

Education and Skills Act 2008

2008 CHAPTER 25

An Act to make provision about education and training; and for connected purposes.

[26th November 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Introductory Note:

The Government's Explanatory Notes (see General Note: Explanatory Notes) summarises the Act as follows:

“Part 1: Duty to participate in education or training: England

- * Places a duty on young people to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier);

- * Requires local education authorities to promote the effective participation of young people in their areas who are subject to the duty to participate;

- * Allows for the sharing of information between the Secretary of State, certain public bodies and local education authorities to facilitate the provision of support services and enable local education authorities to identify young people who are not participating;

- * Makes provision for duties on employers to enable young people who are their employees to participate;

- * Sets out the circumstances in which a local education authority may issue a parenting contract or order to a parent of a young person who is failing to fulfil the duty to participate;

- * Provides for local education authorities to issue attendance notices to young people who are not participating and to set up independent attendance panels to monitor the ensuing enforcement process and provide a mechanism for appeal;

Part 2: Support for participation in education or training: Young adults with learning

difficulties and young people in England

* Places a duty on local education authorities to provide support services to young people to be known as Connexions. Connexions services are currently provided under a power available to the Secretary of State in section 114 of the Learning and Skills Act 2000;

* Places a duty on local education authorities to arrange for an assessment of a person with a statement of special educational needs at some time during the person's last year of schooling where the local education authority believes that person will leave school at the end of their last year of compulsory schooling or at some time during their current school year to receive post-16 education or training or higher education;

* Confers a power on local education authorities to arrange for an assessment where a person is in his or her last year of compulsory schooling or is over compulsory school age but under 25 years old, where he or she appears to the authority to have a learning difficulty and is likely to receive post-16 education or training or higher education;

* Amends the requirements on maintained secondary schools in England to require them to present careers information in an impartial manner and to provide careers advice which is in the best interests of the pupils;

* Makes explicit the duty on the Learning and Skills Council (LSC) to secure provision of proper facilities for apprenticeships for 16 to 18 year olds, and requires that the LSC secures provision of reasonable facilities for apprenticeships for those aged 19 and over;

* Introduces a requirement on local education authorities to have regard to journey times in preparing their transport statements for people of sixth form age to attend educational establishments;

* Requires local education authorities to co-operate with partners who are responsible for 14-19 education and training;

Part 3: Adult skills

* Places a duty on the LSC to secure the provision of proper facilities for education and training to enable adults to obtain a specified qualification at levels of attainment identified in the Leitch Review of Skills (level 1 literacy, entry level 3 numeracy and level 2);

- * 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 the duty to secure proper provision;

- * Places a duty on the LSC to ensure the provision of sufficient financial resources for the purpose of paying tuition fees for people between 19 and 25 years old to attain their first level 3 qualification;

- * Allows the Secretary of State, the devolved administrations and the Commissioners of Revenue and Customs to share information on tax and employment and benefit and training information for defined assessment functions;

Part 4: Regulation and inspection of independent educational provision in England

- * Creates a new category of independent educational institution to which the regulatory regime for independent schools in England is extended. That regime (currently in Chapter 1 of Part 10 of the Education Act 2002) is restated with changes in Chapter 1 of this Part;

- * Enables the Secretary of State to appoint an independent inspectorate to carry out inspections of registered independent educational institutions and requires the Chief Inspector to prepare a report about independent inspectorates;

- * Provides the Secretary of State with the power to require an action plan from a proprietor of an independent educational institution where the standards are not being met;

- * Provides a power for the Secretary of State to apply to a justice of the peace to impose an immediate restriction on an independent educational institution in an emergency where there is significant risk of harm to a student at the institution;

- * Enables the Secretary of State to make regulations to apply any provisions of the regime for the regulation of independent educational institutions to independent post-16 colleges;

- * Provides a right for sixth-form pupils in non-maintained special schools to opt out of religious worship;

- * Provides a power to make regulations under which the Secretary of State could apply to a Justice of the Peace for an order to withdraw approval from a non-maintained special school in an emergency where there is significant risk of harm to a pupil at the institution;

- * Amends section 347 of the Education Act 1996 which requires the Secretary of

State to approve independent schools for the placement by local education authorities of pupils with statements of special educational needs, and to give his consent for the placement of such pupils in "non-approved" independent schools. The amendments alter the section so that the approval and consent for which it provides are only necessary for schools in Wales (where they are given by the Welsh Ministers);

Part 5: Miscellaneous and general

- * Amends Part 1 of Schedule 5 to the Government of Wales Act 2006 (legislative competence of the National Assembly for Wales) so as to devolve additional powers to the Assembly in the field of education and training;

- * Amends the School Standards and Framework Act 1998 to give young people the right to express a preference as to the school at which they wish to receive sixth form education, and also to appeal against a decision to refuse them a place at that school;

- * Places a new duty on local education authorities to produce an annual report to the Schools Adjudicator on school admission arrangements in their areas, and requires the Schools Adjudicator to consider and act on any unlawful admission arrangements which come to his attention;

- * Creates a power for governing bodies of maintained schools in England to direct pupils to learn outside the school premises to receive provision to improve their behaviour;

- * Extends the circumstances in which parents may be prosecuted for failure to ensure that their child attends school regularly, where a governing body has directed that child to learn offsite;

- * Requires maintained schools and local authorities to implement National Curriculum assessment arrangements as they exist at a given time, rather than as they exist at the start of the school year;

- * Requires maintained school governing bodies to invite and consider pupils' views on matters set out in regulations;

- * Amends the Learning and Skills Act 2000 to remove the requirement for the Secretary of State or Welsh Ministers to give consent to all decisions of a designated body to approve qualifications as eligible to receive public funding;

- * Creates additional functions for the QCA or Welsh Ministers to recognise bodies

that wish to award or authenticate qualifications;

* Removes the legislative requirement for the Chief Inspector to notify providers of initial teacher training in England eight weeks before an inspection;

* Enables regulations to require schools forums to include non-schools representatives amongst their members.”

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).

Introduction:

This section introduces Part 1 (which makes education or training compulsory up to age 18) by setting out to whom the Part applies (in essence, 16 and 17 year-olds).

Note:

Part 1 applies to England only, although it extends to England and Wales (see s. 172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Paragraph (a):

“Compulsory school age” – 5– 16 (s.8(3) of the Education Act 1996). For the precise rules about the school leaving date (set by the Secretary of State) on which a 16-year old ceases to be of compulsory school age, see s.8(3) of the 1996 Act.

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, or
 - (c) both—
 - (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.
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Introduction:

This section requires 16 and 17 year-olds to participate in full-time education or training, an apprenticeship, or employment with training. The consequences of failing to comply with this duty are set out in Chapter 5 of Part 1.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Person to whom this Part applies” - see s.1.

Interpretation

3 Level 3 qualification

- (1) In this Part, “level 3 qualification” means a prescribed external qualification, or an external 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 Qualifications and Curriculum Authority 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 the Authority.
- (4) In subsection (1), “external qualification” has the meaning given in section 24 of the Education Act 1997 (c. 44).
- (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.

Introduction:

This section defines “level 3 qualification” for the purposes of Part 1. Once a person has attained a level 3 qualification, Part 1 ceases to apply to them.

The Government’s Explanatory Notes (See General Note: Explanatory Notes) state that the Progression Diploma and the Advanced Diploma are intended to fall within this definition when they become available.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

Prescribed — by regulations made by the Secretary of State by statutory instrument, subject to negative resolution procedure (see ss.168(1), 166(1) and 166(3)). See General Note: Statutory Instruments: Negative Resolution.

External qualification – see subs.(4) (and its note).

Subsection (2):

See General Note: Secretary of State.

“General Certificate of Education at advanced level” - commonly known as an A Level.

Subsection (3):

“The Qualifications and Curriculum Authority” - a body established by s.21 of the Education Act 1997. Its functions include oversight of qualifications and the curriculum.

Subsection (4):

“External qualification” — s.24 of the Education Act 1997 defines external qualification as:

“A any academic or vocational qualification authenticated or awarded by an outside person, except an academic qualification at first degree level or any comparable or higher level; or (b) (whether within paragraph (a) or not) any National Vocational Qualification.”

Subsection (5):

Order — An order made by the Secretary of State under this subsection is to be made by statutory instrument subject to draft affirmative procedure (see ss.168(1), 166(1) and (2)). See General Note: Statutory Instruments: Draft Affirmative Procedure.

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) Subsections (5) and (6) of section 13 of the Learning and Skills Act 2000 (c.21) (persons with learning difficulties) apply for the purposes of this section.

Introduction:

This section defines “appropriate full-time education or training” for the purposes of Pt 1. One way for a person to fulfil the duty under s.2 is to be engaged in appropriate full-time education or training.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Note:

This section does not seem to require that appropriate full-time education or training be provided by any particular institution or type of institution. The Government’s Explanatory Notes (see General Note: Explanatory Notes) state that, for example, education in the home can constitute appropriate full-time education or training for the purposes of the Act.

Subsection (1):

“Learning difficulty” — the following definition from s.13(5) and (6) of the Learning and Skills Act 2000 applies (by virtue of subs.(3)):

“(5) A person has a learning difficulty if— (a) he has a significantly greater difficulty in learning than the majority of persons of his age, or (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training.

“(6) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.”

Subsection (2):

Regulations — regulations made under this section are made by the Secretary of State by statutory instrument subject to negative resolution procedure (see ss.168(1), 166(1) and 166(3)). See General Note: Statutory Instruments: Negative Resolution.

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
- (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.

Introduction:

This section defines “full-time occupation” for Pt 1. One way for a person to fulfil the duty under s.2 is to be engaged in a full-time occupation with sufficient relevant training or education in each relevant period.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

Contract of employment — see s.66(1).

Prescribed — by regulations made by the Secretary of State by statutory instrument, subject to draft affirmative procedure (see ss.168(1), 166(1) and (2)). See General Note: Statutory Instruments: Draft Affirmative Procedure.

“Short-term contract or arrangement” - see subs.(8).

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“Regulations made under subsection (1)(b) can prescribe any other kinds of occupation that should count for these purposes, including volunteering, agency work and working as the holder of an office (for example, police officers or public appointees).”

Subsection (3):

“Normal weekly working hours” - see subs.(4).

Actual guided learning - see s.8(3).

Subsection (4):

Where a person works overtime hours in addition to their ordinary hours s.234 of the Employment Rights Act 1996 determines what that person’s normal weekly working hours are (see subs.(5)).

Subsection (6):

“Regulations” — regulations made under this section are made by the Secretary of State by statutory instrument subject to negative resolution procedure (see ss.168(1), 166(1) and 166(3)) (other than regulations under subs.(1)(b) which are subject to the affirmative procedure). See General Note: Statutory Instruments: Negative Resolution.

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

Introduction

This section defines “relevant training or education” for the purposes of Pt 1. One way for a person to fulfil the duty under s.2 is to be engaged in a full-time occupation with sufficient relevant training or education.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (2):

The Qualifications and Curriculum Authority - a body established by s.21 of the Education Act 1997. Its functions include oversight of qualifications and the curriculum.

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).

Introduction:

This section defines “relevant period” for the purposes of Pt 1. One way for a person to fulfil the duty under s.2 is to be engaged in a full-time occupation with sufficient relevant training or education in each relevant period.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions – see s.67.

Subsection (3):

Prescribed — by regulations made by the Secretary of State by statutory instrument, subject to negative resolution procedure (see ss.168(1), 166(1) and 166(3)). See General Note: Statutory Instruments: Negative Resolution.

Subsection (4)(a):

“This Part applies to the person” – see s.1.

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 (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.

Introduction:

This section determines when relevant training or education is sufficient for the purposes of Pt 1. One way for a person to fulfil the duty under s. 2 is to be engaged in a full-time occupation with

sufficient relevant training or education in each relevant period.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection 1:

“Guided learning” — see subs.(2).

Relevant period — see s.7.

Regulations — regulations made under this section are made by the Secretary of State by statutory instrument subject to negative resolution procedure (see ss.168(1), 166(1) and 166(3)). See General Note: Statutory Instruments: Negative Resolution

Subsection (2):

Accredited qualification — see s.6(2).

Actual guided learning — see subs.(3).

Assigned — From the date when s.9 comes into force the Qualifications and Curriculum Authority must, when it accredits a qualification, assign a number of hours of actual guided learning to it as an estimate of the time needed to achieve it. The Qualifications and Curriculum Authority is established by s.21 of the Education Act 1997: its functions include oversight of qualifications and the curriculum.

9 Assignment of numbers of hours of guided learning to external qualifications

In section 24 of the Education Act 1997 (functions of Qualifications and Curriculum Authority in relation to external vocational and academic qualifications), after subsection (2A) insert—

“ (2B) Any accreditation of a qualification under paragraph (g) of subsection (2) must assign to the qualification a number of notional hours (to be known as “ the number of hours of guided learning”) representing an estimate of the amount of actual guided learning which could reasonably be expected to be required in order for persons to achieve the standard required to attain the qualification.

(2C) Accordingly, criteria published under paragraph (f) of that subsection must include criteria for the assignment of numbers of hours of guided learning to qualifications mentioned in that paragraph.

(2D) In subsection (2B), “ actual guided learning” means time a 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.”

Introduction:

This section amends s.24 of the Education Act 1997 so as to require the Qualification and Curriculum Authority, when accrediting external qualifications, to assign a notional number of hours of “guided learning” which the qualification is taken to represent.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Chapter 2

LOCAL EDUCATION AUTHORITIES AND EDUCATIONAL INSTITUTIONS ETC

Duty to promote fulfilment of duty imposed by section 2

10 Local education authority to promote fulfilment of duty imposed by section 2

A local education 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.

Introduction:

This section introduces Chapter 2 of Pt 1 which imposes duties on local education authorities and educational institutions. This section requires local education authorities in England to promote the participation in education or training of 16 and 17 year-olds.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

“Persons ... to whom this Part applies” - see s.1.

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.

(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 local education 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).

Introduction:

This section places a duty on the governing bodies of various institutions (broadly speaking schools in the maintained sector), to ensure the regular attendance of 16 and 17 year-olds.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“The Learning and Skills Council will be asked to place the same duty on the private providers that it funds, through its existing power to attach conditions to funding under section 6 of the Learning and Skills Act 2000.”

Subsection (1):

Governing body — see subs.(3).

“Persons to whom this Part applies” - see s.1.

Subsection (2):

“Community, foundation or voluntary school” and “community or foundation special school” — these are all schools maintained by local education authorities (see s.20 of the School Standards and Framework Act 1998). That section applies to this Act, unless the context requires otherwise, by virtue of s.168(6) of this Act.

Subsection (2)(c):

“Pupil referral units” — Institutions provided by local education authorities for the education of children who, through illness, exclusion or other reasons cannot obtain adequate education elsewhere. See s.19 of, and Sch.1 to, the Education Act 1996.

Subsection (2)(d):

“Further education sector” — Further education is defined in s.2(3)–(6) of the Education Act 1996. That definition applies to this section by virtue of s.168(2) of this Act.

Subsection (3):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

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.

Introduction:

This section requires local education authorities in England to identify people in their area who are failing to fulfil their duty under section 2 to participate in education or training.

Note:

Part 1 applies to England only, although it extends to England and Wales (see section 172 and General Notes: Extent and England and Wales). If the National Assembly for Wales make similar provision by Measure, the Secretary of State has power to make ancillary provisions – see section 67.

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

“Persons ... to whom this Part applies” — see s.1.

“Persons ... failing to fulfil the duty imposed by section 2” — see s.66(4).

Information

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.

(2) Where a local education 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 local education authority,

it must as soon as reasonably practicable give notice to the service provider for the other local education 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 local education 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 local education authority, the provider gives notice to the service provider for the other local education 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 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);

“service provider”, in relation to a local education 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 local education authority in whose area the institution is situated.

Introduction:

This section places a duty on certain people within educational institutions, in certain circumstances, to report to the local education authority the failure of people to whom Pt 1 applies to attend their institution.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1): “Person to whom this Part applies” — see s.1.

Educational institution — see subs.(5).

Responsible person — see subs.(5).

Appropriate service provider — see subs.(5).

“Person is failing to fulfil the duty imposed by section 2” — see s.66(4).

Subsection (2):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

“Section 68(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.”

Service provider — see subs.(5).

Subsection (5):

“Community, foundation or voluntary school” and “community or foundation special school” — these are all schools maintained by local education authorities (see s.20 of the School Standards and Framework Act 1998). That section applies to this Act, unless the context requires otherwise, by virtue of s.168(6) of this Act.

“City technology college; a city college for the technology of the arts” — These are both kinds of independent school in receipt of government funding and situated in urban areas, with an emphasis on science, technology or the application of these subjects to the arts (established under s.482 of the Education Act 1996 before its substitution by s.65 of the Education Act 2002).

“Academy” — Academies are independent schools in receipt of government funding which specialise in one or more subject areas. Established under s.482 of the Education Act 1996 as substituted by s.65 of the Education Act 2002.

“Pupil referral units” — Institutions provided by local education authorities for the education of children who, through illness, exclusion or other reasons cannot obtain adequate education elsewhere – see s.19 of, and Sch.1 to, the Education Act 1996.

“Further education sector” — Further education is defined in s.2(3)–(6) of the Education Act 1996. That definition applies to this section by virtue of s.168(2) of this Act.

“Learning and Skills Council” — established under the Learning and Skills Act 2000, with some responsibility for the education of people aged between 16 and 19.

“Service Provider” — The Government’s Explanatory Notes (see General Note: Explanatory Notes) say that:

“[S]ervices are currently provided under arrangements made by the Secretary of State and are known as “Connexions”. This name will be retained when the responsibility for providing

the Connexions service is transferred to local education authorities in accordance with the provisions in Part 2. An institution's local Connexions office will be the "appropriate service provider" for the purposes of this section."

14 Educational institutions: duty to provide information

- (1) Relevant information about a pupil or student—
- (a) who is attending an educational institution in England, and
 - (b) 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—
- (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” and “responsible person” have the same meanings as in section 13.

Introduction:

This section requires educational institutions to supply local education authorities with information about their students.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

Relevant information — see subs.(3).

“Pupil” — in essence:

"[A] person for whom education is being provided at a school, other than—(a) a person who has attained the age of 19 for whom further education is being provided, or (b) a person for whom part-time education suitable to the requirements of persons of any age over compulsory school age is being provided."

This definition is taken from s.3 of the Education Act 1996 and applies by virtue of s.168(2) of this Act.

Educational institution — see s.13(5).

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Responsible person — see s.13(5).

15 Supply of social security information

(1) Social security information may be supplied to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under this Part.

(2) In this section “ social security information” means personal information about a 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 person, means—

- (a) the person's name, address and date of birth, and
- (b) the name and address of a parent of the 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 enabling or assisting the exercise of any function of a local education authority under this Part,
- (b) for the purpose of the provision of services in pursuance of section 68 or 70(1)(b),
- (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 two 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.

(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.

Introduction:

This section allows social security information to be supplied to local education authorities for the purpose of Pt 1.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1): Social security information — see subs.(2).

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

“Functions under this Part” — The functions of a local education authority under Pt 1 include promoting the participation in education or training of those to whom the part applies and taking enforcement action against parents, employers or young people breaching their duties under Pt 1.

Subsection (2):

See General Note: Secretary of State.

See General Note: Social Security.

Subsection (4):

See General Note: Enactment.

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).

Introduction:

This section allows certain bodies to supply information to local education authorities for the purpose of Pt 1.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say this section:

“[I]s primarily an enabling provision as, without it, there might be doubt as to whether the particular public body involved had the legal power to share information for the purposes of fulfilling local authority functions under Pt 1.”

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67..

Subsection (1):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

“Functions under this Part” — The functions of a local education authority under Pt 1 include promoting the participation in education or training of those to whom the part applies and taking enforcement action against parents, employers or young people breaching their duties under Pt 1.

Subsection (2):

“Primary Care Trust” — bodies responsible for providing certain health services within their areas. Their existence is confirmed by s.18 of the National Health Service Act 2006.

“Strategic Health Authority” — bodies responsible for managing the National Health Service in their areas. Their existence is confirmed by s.13 of the National Health Service Act 2006.

“Chief officer of police” — according to the Police Act 1996, s.101:

““chief officer of police” means (a) in relation to a police force maintained under section 2, the chief constable, (b) in relation to the metropolitan police force, the Commissioner of Police of the Metropolis, and (c) in relation to the City of London police force, the Commissioner of Police for the City of London ...”.

Section 2 of that Act reads, “[a] police force shall be maintained for every police area for the time being listed in Schedule 1.”

“Provider of probation services” — the provision of probation services is governed by the Offender Management Act 2007.

Local probation board — see subs.(3).

Youth offending team — see subs.(3).

17 Sharing and use of information held for purposes of support services or functions under this Part

(1) Any persons within subsection (2) may provide relevant information to each other.

(2) Those persons are—

- (a) a local education 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 local education authority in England may use relevant information held by it for any relevant purpose.

(5) A local education 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 local education 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.

(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;

“relevant purpose” —

(a) in relation to a local education 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 local education 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 local education 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 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.

Introduction:

This section allows local education authorities and persons providing services on their behalf to pass relevant information to each other and to use it for relevant purposes.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“The intention is that local education authorities or service providers will continue to maintain the database currently established and maintained under the Learning and Skills Act 2000 to help them provide the right support services to young people (under Part 2 of this Act) and promote and ensure fulfilment of the duty to participate (under Part 1).”

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

Relevant information — see subs.(7).

Subsection (2):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Service provider — see subs.(7).

Subsection (3):

Relevant purpose — see subs.(7).

Subsection (7):

Young person — see subs.(8).

Relevant young adult — see subs.(8).

Subsection (8):

“Learning difficulty” — the following definition from s.13(5), (6) of the Learning and Skills Act 2000 applies :

“(5) A person has a learning difficulty if– (a) he has a significantly greater difficulty in learning than the majority of persons of his age, or (b) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training.

“(6) But a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home.”

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.

Introduction:

This section places a duty on local education authorities to have regard to guidance given by the Secretary of State in the exercise of their functions under Pt 1.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

See General Note: Have Regard To.

See General Note: Guidance.

See General Note: Secretary of State.

Chapter 3
EMPLOYERS
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.

Introduction:

This section introduces Ch 3 of Pt 1, which requires employers to allow certain young employees to participate in education or training alongside their work. This section defines “relevant contract of employment”, to which the duties in ss.21, 27 and 28 are restricted.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Contract of employment” means, by virtue of s.66, “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.”

Subsection (2):

Sufficient relevant training or education- for the meaning of “relevant training or education” see section 6, for whether it is sufficient see section 8.

Relevant period - see section 7.

Full-time occupation - see section 5.

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.

Introduction:

This section defines “appropriate arrangements for training or education.” Employers must not enter into employment contracts with young people unless appropriate arrangements for training or education have been made, and must allow their young employees to participate in training or education under such arrangements alongside their work.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Person to whom this Part applies” — see s.1.

“Relevant training or education” — see s.6.

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.

Introduction:

This section requires employers not to employ young people unless appropriate arrangements for training or education have been made. The penalty for breaching this duty is set out in s.22.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“The duty does not require the employer to check that the arrangements cover relevant training or education that is sufficient (that is enough hours in the relevant period). For example, an employer would check that a potential employee could produce a letter from a learning provider indicating that he or she had enrolled on a course.”

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

See General Note: Person

Relevant contract of employment — see s.19.

“Person to whom this Part applies” — see s.1.

“Appropriate arrangements for training or education” — see s.20.

22 Financial penalty for contravention of section 21

- (1) Where a relevant local education 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 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.
- (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).

Introduction:

This section allows local education authorities to impose penalties on employers for breach of the duty under section 21.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Relevant local education authority” — see subs.(4).

See General Note: Person.

Financial penalty — see General Note: Civil Penalties.

Subsection (2):

Regulations — made by the Secretary of State (see s.168(1)). If regulations under this subsection increase the penalty they are subject to draft affirmative procedure (see s.166(2)(c)) — See General Note: Statutory Instruments: Draft Affirmative Procedure. If they decrease the penalty they are subject to negative resolution procedure (see s.166(3), and (4)) — See General Note: Statutory Instruments: Negative Resolution.

Subsection (3)(e):

The procedure for appeals against penalty notices is set out in s.24.

Subsection (4):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

“Contract of employment” means, by virtue of s.66, “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.”

Subsection (5):

Section 166(6) gives the Secretary of State the power, when making regulations under this Act, “to make different provision for different cases, circumstances or areas,”.

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 local education 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 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 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.

Introduction:

This section allows employers threatened with a penalty under s.22 to object.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

See General Note: Person.

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Subsection (5):

Prescribed — by regulations made by the Secretary of State by statutory instrument, subject to negative resolution procedure (see ss.168(1), 166(1) and , (3)). See General Note: Statutory Instruments: Negative Resolution.

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.

Introduction:

This section allows employers to appeal against penalties imposed under s.22.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“Any appeal must be made within the time limit set by the Tribunal Procedure Rules under para.4 of Sch.5 to the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal has the power to: allow the appeal and cancel the penalty notice; replace the penalty with a smaller amount (if the amount was incorrect); or dismiss the appeal.”

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Period during which a notice of objection may be given” — see s.23(3), “during the period of 2 weeks beginning with the day on which the penalty notice was given to the employer.”

Subsection (2):

See General Note: First-tier Tribunal

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 local education 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.
-

Introduction:

This section allows local authorities to withdraw or vary penalty notices they have issued under s.22.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

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).

Introduction:

This section governs the repayment of money paid in response to penalty notices issued under s.22 which are later withdrawn or reduced.

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.
- (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.

Introduction:

This section requires employers to allow employees under the age of eighteen to participate in pre-arranged education or training. The consequences of breach are set out in s.30.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Person to whom this Part applies” — see s.1.

Relevant contract of employment — see s.19.

“Appropriate arrangements” — see s.20.

Subsection (5):

Normal working time — see subs.(6).

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.
-

Introduction:

This section requires employers to allow employees under the age of eighteen to participate in education or training arranged after the employment began. The consequences of breach are set out in section 30.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Person to whom this Part applies” — see s.1.

Relevant contract of employment — see s.19.

Appropriate arrangements — see s.20.

Subsection (3):

“Duty imposed by s.2” — in essence, the duty to participate in full-time education or training, an apprenticeship or full-time work with sufficient relevant training or education.

Subsection (6):

“Normal working time” — see subs.(7).

29 Sections 27 and 28: extension for person reaching 18

- (1) This section applies where—
 - (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.

Introduction:

This section extends the duty of employers under ss.27 and 28 to apply to employees who reach the age of eighteen while still engaged in education or training intended to fulfil their duty under s.2.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Person to whom this Part applies” — see s.1.

Relevant contract of employment — see s.19.

“Duty imposed by s.2” — in essence, the duty to participate in full-time education or training, an apprenticeship or full-time work with sufficient relevant training or education.

Subsection (2):

Level 3 qualification — see s.3.

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)—
 - (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.

Introduction:

This section allows local education authorities to issue enforcement notices to employers that fail to fulfil their duties under ss.27 and 28.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

“The Government’s intention is to issue guidance to local education authorities to the effect that an employer should first be asked to fulfil the duty and given the chance to remedy the mistake voluntarily before an enforcement notice is issued.”

Subsection (1):

“Person to whom this Part applies” — see s.1.

Relevant contract of employment — see s.19.

Subsection (2):

“Relevant local education authority” — see subs.(9).

Subsection (4):

Normal working time — see subs.(10).

Subsection (5):

Appropriate arrangements — see s.20.

Subsection (9):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

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),

(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).

Introduction:

This section allows local education authorities to issue financial penalties to employers that fail to comply with an enforcement notice served under s.30.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

See General Note: Person.

Subsection (3):

Regulations — made by the Secretary of State (see s.168(1)). If regulations under this subsection increase the penalty they are subject to draft affirmative procedure (see s.166(2)(c)) – see General Note: Statutory Instruments: Draft Affirmative Procedure. If they decrease the penalty they are subject to negative resolution procedure (see s.166(3), and (4)) – see General Note: Statutory Instruments: Negative Resolution. Note that this explanation assumes that section 166(2)(c) contains an error, as described in the note to that provision below.

Subsection (4):

The procedure for appeals against penalty notices is set out in s.34.

Subsection (5):

Section 166(6) gives the Secretary of State the power, when making regulations under this Act, “to make different provision for different cases, circumstances or areas,”. Because the idea of increasing the penalty for late payment is likely to prove controversial, this subsection puts the power beyond doubt by express permission for the regulations to vary the penalty by reference to time of payment. Relying on the general words of s.166(6) could be unsafe, if the courts found that by their very generality it cannot be assumed that Parliament intended them to cover this contentious proposal. Equally, including express power here for particularity in the regulations could cause the general words of s.166(6) to be read more restrictively than would otherwise be the case; which is why subs.(5) begins with the assertion that it is to be taken as being without prejudice to s.166(6).

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).

Introduction:

This section allows local education authorities to withdraw enforcement notices issued under s.30.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Local education authority” — A local authority with education functions, as identified by s.12 of the

Education Act 1996. See General Note: Local Authorities.

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;
 - (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.

Introduction:

This section allows employers to object to penalty notices issued under s.31.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and **General Notes:** Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Subsection (5):

Prescribed — by regulations made by the Secretary of State by statutory instrument, subject to negative resolution procedure (see ss.168(1), 166(1) and (3)). See General Note: Statutory Instruments: Negative Resolution.

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.
- (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.

Introduction:

This section allows employers to appeal against penalty notices issued under section 31.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General

Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“Any appeal must be made within the time limit set by the Tribunal Procedure Rules under para.4 of Sch.5 to the Tribunals, Courts and Enforcement Act 2007. The First-tier Tribunal has the power to: allow the appeal and cancel the penalty notice; replace the penalty with a smaller amount (if the amount was incorrect); or dismiss the appeal.”

Subsection (1):

“Period during which a notice of objection may be given” — within 2 weeks of the penalty notice being given to the employer (see s.33(3)).

Subsection (2):

See General Note: First-tier Tribunal.

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.
-

Introduction:

This section gives local education authorities a general power to withdraw penalty notices issued under s.31.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection 1:

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

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).

Introduction:

This section requires local education authorities to repay money they have received from employers under penalty notices that have been withdrawn under ss.33 or 35.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (3):

See General Note: Judgments Act 1838, s. 17.

Supplementary

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.

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

Introduction:

This section amends the Employment Rights Act 1996 to prohibit employers from ill-treating employees who choose to exercise their rights under this Act.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

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.”

Introduction:

This section amends the Employment Rights Act 1996 so as to give unfair dismissal remedies where an employee is dismissed because he or she chooses to exercise rights under this Act.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

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 (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,” ” .

Introduction:

This section makes several amendments to the Education Act 1996. In particular, “s.39 provides that section 63A of the Employment Rights Act 1996, which establishes a right to paid time off for young people aged 16-19 if they do not already have a level 2 qualification, does not apply to people subject to the duty to participate and will continue to apply only in Wales and Scotland” (Government Explanatory Notes – see General Note: Explanatory Notes).

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

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.

Introduction:

This section introduces Ch.4 of Pt 1, which sets out action that can be taken against the parents of young people who fail to fulfil their duty under s.2 to participate in education or training. This section allows local education authorities to enter into parenting contracts with parents whereby the parents agree to meet specified requirements in return for support from the local education authority.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say, “Parenting contracts under section 40 are similar to parenting contracts under the Anti-Social Behaviour Act

2003.”

Subsection (1):

“Person to whom this Part applies” — see s.1.

“Person ... failing to fulfil the duty imposed by section 2” —see s.66(4).

Subsection (2):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Parent — by virtue of s.44(4) the definition in s.576 of the Education Act 1996 applies to this section, except that only individuals can be parents.

Subsection (3):

In exercising its discretion over the contents of parenting orders a local authority must, under s.44(1),:

“[H]ave 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.”

It must also comply with regulations under s.44(2).

Subsection (3)(b):

No guidance is given on what kind of support might be offered. It can be assumed, however, that direct financial inducements are not contemplated, or one would expect them to have been mentioned expressly. Support could, however, include the provision of facilities that cost money. A Government guide to how parenting contracts might work suggests that:

“For example, the LA or school may be able to offer help with transport, advice on setting boundaries at home, parenting classes, etc.” (Parenting Contracts: A Guide for Parents, Department for Children, Schools and Families, September 2007).

Subsection (6):

Breach of a parenting contract may however be taken into account by a court considering whether to make a parenting order (see s.42(1)).

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
 - (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.

Introduction:

This section allows parenting orders to be made against the parents of young people who are failing to fulfil their duty under s.2 to participate in education or training.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by

Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

“Person to whom this Part applies” — see s.1.

“Person ... failing to fulfil the duty imposed by section 2” — see s.66(4).

Subsection (2):

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Parent — by virtue of s.44(4) the definition in s.576 of the Education Act 1996 applies to this section, except that only individuals can be parents.

Subsection (4):

Responsible officer — by virtue of s.44(4), “in relation to a parenting order, means an officer of a local education authority who is specified in the order.”

Subsection (5):

See General Note: Enactment.

Subsection (8):

See General Note: Proportionality.

Note also that respect for family life is one of the freedoms granted or recognised by the European Convention on Human Rights.

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.

Introduction:

This section sets out factors that a court must take into account when deciding whether to make a parenting order under s.41.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

Parent — by virtue of s.44(4) the definition in s.576 of the Education Act 1996 applies to this section, except that only individuals can be parents.

“Person to whom this Part applies” - see s.1.

Subsection (2):

Section 9(3)–(7) of the Crime and Disorder Act 1998 deal with procedural requirements for the issue of parenting orders, limits on their contents, the power of the court to discharge them and the consequences of their being breached.

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.

Introduction:

This section gives a right of appeal against parenting orders issued under section 41.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

Subsection (1):

See General Note: Crown Court.

Subsection (2):

Section 10(2) and (3) of the Crime and Disorder Act 1998 — power to make incidental orders; and treatment as if original order.

44 Parenting contracts and parenting orders: further provisions

- (1) Local education 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 local education authorities in England of their functions relating to—
- (a) parenting contracts under section 40, or
 - (b) parenting orders under section 41.
- (3) The provision that may be made under subsection (2) includes—
- (a) provision limiting the power of a local education authority to enter into a parenting contract, or apply for a parenting order, in prescribed cases;
 - (b) provision requiring one local education authority to consult with another before taking any prescribed step;
 - (c) provision requiring the provision of information by one local education 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 local education authority who is specified in the order.

Introduction:

This section sets out factors to be taken into account by local education authorities and their officers when entering into parenting contracts or applying for parenting orders.

Note:

Part 1 applies to England only, although it extends to England and Wales (see s.172 and General Notes: Extent; England and Wales). If the National Assembly for Wales makes similar provision by Measure, the Secretary of State has power to make ancillary provisions, see s.67.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

“This section also allows regulations to make provision about the exercise by local education authorities of their functions in relation to parenting contracts and parenting orders, and to require information to be provided by one local education authority to another. The reason for this provision is that a young person who is failing to fulfil the duty may be in the area of one local education authority, but his parent may be in the area of another, and it will need to be clear which authority should lead, and to ensure that both authorities cannot take action against the same parent for the same reason at the same time.”

Subsection (1):

Parent — by virtue of s.44(4) the definition in s.576 of the Education Act 1996 applies to this section, except that only individuals can be parents.

“Local education authority” — A local authority with education functions, as identified by s.12 of the Education Act 1996. See General Note: Local Authorities.

Responsible officer — by virtue of s.44(4), “in relation to a parenting order, means an officer of a local education authority who is specified in the order.”

“Person to whom this Part applies” — see s.1.

Failure to fulfil the duty imposed by s.2 — see s.66(4).

Subsection (2):

Regulations — regulations made under this section are made by the Secretary of State by statutory instrument subject to negative resolution procedure (see ss.168(1), 166(1) and (3)). See General Note: Statutory Instruments: Negative Resolution

Subsection (3):

Prescribed — by regulations made by the Secretary of State by statutory instrument, subject to negative resolution procedure (see ss.168(1), 166(1) and (3)). See General Note: Statutory Instruments: Negative Resolution.

The remainder of this Act has not been reproduced for the purposes of this sample.