



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 3

#### ADULT SKILLS

VALID FROM 19/06/2009

#### *Provision of courses of study*

#### **86 Learning aims for persons aged 19 and over**

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 3 (Council's duty to secure provision of facilities for education and training for persons aged 19 and over), after subsection (1) insert—

“(1A) This section does not apply to the provision of facilities to the extent that section 4A applies to the provision of those facilities.”
- (3) After section 4 insert—

#### **“4A Learning aims for persons over 19: provision of facilities**

- (1) The Council must secure the provision of proper facilities for relevant education or training for persons falling within subsection (3) which is suitable to their requirements.
- (2) Relevant education or training is education (other than higher education) or vocational training provided by means of a course of study for a qualification to which paragraph 1 of Schedule 1A applies.
- (3) The persons falling within this subsection are persons who—
  - (a) have attained the age of 19,

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- (b) do not have the qualification in question or one (including one awarded by a person outside England) which appears to the Council to be at a comparable or higher level, and
  - (c) satisfy such conditions as may be specified in regulations made by the Secretary of State.
- (4) Facilities are proper if they are—
- (a) of a quantity sufficient to meet the reasonable needs of individuals, and
  - (b) of a quality adequate to meet those needs.
- (5) In performing the duty imposed on it by subsection (1) the Council must—
- (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;
  - (b) take account of the different abilities and aptitudes of different persons;
  - (c) take account of the education and training required in different sectors of employment for employees and potential employees;
  - (d) act with a view to encouraging diversity of education and training available to individuals;
  - (e) act with a view to increasing opportunities for individuals to exercise choice;
  - (f) make the best use of the Council's resources and in particular avoid provision which might give rise to disproportionate expenditure;
  - (g) have regard to any guidance given from time to time by the Secretary of State.
- (6) Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision.
- (7) For the purposes of this section—
- (a) education includes both full-time education and part-time education;
  - (b) training includes both full-time and part-time training;
  - (c) higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

#### **4B Learning aims for persons over 19: payment of tuition fees**

- (1) The Council must exercise its functions under this Part so as to secure that a course of study for a qualification to which paragraph 1 of Schedule 1A applies is free to a person falling within subsection (2) if it is provided for the person by virtue of facilities whose provision is secured under section 4A.
- (2) A person falls within this subsection if, at the time of starting the course in question, the person—
- (a) has attained the age of 19,
  - (b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Council to be at a comparable or higher level, and

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- (c) satisfies such conditions as may be specified in regulations made by the Secretary of State.
- (3) The Council must exercise its functions under this Part so as to secure that a course of study for a qualification to which paragraph 2 of Schedule 1A applies is free to a person falling within subsection (4) if it is provided for the person by virtue of facilities whose provision is secured under section 3.
- (4) A person falls within this subsection if, at the time of starting the course in question, the person—
- (a) has attained the age of 19 but not the age of 25,
  - (b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Council to be at a comparable or higher level, and
  - (c) satisfies such conditions as may be specified in regulations made by the Secretary of State.
- (5) In performing a duty imposed on it by this section, the Council must have regard to any guidance given from time to time by the Secretary of State.
- (6) The Secretary of State may by order—
- (a) amend subsection (2)(a) by substituting a different age for the age for the time being referred to;
  - (b) amend subsection (4)(a) by substituting a different age for either of the ages for the time being referred to.
- (7) For the purposes of this section, a course is free to a person if no tuition fees in respect of the provision of the course for the person are payable by a person other than—
- (a) the Council, or
  - (b) a body specified by order by the Secretary of State for the purposes of this section.
- (8) In subsection (7), “tuition fees”, in relation to a course, means—
- (a) the fees charged in respect of the course by the person providing it, and
  - (b) such fees in respect of other matters relating to the course (such as undergoing a preliminary assessment or sitting an examination) as may be specified in regulations made by the Secretary of State.

#### **4C Sections 4A and 4B: supplementary**

- (1) The Secretary of State may by regulations make provision as to circumstances in which—
- (a) despite having a specified qualification, a person is to be treated for the purposes of section 4A or 4B as not having that qualification;
  - (b) despite not having a specified qualification, a person is to be treated for any of those purposes as having that qualification.
- (2) A condition specified in regulations under section 4A or 4B may, in particular, relate to—
- (a) the possession, or lack, of a specified qualification;

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<p>(b) the completion of, or failure to complete, a course for a specified qualification.</p> <p>(3) A reference in subsection (1) or (2) to a specified qualification is to a qualification specified, or of a description specified, in the regulations.</p> <p>(4) Regulations under this section, or under section 4A or 4B, may confer a function (which may relate to the administration of an assessment and may include the exercise of a discretion) on a person specified, or of a description specified, in the regulations.</p> <p>(5) Part 2 of Schedule 1A makes further provision for the purposes of sections 4A and 4B.”</p> <p>(4) In section 13 (Council's duty to have regard to needs of persons with learning difficulties), in subsection (1), after “3,” insert “ 4A, 4B, ”.</p> <p>(5) Section 152 (orders and regulations) is amended as set out in subsections (6) and (7).</p> <p>(6) In subsection (2A), at the end insert “ or an order to which subsection (2C) applies ”.</p> <p>(7) After subsection (2B) insert—</p> <p style="padding-left: 40px;">“(2C) An order under section 4B(6) or paragraph 9 of Schedule 1A may not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.</p> <p style="padding-left: 40px;">(2D) If a draft of an order under paragraph 9 of Schedule 1A would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.”</p> <p>(8) After Schedule 1 insert—</p> <p style="text-align: center;">“SCHEDULE 1A</p> <p style="text-align: center;">LEARNING AIMS FOR PERSONS AGED 19 AND OVER</p> <p>.....</p> <p>.....</p>
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### *Assessments of effectiveness of education or training*

#### **87 Benefit and training information**

- (1) Information within subsection (2) or (3) may be—
- (a) used in connection with the exercise of an assessment function of the Secretary of State or a devolved authority, or
  - (b) disclosed to a person for use in connection with the exercise of an assessment function of the Secretary of State or a devolved authority.
- (2) Information is within this subsection if—
- (a) it is about an individual who has attained the age of 19, and

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- (b) it is held by the Secretary of State for the purposes of any function of the Secretary of State relating to social security.
- (3) Information is within this subsection if—
- (a) it is about an individual who has attained the age of 19,
  - (b) it is held by the Secretary of State or a devolved authority, and
  - (c) it relates to any training or course of education undertaken by the individual (whether before or after the individual attained the age of 19).
- (4) For the purposes of this section and sections 88 to 90, “assessment function” means any of the following functions—
- (a) evaluating the effectiveness of training or education provided for persons who have attained the age of 19;
  - (b) assessing policy in relation to the provision of such training or education;
  - (c) assessing policy in relation to social security or employment as it affects the provision of or participation in such training or education.

#### Commencement Information

**I1** S. 87 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 88 Revenue and Customs information

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose information relating to income tax or tax credits to a person for use in connection with the exercise of an assessment function of the Secretary of State or a devolved authority.
- (2) The reference in subsection (1) to the Commissioners for Her Majesty's Revenue and Customs includes a reference to a person authorised by the Commissioners.

#### Commencement Information

**I2** S. 88 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 89 Use of information

- (1) Information disclosed to a person in reliance on section 87(1)(b) or 88 may be used by that person only in connection with the exercise of an assessment function of the Secretary of State or a devolved authority.
- (2) Subsection (3) applies where information about an individual is used in connection with the exercise of an assessment function of the Secretary of State or a devolved authority—
  - (a) in reliance on section 87(1)(a), or
  - (b) under subsection (1) above.
- (3) So far as is reasonably practicable, the information must not be used in such a way that the identity of the individual is disclosed to, or capable of being discovered by, a person carrying out an evaluation or assessment of a kind mentioned in section 87(4) (a) to (c).

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#### Commencement Information

**I3** S. 89 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 90 Wrongful onward disclosure of information

- (1) This section applies to information—
  - (a) used in reliance on section 87(1)(a), or
  - (b) disclosed in reliance on section 87(1)(b) or 88.
- (2) A person commits an offence if—
  - (a) the person discloses the information to another otherwise than in connection with the exercise of an assessment function of the Secretary of State or a devolved authority, and
  - (b) the information relates to a person whose identity is specified in or can be deduced from the disclosure.
- (3) It is a defence to prove that a person charged with the offence reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.
- (5) A prosecution for an offence under this section may be instituted in England and Wales only with the consent of the Director of Public Prosecutions.
- (6) In subsection (4)(b), the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed in England and Wales before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences).

#### Commencement Information

**I4** S. 90 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 91 Information: supplementary

- (1) This section applies for the purposes of sections 87 to 90.
- (2) Nothing in these sections affects the use or disclosure of information by virtue of—
  - (a) section 3 of the Social Security Act 1998 (c. 14);
  - (b) any other enactment or rule of law.
- (3) These are the devolved authorities—
  - (a) the Scottish Ministers;
  - (b) the Welsh Ministers.

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- (4) A reference to the Secretary of State includes a reference to a person providing services to the Secretary of State.
- (5) A reference to a devolved authority includes a reference to a person providing services to the authority.
- (6) A reference to training or education does not include a reference to higher education (within the meaning of the Education Reform Act 1988 (c. 40) or section 38 of the Further and Higher Education (Scotland) Act 1992 (c. 37)).

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**Commencement Information**

**I5** S. 91 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

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