

2010 No. 303 (C. 25)

EDUCATION, ENGLAND AND WALES

**CHILDREN AND YOUNG PERSONS, ENGLAND AND
WALES**

**The Apprenticeships, Skills, Children and Learning Act 2009
(Commencement No. 2 and Transitional and Saving Provisions)
Order 2010**

Made - - - - *10th February 2010*

The Secretary of State for Children, Schools and Families makes the following Order in exercise of the powers conferred by section 269(4) and (8) of the Apprenticeships, Skills, Children and Learning Act 2009(a):

Citation and interpretation

1.—(1) This Order may be cited as the Apprenticeships, Skills, Children and Learning Act 2009 (Commencement No.2 and Transitional and Saving Provisions) Order 2010.

(2) In this Order—

“the Act” means the Apprenticeships, Skills, Children and Learning Act 2009;

“relevant young offender institution” means a young offender institution in England, or part of such an institution, other than Ashfield Young Offender Institution, South Gloucestershire;

“the YPLA” means the Young People’s Learning Agency for England.

Provisions coming into force on 26th February 2010

2. The provisions of the Act specified in column 1 of Schedule 1 come into force on 26th February 2010 to the extent specified in column 2 of the Schedule.

Provisions coming into force on 1st April 2010

3.—(1) The provisions of the Act specified in column 1 of Schedule 2 come into force on 1st April 2010.

(2) Where a particular purpose is specified in column 2 of that Schedule in relation to any such provision, the provision comes into force on that date for that purpose only.

Provisions coming into force on 6th April 2010

4. The provisions of the Act specified in column 1 of Schedule 3 come into force on 6th April 2010 to the extent specified in column 2 of the Schedule.

Provisions coming into force on 19th April 2010

5. The provisions of the Act specified in column 1 of Schedule 4 come into force on 19th April 2010 to the extent specified in column 2 of the Schedule.

Provisions coming into force on 1st September 2010

6.—(1) The provisions of the Act specified in column 1 of Schedule 5 come into force on 1st September 2010.

(2) Where a particular purpose is specified in column 2 of that Schedule in relation to any such provision, the provision comes into force on that date for that purpose only.

Provisions coming into force on 6th April 2011

7. The provisions of the Act specified in column 1 of Schedule 6 come into force on 6th April 2011 to the extent specified in column 2 of the Schedule.

Transitional and Saving Provisions

8.—(1) Despite the coming into force of sections 54 and 57 of the Act in accordance with article 3, the amendments to the Education Act 1996 made by those sections in relation to—

- (a) inserting paragraph (ca) in section 509AB(6);
- (b) inserting sections 508G and 508I,

do not have effect in respect of any academic year before the 2011-2012 academic year.

(2) In this article “academic year” has the meaning given by section 509AC of the Education Act 1996.

9.—(1) This article applies in relation to any consultation carried out before 1st April 2010 in respect of the first guidance to be issued to local education authorities under section 72(1) of the Act.

(2) For the purposes of section 72 of the Act, the consultation is to be treated, on and after 1st April 2010, as if it had been carried out under section 72(3) of the Act by the YPLA.

10.—(1) This article applies in relation to the statement of policy most recently published by the Learning and Skills Council for England under section 56B(7) of the 1992 Act (“the current section 56B statement”).

(2) The current section 56B statement is to be treated during the transitional period as prepared by the YPLA with respect to the exercise of its intervention powers (as defined in section 73(6) of the Act).

(3) Anything done by the Learning and Skills Council for England in respect of the current section 56B statement under section 56B(2), (5) or (7) of the 1992 Act is to be treated during the transitional period as done by the YPLA under section 73(2), (3) or (4) (as the case may be) of the Act.

(4) In this article—

“the 1992 Act” means the Further and Higher Education Act 1992;

“the transitional period” means the period beginning with 1st April 2010 and ending with the date on which the YPLA publishes a statement under section 73(4) of the Act.

11.—(1) This article applies in relation to any children and young people’s plan (“the current plan”) prepared by a children’s services authority under section 17 of the Children Act 2004 (“the 2004 Act”) and which has effect immediately before 1st April 2010.

(2) The current plan is to continue to have effect until the relevant date.

(3) The “relevant date” is the date on which the Children’s Trust Board established by arrangements made by the children’s services authority under section 10 of the 2004 Act publishes a new children and young people’s plan.

(4) For the purposes of this article and article 12, a “new children and young people’s plan” means a children and young people’s plan published in accordance with regulations under section 17 of the 2004 Act, as substituted by section 194(3) of the Act.

12.—(1) Despite the coming into force of section 194(9) of the Act in accordance with article 3, the amendments to section 21 of the Education Act 2002 made by that subsection do not have effect in relation to a school until the relevant Children’s Trust Board publishes a new children and young people’s plan.

(2) The “relevant Children’s Trust Board”, in relation to a school, means the Children’s Trust Board established by arrangements made under section 10 of the Children Act 2004 by the local education authority by which the school is maintained, in their capacity as a children’s services authority (within the meaning of that Act).

Iain Wright

Parliamentary Under Secretary of State
Department for Children, Schools and Families

10th February 2010

SCHEDULE 1

Provisions coming into force on 26th February 2010

<i>Column 1</i>	<i>Column 2</i>
Section 194(1), (2) and (3)	To the extent necessary for the purposes of enabling regulations to be made under section 12A(4) of the Children Act 2004 (as inserted by section 194(2) of the Act) and section 17(1) of the Children Act 2004 (as substituted by section 194(3) of the Act).

SCHEDULE 2

Provisions coming into force on 1st April 2010

<i>Column 1</i>	<i>Column 2</i>
Sections 41 to 44	
Sections 46 and 47	
Sections 53, 54 and 57	
Section 59	To the extent that it relates to the provisions of Schedule 2 to the Act specified in column 1 below.
Sections 60 to 80	
Sections 81 to 90	
Sections 100 to 104	
Sections 106 to 111	
Section 112	To the extent that it is not already in force.
Sections 113 to 121	

Section 122	
Sections 123 and 124	
Section 125	To the extent that it is not already in force.
Section 193(2)(b)	
Section 194	To the extent that it is not already in force.
Sections 196 and 197	
Section 225	To the extent that it is not already in force.
Section 256	
Section 266	To the extent that it relates to the repeals in Schedule 16 to the Act referred to in column 1 below.
In Schedule 2 paragraph 1	To the extent that it relates to the paragraphs of Schedule 2 specified in column 1 below.
paragraph 2	
paragraph 3	
paragraph 4	
paragraph 5	
paragraph 7	To the extent that it is not already in force.
paragraph 8	To the extent that it is not already in force.
paragraph 9	To the extent that it is not already in force.
In Schedule 3 paragraphs 1 to 12, 13(1) and (3) to (4)	
paragraph 13(2)	Only in relation to the academic year commencing on 1st September 2010 and all following academic years.
paragraphs 14 to 22	
Schedules 4 to 6	
Schedule 7	
Schedule 8	To the extent that it is not already in force.
In Schedule 16— The repeals specified in Parts 1, 2 and 5	To the extent that it is not already in force.

SCHEDULE 3

Provisions coming into force on 6th April 2010

<i>Column 1</i>	<i>Column 2</i>
Section 40	For all purposes except in relation to small employers and their employees. (1) “small employer” means an employer who employs fewer than 250 employees. (2) For the purposes of (1) above — (a) Subject to (3) below, the number of employees employed by an employer at any time shall be determined by ascertaining the average number of employees employed by the

	<p>employer in the previous twelve months, calculated in accordance with (b).</p> <p>(b) The average number of employees employed by an employer in a twelve month period is to be ascertained by determining the number of employees employed by the employer in each month in the twelve month period (whether they were employed throughout the month or not), adding together those monthly figures and dividing the number by 12.</p> <p>(3) If the undertaking has been in existence for less than twelve months, the references to twelve months in (2)(a) and (b) and the divisor of 12 referred to in (2)(b), are to be replaced by the number of months the undertaking has been in existence.</p>
Schedule 1	For all purposes except in relation to small employers and their employees as defined above.

SCHEDULE 4

Provisions coming into force on 19th April 2010

<i>Column 1</i>	<i>Column 2</i>
Sections 206 to 224	In relation to a complaint against a school (as defined in section 206 of the Act), where the school is maintained by Barking and Dagenham London Borough Council, Cambridgeshire County Council, Medway Council or Sefton Council.
In Schedule 16, Part 7	In relation to a complaint against a school (as defined in section 206 of the Act), where the school is maintained by Barking and Dagenham London Borough Council, Cambridgeshire County Council, Medway Council or Sefton Council.

SCHEDULE 5

Provisions coming into force on 1st September 2010

<i>Column 1</i>	<i>Column 2</i>
Section 48 for England only, to the extent that it inserts section 18A(1), (2)(a) to (d), (3) and (5) to (8) into the Education Act 1996.	In relation to persons who are subject to youth detention (as defined in section 18A(8) of the Education Act 1996) by virtue of being detained in a relevant young offender institution.

Section 49 for England only	(a) In relation to persons who are detained in relevant youth accommodation (as defined by section 562(1A) of the Education Act 1996) by virtue of being detained in a relevant young offender institution. (b) In relation to persons who are detained in any other relevant youth accommodation in England— (i) for the purposes of section 50 of the Act, to the extent brought into force in relation to those persons by virtue of column 1 below; (ii) for the purposes of section 52 of the Act, to the extent brought into force by virtue of column 1 below.
Section 50 for England only	(a) In relation to persons who are detained persons (as defined in section 562A(3) of the Education Act 1996) by virtue of being detained in a relevant young offender institution. (b) To the extent that section 50 of the Act inserts provisions applying on a person's release, in relation to persons who, immediately before release, were within paragraph (a).
Section 50 for England only, to the extent that it inserts the following provisions into the Education Act 1996— 562A(3), 562B(1) to (3), 562C(1) and (2), 562F(1) to (4) and (11), 562I, and 562J.	(a) In relation to persons who are detained persons (as defined in section 562A(3) of the Education Act 1996) by virtue of being detained in any relevant youth accommodation (as defined in section 562(1A) of that Act) in England other than a relevant young offender institution. (b) To the extent that section 50 of the Act inserts provisions applying on a person's release, in relation to persons who, immediately before release, were within paragraph (a).
Section 51 for England only	
Section 52 for England only	
Section 59	To the extent that it is not already in force.
Sections 242 to 249	
Section 250	
Schedule 2	To the extent that it is not already in force.

SCHEDULE 6

Provisions coming into force on 6th April 2011

<i>Column 1</i>	<i>Column 2</i>
Section 40	To the extent that it is not already in force.
Schedule 1	To the extent that it is not already in force.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Apprenticeships, Skills, Children and Learning Act 2009 (“the Act”) on 26th February, 1st, 6th, and 19th April, 1st September 2010 and 6th April 2011. Where a provision is brought into force for certain purposes only, those purposes are specified in column 2 of the tables in the Schedules.

Provisions coming into force on 26th February 2010

Section 194 transfers from children’s services authorities to Children Trust Boards (which are to be set up by children’s services authorities) the duty to prepare and review a children and young people’s plan. These provisions are commenced for the purposes of making regulations under sections 12A and 17 of the Children Act 2004 (as amended) only.

Provisions coming into force on 1st April 2010

Sections 41 to 44 set out the new duties and responsibilities that local education authorities will have to ensure access to enough suitable education and training provision for those who are over compulsory school age but under 19 and for those aged 19 or over but under 25 who are subject to learning difficulty assessment. These new responsibilities are being transferred to local education authorities from the Learning and Skills Council for England (LSC) which is dissolved. These sections insert new provisions into the Education Act 1996, the School Standards and Framework Act 1998 and the Further and Higher Education Act 1992 relating to these new duties.

Section 46 inserts a new section 514A into the Education Act 1996 enabling local education authorities, to secure boarding accommodation when securing education and training for young people with learning difficulties who are over compulsory school age but under 25, and subject to learning difficulty assessment.

Section 47 inserts a new section 560A into the Education Act 1996 creating a power for local education authorities to secure the provision of work experience for people who are over compulsory school age but under 19, and those aged 19 or over but under 25 subject to learning difficulty assessment. It also creates a duty on local education authorities to encourage learners to participate in work experience and employers to provide opportunities for work experience.

Sections 53, 54 and 57 amend the local education authority’s duty under the Education Act 1996 to prepare and publish an annual transport policy statement for young people of sixth form age to facilitate their attendance at establishments of education and training. These sections amend the duty so that young people and their parents will be consulted in the drawing up of transport policy statements and requires the statements to provide sufficient information to enable young people and their parents to choose between establishments. Section 57 inserts new sections 508F, 508G, 508H and 508I into the Education Act 1996 in respect of provision of transport etc for adult learners.

Sections 60 to 76 and Schedule 3 establishes the Young People’s Learning Agency for England (YPLA) a small non-departmental public body and sets out its functions, the core function being to support and enable local education authorities to carry out their new duties by securing provision for funding. Section 65 requires the YPLA to ensure, so far as is practicable, that no charge is made for the education and training it funds. Section 66 provides that in certain circumstances the YPLA is able to commission education and training itself and make directions where it is satisfied that a LEA is failing, or is likely to fail in its new duties. Section 67 confers intervention powers. Section 68 gives the YPLA the power to provide and receive payment for services in connection with the education and training function of, amongst others, the Secretary of State, the Welsh Ministers, the Scottish Ministers, a Northern Ireland department and the Chief Executive of Skills Funding. Sections 69 and 70 enable the YPLA to take part in arrangements in relation to Wales, Scotland and Northern Ireland for assisting persons to select, train for, obtain and retain employment.

Sections 77 to 78 enable the Secretary of State to require the YPLA to carry out specified functions on the Secretary of State's behalf relating to Academies, city technology colleges and city colleges for the technology of the arts. Section 79 enables persons listed to provide information to each other in order to carry out such a function.

Section 81 and Schedule 4 provide for there to be a Chief Executive of Skills Funding. Section 82 enables the Secretary of State to direct the Chief Executive to designate a person to carry out apprenticeship functions on the Chief Executive's behalf. Sections 83 to 90 provide that the Chief Executive will be responsible for funding post-19 education and training, apprenticeship training for persons aged 16 and over, and education and training of those in adult custody.

Sections 100 to 104 and 106 to 111 set out the further functions of the Chief Executive of Skills Funding, including a power to fund others to provide education or training within the Chief Executive's remit. Sections 112 to 121 contain provision about the exercise of the Chief Executive's functions, including powers of the Secretary of State to direct or give guidance to the Chief Executive.

Section 122 allows information sharing between bodies and persons replacing the LSC to enable or facilitate the exercise of their functions. It does not, however extend local education authorities' existing statutory powers to share information with each other.

Section 123 and Schedule 6 provide for the dissolution of the LSC and make minor and consequential amendments. Section 124 and Schedule 7 gives power to the Secretary of State to make one or more schemes to enable the transfer of staff and property from the LSC to various bodies.

Section 125 and Schedule 8 contain provisions for a new sixth form sector.

Section 193(2)(b) omits the reference to the LSC from the list of relevant partners set out in section 10 of the Children Act 2004.

Section 194 requires children's services authorities, as part of the arrangements made under section 10 of the Children Act 2004, to set up Children's Trust Boards and transfers the responsibility of preparing and reviewing a Children and Young People's Plan.

Sections 196 and 197 amend the Children Act 2004 so as to require each Local Safeguarding Board in England to include two representatives of the local community and permit an authority which establishes the Board to pay remunerations, allowances and expenses to these community representatives. Each Board is required to produce and publish a report at least once a year about safeguarding and promoting the welfare of children in its area and must send a copy of the report to the local Children's Trust Board.

Section 225 inserts three new sections into the Education Act 2005 in relation to the powers of the Chief Inspector and associated duties of schools. Most of the section was commenced on 12th January 2010. This Order commences the section to the extent that it inserts section 14A(3) into the Education Act 2005 requiring the Chief Inspector to ensure a copy of an interim statement is also sent to the YPLA.

Section 256 amends the Further and Higher Education Act 1992 to enable a further education corporation in England to provide advice and assistance to other persons, where it appears appropriate to do so, for the purpose of or in connection with the provision of education by those persons.

Section 266 introduces Schedule 16 which repeals certain provisions in other legislation. The repeals are necessary as a consequence of the various provisions set out in this Order coming into force.

Provisions coming into force on 6th April 2010

Section 40 inserts a new Part 6A (sections 63D to 63K) and two new sections (47F and 104E) into the Employment Rights Act 1996. These new sections introduce a right for qualifying employees to make an application to their employers in relation to study and training - "time to train".

Schedule 1 makes amendments to other legislation which are consequential on this new statutory right.

These provisions are brought into force for all purposes except in relation to small employers and their employees (as defined in Schedule 3).

Provisions coming into force on 19th April 2010

Sections 206 to 224 create a new scheme for complaints by parents and pupils and replaces the Secretary of State's role in resolving these complaints with a new parents' and young persons' independent complaints service involving a Local Commissioner. This new scheme is brought into force for complaints against schools maintained by Barking and Dagenham London Borough Council, Cambridgeshire County Council, Medway Council and Sefton Council only.

Provisions coming into force on 1st September 2010

Sections 48 to 50 and 52 of the Act set out new responsibilities local education authorities will have in relation to education and training for children and young people subject to detention in relevant youth accommodation. This Order brings into force sections 48 to 50 (fully) in relation to certain persons detained in young offender institutions in England, or in part of any such institution (other than Ashfield Young Offender Institution in South Gloucestershire). Sections 49 and 50 are also brought into force partially for all other institutions that are relevant youth accommodation.

Section 49 of the Act reverses the effect of section 562 of the Education Act 1996 for children and young people detained in relevant youth accommodation (therefore, functions of local education authorities, the Secretary of State, and parents under that Act will generally apply towards such persons).

Section 51 amends the Crime and Disorder Act 1998 and puts a duty on youth offending teams to notify certain local authorities when a person is detained in, transferred in, or released from, relevant youth accommodation. Section 52 inserts a new section 312A into the Education Act 1996.

Sections 242 and 244 apply to England only. They re-enact existing powers for a head teacher or authorised member of school staff in England; or a principal or authorised member of college staff of an institution in England to search a pupil or student or their possessions without consent for knives, blades and other offensive weapons and extend these powers to enable searches to be undertaken without consent for controlled drugs, alcohol and stolen property. There is a power to make regulations to add to the list of "prohibited items" which may be searched for. Provision is also made for the confiscation and disposal of prohibited items.

Sections 243 and 245 make consequential amendments to apply the current law to Wales only. Members of staff in schools and in colleges in Wales will continue to have powers to search for weapons only as set out in the Education Act 1996 and the Further and Higher Education Act 1992.

Sections 246 and 247 insert new sections into the Education and Inspections Act 2006 and the Further and Higher Education Act 1992 requiring governing bodies of schools in England and governing bodies of institutions within the FE sector in England (including sixth form colleges) to ensure that a procedure is in place for the recording of significant incidents where a member of staff has used force on a pupil or student and the reporting of such incidents to parents or to the local authority. There is also a requirement to take reasonable steps to ensure that the procedure is followed by staff.

Section 248 places a duty on the governing body of a school in England and the proprietor of an Academy, city technology college or city college for the technology of the Arts in England to make arrangements to co-operate with at least one other relevant partner with a view to promoting good behaviour.

Section 249 changes the name of pupil referral units in England to “short stay schools” and gives the Secretary of State power to make a consequential amendment order as a result of this change. It also gives the Secretary of State power by regulations to make provision about the closure of short stay schools and to give directions to local authorities about the exercise of their functions in relation to short stay schools.

Section 250 amends section 43 of the Education Act 1997 by inserting new subsection (2ZA) and (2ZB) requiring schools to ensure that the programme of careers education includes information on apprenticeships.

Provisions coming into force on 6th April 2011

Section 40 of and Schedule 1 to the Act are brought fully into force (ie in respect of small employers).

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Sections 55 and 56	12th January 2010	2009/3317
Section 59 (partially)	12th January 2010	2009/3317
Section 112(1), (2) and (3)	12th January 2010	2009/3317
Section 125 (partially)	12th January 2010	2009/3317
Section 126	12th January 2010	2009/3317
Section 178(2)	12th January 2010	2009/3317
Section 193 save for subsection (2)(b)	12th January 2010	2009/3317
Section 195	12th January 2010	2009/3317
Section 202(1) and (2)	12th January 2010	2009/3317
Sections 203 and 204	12th January 2010	2009/3317
Section 225 (partially)	12th January 2010	2009/3317
Section 226	12th January 2010	2009/3317
Sections 227 to 241	12th January 2010	2009/3317
Sections 251 to 253	12th January 2010	2009/3317
Sections 254 and 255	12th January 2010	2009/3317
Sections 257 and 258	12th January 2010	2009/3317
Section 261	12th January 2010	2009/3317
Section 266 (partially)	12th January 2010	2009/3317
Schedule 2, paragraphs 1 to 9 (partially) and paragraph 10	12th January 2010	2009/3317
Schedule 8 paragraphs 1, 3 and 11 (partially) and paragraphs 12 to 14	12th January 2010	2009/3317
Schedule 13	12th January 2010	2009/3317
Schedule 15	12th January 2010	2009/3317
Schedule 16 (partially)	12th January 2010	2009/3317

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Order 2010

£5.50