

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

The Chief Executive

231. The White Paper *Raising Expectations: enabling the system to deliver* set out proposals to create a new system that would fund education and skills training for persons aged 19 or over (referred to in these Notes as “post 19”). A widespread consultation was undertaken on these proposals.
232. Part 4 of the Apprenticeships, Skills, Children and Learning Act 2009 describes the powers and duties of the Chief Executive of Skills Funding, referred to in these Notes as “the Chief Executive”. The Chief Executive will be responsible for funding post-19 education and training, for exercising the apprenticeships functions, including securing provision of apprenticeship places for suitably qualified young people aged 16 to 18; and for the education and training of those in adult custody.
233. The Government intends that the Chief Executive will be supported by a new Skills Funding Agency, which will administer the funding system, and make payments to colleges, training providers and others based on the course selections of learners and employers and on a set of entitlements to learning, advice and financial support. The Skills Funding Agency will also manage the new Adult Advancement and Careers Service (AACS), the National Apprenticeship Service and the Train to Gain service. The Train to Gain service is the set of skills services provided to business including public sector employers. Together with its role in funding colleges and providers, these services will provide advice and support on jobs, skills and funding.
234. The Skills Funding Agency will also oversee the development of the Further Education Sector, working with the aim of ensuring that the supply of learning provision meets the needs of learners and employers, and the wider economy. It will also work with other agencies such as Jobcentre Plus to ensure those out of work or likely to be made redundant, receive an integrated employment and skills service, taking account of labour market needs.
235. The Skills Funding Agency is not defined in this Act – instead the Government intends that it will operate through the powers and duties of the Chief Executive of Skills Funding, as described in Part 4 of the Act. The detailed role and functions of the Skills Funding Agency will be set out in a Framework Document which will be issued by the Secretary of State. The Secretary of State will also provide the agency with an annual letter setting out its budget and performance targets for each forthcoming financial year.

236. Both the Chief Executive and the staff of the Skills Funding Agency will work within the Department for Business, Innovation, and Skills (BIS). The Chief Executive will be a civil servant, and will be accountable to the Permanent Secretary and through him to Ministers.
237. The Act provides the Secretary of State with powers to direct the Chief Executive in certain circumstances, but the responsibility for making decisions relating to the funding of particular individuals or bodies lies with the Chief Executive, not the Secretary of State, who is prohibited from giving directions to the Chief Executive in relation to individual funding decisions.

Section 81: The Chief Executive of Skills Funding

238. This section provides for there to be a Chief Executive of Skills Funding who will be appointed by the Secretary of State and whose functions will be limited to England, except where the Chief Executive participates in arrangements with devolved administrations — see sections 107, 108 and 109 below.
239. Most provisions about the Chief Executive which could broadly be categorised as relating to the administration of the office are contained in Schedule 4 whereas the specific duties, powers and functions in relation to the provision of education and training are in the main body of the Act.

Schedule 4: The Chief Executive of Skills Funding

240. *Paragraph 1* provides that the holder of the office of Chief Executive will exercise the functions of the office on behalf of the Crown. It also provides that the office itself will be a corporation sole, so that any contracts entered into, or property owned by, the Chief Executive will pass automatically from one holder of the office to the next. *Paragraph 2* sets out how the Chief Executive will hold and vacate office, and provides that the holder of the office will be a civil servant. *Paragraphs 3 to 5* contain provision about the staff of the Chief Executive, who will form the Skills Funding Agency. These staff may either be staff appointed by the Chief Executive under *paragraph 3*, or staff provided by the Secretary of State to the Chief Executive under secondment arrangements under *paragraph 5* and will in either case be civil servants. *Paragraph 4* makes arrangements whereby the Chief Executive may delegate the functions of the office to members of the Chief Executive's staff and to staff provided by the Secretary of State under *paragraph 5*. *Paragraphs 6 to 8* make provision for operational matters such as funding, including the payment of grants to the Chief Executive and how these must be accounted for, and the preparation and publication of annual reports and accounts.
241. *Paragraph 9* sets out provision for supplementary powers and restrictions, and gives the Chief Executive additional general powers to enable him or her to perform the functions of the office. For example, these powers would allow the Chief Executive to acquire and dispose of land and other property, and enter into contracts. It also sets out those things that the Chief Executive may not do. So the Chief Executive may not borrow money and may not, without the prior consent of the Secretary of State, lend money; form, participate or invest in a company; or form, participate in forming, or become a member of a charitable incorporated organisation.

Apprenticeship Functions

Section 82: Apprenticeship functions

242. The Secretary of State may direct the Chief Executive of Skills Funding to designate a person to carry out apprenticeship functions on behalf of the Chief Executive. The Government expects that the person designated will be the Chief Executive of the National Apprenticeship Service (NAS). The NAS will be a discrete service within the Skills Funding Agency, and the Chief Executive of the NAS and his staff will undertake the apprenticeship functions, including the duty to secure places for young people under

the apprenticeship scheme (section 91). *Subsection (5)* sets out the “apprenticeship functions” that may be carried out under this section.

243. This section, together with the administrative arrangements in place, allows the Secretary of State to define and regulate the relationship between the Chief Executive of Skills Funding and the person designated to carry out the apprenticeship functions, and contains a power for the Secretary of State to make directions to the Chief Executive of Skills Funding requiring him to ensure that the designated person reports to the Secretary of State on the performance of the apprenticeship functions. The “Secretary of State” in this instance should be taken as meaning both the Secretary of State for Business, Innovation, and Skills and the Secretary of State for Children, Schools and Families.
244. All apprenticeship functions will be conferred by the Act on the Chief Executive of Skills Funding. Where those functions are delegated to the Chief Executive of the NAS or another designated person, regulations under *subsection (7)* may make clear which statutory references should operate as references to the designated person, and may modify other statutory provisions.

Apprenticeship training for persons aged 16 to 18 and certain young adults

245. [Sections 83](#) and [84](#) set out the general powers relating to the provision of apprenticeship places for young people. The local education authorities will agree with the Chief Executive the amount and type of apprenticeship training required.
246. Within these general powers, the Chief Executive has a specific duty to secure sufficient suitable apprenticeship places for every suitably qualified young person aged 16 to 18 who wants one. This duty is set out as the apprenticeship offer in sections 91 to 99. A suitable place is in one of the two available chosen apprenticeship sectors, at the appropriate level, and within the reasonable travel area of the person concerned. The definitions and levels in these sections relate solely to the apprenticeship scheme. The sections do not define an apprenticeship, the characteristics of which will reflect the specification of apprenticeship standards provided for in Part 1.

Section 83: Apprenticeship training for persons aged 16 to 18 and certain young adults

247. This section enables the Chief Executive to secure the provision of facilities for apprenticeship training of young people, that is, people above compulsory school age but under 19 and those aged 19 or over but under 25 who are subject to a learning difficulty assessment. These include the people for whose training and education local education authorities will be responsible under section 15ZA of the Education Act 1996 (inserted by section 41 of the Act). Apprenticeship training for them will be provided in response to the need for such training agreed with the local education authorities. The Chief Executive also has a specific duty to secure suitable apprenticeship provision for young people aged 19 or over but under 25 and leaving care or are subject to a learning difficulty assessment.
248. Apprenticeship training is defined as training provided in connection with an apprenticeship agreement, any other contract of employment or other kinds of working which may lead to the award of apprenticeship certificates.

Section 84: Arrangements and co-operation with local education authorities

249. This section enables the Chief Executive to enter into arrangements with local education authorities when securing apprenticeship training for young people. It also requires the Chief Executive to co-operate with local education authorities when deciding on the number of places for apprenticeship training to be secured. The arrangements need to enable local education authorities to meet their responsibilities under section 41 of the

Act and to enable the Chief Executive to meet demand for apprenticeship places under the apprenticeship scheme in accordance with section 91.

Section 85: Encouragement of training provision etc for persons within section 83

250. This sets out the general duty on the Chief Executive to promote apprenticeships for young people to employers, and encourage them to employ young people as apprentices.

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.

The apprenticeship offer

Section 91: Duty to secure availability of apprenticeship places

274. The Chief Executive has a specific duty to secure sufficient apprenticeship places for every suitably qualified person within one of the categories of people eligible for the offer who wants one. This duty is one of the apprenticeship functions which is expected to be delegated to the Chief Executive of the National Apprenticeship Service. The arrangements for fulfilling this duty are set out in the following sections and are known as the apprenticeship offer. *Subsection (3)* allows the Secretary of State to prescribe when the duty has or has not been met.

Section 92: Election for apprenticeship offer

275. This specifies the eligibility criteria for persons who may elect for the apprenticeship offer, and provides that a person who elects for the offer should select two apprenticeship sectors for the purposes of the offer. Each sector will contain a number of different frameworks. The intention is that the sectors will follow those of the Sector Skills Councils.
276. To be eligible for the offer a person has to satisfy the apprenticeship offer requirements at level 2 or level 3, as set out in section 95. The person must also be aged between 16 to 18; be a person aged 21 towards whom a local authority owes duties under section 23C of the Children Act 1989, or a person towards whom a local authority owes duties under section 23CA of that Act; or be a person of a prescribed description up to the age of 25.
277. A person aged under 21 to whom a local authority owes duties under section 23C of the Children Act 1989 will be a “care leaver”: a person aged 18 or over, who has been looked after by the authority. A person to whom an authority owes duties under section 23CA of the Children Act 1989 will be a “care leaver” to whom the authority no longer owes duties under section 23C, but who wishes to pursue education or training:

the duties provided for by section 23CA may continue to be owed until the person reaches the age of 25.

278. It is intended that the persons who will be described in regulations under section 92(4) will be persons who are subject to a learning difficulty.
279. The section also provides that persons who satisfy the apprenticeship requirements at both level 2 and 3 must choose one of those levels.

Section 93: Meaning of “apprenticeship place”

280. This defines an apprenticeship place for the purposes of the apprenticeship offer set out in section 91. A place consists of arrangements comprising both a place on a training course and a place for employment under an apprenticeship agreement, which together relate to an English framework (section 15).

Section 94: Suitability and availability of apprenticeship places: further provision

281. This makes provision about the suitability and availability of apprenticeship places and defines what is meant by the “appropriate level” of an apprenticeship place and “reasonable travel area”. Under *subsection (6)* the Secretary of State must specify areas; the Government intends that the starting point for establishing these ‘reasonable travel areas’ will be the “travel to work areas” (TTWAs) defined by the Office for National Statistics. TTWAs were introduced to provide self contained labour markets and indicate an area within which the population would generally commute for the purposes of employment. The Government expects that that the duty to secure places will usually enable young people to take places within the specified area in which a person lives; and only, where neither choice of sector cannot be met because there are very few or even no employers in those sectors in the specified area, the Chief Executive might reasonably conclude that travel outside the specified area is warranted to take up a place.

Section 95: Apprenticeship offer requirements,

Section 96: Apprenticeship offer requirements: interpretation

282. *Section 95* sets out the qualifications a person must have to elect for the apprenticeship offer at level 2 or level 3, and *Section 96* contains definitions for the purposes of section 95. These qualifications relate solely to the apprenticeship offer and do not affect anyone’s ability to work towards an apprenticeship certificate outside the apprenticeship offer. Under section 96(2) which qualifications count will be specified in regulations which will be subject to the negative resolution procedure. Section 95(5) enables regulations to be made which will set out the circumstances in which a person who appears to the Chief Executive to have a learning difficulty is to be treated as meeting the apprenticeship offer requirements. Persons with learning difficulties will be able to provide alternative evidence which will be taken into account by way of satisfying the apprenticeship offer requirements at Level 2 and Level 3. Section 95(3) provides that the Chief Executive of Skills Funding may determine that certain qualifications awarded outside England are comparable to a specified qualification for the purpose of entry to the apprenticeship offer. Section 95 also specifies that a person must be available for employment under an apprenticeship agreement and allows regulations which will be subject to the negative resolution procedure, to set out what that means. In forming an opinion about the levels of attainment of qualifications that satisfy the apprenticeship offer requirements, the Secretary of State must consult Ofqual under section 96(7).

Section 97: Suspension of offer

283. The Secretary of State may suspend the apprenticeship offer in a specified geographical area in relation to particular apprenticeship sector or at a particular level for up to

*These notes refer to the Apprenticeships, Skills, Children and Learning
Act 2009 (c.22) which received Royal Assent on 12 November 2009*

two years. This would allow the duty to secure suitable apprenticeship places to be suspended where the economic difficulties, or other circumstances, are so severe that it cannot be fulfilled.

Section 98: Power to amend apprenticeship offer

284. This section allows the Secretary of State to amend the age in section 92(2)(b) under which people other than care leavers are eligible for the apprenticeship offer, currently set at 19. The section also enables the Secretary of State to amend the level of qualification for the apprenticeship offer. The power is exercisable by order, which will be subject to the affirmative resolution procedure.