



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 1

#### DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

### CHAPTER 6

#### MISCELLANEOUS

PROSPECTIVE

#### **61 Alternative ways of working**

- (1) Regulations may—
  - (a) provide for who is to be treated as the employer for the purposes of this Part in relation to any way of working prescribed by regulations under section 5(1)(b), and
  - (b) provide for any provision of this Part to apply with modifications in relation to any such way of working.
- (2) Regulations may provide for any provision of this Part to apply with modifications in cases where a person to whom this Part applies—
  - (a) is employed under a contract of employment, and
  - (b) is for the time being supplied by the employer to another person (“the principal”) to perform work in accordance with a contract made between the employer and the principal.

#### **62 Crown employment**

- (1) For the purposes of section 5—
  - (a) Crown employment, and

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- (b) service as a member of the armed forces of the Crown,  
 are each to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in either of those ways.
- (3) Chapter 3 applies in relation to Crown employment and persons in Crown employment as it applies in relation to other employment and other employees, but subject to subsection (4).
- (4) For the purposes of the application of Chapter 3 in relation to Crown employment and persons in Crown employment—
- (a) references to a contract of employment are to be construed, in relation to a person in Crown employment, as references to the terms and conditions under which the person works, and
  - (b) references to an employee are to be construed as references to a person in Crown employment.
- (5) In this section, “Crown employment” means employment under or for the purposes of a government department or any officer or body exercising on behalf of the Crown functions conferred by statutory provision, but subject to subsection (6).
- (6) Crown employment—
- (a) does not include service as a member of the armed forces of the Crown, but
  - (b) does include employment by an association established for the purposes of Part 11 of the Reserve Forces Act 1996 (c. 14).

#### Commencement Information

**II** S. 62(1)(2)(5)(6) in force at 28.6.2013 by [S.I. 2013/1204](#), [art. 2\(r\)](#)

PROSPECTIVE

#### 63 House of Lords staff

The following provisions apply in relation to employment under a contract of employment with the Corporate Officer of the House of Lords as they apply in relation to other employment—

- (a) sections 19 to 21;
- (b) sections 27 to 29.

#### 64 House of Commons staff

- (1) For the purposes of section 5, working as a relevant member of the House of Commons staff is to be treated as working under a contract of employment.
- (2) Regulations may provide for Chapter 1 to have effect subject to modifications in relation to persons working in that way.
- (3) The following provisions apply in relation to employment as a relevant member of the House of Commons staff as they apply in relation to other employment—

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- (a) sections 19 to 21;
  - (b) sections 27 to 29.
- (4) For the purposes of the application of Chapter 3 in relation to a relevant member of the House of Commons staff—
- (a) references to a contract of employment are to be construed as including references to the terms of employment of a relevant member of the House of Commons staff, and
  - (b) references to an employee are to be construed as references to a relevant member of the House of Commons staff.
- (5) In this section, “relevant member of the House of Commons staff” has the same meaning as in section 195 of the Employment Rights Act 1996 (c. 18).
- (6) Subsections (6), (7) and (12) of that section (person to be treated as employer of relevant member of House of Commons staff) apply (with any necessary modifications) for the purposes of the provisions mentioned in subsection (3) as applied by virtue of this section.

#### Commencement Information

**12** S. 64(1)(2)(5) in force at 28.6.2013 by [S.I. 2013/1204](#), [art. 2\(s\)](#)

PROSPECTIVE

## 65 Financial penalties

- (1) A penalty payable by virtue of a penalty notice under—
- (a) section 22,
  - (b) section 31, or
  - (c) section 53,
- is payable to the [<sup>F1</sup>local authority] which issued the notice.
- (2) Any sums received by a [<sup>F1</sup>local authority] under any of those sections may be used by the authority for the purposes of any of its functions which may be specified in regulations but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State.
- (3) A penalty under section 22 or 31 (and any interest or financial penalty for late payment) is recoverable, if [<sup>F2</sup>the county court] so orders, as if it were payable under an order of that court.
- (4) Where a person is required by a penalty notice given under section 22 or 31 to pay a financial penalty, and
- (a) has given a notice of objection to the [<sup>F1</sup>local authority] under section 23 or 33, or
  - (b) has appealed against the giving of the penalty notice under section 24 or 34,
- the penalty is not enforceable until the authority has given a determination notice under section 23 or 33 in relation to the penalty notice, or, as the case may be, the appeal has been determined.

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### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children’s Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), **Sch. 2 para. 15(2)**
- F2** Words in s. 65(3) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

## 66 Interpretation of Part

(1) In this Part—

[<sup>F3</sup>“apprenticeship agreement” [<sup>F4</sup>means an apprenticeship agreement within] the meaning given in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009 [<sup>F5</sup>or an approved English apprenticeship agreement within the meaning given in section A1(3) of that Act];]

“appropriate full-time education or training” has the meaning given by section 4;

“contract of employment” means 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 [<sup>F6</sup>or an apprenticeship agreement];

“level 3 qualification” has the meaning given by section 3;

“proprietor”, in relation to a school or other institution, means the person or body of persons responsible for its management;

“relevant period”, in relation to a person to whom this Part applies, has the meaning given by section 7;

“relevant training or education” has the meaning given by section 6;

“sufficient”, in relation to relevant training or education, is to be construed in accordance with section 8(1).

(2) Regulations may provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of this Part.

(3) Any reference in this Part to a person's being in full-time occupation is to be construed in accordance with section 5.

(4) For the purposes of this Part, a person is failing to fulfil the duty imposed by section 2 if the person—

- (a) is not participating in education or training in accordance with subsection (1) (a) or (b) of that section, and
- (b) is not in full-time occupation or is not participating in sufficient relevant training.

(5) A reasonable excuse for a failure to be in full-time occupation is not a reasonable excuse for a failure to fulfil the duty imposed by section 2 (unless it is also a reasonable excuse for any failure to participate as mentioned in subsection (4)).

### Textual Amendments

- F3** Words in s. 66(1) inserted (6.4.2011) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), **ss. 37(3)(a)**, 269(4); [S.I. 2011/200, art. 3](#)

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- F4** Words in s. 66(1) substituted (24.11.2015) by [The English Apprenticeships \(Consequential Amendments to Primary Legislation\) Order 2015 \(S.I. 2015/1852\)](#), arts. 1, **3(a)**
- F5** Words in s. 66(1) inserted (24.11.2015) by [The English Apprenticeships \(Consequential Amendments to Primary Legislation\) Order 2015 \(S.I. 2015/1852\)](#), arts. 1, **3(b)**
- F6** Words in s. 66(1) inserted (6.4.2011) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), **ss. 37(3)(b)**, 269(4); [S.I. 2011/200](#), art. 3

#### Commencement Information

- I3** S. 66 in force at 28.6.2013 by [S.I. 2013/1204](#), **art. 2(t)**

PROSPECTIVE

### 67 Corresponding provision for Wales

- (1) This section applies if a Measure of the National Assembly for Wales includes provision that appears to the Secretary of State to correspond to provision made by section 2.
- (2) The Secretary of State may by order make provision in relation to Wales that corresponds to any provision made by sections 19 to 36.
- (3) Without prejudice to section 166(6), the power conferred by this section includes power to make provision in relation to Wales that corresponds to any of the following—
- (a) the provisions of the Employment Rights Act 1996 (c. 18) inserted by sections 37 to 39;
  - (b) section 61;
  - (c) section 62;
  - (d) section 65 so far as relating to financial penalties under sections 22 and 31.
- (4) Power conferred by this section to make provision in relation to Wales that corresponds to any other provision includes power—
- (a) to apply that other provision in relation to Wales, with or without modification;
  - (b) to amend that other provision so that it applies in relation to Wales, with or without modification.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 91(3)(c) inserted by [2022 asc 1 Sch. 4 para. 22\(3\)](#)