



Education and Skills Act 2008

2008 CHAPTER 25

PART 1

DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

CHAPTER 1

YOUNG PERSONS

Duty to participate in education or training

1 Persons to whom Part 1 applies

This Part applies to any person who is resident in England and who—

- (a) has ceased to be of compulsory school age,
- (b) has not reached the age of 18, and
- (c) has not attained a level 3 qualification (see section 3).

2 Duty to participate in education or training

(1) A person to whom this Part applies must—

- (a) be participating in appropriate full-time education or training (see section 4),
- (b) be participating in training in accordance with a contract of apprenticeship, or
- (c) both—
 - (i) be in full-time occupation (see section 5), and
 - (ii) participate in sufficient relevant training or education in each relevant period (see sections 6 to 8).

(2) For the purposes of this Part, a person who is in full-time occupation is to be taken to be participating in sufficient relevant training or education at any particular time if—

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- (a) arrangements have been made (whether by means of enrolment on a course or courses, or otherwise) for the person to receive sufficient relevant training or education during the current relevant period, and
- (b) where the arrangements call for the person to be participating in training or education at the time, the person is so participating.

Interpretation

3 Level 3 qualification

- (1) In this Part, “level 3 qualification” means a prescribed external qualification, or an external qualification of a prescribed description, at level 3.
- (2) For this purpose, level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects.
- (3) A qualification, or description of qualification, prescribed under subsection (1) may be prescribed by reference to an assessment made by the Qualifications and Curriculum Authority of the level of attainment demonstrated by a qualification; and for that purpose regulations under subsection (1) may confer a function (which may include the exercise of a discretion) on the Authority.
- (4) In subsection (1), “external qualification” has the meaning given in section 24 of the Education Act 1997 (c. 44).
- (5) The Secretary of State may by order amend subsection (2) so as to substitute a different qualification for the qualification for the time being referred to.

4 Appropriate full-time education or training

- (1) In this Part, “appropriate full-time education or training”, in relation to a person, means full-time education or training which is suitable for the person, having regard—
 - (a) to the person’s age, ability and aptitude, and
 - (b) to any learning difficulty which the person may have,
 and is provided at a school, at a college of further education, at an institution within the higher education sector or otherwise.
- (2) Regulations may provide that a particular description of—
 - (a) education provided otherwise than at a school, or
 - (b) training,
 is, or is not, to be treated as being “full-time” for the purposes of this section.
- (3) Subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (persons with learning difficulties) apply for the purposes of this section.

5 Full-time occupation

- (1) For the purposes of this Part, a person is in full-time occupation if the person works for at least 20 hours per week—
 - (a) under a contract of employment, or
 - (b) in any other way which may be prescribed,

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otherwise than under a short-term contract or arrangement.

- (2) The power conferred by subsection (1)(b) includes, in particular, power to prescribe the following ways of working—
- (a) as a self-employed person,
 - (b) otherwise than for reward, or
 - (c) as the holder of an office.
- (3) For the purposes of this section, the number of hours for which a person works per week is—
- (a) the number of the person’s normal weekly working hours, less
 - (b) the number of hours of actual guided learning—
 - (i) which constitute relevant training or education, and
 - (ii) in which the young person participates each week during normal weekly working hours.
- (4) In subsection (3)—
- “normal weekly working hours”—
 - (a) in relation to a person employed under a contract of employment, means the person’s normal working hours in a week, and
 - (b) in relation to a person working in a way prescribed under subsection (1)(b), has the prescribed meaning;
 - “actual guided learning” has the meaning given by section 8(3).
- (5) Section 234 of the Employment Rights Act 1996 (c. 18) (construction of references to normal working hours where employee entitled to overtime pay) applies for the purposes of the definition of “normal weekly working hours” in subsection (4) as it applies for the purposes of that Act.
- (6) Regulations may make provision for a person to be, or not to be, treated as working for at least 20 hours per week in cases where the number of hours for which the person works per week (calculated under subsection (3)) varies from week to week.
- (7) Where a person works otherwise than under—
- (a) a single contract of employment, or
 - (b) a single arrangement (in the case of a way of working prescribed under subsection (1)(b)),
- the number of hours for which the person works per week is the aggregate of the amounts calculated under subsection (3) in relation to each of the contracts or arrangements under which the person works.
- (8) For the purposes of subsection (1)—
- (a) a contract of employment is a short-term contract unless it—
 - (i) has a fixed term of 8 weeks or longer, or
 - (ii) does not have a fixed term but has been, or can reasonably be expected to be, in force for at least 8 weeks;
 - (b) an arrangement, in the case of a way of working prescribed under paragraph (b) of that subsection, is a short-term arrangement unless it has been, or can reasonably be expected to be, in force for at least 8 weeks.

6 Relevant training or education

- (1) In this Part, “relevant training or education” means training or education towards an accredited qualification provided by a course or courses.
- (2) For this purpose, “accredited qualification” means a qualification which has been accredited by the Qualifications and Curriculum Authority under section 24(2)(g) of the Education Act 1997 (c. 44) (functions of the Authority in relation to external vocational and academic qualifications).

7 Relevant period

- (1) In this Part, “relevant period”, in relation to a person, means a period beginning with a start date and ending with the next end date.
- (2) The following are start dates for the purposes of subsection (1)—
 - (a) a date on which subsection (4) starts to apply to the person;
 - (b) the date immediately following the end of a relevant period (if on that date that subsection still applies to the person).
- (3) The following are end dates for the purposes of subsection (1)—
 - (a) a prescribed date;
 - (b) a date on which subsection (4) ceases to apply to the person.
- (4) This subsection applies to a person at any time when—
 - (a) this Part applies to the person, and
 - (b) the person is not participating in education or training in accordance with section 2(1)(a) or (b).

8 Sufficient relevant training or education

- (1) For the purposes of this Part, relevant training or education is “sufficient” in relation to any relevant period if it amounts in aggregate to—
 - (a) at least 280 hours of guided learning, in the case of a relevant period which is one year;
 - (b) such number of hours of guided learning as is determined in accordance with regulations, in the case of any other relevant period.
- (2) For the purposes of this Part, a person participates in a particular number of hours of guided learning by—
 - (a) participating in actual guided learning for that number of hours, or
 - (b) completing a course or courses which can reasonably be expected to be adequate to enable persons completing it or them to achieve any standard required to attain an accredited qualification to which that number of hours of guided learning has been assigned.
- (3) In subsection (2)—

“accredited qualification” has the meaning given by section 6(2);

“actual guided learning”, in relation to a person, means time the person spends—

 - (a) being taught or given instruction by a lecturer, tutor, supervisor or other appropriate provider of training or education, or

(b) otherwise participating in education or training under the immediate guidance or supervision of such a person,

but does not include time spent on unsupervised preparation or study, whether at home or otherwise;

“assigned” means assigned by the Qualifications and Curriculum Authority under subsection (2)(g) of section 24 of the Education Act 1997 (c. 44) (functions of the Authority in relation to external vocational and academic qualifications) by virtue of subsection (2B) of that section.

- (4) Regulations may make provision for attributing to any relevant period a number of hours of guided learning in which a person participates (or is treated by the regulations as participating) by virtue of subsection (2)(b) in cases where courses do not begin and end during a single relevant period.

9 Assignment of numbers of hours of guided learning to external qualifications

In section 24 of the Education Act 1997 (functions of Qualifications and Curriculum Authority in relation to external vocational and academic qualifications), after subsection (2A) insert—

“(2B) Any accreditation of a qualification under paragraph (g) of subsection (2) must assign to the qualification a number of notional hours (to be known as “the number of hours of guided learning”) representing an estimate of the amount of actual guided learning which could reasonably be expected to be required in order for persons to achieve the standard required to attain the qualification.

(2C) Accordingly, criteria published under paragraph (f) of that subsection must include criteria for the assignment of numbers of hours of guided learning to qualifications mentioned in that paragraph.

(2D) In subsection (2B), “actual guided learning” means time a person spends—

- (a) being taught or given instruction by a lecturer, tutor, supervisor or other appropriate provider of training or education, or
- (b) otherwise participating in education or training under the immediate guidance or supervision of such a person,

but does not include time spent on unsupervised preparation or study, whether at home or otherwise.”

CHAPTER 2

LOCAL EDUCATION AUTHORITIES AND EDUCATIONAL INSTITUTIONS ETC

Duty to promote fulfilment of duty imposed by section 2

10 Local education authority to promote fulfilment of duty imposed by section 2

A local education authority in England must ensure that its functions are (so far as they are capable of being so exercised) exercised so as to promote the effective participation in education or training of persons belonging to its area to whom this Part applies with a view to ensuring that those persons fulfil the duty imposed by section 2.

Duty to promote good attendance

11 Educational institutions: promotion of good attendance

- (1) The governing body of an institution in England to which this section applies must exercise its functions (so far as they are capable of being so exercised) so as to promote the participation, through regular attendance, of persons to whom this Part applies and for whom the institution provides education or training in that education or training.
- (2) This section applies to—
- (a) a community, foundation or voluntary school;
 - (b) a community or foundation special school;
 - (c) a pupil referral unit;
 - (d) an institution within the further education sector.
- (3) For the purposes of this section, “governing body”—
- (a) in relation to a pupil referral unit maintained by a local education authority, means any management committee established for the unit by virtue of paragraph 15 of Schedule 1 to the Education Act 1996 (c. 56) or, if there is no such committee, the authority, and
 - (b) in relation to an institution within the further education sector has the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13).

Duty to identify persons not fulfilling duty imposed by section 2

12 Duty to make arrangements to identify persons not fulfilling duty imposed by section 2

A local education authority in England must make arrangements to enable it to establish (so far as it is possible to do so) the identities of persons belonging to its area to whom this Part applies but who are failing to fulfil the duty imposed by section 2.

Information

13 Notification of non-compliance with duty imposed by section 2

- (1) Where—
- (a) arrangements have been made for a person to whom this Part applies to participate in education or training provided by an educational institution in England,
 - (b) the person is not participating in that education or training at a time when the arrangements call for the person to be so participating, and
 - (c) the responsible person has reasonable cause to believe that in consequence of that failure to participate the person is failing to fulfil the duty imposed by section 2,

the responsible person must give notice to the appropriate service provider of those circumstances.

- (2) Where a local education authority—
- (a) itself provides services in exercise of its functions under section 68(1), and

- (b) receives a notice under subsection (1) relating to a person to whom this Part applies who belongs to the area of another local education authority, it must as soon as reasonably practicable give notice to the service provider for the other local education authority of the circumstances notified to it under subsection (1).
- (3) Subsection (4) applies where, in exercise of its functions under section 68(3)(b), a local education authority makes arrangements with another person (“the provider”) for the provision of services.
- (4) The arrangements must secure that, as soon as reasonably practicable after receiving a notice under subsection (1) relating to a person to whom this Part applies who belongs to the area of another local education authority, the provider gives notice to the service provider for the other local education authority of the circumstances notified to the provider under subsection (1).
- (5) In this section—
- “educational institution” means—
- (a) a community, foundation or voluntary school,
 - (b) a community or foundation special school,
 - (c) a city technology college, a city college for the technology of the arts or an Academy,
 - (d) a pupil referral unit,
 - (e) an institution within the further education sector, or
 - (f) an institution in receipt of funding from the Learning and Skills Council for England;
- “responsible person” means—
- (a) in relation to a school within paragraph (a) or (b) of the definition of “educational institution”, the governing body;
 - (b) in relation to an institution within paragraph (c) or (f) of that definition, the proprietor;
 - (c) in relation to a pupil referral unit, the local education authority by which it is maintained;
 - (d) in relation to an institution within the further education sector, the governing body within the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);
- “service provider”, in relation to a local education authority, means—
- (a) where the authority itself provides services in exercise of its functions under subsection (1) of section 68, the authority;
 - (b) where, in exercise of its functions under subsection (3)(b) of that section, the authority makes arrangements for the provision of services, the person providing those services;
- “the appropriate service provider”, in relation to an educational institution, means the service provider of the local education authority in whose area the institution is situated.

14 Educational institutions: duty to provide information

- (1) Relevant information about a pupil or student—
- (a) who is attending an educational institution in England, and
 - (b) to whom this Part applies,

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must, on request by a local education authority in England, be provided by the responsible person to the authority.

- (2) A local education authority may request information under subsection (1) only for the purpose of enabling or assisting it to exercise its functions under this Part.
- (3) For the purpose of subsection (1), “relevant information” means—
 - (a) the name, address and date of birth of the pupil or student;
 - (b) the name and address of a parent of the pupil or student;
 - (c) information in the institution’s possession about the pupil or student.
- (4) Information within subsection (3)(c) must not be provided under subsection (1) if—
 - (a) the pupil or student concerned, in the case of a pupil or student who has attained the age of 16, or
 - (b) a parent of the pupil or student concerned, in the case of a pupil or student who has not attained the age of 16,
 has instructed the responsible person not to provide information of that kind under this section.
- (5) In this section, “educational institution” and “responsible person” have the same meanings as in section 13.

15 Supply of social security information

- (1) Social security information may be supplied to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under this Part.
- (2) In this section “social security information” means personal information about a person which is held for the purposes of functions relating to social security—
 - (a) by the Secretary of State, or
 - (b) by a person providing services to the Secretary of State in connection with the provision of those services.
- (3) For the purposes of subsection (2) “personal information”, in relation to a person, means—
 - (a) the person’s name, address and date of birth, and
 - (b) the name and address of a parent of the person.
- (4) A person to whom information is supplied under subsection (1) commits an offence by disclosing the information unless the disclosure is made—
 - (a) for the purpose of enabling or assisting the exercise of any function of a local education authority under this Part,
 - (b) for the purpose of the provision of services in pursuance of section 68 or 70(1)(b),
 - (c) in accordance with section 17 or any other enactment or an order of a court or tribunal,
 - (d) for the purpose of actual or contemplated proceedings before a court or tribunal,
 - (e) with consent given by or on behalf of the person to whom the information relates, or
 - (f) in such a way as to prevent the identification of the person to whom it relates.

- (5) It is a defence for a person charged with an offence under this section relating to a disclosure to prove that the person reasonably believed that the disclosure was lawful.
- (6) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (7) In subsection (6)(b) the reference to 12 months is to be read in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum term that may be imposed on summary conviction of offence triable either way) as a reference to 6 months.

16 Supply of information by public bodies

- (1) Any of the persons or bodies mentioned in subsection (2) may supply information about a person to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under this Part.
- (2) Those persons and bodies are—
 - (a) a local authority,
 - (b) the Learning and Skills Council for England,
 - (c) a Primary Care Trust,
 - (d) a Strategic Health Authority,
 - (e) a chief officer of police,
 - (f) a provider of probation services,
 - (g) a local probation board, and
 - (h) a youth offending team.
- (3) In this section—

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).

17 Sharing and use of information held for purposes of support services or functions under this Part

- (1) Any persons within subsection (2) may provide relevant information to each other.
- (2) Those persons are—
 - (a) a local education authority in England, and
 - (b) a service provider of that authority.
- (3) Information provided under subsection (1) may only be used by the person to whom it is provided for a purpose which is a relevant purpose in relation to that person.
- (4) A local education authority in England may use relevant information held by it for any relevant purpose.

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- (5) A local education authority in England may provide relevant information to any other such authority for a purpose which is a relevant purpose in relation to that other authority.
- (6) A service provider of a local education authority in England may provide relevant information to any other service provider of that or any other such authority for a purpose which is a relevant purpose in relation to that other service provider.
- (7) In this section—
- “relevant information”, in relation to a person providing or holding information, means information which—
- (a) is held by the person for a relevant purpose, and
- (b) is about a young person or a relevant young adult in England;
- “relevant purpose”—
- (a) in relation to a local education authority, means the purpose of, or a purpose connected with, the exercise of any function of the authority—
- (i) under this Part, or
- (ii) under or by virtue of sections 68 to 78;
- (b) in relation to a service provider of a local education authority (other than the authority in question), means the purpose of providing services of the kind mentioned in section 68(1);
- “service provider”, in relation to a local education authority in England, means—
- (a) where the authority itself provides services in exercise of its functions under subsection (1) of section 68, the authority;
- (b) where, in exercise of its functions under subsection (3)(b) of that section, the authority makes arrangements for the provision of services, the person providing those services.
- (8) In subsection (7)—
- (a) “young person” means a person who has attained the age of 13 but not the age of 20, and
- (b) “relevant young adult” means a person who—
- (i) has attained the age of 20 but not the age of 25, and
- (ii) has a learning difficulty;
- and subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (construction of references to learning difficulties) apply for this purpose.

Guidance

18 Guidance

In exercising its functions under this Part, a local education authority must have regard to any guidance given by the Secretary of State.

CHAPTER 3

EMPLOYERS

Interpretation

19 Contracts to which Chapter applies

- (1) In this Chapter, “relevant contract of employment” means a contract of employment—
- (a) under which the employee is required to work for at least 20 hours per week,
 - (b) which—
 - (i) has a fixed term of 8 weeks or longer, or
 - (ii) does not have a fixed term but can reasonably be expected to be, or has been, in force for at least 8 weeks, and
 - (c) under which the place of work, or one of the places where the employee may be required to work, is in England.
- (2) But a contract is not a “relevant contract of employment” if—
- (a) the employer has undertaken to provide the employee with sufficient relevant training or education in each relevant period, and
 - (b) by virtue of the contract, the employee is in full-time occupation for the purposes of this Part.

20 Appropriate arrangements

- (1) For the purposes of this Chapter, a person to whom this Part applies has made appropriate arrangements for training or education if—
- (a) the person has enrolled on a course or courses constituting relevant training or education (or arrangements have otherwise been made for the person to receive relevant training or education), or
 - (b) the person is participating in full-time education or training.
- (2) References in this Chapter to appropriate arrangements made by the person are to the arrangements (of whatever kind and whether or not made by the person) for the person to receive the training or education in question.

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

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- (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—

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- (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).

Employer to enable participation in education or training

27 Duty to enable participation: initial arrangements

- (1) This section applies where—
 - (a) a person to whom this Part applies is employed under a relevant contract of employment, and
 - (b) before commencement of the employment the person notified the employer in accordance with subsection (3) of appropriate arrangements which the person had made.
- (2) The employer must permit the employee to participate in training or education in accordance with those appropriate arrangements.
- (3) A person notifies an employer (or a prospective employer) of appropriate arrangements in accordance with this subsection by giving a notice which—
 - (a) specifies the arrangements,
 - (b) states the times when the person would need to be not at work in order to participate in training or education in accordance with those arrangements, and
 - (c) if so required under subsection (4), is given in writing.
- (4) Such a notice need not be given in writing, but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing.

- (5) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (3)(b) which falls during normal working time, for the employer—
- (a) if the contract was entered into before the notice was given, to offer to vary the terms and conditions of the contract of employment so as to secure that that time does not fall during normal working time, or
 - (b) in any case, to permit the employee to take that time off.
- (6) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

28 Duty to enable participation: arrangements subsequently notified

- (1) This section applies where—
- (a) a person to whom this Part applies is employed under a relevant contract of employment, and
 - (b) after commencement of the employment the person notifies the employer in accordance with subsection (4) of appropriate arrangements which the person has made.
- (2) The employer must, so far as is reasonable having regard to the matters mentioned in subsection (3), permit the person to participate in training or education in accordance with those appropriate arrangements.
- (3) Those matters are—
- (a) the needs of the person in order to fulfil the duty imposed by section 2;
 - (b) the circumstances of the employer’s business;
 - (c) the effect of the person’s absence from work on the running of that business.
- (4) A person notifies an employer of appropriate arrangements in accordance with this subsection by giving a notice which—
- (a) specifies the arrangements,
 - (b) states the times when the employee needs to be not at work in order to participate in education or training in accordance with those arrangements, and
 - (c) if so required under subsection (5), is given in writing.
- (5) Such a notice need not be given in writing but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing.
- (6) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (4)(b) which falls during normal working time, for the employer—
- (a) to offer to vary the terms and conditions of the contract of employment so as to secure that, so far as is reasonable having regard to the matters mentioned in subsection (3), that time does not fall during normal working time, or
 - (b) so far as is reasonable having regard to those matters, to permit the employee to take that time off.
- (7) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

29 Sections 27 and 28: extension for person reaching 18

- (1) This section applies where—
 - (a) a person to whom this Part applies is employed under a relevant contract of employment,
 - (b) the person reaches the age of 18, and
 - (c) at that time the person is participating in a course of education or training for the purpose of fulfilling the duty imposed by section 2.
- (2) The person is to continue to be treated, for the purposes of sections 27, 28 and 30 to 36, as a person to whom this Part applies until one of the following occurs—
 - (a) the course of education or training concludes;
 - (b) the person reaches the age of 19;
 - (c) the person ceases to be resident in England;
 - (d) the person attains a level 3 qualification.

30 Contravention of section 27 or 28: enforcement notice

- (1) This section applies where a person to whom this Part applies is employed under a relevant contract of employment.
- (2) Where a relevant local education authority in England is satisfied that the employer has contravened section 27 or 28, the authority may give the employer a notice (an “enforcement notice”).
- (3) An enforcement notice means a notice requiring the employer to take such steps as are specified in the notice.
- (4) The steps that may be specified in the notice are—
 - (a) to offer to vary the terms and conditions of employment in the manner specified in the notice;
 - (b) to permit the employee to take time off during normal working time at the times specified in the notice.
- (5) But—
 - (a) any variation specified under subsection (4)(a) must be a variation only for the purpose of securing that normal working time does not include any time when, in order to be able to participate in education or training in accordance with appropriate arrangements notified to the employer under section 27(1)(b) or 28(1)(b), the employee needs to be not at work;
 - (b) any time specified under subsection (4)(b) must be a time when the employee needs to be not at work in order to participate in education or training in accordance with appropriate arrangements so notified to the employer;
 - (c) in the case of an enforcement notice given in respect of a contravention of section 28, any steps specified in the notice must be steps which it would be reasonable for the employer to take having regard to the matters mentioned in subsection (3) of that section.
- (6) An enforcement notice must also specify—
 - (a) particulars of the contravention of section 27 or 28 in respect of which the notice is given, and
 - (b) the consequences of failure to comply with any requirement imposed by it.

- (7) Where an enforcement notice requires the employer to offer to vary the terms and conditions of employment under subsection (4)(a)—
- (a) the employer must make the offer within the time specified in the notice,
 - (b) the employer’s offer must not be made directly or indirectly conditional on the employee’s agreeing to any other variation of the terms and conditions of employment, and
 - (c) if the employee accepts the employer’s offer to vary the terms and conditions of employment, those terms and conditions have effect subject to the variation (but subject to any subsequent variation that may be agreed between the employer and employee).
- (8) Where an enforcement notice requires the employer, under subsection (4)(b), to permit the employee to take time off at specified times during normal working time, the enforcement notice remains in force until—
- (a) the last of the times so specified, or
 - (b) if earlier, the termination of the contract of employment.
- (9) For the purposes of subsection (2), 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.
- (10) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

31 Financial penalty for non-compliance with enforcement notice given under section 30

- (1) This section applies where a local education authority has given an enforcement notice to a person (“the employer”) under section 30.
- (2) Where the local education authority is satisfied—
- (a) that the employer has failed to comply with the notice, or
 - (b) in the case of an enforcement notice requiring the employer to offer to vary the terms and conditions of employment by virtue of section 30(4)(a), the employee has agreed to the variation but the employer has failed to give effect to the variation,
- the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.
- (3) The amount of the financial penalty is to be determined in accordance with regulations.
- (4) A penalty notice must state—
- (a) particulars of the failure by the employer in respect of which the penalty notice is given,
 - (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),

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- (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.
- (5) Without prejudice to section 166(6), regulations under subsection (3) 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).

32 Withdrawal of enforcement notice given under section 30

- (1) This section applies where—
- (a) an enforcement notice has been given to a person (“the employer”) under section 30 by a local education authority, and
 - (b) if a penalty notice has been given in respect of the enforcement notice under section 31, any appeal made under section 34 in respect of the penalty notice has not been determined.
- (2) The local education authority may withdraw the enforcement notice by giving notice of the withdrawal to the employer.
- (3) After the withdrawal, no penalty notice may be given under section 31 in respect of—
- (a) any failure to comply with the enforcement notice, or
 - (b) any failure to give effect to any variation of terms and conditions of employment required by the enforcement notice to be offered,
- which occurred before the enforcement notice was withdrawn.
- (4) Where an enforcement notice is withdrawn—
- (a) any penalty notice given under section 31 in respect of the enforcement notice ceases to have effect, and
 - (b) any sum paid or recovered in respect of any such 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.
- (5) In subsection (4)(b) “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).
- (6) A notice of withdrawal under subsection (2) must state the effect of the withdrawal (but a failure to do so does not make the notice of withdrawal ineffective).

33 Withdrawal or variation of penalty notice given under section 31 following notice of objection

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 31 by a local education authority in respect of a failure of a kind mentioned in subsection (2) of that section relating to an enforcement notice.
- (2) The employer may, by giving notice (a “notice of objection”) to the authority, object to the giving of the penalty notice on one or more of the following grounds—
- (a) that the employer did not contravene section 27 or 28 in the way stated in the enforcement notice;
 - (b) that the requirements imposed by the enforcement notice were unreasonable;
 - (c) that the employer did not fail in the way stated in the penalty notice;

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- (d) 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 set out 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 31(3) 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.

34 Appeal against penalty notice given under section 31

- (1) This section applies where a penalty notice has been given to a person under section 31 in respect of a failure of a kind mentioned in subsection (2) of that section in relation to an enforcement notice 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 person 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 person did not contravene section 27 or 28 in the way stated in the enforcement notice;
 - (b) that the circumstances of the contravention of section 27 or 28 stated in the enforcement notice make the giving of an enforcement notice under section 30 unreasonable;
 - (c) that the requirements imposed by the enforcement notice were unreasonable;
 - (d) that the person did not fail in the way stated in the penalty notice;
 - (e) that the circumstances of the failure stated in the penalty notice make the giving of the notice unreasonable;
 - (f) 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 31(3) 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.

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- (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 33.

35 Further power to withdraw penalty notice given under section 31

- (1) This section applies where—
 - (a) a penalty notice has been given to a person (“the employer”) under section 31 by a local education authority, and
 - (b) any appeal made under section 34 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.

36 Withdrawal or variation of penalty notice given under section 31: further provisions

- (1) If a penalty notice is withdrawn under section 33 or 35, 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 33, 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).

Supplementary

37 Right not to suffer detriment

After section 47A of the Employment Rights Act 1996 (c. 18) insert—

“47AA Employees in England aged 16 or 17 participating in education or training

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a person entitled to be permitted to participate in education or training by section 27 or 28 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.
- (2) This section does not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).”

38 Dismissal to be treated as unfair

After section 101A of the Employment Rights Act 1996 insert—

“101B Participation in education or training

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a person entitled to be permitted to participate in education or training by section 27 or 28 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.”

39 Other amendments of Employment Rights Act 1996

- (1) The Employment Rights Act 1996 is further amended as follows.
- (2) In section 63A (right to time off for young person for study or training), after subsection (5) insert—

“(5A) References in this section to an employee do not include a person to whom Part 1 of the Education and Skills Act 2008 (duty to participate in education or training for 16 and 17 year olds in England) applies, or is treated by section 29 of that Act (extension for person reaching 18) as applying.”;

and, in the title, after “young person” insert “in Wales or Scotland”.
- (3) In section 105 (redundancy), after subsection (4A) insert—

“(4B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 101B.”
- (4) In section 108 (qualifying period of employment), after subsection (3)(dd) insert—

“(de) section 101B applies.”.
- (5) In section 194 (House of Lords staff), in subsection (2)(c), after “47,” insert “47AA,”.
- (6) In section 195 (House of Commons staff), in subsection (2)(c), after “47,” insert “47AA,”.

CHAPTER 4

PARENTING CONTRACTS AND PARENTING ORDERS

40 Parenting contracts

- (1) This section applies where a person to whom this Part applies (“the young person”) is failing to fulfil the duty imposed by section 2.
- (2) A local education authority in England may enter into a parenting contract with a parent of the young person—
 - (a) if the parent is resident in England, and
 - (b) the authority considers that entering into the parenting contract would be desirable in the interests of the young person’s fulfilment of that duty.

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- (3) A parenting contract is a document which contains—
 - (a) a statement by the parent that the parent agrees to comply with such requirements as may be specified in the document for such period as may be so specified, and
 - (b) a statement by the local education authority that it agrees to provide support to the parent for the purpose of complying with those requirements.
- (4) The requirements mentioned in subsection (3) may include (in particular) a requirement to attend a counselling or guidance programme.
- (5) A parenting contract must be signed by the parent and signed on behalf of the local education authority.
- (6) A parenting contract does not create any obligations in respect of whose breach any liability arises in contract or in tort.

41 Parenting orders

- (1) This section applies where a person to whom this Part applies (“the young person”) is failing to fulfil the duty imposed by section 2.
- (2) A local education authority in England may apply to a magistrates' court for a parenting order in respect of a parent of the young person, if the parent is resident in England.
- (3) If such an application is made, the court may make a parenting order in respect of the parent if it is satisfied that—
 - (a) the young person is failing to fulfil the duty imposed by section 2, and
 - (b) the making of the order would be desirable in the interests of the young person's fulfilment of that duty.
- (4) A parenting order is an order which requires the parent—
 - (a) to comply, for a period not exceeding 12 months, with such requirements as are specified in the order, and
 - (b) subject to subsection (5), to attend, for a concurrent period not exceeding 3 months, such counselling or guidance programme as may be specified in directions given by the responsible officer.
- (5) A parenting order under this section may, but need not, include a requirement mentioned in subsection (4)(b) in any case where a parenting order under this section or any other enactment has been made in respect of the parent on a previous occasion.
- (6) A counselling or guidance programme which a parent is required to attend by virtue of subsection (4)(b) may be or include a residential course but only if the court is satisfied that the following two conditions are fulfilled.
- (7) The first condition is that the attendance of the parent at a residential course is likely to be more effective than attendance at a non-residential course in the interests of the young person's fulfilment of the duty imposed by section 2.
- (8) The second condition is that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

42 Parenting orders: supplemental

- (1) In deciding whether to make a parenting order under section 41, a court must take into account (amongst other things)—
 - (a) any refusal by the parent to enter into a parenting contract under section 40 in respect of the person to whom this Part applies, or
 - (b) if the parent has entered into such a parenting contract, any failure by the parent to comply with the requirements specified in the contract.
- (2) Subsections (3) to (7) of section 9 of the Crime and Disorder Act 1998 (c. 37) (supplemental provisions about parenting orders) apply in relation to a parenting order under section 41 as they apply in relation to a parenting order under section 8 of that Act.

43 Parenting orders: appeals

- (1) An appeal lies to the Crown Court against the making of a parenting order under section 41.
- (2) Subsections (2) and (3) of section 10 of the Crime and Disorder Act 1998 (appeals against parenting orders) apply in relation to an appeal under this section as they apply in relation to an appeal under subsection (1)(b) of that section.

44 Parenting contracts and parenting orders: further provisions

- (1) Local education authorities in England and responsible officers must, in carrying out their functions in relation to parenting contracts under section 40 and parenting orders under section 41, have regard to the extent to which any failure by, or anything done by, a parent of a person to whom this Part applies is affecting, or is likely to affect, that person's fulfilment of the duty imposed by section 2.
- (2) Regulations may make further provision about the exercise by local education authorities in England of their functions relating to—
 - (a) parenting contracts under section 40, or
 - (b) parenting orders under section 41.
- (3) The provision that may be made under subsection (2) includes—
 - (a) provision limiting the power of a local education authority to enter into a parenting contract, or apply for a parenting order, in prescribed cases;
 - (b) provision requiring one local education authority to consult with another before taking any prescribed step;
 - (c) provision requiring the provision of information by one local education authority in England to another;
 - (d) provision as to how the costs associated with parenting contracts under section 40 or parenting orders under section 41 (including in each case the costs of providing counselling or guidance programmes) are to be met.
- (4) In this Chapter—
 - “parent”, in relation to a young person, is to be construed in accordance with section 576 of the Education Act 1996 (c. 56), but does not include a person who is not an individual;
 - “responsible officer”, in relation to a parenting order, means an officer of a local education authority who is specified in the order.

CHAPTER 5

ATTENDANCE NOTICES

Initial steps

45 Failure to fulfil duty under section 2: initial steps

- (1) This section applies where it appears to a local education authority that a person to whom this Part applies and who belongs to the authority's area is failing to fulfil the duty imposed by section 2.
- (2) The authority may give a written notice to the person stating—
 - (a) that it appears to the authority that the person—
 - (i) is a person to whom this Part applies, and
 - (ii) is failing without reasonable excuse to fulfil that duty, and
 - (b) that if, after the date specified in the notice, the person appears to the authority to be failing, without reasonable excuse, to fulfil that duty, the authority may issue an attendance notice under section 46,
and explaining the effect of an attendance notice.
- (3) The date specified under subsection (2)(b) must not be less than 15 days after the date on which the notice is given.
- (4) Subsections (5) and (6) apply where an authority proposes to give a notice to a person under subsection (2).
- (5) The authority—
 - (a) must take all reasonable steps to secure that relevant support is offered to the person, and
 - (b) may not give the notice unless satisfied that the person has been afforded an opportunity to take advantage of the support offered.
- (6) The authority—
 - (a) must give the person an opportunity to make representations, and
 - (b) may not give the notice—
 - (i) in a case within subsection (7), unless, having regard to any representations made, the person appears to the authority to have no reasonable excuse for the failure;
 - (ii) in any other case, if, having regard to any representations made, the person appears to the authority to have a reasonable excuse for the failure.
- (7) This subsection applies where—
 - (a) arrangements have been made for the person to participate during the current relevant period in a course or courses constituting relevant training or education,
 - (b) the only failure by the person during that relevant period is that the relevant education and training to which the arrangements relate is not sufficient relevant education and training,
 - (c) the course has not, or the courses have not all, concluded, and

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- (d) further arrangements for relevant training or education after the conclusion of the course or courses could be made which would enable the person to participate in sufficient relevant training or education during the current relevant period.
- (8) In subsection (5), “relevant support” means support provided by means of services made available by the local education authority in exercise of its functions under section 68.

Attendance notices

46 Attendance notice

- (1) This section applies where—
- (a) a local education authority has given a notice to a person under section 45(2),
 - (b) this Part still applies to the person, and
 - (c) at any time after the date specified in the notice under section 45(2)(b), it appears to the local education authority that the person is, without reasonable excuse, failing to fulfil the duty imposed by section 2.
- (2) The local education authority may, before the end of the period of 6 months beginning with the day on which the notice under section 45(2) was given to the person, give the person a further notice in accordance with this section (an “attendance notice”) requiring the person to participate in education or training specified in the notice.
- (3) Subsections (6) and (7) of section 45 apply in relation to the giving of attendance notices as they apply in relation to the giving of notices under subsection (2) of that section.
- (4) The education or training specified under subsection (2) must satisfy section 47.
- (5) Where the education or training specified is education or training provided by means of a course, the attendance notice must specify—
- (a) the school, college or other training or educational establishment at which the education or training is to be provided, and
 - (b) the name and description of the course.
- (6) Where the education or training specified is training provided in accordance with a contract of apprenticeship otherwise than by a course, the attendance notice must specify prescribed details of the contract of apprenticeship.
- (7) An attendance notice given to a person must specify—
- (a) the place or places at which the person is required to attend,
 - (b) the time or times at which the person is required to attend,
 - (c) the person or persons to whom the person must present himself or herself, and may specify other prescribed requirements relating to the description of education or training specified in the notice.
- (8) An attendance notice must state—
- (a) the period for which the notice has effect,
 - (b) the consequences of failing to comply with any requirement imposed by the notice, and
 - (c) such other matters as may be prescribed.

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- (9) An attendance notice given by a local education authority to a person has effect for the period beginning with the day on which it is given and ending with—
- (a) the last day on which the person is a person to whom this Part applies, or
 - (b) if earlier, the day on which it is revoked.

47 Attendance notice: description of education or training

- (1) This section must be satisfied in relation to education or training specified in an attendance notice given to a person to whom this Part applies by a local education authority.
- (2) The education or training must be provided—
 - (a) at a school, college or other training or educational establishment by means of a course, or
 - (b) in accordance with a contract of apprenticeship.
- (3) The education or training must be such that, by participating in it, the young person would fulfil the duty imposed by section 2.
- (4) For that purpose, account may be taken of any contract of employment of the person or other arrangement under which the person works.
- (5) The education or training must—
 - (a) be appropriate full-time education or training, or
 - (b) otherwise be suitable for the person, having regard—
 - (i) to the person’s age, ability and aptitude, and
 - (ii) to any learning difficulty which the person may have.
- (6) Subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (persons with learning difficulties) apply for the purposes of subsection (5)(b).
- (7) Where the education or training is to be provided by means of a course, the local education authority—
 - (a) must have consulted the governing body or proprietor of the school, college or other training or educational establishment at which the education or training is to be provided, and
 - (b) must have made arrangements, or be satisfied that arrangements have been made, for the education or training to be provided there for the person.
- (8) Where the education or training is training provided in accordance with a contract of apprenticeship, the local education authority must have consulted the employer in relation to the contract of apprenticeship.

Attendance panel, appeals and variations etc

48 Attendance panel

- (1) A local education authority in England must establish a panel (an “attendance panel”), constituted in accordance with regulations.
- (2) An attendance panel of a local education authority in England has the following functions—

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- (a) functions conferred on it by virtue of section 49 in relation to appeals against attendance notices;
 - (b) functions conferred on it by virtue of section 50(6)(b);
 - (c) functions conferred on it by section 52(5) and (6);
 - (d) functions conferred on it by virtue of section 54 in relation to appeals against fixed penalty notices.
- (3) Regulations under subsection (1)—
- (a) must require a local education authority to secure that any person who chairs an attendance panel is not a member of the authority; and
 - (b) may make provision for the payment by the local education authority of allowances to members of an appeal panel.
- (4) Regulations made by virtue of subsection (3)(b) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (c. 70) (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an attendance panel.

49 Appeal arrangements

- (1) A local education authority in England must make arrangements for enabling a young person to whom an attendance notice is given by the authority to appeal against—
- (a) the giving of the attendance notice;
 - (b) the description of education or training specified in the attendance notice;
 - (c) any variation of the notice—
 - (i) under subsection (2) of section 50;
 - (ii) by virtue of subsection (5) or (6)(b) of that section.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 48.
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision—
- (a) as to the procedure on such appeals; and
 - (b) as to the powers of the attendance panel in relation to such appeals.

50 Variation and revocation of attendance notice

- (1) Subsection (2) applies where a local education authority has given an attendance notice under section 46 to a person to whom this Part applies.
- (2) If the attendance notice still has effect when—
- (a) the education or training specified in the notice ends, or
 - (b) it becomes impracticable for the person to comply with the requirements specified in the notice because of a change of residence,
- the local education authority may by notice to the person specify other education or training.
- (3) Subsections (4) to (7) and (8)(c) of section 46 apply in relation to specifying education or training under subsection (2) as they apply in relation to the giving of an attendance notice.

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- (4) Where the local education authority gives a notice under subsection (2), the attendance notice has effect as if it specified the education or training specified in the notice under that subsection.
- (5) Prescribed matters specified in an attendance notice given by a local education authority may be varied by the authority by notice given to the person to whom the attendance notice was given.
- (6) Regulations may provide for other matters specified in an attendance notice given by a local education authority to be varied—
 - (a) with the consent of the person to whom the notice was given, or
 - (b) with the consent of an attendance panel established by the local education authority under section 48.
- (7) Regulations under subsection (6)(b) may in particular make provision as to the procedure to be followed in relation to the giving of any consent under the regulations.
- (8) An attendance notice given by a local education authority may be revoked by the authority by notice given to the person to whom the attendance notice was given.

Failure to comply with attendance notice

51 Offence of failure to comply with attendance notice

- (1) It is an offence for a person to whom an attendance notice has been given to fail, without reasonable excuse, to comply with the requirements of the attendance notice.
- (2) It is a defence for a person charged with an offence under subsection (1) to show that he or she is, and since the giving of the attendance notice has been, fulfilling the duty imposed by section 2.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

52 Restrictions on proceedings for offences under section 51

- (1) This section applies to proceedings for an alleged offence under section 51 relating to an attendance notice.
- (2) The proceedings may not be instituted except by the local education authority which gave the attendance notice.
- (3) The proceedings may not be instituted if the attendance notice has been—
 - (a) rescinded on an appeal by virtue of section 49, or
 - (b) revoked under section 50(8).
- (4) The proceedings may not be instituted unless—
 - (a) a penalty notice has been given under section 53 in respect of the alleged offence and has not been rescinded on an appeal by virtue of section 54,
 - (b) the penalty imposed by the notice has not been paid in accordance with the notice, and
 - (c) an attendance panel established by the local education authority under section 48 has, on being consulted by the local education authority about the

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question whether the proceedings should be instituted, recommended to the authority that the proceedings should be instituted.

- (5) Regulations—
- (a) must make provision to secure that, before a recommendation under subsection (4)(c) is made by an attendance panel in a person's case, the person has an opportunity to make representations to the panel, and
 - (b) may make other provision as to the procedure to be followed in relation to the making of such recommendations.
- (6) The proceedings may not be instituted after this Part has ceased to apply to the person alleged to have committed the offence under section 51.
- (7) Subsection (6) does not affect proceedings for such an offence by a person which were instituted while this Part applied to the person.

53 Failure to comply with attendance notice: penalty notice

- (1) Where a local education authority which has given an attendance notice to a person under section 46 has reason to believe that the person has committed an offence under section 51 relating to the notice, the authority may give the person a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction in respect of the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (3) Where a person is given a penalty notice—
- (a) proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed; and
 - (b) the person cannot be convicted of the offence to which the notice relates if a penalty is paid in accordance with the notice.
- (4) Regulations may make—
- (a) provision as to the form and content of penalty notices;
 - (b) provision as to the amount of any penalty and the time by which it is to be paid (but subject to subsection (6));
 - (c) provision as to the methods by which penalties may be paid;
 - (d) provision as to the records which are to be kept in relation to penalty notices;
 - (e) provision for or in connection with the withdrawal of a penalty notice, or its ceasing to have effect, in prescribed circumstances, including—
 - (i) provision about repayment of any amount paid by way of penalty under a penalty notice which is withdrawn or ceases to have effect; and
 - (ii) provision prohibiting the institution or continuation of proceedings for the offence to which such a notice relates;
 - (f) provision for a certificate—
 - (i) purporting to be signed by or on behalf of a prescribed person, and
 - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,to be received in evidence of the matters so stated;

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- (g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice;
 - (h) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices;
 - (i) such other provision in relation to penalties under penalty notices or in relation to penalty notices as the Secretary of State thinks necessary or expedient.
- (5) Without prejudice to section 166(6), regulations under subsection (4)(b) 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).
- (6) The amount of any penalty payable by virtue of regulations under subsection (4)(b) must not exceed the amount for the time being specified as level 1 on the standard scale of fines for summary offences.

54 Penalty notices: appeal arrangements

- (1) A local education authority in England must make arrangements for enabling a young person to whom a penalty notice is given by the authority under section 53 to appeal against the notice.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 48.
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision—
 - (a) as to the procedure on such appeals; and
 - (b) as to the powers of an attendance panel in relation to such appeals.

55 Non-participation fines: interpretation

- (1) In this section and sections 56 to 59—
 - “non-participation fine” means a fine imposed—
 - (a) for an offence under section 51, or
 - (b) in respect of a failure to comply with any sentence imposed for such an offence;
 - “the relevant sum”, in relation to a non-participation fine, means—
 - (a) the non-participation fine,
 - (b) any surcharge ordered under section 161A of the Criminal Justice Act 2003 (c. 44) (surcharges) to be paid solely in relation to the offence, and
 - (c) any costs ordered by a court to be paid by the person on whom the fine was imposed in connection with the offence or proceedings relating to the offence or any sentence imposed (including proceedings on appeal);
 - “relevant local education authority”, in relation to a non-participation fine, means the local education authority which issued the penalty notice under section 53 in respect of the offence to which the fine relates.
- (2) References in those sections to a fine being imposed are, in the case of a fine varied or confirmed on appeal, references to its being varied or confirmed.

56 Enforcement of non-participation fine etc: person reaching 18

- (1) This section applies where—
 - (a) a non-participation fine has been imposed on a person aged under 18, and
 - (b) the relevant sum, or any part of it, remains unpaid when the person reaches the age of 18.
- (2) When the person reaches the age of 18, the relevant sum ceases to be enforceable as a sum adjudged to be paid by a conviction of a magistrates' court.
- (3) Accordingly, after the person has reached the age of 18—
 - (a) the normal enforcement provisions do not apply in relation to the relevant sum, and
 - (b) the normal enforcement powers are not exercisable in relation to the relevant sum,except so far as necessary to permit current enforcement processes to be concluded.
- (4) Any order or warrant made or issued in relation to the non-participation fine, other than—
 - (a) an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment),
 - (b) an order under section 85A of that Act (variation of instalments of sum adjudged to be paid by conviction), or
 - (c) a current enforcement process,ceases to have effect when the person reaches the age of 18.
- (5) A magistrates' court may, after the person has reached the age of 18, order that payment of so much of the relevant sum as remains unpaid may be enforced as if it were a sum due to the relevant local education authority in pursuance of a judgment or order of a county court.
- (6) An order under subsection (5) may not be made unless—
 - (a) the person appears to the court to have sufficient means to pay the sum forthwith, and
 - (b) any current enforcement processes have been concluded.
- (7) For the purposes of this section, “current enforcement process” means an order or warrant mentioned in paragraph (a), (b) or (c) and any reference to its conclusion is to be read in accordance with that paragraph—
 - (a) a warrant of control—
 - (i) issued under section 76 of the Magistrates' Courts Act 1980 (warrants of control etc) for the purpose of recovering the relevant sum (or any part of it), and
 - (ii) by virtue of which an enforcement agent has, before the person reaches the age of 18, taken control of any goods of the person under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (taking control of goods),
is concluded when property in all goods of the person has, in accordance with paragraph 6 of that Schedule, ceased to be bound by virtue of the warrant;
 - (b) an order in force when the person reaches the age of 18 under—
 - (i) section 81(1)(b) of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offenders), or

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- (ii) section 137(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (power to order parent or guardian to pay fine, costs, compensation or surcharge),
 requiring that the relevant sum (or any part of it) be paid by a parent or guardian of the person is concluded when it is revoked;
- (c) an order in force when the person reaches the age of 18 under section 39 of the Criminal Justice and Immigration Act 2008 (c. 4) (youth default orders) in respect of the relevant sum (or any part of it) is concluded when it is revoked.
- (8) Subsection (2) does not affect the exercise of any power, or any order made, in respect of the offence before the person reached the age of 18.
- (9) The Lord Chancellor may by order amend subsection (4) or (7) by—
 - (a) adding to it provision about any warrant or order that may be issued or made, or step that may be taken, in relation to a non-participation fine before the person on whom it is imposed reaches the age of 18, or
 - (b) removing any such provision for the time being made by that subsection.

57 Enforcement of non-participation fine etc: fine imposed on person aged 18 or over

- (1) This section applies where a non-participation fine is imposed on a person who has reached the age of 18.
- (2) Payment of the relevant sum may be enforced as if it were a sum due to the relevant local education authority in pursuance of a judgment or order of a county court.
- (3) The relevant sum is not enforceable as a sum adjudged to be paid by a conviction of a magistrates' court.
- (4) Accordingly—
 - (a) the normal enforcement provisions do not apply in relation to the relevant sum, and
 - (b) the normal enforcement powers are not exercisable in relation to the relevant sum.
- (5) But subsections (3) and (4) do not prevent a magistrates' court, on imposing the fine, from—
 - (a) making an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment), or
 - (b) making an order under section 80 of that Act (application of money found on defaulter to satisfy sum adjudged) for the person to be searched before leaving the precincts of the court-house; and subsections (2) and (3) of that section apply in relation to a search in pursuance of any such order.

58 Enforcement of non-participation fine: further provisions

- (1) In sections 56 and 57, “the normal enforcement provisions” means—
 - (a) Part 3 of the Magistrates' Courts Act 1980 (satisfaction and enforcement);
 - (b) sections 135 and 136 of that Act (committal and detention for short period);
 - (c) section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention of persons aged at least 18 but under 21 for default or contempt);

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- (d) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc and discharge of fines by unpaid work); and
 - (e) section 300 of the Criminal Justice Act 2003 (c. 44) (power to impose unpaid work requirement or curfew requirement on fine defaulter).
- (2) In sections 56 and 57, “the normal enforcement powers”, in relation to any sum, means—
- (a) any power of a magistrates' court or an officer of such a court—
 - (i) to enforce payment of the sum; or
 - (ii) which is exercisable in consequence of a default in payment of the sum or any part of it;
 - (b) in the case of a fine imposed, varied or confirmed by a decision of any other court on an appeal, any power of that other court to enforce the decision.
- (3) The Lord Chancellor may by order amend subsection (1) or (2) by—
- (a) adding a reference to any statutory provision which relates to enforcement of fines, costs or surcharges, or to any power to enforce payment of such sums, or
 - (b) removing a reference to any provision or power for the time being listed in that section.
- (4) Where—
- (a) a sum is payable at a time or times specified by—
 - (i) an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment), or
 - (ii) orders under that section and section 85A of that Act (variation of instalments of sum adjudged to be paid by conviction), and
 - (b) the sum would (but for this subsection) be treated by virtue of section 56 or 57 as due to a local education authority in pursuance of a judgment or order of a county court,

the sum is to be treated as so payable to that authority at the time or times referred to in paragraph (a) by virtue of an order of the county court under section 71(1) of the County Courts Act 1984 (c. 28) (satisfaction of judgments and orders for payment of money).

59 Application of sums recovered by virtue of section 56 or 57

- (1) The Lord Chancellor may by regulations make provision as to the application of amounts recovered by local education authorities by virtue of sections 56 and 57.
- (2) Any such regulations must make provision for securing that any such amount recovered, so far as not—
- (a) attributable to county court enforcement costs, or
 - (b) paid to a magistrates' court, or to an officer of such a court,
- is repaid to the person on whom the non-participation fine to which it relates was imposed (or other person who paid the amount).
- (3) Regulations under this section may make provision, in particular, as to—
- (a) the extent to which amounts recovered by virtue of section 56 or 57 are attributable to county court enforcement costs;

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- (b) further payments, or repayments, to be made in consequence of any appeal, or of any remission or variation of a non-participation fine or any other amount required to be paid.
- (4) In this section, “county court enforcement costs” in relation to a non-participation fine means costs incurred by a local education authority in connection with the recovery of the relevant sum in a county court.

Supplementary

60 Review of initial operation of Chapter

- (1) The Secretary of State must appoint a person to conduct a review of the initial operation of this Chapter.
- (2) The person appointed must make a report to the Secretary of State on the review within a reasonable period after the school leaving date for 2016.
- (3) The Secretary of State must lay a copy of the report before Parliament.
- (4) The Secretary of State may pay to the person appointed such remuneration and expenses as the Secretary of State may determine.

CHAPTER 6

MISCELLANEOUS

61 Alternative ways of working

- (1) Regulations may—
 - (a) provide for who is to be treated as the employer for the purposes of this Part in relation to any way of working prescribed by regulations under section 5(1)(b), and
 - (b) provide for any provision of this Part to apply with modifications in relation to any such way of working.
- (2) Regulations may provide for any provision of this Part to apply with modifications in cases where a person to whom this Part applies—
 - (a) is employed under a contract of employment, and
 - (b) is for the time being supplied by the employer to another person (“the principal”) to perform work in accordance with a contract made between the employer and the principal.

62 Crown employment

- (1) For the purposes of section 5—
 - (a) Crown employment, and
 - (b) service as a member of the armed forces of the Crown,
 are each to be treated as working under a contract of employment.

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- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in either of those ways.
- (3) Chapter 3 applies in relation to Crown employment and persons in Crown employment as it applies in relation to other employment and other employees, but subject to subsection (4).
- (4) For the purposes of the application of Chapter 3 in relation to Crown employment and persons in Crown employment—
 - (a) references to a contract of employment are to be construed, in relation to a person in Crown employment, as references to the terms and conditions under which the person works, and
 - (b) references to an employee are to be construed as references to a person in Crown employment.
- (5) In this section, “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by statutory provision, but subject to subsection (6).
- (6) Crown employment—
 - (a) does not include service as a member of the armed forces of the Crown, but
 - (b) does include employment by an association established for the purposes of Part 11 of the Reserve Forces Act 1996 (c. 14).

63 House of Lords staff

The following provisions apply in relation to employment under a contract of employment with the Corporate Officer of the House of Lords as they apply in relation to other employment—

- (a) sections 19 to 21;
- (b) sections 27 to 29.

64 House of Commons staff

- (1) For the purposes of section 5, working as a relevant member of the House of Commons staff is to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in that way.
- (3) The following provisions apply in relation to employment as a relevant member of the House of Commons staff as they apply in relation to other employment—
 - (a) sections 19 to 21;
 - (b) sections 27 to 29.
- (4) For the purposes of the application of Chapter 3 in relation to a relevant member of the House of Commons staff—
 - (a) references to a contract of employment are to be construed as including references to the terms of employment of a relevant member of the House of Commons staff, and
 - (b) references to an employee are to be construed as references to a relevant member of the House of Commons staff.

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- (5) In this section, “relevant member of the House of Commons staff” has the same meaning as in section 195 of the Employment Rights Act 1996 (c. 18).
- (6) Subsections (6), (7) and (12) of that section (person to be treated as employer of relevant member of House of Commons staff) apply (with any necessary modifications) for the purposes of the provisions mentioned in subsection (3) as applied by virtue of this section.

65 Financial penalties

- (1) A penalty payable by virtue of a penalty notice under—
 - (a) section 22,
 - (b) section 31, or
 - (c) section 53,
 is payable to the local education authority which issued the notice.
- (2) Any sums received by a local education authority under any of those sections may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.
- (3) A penalty under section 22 or 31 (and any interest or financial penalty for late payment) is recoverable, if a county court so orders, as if it were payable under an order of that court.
- (4) Where a person is required by a penalty notice given under section 22 or 31 to pay a financial penalty, and
 - (a) has given a notice of objection to the local education authority under section 23 or 33, or
 - (b) has appealed against the giving of the penalty notice under section 24 or 34,
 the penalty is not enforceable until the authority has given a determination notice under section 23 or 33 in relation to the penalty notice, or, as the case may be, the appeal has been determined.

66 Interpretation of Part

- (1) In this Part—
 - “appropriate full-time education or training” has the meaning given by section 4;
 - “contract of employment” means a contract of service, whether express or implied and (if it is express) whether oral or in writing, but does not include a contract of apprenticeship;
 - “level 3 qualification” has the meaning given by section 3;
 - “proprietor”, in relation to a school or other institution, means the person or body of persons responsible for its management;
 - “relevant period”, in relation to a person to whom this Part applies, has the meaning given by section 7;
 - “relevant training or education” has the meaning given by section 6;
 - “sufficient”, in relation to relevant training or education, is to be construed in accordance with section 8(1).

- (2) Regulations may provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of this Part.
- (3) Any reference in this Part to a person's being in full-time occupation is to be construed in accordance with section 5.
- (4) For the purposes of this Part, a person is failing to fulfil the duty imposed by section 2 if the person—
 - (a) is not participating in education or training in accordance with subsection (1) (a) or (b) of that section, and
 - (b) is not in full-time occupation or is not participating in sufficient relevant training.
- (5) A reasonable excuse for a failure to be in full-time occupation is not a reasonable excuse for a failure to fulfil the duty imposed by section 2 (unless it is also a reasonable excuse for any failure to participate as mentioned in subsection (4)).

67 Corresponding provision for Wales

- (1) This section applies if a Measure of the National Assembly for Wales includes provision that appears to the Secretary of State to correspond to provision made by section 2.
- (2) The Secretary of State may by order make provision in relation to Wales that corresponds to any provision made by sections 19 to 36.
- (3) Without prejudice to section 166(6), the power conferred by this section includes power to make provision in relation to Wales that corresponds to any of the following—
 - (a) the provisions of the Employment Rights Act 1996 (c. 18) inserted by sections 37 to 39;
 - (b) section 61;
 - (c) section 62;
 - (d) section 65 so far as relating to financial penalties under sections 22 and 31.
- (4) Power conferred by this section to make provision in relation to Wales that corresponds to any other provision includes power—
 - (a) to apply that other provision in relation to Wales, with or without modification;
 - (b) to amend that other provision so that it applies in relation to Wales, with or without modification.