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# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

An Act to make provision about apprenticeships, education, training and children's services; to amend the Employment Rights Act 1996; to establish the Young People's Learning Agency for England, the office of Chief Executive of Skills Funding, the Office of Qualifications and Examinations Regulation and the School Support Staff Negotiating Body and to make provision about those bodies and that office; to make provision about the Qualifications and Curriculum Authority; to make provision about schools and institutions within the further education sector; to make provision about student loans; and for connected purposes. [12th November 2009]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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VALID FROM 06/04/2010

## PART 1

### APPRENTICESHIPS, STUDY AND TRAINING

VALID FROM 30/09/2010

## CHAPTER 1

### APPRENTICESHIPS

VALID FROM 06/04/2011

#### *Completing an apprenticeship*

#### **1 Meaning of “completing an English apprenticeship”**

- (1) This section applies for the purposes of this Chapter.
- (2) A person completes an English apprenticeship in relation to an apprenticeship framework if—
  - (a) the standard English completion conditions are met, or
  - (b) the alternative English completion conditions are met.
- (3) The standard English completion conditions are—
  - (a) that the person has entered into an apprenticeship agreement in connection with the apprenticeship framework,
  - (b) that at the date of that agreement the framework was a recognised English framework,
  - (c) that the person has completed a course of training for the competencies qualification identified in the framework,
  - (d) that, throughout the duration of the course, the person was working under the apprenticeship agreement, and
  - (e) that the person meets the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate.
- (4) In subsection (3)(d)—
  - (a) the reference to the apprenticeship agreement mentioned in subsection (3) (a) includes a reference to any apprenticeship agreement which the person subsequently entered into in connection with the same apprenticeship framework;
  - (b) the reference to the course of training for the competencies qualification is to be read, in a case where the person has followed two or more courses of training for the competencies qualification, as a reference to both or all of them.

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- (5) The alternative English completion conditions are conditions which—
  - (a) apply in cases where a person works otherwise than under an apprenticeship agreement, and
  - (b) are specified in regulations.
- (6) The kinds of working in relation to which provision may be made under subsection (5) include—
  - (a) working as a self-employed person;
  - (b) working otherwise than for reward.

VALID FROM 10/05/2013

## 2 Meaning of “completing a Welsh apprenticeship”

- (1) This section applies for the purposes of this Chapter.
- (2) A person completes a Welsh apprenticeship in relation to an apprenticeship framework if—
  - (a) the standard Welsh completion conditions are met, or
  - (b) the alternative Welsh completion conditions are met.
- (3) The standard Welsh completion conditions are—
  - (a) that the person has entered into an apprenticeship agreement in connection with the apprenticeship framework,
  - (b) that at the date of that agreement the framework was a recognised Welsh framework,
  - (c) that the person has completed a course of training for the competencies qualification identified in the framework,
  - (d) that, throughout the duration of the course, the person was working under the apprenticeship agreement, and
  - (e) that the person meets the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate.
- (4) In subsection (3)(d)—
  - (a) the reference to the apprenticeship agreement mentioned in subsection (3)(a) includes a reference to any apprenticeship agreement which the person subsequently entered into in connection with the same apprenticeship framework;
  - (b) the reference to the course of training for the competencies qualification is to be read, in a case where the person has followed two or more courses of training for the competencies qualification, as a reference to both or all of them.
- (5) The alternative Welsh completion conditions are conditions which—
  - (a) apply in cases where a person works otherwise than under an apprenticeship agreement, and
  - (b) are specified in regulations made by the Welsh Ministers.
- (6) The kinds of working in relation to which provision may be made under subsection (5) include—

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- (a) working as a self-employed person;
- (b) working otherwise than for reward.

VALID FROM 06/04/2011

### *Apprenticeship certificates: England*

#### **3 Duty to issue: England**

The English certifying authority must issue a certificate relating to an apprenticeship framework to a person who applies to the authority in the prescribed manner if—

- (a) it appears to the authority that the person has completed an English apprenticeship in relation to the apprenticeship framework,
- (b) in a case within section 1(2)(a), it appears to the authority that the condition in subsection (3)(e) of that section was met at the date of the person's application, and
- (c) the person—
  - (i) provides the authority with such information and evidence as the authority requires the person to provide, and
  - (ii) pays any fee charged by the authority for the issue of the certificate (see section 5).

#### **4 Power to issue: England**

The English certifying authority may issue a certificate relating to an apprenticeship framework to a person who applies to the authority in the prescribed manner if—

- (a) it appears to the authority that at the date of the application the person met the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate,
- (b) the framework is, or has been, a recognised English framework, and
- (c) the person—
  - (i) provides the authority with such information and evidence as the authority requires the person to provide, and
  - (ii) pays any fee charged by the authority for the issue of the certificate (see section 5).

#### **5 Issue by the English certifying authority: supplementary**

- (1) The English certifying authority may charge a fee for issuing an apprenticeship certificate only if, and to the extent that, it is authorised to do so by regulations.
- (2) Regulations may make provision about the supply of copies of apprenticeship certificates issued under section 3 or 4.

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- (3) Regulations under subsection (2) may include provision authorising the English certifying authority to charge a fee for supplying a copy of an apprenticeship certificate.

## **6 The English certifying authority**

In this Chapter, the “English certifying authority” means the Chief Executive of Skills Funding.

VALID FROM 10/05/2013

### *Apprenticeship certificates: Wales*

## **7 Duty to issue: Wales**

- (1) The Welsh certifying authority must issue a certificate relating to an apprenticeship framework to a person who applies to the authority in the prescribed manner if—
- (a) it appears to the authority that the person has completed a Welsh apprenticeship in relation to the apprenticeship framework,
  - (b) in a case within section 2(2)(a), it appears to the authority that the condition in subsection (3)(e) of that section was met at the date of the person's application, and
  - (c) the person—
    - (i) provides the authority with such information and evidence as the authority requires the person to provide, and
    - (ii) pays any fee charged by the authority for the issue of the certificate (see section 9).
- (2) The “prescribed manner” is the manner prescribed by regulations made by the Welsh Ministers.

## **8 Power to issue: Wales**

- (1) The Welsh certifying authority may issue a certificate relating to an apprenticeship framework to a person who applies to the authority in the prescribed manner if—
- (a) it appears to the authority that at the date of the application the person met the requirements specified in the framework for the purpose of the issue of an apprenticeship certificate,
  - (b) the framework is, or has been, a recognised Welsh framework,
  - (c) the person—
    - (i) provides the authority with such information and evidence as the authority requires the person to provide, and
    - (ii) pays any fee charged by the authority for the issue of the certificate (see section 9).
- (2) The “prescribed manner” for the purposes of subsection (1), is the manner prescribed by regulations made by the Welsh Ministers.

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## **9 Issue by the Welsh certifying authority: supplementary**

- (1) The Welsh certifying authority may charge a fee for issuing an apprenticeship certificate only if, and to the extent that, it is authorised to do so by regulations made by the Welsh Ministers.
- (2) Regulations made by the Welsh Ministers may make provision about the supply of copies of apprenticeship certificates issued under section 7 or 8.
- (3) Regulations under subsection (2) may include provision authorising a person supplying a copy of an apprenticeship certificate to charge a fee for doing so.

## **10 The Welsh certifying authority**

- (1) In this Chapter, the “Welsh certifying authority”, in relation to an apprenticeship certificate of any description, means—
  - (a) the person (if any) designated under this section to issue apprenticeship certificates of that description;
  - (b) if there is no-one within paragraph (a), the person (if any) designated under this section to issue apprenticeship certificates generally;
  - (c) if there is no-one within paragraph (a) or (b), the Welsh Ministers.
- (2) A person designated under this section to issue apprenticeship certificates must, in exercising functions under this Chapter—
  - (a) comply with directions given by the Welsh Ministers, and
  - (b) have regard to guidance given by the Welsh Ministers.
- (3) “Designated” means designated by an order made by the Welsh Ministers.

VALID FROM 06/04/2011

### *Contents of apprenticeship certificate: England and Wales*

## **11 Contents of apprenticeship certificate**

- (1) An apprenticeship certificate must state—
  - (a) the name of the person to whom it is issued,
  - (b) the apprenticeship framework to which it relates,
  - (c) the level of that framework, and
  - (d) the apprenticeship sector to which that framework relates.
- (2) An apprenticeship certificate must also state such other matters as the appropriate national authority may by regulations require to be stated in a certificate of that description.
- (3) The appropriate national authority, for the purposes of subsection (2), is—
  - (a) in relation to a certificate issued under section 3 or 4, the Secretary of State;
  - (b) in relation to a certificate issued under section 7 or 8, the Welsh Ministers.

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VALID FROM 01/03/2011

*Apprenticeship frameworks: England and Wales***12 Apprenticeship frameworks: interpretation**

- (1) In this Chapter, “apprenticeship framework” means a specification of requirements, for the purpose of the issue of apprenticeship certificates, that satisfies subsection (2).
- (2) The requirements specified must—
  - (a) be at a particular level stated in the specification, and
  - (b) relate to a particular skill, trade or occupation included in an apprenticeship sector stated in the specification.
- (3) In this Chapter, “recognised English framework” means an apprenticeship framework issued under section 14(1) from which recognition has not been withdrawn under section 14(2).
- (4) In this Chapter, “recognised Welsh framework” means an apprenticeship framework issued under section 19(1) from which recognition has not been withdrawn under section 19(2).
- (5) For the purposes of this Chapter—
  - (a) an apprenticeship framework is at the level of the requirements stated in it;
  - (b) an apprenticeship framework relates to the apprenticeship sector stated in it.

VALID FROM 01/03/2011

*Apprenticeship frameworks: England***13 English issuing authority**

- (1) The Secretary of State may designate a person to issue apprenticeship frameworks relating to a particular apprenticeship sector.
- (2) The power conferred by this section must be exercised so as to secure that, at any time, only one person is designated by the Secretary of State to issue apprenticeship frameworks relating to a particular apprenticeship sector.
- (3) A person designated under this section must, in exercising functions under this Chapter—
  - (a) comply with directions given by the Secretary of State;
  - (b) have regard to guidance given by the Secretary of State.
- (4) A designation under this section may be amended or revoked by the Secretary of State.

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- (5) In this Chapter the “English issuing authority”, in relation to an apprenticeship framework, means the person designated under this section to issue frameworks of that description.

#### **14 Issue: England**

- (1) The English issuing authority may issue an apprenticeship framework only if the authority is satisfied that the framework meets the requirements specified, by the specification of apprenticeship standards for England, for recognised English frameworks of that description.
- (2) Recognition of a recognised English framework may be withdrawn—
- (a) by the English issuing authority, or
  - (b) if there is no English issuing authority in relation to the framework, by the Secretary of State.

#### **15 Recognised English frameworks: notification and publication**

- (1) On issuing an apprenticeship framework under section 14(1), the English issuing authority must—
- (a) publish the framework;
  - (b) notify the Chief Executive of Skills Funding of the issue of the framework.
- (2) A notice given under subsection (1)(b) must be accompanied by a copy of the framework.
- (3) A person who withdraws recognition of an apprenticeship framework under section 14(2) must—
- (a) publish a notice stating that recognition of the framework has been withdrawn;
  - (b) notify the Chief Executive of Skills Funding of the withdrawal.
- (4) Where this section imposes a duty on a person to publish a framework or notice, the publication may be in such manner as the person thinks fit.

#### **16 Submission of draft framework for issue: England**

- (1) This section applies if a person—
- (a) submits a draft of an apprenticeship framework to the English issuing authority, and
  - (b) requests that the authority issue a framework in the form of the draft.
- (2) The authority may require the person to provide such information and evidence in connection with the draft as the authority thinks appropriate.
- (3) If the authority decides not to issue a framework in the form of the draft, it must give the person reasons for its decision.



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VALID FROM 06/04/2011

## 17 Transitional provision: England

- (1) The Secretary of State may by order provide for an existing vocational specification to be treated, for all purposes or for purposes specified in the order, as if it were an apprenticeship framework issued under section 14(1) that specified requirements for the purpose of the issue of apprenticeship certificates.
- (2) For the purposes of its application in relation to an existing vocational specification that, by virtue of an order under subsection (1), is treated as an apprenticeship framework issued under section 14(1), this Chapter has effect subject to any modifications specified in the order.
- (3) An order under subsection (1) must—
  - (a) specify a date on which the deemed framework is to be treated as being issued under section 14(1);
  - (b) specify a date on which recognition of the deemed framework is to be treated as having been withdrawn under section 14(2);
  - (c) specify a qualification that the deemed framework is to be treated as identifying as the competencies qualification;
  - (d) specify the level and apprenticeship sector that are to be treated as being stated in the deemed framework.
- (4) The date specified under subsection (3)(b) in an order under subsection (1) must be no later than the day after the day that is the school leaving date for 2013.
- (5) In this section—
 

“the deemed framework”, in relation to an order under subsection (1), means an existing vocational specification that, by virtue of the order, is treated as an apprenticeship framework issued under section 14(1);

“existing vocational specification” means a specification, prepared before the coming into force of section 14, of training, qualifications and skills appropriate for persons engaging in a particular trade, skill or occupation.
- (6) Nothing in this section limits the powers conferred by sections 262 and 265.

VALID FROM 10/05/2013

### *Apprenticeship frameworks: Wales*

## 18 Welsh issuing authority

- (1) The Welsh Ministers may designate a person to issue apprenticeship frameworks relating to a particular apprenticeship sector.
- (2) The power conferred by this section must be exercised so as to secure that, at any time, only one person is designated by the Welsh Ministers to issue apprenticeship frameworks relating to a particular apprenticeship sector.

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- (3) A person designated under this section must, in exercising functions under this Chapter—
  - (a) comply with directions given by the Welsh Ministers;
  - (b) have regard to guidance given by the Welsh Ministers.
- (4) A designation under this section may be amended or revoked by the Welsh Ministers.
- (5) In this Chapter the “Welsh issuing authority”, in relation to an apprenticeship framework, means the person designated under this section to issue frameworks of that description.

## **19 Issue: Wales**

- (1) The Welsh issuing authority may issue an apprenticeship framework only if the authority is satisfied that the framework meets the requirements specified, by the specification of apprenticeship standards for Wales, for recognised Welsh frameworks of that description.
- (2) Recognition of a recognised Welsh framework may be withdrawn—
  - (a) by the Welsh issuing authority, or
  - (b) if there is no Welsh issuing authority in relation to the framework, by the Welsh Ministers.

## **20 Recognised Welsh frameworks: notification and publication**

- (1) On issuing an apprenticeship framework under section 19(1), the Welsh issuing authority must—
  - (a) publish the framework;
  - (b) notify the Welsh Ministers of the issue of the framework.
- (2) A notice given under subsection (1)(b) must be accompanied by a copy of the framework.
- (3) A person who withdraws recognition of an apprenticeship framework under section 19(2) must—
  - (a) publish a notice stating that recognition of the framework has been withdrawn;
  - (b) in the case of withdrawal otherwise than by the Welsh Ministers, notify the Welsh Ministers of the withdrawal.
- (4) Where this section imposes a duty on a person to publish a framework or notice, the publication may be in such manner as the person thinks fit.

## **21 Submission of draft framework for issue: Wales**

- (1) This section applies if a person—
  - (a) submits a draft of an apprenticeship framework to the Welsh issuing authority, and
  - (b) requests that the authority issue a framework in the form of the draft.

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- (2) The authority may require the person to provide such information and evidence in connection with the draft as the authority thinks appropriate.
- (3) If the authority decides not to issue a framework in the form of the draft, it must give the person reasons for its decision.

## **22 Transitional provision: Wales**

- (1) The Welsh Ministers may by order provide for an existing vocational specification to be treated, for all purposes or for purposes specified in the order, as if it were an apprenticeship framework issued under section 19(1) that specified requirements for the purpose of the issue of apprenticeship certificates.
- (2) For the purposes of its application in relation to an existing vocational specification that, by virtue of an order under subsection (1), is treated as an apprenticeship framework issued under section 19(1), this Chapter has effect subject to any modifications specified in the order.
- (3) An order under subsection (1) must—
  - (a) specify a date on which the deemed framework is to be treated as being issued under section 19(1);
  - (b) specify a date on which recognition of the deemed framework is to be treated as having been withdrawn under section 19(2);
  - (c) specify a qualification that the deemed framework is to be treated as identifying as the competencies qualification;
  - (d) specify the level and apprenticeship sector that are to be treated as being stated in the deemed framework.
- (4) The date specified under subsection (3)(b) in an order under subsection (1) must be no later than the day after the day that is the school leaving date for 2013.
- (5) In this section—
 

“the deemed framework”, in relation to an order under subsection (1), means an existing vocational specification that, by virtue of the order, is treated as being an apprenticeship framework issued under section 19(1);

“existing vocational specification” means a specification, prepared before the coming into force of section 19, of training, qualifications and skills appropriate for persons engaging in a particular trade, skill or occupation.
- (6) Nothing in this section limits the powers conferred by section 262.

### *Specification of apprenticeship standards: England*

## **23 Duty to prepare and submit draft specification: England**

- (1) If the Secretary of State so directs, the Chief Executive of Skills Funding must—
  - (a) prepare a draft specification of apprenticeship standards, and
  - (b) submit it to the Secretary of State.
- (2) In preparing the draft, the Chief Executive must consult—
  - (a) each person designated under section 13,

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- (b) persons who appear to the Chief Executive to represent—
    - (i) employers,
    - (ii) institutions within the further education sector, and
    - (iii) any other providers of training,
  - (c) any other persons or descriptions of persons specified in regulations, and
  - (d) such other persons as the Chief Executive thinks appropriate.
- (3) A direction under subsection (1) may specify the date by which a draft must be submitted to the Secretary of State.
- (4) Subsection (2) does not apply in relation to the first draft specification to be prepared by the Chief Executive after the commencement of this section.
- (5) “Institution within the further education sector” has the same meaning as in the Education Act 1996 (c. 56) (see section 4(3) of that Act).

#### **24 Order bringing specification into effect**

- (1) Where a draft specification of apprenticeship standards has been submitted under section 23, the Secretary of State may by order provide that a specification of apprenticeship standards (“the specification of apprenticeship standards for England”) is to have effect—
- (a) in the form of the draft, or
  - (b) in that form with such modifications as the Secretary of State thinks appropriate.
- (2) The Secretary of State may not make an order under subsection (1) unless satisfied that the specification of apprenticeship standards given effect to by the order complies with section 27.
- (3) The power conferred by subsection (1) is to be exercised so as to secure that at any time only one specification of apprenticeship standards has effect as the specification of apprenticeship standards for England.

#### **25 Modification: England**

- (1) If the Secretary of State so directs, the Chief Executive of Skills Funding must—
- (a) prepare draft modifications to the specification of apprenticeship standards for England, and
  - (b) submit the modifications to the Secretary of State.
- (2) A direction given under subsection (1) may specify the date by which the draft modifications must be submitted to the Secretary of State.
- (3) Where draft modifications to a specification of apprenticeship standards have been submitted under subsection (1), the Secretary of State may by order provide that the specification of apprenticeship standards for England is to have effect with those modifications.
- (4) The Secretary of State may not make an order under subsection (3) providing that the specification of apprenticeship standards for England is to have effect with modifications unless satisfied that the specification, as so modified, complies with section 27.

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## **26 Replacement or modification: recognised English frameworks**

- (1) Subject to subsection (2), a recognised English framework does not cease to be a recognised English framework if, by virtue of an order under section 24 or 25, it ceases to meet the requirements specified for frameworks of its description by the specification of apprenticeship standards for England.
- (2) An order under section 24 may provide for an apprenticeship framework which—
  - (a) immediately before the making of the order is a recognised English framework, but
  - (b) does not meet the requirements specified for frameworks of its description by the specification of apprenticeship standards for England to which the order gives effect,to cease to have effect as a recognised English framework.

## **27 Contents of specification of apprenticeship standards for England**

- (1) The specification of apprenticeship standards for England—
  - (a) must specify requirements to be met by recognised English frameworks,
  - (b) may specify different requirements in relation to recognised English frameworks at different levels, and
  - (c) must, in particular, specify requirements in relation to—
    - (i) recognised English frameworks at level 2, and
    - (ii) recognised English frameworks at level 3.
- (2) The requirements specified by the specification of apprenticeship standards for England must include—
  - (a) requirements as to English certificate requirements, including requirements as to standards of attainment to be required by them,
  - (b) requirements for a recognised English framework to include, as an English certificate requirement, the requirement that an apprenticeship certificate relating to the framework may be issued to a person only if the person has received both on-the-job training and off-the-job training, and
  - (c) requirements for a recognised English framework to—
    - (i) include, as an English certificate requirement, the requirement that one or more qualifications be held,
    - (ii) include, as an English certificate requirement, the requirement that the qualification, or the qualifications taken together, demonstrate the relevant occupational competencies and the relevant technical knowledge, and
    - (iii) identify the qualification that demonstrates the relevant occupational competencies as the competencies qualification in relation to the framework.
- (3) Requirements as to standards of attainment may be specified by reference, in particular, to descriptions of qualifications or training.
- (4) In this section—

“English certificate requirement” means a requirement specified in a recognised English framework for the purpose of the issue of apprenticeship certificates relating to that framework by the English certifying authority;

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“off-the-job training” in relation to a recognised English framework, is training which—

- (a) is received for the purposes of the skill, trade or occupation to which the framework relates, and
- (b) is not on-the-job training;

“on-the-job training” in relation to a recognised English framework, is training received in the course of carrying on the skill, trade or occupation to which the framework relates;

“the relevant occupational competencies”, in relation to a recognised English framework, means the competencies required to perform the skill, trade or occupation to which the framework relates at the level required in the framework;

“the relevant technical knowledge”, in relation to a recognised English framework, means the technical knowledge required to perform the skill, trade or occupation to which the framework relates at the level required in the framework.

VALID FROM 10/05/2013

### *Specification of apprenticeship standards: Wales*

#### **28 Specification of apprenticeship standards for Wales**

- (1) The Welsh Ministers may prepare a draft specification of apprenticeship standards.
- (2) In preparing the draft, the Welsh Ministers must consult such persons as they think appropriate.
- (3) Having prepared a draft, the Welsh Ministers may by order provide that a specification of apprenticeship standards (“the specification of apprenticeship standards for Wales”) is to have effect—
  - (a) in the form of the draft, or
  - (b) in that form with such modifications as the Welsh Ministers think appropriate.
- (4) Subsection (2) does not apply in relation to the first draft specification to be prepared by the Welsh Ministers after the commencement of this section.
- (5) The Welsh Ministers may not make an order under subsection (3) unless satisfied that the specification of apprenticeship standards given effect to by the order complies with section 31.
- (6) The power conferred by subsection (3) is to be exercised so as to secure that at any time only one specification of apprenticeship standards has effect as the specification of apprenticeship standards for Wales.

#### **29 Modification: Wales**

- (1) The Welsh Ministers may by order provide that the specification of apprenticeship standards for Wales is to have effect subject to modifications specified in the order.

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- (2) The Welsh Ministers may not make an order under this section unless satisfied that the specification, as so modified, complies with section 31.

### **30 Replacement or modification: recognised Welsh frameworks**

- (1) Subject to subsection (2), a recognised Welsh framework does not cease to be a recognised Welsh framework if, by virtue of an order under section 28 or 29, it ceases to meet the requirements specified for frameworks of its description by the specification of apprenticeship standards for Wales.
- (2) An order under section 28 may provide for an apprenticeship framework which—
- (a) immediately before the making of the order is a recognised Welsh framework, but
  - (b) does not meet the requirements specified for frameworks of its description by the specification of apprenticeship standards for Wales to which the order gives effect,
- to cease to have effect as a recognised Welsh framework.

### **31 Contents of specification of apprenticeship standards for Wales**

- (1) The specification of apprenticeship standards for Wales—
- (a) must specify requirements to be met by recognised Welsh frameworks,
  - (b) may specify different requirements in relation to recognised Welsh frameworks at different levels.
- (2) The requirements specified by the specification of apprenticeship standards for Wales must include—
- (a) requirements as to Welsh certificate requirements, including requirements as to standards of attainment to be required by them,
  - (b) requirements for a recognised Welsh framework to include, as a Welsh certificate requirement, the requirement that an apprenticeship certificate relating to the framework may be issued to a person only if the person has received both on-the-job training and off-the-job training, and
  - (c) requirements for a recognised Welsh framework to—
    - (i) include, as a Welsh certificate requirement, the requirement that one or more qualifications be held,
    - (ii) include, as a Welsh certificate requirement, the requirement that the qualification, or the qualifications taken together, demonstrate the relevant occupational competencies and the relevant technical knowledge, and
    - (iii) identify the qualification that demonstrates the relevant occupational competencies as the competencies qualification in relation to the framework.
- (3) Requirements as to standards of attainment may be specified by reference, in particular, to descriptions of qualifications or training.
- (4) In this section—
- “off-the-job training” in relation to a recognised Welsh framework, is training which—

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(a) is received for the purposes of the skill, trade or occupation to which the framework relates, and

(b) is not on-the-job training;

“on-the-job training” in relation to a recognised Welsh framework, is training received in the course of carrying on the skill, trade or occupation to which the framework relates;

“the relevant occupational competencies”, in relation to a recognised Welsh framework, means the competencies required to perform the skill, trade or occupation to which the framework relates at the level required in the framework;

“the relevant technical knowledge”, in relation to a recognised Welsh framework, means the technical knowledge required to perform the skill, trade or occupation to which the framework relates at the level required in the framework;

“Welsh certificate requirement” means a requirement specified in a recognised Welsh framework for the purpose of the issue of apprenticeship certificates relating to that framework by the Welsh certifying authority.

VALID FROM 06/04/2011

### *Apprenticeship agreements: England and Wales*

#### **32 Meaning of “apprenticeship agreement”**

- (1) In this Chapter, “apprenticeship agreement” means an agreement in relation to which each of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
  - (a) that a person (the “apprentice”) undertakes to work for another (the “employer”) under the agreement;
  - (b) that the agreement is in the prescribed form;
  - (c) that the agreement states that it is governed by the law of England and Wales;
  - (d) that the agreement states that it is entered into in connection with a qualifying apprenticeship framework.
- (3) The power conferred by subsection (2)(b) may be exercised, in particular—
  - (a) to specify provisions that must be included in an apprenticeship agreement;
  - (b) to specify provisions that must not be included in an apprenticeship agreement;
  - (c) to specify all or part of the wording of provisions that must be included in an apprenticeship agreement.
- (4) Where an agreement states that it is entered into in connection with an apprenticeship framework (“the relevant framework”) that is not a qualifying apprenticeship framework, subsection (2)(d) is to be taken to be satisfied in relation to the agreement if—



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- (a) at a time within the period of three years ending with the date of the agreement, the relevant framework was a qualifying apprenticeship framework;
  - (b) at the date of the agreement, the apprentice has not completed the whole of a course of training for the competencies qualification identified in the relevant framework,
  - (c) before the date of the agreement, the apprentice entered into an apprenticeship agreement (“the earlier agreement”) which stated that it was entered into in connection with the relevant framework, and
  - (d) at the date of the earlier agreement, the relevant framework was a qualifying apprenticeship framework.
- (5) In subsection (4)(b), the reference to a course of training for the competencies qualification is to be read, in a case where the person follows two or more courses of training for the competencies qualification, as a reference to both or all of them.
- (6) An apprenticeship framework is a “qualifying apprenticeship framework”, for the purposes of this section, if it is—
- (a) a recognised English framework, or
  - (b) a recognised Welsh framework.

### **33 Ineffective provisions**

- (1) To the extent that provision included in an apprenticeship agreement conflicts with the prescribed apprenticeship provisions, it has no effect.
- (2) In this section, the “prescribed apprenticeship provisions”, in relation to an apprenticeship agreement, means those provisions—
  - (a) that are included in the agreement, and
  - (b) without the inclusion of which the agreement would not satisfy section 32(2)(b).

### **34 Variation**

- (1) If a variation to an apprenticeship agreement is within subsection (2), it has effect only if, before it was made, the employer complied with the requirement in subsection (3).
- (2) A variation to an apprenticeship agreement is within this subsection if its nature is such that, were it to take effect, the agreement would cease to be an apprenticeship agreement.
- (3) The employer must give the apprentice written notice stating that, if the variation takes effect, the agreement will cease to be an apprenticeship agreement.

### **35 Status**

- (1) To the extent that it would otherwise be treated as being a contract of apprenticeship, an apprenticeship agreement is to be treated as not being a contract of apprenticeship.
- (2) To the extent that it would not otherwise be treated as being a contract of service, an apprenticeship agreement is to be treated as being a contract of service.

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(3) This section applies for the purposes of any enactment or rule of law.

### **36 Crown servants and Parliamentary staff**

(1) Sections 32 to 35 apply in relation to—

- (a) an agreement under which a person undertakes Crown employment,
- (b) an agreement under which a person undertakes service as a member of the naval, military or air forces of the Crown, and
- (c) an agreement under which a person undertakes employment as—
  - (i) a relevant member of the House of Lords staff, or
  - (ii) a relevant member of the House of Commons staff,

as they apply in relation to any other agreement under which a person undertakes to work for another.

(2) Subsection (1) is subject to subsection (3) and to any modifications which may be prescribed under subsection (5).

(3) Section 35(2) does not apply in relation to an apprenticeship agreement that is an agreement within paragraph (a), (b) or (c) of subsection (1).

(4) Without prejudice to section 262(3), the power conferred by section 32(2)(b) may be exercised, in particular, to make provision in relation to an apprenticeship agreement which is an agreement within any of paragraphs (a), (b) and (c) of subsection (1) that differs from provision made in relation to other apprenticeship agreements.

(5) Regulations may provide for any provision of this Chapter, or any of sections 91 to 99, to apply with modifications in relation to—

- (a) an agreement within paragraph (a), (b) or (c) of subsection (1), or
- (b) a person working, or proposing to work, under such an agreement.

(6) In subsection (1)—

“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 a statutory provision (but does not include service as a member of the naval, military or air forces of the Crown);

“relevant member of the House of Commons staff” has the meaning given by section 195(5) of the Employment Rights Act 1996 (c. 18);

“relevant member of the House of Lords staff” has the meaning given by section 194(6) of that Act.

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VALID FROM 06/04/2011

*Duty to participate in education or training: England*

**37 Duty to participate in education or training: apprenticeship agreements**

- (1) Part 1 of the Education and Skills Act 2008 (c. 25) (duty to participate in education or training: England) is amended as follows.
- (2) In section 2 (duty to participate), in subsection (1)(b) after “contract of apprenticeship” insert “ or an apprenticeship agreement ”.
- (3) In section 66 (interpretation of Part 1), in subsection (1)—
  - (a) at the appropriate place insert—
 

““apprenticeship agreement” has the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009;”;
  - (b) in the definition of “contract of employment” after “contract of apprenticeship” insert “ or an apprenticeship agreement ”.

VALID FROM 01/03/2011

*General*

**38 Apprenticeship sectors**

- (1) The Secretary of State must by order specify sectors of skill, trade or occupation for the purposes of this Chapter.
- (2) The sectors specified under subsection (1) must in the opinion of the Secretary of State encompass the full range of skills, trades and occupations.

VALID FROM 06/04/2011

**39 Interpretation of Chapter**

- (1) In this Chapter—
  - “apprenticeship agreement” has the meaning given by section 32(1);
  - “apprenticeship certificate” means a certificate issued under section 3, 4, 7 or 8;
  - “apprenticeship framework” has the meaning given by section 12(1);
  - “apprenticeship sector” means a sector specified under section 38;
  - “the competencies qualification”, in relation to an apprenticeship framework, means the qualification identified in the framework as being the competencies qualification;
  - “English certifying authority” has the meaning given by section 6;
  - “English issuing authority”, in relation to an apprenticeship framework, has the meaning given by section 13(5);

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“recognised English framework” has the meaning given by section 12(3);

“recognised Welsh framework” has the meaning given by section 12(4);

“the specification of apprenticeship standards for England” means the specification of apprenticeship standards having effect for the time being by virtue of an order made by the Secretary of State under section 24 or 25;

“the specification of apprenticeship standards for Wales” means the specification of apprenticeship standards having effect for the time being by virtue of an order made by the Welsh Ministers under section 28 or 29;

“Welsh certifying authority”, in relation to an apprenticeship certificate of any description, has the meaning given by section 10(1);

“Welsh issuing authority”, in relation to an apprenticeship framework, has the meaning given by section 18(5).

(2) References in this Chapter—

- (a) to the level of an apprenticeship framework, or
- (b) to the apprenticeship sector to which an apprenticeship framework relates,

are to be construed in accordance with section 12(5).

(3) References in this Chapter to an employer and an apprentice, in relation to an apprenticeship agreement, are to be construed in accordance with section 32.

## CHAPTER 2

### STUDY AND TRAINING

#### 40 Employer support for employee study and training

(1) The Employment Rights Act 1996 (c. 18) is amended as follows.

(2) After Part 6 (time off work) insert—

#### “PART 6A

### STUDY AND TRAINING

#### 63D Statutory right to make request in relation to study or training

(1) A qualifying employee may make an application under this section to his or her employer.

(2) An application under this section (a “section 63D application”) is an application that meets—

- (a) the conditions in subsections (3) to (5), and

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- (b) any further conditions specified by the Secretary of State in regulations.
- (3) The application must be made for the purpose of enabling the employee to undertake study or training (or both) within subsection (4).
- (4) Study or training is within this subsection if its purpose is to improve—
  - (a) the employee's effectiveness in the employer's business, and
  - (b) the performance of the employer's business.
- (5) The application must state that it is an application under this section.
- (6) An employee is a qualifying employee for the purposes of this section if the employee—
  - (a) satisfies any conditions about duration of employment specified by the Secretary of State in regulations, and
  - (b) is not a person within subsection (7).
- (7) The following persons are within this subsection—
  - (a) a person of compulsory school age (or, in Scotland, school age);
  - (b) 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) applies;
  - (c) a person who, by virtue of section 29 of that Act, is treated as a person to whom that Part applies for the purposes specified in that section (extension for person reaching 18);
  - (d) a person to whom section 63A of this Act (right to time off for young person for study or training) applies;
  - (e) an agency worker;
  - (f) a person of a description specified by the Secretary of State in regulations.
- (8) Nothing in this Part prevents an employee and an employer from making any other arrangements in relation to study or training.
- (9) In this section—
  - “agency worker” means a worker supplied by a person (the “agent”) to do work for another person (the “principal”) under a contract or other arrangement between the agent and principal;
  - “compulsory school age” has the meaning given in section 8 of the Education Act 1996;
  - “school age” has the meaning given in section 31 of the Education (Scotland) Act 1980.

### 63E Section 63D application: supplementary

- (1) A section 63D application may—
  - (a) be made in relation to study or training of any description (subject to section 63D(3) and (4) and regulations under section 63D(2));
  - (b) relate to more than one description of study or training.
- (2) The study or training may (in particular) be study or training that (if undertaken)—

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- (a) would be undertaken on the employer's premises or elsewhere (including at the employee's home);
  - (b) would be undertaken by the employee while performing the duties of the employee's employment or separately;
  - (c) would be provided or supervised by the employer or by someone else;
  - (d) would be undertaken without supervision;
  - (e) would be undertaken within or outside the United Kingdom.
- (3) The study or training need not be intended to lead to the award of a qualification to the employee.
- (4) A section 63D application must—
- (a) give the following details of the proposed study or training—
    - (i) its subject matter;
    - (ii) where and when it would take place;
    - (iii) who would provide or supervise it;
    - (iv) what qualification (if any) it would lead to;
  - (b) explain how the employee thinks the proposed study or training would improve—
    - (i) the employee's effectiveness in the employer's business, and
    - (ii) the performance of the employer's business;
  - (c) contain information of any other description specified by the Secretary of State in regulations.
- (5) The Secretary of State may make regulations about—
- (a) the form of a section 63D application;
  - (b) when a section 63D application is to be taken to be received for the purposes of this Part.

#### **63F Employer's duties in relation to application**

- (1) Subsections (4) to (7) apply if—
- (a) an employer receives a section 63D application (the “current application”) from an employee, and
  - (b) during the relevant 12 month period the employer has not received another section 63D application (an “earlier application”) from the employee.
- (2) The “relevant 12 month period” is the 12 month period ending with the day on which the employer receives the current application.
- (3) The Secretary of State may make regulations about circumstances in which, at an employee's request, an employer is to be required to ignore an earlier application for the purposes of subsection (1).
- (4) The employer must deal with the application in accordance with regulations made by the Secretary of State.
- (5) The employer may refuse a section 63D application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to the application.

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- (6) The employer may refuse part of a section 63D application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to that part.
- (7) The permissible grounds for refusal are—
- (a) that the proposed study or training to which the application, or the part in question, relates would not improve—
    - (i) the employee's effectiveness in the employer's business, or
    - (ii) the performance of the employer's business;
  - (b) the burden of additional costs;
  - (c) detrimental effect on ability to meet customer demand;
  - (d) inability to re-organise work among existing staff;
  - (e) inability to recruit additional staff;
  - (f) detrimental impact on quality;
  - (g) detrimental impact on performance;
  - (h) insufficiency of work during the periods the employee proposes to work;
  - (i) planned structural changes;
  - (j) any other grounds specified by the Secretary of State in regulations.

### 63G Regulations about dealing with applications

- (1) Regulations under section 63F(4) may, in particular, include provision—
- (a) for the employee to have a right to be accompanied by a person of a specified description when attending meetings held in relation to a section 63D application in accordance with any such regulations;
  - (b) for the postponement of such a meeting if the employee's companion under paragraph (a) is not available to attend it;
  - (c) in relation to companions under paragraph (a), corresponding to section 10(6) and (7) of the Employment Relations Act 1999 (right to paid time off to act as companion, etc.);
  - (d) in relation to the rights under paragraphs (a) to (c), for rights to complain to an employment tribunal and not to be subjected to a detriment, and about unfair dismissal;
  - (e) for section 63D applications to be treated as withdrawn in specified circumstances.
- (2) In this section “specified” means specified in the regulations.

### 63H Employee's duties in relation to agreed study or training

- (1) This section applies if an employer has agreed to a section 63D application, or part of a section 63D application, made by an employee in relation to particular study or training (the “agreed study or training”).
- (2) The employee must inform the employer if the employee—
- (a) fails to start the agreed study or training;
  - (b) fails to complete the agreed study or training;

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(c) undertakes, or proposes to undertake, study or training that differs from the agreed study or training in any respect (including those specified in section 63E(4)(a)).

(3) The Secretary of State may make regulations about the way in which the employee is to comply with the duty under subsection (2).

### 63I Complaints to employment tribunals

(1) An employee who makes a section 63D application may present a complaint to an employment tribunal that—

- (a) the employer has failed to comply with section 63F(4), (5) or (6), or
- (b) the employer's decision to refuse the application, or part of it, is based on incorrect facts.

This is subject to the following provisions of this section.

(2) No complaint under this section may be made in respect of a section 63D application which has been disposed of by agreement or withdrawn.

(3) In the case of a section 63D application that has not been disposed of by agreement or withdrawn, a complaint under this section may only be made if the employer—

- (a) notifies the employee of a decision to refuse the application (or part of it) on appeal, or
- (b) commits a breach of regulations under section 63F(4), where the breach is of a description specified by the Secretary of State in regulations.

(4) No complaint under this section may be made in respect of failure to comply with provision included in regulations under section 63F(4) because of—

- (a) section 63G(1)(a) or (b), if provision is included in regulations under section 63F(4) by virtue of section 63G(1)(d), or
- (b) section 63G(1)(c).

(5) An employment tribunal may not consider a complaint under this section unless the complaint is presented—

- (a) before the end of the period of three months beginning with the relevant date, or
- (b) within any further period that the tribunal considers reasonable, if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(6) The relevant date is—

- (a) in the case of a complaint permitted by subsection (3)(a), the date on which the employee is notified of the decision on the appeal;
- (b) in the case of a complaint permitted by subsection (3)(b), the date on which the breach was committed.



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### 63J Remedies

- (1) If an employment tribunal finds a complaint under section 63I well-founded it must make a declaration to that effect and may—
  - (a) make an order for reconsideration of the section 63D application;
  - (b) make an award of compensation to be paid by the employer to the employee.
- (2) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, but must not exceed the permitted maximum.
- (3) The permitted maximum is the number of weeks' pay specified by the Secretary of State in regulations.
- (4) If an employment tribunal makes an order under subsection (1)(a), section 63F and regulations under that section apply as if the application had been received on the date of the order (instead of on the date it was actually received).

### 63K Supplementary

Regulations under this Part may make different provision for different cases.”

- (3) After section 47E (protection from suffering detriment in employment: flexible working) insert—

#### “47F Study and training

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employee's employer done on the ground that the employee—
  - (a) made (or proposed to make) a section 63D application,
  - (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,
  - (c) brought proceedings against the employer under section 63I, or
  - (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
- (2) This section does not apply if the detriment in question amounts to dismissal within the meaning of Part 10.”

- (4) After section 104D (unfair dismissal: pension enrolment) insert—

#### “104E Study and training

An employee who is dismissed is to 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 the employee—

- (a) made (or proposed to make) a section 63D application,

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- (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,
  - (c) brought proceedings against the employer under section 63I, or
  - (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”
- (5) Schedule 1 makes amendments to employment legislation relating to the provision made by this section.

## PART 2

### LEA FUNCTIONS

VALID FROM 01/04/2010

#### *Education and training for persons over compulsory school age*

#### **41 Education and training for persons over compulsory school age: general duty**

Before section 15A of the Education Act 1996 (c. 56) insert—

##### **“15ZA Duty in respect of education and training for persons over compulsory school age: England**

- (1) A local education authority in England must secure that enough suitable education and training is provided to meet the reasonable needs of—
  - (a) persons in their area who are over compulsory school age but under 19, and
  - (b) persons in their area who are aged 19 or over but under 25 and are subject to learning difficulty assessment.
- (2) A local education authority may comply with subsection (1) by securing the provision of education or training outside as well as within their area.
- (3) In deciding for the purposes of subsection (1) whether education or training is suitable to meet persons' reasonable needs, a local education authority must (in particular) have regard to—
  - (a) the persons' ages, abilities and aptitudes;
  - (b) any learning difficulties the persons may have;
  - (c) the quality of the education or training;
  - (d) the locations and times at which the education or training is provided.
- (4) In performing the duty imposed by subsection (1) a local education authority must—
  - (a) act with a view to encouraging diversity in the education and training available to persons;
  - (b) act with a view to increasing opportunities for persons to exercise choice;

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- (c) act with a view to enabling persons to whom Part 1 of the Education and Skills Act 2008 applies to fulfil the duty imposed by section 2 of that Act;
  - (d) take account of education and training whose provision the authority think might reasonably be secured by other persons.
- (5) A local education authority must, in—
- (a) making any determination as to the provision of apprenticeship training that should be secured under subsection (1), or
  - (b) securing the provision of any apprenticeship training under that subsection,
- co-operate with the Chief Executive of Skills Funding.
- (6) For the purposes of this section a person has a learning difficulty if—
- (a) the person has a significantly greater difficulty in learning than the majority of persons of the same age, or
  - (b) the person has a disability which either prevents or hinders the person from making use of facilities of a kind generally provided by institutions providing education or training for persons who are over compulsory school age.
- (7) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which the person is or will be taught is different from a language (or form of language) which has at any time been spoken in the person's home.
- (8) In this section—
- “apprenticeship training” means training provided in connection with—
- (a) an apprenticeship agreement (within the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009),
  - (b) any other contract of employment, or
  - (c) any other kind of working in relation to which alternative English completion conditions apply under section 1(5) of that Act (meaning of “completing an English apprenticeship”);
- “education” includes full-time and part-time education;
- “training” includes—
- (a) full-time and part-time training;
  - (b) vocational, social, physical and recreational training;
  - (c) apprenticeship training.
- (9) The references in subsection (1) to—
- (a) persons in a local authority's area who are over compulsory school age but under 19, and
  - (b) persons in a local authority's area who are aged 19 or over but under 25 and are subject to learning difficulty assessment,
- do not include persons who are subject to a detention order.

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### **15ZB Co-operation in performance of section 15ZA duty**

Local education authorities in England must co-operate with each other in performing their duties under section 15ZA(1).”

### **42 Encouragement of education and training for persons over compulsory school age**

After section 15ZB of the Education Act 1996 (c. 56) (inserted by section 41) insert—

#### **“15ZC Encouragement of education and training for persons over compulsory school age: England**

- (1) A local education authority in England must—
  - (a) encourage participation in education and training by persons in their area who are within section 15ZA(1)(a) or (b);
  - (b) encourage employers to participate in the provision of education and training for such persons.
- (2) For the purposes of subsection (1)(b), participating in the provision of training includes participating by entering into—
  - (a) an apprenticeship agreement (within the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009), or
  - (b) any other contract of employment in connection with which training is provided.
- (3) In this section “education” and “training” have the same meanings as in section 15ZA.”

### **43 LEA directions: children over compulsory school age**

- (1) Chapter 1 of Part 3 of the School Standards and Framework Act 1998 (c. 31) is amended as follows.
- (2) In section 84(6) (admissions code: interpretation) for the definition of “child” substitute—
 

““child” includes a person who has not attained the age of 19, except in sections 96 and 97 in so far as those sections apply in relation to Wales;”.
- (3) After section 96(3) (direction to admit child to specified school) insert—
 

“(3A) A direction under this section to admit a child shall not specify a school which has in place admission arrangements that make provision for selection by ability falling within section 99(2)(c) unless the child satisfies the selection criteria.”

### **44 Power to require provision of education by further education institution**

- (1) Before section 52 of the Further and Higher Education Act 1992 (c. 13) insert—

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#### “51A Duty to provide for named individuals: England

- (1) This section applies to an institution in England within the further education sector which provides education suitable to the requirements of persons over compulsory school age but under the age of 19.
  - (2) A local education authority may by notice given to the governing body of such an institution—
    - (a) require them to provide specified individuals with such education falling within subsection (1) as is appropriate to the individuals' abilities and aptitudes;
    - (b) withdraw such a requirement.
  - (3) A local education authority may specify an individual in a notice under subsection (2) only if the individual—
    - (a) is in the authority's area, and
    - (b) is over compulsory school age but under the age of 19.
  - (4) Before giving a notice under subsection (2) imposing a requirement on a governing body, a local education authority must consult—
    - (a) the governing body, and
    - (b) such other persons as the authority think appropriate.
  - (5) The governing body of an institution within subsection (1) must secure compliance with a requirement that has been imposed under subsection (2) and has not been withdrawn.
  - (6) In deciding whether to require a particular institution to provide education to a particular individual under subsection (2) a local education authority in England must have regard to any guidance given from time to time by the Secretary of State.”
- (2) In section 52 of that Act—
- (a) in subsection (1) after “institution” insert “ in Wales ”;
  - (b) in the title, at the end insert “ : Wales ”.

PROSPECTIVE

#### *The core and additional entitlements*

#### **45 Duties in relation to the core and additional entitlements**

After section 17 of the Education Act 1996 (c. 56) insert—

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“The [<sup>F1</sup>core entitlement]: England

### 17A Duties in relation to the [<sup>F2</sup>core entitlement]

(1) A [<sup>F3</sup>local authority] in England must exercise their functions in such a way as to secure that the [<sup>F4</sup>core entitlement is] satisfied in relation to persons in their area who are over compulsory school age but under 19.

<sup>F5</sup>( 2 ) .....

<sup>F5</sup>( 3 ) .....

<sup>F5</sup>( 4 ) .....

<sup>F5</sup>( 5 ) .....

(6) In exercising their functions as required by this section, a [<sup>F3</sup>local authority] in England must have regard to any guidance given from time to time by the Secretary of State.

(7) In this section—

<sup>F6</sup>

...

<sup>F6</sup>

...

“ the core entitlement ” has the meaning given by section 17C.

<sup>F7</sup>( 8 ) .....

(9) The [<sup>F8</sup>reference in subsection (1)] to persons in a [<sup>F3</sup>local authority]'s area who are over compulsory school age but under 19 [<sup>F8</sup>does] not include persons who are subject to a detention order.

### 17B Entitlement to education and training for 16 to 18 year olds

.....

### 17C The core entitlement

[<sup>F10</sup>(A1) A person over compulsory school age but under 19 has the core entitlement.]

(1) The core entitlement is an entitlement to follow a course of study in each of the core subjects chosen by the person [<sup>F11</sup>who has ] the entitlement (the “chosen core subjects”).

(2) The core subjects are—

(a) mathematics;

(b) English;

(c) information and communication technology.

(3) The core entitlement is satisfied in relation to a person if a course of study in each of the chosen core subjects is made available to the person at a school or institution.

(4) A person's entitlement to follow a course of study in one of the chosen core subjects ceases if—

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- (a) a course of study in the subject is made available to the person, but
- (b) the person does not begin the course of study before reaching the age of 19.

[<sup>F12</sup>(5) In this section “ course of study ” means a course of education or training leading to a qualification specified, or a qualification of a description specified, by the Secretary of State by order for the purposes of this subsection.  
 ]

**17D The additional entitlement**

.....”

**Textual Amendments**

- F1** Words in s. 45 substituted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(2)** , 82(2)(b)
- F2** Words in s. 45 substituted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(3)(f)** , 82(2)(b)
- F3** Words in Act substituted (5.5.2010) by The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I. 2010/1158) , **Sch. 2 para. 16(2)**
- F4** Words in s. 45 substituted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(3)(a)** , 82(2)(b)
- F5** Words in s. 45 omitted (15.1.2012) by virtue of Education Act 2011 (c. 21) , **ss. 30(3)(b)** , 82(2)(b)
- F6** Words in s. 45 omitted (15.1.2012) by virtue of Education Act 2011 (c. 21) , **ss. 30(3)(c)** , 82(2)(b)
- F7** Words in s. 45 omitted (15.1.2012) by virtue of Education Act 2011 (c. 21) , **ss. 30(3)(d)** , 82(2)(b)
- F8** Words in s. 45 substituted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(3)(e)** , 82(2)(b)
- F9** Words in s. 45 omitted (15.1.2012) by virtue of Education Act 2011 (c. 21) , **ss. 30(4)** , 82(2)(b)
- F10** Words in s. 45 inserted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(5)(a)** , 82(2)(b)
- F11** Words in s. 45 substituted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(5)(b)** , 82(2)(b)
- F12** Words in s. 45 inserted (15.1.2012) by Education Act 2011 (c. 21) , **ss. 30(5)(c)** , 82(2)(b)
- F13** Words in s. 45 omitted (15.1.2012) by virtue of Education Act 2011 (c. 21) , **ss. 30(6)** , 82(2)(b)

VALID FROM 01/04/2010

*Boarding accommodation: persons subject to learning difficulty assessment*

**46 Boarding accommodation: persons subject to learning difficulty assessment**

After section 514 of the Education Act 1996 (c. 56) insert—

**“514A Provision of boarding accommodation for persons subject to learning difficulty assessment**

- (1) A local education authority in England may secure the provision of boarding accommodation in connection with the provision of education or training for a person in their area who is—
  - (a) over compulsory school age but under 25, and
  - (b) subject to learning difficulty assessment.
- (2) A local education authority may secure the provision of boarding accommodation under subsection (1) either within or outside their area.

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(3) For the purposes of subsection (1) it is immaterial who provides, or secures the provision of, the education or training.

(4) In this section “education” and “training” have the same meanings as in section 15ZA.”

VALID FROM 01/04/2010

*Work experience*

**47 Work experience for persons over compulsory school age**

After section 560 of the Education Act 1996 insert—

**“560A Work experience for persons over compulsory school age:  
England**

- (1) A local education authority in England may secure the provision of work experience for persons in their area—
- (a) who are over compulsory school age but under 19, or
  - (b) who are aged 19 or over but under 25 and are subject to learning difficulty assessment.
- (2) A local education authority in England must—
- (a) encourage participation in work experience by persons in their area who are within subsection (1)(a) or (b);
  - (b) encourage employers to participate in the provision of work experience for such persons.”

VALID FROM 01/09/2010

*Persons detained in youth accommodation*

**48 Provision of education for persons subject to youth detention**

After section 18 of the Education Act 1996 insert—

**“18A Provision of education for persons subject to youth detention**

- (1) A [F<sup>3</sup>local authority] must secure that—
- (a) enough suitable education is provided to meet the reasonable needs of children subject to youth detention in their area;
  - (b) enough suitable education and training is provided to meet the reasonable needs of persons who are—
    - (i) over compulsory school age but under 19, and
    - (ii) subject to youth detention in their area.



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- (2) In deciding for the purposes of subsection (1) whether education or training is suitable to meet persons' reasonable needs, a [F3]local authority] must (in particular) have regard to—
- (a) the persons' ages, abilities and aptitudes;
  - (b) any special educational needs or learning difficulties (within the meaning of section 15ZA(6) and (7)) the persons may have;
  - (c) the desirability of enabling persons to complete programmes of study or training which they have begun;
  - (d) any relevant curriculum and the desirability that education received by persons subject to youth detention should be comparable with education which they could be expected to receive if they were attending a school or institution implementing a relevant curriculum;
  - (e) the desirability of the core entitlement and the additional entitlement being satisfied in relation to persons over compulsory school age but under 19 who have elected for them.
- (3) In subsection (2)(d), “relevant curriculum” means—
- (a) in relation to a [F3]local authority] in England, the National Curriculum for England established under section 87 of the Education Act 2002 as subsisting for the time being;
  - (b) in relation to a [F3]local authority] in Wales—
    - (i) the National Curriculum for Wales established under section 108 of that Act as subsisting for the time being, or
    - (ii) any local curriculum formed by the authority under section 116A of the Education Act 2002 (formation of local curricula for pupils in Key Stage 4) or for their area under section 33A of the Learning and Skills Act 2000 (formation of local curricula for students aged 16 to 18).
- (4) Sections 17B to 17D apply for the purposes of subsection (2)(e) as they apply for the purposes of section 17A.
- (5) Any arrangements made by a [F3]local authority] under subsection (1) for the provision by another person (the “learning provider”) of education or training must require the learning provider, in making any determination as to the education or training to be provided for a particular person (“P”), to have regard to any information within subsection (6).
- (6) The information within this subsection is—
- (a) information provided under section 562F by a [F3]local authority] as to the level of P's literacy and numeracy skills;
  - (b) any other information provided under section 562F by P's home authority (within the meaning of Chapter 5A of Part 10) for the purpose of assisting a determination such as is mentioned in subsection (5).
- (7) In performing the duty imposed by subsection (1), a [F3]local authority] must have regard to any guidance issued—
- (a) in the case of a [F3]local authority] in England, by the Secretary of State;
  - (b) in the case of a [F3]local authority] in Wales, by the Welsh Ministers.

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- (8) For the purposes of subsection (1), a person is subject to youth detention in the area of a [F3]local authority] if—
- (a) subject to a detention order, and
  - (b) detained in relevant youth accommodation in the area of the authority.”

#### Textual Amendments

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(2)**

#### 49 Persons detained in youth accommodation: application of provisions

- (1) Section 562 of the Education Act 1996 (c. 56) (Act not to apply to persons detained under order of a court) is amended as follows.

- (2) In subsection (1)—

- (a) for “detained in pursuance of an order made by a court or of an order of recall made by the Secretary of State” substitute “ subject to a detention order and is detained in accommodation that is not relevant youth accommodation ”, and
- (b) for “a person who is detained in pursuance of such an order” substitute “ such a person ”.

- (3) After that subsection insert—

“(1A) For the purposes of this Act—

- (a) a person is subject to a detention order if detained in pursuance of—
  - (i) an order made by a court, or
  - (ii) an order of recall made by the Secretary of State, and
- (b) relevant youth accommodation is accommodation which—
  - (i) is youth detention accommodation (within the meaning given by section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000), and
  - (ii) is not in a young offender institution, or part of such an institution, that is used wholly or mainly for the detention of persons aged 18 and over.”

- (4) In subsection (2), for “subsection (1)” substitute “ this section ”.

- (5) After that subsection add—

“(3) A child or young person who is being kept in accommodation provided for the purpose of restricting liberty is not to be regarded for the purposes of this section as detained in pursuance of an order made by a court by reason of the fact that a court has authorised the person to be kept in such accommodation under section 25(4) of the Children Act 1989 (use of accommodation for restricting liberty).”

- (6) In the title, after “apply to” insert “ certain ”.

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## **50 Persons detained in youth accommodation: further provision**

After section 562 of the Education Act 1996 (c. 56) insert—

“**CHAPTER 5** PERSONS DETAINED IN YOUTH ACCOMMODATION Provisions applying to detained persons

### **562A Application of Act to detained persons**

- (1) In its application in relation to detained persons, this Act has effect subject to modifications prescribed by regulations made by the appropriate national authority.
- (2) The power conferred by subsection (1) may not be exercised to modify the application of a provision of this Act if—
  - (a) the provision makes special provision in relation to detained persons, or a description of detained persons,
  - (b) the application of the provision in relation to detained persons, or a description of detained persons, is excluded by provision made by this Act, or
  - (c) the provision has effect in relation to detained persons, or a description of detained persons, subject to modifications made by this Act.
- (3) References in this Chapter to a detained person are to a child or young person who is—
  - (a) subject to a detention order, and
  - (b) detained in relevant youth accommodation;
 and, in provisions applying on a person's release, also include references to a person who, immediately before release, was a detained person.

### **562B Duty to take steps to promote fulfilment of potential**

- (1) Subsection (2) applies in relation to a detained person who is not a looked after child.
- (2) The home authority must—
  - (a) during the period of detention in relevant youth accommodation, and
  - (b) on the person's release from detention in relevant youth accommodation,
 take such steps as they consider appropriate to promote the person's fulfilment of his or her learning potential.
- (3) Those steps must include, where it appears to the home authority appropriate for them to do so, making arrangements for the provision, on the person's release from detention—
  - (a) of education, or
  - (b) in the case of a person who is over compulsory school age, of education or training.

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- (4) Where the host authority make any determination as to the education or training to be provided for a detained person, the authority must have regard to—
- (a) any information provided under section 562F by a [<sup>F3</sup>local authority] as to the level of the person's literacy and numeracy skills;
  - (b) any other information provided by the home authority under section 562F for the purpose of assisting any such determination.

#### **562C Detained persons with special educational needs**

- (1) This section applies where, immediately before the beginning of the detention, a [<sup>F3</sup>local authority] were maintaining a statement under section 324 for a detained person.
- (2) The authority must keep the statement while the person is detained in relevant youth accommodation.
- (3) The host authority must use best endeavours to secure that appropriate special educational provision is made for the detained person while the person is detained in relevant youth accommodation.
- (4) For the purposes of subsection (3), appropriate special educational provision is—
  - (a) the special educational provision that, immediately before the beginning of the detention, was specified in the statement,
  - (b) educational provision corresponding as closely as practicable to the special educational provision so specified, or
  - (c) if it appears to the host authority that the special educational provision so specified is no longer appropriate for the person, such special educational provision as reasonably appears to the host authority to be appropriate for the person.

#### **562D Appropriate special educational provision: arrangements between [<sup>F14</sup>local authorities]**

- (1) This section applies where special educational provision is secured for a person in circumstances where section 562C applies.
- (2) A [<sup>F3</sup>local authority] may supply goods and services to—
  - (a) the host authority, or
  - (b) any other person making the special educational provision in question.
- (3) Goods and services may be supplied under subsection (2) only for the purpose of assisting the making or securing of that special educational provision.

#### **562E Literacy and numeracy assessments**

- (1) This section applies in relation to a detained person who is detained in particular relevant youth accommodation.

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- (2) The host authority must arrange for the level of the detained person's literacy and numeracy skills to be assessed as soon as reasonably practicable after the beginning of the period during which the person is detained in that accommodation.
- (3) Subsection (2) does not apply if the authority are satisfied that they have evidence of the current level of the person's literacy and numeracy skills.
- (4) The “current level” of a detained person's literacy and numeracy skills is the level of those skills at the beginning of the period during which the person is detained in the relevant youth accommodation in question.

#### Provision of information relating to detained persons

##### **562F Provision of information about detained persons**

- (1) Any person who has provided education or training for a detained person (whether before or during the period of detention) may provide information relating to the detained person to—
  - (a) the home authority, or
  - (b) the host authority,
 for the purposes of, or in connection with, the provision of education or training for the detained person.
- (2) A [<sup>F3</sup>local authority] must, on a request under subsection (3), as soon as practicable provide to the person making the request such information that they hold relating to a detained person as is requested.
- (3) A request is made under this subsection if it—
  - (a) is made by a person within subsection (4), and
  - (b) asks only for information which the person requires for the purposes of, or in connection with, the provision of education or training for the detained person (including education or training to be provided after the detained person's release from detention).
- (4) Those persons are—
  - (a) any other [<sup>F3</sup>local authority];
  - (b) a youth offending team established under section 39 of the Crime and Disorder Act 1998;
  - (c) the person in charge of any place at which the detained person is detained or is expected to be detained;
  - (d) any person providing or proposing to provide education or training for the detained person.
- (5) The Welsh Ministers must, on a request by the home authority or the host authority, provide a copy of any relevant assessment report for the purposes of the exercise of any function of that authority under section 18A or this Chapter.
- (6) In subsection (5), “relevant assessment report” means a report of an assessment of a detained person conducted (whether before or during the period of detention)—
  - (a) under section 140 of the Learning and Skills Act 2000, and

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(b) by virtue of arrangements made by the Welsh Ministers.

- (7) Subsection (8) applies in relation to a detained person if it appears to the host authority that the person is to be released from detention in relevant youth accommodation.
- (8) The host authority must provide to the home authority any information they hold which—
- (a) relates to the detained person, and
  - (b) may be relevant for the purposes of, or in connection with, the provision of education or training for the detained person after the release.
- (9) The information required to be provided under subsection (8) must be provided at such time as the host authority think reasonable for the purpose of enabling education or training to be provided for the detained person after the release.
- (10) Nothing in subsections (7) to (9) requires the host authority to provide to the home authority information which it appears to the host authority that the home authority already have.
- (11) In this section any reference to the host authority, in relation to a detained person, includes a reference to any [<sup>F3</sup>local authority] in whose area the person is expected to be detained.

#### **562G Information to be provided where statement of special educational needs previously maintained**

- (1) This section applies in relation to a detained person if, immediately before the beginning of the detention, a [<sup>F3</sup>local authority] were maintaining a statement under section 324 for the person.
- (2) Subsections (3) and (4) apply where the home authority become aware (whether by notice under section 39A(2) of the Crime and Disorder Act 1998 (detention of child or young person: [<sup>F14</sup>local authorities] to be notified) or otherwise)—
- (a) that the person—
    - (i) has become subject to a detention order, and
    - (ii) is detained in relevant youth accommodation, or
  - (b) that the person has been transferred from one place of accommodation to another place of accommodation which is relevant youth accommodation.
- (3) If, immediately before the beginning of the detention, the home authority were maintaining the statement, they must send a copy of the statement to the host authority.
- (4) If the home authority are or become aware that, immediately before the beginning of the detention, another [<sup>F3</sup>local authority] were maintaining a statement for the person under section 324, they must notify the host authority—
- (a) of that fact, and
  - (b) of the identity of that other [<sup>F3</sup>local authority].

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009 is up to date with all changes known to be in force on or before 12 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) The [<sup>F3</sup>local authority] who, immediately before the beginning of the detention, were maintaining the statement must, on a request by the host authority, send a copy of the statement to the host authority.
- (6) Subsections (7) and (8) apply where the person is released from detention in relevant youth accommodation.
- (7) The host authority must notify the following of the person's release—
  - (a) the home authority, and
  - (b) if different, the authority who, immediately before the beginning of the detention, were maintaining the statement under section 324.
- (8) If the home authority are not the authority who, immediately before the beginning of the detention, were maintaining the statement, the host authority must also notify the home authority—
  - (a) of the fact that immediately before the beginning of the detention a statement was being maintained for the person by a [<sup>F3</sup>local authority] under section 324, and
  - (b) of the identity of that authority.
- (9) Nothing in this section requires any [<sup>F3</sup>local authority] to notify another authority of any matter of which the other authority are already aware, or to send a copy of any statement to another authority who already have a copy of it.

#### **562H Release of detained person appearing to host authority to require assessment**

- (1) This section applies in relation to the release from detention in relevant youth accommodation of a detained person in relation to whom section 562G does not apply.
- (2) Subsection (3) applies where it appears to the host authority that the detained person will, on release, be a child within the meaning of Part 4.
- (3) If the host authority are of the opinion that the person has, or may have, special educational needs, they must, on the person's release, notify the home authority of their opinion.
- (4) Subsections (5) and (6) apply where, on release, the detained person—
  - (a) will be over compulsory school age, or
  - (b) will cease to be of compulsory school age within one year.
- (5) If—
  - (a) the host authority are of the opinion that the person has, or may have, a learning difficulty (within the meaning of section 15ZA (6) and (7)), and
  - (b) the home authority are a [<sup>F3</sup>local authority] in England,
 the host authority must, on the person's release, notify the home authority of their opinion.
- (6) If—

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- (a) the host authority are of the opinion that the person has, or may have, a learning difficulty (within the meaning of section 41 of the Learning and Skills Act 2000 (assessments relating to learning difficulties: Wales)) and
  - (b) the home authority are a <sup>F3</sup>local authority] in Wales,
- the host authority must, on the person's release, notify the Welsh Ministers of their opinion.

Supplementary

### 562I Guidance

In performing their functions under this Chapter a <sup>F3</sup>local authority] must have regard to any guidance issued by the appropriate national authority.

### 562J Interpretation of Chapter

(1) In this Chapter—

“the appropriate national authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;

“beginning of the detention”, in relation to a person detained in relevant youth accommodation, means—

- (a) the beginning of the period of detention in such accommodation, or
- (b) where that period is part of a continuous period, comprising periods of detention in relevant youth accommodation and in other accommodation, the beginning of that continuous period;

“detained person” has the meaning given by section 562A(3);

“the home authority”—

- (a) in relation to a child or young person who immediately before the beginning of the detention was, or at any time since then has been, a looked after child, means the <sup>F3</sup>local authority] who are <sup>F15</sup>... looking after, or who have most recently been looking after, the person;
- (b) in relation to any other child or young person, means the <sup>F3</sup>local authority] in whose area the person is ordinarily resident;

“the host authority”, in relation to a child or young person detained in relevant youth accommodation, means the <sup>F3</sup>local authority] in whose area the child or young person is detained;

“looked after child” means a person who, for the purposes of the Children Act 1989 is a child looked after by a local authority; and references to the local authority looking after the person are to be read accordingly;

“young person” includes a person aged 18.



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- (2) For the purposes of the definition of “beginning of the detention” in subsection (1), it is immaterial whether or not a period of detention is pursuant to a single order.
- (3) In determining for the purpose of subsection (1) where a child or young person is ordinarily resident, any period when the person is subject to a detention order is to be disregarded.
- (4) Regulations made by the appropriate national authority may make further provision for determining where a person is ordinarily resident for the purpose of that subsection.”

#### Textual Amendments

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(2)**
- F14** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(3)**
- F15** Words in s. 50 repealed (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , art. 1, Sch. 2 para. 16(4), **Sch. 3 Pt. 1**

## 51 Detention of child or young person: [<sup>F14</sup>local authorities] to be notified

After section 39 of the Crime and Disorder Act 1998 (c. 37) insert—

### “39A Detention of child or young person: [<sup>F14</sup>local authorities] to be notified

- (1) Subsection (2) applies where a youth offending team becomes aware that—
  - (a) a child or young person has become subject to a detention order and is detained in relevant youth accommodation, or
  - (b) a child or young person who is subject to a detention order has been transferred from one place of accommodation to another which is relevant youth accommodation.
- (2) The youth offending team must as soon as practicable notify—
  - (a) the home [<sup>F3</sup>local authority], and
  - (b) the host [<sup>F3</sup>local authority],
 of the place where the child or young person is detained.
- (3) Subsection (4) applies where a youth offending team becomes aware that a person has been released having immediately before release been—
  - (a) subject to a detention order, and
  - (b) detained in relevant youth accommodation.
- (4) The youth offending team must as soon as practicable notify the following authorities of the release—
  - (a) the home [<sup>F3</sup>local authority];
  - (b) the host [<sup>F3</sup>local authority];

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**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009 is up to date with all changes known to be in force on or before 12 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) any other [<sup>F3</sup>local authority] in whose area the youth offending team expects the person to live on release.
- (5) Nothing in this section requires a youth offending team to notify a [<sup>F14</sup>local authority] of any matter of which the authority is already aware.
- (6) In this section—
- “home [<sup>F3</sup>local authority]”, in relation to a child or young person, means the [<sup>F3</sup>local authority] which is the home authority in relation to that person within the meaning of Chapter 5A of Part 10 of the Education Act 1996 (persons detained in youth accommodation);
- “host [<sup>F3</sup>local authority]”, in relation to a child or young person who is detained in relevant youth accommodation, means the [<sup>F3</sup>local authority] for the area in which that person is detained;
- [<sup>F16</sup> “local authority” has the meaning given by section 579(1) of the Education Act 1996; ]
- “young person” includes a person who is aged 18;
- and references in this section to a person subject to a detention order and to relevant youth accommodation have the same meanings as they have in the Education Act 1996 (see section 562(1A) of that Act).”

#### Textual Amendments

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(2)**
- F14** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 16(3)**
- F16** Words in s. 51 inserted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, **Sch. 2 para. 16(5)**

## 52 Release from detention of child or young person with special educational needs

- (1) The Education Act 1996 (c. 56) is amended as follows.
- (2) After section 312 insert—

### “312A Children subject to detention

- (1) No provision of, or made under, this Part applies in relation to a child who is subject to a detention order and detained in relevant youth accommodation.
- (2) The following provisions of this section apply where a child who has been subject to a detention order is released having, immediately before release, been detained in relevant youth accommodation.
- (3) Subject to subsection (6), a statement which was maintained for the child by a [<sup>F3</sup>local authority] under section 324 immediately before the beginning of the detention is, from the child's release, to be treated as being maintained by that authority under section 324.
- (4) In subsection (3) “the beginning of the detention” means—

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**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009 is up to date with all changes known to be in force on or before 12 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) the beginning of the period of detention in relevant youth accommodation, or
  - (b) where that period is part of a continuous period, comprising periods of detention in relevant youth accommodation and in other accommodation, the beginning of that continuous period.
- (5) For the purposes of subsection (4), it is immaterial whether or not a period of detention is pursuant to a single order.
- (6) Where, on the child's release, a [<sup>F3</sup>local authority] (“the new authority”) other than the authority mentioned in subsection (3) (“the old authority”) becomes responsible for the child for the purposes of this Part—
- (a) the old authority must transfer the statement to the new authority, and
  - (b) from the child's release, the statement is to be treated as being maintained by the new authority under section 324.”
- (3) In section 328(5) (reviews of educational needs), at the end of paragraph (a) (but before “and”) insert—
- “(aa) where the child concerned—
    - (i) has been subject to a detention order, and
    - (ii) immediately before release was detained in relevant youth accommodation,
 on the child's release from detention,”.

#### Textual Amendments

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(2)**

### *Transport in England*

VALID FROM 01/04/2010

#### **53 Provision of transport etc for persons of sixth form age: duty to have regard to section 15ZA duty**

In section 509AB(3) of the Education Act 1996 (c. 56) (provision of transport etc for persons of sixth form age in England: matters to which LEAs must have regard) after paragraph (b) insert—

- “(ba) what they are required to do under section 15ZA(1) in relation to persons of sixth form age,”.

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**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009 is up to date with all changes known to be in force on or before 12 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 01/04/2010

#### 54 Transport policy statements for persons of sixth form age: consultation

In section 509AB(6) of the Education Act 1996 (people to be consulted when preparing transport policy statements for persons of sixth form age in England), in paragraph (c), before “and” insert—

“(ca) persons in the local education authority's area who will be of sixth form age when the statement has effect, and their parents.”

#### 55 Transport policy statements for persons of sixth form age: content and publication

(1) In section 509AB of the Education Act 1996 (provision about transport policy statements for persons of sixth form age in England), after subsection (7) insert—

“(7A) In preparing and publishing a statement under section 509AA, a local education authority must have regard (among other things) to the need to—

- (a) include in the statement sufficient information about the matters that the statement must specify, and
- (b) publish the statement in time,

to enable persons who will be of sixth form age when the statement has effect and their parents to take reasonable account of those matters when choosing between different establishments at which education or training is provided.”

(2) In section 509AA(10) of that Act (time by which transport policy statements for persons of sixth form age in England must be published) for “by substituting a different date for 31st May” substitute “to change the time by which the statement must be published”.

#### Commencement Information

II S. 55 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch. (with art. 3)

#### 56 Complaints about transport arrangements etc for persons of sixth form age

(1) The Education Act 1996 is amended as follows.

(2) After section 509AD (local education authorities in England: duty to have regard to religion or belief in exercise of travel functions) insert—

##### “509AE Complaints about transport arrangements etc for persons of sixth form age in England

- (1) A local education authority may revise a statement prepared under section 509AA to change the arrangements specified under subsection (2) or (3) of that section if, as a result of a sixth form transport complaint, they have come to consider the change necessary for the purpose of the arrangements specified under the subsection in question.

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**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009 is up to date with all changes known to be in force on or before 12 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (2) A local education authority must revise a statement prepared under section 509AA to change the arrangements specified under subsection (2) or (3) of that section if, as a result of a sixth form transport complaint, the Secretary of State has directed them to do so.
- (3) An authority that revise a statement under subsection (1) or (2) must publish the revised statement and a description of the revision as soon as practicable.
- (4) The Secretary of State need not consider whether to exercise any power under sections 496 to 497A (powers to prevent unreasonable exercise of functions, etc), section 509AA(9) (power to require LEA to make additional transport arrangements), or subsection (2) of this section in response to a matter that is, or could have been, the subject of a sixth form transport complaint made to him or her unless satisfied that—
- (a) the matter has been brought to the notice of the local education authority concerned, and
  - (b) the authority have had a reasonable opportunity to investigate the matter and respond.
- (5) In this section “sixth form transport complaint” means a complaint that is—
- (a) about a local education authority's exercise of, or failure to exercise, a function under sections 509AA to 509AD in relation to persons of sixth form age, and
  - (b) made by a person who is, or will be, a person of sixth form age when the matter complained of has effect, or by a parent of such a person, and “sixth form age” is to be construed in accordance with section 509AC(1).
- (6) For the purposes of sections 509AA(8) and (9), 509AB(1) to (5), 509AC and 509AD, the revision of a statement under this section is to be treated as the preparation of a statement under section 509AA.
- (7) Where a local education authority have published in a single document a statement prepared under section 508G and a statement prepared under 509AA, the requirement to publish a revised statement under subsection (3) is to be treated as a requirement to publish a version of the document that includes the revised statement.”
- (3) In section 509AA (provision of transport etc for persons of sixth form age), at the end insert—
- “(11) Subsection (9) is subject to section 509AE (complaints about transport arrangements etc for persons of sixth form age in England).”

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#### Commencement Information

**I2** S. 56 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch. (with art. 3)

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/04/2010

## 57 Local education authorities in England: provision of transport etc for adult learners

- (1) The Education Act 1996 (c. 56) is amended as follows.
- (2) After section 508E (LEAs in England: school travel schemes) insert—

### “508F LEAs in England: provision of transport etc for adult learners

- (1) A local education authority in England must make such arrangements for the provision of transport and otherwise as they consider necessary, or as the Secretary of State may direct, for the purposes mentioned in subsections (2) and (3).
- (2) The first purpose is to facilitate the attendance of adults receiving education at institutions—
  - (a) maintained or assisted by the authority and providing further or higher education (or both), or
  - (b) within the further education sector.
- (3) The second purpose is to facilitate the attendance of relevant young adults receiving education or training at institutions outside both the further and higher education sectors, but only in cases where the local education authority have secured for the adults in question—
  - (a) the provision of education or training at the institution in question, and
  - (b) the provision of boarding accommodation under section 514A.
- (4) Any transport provided under subsection (1) must be provided free of charge.
- (5) In considering what arrangements it is necessary to make under subsection (1) in relation to relevant young adults, a local education authority must have regard to what they are required to do under section 15ZA(1) in relation to those persons.
- (6) In considering whether they are required by subsection (1) to make arrangements in relation to a particular adult, a local education authority must have regard (among other things) to the age of the adult and the nature of the route, or alternative routes, which the adult could reasonably be expected to take.
- (7) Arrangements made under subsection (1) by virtue of subsection (3) to facilitate full-time education or training at an institution outside both the further and higher education sectors must be no less favourable than the arrangements made for relevant young adults of the same age for whom the authority secure the provision of education at another institution.
- (8) A local education authority in England may pay all or part of the reasonable travelling expenses of an adult—
  - (a) receiving education or training at an institution mentioned in subsection (2) or (3), and

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(b) for whose transport no arrangements are made under subsection (1).

(9) In this section—

“adult” means a person who is neither a child nor a person of sixth form age,

“sixth form age” is to be construed in accordance with section 509AC(1), and

“relevant young adult” means an adult who is aged under 25 and is subject to learning difficulty assessment.

### **508G LEAs in England: transport policy statements etc for young adults subject to learning difficulty assessment**

(1) A local education authority in England making arrangements, or proposing to pay travelling expenses, under section 508F in relation to relevant young adults must consult—

(a) any other local education authority that they consider it appropriate to consult,

(b) governing bodies of institutions within the further education sector in the authority's area,

(c) persons in the local education authority's area who will be relevant young adults when the arrangements or payments have effect, and their parents,

(d) the Secretary of State, and

(e) any other person specified by the Secretary of State.

(2) The authority must prepare for each academic year a transport policy statement complying with the following requirements.

(3) The statement must specify any transport or other arrangements, and any payment of travelling expenses, made or to be made in relation to the year under section 508F in relation to relevant young adults.

(4) The statement must also specify any travel concessions (within the meaning of Part 5 of the Transport Act 1985) which are to be provided under any scheme established under section 93 of that Act to relevant young adults receiving education or training at an institution mentioned in subsection (2) or (3) of section 508F.

(5) The authority must publish the statement by the end of May in the year in which the relevant academic year begins.

(6) In preparing and publishing the statement, the authority must have regard (among other things) to the need to—

(a) include in the statement sufficient information about the matters that the statement must specify, and

(b) publish the statement in time,

to enable relevant young adults and their parents to take reasonable account of those matters when choosing between different institutions at which education or training is provided.

(7) The publication of a statement under this section in relation to an academic year does not prevent an authority from—

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- (a) making additional arrangements or payments under section 508F in relation to the academic year, or
  - (b) providing additional travel concessions in relation to the academic year.
- (8) The Secretary of State may amend subsection (5) by order to change the time by which the statement must be published.
- (9) In this section—
- “academic year” has the meaning given in section 509AC,
  - “governing body” has the meaning given in section 509AC, and
  - “relevant young adult” has the meaning given in section 508F.

#### **508H Guidance: sections 508F and 508G**

In making arrangements under section 508F(1) and preparing and publishing a statement under section 508G, a local education authority must have regard to any guidance issued by the Secretary of State under this section.

#### **508I Complaints about transport arrangements etc for young adults subject to learning difficulty assessment: England**

- (1) A local education authority may revise a statement prepared under section 508G to change any matter specified under subsection (3) of that section if, as a result of a relevant young adult transport complaint, they have come to consider the change necessary for a purpose mentioned in section 508F(2) or (3).
- (2) A local education authority must revise a statement prepared under section 508G to change any matter specified in subsection (3) of that section if, as a result of a relevant young adult transport complaint, the Secretary of State has directed them to do so.
- (3) An authority that revise a statement under subsection (1) or (2) must publish the revised statement and a description of the revision as soon as practicable.
- (4) The Secretary of State need not consider whether to exercise any power under sections 496 to 497A (powers to prevent unreasonable exercise of functions, etc) or subsection (2) of this section in response to a matter that is, or could have been, the subject of a relevant young adult transport complaint made to him or her unless satisfied that—
  - (a) the matter has been brought to the notice of the local education authority concerned, and
  - (b) the authority have had a reasonable opportunity to investigate the matter and respond.
- (5) In this section “relevant young adult transport complaint” means a complaint that is—
  - (a) about a local education authority's exercise of, or failure to exercise, a function under section 508F or 508G in relation to relevant young adults, and
  - (b) made by a person who is, or will be, a relevant young adult when the matter complained of has effect, or by a parent of such a person,



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and “relevant young adult” has the meaning given in section 508F.

- (6) For the purposes of sections 508G(7) and 508H, the revision of a statement under this section is to be treated as the preparation of a statement under section 508G.
- (7) Where a local education authority have published in a single document a statement prepared under section 509AA and a statement prepared under 508G, the requirement to publish a revised statement under subsection (3) is to be treated as a requirement to publish a version of the document that includes the revised statement.”
- (3) In section 509AD(2) (LEAs in England: duty to have regard to religion or belief in exercise of travel functions) for the entry relating to section 508F substitute—  
“section 508F (LEAs in England: provision of transport etc for adult learners);”.
- (4) Section 509 (provision of transport etc) ceases to have effect.
- (5) Section 81 of the Education and Inspections Act 2006 (c. 40) (LEAs in England: provision of transport etc for certain adult learners) ceases to have effect.

### *Powers in respect of non-maintained schools*

#### **58 Power of LEAs to arrange provision of education at non-maintained schools**

- (1) The following provisions cease to have effect—
- section 128 of the School Standards and Framework Act 1998 (c. 31), and
  - paragraph 64 of Schedule 30 to that Act.
- (2) Accordingly, sections 16 and 18 of the Education Act 1996 (c. 56) (powers of LEAs to assist, and arrange provision of education at, non-maintained schools) continue to have effect as if the provisions mentioned in subsection (1) had never been enacted.

### *General*

#### **59 Minor and consequential amendments**

Schedule 2 contains minor and consequential amendments relating to the provision made by this Part.

#### **Commencement Information**

**I3** [S. 59](#) in force at 12.1.2010 for specified purposes by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/04/2010

## PART 3

### THE YOUNG PEOPLE'S LEARNING AGENCY FOR ENGLAND

#### CHAPTER 1

##### ESTABLISHMENT

#### 60 The Young People's Learning Agency for England

- (1) There is to be a body corporate known as the Young People's Learning Agency for England.
- (2) In this Part that body is referred to as “the YPLA”.
- (3) Except as provided for in sections 68 to 70, the YPLA is to perform its functions in relation to England only.
- (4) Schedule 3 makes further provision about the YPLA.

#### CHAPTER 2

##### MAIN FUNCTIONS

##### *Funding*

#### 61 Provision of financial resources

- (1) The YPLA must secure the provision of financial resources to—
  - (a) persons providing or proposing to provide suitable education or training to persons—
    - (i) who are over compulsory school age but under 19, or
    - (ii) who are aged 19 or over but under 25 and are subject to learning difficulty assessment;
  - (b) persons providing or proposing to provide suitable education to children subject to youth detention;
  - (c) local education authorities, for the purposes of their functions in relation to education or training within paragraph (a) or (b).
- (2) The YPLA must also secure the provision of financial resources in accordance with any directions given to it by the Secretary of State.
- (3) The YPLA may secure the provision of financial resources to—
  - (a) persons providing or proposing to provide education or training to persons who are of or under compulsory school age;

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- (b) persons providing or proposing to provide education or training to persons aged 19 or over, in respect of education or training begun by them before reaching the age of 19;
  - (c) local education authorities, for the purposes of their functions in relation to education or training in respect of which the YPLA has power to secure the provision of financial resources under paragraph (a) or (b).
- (4) The YPLA may also secure the provision of financial resources—
- (a) to or in respect of persons (of any age) for purposes related to enabling, facilitating or encouraging their participation in education or training;
  - (b) to persons providing or proposing to provide goods or services in connection with the provision by others of education or training within subsection (1) (a) or (b) or (3)(a) or (b);
  - (c) to persons undertaking or proposing to undertake research relating to education or training;
  - (d) to persons providing or proposing to provide work experience for persons receiving education;
  - (e) to persons carrying out means tests under arrangements made under section 64;
  - (f) to persons providing or proposing to provide information, advice or guidance about education or training or connected matters (including employment).
- (5) In performing its functions under this section the YPLA must make the best use of its resources.
- (6) The YPLA may secure the provision of financial resources under this section—
- (a) by providing the resources;
  - (b) by making arrangements for the provision of resources by another person;
  - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the YPLA).
- (7) The YPLA may under subsection (4)(a) secure the provision of financial resources by reference to—
- (a) any fees or charges payable by the person receiving or proposing to receive the education or training, or
  - (b) any other matter (such as transport or childcare).
- (8) The reference in subsection (1)(a) to persons—
- (a) who are over compulsory school age but under 19, or
  - (b) who are aged 19 or over but under 25 and are subject to learning difficulty assessment,
- does not include persons who are subject to adult detention within the meaning given in section 121(4).
- (9) Directions given under subsection (2) may not concern the provision of financial resources to or in respect of a particular person or persons.

## 62 Financial resources: conditions

- (1) Financial resources provided by the YPLA may be provided subject to conditions.
- (2) The conditions may include—

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- (a) information conditions;
- (b) operational conditions;
- (c) repayment conditions.

(3) Information conditions are conditions which—

- (a) require the YPLA, or a person designated by the YPLA, to be given access to a person's accounts and documents and to be given rights in relation to a person's computers and associated apparatus and material, or
- (b) require a person to whom financial resources are provided to give to the YPLA such information as the YPLA may request for the purpose of carrying out its functions.

(4) Operational conditions are conditions which require a person providing or proposing to provide education or training (“the provider”) to make arrangements providing for all or any of the matters mentioned in subsection (5).

(5) The matters are the following—

- (a) the charging of fees by the provider by reference to specified criteria;
- (b) the making of awards by the provider by reference to specified criteria;
- (c) the recovery by the provider of amounts from persons receiving education or training or from employers (or from both);
- (d) the determination of amounts by reference to specified criteria where provision is made under paragraph (c);
- (e) the operation of specified exemptions where provision is made under paragraph (c);
- (f) the making by the provider of provision specified in a report of an assessment under section 139A or 140 of the Learning and Skills Act 2000 (c. 21) (assessments relating to learning difficulties).

(6) Repayment conditions are conditions which—

- (a) enable the YPLA to require the repayment (in whole or part) of sums paid by the YPLA if any of the conditions subject to which the sums were paid is not complied with;
- (b) require the payment of interest in respect of any period in which a sum due to the YPLA in accordance with any condition is unpaid.

### **63 Performance assessments**

- (1) The YPLA may adopt or develop schemes for the assessment of the performance of persons in providing education or training funded (directly or indirectly) by the YPLA in the exercise of its functions under section 61.
- (2) The YPLA may take the assessments into account in deciding how to exercise its functions under section 61.

### **64 Means tests**

- (1) The YPLA may—
  - (a) carry out means tests;
  - (b) arrange for other persons to carry out means tests.

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- (2) The YPLA may take the results of the tests into account in exercising its functions under section 61(4)(a).

#### **65 Prohibition on charging**

- (1) The YPLA must exercise its funding functions so as to secure (so far as practicable) that no charge is made in relation to the provision of relevant education or training funded by it.
- (2) The YPLA's funding functions are its functions under sections 61 and 62.
- (3) “Relevant education or training” means full-time or part-time education or training suitable to the requirements of persons over compulsory school age but under 19, other than education to be provided at a school maintained by a local education authority.
- (4) Education or training is funded by the YPLA for the purposes of this section if the YPLA has secured the provision of financial resources under section 61 in respect of it.
- (5) Regulations may specify charges or descriptions of charges which are, or are not, to be treated as made in relation to the provision of education or training for the purposes of this section.

#### *Securing provision of education and training*

#### **66 Securing provision of education and training**

- (1) The YPLA may secure the provision of suitable education or training for persons—
- (a) who are over compulsory school age but under 19, or
  - (b) who are aged 19 or over but under 25 and are subject to learning difficulty assessment.
- (2) Subsection (1) does not apply to persons who are subject to adult detention within the meaning given in section 121(4).
- (3) The YPLA may secure the provision of suitable education for children subject to youth detention.
- (4) In exercising its powers under subsection (1) in relation to persons who are within section 15ZA(1)(a) or (b) of the Education Act 1996 (c. 56), the YPLA must have regard to things done by local education authorities in the performance of their duties under section 15ZA(1) of that Act.
- (5) In exercising its powers under this section in relation to persons subject to youth detention, the YPLA must have regard to things done by local education authorities in the performance of their duties under section 18A(1) of the Education Act 1996.

#### **67 Intervention for purpose of securing provision of education and training**

- (1) This section applies if the YPLA is satisfied that a local education authority is failing, or is likely to fail, to perform—

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- (a) its duty under section 15ZA(1) of the Education Act 1996 (duty to secure provision of enough suitable education and training for persons over compulsory school age), or
  - (b) its duty under section 18A(1) of that Act (duty to secure provision of enough suitable education and training for persons subject to youth detention).
- (2) The YPLA may give directions to the authority for the purpose of securing the provision of education and training to which the duty in question relates.
  - (3) A direction given under this section may include provision requiring an authority to permit action of a specified description in relation to any such education or training to be taken by the YPLA or another person.
  - (4) The YPLA may give a direction under this section only with the approval of the Secretary of State.

*Provision of services and assistance*

**68 Provision of services**

- (1) The YPLA may make arrangements with a permitted recipient for the provision by the YPLA of services that are required by the permitted recipient in connection with the exercise of the recipient's functions relating to education or training.
- (2) The services that may be provided under arrangements made under subsection (1) include—
  - (a) providing accommodation and other facilities to a permitted recipient or managing such facilities on behalf of a permitted recipient;
  - (b) procuring, or assisting in procuring, goods and services for use by a permitted recipient.
- (3) The terms and conditions upon which the arrangements are made may include provision for making payments to the YPLA in respect of expenditure incurred by the YPLA in performing any function under the arrangements.
- (4) In this section “permitted recipient” means—
  - (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Scottish Ministers;
  - (d) a Northern Ireland department;
  - (e) the Chief Executive of Skills Funding;
  - (f) any other person, wholly or partly funded from public funds, who has functions relating to education or training;
  - (g) any other person specified, or of a description specified, by order made by the appropriate national authority for the purposes of this section.
- (5) Before making arrangements under which it may provide services to a permitted recipient who falls within any of paragraphs (b) to (g) of subsection (4) in connection with the exercise of the recipient's functions relating to education or training provided in Wales, Scotland or Northern Ireland, the YPLA must obtain the consent of the Secretary of State.

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- (6) Before making arrangements under which it may provide services to a permitted recipient who falls within paragraph (a), (e), (f) or (g) of subsection (4) in connection with the exercise of the recipient's functions relating to education or training provided in Wales, Scotland or Northern Ireland, the YPLA must obtain—
- (a) in relation to education or training provided in Wales, the consent of the Welsh Ministers;
  - (b) in relation to education or training provided in Scotland, the consent of the Scottish Ministers;
  - (c) in relation to education or training provided in Northern Ireland, the consent of the Minister for Employment and Learning in Northern Ireland.
- (7) Consent may be given under subsection (5) or (6) in relation to particular arrangements or arrangements of a particular description.
- (8) “The appropriate national authority” means—
- (a) in relation to a person exercising functions relating only to education or training provided in Wales, the Welsh Ministers;
  - (b) in relation to a person exercising functions relating only to education or training provided in Scotland, the Scottish Ministers;
  - (c) in relation to a person exercising functions relating only to education or training provided in Northern Ireland, the Department for Employment and Learning in Northern Ireland;
  - (d) in any other case, the Secretary of State.

## **69 Assistance with respect to employment and training**

- (1) The YPLA may take part in arrangements made by the Secretary of State, the Welsh Ministers or the Scottish Ministers under section 2 of the Employment and Training Act 1973 (c. 50) (arrangements for assisting persons to select, train for, obtain and retain employment).
- (2) Before making such arrangements in relation to Wales or Scotland in which the YPLA is to take part, the Secretary of State must obtain the consent of the Welsh Ministers or (as the case may be) the Scottish Ministers to the arrangements.
- (3) Before making such arrangements in which the YPLA is to take part, the Welsh Ministers or the Scottish Ministers must obtain the consent of the Secretary of State to the arrangements.

## **70 Assistance with respect to employment and training: Northern Ireland**

- (1) The YPLA may take part in any arrangements made by the Department for Employment and Learning in Northern Ireland under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.)) (arrangements for assisting persons to select, train for, obtain and retain employment).
- (2) Before making such arrangements in which the YPLA is to take part, the Department must obtain the consent of the Secretary of State to the arrangements.

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### Miscellaneous

#### 71 Research, information and advice

- (1) The YPLA may carry out programmes of research and development connected with any matter relevant to any of its functions.
- (2) If requested to do so by the Secretary of State, the YPLA must provide the Secretary of State with information or advice on such matters relating to any of its functions as may be specified in the request.
- (3) The YPLA may provide the Secretary of State with other information or advice on any matter in relation to which the YPLA has a function.
- (4) The YPLA may provide any person designated by the Secretary of State with information about any matter in relation to which the YPLA has a function.
- (5) The YPLA must establish systems for collecting information designed to secure that decisions of the YPLA with regard to education and training are made on a sound basis.
- (6) The YPLA may secure the provision of facilities and services for providing information, advice or guidance about education or training or connected matters (including employment).

#### 72 Guidance by YPLA

- (1) The YPLA must issue guidance to local education authorities about the performance of their duties under sections 15ZA(1), 15ZB, 15ZC(1)(b) and 18A(1) of the Education Act 1996 (c. 56).
- (2) Local education authorities must have regard to any such guidance in performing those duties.
- (3) Before issuing guidance under subsection (1) the YPLA must consult—
  - (a) local education authorities in England, and
  - (b) such other persons as it thinks appropriate.
- (4) The YPLA may also issue guidance about any other matter in respect of which it has a function.

#### 73 Intervention powers: policy statement

- (1) The YPLA must—
  - (a) prepare a statement of its policy with respect to the exercise of its intervention powers,
  - (b) keep the statement under review, and
  - (c) revise the statement, if it thinks it appropriate in consequence of the review.
- (2) When preparing a statement or revised statement of its policy, the YPLA must—
  - (a) undertake such consultation as it thinks appropriate, and
  - (b) consider any representations made to it about the policy to be set out in the statement.



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- (3) The YPLA must send a copy of the statement or the revised statement to the Secretary of State for approval.
- (4) The YPLA must publish the statement, or revised statement, as soon as practicable after it has been approved by the Secretary of State.
- (5) The YPLA must have regard to the statement, or revised statement, most recently published under subsection (4) in exercising, or deciding whether to exercise, any of its intervention powers.
- (6) The YPLA's intervention powers are its powers under—
  - (a) section 67;
  - (b) section 56H of the Further and Higher Education Act 1992 (c. 13);
  - (c) section 56I of that Act.

#### **74 Power to confer supplementary functions on YPLA**

- (1) The Secretary of State may by order confer supplementary functions on the YPLA.
- (2) A supplementary function is a function which is—
  - (a) exercisable in connection with functions of the Secretary of State, and
  - (b) relevant to the provision of education or training within the YPLA's remit.

### **CHAPTER 3**

#### **YPLA'S FUNCTIONS: SUPPLEMENTARY**

#### **75 Directions by Secretary of State**

- (1) The Secretary of State may give directions to the YPLA containing—
  - (a) objectives which the YPLA should achieve in carrying out its functions,
  - (b) time limits within which the YPLA should achieve the objectives, and
  - (c) provision relating to the management of the YPLA.
- (2) The Secretary of State may give to the YPLA other directions as to the performance of any of its functions if the Secretary of State is satisfied that the YPLA—
  - (a) has failed to discharge a duty imposed by or under any Act, or
  - (b) has acted or is proposing to act unreasonably with respect to the performance of any function conferred by or under any Act.
- (3) The Secretary of State may give directions under subsection (2) despite any provision made by or under any Act making the performance of a function dependent on the YPLA's opinion.
- (4) Directions given under this section with respect to functions conferred on the YPLA by or under section 61 may not concern the provision of financial resources to or in respect of a particular person or persons.

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## 76 Guidance by Secretary of State

- (1) The YPLA must, in performing its functions, have regard to any guidance given by the Secretary of State.
- (2) Guidance under this section may include in particular guidance about—
  - (a) consultation with persons mentioned in subsection (3) in connection with the taking of decisions which affect such persons, and
  - (b) taking advice from such persons or descriptions of persons as may be specified in the guidance.
- (3) The persons are—
  - (a) persons receiving or proposing to receive education or training within the YPLA's remit,
  - (b) employers, or
  - (c) such other persons or descriptions of persons as may be specified in the guidance.
- (4) Guidance under this section about consultation with persons falling within subsection (3)(a) must provide for the views of such persons to be considered in the light of their age and understanding.

## CHAPTER 4

### ACADEMY ARRANGEMENTS

## 77 Academy arrangements

- (1) The Secretary of State may require the YPLA to enter into Academy arrangements with the Secretary of State.
- (2) For the purposes of this Chapter “Academy arrangements” are arrangements under which the YPLA is required to exercise specified Academy functions on the Secretary of State's behalf in accordance with the arrangements.
- (3) An “Academy function” is a function of the Secretary of State relating to or exercisable in connection with—
  - (a) Academies, city technology colleges or city colleges for the technology of the arts generally, or
  - (b) a particular, or particular description of, Academy, city technology college or city college for the technology of the arts.
- (4) But Academy functions do not include—
  - (a) the function of entering into an agreement under section 482(1) of the Education Act 1996 (c. 56), or
  - (b) functions of making, confirming or approving subordinate legislation.
- (5) Academy arrangements must include provision about the procedure for complaints to be made to the Secretary of State about what the YPLA has done, or failed to do, under the arrangements.
- (6) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30) (see section 21(1) of that Act).

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- (7) References in a provision made by or under any Act to the functions of the YPLA do not include any functions conferred or imposed on the YPLA under Academy arrangements.

## **78 Grants for purposes of Academy arrangements functions**

- (1) The Secretary of State may make grants to the YPLA for the purposes of any functions that are or may be conferred or imposed on the YPLA under Academy arrangements.
- (2) Grants to the YPLA under this section are to be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate.
- (3) Conditions to which a grant is subject may (in particular)—
- (a) require the YPLA to use the grant for specified purposes;
  - (b) require the YPLA to comply with specified requirements in respect of persons or persons of a specified description;
  - (c) enable repayment (in whole or part) to be required of sums paid by the Secretary of State if any condition subject to which the grant was made is not complied with;
  - (d) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any condition remains unpaid.
- (4) Requirements which may be imposed under subsection (3)(b) include in particular requirements that, if the YPLA provides specified financial resources, it is to impose specified conditions.

## **79 Academy arrangements: information sharing**

- (1) This section applies if the Secretary of State and the YPLA enter into Academy arrangements.
- (2) A person within subsection (3) may provide information to any other person within that subsection for the purpose of enabling or facilitating the exercise of any relevant function.
- (3) The persons are—
- (a) the Secretary of State;
  - (b) the YPLA;
  - (c) a relevant Academy;
  - (d) any other person by or in respect of whom a relevant function is exercisable.
- (4) A “relevant function” is—
- (a) a function conferred or imposed on the YPLA under the arrangements;
  - (b) a function of the Secretary of State, a relevant Academy, or any other person, which is exercisable in connection with a function conferred or imposed on the YPLA under the arrangements.
- (5) A “relevant Academy” is an Academy, city technology college or city college for the technology of the arts in relation to which a function is exercisable by the YPLA under the arrangements.

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(6) Nothing in this section—

- (a) affects a power to disclose information that exists apart from this section, or
- (b) authorises the disclosure of any information in contravention of a provision made by or under any Act which prevents disclosure of the information.

## CHAPTER 5

### GENERAL

#### 80 Interpretation of Part

(1) In this Part a reference to education within the YPLA's remit is a reference to education suitable to the requirements of—

- (a) persons aged under 19, or
- (b) persons aged 19 or over but under 25 who are subject to learning difficulty assessment.

(2) In this Part a reference to training within the YPLA's remit is a reference to training suitable to the requirements of—

- (a) persons aged 14 or over but under 19, or
- (b) persons aged 19 or over but under 25 who are subject to learning difficulty assessment.

(3) For the purposes of this Part a person is subject to youth detention if—

- (a) subject to a detention order, and
- (b) detained in relevant youth accommodation.

(4) In this Part—

“education” includes full-time and part-time education;

“training” includes—

- (a) full-time and part-time training;
- (b) vocational, social, physical and recreational training;
- (c) apprenticeship training.

(5) In subsection (4) “apprenticeship training” means training provided in connection with—

- (a) an apprenticeship agreement (within the meaning given in section 32),
- (b) any other contract of employment, or
- (c) any other kind of working in relation to which alternative English completion conditions apply under section 1(5).

(6) The references in subsections (1) and (2) to persons—

- (a) aged under 19, or 14 or over but under 19, or
- (b) aged 19 or over but under 25 who are subject to learning difficulty assessment,

do not include persons who are subject to adult detention within the meaning given in section 121(4).

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## PART 4

### THE CHIEF EXECUTIVE OF SKILLS FUNDING

VALID FROM 01/04/2010

#### CHAPTER 1

##### ESTABLISHMENT AND MAIN DUTIES

##### *The Chief Executive*

#### **81 The Chief Executive of Skills Funding**

- (1) There is to be a Chief Executive of Skills Funding.
- (2) In this Part that person is referred to as “the Chief Executive”.
- (3) The Chief Executive is to be appointed by the Secretary of State.
- (4) Except as provided for in section 107, 108 or 109, the Chief Executive is to perform the functions of the office in relation to England only.
- (5) Schedule 4 makes further provision about the Chief Executive.

##### *Apprenticeship functions*

#### **82 Apprenticeship functions**

- (1) The Secretary of State may direct the Chief Executive to arrange for apprenticeship functions specified in the direction to be carried out on behalf of the Chief Executive by a person designated by the Chief Executive.
- (2) The Secretary of State may give directions to the Chief Executive—
  - (a) as to the performance of apprenticeship functions;
  - (b) as to the description or identity of the person to be designated under subsection (1);
  - (c) as to the terms of arrangements under that subsection;
  - (d) requiring the Chief Executive to secure that the person designated under subsection (1) reports to the Secretary of State, in such form and at such times as may be specified in the direction, on the performance of apprenticeship functions which are the subject of arrangements under subsection (1).
- (3) A designation of a person under subsection (1) may be made only with the person's consent.
- (4) Arrangements made by virtue of subsection (1) may be made on terms that permit sub-delegation; and the power conferred by subsection (2)(c) includes power to give directions as to—
  - (a) the arrangements for any such sub-delegation;
  - (b) functions which may be sub-delegated;

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- (c) the description or identity of persons to whom functions may be sub-delegated.
- (5) In this section, “apprenticeship functions” means functions of the office which relate to—
- (a) apprenticeship certificates;
  - (b) recognised English frameworks and the specification of apprenticeship standards for England;
  - (c) apprenticeship training;
  - (d) apprenticeship places (within the meaning of section 93), including functions under section 104 relating to apprenticeship places;
  - (e) the provision of advice and assistance to the Secretary of State under section 106.
- (6) Terms used in subsection (5)(a) and (b) have the same meanings as in Chapter 1 of Part 1.
- (7) Regulations may provide—
- (a) for any provision relating to a function of the office made by or under any Act—
    - (i) not to apply, or
    - (ii) to apply subject to prescribed modifications,
 in relation to the function where the function is the subject of arrangements under subsection (1);
  - (b) for references to the Chief Executive in any such provisions to be construed in prescribed circumstances as, or as including, references—
    - (i) to a person designated under subsection (1), or
    - (ii) to a person to whom functions are sub-delegated under subsection (4),
 subject to such exceptions or modifications as may be prescribed.

*Apprenticeship training for persons aged 16 to 18 and certain young adults*

### **83 Apprenticeship training for persons aged 16 to 18 and certain young adults**

- (1) The Chief Executive may secure the provision of facilities for suitable apprenticeship training for persons—
- (a) who are over compulsory school age but under 19, or
  - (b) who are aged 19 or over but under 25 and are subject to learning difficulty assessment.
- (2) In deciding for the purposes of subsection (1) whether apprenticeship training is suitable for persons for whom facilities are provided, the Chief Executive must have regard (in particular) to—
- (a) the persons' ages, abilities and aptitudes,
  - (b) any learning difficulties the persons may have,
  - (c) the quality of the training,
  - (d) the locations and times at which the training is provided.

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- (3) In exercising the power conferred by subsection (1), the Chief Executive must have regard (in particular) to the desirability of—
- (a) encouraging diversity of apprenticeship training available to persons;
  - (b) increasing opportunities for persons to exercise choice;
  - (c) enabling persons to whom Part 1 of the Education and Skills Act 2008 (c. 25) applies to fulfil the duty imposed by section 2 of that Act (duty to participate in education or training).
- (4) Subsections (6) and (7) of section 15ZA of the Education Act 1996 (c. 56) (meaning of learning difficulty) apply for the purposes of this section as they apply for the purposes of that section.
- (5) In this Part “apprenticeship training” means training provided in connection with—
- (a) an apprenticeship agreement,
  - (b) any other contract of employment, or
  - (c) any other kind of working in relation to which alternative English completion conditions apply under section 1(5).

#### **84 Arrangements and co-operation with local education authorities**

- (1) The Chief Executive may enter into arrangements with local education authorities in England under which the Chief Executive is to secure the provision of apprenticeship training by virtue of section 83.
- (2) The Chief Executive must co-operate with a local education authority in England where the authority is—
- (a) making any determination as to the provision of apprenticeship training that should be secured under section 15ZA(1) of the Education Act 1996 (duty in respect of education and training for persons over compulsory school age: England), or
  - (b) securing the provision of any apprenticeship training under that section.

#### **85 Encouragement of training provision etc for persons within section 83**

- (1) The Chief Executive must—
- (a) encourage employers to participate in the provision of training within the Chief Executive's remit for persons who are within section 83(1)(a) or (b);
  - (b) encourage employers to contribute to the costs of training within the Chief Executive's remit for such persons.
- (2) For the purposes of subsection (1)(a), participating in the provision of training includes participating by entering into—
- (a) an apprenticeship agreement, or
  - (b) any other contract of employment in connection with which training is provided.

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*Education and training for persons aged 19 or over etc.*

**86 Education and training for persons aged 19 or over and others subject to adult detention**

- (1) The Chief Executive must secure the provision of reasonable facilities for—
  - (a) education suitable to the requirements of persons who are aged 19 or over, other than persons aged under 25 who are subject to learning difficulty assessment,
  - (b) education suitable to the requirements of persons who are subject to adult detention, and
  - (c) training suitable to the requirements of persons within paragraphs (a) and (b).
- (2) This section does not apply to the provision of facilities to the extent that section 87 applies to the provision of those facilities.
- (3) Facilities are reasonable if (taking account of the Chief Executive's resources) their quantity and quality are such that the Chief Executive can reasonably be expected to secure their provision.
- (4) In discharging the duty under subsection (1) the Chief Executive 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 skills required in different sectors of employment for employees and potential employees;
  - (d) take account of facilities the provision of which the Chief Executive thinks might reasonably be secured by other persons;
  - (e) act with a view to encouraging diversity of education and training available to individuals;
  - (f) act with a view to increasing opportunities for individuals to exercise choice;
  - (g) have regard to the desirability of enabling persons subject to adult detention to continue programmes of education or training which they have begun;
  - (h) have regard to the desirability of the core entitlement and the additional entitlement being satisfied for persons subject to adult detention but aged under 19 who have elected for them;
  - (i) make the best use of resources.
- (5) For the purposes of this section a reference to the provision of facilities for education or training (except so far as relating to facilities for persons subject to adult detention) includes a reference to the provision of facilities for organised leisure-time occupation in connection with education or (as the case may be) training.
- (6) For the purposes of this section—
 

“education” includes full-time and part-time education;

“training” includes—

  - (a) full-time and part-time training;
  - (b) vocational, social, physical and recreational training;
  - (c) apprenticeship training.
- (7) In this Part, “organised leisure-time occupation” means leisure-time occupation, in such organised cultural training and recreational activities as are suited to the



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requirements of persons who fall within subsection (1)(a) or (b), for any such persons who are able and willing to profit by facilities provided for that purpose.

- (8) Sections 17B to 17D of the Education Act 1996 (c. 56) (core and additional entitlements: interpretation) apply for the purpose of subsection (4)(h) as they apply for the purpose of section 17A of that Act (duties of local education authorities in relation to the core and additional entitlements).

## **87 Learning aims for persons aged 19 or over: provision of facilities**

- (1) The Chief Executive 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 or vocational training provided by means of a course of study for a qualification to which paragraph 1 of Schedule 5 applies.
- (3) The persons falling within this subsection are persons who—
- (a) are aged 19 or over, and are not persons aged under 25 who are subject to learning difficulty assessment,
  - (b) do not have the qualification in question or one (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level, and
  - (c) satisfy such conditions as may be specified in regulations.
- (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 discharging the duty under subsection (1) the Chief Executive 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 Chief Executive's resources.
- (6) For the purposes of this section—
- “education” includes full-time and part-time education;
  - “training” includes full-time and part-time training.

## **88 Learning aims for persons aged 19 or over: payment of tuition fees**

- (1) Functions under this Part must be exercised by the Chief Executive so as to secure that a course of study for a qualification to which paragraph 1 of Schedule 5 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 87.
- (2) A person falls within this subsection if, at the time of starting the course in question, the person—

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- (a) is aged 19 or over,
  - (b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level, and
  - (c) satisfies such conditions as may be specified in regulations.
- (3) Functions under this Part must be exercised by the Chief Executive so as to secure that a course of study for a qualification to which paragraph 2 of Schedule 5 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 86.
- (4) A person falls within this subsection if, at the time of starting the course in question, the person—
- (a) is aged at least 19 but less than 25,
  - (b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level, and
  - (c) satisfies such conditions as may be specified in regulations.
- (5) 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.
- (6) 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 Chief Executive, or
  - (b) a body specified by order by the Secretary of State for the purposes of this section.
- (7) In subsection (6) “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.

## 89 Sections 87 and 88: supplementary

- (1) Regulations may make provision as to circumstances in which—
- (a) despite having a specified qualification, a person is to be treated for the purposes of section 87 or 88 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 87 or 88 may, in particular, relate to—
- (a) the possession, or lack, of a specified qualification;
  - (b) the completion of, or failure to complete, a course for a specified qualification.

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- (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.
- (4) Regulations under this section, or under section 87 or 88, 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.
- (5) Nothing in section 87 or 88 applies to the provision of facilities, or to courses of study, for persons subject to adult detention.
- (6) Part 2 of Schedule 5 makes further provision for the purposes of sections 87 and 88.

**90 Encouragement of education and training for persons aged 19 or over and others subject to adult detention**

- (1) The Chief Executive must—
  - (a) encourage participation by persons within section 86(1)(a) and (b) in education and training within the Chief Executive's remit;
  - (b) encourage employers to participate in the provision of education and training within the Chief Executive's remit for persons within section 86(1)(a);
  - (c) encourage employers to contribute to the costs of education and training within the Chief Executive's remit for such persons.
- (2) For the purposes of subsection (1)(b), participating in the provision of training includes participating by entering into—
  - (a) an apprenticeship agreement, or
  - (b) any other contract of employment in connection with which training is provided.

PROSPECTIVE

*The apprenticeship offer*

**F1791 Duty to secure availability of apprenticeship places**

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**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 18 para. 8](#); S.I. 2012/1087, art. 3

**F1792 Election for apprenticeship offer**

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**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 18 para. 8**; S.I. 2012/1087, art. 3

**F1793 Meaning of “apprenticeship place”**

.....

**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 18 para. 8**; S.I. 2012/1087, art. 3

**F1794 Suitability and availability of apprenticeship places: further provision**

.....

**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 18 para. 8**; S.I. 2012/1087, art. 3

**F1795 Apprenticeship offer requirements**

.....

**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 18 para. 8**; S.I. 2012/1087, art. 3

**F1796 Apprenticeship offer requirements: interpretation**

.....

**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), **Sch. 18 para. 8**; S.I. 2012/1087, art. 3

**F1797 Suspension of offer**

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**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 18 para. 8](#); S.I. 2012/1087, art. 3

**<sup>F17</sup>98 Power to amend apprenticeship offer**

.....

**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 18 para. 8](#); S.I. 2012/1087, art. 3

**<sup>F17</sup>99 Apprenticeship offer: interpretation**

.....

**Textual Amendments**

**F17** Ss. 91-99 repealed (1.9.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 18 para. 8](#); S.I. 2012/1087, art. 3

VALID FROM 01/04/2010

**CHAPTER 2**

OTHER FUNCTIONS

*Funding*

**100 Provision of financial resources**

- (1) The Chief Executive may secure the provision of financial resources to—
- (a) persons providing or proposing to provide education or training within the Chief Executive's remit;
  - (b) persons providing or proposing to provide goods or services in connection with the provision by others of such education or training;
  - (c) persons receiving or proposing to receive such education or training;
  - (d) persons aged 18 receiving or proposing to receive education or training;
  - (e) persons making loans to others receiving or proposing to receive education or training;
  - (f) persons providing or proposing to provide courses falling within paragraph 1(g) or (h) of Schedule 6 to the Education Reform Act 1988 (c. 40) (courses

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- in preparation for professional examinations at a higher level or providing education at a higher level);
  - (g) persons undertaking or proposing to undertake research relating to education or training;
  - (h) persons carrying out means tests under arrangements made under section 103;
  - (i) persons providing or proposing to provide services relating to finding apprenticeship places under section 104;
  - (j) persons providing or proposing to provide information, advice or guidance about education or training or connected matters (including employment).
- (2) In performing the functions under this section the Chief Executive must make the best use of the Chief Executive's resources.
- (3) The Chief Executive may secure the provision of financial resources under subsection (1)—
- (a) by providing the resources;
  - (b) by making arrangements for the provision of resources by another person;
  - (c) by making arrangements for the provision of resources by persons jointly (whether or not including the Chief Executive).
- (4) The Chief Executive may under subsection (1)(c) secure the provision of financial resources by reference to—
- (a) any fees or charges payable by the person receiving or proposing to receive the education or training, or
  - (b) any other matter (such as transport or childcare).

#### **101 Financial resources: conditions**

- (1) Financial resources provided by the Chief Executive may be provided subject to conditions.
- (2) The conditions may include—
- (a) information conditions;
  - (b) operational conditions;
  - (c) repayment conditions.
- (3) Information conditions are conditions which—
- (a) require the Chief Executive, or a person designated by the Chief Executive, to be given access to a person's accounts and documents and to be given rights in relation to a person's computers and associated apparatus and material, or
  - (b) require a person to whom financial resources are provided to give to the Chief Executive such information as the Chief Executive may request for the purpose of carrying out the functions of the office.
- (4) Operational conditions are conditions which require a person providing or proposing to provide education or training (“the provider”) to make arrangements providing for all or any of the matters mentioned in subsection (5).
- (5) The matters are the following—
- (a) the charging of fees by the provider by reference to specified criteria;

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- (b) the making of awards by the provider by reference to specified criteria;
  - (c) the recovery by the provider of amounts from persons receiving education or training or from employers (or from both);
  - (d) the determination of amounts by reference to specified criteria where provision is made under paragraph (c);
  - (e) the operation of specified exemptions where provision is made under paragraph (c);
  - (f) the making by the provider of provision specified in a report of an assessment under section 139A or 140 of the Learning and Skills Act 2000 (c. 21) (assessments relating to learning difficulties).
- (6) Repayment conditions are conditions which—
- (a) enable the Chief Executive to require the repayment (in whole or part) of sums paid by the Chief Executive if any of the conditions subject to which the sums were paid is not complied with;
  - (b) require the payment of interest in respect of any period in which a sum due to the Chief Executive in accordance with any condition is unpaid.

### **102 Performance assessments**

- (1) The Chief Executive may adopt or develop schemes for the assessment of the performance of persons in providing education or training within the Chief Executive's remit.
- (2) The Chief Executive may take the assessments into account in deciding how to exercise the powers under section 100.

### **103 Means tests**

- (1) The Chief Executive may—
  - (a) carry out means tests;
  - (b) arrange for other persons to carry out means tests.
- (2) The Chief Executive may take the results of the tests into account in exercising the power under section 100(1)(c), (d) or (e).

### *Apprenticeships: general*

### **104 Assistance and support in relation to apprenticeship places**

- (1) The Chief Executive—
  - (a) must provide or secure the provision of such services as the Chief Executive considers appropriate for assisting persons to find apprenticeship places, and
  - (b) may provide or secure the provision of other services for encouraging, enabling or assisting the effective participation of persons in employment and training provided for by apprenticeship places.
- (2) The services provided by virtue of subsection (1)(a) may, in particular, be or include—
  - (a) services provided by means of the publication, whether electronically or otherwise, of information, advice and guidance;

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(b) facilities for enabling employers to advertise apprenticeship places.

(3) In this section, “apprenticeship place” has the meaning given by section 93.

VALID FROM 06/04/2011

### **105 Promoting progression from level 2 to level 3 apprenticeships**

- (1) The Chief Executive must promote the desirability of persons within subsection (2) undertaking apprenticeship training at level 3.
- (2) The persons are those who—
  - (a) are undertaking apprenticeship training at level 2,
  - (b) have completed an English apprenticeship in relation to an apprenticeship framework at level 2, or
  - (c) hold an apprenticeship certificate at level 2.
- (3) For the purposes of this section apprenticeship training is at a particular level if it might reasonably be expected to lead to the issue of an apprenticeship certificate at that level.
- (4) The following provisions of Chapter 1 of Part 1 apply for the purposes of this section—
  - section 1 (meaning of “completing an English apprenticeship”);
  - section 12 (meaning of apprenticeship framework and level of an apprenticeship framework).
- (5) Section 95(4) (meaning of apprenticeship certificate and level of an apprenticeship certificate) applies for the purposes of this section.

### **106 Advice and assistance in relation to apprenticeships**

The Chief Executive must, on request, provide the Secretary of State with advice and assistance in relation to the exercise of the Secretary of State's functions under Chapter 1 of Part 1.

*Provision of services and assistance*

### **107 Provision of services**

- (1) The Chief Executive may make arrangements with a permitted recipient for the provision by the Chief Executive of services that are required by the permitted recipient in connection with the exercise of the recipient's functions relating to education or training.
- (2) The services that may be provided under arrangements made under subsection (1) include—
  - (a) providing accommodation and other facilities to a permitted recipient or managing such facilities on behalf of a permitted recipient;
  - (b) procuring, or assisting in procuring, goods and services for use by a permitted recipient.



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- (3) The terms and conditions upon which the arrangements are made may include provision for making payments to the Chief Executive in respect of expenditure incurred by the Chief Executive in performing any function under the arrangements.
- (4) In this section “permitted recipient” means—
- (a) the Secretary of State;
  - (b) the Welsh Ministers;
  - (c) the Scottish Ministers;
  - (d) a Northern Ireland department;
  - (e) the Young People's Learning Agency for England;
  - (f) a person, wholly or partly funded from public funds, who has functions relating to education or training;
  - (g) any other person specified, or of a description specified, by order made by the appropriate national authority for the purposes of this section.
- (5) Before making arrangements under which it may provide services to a permitted recipient who falls within any of paragraphs (b) to (g) of subsection (4) in connection with the exercise of the recipient's functions relating to education or training provided in Wales, Scotland or Northern Ireland, the Chief Executive must obtain the consent of the Secretary of State.
- (6) Before making arrangements under which it may provide services to a permitted recipient who falls within paragraph (a), (e), (f) or (g) of subsection (4) in connection with the exercise of the recipient's functions relating to education or training provided in Wales, Scotland or Northern Ireland, the Chief Executive must obtain—
- (a) in relation to education or training provided in Wales, the consent of the Welsh Ministers;
  - (b) in relation to education or training provided in Scotland, the consent of the Scottish Ministers;
  - (c) in relation to education or training provided in Northern Ireland, the consent of the Minister for Employment and Learning in Northern Ireland.
- (7) Consent may be given under subsection (5) or (6) in relation to particular arrangements or arrangements of a particular description.
- (8) “The appropriate national authority” means—
- (a) in relation to a person exercising functions relating only to education or training provided in Wales, the Welsh Ministers;
  - (b) in relation to a person exercising functions relating only to education or training provided in Scotland, the Scottish Ministers;
  - (c) in relation to a person exercising functions relating only to education or training provided in Northern Ireland, the Department for Employment and Learning in Northern Ireland;
  - (d) in any other case, the Secretary of State.

## **108 Assistance with respect to employment and training**

- (1) The Chief Executive may take part in arrangements made by the Secretary of State, the Welsh Ministers or the Scottish Ministers under section 2 of the Employment and Training Act 1973 (c. 50) (arrangements for assisting persons to select, train for, obtain and retain employment).

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- (2) Before making such arrangements in relation to Wales or Scotland in which the Chief Executive is to take part, the Secretary of State must obtain the consent of the Welsh Ministers or (as the case may be) the Scottish Ministers to the arrangements.
- (3) Before making such arrangements in which the Chief Executive is to take part, the Welsh Ministers or the Scottish Ministers must obtain the consent of the Secretary of State to the arrangements.

#### **109 Assistance with respect to employment and training: Northern Ireland**

- (1) The Chief Executive may take part in any arrangements made by the Department for Employment and Learning in Northern Ireland under section 1 of the Employment and Training Act (Northern Ireland) 1950 (c. 29 (N.I.)) (arrangements for assisting persons to select, train for, obtain and retain employment).
- (2) Before making such arrangements in which the Chief Executive is to take part, the Department must obtain the consent of the Secretary of State to the arrangements.

#### *Miscellaneous*

#### **110 Research, information and advice**

- (1) The Chief Executive may carry out programmes of research and development connected with any matter relevant to the functions of the office.
- (2) If requested to do so by the Secretary of State, the Chief Executive must provide the Secretary of State with information or advice on such matters relating to any of the functions of the office as may be specified in the request.
- (3) The Chief Executive may provide the Secretary of State with other information or advice on any matter in relation to which the Chief Executive has a function.
- (4) The Chief Executive may provide any person designated by the Secretary of State with information about any matter in relation to which the Chief Executive has a function.
- (5) The Chief Executive must establish systems for collecting information designed to secure that decisions of the Chief Executive with regard to education and training are made on a sound basis.
- (6) The Chief Executive may secure the provision of facilities and services for providing information, advice or guidance about education or training or connected matters (including employment).

#### **111 Power to confer supplementary functions on Chief Executive**

- (1) The Secretary of State may by order confer supplementary functions on the Chief Executive.
- (2) A supplementary function is a function which is—
  - (a) exercisable in connection with functions of the Secretary of State, and
  - (b) relevant to the provision of facilities for education or training within the Chief Executive's remit.

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## CHAPTER 3

### CHIEF EXECUTIVE'S FUNCTIONS: SUPPLEMENTARY

#### *Strategies*

#### **112 Strategies for functions of Chief Executive**

- (1) The Secretary of State may by order specify an area in England as an area for which a body specified in the order (“a specified body”) may formulate and keep under review a strategy setting out how such functions of the Chief Executive as are specified in the order are to be carried out in relation to the area.
- (2) An order under subsection (1) may specify an area comprising the whole of England.
- (3) An order under subsection (1) may not specify an area in England consisting only of Greater London or a part of Greater London.
- (4) The Secretary of State may give directions and guidance to a specified body in relation to the formulation and review of its strategy, in particular in relation to—
  - (a) the form and content of the strategy;
  - (b) the updating of the strategy;
  - (c) the steps to be taken when the body is formulating or reviewing the strategy;
  - (d) the matters to which the body is to have regard when formulating or reviewing the strategy;
  - (e) the consultation to be carried out when the body is formulating or reviewing the strategy.
- (5) A specified body must—
  - (a) comply with any directions given to it under subsection (4), and
  - (b) have regard to any guidance given to it under that subsection.
- (6) The Chief Executive may pay to a specified body such sums as appear to the Chief Executive appropriate for enabling the body to meet costs and expenses incurred, or to be incurred, by it in formulating its strategy or keeping it under review.

#### **Commencement Information**

**I4** S. 112(1)-(3) in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010

#### **113 Strategy for functions of Chief Executive: Greater London**

- (1) Regulations must provide for the establishment of a body (“the London body”) for the purposes of this section.
- (2) The London body must—
  - (a) formulate a strategy setting out how specified functions of the Chief Executive are to be carried out in Greater London, and
  - (b) keep it under review.

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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- (3) Specified functions are functions of the Chief Executive specified for the purposes of this section by order of the Secretary of State.
- (4) The Secretary of State may give directions and guidance to the London body in relation to the formulation and review of its strategy, in particular in relation to—
  - (a) the form and content of the strategy;
  - (b) the updating of the strategy;
  - (c) the steps to be taken when the body is formulating or reviewing the strategy;
  - (d) the matters to which the body is to have regard when formulating or reviewing the strategy;
  - (e) the consultation to be carried out when the body is formulating or reviewing the strategy.
- (5) The London body must—
  - (a) comply with any directions given to it under subsection (4), and
  - (b) have regard to any guidance given to it under that subsection.
- (6) Where the London body formulates a strategy under this section, or in consequence of a review of the strategy modifies it, the body must publish the strategy or modified strategy in such manner as it thinks fit.
- (7) Regulations under this section must include—
  - (a) provision for the London body to consist of the Mayor of London and such other persons as are appointed by the Mayor in accordance with the regulations;
  - (b) provision for the Mayor to be the chairman of the body.
- (8) The Chief Executive may pay to the London body such sums as appear to the Chief Executive appropriate for enabling the body to meet costs and expenses incurred, or to be incurred, by it in formulating its strategy or keeping it under review.
- (9) The Chief Executive may pay to the Greater London Authority such sums as appear to the Chief Executive appropriate for enabling the Authority to meet costs and expenses incurred, or to be incurred, by the Mayor in connection with the exercise of functions conferred on him by regulations under this section or as chairman of the London body.

VALID FROM 01/04/2010

#### **114 Strategies: duty of Chief Executive**

- (1) The Chief Executive must carry out any function to which a strategy under section 112 or 113 relates in accordance with that strategy.
- (2) Subsection (1) is subject to the following provisions of this section.
- (3) The Chief Executive may not carry out a function in accordance with such a strategy if doing so would entail failing to comply with a duty imposed on the Chief Executive by any provision made by or under any Act (other than subsection (1)).

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- (4) If provision in a strategy under section 112 conflicts with provision in another strategy under section 112 or 113, the Chief Executive may disregard such conflicting provision in one of the strategies or in both of them.
- (5) The Chief Executive may disregard a strategy under section 112 or 113 if the body whose strategy it is, in formulating or reviewing the strategy—
  - (a) failed to comply with directions given under section 112(4) or (as the case may be) section 113(4), or
  - (b) failed to have regard to guidance given under section 112(4) or (as the case may be) section 113(4).
- (6) Nothing in subsection (1) requires the Chief Executive to carry out any functions of the office in a manner that the Chief Executive is satisfied—
  - (a) would be unreasonable, or
  - (b) might give rise to disproportionate expenditure.
- (7) If the Chief Executive proposes not to carry out, or does not carry out, a function to which a strategy under section 112 or 113 relates in accordance with the strategy—
  - (a) the Chief Executive must refer the matter to the Secretary of State;
  - (b) the body whose strategy it is may refer the matter to the Secretary of State.
- (8) On a reference under subsection (7) the Secretary of State may give such direction to the Chief Executive as the Secretary of State thinks fit as to the carrying out of the function.

VALID FROM 01/04/2010

### *Other*

#### **115 Persons with learning difficulties**

- (1) The Chief Executive must, in performing the functions of the office, have regard to the needs of persons with learning difficulties to whom this section applies.
- (2) This section applies to—
  - (a) persons who are aged 19 or over, other than persons aged under 25 who are subject to learning difficulty assessment, and
  - (b) persons who are subject to adult detention.
- (3) For the purposes of this section, a person has a learning difficulty if—
  - (a) the person has a significantly greater difficulty in learning than the majority of persons of the same age, or
  - (b) the person has a disability which either prevents or hinders the person from making use of facilities of a kind generally provided by institutions providing education or training falling within section 86(1)(a), (b) or (c).
- (4) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which the person is or will be taught is different from a language (or form of language) which has at any time been spoken in the person's home.

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## **116 Persons subject to adult detention**

The Chief Executive must, in performing the functions of the office, have regard to the needs of persons subject to adult detention.

## **117 Use of information by Chief Executive**

The Chief Executive must, in performing the functions of the office, have regard to information supplied to the Chief Executive by any person designated for the purposes of this section by the Secretary of State.

## **118 Guidance**

- (1) The Chief Executive must, in performing the functions of the office, have regard to any guidance given by the Secretary of State.
- (2) Guidance under this section may include in particular guidance about—
  - (a) consultation with persons mentioned in subsection (3) in connection with the taking of decisions which affect such persons, and
  - (b) taking advice from such persons or descriptions of persons as may be specified in the guidance.
- (3) The persons are—
  - (a) persons receiving or proposing to receive education or training within the Chief Executive's remit,
  - (b) employers, or
  - (c) such other persons or descriptions of persons as may be specified in the guidance.
- (4) Guidance under this section about consultation with persons falling within subsection (3)(a) must provide for the views of such persons to be considered in the light of their age and understanding.

## **119 Directions: funding of qualifications**

- (1) The Secretary of State may direct the Chief Executive that financial resources provided by the Chief Executive to a relevant institution or employer must be provided subject to a condition that the institution or employer does not make an excluded payment which can reasonably be said to consist of or come from financial resources received from the Chief Executive.
- (2) A direction under subsection (1) relating to a qualification may be made after any course of training or education leading to the qualification has begun.
- (3) In this section—
 

“an excluded payment” is a payment which —

  - (a) is in respect of a qualification to which Part 7 applies (see section 130) that is specified or of a description specified in the direction, and
  - (b) is made to the person who awards that qualification;

“relevant institution or employer” means an institution or employer who provides or is proposing to provide a course of training or education for persons who are aged 19 or over which leads to a qualification to which Part 7 applies.

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## **120 Other directions relating to functions of the office**

- (1) The Secretary of State may give directions to the Chief Executive containing—
  - (a) objectives which the Chief Executive should achieve in carrying out the functions of the office, and
  - (b) time limits within which the Chief Executive should achieve the objectives.
- (2) The Secretary of State may give to the Chief Executive other directions as to the performance of any of the functions of the office if the Secretary of State is satisfied that the Chief Executive—
  - (a) has failed to discharge a duty imposed by or under any Act, or
  - (b) has acted or is proposing to act unreasonably with respect to the performance of any function conferred by or under any Act.
- (3) The Secretary of State may give directions under subsection (2) despite any provision made by or under any Act making the performance of a function dependent on the Chief Executive's opinion.
- (4) Directions given under this section with respect to functions conferred on the Chief Executive by or under this Part may not concern the provision of financial resources to a particular person or persons.

VALID FROM 01/04/2010

## **CHAPTER 4**

### **GENERAL**

## **121 Interpretation of Part**

- (1) In this Part—
  - “apprenticeship agreement” has the meaning given by section 32(1);
  - “apprenticeship training” has the meaning given by section 83;
  - “functions of the office” means functions of the Chief Executive conferred by or under any Act;
  - “organised leisure-time occupation” has the meaning given by section 86.
- (2) In this Part a reference to education within the Chief Executive's remit is a reference to—
  - (a) education falling within section 86(1)(a) or (b), and
  - (b) organised leisure-time occupation in connection with such education.
- (3) In this Part a reference to training within the Chief Executive's remit is a reference to—
  - (a) training falling within section 83(1),
  - (b) training falling within section 86(1)(c), and
  - (c) organised leisure-time occupation in connection with training falling within section 86(1)(c).

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- (4) For the purposes of this Part a person is subject to adult detention if the person is subject to a detention order and—
- (a) aged 19 or over, or
  - (b) aged under 19 and detained in—
    - (i) a young offender institution, or part of such an institution, that is used wholly or mainly for the detention of persons aged 18 and over, or
    - (ii) a prison.

VALID FROM 01/04/2010

## PART 5

### PARTS 2 TO 4: SUPPLEMENTARY

#### *Information*

#### **122 Sharing of information for education and training purposes**

- (1) A person within subsection (3) may provide information to another person within that subsection, or a person within subsection (4), for the purpose of enabling or facilitating the exercise of any relevant function.
- (2) A person within subsection (4) may provide information to a person within subsection (3) for the purpose of enabling or facilitating the exercise of any relevant function.
- (3) The persons within this subsection are—
  - (a) the Chief Executive;
  - (b) the Young People's Learning Agency for England;
  - (c) a designated person;
  - (d) a member of the Chief Executive's staff;
  - (e) a member of staff of a designated person;
  - (f) a person providing services to any person within paragraphs (a) to (c).
- (4) The persons within this subsection are—
  - (a) a local education authority in England;
  - (b) a person providing services to a local education authority in England in its capacity as such.
- (5) In subsections (1) and (2), “relevant function” means—
  - (a) any function of the Chief Executive,
  - (b) any function of the Young People's Learning Agency for England, or
  - (c) any function conferred on a local education authority in England in its capacity as such,
 other than a function under this section.
- (6) In this section—



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“the Chief Executive” means the Chief Executive of Skills Funding;  
 “designated person” means a person by whom any function of the Chief Executive is exercisable by virtue of section 82(1);

“member of staff of a designated person” means a person—

- (a) appointed by a designated person to assist the designated person in connection with the performance of any function exercisable by the designated person by virtue of section 82(1), or
- (b) exercising any function of the Chief Executive by virtue of section 82(4);

“member of the Chief Executive's staff” means—

- (a) a member of the Chief Executive's staff appointed by the Chief Executive under paragraph 3 of Schedule 4, or
- (b) a member of staff provided to the Chief Executive by the Secretary of State under arrangements under paragraph 5 of that Schedule.

(7) Nothing in this section—

- (a) affects any power to disclose information that exists apart from this section, or
- (b) authorises the disclosure of any information in contravention of any provision made by or under any Act which prevents disclosure of the information.

*The Learning and Skills Council for England*

**123 Dissolution of the Learning and Skills Council for England**

- (1) The Learning and Skills Council for England ceases to exist on the day on which this section comes into force.
- (2) Schedule 6 contains minor and consequential amendments in relation to the dissolution of the Learning and Skills Council for England.

**124 Dissolution of the Learning and Skills Council: transfer schemes**

Schedule 7 contains provision about schemes for the transfer of staff, property, rights and liabilities from the Learning and Skills Council for England to other persons.

**PART 6**

THE SIXTH FORM COLLEGE SECTOR

**125 Sixth form college sector**

Schedule 8 makes provision about the sixth form college sector.

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#### Commencement Information

**I5** S. 125 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

### 126 Removal of power to establish sixth form schools

(1) In section 16 of the Education Act 1996 (c. 56) (power to establish etc. primary and secondary schools) after subsection (3) insert—

“(3A) A local education authority in England may not under subsection (1) establish a school which is principally concerned with the provision of full-time education suitable to the requirements of pupils who are over compulsory school age but under 19.”

(2) The Education and Inspections Act 2006 (c. 40) is amended as follows.

(3) In section 7 (invitation for proposals for establishment of new schools) after subsection (5) insert—

“(5A) A local education authority may not publish under this section proposals within subsection (5)(b) for the establishment of a school providing education suitable only to the requirements of persons above compulsory school age.”

(4) In section 10 (publication of proposals with consent of Secretary of State) in subsection (1)(a) after “school” insert “, other than one providing education suitable only to the requirements of persons above compulsory school age”.

(5) In section 11 (publication of proposals to establish maintained schools: special cases) omit subsections (1)(b) and (2)(a).

#### Commencement Information

**I6** S. 126 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.  
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VALID FROM 01/04/2010

## PART 7

### THE OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

#### CHAPTER 1

##### ESTABLISHMENT, OBJECTIVES AND GENERAL DUTIES

###### *Establishment*

#### **127 The Office of Qualifications and Examinations Regulation**

- (1) There is to be a body corporate known as the Office of Qualifications and Examinations Regulation.
- (2) In this Part that body is referred to as “Ofqual”.
- (3) Schedule 9 makes further provision about Ofqual.

###### *Objectives and general duties*

#### **128 Objectives**

- (1) Ofqual's objectives are—
  - (a) the qualifications standards objective,
  - (b) the assessments standards objective,
  - (c) the public confidence objective,
  - (d) the awareness objective, and
  - (e) the efficiency objective.
- (2) The qualifications standards objective is to secure that regulated qualifications—
  - (a) give a reliable indication of knowledge, skills and understanding, and
  - (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications.
- (3) The assessments standards objective is to promote the development and implementation of regulated assessment arrangements which—
  - (a) give a reliable indication of achievement, and
  - (b) indicate a consistent level of attainment (including over time) between comparable assessments.
- (4) The public confidence objective is to promote public confidence in regulated qualifications and regulated assessment arrangements.
- (5) The awareness objective is to promote awareness and understanding of—
  - (a) the range of regulated qualifications available,

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- (b) the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and
  - (c) the benefits of recognition under section 132 to bodies awarding or authenticating qualifications to which this Part applies.
- (6) The efficiency objective is to secure that regulated qualifications are provided efficiently and in particular that any relevant sums payable to a body awarding or authenticating a qualification in respect of which the body is recognised under section 132 represent value for money.
- (7) For the purposes of subsection (6) a sum is relevant if it is payable in respect of the award or authentication of the qualification in question.

## 129 General duties

- (1) So far as reasonably practicable, in performing its functions Ofqual must act in a way—
- (a) which is compatible with its objectives, and
  - (b) which it considers most appropriate for the purpose of meeting its objectives.
- (2) So far as relevant, in performing its functions Ofqual must have regard to—
- (a) the need to ensure that the number of regulated qualifications available for award or authentication is appropriate;
  - (b) the other reasonable requirements of relevant learners, including persons with learning difficulties;
  - (c) the reasonable requirements of pupils and children, including persons with learning difficulties, in relation to regulated assessment arrangements;
  - (d) the reasonable requirements of industry, commerce, finance, the professions and other employers regarding education and training (including required standards of practical competence);
  - (e) the reasonable requirements of institutions within the higher education sector;
  - (f) information provided to Ofqual by a person falling within subsection (4);
  - (g) the desirability of facilitating innovation in connection with the provision of regulated qualifications;
  - (h) the specified purposes of regulated assessment arrangements.
- (3) For the purposes of subsection (2)(a) the number of regulated qualifications available for award or authentication is appropriate if the number is such that—
- (a) there is a reasonable level of choice for learners, in terms of both the number of different regulated qualifications and the number of different forms of such qualifications, but
  - (b) the number of different regulated qualifications in similar subject areas or serving similar functions is not excessive.
- (4) The persons falling within this subsection are—
- (a) the Qualifications and Curriculum Development Agency;
  - (b) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
  - (c) such other relevant persons, or relevant persons of such a description, as the Secretary of State may direct.

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- (5) In subsection (4)(c) “relevant person” means a person who appears to the Secretary of State to have knowledge of, or expertise in, requirements of a kind mentioned in subsection (2)(d).
- (6) In performing its functions Ofqual must also have regard to such aspects of government policy as the Secretary of State may direct.
- (7) The Secretary of State must publish a direction given under subsection (6).
- (8) Ofqual must perform its functions efficiently and effectively.
- (9) “Persons with learning difficulties” means—
  - (a) children with special educational needs (as defined in section 312 of the Education Act 1996 (c. 56)), and
  - (b) other persons who—
    - (i) have a significantly greater difficulty in learning than the majority of persons of their age, or
    - (ii) have a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for persons of their age.
- (10) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which the person is or will be taught is different from a language (or form of language) which has at any time been spoken in the person's home.
- (11) “Relevant learner” means a person seeking to obtain, or who may reasonably be expected to seek to obtain, a regulated qualification.

*Regulated qualifications and regulated assessment arrangements*

**130 Meaning of “regulated qualifications” etc.**

- (1) In this Part a “regulated qualification” means a qualification to which this Part applies which is awarded or authenticated by a body which is recognised under section 132 in respect of the qualification.
- (2) This Part applies to any of the following qualifications which is not an excluded qualification—
  - (a) an academic or vocational qualification awarded or authenticated in England;
  - (b) a vocational qualification awarded or authenticated in Northern Ireland.
- (3) An excluded qualification is any of the following—
  - (a) a foundation degree;
  - (b) a first degree;
  - (c) a degree at a higher level.
- (4) For the purposes of subsection (2) a qualification is awarded or authenticated in England or Northern Ireland if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are, will be or may reasonably be expected to be assessed for those purposes wholly or mainly in England or Northern Ireland (as the case may be).

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- (5) The Secretary of State may by order repeal subsection (2)(b).
- (6) An order under subsection (5) may make amendments and repeals to a provision of, or in an instrument made under, this or any other Act (including any Act passed after this Act) in consequence of the repeal of subsection (2)(b).
- (7) Before making an order under subsection (5) the Secretary of State must consult the Department for Employment and Learning in Northern Ireland.

### **131 Meaning of “regulated assessment arrangements” etc.**

- (1) This section applies for the purposes of this Part.
- (2) “Regulated assessment arrangements” means—
  - (a) NC assessment arrangements, and
  - (b) EYFS assessment arrangements.
- (3) “NC assessment arrangements” means arrangements made under or by virtue of an order made under section 87(3)(c) of the Education Act 2002 (c. 32) for assessing pupils in England in respect of each key stage for the specified purposes.
- (4) In subsection (3)—
 

“assessing” includes testing;

“key stage” has the same meaning as in Part 6 of the Education Act 2002 (c. 32) (see section 76 of that Act).
- (5) “EYFS assessment arrangements” means arrangements made under or by virtue of an order made under section 39(1)(a) of the Childcare Act 2006 (c. 21) for assessing children in England for the specified purposes.
- (6) “The specified purposes” in relation to regulated assessment arrangements—
  - (a) if the arrangements are NC assessment arrangements, has the same meaning as in section 76(1) of the Education Act 2002;
  - (b) if the arrangements are EYFS assessment arrangements, has the same meaning as in section 41(2)(c) of the Childcare Act 2006.

## **CHAPTER 2**

### FUNCTIONS IN RELATION TO QUALIFICATIONS

#### *Recognition of awarding bodies*

### **132 Recognition**

- (1) Ofqual must recognise an awarding body in respect of the award or authentication of a specified qualification, or description of qualification, to which this Part applies if—
  - (a) the awarding body has applied for recognition in the respect in question, and
  - (b) the body meets the applicable criteria for recognition most recently published under section 133.

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- (2) Ofqual may not recognise an awarding body if the requirements set out in paragraphs (a) and (b) of subsection (1) are not met by the body.
- (3) A recognition—
  - (a) has effect from such date as Ofqual may specify,
  - (b) is subject to the general conditions,
  - (c) if in respect of a qualification subject to the accreditation requirement, is subject to an accreditation condition, and
  - (d) is subject to such other conditions that Ofqual may impose at the time of recognition or later.
- (4) But Ofqual may, at the time of recognition or later, determine that a specified recognition is not to be subject to a specified general condition.
- (5) An accreditation condition in respect of a qualification subject to the accreditation requirement is a condition requiring that the recognised body may award or authenticate a particular form of the qualification only if, at the time of the award or authentication, that form of the qualification is accredited under section 139.
- (6) Ofqual may not charge an awarding body in respect of recognition.
- (7) If Ofqual refuses an application for recognition it must provide the awarding body with a statement setting out the reasons for its decision.
- (8) In this section “the general conditions”, in respect of a recognition of an awarding body, means the general conditions for the time being in force under section 134 which are applicable to the recognition and the body.
- (9) In this Chapter—
  - “awarding body” means a person who awards or authenticates, or who proposes to award or authenticate, a qualification to which this Part applies;
  - “recognised body” means an awarding body recognised under this section;
  - a “recognition” means a recognition under this section.

### **133 Criteria for recognition**

- (1) Ofqual must set and publish the criteria for recognition under section 132.
- (2) Different criteria may be set for—
  - (a) recognition of different descriptions of awarding bodies;
  - (b) recognition in respect of different qualifications or different descriptions of qualifications;
  - (c) recognition in respect of credits in respect of different components of qualifications or different descriptions of components of qualifications.
- (3) Ofqual may revise the criteria.
- (4) If Ofqual revises the criteria it must publish them as revised.
- (5) Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate.

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### **134 General conditions of recognition**

- (1) Ofqual must set and publish the general conditions to which a recognition is to be subject.
- (2) Different general conditions may be set for—
  - (a) recognition of different descriptions of awarding bodies;
  - (b) recognition in respect of different qualifications or different descriptions of qualifications;
  - (c) recognition in respect of credits in respect of different components of qualifications or different descriptions of components of qualifications.
- (3) Ofqual may revise the general conditions.
- (4) If Ofqual revises the general conditions it must publish them as revised.
- (5) Before setting or revising the general conditions Ofqual must consult such persons as it considers appropriate.

### **135 Other conditions of recognition**

- (1) The conditions of recognition that Ofqual may impose under section 132(3)(d) include in particular—
  - (a) fee capping conditions;
  - (b) entry and inspection conditions.
- (2) Fee capping conditions are conditions limiting the amount of a fee chargeable by a recognised body for—
  - (a) the award or authentication of a qualification in respect of which the body is recognised, or
  - (b) the provision of any other service in relation to such a qualification.
- (3) Entry and inspection conditions are conditions requiring permission to enter premises for the purposes of inspecting and copying documents so far as necessary for Ofqual—
  - (a) to satisfy itself that the appropriate standards are being maintained by a recognised body in relation to the award or authentication of any qualification in respect of which the body is recognised, or
  - (b) to determine whether to impose a fee capping condition and, if so, what that condition should be.

### **136 Fee capping conditions: supplementary**

- (1) Ofqual may impose a fee capping condition limiting the amount of a particular fee only if satisfied that the limit is necessary in order to secure value for money.
- (2) Before imposing a fee capping condition in respect of a recognition Ofqual must give notice to the recognised body of its intention to do so.
- (3) The notice must—
  - (a) set out Ofqual's reasons for proposing to impose the fee capping condition, and
  - (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.



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- (4) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to impose the fee capping condition.
- (5) Ofqual must establish arrangements (the “review arrangements”) for the review, at the request of a recognised body, of a decision to impose a fee capping condition.
- (6) The review arrangements must require the decision on review to be made by a person within subsection (7).
- (7) A person within this subsection is one who—
  - (a) appears to Ofqual to have skills likely to be relevant to decisions to impose fee capping conditions, and
  - (b) is independent of Ofqual.
- (8) A person is independent of Ofqual for the purposes of subsection (7) if the person is—
  - (a) an individual who is not a member of Ofqual or Ofqual's staff, or
  - (b) a body none of whose members is a member of Ofqual or Ofqual's staff.
- (9) A decision to impose a fee capping condition must not take effect before the later of—
  - (a) the expiry of the period during which a review can be requested under the review arrangements, and
  - (b) the completion of any review requested under those arrangements.
- (10) Ofqual must, in performing its functions in relation to fee capping conditions, have regard to any guidance given by the Secretary of State.
- (11) The Secretary of State must publish any guidance given under subsection (10).

### **137 Entry and inspection conditions: supplementary**

- (1) An entry and inspection condition requires permission to enter premises to be given only if—
  - (a) the premises in question are not used as a private dwelling,
  - (b) the entry is to be by an authorised person,
  - (c) reasonable notice has been given to the recognised body in question, and
  - (d) the entry is to be at a reasonable time.
- (2) “Authorised person” means a member of Ofqual's staff who is authorised (generally or specifically) for the purpose.
- (3) An entry and inspection condition may require an authorised person to be given permission to do anything that a person authorised by a provision of Part 1 of the Education Act 2005 (c. 18) to inspect documents could do by virtue of section 58 of that Act (computer records).

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### *Accreditation of certain qualifications*

#### **138 Qualifications subject to the accreditation requirement**

- (1) Ofqual may determine that a specified qualification, or description of qualification, to which this Part applies is subject to the accreditation requirement.
- (2) A determination under subsection (1) may provide that a qualification or description of qualification is subject to the accreditation requirement—
  - (a) for all purposes, or
  - (b) for the purposes of award or authentication by a specified awarding body.
- (3) Ofqual must publish a determination falling within subsection (2)(a).
- (4) Ofqual may revise a determination made under subsection (1).
- (5) If Ofqual revises a determination falling within subsection (2)(a) it must publish the determination as revised.
- (6) Before making or revising a determination under subsection (1) Ofqual must—
  - (a) if the determination falls within subsection (2)(a), consult such persons as it considers appropriate, and
  - (b) if the determination falls within subsection (2)(b), consult the awarding body in question.

#### **139 Accreditation**

- (1) Where a qualification is subject to the accreditation requirement Ofqual must accredit a particular form of the qualification if—
  - (a) that form of the qualification has been submitted for accreditation by a recognised body which is recognised in respect of the qualification, and
  - (b) that form of the qualification meets the applicable criteria for accreditation most recently published under section 140.
- (2) Ofqual may not accredit a form of a qualification if the requirements set out in paragraphs (a) and (b) of subsection (1) are not met in respect of that form of the qualification.
- (3) An accreditation under this section has effect from such date as Ofqual may specify.
- (4) Ofqual may not charge a recognised body in respect of accreditation under this section.
- (5) If Ofqual refuses an application for accreditation it must provide the recognised body with a statement setting out the reasons for its decision.

#### **140 Criteria for accreditation**

- (1) Ofqual must set and publish the criteria for accreditation under section 139.
- (2) Different criteria may be set for the accreditation of different qualifications or different descriptions of qualifications.
- (3) Ofqual may revise the criteria.

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- (4) If Ofqual revises the criteria it must publish them as revised.
- (5) Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate.
- (6) If Ofqual revises the criteria under this section which are applicable to a form of a qualification which is accredited under section 139, the accreditation ceases to have effect on the date specified by Ofqual.
- (7) Ofqual may vary the date specified under subsection (6) at any time before the date.
- (8) Ofqual may determine that subsection (6) does not apply in relation to a specified revision.
- (9) Ofqual must publish a determination made under subsection (8).
- (10) Ofqual may make saving or transitional provision in connection with the accreditation of a form of a qualification ceasing to have effect under subsection (6).

#### *Minimum requirements*

### **141 Power to specify minimum requirements**

- (1) The Secretary of State may by order specify minimum requirements in respect of a specified qualification, or description of qualification, to which this section applies.
- (2) But the Secretary of State may make an order under subsection (1) only if satisfied that it is necessary to do so for the purpose of ensuring that the curriculum studied by persons taking a course leading to the qualification, or a qualification of the description, is appropriate, having regard to the likely ages of those persons.
- (3) This section applies to a qualification, or description of qualification, if—
  - (a) the qualification, or each qualification of the description, is one to which this Part applies, and
  - (b) the condition in subsection (4) is met in relation to the qualification or each qualification of the description.
- (4) The condition is that—
  - (a) one or more forms of the qualification is (or are) approved under section 98 of the Learning and Skills Act 2000 (c. 21), or
  - (b) the Secretary of State reasonably expects approval under that section to be sought for one or more forms of the qualification.
- (5) A minimum requirement in respect of a qualification or description of qualification is a requirement which relates to the knowledge, skills or understanding which a person must demonstrate in order to obtain the qualification or a qualification of the description.

### **142 Consultation before making order specifying minimum requirements**

- (1) Before making an order under section 141(1) the Secretary of State must consult Ofqual and such other persons as the Secretary of State considers appropriate.

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- (2) For the purposes of consulting under subsection (1) the Secretary of State must publish a document setting out—
  - (a) the grounds on which the Secretary of State is satisfied of the matter specified in section 141(2),
  - (b) the proposed minimum requirements, and
  - (c) the Secretary of State's reasons for proposing those minimum requirements.
- (3) The Secretary of State must provide a copy of the document to Ofqual and any other persons the Secretary of State proposes to consult under subsection (1).

#### **143 Effect of order specifying minimum requirements**

- (1) This section applies in relation to a qualification or description of qualification in respect of which minimum requirements specified in an order under section 141(1) have effect.
- (2) Ofqual must perform its functions under sections 133, 134 and 140 in relation to the qualification or description of qualification in a way which secures that the minimum requirements in respect of the qualification or description of qualification are met.
- (3) But Ofqual is not required to comply with the duty imposed by subsection (2) if it appears to Ofqual that complying with that duty would result in the level of attainment (in terms of depth of knowledge, skills or understanding) indicated by the qualification or description of qualification not being consistent with that indicated by comparable regulated qualifications.

#### **144 Revocation and amendment of orders specifying minimum requirements**

- (1) Subsection (2) applies if—
  - (a) the Secretary of State has made an order under section 141(1) in respect of a qualification or description of qualification, and
  - (b) the qualification or description of qualification ceases to be one to which section 141 applies.
- (2) The Secretary of State may by order—
  - (a) revoke the order, or
  - (b) amend it for the purpose of removing the qualification or description of qualification from the application of the order.
- (3) Subsections (1) and (2) do not affect the power of the Secretary of State to revoke or amend an order under section 141(1) in other circumstances.
- (4) Sections 141(2) and 142 do not apply to an order—
  - (a) revoking an order under section 141(1), or
  - (b) amending an order under section 141(1) for the purpose only of removing a qualification or description of qualification from the application of the order.

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VALID FROM 31/05/2013

### *Guided learning*

#### **145 Assignment of number of hours of guided learning**

- (1) A recognised body may only award or authenticate a particular form of a qualification in respect of which it is recognised if Condition 1 or 2 is met.
- (2) Condition 1 is met if the recognised body determines that the qualification is not relevant for 2008 Act purposes.
- (3) Condition 2 is met if—
  - (a) the recognised body determines that the qualification is relevant for 2008 Act purposes, and
  - (b) the body assigns to the particular form of the qualification a number of hours of guided learning.
- (4) Subsection (1) does not apply in relation to a qualification which is a Northern Ireland-only qualification.
- (5) A recognised body must apply the applicable criteria then in force under section 146 when determining—
  - (a) whether or not a qualification is relevant for 2008 Act purposes, and
  - (b) in respect of a qualification which the body has determined is relevant for those purposes, a number of hours of guided learning to assign to a form of the qualification.
- (6) If revised criteria come into force under section 146, a recognised body must review any determination it has made under this section.
- (7) Ofqual may—
  - (a) review any determination made by a recognised body under this section, and
  - (b) require the recognised body to revise any such determination in such respects as Ofqual may specify.
- (8) If under subsection (7)(b) Ofqual requires a recognised body to revise a determination that a qualification is not relevant for 2008 Act purposes by specifying that the determination should provide that the qualification is so relevant—
  - (a) Ofqual may assign to a form of the qualification awarded or authenticated by the recognised body a number of hours of guided learning, and
  - (b) if it does so, the recognised body is to be treated as having determined to assign that number of hours of guided learning to that form of the qualification.
- (9) For the purposes of this Chapter a qualification is relevant for 2008 Act purposes if there are, or may reasonably be expected to be, persons seeking to obtain the qualification for the purposes of discharging the duty under section 2(1)(c) of the Education and Skills Act 2008 (c. 25) (duty to participate in education or training).

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(10) In this Chapter a “number of hours of guided learning”, in relation to a form of a qualification, means a number of notional hours 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 obtain that form of the qualification.

(11) In subsection (10) “actual guided learning” means time a person spends—

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

(12) Section 172(2)(a) does not apply for the purposes of this section.

#### **146 Criteria for assignment of number of hours of guided learning**

- (1) Ofqual must set and publish criteria for determining—
  - (a) whether a qualification is relevant for 2008 Act purposes, and
  - (b) in respect of a qualification which a recognised body has determined is relevant for those purposes, the number of hours of guided learning that should be assigned to a form of the qualification.
- (2) Different criteria may be set for determinations in relation to different qualifications or different descriptions of qualifications.
- (3) Ofqual may revise the criteria.
- (4) If Ofqual revises the criteria it must publish them as revised.
- (5) Before setting or revising the criteria Ofqual must consult such persons as it considers appropriate.

#### *Surrender*

#### **147 Surrender of recognition**

- (1) A recognised body may give notice to Ofqual that it wishes to cease to be recognised in respect of the award or authentication of a specified qualification or description of qualification.
- (2) As soon as reasonably practicable after receipt of a notice under subsection (1) Ofqual must give notice to the recognised body of the date on which the body is to cease to be recognised in the respect in question (“the surrender date”).
- (3) At any time before the surrender date Ofqual may vary that date by giving further notice to the recognised body.
- (4) In deciding or varying the surrender date Ofqual must have regard to the need to avoid prejudicing persons who are seeking, or might reasonably be expected to seek, to obtain the qualification, or a qualification of the description, specified in the notice under subsection (1).

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- (5) Ofqual may make saving or transitional provision in connection with a recognised body ceasing to be recognised in any respect by virtue of this section.

### *Register*

#### **148 Register**

- (1) Ofqual must maintain and publish a register containing the following information in relation to each recognised body—
- (a) the qualifications in respect of which it is recognised,
  - (b) the forms of those qualifications which are awarded or authenticated by it, and
  - (c) if the recognised body has determined under section 145 that any of those qualifications is relevant for 2008 Act purposes, the number of hours of guided learning it has assigned to each form of the qualification awarded or authenticated by it.
- (2) The register may include such other information as Ofqual considers appropriate.

### *Recognised bodies: monitoring and enforcement*

#### **149 Review of activities of recognised bodies**

- (1) Ofqual may keep under review any connected activities of a recognised body.
- (2) An activity of a recognised body is a connected activity if Ofqual considers that it is connected or otherwise relevant to—
- (a) the body's recognition (including, in particular, the compliance by the body with the conditions to which the recognition is subject), or
  - (b) the award or authentication by the body of any qualification in respect of which it is recognised.

#### **150 Investigation of complaints**

- (1) Ofqual may investigate, or make arrangements for the investigation of, complaints in relation to the award or authentication of a regulated qualification.
- (2) Arrangements made under subsection (1) may in particular include arrangements for the referral of complaints to an independent party.
- (3) “An independent party” means—
- (a) an individual who is not a member of Ofqual or Ofqual's staff, or
  - (b) a body none of whose members is a member of Ofqual or Ofqual's staff.

#### **151 Power to give directions**

- (1) Subsection (2) applies if it appears to Ofqual—
- (a) that a recognised body has failed or is likely to fail to comply with any condition to which the recognition is subject, and
  - (b) that the failure prejudices or would be likely to prejudice—

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- (i) the proper award or authentication by the body of any qualification in respect of which the body is recognised, or
  - (ii) persons who might reasonably be expected to seek to obtain such a qualification awarded or authenticated by the body.
- (2) Ofqual may direct the recognised body to take or refrain from taking specified steps with a view to securing compliance with the condition.
- (3) Before giving a recognised body a direction under this section Ofqual must give notice to the body of its intention to do so.
- (4) The notice must—
- (a) set out Ofqual's reasons for proposing to give the direction, and
  - (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.
- (5) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to give a direction to the body.
- (6) A recognised body must comply with a direction given to it under this section.
- (7) A direction under this section is enforceable, on the application of Ofqual—
- (a) in England and Wales, by a mandatory order, or
  - (b) in Northern Ireland, by an order of mandamus.
- (8) A direction given under this section may be amended or revoked by Ofqual; and subsections (3) to (5) apply to the amendment of a direction as they apply to the giving of a direction.

## **152 Power to withdraw recognition**

- (1) Subsection (2) applies if a recognised body has failed to comply with a condition to which the recognition is subject.
- (2) Ofqual may withdraw recognition from the recognised body in respect of the award or authentication of a specified qualification or a specified description of qualification if it appears to Ofqual that the failure mentioned in subsection (1) prejudices or would be likely to prejudice—
- (a) the proper award or authentication by the body of the qualification or a qualification of the description in question, or
  - (b) persons who might reasonably be expected to seek to obtain the qualification or a qualification of the description in question awarded or authenticated by the body.
- (3) Before withdrawing recognition from a recognised body in any respect Ofqual must give notice to the body of its intention to do so.
- (4) The notice must—
- (a) set out Ofqual's reasons for proposing to withdraw recognition from the recognised body in the respect in question, and
  - (b) specify the period during which, and the way in which, the recognised body may make representations about the proposal.



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- (5) Ofqual must have regard to any representations made by the recognised body during the period specified in the notice in deciding whether to withdraw recognition from the body in the respect in question.
- (6) If Ofqual decides to withdraw recognition from a recognised body Ofqual—
  - (a) must give notice to the body of its decision and of the date on which the withdrawal is to take effect, and
  - (b) may make saving or transitional provision.
- (7) At any time before a withdrawal takes effect Ofqual may vary the date on which it is to take effect by giving further notice to the recognised body.
- (8) Ofqual must establish arrangements for the review, at the request of a recognised body, of a decision to withdraw recognition under this section.
- (9) The arrangements established under subsection (8) must require the decision on review to be made by a person who is independent of Ofqual.
- (10) A person is independent of Ofqual for the purposes of subsection (9) if the person is—
  - (a) an individual who is not a member of Ofqual or Ofqual's staff, or
  - (b) a body none of whose members is a member of Ofqual or Ofqual's staff.

### **153 Qualifications regulatory framework**

- (1) Ofqual must prepare and publish—
  - (a) a statement of how Ofqual intends to perform the monitoring and enforcement functions, and
  - (b) guidance to recognised bodies in relation to the award and authentication of qualifications in respect of which they are recognised.
- (2) The statement and guidance mentioned in subsection (1) are together referred to in this section as “the qualifications regulatory framework”.
- (3) Guidance under subsection (1)(b) must include guidance for the purpose of helping to determine whether or not behaviour complies with the general conditions to which a recognition is subject (see section 134).
- (4) The guidance may in particular specify—
  - (a) descriptions of behaviour which Ofqual considers complies with a general condition;
  - (b) descriptions of behaviour which Ofqual considers does not comply with a general condition;
  - (c) factors which Ofqual will take into account in determining whether or not a recognised body's behaviour complies with a general condition.
- (5) Ofqual—
  - (a) may revise the qualifications regulatory framework, and
  - (b) if it does so, must publish the revised version.
- (6) Before publishing the qualifications regulatory framework or a revised version of it, Ofqual must consult such persons as it considers appropriate.

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- (7) A recognised body must have regard to guidance under subsection (1)(b) in awarding or authenticating a qualification in respect of which it is recognised.
- (8) In subsection (1) “the monitoring and enforcement functions” means—
- (a) Ofqual's power under section 132(3)(d) (power to impose other conditions);
  - (b) Ofqual's functions under sections 132(4) and 134 (functions in relation to general conditions);
  - (c) Ofqual's functions under an entry and inspection condition to which a recognition is subject (see section 135);
  - (d) Ofqual's functions under section 138(1) (power to determine that a qualification is subject to the accreditation requirement);
  - (e) Ofqual's functions under sections 149 to 152.

*Other*

#### **154 Review of qualifications to which Part applies**

Ofqual may keep under review all aspects of qualifications to which this Part applies.

PROSPECTIVE

#### **155 Review of system for allocating values to qualifications**

- (1) Ofqual must keep under review any system used by the Secretary of State for allocating values to qualifications to which this Part applies by reference to the level of attainment indicated by the qualifications.
- (2) The duty in subsection (1) applies only if the values are to be allocated for the purpose of a qualifications-based performance management system.
- (3) A qualifications-based performance management system is a system for measuring the relative performance of schools by reference to the performance of pupils at the schools in qualifications to which this Part applies.
- (4) Ofqual may at any time require the Secretary of State to provide it with any information which Ofqual considers it necessary or expedient to have for the purposes of, or in connection with, the performance by Ofqual of its duty under subsection (1).

#### **156 Co-operation and joint working**

- (1) Ofqual may co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of Ofqual's qualifications functions.
- (2) “Public authority” includes any person who performs functions (whether or not in the United Kingdom) which are of a public nature.
- (3) In this Chapter “qualifications functions” means functions in connection with qualifications to which this Part applies.

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## **157 Power to provide information to qualifications regulators**

- (1) Ofqual may provide information to a qualifications regulator for the purpose of enabling or facilitating the performance of a relevant function of the regulator.
- (2) For the purposes of this section—
  - (a) a qualifications regulator is a person who has functions in any part of the United Kingdom which are similar to Ofqual's qualifications functions, and
  - (b) a function of a qualifications regulator is a relevant function if it is similar to any of the qualifications functions of Ofqual.
- (3) Nothing in this section—
  - (a) affects any power to disclose information that exists apart from this section, or
  - (b) authorises the disclosure of information in contravention of any provision made by or under any Act which prevents disclosure of the information.

### *General*

## **158 Interpretation of Chapter**

- (1) In this Chapter—
  - “awarding body” has the meaning given by section 132;
  - “entry and inspection condition” has the meaning given by section 135;
  - “fee capping condition” has the meaning given by section 135;
  - “Northern Ireland-only qualification” means a qualification in respect of which the persons who are, or who may reasonably be expected to be, seeking to obtain the qualification are, will be or may reasonably be expected to be assessed for those purposes wholly in Northern Ireland;
  - “number of hours of guided learning”, in relation to a form of a qualification, has the meaning given by section 145;
  - “qualifications functions” has the meaning given by section 156;
  - “recognised body” has the meaning given by section 132;
  - a “recognition” has the meaning given by section 132.
- (2) For the purposes of this Chapter a qualification is subject to the accreditation requirement if a determination by Ofqual that the qualification, or a description of qualification which applies to the qualification, is to be subject to that requirement has effect under section 138.
- (3) For the purposes of this Chapter a qualification is relevant for 2008 Act purposes if it falls within section 145(9).

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### CHAPTER 3

#### FUNCTIONS IN RELATION TO ASSESSMENT ARRANGEMENTS

##### *Development etc. of regulated assessment arrangements*

#### **159 NC assessment arrangements: duty to consult Ofqual etc.**

(1) Section 87 of the Education Act 2002 (c. 32) (establishment of the National Curriculum for England by order) is amended as follows.

(2) Before subsection (7) insert—

“(6A) Before making an order under subsection (3)(c) the Secretary of State—

- (a) shall consult the Office of Qualifications and Examinations Regulation, and
- (b) may consult such other persons as the Secretary of State considers appropriate.”

(3) After subsection (8) insert—

“(8A) An order under subsection (3)(c) which includes provision made by virtue of subsection (8) shall provide that before making or revising the assessment arrangements the person specified in the order—

- (a) shall consult the Office of Qualifications and Examinations Regulation, and
- (b) may consult such other persons as that person considers appropriate.”

(4) After subsection (12) (as inserted by paragraph 35 of Schedule 12) insert—

“(12A) An order under subsection (3)(c) which authorises a person to make delegated supplementary provisions shall provide that before making, amending or revoking any such provisions the person so authorised—

- (a) shall consult the Office of Qualifications and Examinations Regulation, and
- (b) may consult such other persons as that person considers appropriate.”

#### **160 EYFS assessment arrangements: duty to consult Ofqual etc.**

(1) Section 42 of the Childcare Act 2006 (c. 21) (further provisions about assessment arrangements) is amended as follows.

(2) Before subsection (1) insert—

“(A1) Before making a learning and development order specifying assessment arrangements the Secretary of State—

- (a) must consult the Office of Qualifications and Examinations Regulation, and
- (b) may consult such other persons as the Secretary of State considers appropriate.”

(3) After subsection (3) insert—

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“(3A) A learning and development order which includes provision made by virtue of subsection (3) must provide that before making or revising the assessment arrangements the person specified in the order—

- (a) must consult the Office of Qualifications and Examinations Regulation, and
- (b) may consult such other persons as that person considers appropriate.”

(4) After subsection (6A) (as inserted by paragraph 40 of Schedule 12) insert—

“(6AA) A learning and development order which authorises a person to make delegated supplementary provisions must provide that before making, amending or revoking any such provisions the person so authorised—

- (a) must consult the Office of Qualifications and Examinations Regulation, and
- (b) may consult such other persons as that person considers appropriate.”

*Review etc. of regulated assessment arrangements*

#### **161 Review of regulated assessment arrangements**

- (1) Ofqual must keep under review all aspects of NC assessment arrangements.
- (2) Ofqual must keep under review all aspects of EYFS assessment arrangements.

#### **162 Powers to require information**

- (1) Ofqual may at any time require a person falling within subsection (2) to provide it with any information which Ofqual considers it necessary or expedient to have for the purposes of, or in connection with, the performance by Ofqual of its function under section 161(1).
- (2) The persons are—
  - (a) the Secretary of State;
  - (b) an NC responsible body;
  - (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
  - (d) any other person specified or of a description specified in regulations.
- (3) Ofqual may at any time require a person falling within subsection (4) to provide it with any information which Ofqual considers it necessary or expedient to have for the purposes of, or in connection with, the performance by Ofqual of its function under section 161(2).
- (4) The persons are—
  - (a) the Secretary of State;
  - (b) an EYFS responsible body;
  - (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
  - (d) any other person specified or of a description specified in regulations.
- (5) In this Chapter—

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“EYFS responsible body” means a person who under or by virtue of an order made under section 39(1)(a) of the Childcare Act 2006 (c. 21) has functions in relation to the development, implementation or monitoring of EYFS assessment arrangements;

“NC responsible body” means a person who under or by virtue of an order made under section 87(3)(c) of the Education Act 2002 (c. 32) has functions in relation to the development, implementation or monitoring of NC assessment arrangements.

### **163 Duty to notify significant failings**

- (1) If it appears to Ofqual that there is or is likely to be a significant failing in NC assessment arrangements Ofqual must notify—
  - (a) the Secretary of State, and
  - (b) any NC responsible body whose act or omission appears to Ofqual to have contributed to the significant failing.
- (2) If it appears to Ofqual that there is or is likely to be a significant failing in EYFS assessment arrangements Ofqual must notify—
  - (a) the Secretary of State, and
  - (b) any EYFS responsible body whose act or omission appears to Ofqual to have contributed to the significant failing.
- (3) There is a significant failing in NC assessment arrangements or (as the case may be) EYFS assessment arrangements if, as a result of the way in which the arrangements are being developed or implemented, they fail in a significant way to achieve one or more of the specified purposes of the arrangements.

#### *Regulatory frameworks*

### **164 NC assessments regulatory framework**

- (1) Ofqual must prepare and publish a document (“the NC assessments regulatory framework”) which—
  - (a) contains a description of how Ofqual intends to perform its function under section 161(1), and
  - (b) gives guidance to NC responsible bodies about the performance of their functions in relation to NC assessment arrangements.
- (2) Ofqual—
  - (a) may revise the NC assessments regulatory framework, and
  - (b) if it does so, it must publish the revised version.
- (3) Before publishing the NC assessments regulatory framework or a revised version of it, Ofqual must consult—
  - (a) the Secretary of State, and
  - (b) such NC responsible bodies and other persons as it considers appropriate.
- (4) An NC responsible body must have regard to the NC assessments regulatory framework in performing its functions in relation to NC assessment arrangements.

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## **165 EYFS assessments regulatory framework**

- (1) Ofqual must prepare and publish a document (“the EYFS assessments regulatory framework”) which—
  - (a) contains a description of how Ofqual intends to perform its function under section 161(2), and
  - (b) gives guidance to EYFS responsible bodies about the performance of their functions in relation to EYFS assessment arrangements.
- (2) Ofqual—
  - (a) may revise the EYFS assessments regulatory framework, and
  - (b) if it does so, it must publish the revised version.
- (3) Before publishing the EYFS assessments regulatory framework or a revised version of it, Ofqual must consult—
  - (a) the Secretary of State, and
  - (b) such EYFS responsible bodies and other persons as it considers appropriate.
- (4) An EYFS responsible body must have regard to the EYFS assessments regulatory framework in performing its functions in relation to EYFS assessment arrangements.

### *General*

## **166 Interpretation of Chapter**

In this Chapter—

- “EYFS assessment arrangements” has the meaning given by section 131;
- “EYFS responsible body” has the meaning given by section 162;
- “NC assessment arrangements” has the meaning given by section 131;
- “NC responsible body” has the meaning given by section 162.

## **CHAPTER 4**

### **OTHER FUNCTIONS**

## **167 Provision of services**

- (1) Ofqual may, in connection with any of its functions, provide services to any person (whether or not in the United Kingdom).
- (2) Services provided by virtue of this section may be provided on such terms and subject to such conditions (if any) as Ofqual may determine.
- (3) Ofqual may charge a fee for, or in connection with, any service provided by virtue of this section.

## **168 Provision of information or advice**

- (1) If requested to do so by the Secretary of State, Ofqual must provide the Secretary of State with information or advice on such matters relating to any of its functions as may be specified in the request.

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- (2) If requested to do so by the Department for Employment and Learning in Northern Ireland, Ofqual must provide the Department with information or advice on such matters relating to any of its functions (so far as they relate to Northern Ireland) as may be specified in the request.

### **169 Research and development**

- (1) Ofqual may carry out programmes of research and development for purposes connected with—
- (a) qualifications to which this Part applies, or
  - (b) regulated assessment arrangements.
- (2) Ofqual may commission, co-ordinate or facilitate the carrying out of programmes of research and development for the purposes mentioned in subsection (1).

### **170 Duty not to impose or maintain unnecessary burdens**

- (1) Ofqual must keep its regulatory functions under review.
- (2) Ofqual must secure that in performing any of its regulatory functions it does not—
- (a) impose burdens which it considers to be unnecessary, or
  - (b) maintain burdens which it considers to have become unnecessary.
- (3) Subsection (2) does not require the removal of a burden which has become unnecessary where its removal would, having regard to all the circumstances, be impracticable or disproportionate.
- (4) Ofqual must publish a statement setting out—
- (a) what it proposes to do pursuant to subsections (1) and (2) in the period to which the statement relates,
  - (b) (except in the case of the first statement published under this section) what it has done pursuant to subsections (1) and (2) since the previous statement was published under this section, and
  - (c) where a burden which has become unnecessary is maintained pursuant to subsection (3), the reasons why the removal of the burden would, having regard to all the circumstances, be impracticable or disproportionate.
- (5) The first statement published under this section—
- (a) must be published as soon as reasonably practicable after the commencement of section 127, and
  - (b) is to be a statement for the period of 12 months beginning with the day of its publication.
- (6) A subsequent statement published under this section—
- (a) must be published during the period to which the previous statement related or as soon as reasonably practicable after the end of that period, and
  - (b) must be a statement for the period of 12 months beginning with the end of the period to which the previous statement related.
- (7) Ofqual must, in performing any of its regulatory functions during a period for which a statement is in force under this section, have regard to the statement.



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(8) In this section “regulatory function” has the same meaning as in the Legislative and Regulatory Reform Act 2006 (c. 51) (see section 32 of that Act).

## **171 Annual and other reports**

- (1) As soon as reasonably practicable after the end of each reporting period Ofqual must prepare and publish a report for the period (“the annual report”).
- (2) The annual report must include—
  - (a) a statement of what Ofqual has done in performing its functions in the reporting period;
  - (b) an assessment of the extent to which Ofqual has met its objectives in that period;
  - (c) details of any information obtained by Ofqual in that period on the levels of attainment in relevant regulated qualifications.
- (3) “Relevant regulated qualifications” are regulated qualifications that are taken wholly or mainly by pupils at schools in England.
- (4) An assessment under subsection (2)(b) in respect of the qualifications standards objective must in particular explain how, in making the assessment, Ofqual has taken account of any information within subsection (2)(c) obtained in the reporting period or an earlier reporting period.
- (5) If arrangements of the kind mentioned in section 150(2) (arrangements for referral of complaints to an independent party) were in place during the reporting period, the annual report must include a description of the activities of the independent party during the reporting period.
- (6) Ofqual must—
  - (a) lay a copy of each annual report before Parliament;
  - (b) (so far as it relates to Northern Ireland) lay a copy of each annual report before the Northern Ireland Assembly.
- (7) Ofqual may prepare and publish other reports on matters relating to its functions.
- (8) If Ofqual prepares and publishes a report under subsection (7) it may—
  - (a) lay a copy of the report before Parliament;
  - (b) (so far as it relates to Northern Ireland) lay a copy of the report before the Northern Ireland Assembly.
- (9) Ofqual may comply with subsection (1) by preparing and publishing a single document or separate documents in relation to England and to Northern Ireland.
- (10) In this section “reporting period” means—
  - (a) the period (being not longer than 12 months) beginning with the day on which section 127 comes into force and ending on such date as Ofqual decides;
  - (b) each successive period of 12 months.

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## CHAPTER 5

### GENERAL

#### **172 Interpretation of Part**

- (1) In this Part—
- “institution within the higher education sector”—
- (a) in relation to England, has the same meaning as in the Education Act 1996 (c. 56) (see section 4(4) of that Act);
- (b) in relation to Northern Ireland, means a higher education institution within the meaning of Article 30 of the Education and Libraries (Northern Ireland) Order 1993 (S.I. 1993/2810 (N.I. 12));
- “Ofqual” means the Office of Qualifications and Examinations Regulation;
- “qualification to which this Part applies” has the meaning given by section 130;
- “regulated assessment arrangements” has the meaning given by section 131;
- “regulated qualification” has the meaning given by section 130;
- “the specified purposes”, in relation to regulated assessment arrangements, has the meaning given by section 131.
- (2) In this Part a reference to the award or authentication of a qualification includes a reference to—
- (a) the award or authentication of credits in respect of components of a qualification, and
- (b) the award or authentication of a qualification by a body either alone or jointly with others.
- (3) In this Part a reference to recognition, or being recognised, in respect of a qualification is a reference to recognition, or being recognised, under section 132 in respect of the award or authentication of the qualification or of a description of qualification which applies to the qualification.

#### **173 Transfer schemes**

Schedule 10 contains provision for the transfer of staff, property, rights and liabilities from the body to be known as the Qualifications and Curriculum Development Agency to Ofqual.

#### **174 Minor and consequential amendments**

Schedule 12 contains minor and consequential amendments relating to the provision made by this Part (and Part 8).

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## PART 8

### THE QUALIFICATIONS AND CURRICULUM DEVELOPMENT AGENCY

VALID FROM 01/04/2010

#### CHAPTER 1

##### THE QCDA, OBJECTIVE AND GENERAL DUTIES

###### *The QCDA*

#### **175 The Qualifications and Curriculum Development Agency**

- (1) The body corporate originally established under section 21 of the Education Act 1997 (c. 44) as the Qualifications and Curriculum Authority is to continue in existence but is to be known instead as the Qualifications and Curriculum Development Agency.
- (2) In this Part the Qualifications and Curriculum Development Agency is referred to as “the QCDA”.
- (3) Schedule 11 makes further provision about the QCDA.

###### *Objective and general duties*

#### **176 Objective**

The QCDA's objective is to promote quality and coherence in education and training in England.

#### **177 General duties**

- (1) So far as reasonably practicable, in performing its functions the QCDA must act in a way—
  - (a) which is compatible with its objective, and
  - (b) which it considers most appropriate for the purpose of meeting its objective.
- (2) So far as relevant, in performing its functions the QCDA must have regard to—
  - (a) the reasonable requirements of learners, including persons with learning difficulties;
  - (b) the reasonable requirements of industry, commerce, finance, the professions and other employers regarding education and training (including required standards of practical competence);
  - (c) the reasonable requirements of institutions within the higher education sector;
  - (d) the requirements of section 78 of the Education Act 2002 (c. 32) (general requirements in relation to curriculum);
  - (e) information provided to it by a person falling within subsection (3);
  - (f) the desirability of facilitating innovation.

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- (3) The persons falling within this subsection are—
- (a) the Office of Qualifications and Examinations Regulation;
  - (b) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
  - (c) such other persons, or persons of such a description, as the Secretary of State may direct.
- (4) In performing its functions the QCDA must also have regard to such aspects of government policy as the Secretary of State may direct.
- (5) The QCDA must perform its functions efficiently and effectively.
- (6) In this section—
- “learner” means a person who is, or may reasonably be expected to be, in receipt of education or training;
- “persons with learning difficulties” has the same meaning as in section 129.

## CHAPTER 2

### FUNCTIONS IN RELATION TO QUALIFICATIONS

#### 178 Qualifications within the QCDA's remit

- (1) For the purposes of this Part a qualification is within the QCDA's remit if—
- (a) it is an academic or vocational qualification awarded or authenticated in England, and
  - (b) it is not an excluded qualification.
- (2) But the Secretary of State may by order provide that a specified qualification, or qualifications of a specified description, despite falling within subsection (1), is or are outside the QCDA's remit for the purposes of this Part.
- (3) For the purposes of subsection (1) a qualification is awarded or authenticated in England if there are, or may reasonably be expected to be, persons seeking to obtain the qualification who are, will be or may reasonably be expected to be assessed for those purposes wholly or mainly in England.
- (4) An excluded qualification is a qualification awarded or authenticated by an institution within the higher education sector—
- (a) at foundation degree level or any comparable level, or
  - (b) at first degree level, or any comparable or higher level.

#### Commencement Information

**I7** S. 178(2) in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

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VALID FROM 01/04/2010

### 179 Qualifications: general functions

- (1) The QCDA must keep under review all aspects of qualifications within its remit.
- (2) The QCDA—
  - (a) may advise the Secretary of State on matters concerning qualifications within its remit, and
  - (b) must advise the Secretary of State on any such matters which are referred to the QCDA by the Secretary of State.
- (3) The QCDA may and, if requested to do so by the Secretary of State, must—
  - (a) carry out programmes of research and development for purposes connected with qualifications within its remit, or
  - (b) commission, co-ordinate or facilitate the carrying out of such programmes.
- (4) The QCDA may publish and disseminate, or facilitate the publication or other dissemination of, information relating to qualifications within its remit.

VALID FROM 01/04/2010

### 180 Assistance etc. in relation to qualifications functions of Ofqual

- (1) The QCDA must, if requested to do so by Ofqual, assist Ofqual in setting criteria under section 133 or 140 which relate to a qualification or description of qualification within subsection (2).
- (2) A qualification or description of qualification is within this subsection if Ofqual is required to comply with the duty imposed by section 143(2) in relation to it.
- (3) The QCDA may—
  - (a) assist Ofqual in setting qualifications criteria which do not fall within subsection (1), and
  - (b) provide other assistance, information or advice to Ofqual in connection with the performance by Ofqual of any of its qualifications functions.
- (4) In this section—

“assistance” does not include financial assistance (and “assist” is to be construed accordingly);

“Ofqual” means the Office of Qualifications and Examinations Regulation;

“qualifications criteria” means criteria required to be set by Ofqual under—

  - (a) section 133 (criteria for recognition of awarding bodies),
  - (b) section 140 (criteria for accreditation of qualifications subject to the accreditation requirement), and
  - (c) section 146 (criteria in connection with the assignment of number of hours of guided learning);

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“qualifications functions” means functions in connection with qualifications to which Part 7 applies (see section 130).

VALID FROM 01/04/2010

### CHAPTER 3

#### FUNCTIONS IN RELATION TO CURRICULUM, EARLY YEARS FOUNDATION STAGE AND ASSESSMENT

#### **181 Curriculum**

- (1) The QCDA must keep under review all aspects of the curriculum.
- (2) The QCDA—
  - (a) may advise the Secretary of State on matters concerning the curriculum, and
  - (b) must advise the Secretary of State on any such matters which are referred to the QCDA by the Secretary of State.
- (3) The QCDA may and, if requested to do so by the Secretary of State, must—
  - (a) carry out programmes of research and development for purposes connected with the curriculum, or
  - (b) commission, co-ordinate or facilitate the carrying out of such programmes.
- (4) The QCDA may publish and disseminate, or facilitate the publication or other dissemination of, information relating to the curriculum.
- (5) In this Part “the curriculum” means the curriculum for—
  - (a) pupils at maintained schools in England who have not ceased to be of compulsory school age, and
  - (b) pupils at maintained nursery schools in England.

#### **182 Early learning goals and educational programmes**

- (1) The QCDA must keep under review all aspects of the early learning goals and educational programmes.
- (2) The QCDA—
  - (a) may advise the Secretary of State on matters concerning the early learning goals and educational programmes, and
  - (b) must advise the Secretary of State on any such matters which are referred to the QCDA by the Secretary of State.
- (3) The QCDA may and, if requested to do so by the Secretary of State, must—
  - (a) carry out programmes of research and development for purposes connected with the early learning goals and educational programmes, or
  - (b) commission, co-ordinate or facilitate the carrying out of such programmes.

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- (4) The QCDA may publish and disseminate, or facilitate the publication or other dissemination of, information relating to the early learning goals and educational programmes.
- (5) In this Part “the early learning goals and educational programmes” means the requirements specified under section 39(1)(a) of the Childcare Act 2006 (c. 21) by virtue of paragraphs (a) and (b) of section 41(2) of that Act.

### **183 Assessment arrangements**

- (1) The QCDA must keep under review all aspects of assessment arrangements within its remit.
- (2) The QCDA—
  - (a) may advise the Secretary of State on matters concerning assessment arrangements within its remit, and
  - (b) must advise the Secretary of State on any such matters which are referred to the QCDA by the Secretary of State.
- (3) The QCDA may and, if requested to do so by the Secretary of State, must—
  - (a) carry out programmes of research and development for purposes connected with assessment arrangements within its remit, or
  - (b) commission, co-ordinate or facilitate the carrying out of such programmes.
- (4) The QCDA may publish and disseminate, or facilitate the publication or other dissemination of, information relating to assessment arrangements within its remit.
- (5) For the purposes of this Part the following are assessment arrangements within the QCDA's remit—
  - (a) regulated assessment arrangements;
  - (b) arrangements which do not fall within paragraph (a) but which are for tests and other assessments in respect of—
    - (i) pupils at maintained schools in England who have not ceased to be of compulsory school age, and
    - (ii) pupils at maintained nursery schools in England.

VALID FROM 01/04/2010

## **CHAPTER 4**

### **OTHER FUNCTIONS AND SUPPLEMENTARY PROVISION**

#### *Other functions*

### **184 Provision of services or other assistance**

- (1) The QCDA may provide services or other assistance in connection with any of the following—
  - (a) qualifications within the QCDA's remit;

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- (b) the curriculum;
  - (c) the early learning goals and educational programmes;
  - (d) assessment arrangements within the QCDA's remit.
- (2) The QCDA may, with the consent of the Secretary of State, also provide services or other assistance which—
- (a) do not fall within subsection (1), but
  - (b) are otherwise provided in connection with education or training in England.
- (3) The QCDA may not lend money.
- (4) The power under subsection (1) may only be exercised to provide other forms of financial assistance with the consent of the Secretary of State.
- (5) Services or other assistance provided by virtue of this section may be provided on such terms and subject to such conditions (if any) as the QCDA may determine.
- (6) The QCDA may, with the consent of the Secretary of State, charge a fee for, or in connection with, any service or other assistance provided under this section.
- (7) Any consent of the Secretary of State required under this section may be given—
- (a) unconditionally or subject to conditions, and
  - (b) generally or specifically.
- (8) Services or other assistance may be provided under this section to any person whether or not in the United Kingdom.
- (9) The powers under subsections (1) and (2) must not be exercised—
- (a) to assist Ofqual in setting qualifications criteria, or
  - (b) to provide other assistance, information or advice to Ofqual in connection with the performance by Ofqual of any of its qualifications functions.
- (10) In subsection (9) “Ofqual”, “qualifications criteria” and “qualifications functions” have the same meanings as in section 180.

### **185 Provision of information or advice**

- (1) The QCDA must advise the Secretary of State on any additional matters which are referred to it by the Secretary of State.
- (2) An “additional matter” is a matter relating to the provision of education or training in England other than one which may be referred to the QCDA under section 179(2)(b), 181(2)(b), 182(2)(b) or 183(2)(b).
- (3) If requested to do so by the Secretary of State, the QCDA must provide the Secretary of State with information on such matters relating to any of its functions as may be specified in the request.

### **186 Ancillary activities**

- (1) The QCDA must carry out such ancillary activities as the Secretary of State may direct.



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- (2) An ancillary activity is an activity which the Secretary of State considers it appropriate for the QCDA to carry out for the purposes of, or in connection with, any of its functions.

**187 Co-operation and joint working**

- (1) The QCDA may co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of the QCDA's functions.
- (2) In this section “public authority” includes any person who performs functions (whether or not in the United Kingdom) which are of a public nature.

**188 Power to confer supplementary functions on the QCDA**

- (1) The Secretary of State may by order confer supplementary functions on the QCDA.
- (2) A supplementary function is a function which is to be performed in connection with any of the following—
- (a) qualifications within the QCDA's remit;
  - (b) the curriculum;
  - (c) the early learning goals and educational programmes;
  - (d) assessment arrangements within the QCDA's remit.
- (3) The Secretary of State must consult the QCDA before making an order under this section.

*Supplementary provision*

**189 Directions etc. by the Secretary of State**

- (1) The Secretary of State may give the QCDA directions as to the performance of any of its functions.
- (2) The QCDA must, in performing its functions, act in accordance with any plans approved by the Secretary of State.

**190 Guidance by the Secretary of State**

The QCDA must, in performing its functions, have regard to any guidance given by the Secretary of State.

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VALID FROM 01/04/2010

## CHAPTER 5

### GENERAL

#### 191 Interpretation of Part

(1) In this Part—

“the curriculum” has the meaning given by section 181;

“the early learning goals and educational programmes” has the meaning given by section 182;

“education” includes the learning by, and development of, young children pursuant to the learning and development requirements within the meaning given by section 39(1)(a) of the Childcare Act 2006 (c. 21);

“maintained school” means—

(a) a community, foundation or voluntary school, and

(b) a community or foundation special school;

“the QCDA” means the Qualifications and Curriculum Development Agency;

“regulated assessment arrangements” has the same meaning as in Part 7 (see section 131);

“young child” has the same meaning as in the Childcare Act 2006 (see section 19 of that Act).

(2) References in this Part to assessment arrangements within the QCDA's remit are to be construed in accordance with section 183.

(3) References in this Part to qualifications within the QCDA's remit are to be construed in accordance with section 178.

#### 192 Minor and consequential amendments

Schedule 12 contains minor and consequential amendments relating to the provision made by this Part (and by Part 7).

## PART 9

### CHILDREN'S SERVICES

#### *Co-operation to improve well-being of children*

#### 193 Arrangements to promote co-operation

(1) Section 10 of the Children Act 2004 (c. 31) (co-operation to improve well-being) is amended as set out in subsections (2) to (5).

(2) In subsection (4)—

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(a) after paragraph (f) insert—

- “(fa) the governing body of a maintained school that is maintained by the authority in their capacity as a local education authority;
- (fb) the proprietor of a school approved by the Secretary of State under section 342 of the Education Act 1996 and situated in the authority's area;
- (fc) the proprietor of a city technology college, city college for the technology of the arts or Academy situated in the authority's area;
- (fd) the governing body of an institution within the further education sector the main site of which is situated in the authority's area;
- (fe) the Secretary of State, in relation to the Secretary of State's functions under section 2 of the Employment and Training Act 1973.”;

(b) omit paragraph (g).

(3) After subsection (5) insert—

“(5A) For the purposes of arrangements under this section a relevant person or body may—

- (a) provide staff, goods, services, accommodation or other resources to another relevant person or body;
- (b) make contributions to a fund out of which relevant payments may be made.”

(4) Omit subsections (6) and (7).

(5) After subsection (9) insert—

“(10) In deciding for the purposes of subsection (4)(fd) whether the main site of an institution within the further education sector is situated within the area of a children's services authority, the authority and the governing body of the institution must have regard to any guidance given to them by the Secretary of State.

(11) In this section—

“governing body”, 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;

“institution within the further education sector” has the meaning given by section 4(3) of the Education Act 1996;

“maintained school” has the meaning given by section 39(1) of the Education Act 2002;

“proprietor”, in relation to a city technology college, city college for the technology of the arts, Academy or other school, means the person or body of persons responsible for its management;

“relevant payment”, in relation to a fund, means a payment in respect of expenditure incurred, by a relevant person or body contributing to the fund, in the exercise of its functions;

“relevant person or body” means—

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- (a) a children's services authority in England;
- (b) a relevant partner of a children's services authority in England.”

#### Commencement Information

**I8** S. 193(1)(2)(a)(3)-(5) in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

## 194 Children's Trust Boards

- (1) Part 2 of the Children Act 2004 (c. 31) (children's services in England) is amended as set out in subsections (2) to (5).
- (2) After section 12 insert—

### *“Children's Trust Boards*

#### **12A Establishment of CTBs**

- (1) Arrangements made by a children's services authority in England under section 10 must include arrangements for the establishment of a Children's Trust Board for their area.
- (2) A Children's Trust Board must include a representative of each of the following—
  - (a) the establishing authority;
  - (b) each of the establishing authority's relevant partners (subject to subsection (4)).
- (3) A Children's Trust Board may also include any other persons or bodies that the establishing authority, after consulting each of their relevant partners, think appropriate.
- (4) A Children's Trust Board need not include any of the establishing authority's relevant partners who are of a description prescribed by regulations made by the Secretary of State.
- (5) Subsection (2) does not require a Children's Trust Board to include a separate representative for each of the persons or bodies mentioned in subsection (2) (a) and (b).
- (6) Where two or more children's services authorities jointly make arrangements under section 10 for the establishment of a Children's Trust Board, references in sections 12B and 17 to the area of the authority that established the Board are to be read as references to an area consisting of the combined areas of those authorities.
- (7) For the purposes of this section and sections 12B and 12C—
  - (a) “the establishing authority”, in relation to a Children's Trust Board, is the children's services authority that establishes the Board;
  - (b) a person or body is a “relevant partner” of a children's services authority if it is a relevant partner of the authority for the purposes of section 10.

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### **12B Functions and procedures of CTBs**

- (1) The functions of a Children's Trust Board are—
  - (a) those conferred by or under section 17 or 17A (children and young people's plans);
  - (b) any further functions conferred by regulations made by the Secretary of State.
- (2) Regulations under subsection (1)(b) may confer a function on a Children's Trust Board only if the function relates to improving the well-being of children or relevant young persons in the area of the establishing authority.
- (3) In subsection (2) “well-being” means well-being so far as relating to one or more of the matters specified in section 10(2)(a) to (e).
- (4) A Children's Trust Board must have regard to any guidance given to it by the Secretary of State in connection with—
  - (a) the procedures to be followed by it;
  - (b) the exercise of its functions.
- (5) In this section “relevant young persons” means persons, other than children, in relation to whom arrangements under section 10 may be made.

### **12C Funding of CTBs**

- (1) The establishing authority and any of their relevant partners represented on a Children's Trust Board may make payments towards expenditure incurred by, or for purposes connected with, the Board—
  - (a) by making the payments directly; or
  - (b) by contributing to a fund out of which the payments may be made.
- (2) The establishing authority and any of their relevant partners represented on a Children's Trust Board may provide staff, goods, services, accommodation or other resources for purposes connected with the functions of the Board.
- (3) Two or more Children's Trust Boards may establish and maintain a pooled fund for the purposes of any of their functions.
- (4) A pooled fund is a fund—
  - (a) which is made up of contributions by the Boards concerned, and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of functions of any of the Boards.

### **12D Supply of information to CTBs**

- (1) A person or body represented on a Children's Trust Board must supply to the Board any information requested by the Board for the purpose of enabling or assisting it to perform its functions.
- (2) Information supplied to a Children's Trust Board under this section may be used by the Board only for the purpose of enabling or assisting it to perform its functions.

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(3) Information requested under subsection (1) must be information that relates to—

- (a) the person or body to whom the request is made;
- (b) a function of that person or body, or
- (c) a person in respect of whom a function is exercisable by that person or body.”

(3) For section 17 substitute—

### “17 Children and young people's plans

- (1) The Secretary of State may by regulations require a Children's Trust Board established by virtue of arrangements under section 10 from time to time to prepare and publish a children and young people's plan.
- (2) A children and young people's plan is a plan setting out the strategy of the persons or bodies represented on the Board for co-operating with each other with a view to improving the well-being of children and relevant young persons in the area of the authority that established the Board.
- (3) In subsection (2) “well-being” means well-being so far as relating to the matters specified in section 10(2)(a) to (e).
- (4) Regulations under this section may in particular make provision as to—
  - (a) the matters to be dealt with in a children and young people's plan;
  - (b) the period to which a children and young people's plan is to relate;
  - (c) when and how a children and young people's plan must be published;
  - (d) keeping a children and young people's plan under review;
  - (e) revising a children and young people's plan;
  - (f) consultation to be carried out during preparation or revision of a children and young people's plan;
  - (g) other steps required or permitted to be taken in connection with the preparation or revision of a children and young people's plan.
- (5) In this section “relevant young persons” means persons, other than children, in relation to whom arrangements under section 10 may be made.

### 17A Children and young people's plans: implementation

- (1) This section applies where a Children's Trust Board prepares a children and young people's plan in accordance with regulations under section 17.
- (2) The persons and bodies whose strategy for co-operation is set out in the plan must have regard to the plan in exercising their functions.
- (3) The Board must—
  - (a) monitor the extent to which the persons and bodies whose strategy for co-operation is set out in the plan are acting in accordance with the plan;
  - (b) prepare and publish an annual report about the extent to which, during the year to which the report relates, those persons and bodies have acted in accordance with the plan.”

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- (4) In section 18(2) (functions of children's services authority exercisable by director of children's services) in paragraph (d) for “and 17” substitute “, 12C, 12D and 17A”.
- (5) In section 23(3) (sections 20 to 22: meaning of “children's services”) in paragraph (b) for “13” substitute “ 12B”.
- (6) In section 50(2) of the Children Act 2004 (c. 31) (intervention: relevant functions) in paragraph (c) for “and 17” substitute “, 12C, 12D and 17A”.
- (7) In section 66(3) of that Act (regulations and orders subject to affirmative procedure) after “12” insert “, 12B(1)(b)”.
- (8) In section 47A of the School Standards and Framework Act 1998 (schools forums)—
- (a) after subsection (3) insert—
- “(3A) In exercising its functions, a schools forum is to have regard to any children and young people's plan prepared by the local Children's Trust Board.”;
- (b) after subsection (9) insert—
- “(10) In this section—
- (a) a “children and young people's plan” means a plan published by a Children's Trust Board under section 17 of the Children Act 2004;
- (b) “the local Children's Trust Board”, in relation to a schools forum, is the Children's Trust Board established by arrangements made under section 10 of that Act by the relevant authority in their capacity as a children's services authority within the meaning of that Act.”
- (9) In section 21 of the Education Act 2002 (c. 32)—
- (a) in subsection (9) for paragraph (a) (but not the “and” immediately after it) substitute—
- “(a) in relation to a school in England, any plan published by the relevant Children's Trust Board under section 17 of the Children Act 2004 (children and young people's plans: England),”;
- (b) after subsection (9) insert—
- “(10) In subsection (9)(a), “the relevant Children's Trust Board” means the Children's Trust Board established by arrangements made under section 10 of the Children Act 2004 by the local education authority in their capacity as a children's services authority (within the meaning of that Act).”

#### Commencement Information

- 19** S. 194(1)(2)(3) in force at 26.2.2010 for specified purposes by S.I. 2010/303, art. 2, Sch. 1 (with arts. 9-11)

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### *Safeguarding and promoting the welfare of children*

## **195 Targets for safeguarding and promoting the welfare of children**

(1) Before section 10 of the Children Act 2004 (c. 31) insert—

### **“9A Targets for safeguarding and promoting the welfare of children**

(1) The Secretary of State may, in accordance with regulations, set safeguarding targets for a children's services authority in England.

(2) The regulations may, in particular—

- (a) make provision about matters by reference to which safeguarding targets may, or must, be set;
- (b) make provision about periods to which safeguarding targets may, or must, relate;
- (c) make provision about the procedure for setting safeguarding targets;
- (d) specify requirements with which a children's services authority in England must comply in connection with the setting of safeguarding targets.

(3) In exercising their functions, a children's services authority in England must act in the manner best calculated to secure that any safeguarding targets set under this section (so far as relating to the area of the authority) are met.

(4) “Safeguarding targets”, in relation to a children's services authority in England, are targets for safeguarding and promoting the welfare of children in the authority's area.”

(2) In section 66 of that Act (regulations and orders)—

- (a) in subsection (4) after “containing” insert “ the first regulations under section 9A or ”;
- (b) in subsection (5)(a) for “to which subsection (3) does not apply” substitute “ to which neither of subsections (3) and (4) applies ”.

(3) In Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (social services functions) in the entry relating to the Children Act 2004—

- (a) in the first column, after “Sections” insert “ 9A, ”;
- (b) in the second column, after “to” insert “ targets for safeguarding and promoting the welfare of children, and to ”.

#### **Commencement Information**

**I10** S. 195 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010

## **196 Local Safeguarding Children Boards: lay members**

(1) Part 2 of the Children Act 2004 is amended as follows.



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(2) In section 13 (establishment of LSCBs) after subsection (5) insert—

“(5A) A children's services authority in England must take reasonable steps to ensure that the Local Safeguarding Children Board established by them also includes two persons who appear to the authority to be representative of persons living in the authority's area.

(5B) An authority may pay remuneration, allowances and expenses to persons who are included by virtue of subsection (5A) in a Local Safeguarding Children Board established by them.”

(3) In section 14 (functions and procedures of LSCBs) in subsection (1)(a) after “the Board” insert “ by virtue of section 13(2), (4) or (5) ”.

VALID FROM 01/04/2010

### 197 Local Safeguarding Children Boards: annual reports

After section 14 of the Children Act 2004 (c. 31) insert—

#### “14A LSCBs: annual reports

- (1) At least once in every 12 month period, a Local Safeguarding Children Board established under section 13 must prepare and publish a report about safeguarding and promoting the welfare of children in its local area.
- (2) The Board must submit a copy of the report to the local Children's Trust Board.
- (3) For the purposes of this section—
  - (a) the local area of a Local Safeguarding Children Board is the area of the children's services authority that established the Board;
  - (b) the local Children's Trust Board, in relation to a Local Safeguarding Children Board, is the Children's Trust Board established for the Board's local area.”

### *Children's centres*

### 198 Arrangements for children's centres

In Part 1 of the Childcare Act 2006 (c. 21) (functions of local authorities in England in relation to children) after section 5 insert—

“Children's centres

#### **5A Arrangements for provision of children's centres**

- (1) Arrangements made by an English local authority under section 3(2) must, so far as is reasonably practicable, include arrangements for sufficient provision of children's centres to meet local need.

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- (2) “Local need” is the need of parents, prospective parents and young children in the authority's area.
- (3) In determining what provision of children's centres is sufficient to meet local need, an authority may have regard to any children's centres—
  - (a) that are provided outside the authority's area, or
  - (b) that the authority expect to be provided outside their area.
- (4) For the purposes of this Part and Part 3A a “children's centre” is a place, or a group of places—
  - (a) which is managed by or on behalf of, or under arrangements made with, an English local authority, with a view to securing that early childhood services in their area are made available in an integrated manner,
  - (b) through which each of the early childhood services is made available, and
  - (c) at which activities for young children are provided, whether by way of early years provision or otherwise.
- (5) For the purposes of this section, a service is made available—
  - (a) by providing the service, or
  - (b) by providing advice and assistance to parents and prospective parents on gaining access to the service.
- (6) Guidance given under section 3(6) in respect of arrangements made under section 3(2) by virtue of subsection (1) of this section may, in particular, relate to—
  - (a) circumstances in which any early childhood services should be made available through children's centres as mentioned in subsection (5)(a);
  - (b) circumstances in which any early childhood services should be made available through children's centres as mentioned in subsection (5)(b).
- (7) A children's centre provided by virtue of arrangements made by an English local authority under section 3(2) is to be known as a Sure Start Children's Centre.

### **5B Children's centres: staffing, organisation and operation**

- (1) Regulations may make provision about the staffing, organisation and operation of children's centres.
- (2) The regulations may in particular—
  - (a) require English local authorities to secure that children's centres have governing bodies;
  - (b) impose obligations and confer powers on any such governing bodies.

### **5C Children's centres: advisory boards**

- (1) This section applies where arrangements made by an English local authority under section 3(2) include arrangements for the provision of one or more children's centres.
- (2) The authority must make arrangements to secure that each of the children's centres is within the remit of an advisory board.

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- (3) A children's centre is within the remit of an advisory board if it is specified in relation to the board by the responsible authority.
- (4) An advisory board must provide advice and assistance for the purpose of ensuring the effective operation of the children's centres within its remit.
- (5) An advisory board must include persons representing the interests of—
  - (a) each children's centre within its remit;
  - (b) the responsible authority;
  - (c) parents or prospective parents in the responsible authority's area.
- (6) An advisory board may also include persons representing the interests of any other persons or bodies that the responsible authority think appropriate.
- (7) In exercising their functions under this section, an English local authority must have regard to any guidance given from time to time by the Secretary of State.
- (8) The guidance may in particular relate to—
  - (a) the membership of advisory boards;
  - (b) the organisation and operation of advisory boards.
- (9) The “responsible authority”, in relation to an advisory board in respect of which arrangements have been made under subsection (2), is the authority that made the arrangements.

#### **5D Children's centres: consultation**

- (1) An English local authority must secure that such consultation as they think appropriate is carried out—
  - (a) before making arrangements under section 3(2) for the provision of a children's centre;
  - (b) before any significant change is made in the services provided through a relevant children's centre;
  - (c) before anything is done that would result in a relevant children's centre ceasing to be a children's centre.
- (2) In discharging their duty under this section, an English local authority must have regard to any guidance given from time to time by the Secretary of State.
- (3) For the purposes of this section a change in the manner in which, or the location at which, services are provided is to be treated as a change in the services.
- (4) A “relevant children's centre”, in relation to an authority, is a children's centre provided by virtue of arrangements made by the authority under section 3(2).

#### **5E Duty to consider providing services through a children's centre**

- (1) This section applies where arrangements made by an English local authority under section 3(2) include arrangements for the provision of one or more children's centres.
- (2) The authority must consider whether each of the early childhood services to be provided by them should be provided through any of those children's centres.

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- (3) Each relevant partner of the authority must consider whether each of the early childhood services to be provided by it in the authority's area should be provided through any of those children's centres.
- (4) In discharging their duties under this section, the authority and each relevant partner must take into account whether providing a service through any of the children's centres in question would—
  - (a) facilitate access to it, or
  - (b) maximise its benefit to parents, prospective parents and young children.
- (5) In discharging their duties under this section, an English local authority and each of their relevant partners must have regard to any guidance given from time to time by the Secretary of State.
- (6) For the purposes of this section, early childhood services are provided by a person or body if they are provided on behalf of, or under arrangements made with, that person or body.
- (7) For the avoidance of doubt, nothing in this section is to be taken as preventing an English local authority or any of their relevant partners from providing early childhood services otherwise than through a children's centre.

#### **5F Children's centres: transitional provision**

- (1) This section applies if immediately before the commencement date an English local authority has made arrangements for the provision of a children's centre.
- (2) To the extent that this would not otherwise be the case, the arrangements are to be treated for the purposes of this Part and Part 3A as made under section 3(2).
- (3) “The commencement date” is the day on which section 198 of the Apprenticeships, Skills, Children and Learning Act 2009 comes into force.

#### **5G Children's centres: interpretation**

In sections 5A to 5F—

- “children's centre” has the meaning given by section 5A(4);
- “early childhood services” has the same meaning as in section 3;
- “parent” and “prospective parent” have the same meaning as in section 2;
- “relevant partner” has the same meaning as in section 4.”

### **199 Inspection of children's centres**

After Part 3 of the Childcare Act 2006 (c. 21) (regulation of provision of childcare in England) insert—

“PART 3A INSPECTION OF CHILDREN'S CENTRES

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## 98A Inspections

- (1) The Chief Inspector must—
  - (a) inspect a children's centre at such intervals as may be prescribed;
  - (b) inspect a children's centre at any time when the Secretary of State requires the Chief Inspector to secure its inspection.
- (2) The Chief Inspector may inspect a children's centre at any other time when the Chief Inspector considers that it would be appropriate for it to be inspected.
- (3) Regulations may provide that in prescribed circumstances the Chief Inspector is not required to inspect a children's centre at an interval prescribed for the purposes of subsection (1)(a).
- (4) A requirement made by the Secretary of State as mentioned in subsection (1)(b) may be imposed in relation to—
  - (a) children's centres generally;
  - (b) a class of children's centres;
  - (c) a particular children's centre.
- (5) For the purposes of subsection (4)(b) a class of children's centres may be described, in particular, by reference to a geographical area.
- (6) If the Chief Inspector so elects in the case of an inspection falling within subsection (1)(b) or (2), that inspection is to be treated as if it were an inspection falling within subsection (1)(a).

## 98B Reports

- (1) After conducting an inspection of a children's centre under section 98A, the Chief Inspector must make a report in writing.
- (2) The report must address the centre's contribution to—
  - (a) facilitating access to early childhood services by parents, prospective parents and young children;
  - (b) maximising the benefit of those services to parents, prospective parents and young children;
  - (c) improving the well-being of young children.
- (3) Regulations may make provision, for the purposes of subsection (2), about—
  - (a) matters required to be dealt with in the report;
  - (b) matters not required to be dealt with in the report.
- (4) The regulations may, in particular, require the matters dealt with in the report to include matters relating to the quality of the leadership and management of the centre, including whether the financial resources made available to it are managed effectively.
- (5) The Chief Inspector—
  - (a) may send a copy of the report to the Secretary of State and must do so without delay if the Secretary of State requests a copy;

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- (b) must ensure that a copy of the report is sent without delay to the relevant local authority;
- (c) may arrange for the report (or parts of it) to be further published in any manner the Chief Inspector considers appropriate.

(6) For the purposes of this section and section 98C, the “relevant local authority”, in relation to a children's centre, is the English local authority that made the arrangements under section 3(2) by virtue of which the centre is provided.

#### 98C Action to be taken by local authority on receiving report

- (1) This section applies where a copy of a report relating to a children's centre is sent to the relevant local authority under section 98B(5)(b).
- (2) The authority may—
  - (a) send a copy of the report (or parts of it) to any person they think appropriate;
  - (b) otherwise publish the report (or parts of it) in any manner they think appropriate.
- (3) The authority must secure that a written statement within subsection (4) is prepared and published.
- (4) A statement within this subsection is one setting out—
  - (a) the action that each relevant person proposes to take in the light of the report, and
  - (b) the period within which each relevant person proposes to take that action.
- (5) For the purposes of this section and section 98D, each of the following is a relevant person in relation to a children's centre—
  - (a) the relevant local authority;
  - (b) any person or body, other than the relevant local authority, managing the centre.
- (6) In exercising their functions under this section, an English local authority must have regard to any guidance given from time to time by the Secretary of State.

#### 98D Inspections of children's centres: powers of entry

- (1) The Chief Inspector may, at any reasonable time, enter any relevant premises in England for the purpose of conducting an inspection of a children's centre under section 98A.
- (2) “Relevant premises”, for the purposes of subsection (1), are—
  - (a) premises on which services or activities are being provided through the children's centre;
  - (b) premises of a relevant person which are used in connection with the staffing, organisation or operation of the children's centre.
- (3) But premises used wholly or mainly as a private dwelling are not relevant premises for the purposes of subsection (1).

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- (4) An authorisation given by the Chief Inspector under paragraph 9(1) of Schedule 12 to the Education and Inspections Act 2006 in relation to functions under subsection (1)—
  - (a) may be given for a particular occasion or period;
  - (b) may be given subject to conditions.
- (5) Subject to any conditions imposed under subsection (4)(b), subsections (6) to (8) apply where a person (“the inspector”) enters premises under this section.
- (6) The inspector may—
  - (a) inspect the premises;
  - (b) take measurements and photographs or make recordings;
  - (c) inspect any children for whom activities are provided on the premises, and the arrangements made for their welfare;
  - (d) interview in private any person working on the premises who consents to be interviewed.
- (7) The inspector may inspect, and take copies of, any records or documents relating to—
  - (a) the services or activities provided through the children's centre;
  - (b) the staffing, organisation or operation of the children's centre.
- (8) The inspector may require a person to afford such facilities and assistance, with respect to matters within the person's control, as are necessary to enable the inspector to exercise the powers conferred by this section.
- (9) Section 58 of the Education Act 2005 (inspection of computer records) applies for the purposes of this section as it applies for the purposes of Part 1 of that Act.
- (10) In this section “documents” and “records” each include information recorded in any form.

#### **98E Obstruction of power of entry, etc.**

- (1) A person commits an offence if the person intentionally obstructs another person exercising a power under section 98D.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **98F Power of constable to assist in exercise of power of entry**

- (1) The Chief Inspector may apply to a court for a warrant under this section.
- (2) Subsection (3) applies if on an application under subsection (1) it appears to the court that the Chief Inspector—
  - (a) has attempted to exercise a power conferred by section 98D but has been prevented from doing so, or
  - (b) is likely to be prevented from exercising any such power.
- (3) The court may issue a warrant authorising any constable to assist the Chief Inspector in the exercise of the power, using reasonable force if necessary.

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- (4) A warrant under this section must be addressed to, and executed by, a constable.
- (5) Schedule 11 to the Children Act 1989 (jurisdiction of courts) applies in relation to proceedings under this section as if they were proceedings under that Act.
- (6) Subject to any provision made (by virtue of subsection (5)) by or under Schedule 11 to the Children Act 1989, “court” in this section means—
  - (a) the High Court;
  - (b) a county court;
  - (c) a magistrates' court.

### 98G Inspection of children's centres: interpretation

In sections 98A to 98F—

“the Chief Inspector” means Her Majesty's Chief Inspector of Education, Children's Services and Skills;

“children's centre” has the meaning given by section 5A(4);

“relevant partner” has the same meaning as in section 4.”

### 200 Children's centres: safeguarding children

In paragraph 3(1) of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) (regulated activities relating to children: establishments) after paragraph (f) insert—

“(fa) a children's centre (within the meaning of section 5A(4) of the Childcare Act 2006);”.

#### *Arrangements in respect of early childhood services*

### 201 Arrangements in respect of early childhood services

In section 3 of the Childcare Act 2006 (c. 21) (specific duties of local authority in relation to early childhood services) after subsection (4) insert—

“(4A) In deciding what arrangements to make under this section, an English local authority must in particular have regard to—

- (a) the quantity and quality of early childhood services that are provided, or that the authority expect to be provided, in their area, and
- (b) where in that area those services are provided or are expected to be provided.”

#### *Early years provision: budgetary framework*

### 202 Free of charge early years provision: budgetary framework: England

- (1) The School Standards and Framework Act 1998 (c. 31) is amended as follows.
- (2) In section 45A (determination of specified budgets of LEA), after subsection (4A) insert—



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“(4B) For the purposes of this Part, the duty imposed on a local authority in England by section 7(1) of the Childcare Act 2006 (duty to secure prescribed early years provision free of charge) is to be treated as imposed on the authority in their capacity as a local education authority.”

(3) After section 47 (determination of school's budget share) insert—

**“47ZA Free of charge early years provision outside a maintained school: budgetary framework: England**

- (1) This section applies where a local education authority in England propose to allocate an amount of relevant financial assistance to a relevant childcare provider for a funding period out of the authority's individual schools budget for the period.
- (2) The amount to be allocated is to be determined in accordance with regulations.
- (3) Financial assistance provided by a local education authority in England to a childcare provider is “relevant” financial assistance if it is provided—
  - (a) for the purpose of the discharge of the authority's duty under section 7 of the Childcare Act 2006, and
  - (b) in respect of the provision of childcare.
- (4) Regulations under this section may, in particular—
  - (a) specify factors or criteria which an authority are to take into account in determining the amount of any relevant financial assistance to be provided by them to a relevant childcare provider;
  - (b) specify factors or criteria which an authority are to disregard in determining such an amount;
  - (c) specify requirements as to other matters with which an authority are to comply in determining such an amount;
  - (d) make provision about consultation to be carried out by an authority in connection with determining such an amount;
  - (e) authorise an authority, in prescribed circumstances and to a prescribed extent, to determine such an amount in accordance with arrangements approved by the Secretary of State (instead of in accordance with arrangements provided for by the regulations);
  - (f) require an authority to provide relevant childcare providers with prescribed information relating to their determination of such an amount;
  - (g) make provision about the circumstances in which an authority are required to redetermine such an amount;
  - (h) specify a time by which an authority's determination of such an amount is to take place.
- (5) For the purposes of this section—
  - (a) “childcare” has the meaning given in section 18 of the Childcare Act 2006;
  - (b) “relevant childcare provider” means a provider of childcare other than the governing body of a maintained school;

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- (c) a reference to an authority's determination of the amount of any relevant financial assistance includes a reference to the authority's redetermination of such an amount.”

**Commencement Information**

**I11** S. 202(1)(2) in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

**PART 10**

SCHOOLS

**CHAPTER 1**

SCHOOLS CAUSING CONCERN

*Schools causing concern: England*

**203 Powers in relation to schools causing concern: England**

Schedule 13 makes provision in relation to schools causing concern in England.

**Commencement Information**

**I12** S. 203 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

**204 Power to require LEAs in England to obtain advisory services**

(1) Section 62A of the Education Act 2002 (power of Secretary of State to require LEAs in England to obtain advisory services) is amended as follows.

(2) After subsection (1) insert—

“(1A) This section also applies where it appears to the Secretary of State that—

- (a) a local education authority in England maintain a disproportionate number of low-performing schools, and
- (b) the authority—
  - (i) have not been effective or are unlikely to be effective in securing an improvement in the standards of performance of pupils at those schools, or
  - (ii) are unlikely to be effective in securing an improvement in the standards of performance of pupils at other schools which may in the future be low-performing schools.

(1B) In subsection (1A) “low-performing school” means a school at which the standards of performance of pupils are unacceptably low.

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(1C) For the purposes of subsection (1B) the standards of performance of pupils at a school are low if they are low by reference to any one or more of the following—

- (a) the standards that the pupils might in all the circumstances reasonably be expected to attain;
- (b) where relevant, the standards previously attained by them;
- (c) the standards attained by pupils at comparable schools.”

(3) In subsection (4) after “section” insert—

““pupil” has the same meaning as in the Education Act 1996 (see sections 3 and 19(5) of that Act);”.

#### Commencement Information

**I13** S. 204 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

#### *Schools causing concern: Wales*

### **205 Powers in relation to schools causing concern: Wales**

Schedule 14 makes provision in relation to schools causing concern in Wales.

#### Commencement Information

**I14** S. 205 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

VALID FROM 19/04/2010

## CHAPTER 2

### COMPLAINTS: ENGLAND

#### **206 Complaints to which this Chapter applies**

(1) This Chapter applies to a complaint against a school made by—

- (a) a parent of a pupil at a qualifying school in England; or
- (b) a pupil at such a school.

(2) In subsection (1) “a complaint against a school” means (subject to subsection (3)) a complaint that the pupil or a parent of the pupil has sustained injustice in consequence of—

- (a) an act of the governing body of the school; or
- (b) an exercise of, or failure to exercise, a prescribed function of the head teacher of the school.

(3) A “complaint against a school” does not include a complaint that relates to—

- (a) a decision about admissions to the school;

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- (b) a matter in respect of which the complainant has or had a prescribed right of appeal.
- (4) An act is to be treated as an act of the governing body of a school for the purposes of subsection (2) if it is an act of—
  - (a) a person acting on behalf of the governing body; or
  - (b) a person to whom the governing body has delegated any functions.
- (5) An act is also to be treated as an act of the governing body of a school if—
  - (a) the governing body exercises a function by means of an arrangement with another person; and
  - (b) the act is done by or on behalf of the other person in carrying out the arrangement.
- (6) In this section—
  - (a) “function” includes a power and a duty;
  - (b) “head teacher” has the meaning given by section 579(1) of the Education Act 1996 (c. 56);
  - (c) “qualifying school” means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school (within the meaning given by section 22(9) of the School Standards and Framework Act 1998 (c. 31)) or a short stay school;
  - (d) references to a pupil at a qualifying school are (subject to section 207(6)) references to a person who is, or was within a prescribed period ending with the date of the complaint, a registered pupil (within the meaning of the Education Act 1996) at the school;
  - (e) “parent”, in relation to a pupil, has the meaning given by section 576 of the Education Act 1996 in relation to a child or young person.
- (7) In this Chapter a reference to an act includes an omission.

## **207 Power of Local Commissioner to investigate complaint**

- (1) This section applies where a complaint to which this Chapter applies, and which meets the requirements of section 208—
  - (a) is made by the complainant to a Local Commissioner; or
  - (b) is made by the complainant to a governor, the governing body or the head teacher of the school and referred to a Local Commissioner, with the complainant's consent, by the governing body or the head teacher of the school.
- (2) Where this section applies, a Local Commissioner may under this Chapter investigate the complaint.
- (3) But before investigating a complaint to which this Chapter applies, a Local Commissioner must be satisfied—
  - (a) that the matter was brought to the notice of the governing body by or on behalf of the complainant and that the governing body was given a reasonable opportunity to investigate the matter and respond; or
  - (b) that, in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of the governing body or for the governing body to be given a reasonable opportunity to investigate the matter and respond.

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- (4) Whether to initiate, continue or discontinue an investigation is a matter for the discretion of the Local Commissioner dealing with the complaint.
- (5) A Local Commissioner may in particular decide not to investigate a complaint under this Chapter, or to discontinue an investigation—
  - (a) if satisfied with the action that the governing body has taken or proposes to take; or
  - (b) if satisfied that the complaint is vexatious.
- (6) Regulations prescribing a period for the purposes of section 206(6)(d) may prescribe circumstances in which a Local Commissioner may determine that a person who has not been a registered pupil at the school within the prescribed period is to be treated as a “pupil” for the purposes of that section.
- (7) In this Chapter “Local Commissioner” has the meaning given by section 23 of the Local Government Act 1974 (c. 7).

#### **208 Time-limit etc for making complaint**

- (1) The requirements referred to in section 207(1) are that the complaint is made—
  - (a) in writing; and
  - (b) within 12 months beginning with the day the complainant first had notice of the matter complained of;
 but this is subject to subsection (2).
- (2) A Local Commissioner may disapply either or both of the requirements in subsection (1) in relation to a particular complainant.

#### **209 Procedure in respect of investigations**

- (1) A Local Commissioner who proposes to investigate a complaint to which this Chapter applies must give the following an opportunity to comment on the matter—
  - (a) the respondent;
  - (b) any other person who is alleged in the complaint to have done or authorised the act which would be the subject of the investigation;
  - (c) any person who otherwise appears to the Local Commissioner to have done or authorised the act.
- (2) Every investigation under this Chapter is to be conducted in private.
- (3) Subject to subsection (2), the procedure for conducting an investigation is to be such as the Local Commissioner considers appropriate in the circumstances of the case.
- (4) The Local Commissioner may, in particular—
  - (a) obtain information from such persons and in such manner as the Local Commissioner thinks fit;
  - (b) make such inquiries as the Local Commissioner thinks fit; and
  - (c) determine whether any person may be represented (by counsel, solicitor or otherwise) in the investigation.
- (5) The Local Commissioner may, if the Local Commissioner thinks fit, pay to the complainant, and to any other person who attends or provides information for the purposes of an investigation under this Chapter—

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- (a) sums in respect of the expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time.

(6) In this Chapter a reference to the “respondent” is a reference to the governing body or head teacher about whose act a complaint to which this Chapter applies was made.

## **210 Investigations: further provisions**

(1) For the purposes of an investigation under this Chapter a Local Commissioner may require the following persons to provide information or produce documents relevant to the investigation—

- (a) the respondent;
- (b) any other person who in the Local Commissioner's opinion is able to provide any such information or produce any such documents.

(2) For the purposes of an investigation under this Chapter a Local Commissioner has the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses; and
- (b) the production of documents.

(3) To assist in any investigation, a Local Commissioner may obtain advice from any person who in the Local Commissioner's opinion is qualified to give it.

(4) A Local Commissioner may pay to a person giving advice such fees or allowances as the Local Commissioner may determine.

(5) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist in the conduct of an investigation under this Chapter.

(6) Any person appointed under subsection (5) is deemed to be an officer of the Commission for Local Administration in England in carrying out functions under that appointment.

(7) No person may be compelled for the purposes of an investigation under this Chapter to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.

(8) If any person, without lawful excuse—

- (a) obstructs a Local Commissioner in the performance of the Local Commissioner's functions under this Chapter;
- (b) obstructs a person discharging or assisting in the discharge of those functions; or
- (c) is guilty of an act in relation to an investigation under this Chapter which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Local Commissioner may certify the offence to the High Court.

(9) Where an offence is certified under subsection (8), the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged (“D”), and after hearing any statement that may be offered in D's defence, deal with D in any manner in which the High Court could deal with a person who had committed the offence in relation to the High Court.

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## 211 Statements about investigations

- (1) A Local Commissioner must prepare a written statement in accordance with subsections (2) to (4) if the Local Commissioner—
  - (a) decides not to investigate a matter under this Chapter;
  - (b) decides to discontinue an investigation; or
  - (c) completes an investigation.
- (2) In a case falling within subsection (1)(a) or (b), the statement must set out the Local Commissioner's reasons for the decision.
- (3) In a case falling within subsection (1)(c), the statement must—
  - (a) set out the Local Commissioner's conclusions on the investigation; and
  - (b) include any recommendations the Local Commissioner considers it appropriate to make.
- (4) The recommendations the Local Commissioner may make are recommendations with respect to action which, in the Local Commissioner's opinion, the governing body should take—
  - (a) to remedy any injustice sustained by the complainant in consequence of the act which was the subject of the investigation; and
  - (b) to prevent injustice being caused in the future in consequence of a similar act.
- (5) The Local Commissioner must send a copy of a statement prepared under this section to—
  - (a) the complainant (or, if the complainant is the pupil and the Local Commissioner thinks it appropriate, a parent of the complainant);
  - (b) the respondent; and
  - (c) the governing body, if the respondent is the head teacher.
- (6) If, on consideration of the statement, it appears to the governing body that a payment should be made to or in respect of a person who has suffered injustice in consequence of the act which was the subject of the investigation, the governing body may make such a payment.
- (7) The statement must identify the school concerned.
- (8) The statement must not—
  - (a) mention the name of any person; or
  - (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the statement.
- (9) But, after taking into account the public interest as well as the interests of that person, the complainant and other persons, the Local Commissioner may mention the name of a person, or include in the statement any particulars which are likely to identify the person, if the Local Commissioner considers it necessary to do so.
- (10) Nothing in subsection (8) prevents a statement mentioning the name of, or containing particulars which are likely to identify, the head teacher of the school concerned.

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## 212 Adverse findings notices

- (1) This section applies where a governing body receives a statement prepared under section 211 which contains recommendations.
- (2) The governing body must—
  - (a) consider the statement; and
  - (b) notify the Local Commissioner, within the notification period, of the action which the governing body has taken or proposes to take.
- (3) The Local Commissioner may by notice require the governing body to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner—
  - (a) does not receive the notification mentioned in subsection (2)(b) within the notification period or is satisfied before the end of that period that the governing body has decided to take no action;
  - (b) is not satisfied with the action which the governing body has taken or proposes to take; or
  - (c) does not within the period of one month beginning with the end of the notification period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the governing body has taken action, as proposed, to the satisfaction of the Commissioner.
- (4) An adverse findings notice is a notice, in such form as the governing body and the Local Commissioner may agree, consisting of—
  - (a) details of any action recommended in the statement which the governing body has not taken;
  - (b) such supporting material as the Local Commissioner may require;
  - (c) if the governing body so requires, an explanation of the reasons for having taken no action, or for not having taken the action recommended in the statement.
- (5) The adverse findings notice must be published by the governing body in such a way as the Local Commissioner may direct.
- (6) If the governing body—
  - (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5); or
  - (b) is unable, within the publication period, to agree with the Local Commissioner the form of the adverse findings notice to be published,
 the Local Commissioner must arrange for an adverse findings notice to be published in such a way as the Local Commissioner considers appropriate.
- (7) The governing body must reimburse the Local Commissioner on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section—
 

“notification period” means—

  - (a) the period of one month beginning with the date on which the governing body received the statement; or
  - (b) such longer period as the Local Commissioner may agree in writing.

“publication period” means—



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- (a) the period of one month beginning with the date on which the governing body received the notice under subsection (3); or
- (b) such longer period as the Local Commissioner may agree in writing.

### **213 Publication of statements etc. by Local Commissioner**

- (1) A Local Commissioner may—
  - (a) publish all or part of a statement under section 211; or
  - (b) publish a summary of a matter which is the subject of a statement under section 211,
 if, after taking into account the public interest as well as the interests of the complainant and of other persons, the Local Commissioner considers it appropriate to do so.
- (2) A Local Commissioner may—
  - (a) supply a copy of all or part of a statement or summary mentioned in subsection (1) to any person who requests it; and
  - (b) charge a reasonable fee for doing so.
- (3) Where a Local Commissioner publishes all or part of a statement or summary mentioned in subsection (1), the governing body of the school concerned must, on demand, reimburse the Local Commissioner the reasonable expenses of publication.
- (4) Subsections (8) to (10) of section 211 apply to a summary of a matter which is published, or a copy of which is supplied, under this section as they apply to a statement prepared under that section.

### **214 Disclosure of information**

- (1) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Chapter must not be disclosed except—
  - (a) for the purpose of the investigation and of any statement, adverse findings notice or summary under section 211, 212 or 213;
  - (b) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Chapter;
  - (c) for the purposes of proceedings under section 210(9).
- (2) A Local Commissioner and a person discharging or assisting in the discharge of a function of a Local Commissioner may not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) of subsection (1)) of matters coming to their knowledge in the course of an investigation under this Chapter.

### **215 Permitted disclosures of information by Local Commissioner**

- (1) A Local Commissioner may disclose to Her Majesty's Chief Inspector of Education, Children's Services and Skills any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the Chief Inspector has functions.

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- (2) A Local Commissioner may disclose to the Parliamentary Commissioner for Administration any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the Parliamentary Commissioner has functions.
- (3) A Local Commissioner may disclose to the Information Commissioner any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
    - (i) Part 5 of the Data Protection Act 1998 (c. 29) (enforcement);
    - (ii) section 48 of the Freedom of Information Act 2000 (c. 36) (practice recommendations); or
    - (iii) Part 4 of that Act (enforcement); or
  - (b) the commission of an offence under—
    - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant); or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (4) A Local Commissioner may disclose to a local education authority (within the meaning given by section 12 of the Education Act 1996 (c. 56)) any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to a matter in respect of which the authority has functions.
- (5) A Local Commissioner may disclose to the Secretary of State any information obtained by the Local Commissioner under or for the purposes of this Chapter if the information appears to the Local Commissioner to relate to the Secretary of State's functions under section 220.
- (6) Nothing in section 214(1) applies in relation to the disclosure of information in accordance with this section.

## 216 Law of defamation

- (1) For the purposes of the law of defamation the following are absolutely privileged—
- (a) the publication of any matter in communications between a governing body and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Chapter;
  - (b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating for the purposes of this Chapter with a person mentioned in subsection (2);
  - (c) the publication of any matter in preparing, making and sending a statement in accordance with section 211;
  - (d) the publication of any matter by inclusion in an adverse findings notice published in accordance with section 212(3), (4) and (5) or (6);
  - (e) the publication of any matter by inclusion in a statement or summary published or supplied under section 213;

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- (f) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 219.
- (2) The persons mentioned in subsection (1)(b) are—
- (a) the governing body;
  - (b) the complainant (or, if the complainant is the pupil, a parent of the complainant);
  - (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills;
  - (d) the Parliamentary Commissioner for Administration;
  - (e) a local education authority (within the meaning given by section 12 of the Education Act 1996 (c. 56));
  - (f) the Secretary of State.

## 217 Consultation with Parliamentary Commissioner for Administration

- (1) Subsection (2) applies if, at any stage in the course of an investigation under this Chapter, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation by the Parliamentary Commissioner for Administration in accordance with the Parliamentary Commissioner Act 1967 (c. 13) (“the 1967 Act”).
- (2) The Local Commissioner—
- (a) must consult the Parliamentary Commissioner for Administration about the matter; and
  - (b) where a complaint was made about the matter must, if the Local Commissioner considers it necessary, inform the complainant of the steps necessary to initiate a complaint under the 1967 Act.
- (3) Consultation under subsection (2)(a) in relation to a matter under investigation under this Chapter may be about anything relating to the matter, including—
- (a) the conduct of any investigation into the matter; and
  - (b) the form, content and publication of any report or statement of the result of such an investigation.
- (4) Subsection (5) applies if, at any stage in the course of conducting an investigation under the 1967 Act, the Parliamentary Commissioner for Administration forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Chapter.
- (5) The Parliamentary Commissioner for Administration—
- (a) must consult the appropriate Local Commissioner about the complaint; and
  - (b) where the Parliamentary Commissioner considers it necessary, must inform the person initiating the complaint of the steps necessary to initiate a complaint under this Chapter.
- (6) Where a Local Commissioner is consulted about a complaint under the 1967 Act by virtue of subsection (5), subsection (3) applies (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (2).
- (7) Section 11(2) of the 1967 Act (secrecy) does not apply in relation to the disclosure of information in the course of consultations held in accordance with this section.

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## **218 Arrangements etc. to be made by Commission**

- (1) The Commission for Local Administration in England (“the Commission”) must—
  - (a) divide the matters which may be investigated under this Chapter into such categories as it considers appropriate; and
  - (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.
- (2) The Commission—
  - (a) must make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (1); and
  - (b) must publish information about the procedures for making complaints under this Chapter.
- (3) The information published under subsection (2)(b) must include details of assistance available to each of the following—
  - (a) a pupil at a qualifying school (see section 206(6)(d)) who is, or has been, looked after by a local authority (within the meaning given by section 22(1) of the Children Act 1989 (c. 41));
  - (b) a person who has a disability (within the meaning of section 1(1) of the Disability Discrimination Act 1995 (c. 50));
  - (c) a person who has special educational needs (within the meaning of section 312 of the Education Act 1996 (c. 56)).

## **219 Annual reports**

- (1) Every Local Commissioner must for each financial year—
  - (a) prepare a general report on the discharge of the Local Commissioner's functions under this Chapter; and
  - (b) submit it to the Commission.
- (2) The Commission must, for each financial year, prepare a general report on the discharge of the Local Commissioners' functions under this Chapter (an “annual report”).
- (3) The annual report must be prepared as soon as practicable after the Commission has received the reports for the year from the Local Commissioners under subsection (1).
- (4) The Commission must arrange for the publication of—
  - (a) the annual report; and
  - (b) the reports which are submitted under subsection (1).
- (5) The Commission must lay a copy of the annual report before Parliament.
- (6) In this section “financial year” means the period of 12 months ending with 31st March in any year.

## **220 Secretary of State's power of direction**

- (1) This section applies where—
  - (a) a Local Commissioner has made recommendations under section 211(4); and
  - (b) the governing body of the school concerned has not complied with them.

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- (2) The Secretary of State may direct the governing body to comply with the recommendations within the period specified in the direction.
- (3) A direction under subsection (2) is enforceable, on an application made on behalf of the Secretary of State, by a mandatory order.

## 221 Disapplication of certain powers of Secretary of State

- (1) In section 496 of the Education Act 1996 (c. 56) (power of Secretary of State to prevent unreasonable exercise of functions), after subsection (2) insert—

“(3) The Secretary of State may not make a direction under this section in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
- (b) in the Secretary of State's opinion, could have been so complained about.

- (4) Regulations may disapply subsection (3) in relation to cases where a complaint about the matter has been made to the Secretary of State by—

- (a) a prescribed person, or
- (b) a person of a prescribed description.”

- (2) In section 497 of that Act (general default powers of Secretary of State), after subsection (3) insert—

“(4) The Secretary of State may not make an order under this section in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or
- (b) in the Secretary of State's opinion, could have been so complained about.

- (5) Regulations may disapply subsection (4) in relation to cases where a complaint about the matter has been made to the Secretary of State by—

- (a) a prescribed person, or
- (b) a person of a prescribed description.”

- (3) In section 28M of the Disability Discrimination Act 1995 (c. 50) (directions by Secretary of State and Welsh Ministers) after subsection (7) insert—

“(7A) The Secretary of State may not, unless subsection (7B) applies, give a direction under this section to a responsible body in England in respect of a matter that—

- (a) has been complained about to a Local Commissioner in accordance with Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 (parental complaints against governing bodies etc.), or

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- (b) in the Secretary of State's opinion, could have been so complained about.

(7B) This subsection applies if—

- (a) the Local Commissioner has made a recommendation to the responsible body under section 211(4) of the Apprenticeships, Skills, Children and Learning Act 2009 (statement following investigation) in respect of the matter, and
- (b) the responsible body has not complied with the recommendation.”

## **222 Power to amend meaning of “qualifying school”**

- (1) The Secretary of State may by order amend the definition of “qualifying school” in section 206(6)(c).
- (2) An order under this section may make consequential amendments of this Chapter.

## **223 Amendments consequential on Chapter 2**

- (1) The following provisions of the Education Act 1996 (c. 56) cease to have effect—
  - (a) section 408(4)(g) (provision of information);
  - (b) section 409 (complaints and enforcement: maintained schools);
  - (c) paragraph 6(3) and (4) of Schedule 1 (complaints and enforcement: short stay schools).
- (2) In paragraph 1 of Schedule 4 to the Local Government Act 1974 (c. 7) (the Commission), after sub-paragraph (2B) (inserted by the Health Act 2009 (c. 21)) insert—

“(2C) A Local Commissioner may not investigate a complaint against a school under Chapter 2 of Part 10 of the Apprenticeships, Skills, Children and Learning Act 2009 if the Local Commissioner—

- (a) is a governor of the school;
- (b) is a parent of—
  - (i) a registered pupil at the school, or
  - (ii) a person who has been a registered pupil at the school within the five years ending with the making of the complaint; or
- (c) works at the school or has worked at the school within those five years.

(2D) In sub-paragraph (2C) “registered pupil” has the same meaning as in the Education Act 1996.”

## **224 Interpretation of Chapter 2**

In this Chapter—

- (a) “act” has the meaning given by section 206(7);
- (b) “the Commission” has the meaning given by section 218(1);
- (c) “Local Commissioner” has the meaning given by section 207(7);
- (d) “respondent” has the meaning given by section 209(6).

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## CHAPTER 3

### INSPECTIONS

#### 225 Interim statements

- (1) The Education Act 2005 (c. 18) is amended as follows.
- (2) After section 10 insert—

#### “10A Interim statements between inspections

- (1) The Chief Inspector may make a statement (an “interim statement”) about a school in England to which section 5 applies.
- (2) An interim statement is a statement—
  - (a) that the Chief Inspector is of the opinion that it is not necessary for the school to be inspected under section 5 for at least a year after the date on which the statement is made,
  - (b) setting out the Chief Inspector's reasons for forming that opinion, and
  - (c) containing such other information (if any) as the Chief Inspector considers appropriate.
- (3) The Chief Inspector may arrange for an interim statement to be published in such manner as the Chief Inspector considers appropriate.
- (4) Section 151 of the Education and Inspections Act 2006 (publication of inspection reports: privilege and electronic publication) applies in relation to an interim statement as it applies in relation to a report.”
- (3) In the italic heading before section 14 after “reports” insert “ and interim statements ”.
- (4) After section 14 insert—

#### “14A Destination of interim statements: maintained schools

- (1) The Chief Inspector must ensure that a copy of any interim statement about a maintained school is sent without delay to the appropriate authority for the school.
- (2) The Chief Inspector must ensure that copies of the statement are sent—
  - (a) to the head teacher of the school,
  - (b) to whichever of the local education authority and the governing body are not the appropriate authority, and
  - (c) in the case of a school having foundation governors, to the person who appoints them and (if different) to the appropriate appointing authority.
- (3) If the school provides full-time education suitable to the requirements of pupils over compulsory school age, the Chief Inspector must ensure that a copy of the statement is also sent to the Young People's Learning Agency for England.
- (4) The appropriate authority must—

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- (a) make a copy of any statement sent to the authority under subsection (1) available for inspection by members of the public at such times and at such places as may be reasonable,
  - (b) provide one copy of the statement free of charge to any person who asks for one, and
  - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the statement within such period following receipt of the statement by the authority as may be prescribed.”
- (5) In the italic heading before section 16 after “reports” insert “ and interim statements ”.
- (6) After section 16 insert—

**“16A Destination of interim statements: non-maintained schools**

- (1) The Chief Inspector must ensure that a copy of any interim statement about a school other than a maintained school is sent without delay to the proprietor of the school.
  - (2) In the case of a special school which is not a community or foundation special school, the proprietor must without delay send a copy of any interim statement sent to the proprietor under subsection (1) to any local education authority that are paying fees in respect of the attendance of a registered pupil at the school.
  - (3) The proprietor of the school must—
    - (a) make any statement sent to the proprietor under subsection (1) available for inspection by members of the public at such times and at such place as may be reasonable,
    - (b) provide one copy of the statement free of charge to any person who asks for one, and
    - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the statement within such period following receipt of the statement by the proprietor as may be prescribed.”
- (7) In section 18 (interpretation of Chapter) after the definition of “the Chief Inspector” insert—

““interim statement” means an interim statement under section 10A;”.

**Commencement Information**

**I15** S. 225 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

**226 Powers of persons providing administrative support in connection with inspections**

- (1) Part 2 of Schedule 12 to the Education and Inspections Act 2006 (c. 40) (inspectors etc acting on behalf of Chief Inspector) is amended as follows.
- (2) In paragraph 9(1) (delegation of functions), after paragraph (c) insert “or



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- (d) any inspection administrator,”, (and omit “or” at the end of paragraph (b)).
- (3) In paragraph 9(2)(a) for “and 11(4)” substitute “, 11(4) and 11A(3) ”.
- (4) In paragraph 10(1) (inspectors etc to have necessary qualifications, experience and skills), after paragraph (c) insert “or
- (d) an inspection administrator,”, (and omit “or” at the end of paragraph (b)).
- (5) After paragraph 11 insert—

#### 11A “**Inspection administrators**

- (1) The Chief Inspector may enter into arrangements with inspection service providers under which they provide the services of persons to provide administrative support in connection with the carrying out of inspections.
- (2) A person providing administrative support in pursuance of arrangements under sub-paragraph (1) is to be known as an inspection administrator.
- (3) The Chief Inspector may not authorise an inspection administrator to conduct an inspection.”

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#### **Commencement Information**

**I16** S. 226 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

## CHAPTER 4

### SCHOOL SUPPORT STAFF PAY AND CONDITIONS: ENGLAND

#### *The SSSNB*

#### **227 The School Support Staff Negotiating Body**

- (1) There is to be an unincorporated body of persons known as the School Support Staff Negotiating Body.
- (2) In this Chapter that body is referred to as “the SSSNB”.
- (3) The SSSNB's functions are those conferred on it by this Chapter.
- (4) Schedule 15 makes further provision about the SSSNB.

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#### **Commencement Information**

**I17** S. 227 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

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## 228 Matters within SSSNB's remit

- (1) For the purposes of this Chapter, the matters within the SSSNB's remit are matters relating to—
  - (a) the remuneration of school support staff, or
  - (b) conditions of employment relating to the duties or working time of school support staff.
- (2) The Secretary of State may by order provide that, for the purposes of subsection (1)—
  - (a) a payment or entitlement of a specified kind is or is not to be treated as remuneration;
  - (b) a specified matter is or is not to be treated as relating to the duties of school support staff;
  - (c) a specified matter is or is not to be treated as relating to the working time of school support staff.

### Commencement Information

**I18** S. 228 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### *Consideration of matter by SSSNB*

## 229 Referral of matter to SSSNB for consideration

- (1) The Secretary of State may refer a matter within the SSSNB's remit to the SSSNB for consideration by it.
- (2) The rest of this section applies if the Secretary of State does so.
- (3) The Secretary of State may specify—
  - (a) factors to which the SSSNB must have regard in considering the matter;
  - (b) a date by which the SSSNB must comply with subsection (5).
- (4) The SSSNB must consider the matter, having regard to any factors specified under subsection (3)(a).
- (5) When it has considered the matter, the SSSNB must—
  - (a) if it has reached an agreement about the matter, submit that agreement to the Secretary of State, and
  - (b) if it has been unable to reach an agreement about the matter, notify the Secretary of State of that.
- (6) If the Secretary of State specifies a date under subsection (3)(b), the SSSNB must comply with subsection (5) no later than that date.
- (7) The Secretary of State may, at any time before the SSSNB have complied with subsection (5) in relation to a matter—
  - (a) withdraw or vary the reference of the matter;
  - (b) if factors have been specified under subsection (3)(a), withdraw or vary those factors, or specify further factors under that paragraph;
  - (c) if a date has been specified under subsection (3)(b), specify a later date under that paragraph.

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**Commencement Information**

**I19** S. 229 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

**230 Consideration of other matters by SSSNB**

- (1) The SSSNB may consider a matter within its remit, even if the matter has not been referred to it by the Secretary of State under section 229.
- (2) If the SSSNB reaches agreement about the matter, it may submit the agreement to the Secretary of State.

**Commencement Information**

**I20** S. 230 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

*Powers of Secretary of State on submission of SSSNB agreement*

**231 Agreement submitted by SSSNB under section 229 or 230**

- (1) This section applies if the SSSNB submits an agreement to the Secretary of State under section 229(5)(a) or 230(2).
- (2) The Secretary of State may—
  - (a) make an order ratifying the agreement, or
  - (b) if the Secretary of State thinks that it would be inappropriate to make an order ratifying the agreement, refer the agreement back to the SSSNB for reconsideration (see section 232).

**Commencement Information**

**I21** S. 231 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

*Reconsideration by SSSNB*

**232 Reconsideration of agreement by SSSNB**

- (1) This section applies if, under section 231(2)(b) or section 233(2)(b), the Secretary of State refers an agreement back to the SSSNB for reconsideration.
- (2) The Secretary of State may specify—
  - (a) factors to which the SSSNB must have regard in the reconsideration;
  - (b) a date by which the SSSNB must comply with subsection (4).
- (3) The SSSNB must reconsider the agreement, having regard to any factors specified under subsection (2)(a).
- (4) After completing its reconsideration, the SSSNB must—

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- (a) if it has agreed revisions to the agreement, submit to the Secretary of State a new version of the agreement incorporating the revisions;
  - (b) if it has not agreed revisions to the agreement, submit the existing version of the agreement to the Secretary of State.
- (5) If the Secretary of State specifies a date under subsection (2)(b), the SSSNB must comply with subsection (4) no later than that date.
- (6) The Secretary of State may, at any time before the SSSNB has complied with subsection (4) in relation to an agreement referred back to it for reconsideration—
- (a) withdraw the reference of the agreement;
  - (b) if factors have been specified under subsection (2)(a), withdraw or vary those factors, or specify further factors under that paragraph;
  - (c) if a date has been specified under subsection (2)(b), specify a later date under that paragraph.

#### Commencement Information

**I22** S. 232 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### 233 SSSNB's submission of agreement following reconsideration: powers of Secretary of State

- (1) This section applies if the SSSNB submits an agreement about a matter to the Secretary of State under section 232.
- (2) Subject to subsections (3) and (4), the Secretary of State may—
- (a) by order ratify the agreement;
  - (b) refer the agreement back to the SSSNB for reconsideration (see section 232);
  - (c) by order require specified persons to have regard to the agreement in exercising specified functions;
  - (d) by order make provision, in relation to a matter to which the agreement relates, otherwise than in the terms of the agreement.
- (3) The Secretary of State may refer an agreement about a matter back to the SSSNB for reconsideration only if it appears to the Secretary of State that the condition in subsection (5) is met.
- (4) The Secretary of State may make an order under subsection (2)(d) in relation to a matter only if it appears to the Secretary of State that—
- (a) the condition in subsection (5) is met, and
  - (b) there is an urgent need to make provision in relation to the matter.
- (5) The condition is that one or more of the following applies—
- (a) the agreement does not properly address the matter;
  - (b) it is not practicable to implement the agreement;
  - (c) the SSSNB failed in reconsidering the agreement to have regard to factors specified under section 232(2)(a).
- (6) In this section, “specified”, in relation to an order, means specified in the order.

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**Commencement Information**

**I23** S. 233 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Powers of Secretary of State in absence of SSSNB agreement*

**234 Powers of Secretary of State in absence of SSSNB agreement**

- (1) Subsection (2) applies if—
  - (a) the SSSNB notifies the Secretary of State under section 229(5)(b) that it has been unable to reach agreement on a matter referred to it, or
  - (b) the SSSNB fails to comply with section 229(5) in relation to a matter by any date specified under section 229(3)(b).
- (2) The Secretary of State may—
  - (a) if a date has been specified under section 229(3)(b) in relation to the matter, specify a later date under that paragraph, or
  - (b) if it appears to the Secretary of State that there is an urgent need to do so, by order make provision in relation to the matter.
- (3) Subsection (4) applies if the SSSNB fails to comply with section 232(4) in relation to an agreement by any date specified under section 232(2)(b).
- (4) The Secretary of State may—
  - (a) if a date has been specified under section 232(2)(b) in relation to the SSSNB's reconsideration of the agreement, specify a later date under that paragraph, or
  - (b) if it appears to the Secretary of State that there is an urgent need to do so, by order make provision in relation to a matter to which the agreement relates.
- (5) Before making an order under subsection (2)(b) or (4)(b), the Secretary of State must consult the SSSNB.

**Commencement Information**

**I24** S. 234 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Orders*

**235 Effect of order ratifying SSSNB agreement**

- (1) This section applies if the Secretary of State makes an order ratifying an agreement submitted by the SSSNB.
- (2) If the agreement relates to a person's remuneration, the person's remuneration is to be determined and paid in accordance with it.
- (3) A provision of the agreement that relates to any other condition of a person's employment has effect as a term of the person's contract of employment.
- (4) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the agreement.

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#### Commencement Information

**I25** S. 235 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### 236 Effect of order making provision otherwise than in terms of SSSNB agreement

- (1) This section applies if the Secretary of State makes an order under section 233(2)(d) or 234(2)(b) or (4)(b).
- (2) The order must either—
  - (a) require specified persons, in exercising specified functions, to have regard to the order, or
  - (b) provide that it is to have effect for determining the conditions of employment of persons to whom it applies.
- (3) If the order makes provision within subsection (2)(b), subsections (4) to (6) apply.
- (4) If the order relates to a person's remuneration, the person's remuneration is to be determined and paid in accordance with it.
- (5) A provision of the order that relates to any other condition of a person's employment has effect as a term of the person's contract of employment.
- (6) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the order.
- (7) In subsection (2)(a), “specified” means specified in the order.

#### Commencement Information

**I26** S. 236 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### 237 Orders: supplementary

- (1) An order under this Chapter may make provision that has retrospective effect, subject to subsection (2).
- (2) An order under this Chapter may not make provision the effect of which is to—
  - (a) reduce remuneration in respect of a period wholly or partly before the date on which the order is made, or
  - (b) alter a condition of a person's employment to the person's detriment in respect of such a period.
- (3) An order under section 233(2)(d) or 234(2)(b) or (4)(b) may make provision by reference to the exercise of a power under—
  - (a) section 35 of the Education Act 2002 (c. 32) (staffing of community schools, etc.), or
  - (b) section 36 of that Act (staffing of foundation schools, etc.).
- (4) An order under this Chapter may make provision by reference to—
  - (a) an agreement submitted to the Secretary of State by the SSSNB, or
  - (b) any other document.

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- (5) If an order under this Chapter does so, it must include provision about the publication of the agreement or other document.
- (6) A reference in subsection (3) to an order under section 233(2)(d) or 234(2)(b) or (4)(b), and a reference in section 236(4) to (6) to such an order, or a provision of such an order, includes a reference to a provision of a document referred to by such an order.
- (7) In Schedule 2 to the Education Act 2002 (c. 32) (effect on staffing of suspension of delegated budget), after paragraph 10 insert—

- “11 Paragraph 8 has effect subject to—
- (a) any provision made by an order under section 231(2)(a) or 233(2)(a) of the Apprenticeships, Skills, Children and Learning Act 2009;
  - (b) any provision made by an order under section 233(2)(d) or 234(2)(b) or (4)(b) of that Act, where the order provides that it is to have effect for determining the conditions of employment of persons to whom it applies.”

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**Commencement Information**

**I27** S. 237 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Guidance*

**238 Guidance**

- (1) The SSSNB may, with the approval of the Secretary of State, issue guidance relating to—
  - (a) an agreement to which an order under section 233(2)(c) requires persons to have regard;
  - (b) an agreement that has been ratified by an order under this Chapter.
- (2) The Secretary of State may issue guidance relating to an order made under section 233(2)(d) or 234(2)(b) or (4)(b).
- (3) In exercising functions in respect of school support staff, each of the following is to have regard to guidance issued under this section—
  - (a) a local education authority in England;
  - (b) the governing body of a school maintained by a local education authority in England.

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**Commencement Information**

**I28** S. 238 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

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### General

#### 239 Non-statutory School Support Staff Negotiating Body

- (1) This section applies for the purposes of this Chapter.
- (2) The establishment of the non-statutory School Support Staff Negotiating Body is to be treated as the establishment of the SSSNB.
- (3) Arrangements made for the constitution of the non-statutory School Support Staff Negotiating Body are to be treated as if they were arrangements made under paragraph 1(1) of Schedule 15.
- (4) Consultation carried out before arrangements are made for the constitution of the non-statutory School Support Staff Negotiating Body is to be treated as carried out under paragraph 1(2) of Schedule 15.
- (5) A matter within the SSSNB's remit that has been referred to the non-statutory School Support Staff Negotiating Body by the Secretary of State is to be treated as if it had been referred by the Secretary of State to the SSSNB under section 229.
- (6) For the purposes of this section the “non-statutory School Support Staff Negotiating Body” is the body of persons—
  - (a) established by the Secretary of State before the date on which this Chapter comes into force, and
  - (b) known as the School Support Staff Negotiating Body.

#### Commencement Information

**I29** S. 239 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

#### 240 “School support staff”

- (1) This section has effect for the purposes of this Chapter.
- (2) “School support staff” are persons within subsection (3).
- (3) A person is within this subsection if the person—
  - (a) is employed by a local education authority in England or the governing body of a school maintained by a local education authority in England, under a contract of employment providing for the person to work wholly at a school or schools maintained by a local education authority in England;
  - (b) is not a school teacher, or a person of a prescribed description.
- (4) In this section, “school teacher” means a person who is a school teacher for the purposes of section 122 of the Education Act 2002 (c. 32).

#### Commencement Information

**I30** S. 240 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)



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## 241 General interpretation

For the purposes of this Chapter—

“contract of employment” has the meaning given by section 230(2) of the Employment Rights Act 1996 (c. 18);

“school maintained by a local education authority” means—

- (a) a community, foundation or voluntary school;
- (b) a community or foundation special school;
- (c) a maintained nursery school;
- (d) a short stay school.

### Commencement Information

**I31** S. 241 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

VALID FROM 01/09/2010

## PART 11

### LEARNERS

#### *Power to search for prohibited items*

## 242 Power of members of staff to search pupils for prohibited items: England

(1) After section 550A of the Education Act 1996 (c. 56) insert—

#### *“Powers to search pupils*

### **550ZA Power of members of staff to search pupils for prohibited items: England**

- (1) This section applies where a member of staff of a school in England—
  - (a) has reasonable grounds for suspecting that a pupil at the school may have a prohibited item with him or her or in his or her possessions; and
  - (b) falls within section 550ZB(1).
- (2) The member of staff may search the pupil (“P”) or P’s possessions for that item.
- (3) For the purposes of this section and section 550ZC each of the following is a “prohibited item”—
  - (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
  - (b) an offensive weapon, within the meaning of the Prevention of Crime Act 1953;

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- (c) alcohol, within the meaning of section 191 of the Licensing Act 2003;
  - (d) a controlled drug, within the meaning of section 2 of the Misuse of Drugs Act 1971, which section 5(1) of that Act makes it unlawful for P to have in P's possession;
  - (e) a stolen article;
  - (f) an article of a kind specified in regulations.
- (4) In subsection (3)(e) “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 in the provisions of that Act relating to goods which have been stolen.
- (5) In this section and section 550ZB—
- “member of staff”, in relation to a school, means—
    - (a) any teacher who works at the school; and
    - (b) any other person who, with the authority of the head teacher, has lawful control or charge of pupils for whom education is being provided at the school;
  - “possessions”, in relation to P, includes any goods over which P has or appears to have control.
- (6) The powers conferred by this section and sections 550ZB and 550ZC are in addition to any powers exercisable by the member of staff in question apart from those sections and are not to be construed as restricting such powers.

#### **550ZB Power of search under section 550ZA: supplementary**

- (1) A person may carry out a search under section 550ZA only if that person—
  - (a) is the head teacher of the school; or
  - (b) has been authorised by the head teacher to carry out the search.
- (2) An authorisation for the purposes of subsection (1)(b) may be given in relation to—
  - (a) searches under section 550ZA generally;
  - (b) a particular search under that section;
  - (c) a particular description of searches under that section.
- (3) Nothing in any enactment, instrument or agreement shall be construed as authorising a head teacher of a school in England to require a person other than a member of the security staff of the school to carry out a search under section 550ZA.
- (4) A search under section 550ZA may be carried out only where—
  - (a) the member of staff and P are on the premises of the school; or
  - (b) they are elsewhere and the member of staff has lawful control or charge of P.
- (5) A person exercising the power in section 550ZA may use such force as is reasonable in the circumstances for exercising that power.
- (6) A person carrying out a search of P under section 550ZA—
  - (a) may not require P to remove any clothing other than outer clothing;

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- (b) must be of the same sex as P;
  - (c) may carry out the search only in the presence of another member of staff; and
  - (d) must ensure that the other member of staff is of the same sex as P if it is reasonably practicable to do so.
- (7) P's possessions may not be searched under section 550ZA except in the presence of—
- (a) P; and
  - (b) another member of staff.
- (8) In this section—
- “member of the security staff”, in relation to a school, means a member of staff whose work at the school consists wholly or mainly of security-related activities;
- “outer clothing” means—
- (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
  - (b) a hat, shoes, boots, gloves or a scarf.

#### **550ZC Power to seize items found during search under section 550ZA**

- (1) A person carrying out a search under section 550ZA may seize any of the following found in the course of the search—
- (a) anything which that person has reasonable grounds for suspecting is a prohibited item;
  - (b) any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence.
- (2) A person exercising the power in subsection (1) may use such force as is reasonable in the circumstances for exercising that power.
- (3) A person who seizes alcohol under subsection (1) may retain or dispose of the alcohol and its container.
- (4) A person who seizes a controlled drug under subsection (1)—
- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
  - (b) may dispose of it if the person thinks that there is a good reason to do so.
- (5) A person who seizes a stolen article under subsection (1)—
- (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
  - (b) may return it to its owner (or, if returning it to its owner is not practicable, may retain it or dispose of it) if the person thinks that there is a good reason to do so.
- (6) In determining, for the purposes of subsections (4) and (5), whether there is a good reason to dispose of a controlled drug or to return a stolen article

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to its owner, retain it or dispose of it, the person must have regard to any guidance issued by the Secretary of State.

- (7) Regulations may prescribe what must or may be done by a person who, under subsection (1), seizes an article of a kind specified in regulations under section 550ZA(3)(f) (or an article which the person has reasonable grounds for suspecting to be such an article).
- (8) A person who, under subsection (1), seizes—
- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
  - (b) an offensive weapon; or
  - (c) anything which that person has reasonable grounds for suspecting is evidence in relation to an offence;
- must deliver it to a police constable as soon as reasonably practicable.
- (9) Subsection (8)(c) is subject to subsections (3), (4) and (5) and regulations made under subsection (7).
- (10) In subsections (3) to (8), references to alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies and an offensive weapon include references to anything which the person has reasonable grounds for suspecting is alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies or an offensive weapon.

#### **550ZD Section 550ZC: supplementary**

- (1) The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under section 550ZC(4)(a), (5)(a) or (8) as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.
- (2) Subsection (3) applies where a person—
- (a) seizes, retains or disposes of alcohol or its container, a controlled drug or a stolen article under section 550ZC; and
  - (b) proves that the seizure, retention or disposal was lawful.
- (3) That person is not liable in any proceedings in respect of—
- (a) the seizure, retention or disposal; or
  - (b) any damage or loss which arises in consequence of it.
- (4) Subsections (2) and (3) do not prevent any person from relying on any defence on which the person is entitled to rely apart from those subsections.
- (5) Regulations under section 550ZC(7) may make provision corresponding to any provision of this section.”
- (2) In section 569 of the Education Act 1996 (c. 56) (regulations)—
- (a) in subsection (2) after “this Act,” insert “ other than one falling within subsection (2A), ”, and
  - (b) after subsection (2) insert—

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“(2A) A statutory instrument which contains (whether alone or with other provision) regulations under section 550ZA or 550ZC may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

- (3) In section 94(3) of the Education and Inspections Act 2006 (c. 40) (provision to apply where items confiscated from pupils) before “550AA” insert “ 550ZC or ”.

#### **243 Power of members of staff to search pupils for weapons: Wales**

- (1) Section 550AA of the Education Act 1996 (c. 56) (power of members of staff to search pupils for weapons) is amended as follows.
- (2) At the end of the title insert “ : Wales ”.
- (3) In each of subsections (1) and (4) after “a school” insert “ in Wales ”.

#### **244 Power of members of staff to search students for prohibited items: England**

- (1) After section 85A of the Further and Higher Education Act 1992 (c. 13) insert—

##### **“85AA Power of members of staff to search students for prohibited items: England**

- (1) This section applies where a member of staff of an institution within the further education sector in England—
- (a) has reasonable grounds for suspecting that a student at the institution may have a prohibited item with him or her or in his or her possessions; and
  - (b) falls within section 85AB(1).
- (2) The member of staff may search the student (“S”) or S's possessions for that item (but this is subject to subsection (5)).
- (3) For the purposes of this section and section 85AC each of the following is a “prohibited item”—
- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
  - (b) an offensive weapon, within the meaning of the Prevention of Crime Act 1953;
  - (c) alcohol, within the meaning of section 191 of the Licensing Act 2003;
  - (d) a controlled drug, within the meaning of section 2 of the Misuse of Drugs Act 1971, which section 5(1) of that Act makes it unlawful for S to have in S's possession;
  - (e) a stolen article;
  - (f) an article of a kind specified in regulations.
- (4) In subsection (3)(e) “stolen”, in relation to an article, has the same meaning as it has by virtue of section 24 of the Theft Act 1968 in the provisions of that Act relating to goods which have been stolen.

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- (5) A member of staff may not under this section search S or S's possessions for alcohol if S is aged 18 or over.
- (6) In this section and section 85AB—
  - “member of staff”, in relation to an institution within the further education sector, means any person who works at that institution whether or not as its employee;
  - “possessions”, in relation to S, includes any goods over which S has or appears to have control.
- (7) The powers conferred by this section and sections 85AB and 85AC are in addition to any powers exercisable by the member of staff in question apart from those sections and are not to be construed as restricting such powers.

#### **85AB Power of search under section 85AA: supplementary**

- (1) A person may carry out a search under section 85AA only if that person—
  - (a) is the principal of the institution; or
  - (b) has been authorised by the principal to carry out the search.
- (2) An authorisation for the purposes of subsection (1)(b) may be given in relation to—
  - (a) searches under section 85AA generally;
  - (b) a particular search under that section;
  - (c) a particular description of searches under that section.
- (3) Nothing in any enactment, instrument or agreement shall be construed as authorising a principal of an institution within the further education sector in England to require a person other than a member of the security staff of the institution to carry out a search under section 85AA.
- (4) A search under section 85AA may be carried out only where—
  - (a) the member of staff and S are on the premises of the institution; or
  - (b) they are elsewhere and the member of staff has lawful control or charge of S.
- (5) A person exercising the power in section 85AA may use such force as is reasonable in the circumstances for exercising that power.
- (6) A person carrying out a search of S under section 85AA—
  - (a) may not require S to remove any clothing other than outer clothing;
  - (b) must be of the same sex as S;
  - (c) may carry out the search only in the presence of another member of staff; and
  - (d) must ensure that the other member of staff is of the same sex as S if it is reasonably practicable to do so.
- (7) S's possessions may not be searched under section 85AA except in the presence of—
  - (a) S; and
  - (b) another member of staff.

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(8) In this section—

“member of the security staff”, in relation to an institution, means a member of staff whose work at the institution consists wholly or mainly of security-related activities;

“outer clothing” means—

- (a) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
- (b) a hat, shoes, boots, gloves or a scarf.

### 85AC Power to seize items found during search under section 85AA

- (1) A person carrying out a search under section 85AA may seize any of the following found in the course of the search—
  - (a) anything which that person has reasonable grounds for suspecting is a prohibited item;
  - (b) any other thing which that person has reasonable grounds for suspecting is evidence in relation to an offence,but may not seize alcohol from S under this section where S is aged 18 or over.
- (2) A person exercising the power in subsection (1) may use such force as is reasonable in the circumstances for exercising that power.
- (3) A person who seizes alcohol under subsection (1) may retain or dispose of the alcohol and its container.
- (4) A person who seizes a controlled drug under subsection (1)—
  - (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
  - (b) may dispose of it if the person thinks that there is a good reason to do so.
- (5) A person who seizes a stolen article under subsection (1)—
  - (a) must (subject to paragraph (b)) deliver it to a police constable as soon as reasonably practicable; but
  - (b) may return it to its owner (or, if returning it to its owner is not practicable, may retain it or dispose of it) if the person thinks that there is a good reason to do so.
- (6) In determining, for the purposes of subsections (4) and (5), whether there is a good reason to dispose of a controlled drug or to return a stolen article to its owner, retain it or dispose of it, the person must have regard to any guidance issued by the Secretary of State.
- (7) Regulations may prescribe what must or may be done by a person who, under subsection (1), seizes an article of a kind specified in regulations under section 85AA(3)(f) (or an article which the person has reasonable grounds for suspecting to be such an article).
- (8) A person who, under subsection (1), seizes—

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- (a) an article to which section 139 of the Criminal Justice Act 1988 applies (knives and blades etc);
- (b) an offensive weapon; or
- (c) anything which that person has reasonable grounds for suspecting is evidence in relation to an offence;

must deliver it to a police constable as soon as reasonably practicable.

- (9) Subsection (8)(c) is subject to subsections (3), (4) and (5) and regulations made under subsection (7).
- (10) In subsections (3) to (8), references to alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies and an offensive weapon include references to anything which a person has reasonable grounds for suspecting is alcohol, a controlled drug, a stolen article, an article to which section 139 of the Criminal Justice Act 1988 applies or an offensive weapon.

#### 85AD Section 85AC: supplementary

- (1) The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under section 85AC(4)(a), (5)(a) or (8) as it applies to property which has come into the possession of the police in the circumstances mentioned in that Act.
- (2) Subsection (3) applies where a person—
  - (a) seizes, retains or disposes of alcohol or its container, a controlled drug or a stolen article under section 85AC; and
  - (b) proves that the seizure, retention or disposal was lawful.
- (3) That person is not liable in any proceedings in respect of—
  - (a) the seizure, retention or disposal; or
  - (b) any damage or loss which arises in consequence of it.
- (4) Subsections (2) and (3) do not prevent any person from relying on any defence on which the person is entitled to rely apart from those subsections.
- (5) Regulations under section 85AC(7) may make provision corresponding to any provision of this section.”
- (2) In section 89 of the Further and Higher Education Act 1992 (c. 13) (regulations etc)—
  - (a) in subsection (3) after “other than” insert “one falling within subsection (3A) or ”, and
  - (b) after subsection (3) insert—
    - “(3A) A statutory instrument which contains (whether alone or with other provision) regulations under section 85AA or 85AC may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”



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#### **245 Power of members of staff to search students for weapons: Wales**

- (1) Section 85B of the Further and Higher Education Act 1992 (power to search further education students for weapons) is amended as follows.
- (2) At the end of the title insert “ : Wales ”.
- (3) In subsection (1) after “an institution within the further education sector” insert “ in Wales ”.

PROSPECTIVE

#### *Recording and reporting use of force*

#### **246 Recording and reporting the use of force in schools: England**

After section 93 of the Education and Inspections Act 2006 (c. 40) (power of members of staff to use force) insert—

##### **“93A Recording and reporting the use of force by members of staff: England**

- (1) The governing body of a school in England must ensure that a procedure is in place for—
  - (a) recording each significant incident in which a member of the staff uses force on a pupil for whom education is being provided at the school (a “use of force incident”); and
  - (b) reporting each use of force incident (except those where the pupil is aged 20 or over or provision made under subsection (5) applies) to each parent of the pupil as soon as practicable after the incident.
- (2) The governing body must take all reasonable steps to ensure that the procedure is complied with.
- (3) The procedure must require that a record of a use of force incident is made in writing as soon as practicable after the incident.
- (4) In discharging their duty under subsection (1), the governing body must have regard to any guidance issued by the Secretary of State for the purposes of that subsection.
- (5) A procedure under subsection (1) must include provision to the effect—
  - (a) that a person (“R”) who would otherwise be required by the procedure to report an incident to a parent must not report it to that parent if it appears to R that doing so would be likely to result in significant harm to the pupil; and
  - (b) that if it appears to R that there is no parent of the pupil to whom R could report the incident without that being likely to result in significant harm to the pupil, R must report the incident to the local authority<sup>F18</sup> ... within whose area the pupil is ordinarily resident.
- (6) In deciding for the purposes of provision made under subsection (5) whether reporting an incident to a parent would be likely to result in

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significant harm to the pupil, R must have regard to any guidance issued by the Secretary of State about the meaning of “significant harm” for those purposes.

(7) In this section—

“governing body”, in relation to a school which is not a maintained school, means the proprietor of the school;

“maintained school” means—

- (a) a community, foundation or voluntary school;
- (b) a community or foundation special school;
- (c) a maintained nursery school;

“parent”, in relation to a pupil, has the meaning given by section 576 of EA 1996 in relation to a child or young person, but includes a local authority which provides accommodation for the pupil under section 20 of the Children Act 1989.”

#### Textual Amendments

**F18** Words in s. 246 repealed (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 16(12), [Sch. 3 Pt. 1](#)

#### 247 Recording and reporting the use of force in FE institutions: England

After section 85C of the Further and Higher Education Act 1992 (power of members of staff to use force) insert—

##### “85D Recording and reporting the use of force by members of staff: England

- (1) The governing body of an institution within the further education sector in England must ensure that a procedure is in place for—
  - (a) recording each significant incident in which a member of the staff uses force on a student at the institution (a “use of force incident”); and
  - (b) reporting each use of force incident (except those where the student is aged 20 or over or provision made under subsection (5) applies) to each parent of the student as soon as practicable after the incident.
- (2) The governing body must take all reasonable steps to ensure that the procedure is complied with.
- (3) The procedure must require that a record of a use of force incident is made in writing as soon as practicable after the incident.
- (4) In discharging their duty under subsection (1), the governing body must have regard to any guidance issued by the Secretary of State for the purposes of that subsection.
- (5) A procedure under subsection (1) must include provision to the effect—

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- (a) that a person (“R”) who would otherwise be required by the procedure to report an incident to a parent must not report it to that parent if it appears to R that doing so would be likely to result in significant harm to the student; and
  - (b) that if it appears to R that there is no parent of the student to whom R could report the incident without that being likely to result in significant harm to the student, R must report the incident to the local authority <sup>F19</sup>... within whose area the student is ordinarily resident.
- (6) In deciding for the purposes of provision made under subsection (5) whether reporting an incident to a parent would be likely to result in significant harm to the student, R must have regard to any guidance issued by the Secretary of State about the meaning of “significant harm” for those purposes.
- (7) In this section, “parent”, in relation to a student, has the meaning given by section 576 of EA 1996 in relation to a child or young person, but includes a local authority which provides accommodation for the student under section 20 of the Children Act 1989.”

**Textual Amendments**

**F19** Words in s. 247 repealed (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), art. 1, Sch. 2 para. 16(13), [Sch. 3 Pt. 1](#)

PROSPECTIVE

*School behaviour and attendance partnerships*

**F20 248 Co-operation with a view to promoting good behaviour, etc.: England**

**Textual Amendments**

**F20** S. 248 repealed (15.1.2012) by [Education Act 2011 \(c. 21\)](#), [ss. 6, 82\(2\)\(a\)](#)

*Short stay schools*

**249 Short stay schools: miscellaneous**

- (1) A school established in England and falling within section 19(2B) of the Education Act 1996 (c. 56) (pupil referral units) is to be known from the day on which this subsection comes into force as a “short stay school”.

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- (2) The Secretary of State may by order make amendments consequential on the change of name effected by subsection (1) to—
- (a) any enactment (including this Act) passed on or before the last day of the Session in which this Act is passed;
  - (b) an instrument made under an Act before the passing of this Act.
- (3) After paragraph 3 of Schedule 1 to the Education Act 1996 (c. 56) (short stay schools: further provision) insert—

“3A Regulations may also—

- (a) require a [<sup>F3</sup>local authority] in England to obtain the consent of the Secretary of State, in specified circumstances, to the closure of a short stay school;
- (b) confer a power on the Secretary of State to give directions to a [<sup>F3</sup>local authority] in England about the exercise of—
  - (i) their functions under section 19;
  - (ii) their functions under any enactment applied to short stay schools (with or without modifications) by regulations under paragraph 3;
  - (iii) any other function connected with short stay schools;
- (c) require a [<sup>F3</sup>local authority] to comply with such directions.”

#### Textual Amendments

- F3** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#) , **Sch. 2 para. 16(2)**

## PART 12

### MISCELLANEOUS

PROSPECTIVE

#### *Careers education*

#### <sup>F21</sup>250 Careers education in schools: England

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#### Textual Amendments

- F21** S. 250 omitted (1.9.2012) by virtue of [Education Act 2011 \(c. 21\)](#), **ss. 29(9)(d)**, 82(3); S.I. 2012/1087, art. 3

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### *Information about local authority expenditure*

#### **251 Information about planned and actual expenditure**

- (1) The Secretary of State may direct a local authority in England to provide information about its planned and actual expenditure in connection with—
  - (a) its education functions;
  - (b) its children's social services functions.
- (2) The Secretary of State may also direct a local authority in England to provide information about accountable resources held, received or expended by any person in relation to a school maintained by the authority.
- (3) Information to which a direction under this section relates must be provided in accordance with the direction.
- (4) A direction under this section may (in particular) include provision about—
  - (a) the period to which information is to relate;
  - (b) the form and manner in which information is to be provided;
  - (c) the persons to whom information is to be provided;
  - (d) the publication of information.
- (5) If a direction under this section requires information to be provided to a person other than the Secretary of State, the direction may also require that person to make the information available for inspection in accordance with the direction.

#### **Commencement Information**

**I32** S. 251 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

#### **252 Information about expenditure: supplementary**

- (1) This section applies for the purposes of section 251.
- (2) The education functions of a local authority in England are the functions conferred on or exercisable by the authority in its capacity as a local education authority.
- (3) The children's social services functions of a local authority in England are—
  - (a) functions conferred on or exercisable by the authority which are social services functions, so far as those functions relate to children;
  - (b) functions conferred on the authority under sections 23C to 24D of the Children Act 1989 (c. 41), so far as not within paragraph (a);
  - (c) functions conferred on the authority, in its capacity as a children's services authority in England, under sections 10 to 12, 12C, 12D and 17A of the Children Act 2004 (c. 31).
- (4) “Accountable resources”, in relation to a school maintained by a local authority, means resources that are not provided by the authority in its capacity as a local education authority, but in respect of which an obligation is imposed on the school's governing body by virtue of regulations under section 44 of the Education Act 2002 (c. 32) (accounts of maintained schools).

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- (5) The Secretary of State may by order amend this section for one or more of the following purposes—
- (a) adding to the functions that are education functions or children's social services functions;
  - (b) removing or changing the description of functions that are education functions or children's social services functions.
- (6) In this section—
- “children's services authority in England” has the meaning given by section 65(1) of the Children Act 2004 (c. 31);
- “social services functions” has the same meaning as in the Local Authority Social Services Act 1970 (c. 42) (see section 1A of that Act).

#### Commencement Information

**I33** S. 252 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

### 253 Information about expenditure: consequential amendments

- (1) The School Standards and Framework Act 1998 (c. 31) is amended as follows.
- (2) In section 52 (the title of which becomes “Financial statements: Wales”), in subsections (1) and (2) after “local education authority” insert “ in Wales ”.
- (3) Omit section 53 (certification of statements by Audit Commission).

#### Commencement Information

**I34** S. 253 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

#### *Support for participation in education and training*

### 254 Provision of social security information for purposes of functions under Education and Skills Act 2008

- (1) The Education and Skills Act 2008 (c. 25) is amended as follows.
- (2) Omit section 15 (supply of social security information for purposes of Part 1).
- (3) Section 17 (sharing and use of information held for purposes of support services or functions under Part 1) is amended as follows.
- (4) In subsection (1), for “provide relevant information to each other” substitute “—
  - (a) provide relevant information to each other;
  - (b) make arrangements for the holding by either of them of information provided, or which could be provided, under paragraph (a).”
- (5) In subsection (7), in the definition of “relevant information”, after paragraph (b), insert—
 

“but does not include information provided under section 72 of the Welfare Reform and Pensions Act 1999;”.

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(6) At the end add—

“(9) Nothing in this section authorises the disclosure of any information in contravention of any provision of, or made under, this or any other Act (whenever passed or made) which prevents disclosure of the information.”

(7) Section 76 (supply of social security information for purposes of support services) is amended as follows.

(8) Omit subsection (1).

(9) For subsections (3) and (4) substitute—

“(3) For the purposes of subsection (2), “personal information” in relation to a young person, means the person's name, address and date of birth.

(3A) The Secretary of State may make arrangements with a person for the supply of social security information for the purposes of the provision of services for young persons in pursuance of section 68 or 70(1)(b).

(3B) Social security information may be supplied to—

- (a) the Secretary of State, or
- (b) a person providing services to the Secretary of State under subsection (3A).

(3C) A person to whom social security information is supplied under subsection (3B) may supply the information to a local education authority or other person involved in the provision of services for young persons or relevant young adults in pursuance of section 68 or 70(1)(b) for the purpose of the provision of those services.

(3D) Information supplied to a person in reliance on subsection (3C) or this subsection may be supplied in accordance with, or with arrangements made under, section 17(1).

(3E) Information supplied to a person in reliance on subsection (3B), (3C) or (3D) may be disclosed—

- (a) for the purpose of the provision of services in pursuance of section 68 or 70(1)(b),
- (b) for the purpose of enabling or assisting the exercise of any function of a local education authority under Part 1,
- (c) in accordance with any provision of, or made under, any other Act,
- (d) in accordance with an order of a court or tribunal,
- (e) for the purpose of actual or contemplated proceedings before a court or tribunal,
- (f) with consent given by or on behalf of the person to whom the information relates, or
- (g) in such a way as to prevent the identification of the person to whom it relates.

(4) It is an offence for a person to disclose restricted information otherwise than in accordance with this section.

(4A) For the purposes of subsection (4), “restricted information”, in relation to a person, means information that was disclosed to the person—

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- (a) in reliance on subsection (3B), (3C) or (3D), or
- (b) in circumstances that constitute an offence under this section.”

#### Commencement Information

**I35** S. 254 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

### 255 Provision of other information in connection with support services

- (1) The Education and Skills Act 2008 (c. 25) is amended as follows.
- (2) In section 69(1) (directions), after paragraph (a) insert—
  - “(aa) requiring the authority to secure that any person by whom such services are provided (whether the authority or any other person) provides such relevant information (within the meaning of section 76A) as the Secretary of State may require to—
    - (i) the Secretary of State, or
    - (ii) a person providing services to the Secretary of State under section 76A;”.
- (3) After section 76 insert—

#### “76A Supply of information by Secretary of State or person providing services

- (1) The Secretary of State may make arrangements with any other person for the holding and supply of information in connection with, or for the purposes of, the provision of services in pursuance of section 68 or 70(1)(b).
- (2) In this section “relevant information”, in relation to a person by whom services are provided under section 68 or 70(1)(b), means information which—
  - (a) is obtained by a person involved in the provision of those services in, or in connection with, the provision of those services,
  - (b) relates to a person for whom those services are provided;
 but does not include information provided under section 72 of the Welfare Reform and Pensions Act 1999.
- (3) Relevant information may be supplied to—
  - (a) the Secretary of State, or
  - (b) a person providing services to the Secretary of State under this section.
- (4) Information supplied under subsection (3) may be supplied to any person involved in the provision of services in pursuance of section 68 or 70(1)(b) for the purposes of the provision of those services.
- (5) Except as provided by subsection (4), information supplied in reliance on subsection (3) must not be disclosed in such a way that the identity of the individual is disclosed to, or capable of being discovered by, the person to whom it is disclosed.



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- (6) Nothing in this section authorises the disclosure of any information in contravention of any provision of, or made under, this or any other Act (whenever passed or made) which prevents disclosure of the information.”

#### Commencement Information

**I36** S. 255 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010

#### *Further education corporations*

#### **256 Further education corporations in England: co-operation and promotion of well-being**

- (1) The Further and Higher Education Act 1992 (c. 13) is amended as follows.
- (2) In section 19 (supplementary powers of a further education corporation), after subsection (8) add—
- “(9) A further education corporation may provide advice or assistance to any other person where it appears to the corporation to be appropriate for them to do so for the purpose of or in connection with the provision of education by the other person.”
- (3) After that section insert—

#### **“19A Duty in relation to promotion of well-being of local area**

- (1) This section applies to a further education corporation established in respect of an educational institution in England.
- (2) In exercising their functions under sections 18 and 19, the corporation must—
- (a) have regard, amongst other things, to the objective of promoting the economic and social well-being of the local area, and
- (b) in doing so, have regard to any guidance issued by the Secretary of State about co-operation with a view, directly or indirectly, to advancing that objective.
- (3) In subsection (2)—
- (a) the reference to the well-being of an area includes a reference to the well-being of people who live or work in the area;
- (b) “co-operation”, in relation to a further education corporation, means any form of co-operation, including consulting, seeking advice or assistance from, providing advice or assistance to, or collaborating or otherwise participating in joint working with, other educational institutions, employers or other persons (who may be, or include, persons outside the local area).

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(4) In this section, “the local area”, in relation to a further education corporation, means the locality of the institution in respect of which they are established.

(5) Nothing in this section is to be taken to affect the operation of section 49A.”

### *Student loans*

#### **257 Student loans under the 1998 Act: IVAs**

- (1) The Teaching and Higher Education Act 1998 (c. 30) is amended as set out in subsections (2) and (3).
- (2) In section 22(3) (new arrangements for giving financial support to students), after paragraph (f) insert—
  - “(g) with respect to sums which a borrower receives, or is entitled to receive, under such a loan before or after a voluntary arrangement under Part 8 of the Insolvency Act 1986 or Part 8 of the Insolvency (Northern Ireland) Order 1989 (individual voluntary arrangements) takes effect in respect of the borrower;
  - (h) excluding or modifying the application of Part 8 of that Act, or Part 8 of that Order, in relation to liability to make repayments in respect of such a loan (whether the repayments relate to sums which the borrower receives, or is entitled to receive, before or after a voluntary arrangement takes effect in respect of the borrower).”
- (3) In section 46(8) (provisions extending to Northern Ireland), in the entry relating to section 22, for “(3)(e) or (f)” substitute “(3)(e), (f), (g) or (h) ”.
- (4) Nothing in this section affects a voluntary arrangement that takes effect before this section comes into force.

#### **Commencement Information**

**I37** S. 257 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

#### **258 Student loans under the 1990 Act: IVAs and bankruptcy**

- (1) Subsections (2) to (5) have effect in relation to the Education (Student Loans) Act 1990 (c. 6) to the extent that that Act continues in force by virtue of any savings made, in connection with its repeal by the Teaching and Higher Education Act 1998 (c. 30), by an order under section 46(4) of that Act.
- (2) In Schedule 2 (loans for students), in paragraph 5(1) for “or 310” substitute “, 310 or 310A ”.
- (3) In Schedule 2, after paragraph 5 insert—
  - “5A (1) This paragraph applies to a sum by way of public sector student loan or subsidised private sector student loan that a person (“the debtor”) receives or is entitled to receive before or after a voluntary arrangement under Part 8 of the Insolvency Act 1986 takes effect in respect of the debtor.

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- (2) The sum is to be ignored for the purposes of the voluntary arrangement.
- 5B (1) Part 8 of the Insolvency Act 1986 (individual voluntary arrangements) has effect in relation to a student loan debt with the following modifications.
- (2) A student loan debt is to be treated as not included among the debtor's debts.
- (3) A person to whom a student loan debt is owed is to be treated as not being one of the debtor's creditors.
- (4) A “student loan debt” is a debt or liability to which a debtor is or may become subject in respect of a public sector student loan or subsidised private sector student loan.”
- (4) In Schedule 2, after paragraph 6 insert—

**“Insolvency: Northern Ireland**

- 7 (1) There shall not be treated as part of a bankrupt's estate or claimed for his estate under article 280 or 283 of the Insolvency (Northern Ireland) Order 1989 any sums to which this paragraph applies that the bankrupt receives or is entitled to receive after the commencement of the bankruptcy.
- (2) No debt or liability to which a bankrupt is or may become subject in respect of a sum to which this paragraph applies shall be included in the bankrupt's bankruptcy debts.
- (3) This paragraph applies to a sum by way of public sector student loan or subsidised private sector student loan payable to the bankrupt pursuant to an agreement entered into by the bankrupt before or after the commencement of the bankruptcy.
- 8 (1) This paragraph applies to a sum by way of public sector student loan or subsidised private sector student loan that a person (“the debtor”) receives or is entitled to receive before or after a voluntary arrangement under Part 8 of the Insolvency (Northern Ireland) Order 1989 takes effect in respect of the debtor.
- (2) The sum is to be ignored for the purposes of the voluntary arrangement.
- 9 (1) Part 8 of the Insolvency (Northern Ireland) Order 1989 (individual voluntary arrangements) has effect in relation to a student loan debt with the following modifications.
- (2) A student loan debt is to be treated as not included among the debtor's debts.
- (3) A person to whom a student loan debt is owed is to be treated as not being one of the debtor's creditors.
- (4) A “student loan debt” is a debt or liability to which a debtor is or may become subject in respect of a public sector student loan or subsidised private sector student loan.”
- (5) In section 4, for subsection (4) (extent) substitute—

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“(4) This Act does not extend to Northern Ireland, with the following exceptions—

- (a) section 1, so far as necessary for the purpose of defining “public sector student loan” and “subsidised private sector student loan”;
- (b) section 2;
- (c) as respects institutions in Northern Ireland, the power to make regulations under paragraph 2 of Schedule 2;
- (d) paragraphs 7 to 9 of Schedule 2.”

(6) Nothing in this section affects a voluntary arrangement that takes effect, or a bankruptcy that commences, before this section comes into force.

#### Commencement Information

**I38** S. 258 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/10/2010

#### *Foundation degrees: Wales*

#### **259 Power to award foundation degrees: Wales**

- (1) In section 76(1)(b) of the Further and Higher Education Act 1992 (c. 13) (power of Privy Council to specify further education institutions in England that may award foundation degrees) omit “in England”.
- (2) Within the period of four years beginning with the commencement of subsection (1) of this section, the Welsh Ministers must lay before the National Assembly for Wales a report about its effect.

PROSPECTIVE

#### *Complaints: Wales*

#### **260 Complaints: Wales**

- (1) Section 29 of the Education Act 2002 (c. 32) (additional functions of governing body) is amended as follows.
- (2) In subsection (1) after “maintained school” insert “ in England ”.
- (3) In subsection (2) for the words from “(in relation to England)” to the end substitute “ by the Secretary of State ”.
- (4) After subsection (2) insert—
 

“(2A) The Welsh Ministers may make regulations establishing procedures in relation to relevant complaints.

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- (2B) For the purposes of subsection (2A), a “relevant complaint” is a complaint which relates to a maintained school in Wales, or to the provision of facilities or services under section 27 by the governing body of such a school, other than a complaint which falls to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of a statutory provision other than this section.
- (2C) Where the Welsh Ministers establish procedures by regulations under subsection (2A), the governing body of a maintained school in Wales shall—
- (a) adopt the procedures, and
  - (b) publicise them in the way specified in the regulations.
- (2D) In adopting or publicising procedures established by virtue of subsection (2A), the governing body shall have regard to any guidance given from time to time by the Welsh Ministers.”

#### *Local Government Act 1974*

### **261 Local Government Act 1974: minor amendment**

In paragraph 5(2) of Schedule 5 to the Local Government Act 1974 (c. 7) (exclusion of matters relating to teaching etc. in any school maintained by local authority), after “authority” insert “, except so far as relating to special educational needs (within the meaning given by section 312 of the Education Act 1996) ”.

#### **Commencement Information**

**I39** S. 261 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

## **PART 13**

### **GENERAL**

### **262 Orders and regulations**

- (1) A power to make an order or regulations under Chapter 1 of Part 1, or Part 3 or 4—
  - (a) so far as exercisable by the Secretary of State, the Welsh Ministers or the Scottish Ministers, is exercisable by statutory instrument;
  - (b) so far as exercisable by the Department for Employment and Learning in Northern Ireland, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) Any other power of the Secretary of State to make an order or regulations under this Act is exercisable by statutory instrument.
- (3) A power of the Secretary of State or the Welsh Ministers to make an order or regulations under this Act (except a power conferred by section 17, 22 or 269) includes power—
  - (a) to make different provision for different purposes (including different areas);

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**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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- (b) to make provision generally or in relation to specific cases;
  - (c) to make incidental, consequential, supplementary, transitional, transitory or saving provision.
- (4) An order under section 98 may amend or repeal any provision of, or in an instrument made under, this or any other Act.
- (5) Subject to subsections (6) to (8), a statutory instrument containing an order or regulations made by the Secretary of State under any provision of this Act (other than an order under section 269) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (aa) regulations under section 1(5);
  - (b) an order under section 88 or paragraph 9 of Schedule 5;
  - (c) an order under section 96(9) or 98;
  - (d) an order under section 130(5);
  - (e) an order under section 141(1);
  - (f) an order under section 222;
  - (g) an order under section 252(5);
  - (h) an order under section 265 which amends or repeals any provision of an Act.
- (7) Subsections (5) and (6) do not apply to a statutory instrument which contains only—
  - (a) an order revoking an order under section 141(1), or
  - (b) an order amending an order under section 141(1) for the purpose only of removing a qualification or description of qualification from the application of the order.
- (8) A statutory instrument within subsection (7) must be laid before Parliament.
- (9) Subject to subsection (10), a statutory instrument containing an order or regulations made by the Welsh Ministers under Chapter 1 of Part 1 (other than an order under section 10) or under section 68 or 107 is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (10) A statutory instrument which contains (whether alone or with other provision) regulations under section 2(5) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.
- (11) A statutory instrument containing an order made by the Scottish Ministers under section 68 or 107 is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (12) A statutory rule containing an order made by the Department for Employment and Learning in Northern Ireland under section 68 or 107 is to be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if it were a statutory instrument within the meaning of that Act.
- (13) If a draft of an instrument containing an order under paragraph 9 of Schedule 5 would, apart from this subsection, be treated for the purposes of the Standing Orders of either

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House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

## **263 Directions**

A direction given under this Act—

- (a) may be amended or revoked by the person or body by whom it is given;
- (b) may make different provision for different purposes.

## **264 General interpretation of Act**

- (1) In this Act, unless the context otherwise requires—
  - “prescribed” means prescribed by regulations;
  - “regulations” means regulations made by the Secretary of State.
- (2) Subject to subsections (4) and (5), the Education Act 1996 (c. 56) and the provisions of this Act specified in subsection (3) are to be construed as if those provisions were contained in that Act.
- (3) The provisions are—
  - (a) Parts 3, 4 and 5;
  - (b) Parts 7 and 8;
  - (c) Chapter 4 of Part 10;
  - (d) sections 248, 251 and 252.
- (4) Section 562 of the Education Act 1996 (Act not to apply to certain persons detained under order of a court) does not apply to functions of the Secretary of State under Part 4.
- (5) If—
  - (a) an expression is given a meaning for the purposes of a provision within subsection (3) (its “local meaning”), and
  - (b) that meaning is different from the meaning given to it for the purposes of the Education Act 1996 (its “1996 Act meaning”),the expression's local meaning applies instead of its 1996 Act meaning.
- (6) Unless the context otherwise requires, a reference in this Act to—
  - (a) a community, foundation or voluntary school, or
  - (b) a community or foundation special school,is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31).

## **265 Power to make consequential and transitional provision etc.**

- (1) The Secretary of State may by order make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,as the Secretary of State thinks appropriate for the general purposes, or any particular purpose, of this Act or in consequence of, or for giving full effect to, any provision made by this Act.

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- (2) An order under this section may in particular—
- (a) provide for any provision of this Act which comes into force before another provision made by or under this or any other Act has come into force to have effect, until that other provision has come into force, with specified modifications;
  - (b) amend, repeal, revoke or otherwise modify any provision of—
    - (i) an Act passed before or in the same Session as this Act, or
    - (ii) an instrument made under an Act before the passing of this Act.
- (3) Nothing in this section limits the powers conferred by section 262(3)(c) or 269(8)(b).
- (4) The amendments that may be made by virtue of subsection (2)(b) are in addition to those that are made by any other provision of this Act.

## 266 Repeals and revocations

Schedule 16 contains repeals and revocations (including repeals and revocations of spent provisions).

### Commencement Information

**I40** S. 266 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

## 267 Financial provisions

- (1) There are to be paid out of money provided by Parliament—
- (a) any expenditure incurred by virtue of this Act by the Secretary of State,
  - (b) any expenditure incurred by virtue of this Act by the Office of Qualifications and Examinations Regulation, and
  - (c) any increase attributable to this Act in the sums payable by virtue of any other Act out of money provided by Parliament.
- (2) Any sums received by the Secretary of State by virtue of Chapter 1 of Part 1, section 78(3)(c), paragraph 18(3)(d) of Schedule 3 or paragraph 6(3)(d) of Schedule 4 are to be paid into the Consolidated Fund.

## 268 Extent

- (1) This Act extends to England and Wales only, subject to subsections (2) to (4).
- (2) Sections 40, 68, 69, 107, 108 and this Part also extend to Scotland.
- (3) Sections 68, 70, 107, 109, Part 7, sections 257 and 258 and this Part also extend to Northern Ireland.
- (4) An amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

## 269 Commencement

- (1) This Part (except section 266) comes into force on the day on which this Act is passed.



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- (2) The following provisions of this Act come into force at the end of two months beginning with the day on which this Act is passed—
  - (a) section 58 (and the associated entries in Schedule 16);
  - (b) sections 198 to 201.
- (3) The following provisions of this Act come into force on such day as the Welsh Ministers may by order appoint—
  - (a) sections 2 and 7 to 10;
  - (b) sections 11 and 12, so far as relating to Wales;
  - (c) sections 18 to 22;
  - (d) sections 28 to 31;
  - (e) section 39, so far as relating to Wales;
  - (f) sections 48 to 52, so far as relating to Wales;
  - (g) paragraphs 54 to 56 of Schedule 6, so far as relating to Wales;
  - (h) paragraphs 11, 13 and 27 of Schedule 12, so far as relating to Wales (and the associated entries in Schedule 16);
  - (i) paragraphs 14 to 19 and 29 of Schedule 12 (and the associated entries in Schedule 16);
  - (j) sections 174 and 192 so far as they relate to the paragraphs of Schedule 12 mentioned in paragraphs (h) and (i);
  - (k) section 205 and Schedule 14;
  - (l) section 259 (and the associated entry in Schedule 16);
  - (m) section 260;
  - (n) section 266, so far as it relates to the entries in Schedule 16 mentioned in paragraphs (h), (i) and (l).
- (4) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (5) The Secretary of State must exercise the power conferred by subsection (4) so as to secure that, subject to any provision made by virtue of subsection (8), sections 91 to 99 and 104 are in force no later than the day after the day which is the school leaving date for 2013.
- (6) Before making an order under subsection (4) bringing into force any provision of Part 7 which confers functions on the Office of Qualifications and Examinations Regulation in relation to Northern Ireland, the Secretary of State must consult the Department for Employment and Learning in Northern Ireland.
- (7) The powers conferred by this section are exercisable by statutory instrument.
- (8) An order under this section may—
  - (a) appoint different days for different purposes (including different areas);
  - (b) contain transitional, transitory or saving provision in connection with the coming into force of this Act.

## 270 Short title

- (1) This Act may be cited as the Apprenticeships, Skills, Children and Learning Act 2009.

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- (2) This Act is to be included in the list of Education Acts set out in section 578 of the Education Act 1996 (c. 56).

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## SCHEDULES

VALID FROM 06/04/2010

### SCHEDULE 1

Section 40

#### EMPLOYEE STUDY AND TRAINING: MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Employment Rights Act 1996 (c. 18)*

- 1 The Employment Rights Act 1996 is amended as follows.
- 2 In section 48 (right to present complaint of detriment to employment tribunal),  
in subsection (1) for “or 47E” substitute “, 47E or 47F”.
- 3 In section 105 (unfair dismissal: redundancy), after subsection (7BA) insert—  
“(7BB) This subsection applies if the reason (or, if more than one, the principal  
reason) for which the employee was selected for dismissal was one of  
those specified in section 104E.”
- 4 In section 108(3) (exceptions to one year qualifying period of continuous  
employment for claims for unfair dismissal), after paragraph (gj) insert—  
“(gk) section 104E applies.”
- 5 In section 194 (House of Lords staff), in subsection (2)(e) before “VII” insert  
“6A,”.
- 6 In section 195 (House of Commons staff), in subsection (2)(e) before “VII” insert  
“6A,”.
- 7 In section 199 (mariners)—
  - (a) in subsection (2), after “47E,” insert “47F,”;
  - (b) in that subsection, before “VII” insert “6A,”;
  - (c) in subsection (8)(d), before “VII” insert “6A,”.
- 8 In section 225 (how to calculate a week's pay in relation to rights during  
employment) after subsection (4A) insert—  
“(4B) Where the calculation is for the purposes of section 63J, the calculation  
date is the day on which the section 63D application was made.”
- 9 In section 227(1) (maximum amount of week's pay) before paragraph (za)  
insert—  
“(zza) an award of compensation under section 63J(1)(b),”.
- 10 In section 235(1) (other definitions) at the appropriate place insert—  
““section 63D application” has the meaning given by section 63D(2);”.
- 11 In section 236(3) (orders and regulations subject to affirmative Parliamentary  
procedure), after “47C,” insert “63D, 63F(7),”.

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*Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)*

12 The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.

13 In section 212A (arbitration scheme for unfair dismissal cases etc.), in subsection (1)—

(a) before paragraph (za) insert—

“(zza) section 63F(4), (5) or (6) or 63I(1)(b) of the Employment Rights Act 1996 (study and training);”;

(b) in paragraph (za) for “the Employment Rights Act 1996” substitute “that Act”.

14 In section 237(1A)(a) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action)—

(a) for “or 104D” substitute “, 104D or 104E”;

(b) for “and pension scheme membership” substitute “, pension scheme membership, and study and training”.

15 In section 238(2A)(a) (cases where employment tribunal to determine whether dismissal of an employee is unfair despite limitation in subsection (2) of that section)—

(a) for “or 104D” substitute “, 104D or 104E”;

(b) for “and pension scheme membership” substitute “, pension scheme membership, and study and training”.

*Employment Tribunals Act 1996 (c. 17)*

16 In section 18 of the Employment Tribunals Act 1996 (conciliation), in subsection (1)(d) after “28,” insert “ 63F(4), (5) or (6), 63I(1)(b), ”.

SCHEDULE 2

Section 59

LEA FUNCTIONS: MINOR AND CONSEQUENTIAL AMENDMENTS

*Education Act 1996 (c. 56)*

1 The Education Act 1996 is amended as follows.

**Commencement Information**

**I41** Sch. 2 para. 1 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010

2 (1) Section 13 (general responsibility for education) is amended as follows.

(2) In subsection (1) after “secondary education” insert “ and, in the case of a local education authority in England, further education, ”.

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(3) After subsection (2) insert—

“(3) The reference in subsection (1) to further education is to further education for persons—

- (none)                      “(a) who are over compulsory school age but under 19, or  
(b) who are aged 19 or over but under 25 and are subject to learning difficulty assessment.”

(4) For the purposes of this Act a person is subject to learning difficulty assessment if—

- (a) a learning difficulty assessment has been conducted in respect of the person, or  
(b) arrangements for a learning difficulty assessment to be conducted in respect of the person have been made or are required to be made.

(5) In subsection (4), a “learning difficulty assessment” means an assessment under section 139A or 140 of the Learning and Skills Act 2000 (assessments relating to learning difficulties).

(6) For the purposes of subsection (1), persons who are subject to a detention order are to be regarded as part of the population of the area in which they are detained (and not any other area).”

VALID FROM 01/04/2010

3 For section 13A substitute—

**“13A Duty to promote high standards and fulfilment of potential**

(1) A local education authority in England must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to—

- (a) promoting high standards,  
(b) ensuring fair access to opportunity for education and training, and  
(c) promoting the fulfilment of learning potential by every person to whom this subsection applies.

(2) Subsection (1) applies to the following—

- (a) persons under the age of 20;  
(b) persons aged 20 or over but under 25 who are subject to learning difficulty assessment.

(3) A local education authority in Wales must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to—

- (a) promoting high standards, and  
(b) promoting the fulfilment of learning potential by every person to whom this subsection applies.

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(4) Subsection (3) applies to persons under the age of 20.

(5) In this section—

“education” and “training” have the same meanings as in section 15ZA;

“relevant education function”, in relation to a local education authority in England, means a function relating to the provision of education for—

- (a) persons of compulsory school age (whether at school or otherwise);
- (b) persons (whether at school or otherwise) who are over compulsory school age and to whom subsection (1) applies;
- (c) persons who are under compulsory school age and are registered as pupils at schools maintained by the authority;

“relevant education function”, in relation to a local education authority in Wales, means a function relating to the provision of education for—

- (a) persons of compulsory school age (whether at school or otherwise);
- (b) persons (whether at school or otherwise) who are over compulsory school age but under the age of 20;
- (c) persons who are under compulsory school age and are registered as pupils at schools maintained by the authority;

“relevant training function” means a function relating to the provision of training.”

VALID FROM 01/04/2010

- 4 (1) Section 15A (functions in respect of full-time education for 16 to 18 year olds) is amended as follows.
- (2) In subsection (1) after “local education authority” insert “ in Wales ”.
- (3) After subsection (1) insert—
- “(1ZA) A local education authority in England may secure the provision for their area of full-time or part-time education suitable to the requirements of persons from other areas who are over compulsory school age but have not attained the age of 19.”
- (4) In subsection (1A) for “subsection (1)” substitute “ subsections (1) and (1ZA) ”.
- (5) In subsection (3) for “section 13(5) and (6) of the Learning and Skills Act 2000” substitute “ section 15ZA(6) and (7) ”.
- (6) In the title for “Functions in respect of full-time education” substitute “ Powers in respect of education and training ”.

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VALID FROM 01/04/2010

- 5 In section 15B (functions in respect of education for persons over 19) in subsection (3) for “section 13(5) and (6) of the Learning and Skills Act 2000” substitute “ section 15ZA(6) and (7) ”.

VALID FROM 01/09/2010

- 6 (1) Section 312 (meaning of “special educational needs”, “learning difficulty” etc) is amended as follows.
- (2) In subsection (2) for the words from “subsection (3)” to “section 507B)” substitute “ subsections (3) and (3A) ”.
- (3) After subsection (3) insert—
- “(3A) Subsection (2) does not apply—
- (a) for the purposes of sections 15ZA, 15A, 15B and 507B, or
  - (b) for the purposes of sections 18A and 562H (except for the purpose of determining, for the purposes of those sections, whether a child has special educational needs).”

- 7 In section 496 (power of Secretary of State to prevent unreasonable exercise of functions) after subsection (4) (as inserted by section 221(1) of this Act) insert—
- “(5) This section is subject to sections 508I and 509AE (complaints about transport arrangements etc).”

**Commencement Information**

**I42** Sch. 2 para. 7 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch. (with art. 3)

- 8 In section 497 (general default powers of Secretary of State) after subsection (5) (as inserted by section 221(2) of this Act) insert—
- “(6) This section is subject to sections 508I and 509AE (complaints about transport arrangements etc).”

**Commencement Information**

**I43** Sch. 2 para. 8 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch. (with art. 3)

- 9 In section 497A (power of Secretary of State to secure proper performance of LEA's functions) at the end insert—
- “(8) This section is subject to sections 508I and 509AE (complaints about transport arrangements etc).”

**Commencement Information**

**I44** Sch. 2 para. 9 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch. (with art. 3)

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- 10 (1) In the title of section 509AA, for “Provision” substitute “LEAs in England: provision”.
- (2) For the title of section 509AB substitute “LEAs in England: further provision about transport policy statements for persons of sixth form age”.
- (3) In the title of section 509A, for “Travel” substitute “LEAs in England: travel”.

#### Commencement Information

**I45** Sch. 2 para. 10 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/09/2010

11 After section 569 insert—

**“569A Regulations made by Welsh Ministers under Chapter 5A**

- (1) Any power of the Welsh Ministers to make regulations under Chapter 5A shall be exercised by statutory instrument.
- (2) A statutory instrument containing any such regulations made by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (3) Any such regulations may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Welsh Ministers think fit.”

VALID FROM 01/09/2010

12 In section 579(1) (general interpretation)—

- (a) in the definition of “prescribed”, after “ “prescribed”” insert “ (except in Chapter 5A) ”;
- (b) in the definition of “regulations”, after “ “regulations”” insert “ (except in Chapter 5A) ”.

VALID FROM 01/09/2010

13 In section 580 (index) insert the following entries at the appropriate places—

“relevant young adult (in sections 508F, 508G section 508F(9); and 508I)	
“relevant youth accommodation	section 562(1A)”;
“subject to a detention order	section 562(1A)”;
“subject to learning difficulty assessment	section 13(4)”



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VALID FROM 01/09/2010

*Education Act 2002 (c. 32)*

14 In section 207(2) of the Education Act 2002 (recoupment: adjustment between [F14]local authorities]), for “primary education and secondary education” substitute “—

- (a) primary education;
- (b) secondary education;
- (c) education provided under section 562C of the Education Act 1996 (detention of persons with special educational needs: appropriate special educational provision).”

**Textual Amendments**

**F14** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 16(3)**

VALID FROM 01/04/2010

SCHEDULE 3

Section 60

THE YOUNG PEOPLE'S LEARNING AGENCY FOR ENGLAND  
.....

VALID FROM 01/04/2010

SCHEDULE 4

Section 81

THE CHIEF EXECUTIVE OF SKILLS FUNDING  
.....

VALID FROM 01/04/2010

SCHEDULE 5

Section 87

LEARNING AIMS FOR PERSONS AGED 19 OR OVER  
.....

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VALID FROM 01/04/2010
<p style="margin: 0;"><b>SCHEDULE 6</b> <span style="float: right;">Section 123</span></p> <p style="margin: 0;">DISSOLUTION OF THE LEARNING AND SKILLS COUNCIL FOR ENGLAND: MINOR AND CONSEQUENTIAL AMENDMENTS</p> <p style="margin: 0;">.....</p>

VALID FROM 01/04/2010
<p style="margin: 0;"><b>SCHEDULE 7</b> <span style="float: right;">Section 124</span></p> <p style="margin: 0;">LEARNING AND SKILLS COUNCIL FOR ENGLAND: TRANSFER SCHEMES</p> <p style="margin: 0;">.....</p>

Section 125

**SCHEDULE 8**

SIXTH FORM COLLEGE SECTOR

1        The Further and Higher Education Act 1992 (c. 13) is amended as follows.

**Commencement Information**  
**I48**    Sch. 8 para. 1 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010
<p>2        In section 17(1) (meaning of “further education corporation”) after “by virtue of section” insert “ 33D or ”.</p>

3        After section 33 insert—

*“Sixth form college corporations: England*

**33A Initial designation of existing bodies corporate as sixth form college corporations**

- (1) The Secretary of State may by order designate a body corporate within subsection (2) as a sixth form college corporation, for the purpose of conducting an educational institution specified in the order.
- (2) A body corporate is within this subsection if it is—

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- (a) a further education corporation established in respect of an institution in England, or
  - (b) a body corporate established by an order under section 143(4) of the Learning and Skills Act 2000 in respect of an institution in England.
- (3) On the date specified in the order—
  - (a) a body corporate within subsection (2)(a) ceases to be a further education corporation and becomes a sixth form college corporation;
  - (b) a body corporate within subsection (2)(b) ceases to be subject to the order under section 143(4) of the Learning and Skills Act 2000 establishing it and becomes a sixth form college corporation;
  - (c) in the case of a body corporate within subsection (2)(b), a designation under section 28 which has effect in relation to the relevant sixth form college ceases to have effect.
- (4) An order under subsection (1) may—
  - (a) make provision for the continuity of the body corporate, including provision for the continuation of the instrument and articles of government of the body and the relevant sixth form college;
  - (b) make provision as to the initial name of the corporation as a sixth form college corporation.
- (5) The power conferred by subsection (1)—
  - (a) is exercisable only once;
  - (b) is not exercisable after the date specified in an order made by the Secretary of State.

### **33B Subsequent designation of existing bodies corporate as sixth form college corporations**

- (1) The Secretary of State may by order designate a body corporate within subsection (2) as a sixth form college corporation, for the purpose of conducting an educational institution specified in the order.
- (2) A body corporate is within this subsection if it is—
  - (a) a further education corporation established in respect of an institution in England, or
  - (b) a body corporate established by an order under section 143(4) of the Learning and Skills Act 2000 in respect of an institution in England.
- (3) An order under subsection (1) may be made only if—
  - (a) an application for the order has been made by the governing body of the institution mentioned in subsection (2)(a) or (b), and
  - (b) the institution is one within subsection (4).
- (4) An institution is within this subsection if it appears to the Secretary of State that on the date on which the application is made at least 80% of its total enrolment number will be persons over compulsory school age but under 19.
- (5) The total enrolment number of an institution is to be calculated in accordance with paragraph 1(2) of Schedule 3.

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- (6) On the date specified in the order—
  - (a) a body corporate within subsection (2)(a) ceases to be a further education corporation and becomes a sixth form college corporation;
  - (b) a body corporate within subsection (2)(b) ceases to be subject to the order under section 143(4) of the Learning and Skills Act 2000 establishing it and becomes a sixth form college corporation;
  - (c) in the case of a body corporate within subsection (2)(b), a designation under section 28 which has effect in relation to the relevant sixth form college ceases to have effect.
- (7) An order under subsection (1) may—
  - (a) make provision for the continuity of the body corporate, including provision for the continuation of the instrument and articles of government of the body and the relevant sixth form college;
  - (b) make provision as to the initial name of the corporation as a sixth form college corporation.
- (8) The power conferred by subsection (1) is exercisable only after the date specified in an order under section 33A(5)(b).

### **33C Establishment of new bodies corporate as sixth form college corporations**

- (1) The Secretary of State may by order make provision for the establishment of a body corporate as a sixth form college corporation, for the purpose of establishing and conducting an educational institution specified in the order.
- (2) An order under subsection (1) may be made only if—
  - (a) a proposal relating to the order has been made by the responsible local education authority and it appears to the Secretary of State that the requirements in subsection (3) have been met in relation to the proposal, and
  - (b) it appears to the Secretary of State that the institution will when established be one within subsection (4).
- (3) The requirements are that—
  - (a) the authority have published the proposal by the prescribed time and in the prescribed manner;
  - (b) the proposal as published contained prescribed information;
  - (c) the authority have considered any representations about the proposal made to them within the prescribed period.
- (4) An institution is within this subsection if—
  - (a) the institution is in England, and
  - (b) on the date on which it is proposed to be established, at least 80% of its total enrolment number will be persons over compulsory school age but under 19.
- (5) The total enrolment number of an institution is to be calculated in accordance with paragraph 1(2) of Schedule 3.
- (6) An order under subsection (1)—

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- (a) must provide for the institution to be established and conducted by the body corporate as from the date specified in the order;
- (b) may make provision as to the initial name of the corporation as a sixth form college corporation.

### **33D Conversion of sixth form college corporations into further education corporations**

- (1) The Secretary of State may by order convert a sixth form college corporation into a further education corporation.
- (2) An order under subsection (1) may be made only if—
  - (a) an application for the order has been made by the governing body of the relevant sixth form college, or
  - (b) the Secretary of State is satisfied that it is no longer appropriate for the body to be a sixth form college corporation.
- (3) An application under subsection (2)(a) may not be made during the period of two years beginning with the date on which the body's designation or establishment as a sixth form college corporation takes effect.
- (4) The Secretary of State must consult the governing body of the relevant sixth form college before making an order under subsection (1) in a case within subsection (2)(b).
- (5) On the date specified in the order, the body ceases to be a sixth form college corporation and becomes a further education corporation.
- (6) An order under subsection (1) may—
  - (a) make provision for the continuity of the body corporate, including provision for the continuation of the instrument and articles of government of the body and the relevant sixth form college;
  - (b) make provision as to the initial name of the corporation as a further education corporation.

### **33E Principal powers of a sixth form college corporation**

- (1) A sixth form college corporation may do any of the following—
  - (a) provide further and higher education,
  - (b) provide secondary education suitable to the requirements of persons who have attained the age of 14,
  - (c) provide education which is secondary education by virtue of section 2(2B) of the Education Act 1996,
  - (d) participate in the provision of secondary education at a school,
  - (e) supply goods or services in connection with their provision of education.
- (2) The powers conferred by subsection (1) are referred to in section 33F as the corporation's principal powers.
- (3) A sixth form college corporation may not provide education of a kind specified in subsection (1)(b), (c) or (d) unless they have consulted such local education authorities as they consider appropriate.

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- (4) For the purposes of subsection (1), goods are supplied in connection with the provision of education by a sixth form college corporation if they result from—
  - (a) their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education,
  - (b) the use of their facilities or the expertise of persons employed by them in the fields in which they are so employed, or
  - (c) ideas of a person employed by them, or one of their students, arising out of their provision of education.
- (5) For the purposes of subsection (1), services are supplied in connection with the provision of education by a sixth form college corporation if—
  - (a) they result from their provision of education or anything done by them under this Act for the purpose of or in connection with their provision of education,
  - (b) they are provided by making available their facilities or the expertise of persons employed by them in the fields in which they are so employed, or
  - (c) they result from ideas of a person employed by them, or of one of their students, arising out of their provision of education.

### **33F Supplementary powers of a sixth form college corporation**

- (1) A sixth form college corporation may do anything (including in particular the things referred to in subsections (2) to (6)) which appears to the corporation to be necessary or expedient for the purpose of or in connection with the exercise of any of their principal powers.
- (2) A sixth form college corporation may conduct an educational establishment for the purpose of carrying on activities undertaken in the exercise of their powers to provide further or higher education.
- (3) In particular, a sixth form college corporation may conduct the relevant sixth form college as from the date specified in the order designating or establishing the corporation as a sixth form college corporation.
- (4) A sixth form college corporation may provide facilities of any description appearing to the corporation to be necessary or desirable for the purposes of or in connection with carrying on any activities undertaken in the exercise of their principal powers.
- (5) The facilities include—
  - (a) boarding accommodation and recreational facilities for students and staff, and
  - (b) facilities to meet the needs of students with learning difficulties.
- (6) A sixth form college corporation may—
  - (a) acquire and dispose of land and other property,
  - (b) enter into contracts, including in particular—
    - (i) contracts for the employment of teachers and other staff for the purposes of or in connection with carrying on

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- any activities undertaken in the exercise of their principal powers, and
- (ii) contracts with respect to the carrying on by the corporation of any such activities,
- (c) form, participate in forming or invest in a company,
- (d) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993),
- (e) borrow such sums as the corporation think fit for the purposes of—
- (i) carrying on any activities they have power to carry on, or
- (ii) meeting any liability transferred to them under sections 23 to 27,
- (f) in connection with their borrowing, grant any mortgage, charge or other security in respect of any land or other property of the corporation,
- (g) invest any sums not immediately required for the purpose of carrying on any activities they have power to carry on,
- (h) accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes,
- (i) do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes.
- (7) The powers conferred by subsection (6) are subject to section 33G.
- (8) For the purposes of this section a person has a learning difficulty if—
- (a) the person has a significantly greater difficulty in learning than the majority of persons of the same age, or
- (b) the person has a disability which either prevents or hinders the person from making use of facilities of a kind generally provided by institutions within the further education sector for persons of the same age.
- (9) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which the person is or will be taught is different from a language (or form of language) which has at any time been spoken in the person's home.
- (10) A reference in this section or section 33G to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.
- (11) A sixth form college corporation may provide advice or assistance to any other person where it appears to the corporation to be appropriate for them to do so for the purpose of or in connection with the provision of education by the other person.

### **33G Further provision about supplementary powers**

- (1) The power conferred by section 33F(6)(c) may not be exercised for the purpose of—
- (a) conducting an educational institution, or

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- (b) investing in a company conducting an educational institution.
- (2) The power conferred by section 33F(6)(d) may not be exercised for the purpose of—
  - (a) conducting an educational institution, or
  - (b) becoming a member of a charitable incorporated organisation conducting an educational institution.
- (3) But a restriction on the exercise of a power imposed by subsection (1) or (2) does not apply to the extent that the responsible local education authority consent to the exercise of the power in a way which does not comply with the restriction.
- (4) Neither the power conferred by section 33F(6)(c) nor the power conferred by section 33F(6)(d) may be exercised for the purposes of the provision of education if the provision is secured (wholly or partly) by financial resources provided by a relevant funding body.
- (5) But subsection (4) does not apply to the extent that the relevant funding body consents to the exercise of the power in question in a way which does not comply with the restriction in that subsection.
- (6) The power conferred on a sixth form college corporation by section 33F(6)(e) to borrow money may not be exercised without the consent of the responsible local education authority.
- (7) Consent under subsection (6) may be given for particular borrowing or for borrowing of a particular class.
- (8) In this section “relevant funding body” means a local education authority, the YPLA or the Chief Executive of Skills Funding.

### **33H Duty in relation to promotion of well-being of local area**

- (1) In exercising their functions under sections 33E and 33F, a sixth form college corporation must have regard, amongst other things, to the objective of promoting the economic and social well-being of the local area.
- (2) In subsection (1)—
  - (a) “the local area”, in relation to a sixth form college corporation, means the locality of the relevant sixth form college, and
  - (b) a reference to the well-being of an area includes a reference to the well-being of people who live or work in that area.

### **33I Constitution of sixth form college corporation and conduct of sixth form college**

- (1) For every sixth form college corporation there is to be—
  - (a) an instrument providing for the constitution of the corporation (to be known as the instrument of government), and
  - (b) an instrument in accordance with which the corporation, and the relevant sixth form college, are to be conducted (to be known as articles of government).
- (2) Instruments of government and articles of government—



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- (a) must comply with the requirements of Schedule 4, and
  - (b) may make any provision authorised to be made by that Schedule and such other provision as may be necessary or desirable.
- (3) Subsection (2) is subject to section 33J.
- (4) The validity of any proceedings of a sixth form college corporation, or of any committee of the corporation, is not affected by—
- (a) a vacancy among the members, or
  - (b) a defect in the appointment or nomination of a member.
- (5) Subsection (6) applies to a document purporting to be an instrument made or issued by or on behalf of a sixth form college corporation and to be—
- (a) duly executed under the seal of the corporation, or
  - (b) signed or executed by a person authorised by the corporation to act in that behalf.
- (6) The document is to be received in evidence and treated, without further proof, as being made or issued by or on behalf of the corporation unless the contrary is shown.

### **33J Special provision for certain institutions**

- (1) Despite anything in section 33I, the instrument of government of a sixth form college corporation to which this section applies must provide—
- (a) for the governing body of the relevant sixth form college to include persons appointed for the purpose of securing so far as practicable that the established character of the sixth form college is preserved and developed and, in particular, that the sixth form college is conducted in accordance with any trust deed relating to it, and
  - (b) for the majority of members of the governing body of the relevant sixth form college to be such governors.
- (2) This section applies to a sixth form college corporation in respect of which the relevant sixth form college is specified, or falls within a class specified, by the Secretary of State by order.
- (3) The reference in subsection (1)(a) to the established character of a sixth form college is, in relation to a sixth form college established shortly before or at the same time as the designation or establishment of the sixth form college corporation in respect of which it is the relevant sixth form college, a reference to the character which the sixth form college is intended to have on its establishment.

### **33K Instrument and articles of new sixth form college corporations**

- (1) The first instrument of government and articles of government of a sixth form college corporation established under section 33C are to be made by the YPLA.
- (2) Before making an instrument or articles for a sixth form college corporation under this section the YPLA must consult the corporation.

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### **33L Changes to instruments and articles**

- (1) The YPLA may—
  - (a) if a sixth form college corporation submits a draft of an instrument of government to have effect in place of their existing instrument, by order make a new instrument of government in terms of the draft or in such terms as it thinks fit, and
  - (b) if a sixth form college corporation submits draft modifications of an instrument made under paragraph (a), by order modify the instrument in terms of the draft or in such terms as it thinks fit.
- (2) The YPLA may not make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless it has consulted the corporation.
- (3) The YPLA may by order modify, replace or revoke an instrument of government or articles of government of a sixth form college corporation.
- (4) An order under subsection (3)—
  - (a) may relate to all sixth form college corporations, to a category of sixth form college corporations specified in the order or to a sixth form college corporation specified in the order, but
  - (b) may not be made unless the YPLA has consulted each sixth form college corporation to which the order relates.
- (5) A sixth form college corporation may, with the consent of the YPLA—
  - (a) make new articles of government in place of their existing articles, or
  - (b) modify their existing articles.
- (6) The YPLA may by a direction under this section require sixth form college corporations, a class of sixth form college corporations specified in the direction or any particular sixth form college corporation specified in the direction—
  - (a) to modify, replace or revoke their articles of government in any manner specified in the direction, or
  - (b) to secure that any rules or bye-laws made in pursuance of their articles of government are modified, replaced or revoked in any manner specified in the direction.
- (7) Before giving a direction under this section the YPLA must consult the sixth form college corporation or (as the case may be) each sixth form college corporation to which the direction applies.

### **33M Charitable status of a sixth form college corporation**

A sixth form college corporation is a charity within the meaning of the Charities Act 1993.

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### **33N Dissolution of sixth form college corporations**

- (1) Subject to the following provisions of this section, the Secretary of State may by order provide for—
  - (a) the dissolution of a sixth form college corporation, and
  - (b) the transfer to a person mentioned in subsection (4) or (6) of property, rights and liabilities of the corporation.
- (2) An order under subsection (1) may be made only if a proposal relating to the order has been made by the responsible local education authority and it appears to the Secretary of State that the requirements in subsection (3) have been met in relation to the proposal.
- (3) The requirements are that—
  - (a) the authority have published the proposal by the prescribed time and in the prescribed manner;
  - (b) the proposal as published contained prescribed information;
  - (c) the authority have considered any representations about the proposal made to them within the prescribed period.
- (4) Property, rights and liabilities may (subject to subsection (5)) be transferred to—
  - (a) a person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description, or
  - (b) a body corporate established for purposes which include the provision of such facilities or services.
- (5) Property, rights and liabilities may be transferred to a person or body under subsection (4) only with the consent of the person or body.
- (6) Property, rights and liabilities may be transferred to the responsible local education authority.
- (7) Where the recipient of a transfer under an order under this section is not a charity established for charitable purposes which are exclusively educational purposes, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes.
- (8) An order under this section may make provision about the transfer of staff (including provision applying section 26 with such modifications as the Secretary of State may consider necessary or desirable).
- (9) Before making an order under this section in respect of a sixth form college corporation the Secretary of State must consult—
  - (a) the corporation, and
  - (b) the YPLA.
- (10) In this section “charity” and “charitable purposes” have the same meanings as in the Charities Act 1993.”

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### Commencement Information

**I49** Sch. 8 para. 3 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010

4 In section 34(1) (making additional property available for use) after “institution within the further education sector” insert “ other than a sixth form college ”.

VALID FROM 01/04/2010

5 In section 52A(1) (duty to safeguard pupils receiving secondary education) after “by virtue of section 18(1)(aa) or (ab) of this Act,” insert—  
 “(aa) by a sixth form college corporation by virtue of section 33E(1) (b) or (c) of this Act.”.

VALID FROM 01/04/2010

6 In section 56A(1) (intervention: England) after “institution in England within the further education sector” insert “ other than a sixth form college ”.

VALID FROM 01/04/2010

7 In section 56C(1) (directions as to exercise of section 56A powers) after “institution in England within the further education sector” insert “ other than a sixth form college ”.

VALID FROM 01/04/2010

8 After section 56D (inserted by Schedule 6) insert—

#### “56E Intervention by LEAs: sixth form colleges

(1) This section applies in relation to a sixth form college if the responsible local education authority are satisfied as to one or more the matters listed in subsection (2) in relation to the sixth form college; and it is immaterial whether or not a complaint is made by any person.

(2) The matters are—

- (a) that the sixth form college's affairs have been or are being mismanaged by its governing body;
- (b) that the sixth form college's governing body have failed to discharge any duty imposed on them by or for the purposes of any Act;
- (c) that the sixth form college's governing body have acted or are proposing to act unreasonably with respect to the exercise of any

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- power conferred or the performance of any duty imposed by or under any Act;
- (d) that the sixth form college is performing significantly less well than it might in all the circumstances reasonably be expected to perform, or is failing or likely to fail to give an accepted standard of education or training.
- (3) If this section applies the authority may do one or more of the things listed in subsection (6).
- (4) Before doing one or more of those things, the authority must give the Secretary of State and the YPLA a notice stating—
- (a) the matter or matters listed in subsection (2) as to which the authority are satisfied;
  - (b) the reasons why the authority are so satisfied;
  - (c) the thing or things that the authority propose to do;
  - (d) the reasons why the authority propose to do that thing or those things.
- (5) If the authority do one or more of those things, the authority must at the same time give the sixth form college's governing body a notice stating—
- (a) the matter or matters listed in subsection (2) as to which the authority are satisfied;
  - (b) the reasons why the authority have decided to do that thing or those things.
- (6) The authority may—
- (a) remove all or any of the members of the sixth form college's governing body;
  - (b) appoint new members of that body if there are vacancies (however arising);
  - (c) give to that body such directions as the authority think expedient as to the exercise of the body's powers and performance of the body's duties.
- (7) The directions that may be given to a governing body under this section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.
- (8) Directions may be given to a governing body under this section despite any enactment making the exercise of a power or performance of a duty contingent on the body's opinion.
- (9) The authority may not direct a governing body under subsection (6)(c) to dismiss a member of staff.
- (10) But subsection (9) does not prevent the authority, where the authority consider that it may be appropriate to dismiss a member of staff whom the governing body have power under the governing body's articles of government to dismiss, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable

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to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.

- (11) A governing body must comply with any directions given to them under this section.
- (12) An appointment of a member of a governing body under this section shall have effect as if made in accordance with the governing body's instrument of government and articles of government.

#### **56F Appointment by LEAs of members of sixth form college governing body**

- (1) The responsible local education authority for a sixth form college may appoint a person to be a member of the governing body of the sixth form college.
- (2) But no more than two members of the governing body of a sixth form college may at any given time have been appointed under this section.
- (3) Before exercising the power conferred by subsection (1) in relation to a governing body, the responsible local education authority must consult the governing body.
- (4) A member of the governing body of a sixth form college who was appointed before the relevant commencement date by the Learning and Skills Council for England under section 11 of the Learning and Skills Act 2000 is, on and after that date, to be treated for the purposes of subsection (2) of this section as appointed by the responsible local education authority under this section.
- (5) “The relevant commencement date” is the date on which section 123 of the Apprenticeships, Skills, Children and Learning Act 2009 comes into force.

#### **56G Intervention policy: sixth form colleges**

- (1) The YPLA must—
  - (a) prepare a statement of the policy to be followed by local education authorities with respect to the exercise of their powers under section 56E,
  - (b) keep the statement under review, and
  - (c) if it considers it appropriate in consequence of a review, prepare a revised statement.
- (2) When preparing a statement or revised statement, the YPLA must—
  - (a) undertake such consultation as it thinks appropriate;
  - (b) consider any representations made to it about the policy to be set out in the statement.
- (3) Guidance given to the YPLA under section 76 of the Apprenticeships, Skills, Children and Learning Act 2009 in connection with the performance of its functions under this section may, in particular, relate to the form and content of the policy to be set out in a statement or revised statement.

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- (4) The YPLA must send a copy of the statement or revised statement prepared by it to the Secretary of State.
- (5) If the Secretary of State approves it the Secretary of State must lay a copy of it before each House of Parliament.
- (6) The YPLA must publish—
  - (a) the statement of its policy approved by the Secretary of State;
  - (b) where the Secretary of State approves a revised statement of its policy, the revised statement.
- (7) A local education authority must have regard to the statement most recently published under subsection (6) in exercising, or deciding whether to exercise, any of their powers under section 56E in relation to a sixth form college.

#### **56H Intervention by YPLA**

- (1) This section applies if—
  - (a) the YPLA proposes to secure the provision of education or training at a sixth form college in the exercise of the power conferred by section 66 of the Apprenticeships, Skills, Children and Learning Act 2009, and
  - (b) the YPLA is satisfied—
    - (i) as to one or more of the matters listed in section 56E(2) in relation to the sixth form college, and
    - (ii) that the circumstances are such that it would be appropriate for the responsible local education authority to do one or more of the things listed in section 56E(6) in relation to the sixth form college.
- (2) If this section applies the YPLA may do one or more of the things listed in subsection (5).
- (3) Before doing one or more of those things, the YPLA must give the Secretary of State a notice stating—
  - (a) the matter or matters listed in section 56E(2) as to which the YPLA is satisfied;
  - (b) the reasons why the YPLA is so satisfied;
  - (c) the thing or things that the YPLA proposes to do;
  - (d) the reasons why the YPLA proposes to do that thing or those things.
- (4) If the YPLA does one or more of those things, it must at the same time give the sixth form college's governing body a notice stating—
  - (a) the matter or matters listed in section 56E(2) as to which the YPLA is satisfied;
  - (b) the reasons why the YPLA has decided to do that thing or those things.
- (5) The YPLA may—

*Status: Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.*

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- (a) remove all or any of the members of the sixth form college's governing body;
  - (b) appoint new members of that body if there are vacancies (however arising);
  - (c) give to that body such directions as the YPLA thinks expedient as to the exercise of the body's powers and performance of the body's duties.
- (6) The directions that may be given to a governing body under this section include a direction requiring a governing body to make collaboration arrangements (within the meaning of section 166 of the Education and Inspections Act 2006) with such bodies and on such terms as may be specified in the direction.
- (7) Directions may be given to a governing body under this section despite any enactment making the exercise of a power or performance of a duty contingent on the body's opinion.
- (8) The YPLA may not direct a governing body under subsection (5)(c) to dismiss a member of staff.
- (9) But subsection (8) does not prevent the YPLA, where it considers that it may be appropriate to dismiss a member of staff whom the governing body have power to dismiss under their articles of government, from giving the governing body such directions under this section as are necessary to secure that the procedures applicable to the consideration of the case for dismissal of that member of staff are given effect to in relation to that member of staff.
- (10) A governing body must comply with any directions given to them under this section.
- (11) An appointment of a member of a governing body under this section shall have effect as if made in accordance with the governing body's instrument of government and articles of government.

#### **56I Appointment by YPLA of members of sixth form college governing body**

- (1) The YPLA may appoint a person to be a member of the governing body of a sixth form college.
- (2) But no more than two members of the governing body of a sixth form college may at any given time have been appointed under this section.
- (3) Before exercising the power conferred by subsection (1) in relation to a governing body, the YPLA must consult the governing body.
- (4) A member of the governing body of a sixth form college who was appointed before the relevant commencement date by the Learning and Skills Council for England under section 11 of the Learning and Skills Act 2000 is, on and after that date, to be treated for the purposes of subsection (2) of this section as appointed by the YPLA under this section.



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- (5) “The relevant commencement date” is the date on which section 123 of the Apprenticeships, Skills, Children and Learning Act 2009 comes into force.

**56J Notification by Chief Executive of Skills Funding of possible grounds for intervention**

- (1) This section applies if the Chief Executive of Skills Funding is of the view that any of the matters listed in section 56E(2) applies in relation to a sixth form college.
- (2) The Chief Executive must notify the responsible local education authority and the YPLA of that view.
- (3) The responsible local education authority must have regard to the Chief Executive's view in deciding whether to exercise their powers under section 56E.
- (4) The YPLA must have regard to the Chief Executive's view in deciding whether to exercise its powers under section 56H.”

VALID FROM 01/04/2010

- 9 In section 88(1) (stamp duty) after “32,” insert “ 33N, ”.

VALID FROM 01/04/2010

- 10 In section 88A(1) (stamp duty land tax) after “32” insert “ , 33N ”.

- 11 (1) Section 89 (orders, regulations and directions) is amended as follows.
- (2) In subsection (2)—
- (a) after “30(2)(b),” insert “ 33A(5)(b), ”;
- (b) after “those sections” insert “ or section 33L ”.
- (3) In subsection (4) for “Secretary of State” substitute “ person or body making the order or regulations ”.
- (4) For subsection (5) substitute—
- “(5) Section 570 of the Education Act 1996 (revocation and variation) applies to directions given by any person or body under this Act as it applies to directions given by the Secretary of State or a local education authority under that Act.”

**Commencement Information**

**150** Sch. 8 para. 11 in force at 12.1.2010 for specified purposes by S.I. 2009/3317, art. 2, Sch.

- 12 (1) Section 90(1) (interpretation) is amended as follows.

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(2) In paragraph (a) of the definition of “governing body” after “further education corporation” insert “, a sixth form college corporation”.

(3) At the end insert—

““the relevant sixth form college”, in relation to a sixth form college corporation, means the educational institution specified in the order under this Act designating the corporation as a sixth form college corporation or establishing it as such,

“the responsible local education authority”—

- (a) in relation to a proposal relating to the establishment of a sixth form college corporation, means the local education authority in whose area the relevant sixth form college, or its main site, is proposed to be situated;
- (b) in relation to a sixth form college corporation, means the local education authority in whose area the relevant sixth form college, or its main site, is situated;
- (c) in relation to a sixth form college, means the local education authority in whose area the sixth form college, or its main site, is situated,

“sixth form college corporation” means a body corporate—

- (a) designated as a sixth form college corporation under section 33A or 33B, or
- (b) established under section 33C,

“the YPLA” means the Young People's Learning Agency for England.”

(4) After subsection (2) insert—

“(2ZA) The Secretary of State may give guidance on which of a sixth form college's sites is to be taken to be its main site for the purposes of the definition of “the responsible local education authority” in subsection (1).”

#### Commencement Information

**I51** Sch. 8 para. 12 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

13 (1) Section 91 (interpretation of Education Acts) is amended as follows.

(2) In subsection (3) (institutions within the further education sector) after paragraph (b) insert “and

(c) sixth form colleges,”

(3) After subsection (3) insert—

“(3A) References to sixth form colleges are to institutions conducted by sixth form college corporations.”

#### Commencement Information

**I52** Sch. 8 para. 13 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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14 In section 92 (index) at the appropriate places insert—

“relevant sixth form college	section 90(1)”
“responsible local education authority	section 90(1)”
“sixth form college	section 91(3A)”
“sixth form college corporation	section 90(1)”
“the YPLA	section 90(1)”

#### Commencement Information

**I53** Sch. 8 para. 14 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

VALID FROM 01/04/2010

- 15 (1) Schedule 4 (instruments and articles of government for further education corporations) is amended as follows.
- (2) For paragraph 1 substitute—
- “1 In this Schedule—
- “instrument” means an instrument of government or articles of government;
- “the institution” means—
- (a) in the case of a further education corporation, the institution which the corporation is established to conduct;
- (b) in the case of a sixth form college corporation, the relevant sixth form college.”
- (3) In paragraph 1A, after “appointment of members” insert “ of a further education corporation ”.
- (4) After paragraph 1A insert—
- “1B Provision made by an instrument under this Schedule in relation to the appointment of members of a sixth form college corporation must take into account the members who may be appointed by—
- (a) the responsible local education authority under section 56F;
- (b) the YPLA under section 56I.”
- (5) In paragraph 2(1) after “further education corporation” insert “ or sixth form college corporation ”.
- (6) In the title, after “further education corporations” insert “ and sixth form college corporations ”.

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VALID FROM 01/04/2010

SCHEDULE 9 Section 127

THE OFFICE OF QUALIFICATIONS AND EXAMINATIONS REGULATION

.....

VALID FROM 01/04/2010

SCHEDULE 10 Section 173

QCA: TRANSFER SCHEMES

.....

VALID FROM 01/04/2010

SCHEDULE 11 Section 175

THE QUALIFICATIONS AND CURRICULUM DEVELOPMENT AGENCY

.....

VALID FROM 01/04/2010

SCHEDULE 12 Sections 174 and 192

OFQUAL AND THE QCDA: MINOR AND CONSEQUENTIAL AMENDMENTS

.....

SCHEDULE 13 Section 203

POWERS IN RELATION TO SCHOOLS CAUSING CONCERN: ENGLAND

1 Part 4 of the Education and Inspections Act 2006 (c. 40) (schools causing concern: England) is amended as follows.

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**Commencement Information**

**I54** Sch. 13 para. 1 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 2 (1) Section 59(2) (meaning of schools being “eligible for intervention”) is amended as follows.
- (2) For “warning notice by local education authority” substitute “ performance standards and safety warning notice ”.
- (3) Before “section 61” insert—  
“section 60A (teachers' pay and conditions warning notice),”.

**Commencement Information**

**I55** Sch. 13 para. 2 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 3 For the title of section 60 substitute “ Performance standards and safety warning notice ”.

**Commencement Information**

**I56** Sch. 13 para. 3 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 4 After section 60 insert—

**“60A Teachers' pay and conditions warning notice**

- (1) A maintained school is by virtue of this section eligible for intervention if—
- (a) the local education authority have given the governing body a warning notice in accordance with subsection (2),
  - (b) the period beginning with the day on which the warning notice is given and ending with the fifteenth working day following that day (“the initial period”) has expired,
  - (c) either the governing body made no representations under subsection (7) to the local education authority against the warning notice during the initial period or the local education authority have confirmed the warning notice under subsection (8),
  - (d) the governing body have failed to comply, or secure compliance, with the notice to the authority's satisfaction by the end of the compliance period (as defined by subsection (10)), and
  - (e) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under any one or more of sections 64 to 66.
- (2) A local education authority may give a warning notice to the governing body of a maintained school where the authority are satisfied that—
- (a) the governing body have failed to comply with a provision of an order under section 122 of EA 2002 (teachers' pay and conditions) that applies to a teacher at the school, or

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- (b) the governing body have failed to secure that the head teacher of the school complies with such a provision.
- (3) In subsection (2) references to an order under section 122 of EA 2002 include a document by reference to which provision is made in such an order.
- (4) For the purposes of this section a “warning notice” is a notice in writing by the local education authority setting out—
  - (a) the matters on which the conclusion mentioned in subsection (2) is based,
  - (b) the action which they require the governing body to take in order to remedy those matters,
  - (c) the initial period applying under subsection (1)(b), and
  - (d) the action which the local education authority are minded to take (under one or more of sections 64 to 66 or otherwise) if the governing body fail to take the required action.
- (5) The warning notice must also inform the governing body of their right to make representations under subsection (7) during the initial period.
- (6) The local education authority must, at the same time as giving the governing body the warning notice, give a copy of the notice to each of the following persons—
  - (a) the head teacher of the school,
  - (b) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
  - (c) in the case of a foundation or voluntary school, the person who appoints the foundation governors.
- (7) Before the end of the initial period, the governing body may make representations in writing to the local education authority against the warning notice.
- (8) The local education authority must consider any representations made to them under subsection (7) and may, if they think fit, confirm the warning notice.
- (9) The local education authority must give notice in writing of their decision whether or not to confirm the warning notice to the governing body and such other persons as the Secretary of State may require.
- (10) In this section “the compliance period”, in relation to a warning notice, means—
  - (a) in a case where the governing body does not make representations under subsection (7), the initial period mentioned in subsection (1) (b), and
  - (b) in a case where the local education authority confirm the warning notice under subsection (8), the period beginning with the day on which they do so and ending with the fifteenth working day following that day.”

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#### Commencement Information

**I57** Sch. 13 para. 4 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 5
- (1) Section 63 (power of LEA to require governing body to enter into arrangements) is amended as follows.
  - (2) In subsection (1) after “eligible for intervention” insert “ other than by virtue of section 60A ”.
  - (3) In subsection (3) for “formal warning” substitute “ performance standards and safety warning ”.

#### Commencement Information

**I58** Sch. 13 para. 5 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 6
- (1) Section 64 (power of LEA etc to appoint additional governors) is amended as follows.
  - (2) In subsection (1) for “subsection (2)” substitute “ subsections (1A) and (2) ”.
  - (3) After subsection (1) insert—
    - “(1A) Subsection (1) does not apply if the Secretary of State has exercised the power under section 67 (power to appoint additional governors) in connection with—
      - (a) the same warning notice, where the school is eligible for intervention by virtue of section 60 (school subject to performance standards and safety warning) or 60A (school subject to teachers' pay and conditions warning), or
      - (b) the same inspection falling within section 61(a) or 62(a), where the school is eligible for intervention by virtue of section 61 (school requiring significant improvement) or 62 (school requiring special measures).”
  - (4) In subsection (2)—
    - (a) for “formal warning)” substitute “performance standards and safety warning) or 60A (school subject to teachers' pay and conditions warning)”, and
    - (b) after “60(10)” insert “ or as the case may be section 60A(10) ”.
  - (5) In subsection (4)—
    - (a) in paragraph (a) for “formal warning)” substitute “performance standards and safety warning) or 60A (school subject to teachers' pay and conditions warning)”,
    - (b) after paragraph (b) insert—
      - “and
      - (c) the Secretary of State has not exercised the power under section 67 in connection with the same warning notice,”.

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**Commencement Information**

**I59** Sch. 13 para. 6 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 7 In section 66(2) (power of LEA to suspend right to delegated budget)—
- (a) for “formal warning” substitute “performance standards and safety warning) or 60A (school subject to teachers' pay and conditions warning)”, and
  - (b) after “60(10)” insert “ or as the case may be section 60A(10) ”.

**Commencement Information**

**I60** Sch. 13 para. 7 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 8 In section 67(1) (power of Secretary of State to appoint additional governors) omit the words from “by virtue of” to “special measures)”.

**Commencement Information**

**I61** Sch. 13 para. 8 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 9 In section 69(1) (power of Secretary of State to provide for governing body to consist of interim executive members) omit the words from “by virtue of” to “special measures)”.

**Commencement Information**

**I62** Sch. 13 para. 9 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

- 10 After section 69 insert—

**“69A Power of Secretary of State to direct LEA to consider giving performance standards and safety warning notice**

- (1) This section applies if the Secretary of State thinks that the conditions in subsections (2) and (3) are met.
- (2) The condition is that there are reasonable grounds for a local education authority to give a warning notice to the governing body of a maintained school under section 60 (performance standards and safety warning notice).
- (3) The condition is that one of the following applies—
  - (a) the authority have not given a warning notice to the governing body under section 60 on those grounds;
  - (b) the authority have done so, but in inadequate terms;
  - (c) the authority have given a warning notice to the governing body under section 60 on those grounds, but the Chief Inspector has failed or declined to confirm it;
  - (d) the school has become eligible for intervention on those grounds by virtue of section 60, but the period of two months following the end of the compliance period (as defined by section 60(10)) has ended.



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- (4) The Secretary of State may direct the local education authority to consider giving a warning notice to the governing body under section 60 in the terms specified in the direction.
- (5) A direction under subsection (4) must be in writing.
- (6) If the Secretary of State gives a direction under subsection (4) to a local education authority in respect of a governing body, the authority must—
  - (a) give the Secretary of State a written response to the direction before the end of the period of 10 working days beginning with the day on which the direction is given, and
  - (b) on the same day as they do so, give the Chief Inspector a copy of the response.
- (7) The local education authority's response to the direction must do one of the following—
  - (a) state that the authority have decided to give a warning notice to the governing body in the specified terms;
  - (b) state that the authority have decided not to give a warning notice to the governing body in those terms.
- (8) If the response states that the authority have decided to give a warning notice to the governing body in the specified terms, the authority must—
  - (a) give the warning notice to the governing body in those terms before the end of the period of 5 working days beginning with the day on which the response is given (and withdraw any previous warning notice given to the governing body under section 60), and
  - (b) on the same day as they do so, give the Secretary of State a copy of the notice.
- (9) If the response states that the authority have decided not to give a warning notice to the governing body in the specified terms, it must set out the authority's reasons for the decision.
- (10) Subsection (8)(b) applies in addition to section 60(6).

#### **69B Power of Secretary of State to direct LEA to give teachers' pay and conditions warning notice**

- (1) This section applies if the Secretary of State thinks that the conditions in subsections (2) and (3) are met.
- (2) The condition is that there are reasonable grounds for a local education authority to give a warning notice to the governing body of a maintained school under section 60A (teachers' pay and conditions warning notice).
- (3) The condition is that one of the following applies—
  - (a) the authority have not given a warning notice to the governing body under section 60A on those grounds;
  - (b) the authority have done so, but in inadequate terms;
  - (c) the authority have given a warning notice to the governing body under section 60A on those grounds, but have declined or failed to confirm it;

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- (d) the school has become eligible for intervention on those grounds by virtue of section 60A, but the period of two months following the end of the compliance period (as defined by section 60A(10)) has ended.
- (4) The Secretary of State may direct the local education authority to consider giving a warning notice to the governing body under section 60A in the terms specified in the direction.
- (5) If the Secretary of State gives a direction under subsection (4) to a local education authority in respect of a governing body, the authority must—
- (a) give a copy of the direction to the governing body before the end of the period of 2 working days beginning with the day on which the direction is given,
  - (b) when it does so, invite the governing body to give the authority a written response before the end of the period of 7 working days beginning with the day on which the direction is given, and
  - (c) give the Secretary of State the authority's written response, and any response received from the governing body in accordance with paragraph (b), before the end of the period of 10 working days beginning with the day on which the direction is given.
- (6) The local education authority's response to the direction must do one of the following—
- (a) state that the authority have decided to give a warning notice to the governing body in the specified terms;
  - (b) state that the authority have decided not to give a warning notice to the governing body in those terms.
- (7) If the response states that the authority have decided to give a warning notice to the governing body in the specified terms, the authority must—
- (a) give the warning notice to the governing body in those terms before the end of the period of 5 working days beginning with the day on which the response is given (and withdraw any previous warning notice given to the governing body under section 60A), and
  - (b) on the same day as they do so, give the Secretary of State a copy of the notice.
- (8) If the response states that the authority have decided not to give a warning notice to the governing body in the specified terms—
- (a) the response must set out the authority's reasons for the decision, and
  - (b) the Secretary of State may direct the authority to give the warning notice to the governing body in those terms (and to withdraw any previous warning notice given to the governing body under section 60A).
- (9) If the Secretary of State directs the authority under subsection (8)(b) to give a warning notice to the governing body in the specified terms, the authority must—
- (a) comply with the direction under subsection (8)(b) before the end of the period of 5 working days beginning with the day on which that direction is given, and

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(b) on the same day as they do so, give the Secretary of State a copy of the notice.

(10) Subsections (7)(b) and (9)(b) apply in addition to section 60A(6).

(11) A direction under this section must be in writing.”

**Commencement Information**

**I63** Sch. 13 para. 10 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

11 In section 73 (interpretation of Part 4) at the end insert—

““working day” has the meaning given by section 60(10).”

**Commencement Information**

**I64** Sch. 13 para. 11 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

SCHEDULE 14

Section 205

POWERS IN RELATION TO SCHOOLS CAUSING CONCERN: WALES

1 Chapter 4 of Part 1 of the School Standards and Framework Act 1998 (c. 31) (measures to raise standards of school education in Wales: intervention powers) is amended as follows.

**Commencement Information**

**I65** Sch. 14 para. 1 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

2 In section 14(4) (intervention powers: interpretation), in paragraph (c) for “that Act” substitute “ the Education Act 2005 ”.

**Commencement Information**

**I66** Sch. 14 para. 2 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

3 In section 15 (cases where LEA may exercise powers of intervention), in subsection (2)(a), after “(whether by a breakdown of discipline or otherwise)” insert “, or—

- (iv) that the governing body have failed to comply with a provision of an order under section 122 of the Education Act 2002 (teachers' pay and conditions) that applies to a teacher at the school, or
- (v) that the governing body have failed to secure that the head teacher of the school complies with such a provision”.

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#### Commencement Information

**I67** Sch. 14 para. 3 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

- 4 In section 18 (power of Welsh Ministers to appoint additional governors), in subsection (1)—
- (a) in the opening words for “either” substitute “ any ”;
  - (b) before paragraph (a) insert—
    - “(za) subsection (1), in a case within subsection (2)(a)(iv) or (v) (school subject to teachers' pay and conditions warning),”.

#### Commencement Information

**I68** Sch. 14 para. 4 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

- 5 In section 18A (power of Welsh Ministers to provide for governing body to consist of interim executive members), in subsection (1)—
- (a) in the opening words for “either” substitute “ any ”;
  - (b) before paragraph (a) insert—
    - “(za) subsection (1), in a case within subsection (2)(a)(iv) or (v) (school subject to teachers' pay and conditions warning),”.

#### Commencement Information

**I69** Sch. 14 para. 5 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

- 6 After section 19 insert—

#### **“19ZA Power of Welsh Ministers to direct LEA to give warning notice: teachers' pay and conditions**

- (1) This section applies if the Welsh Ministers think that the conditions in subsections (2) and (3) are met.
- (2) The condition is that there are reasonable grounds for a local education authority to give a warning notice to the governing body of a maintained school under section 15(2)(a)(iv) or (v) (teachers' pay and conditions warning notice).
- (3) The condition is that one of the following applies in relation to those grounds—
  - (a) the authority have not given a warning notice to the governing body under section 15 on those grounds, or have not given a copy to the head teacher at the same time;
  - (b) the authority have given a warning notice to the governing body under section 15, but in inadequate terms;
  - (c) section 15 applies to the school on those grounds by virtue of subsection (1) of that section, but the period of two months following the end of the compliance period (as defined by section 15(3)(c)) has ended.

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- (4) The Welsh Ministers may direct the local education authority to consider giving a warning notice to the governing body under section 15(2)(a)(iv) or (v) in the terms specified in the direction.
- (5) If the Welsh Ministers give a direction under subsection (4) to a local education authority in respect of a governing body, the authority must—
  - (a) give a copy of the direction to the governing body before the end of the period of 2 working days beginning with the day on which the direction is given,
  - (b) when it does so, invite the governing body to give the authority a written response before the end of the period of 7 working days beginning with the day on which the direction is given, and
  - (c) give the Welsh Ministers the authority's written response, and any response received from the governing body in accordance with paragraph (b), before the end of the period of 10 working days beginning with the day on which the direction is given.
- (6) The local education authority's response to the direction must do one of the following—
  - (a) state that the authority have decided to give a warning notice to the governing body in the specified terms;
  - (b) state that the authority have decided not to give a warning notice to the governing body in those terms.
- (7) If the response states that the authority have decided to give a warning notice to the governing body in the specified terms, the authority must—
  - (a) give the warning notice to the governing body in those terms before the end of the period of 5 working days beginning with the day on which the response is given (and withdraw any previous warning notice given to the governing body under section 15(2)(a)(iv) or (v)), and
  - (b) on the same day as they do so, give the Welsh Ministers a copy of the notice.
- (8) If the response states that the authority have decided not to give a warning notice to the governing body in the specified terms—
  - (a) the response must set out the authority's reasons for the decision, and
  - (b) the Welsh Ministers may direct the authority to give the warning notice to the governing body in those terms (and to withdraw any previous warning notice given to the governing body under section 15(2)(a)(iv) or (v)).
- (9) If the Welsh Ministers direct the authority under subsection (8)(b) to give a warning notice to the governing body in the specified terms, the authority must—
  - (a) comply with the direction under subsection (8)(b) before the end of the period of 5 working days beginning with the day on which that direction is given, and
  - (b) on the same day as they do so, give the Welsh Ministers a copy of the notice.
- (10) Subsections (7)(b) and (9)(b) apply in addition to section 15(1)(a)(ii).

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(11) A direction under this section must be in writing.

(12) In this section “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in Wales.”

#### Commencement Information

**I70** Sch. 14 para. 6 in force at 12.1.2010 for W. by S.I. 2009/3341, art. 2

## SCHEDULE 15

Section 227

### THE SCHOOL SUPPORT STAFF NEGOTIATING BODY

#### *Constitution*

- 1 (1) The SSSNB is to be constituted in accordance with arrangements made by the Secretary of State.
- (2) Before making or revising arrangements under sub-paragraph (1), the Secretary of State must consult—
- (a) the prescribed school support staff organisations, and
  - (b) the prescribed school support staff employer organisations.
- (3) References in this Schedule to the SSSNB's constitutional arrangements are to arrangements made under sub-paragraph (1).
- (4) References in this Schedule to the prescribed organisations are to the organisations prescribed under sub-paragraph (2).

#### Commencement Information

**I71** Sch. 15 para. 1 in force at 12.1.2010 by S.I. 2009/3317, art. 2, Sch.

#### *Membership*

- 2 (1) The SSSNB's constitutional arrangements must provide for the members of the SSSNB to include persons representing the interests of—
- (a) the prescribed organisations;
  - (b) the Secretary of State.
- (2) The arrangements must also provide for the members of the SSSNB to include a person appointed to chair the SSSNB.
- (3) The arrangements must provide for that person to be a person who, in the opinion of the Secretary of State, does not represent the interests of—
- (a) a school support staff organisation,
  - (b) a school support staff employer organisation,
  - (c) the Secretary of State, or

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(d) any other person or organisation represented on the SSSNB.

(4) The arrangements may provide for the members of the SSSNB to include other persons who do not represent the interests of—

- (a) school support staff organisations, or
- (b) school support staff employer organisations.

**Commencement Information**

I72 Sch. 15 para. 2 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Proceedings*

3 (1) The SSSNB's constitutional arrangements must not provide for a member of the SSSNB to be entitled to vote in respect of its proceedings unless the member is a person representing the interests of any of the prescribed organisations.

(2) Subject to sub-paragraph (1), the arrangements may make provision about the proceedings of the SSSNB (including provision allowing the SSSNB to determine its own proceedings).

**Commencement Information**

I73 Sch. 15 para. 3 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Administrative support*

4 The SSSNB's constitutional arrangements may make provision about the provision of administrative support to the SSSNB.

**Commencement Information**

I74 Sch. 15 para. 4 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

*Annual reports*

5 (1) The SSSNB's constitutional arrangements must provide for the SSSNB to prepare a report, in respect of each successive period of 12 months beginning on the day on which it is established, about the performance of its functions in that period.

(2) The arrangements may—

- (a) require the SSSNB to send copies of the report to specified persons;
- (b) require the SSSNB otherwise to publish the report in a specified manner.

**Commencement Information**

I75 Sch. 15 para. 5 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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### *Fees and expenses*

- 6 The SSSNB's constitutional arrangements may make provision about—
- (a) the payment of fees to the person appointed to chair the SSSNB;
  - (b) the payment of expenses incurred by the SSSNB.

#### **Commencement Information**

**I76** Sch. 15 para. 6 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

### *House of Commons disqualification*

- 7 In the House of Commons Disqualification Act 1975 (c. 24), in Part 3 of Schedule 1 (other disqualifying offices), at the appropriate place insert— “ Person appointed to chair the School Support Staff Negotiating Body. ”

#### **Commencement Information**

**I77** Sch. 15 para. 7 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

### *Interpretation*

- 8 For the purposes of this Schedule—
- (a) a “school support staff organisation” is an organisation that, in the opinion of the Secretary of State, represents the interests of school support staff;
  - (b) a “school support staff employer organisation” is an organisation that, in the opinion of the Secretary of State, represents the interests of employers of school support staff;
  - (c) “specified” means specified in the SSSNB's constitutional arrangements.

#### **Commencement Information**

**I78** Sch. 15 para. 8 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

## SCHEDULE 16

Section 266

### REPEALS AND REVOCATIONS

#### **Commencement Information**

**I79** Sch. 16 partly in force; Sch. 16 in force for specified purposes at 12.1.2010 see s. 269(2)



**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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## PART 1

### LEA FUNCTIONS

<i>Title</i>	<i>Extent of repeal</i>
Education Act 1996 (c. 56)	Section 509.
School Standards and Framework Act 1998 (c. 31)	Section 128. In Schedule 30, paragraph 64.
Education and Inspections Act 2006 (c. 40)	Section 81.

VALID FROM 01/04/2010

## PART 2

### DISSOLUTION OF THE LSC

<i>Title</i>	<i>Extent of repeal</i>
Further and Higher Education Act 1992 (c. 13)	In section 56B(3), the word “its”. In section 56C(4), the words “to it”.
Learning and Skills Act 2000 (c. 21)	Part 1. Section 97. Section 98(2A). Section 99(2A). In section 101(1), paragraph (c) (and the word “or” before it). In section 102(1), paragraph (c) (and the word “or” before it). In section 113A— (a) subsections (1), (4)(aa), (5), (7), (8) and (9)(f); (b) in subsection (11), paragraph (a) of the definition of “regulations” (and the word “and” after it) and paragraph (a) of the definition of “relevant authority” (and the word “and” after it). Schedules 1, 1A and 3. In Schedule 7A—

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	(a) in paragraph 1, the words “approved or” and “approval or”, wherever occurring;
	(b) in paragraph 3(4), paragraph (a);
	(c) paragraphs 5(1), 6(1) and 7(1) and (2).
Education and Inspections Act 2006 (c. 40)	Section 75.
Further Education and Training Act 2007 (c. 25)	Section 1. Section 2. Sections 4 to 10. Sections 11 to 13. Sections 14 to 16.
Education and Skills Act 2008 (c. 25)	Section 159(2). Section 160(2).

### PART 3

#### SIXTH FORM COLLEGE SECTOR

#### Commencement Information

**180** Sch. 16 Pt. 3 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

<i>Title</i>	<i>Extent of repeal</i>
Education and Inspections Act 2006	Section 11(1)(b) and (2)(a).

VALID FROM 01/04/2010

### PART 4

#### OFQUAL AND THE QCDA

<i>Title</i>	<i>Extent of repeal or revocation</i>
Charities Act 1993 (c. 10)	In Schedule 2, paragraph (da).
Education Act 1997 (c. 44)	Sections 21 to 26A. Section 30(1C), (1D), (2) and (6). Section 32(4A). Section 32A(6).

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	<p>Section 36.</p> <p>In section 54(1), the words “, except an order under section 25 or 31,”.</p> <p>In section 58(6), the entries for—</p> <ul style="list-style-type: none"><li>(a) sections 21 and 22;</li><li>(b) section 24(4), (6) and (7);</li><li>(c) sections 26 and 26A;</li><li>(d) Schedule 4 (and the word “and” before it).</li></ul> <p>Schedule 4.</p> <p>In Schedule 7—</p> <ul style="list-style-type: none"><li>(a) paragraph 1;</li><li>(b) paragraph 2 (and the italic heading before it);</li><li>(c) paragraph 3(1)(b) (and the word “and” before it);</li><li>(d) paragraph 4(3);</li><li>(e) paragraph 29(a) (and the word “and” after it).</li></ul>
School Standards and Framework Act 1998 (c. 31)	In Schedule 30, paragraph 214.
Learning and Skills Act 2000 (c. 21)	Section 103(2) and (3).
	In Schedule 9, paragraph 69.
Education Act 2002 (c. 32)	In section 76, in the definition of “assess”, the words “examine and”.
	In section 87—
	<ul style="list-style-type: none"><li>(a) in subsection (7), the word “and” at the end of paragraph (a);</li><li>(b) subsection (9).</li></ul>
	In section 96(6), the words from “and shall send copies” to the end.
	In section 216(2), the words “paragraphs 1 to 4 and 9 of Schedule 17, and section 189 so far as relating to those paragraphs,”.
	In Schedule 17—
	<ul style="list-style-type: none"><li>(a) paragraphs 1 to 4 and the italic heading before paragraph 1;</li><li>(b) paragraph 5(6);</li><li>(c) paragraph 9 and the italic heading before it.</li></ul>
	In Schedule 21, paragraph 69.
The Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the	In Schedule 1, paragraphs 7, 22, 23 and 24.

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

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National Assembly for Wales and Abolition) Order  
2005 (S.I. 2005/3239)

Childcare Act 2006 (c. 21)

In section 42—

- (a) in subsection (2), the word “and” at the end of paragraph (b);
- (b) subsection (4).

In Schedule 1—

- (a) paragraph 2 and the italic heading before it;
- (b) paragraph 10(9).

Education and Inspections Act 2006 (c. 40)

In Schedule 14, paragraphs 21 and 25.

Education and Skills Act 2008 (c. 25)

Section 9.

Section 161.

Section 162(2) to (5).

Section 163.

## PART 5

### CO-OPERATION TO IMPROVE WELL-BEING OF CHILDREN

#### Commencement Information

**I81** Sch. 16 Pt. 5 in force at 12.1.2010 for specified purposes by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

<i>Title</i>	<i>Extent of repeal</i>
Children Act 2004 (c. 31)	In section 10— (a) subsection (4)(g); (b) subsections (6) and (7).

## PART 6

### SCHOOLS CAUSING CONCERN

#### Commencement Information

**I82** Sch. 16 Pt. 6 in force at 12.1.2010 by [S.I. 2009/3317](#), [art. 2](#), [Sch.](#)

<i>Title</i>	<i>Extent of repeal</i>
Education and Inspections Act 2006	In section 67(1), the words from “by virtue of” to “special measures”.

**Status:** Point in time view as at 26/02/2010. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Apprenticeships, Skills, Children and Learning Act 2009 is up to date with all changes known to be in force on or before 12 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

In section 69(1), the words from “by virtue of” to “special measures”.

VALID FROM 19/04/2010

## PART 7

### COMPLAINTS

<i>Title</i>	<i>Extent of repeal</i>
Education Act 1996 (c. 56)	Section 408(4)(g). Section 409. In Schedule 1, paragraph 6(3) and (4).

## PART 8

### SCHOOL INSPECTIONS

#### Commencement Information

**I83** Sch. 16 Pt. 8 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

<i>Title</i>	<i>Extent of repeal</i>
Education and Inspections Act 2006 (c. 40)	In Schedule 12— (a) in paragraph 9(1), the word “or” at the end of paragraph (b); (b) in paragraph 10(1), the word “or” at the end of paragraph (b).

## PART 9

### INFORMATION ABOUT LOCAL AUTHORITY EXPENDITURE

#### Commencement Information

**I84** Sch. 16 Pt. 9 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

<i>Title</i>	<i>Extent of repeal</i>
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School Standards and Framework Act 1998 (c. 31)	Section 53.
Public Audit (Wales) Act 2004 (c. 23)	In Schedule 2, paragraph 40.

## PART 10

### SUPPORT FOR PARTICIPATION IN EDUCATION AND TRAINING

#### Commencement Information

**I85** Sch. 16 Pt. 10 in force at 12.1.2010 by [S.I. 2009/3317](#), art. 2, [Sch.](#)

<i>Title</i>	<i>Extent of repeal</i>
Education and Skills Act 2008 (c. 25)	Section 15. Section 76(1).

VALID FROM 01/10/2010

## PART 11

### FOUNDATION DEGREES: WALES

<i>Title</i>	<i>Extent of repeal</i>
Further and Higher Education Act 1992 (c. 13)	In section 76(1)(b), the words “in England”.

**Status:**

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