



# Education and Skills Act 2008

## 2008 CHAPTER 25

VALID FROM 28/06/2013

### PART 1

#### DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

### CHAPTER 1

#### YOUNG PERSONS

##### *Duty to participate in education or training*

#### **1 Persons to whom Part 1 applies**

This Part applies to any person who is resident in England and who—

- (a) has ceased to be of compulsory school age,
- (b) has not reached the age of 18, and
- (c) has not attained a level 3 qualification (see section 3).

PROSPECTIVE

#### **2 Duty to participate in education or training**

(1) A person to whom this Part applies must—

- (a) be participating in appropriate full-time education or training (see section 4),
- (b) be participating in training in accordance with a contract of apprenticeship [<sup>F1</sup>or an apprenticeship agreement], or
- (c) both—

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- (i) be in full-time occupation (see section 5), and
  - (ii) participate in sufficient relevant training or education in each relevant period (see sections 6 to 8).
- (2) For the purposes of this Part, a person who is in full-time occupation is to be taken to be participating in sufficient relevant training or education at any particular time if—
- (a) arrangements have been made (whether by means of enrolment on a course or courses, or otherwise) for the person to receive sufficient relevant training or education during the current relevant period, and
  - (b) where the arrangements call for the person to be participating in training or education at the time, the person is so participating.

#### Textual Amendments

- F1** Words in s. 2(1)(b) inserted (6.4.2011) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), ss. **37(2)**, 269(4); S.I. 2011/200, art. 3

#### *Interpretation*

### 3 Level 3 qualification

- (1) In this Part, “level 3 qualification” means a prescribed <sup>F2</sup>... qualification, or [<sup>F3</sup>a qualification] of a prescribed description, at level 3.
- (2) For this purpose, level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects.
- (3) A qualification, or description of qualification, prescribed under subsection (1) may be prescribed by reference to an assessment made by the [<sup>F4</sup>Office of Qualifications and Examinations Regulation (in this Part referred to as “Ofqual”)] of the level of attainment demonstrated by a qualification; and for that purpose regulations under subsection (1) may confer a function (which may include the exercise of a discretion) on [<sup>F5</sup>Ofqual].
- <sup>F6</sup>(4) .....
- (5) The Secretary of State may by order amend subsection (2) so as to substitute a different qualification for the qualification for the time being referred to.

#### Textual Amendments

- F2** Word in s. 3(1) omitted (24.5.2013) by virtue of [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Part 1 of the Education and Skills Act 2008\) Order 2013 \(S.I. 2013/1242\)](#), arts. 1, **2(2)(a)(i)**
- F3** Words in s. 3(1) substituted (24.5.2013) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Part 1 of the Education and Skills Act 2008\) Order 2013 \(S.I. 2013/1242\)](#), arts. 1, **2(2)(a)(ii)**
- F4** Words in s. 3(3) substituted (24.5.2013) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Part 1 of the Education and Skills Act 2008\) Order 2013 \(S.I. 2013/1242\)](#), arts. 1, **2(2)(b)(i)**

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**F5** Word in s. 3(3) substituted (24.5.2013) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Part 1 of the Education and Skills Act 2008\) Order 2013 \(S.I. 2013/1242\)](#), arts. 1, [2\(2\)\(b\)\(ii\)](#)

**F6** S. 3(4) omitted (24.5.2013) by virtue of [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments to Part 1 of the Education and Skills Act 2008\) Order 2013 \(S.I. 2013/1242\)](#), arts. 1, [2\(2\)\(c\)](#)

#### Modifications etc. (not altering text)

**C1** Pt. 1 Ch. 1 modified (28.6.2013) by [The Duty to Participate in Education or Training \(Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/1205\)](#), regs. 1(1), [8](#)

#### Commencement Information

**II** S. 3 in force at 28.6.2013 by [S.I. 2013/1204](#), [art. 2\(c\)](#)

## 4 Appropriate full-time education or training

(1) In this Part, “appropriate full-time education or training”, in relation to a person, means full-time education or training which is suitable for the person, having regard—

- (a) to the person's age, ability and aptitude, and
- (b) to any learning difficulty which the person may have,

and is provided at a school, at a college of further education, at an institution within the higher education sector or otherwise.

(2) Regulations may provide that a particular description of—

- (a) education provided otherwise than at a school, or
- (b) training,

is, or is not, to be treated as being “full-time” for the purposes of this section.

(3) [<sup>F7</sup>Subsections (6) and (7) of section 15ZA of the Education Act 1996] (persons with learning difficulties) apply for the purposes of this section.

#### Textual Amendments

**F7** Words in s. 4(3) substituted (1.4.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments\) \(England and Wales\) Order 2010 \(S.I. 2010/1080\)](#), art. 1(2)(a), [Sch. 1 para. 75](#) (with art. 2(3))

## 5 Full-time occupation

(1) For the purposes of this Part, a person is in full-time occupation if the person works for at least 20 hours per week—

- (a) under a contract of employment, or
  - (b) in any other way which may be prescribed,
- otherwise than under a short-term contract or arrangement.

(2) The power conferred by subsection (1)(b) includes, in particular, power to prescribe the following ways of working—

- (a) as a self-employed person,
- (b) otherwise than for reward, or

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(c) as the holder of an office.

(3) For the purposes of this section, the number of hours for which a person works per week is—

- (a) the number of the person's normal weekly working hours, less
- (b) the number of hours of actual guided learning—
  - (i) which constitute relevant training or education, and
  - (ii) in which the young person participates each week during normal weekly working hours.

(4) In subsection (3)—

normal weekly working hours—

- (a) in relation to a person employed under a contract of employment, means the person's normal working hours in a week, and
- (b) in relation to a person working in a way prescribed under subsection (1) (b), has the prescribed meaning;

“actual guided learning” has the meaning given by section 8(3).

(5) Section 234 of the Employment Rights Act 1996 (c. 18) (construction of references to normal working hours where employee entitled to overtime pay) applies for the purposes of the definition of “normal weekly working hours” in subsection (4) as it applies for the purposes of that Act.

(6) Regulations may make provision for a person to be, or not to be, treated as working for at least 20 hours per week in cases where the number of hours for which the person works per week (calculated under subsection (3)) varies from week to week.

(7) Where a person works otherwise than under—

- (a) a single contract of employment, or
- (b) a single arrangement (in the case of a way of working prescribed under subsection (1)(b)),

the number of hours for which the person works per week is the aggregate of the amounts calculated under subsection (3) in relation to each of the contracts or arrangements under which the person works.

(8) For the purposes of subsection (1)—

- (a) a contract of employment is a short-term contract unless it—
  - (i) has a fixed term of 8 weeks or longer, or
  - (ii) does not have a fixed term but has been, or can reasonably be expected to be, in force for at least 8 weeks;
- (b) an arrangement, in the case of a way of working prescribed under paragraph (b) of that subsection, is a short-term arrangement unless it has been, or can reasonably be expected to be, in force for at least 8 weeks.

## **6 Relevant training or education**

(1) In this Part, “relevant training or education” means training or education towards an accredited qualification provided by a course or courses.

(2) For this purpose, “accredited qualification” means a qualification which has been accredited by the Qualifications and Curriculum Authority under section 24(2)(g)

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of the Education Act 1997 (c. 44) (functions of the Authority in relation to external vocational and academic qualifications).

## 7 Relevant period

- (1) In this Part, “relevant period”, in relation to a person, means a period beginning with a start date and ending with the next end date.
- (2) The following are start dates for the purposes of subsection (1)—
  - (a) a date on which subsection (4) starts to apply to the person;
  - (b) the date immediately following the end of a relevant period (if on that date that subsection still applies to the person).
- (3) The following are end dates for the purposes of subsection (1)—
  - (a) a prescribed date;
  - (b) a date on which subsection (4) ceases to apply to the person.
- (4) This subsection applies to a person at any time when—
  - (a) this Part applies to the person, and
  - (b) the person is not participating in education or training in accordance with section 2(1)(a) or (b).

## 8 Sufficient relevant training or education

- (1) For the purposes of this Part, relevant training or education is “sufficient” in relation to any relevant period if it amounts in aggregate to—
  - (a) at least 280 hours of guided learning, in the case of a relevant period which is one year;
  - (b) such number of hours of guided learning as is determined in accordance with regulations, in the case of any other relevant period.
- (2) For the purposes of this Part, a person participates in a particular number of hours of guided learning by—
  - (a) participating in actual guided learning for that number of hours, or
  - (b) completing a course or courses which can reasonably be expected to be adequate to enable persons completing it or them to achieve any standard required to attain an accredited qualification to which that number of hours of guided learning has been assigned.
- (3) In subsection (2)—

“accredited qualification” has the meaning given by section 6(2);

“actual guided learning”, in relation to a person, means time the person spends—

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

“assigned” means assigned by the Qualifications and Curriculum Authority under subsection (2)(g) of section 24 of the Education Act 1997

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(c. 44) (functions of the Authority in relation to external vocational and academic qualifications) by virtue of subsection (2B) of that section.

(4) Regulations may make provision for attributing to any relevant period a number of hours of guided learning in which a person participates (or is treated by the regulations as participating) by virtue of subsection (2)(b) in cases where courses do not begin and end during a single relevant period.

PROSPECTIVE

**F89 Assignment of numbers of hours of guided learning to external qualifications**

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**Textual Amendments**

**F8** S. 9 repealed (31.5.2013) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), s. 269(4), [Sch. 16 Pt. 4](#); S.I. 2013/975, art. 2(c) (with art. 3)

**CHAPTER 2**

LOCAL EDUCATION AUTHORITIES AND EDUCATIONAL INSTITUTIONS ETC

*Duty to promote fulfilment of duty imposed by section 2*

**10 [F9local authority] to promote fulfilment of duty imposed by section 2**

A [F9local authority] in England must ensure that its functions are (so far as they are capable of being so exercised) exercised so as to promote the effective participation in education or training of persons belonging to its area to whom this Part applies with a view to ensuring that those persons fulfil the duty imposed by section 2.

**Textual Amendments**

**F9** 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. 15\(2\)](#)

*Duty to promote good attendance*

**11 Educational institutions: promotion of good attendance**

(1) The governing body of an institution in England to which this section applies must exercise its functions (so far as they are capable of being so exercised) so as to promote the participation, through regular attendance, of persons to whom this Part applies and for whom the institution provides education or training in that education or training.

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(2) This section applies to—

- (a) a community, foundation or voluntary school;
- (b) a community or foundation special school;
- (c) a pupil referral unit;
- (d) an institution within the further education sector.

(3) For the purposes of this section, governing body—

- (a) in relation to a pupil referral unit maintained by a [<sup>F9</sup>local authority] , means any management committee established for the unit by virtue of paragraph 15 of Schedule 1 to the Education Act 1996 (c. 56) or, if there is no such committee, the authority, and
- (b) 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 (c. 13).

#### Textual Amendments

- F9** 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. 15(2)**

#### *Duty to identify persons not fulfilling duty imposed by section 2*

### **12 Duty to make arrangements to identify persons not fulfilling duty imposed by section 2**

A local education authority in England must make arrangements to enable it to establish (so far as it is possible to do so) the identities of persons belonging to its area to whom this Part applies but who are failing to fulfil the duty imposed by section 2.

#### *Information*

VALID FROM 26/05/2015

### **13 Notification of non-compliance with duty imposed by section 2**

(1) Where—

- (a) arrangements have been made for a person to whom this Part applies to participate in education or training provided by an educational institution in England,
- (b) the person is not participating in that education or training at a time when the arrangements call for the person to be so participating, and
- (c) the responsible person has reasonable cause to believe that in consequence of that failure to participate the person is failing to fulfil the duty imposed by section 2,

the responsible person must give notice to the appropriate service provider of those circumstances.

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- (2) Where a [<sup>F9</sup>local authority]—
- (a) itself provides services in exercise of its functions under section 68(1), and
  - (b) receives a notice under subsection (1) relating to a person to whom this Part applies who belongs to the area of another [<sup>F9</sup>local authority],
- it must as soon as reasonably practicable give notice to the service provider for the other [<sup>F9</sup>local authority] of the circumstances notified to it under subsection (1).
- (3) Subsection (4) applies where, in exercise of its functions under section 68(3)(b), a [<sup>F9</sup>local authority] makes arrangements with another person (“ the provider ”) for the provision of services.
- (4) The arrangements must secure that, as soon as reasonably practicable after receiving a notice under subsection (1) relating to a person to whom this Part applies who belongs to the area of another [<sup>F9</sup>local authority], the provider gives notice to the service provider for the other [<sup>F9</sup>local authority] of the circumstances notified to the provider under subsection (1).
- (5) In this section—
- “ educational institution ” means—
- (a) a community, foundation or voluntary school,
  - (b) a community or foundation special school,
  - (c) a city technology college, a city college for the technology of the arts or an Academy,
  - (d) a pupil referral unit,
  - (e) an institution within the further education sector, or
  - (f) an institution [<sup>F10</sup>(other than one within any of paragraphs (a) to (e)) in receipt of funding from a local authority [<sup>F11</sup>or the Secretary of State]];
- “ responsible person ” means—
- (a) in relation to a school within paragraph (a) or (b) of the definition of “ educational institution ”, the governing body;
  - (b) in relation to an institution within paragraph (c) or (f) of that definition, the proprietor;
  - (c) in relation to a pupil referral unit, the [<sup>F9</sup>local authority] by which it is maintained;
  - (d) in relation to an institution within the further education sector, the governing body within the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13);
- “ service provider ”, in relation to a [<sup>F9</sup>local authority], means—
- (a) where the authority itself provides services in exercise of its functions under subsection (1) of section 68, the authority;
  - (b) where, in exercise of its functions under subsection (3)(b) of that section, the authority makes arrangements for the provision of services, the person providing those services;
- “ the appropriate service provider ”, in relation to an educational institution, means the service provider of the [<sup>F9</sup>local authority] in whose area the institution is situated.



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### Textual Amendments

- F9** 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. 15(2)**
- F10** Words in s. 13(5) substituted (1.4.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments\) \(England and Wales\) Order 2010 \(S.I. 2010/1080\)](#), art. 1(2)(a), **Sch. 1 para. 76** (with art. 2(3))
- F11** Words in s. 13(5) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(g), **Sch. 14 para. 61**

### Commencement Information

- I2** S. 13 in force at 28.6.2013 by [S.I. 2013/1204](#), **art. 2(1)**

## 14 Educational institutions: duty to provide information

- (1) Relevant information about a pupil or student—
- who is attending an educational institution in England, and
  - to whom this Part applies,
- must, on request by a local education authority in England, be provided by the responsible person to the authority.
- (2) A local education authority may request information under subsection (1) only for the purpose of enabling or assisting it to exercise its functions under this Part.
- (3) For the purpose of subsection (1), “relevant information” means—
- the name, address and date of birth of the pupil or student;
  - the name and address of a parent of the pupil or student;
  - information in the institution's possession about the pupil or student.
- (4) Information within subsection (3)(c) must not be provided under subsection (1) if—
- the pupil or student concerned, in the case of a pupil or student who has attained the age of 16, or
  - a parent of the pupil or student concerned, in the case of a pupil or student who has not attained the age of 16,
- has instructed the responsible person not to provide information of that kind under this section.
- (5) In this section, “educational institution” and “responsible person” have the same meanings as in section 13.

PROSPECTIVE

## <sup>F12</sup> 15 Supply of social security information

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### Textual Amendments

**F12** S. 15 repealed (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. 254(2), 269(4), **Sch. 16 Pt. 10**; S.I. 2009/3317, art. 2, Sch.

## 16 Supply of information by public bodies

- (1) Any of the persons or bodies mentioned in subsection (2) may supply information about a person to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under this Part.
- (2) Those persons and bodies are—
- (a) a local authority,
  - (b) the Learning and Skills Council for England,
  - (c) a Primary Care Trust,
  - (d) a Strategic Health Authority,
  - (e) a chief officer of police,
  - (f) a provider of probation services,
  - (g) a local probation board, and
  - (h) a youth offending team.
- (3) In this section—
- “local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);
- “youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).

### **[F9]17 Sharing and use of information held for purposes of support services or functions under this Part**

- (1) Any persons within subsection (2) may <sup>[F13]</sup>—
- (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).]
- (2) Those persons are—
- (a) a <sup>[F9]</sup>local authority] in England, and
  - (b) a service provider of that authority.
- (3) Information provided under subsection (1) may only be used by the person to whom it is provided for a purpose which is a relevant purpose in relation to that person.
- (4) A <sup>[F9]</sup>local authority] in England may use relevant information held by it for any relevant purpose.
- (5) A <sup>[F9]</sup>local authority] in England may provide relevant information to any other such authority for a purpose which is a relevant purpose in relation to that other authority.
- (6) A service provider of a <sup>[F9]</sup>local authority] in England may provide relevant information to any other service provider of that or any other such authority for a purpose which is a relevant purpose in relation to that other service provider.

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(7) In this section—

“ relevant information ”, in relation to a person providing or holding information, means information which—

- (a) is held by the person for a relevant purpose, and
- (b) is about a young person or a relevant young adult in England;

[<sup>F14</sup>but does not include information provided under section 72 of the Welfare Reform and Pensions Act 1999;]

relevant purpose—

- (a) in relation to a [<sup>F9</sup>local authority], means the purpose of, or a purpose connected with, the exercise of any function of the authority—
  - (i) under this Part, or
  - (ii) under or by virtue of sections 68 to 78;
- (b) in relation to a service provider of a [<sup>F9</sup>local authority] (other than the authority in question), means the purpose of providing services of the kind mentioned in section 68(1);

“ service provider ”, in relation to a [<sup>F9</sup> local authority ] in England, means

- (a) where the authority itself provides services in exercise of its functions under subsection (1) of section 68, the authority;
- (b) where, in exercise of its functions under subsection (3)(b) of that section, the authority makes arrangements for the provision of services, the person providing those services.

(8) In subsection (7)—

- (a) “ young person ” means a person who has attained the age of 13 but not the age of 20, and
- (b) “ relevant young adult ” means a person who—
  - (i) has attained the age of 20 but not the age of 25, and
  - (ii) has a learning difficulty;
 and [<sup>F15</sup>subsections (6) and (7) of section 15ZA of the Education Act 1996] (construction of references to learning difficulties) apply for this purpose.

[<sup>F16</sup>(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.]]

### Textual Amendments

- F9** 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. 15(2)**
- F13** Words in s. 17(1) substituted (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 254(4), 269(4)**; S.I. 2009/3317, art. 2, Sch.
- F14** Words in s. 17(7) inserted (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 254(5), 269(4)**; S.I. 2009/3317, art. 2, Sch.
- F15** Words in s. 17(8) substituted (1.4.2010) by The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments) (England and Wales) Order 2010 (S.I. 2010/1080), art. 1(2)(a), **Sch. 1 para. 78** (with art. 2(3))
- F16** S. 17(9) added (12.1.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), **ss. 254(6), 269(4)**; S.I. 2009/3317, art. 2, Sch.

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### *Guidance*

#### **18 Guidance**

In exercising its functions under this Part, a local education authority must have regard to any guidance given by the Secretary of State.

### **CHAPTER 3**

#### EMPLOYERS

PROSPECTIVE

### *Interpretation*

#### **19 Contracts to which Chapter applies**

- (1) In this Chapter, “relevant contract of employment” means a contract of employment—
- (a) under which the employee is required to work for at least 20 hours per week,
  - (b) which—
    - (i) has a fixed term of 8 weeks or longer, or
    - (ii) does not have a fixed term but can reasonably be expected to be, or has been, in force for at least 8 weeks, and
  - (c) under which the place of work, or one of the places where the employee may be required to work, is in England.
- (2) But a contract is not a “relevant contract of employment” if—
- (a) the employer has undertaken to provide the employee with sufficient relevant training or education in each relevant period, and
  - (b) by virtue of the contract, the employee is in full-time occupation for the purposes of this Part.

#### **20 Appropriate arrangements**

- (1) For the purposes of this Chapter, a person to whom this Part applies has made appropriate arrangements for training or education if—
- (a) the person has enrolled on a course or courses constituting relevant training or education (or arrangements have otherwise been made for the person to receive relevant training or education), or
  - (b) the person is participating in full-time education or training.
- (2) References in this Chapter to appropriate arrangements made by the person are to the arrangements (of whatever kind and whether or not made by the person) for the person to receive the training or education in question.

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PROSPECTIVE

*Commencement of employment*

**21 Appropriate arrangements to be in place before employment begins**

- (1) A person must not, as employer, enter into a relevant contract of employment with a person to whom this Part applies without being satisfied, having taken all such steps as are reasonable to ascertain, that the person has made appropriate arrangements for training or education.
- (2) In the case of a relevant contract of employment which provides for commencement of the employment to be conditional on the employee's having made such arrangements—
  - (a) subsection (1) does not apply, but
  - (b) the employer must not permit the employment to commence, at a time when the employee is a person to whom this Part applies, without being satisfied, having taken all such steps as are reasonable to ascertain, that the employee has made appropriate arrangements for training or education.
- (3) Failure to comply with this section in relation to a contract of employment is not to be taken to affect the validity of the contract.

**22 Financial penalty for contravention of section 21**

- (1) Where a relevant [F9]local authority] is satisfied that a person (“the employer”) has contravened section 21, the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.
- (2) The amount of the financial penalty is to be determined in accordance with regulations.
- (3) A penalty notice must state—
  - (a) particulars of the contravention of section 21 in respect of which the penalty is imposed,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given),
  - (e) the steps that the employer may take if the employer objects to the giving of the penalty notice, including how the employer may appeal against it, and
  - (f) the consequences of non-payment.
- (4) For the purposes of subsection (1), a [F9]local authority] is a relevant [F9]local authority] in relation to a contract of employment under which a person to whom this Part applies is employed if—
  - (a) the person belongs to the authority's area, or
  - (b) the person's place of work, or one of the places at which the person works, under the contract is in the authority's area.

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- (5) Without prejudice to section 166(6), regulations under subsection (2) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).

#### Textual Amendments

- F9** 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. 15(2)**

### 23 **Withdrawal or variation of penalty notice given under section 22 following notice of objection**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 by a <sup>F9</sup>local authority].
- (2) The employer may, by giving notice (a “notice of objection”) to the authority, object to the giving of the penalty notice on either or both of the following grounds—
- (a) that the employer did not commit the contravention of section 21 stated in the penalty notice;
  - (b) that the amount of the penalty stated in the penalty notice is too high.
- (3) A notice of objection—
- (a) may be given to the authority only during the period of 2 weeks beginning with the day on which the penalty notice was given to the employer, and
  - (b) must state the grounds of the objection and the employer's reasons for objecting on those grounds.
- (4) A <sup>F9</sup>local authority] must consider a notice of objection given under subsection (2) and, by giving notice (a “determination notice”) to the employer—
- (a) withdraw the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 22(2) is smaller than the amount stated in the penalty notice, replace the penalty with the smaller amount, or
  - (c) confirm the penalty notice.
- (5) The determination notice must be given within the prescribed period beginning with the day on which the notice of objection was given.
- (6) Where, under subsection (4)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.

#### Textual Amendments

- F9** 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. 15(2)**

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## **24 Appeal against penalty notice given under section 22**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 and—
  - (a) the period during which a notice of objection may be given in relation to the penalty notice has expired, and
  - (b) if a notice of objection has been given in relation to the penalty notice, a determination notice has been given in relation to the notice of objection.
- (2) The employer may appeal to the First-tier Tribunal against the giving of the penalty notice on one or more of the following grounds—
  - (a) that the employer did not contravene section 21 in the way stated in the penalty notice;
  - (b) that the circumstances of the contravention of section 21 stated in the penalty notice make the giving of the notice unreasonable;
  - (c) that the amount of the penalty stated in the penalty notice is too high.
- (3) On an appeal under this section, the First-tier Tribunal may—
  - (a) allow the appeal and cancel the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 22(2) is smaller than the amount stated in the penalty notice, allow the appeal and replace the penalty with the smaller amount, or
  - (c) dismiss the appeal.
- (4) Where, under subsection (3)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.
- (5) In subsection (1), “notice of objection” and “determination notice” have the same meanings as in section 23.

## **25 Further power to withdraw penalty notice given under section 22**

- (1) This section applies where—
  - (a) a penalty notice has been given to a person (“the employer”) under section 22 by a [<sup>F9</sup>local authority], and
  - (b) any appeal made under section 24 in respect of the penalty notice has not been determined.
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer.

### **Textual Amendments**

- F9** 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. 15\(2\)](#)

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## **26 Withdrawal or variation of penalty notice given under section 22: further provisions**

- (1) If a penalty notice is withdrawn under section 23 or 25, any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (2) If the amount of a penalty is reduced under section 23, any sum already paid or recovered must, to the extent that it was paid or recovered in respect of any amount in excess of the reduced amount, be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (3) In this section “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

PROSPECTIVE

*Employer to enable participation in education or training*

## **27 Duty to enable participation: initial arrangements**

- (1) This section applies where—
  - (a) a person to whom this Part applies is employed under a relevant contract of employment, and
  - (b) before commencement of the employment the person notified the employer in accordance with subsection (3) of appropriate arrangements which the person had made.
- (2) The employer must permit the employee to participate in training or education in accordance with those appropriate arrangements.
- (3) A person notifies an employer (or a prospective employer) of appropriate arrangements in accordance with this subsection by giving a notice which—
  - (a) specifies the arrangements,
  - (b) states the times when the person would need to be not at work in order to participate in training or education in accordance with those arrangements, and
  - (c) if so required under subsection (4), is given in writing.
- (4) Such a notice need not be given in writing, but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing.
- (5) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (3)(b) which falls during normal working time, for the employer—
  - (a) if the contract was entered into before the notice was given, to offer to vary the terms and conditions of the contract of employment so as to secure that that time does not fall during normal working time, or
  - (b) in any case, to permit the employee to take that time off.



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- (6) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

## **28 Duty to enable participation: arrangements subsequently notified**

- (1) This section applies where—
- (a) a person to whom this Part applies is employed under a relevant contract of employment, and
  - (b) after commencement of the employment the person notifies the employer in accordance with subsection (4) of appropriate arrangements which the person has made.
- (2) The employer must, so far as is reasonable having regard to the matters mentioned in subsection (3), permit the person to participate in training or education in accordance with those appropriate arrangements.
- (3) Those matters are—
- (a) the needs of the person in order to fulfil the duty imposed by section 2;
  - (b) the circumstances of the employer's business;
  - (c) the effect of the person's absence from work on the running of that business.
- (4) A person notifies an employer of appropriate arrangements in accordance with this subsection by giving a notice which—
- (a) specifies the arrangements,
  - (b) states the times when the employee needs to be not at work in order to participate in education or training in accordance with those arrangements, and
  - (c) if so required under subsection (5), is given in writing.
- (5) Such a notice need not be given in writing but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing.
- (6) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (4)(b) which falls during normal working time, for the employer—
- (a) to offer to vary the terms and conditions of the contract of employment so as to secure that, so far as is reasonable having regard to the matters mentioned in subsection (3), that time does not fall during normal working time, or
  - (b) so far as is reasonable having regard to those matters, to permit the employee to take that time off.
- (7) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

## **29 Sections 27 and 28: extension for person reaching 18**

- (1) This section applies where—

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- (a) a person to whom this Part applies is employed under a relevant contract of employment,
  - (b) the person reaches the age of 18, and
  - (c) at that time the person is participating in a course of education or training for the purpose of fulfilling the duty imposed by section 2.
- (2) The person is to continue to be treated, for the purposes of sections 27, 28 and 30 to 36, as a person to whom this Part applies until one of the following occurs—
- (a) the course of education or training concludes;
  - (b) the person reaches the age of 19;
  - (c) the person ceases to be resident in England;
  - (d) the person attains a level 3 qualification.

### **30 Contravention of section 27 or 28: enforcement notice**

- (1) This section applies where a person to whom this Part applies is employed under a relevant contract of employment.
- (2) Where a relevant local education authority in England is satisfied that the employer has contravened section 27 or 28, the authority may give the employer a notice (an “enforcement notice”).
- (3) An “enforcement notice” means a notice requiring the employer to take such steps as are specified in the notice.
- (4) The steps that may be specified in the notice are—
- (a) to offer to vary the terms and conditions of employment in the manner specified in the notice;
  - (b) to permit the employee to take time off during normal working time at the times specified in the notice.
- (5) But—
- (a) any variation specified under subsection (4)(a) must be a variation only for the purpose of securing that normal working time does not include any time when, in order to be able to participate in education or training in accordance with appropriate arrangements notified to the employer under section 27(1)(b) or 28(1)(b), the employee needs to be not at work;
  - (b) any time specified under subsection (4)(b) must be a time when the employee needs to be not at work in order to participate in education or training in accordance with appropriate arrangements so notified to the employer;
  - (c) in the case of an enforcement notice given in respect of a contravention of section 28, any steps specified in the notice must be steps which it would be reasonable for the employer to take having regard to the matters mentioned in subsection (3) of that section.
- (6) An enforcement notice must also specify—
- (a) particulars of the contravention of section 27 or 28 in respect of which the notice is given, and
  - (b) the consequences of failure to comply with any requirement imposed by it.
- (7) Where an enforcement notice requires the employer to offer to vary the terms and conditions of employment under subsection (4)(a)—

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- (a) the employer must make the offer within the time specified in the notice,
  - (b) the employer's offer must not be made directly or indirectly conditional on the employee's agreeing to any other variation of the terms and conditions of employment, and
  - (c) if the employee accepts the employer's offer to vary the terms and conditions of employment, those terms and conditions have effect subject to the variation (but subject to any subsequent variation that may be agreed between the employer and employee).
- (8) Where an enforcement notice requires the employer, under subsection (4)(b), to permit the employee to take time off at specified times during normal working time, the enforcement notice remains in force until—
- (a) the last of the times so specified, or
  - (b) if earlier, the termination of the contract of employment.
- (9) For the purposes of subsection (2), a local education authority is a relevant local education authority in relation to a contract of employment under which a person to whom this Part applies is employed if—
- (a) the person belongs to the authority's area, or
  - (b) the person's place of work, or one of the places at which the person works, under the contract is in the authority's area.
- (10) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

### **31 Financial penalty for non-compliance with enforcement notice given under section 30**

- (1) This section applies where a local education authority has given an enforcement notice to a person (“the employer”) under section 30.
- (2) Where the local education authority is satisfied—
- (a) that the employer has failed to comply with the notice, or
  - (b) in the case of an enforcement notice requiring the employer to offer to vary the terms and conditions of employment by virtue of section 30(4)(a), the employee has agreed to the variation but the employer has failed to give effect to the variation,
- the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.
- (3) The amount of the financial penalty is to be determined in accordance with regulations.
- (4) A penalty notice must state—
- (a) particulars of the failure by the employer in respect of which the penalty notice is given,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given),

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- (e) the steps that the employer may take if the employer objects to the giving of the penalty notice, including how the employer may appeal against it, and
- (f) the consequences of non-payment.

(5) Without prejudice to section 166(6), regulations under subsection (3) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).

### **32 Withdrawal of enforcement notice given under section 30**

(1) This section applies where—

- (a) an enforcement notice has been given to a person (“the employer”) under section 30 by a local education authority, and
- (b) if a penalty notice has been given in respect of the enforcement notice under section 31, any appeal made under section 34 in respect of the penalty notice has not been determined.

(2) The local education authority may withdraw the enforcement notice by giving notice of the withdrawal to the employer.

(3) After the withdrawal, no penalty notice may be given under section 31 in respect of—

- (a) any failure to comply with the enforcement notice, or
- (b) any failure to give effect to any variation of terms and conditions of employment required by the enforcement notice to be offered,

which occurred before the enforcement notice was withdrawn.

(4) Where an enforcement notice is withdrawn—

- (a) any penalty notice given under section 31 in respect of the enforcement notice ceases to have effect, and
- (b) any sum paid or recovered in respect of any such penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.

(5) In subsection (4)(b) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

(6) A notice of withdrawal under subsection (2) must state the effect of the withdrawal (but a failure to do so does not make the notice of withdrawal ineffective).

### **33 Withdrawal or variation of penalty notice given under section 31 following notice of objection**

(1) This section applies where a penalty notice has been given to a person (“the employer”) under section 31 by a local education authority in respect of a failure of a kind mentioned in subsection (2) of that section relating to an enforcement notice.

(2) The employer may, by giving notice (a “notice of objection”) to the authority, object to the giving of the penalty notice on one or more of the following grounds—

- (a) that the employer did not contravene section 27 or 28 in the way stated in the enforcement notice;
- (b) that the requirements imposed by the enforcement notice were unreasonable;
- (c) that the employer did not fail in the way stated in the penalty notice;

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- (d) that the amount of the penalty stated in the penalty notice is too high.
- (3) A notice of objection—
  - (a) may be given to the authority only during the period of 2 weeks beginning with the day on which the penalty notice was given to the employer, and
  - (b) must set out the grounds of the objection and the employer's reasons for objecting on those grounds.
- (4) A local education authority must consider a notice of objection given under subsection (2) and, by giving notice (a “determination notice”) to the employer—
  - (a) withdraw the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 31(3) is smaller than the amount stated in the penalty notice, replace the penalty with the smaller amount, or
  - (c) confirm the penalty notice.
- (5) The determination notice must be given within the prescribed period beginning with the day on which the notice of objection was given.
- (6) Where, under subsection (4)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.

#### **34 Appeal against penalty notice given under section 31**

- (1) This section applies where a penalty notice has been given to a person under section 31 in respect of a failure of a kind mentioned in subsection (2) of that section in relation to an enforcement notice and—
  - (a) the period during which a notice of objection may be given in relation to the penalty notice has expired, and
  - (b) if a notice of objection has been given in relation to the penalty notice, a determination notice has been given in relation to the notice of objection.
- (2) The person may appeal to the First-tier Tribunal against the giving of the penalty notice on one or more of the following grounds—
  - (a) that the person did not contravene section 27 or 28 in the way stated in the enforcement notice;
  - (b) that the circumstances of the contravention of section 27 or 28 stated in the enforcement notice make the giving of an enforcement notice under section 30 unreasonable;
  - (c) that the requirements imposed by the enforcement notice were unreasonable;
  - (d) that the person did not fail in the way stated in the penalty notice;
  - (e) that the circumstances of the failure stated in the penalty notice make the giving of the notice unreasonable;
  - (f) that the amount of the penalty stated in the penalty notice is too high.
- (3) On an appeal under this section, the First-tier Tribunal may—
  - (a) allow the appeal and cancel the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 31(3) is smaller than the amount stated in the penalty notice, allow the appeal and replace the penalty with the smaller amount, or
  - (c) dismiss the appeal.

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- (4) Where, under subsection (3)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.
- (5) In subsection (1), “notice of objection” and “determination notice” have the same meanings as in section 33.

### **35 Further power to withdraw penalty notice given under section 31**

- (1) This section applies where—
  - (a) a penalty notice has been given to a person (“the employer”) under section 31 by a local education authority, and
  - (b) any appeal made under section 34 in respect of the penalty notice has not been determined.
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer.

### **36 Withdrawal or variation of penalty notice given under section 31: further provisions**

- (1) If a penalty notice is withdrawn under section 33 or 35, any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (2) If the amount of a penalty is reduced under section 33, any sum already paid or recovered must, to the extent that it was paid or recovered in respect of any amount in excess of the reduced amount, be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (3) In this section “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

*Supplementary*

PROSPECTIVE

### **37 Right not to suffer detriment**

After section 47A of the Employment Rights Act 1996 (c. 18) insert—

#### **“47AA Employees in England aged 16 or 17 participating in education or training**

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a person entitled to be permitted to participate in education or training by section 27 or 28 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.

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(2) This section does not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).”

PROSPECTIVE

### 38 Dismissal to be treated as unfair

After section 101A of the Employment Rights Act 1996 insert—

#### “101B Participation in education or training

An employee who is dismissed shall 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, being a person entitled to be permitted to participate in education or training by section 27 or 28 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.”

### 39 Other amendments of Employment Rights Act 1996

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

(2) In section 63A (right to time off for young person for study or training), after subsection (5) insert—

“(5A) References in this section to an employee do not include 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 in England) applies, or is treated by section 29 of that Act (extension for person reaching 18) as applying.”;

and, in the title, after “young person” insert “ in Wales or Scotland ”.

(3) In section 105 (redundancy), after subsection (4A) insert—

“(4B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 101B.”

(4) In section 108 (qualifying period of employment), after subsection (3)(dd) insert—  
“(de) section 101B applies.”.

(5) In section 194 (House of Lords staff), in subsection (2)(c), after “47,” insert “ 47AA, ”.

(6) In section 195 (House of Commons staff), in subsection (2)(c), after “47,” insert “ 47AA, ”.

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PROSPECTIVE

## CHAPTER 4

### PARENTING CONTRACTS AND PARENTING ORDERS

#### 40 Parenting contracts

- (1) This section applies where a person to whom this Part applies (“the young person”) is failing to fulfil the duty imposed by section 2.
- (2) A local education authority in England may enter into a parenting contract with a parent of the young person—
  - (a) if the parent is resident in England, and
  - (b) the authority considers that entering into the parenting contract would be desirable in the interests of the young person's fulfilment of that duty.
- (3) A parenting contract is a document which contains—
  - (a) a statement by the parent that the parent agrees to comply with such requirements as may be specified in the document for such period as may be so specified, and
  - (b) a statement by the local education authority that it agrees to provide support to the parent for the purpose of complying with those requirements.
- (4) The requirements mentioned in subsection (3) may include (in particular) a requirement to attend a counselling or guidance programme.
- (5) A parenting contract must be signed by the parent and signed on behalf of the local education authority.
- (6) A parenting contract does not create any obligations in respect of whose breach any liability arises in contract or in tort.

#### 41 Parenting orders

- (1) This section applies where a person to whom this Part applies (“the young person”) is failing to fulfil the duty imposed by section 2.
- (2) A local education authority in England may apply to a magistrates' court for a parenting order in respect of a parent of the young person, if the parent is resident in England.
- (3) If such an application is made, the court may make a parenting order in respect of the parent if it is satisfied that—
  - (a) the young person is failing to fulfil the duty imposed by section 2, and
  - (b) the making of the order would be desirable in the interests of the young person's fulfilment of that duty.
- (4) A parenting order is an order which requires the parent—
  - (a) to comply, for a period not exceeding 12 months, with such requirements as are specified in the order, and



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(b) subject to subsection (5), to attend, for a concurrent period not exceeding 3 months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

(5) A parenting order under this section may, but need not, include a requirement mentioned in subsection (4)(b) in any case where a parenting order under this section or any other enactment has been made in respect of the parent on a previous occasion.

(6) A counselling or guidance programme which a parent is required to attend by virtue of subsection (4)(b) may be or include a residential course but only if the court is satisfied that the following two conditions are fulfilled.

(7) The first condition is that the attendance of the parent at a residential course is likely to be more effective than attendance at a non-residential course in the interests of the young person's fulfilment of the duty imposed by section 2.

(8) The second condition is that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

#### **42 Parenting orders: supplemental**

(1) In deciding whether to make a parenting order under section 41, a court must take into account (amongst other things)—

(a) any refusal by the parent to enter into a parenting contract under section 40 in respect of the person to whom this Part applies, or

(b) if the parent has entered into such a parenting contract, any failure by the parent to comply with the requirements specified in the contract.

(2) Subsections (3) to (7) of section 9 of the Crime and Disorder Act 1998 (c. 37) (supplemental provisions about parenting orders) apply in relation to a parenting order under section 41 as they apply in relation to a parenting order under section 8 of that Act.

#### **43 Parenting orders: appeals**

(1) An appeal lies to the Crown Court against the making of a parenting order under section 41.

(2) Subsections (2) and (3) of section 10 of the Crime and Disorder Act 1998 (appeals against parenting orders) apply in relation to an appeal under this section as they apply in relation to an appeal under subsection (1)(b) of that section.

#### **44 Parenting contracts and parenting orders: further provisions**

(1) [<sup>F9</sup>local authorities] in England and responsible officers must, in carrying out their functions in relation to parenting contracts under section 40 and parenting orders under section 41, have regard to the extent to which any failure by, or anything done by, a parent of a person to whom this Part applies is affecting, or is likely to affect, that person's fulfilment of the duty imposed by section 2.

(2) Regulations may make further provision about the exercise by [<sup>F9</sup>local authorities] in England of their functions relating to—

(a) parenting contracts under section 40, or

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(b) parenting orders under section 41.

(3) The provision that may be made under subsection (2) includes—

- (a) provision limiting the power of a [<sup>F9</sup>local authority] to enter into a parenting contract, or apply for a parenting order, in prescribed cases;
- (b) provision requiring one [<sup>F9</sup>local authority] to consult with another before taking any prescribed step;
- (c) provision requiring the provision of information by one [<sup>F9</sup>local authority] in England to another;
- (d) provision as to how the costs associated with parenting contracts under section 40 or parenting orders under section 41 (including in each case the costs of providing counselling or guidance programmes) are to be met.

(4) In this Chapter—

“parent”, in relation to a young person, is to be construed in accordance with section 576 of the Education Act 1996 (c. 56), but does not include a person who is not an individual;

“responsible officer”, in relation to a parenting order, means an officer of a [<sup>F9</sup>local authority] who is specified in the order.

#### Textual Amendments

**F9** 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. 15\(2\)](#)

PROSPECTIVE

## CHAPTER 5

### ATTENDANCE NOTICES

#### *Initial steps*

#### **45 Failure to fulfil duty under section 2: initial steps**

- (1) This section applies where it appears to a local education authority that a person to whom this Part applies and who belongs to the authority's area is failing to fulfil the duty imposed by section 2.
- (2) The authority may give a written notice to the person stating—
  - (a) that it appears to the authority that the person—
    - (i) is a person to whom this Part applies, and
    - (ii) is failing without reasonable excuse to fulfil that duty, and
  - (b) that if, after the date specified in the notice, the person appears to the authority to be failing, without reasonable excuse, to fulfil that duty, the authority may issue an attendance notice under section 46, and explaining the effect of an attendance notice.

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- (3) The date specified under subsection (2)(b) must not be less than 15 days after the date on which the notice is given.
- (4) Subsections (5) and (6) apply where an authority proposes to give a notice to a person under subsection (2).
- (5) The authority—
  - (a) must take all reasonable steps to secure that relevant support is offered to the person, and
  - (b) may not give the notice unless satisfied that the person has been afforded an opportunity to take advantage of the support offered.
- (6) The authority—
  - (a) must give the person an opportunity to make representations, and
  - (b) may not give the notice—
    - (i) in a case within subsection (7), unless, having regard to any representations made, the person appears to the authority to have no reasonable excuse for the failure;
    - (ii) in any other case, if, having regard to any representations made, the person appears to the authority to have a reasonable excuse for the failure.
- (7) This subsection applies where—
  - (a) arrangements have been made for the person to participate during the current relevant period in a course or courses constituting relevant training or education,
  - (b) the only failure by the person during that relevant period is that the relevant education and training to which the arrangements relate is not sufficient relevant education and training,
  - (c) the course has not, or the courses have not all, concluded, and
  - (d) further arrangements for relevant training or education after the conclusion of the course or courses could be made which would enable the person to participate in sufficient relevant training or education during the current relevant period.
- (8) In subsection (5), “relevant support” means support provided by means of services made available by the local education authority in exercise of its functions under section 68.

#### *Attendance notices*

### **46 Attendance notice**

- (1) This section applies where—
  - (a) a local education authority has given a notice to a person under section 45(2),
  - (b) this Part still applies to the person, and
  - (c) at any time after the date specified in the notice under section 45(2)(b), it appears to the local education authority that the person is, without reasonable excuse, failing to fulfil the duty imposed by section 2.

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- (2) The local education authority may, before the end of the period of 6 months beginning with the day on which the notice under section 45(2) was given to the person, give the person a further notice in accordance with this section (an “attendance notice”) requiring the person to participate in education or training specified in the notice.
- (3) Subsections (6) and (7) of section 45 apply in relation to the giving of attendance notices as they apply in relation to the giving of notices under subsection (2) of that section.
- (4) The education or training specified under subsection (2) must satisfy section 47.
- (5) Where the education or training specified is education or training provided by means of a course, the attendance notice must specify—
  - (a) the school, college or other training or educational establishment at which the education or training is to be provided, and
  - (b) the name and description of the course.
- (6) Where the education or training specified is training provided in accordance with a contract of apprenticeship otherwise than by a course, the attendance notice must specify prescribed details of the contract of apprenticeship.
- (7) An attendance notice given to a person must specify—
  - (a) the place or places at which the person is required to attend,
  - (b) the time or times at which the person is required to attend,
  - (c) the person or persons to whom the person must present himself or herself, and may specify other prescribed requirements relating to the description of education or training specified in the notice.
- (8) An attendance notice must state—
  - (a) the period for which the notice has effect,
  - (b) the consequences of failing to comply with any requirement imposed by the notice, and
  - (c) such other matters as may be prescribed.
- (9) An attendance notice given by a local education authority to a person has effect for the period beginning with the day on which it is given and ending with—
  - (a) the last day on which the person is a person to whom this Part applies, or
  - (b) if earlier, the day on which it is revoked.

#### **47 Attendance notice: description of education or training**

- (1) This section must be satisfied in relation to education or training specified in an attendance notice given to a person to whom this Part applies by a [<sup>F9</sup>local authority].
- (2) The education or training must be provided—
  - (a) at a school, college or other training or educational establishment by means of a course, or
  - (b) in accordance with a contract of apprenticeship.
- (3) The education or training must be such that, by participating in it, the young person would fulfil the duty imposed by section 2.

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- (4) For that purpose, account may be taken of any contract of employment of the person or other arrangement under which the person works.
- (5) The education or training must—
  - (a) be appropriate full-time education or training, or
  - (b) otherwise be suitable for the person, having regard—
    - (i) to the person's age, ability and aptitude, and
    - (ii) to any [<sup>F17</sup>special educational needs] which the person may have.
- <sup>F18</sup>(6) .....
- (7) Where the education or training is to be provided by means of a course, the [<sup>F9</sup>local authority]—
  - (a) must have consulted the governing body or proprietor of the school, college or other training or educational establishment at which the education or training is to be provided, and
  - (b) must have made arrangements, or be satisfied that arrangements have been made, for the education or training to be provided there for the person.
- (8) Where the education or training is training provided in accordance with a contract of apprenticeship, the [<sup>F9</sup>local authority] must have consulted the employer in relation to the contract of apprenticeship.

#### Textual Amendments

- F9** 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. 15(2)**
- F17** Words in s. 47(5)(b)(ii) substituted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 85(a)**; S.I. 2014/889, art. 7(a)
- F18** S. 47(6) omitted (1.9.2014) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), **Sch. 3 para. 85(b)**; S.I. 2014/889, art. 7(a)

### *Attendance panel, appeals and variations etc*

#### **48 Attendance panel**

- (1) A [<sup>F9</sup>local authority] in England must establish a panel (an “attendance panel”), constituted in accordance with regulations.
- (2) An attendance panel of a [<sup>F9</sup>local authority] in England has the following functions—
  - (a) functions conferred on it by virtue of section 49 in relation to appeals against attendance notices;
  - (b) functions conferred on it by virtue of section 50(6)(b);
  - (c) functions conferred on it by section 52(5) and (6);
  - (d) functions conferred on it by virtue of section 54 in relation to appeals against fixed penalty notices.
- (3) Regulations under subsection (1)—
  - (a) must require a [<sup>F9</sup>local authority] to secure that any person who chairs an attendance panel is not a member of the authority; and

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(b) may make provision for the payment by the [<sup>F9</sup>local authority] of allowances to members of an appeal panel.

(4) Regulations made by virtue of subsection (3)(b) may provide for any of the provisions of sections 173 to 174 of the Local Government Act 1972 (c. 70)<sup>F19</sup> or (in relation to Wales) Part 8 of the Local Government (Wales) Measure 2011] (allowances to members of local authorities and other bodies) to apply with prescribed modifications in relation to members of an attendance panel.

#### Textual Amendments

**F9** 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. 15(2)**

**F19** Words in s. 48(4) inserted (W.) (30.4.2012) by [Local Government \(Wales\) Measure 2011 \(nawm 4\)](#), s. 178(3), **Sch. 3 para. 7**; S.I. 2012/1187, art. 2(1)(q)

## 49 Appeal arrangements

- (1) A local education authority in England must make arrangements for enabling a young person to whom an attendance notice is given by the authority to appeal against—
  - (a) the giving of the attendance notice;
  - (b) the description of education or training specified in the attendance notice;
  - (c) any variation of the notice—
    - (i) under subsection (2) of section 50;
    - (ii) by virtue of subsection (5) or (6)(b) of that section.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 48.
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision—
  - (a) as to the procedure on such appeals; and
  - (b) as to the powers of the attendance panel in relation to such appeals.

## 50 Variation and revocation of attendance notice

- (1) Subsection (2) applies where a local education authority has given an attendance notice under section 46 to a person to whom this Part applies.
- (2) If the attendance notice still has effect when—
  - (a) the education or training specified in the notice ends, or
  - (b) it becomes impracticable for the person to comply with the requirements specified in the notice because of a change of residence,
 the local education authority may by notice to the person specify other education or training.
- (3) Subsections (4) to (7) and (8)(c) of section 46 apply in relation to specifying education or training under subsection (2) as they apply in relation to the giving of an attendance notice.

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- (4) Where the local education authority gives a notice under subsection (2), the attendance notice has effect as if it specified the education or training specified in the notice under that subsection.
- (5) Prescribed matters specified in an attendance notice given by a local education authority may be varied by the authority by notice given to the person to whom the attendance notice was given.
- (6) Regulations may provide for other matters specified in an attendance notice given by a local education authority to be varied—
  - (a) with the consent of the person to whom the notice was given, or
  - (b) with the consent of an attendance panel established by the local education authority under section 48.
- (7) Regulations under subsection (6)(b) may in particular make provision as to the procedure to be followed in relation to the giving of any consent under the regulations.
- (8) An attendance notice given by a local education authority may be revoked by the authority by notice given to the person to whom the attendance notice was given.

#### *Failure to comply with attendance notice*

### **51 Offence of failure to comply with attendance notice**

- (1) It is an offence for a person to whom an attendance notice has been given to fail, without reasonable excuse, to comply with the requirements of the attendance notice.
- (2) It is a defence for a person charged with an offence under subsection (1) to show that he or she is, and since the giving of the attendance notice has been, fulfilling the duty imposed by section 2.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### **52 Restrictions on proceedings for offences under section 51**

- (1) This section applies to proceedings for an alleged offence under section 51 relating to an attendance notice.
- (2) The proceedings may not be instituted except by the local education authority which gave the attendance notice.
- (3) The proceedings may not be instituted if the attendance notice has been—
  - (a) rescinded on an appeal by virtue of section 49, or
  - (b) revoked under section 50(8).
- (4) The proceedings may not be instituted unless—
  - (a) a penalty notice has been given under section 53 in respect of the alleged offence and has not been rescinded on an appeal by virtue of section 54,
  - (b) the penalty imposed by the notice has not been paid in accordance with the notice, and

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- (c) an attendance panel established by the local education authority under section 48 has, on being consulted by the local education authority about the question whether the proceedings should be instituted, recommended to the authority that the proceedings should be instituted.
- (5) Regulations—
  - (a) must make provision to secure that, before a recommendation under subsection (4)(c) is made by an attendance panel in a person's case, the person has an opportunity to make representations to the panel, and
  - (b) may make other provision as to the procedure to be followed in relation to the making of such recommendations.
- (6) The proceedings may not be instituted after this Part has ceased to apply to the person alleged to have committed the offence under section 51.
- (7) Subsection (6) does not affect proceedings for such an offence by a person which were instituted while this Part applied to the person.

### **53 Failure to comply with attendance notice: penalty notice**

- (1) Where a local education authority which has given an attendance notice to a person under section 46 has reason to believe that the person has committed an offence under section 51 relating to the notice, the authority may give the person a penalty notice in respect of the offence.
- (2) A penalty notice is a notice offering a person the opportunity of discharging any liability to conviction in respect of the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (3) Where a person is given a penalty notice—
  - (a) proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed; and
  - (b) the person cannot be convicted of the offence to which the notice relates if a penalty is paid in accordance with the notice.
- (4) Regulations may make—
  - (a) provision as to the form and content of penalty notices;
  - (b) provision as to the amount of any penalty and the time by which it is to be paid (but subject to subsection (6));
  - (c) provision as to the methods by which penalties may be paid;
  - (d) provision as to the records which are to be kept in relation to penalty notices;
  - (e) provision for or in connection with the withdrawal of a penalty notice, or its ceasing to have effect, in prescribed circumstances, including—
    - (i) provision about repayment of any amount paid by way of penalty under a penalty notice which is withdrawn or ceases to have effect; and
    - (ii) provision prohibiting the institution or continuation of proceedings for the offence to which such a notice relates;
  - (f) provision for a certificate—
    - (i) purporting to be signed by or on behalf of a prescribed person, and



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- (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,  
to be received in evidence of the matters so stated;
  - (g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice;
  - (h) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices;
  - (i) such other provision in relation to penalties under penalty notices or in relation to penalty notices as the Secretary of State thinks necessary or expedient.
- (5) Without prejudice to section 166(6), regulations under subsection (4)(b) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).
- (6) The amount of any penalty payable by virtue of regulations under subsection (4)(b) must not exceed the amount for the time being specified as level 1 on the standard scale of fines for summary offences.

#### **54 Penalty notices: appeal arrangements**

- (1) A local education authority in England must make arrangements for enabling a young person to whom a penalty notice is given by the authority under section 53 to appeal against the notice.
- (2) The arrangements must provide for any appeal under the arrangements to be to an attendance panel established under section 48.
- (3) Regulations may make provision about the making of appeals under arrangements under this section, including provision—
  - (a) as to the procedure on such appeals; and
  - (b) as to the powers of an attendance panel in relation to such appeals.

#### **55 Non-participation fines: interpretation**

- (1) In this section and sections 56 to 59—
  - “non-participation fine” means a fine imposed—
    - (a) for an offence under section 51, or
    - (b) in respect of a failure to comply with any sentence imposed for such an offence;
  - “the relevant sum”, in relation to a non-participation fine, means—
    - (a) the non-participation fine,
    - (b) any surcharge ordered under [F20]section 42 of the Sentencing Code ] (surcharges) to be paid solely in relation to the offence, and
    - (c) any costs ordered by a court to be paid by the person on whom the fine was imposed in connection with the offence or proceedings relating to the offence or any sentence imposed (including proceedings on appeal);

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“relevant [<sup>F9</sup>local authority]”, in relation to a non-participation fine, means the [<sup>F9</sup>local authority] which issued the penalty notice under section 53 in respect of the offence to which the fine relates.

- (2) References in those sections to a fine being imposed are, in the case of a fine varied or confirmed on appeal, references to its being varied or confirmed.

#### Textual Amendments

- F9** 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. 15(2)**
- F20** Words in s. 55(1) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 271** (with [Sch. 24 para. 447](#), [Sch. 27](#)); S.I. 2020/1236, reg. 2

### 56 Enforcement of non-participation fine etc: person reaching 18

- (1) This section applies where—
- (a) a non-participation fine has been imposed on a person aged under 18, and
  - (b) the relevant sum, or any part of it, remains unpaid when the person reaches the age of 18.
- (2) When the person reaches the age of 18, the relevant sum ceases to be enforceable as a sum adjudged to be paid by a conviction of a magistrates' court.
- (3) Accordingly, after the person has reached the age of 18—
- (a) the normal enforcement provisions do not apply in relation to the relevant sum, and
  - (b) the normal enforcement powers are not exercisable in relation to the relevant sum,
- except so far as necessary to permit current enforcement processes to be concluded.
- (4) Any order or warrant made or issued in relation to the non-participation fine, other than—
- (a) an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment),
  - (b) an order under section 85A of that Act (variation of instalments of sum adjudged to be paid by conviction), or
  - (c) a current enforcement process,
- ceases to have effect when the person reaches the age of 18.
- (5) A magistrates' court may, after the person has reached the age of 18, order that payment of so much of the relevant sum as remains unpaid may be enforced as if it were a sum due to the relevant [<sup>F9</sup>local authority] in pursuance of a judgment or order of [<sup>F21</sup>the county court].
- (6) An order under subsection (5) may not be made unless—
- (a) the person appears to the court to have sufficient means to pay the sum forthwith, and
  - (b) any current enforcement processes have been concluded.

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- (7) For the purposes of this section, “current enforcement process” means an order or warrant mentioned in paragraph (a), (b) or (c) and any reference to its conclusion is to be read in accordance with that paragraph—
- (a) a warrant of control—
    - (i) issued under section 76 of the Magistrates' Courts Act 1980 (warrants of control etc) for the purpose of recovering the relevant sum (or any part of it), and
    - (ii) by virtue of which an enforcement agent has, before the person reaches the age of 18, taken control of any goods of the person under Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (taking control of goods),is concluded when property in all goods of the person has, in accordance with paragraph 6 of that Schedule, ceased to be bound by virtue of the warrant;
  - (b) an order in force when the person reaches the age of 18 under—
    - (i) section 81(1)(b) of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offenders), or
    - (ii) [F22section 380(1) of the Sentencing Code] (power to order parent or guardian to pay fine, costs, compensation or surcharge),requiring that the relevant sum (or any part of it) be paid by a parent or guardian of the person is concluded when it is revoked;
  - (c) an order in force when the person reaches the age of 18 under section 39 of the Criminal Justice and Immigration Act 2008 (c. 4) (youth default orders) in respect of the relevant sum (or any part of it) is concluded when it is revoked.
- (8) Subsection (2) does not affect the exercise of any power, or any order made, in respect of the offence before the person reached the age of 18.
- (9) The Lord Chancellor may by order amend subsection (4) or (7) by—
- (a) adding to it provision about any warrant or order that may be issued or made, or step that may be taken, in relation to a non-participation fine before the person on whom it is imposed reaches the age of 18, or
  - (b) removing any such provision for the time being made by that subsection.

#### Textual Amendments

- F9** 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. 15(2)**
- F21** Words in s. 56(5) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F22** Words in s. 56(7)(b)(ii) substituted (1.12.2020) by [Sentencing Act 2020 \(c. 17\)](#), s. 416(1), **Sch. 24 para. 272** (with [Sch. 24 para. 447](#), [Sch. 27](#)); [S.I. 2020/1236](#), reg. 2

#### 57 Enforcement of non-participation fine etc: fine imposed on person aged 18 or over

- (1) This section applies where a non-participation fine is imposed on a person who has reached the age of 18.

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- (2) Payment of the relevant sum may be enforced as if it were a sum due to the relevant [<sup>F9</sup>local authority] in pursuance of a judgment or order of [<sup>F23</sup>the county court].
- (3) The relevant sum is not enforceable as a sum adjudged to be paid by a conviction of a magistrates' court.
- (4) Accordingly—
  - (a) the normal enforcement provisions do not apply in relation to the relevant sum, and
  - (b) the normal enforcement powers are not exercisable in relation to the relevant sum.
- (5) But subsections (3) and (4) do not prevent a magistrates' court, on imposing the fine, from—
  - (a) making an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment), or
  - (b) making an order under section 80 of that Act (application of money found on defaulter to satisfy sum adjudged) for the person to be searched before leaving the precincts of the court-house; and subsections (2) and (3) of that section apply in relation to a search in pursuance of any such order.

#### Textual Amendments

- F9** 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. 15(2)**
- F23** Words in s. 57(2) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

## 58 Enforcement of non-participation fine: further provisions

- (1) In sections 56 and 57, “the normal enforcement provisions” means—
  - (a) Part 3 of the Magistrates' Courts Act 1980 (satisfaction and enforcement);
  - (b) sections 135 and 136 of that Act (committal and detention for short period);
  - (c) section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention of persons aged at least 18 but under 21 for default or contempt);
  - (d) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc and discharge of fines by unpaid work); and
  - (e) section 300 of the Criminal Justice Act 2003 (c. 44) (power to impose unpaid work requirement or curfew requirement on fine defaulter).
- (2) In sections 56 and 57, “the normal enforcement powers”, in relation to any sum, means—
  - (a) any power of a magistrates' court or an officer of such a court—
    - (i) to enforce payment of the sum; or
    - (ii) which is exercisable in consequence of a default in payment of the sum or any part of it;
  - (b) in the case of a fine imposed, varied or confirmed by a decision of any other court on an appeal, any power of that other court to enforce the decision.
- (3) The Lord Chancellor may by order amend subsection (1) or (2) by—

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- (a) adding a reference to any statutory provision which relates to enforcement of fines, costs or surcharges, or to any power to enforce payment of such sums, or
  - (b) removing a reference to any provision or power for the time being listed in that section.
- (4) Where—
- (a) a sum is payable at a time or times specified by—
    - (i) an order under section 75 of the Magistrates' Courts Act 1980 (c. 43) (power to dispense with immediate payment), or
    - (ii) orders under that section and section 85A of that Act (variation of instalments of sum adjudged to be paid by conviction), and
  - (b) the sum would (but for this subsection) be treated by virtue of section 56 or 57 as due to a [<sup>F9</sup>local authority] in pursuance of a judgment or order of [<sup>F24</sup>the county court],

the sum is to be treated as so payable to that authority at the time or times referred to in paragraph (a) by virtue of an order of the county court under section 71(1) of the County Courts Act 1984 (c. 28) (satisfaction of judgments and orders for payment of money).

#### Textual Amendments

- F9** 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. 15(2)**
- F24** Words in s. 58(4)(b) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; [S.I. 2014/954](#), art. 2(c) (with art. 3) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

#### 59 Application of sums recovered by virtue of section 56 or 57

- (1) The Lord Chancellor may by regulations make provision as to the application of amounts recovered by [<sup>F9</sup>local authorities] by virtue of sections 56 and 57.
- (2) Any such regulations must make provision for securing that any such amount recovered, so far as not—
  - (a) attributable to county court enforcement costs, or
  - (b) paid to a magistrates' court, or to an officer of such a court,is repaid to the person on whom the non-participation fine to which it relates was imposed (or other person who paid the amount).
- (3) Regulations under this section may make provision, in particular, as to—
  - (a) the extent to which amounts recovered by virtue of section 56 or 57 are attributable to county court enforcement costs;
  - (b) further payments, or repayments, to be made in consequence of any appeal, or of any remission or variation of a non-participation fine or any other amount required to be paid.
- (4) In this section, “county court enforcement costs” in relation to a non-participation fine means costs incurred by a [<sup>F9</sup>local authority] in connection with the recovery of the relevant sum in [<sup>F25</sup>the county court].

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### Textual Amendments

- F9** 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. 15(2)**
- F25** Words in s. 59(4) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

### *Supplementary*

## 60 Review of initial operation of Chapter

- (1) The Secretary of State must appoint a person to conduct a review of the initial operation of this Chapter.
- (2) The person appointed must make a report to the Secretary of State on the review within a reasonable period after the school leaving date for 2016.
- (3) The Secretary of State must lay a copy of the report before Parliament.
- (4) The Secretary of State may pay to the person appointed such remuneration and expenses as the Secretary of State may determine.

## CHAPTER 6

### MISCELLANEOUS

PROSPECTIVE

## 61 Alternative ways of working

- (1) Regulations may—
  - (a) provide for who is to be treated as the employer for the purposes of this Part in relation to any way of working prescribed by regulations under section 5(1)(b), and
  - (b) provide for any provision of this Part to apply with modifications in relation to any such way of working.
- (2) Regulations may provide for any provision of this Part to apply with modifications in cases where a person to whom this Part applies—
  - (a) is employed under a contract of employment, and
  - (b) is for the time being supplied by the employer to another person (“the principal”) to perform work in accordance with a contract made between the employer and the principal.

## 62 Crown employment

- (1) For the purposes of section 5—

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- (a) Crown employment, and
  - (b) service as a member of the armed forces of the Crown,
- are each to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in either of those ways.
  - (3) Chapter 3 applies in relation to Crown employment and persons in Crown employment as it applies in relation to other employment and other employees, but subject to subsection (4).
  - (4) For the purposes of the application of Chapter 3 in relation to Crown employment and persons in Crown employment—
    - (a) references to a contract of employment are to be construed, in relation to a person in Crown employment, as references to the terms and conditions under which the person works, and
    - (b) references to an employee are to be construed as references to a person in Crown employment.
  - (5) In this section, “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 statutory provision, but subject to subsection (6).
  - (6) Crown employment—
    - (a) does not include service as a member of the armed forces of the Crown, but
    - (b) does include employment by an association established for the purposes of Part 11 of the Reserve Forces Act 1996 (c. 14).

PROSPECTIVE

### **63 House of Lords staff**

The following provisions apply in relation to employment under a contract of employment with the Corporate Officer of the House of Lords as they apply in relation to other employment—

- (a) sections 19 to 21;
- (b) sections 27 to 29.

### **64 House of Commons staff**

- (1) For the purposes of section 5, working as a relevant member of the House of Commons staff is to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in that way.
- (3) The following provisions apply in relation to employment as a relevant member of the House of Commons staff as they apply in relation to other employment—
  - (a) sections 19 to 21;
  - (b) sections 27 to 29.

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- (4) For the purposes of the application of Chapter 3 in relation to a relevant member of the House of Commons staff—
- (a) references to a contract of employment are to be construed as including references to the terms of employment of a relevant member of the House of Commons staff, and
  - (b) references to an employee are to be construed as references to a relevant member of the House of Commons staff.
- (5) In this section, “relevant member of the House of Commons staff” has the same meaning as in section 195 of the Employment Rights Act 1996 (c. 18).
- (6) Subsections (6), (7) and (12) of that section (person to be treated as employer of relevant member of House of Commons staff) apply (with any necessary modifications) for the purposes of the provisions mentioned in subsection (3) as applied by virtue of this section.

PROSPECTIVE

## 65 Financial penalties

- (1) A penalty payable by virtue of a penalty notice under—
- (a) section 22,
  - (b) section 31, or
  - (c) section 53,
- is payable to the [<sup>F9</sup>local authority] which issued the notice.
- (2) Any sums received by a [<sup>F9</sup>local authority] under any of those sections may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.
- (3) A penalty under section 22 or 31 (and any interest or financial penalty for late payment) is recoverable, if [<sup>F26</sup>the county court] so orders, as if it were payable under an order of that court.
- (4) Where a person is required by a penalty notice given under section 22 or 31 to pay a financial penalty, and
- (a) has given a notice of objection to the [<sup>F9</sup>local authority] under section 23 or 33, or
  - (b) has appealed against the giving of the penalty notice under section 24 or 34,
- the penalty is not enforceable until the authority has given a determination notice under section 23 or 33 in relation to the penalty notice, or, as the case may be, the appeal has been determined.

### Textual Amendments

- F9** 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. 15(2)**



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**F26** Words in s. 65(3) substituted (22.4.2014) by **Crime and Courts Act 2013 (c. 22), s. 61(3), Sch. 9 para. 52; S.I. 2014/954, art. 2(c)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

## **66 Interpretation of Part**

(1) In this Part—

“appropriate full-time education or training” has the meaning given by section 4;

“contract of employment” means a contract of service, whether express or implied and (if it is express) whether oral or in writing, but does not include a contract of apprenticeship;

“level 3 qualification” has the meaning given by section 3;

“proprietor”, in relation to a school or other institution, means the person or body of persons responsible for its management;

“relevant period”, in relation to a person to whom this Part applies, has the meaning given by section 7;

“relevant training or education” has the meaning given by section 6;

“sufficient”, in relation to relevant training or education, is to be construed in accordance with section 8(1).

(2) Regulations may provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of this Part.

(3) Any reference in this Part to a person's being in full-time occupation is to be construed in accordance with section 5.

(4) For the purposes of this Part, a person is failing to fulfil the duty imposed by section 2 if the person—

(a) is not participating in education or training in accordance with subsection (1) (a) or (b) of that section, and

(b) is not in full-time occupation or is not participating in sufficient relevant training.

(5) A reasonable excuse for a failure to be in full-time occupation is not a reasonable excuse for a failure to fulfil the duty imposed by section 2 (unless it is also a reasonable excuse for any failure to participate as mentioned in subsection (4)).

PROSPECTIVE

## **67 Corresponding provision for Wales**

(1) This section applies if a Measure of the National Assembly for Wales includes provision that appears to the Secretary of State to correspond to provision made by section 2.

(2) The Secretary of State may by order make provision in relation to Wales that corresponds to any provision made by sections 19 to 36.

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- (3) Without prejudice to section 166(6), the power conferred by this section includes power to make provision in relation to Wales that corresponds to any of the following—
- (a) the provisions of the Employment Rights Act 1996 (c. 18) inserted by sections 37 to 39;
  - (b) section 61;
  - (c) section 62;
  - (d) section 65 so far as relating to financial penalties under sections 22 and 31.
- (4) Power conferred by this section to make provision in relation to Wales that corresponds to any other provision includes power—
- (a) to apply that other provision in relation to Wales, with or without modification;
  - (b) to amend that other provision so that it applies in relation to Wales, with or without modification.

## PART 2

### SUPPORT FOR PARTICIPATION IN EDUCATION OR TRAINING: YOUNG ADULTS WITH LEARNING DIFFICULTIES AND YOUNG PEOPLE IN ENGLAND

#### *Provision of support services*

#### **68 Support services: provision by local education authorities**

- (1) A local education authority in England must make available to young persons and relevant young adults for whom it is responsible such services as it considers appropriate to encourage, enable or assist the effective participation of those persons in education or training.
- (2) Subsection (1) is subject to any direction given by the Secretary of State under section 69.
- (3) For the purposes of this section and section 69, a local education authority makes services available if it—
  - (a) provides them, or
  - (b) makes arrangements with another local education authority or another person for their provision.
- (4) In carrying out its functions under this section, a local education authority must—
  - (a) comply with any direction given by the Secretary of State under section 69, and
  - (b) have regard to any guidance issued by the Secretary of State.
- (5) Nothing in this section requires a local education authority to make services available to a young person or relevant young adult for whom it is responsible if—
  - (a) another local education authority in England is also responsible for the person, and

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- (b) services are being provided to the person by, or under arrangements made by, the other authority in exercise of its functions under subsection (1).

#### Commencement Information

**I3** S. 68 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

## 69 Directions

- (1) The Secretary of State may give directions to a local education authority—
- (a) specifying the services to be made available to young persons and relevant young adults in the exercise of the authority's functions under section 68(1);
  - (b) specifying the descriptions of individual who may be involved, in ways specified in the direction, in the provision of such services;
  - (c) requiring the authority to secure that any person by whom such services are provided (whether the authority or any other person) co-operates with—
    - (i) any person providing services under section 74;
    - (ii) any person exercising functions, or providing services, which relate to social security or are connected with finding suitable employment, education or training for young persons or relevant young adults;
  - (d) as to the names and symbols to be used, in ways specified in the direction, in connection with services provided in pursuance of section 68(1);
  - (e) imposing requirements as to—
    - (i) the keeping of records, or
    - (ii) the provision of information to local education authorities and persons providing services in pursuance of section 68(1),
 in connection with the provision of such services.
- (2) The Secretary of State may direct a local education authority to exercise its functions under section 68(1) in such a way that the person who provides services (whether the local education authority or any other person), or such services as are specified in the direction, as a result of the exercise of those functions is a person who also—
- (a) exercises such functions, or
  - (b) provides such services,
- as are specified in the direction.
- (3) Functions or services specified under subsection (2)—
- (a) need not relate to education or training, and
  - (b) may, in particular, be functions or services relating to social security.
- (4) A direction under this section may be varied or revoked by a later direction.
- (5) Different directions may be given under this section in relation to different descriptions of service.

#### Commencement Information

**I4** S. 69 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

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## **70 Local education authorities: supplementary powers**

- (1) A local education authority in England—
- (a) may provide, secure the provision of or participate in the provision of services under arrangements entered into by it with another local education authority in pursuance of any function of that other local education authority under section 68, and
  - (b) may provide, secure the provision of or participate in the provision of services for encouraging, enabling or assisting the effective participation in education or training of—
    - (i) young persons, or
    - (ii) relevant young adults,
 (including such persons from other areas) otherwise than in accordance with section 68 or paragraph (a).
- (2) Nothing in or done under section 68 or 69 or this section is to be taken to prejudice any powers which a local education authority has with respect to the exercise of its functions otherwise than under those sections.

### **Commencement Information**

**I5** S. 70 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

## **71 Provision of support on conditional basis: learning and support agreements**

- (1) Services provided for young persons in pursuance of section 68 or 70(1)(b) may include the provision of support on a conditional basis.
- (2) For the purposes of this section—
- (a) “support” provided for a person means any form of support and includes, in particular—
    - (i) support in the form of medical or social care, including care provided otherwise than to that person,
    - (ii) support in the form of incentives, including allowances and payments, and
    - (iii) other financial assistance;
  - (b) support is provided for a young person on a conditional basis if it is provided under arrangements (a “learning and support agreement”) under which its provision is subject to the young person's agreement to fulfil conditions (“learning and support conditions”).
- (3) Subsections (4) to (6) apply where support is provided for a young person on a conditional basis by virtue of subsection (1).
- (4) The learning and support agreement must include provision (whether or not in the form of a learning and support condition) relating to the young person's participation in education or training.
- (5) The person providing the support (the “service provider”) must consider that providing it on a conditional basis would be desirable in the interests of encouraging, enabling or assisting the young person—

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- (a) to fulfil the duty imposed by section 2, in a case where the young person is a person to whom Part 1 applies, or
  - (b) in any case, to participate effectively in education or training.
- (6) The learning and support conditions must be conditions—
- (a) determined in consultation between the service provider and the young person, having regard to an assessment of the young person's needs conducted by the service provider and the young person for the purposes of this section, and
  - (b) to which in the course of that consultation the young person has agreed;
- and the service provider must make arrangements for the learning and support conditions to be reviewed periodically.
- (7) Learning and support agreements made by virtue of subsection (1) do not create any obligations in respect of whose breach any liability arises in contract or in tort.
- (8) Subsection (1) is subject to section 68(2) and (4).

#### Commencement Information

**I6** S. 71 in force at 26.1.2009 by S.I. 2008/3077, art. 4(a)

## 72 Educational institutions: duty to provide information

- (1) Relevant information about a pupil or student who is attending an educational institution in England must be provided by the responsible person to a person involved in the provision of services in pursuance of section 68 or 70(1)(b), on a request by that person.
- (2) A request under subsection (1) by a person involved in the provision of services in pursuance of 68 or 70(1)(b) may be made only for the purposes of the provision of those services.
- (3) In subsection (1), “relevant information” means—
- (a) the name, address and date of birth of the pupil or student;
  - (b) the name and address of a parent of the pupil or student;
  - (c) information in the institution's possession about the pupil or student.
- (4) Information within subsection (3)(c) must not be provided under subsection (1) if—
- (a) the pupil or student concerned, in the case of a pupil or student who has attained the age of 16, or
  - (b) a parent of the pupil or student concerned, in the case of a pupil or student who has not attained the age of 16,
- has instructed the responsible person not to provide information of that kind under this section.
- (5) In this section—
- “educational institution” means—
- (a) a community, foundation or voluntary school,
  - (b) a community or foundation special school,
  - (c) a city technology college, a city college for the technology of the arts or an Academy,

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- (d) a pupil referral unit,
  - (e) an institution within the further education sector, or
  - (f) an institution in receipt of funding from the Learning and Skills Council for England;
- “responsible person” means—
- (a) in relation to a school within paragraph (a) or (b) of the definition of “educational institution”, the governing body;
  - (b) in relation to an institution within paragraph (c) or (f) of that definition, the proprietor;
  - (c) in relation to a pupil referral unit, the local education authority by which it is maintained;
  - (d) in relation to an institution within the further education sector, the governing body within the meaning given by section 90 of the Further and Higher Education Act 1992 (c. 13).

#### Commencement Information

**I7** S. 72 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

### 73 Educational institutions: access and facilities

- (1) The responsible person in relation to an educational institution in England, must, on a request by a person involved in the provision of services in pursuance of section 68 or 70(1)(b)—
  - (a) permit that person to have access to a pupil or student attending the institution on the institution's premises at reasonable times, and
  - (b) make available to that person, so far as is reasonably convenient, facilities on the institution's premises for providing services to individual such pupils or students or groups of such pupils or students.
- (2) A request under subsection (1) by a person involved in the provision of services in pursuance of section 68 or 70(1)(b) may be made only for the purposes of the provision of those services.
- (3) Subject to subsection (4), “educational institution” and “responsible person” have the same meanings in subsection (1) as in section 72.
- (4) In relation to a pupil referral unit for which there is a management committee established by virtue of paragraph 15 of Schedule 1 to the Education Act 1996 (c. 56), “responsible person” means that committee.

#### Commencement Information

**I8** S. 73 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

### 74 Internet and telephone support services etc

- (1) The Secretary of State may provide or secure the provision of services for encouraging, enabling or assisting the effective participation of young persons and relevant young adults in England in education or training.

**Status:** Point in time view as at 19/06/2009. This version of this Act contains provisions that are not valid for this point in time.

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- (2) The services which may be provided under subsection (1) are services provided by means of—
- (a) the publication whether electronically or otherwise of information, advice and guidance;
  - (b) the provision, in response to requests by young persons and relevant young adults, of information, advice or guidance to those persons by telephone or other electronic means.
- (3) In securing the provision of those services the Secretary of State may, in particular, make arrangements with other persons for the provision of services.
- (4) Arrangements under subsection (3) may include provision—
- (a) for grants, loans and other kinds of financial assistance to be provided by the Secretary of State (whether or not on conditions);
  - (b) requiring persons with whom arrangements are made to have regard to guidance issued by the Secretary of State.
- (5) For the purposes of this section, a young person or relevant young adult is in England if he or she is a person for whom a local education authority in England is responsible.

#### Commencement Information

**I9** S. 74 in force at 26.1.2009 by S.I. 2008/3077, art. 4(a)

## 75 Inspection

- (1) Her Majesty's Chief Inspector of Education, Children's Services and Skills—
- (a) must, when requested to do so by the Secretary of State, inspect and report on the provision of services in pursuance of section 68 or 74, and
  - (b) may undertake such other inspections of the provision of those services as Her Majesty's Chief Inspector thinks fit.
- (2) A request under subsection (1)(a)—
- (a) may be in general terms or in relation to specific matters,
  - (b) may relate to a specific person providing services, or to a specific class of person, and
  - (c) may relate to a specific area.
- (3) A reference in subsection (1) to the provision of services includes a reference to the management and use of resources in providing services.
- (4) Subsections (5) to (7) apply to an inspection under subsection (1) of services provided by a person in pursuance of section 68 or 74.
- (5) A person carrying out or participating in the inspection has the same powers as Her Majesty's Chief Inspector has under the following provisions of the Education Act 2005 (c. 18)—
- (a) section 10(1)(a) and (d) (right of access), and
  - (b) section 58 (computer records).
- (6) Section 11 of the Education Act 2005 (publication of inspection reports) applies.

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- (7) A person who wilfully obstructs a person in carrying out or participating in the inspection—
- (a) is guilty of an offence, and
  - (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Commencement Information**

**I10** S. 75 in force at 26.1.2009 by S.I. 2008/3077, art. 4(a)

## **76 Supply of social security information relating to young persons**

- (1) Social security information may be supplied to a local education authority or other person involved in the provision of services for young persons in pursuance of section 68 or 70(1)(b) for the purpose of the provision of those services.
- (2) In this section “social security information” means personal information about a young person which is held for the purposes of functions relating to social security—
  - (a) by the Secretary of State, or
  - (b) by a person providing services to the Secretary of State in connection with the provision of those services.
- (3) For the purposes of subsection (2) “personal information”, in relation to a young person, means—
  - (a) the person's name, address and date of birth, and
  - (b) the name and address of a parent of the young person.
- (4) A person to whom information is supplied under subsection (1) commits an offence by disclosing the information unless the disclosure is made—
  - (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 section 17 or any other enactment or an order of a court or tribunal,
  - (d) for the purpose of actual or contemplated proceedings before a court or tribunal,
  - (e) with consent given by or on behalf of the person to whom the information relates, or
  - (f) in such a way as to prevent the identification of the person to whom it relates.
- (5) It is a defence for a person charged with an offence under this section relating to a disclosure to prove that the person reasonably believed that the disclosure was lawful.
- (6) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.



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- (7) In subsection (6)(b) the reference to 12 months is to be read in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (increase in maximum term that may be imposed on summary conviction of offence triable either way) as a reference to 6 months.

#### Commencement Information

**I11** S. 76 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

### 77 Supply of information by public bodies

- (1) Any of the persons or bodies mentioned in subsection (2) may supply information about a young person or relevant young adult to any person or body involved in the provision of services in pursuance of section 68 or 70(1)(b) for the purpose of the provision of those services.

- (2) Those persons and bodies are—

- (a) a local authority,
- (b) the Learning and Skills Council for England,
- (c) a Primary Care Trust,
- (d) a Strategic Health Authority,
- (e) a chief officer of police,
- (f) a provider of probation services,
- (g) a local probation board, and
- (h) a youth offending team.

- (3) In this section—

“local authority” has the meaning given by section 579(1) of the Education Act 1996 (c. 56) (interpretation);

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).

#### Commencement Information

**I12** S. 77 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

### 78 Supplementary

- (1) In sections 68 to 77 and this section—

“parent”, in relation to a child, has the meaning given by section 576 of the Education Act 1996 (c. 56);

“proprietor”, in relation to a school or other institution, means the person or body of persons responsible for its management;

“relevant young adult” means a person who—

- (a) has attained the age of 20 but not the age of 25, and
- (b) has a learning difficulty;

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and subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c. 21) (construction of references to learning difficulties) apply for this purpose;

“young person” means a person who has attained the age of 13 but not the age of 20.

- (2) For the purposes of sections 68 to 77, a local education authority is responsible for any young person or relevant young adult who is—
- (a) receiving education or training in its area,
  - (b) normally resident in its area, or
  - (c) otherwise within its area.
- (3) For the purposes of subsection (2)(a), “training” includes vocational, social, physical and recreational training.

**Commencement Information**

**I13** S. 78 in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(a\)](#)

**79 Existing functions of Secretary of State**

Sections 114 to 121 of the Learning and Skills Act 2000 (provision of support services for 13 to 19 year olds) cease to have effect.

**Commencement Information**

**I14** S. 79 in force at 26.1.2009 for specified purposes by [S.I. 2008/3077](#), [art. 4\(b\)](#)

*Assessments relating to learning difficulties*

**80 Assessments relating to learning difficulties**

Before section 140 of the Learning and Skills Act 2000 (assessments relating to learning difficulties) insert—

**“139A Assessments relating to learning difficulties: England**

- (1) Subsection (2) applies if a local education authority in England—
  - (a) maintains a statement of special educational needs for a person, and
  - (b) believes that the person will leave school, at the end of his last year of compulsory schooling, to receive post-16 education or training or higher education.
- (2) The authority must arrange for an assessment of the person to be conducted at some time during his last year of compulsory schooling.
- (3) Subsection (4) applies if a local education authority in England—
  - (a) maintains a statement of special educational needs for a person who is over compulsory school age, and

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- (b) believes that the person will leave school, during or at the end of the current school year, to receive post-16 education or training or higher education.
- (4) The authority must arrange for an assessment of the person to be conducted at some time during the current school year.
- (5) A local education authority in England may at any time arrange for an assessment to be conducted of a person—
  - (a) who is within subsection (6), and
  - (b) for whom the authority is responsible.
- (6) A person within this subsection is one who—
  - (a) is in his last year of compulsory schooling, or is over compulsory school age but has not attained the age of 25,
  - (b) appears to the authority to have a learning difficulty within the meaning of section 13, and
  - (c) is receiving, or in the opinion of the authority is likely to receive, post-16 education or training or higher education.
- (7) In exercising its functions under this section an authority must have regard to any guidance issued by the Secretary of State.

### **139B Assessments under section 139A: interpretation**

- (1) This section applies for the purposes of section 139A.
- (2) A statement of special educational needs is a statement maintained under section 324 of the Education Act 1996.
- (3) An assessment of a person is an assessment, resulting in a written report, of—
  - (a) the person's educational and training needs, and
  - (b) the provision required to meet them.
- (4) A local education authority is responsible for—
  - (a) a person who is receiving education or training in its area;
  - (b) a person who is not receiving education or training, but who is normally resident in its area;
  - (c) a person who is not receiving education or training, and who is not normally resident in its area or that of another authority, but who is otherwise within its area and, in its opinion, likely to receive post-16 education or training or higher education.
- (5) A person's last year of compulsory schooling is the last school year at his school during the whole or part of which he is of compulsory school age; and in the application of section 139A(6) to a person who is receiving education at an institution other than a school, that institution is to be treated for the purpose of determining his last year of compulsory schooling as though it were a school.
- (6) “Higher education” is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.
- (7) “Post-16 education or training” means post-16 education or post-16 training within the meaning of Part 1.

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- (8) “School year” has the meaning given in section 579(1) of the Education Act 1996.

### 139C Assessments under section 139A: persons educated at home

- (1) Section 139A applies in relation to a person who is receiving education at home, subject to the following modifications.
- (2) In section 139A(1)(b) and (3)(b), references to a person's leaving school to receive post-16 education or training or higher education are to be construed as references to a person's ceasing to receive education at home in order to receive, otherwise than in a school, post-16 education or training or higher education.
- (3) References to a person's last year of compulsory schooling are to be construed as references to the 12 month period ending when the person ceases to be of compulsory school age.
- (4) References to the current school year are to be construed as references to the period of 12 months beginning on the most recent 1st September.”

VALID FROM 01/09/2009

### *Careers education*

#### **81 Careers education: information and advice**

- (1) Part 7 of the Education Act 1997 (c. 44) (careers education and guidance) is amended as follows.
- (2) In section 43 (provision of careers education in schools)—
  - (a) after subsection (2) insert—
 

“(2A) Subsection (2B) applies where, in the course of a programme of careers education provided, in pursuance of subsection (1), to registered pupils at a school in England falling within subsection (2) (a), (c) or (e), information or advice is given which—

    - (a) relates to any options available in respect of 16-18 education or training, or otherwise relates to the pursuit of particular careers (at any age), or
    - (b) relates to decisions or other steps to be taken in connection with any such options or careers.

(2B) Any such information must be presented in an impartial manner, and—

    - (a) any such advice must be advice which the person giving it considers will promote the best interests of the pupils concerned, and
    - (b) accordingly, in giving the advice, that person must not seek to promote, contrary to the pupils' best interests, the interests or aspirations of the school or of other persons or institutions.”;

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(b) in subsection (3), after “subsection (1)” insert “ (and, where applicable, subsection (2B)) ”;

(c) in subsection (6), at the end insert—

““16-18 education or training” means education or training suitable to the requirements of persons who have ceased to be of compulsory school age but have not attained the age of 18;

“training”, in connection with registered pupils at schools in England, includes a voluntary or other placement apt to enable the development of any skill or competency (whether or not taking place at a time when the person concerned is still such a pupil).”

(3) In section 45 (provision of careers information at schools etc.)—

(a) at the end of subsection (2) insert— “ and, in the case of any such school in England, the reference in subsection (1) to persons attending it is a reference to persons who are registered pupils there. ”;

(b) after subsection (2) insert—

“(2A) Subsection (2B) applies where registered pupils at a school in England falling within section 43(2)(a) or (c) are provided, in pursuance of subsection (1), with access to materials of the kinds mentioned in that subsection.

(2B) The materials, taken as a whole, must present the pupils with (so far as relevant to them) a full range of—

(a) options available in respect of 16-18 education or training, and

(b) other options available to them (at any age) in terms of career opportunities,

and must not unduly promote any particular options over any others.”;

(c) in subsection (3), after “subsection (1)” insert “ (and, where applicable, subsection (2B)) ”;

(d) in subsection (5), for “and careers education” substitute “careers education” and “16-18 education or training” .

(4) After section 45 insert—

#### “45A Guidance as to discharge of duties

(1) The persons responsible for discharging a relevant duty in relation to a school in England falling within section 43(2)(a), (c) or (e) must, in discharging the duty, have regard to any guidance given from time to time by the Secretary of State.

(2) A “relevant duty” means a duty under any of sections 43(3), 44(9) and 45(3).”

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## *Apprenticeships*

### **82 Apprenticeships: functions of Learning and Skills Council for England**

- (1) The Learning and Skills Act 2000 (c. 21) is amended as follows.
- (2) In section 2 (education and training for persons aged 16 to 19), in subsection (5), after paragraph (b) insert—
  - “(ba) training includes training provided in connection with a contract of employment or a contract of apprenticeship;”.
- (3) In section 3 (education and training for persons over 19), in subsection (5), after paragraph (b) insert—
  - “(ba) training includes training provided in connection with a contract of employment or a contract of apprenticeship;”.
- (4) Section 4 (encouragement of education and training) is amended as follows.
- (5) The existing provision is to become subsection (1) of that section.
- (6) After that subsection, insert—
  - “(2) For the purposes of subsection (1)(b), participating in the provision of post-16 training includes participating by entering into—
    - (a) a contract of apprenticeship, or
    - (b) a contract of employment under or in connection with which training is provided.”

#### **Commencement Information**

**I15** S. 82 in force at 28.2.2009 by S.I. 2009/387, art. 2

## *School transport etc*

### **83 Provision of transport etc for persons of sixth form age: duty to consider journey times**

In section 509AB of the Education Act 1996 (c. 56) (further provision about transport policy statements), in subsection (3)(c)—

- (a) for “distance from” substitute “distances, and journey times, between”; and
- (b) for “of establishments” substitute “and establishments”.

#### **Commencement Information**

**I16** S. 83 in force at 7.3.2009 by S.I. 2009/387, art. 3(1) (with art. 3(2))

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#### **84 Exercise of travel functions by local education authorities in England: duty to have regard to religion or belief of persons of sixth form age**

In section 509AD of the Education Act 1996 (LEAs in England: duty to have regard to religion or belief in exercise of travel functions), in subsection (1), for the words from “to any wish” to the end substitute—

- “(a) to any wish of a parent of such a person for him to be provided with education or training at a particular school, institution or other place where that wish is based on the parent's religion or belief, and
- (b) in a case where the person in question (or any of the persons in question) is of sixth form age (within the meaning given in section 509AC(1)), to any wish of that person to be provided with education or training at a particular school, institution or other place where that wish is based on the person's religion or belief.”

#### **Commencement Information**

**I17** S. 84 in force at 7.3.2009 by S.I. 2009/387, art. 3(1) (with art. 3(3))

#### *Co-operation as regards 14-19 education and training*

#### **85 Co-operation as regards provision of 14-19 education and training**

- (1) The arrangements made by a children's services authority in England (a “children's authority”) under section 10 of the 2004 Act (co-operation to improve well-being of children) must include arrangements within subsection (2) or (3).
- (2) The arrangements within this subsection are arrangements to promote co-operation between—
  - (a) the children's authority,
  - (b) the authority's relevant partners, and
  - (c) the other persons and bodies (of any nature) who exercise functions, or are engaged in activities, relevant to the provision of 14-19 education or training in the authority's area.
- (3) The arrangements within this subsection are arrangements made jointly by the children's authority and one or more other children's authorities to promote co-operation between—
  - (a) the authorities,
  - (b) the authorities' relevant partners, and
  - (c) the other persons and bodies (of any nature) who exercise functions, or are engaged in activities, relevant to the provision of 14-19 education or training in each of the authorities' areas.
- (4) Subsection (1) is not to be read as affecting the generality of the duty imposed by section 10(1) and (2) of the 2004 Act so far as relating to education and training.
- (5) In this section—
  - “the 2004 Act” means the Children Act 2004 (c. 31);
  - “children's services authority in England” has the meaning given by section 65(1) of that Act;

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“14-19 education” and “14-19 training” mean, respectively, education and training suitable to the requirements of persons during the period beginning with the start of the academic year in which they attain the age of 15 and ending when they attain the age of 19;

“relevant partner”, in relation to a children's services authority in England, has the meaning given by section 10(4) of the 2004 Act.

- (6) For the purposes of subsection (5)—
- (a) “education” means full-time or part-time education, but does not include higher education (namely, education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 (c. 40));
  - (b) “training” means full-time or part-time training, and includes vocational, social, physical and recreational training;
  - (c) “academic year” means any period beginning with 1 August and ending with the next 31 July.

#### Commencement Information

**I18** S. 85 in force at 28.2.2009 by S.I. 2009/387, art. 2

### PART 3

#### ADULT SKILLS

##### *Provision of courses of study*

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

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

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

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

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



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

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

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

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

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

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

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- (b) the completion of, or failure to complete, a course for a specified qualification.
- (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 4A or 4B, may confer a function (which may relate to the administration of an assessment and may include the exercise of a discretion) on a person specified, or of a description specified, in the regulations.
- (5) Part 2 of Schedule 1A makes further provision for the purposes of sections 4A and 4B.”
- (4) In section 13 (Council's duty to have regard to needs of persons with learning difficulties), in subsection (1), after “3,” insert “ 4A, 4B, ”.
- (5) Section 152 (orders and regulations) is amended as set out in subsections (6) and (7).
- (6) In subsection (2A), at the end insert “ or an order to which subsection (2C) applies ”.
- (7) After subsection (2B) insert—
  - “(2C) An order under section 4B(6) or paragraph 9 of Schedule 1A may not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
  - (2D) If a draft of an order under paragraph 9 of Schedule 1A would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.”
- (8) After Schedule 1 insert—

“SCHEDULE 1A

LEARNING AIMS FOR PERSONS AGED 19 AND OVER

**PART 1**

*Qualifications to which this Schedule applies*

- 1 This paragraph applies to the following qualifications—
  - (a) a specified qualification in level 1 literacy,
  - (b) a specified qualification in entry level 3 numeracy,
  - (c) a specified vocational qualification at level 2.
- 2 This paragraph applies to a specified qualification at level 3.

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## PART 2

### *Power to specify*

- 3 (1) In paragraphs 1 and 2, a reference to a specified qualification is to an external qualification which is specified, or which is of a description specified, in regulations made by the Secretary of State.
- (2) The regulations may specify qualifications, or descriptions of qualifications, by reference to an assessment made by the Council of the level of attainment demonstrated by a qualification; and for that purpose the regulations may confer a function (which may include the exercise of a discretion) on the Council.
- (3) The regulations may make provision which applies subject to exceptions specified in the regulations.
- (4) In sub-paragraph (1), “external qualification” has the meaning given in section 24 of the Education Act 1997.

### *Level 1 literacy*

- 4 Level 1 literacy is the level of attainment in literacy which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 and over in order to be able to operate effectively in day-to-day life.

### *Entry level 3 numeracy*

- 5 Entry level 3 numeracy is the level of attainment in numeracy which, in the opinion of the Secretary of State, is the minimum required in that respect by persons aged 19 and over in order to be able to operate effectively in day-to-day life.

### *Level 2*

- 6 Level 2 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in five subjects, each at Grade C or above.

### *Level 3*

- 7 Level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects.

### *Advice and information*

- 8 In forming an opinion for the purposes of this Schedule, the Secretary of State may have regard, in particular, to advice or information relating to qualifications which is provided by—
  - (a) the Council, or

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- (b) the Qualifications and Curriculum Authority.

*Power to amend*

- 9 (1) The Secretary of State may by order amend this Schedule so as to—
- (a) add a category of qualification to Part 1;
  - (b) remove a category of qualification for the time being referred to in Part 1;
  - (c) substitute a different qualification for a qualification for the time being referred to in Part 2;
  - (d) make consequential amendments.
- (2) The power conferred by sub-paragraph (1)(b) includes power to remove every category of qualification to which a paragraph of Part 1 for the time being applies.”

**Commencement Information**

**I19** S. 86 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(1)

*Assessments of effectiveness of education or training*

**87 Benefit and training information**

- (1) Information within subsection (2) or (3) may be—
- (a) used in connection with the exercise of an assessment function of the Secretary of State or a devolved authority, or
  - (b) disclosed to a person for use in connection with the exercise of an assessment function of the Secretary of State or a devolved authority.
- (2) Information is within this subsection if—
- (a) it is about an individual who has attained the age of 19, and
  - (b) it is held by the Secretary of State for the purposes of any function of the Secretary of State relating to social security.
- (3) Information is within this subsection if—
- (a) it is about an individual who has attained the age of 19,
  - (b) it is held by the Secretary of State or a devolved authority, and
  - (c) it relates to any training or course of education undertaken by the individual (whether before or after the individual attained the age of 19).
- (4) For the purposes of this section and sections 88 to 90, “assessment function” means any of the following functions—
- (a) evaluating the effectiveness of training or education provided for persons who have attained the age of 19;
  - (b) assessing policy in relation to the provision of such training or education;
  - (c) assessing policy in relation to social security or employment as it affects the provision of or participation in such training or education.

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#### Commencement Information

**I20** S. 87 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 88 Revenue and Customs information

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

#### Commencement Information

**I21** S. 88 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 89 Use of information

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

#### Commencement Information

**I22** S. 89 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

### 90 Wrongful onward disclosure of information

- (1) This section applies to information—
  - (a) used in reliance on section 87(1)(a), or
  - (b) disclosed in reliance on section 87(1)(b) or 88.
- (2) A person commits an offence if—
  - (a) the person discloses the information to another otherwise than in connection with the exercise of an assessment function of the Secretary of State or a devolved authority, and
  - (b) the information relates to a person whose identity is specified in or can be deduced from the disclosure.

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- (3) It is a defence to prove that a person charged with the offence reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (4) A person guilty of an offence under this section is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.
- (5) A prosecution for an offence under this section may be instituted in England and Wales only with the consent of the Director of Public Prosecutions.
- (6) In subsection (4)(b), the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed in England and Wales before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences).

#### Commencement Information

**I23** S. 90 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

## 91 Information: supplementary

- (1) This section applies for the purposes of sections 87 to 90.
- (2) Nothing in these sections affects the use or disclosure of information by virtue of—
  - (a) section 3 of the Social Security Act 1998 (c. 14);
  - (b) any other enactment or rule of law.
- (3) These are the devolved authorities—
  - (a) the Scottish Ministers;
  - (b) the Welsh Ministers.
- (4) A reference to the Secretary of State includes a reference to a person providing services to the Secretary of State.
- (5) A reference to a devolved authority includes a reference to a person providing services to the authority.
- (6) A reference to training or education does not include a reference to higher education (within the meaning of the Education Reform Act 1988 (c. 40) or section 38 of the Further and Higher Education (Scotland) Act 1992 (c. 37)).

#### Commencement Information

**I24** S. 91 in force at 26.1.2009 by S.I. 2008/3077, art. 4(c)

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## PART 4

### REGULATION AND INSPECTION OF INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND

#### CHAPTER 1

##### INDEPENDENT EDUCATIONAL INSTITUTIONS IN ENGLAND

###### *Introductory*

### 92 Independent educational institutions

- (1) For the purposes of this Chapter, “an independent educational institution” means—
- (a) an independent school, or
  - (b) an institution other than an independent school which—
    - (i) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
    - (ii) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.
- (2) For the purposes of this section, an institution provides “part-time” education for a person if it provides education for the person—
- (a) for at least 12.5 hours a week, for at least 28 weeks, during an academic year at the end of which the person is under the age of 12, or
  - (b) for at least 15 hours a week, for at least 28 weeks, during an academic year at the end of which the person is aged 12 or over,
- which does not amount to full-time education.
- (3) Regulations may—
- (a) provide that a specified institution or an institution of a specified description is not an independent educational institution by virtue of subsection (1)(b);
  - (b) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education is being provided for the purposes of this section;
  - (c) amend subsection (2)(a) or (b) so as to substitute a different number of weeks for the number of weeks for the time being mentioned there.
- (4) In this section—
- “an academic year” means a period of 12 months ending with 31 August;
- “specified” means specified in regulations under this section.

#### **Commencement Information**

**I25** S. 92 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)



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VALID FROM 01/09/2009

### 93 Application of Chapter to institutions in England only

- (1) References in this Chapter to an independent educational institution are to an independent educational institution in England.
- (2) For provision regulating independent schools in Wales, see Chapter 1 of Part 10 of the Education Act 2002 (c. 32).

## Standards

### 94 Independent educational institution standards

- (1) The Secretary of State must by regulations prescribe standards for the purposes of this Chapter about the following matters—
  - (a) the quality of education provided at independent educational institutions;
  - (b) the spiritual, moral, social and cultural development of students at independent educational institutions;
  - (c) the welfare, health and safety of students at independent educational institutions;
  - (d) the suitability of proprietors of and staff at independent educational institutions;
  - (e) the premises of and accommodation at independent educational institutions;
  - (f) the provision of information by independent educational institutions;
  - (g) the manner in which independent educational institutions handle complaints;
  - (h) the quality of the leadership in and management of independent educational institutions.
- (2) A standard may be prescribed in relation to—
  - (a) all independent educational institutions,
  - (b) specified independent educational institutions, or
  - (c) independent educational institutions of a specified description.
- (3) In subsection (2) “specified” means specified in regulations made under this section.
- (4) The standards do not apply to early years provision for children who have not attained the age of three (separate requirements as to such provision being imposed by or under Part 3 of the Childcare Act 2006 (c. 21)).
- (5) In this Chapter “independent educational institution standards” means—
  - (a) the standards for the time being prescribed under this section, and
  - (b) in relation to early years provision for children who have attained the age of three, the Early Years Foundation Stage (see section 39 of the Childcare Act 2006).

#### Commencement Information

**I26** S. 94 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

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VALID FROM 05/01/2015

### *Requirement of registration*

#### **95 The register**

- (1) The Secretary of State must keep a register of independent educational institutions.
- (2) The register is to be known as “the register of independent educational institutions in England”.
- (3) The Secretary of State must publish the register in such manner, and at such times, as the Secretary of State considers appropriate.

#### **96 Unregistered independent educational institutions: offence**

- (1) A person must not conduct an independent educational institution unless it is registered.
- (2) A person who conducts an independent educational institution in contravention of subsection (1) is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (3) substitute “six months”.

#### **97 Unregistered independent educational institutions: inspection**

- (1) Where the Chief Inspector has reasonable cause to believe that an offence under section 96 is being committed on any premises, the Chief Inspector may at any reasonable time—
  - (a) enter and inspect the premises, and
  - (b) inspect and take copies of any records or other documents which the Chief Inspector has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
- (2) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under this section.
- (3) This section does not confer power to inspect or take copies of anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (legally privileged material etc).
- (4) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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### Registration procedure

#### 98 Applications for registration

- (1) The proprietor of an independent educational institution may apply to the Secretary of State for the institution to be entered on the register.
- (2) An application to enter an institution in the register must—
  - (a) contain the prescribed information, and
  - (b) be made in the prescribed manner.
- (3) The information prescribed under subsection (2)(a) must include information as to the following matters relating to the institution—
  - (a) whether the institution is—
    - (i) an independent school, or
    - (ii) an institution within section 92(1)(b);
  - (b) the age range of students;
  - (c) the maximum number of students;
  - (d) whether the institution is for male or female students or both;
  - (e) whether the institution provides accommodation for students;
  - (f) whether the institution is specially organised to make special educational provision for students with special educational needs;
  - (g) in the case of an institution within paragraph (f), the type or types of special educational needs for which the institution is specially organised to make special educational provision.
- (4) The Secretary of State must notify the Chief Inspector of an application under this section.

#### Commencement Information

I27 S. 98 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 01/01/2011

#### 99 Determination of applications for registration

- (1) Where the Chief Inspector is notified under section 98(4) that an institution has applied to be entered on the register, the Chief Inspector must—
  - (a) inspect the institution, and
  - (b) make a report to the Secretary of State on the extent to which the independent educational institution standards are likely to be met in relation to the institution once it becomes a registered independent educational institution.
- (2) The Secretary of State must then decide, taking into account—
  - (a) the report of the Chief Inspector, and
  - (b) any other evidence relating to the independent educational institution standards,

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whether those standards are likely to be met in relation to the institution once it becomes a registered independent educational institution.

- (3) The Secretary of State must notify the proprietor of the institution of the decision made under subsection (2).
- (4) If the Secretary of State decides under subsection (2) that the independent educational institution standards are likely to be met in relation to the institution once it becomes a registered independent educational institution, the Secretary of State must enter the institution in the register.
- (5) An entry in the register for an independent educational institution must include—
  - (a) the name and address of the institution,
  - (b) the name of the proprietor of the institution, and
  - (c) the information supplied pursuant to section 98(3)(a) to (g).

VALID FROM 05/01/2015

#### **100 Institutions no longer required to register: power to deregister**

- (1) If the Secretary of State—
  - (a) has reasonable cause to believe that a registered institution has ceased to be an independent educational institution, and
  - (b) does not have reasonable cause to believe that the institution will become an independent educational institution again within the following twelve months,
 the Secretary of State may remove the institution from the register.
- (2) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Secretary of State's decision does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

PROSPECTIVE

#### *Approval of material changes to registered details*

#### **101 “Material change”**

- (1) This section defines “a material change” in relation to an independent educational institution for the purposes of this Chapter.
- (2) In relation to an institution other than a special institution, “a material change” means a change in respect of any matter referred to in section 98(3)(e) or (f).
- (3) In relation to a special institution, “a material change” means—

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- (a) a change of proprietor,
  - (b) a change of address, or
  - (c) a change in respect of any matter referred to in section 98(3)(a) to (g).
- (4) In this section “a special institution” means an independent educational institution that is specially organised to make special educational provision for students with special educational needs.

### **102 Requirement to apply for approval for material change**

- (1) Where the proprietor of a registered independent educational institution is aware that a material change is to be made in relation to the institution, the proprietor must make an application to the Secretary of State for approval of the change.
- (2) An application for approval under this section must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor.

### **103 Inspection and report where applications made for approval**

- (1) Where an application for approval of a material change is made under section 102, the Secretary of State may direct the Chief Inspector to inspect the institution.
- (2) Where such a direction is given, the Chief Inspector must—
- (a) inspect the institution, and
  - (b) make a report to the Secretary of State on the extent to which any relevant standard is likely to continue to be met in relation to the institution if the change is made.
- (3) In this section “any relevant standard” means any independent educational institution standard—
- (a) specified by the Secretary of State for the purposes of the inspection, or
  - (b) considered to be relevant by the Chief Inspector in the circumstances of the case.

### **104 Determination of applications for approval**

- (1) Where an application for approval of a material change is made under section 102, the Secretary of State must—
- (a) approve the change, if satisfied that the independent educational institution standards are likely to continue to be met in relation to the institution if the change is made;
  - (b) in any other case refuse to approve it.
- (2) In coming to a decision under subsection (1) the Secretary of State must take into account—
- (a) any report of the Chief Inspector under section 103, and
  - (b) any other evidence relating to the independent educational institution standards.
- (3) The Secretary of State must notify the proprietor of the institution of any decision under subsection (1).

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- (4) A decision under subsection (1) to refuse to approve a material change does not have effect during the period in which—
- (a) an appeal may be brought under section 125 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

### **105 Power to deregister institution that makes unapproved material change**

- (1) The Secretary of State may remove an independent educational institution from the register if—
- (a) there has been a material change in relation to the institution,
  - (b) the change has not been approved under this Chapter, and
  - (c) either—
    - (i) no application has been made under section 102 for approval of the change, or
    - (ii) such an application has been made but has been refused.
- (2) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Secretary of State's decision does not have effect during the period in which—
- (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

## *Independent inspectorates*

### **106 Independent inspectorates**

- (1) The Secretary of State may—
- (a) approve a body or bodies to carry out inspections of registered independent educational institutions;
  - (b) withdraw approval previously given under paragraph (a).
- (2) The Secretary of State may approve a body in relation to—
- (a) specified registered independent educational institutions, or
  - (b) registered independent educational institutions of a specified description.

In this subsection “specified” means specified by the Secretary of State.

- (3) The power in subsection (2)(b) to specify a description of independent educational institution includes power to specify a description by reference to membership of a body.
- (4) The Secretary of State may by regulations specify matters that must be taken into account in deciding to approve or withdraw approval from a body under this section.
- (5) In this Chapter, “an independent inspectorate” means a body approved under this section.

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### Commencement Information

**I28** S. 106 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 08/09/2014

### 107 Quality assurance of independent inspectorates

- (1) The Chief Inspector must, at intervals of no more than a year, prepare and send to the Secretary of State a report about independent inspectorates.
- (2) In preparing a report under this section the Chief Inspector must have regard to such matters as the Secretary of State may direct.
- (3) The Secretary of State may in particular give directions about—
  - (a) matters to be taken into account in preparing a report, and
  - (b) the form and contents of a report.

### *Inspections and reports*

### 108 Duty to inspect certain registered institutions at prescribed intervals

- (1) The Chief Inspector must—
  - (a) inspect each independent educational institution to which this section applies at such intervals as may be prescribed, and
  - (b) make a report to the Secretary of State, in relation to each inspection, on the extent to which any relevant standard is being met, and is likely to continue to be met, in relation to the institution.
- (2) In this section “any relevant standard”, in relation to an inspection, means any independent educational institution standard that is—
  - (a) specified by the Secretary of State for the purposes of the inspection, or
  - (b) considered to be relevant by the Chief Inspector in the circumstances of the case.
- (3) This section does not require the Chief Inspector to carry out an inspection or make a report if the Chief Inspector has been notified by the Secretary of State that the institution is to be inspected instead by an independent inspectorate.
- (4) An interval may be prescribed under subsection (1) by reference to the time of an inspection carried out—
  - (a) by the Chief Inspector in compliance with subsection (1), or
  - (b) by an independent inspectorate as mentioned in subsection (3).
- (5) This section applies to any registered independent educational institution that is not—
  - (a) an Academy,
  - (b) a city technology college, or
  - (c) a city college for the technology of the arts.

**Status:** Point in time view as at 19/06/2009. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Education and Skills Act 2008 is up to date with all changes known to be in force on or before 13 April 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)

### Commencement Information

**I29** S. 108 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 05/01/2015

### 109 Duty to inspect registered institution on direction of Secretary of State

- (1) The Secretary of State may at any time direct the Chief Inspector to inspect a registered independent educational institution specified in the direction.
- (2) Where such a direction is made the Chief Inspector must—
  - (a) inspect the institution, and
  - (b) make a report to the Secretary of State on the extent to which any relevant standard is being met in relation to the institution.
- (3) The Secretary of State may at any time arrange for an independent inspectorate—
  - (a) to inspect a registered independent educational institution in relation to which it is approved under section 106, and
  - (b) to make a report to the Secretary of State on the extent to which any relevant standard is being met in relation to the institution.
- (4) In this section “any relevant standard” means any independent educational institution standard that is—
  - (a) specified by the Secretary of State for the purposes of the inspection, or
  - (b) considered to be relevant by the person carrying out the inspection in the circumstances of the case.

VALID FROM 05/01/2015

### 110 Inspections under this Chapter: power of entry etc

- (1) This section applies to any inspection of a registered independent educational institution that is carried out by the Chief Inspector under this Chapter.
- (2) The Chief Inspector has at all reasonable times—
  - (a) a right of entry to the premises of the institution for the purposes of the inspection, and
  - (b) a right to inspect and take copies of any records kept by the institution and any other documents containing information relating to the institution that are required for the purposes of the inspection.
- (3) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under subsection (2)(b).
- (4) This section does not confer power to inspect or take copies of anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (c. 60) (legally privileged material etc).



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- (5) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection.
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## 111 Fees for inspections by Chief Inspector under this Chapter

- (1) Regulations may require the proprietor of an institution to which this section applies to pay to the Chief Inspector a fee in respect of an inspection of the institution carried out by the Chief Inspector under this Chapter.
- (2) Regulations under this section must make provision for determining—
  - (a) the amount of any fee, and
  - (b) the time at which it must be paid.
- (3) Regulations under this section may make provision—
  - (a) for determining the amount of a fee by reference to circumstances obtaining at a time before the inspection to which it relates takes place;
  - (b) requiring two or more fees to be paid in respect of an inspection under section 108 (inspections at prescribed intervals);
  - (c) requiring a fee to be paid at a time before the inspection to which it relates takes place;
  - (d) prescribing circumstances in which the amount of a fee may be varied or a fee may be waived;
  - (e) conferring a discretion on the Secretary of State.
- (4) The power in subsection (3)(c)—
  - (a) does not include power to make provision requiring a fee in respect of an inspection under section 108 to be paid at any time at which an independent inspectorate is approved in relation to the institution;
  - (b) includes power to make provision as to circumstances in which a fee is not to be refunded (and any requirement to pay a fee is to be unaffected) if the inspection to which it relates does not take place.
- (5) Without prejudice to section 166(6), regulations under this section may make different provision—
  - (a) for inspections of different descriptions of institution, or
  - (b) for inspections carried out for different purposes or in different circumstances.
- (6) This section applies to any registered independent educational institution that is not—
  - (a) an Academy,
  - (b) a city technology college, or
  - (c) a city college for the technology of the arts.

### Commencement Information

**I30** S. 111 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2) (with art. 2A) (which transitory provision was inserted (1.7.2009) by S.I. 2009/1606, art. 7)

**Status:** Point in time view as at 19/06/2009. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/09/2009

### **112 Failure to pay fees**

- (1) Where the proprietor of an institution fails to pay a fee in accordance with regulations under section 111, the Secretary of State may remove the institution from the register.
- (2) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (3) The Secretary of State's decision does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

### **113 Publication of inspection reports**

- (1) The Chief Inspector must comply with a direction given by the Secretary of State to publish the report of any inspection carried out by the Chief Inspector under this Chapter.
- (2) A report published by virtue of this section must be published in the prescribed manner.

#### **Commencement Information**

**I31** S. 113 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 12/10/2009

#### *Failure to meet standards*

VALID FROM 05/01/2015

### **114 Action plans**

- (1) This section applies to a registered independent educational institution if the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution.
- (2) In subsection (1) “relevant evidence” means—
  - (a) the report of an inspection carried out by the Chief Inspector or an independent inspectorate, or
  - (b) any other evidence in respect of the institution.
- (3) The Secretary of State may require the proprietor of a registered independent educational institution to which this section applies to submit an action plan to the Secretary of State for approval.

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- (4) In this Chapter “an action plan” means a plan specifying—
  - (a) the steps that will be taken to meet a standard or standards, and
  - (b) the time by which each step will be taken.
- (5) Any requirement imposed under this section to submit an action plan must be imposed by serving a notice on the proprietor of the institution in question—
  - (a) identifying the standard or standards that the Secretary of State is satisfied is or are not being met in relation to the institution, and
  - (b) specifying a date by which the action plan must be submitted.
- (6) Where an action plan is submitted in pursuance of a requirement imposed under this section (whether or not by the date specified in the notice), the Secretary of State may—
  - (a) approve it, with or without modifications, or
  - (b) reject it.
- (7) Where the Secretary of State rejects an action plan, the Secretary of State may impose a further requirement under this section to submit an action plan.
- (8) An action plan that has been approved may be varied at any time by the proprietor of the institution in question with the agreement of the Secretary of State.

VALID FROM 05/01/2015

## 115 Power of Secretary of State to take enforcement action

- (1) This section applies to a registered independent educational institution if the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution.
- (2) In subsection (1) “relevant evidence” means—
  - (a) the report of an inspection carried out by the Chief Inspector or an independent inspectorate, or
  - (b) any other evidence in respect of the institution.
- (3) The Secretary of State may take enforcement action under section 116 against the proprietor of a registered independent educational institution to which this section applies if either of the following conditions is met.
- (4) The first condition is that—
  - (a) the Secretary of State has, during the period of three years before the enforcement action is taken, required the proprietor of the institution to submit one or more action plans under section 114, and
  - (b) any action plan required as mentioned in paragraph (a)—
    - (i) has not been submitted, and the date specified by the Secretary of State under section 114(5)(b) has passed,
    - (ii) was submitted but was rejected, or
    - (iii) was approved but was subsequently not complied with.
- (5) The second condition is that—

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- (a) at least two years before the enforcement action is taken the Secretary of State required the proprietor of the institution to submit an action plan,
- (b) at least one inspection of the institution has been carried out, by the Chief Inspector or an independent inspectorate approved under section 106 in relation to the institution, since that requirement was imposed, and
- (c) the Secretary of State has not at any time since that requirement was imposed been satisfied that the institution was meeting all of the independent educational institution standards.

VALID FROM 05/01/2015

### **116 Enforcement action available to Secretary of State**

- (1) Where the Secretary of State is entitled under section 115(3) to take enforcement action against the proprietor of an institution, the Secretary of State may—
  - (a) impose a relevant restriction on the proprietor, or
  - (b) remove the institution from the register.
- (2) The Secretary of State must notify the proprietor of the institution in question of any decision to take enforcement action under subsection (1).
- (3) A decision to take enforcement action under subsection (1) does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 or 125 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

### **117 “Relevant restriction”**

- (1) In this Chapter a “relevant restriction” imposed on the proprietor of a registered independent educational institution is a requirement that the proprietor take one or more of the following steps by a specified time or by specified times—
  - (a) to cease to use any part of the institution's premises for all purposes or specified purposes;
  - (b) to close any part of the institution's operation;
  - (c) to cease to admit any new students or new students of specified descriptions.
- (2) In subsection (1) “specified” means—
  - (a) in the case of a relevant restriction imposed by the Secretary of State under section 116(1)(a), specified by the Secretary of State;
  - (b) in the case of a relevant restriction imposed by an order of a justice of the peace under section 120, specified in the order;
  - (c) in the case of a relevant restriction imposed by an order of the Tribunal under section 124, 125 or 126, specified in the order.

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VALID FROM 05/01/2015

### 118 Relevant restriction imposed by Secretary of State: supplementary

- (1) This section applies where the proprietor of an institution is subject to a relevant restriction imposed by the Secretary of State under section 116(1)(a).
- (2) If the proprietor fails to comply with the relevant restriction the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (2) substitute “six months”.
- (4) The proprietor may apply to the Secretary of State for the restriction to be varied or revoked.
- (5) On an application under subsection (4) the Secretary of State must—
  - (a) vary or revoke the restriction as requested in the application, if the Secretary of State is satisfied that it is appropriate to do so because of any change of circumstance, and
  - (b) in any other case, refuse to do so.
- (6) The Secretary of State must notify the proprietor of the decision made under subsection (5).
- (7) A decision to vary or revoke the restriction has effect as from the date on which the proprietor receives notice of it.

### *Unsuitable persons*

### 119 Unsuitable persons

- (1) The Secretary of State may remove an institution from the register if satisfied that a person to whom subsection (2) applies—
  - (a) carries out work of a prescribed kind in relation to the institution, or
  - (b) is the proprietor of the institution.
- (2) This subsection applies to any person who is subject to a direction, order or decision of a prescribed description made under any prescribed enactment having effect in any part of the United Kingdom.
- (3) The Secretary of State must notify the proprietor of an institution of any decision to remove it from the register under this section.
- (4) The Secretary of State's decision does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

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- (5) The reference in subsection (1) to the proprietor of the institution is—
- (a) in a case in which the proprietor is a company, a reference to any director of the company;
  - (b) in a case in which the proprietor is any other body of persons, whether corporate or unincorporate, a reference to any member of the body.

#### **Commencement Information**

**I32** S. 119 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 05/01/2015

### *Emergencies*

#### **120 Application to justice of the peace for order**

- (1) The Secretary of State may apply to a justice of the peace for—
  - (a) an order imposing a relevant restriction on the proprietor of a registered independent educational institution, or
  - (b) an order that such an institution be removed from the register.
- (2) If it appears to the justice that a student at the institution in question is suffering or is likely to suffer significant harm, the justice may make the order.
- (3) An application under this section may be made without notice.
- (4) An order under this section must be in writing.
- (5) A copy of an order under this section must be served on the proprietor of the institution by the Secretary of State as soon as reasonably practicable after the order is made.
- (6) An order under this section has effect from the time the copy is served on the proprietor (and, accordingly, in the case of an order under subsection (1)(b), the Secretary of State must not remove the institution from the register in pursuance of the order before that time).
- (7) For the purposes of this section, “harm” has the same meaning as in the Children Act 1989 (c. 41) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act.

#### **121 Relevant restriction imposed by justice of the peace: supplementary**

- (1) This section applies where the proprietor of an institution is subject to a relevant restriction imposed by an order of a justice of the peace under section 120(1)(a).
- (2) If the proprietor fails to comply with the relevant restriction, the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).

**Status:** Point in time view as at 19/06/2009. This version of this Act contains provisions that are not valid for this point in time.

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- (3) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (2) substitute “six months”.

## 122 Order of justice of the peace: notification

- (1) The Secretary of State must comply with this section as soon as reasonably practicable after an order is made under section 120 against the proprietor of an institution.
- (2) The Secretary of State must serve on the proprietor—
- (a) a copy of any written statement in support of the application for the order, and
  - (b) notice of the right of appeal conferred by section 126.
- (3) In the case of an order made against the proprietor of a special institution, the Secretary of State must notify the following that the order has been made—
- (a) the [<sup>F9</sup>local authority] in whose area the institution is situated;
  - (b) any other [<sup>F9</sup>local authority] that the Secretary of State, after reasonable enquiry, is aware has specified the institution in a statement of special educational needs in respect of a student at the institution.
- (4) In this section “a special institution” means an institution that is specially organised to make special educational provision for students with special educational needs.

### Textual Amendments

- F9** 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. 15\(2\)](#)

## *Provision of information by proprietors*

### 123 Provision of information by proprietors

- (1) Regulations may make provision for requiring the proprietor of a registered independent educational institution to provide the Secretary of State, on request, with such particulars relating to the institution as may be prescribed.
- (2) Regulations under this section may in particular—
- (a) require the provision of such information as is needed by the local authority in whose area the institution is situated for the purpose of determining whether the institution is a children's home within the meaning of the Care Standards Act 2000 (c. 14) (see section 1 of that Act);
  - (b) provide for the Secretary of State to remove from the register any institution in respect of which any requirement imposed by or under the regulations is not complied with;
  - (c) provide that a person who fails to comply with any specified provision of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (3) In subsection (2) “specified” means specified in regulations under this section.
- (4) Regulations that include provision by virtue of subsection (2)(b) must include the provision required by subsections (5) and (6).
- (5) The regulations must require the Secretary of State to notify the proprietor of an institution of any decision to remove the institution from the register by virtue of subsection (2)(b).
- (6) The regulations must provide that a decision by the Secretary of State to remove an institution from the register by virtue of subsection (2)(b) does not have effect during the period in which—
  - (a) an appeal may be brought under section 124 against the decision, or
  - (b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

#### Commencement Information

**I33** S. 123 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 12/10/2009

### *Appeals*

#### **124 Appeal by proprietor against decision of Secretary of State to deregister**

- (1) The proprietor of a registered independent educational institution may appeal to the Tribunal against a decision of the Secretary of State to remove the institution from the register—
  - (a) under section 100 (no longer required to register),
  - (b) under section 105 (unapproved material change),
  - (c) under section 112 (failure to pay fees),
  - (d) under section 116 (failure to meet standards),
  - (e) under section 119 (unsuitable persons), or
  - (f) by virtue of section 123 (failure to provide information).
- (2) Any appeal under this section must be brought within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.
- (3) On an appeal under this section the Tribunal may—
  - (a) confirm the decision,
  - (b) direct that the decision is of no effect, or
  - (c) in the case of an appeal under subsection (1)(b), (d) or (e), direct that the decision is of no effect and make an order imposing a relevant restriction on the proprietor of the institution.
- (4) Where the Tribunal confirms the decision, the Secretary of State must remove the institution from the register on such date as the Tribunal may specify or, if it does not specify a date, from such date as the Secretary of State may determine.



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(5) In this Chapter “the Tribunal” means the First-tier Tribunal.

VALID FROM 05/01/2015

## 125 Appeal by proprietor against other decisions of Secretary of State

- (1) The proprietor of an institution may appeal to the Tribunal against a decision of the Secretary of State in relation to the institution under—
  - (a) section 99(2) (standards not likely to be met on registration),
  - (b) section 104(1) (refusal to approve a material change),
  - (c) section 116(1)(a) (imposition of relevant restriction on proprietor), or
  - (d) section 118(5)(b) (refusal to vary or revoke a relevant restriction).
- (2) Any appeal under this section must be brought within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.
- (3) On an appeal under subsection (1)(a), the Tribunal may—
  - (a) confirm the decision, or
  - (b) require the Secretary of State to reconsider the decision, taking into account, amongst other things, the findings of the Tribunal on the appeal.
- (4) Section 99(3) and (4) applies in relation to the Secretary of State's decision on reconsideration under subsection (3)(b) above as it applies to a decision made under section 99(2).
- (5) On an appeal under subsection (1)(b) the Tribunal may—
  - (a) confirm the decision, or
  - (b) itself approve the change.
- (6) On an appeal under subsection (1)(c), the Tribunal may—
  - (a) confirm the decision,
  - (b) direct that the relevant restriction is to cease to have effect, or
  - (c) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor.
- (7) On an appeal under subsection (1)(d), the Tribunal may—
  - (a) confirm the refusal, or
  - (b) if the Tribunal is satisfied that it is appropriate to do so because of a change of circumstance since the restriction in question was imposed—
    - (i) direct that the relevant restriction is to cease to have effect, or
    - (ii) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor.

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VALID FROM 05/01/2015

### **126 Appeal by proprietor against order of justice of the peace**

- (1) The proprietor of a registered independent educational institution may appeal to the Tribunal against the making of an order under section 120 (order of justice of the peace in an emergency).
- (2) On an appeal under this section the Tribunal may—
  - (a) confirm the making of the order,
  - (b) direct that the order is to cease to have effect, or
  - (c) direct that the order is to cease to have effect and make an order—
    - (i) imposing a relevant restriction on the proprietor of the institution, or
    - (ii) requiring the Secretary of State to remove the institution from the register on such date as the Tribunal may specify or, if it does not specify a date, from such date as the Secretary of State may determine.
- (3) Subsection (4) applies where—
  - (a) an appeal is brought under this section against an order that the institution be removed from the register, and
  - (b) the Tribunal directs that the order is to cease to have effect.
- (4) The institution—
  - (a) must be restored to the register by the Secretary of State, and
  - (b) is to be treated as if it had not been removed from the register in pursuance of the order.

### **127 Relevant restriction imposed by Tribunal: supplementary**

- (1) This section applies where the Tribunal makes an order under section 124, 125 or 126 imposing a relevant restriction on the proprietor of an institution.
- (2) The order in question has effect from the time the proprietor receives notice of it in accordance with Tribunal Procedure Rules or from the Secretary of State.
- (3) If the proprietor fails to comply with the relevant restriction, the proprietor is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), for “51 weeks” in subsection (3) substitute “six months”.
- (5) The proprietor may apply to the Tribunal for the relevant restriction to be varied or revoked.
- (6) On an application under subsection (5) the Tribunal must—

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- (a) vary or revoke the relevant restriction as requested in the application, if the Tribunal is satisfied that it is appropriate to do so because of any change of circumstance, and
- (b) in any other case, refuse to do so.

### *Prohibition on participation in management of independent educational institutions*

## **128 Prohibition on participation in management**

- (1) The appropriate authority may direct that a person—
  - (a) may not take part in the management of an independent educational institution;
  - (b) may take part in the management of such an institution only in circumstances specified in the direction;
  - (c) may take part in the management of such an institution only if conditions specified in the direction are satisfied.
- (2) A direction under this section may be given in respect of a person only on one or more prescribed grounds connected with the suitability of persons to take part in the management of an independent educational institution.
- (3) Regulations may prescribe the procedure for giving a direction under this section (including provision about notification of persons who are subject to directions).
- (4) The appropriate authority may vary or revoke a direction under this section in prescribed cases.
- (5) Regulations may prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked under subsection (4).
- (6) In this section and sections 129 to 131, “the appropriate authority” means—
  - (a) the Secretary of State, or
  - (b) such other public authority as may be prescribed.

### **Commencement Information**

**I34** S. 128 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

## **129 Directions under section 128: appeals**

- (1) A person in respect of whom a direction has been given under section 128 may appeal to the Tribunal—
  - (a) against the decision to give the direction;
  - (b) against a decision not to vary or revoke the direction.
- (2) Regulations may—
  - (a) provide that the Tribunal may not entertain an appeal under this section insofar as the appellant's case is inconsistent with the appellant having been convicted of an offence;
  - (b) prescribe circumstances in which the Tribunal must allow an appeal under this section;

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- (c) prescribe the powers available to the Tribunal on allowing an appeal under this section.

#### Commencement Information

**I35** S. 129 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 08/09/2014

#### 130 Directions under section 128: information

- (1) Where the appropriate authority is a public authority other than the Secretary of State, the Secretary of State may provide to that authority any information relating to a person which appears to the Secretary of State to be relevant to the exercise of the appropriate authority's functions under section 128 or by virtue of section 129.
- (2) The Welsh Ministers may provide to the appropriate authority any information relating to a person which is held by them in connection with their functions under Chapter 1 of Part 10 of the Education Act 2002 (c. 32).
- (3) The Chief Inspector may provide to the appropriate authority any information relating to a person which appears to the Chief Inspector to be relevant to the exercise of the appropriate authority's functions under section 128 or by virtue of section 129.
- (4) The [<sup>F27</sup>Independent Safeguarding Authority] may provide to the appropriate authority any information relating to a person which is held by [<sup>F28</sup>the Authority] in connection with its functions and which appears to it to be relevant to the exercise of the appropriate authority's functions under section 128 or by virtue of section 129.
- (5) The appropriate authority may provide to the [<sup>F27</sup>Independent Safeguarding Authority], the General Teaching Council for England, the General Teaching Council for Wales, the Chief Inspector, the Welsh Ministers or, where the appropriate authority is a public authority other than the Secretary of State, the Secretary of State, any information relating to a person which is held by the appropriate authority in connection with its functions under section 128.

#### Textual Amendments

- F27** Words in s. 130 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\), ss. 81\(2\)\(3\)\(p\), 116\(5\)\(a\)](#)
- F28** Words in s. 130(4) substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\), ss. 81\(4\)\(b\), 116\(5\)\(a\)](#)

VALID FROM 08/09/2014

#### 131 Directions under section 128: notification

Where the appropriate authority gives a direction under section 128(1), or varies or revokes any such direction, it must notify—

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- (a) the Secretary of State (unless the appropriate authority is the Secretary of State), and
- (b) the Welsh Ministers and (if different) the appropriate authority for the purposes of sections 167A to 167D of the Education Act 2002 (c. 32) (prohibition on participation in management of independent schools in Wales).

### *Independent colleges for 16 to 18 year olds*

## **132 Providers of independent education or training for 16 to 18 year olds**

- (1) Regulations may provide for any provision of this Chapter to apply in relation to an independent post-16 college as it applies in relation to an independent educational institution, subject to such modifications as may be prescribed.
- (2) For this purpose, “an independent post-16 college” means an institution in England—
  - (a) at which relevant education or training is provided for—
    - (i) five or more persons who are not under compulsory school age, including at least one who is over compulsory school age but is under the age of 18, or
    - (ii) at least one student to whom subsection (4) applies who is over compulsory school age but is under the age of 18,
  - (b) which is not—
    - (i) an independent educational institution,
    - (ii) a school maintained by a local education authority,
    - (iii) a special school not so maintained, or
    - (iv) an institution in receipt of funding from the Learning and Skills Council for England, and
  - (c) which is outside the further education and higher education sectors.
- (3) In subsection (2)(a), “relevant education or training” provided for a person means education or training which—
  - (a) is provided for the person for at least 16 hours a week, for at least 4 weeks, during an academic year, and
  - (b) is not education or training provided in connection with facilities for adventure activities (within the meaning of section 1 of the Activity Centres (Young Persons' Safety) Act 1995 (c. 15) (adventure activities: licensing)).
- (4) This subsection applies to a person—
  - (a) for whom a statement is maintained by a local education authority under section 324 of the Education Act 1996 (c. 56) (statement of special educational needs), or
  - (b) for whom a statement was so maintained immediately before—
    - (i) the person ceased to be a pupil at his or her last school, or
    - (ii) the institution started providing relevant education or training for the person.
- (5) Regulations may—
  - (a) provide that a specified institution or an institution of a specified description is not an independent post-16 college;

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- (b) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education or training is provided for the purposes of this section;
  - (c) amend subsection (3)(a) so as to substitute a different number of hours or weeks for the number of hours or weeks for the time being mentioned there.
- (6) In this section—
- “an academic year” means a period of 12 months ending with 31 August;
  - “specified” means specified in regulations under this section.

**Commencement Information**

**I36** S. 132 in force at 19.6.2009 for specified purposes by [S.I. 2009/1513](#), **art. 2(2)**

**133 Regulations under section 132: supplementary**

- (1) Regulations under section 132(1) applying—
- (a) section 120, or
  - (b) any of the provisions mentioned in—
    - (i) section 124(1), or
    - (ii) section 125(1),
- in relation to an independent post-16 college must also apply any provision conferring a right of appeal against a decision or order made under that provision.
- (2) No draft of any regulations under section 132(1) may be laid before Parliament unless the Secretary of State has first consulted—
- (a) the Chief Inspector, and
  - (b) such other persons as the Secretary of State considers appropriate, about the proposal to make the regulations.

**Commencement Information**

**I37** S. 133 in force at 19.6.2009 for specified purposes by [S.I. 2009/1513](#), **art. 2(2)**

VALID FROM 01/09/2009

*Supplementary*

VALID FROM 12/10/2009

**134 Proceedings for offences**

No proceedings for an offence under this Chapter may be instituted except by or with the consent of the Secretary of State.

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VALID FROM 12/10/2009

### 135 Offences by bodies corporate

- (1) Where an offence under this Chapter committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,that person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to a director of a body corporate.

VALID FROM 12/10/2009

### 136 Offences by unincorporated bodies

- (1) Proceedings for an offence alleged to have been committed under this Chapter by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.
- (2) A fine imposed on an unincorporated body on its conviction of an offence under this Chapter is to be paid out of the funds of that body.
- (3) If an unincorporated body is charged with an offence under this Chapter, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) (procedure on charge of an offence against a corporation) apply as they do in relation to a body corporate.
- (4) Where an offence under this Chapter committed by an unincorporated body other than a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that person (as well as the body) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) Where an offence under this Chapter committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

### 137 Service of notice etc

For the purposes of this Chapter, any notice, order or other document required to be given to or served on the proprietor of a registered independent educational

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institution may be given to or served on the proprietor by delivering it to the registered address of the institution.

### 138 Interpretation of Chapter

(1) In this Chapter—

“an action plan” has the meaning given by section 114(4);

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

“early years provision” has the meaning given by section 96(2) of the Childcare Act 2006 (c. 21);

“independent educational institution standards” has the meaning given by section 94;

“an independent inspectorate” has the meaning given by section 106;

“a material change”, in relation to an independent educational institution, has the meaning given by section 101;

“proprietor”, in relation to an institution, means the person or body of persons responsible for the management of the institution;

“the register” means the register of independent educational institutions in England (see section 95);

“registered” means entered in the register;

“relevant restriction” has the meaning given by section 117;

“student” means—

(a) in relation to an independent school, a pupil (for the meaning of “pupil” see section 3 of the Education Act 1996 (c. 56));

(b) in relation to an institution within section 92(1)(b), a person for whom the institution provides part-time education within the meaning of that provision or full-time education;

“the Tribunal” has the meaning given by section 124(5).

(2) In section 98 the reference to the proprietor of an independent educational institution includes the proprietor of an institution that it is proposed should become an independent educational institution (and accordingly the information required by subsection (3) of that section, in the case of such a proprietor, is information about the institution as it is proposed to be).

### *Transitional provision*

VALID FROM 05/01/2015

### 139 Continuity of the law

(1) This section applies where—

(a) by virtue of one or more amendments made by paragraphs 15 to 24 of Schedule 1, a provision of or made under Chapter 1 of Part 10 of the Education Act 2002 (c. 32) (“the old provision”) that applied in relation to independent schools in England has ceased so to apply, and



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- (b) a provision of or made under this Chapter (“the new provision”) re-enacts, with or without modification, the old provision as it so applied.
- (2) The amendment or amendments mentioned in subsection (1)(a) and the re-enactment mentioned in subsection (1)(b) do not affect the continuity of the law.
- (3) Anything done (including any subordinate legislation made), or having effect as if done, under or for the purposes of the old provision that—
- (a) could have been done under or for the purposes of the new provision (had the new provision then been in force), and
  - (b) is in force or effective immediately before the coming into force of the new provision,
- has effect from that time as if done under or for the purposes of the new provision.
- (4) Any reference (express or implied) in this Chapter or any other enactment, instrument or document to the new provision is to be construed (so far as the context permits) as including, as respects times, circumstances or purposes in relation to which the old provision had effect, a reference to the old provision.
- (5) Any reference (express or implied) in any enactment, instrument or document to the old provision is to be construed (so far as the context permits), as respects times, circumstances and purposes in relation to which the new provision has effect, as being or (according to the context) including a reference to the new provision.
- (6) This section has effect subject to any specific transitional provision of or made under this Act.
- (7) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

#### 140 The register and fees

- (1) On the coming into force of section 95, the register of independent schools in England becomes the register of independent educational institutions in England.
- (2) The power in section 111(3)(d) to make provision prescribing circumstances in which the amount of a fee may be waived includes power to make such provision in relation to a fee (or any part of a fee) payable by virtue of section 162B(6) of the Education Act 2002 (fees payable to Chief Inspector).

#### Commencement Information

**I38** S. 140 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

#### 141 Prohibition on participation in management

- (1) A person falls within this subsection if—
- (a) immediately before the relevant day the person is subject to a direction under section 142 of the Education Act 2002 (c. 32) given on grounds prescribed for the purposes of this section, and
  - (b) prescribed conditions (which may include conditions relating to decisions taken on or after the relevant day by the Independent Barring Board under the

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Safeguarding Vulnerable Groups Act 2006 (c. 47)) are satisfied in relation to the person.

- (2) Regulations may provide that, as from a time specified in or determined in accordance with the regulations, persons who fall within subsection (1) are to be treated for prescribed purposes as if the direction given under section 142 of the Education Act 2002 were a direction given by the appropriate authority under section 128 of this Act.
- (3) Regulations under this section may make provision in connection with the determination of any appeal under subsection (1) of section 144 of the Education Act 2002, or application for review under subsection (2) of that section, which is pending on the relevant day.
- (4) Regulations made by virtue of subsection (3) may, in particular, provide for an appeal, or application for review, under section 144 of the Education Act 2002 to be treated as an appeal under section 129 of this Act.
- (5) In this section—
  - “appropriate authority” has the same meaning as in sections 128 to 131 (see section 128(6));
  - “the relevant day” means the day on which section 128 comes into force.

#### Commencement Information

**I39** S. 141 in force at 19.6.2009 for specified purposes by S.I. 2009/1513, art. 2(2)

VALID FROM 01/09/2009

## CHAPTER 2

### SCHOOLS PROVIDING FOR SPECIAL EDUCATIONAL NEEDS

VALID FROM 30/03/2010

#### *Non-maintained special schools in England*

#### **142 Interpretation**

- (1) For section 337 of the Education Act 1996 (c. 56) (special schools) and the italic heading preceding it substitute—

*“Interpretation*

#### **337 Special schools**

A school is a special school if—

- (a) it is specially organised to make special educational provision for pupils with special educational needs, and

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- (b) in the case of a school that is not maintained by a local education authority, it is approved under section 342.

### 337A Interpretation of Chapter

In this Chapter—

“a non-maintained special school” means a school that is approved under section 342;

“the appropriate national authority” means—

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

- (2) Section 342 of that Act (approval of non-maintained special schools) is amended as follows.

- (3) In subsection (1)—

- (a) for “Secretary of State” substitute “ appropriate national authority ”;  
(b) omit “his”.

- (4) In subsection (5)(a) for “Secretary of State” substitute “ appropriate national authority ”.

### 143 Right of sixth-form pupils to opt out of religious worship

- (1) Section 342 of the Education Act 1996 is amended as follows.

- (2) After subsection (5) insert—

“(5A) Regulations shall make provision for securing that, so far as practicable, every pupil attending a school in England that is approved under this section—

- (a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil's parent, and  
(b) attends religious worship unless withdrawn from attendance at such worship—  
(i) in the case of a sixth-form pupil, in accordance with the pupil's own wishes, and  
(ii) in any other case, in accordance with the wishes of the pupil's parent.

(5B) In subsection (5A) “a sixth-form pupil” means a pupil who—

- (a) has ceased to be of compulsory school age, and  
(b) is receiving education suitable to the requirements of pupils over compulsory school age.”

- (3) In subsection (6) for “special school” substitute “ school in Wales that is ”.

### 144 Protection of pupils in an emergency

After section 342 of the Education Act 1996 (c. 56) insert—

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*“Non-maintained special schools in England:  
 protection of pupils in an emergency*

**342A Application to justice of the peace: power to make regulations**

- (1) Regulations may make provision conferring power on a justice of the peace, on the application of the Secretary of State, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under section 342.
- (2) Regulations under this section may in particular make provision corresponding, with or without modifications, to that made in—
  - (a) section 120(2) to (7) of the Education and Skills Act 2008 (emergency orders in relation to registered independent educational institutions), or
  - (b) section 122 of that Act (notification).”

**145 Appeals**

After section 342A of the Education Act 1996 (inserted by section 144) insert—

*“Non-maintained special schools in England: appeals*

**342B Appeal against decision of Secretary of State**

- (1) Regulations may make provision for an appeal against a decision of the Secretary of State—
  - (a) to withdraw approval from a non-maintained special school in England by virtue of section 342(4)(b) (failure to comply with prescribed requirement) otherwise than at the request of the proprietor;
  - (b) not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school.
- (2) In subsection (1)(b) “relevant arrangements” means arrangements that require the approval of the Secretary of State by virtue of section 342(5) (a).
- (3) Regulations under this section must provide that an appeal brought by virtue of this section—
  - (a) lies to the First-tier Tribunal, and
  - (b) must be brought by the proprietor of the school in question.
- (4) The regulations may in particular make provision, in the case of an appeal brought by virtue of subsection (1)(a), prohibiting the Secretary of State from acting on a decision to withdraw approval during the period in which—
  - (a) an appeal against the decision could be brought, or

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- (b) where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

### **342C Appeal against order of justice of peace**

- (1) Regulations may make provision for an appeal against the making of an order by virtue of section 342A (order by justice of peace in an emergency).
- (2) The regulations must provide that an appeal brought by virtue of this section—
- (a) lies to the First-tier Tribunal, and
- (b) must be brought by the proprietor of the school in question.”

### *Independent schools in England*

#### **146 Abolition of requirement of approval for independent schools: England**

- (1) Section 347 of the Education Act 1996 (c. 56) (approval of independent schools) is amended as follows.
- (2) In subsection (1) —
- (a) for “The Secretary of State” substitute “ The Welsh Ministers ”;
- (b) after “independent school” insert “ in Wales ”.
- (3) In subsection (3) for “the Secretary of State sees” substitute “ the Welsh Ministers see ”.
- (4) In subsection (4) for “the Secretary of State may withdraw his” substitute “ the Welsh Ministers may withdraw their ”.
- (5) In subsection (5)—
- (a) for “a child with special educational needs” substitute “ a relevant child ”;
- (b) in paragraph (a) for “the Secretary of State” substitute “ the Welsh Ministers ”;
- (c) in paragraph (b), for “the Secretary of State is” substitute “ the Welsh Ministers are ”, and for “consents” substitute “ consent ”.
- (6) After subsection (5) insert—
- “(5ZA) In subsection (5) “a relevant child” means a child with special educational needs—
- (a) for whom a local education authority in Wales maintain a statement under section 324, or
- (b) for whom no local education authority maintain such a statement and who is in the area of a local education authority in Wales.”
- (7) In subsection (5A)—
- (a) for “But that” substitute “ Subsection (5) ”;
- (b) after “local education authority” insert “ in Wales ”.

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### **147 Approval of independent schools: consequential amendments**

- (1) Section 349 of the Education Act 1996 (c. 56) (variation of trust deeds by order) is amended as follows.
- (2) In subsection (1)—
  - (a) for “The Secretary of State” substitute “ The appropriate national authority ”;
  - (b) for “him” substitute “ it ”;
  - (c) omit “or 347”.
- (3) After that provision insert—
 

“(1A) The Welsh Ministers may by order make such modifications of any trust deed or other instrument relating to a school in Wales as, after consultation with the governing body or other proprietor of the school, appear to them to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations under section 347.”
- (4) Section 483A of that Act (city colleges and academies: special educational needs) is amended as follows.
- (5) For subsection (3)(a) and (b) substitute—
  - “(a) the statement is maintained by a local education authority in England, or
  - (b) the statement is maintained by a local education authority in Wales and the Welsh Ministers consent to the child being educated at the school.”
- (6) In subsection (4) of that section for “The Secretary of State” substitute “ The appropriate national authority ”.
- (7) At the end of that section add—
 

“(6A) In subsection (4) “the appropriate national authority” means—

  - (a) in relation to a school in England, the Secretary of State;
  - (b) in relation to a school in Wales, the Welsh Ministers.”
- (8) In section 59(3) of the Safeguarding Vulnerable Groups Act 2006 (c. 47) (vulnerable adults)—
  - (a) in paragraph (b), for the words following “which” substitute—
    - “(i) is in England and is specially organised to make special educational provision for pupils with special educational needs (within the meaning of section 312 of that Act), or
    - (ii) is in Wales and is approved by the Welsh Ministers under section 347 of that Act;”;
  - (b) in paragraph (c), for “the Secretary of State” substitute “ the Welsh Ministers ”.

### **148 Approval of independent schools: transitional provision**

- (1) This section applies where, immediately before the coming into force of section 146, a relevant child is being educated in an independent school in England and—

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- (a) the school is for the time being approved by the Secretary of State under section 347 of the Education Act 1996 (c. 56), or
  - (b) the Secretary of State has consented to the child being educated there under subsection (5)(b) of that section.
- (2) In subsection (1) “a relevant child” means a child with special educational needs—
- (a) for whom a local education authority in Wales maintains a statement under section 324 of the Education Act 1996 (statement of special educational needs), or
  - (b) for whom no local education authority maintains such a statement and who is in the area of a local education authority in Wales.
- (3) On the coming into force of section 146 the Welsh Ministers are deemed to have consented, under section 347(5)(b) of the Education Act 1996, to the child being educated at the school.
- (4) The Welsh Ministers may withdraw consent deemed to have been given under subsection (3) as if it had in fact been given.
- (5) In this section “child” has the same meaning as in Part 4 of the Education Act 1996 (see section 312(5) of that Act).

## PART 5

### MISCELLANEOUS AND GENERAL

#### CHAPTER 1

##### POWERS OF NATIONAL ASSEMBLY FOR WALES

#### 149 Powers of National Assembly for Wales

- (1) In Part 1 of Schedule 5 to the Government of Wales Act 2006 (c. 32) (Assembly Measures), field 5 (education and training) is amended as follows.
- (2) After matter 5.4 insert—
- “Matter 5.4A* The regulation of—
- (a) schools that are not maintained by local education authorities;
  - (b) relevant independent educational institutions.”
- (3) In matter 5.15 after “The inspection of—” insert—
- “(za) schools;  
(zb) relevant independent educational institutions;”.
- (4) In that matter, for paragraph (b) substitute—
- “(b) pre-16 education or training, or post-16 education or training, provided otherwise than by institutions within paragraphs (za) to (a);”.
- (5) In matter 5.16 for “, any of the kinds of education, training or services mentioned in matter 5.15.” substitute “—

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- (a) pre-16 education or training;
- (b) post-16 education or training;
- (c) the training of teachers and specialist teaching assistants for schools;
- (d) services of the kinds mentioned in matter 5.8.”

(6) After the definition of “post-16 training” insert—

““pre-16 education or training” means education or training suitable to the requirements of persons who are of or below compulsory school age;

“relevant independent educational institution” means an institution other than a school which—

- (a) provides part-time education for one or more persons of compulsory school age (“part-time students”) whether or not it also provides full-time education for any person, and
- (b) would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time.

For the purposes of the above definition of “relevant independent educational institution”, an institution provides “part-time” education for a person if—

- (a) it provides education for the person, and
- (b) the education does not amount to full-time education.”

## CHAPTER 2

### MISCELLANEOUS

#### *School admissions*

#### 150 Sixth form admissions etc

After section 86 of the School Standards and Framework Act 1998 (c. 31) (parental preferences) insert—

#### **“86A Preferences relating to sixth-form education: local education authority arrangements**

- (1) A local education authority shall make arrangements for enabling—
- (a) a child in the authority's area to express a preference as to the school at which he wishes sixth form education to be provided for him in the exercise of the authority's functions,
  - (b) a parent of such a child to express a preference as to the school at which he wishes sixth form education to be so provided for his child,
  - (c) a relevant child to express a preference as to the school at which he wishes education other than sixth form education to be provided for him in the exercise of the authority's functions, and
  - (d) a parent of such a child to express a preference as to the school at which he wishes such education to be so provided for his child,



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and, in each case, for enabling the person expressing the preference to give reasons for his preference.

- (2) In subsection (1), “relevant child”, in relation to a local education authority and any education, means a child in the authority's area who—
  - (a) has ceased to be of compulsory school age, or
  - (b) will have ceased to be of compulsory school age before the education in question is provided for him.
- (3) Arrangements made under subsection (1) shall allow—
  - (a) a person who is to be able to express a preference under any of paragraphs (a) to (d) of that subsection to express preferences for more than one school;
  - (b) preferences to be expressed, in relation to a child, by both the child and a parent of his.
- (4) Where—
  - (a) the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, and
  - (b) a child (whether or not in the area of the authority maintaining the school) or his parent makes such an application,that person shall be regarded for the purposes of this Chapter as having expressed a preference for that school in accordance with arrangements made under subsection (1).

**86B Duty in relation to preferences expressed under section 86A:  
admission authorities of maintained schools**

- (1) Subject to subsections (2) and (4) and section 87, the admission authority for a maintained school shall comply with any preference expressed in accordance with arrangements made under section 86A(1).
- (2) The duty imposed by subsection (1) does not apply if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources.
- (3) Subsections (5) to (5B) of section 86 apply for the purpose of determining whether any prejudice should be taken to arise for the purposes of subsection (2), but with the substitution of references to that subsection for references to subsection (3)(a) of section 86.
- (4) The duty imposed by subsection (1) does not apply in a case where a preference is expressed in relation to sixth form education if—
  - (a) the relevant selection arrangements for the preferred school are wholly based on selection by reference to ability or aptitude, and
  - (b) compliance with the preference would be incompatible with selection under those arrangements.
- (5) Where the relevant selection arrangements for a school provide for all pupils selected under the arrangements to be selected by reference to ability or aptitude, those arrangements shall be taken for the purposes of subsection (4)
  - (a) to be wholly based on selection by reference to ability or aptitude whether

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or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group.

- (6) In this section “the relevant selection arrangements”, in relation to a school, means—
- (a) the arrangements for admission to the school for sixth form education, or
  - (b) those arrangements and the arrangements for entry to the sixth form of children who have been admitted to the school.”

#### Commencement Information

**I40** S. 150 in force at 26.1.2009 for E. by [S.I. 2008/3077](#), **art. 5(a)** (with **art. 6**)

**I41** S. 150 in force at 31.3.2009 for W. by [S.I. 2009/784](#), **art. 3(a)** (with **art. 4**)

## 151 Admission arrangements

- (1) The School Standards and Framework Act 1998 (c. 31) is amended as follows.
- (2) After section 88 insert— “ Admission arrangements: England ”
- (3) In section 88A (prohibition on interviews), in subsections (1) and (3), after “maintained school” insert “ in England ”.
- (4) After section 88A insert—

### “88B Admission arrangements relating to children looked after by local authority

- (1) Regulations may require the admission authorities for maintained schools in England to include in their admission arrangements such provision relating to the admission of children who are looked after by a local authority in England as may be prescribed.
- (2) Regulations under subsection (1) may in particular include provision for securing that, subject to sections 86(3), 86B(2) and (4) and 87, such children are to be offered admission in preference to other children.

### 88C Procedure for determining admission arrangements

- (1) The admission authority for a maintained school in England must, before the beginning of each school year, determine in accordance with this section the admission arrangements which are to apply for that year.
- (2) The admission authority must, before determining the admission arrangements that are to apply for a year, carry out such consultation about the proposed arrangements as may be prescribed.
- (3) Regulations under subsection (2) may in particular make provision—
  - (a) specifying persons who must be consulted, or who must be consulted about prescribed provisions of proposed arrangements;

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- (b) specifying provisions of proposed arrangements about which any such consultation is to be carried out;
  - (c) specifying matters to which any such consultation is, or is not, to relate;
  - (d) as to the manner in which, and the time by which, any such consultation is to be carried out.
- (4) When the admission authority have determined the admission arrangements that are to apply for a year, they must notify the appropriate bodies of those admission arrangements.
- (5) Regulations may make provision—
- (a) as to the manner in which, and the time by which, any such notification is to be given;
  - (b) specifying cases in which subsection (4) does not apply.

#### **88D Determination of admission numbers**

- (1) A determination under section 88C by the admission authority for a maintained school in England of the admission arrangements which are to apply for a school year must include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year.
- (2) Such a determination under section 88C may also, if the school is one at which boarding accommodation is provided for pupils, include—
- (a) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year as boarders, and
  - (b) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year otherwise than as boarders.
- (3) Regulations may make provision about the making of any determination required by subsection (1), and may in particular require the admission authority for a maintained school to have regard, in making any such determination, to—
- (a) any prescribed method of calculation, and
  - (b) any other prescribed matter.
- (4) References in this section to the determination of any number include references to the determination of zero as that number.

#### **88E Variation of admission arrangements**

- (1) Subsection (2) applies where an admission authority—
- (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but
  - (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined.
- (2) The authority must—
- (a) refer their proposed variations to the adjudicator, and

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- (b) notify the appropriate bodies of the proposed variations.
- (3) Subsection (2)(a) does not apply in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this subsection.
- (4) Where the local education authority are the admission authority for a community or voluntary controlled school, they must consult the governing body before making any reference under subsection (2)(a).
- (5) On a reference under subsection (2)(a), the adjudicator must consider whether the admission arrangements should have effect with the proposed variations until the end of the school year in question.
- (6) If the adjudicator determines—
  - (a) that the arrangements should so have effect, or
  - (b) that they should so have effect subject to such modification of those variations as the adjudicator may determine,
 the arrangements are to have effect accordingly as from the date of the adjudicator's determination.
- (7) Where the adjudicator makes a determination under subsection (6), the admission authority must notify the appropriate bodies of the variations subject to which the arrangements are to have effect.
- (8) Regulations may make provision—
  - (a) as to the manner in which, and the time by which, any such notification is to be given;
  - (b) specifying cases in which subsection (7) does not apply.
- (9) Regulations may make provision—
  - (a) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of subsection (1)(b);
  - (b) authorising an admission authority, where they have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed;
  - (c) for the application of any of the requirements of, or imposed under, subsections (2) to (8) to variations proposed to be made by virtue of paragraph (b), or to any prescribed description of such variations, as if they were variations proposed to be made under subsection (1).

### **88F Sections 88C to 88E: supplementary**

- (1) Regulations may make provision—
  - (a) requiring an admission authority who have made a determination of a prescribed description under section 88C to publish such information relating to the determination (including information as to the authority's reasons for making the determination) as may be prescribed;
  - (b) as to such other matters connected with the procedure for determining or varying admission arrangements under sections 88C to 88E as the Secretary of State considers appropriate.

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- (2) The power under paragraph (a) of subsection (1) to require an admission authority to publish information includes power to require them to publish it—
  - (a) by giving a notice containing the information to prescribed persons, or
  - (b) in any other prescribed manner.
- (3) In sections 88C and 88E, the “appropriate bodies”, in relation to an admission authority, means—
  - (a) whichever of the governing body and the local education authority are not the admission authority,
  - (b) the admission authorities for all other maintained schools in the relevant area or for such class of schools as may be prescribed;
  - (c) the governing bodies for all community and voluntary controlled schools in the relevant area (so far as not falling within paragraph (a) or (b)),
  - (d) the admission authorities for maintained schools in England of any prescribed description,
  - (e) in the case of a foundation or voluntary school which has a religious character for the purposes of Part 2, such body or person representing the religion or religious denomination in question as may be prescribed,
  - (f) the admission forum for the area of the local education authority in which the school is situated, and
  - (g) such other persons as may be prescribed.
- (4) In subsection (3), “the relevant area” means—
  - (a) the area of the local education authority in which the school in question is situated, or
  - (b) if regulations so provide, such other area in England (whether more or less extensive than the area of the local education authority) as may be determined by or in accordance with the regulations.

### **88G Power to restrict alteration of admission arrangements following establishment or expansion**

- (1) Subsection (2) applies in relation to a maintained school in England where—
  - (a) proposals for the establishment of, or the making of a prescribed alteration to, the school have been published under Part 2 of the Education and Inspections Act 2006 or under section 113A of, or Schedule 7 to, the Learning and Skills Act 2000,
  - (b) in the case of proposals for the making of a prescribed alteration to the school, the proposals are for an increase in the number of pupils that may be admitted to the school or for an enlargement of the premises,
  - (c) the proposals fall to be implemented (with or without modifications), and
  - (d) prescribed conditions are satisfied.
- (2) Regulations may provide that, where this subsection applies in relation to a maintained school—
  - (a) the admission arrangements for the initial period and each of a prescribed number of school years following that period are to be the

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- arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified), and
- (b) those arrangements may not be varied by the admission authority for the school except—
- (i) to comply with any duty imposed on them by regulations under section 88B, or
  - (ii) in accordance with regulations under subsection (5).
- (3) Regulations under subsection (2) may exclude or modify any provision of section 88C, 88E or 88F in its application to cases to which the regulations apply.
- (4) Regulations under subsection (2) may provide that in cases to which the regulations apply the admission arrangements which fall to be implemented in accordance with the proposals (or in accordance with the proposals as modified) are to be treated for the purposes of section 86(5) to (5B) as having been determined by the admission authority under section 88C.
- (5) Regulations may prescribe circumstances in which an admission authority may refer to the adjudicator proposals to vary admission arrangements in cases to which regulations under subsection (2) apply.
- (6) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (5).
- (7) In this section—
- “initial period” means—
- (a) in relation to a maintained school which is being established, the period beginning with the day on which the school opens and ending with the beginning of the first school term to begin after the following July;
  - (b) in relation to a maintained school which is increasing the number of pupils that may be admitted to the school or enlarging its premises, the period beginning with the first day on which additional pupils may be admitted or (as the case may be) the enlarged premises are in use and ending with the beginning of the first school term to begin after the following July;
- “prescribed alteration” means an alteration prescribed for the purposes of section 18 of the Education and Inspections Act 2006.

### **88H Reference of objections to adjudicator**

- (1) This section applies where admission arrangements have been determined by an admission authority for a maintained school in England under section 88C.
- (2) Where—
- (a) an appropriate person wishes to make an objection about the admission arrangements, and
  - (b) the objection does not fall within any description of objections prescribed for the purposes of this paragraph,
- that person may refer the objection to the adjudicator.
- (3) Where—

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- (a) a parent of a prescribed description wishes to make an objection about the admission arrangements, and
  - (b) the objection falls within any description of objections prescribed for the purposes of this paragraph,
- that person may refer the objection to the adjudicator.
- (4) On a reference under subsection (2) or (3) the adjudicator must decide whether, and (if so) to what extent, the objection should be upheld.
- (5) Regulations may make provision—
- (a) as to any conditions which must be satisfied before—
    - (i) an objection can be referred to the adjudicator under subsection (2) or (3), or
    - (ii) the adjudicator is required to determine an objection referred to him under subsection (3);
  - (b) as to circumstances in which the adjudicator is not required to determine an objection under subsection (4);
  - (c) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator under subsection (2) or (3) but has not yet been determined.
  - (d) prohibiting or restricting the reference under subsection (2) or (3), within such period following a decision by the adjudicator under this section as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question.
- (6) In subsection (2), “appropriate person” means—
- (a) a body or person within any of paragraphs (a) to (f) of section 88F(3); or
  - (b) any person prescribed for the purposes of this subsection.

### **88I Other functions of adjudicator relating to admission arrangements**

- (1) This section applies where admission arrangements have been determined by an admission authority for a maintained school in England under section 88C.
- (2) Where it appears to the Secretary of State that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements, the Secretary of State may refer the admission arrangements to the adjudicator.
- (3) Subsection (4) applies where—
- (a) the Secretary of State refers the admission arrangements to the adjudicator under subsection (2), or
  - (b) the adjudicator receives a report under section 88P which, pursuant to regulations under subsection (5) of that section, states that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements.
- (4) The adjudicator must—
- (a) consider the admission arrangements, and

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- (b) decide whether they conform with those requirements and, if not, in what respect they do not.
- (5) Where it appears to the adjudicator that the admission arrangements do not, or may not, conform with the requirements relating to admission arrangements (and subsection (4) does not apply)—
  - (a) the adjudicator may consider the admission arrangements, and
  - (b) if the adjudicator considers the arrangements under paragraph (a), the adjudicator must decide whether they conform with those requirements and, if not, in what respect they do not.
- (6) Regulations may make provision prescribing the steps which may be taken by an admission authority where the adjudicator—
  - (a) is considering the authority's admission arrangements under subsection (4)(a) or (5)(a), but
  - (b) has not yet made a decision in the case under subsection (4)(b) or (5)(b) (as the case may be).

### **88J Changes to admission arrangements**

- (1) This section applies where the adjudicator is required to make a decision (“the primary decision”)—
  - (a) under section 88H(4) on whether to uphold an objection to admission arrangements, or
  - (b) under section 88I(4)(b) or (5)(b) on whether admission arrangements conform with the requirements relating to admission arrangements.
- (2) The adjudicator—
  - (a) must consider whether it would be appropriate for changes to be made to any aspect of the admission arrangements in consequence of the primary decision, and
  - (b) may consider whether it would be appropriate for any other changes to be made to any aspect of the admission arrangements.
- (3) Where the adjudicator decides under subsection (2) that it would be appropriate for changes to be made to the admission arrangements—
  - (a) that decision may specify the modifications that are to be made to the arrangements, and
  - (b) the admission authority must forthwith revise those arrangements in such a way as to give effect to that decision.
- (4) The adjudicator may—
  - (a) decide, in the case of any change required by subsection (3)(b), that it is to be a protected change for the purpose of section 88L, and
  - (b) where the adjudicator does so but considers that the change ought not to be protected for the number of years prescribed under subsection (2) of that section, decide that the change is to be protected only for such lesser number of school years as the adjudicator may specify.



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### **88K Sections 88H to 88J: supplementary**

- (1) Subsection (2) applies to any decision of the adjudicator—
  - (a) under section 88H(4) on whether to uphold an objection to admission arrangements,
  - (b) under section 88I(4)(b) or (5)(b) on whether admission arrangements conform with the requirements relating to admission arrangements, or
  - (c) under section 88J(2) as to whether or not it would be appropriate for changes to be made to admission arrangements.
- (2) Any decision of the adjudicator to which this subsection applies is binding on—
  - (a) the admission authority in question, and
  - (b) all persons by whom an objection may be referred to the adjudicator under section 88H(2) or (3) in relation to the admission arrangements.
- (3) In the case of a decision mentioned in subsection (1)(a) or (b), the adjudicator must publish a report containing the following—
  - (a) the adjudicator's decision on the objection or (as the case may be) on whether the admission arrangements conform with the requirements relating to admission arrangements,
  - (b) the decision of the adjudicator under section 88J(2)(a), and any decision of the adjudicator under section 88J(2)(b), on whether it would be appropriate for changes to be made to the admission arrangements,
  - (c) any decision of the adjudicator—
    - (i) under section 88J(4)(a) that a change is to be a protected change for the purposes of section 88L, or
    - (ii) under section 88J(4)(b) that a change is to be protected only for such lesser number of school years as the adjudicator may specify, and
  - (d) the adjudicator's reasons for the decisions mentioned in paragraphs (a) to (c).
- (4) Regulations may make provision—
  - (a) requiring an admission authority for a maintained school in England to provide information which—
    - (i) falls within a prescribed description, and
    - (ii) is requested by the adjudicator for the purposes of the exercise by the adjudicator of functions under sections 88H to 88J or this section or of enabling the adjudicator to decide whether to exercise the power conferred by section 88I(5);
  - (b) as to the manner in which a report required to be published under subsection (3) is to be published;
  - (c) requiring such matters to be notified to such persons, and in such manner, as may be prescribed;
  - (d) prescribing circumstances in which an admission authority may revise the admission arrangements for their school in the light of any decision by the adjudicator relating to the admission arrangements for another school, and the procedure to be followed in such a case.

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- (5) In sections 88I and 88J and this section “the requirements relating to admission arrangements” means the requirements imposed by or under this Part as to the content of admission arrangements for maintained schools in England.

### **88L Restriction on alteration of admission arrangements following adjudicator's decision**

- (1) This section applies where—
- (a) in accordance with section 88J(3)(b) the admissions authority for a maintained school in England have revised any provisions of admission arrangements for a school year, and
  - (b) the revisions include any protected change.
- (2) In this section—
- “protected change” means a change which the adjudicator has decided under section 88J(4)(a) is to be a protected change for the purposes of this section;
- “the protected provisions”, in relation to any admission arrangements, means provisions corresponding to—
- (a) provisions so far as implementing a protected change, or
  - (b) provisions so far as revised in accordance with regulations under subsection (6);
- “the required number” means such number as may be prescribed or such lesser number as is specified by the adjudicator under section 88J(4)(b) in relation to a particular protected change.
- (3) The admission authority for the school—
- (a) must incorporate the protected provisions in determining the admission arrangements for each of the required number of school years following the school year mentioned in subsection (1)(a), and
  - (b) may not vary those arrangements in such a way as to alter the protected provisions.
- (4) Subsection (3) does not apply to the extent that—
- (a) the admission authority are required to determine or vary their admission arrangements in a way which alters the protected provisions in order to comply with any duty imposed on them by regulations under section 88B, or
  - (b) the arrangements may be determined or varied in a way which alters those provisions in accordance with regulations under subsection (6).
- (5) Regulations may exclude or modify any provision of section 88C, 88E or 88F in its application to cases to which this section applies.
- (6) Regulations may prescribe circumstances in which, in a case where this section applies, an admission authority may refer to the adjudicator proposals to determine or vary their admission arrangements in a way which alters the protected provisions.
- (7) Regulations may make provision as to the determination by the adjudicator of any reference made by virtue of subsection (6).

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### **88M Co-ordination of admission arrangements**

- (1) Regulations may require a local education authority in England—
  - (a) to formulate, for any academic year in relation to which prescribed conditions are satisfied, a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools in their area, and
  - (b) to take prescribed action with a view to securing the adoption of the scheme by themselves and each governing body who are the admission authority for a maintained school in their area.
- (2) Subject to subsection (3), the Secretary of State may make, in relation to the area of a local education authority in England and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area.
- (3) A scheme may not be made under subsection (2) in relation to a local education authority and an academic year if, before the prescribed date in the year preceding the year in which that academic year commences—
  - (a) a scheme formulated by the local education authority in accordance with subsection (1) is adopted in the prescribed manner by the persons mentioned in paragraph (b) of that subsection, and
  - (b) the authority provide the Secretary of State with a copy of the scheme and inform the Secretary of State that the scheme has been so adopted.
- (4) Regulations may provide—
  - (a) that each local education authority in England must secure that, subject to such exceptions as may be prescribed, no decision made by any admission authority for a maintained school in their area to offer or refuse a child admission to the school is to be communicated to the parent of the child except on a single day, designated by the local education authority, in each year, or
  - (b) that, subject to such exceptions as may be prescribed, a decision made by the admission authority for a maintained school in England to offer or refuse a child admission to the school is not to be communicated to the parent of the child except on a prescribed day.
- (5) In this section

“academic year” means a period commencing with 1st August and ending with the next 31st July;

“qualifying scheme” means a scheme that meets prescribed requirements.
- (6) Nothing in this section applies in relation to arrangements for the admission to maintained schools of pupils—
  - (a) who—
    - (i) have ceased to be of compulsory school age, or
    - (ii) will have ceased to be of compulsory school age before education is provided for them at the school, or
  - (b) for the purpose of receiving sixth form education.

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### **88N Further provision about schemes adopted or made by virtue of section 88M**

- (1) Regulations may make provision about the contents of schemes under section 88M(2), including provision about the duties that may be imposed by such schemes on—
  - (a) local education authorities in England, and
  - (b) the admission authorities for maintained schools in England.
- (2) Regulations may provide that where a local education authority in England or the governing body of a maintained school in England have, in such manner as may be prescribed, adopted a scheme formulated by a local education authority for the purpose mentioned in section 88M(1)(a), sections 496 and 497 of the Education Act 1996 are to apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on them by that Act.
- (3) Regulations may provide that where any decision as to whether a child is to be granted or refused admission to a maintained school in England falls to be made in prescribed circumstances, the decision must, if a scheme adopted or made by virtue of section 88M so provides, be made by the local education authority regardless of whether they are the admission authority for the school.
- (4) Where any decision as to whether a child is to be granted or refused admission to a maintained school is (by virtue of regulations under subsection (3)) made by the local education authority although they are not the admission authority, the governing body of the school must implement the decision.
- (5) Before proposing a scheme for adoption under section 88M(1) a local education authority must comply with such requirements as to consultation as may be prescribed.
- (6) Regulations under subsection (5) may in particular require consultations to be undertaken with a view to securing that the arrangements for the admission of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other.
- (7) Before making a scheme under section 88M(2) in relation to the area of any local education authority, the Secretary of State must consult—
  - (a) the local education authority, and
  - (b) any governing body who are the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply.
- (8) A scheme made under section 88M(2) may be varied or revoked by the Secretary of State.

### **88O Sharing of information by local education authorities**

The Secretary of State may by regulations require local education authorities in England to provide other local education authorities with such information as may be required by them in connection with the exercise of any of their functions under this Chapter.

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### **88P Reports by local education authorities to adjudicator**

- (1) A local education authority in England must make such reports to the adjudicator about such matters connected with relevant school admissions as may be prescribed.
- (2) In subsection (1) “relevant school admissions”, in relation to a local education authority, means—
  - (a) the admission of pupils to relevant schools in the authority's area;
  - (b) the admission of pupils in the authority's area to other relevant schools;
  - (c) the entry to the sixth form of pupils who have been admitted to relevant schools in the authority's area; and
  - (d) the entry to the sixth form of pupils in the authority's area who have been admitted to other relevant schools.
- (3) In this section, “relevant school” means—
  - (a) a maintained school,
  - (b) an Academy,
  - (c) a city technology college, or
  - (d) a city college for the technology of the arts.
- (4) The matters which may be prescribed under subsection (1) in relation to a report by a local education authority include, in particular, matters relating to—
  - (a) the determination and operation of admission arrangements for maintained schools in the area of the local education authority;
  - (b) the determination and operation of arrangements for the admission of pupils to Academies, city technology colleges and city colleges for the technology of the arts in the area of the local education authority;
  - (c) the adoption and operation of any scheme, whether or not formulated by the local education authority and whether under section 88M or otherwise, for co-ordinating—
    - (i) the admission of pupils to relevant schools in their area,
    - (ii) the admission of pupils in their area to other relevant schools.
- (5) Regulations under subsection (1) may make provision as to—
  - (a) the time by which any report under that subsection must be made; and
  - (b) the form and content of any such report;and may, in particular, require a report to include a statement as to whether or not admission arrangements for maintained schools in the area of the local education authority conform with the requirements imposed by or under this Part as to the content of admission arrangements for maintained schools in England.

### **88Q Reports under section 88P: provision of information**

- (1) A relevant person must, on request, provide a local education authority in England with such information as the authority may reasonably require for the purpose of enabling the authority to fulfil their duties under section 88P.

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- (2) In subsection (1), “relevant person”, in relation to a local education authority, means—
- (a) an admission authority (other than the local education authority) for a maintained school in the area of the local education authority;
  - (b) the admission forum for the area of the local education authority;
  - (c) any member of an appeal panel constituted under section 94 by—
    - (i) the local education authority, or
    - (ii) the governing body of a foundation or voluntary aided school in the area of the local education authority;
  - (d) the proprietor of—
    - (i) an Academy,
    - (ii) a city technology college, or
    - (iii) a city college for the technology of the arts, in the area of the local education authority;
  - (e) any other local education authority in England;
  - (f) such other person as may be prescribed.”

#### Commencement Information

**I42** S. 151 partly in force; s. 151(1)(4) in force for certain purposes at 26.1.2009 see s. 173(2)(b)

**I43** S. 151(1)(4) in force at 2.12.2008 for specified purposes by [S.I. 2008/3077](#), [art. 2\(a\)](#)

**I44** S. 151(1)(4) in force at 26.1.2009 in so far as not already in force by [S.I. 2008/3077](#), [art. 4\(d\)](#)

**I45** S. 151(2)(3) in force at 26.1.2009 by [S.I. 2008/3077](#), [art. 4\(d\)](#)

## 152 Sixth form admissions etc: appeals

- (1) Section 94 of the School Standards and Framework Act 1998 (c. 31) (appeal arrangements: general) is amended as follows.
- (2) In subsection (1)—
- (a) for “the parent of a child” substitute “ the appropriate person ”;
  - (b) before paragraph (a) insert—
    - “(za) in a case where the local education authority are the admissions authority, any decision made by or on behalf of the authority refusing a child admission to a school,”;
  - (c) in paragraph (a)—
    - (i) for “any decision” substitute “ any other decision ”, and
    - (ii) for “the child” substitute “ a child ”;
  - (d) in paragraph (b), for “the child” substitute “ a child ”.
- (3) In subsection (1A), for “the parent of” substitute “ the appropriate person in relation to ”.
- (4) In subsection (2)—
- (a) for “the parent of a child” substitute “ the appropriate person ”;
  - (b) for “the child” substitute “ a child ”.
- (5) In subsection (2A), for “the parent of” substitute “ the appropriate person in relation to ”.

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(6) After that subsection insert—

“(2B) In this section, “the appropriate person”, in relation to a child, means—

- (a) in the case of a decision about sixth form education for the child any of the following—
  - (i) the child;
  - (ii) a parent of his;
  - (iii) the child and a parent of his, acting jointly;(but subject to regulations made under subsection (5A));
- (b) in any other case, a parent of the child.”

(7) In subsection (5A), after paragraph (a) insert—

“(aa) in cases where separate appeals are made by a parent and a child against a decision about sixth form education for the child, for the appeals to be joined, or otherwise for securing that no more than one appeal against the decision is proceeded with;”.

(8) After subsection (6) insert—

“(6A) In this section, any reference to a decision about sixth form education for a child is a reference to a decision—

- (a) made in relation to a preference expressed in accordance with arrangements made under section 86A(1) as to where education should be provided for the child, or
- (b) refusing permission for the child to enter the sixth form of the school to which he has been admitted.”

#### Commencement Information

**I46** S. 152 in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(a) (with art. 6)

**I47** S. 152 in force at 31.3.2009 for W. by S.I. 2009/784, art. 3(a) (with art. 4)

### 153 School admissions: supplementary

(1) After section 98 of the School Standards and Framework Act 1998 (c. 31) insert—

#### “98A Meaning of “sixth form education” etc

- (1) In this Chapter, “sixth form education” means secondary education suitable to the requirements of pupils who are over compulsory school age.
  - (2) References in this Chapter, in relation to a child who has been admitted to a school, to his entering the school's sixth form are to his being transferred to a class at the school in which sixth form education is provided from a class in which such education is not so provided.”
- (2) In relation to a code for school admissions issued under section 84(1) of the School Standards and Framework Act 1998 after the passing of this Act, the requirement to consult which is imposed by section 85(2) of that Act may be satisfied by consultation undertaken before the passing of this Act, even though the code takes account (to any extent) of any provision made by this Act.

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#### Commencement Information

**I48** S. 153 in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(a)

**I49** S. 153 in force at 31.3.2009 for W. by S.I. 2009/784, art. 3(a)

VALID FROM 30/03/2010

#### *Maintained schools in England: behaviour and attendance etc*

#### **154 Power of governing body: educational provision for improving behaviour**

After section 29 of the Education Act 2002 (c. 32) insert—

##### **“29A Power of governing body in England: educational provision for improving behaviour**

- (1) The governing body of a maintained school in England may require any registered pupil to attend at any place outside the school premises for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil.
- (2) In subsection (1) “maintained school” does not include a maintained nursery school.
- (3) Regulations must make provision—
  - (a) requiring prescribed persons to be given prescribed information relating to the imposition of any requirement under subsection (1), and
  - (b) requiring the governing body of the school to keep under review the imposition of any such requirement.
- (4) Regulations under this section may also make provision—
  - (a) requiring a governing body exercising functions under subsection (1) or under the regulations to have regard to any guidance given from time to time by the Secretary of State,
  - (b) prohibiting a governing body from exercising the power conferred by subsection (1) in such a way that any pupil is required to receive educational provision outside the school premises for a greater number of days in a school year than is specified in the regulations,
  - (c) requiring the governing body to request prescribed persons to participate in any review of the imposition of a requirement under subsection (1),
  - (d) about the time within which the first review must be held and the intervals at which subsequent reviews must be held, and
  - (e) in relation to any other matter relating to the exercise of the power conferred by subsection (1).”



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VALID FROM 01/09/2012

## **155 Application of s.444 of Education Act 1996 to alternative education provision**

(1) Section 444ZA of the Education Act 1996 (c. 56) (application of section 444 to alternative education provision) is amended as follows.

(2) After subsection (1) insert—

“(1A) Where—

- (a) a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a relevant school in England,
- (b) the child remains for the time being a registered pupil at the school,
- (c) the appropriate authority for the school has made arrangements under section 19 above or section 100 of the Education and Inspections Act 2006 for the provision of full-time education for the child otherwise than at the school or at the child's home during the period of exclusion, and
- (d) notice in writing of the arrangements has been given to the child's parent,

subsections (1) to (7) of section 444 have effect during that period as if the child were not a registered pupil at the school and as if the place at which the education is provided were a school and the child were a registered pupil at that school (so far as that would not otherwise be the case).

(1B) Where—

- (a) a child of compulsory school age who is a registered pupil at a relevant school in England is required by the appropriate authority for the school to attend at a place outside the school premises for the purpose of receiving any educational provision, and
- (b) notice in writing of the requirement has been given to the child's parent,

subsections (1) to (7) of section 444 have effect as if the place at which the child is required to attend were a school and the child were a registered pupil at that school (in addition to being a registered pupil at the school mentioned in paragraph (a)).

(1C) Subsection (1B) does not apply if—

- (a) the place at which the child is required to attend is another relevant school (whether in England or elsewhere), and
- (b) the child is a registered pupil at that other school.

(1D) In relation to a maintained school or a pupil referral unit—

- (a) references in subsection (1A) to exclusion are references to exclusion under section 52 of the Education Act 2002, and
- (b) the requirement referred to in subsection (1B) is a requirement imposed under section 29(3) or 29A(1) of that Act.”

(3) In subsection (2)(a), after “relevant school insert “ in Wales ”.

(4) In subsection (4)—

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- (a) in paragraph (a), after “within subsection (1)” insert “ or (1A) ”;
  - (b) in paragraph (b), after “within subsection” insert “ (1B) or ”;
  - (c) in the words following that paragraph, after “(1)(b)” insert “ , (1A)(d), (1B)(b) ”.
- (5) In subsection (5), after “(1)(b)” insert “ , (1A)(d), (1B)(b) ”.
- (6) In subsection (6), after “subsection (1)” (in both places) insert “ or (1A) ”.
- (7) In subsection (7)—
- (a) after paragraph (a) insert—
    - “(aa) in relation to a place at which education is provided as mentioned in subsection (1A) of this section, means leave granted by any person authorised to do so by the appropriate authority for the school;”;
  - (b) in paragraph (b), after “subsection” insert “ (1B)(a) or ”.

*Maintained schools in England: assessment arrangements*

**156 National Curriculum for England: duty to implement assessment arrangements**

- (1) In section 88 of the Education Act 2002 (c. 32) (implementation of the National Curriculum for England in schools), in the existing provision (which becomes subsection (1)), at the end insert— “ This subsection does not apply in relation to assessment arrangements. ”
- (2) After that subsection insert—
- “(1A) In relation to any maintained school—
- (a) the local education authority and the governing body must exercise their functions with a view to securing, and
  - (b) the head teacher must secure,
- that the assessment arrangements specified for the time being in the National Curriculum for England are implemented.”

PROSPECTIVE

*Maintained schools: pupils' views*

**157 Governing bodies of maintained schools to invite and consider pupils' views**

After section 29A of the Education Act 2002 insert—

**“29B Governing body to invite and consider pupils' views**

- (1) The governing body of a maintained school must invite the views of pupils about prescribed matters.
- (2) In exercising any of their functions relating to the conduct of the school, the governing body of a maintained school must consider any relevant views of

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registered pupils at the school about matters prescribed under subsection (1) (whether expressed by virtue of that subsection or otherwise) and, in doing so, must have regard to the age and understanding of the pupils who expressed them.

- (3) For the purposes of subsection (1), a governing body invite the views of pupils about a matter if they invite the views of—
- (a) all registered pupils at the school,
  - (b) such of those pupils as appear to the governing body to be affected by the matter, or
  - (c) pupils appearing to the governing body to be representative of pupils within paragraph (a) or (b).
- (4) The following are the matters that may be prescribed under subsection (1)—
- (a) the exercise, or proposed exercise, of a function of the governing body of a maintained school relating to the conduct of the school;
  - (b) the exercise, or proposed exercise, of such a function in a particular way.
- (5) In discharging their duties under subsections (1) and (2), the governing body of a maintained school must have regard to any guidance given from time to time—
- (a) in relation to England, by the Secretary of State, or
  - (b) in relation to Wales, by the Welsh Ministers.
- (6) In this section, “prescribed” means—
- (a) in relation to England, prescribed by the Secretary of State;
  - (b) in relation to Wales, prescribed by the Welsh Ministers.
- (7) Nothing in this section affects any power or duty relating to consulting pupils which a governing body of a maintained school have otherwise than under this section.”

## 158 Consultation of pupils: existing functions

In section 176 of the Education Act 2002 (c. 32) (consultation with pupils), subsection (1) is amended as follows—

- (a) in paragraph (a) (duty of [<sup>F9</sup>local authorities]), after “authority” insert “ in Wales ”;
- (b) omit paragraph (b) (duty of governing bodies);
- (c) for “the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales)” substitute “ the Welsh Ministers ”.

### Textual Amendments

- F9** 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. 15(2)**

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### External qualifications

#### 159 Approved external qualifications: England

- (1) Section 98 of the Learning and Skills Act 2000 (c. 21) (approved qualifications: England) is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) A body may be designated under subsection (2)(b) in relation to the giving of approvals under—
    - (a) section 96,
    - (b) section 97, or
    - (c) both of those sections.”
- (3) Omit subsection (4) (which renders an approval given by a designated body ineffective unless the Secretary of State consents to the approval).

#### Commencement Information

**I50** S. 159 in force at 28.2.2009 by [S.I. 2009/387](#), [art. 2](#)

PROSPECTIVE

#### 160 Approved external qualifications: Wales

- F29** (1) .....
- F30** (2) .....
- F31** (3) .....

#### Textual Amendments

- F29** S. 160(1) omitted (21.9.2015) by virtue of [Qualifications Wales Act 2015 \(anaw 5\)](#), s. 60(2), [Sch. 4 para. 8](#); [S.I. 2015/1687](#), [art. 2](#) (with arts. 3-12)
- F30** S. 160(2) repealed (1.4.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), s. 269(4), [Sch. 16 Pt. 2](#); [S.I. 2010/303](#), [art. 3](#), [Sch. 2](#) (with arts. 1314) (as amended (30.3.2010) by [S.I. 2010/1151](#), [art. 22](#))
- F31** S. 160(3) omitted (21.9.2015) by virtue of [Qualifications Wales Act 2015 \(anaw 5\)](#), s. 60(2), [Sch. 4 para. 8](#); [S.I. 2015/1687](#), [art. 2](#) (with arts. 3-12)

#### 161 Functions of Qualifications and Curriculum Authority in England and Northern Ireland

- (1) The Education Act 1997 (c. 44) is amended as follows.
- (2) Section 24 (functions of QCA in relation to external vocational and academic qualifications) is amended as follows.
- (3) In subsection (2)—

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- (a) for paragraph (f) substitute—
    - “(ea) to develop and publish criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications;
    - (eb) to recognise, where they meet such criteria, any such persons who apply to be recognised;
    - (f) to develop and publish criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under paragraph (eb);”;
  - (b) after paragraph (g) insert—
    - “(ga) to develop and publish rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised;”.
- (4) In subsection (4), for “(g)” substitute “ (ga) ”.
- (5) In subsection (7)—
- (a) in paragraph (a), after “a qualification” insert “ or a credit in respect of a component of a qualification ” and after “the qualification” insert “ or component ”;
  - (b) in paragraph (b), after “a qualification” insert “ or a credit in respect of a component of a qualification ”.
- (6) Section 26 (supplementary provisions relating to discharge by QCA of their functions) is amended as follows.
- (7) In subsection (3), after “the Authority” insert “ recognise any person or ”.
- (8) In subsection (3A)—
- (a) after “the Authority” insert “ recognise any person or ”;
  - (b) after “at the time of” insert “ recognition or of ”;
  - (c) after “conditions on” insert “ recognition or ”;
  - (d) after “continued” insert “ recognition or ”.
- (9) In subsection (4)(b)(i), for the words from “maintained” to “receiving the accreditation” substitute “ maintained by the recognised person in question in relation to the award or authentication of qualifications generally or in relation to the award or authentication of the qualification in question ”.
- (10) Section 26A (power of QCA to give directions) is amended as follows.
- (11) For subsection (1) substitute—
- “(1) If it appears to the Qualifications and Curriculum Authority—
    - (a) that any recognised person has failed or is likely to fail to comply with any condition subject to which the recognition has effect, and
    - (b) that the failure—
      - (i) prejudices or would be likely to prejudice the proper award or authentication by that person of any accredited qualification, or

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- (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain any accredited qualification awarded or authenticated by that person,

the Authority may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect.

(1A) If it appears to the Authority—

- (a) that any person who awards or authenticates any accredited qualification has failed or is likely to fail to comply with any condition subject to which the accreditation has effect, and

(b) that the failure—

- (i) prejudices or would be likely to prejudice the proper award or authentication of the qualification, or

- (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification,

the Authority may direct the person mentioned in paragraph (a) to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.”

- (12) In subsection (2), for “the awarding body” substitute “ the recognised person or (as the case may be) the person mentioned in subsection (1A)(a) ”.

(13) After subsection (3) insert—

“(4) In this section—

“accredited qualification” means a qualification accredited by the Authority, and

“recognised person” means a person recognised by the Authority.

- (5) In this section any reference to the award or authentication of any qualification by any person is a reference to its award or authentication by any person alone or jointly with others.”

#### Commencement Information

**I51** S. 161(1)-(3)(a)(5)-(9) in force at 28.2.2009 by [S.I. 2009/387](#), [art. 2](#)

## 162 Functions of Welsh Ministers etc

(1) The Education Act 1997 (c. 44) is amended as follows.

(2) Section 30 (functions in Wales in relation to external vocational and academic qualifications) is amended as follows.

(3) In subsection (1)—

- (a) the existing paragraphs (i) to (vi) are re-numbered as paragraphs (a) to (f);

(b) for paragraph (d) (as re-numbered) substitute—

- “(ca) to develop and publish criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications;

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- (cb) to recognise, where they meet such criteria, any such persons who apply to be recognised;
    - (d) to develop and publish criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under paragraph (cb);”;
  - (c) after paragraph (e) (as re-numbered) insert—
    - “(ea) to develop and publish rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised;”.
- (4) For subsections (1B) and (1C) substitute—
  - “(1B) The following functions are exercisable solely by the Welsh Ministers—
    - (a) the functions set out in paragraphs (ca) and (cb) of subsection (1); and
    - (b) the functions set out in the other paragraphs of that subsection so far as they relate to external qualifications other than National Vocational Qualifications.
  - (1C) The functions set out in those other paragraphs so far as they relate to National Vocations Qualifications are exercisable as follows—
    - (a) the functions set out in paragraphs (a) to (c), (d) and (ea) of subsection (1) are exercisable concurrently by the Welsh Ministers and the Qualifications and Curriculum Authority; and
    - (b) the functions set out in paragraphs (e) and (f) of that subsection are exercisable solely by the Qualifications and Curriculum Authority.
  - (1D) Subsections (1B) and (1C) are subject to any exercise of the power conferred by subsection (2).”
- (5) After subsection (5) insert—
  - “(6) Subsection (7) of section 24 (interpretation of references to the award or authentication by outside persons of external qualifications or credits in respect of components of them) applies for the purposes of this section as it applies for the purposes of that section.”
- (6) Section 32 (supplementary provisions relating to discharge by Welsh Ministers of their functions) is amended as follows.
- (7) In subsection (3), before “accredits” insert “ recognises any person or ”.
- (8) In subsection (3A)—
  - (a) before “accredits” insert “ recognises any person or ”;
  - (b) after “at the time of” insert “ recognition or of ”;
  - (c) after “conditions on” insert “ recognition or ”;
  - (d) after “continued” insert “ recognition or ”.
- (9) In subsection (4)(b)(i), for the words from “maintained” to “receiving the accreditation” substitute “ maintained by the recognised person in question in relation to the award or authentication of qualifications generally or in relation to the award or authentication of the qualification in question ”.
- (10) For section 32A substitute—

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### “32A Power of Welsh Ministers to give directions

- (1) If it appears to the Welsh Ministers—
- (a) that any recognised person has failed or is likely to fail to comply with any condition subject to which the recognition has effect, and
  - (b) that the failure—
    - (i) prejudices or would be likely to prejudice the proper award or authentication by that person of any qualification accredited by them or by the Qualifications and Curriculum Authority, or
    - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain any such qualification awarded or authenticated by that person,
 the Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the recognition has effect.
- (2) If it appears to the Welsh Ministers—
- (a) that any recognised person who awards or authenticates any qualification accredited by them has failed or is likely to fail to comply with any condition subject to which the accreditation has effect, and
  - (b) that the failure—
    - (i) prejudices or would be likely to prejudice the proper award or authentication of the qualification, or
    - (ii) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification,
 the Welsh Ministers may direct the recognised person to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect.
- (3) It shall be the duty of the recognised person to comply with any direction under this section.
- (4) Any direction under this section is enforceable, on the application of the Welsh Ministers, by a mandatory order.
- (5) In this section “recognised person” means a person recognised by the Welsh Ministers.
- (6) In this section any reference to the award or authentication of any qualification by any person is a reference to its award or authentication by any person alone or jointly with others.”

#### Commencement Information

**I52** S. 162(1) (2) (3)(a) (3)(b) (4)-(10) in force at 31.3.2009 for W. by S.I. 2009/784, art. 2(a)



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PROSPECTIVE

**F32 163 Functions of Qualifications and Curriculum Authority in Northern Ireland in relation to vocational qualifications**

**Textual Amendments**

**F32** S. 163 repealed (1.4.2010 for E., 1.11.2010 for W.) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), **Sch. 16 Pt. 4**; S.I. 2010/1151, art. 2, Sch. 1; S.I. 2010/2413, art. 2(b)(ii)(j)

*Inspections of teacher training*

**164 Inspections of teacher training in England: removal of duty to notify**

In section 18B(7) of the Education Act 1994 (c. 30) (period of notice to be given of inspections of teacher training), after “subsection (1)” insert “ of training provided by a training provider in Wales ”.

*Schools forums*

**165 Constitution of schools forums**

(1) Section 47A of the School Standards and Framework Act 1998 (c. 31) (schools forums) is amended as follows.

(2) For subsection (1) substitute—

“(1) Every local education authority must, in accordance with regulations, establish for their area a body to be known as a schools forum.”

(3) After subsection (4) insert—

“(4A) Regulations must provide for a schools forum to include—

- (a) members representing governing bodies of schools maintained by the relevant authority, and
- (b) members representing head teachers of such schools.

(4B) Regulations may provide for a schools forum to include—

- (a) members representing such other persons—
  - (i) as may be prescribed, or
  - (ii) as the relevant authority may from time to time, in accordance with regulations, determine, and
- (b) other members,

and may make further provision as to the constitution of a schools forum.”

(4) In subsection (5), omit “the constitution”.

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### Commencement Information

**I53** S. 165 in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(b)

## CHAPTER 3

### GENERAL

#### 166 Orders and regulations

- (1) The following are to be made by statutory instrument—
  - (a) orders and regulations made by the Secretary of State or Lord Chancellor under this Act;
  - (b) orders made by the Welsh Ministers under section 173.
- (2) A statutory instrument containing—
  - (a) an order under section 3(5),
  - (b) regulations under section 5(1)(b),
  - (c) regulations under section 22(2) or 31(3), other than regulations for the purpose only of making provision within subsection (4),
  - (d) an order under section 56(9) or 58(3),
  - (e) regulations under section 61,
  - (f) an order under section 67,
  - (g) regulations under section 132(1), or
  - (h) regulations under section 170 which amend or repeal any provision of an Act, 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) A statutory instrument containing any other order or regulations under this Act, other than an order under section 173, is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Provision contained in regulations under section 22(2) or 31(3) falls within this subsection if it substitutes, for an amount for the time being specified in such regulations, a smaller amount.
- (5) Before a draft of an instrument containing an order under section 67 is laid before either House of Parliament, the Secretary of State must consult the Welsh Ministers.
- (6) Any power of the Secretary of State or Lord Chancellor to make an order or regulations under this Act includes power—
  - (a) to make different provision for different cases, circumstances or areas,
  - (b) to make provision generally or in relation to specific cases, and
  - (c) to make such incidental, supplementary, transitional, transitory or saving provision as the Secretary of State or Lord Chancellor thinks fit.

#### 167 Functions to be exercisable by Welsh Ministers

- (1) Any function conferred on the Secretary of State by section 150, 152 or 165, so far as exercisable in relation to Wales, is to be taken to be transferred, immediately after

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that section comes into force in relation to Wales, to the Welsh Ministers by an Order in Council under section 58 of the Government of Wales Act 2006 (c. 32).

- (2) Nothing in Schedule 1 or 2, so far as relating to the substitution of references to the Welsh Ministers for references to the Secretary of State in sections 89 to 90 of the School Standards and Framework Act 1998 (c. 31), is to be taken to affect the application of those sections, or anything done under or for the purposes of those sections, in relation to Wales.

## 168 General interpretation

- (1) In this Act, unless the context otherwise requires—  
“prescribed” means prescribed by regulations;  
“regulations” means regulations made by the Secretary of State under this Act.
- (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 of this Act referred to in subsection (2) are—  
(a) Part 1 (other than section 9 and sections 37 to 39);  
(b) Chapter 1 of Part 4;  
(c) section 148;  
(d) section 173(10).
- (4) Where an expression is given for the purposes of any provision falling within subsection (3) a meaning different from that given to it for the purposes of the Education Act 1996, the meaning given for the purposes of that provision is to apply instead of the one given for the purposes of that Act.
- (5) Sections 561 and 562 of the Education Act 1996 (Act not to apply to persons in service of the Crown or persons detained under order of a court) do not apply for the purposes of Part 1.
- (6) Unless the context otherwise requires, any reference in this Act to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (c. 31).

## 169 Minor and consequential amendments, repeals and revocations

- (1) Schedule 1 has effect to make minor and consequential amendments.
- (2) The provisions mentioned in Schedule 2 are repealed or revoked to the extent specified.

### Commencement Information

- I54** S. 169 partly in force; s. 169 in force for certain purposes at Royal Assent see s. 173(1)(g)(h)
- I55** S. 169(1) in force at 2.12.2008 for specified purposes by S.I. 2008/3077, art. 2(b)
- I56** S. 169(1) in force at 2.12.2008 for specified purposes for E. by S.I. 2008/3077, art. 3(a)
- I57** S. 169(1) in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(c) (with art. 6)
- I58** S. 169(1) in force at 26.1.2009 for specified purposes by S.I. 2008/3077, art. 4(e)
- I59** S. 169(1) in force at 31.3.2009 for specified purposes for W. by S.I. 2009/784, art. 3(b) (with art. 4)

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| <b>160</b> | S. 169(2) in force at 2.12.2008 for specified purposes by S.I. 2008/3077, art. 2(c)                     |
| <b>161</b> | S. 169(2) in force at 26.1.2009 for specified purposes by S.I. 2008/3077, art. 4(f)                     |
| <b>162</b> | S. 169(2) in force at 26.1.2009 for E. by S.I. 2008/3077, art. 5(d) (with art. 6)                       |
| <b>163</b> | S. 169(2) in force at 31.3.2009 for specified purposes for W. by S.I. 2009/784, art. 3(c) (with art. 4) |

## 170 Power to make consequential and transitional provision etc.

- (1) The Secretary of State may by regulations make—
  - (a) such supplementary, incidental or consequential provision, or
  - (b) such transitory, transitional or saving provision,
 as the Secretary of State considers necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.
- (2) Regulations under this section may in particular—
  - (a) provide for any provision of this Act which comes into force before another provision (of this or any other Act or in subordinate legislation) has come into force to have effect, until that other provision has come into force, with specified modifications;
  - (b) amend, repeal or revoke any provision of—
    - (i) an Act passed before or in the same Session as this Act, or
    - (ii) subordinate legislation made before the passing of this Act.
- (3) Nothing in this section limits the powers conferred by section 166(6)(c) or 173(8)(c).
- (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.
- (5) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

## 171 Financial provisions

- (1) There are to be paid out of money provided by Parliament—
  - (a) any expenditure incurred by the Secretary of State or the Office for Standards in Education, Children's Services and Skills by virtue of this Act, and
  - (b) any increase attributable to this Act in the sums which by virtue of any other Act are payable out of money provided by Parliament.
- (2) Any sums received by the Secretary of State or Her Majesty's Chief Inspector of Education, Children's Services and Skills by virtue of this Act are to be paid into the Consolidated Fund.

## 172 Extent

- (1) Subject as follows, this Act extends to England and Wales only.
- (2) Sections 87 to 91 extend to England and Wales and Scotland.
- (3) The following provisions extend to England and Wales, Scotland and Northern Ireland—
  - (a) section 166;
  - (b) section 170;

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- (c) this section;
  - (d) sections 173 and 174.
- (4) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

### 173 Commencement

- (1) The following provisions of this Act come into force on the day on which it is passed—
- (a) section 80;
  - (b) section 156;
  - (c) sections 166 to 168;
  - (d) sections 170 to 172;
  - (e) this section;
  - (f) section 174;
  - (g) paragraphs 75 to 77 and 86 to 88 of Schedule 1 (and section 169 so far as relating to those paragraphs);
  - (h) the repeal in Schedule 2 relating to section 140 of the Learning and Skills Act 2000 (c. 21) (and section 169 so far as relating to that repeal).
- (2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) section 149;
  - (b) section 151(1) and (4), so far as relating to sections 88P and 88Q of the School Standards and Framework Act 1998 (c. 31);
  - (c) section 164.
- (3) The following provisions, so far as they apply in relation to Wales, come into force in accordance with provision made by the Welsh Ministers by order—
- (a) sections 150, 152 and 153;
  - (b) sections 157 and 158(b) and (c);
  - (c) sections 160 and 162;
  - (d) section 165;
  - (e) the following paragraphs of Schedule 1—
    - (i) paragraphs 54, 55, 59(7), 66 and 67, and, so far as relating to those paragraphs, paragraph 53, and
    - (ii) paragraph 79,(and section 169 so far as relating to those provisions);
  - (f) the repeals and revocations in Schedule 2 so far as relating to—
    - (i) sections 86 and 94 of the School Standards and Framework Act 1998,
    - (ii) section 99(4) of the Learning and Skills Act 2000,
    - (iii) section 176 of and Schedules 4 and 17 to the Education Act 2002 (c. 32),
    - (iv) paragraphs 19 and 20 of Schedule 1 to the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3239),(and section 169 so far as relating to those repeals and revocations).

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- (4) Subject to subsections (1) to (3), the provisions of this Act come into force in accordance with provision made by the Secretary of State by order.
- (5) Before making an order under subsection (4) containing provision for the coming into force of section 67, the Secretary of State must consult the Welsh Ministers.
- (6) Before making an order under subsection (4) containing provision for the coming into force of sections 87 to 91, the Secretary of State must consult the Scottish Ministers and the Welsh Ministers.
- (7) Before making an order under subsection (4) containing provision for the coming into force of section 161(4) or 163, the Secretary of State must consult the Department for Employment and Learning in Northern Ireland.
- (8) An order under this section may—
  - (a) make provision generally or for specified purposes only;
  - (b) make different provision for different purposes and in relation to different areas; and
  - (c) contain such transitory and transitional provisions and savings as the person making the order thinks fit.
- (9) An order under subsection (4) may provide for Part 1 to come into force with the substitution in sections 1(b) and 29(1)(b) of “the first anniversary of the date on which the person ceased to be of compulsory school age” for “the age of 18”.
- (10) The Secretary of State must—
  - (a) exercise the powers conferred by subsections (4) and (9) so as to secure that Part 1 is in force with those substitutions no later than the day after the day which is the school leaving date for 2013, and
  - (b) exercise the power conferred by subsection (4) so as to secure that Part 1 is in force without those substitutions no later than the day after the day which is the school leaving date for 2015,
 subject, in each case, to any provision made by virtue of subsection (8).

#### 174 Short title

- (1) This Act may be cited as the Education and Skills Act 2008.
- (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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