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Apprenticeships, Skills, Children and Learning Act 2009

2009 CHAPTER 22

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,

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- (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.
- (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

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(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—

(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—

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- (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.
- (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.

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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.

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.

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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.

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.

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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.
- (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.

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- (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.

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.

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(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.
- (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.

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- (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.
- (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);

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“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,
 - (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.

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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.

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

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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;

“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—

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- (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.

(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

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- (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—

- (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;

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- (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—
- (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).

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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.
- (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)—

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“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.

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);

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“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);

“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—

Status: Point in time view as at 06/04/2010. This version of this part contains provisions that are not valid for this point in time.

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“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
 - (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;

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“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)—
 - (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

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- (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.
- (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;

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- (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;
 - (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

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- (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.

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—

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“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,
- (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.

Commencement Information

- II** S. 40 in force at 6.4.2010 for specified purposes by S.I. 2010/303, art. 4, Sch. 3 (with arts. 9-11)

Status:

Point in time view as at 06/04/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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