

# **APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Lea Functions**

##### **Persons detained in youth accommodation**

##### ***Section 48: Provision of education for persons subject to youth detention***

120. This section inserts a new section 18A into the Education Act 1996.
121. New section 18A will have the effect that local education authorities in England and Wales (LEAs) with relevant youth accommodation in their area (“host authorities”) will be required to secure that enough suitable education and training is provided to meet the reasonable needs of the children and young people in the youth justice system who are held in those establishments.
122. “Relevant youth accommodation” is defined in section 562(1A) of the Education Act 1996 (as inserted by section 49) and covers most kinds of youth detention accommodation. (“Youth detention accommodation” is defined, in turn, in section 107 of the Powers of Criminal Courts (Sentencing) Act 2000 as a young offender institution, secure training centre and accommodation provided by or on behalf of a local education authority (or the Secretary of State under section 82(5) of the Children Act 1989) for the purpose of restricting the liberty of children and young persons, with power for the Secretary of State under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 to specify other accommodation by order.) However, “relevant youth accommodation” does not include Young Offender Institutions (YOIs) accommodating 18-20 year olds.
123. LEAs will not therefore be responsible for securing the provision of education in YOIs accommodating 18-20 year olds. In England this will be the responsibility of the Chief Executive of Skills Funding under section 86. In Wales this will remain the responsibility of the Welsh Ministers under section 32 of the Learning and Skills Act 2000.
124. Subsection (2) requires LEAs when securing the provision of education and training in relevant youth accommodation to have regard to any special educational needs or learning difficulties persons have, to the desirability of continuing with any courses started, to the core and additional entitlements being satisfied and to the relevant national curriculum.
125. Local education authorities will be required to have regard to guidance issued by the Secretary of State for England and the Welsh Ministers for Wales when exercising their functions under this provision.

***Section 49: Persons detained in youth accommodation: application of provisions***

126. Under section 562 of the Education Act 1996, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under the Education Act 1996 (and those Education Acts read as one with that Act) do not apply in relation to persons detained pursuant to a court order or an order of recall of the Secretary of State.
127. **Section 49** reverses the effect of section 562 for children and young people detained in relevant youth accommodation. Therefore, functions of LEAs, the Secretary of State, the Welsh Ministers and parents under those Acts will generally apply towards such persons detained pursuant to a court order or an order of recall of the Secretary of State in relevant youth accommodation.
128. New section 562(3) clarifies that section 562 does not operate in relation to children and young people who are kept in secure accommodation under section 25 of the Children Act 1989 (which could be for welfare reasons or to protect themselves or others from injury.)
129. This section applies to England and Wales.

***Section 50: Persons detained in youth accommodation: further provision***

130. This section inserts a new Chapter 5A into Part 10 of the Education Act 1996 after section 562 of that Act.
131. New section 562A of the Education Act 1996 (inserted by section 50 of this Act) provides a power to prescribe modifications to provisions of the Education Acts in their application to children and young people who are detained. Subsection (2)(a) ensures that this power cannot be used to modify the specific provisions made by this Act regarding the provision of education and training for detained persons. The power will be exercisable by the Secretary of State for England and the Welsh Ministers for Wales.
132. New section 562B of that Act imposes responsibilities on home LEAs in England and Wales to monitor the education or training of a child or young person subject to a detention order. The home LEA will have to take such steps as they consider appropriate to promote the person's fulfilment of his or her learning potential while they are in custody and on their release.
133. The home LEA is the local education authority where the young person is ordinarily resident (excluding any period when the person is subject to a detention order) or, in relation to a child who is or was looked after by an authority under the Children Act 1989, the local education authority that is or was most recently looking after the person.
134. However, section 562B does not apply to children who, while they are detained, are looked after by a local authority (which could happen where they are detained in local authority accommodation); in those cases, local authorities have duties under section 22(3) of the Children Act 1989 which are similar to those under section 562B.
135. Following the amendments made to section 13A of the Education Act 1996 by Schedule 2 to the Act, host LEAs will be required under that section to exercise their functions under section 18A of that Act (inserted by section 48) with a view to promoting the fulfilment by every child concerned of his or her learning potential.
136. The host LEA will be the local education authority for the area where the child or young person is detained.
137. Sections 562C, 562D and 562G confer functions on both the host and home LEAs in respect of those children and young persons where an LEA was maintaining a statement of special education needs immediately prior to their detention.
138. Under 562C the host LEA must use its best endeavours to ensure that appropriate special educational provision is made for the person. This must be either the special educational

provision specified in the person's statement, provision corresponding as closely as practicable to that specified in the statement, or if it considers the provision specified is no longer appropriate, such provision as reasonably appears to the authority to be appropriate. The LEA which was maintaining the statement for the person prior to their detention must retain the statement while the person is detained.

139. Following the amendment made to section 207 of the Education Act 2002 by Schedule 2 to this Act, regulations can be made to enable host LEAs to recoup the cost of making appropriate special educational provision for a person under new section 562C from the authority in whose area the person belongs.
140. Section 562D allows an authority to supply goods and services to the host LEA or the actual person providing the special educational provision.
141. Section 562E of the Education Act 1996 makes provision for literacy and numeracy assessments to be conducted. Under section 562E(2) the host authority must arrange for the detained person's literacy and numeracy skills to be assessed as soon as reasonably practicable after the person arrives in that particular place of relevant youth accommodation, unless the authority are satisfied that they already have evidence of the current level of the person's literacy and numeracy skills.
142. New section 562F of the Education Act 1996 makes provision for the transfer of information relating to a detained person's education or training from their school or previous place of learning to the home and host LEA and to providers of education in custody. Such information might include the educational achievements of the person, their current programme of study and information relating to any special educational needs the person may have. Section 562F(1) allows any person who has provided education or training for a detained person (including while they are in custody) to provide information relating to the detained person to the home and host LEA for the purposes of or in connection with the provision of education or training for the person. This enables the person's school, or other place of learning and any provider of education in custody to share information with the home and host LEA for the purposes of securing the provision of education both during their period of detention and on their release.
143. New section 562F(2) requires LEAs to comply with any requests for such information made by a youth offending team established under section 39 of the Crime and Disorder Act 1998 (YOT), another LEA, the custodial operator of the place the person is or is expected to be detained and any provider (or proposed provider) of education to the detained person. This enables educational information to be transferred by the home or host LEA to those who will be providing education or involved in the person's education in custody and on their release.
144. Section 562F(5) requires the Welsh Ministers to provide a copy of any relevant report of an assessment of learning difficulties conducted under section 140 of the Learning and Skills Act 2000 on request to the home or host authority.
145. Section 562F(8) requires the host authority to provide the home authority with any information it holds which relates to the detained person and may be relevant to the provision of education or training for the person on their release. The information must be provided at such time as the host authority thinks reasonable for the purpose of enabling education and training to be provided to the person on their release.
146. New section 562G of the Education Act 1996 applies where a person detained in juvenile custody had a statement of special educational needs maintained for them prior to their detention. It makes provision for the home LEA to notify the host LEA about the statement (and which authority was maintaining it) when the person is detained (unless the host LEA is already aware) and, on the person's release, for the host LEA to provide similar information to the home LEA (unless the home LEA is already aware) and to notify the authority that was maintaining the statement about the release. Subsection (5)

requires any LEA which was maintaining a statement of special educational needs for a person immediately prior to their detention to provide this to the host LEA upon request.

147. New section 562H of the Education Act 1996 ensures that upon a child or young person's release the host LEA informs the home LEA (or, in the case of a young person over compulsory school age in Wales, the Welsh Ministers) if they believe the person has special educational needs or a learning difficulty which should be assessed.
148. New section 562I of the Education Act 1996 requires LEAs when they are exercising any of their functions under new Chapter 5A to have regard to any guidance issued by the Secretary of State for England and the Welsh Ministers for Wales.

***Section 51: Detention of child or young person: local education authorities to be notified***

149. **Section 51** inserts new section 39A into the Crime and Disorder Act 1998 and requires YOTs to notify the person's home and host LEA when they become aware that a child or young person has been detained in relevant youth accommodation, or has been transferred to a new place of detention. YOTs must also notify the home and host LEAs and, if different, the authority in whose area the YOT expects the person to live on their release, of the person's release from relevant youth accommodation.

***Section 52: Release from detention of child or young person with special educational needs***

150. **Section 52(2)** inserts a new section 312A into the Education Act 1996. New section 312A(1) suspends Part 4 of the Education Act 1996 while the person is detained in juvenile custody. Part 4 makes provision for children with special educational needs, and would otherwise apply while the person is detained in juvenile custody by virtue of the amendments of section 562 of that Act made by section 49. New Chapter 5A of Part 10 of that Act (inserted by section 50) makes provision for the education of children with special educational needs during the period of that detention. New section 312A(3) revives any statement that was maintained for a person prior to their detention in juvenile custody on their release and makes provision for the statement to transfer to the authority who will be responsible for maintaining it under Part 4 on the person's release.
151. **Section 52(3)** amends section 328(5) of the Education Act 1996 (reviews of educational needs) to require the local authority maintaining the statement to review the child's statement on their release from juvenile custody.