



Department
for Business
Innovation & Skills



Department
for Education

Proposed Insolvency Regime for Further Education and Sixth Form Colleges

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LGPS Managers

Kate Cornish Commercial & Legal Unit, Vocational Education



Policy context for an insolvency regime

- Government is working to help the FE sector to be responsive to the needs of local learners and labour markets, and to help colleges work independently, strategically and be financially resilient.
- The Area Reviews, launched in July 2015, consider current post-16 provision including the curriculum offer, finances and estates; and aim to enable colleges to be put on a stable footing.
- Currently supported by EFS, which will be scaled back, and the Restructuring Facility for Area Review recommendations.
- Our proposals deal with a landscape beyond the implementation of Area Reviews.



Policy context for an insolvency regime

- The proposals we are consulting on now deal with the unlikely possibility of a college failing in the future.
- There is currently no express insolvency regime for FE and SF colleges so uncertainty exists with the real risk of disorderly closure and students' interests being put at risk, in extremis.
- Therefore the Government is consulting on proposals for a regime that would remove this uncertainty, create an orderly process that benefits colleges, learners and creditors; and specifically protect learner provision.



Consultation overview

- We published a consultation on proposals for introducing an insolvency regime for the FE and Sixth Form College sector on **6 July**. The consultation will close on **Friday 5 August**.
- **This is available on GOV.UK**
- We have also published an early version of the **draft legislative clauses** in order to provide as much detail on the proposals as possible. We are not formally consulting on these but welcome views
- We anticipate publishing a Government response by Autumn 2016.
- The proposals would require primary and secondary legislation.



Key areas of consultation:

- 1. General insolvency measures:** Our proposals clarify the application of insolvency measures to the FE sector, as they apply to companies through the Insolvency Act 1986. It is currently unclear whether they apply.
- 2. Special Administration Regime (SAR):** In addition, we are seeking views on the creation of a SAR that will protect the interests of learners in the scenario that a college becomes insolvent.
- 3. Director and Governor Liability:** Within our proposals we think it's important to establish liability for wrongful and fraudulent trading, as a lever for ensuring those with decision making responsibilities have accountability. We are seeking views on how this might work.



Policy Aims

- Establishment of an **orderly process** which provides protections for creditors comparable with other relevant UK insolvency regimes
- **Protection of the interests of learners** by promoting continuity of provision
- Retention of **independence and freedoms of colleges** whilst removing or mitigating any expectation of additional exceptional public funding
- **Support for local and national education and training needs**
- Where possible **facilitation of the rescue of the FEC / SFC** as a going concern, including access to new financing
- Maintaining and **maximising the value of the assets** of the FEC / SFC
- Creating a legislative context in which **commercial lenders will continue to look to lend to colleges on appropriate terms.**



Insolvency Procedures as apply to companies

- We believe it best to have the flexibility of a number of options in the event of insolvency including rescue and voluntary or compulsory winding up.
- The proposals therefore closely mirror the insolvency arrangements afforded to companies under the IA86 and would include:
 - Company Voluntary Arrangement
 - Administration
 - Compulsory Liquidation
 - Creditors' Voluntary Liquidation

We have asked for views on the application of these measures to the sector



Special Objective of the SAR

- The special objective for the education SAR will guide the administrator in the actions they take for continuing of learner provision. We have included the proposed text for the objective in the consultation:
 - *To avoid or minimise disruption to the studies of existing students as a whole.*
 - *To ensure that it becomes unnecessary for the administration to continue for that purpose (i.e. avoid unnecessary delay).*
- In addition existing statutory duties would be protected and account taken of the needs of young people to access suitable provision. The administrator must also carry out functions in a way that achieves the best result for the college's creditors, as a whole.

We have asked for views on whether the proposed special objective sufficiently reflects the needs of learners and creditors.



SAR Initiation

- SAR can only be initiated where a college is insolvent (unable to satisfy creditors or discharge liabilities, either because liabilities exceed assets or because unable to pay debts)
- **There are two routes to initiate a SAR:**
 1. SoS applies to the court for an SAR order; or
 2. SoS may intervene in other insolvency proceedings and apply for a SAR.
- Have 14 days to intervene (in line with other SARs) if a college or its creditors petition court for another type of insolvency order (e.g. ordinary administration or compulsory liquidation).
- SoS not obliged to apply for SAR but may choose to.

We have asked for views on SAR initiation.



Process of a SAR

- Once the education administrator has been appointed, a moratorium is in place to stop action being taken by creditors
- The administrator develops proposals to secure provision for learners
- **Timing:** no time limit, although likely to be longer than ordinary administration



SAR Proposals

A credible proposal from the education administrator may involve:

- College rescued as a going concern;
- A merger between colleges; or
- Keeping the college running to allow course completion and/or transfer of learners.



Funding the SAR

- The need for funding is a feature of SARs.
- The Government intends to take a power in legislation for the Secretary of State to make grants or loans, issue indemnities or make guarantees where he considers it appropriate to do so.
- SoS would be able to use these powers to provide funding on a case-by-case basis, under the terms set out in a funding agreement.



Impact on creditors

- Time restrictions on enforcement by secured creditors with moratorium of SAR.
- Unsecured creditors rank in usual priority order.
- Value of assets needs to be maintained and maximised, subject to protecting learners.
- Special objective to protect learners is relevant to creditors.



Impact on learners

- Learners would be offered protections similar to those from a solvent college. They might either:
 - transfer to an alternative provider, taking into account travel to learn distances, at a natural break point in the academic year; or
 - be offered limited continued provision to complete studies.
- There would also be specific consideration for learners with special education needs and/or disability (SEND) or other high needs.



Governor and Director Liability

- Governors already have important duties as charitable trustees (including principals who are governors).
- Company insolvency regime includes directors' duties on wrongful and fraudulent trading, which help to protect creditors.
- Our proposals clarify their position so colleges would be covered by the wrongful and fraudulent trading provisions in insolvency law.



LGPS Implications

What are the future implications for colleges and LGPS in respect of these insolvency proposals?

- Fund Trustees to seek payment as an unsecured creditor?
- Increased contributions from Scheduled bodies?
- Impact on actuary valuation rates going forward? % increase?
- Other?



How to respond

- Consultation document and draft clauses and explanatory notes available from www.gov.uk

www.gov.uk/government/consultations/developing-an-insolvency-regime-for-the-further-education-and-sixth-form-sector

- The consultation can be completed online via **Citizen Space**
bisgovuk.citizenspace.com/ve/consultation-on-developing-an-insolvency-regime-fo

- Please direct any queries to our consultation mailbox:
FEconsultation@bis.gsi.gov.uk



COMMENTS AND QUESTIONS?