



# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

### PART 4

#### THE CHIEF EXECUTIVE OF SKILLS FUNDING

#### CHAPTER 1

#### ESTABLISHMENT AND MAIN DUTIES

#### *The Chief Executive*

#### **81 The Chief Executive of Skills Funding**

- (1) There is to be a Chief Executive of Skills Funding.
- (2) In this Part that person is referred to as “the Chief Executive”.
- (3) The Chief Executive is to be appointed by the Secretary of State.
- (4) Except as provided for in section 107, 108 or 109, the Chief Executive is to perform the functions of the office in relation to England only.
- (5) Schedule 4 makes further provision about the Chief Executive.

#### *Apprenticeship functions*

#### **82 Apprenticeship functions**

- (1) The Secretary of State may direct the Chief Executive to arrange for apprenticeship functions specified in the direction to be carried out on behalf of the Chief Executive by a person designated by the Chief Executive.

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- (2) The Secretary of State may give directions to the Chief Executive—
- (a) as to the performance of apprenticeship functions;
  - (b) as to the description or identity of the person to be designated under subsection (1);
  - (c) as to the terms of arrangements under that subsection;
  - (d) requiring the Chief Executive to secure that the person designated under subsection (1) reports to the Secretary of State, in such form and at such times as may be specified in the direction, on the performance of apprenticeship functions which are the subject of arrangements under subsection (1).
- (3) A designation of a person under subsection (1) may be made only with the person's consent.
- (4) Arrangements made by virtue of subsection (1) may be made on terms that permit sub-delegation; and the power conferred by subsection (2)(c) includes power to give directions as to—
- (a) the arrangements for any such sub-delegation;
  - (b) functions which may be sub-delegated;
  - (c) the description or identity of persons to whom functions may be sub-delegated.
- (5) In this section, “apprenticeship functions” means functions of the office which relate to—
- (a) apprenticeship certificates;
  - (b) recognised English frameworks and the specification of apprenticeship standards for England;
  - (c) apprenticeship training;
  - (d) apprenticeship places (within the meaning of section 93), including functions under section 104 relating to apprenticeship places;
  - (e) the provision of advice and assistance to the Secretary of State under section 106.
- (6) Terms used in subsection (5)(a) and (b) have the same meanings as in Chapter 1 of Part 1.
- (7) Regulations may provide—
- (a) for any provision relating to a function of the office made by or under any Act—
    - (i) not to apply, or
    - (ii) to apply subject to prescribed modifications,in relation to the function where the function is the subject of arrangements under subsection (1);
  - (b) for references to the Chief Executive in any such provisions to be construed in prescribed circumstances as, or as including, references—
    - (i) to a person designated under subsection (1), or
    - (ii) to a person to whom functions are sub-delegated under subsection (4),subject to such exceptions or modifications as may be prescribed.

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

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

- (1) The Chief Executive may secure the provision of facilities for suitable apprenticeship training for persons—
  - (a) who are over compulsory school age but under 19, or
  - (b) who are aged 19 or over but under 25 and are subject to learning difficulty assessment.
- (2) In deciding for the purposes of subsection (1) whether apprenticeship training is suitable for persons for whom facilities are provided, the Chief Executive must have regard (in particular) to—
  - (a) the persons' ages, abilities and aptitudes,
  - (b) any learning difficulties the persons may have,
  - (c) the quality of the training,
  - (d) the locations and times at which the training is provided.
- (3) In exercising the power conferred by subsection (1), the Chief Executive must have regard (in particular) to the desirability of—
  - (a) encouraging diversity of apprenticeship training available to persons;
  - (b) increasing opportunities for persons to exercise choice;
  - (c) enabling persons to whom Part 1 of the [Education and Skills Act 2008 \(c. 25\)](#) applies to fulfil the duty imposed by section 2 of that Act (duty to participate in education or training).
- (4) Subsections (6) and (7) of section 15ZA of the [Education Act 1996 \(c. 56\)](#) (meaning of learning difficulty) apply for the purposes of this section as they apply for the purposes of that section.
- (5) In this Part “apprenticeship training” means training provided in connection with—
  - (a) an apprenticeship agreement,
  - (b) any other contract of employment, or
  - (c) any other kind of working in relation to which alternative English completion conditions apply under section 1(5).

**84 Arrangements and co-operation with local education authorities**

- (1) The Chief Executive may enter into arrangements with local education authorities in England under which the Chief Executive is to secure the provision of apprenticeship training by virtue of section 83.
- (2) The Chief Executive must co-operate with a local education authority in England where the authority is—
  - (a) making any determination as to the provision of apprenticeship training that should be secured under section 15ZA(1) of the [Education Act 1996](#) (duty in respect of education and training for persons over compulsory school age: England), or
  - (b) securing the provision of any apprenticeship training under that section.

**85 Encouragement of training provision etc for persons within section 83**

- (1) The Chief Executive must—
- (a) encourage employers to participate in the provision of training within the Chief Executive’s remit for persons who are within section 83(1)(a) or (b);
  - (b) encourage employers to contribute to the costs of training within the Chief Executive’s remit for such persons.
- (2) For the purposes of subsection (1)(a), participating in the provision of training includes participating by entering into—
- (a) an apprenticeship agreement, or
  - (b) any other contract of employment in connection with which training is provided.

*Education and training for persons aged 19 or over etc.*

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

- (1) The Chief Executive must secure the provision of reasonable facilities for—
- (a) education suitable to the requirements of persons who are aged 19 or over, other than persons aged under 25 who are subject to learning difficulty assessment,
  - (b) education suitable to the requirements of persons who are subject to adult detention, and
  - (c) training suitable to the requirements of persons within paragraphs (a) and (b).
- (2) This section does not apply to the provision of facilities to the extent that section 87 applies to the provision of those facilities.
- (3) Facilities are reasonable if (taking account of the Chief Executive’s resources) their quantity and quality are such that the Chief Executive can reasonably be expected to secure their provision.
- (4) In discharging the duty under subsection (1) the Chief Executive must—
- (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;
  - (b) take account of the different abilities and aptitudes of different persons;
  - (c) take account of the education and skills required in different sectors of employment for employees and potential employees;
  - (d) take account of facilities the provision of which the Chief Executive thinks might reasonably be secured by other persons;
  - (e) act with a view to encouraging diversity of education and training available to individuals;
  - (f) act with a view to increasing opportunities for individuals to exercise choice;
  - (g) have regard to the desirability of enabling persons subject to adult detention to continue programmes of education or training which they have begun;
  - (h) have regard to the desirability of the core entitlement and the additional entitlement being satisfied for persons subject to adult detention but aged under 19 who have elected for them;
  - (i) make the best use of resources.

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- (5) For the purposes of this section a reference to the provision of facilities for education or training (except so far as relating to facilities for persons subject to adult detention) includes a reference to the provision of facilities for organised leisure-time occupation in connection with education or (as the case may be) training.
- (6) For the purposes of this section—
  - “education” includes full-time and part-time education;
  - “training” includes—
    - (a) full-time and part-time training;
    - (b) vocational, social, physical and recreational training;
    - (c) apprenticeship training.
- (7) In this Part, “organised leisure-time occupation” means leisure-time occupation, in such organised cultural training and recreational activities as are suited to the requirements of persons who fall within subsection (1)(a) or (b), for any such persons who are able and willing to profit by facilities provided for that purpose.
- (8) Sections 17B to 17D of the [Education Act 1996 \(c. 56\)](#) (core and additional entitlements: interpretation) apply for the purpose of subsection (4)(h) as they apply for the purpose of section 17A of that Act (duties of local education authorities in relation to the core and additional entitlements).

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

- (1) The Chief Executive must secure the provision of proper facilities for relevant education or training for persons falling within subsection (3) which is suitable to their requirements.
- (2) Relevant education or training is education or vocational training provided by means of a course of study for a qualification to which paragraph 1 of Schedule 5 applies.
- (3) The persons falling within this subsection are persons who—
  - (a) are aged 19 or over, and are not persons aged under 25 who are subject to learning difficulty assessment,
  - (b) do not have the qualification in question or one (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level, and
  - (c) satisfy such conditions as may be specified in regulations.
- (4) Facilities are proper if they are—
  - (a) of a quantity sufficient to meet the reasonable needs of individuals, and
  - (b) of a quality adequate to meet those needs.
- (5) In discharging the duty under subsection (1) the Chief Executive must—
  - (a) take account of the places where facilities are provided, the character of facilities and the way they are equipped;
  - (b) take account of the different abilities and aptitudes of different persons;
  - (c) take account of the education and training required in different sectors of employment for employees and potential employees;
  - (d) act with a view to encouraging diversity of education and training available to individuals;
  - (e) act with a view to increasing opportunities for individuals to exercise choice;

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(f) make the best use of the Chief Executive’s resources.

(6) For the purposes of this section—

“education” includes full-time and part-time education;

“training” includes full-time and part-time training.

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

(1) Functions under this Part must be exercised by the Chief Executive so as to secure that a course of study for a qualification to which paragraph 1 of Schedule 5 applies is free to a person falling within subsection (2) if it is provided for the person by virtue of facilities whose provision is secured under section 87.

(2) A person falls within this subsection if, at the time of starting the course in question, the person—

(a) is aged 19 or over,

(b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level, and

(c) satisfies such conditions as may be specified in regulations.

(3) Functions under this Part must be exercised by the Chief Executive so as to secure that a course of study for a qualification to which paragraph 2 of Schedule 5 applies is free to a person falling within subsection (4) if it is provided for the person by virtue of facilities whose provision is secured under section 86.

(4) A person falls within this subsection if, at the time of starting the course in question, the person—

(a) is aged at least 19 but less than 25,

(b) does not have the qualification in question or one (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level, and

(c) satisfies such conditions as may be specified in regulations.

(5) The Secretary of State may by order—

(a) amend subsection (2)(a) by substituting a different age for the age for the time being referred to;

(b) amend subsection (4)(a) by substituting a different age for either of the ages for the time being referred to.

(6) For the purposes of this section, a course is free to a person if no tuition fees in respect of the provision of the course for the person are payable by a person other than—

(a) the Chief Executive, or

(b) a body specified by order by the Secretary of State for the purposes of this section.

(7) In subsection (6) “tuition fees”, in relation to a course, means—

(a) the fees charged in respect of the course by the person providing it, and

(b) such fees in respect of other matters relating to the course (such as undergoing a preliminary assessment or sitting an examination) as may be specified in regulations.

## **89 Sections 87 and 88: supplementary**

- (1) Regulations may make provision as to circumstances in which—
  - (a) despite having a specified qualification, a person is to be treated for the purposes of section 87 or 88 as not having that qualification;
  - (b) despite not having a specified qualification, a person is to be treated for any of those purposes as having that qualification.
- (2) A condition specified in regulations under section 87 or 88 may, in particular, relate to—
  - (a) the possession, or lack, of a specified qualification;
  - (b) the completion of, or failure to complete, a course for a specified qualification.
- (3) A reference in subsection (1) or (2) to a specified qualification is to a qualification specified, or of a description specified, in the regulations.
- (4) Regulations under this section, or under section 87 or 88, may confer a function (which may relate to the administration of an assessment and may include the exercise of a discretion) on a person specified, or of a description specified, in the regulations.
- (5) Nothing in section 87 or 88 applies to the provision of facilities, or to courses of study, for persons subject to adult detention.
- (6) Part 2 of Schedule 5 makes further provision for the purposes of sections 87 and 88.

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

- (1) The Chief Executive must—
  - (a) encourage participation by persons within section 86(1)(a) and (b) in education and training within the Chief Executive’s remit;
  - (b) encourage employers to participate in the provision of education and training within the Chief Executive’s remit for persons within section 86(1)(a);
  - (c) encourage employers to contribute to the costs of education and training within the Chief Executive’s remit for such persons.
- (2) For the purposes of subsection (1)(b), participating in the provision of training includes participating by entering into—
  - (a) an apprenticeship agreement, or
  - (b) any other contract of employment in connection with which training is provided.

### *The apprenticeship offer*

## **91 Duty to secure availability of apprenticeship places**

- (1) The Chief Executive must exercise the functions of the office in such a way as to secure that apprenticeship places are available in sufficient number and variety for there to be suitable apprenticeship places available for all persons—
  - (a) who have elected under section 92 for the apprenticeship offer, and
  - (b) for whom places have not already been made available under the apprenticeship offer.

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- (2) For the purposes of subsection (1), an apprenticeship place is suitable for a person if it is—
- (a) in one of the two available sectors chosen by the person under section 92,
  - (b) at the appropriate level, and
  - (c) within the person’s reasonable travel area.
- (3) Regulations may make provision as to circumstances in which an apprenticeship place is to be treated as having been, or as not having been, made available for a person under the apprenticeship offer.
- (4) In securing the provision of facilities for apprenticeship training for the purpose of meeting the requirement imposed by subsection (1) the Chief Executive must make the best use of the Chief Executive’s resources.

## **92 Election for apprenticeship offer**

- (1) A person who—
- (a) is within subsection (2), (3) or (4), and
  - (b) satisfies the apprenticeship offer requirements at level 2 or level 3 (see section 95),
- is entitled to elect for the apprenticeship offer at that level.
- (2) A person within this subsection is one who—
- (a) is over compulsory school age, and
  - (b) is aged under 19.
- (3) A person within this subsection is one who is not within subsection (2) and—
- (a) is a person aged under 21 towards whom a local authority in England has the duties provided for in section 23C of the [Children Act 1989 \(c. 41\)](#) (continuing functions in respect of certain formerly looked after children), or
  - (b) is a person to whom section 23CA of that Act applies, in relation to whom a local authority in England is the responsible local authority (within the meaning of that section).
- (4) A person within this subsection is one who—
- (a) is not within subsection (2), and
  - (b) is of a prescribed description.
- (5) If regulations under subsection (4)(b) describe a person by reference to an age or an age range, the age, or the upper age of the age range, must be less than 25.
- (6) A person who elects for the apprenticeship offer must choose two available sectors.
- (7) A person who elects for the apprenticeship offer and satisfies the apprenticeship offer requirements both at level 2 and at level 3 must choose one of those levels.
- (8) The Secretary of State may make arrangements for the making of elections and choices of apprenticeship sectors and levels under this section.
- (9) The Secretary of State may delegate the functions conferred by subsection (8) (and may do so on terms which allow sub-delegation).



### **93 Meaning of “apprenticeship place”**

- (1) For the purposes of section 91, “apprenticeship place” means a place consisting of arrangements which—
  - (a) are arrangements for—
    - (i) employment, and
    - (ii) training or study,leading to the issue of an apprenticeship certificate under section 3 relating to an apprenticeship framework (“the related framework”), and
  - (b) satisfy subsection (2).
- (2) The arrangements must relate to each of the standard English completion conditions specified in section 1(3) in relation to the related framework and must include, in particular—
  - (a) arrangements for employment under an apprenticeship agreement in connection with the related framework,
  - (b) arrangements for a course, or courses, of training leading to the competencies qualification identified in the related framework, to be provided by—
    - (i) a college or other institution, or
    - (ii) the employer under the apprenticeship agreement, and
  - (c) in relation to each other qualification specified in the related framework, arrangements for study or training, whether provided by means of a course or otherwise.
- (3) A reference to training in subsection (2)(b) or (c) does not include a reference to training provided by an employer to a person while the person is carrying out work for the employer under an apprenticeship agreement.

### **94 Suitability and availability of apprenticeship places: further provision**

- (1) This section has effect for the purposes of section 91.
- (2) An apprenticeship place is in the apprenticeship sector to which the related framework (within the meaning of section 93(1)) relates.
- (3) An apprenticeship place is at the appropriate level—
  - (a) in the case of a person who satisfies the apprenticeship offer requirements both at level 2 and at level 3, if the related framework is at the level chosen by the person under section 92,
  - (b) in the case of any other person who satisfies the apprenticeship offer requirements at level 2, if the related framework is at level 2, and
  - (c) in the case of any other person who satisfies the apprenticeship offer requirements at level 3, if the related framework is at level 3.
- (4) An apprenticeship place is within a person’s reasonable travel area if the following are within that area—
  - (a) the place, or principal place, at which the person would be required to work under the apprenticeship agreement to which the arrangements mentioned in section 93(2)(a) relate, and
  - (b) the place at which tuition or training would be provided under any course of study or training to which the arrangements mentioned in section 93(2)(b) or (c) relate.

- (5) In subsection (4), “reasonable travel area”, in relation to a person, means—
  - (a) the area specified under subsection (6) in which the person lives, and
  - (b) any other area within which it is reasonable for the person’s place of work, training or study to be located.
- (6) The Secretary of State must specify areas into which England is to be divided for the purposes of subsection (5)(a), and must publish any specification or revised specification under this subsection.
- (7) An apprenticeship place is not available to a person if the person is not eligible for appointment to the employment to which the arrangements mentioned in section 93(2) (a) relate because of failure to meet any published criterion.
- (8) In subsection (7), “published criterion” includes any requirement for employment of the kind in question—
  - (a) which is imposed by the employer, and
  - (b) about which information is available to persons proposing to apply for such employment.

## 95 Apprenticeship offer requirements

- (1) In order to satisfy the apprenticeship offer requirements at level 2 a person must—
  - (a) hold—
    - (i) a specified full level 1 qualification, and
    - (ii) specified qualifications, at level 1 or above, in English and mathematics, and
  - (b) not hold an apprenticeship certificate at level 2 or above, and must be available for employment under an apprenticeship agreement.
- (2) In order to satisfy the apprenticeship offer requirements at level 3 a person must—
  - (a) hold—
    - (i) a specified full level 2 qualification, and
    - (ii) specified qualifications, at level 2, in English and mathematics, and
  - (b) not hold an apprenticeship certificate at level 3 or above, and must be available for employment under an apprenticeship agreement.
- (3) A reference in this section to any specified qualification includes a reference to a qualification (including one awarded by a person outside England) which appears to the Chief Executive to be at a comparable or higher level.
- (4) In this section “apprenticeship certificate” means an apprenticeship certificate issued under section 3 or 4; and a reference in this section to an apprenticeship certificate at any level includes a reference to a certificate or other evidence (including a certificate awarded or evidence provided by a person outside England) which appears to the Chief Executive to be evidence of experience and attainment at a comparable or higher level.
- (5) Regulations may make provision as to circumstances in which a person who appears to the Chief Executive to have a learning difficulty is to be treated as meeting the requirements set out in subsection (1)(a) or (2)(a).

- (6) Subsections (6) and (7) of section 15ZA of the [Education Act 1996 \(c. 56\)](#) (meaning of learning difficulty) apply for the purposes of subsection (5) of this section as they apply for the purposes of that section.
- (7) Regulations may make provision as to circumstances in which a person is to be treated as being available, or not being available, for employment under an apprenticeship agreement.

## **96 Apprenticeship offer requirements: interpretation**

- (1) This section has effect for the purposes of section 95.
- (2) A reference to a specified qualification is to a regulated qualification which is specified, or which is of a description specified, in regulations.
- (3) “Full level 1 qualification” means a qualification at 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 Secondary Education in five subjects.
- (4) A reference to a qualification in English or mathematics at level 1 is to a qualification in that subject at the level of attainment (in terms of depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in that subject.
- (5) “Full level 2 qualification” means a qualification at 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 Secondary Education in five subjects, each at Grade C or above.
- (6) A reference to a qualification in English or mathematics at level 2 is to a qualification in that subject at the level of attainment (in terms of depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in that subject at Grade C or above.
- (7) In forming an opinion for the purposes of any of subsections (3) to (6), the Secretary of State must consult the Office of Qualifications and Examinations Regulation.
- (8) In subsection (2), “regulated qualification” has the meaning given by section 130.
- (9) The Secretary of State may, by order, amend this section so as to substitute a different qualification for a qualification for the time being referred to in subsection (3), (4), (5) or (6).
- (10) The Secretary of State must consult the Office of Qualifications and Examinations Regulation before exercising the power conferred by subsection (9).

## **97 Suspension of offer**

- (1) The Secretary of State may by order suspend the apprenticeship offer in an area specified in the order, for a period so specified—
  - (a) in relation to a particular apprenticeship sector, or
  - (b) in relation to a particular apprenticeship sector at a particular level.
- (2) The period specified in an order under subsection (1) must not exceed 2 years.

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*Status: This is the original version (as it was originally enacted).*

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- (3) An apprenticeship sector is an available sector, in relation to a person's election under section 92 for the apprenticeship offer at a particular level, unless the person lives in an area in which the apprenticeship offer is suspended in relation to that sector at that level.

**98 Power to amend apprenticeship offer**

The Secretary of State may by order amend—

- (a) the age for the time being specified in section 92(2)(b);
- (b) any of the requirements specified in section 95.

**99 Apprenticeship offer: interpretation**

- (1) In sections 91 to 98—

“apprenticeship agreement” has the meaning given by section 32(1);  
“apprenticeship framework” has the meaning given by section 12;  
“apprenticeship sector” means a sector specified under section 38;  
“available sector” has the meaning given by section 97.

- (2) References in sections 91 to 98 to—

- (a) the level of an apprenticeship framework, or
  - (b) the apprenticeship sector to which an apprenticeship framework relates,
- are to be read in accordance with section 12(5).