



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 1

#### DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

### CHAPTER 3

#### EMPLOYERS

##### *Commencement of employment*

#### **21 Appropriate arrangements to be in place before employment begins**

- (1) A person must not, as employer, enter into a relevant contract of employment with a person to whom this Part applies without being satisfied, having taken all such steps as are reasonable to ascertain, that the person has made appropriate arrangements for training or education.
- (2) In the case of a relevant contract of employment which provides for commencement of the employment to be conditional on the employee's having made such arrangements—
  - (a) subsection (1) does not apply, but
  - (b) the employer must not permit the employment to commence, at a time when the employee is a person to whom this Part applies, without being satisfied, having taken all such steps as are reasonable to ascertain, that the employee has made appropriate arrangements for training or education.
- (3) Failure to comply with this section in relation to a contract of employment is not to be taken to affect the validity of the contract.

## **22 Financial penalty for contravention of section 21**

- (1) Where a relevant local education authority is satisfied that a person (“the employer”) has contravened section 21, the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.
- (2) The amount of the financial penalty is to be determined in accordance with regulations.
- (3) A penalty notice must state—
  - (a) particulars of the contravention of section 21 in respect of which the penalty is imposed,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given),
  - (e) the steps that the employer may take if the employer objects to the giving of the penalty notice, including how the employer may appeal against it, and
  - (f) the consequences of non-payment.
- (4) For the purposes of subsection (1), a local education authority is a relevant local education authority in relation to a contract of employment under which a person to whom this Part applies is employed if—
  - (a) the person belongs to the authority’s area, or
  - (b) the person’s place of work, or one of the places at which the person works, under the contract is in the authority’s area.
- (5) Without prejudice to section 166(6), regulations under subsection (2) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).

## **23 Withdrawal or variation of penalty notice given under section 22 following notice of objection**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 by a local education authority.
- (2) The employer may, by giving notice (a “notice of objection”) to the authority, object to the giving of the penalty notice on either or both of the following grounds—
  - (a) that the employer did not commit the contravention of section 21 stated in the penalty notice;
  - (b) that the amount of the penalty stated in the penalty notice is too high.
- (3) A notice of objection—
  - (a) may be given to the authority only during the period of 2 weeks beginning with the day on which the penalty notice was given to the employer, and
  - (b) must state the grounds of the objection and the employer’s reasons for objecting on those grounds.
- (4) A local education authority must consider a notice of objection given under subsection (2) and, by giving notice (a “determination notice”) to the employer—
  - (a) withdraw the penalty notice,

- (b) if the amount of the penalty determined in accordance with regulations under section 22(2) is smaller than the amount stated in the penalty notice, replace the penalty with the smaller amount, or
  - (c) confirm the penalty notice.
- (5) The determination notice must be given within the prescribed period beginning with the day on which the notice of objection was given.
- (6) Where, under subsection (4)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.

## **24 Appeal against penalty notice given under section 22**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 and—
- (a) the period during which a notice of objection may be given in relation to the penalty notice has expired, and
  - (b) if a notice of objection has been given in relation to the penalty notice, a determination notice has been given in relation to the notice of objection.
- (2) The employer may appeal to the First-tier Tribunal against the giving of the penalty notice on one or more of the following grounds—
- (a) that the employer did not contravene section 21 in the way stated in the penalty notice;
  - (b) that the circumstances of the contravention of section 21 stated in the penalty notice make the giving of the notice unreasonable;
  - (c) that the amount of the penalty stated in the penalty notice is too high.
- (3) On an appeal under this section, the First-tier Tribunal may—
- (a) allow the appeal and cancel the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 22(2) is smaller than the amount stated in the penalty notice, allow the appeal and replace the penalty with the smaller amount, or
  - (c) dismiss the appeal.
- (4) Where, under subsection (3)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.
- (5) In subsection (1), “notice of objection” and “determination notice” have the same meanings as in section 23.

## **25 Further power to withdraw penalty notice given under section 22**

- (1) This section applies where—
- (a) a penalty notice has been given to a person (“the employer”) under section 22 by a local education authority, and
  - (b) any appeal made under section 24 in respect of the penalty notice has not been determined.
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer.

**26 Withdrawal or variation of penalty notice given under section 22: further provisions**

- (1) If a penalty notice is withdrawn under section 23 or 25, any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (2) If the amount of a penalty is reduced under section 23, any sum already paid or recovered must, to the extent that it was paid or recovered in respect of any amount in excess of the reduced amount, be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (3) In this section “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).