

# APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: the Chief Executive of Skills Funding**

#### **Chapter 3: Chief Executive's functions: supplementary**

#### **Strategies**

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

310. This section re-enacts with modifications, existing powers under section 24A of the Learning and Skills Act 2000. It allows the Secretary of State by order to specify an area of England as an area for which a specified body (which could either be a body that already exists or one which is specifically set up), to put in place and keep under review a strategy for how education and training for those persons that the Chief Executive is responsible for, will be delivered. This would typically be a city region, for which a specified body — for example, an Employment and Skills Board — is able to set out a strategy for the actions of the Chief Executive in that particular area. The Secretary of State may not specify an area comprising Greater London or a part of it because specific powers in respect of Greater London apply and are set out in section 113.
311. *Subsection (4)* allows the Secretary of State to give directions and guidance to the specified body in relation to the formulation and review of its strategy, including such matters as form and content of the strategy, updating and reviewing the strategy and those bodies which need to be consulted on the formulation and review of the strategy. The specified body must comply with any directions and have regard to any guidance given by the Secretary of State.
312. *Subsection (6)* allows the Chief Executive to reimburse this body for costs and expenses it incurs in formulating and reviewing its strategy.

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

313. This section re-enacts with modifications section 24B of the Learning and Skills 2000 (which was inserted by the Further Education and Training Act 2007) This section requires the Secretary of State to provide, by regulations, for the establishment of a London body to formulate a strategy setting out how certain functions of the Chief Executive are to be carried out in Greater London and keep it under review.
314. The body that is established must include the Mayor of London and other members appointed by the Mayor in accordance with the regulations and the Mayor must be the chairman of the body.
315. Under *subsection (4)*, the Secretary of State may give directions and guidance to the London body in relation to the formulation and review of the strategy, including such

*These notes refer to the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) which received Royal Assent on 12 November 2009*

matters as the form and content of the strategy; updating it; procedures to be followed when formulating or reviewing the strategy; and the consultation procedures to be followed.

316. The London body must act in accordance with any such directions and have regard to guidance given by the Secretary of State (*subsection (5)*) and it must publish the strategy, or the revised strategy (*subsection (6)*).
317. The Chief Executive may contribute to costs and expenses incurred by the London body or the Greater London Authority (*subsections (8) and (9)*).

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

318. This section puts the Chief Executive under a duty to implement any strategy formulated by a body set up under the powers contained in sections 112 and 113.
319. The section sets out circumstances in which the Chief Executive may refuse to comply with the strategy. This might be for example where the strategy has been formulated without compliance with any directions or regard to guidance concerning its formulation or review. If provision in a strategy conflicts with provisions of strategies of different specified bodies, the Chief Executive may disregard relevant provision in one or both of the strategies (*subsection (4)*).
320. The Chief Executive is not required to carry out his or her functions in accordance with a strategy in a manner that he or she is satisfied might involve disproportionate cost or in a manner which he or she considers to be unreasonable (*subsection (6)*).
321. The Chief Executive may not carry out a function in accordance with a strategy if to do so would mean failing to comply with a duty imposed on him or her by or under any enactment (*subsection (3)*). Where the Chief Executive proposes not to, or does not, carry out a function in compliance with a strategy, the Chief Executive must refer the matter to the Secretary of State (and the strategy setting body may also refer the matter to the Secretary of State) (*subsection (7)*). In such circumstances, the Secretary of State may give such direction to the Chief Executive as he or she thinks fit regarding the carrying out of that function (*subsection (8)*).

#### ***Section 115: Persons with learning difficulties***

322. This section provides that in performing the functions of the office, the Chief Executive must have regard to the needs of persons who are aged 19 or over who have learning difficulties (other than person aged under 25 who are subject to a learning difficulty assessment (under section 139A of the Learning and Skills Act 2000)) and persons with learning difficulties who are subject to adult detention. "A learning difficulty" is defined in *subsections (2) and (3)*.

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

323. This section provides that the Chief Executive must have regard to the needs of persons in prisons and adult young offender institutions in the performance of the functions of the office.

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

324. This section provides that the Chief Executive must have regard to any information which has been provided by a person designated by the Secretary of State for the purposes of this section.

#### ***Section 118: Guidance***

325. This section sets out a requirement similar to that imposed on the Learning and Skills Council in section 14A of the Learning and Skills Act 2000 (inserted by section 7 of

the Further Education and Training Act 2007). It places a duty on the Chief Executive to have regard to any guidance given by the Secretary of State. In particular, guidance may relate to consultation with learners, potential learners (who fall within the Chief Executive's remit) and employers; and taking advice from such persons or descriptions of persons as may be specified in the guidance. In relation to consultation with learners and potential learners, the guidance must provide for the views of such persons to be considered in the light of their age and understanding.

***Section 119: Directions: funding of qualifications***

326. This section provides for the Secretary of State to direct the Chief Executive to secure (by way of imposing a condition) that funding he provides is not used to make payments in respect of certain specified qualifications. The direction from the Secretary of State would be expected to specify the qualification or qualifications which he considers to be inappropriate for public funding and should therefore be excluded, and may set out the details under which financial resources should not be provided, such as a course leading to a qualification, or exam fees for a qualification.
327. *Subsection (2)* defines the terms “an excluded payment” and “relevant institution or employer” for the purposes of this section.
328. The overall purpose of the section is to ensure that the funding provided by the Secretary of State to the Chief Executive is used to fund qualifications which the Secretary of State thinks are appropriate to receive public funding, and provides a mechanism for the Secretary of State to prevent the public funding of qualifications where he deems it inappropriate to provide such funding.

***Section 120: Other directions relating to the functions of the office***

329. This section allows the Secretary of State to give directions to the Chief Executive about what overarching objectives he or she should be seeking to achieve in performing the functions of the office, and by when. This section also allows the Secretary of State to intervene if he or she considers that the Chief Executive has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of his or her functions.
330. Directions under the section may not relate to the funding of specific individuals or individual bodies. This is to ensure that the Chief Executive has responsibility for funding decisions, without influence from the Secretary of State.