Transfer of property etc

- 13 This clause introduces Schedule 2 which sets out the provision for the transfer of IfATE's property, rights and liabilities to the Secretary of State.

Clause 3: Abolition

- 14 This clause abolishes IfATE.
- 15 It also introduces Schedule 3 which makes consequential provisions in relation to existing primary legislation, that is required as a consequence of the abolition of IfATE.

Clause 4: Preparation of standards

- 16 Clause 4 amends section ZA11 of the 2009 Act in relation to the preparation of standards.
- 17 Clause 4 removes the requirement for standards to be prepared by a group of persons approved by IfATE and replaces it with the power for standards to be either prepared by a group of persons and approved by the Secretary of State or to be prepared by the Secretary of State where the Secretary of State is satisfied that this is more appropriate. Subsection 5 makes a consequential amendment to section A1 of the 2009 Act (meaning of "approved English apprenticeship" etc) to refer to published standards.
- 18 Clause 4 also enables the Secretary of State to commission a group of persons to prepare a standard if they consider that there is a need for a standard, and that the standard should be prepared by a group (approved by the Secretary of State) and the standard would not be prepared unless the Secretary of State convenes a group for this purpose.

Clause 5: Preparation of apprenticeship assessment plans

- 19 Clause 5 amends section A2 of the 2009 Act in relation to the preparation of apprenticeship assessment plans.
- 20 Clause 5 removes the duty for apprenticeship assessment plans to be prepared by a group of persons and approved by IfATE. It replaces it with the power for apprenticeship assessment plans to be prepared by a group of persons and approved by the Secretary of State or prepared by the Secretary of State where the Secretary of State is satisfied that this is more appropriate.
- 21 In a similar way to the clause dealing with standards, this clause also enables the Secretary of State to convene a group of persons to prepare an apprenticeship assessment plan if they consider that such a plan should be prepared by a group (approved by the Secretary of State), and that no group would prepare the assessment plan unless the Secretary of State takes the step of convening a group for this purpose.

Clause 6: Reviews

- 22 Clause 6 amends sections A2D8 and A2E of the 2009 Act by removing the requirement for reviews of technical education qualification and standards and apprenticeship assessment plans to be published at regular intervals,. The sections, as amended, will still require the Secretary of State to maintain arrangements to review approved technical education qualifications, standards and apprenticeship assessment plans with a view to determining

whether they should be revised or withdrawn (and whether qualifications should continue to be approved).

Clause 7: Examinations by independent third parties

- 23 Clause 7 amends section A2G of the 2009 Act.
- 24 It removes the duty for IfATE to make arrangements for an independent third party to carry out an examination of a standard or apprenticeship assessment plan.
- 25 It gives the power for the Secretary of State to make arrangements for an independent third party to carry out an examination of a standard or apprenticeship assessment plan.

Clause 8: Accreditation of technical education qualification

- 26 Clause 8 amends section 138 of the 2009 Act to specify that Ofqual may not decide whether or not there should be an accreditation requirement in relation to approved technical education qualifications, or technical education qualifications that the Secretary of State is considering approving, unless the Secretary of State has notified it that it may do so.

Clause 9: Power to make consequential provision

- 27 Clause 9 sets out that by regulations made by statutory instrument, the Secretary of State may make provision that is consequential on other provisions in the Bill. Regulations that amend primary legislation will be subject to the affirmative resolution procedure, while any other regulations (for example those only dealing with amendments to statutory instruments) may be made by way of the negative resolution procedure.

Clause 10: Extent

- 28 The extent of the Bill is as follows:
 - Clauses 1 to 7 and Schedule 2 extend to England and Wales.
 - Clause 8 extends to England and Wales, and Northern Ireland.
 - Clauses 9 to 13 and Schedules 1 and 3 extend to England and Wales, Scotland and Northern Ireland.

Clause 11: Commencement

- 29 This clause states when the provisions of the Bill will come into effect. Clauses 1 to 8 and Schedules 1 to 3 of this Bill will come into force on such day as the Secretary of State may by regulations appoint. The Secretary of State may appoint different days for different sections to come into force.
- 30 The other provisions of the Bill come into force the day on which the Bill is passed.

Clause 12: Transitional and saving provision

- 31 Clause 12(1) and (2) are aimed at ensuring continuity in relation to things done by, or in relation to, IfATE when exercising its functions immediately prior to the transfer of these functions to the Secretary of State. They enable such matters to be treated as if they had been done by, or in relation to the Secretary of State, so that they continue to have effect when the functions are transferred to them. This means, for example, that standards, assessment plans and technical qualifications that were approved by IfATE immediately before these functions are transferred to the Secretary of State, may be treated as having been approved by the Secretary of State.

- 32 Clause 12(3) enables the Secretary of State to continue things that were in the process of being done by or in relation to IfATE immediately before the function was transferred. This means, for example, that a standard, assessment plan or technical education qualification that was submitted to IfATE for approval, may continue to be considered by the Secretary of State (even though they were not submitted to the Secretary of State).
- 33 Further transitional or saving provision that may be necessary in relation to the coming into force of provisions of the Act may be made by the Secretary of State by way of regulations, which can make different provision for different purposes.

Clause 13: Short Title

- 34 The short title of the Bill is Institute for Apprenticeships and Technical Education (Transfer of Functions etc) Bill 2024.

Schedule 1

Transfer of functions

- 35 Schedule 1 makes amendments to the 2009 Act, to reflect the transfer of functions from IfATE to the Secretary of State, as follows.
- 36 Paragraph 2 removes the requirement for the Secretary of State to notify IfATE of any categories that are determined, under subsection 2 of ZA9 (occupational categories).
- 37 Clauses 3 to 31 of Schedule 1 amend the 2009 Act by substituting IfATE for the Secretary of State and making other minor amendments to ensure that the legislation is coherent. These amendments have the effect of giving the Secretary of State functions in relation to apprenticeships and technical education.
- 38 Clause 14 of Schedule 1 amends the 2009 Act by substituting IfATE for the Secretary of State and gives the Secretary of State the power to charge fees in connection with approvals of technical qualifications under section A2D5. The level of fees will be determined in accordance with regulations. Any fees would be charged on a cost-recovery basis.
- 39 Paragraphs 32 to 35 make changes to the Housing and Regeneration Act 2008, the Enterprise Act 2016, the Technical and Further Education Act 2017 and Skills and Post-16 Education Act 2022 to omit provisions that refer to IfATE or to replace IfATE with the Secretary of State, where appropriate.

Schedule 2

Transfer of property etc

- 40 Schedule 2 enables the Secretary of State to make one or more transfer schemes to transfer property, rights and liabilities from IfATE to the Secretary of State.
- 41 It specifies the things that can be included in a transfer scheme.
- 42 Paragraph 4 enables a transfer scheme to be modified (by agreement) and for such modifications to have effect from when the original scheme came into effect.

Schedule 3

Abolition: Consequential amendments

- 43 Schedule 3 makes provision in consequence of the abolition of IfATE, by removing references to it in the 2009 Act, the Superannuation Act 1972, the Freedom of Information Act 2000, the

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Enterprise Act 2016, the Technical and Further Education Act 2017 and the Skills and Post-16 Education Act 2022.

Commencement

- 44 Sections 1 to 8 and Schedules 1 to 3 of this Bill come into force on such day as the Secretary of State may by regulations appoint.
- The other provisions of the Bill come into force the day on which the Bill is passed.
 - Regulations made under subsection (1) must be made by statutory instrument and may make different provision for different purposes.

Financial implications of the Bill

- 45 The Bill is not expected to impact the administrative costs for the new executive agency, Skills England and is not expected to give rise to any increase in public funds.

Parliamentary approval for financial costs or for charges imposed

- 46 As this Bill is being introduced in the House of Lords, this section will be completed when the Bill transfers to the House of Commons.

Compatibility with the European Convention on Human Rights

- 47 Section 19(1) of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the European Convention on Human Rights (ECHR) (as defined in Section 1 of that Act).
- 48 In the opinion of Baroness Smith of Malvern, Minister of State at the Department for Education, the provisions of the Institute for Apprenticeships and Technical Education (Transfer of Functions etc) Bill are compatible with the Convention rights and she has made a statement to this effect.
- 49 The government has published a separate ECHR memorandum with its assessment of the compatibility of the Bill's provisions with the Convention rights: this memorandum is available on GOV.UK.

Environment Act 2021 Section 20 Statement

- 50 Baroness Smith of Malvern, Minister of State at the Department for Education, is of the view that the Bill as introduced into the House of Lords does not contain provisions which, if enacted, would be environmental law for the purposes of Section 20 of the Environment Act 2021. Accordingly, no statement under Section 20 of the Environment Act 2021 has been made.

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European Union (Withdrawal) Act 2018

51 Baroness Smith of Malvern, Minister of State at the Department for Education, is of the view that the Bill as introduced into the House of Lords does not contain provisions which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under Section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

52 The following documents are relevant to the Bill and can be read at the stated locations:

- [Skills England report: driving growth and widening opportunities - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/123456/Skills_England_report_driving_growth_and_widening_opportunities.pdf) (www.gov.uk) (24 September 2024)
- [Written statements - Written questions, answers and statements - UK Parliament](https://www.parliament.uk/written-questions-answers-statements/written-statements/written-questions-answers-statements-2024-07) (22 July 2024)

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clauses 1 – 8 Schedule 2	Yes	No	No	No	No	No	No
Clauses 9-13	Yes	No*	No	No*	No	No*	No
Schedule 1	Yes	No*	No	No*	No	No*	No
Schedule 3	Yes	No*	No	No*	No	No*	No

53 *Clauses 9 to 13 and Schedules 1 and 3 have only minor or consequential effect in England, Wales, Scotland and Northern Ireland.

Subject matter and legislative competence of devolved legislatures

- 54 Clauses 1 to 7 and schedule 2 extend to England and Wales and apply in England only.
- 55 Clause 8 extends to England and Wales, and Northern Ireland and applies to England only.
- 56 Clauses 9 to 13 and schedules 1 and 3 extend to England and Wales, Scotland and Northern Ireland. As these provisions are minor or consequential, the Bill is assessed as applying to England only.
- 57 Corresponding provision could not be made by a devolved legislature on these subject matters.

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Ordered by the House of Lords to be printed, 9 October 2024

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