

EDUCATION AND SKILLS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Local education authority

Legal background

Part 3: Adult Skills

Section 86: Learning aims for persons aged 19 and over

95. *Section 86* inserts three new sections and a new Schedule 1A into the 2000 Act. New section 4A places a new duty on the LSC to secure the provision of proper (rather than reasonable) facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications. The qualifications will typically be those at relatively low levels of learning, which are designed to equip people with basic and intermediate skills for work and everyday living.
96. The broad standards of achievement (or “learning aims”) for this purpose are set out in Schedule 1A. They are level 1 literacy, entry level 3 numeracy and level 2. The Secretary of State may specify in regulations the qualifications to which the duty applies.
97. The duty will apply only to a learner’s first qualification at the specified level. For example, the LSC will not be under a duty to secure the provision of proper facilities for a learner with a level 2 National Vocational Qualification (NVQ) in Beauty Therapy who then applies for a level 2 course in Hairdressing. However, the Secretary of State may by regulations (under section 4C(1)) provide that, despite having a specified qualification, a person is to be treated as not having that qualification. This could apply, for example, where an individual had achieved a school leaving qualification in English or maths but was later identified, as a result of diagnostic assessment, as having skills below the basic levels of literacy or numeracy.
98. Facilities are proper if they are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. In performing its duty, the LSC must take account of a number of factors, such as the education and training needs in different sectors of employment, and of any guidance issued by the Secretary of State. The LSC must also act with a view to encouraging diversity in education and training and to increasing opportunities for individuals to exercise choice.
99. For example, in respect of courses for which there are high levels of demand fairly consistently across the country – such as NVQ level 2 in Health and Social Care – the duty would be satisfied if provision for learners were accessible widely across many institutions and with a good regional distribution. This position would differ where demand both for courses and for skills is more limited. For aerospace courses, for example, the LSC must have regard to proportionate expenditure; the duty may require a more limited offer of places concentrated in geographical areas with links to the industry. Learners seeking to access these more unusual courses may need to travel to

take up courses or the offer of a course which is analogous to the aerospace qualification, for example, engineering.

Learning aims for persons over 19: payment of tuition fees

100. Section 4B places a duty on the LSC to ensure that learners will not be liable to pay fees for courses of study provided as a result of section 4A. The learner must be at least 19 years of age and following a course of study for a specified qualification as set out in Schedule 1A (at level 1 literacy, entry level 3 numeracy or level 2). Fees include the course fees, but the Secretary of State may also specify in regulations that other fees relating to the course, e.g. examination fees and costs of diagnostic assessment, are included. Costs which are not fees (for example, the costs of buying books, equipment and materials) will not come within the scope of the duty.
101. There is also a duty for the LSC to secure the provision of sufficient financial resources for the purpose of paying tuition fees for people aged 19 up to 25 years old to attain their first level 3 qualification.
102. The Secretary of State may amend the relevant provisions of section 4B so as to vary the ages at which learners qualify for financial help under that section. This will be subject to the affirmative resolution procedure.

Schedule 1A: Learning aims for persons aged 19 and over

103. The Schedule sets out the learning aims for people aged 19 or over i.e. the broad categories from which qualifications may be specified as qualifications for which the LSC must secure proper facilities (new section 4A) or pay for tuition fees (new section 4B).
104. These categories are:
 - a) level 1 literacy (the level of attainment at which an adult's skills are functional and sufficient for operating effectively in day-to-day life);
 - b) entry level 3 numeracy (the functional level of attainment for numeracy);
 - c) level 2;
 - d) level 3.
105. The Secretary of State may by regulations specify particular qualifications or descriptions of qualifications which are to fall within scope of the duties. Qualifications which might be specified through regulations include the following:
 - a) level 1 literacy
 - level 1 certificate in Adult Literacy
 - b) entry level 3 numeracy
 - entry level 3 certificate in Adult Numeracy
 - c) level 2
 - level 2 National Vocational Qualifications (NVQs)
 - Vocationally Related Qualifications (VRQs) at level 2 of 325 guided learning hours or more
 - d) level 3
 - 2 or more A-levels
 - 1 or more A-level double Award

*These notes refer to the Education and Skills Act 2008
(c.25) which received Royal Assent on 26 November 2008*

- level 3 NVQs
- level 3 Diplomas
- International Baccalaureate
- Access to HE certificate/diploma

106. The Secretary of State may amend the Schedule in order to specify that a particular category of qualification is no longer within scope of the duties or to add a new category of qualification. This will be subject to the affirmative resolution procedure.

Sections 87 to 91: Assessments of effectiveness of education or training

107. These sections allow for the sharing of information between Her Majesty's Revenue and Customs (HMRC), the Department for Work and Pensions (DWP), the Department for Innovation, Universities and Skills (DIUS) and the devolved administrations. The information will be shared in order to assess: the effectiveness of education or training of those aged 19 and over; policy in relation to the provision of such education or training; and policy in relation to social security or employment as it affects the provision of, or participation in, such training or education.
108. *Section 87* allows for information about individuals' benefit to be disclosed to the devolved administrations. It also allows information about individuals' learning activities to be disclosed in either direction between the devolved administrations and the Secretary of State (DIUS and DWP). This reflects the devolved nature of education and training. Finally, it allows for information relating to education and training and information relating to benefits to pass between DIUS and DWP. *Section 87* also defines the important concept of an assessment function in *subsection (4)* which is then referred to in sections *88(1)*, *89(1)*, *89(2)* and *90(2)*.
109. *Section 88* allows for information about individuals collected in connection with income tax or tax credits to be disclosed by HMRC to the Secretary of State (DIUS or DWP) or a devolved administration.
110. *Sections 87* and *88* only permit information to be used or disclosed for the purpose of assessing the effectiveness of learning undertaken, or the purpose of making assessments of policy. *Section 89(1)* ensures that a recipient of information disclosed under sections 87 or 88 is only permitted to use it for one of those purposes. It also requires that, so far as reasonably practicable, the information is used in a way which does not allow the individual to be identified. *Section 90* makes it an offence for an individual to disclose the information other than in accordance with the purposes outlined in section 89 where disclosure reveals the identity of a person or a person's identity could be deduced from the information disclosed. A defence is provided where the person charged reasonably believes that the disclosure is lawful or information is already lawfully in the public domain.
111. *Section 91* ensures that the disclosure or use of the same information under other statutory provisions or common law powers is unaffected. It explains the use of certain terms used in sections 87 to 91 including identifying the devolved authorities as the Scottish and Welsh Ministers.