

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: the Chief Executive of Skills Funding

Chapter 1: Establishment and main duties

Education and training for persons aged 19 or over etc.

Section 86: Education and training for persons aged 19 or over and others subject to adult detention

251. This section sets out the general duty of the Chief Executive to secure the provision of “reasonable” facilities for the education and training of people aged 19 or over, (other than those aged under 25 who are subject to learning difficulty assessment) and those who are detained in a prison or an adult young offender institution. Facilities are “reasonable” if they are of a quality and quantity which the Chief Executive can reasonably be expected to provide taking account of the resources available to him or her (*subsection (3)*).
252. The duties do not extend to higher education, which is the responsibility of the Higher Education Funding Council for England. This is because the Education Act 1996 applies for the interpretation of this Part, and section 1(4) of that Act excludes higher education from its ambit.
253. The duty includes funding and securing delivery of education and training for those detained in prisons and adult young offender institutions, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise. This includes 18 year olds held in adult custody (and, very rarely, those under 18), therefore aligning the category of detained people in relation to whom the Chief Executive has responsibilities with the category of people detained in the adult criminal justice system, thereby avoiding local education authorities and the Chief Executive each having responsibility for the provision of education or training in individual establishments. Local education authorities will be responsible for all those detained within the youth justice system (which includes nearly all those aged 17 and under, and those aged 18 who are close to the end of their sentence and who will therefore not transfer to adult prisons). Where a person in adult detention has already begun education or training, the Chief Executive must have regard to the desirability of those persons continuing such programmes whilst in custody. Guidance may be issued by the Secretary of State specifically concerning the provision of education and training for prisoners aged 18 or under who are held in adult detention. The Chief Executive will have to have regard to any such guidance. Feasibility of such provision as well as budgetary considerations may be taken into account.

254. *Subsection (4)* sets out the factors the Chief Executive must take into account in exercising his or her duty under *subsection (1)*, which include ensuring that the education and training required by different employment and industry sectors are met. It also requires the Chief Executive to act with a view to encouraging diversity in education and training; and to increasing opportunities for individuals to exercise choice.
255. The Chief Executive should make the best use of resources. This might mean that for courses and skills where demand is more limited, the Chief Executive could decide to fund places concentrated in particular geographical areas which have links to a particular industry sector, rather than providing more widespread provision for smaller groups of learners. Learners (and employers) seeking to access these more unusual courses may need to travel (or permit employees to travel) to take up the offer of a course.
256. No distinction is drawn between full-time and part-time education in the provision that the Chief Executive must secure.
257. “Organised leisure time occupation” is defined in *subsection (7)*. The Chief Executive’s duties in this regard do not apply to those who are detained in prison or adult young offender institutions; as such facilities are provided by the prison or other institution.

Section 87: Learning aims for persons aged 19 or over: provision of facilities

258. **Sections 87, 88 and 89** re-enact provisions inserted into the Learning and Skills Act 2000 by section 86 of the Education and Skills Act 2008, but conferring functions on the Chief Executive rather than the LSC. Section 87 places a duty on the Chief Executive to secure the provision of proper facilities (in contrast to the reasonable facilities provided for in section 86) for education and training to enable adults who lack particular skills to obtain relevant qualifications. *Subsection (4)* of section 87 defines proper facilities as those which are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. This section effectively gives higher funding priority to those adults who lack certain particular skills to enable them to obtain relevant qualifications.
259. The broad standards of achievement (or “learning aims”) for this purpose are set out in Schedule 5. They are a specified qualification in literacy, a specified qualification in numeracy and a specified vocational qualification at level 2. The specification of the particular qualifications to which the duty applies will be in regulations.
260. The duty will apply only to a learner’s first qualification at the specified level. For example, the Chief Executive 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 made under section 87 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.
261. The qualifications will be those at relatively low levels of learning, which are designed to equip people with basic and intermediate skills for work and everyday living.
262. In performing the duty, the Chief Executive must take account of a number of factors, such as the education and training needs in different sectors of employment. The Chief Executive must also act with a view to encouraging diversity of education and training and to increasing opportunities for individuals to exercise choice; and must make the best use of resources.

Section 88: Learning aims for persons aged 19 or over: payment of tuition fees

263. This section places a duty on the Chief Executive to ensure that learners will not be liable to pay fees for courses of study provided as a result of section 87. There are two categories of learners that the Government intends will not generally have to pay fees for their courses:
- *Subsection (2)* covers those that are at least 19 years of age and are following a course of study for their first specified qualification in literacy, numeracy, or a specified vocational qualification at level 2;
 - *Subsection (4)* covers those that are at least 19 but less than 25 who are following a course to get their first specified level 3 qualification (for example, two A-levels).
264. The intention is that these learners will not be liable to pay fees for these courses of study.
265. Fees include the course fees, but the Secretary of State may also specify in regulations, which will be subject to the affirmative resolution procedure, that other fees relating to the course; for example, 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.
266. *Subsection (5)* gives the Secretary of State the power to amend by order, which will be subject to the affirmative resolution procedure, the relevant provisions of this section so as to vary the ages at which learners qualify for financial help under this section. This provides the flexibility, for example, to be able to adapt to changing economic conditions.

Section 89: Sections 87 and 88: supplementary

267. This section sets out supplementary provisions relating to regulations relating to sections 87 and 88. Regulations may make provision about the circumstances in which a person is to be treated as having or not having a particular qualification for the purposes of meeting the entitlement. It also provides that sections 87 and 88 do not apply to people detained in prisons or adult young offender institutions. This is because all learning provided by the Chief Executive of Skills Funding will be free to learners in custody, and therefore these sections have no practical effect for those prisoners held in adult detention.

Schedule 5: Learning aims for persons aged 19 or over

268. The Schedule sets out the learning aims for people aged 19 or over, that is the broad categories from which qualifications may be specified as ones for which the Chief Executive must secure proper facilities (section 87) or pay for tuition fees (section 88).
269. These categories are:
- a specified qualification in literacy (at the level of attainment in literacy at which an adult's skills are the minimum required to operate in day-to-day life);
 - a specified qualification in numeracy (at the level of attainment in numeracy at which an adult's skills are the minimum required to operate in day-to-day life);
 - level 2 (as demonstrated by 5 GCSEs at Grade C or above);
 - level 3 (as demonstrated by 2 A-levels).
270. The Secretary of State may by regulations specify particular qualifications or descriptions of qualifications which are to fall within scope of the duties. The Government intends that the qualifications specified will be drawn from either the Qualifications and Credit Framework (QCF) or the National Qualifications Framework

(NQF). However, not all qualifications in either framework will necessarily be specified.

271. Qualifications which might be specified in regulations include the following:

- Literacy
 - level 1 certificate in Adult Literacy
- Numeracy
 - entry level 3 certificate in Adult Numeracy
- Level 2
 - level 2 National Vocational Qualifications (NVQs)
 - Vocationally Related Qualifications (VRQs) at level 2
- Level 3
 - Two or more A-levels
 - One or more A-level double Award
 - level 3 NVQs
 - level 3 Diplomas
 - International Baccalaureate
 - Access to HE certificate/diploma

272. The Secretary of State may amend the Schedule by 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. Any such amendment will be subject to the affirmative resolution procedure.

Section 90: Encouragement of education and training for persons aged 19 or over and others subject to adult detention

273. This section sets out the Chief Executive's general duty to encourage participation in education and training amongst people aged 19 or over (other than persons aged under 25 who are subject to learning difficulty assessment) and others in adult detention, and to encourage employers to participate in providing education and training for their employees (who fall within the Chief Executive's remit), including by entering into apprenticeship agreements, and to contribute to the costs of such education and training.