

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: the Young People's Learning Agency for England

172. Section 41 imposes a new duty on local education authorities to secure that all young people in their area who are over compulsory school age but under 19, and persons aged 19 and over but under 25 for whom a learning difficulty assessment has been (or is required to be) carried out, have access to enough suitable education and training provision to meet their reasonable needs. The Young People's Learning Agency for England is a small non-departmental public body, sponsored by DCSF and reporting to the Secretary of State, whose core purpose is to provide the funding to enable local education authorities to fulfil this duty.

Chapter 1: Establishment

Section 60: The Young People's Learning Agency for England

173. This section establishes the YPLA as a body corporate. The YPLA will perform its functions in relation to England only, except under the powers to provide services and assistance (see sections 68 to 70) where it may exercise functions in relation to, and within, the devolved administrations' areas.
174. Further detailed provisions about the body are contained in Schedule 3.

Schedule 3: The Young People's Learning Agency for England

175. [Schedule 3](#) sets out the detail on the constitution, governance and organisation of the YPLA as a non-departmental public body.
176. Under paragraph 1, the YPLA will not be a servant or agent of the Crown and its staff will not be civil servants. Paragraphs 2 to 4 make provision about the membership and remuneration of the YPLA, including:
- how the YPLA's chair and other ordinary members will be appointed;
 - provision for the Secretary of State to remove any ordinary member from office on the grounds of persistent non-attendance, inability or unfitness for office;
 - tenure of office; and
 - the YPLA's powers and duties in relation to remuneration of current and former members.
177. [Paragraphs 5](#) and [6](#) provide for the Secretary of State to appoint the first chief executive of the YPLA, and for the YPLA to appoint later chief executives, subject to the

approval of the Secretary of State, and to appoint other staff, and make provision about employment terms.

178. Under paragraphs 7 and 8, the YPLA is permitted to set up committees and sub-committees. These may consist of or include persons who are not members or staff of the YPLA. The YPLA has the power to establish a committee jointly, and any joint committee is given power to regulate its own proceedings. This may be used, for example, to enable the YPLA to chair jointly with the Qualifications and Curriculum Development Agency (the new name for the Qualifications and Curriculum Authority: see Part 8 of the Act) the proposed Joint Advisory Committee for Qualifications Approval.
179. The YPLA may regulate its own proceedings, and the procedure of its committees (paragraph 9). Under paragraph 10, the Secretary of State or a representative of the Secretary of State is given the right to attend meetings of the YPLA and YPLA committees (including joint committees).
180. Under paragraphs 11 and 12, the YPLA and its committees may delegate functions.
181. The YPLA must:
 - make a plan for each academic year, which must be published before the start of the academic year ([paragraph 13](#));
 - prepare an annual report, a copy of which must be sent to the Secretary of State ([paragraph 14](#)); and
 - keep proper accounts and proper records in relation to the accounts, and prepare annual accounts for each financial year, copies of which must be sent to the Secretary of State and the Comptroller and Auditor General ([paragraph 15](#)).
182. The Secretary of State must lay a copy of the annual accounts and a copy of the Comptroller and Auditor General's report on the accounts before Parliament.
183. [Paragraph 16](#) makes provisions about the application of the YPLA's seal: the reference to "member" in this context includes the chief executive.
184. [Paragraph 18](#) sets out that the YPLA will receive its funding from the Secretary of State, and that payments will be made at such times and subject to such conditions (if any) as the Secretary of State thinks appropriate. Conditions may require the YPLA to use the grant for specified purposes, but may not impose conditions relating to the YPLA's securing of the provision of financial resources to a particular person or organisation.
185. Under paragraph 19 the YPLA is given supplementary powers to do anything that it considers necessary or appropriate for the purposes of, or in connection with, its functions (subject to any restrictions imposed by or under any provision of this or any other Act). However, the YPLA cannot borrow money, and must obtain the Secretary of State's permission to do certain things, including, for example, lending money.

Chapter 2: Main Functions

Funding

Section 61: Provision of financial resources

186. *Subsection (1)* places a duty on the YPLA to secure the provision of financial resources to persons who provide education and training to young persons within the remit of the new LEA duties imposed by sections 15ZA and 18A of the Education Act 1996 (see sections 41 and 48), and also to LEAs themselves.
187. Under *subsection (2)*, the YPLA must also secure the provision of financial resources as directed by the Secretary of State. This would, for example, allow the Secretary of

State to require the YPLA to secure in future the provision of financial resources to a specific group of learners not covered in its duties or powers. However, this would not allow the Secretary of State to require the YPLA to secure the provision of financial resources to a particular person (for example, to provide a certain amount of money to a specific LEA) because of the prohibition in *subsection (9)*.

188. In addition, *subsection (3)* empowers the YPLA to secure financial resources in respect of provision to learners of and under compulsory school age, and learners aged 19 and over (who have not had a learning difficulty assessment) who started their courses before they were 19. These powers will enable provision to be secured, for example, for:
- young people under the age of 16 who are attending courses in a 16 to 19 institution, whether this is because they are starting a course early, or because the course is specifically designed for those under 16, for example, young apprenticeships; and
 - young people who start a course before they reach 19 which ends after their 19th birthday.
189. Under *subsection (4)* the YPLA will have power to pay grants and allowances to learners of all ages. These powers enable the YPLA to secure, for example Care to Learn grants (which are provided to young people who begin their course or learning programme before their 20th birthday), Education Maintenance Allowances (EMAs) (provided to 16 to 18 year olds) and the Adult Learning Grant (a means tested grant provided to adults of all ages). *Subsection (7)* gives the YPLA the power to take account of fees, charges, and other matters such as the cost of travel or childcare when securing these grants.
190. *Subsection (4)* also gives the YPLA the power to secure the provision of financial resources for other purposes. This covers:
- Persons providing goods or services in connection with the provision of education or training to persons up to the age of 19, over 19 where a course has been started before the young person reaches 19, or learners under 25 for whom a learning difficulty assessment has been made. This would allow the YPLA to fund, for example, accommodation on a field trip;
 - Persons undertaking research in relation to education or training;
 - Persons providing work experience for persons receiving education;
 - Persons carrying out means tests, for example, in relation to learner support grants.
 - Persons providing information, advice or guidance about education or training, or connected matters.
191. *Subsection (6)* provides that the YPLA may secure financial resources not only by providing them directly, but also by:
- making arrangements for another person to provide the resources, for example delivering learner support funds through contracts; and
 - making arrangements for two or more persons (whether or not this includes the YPLA) to jointly provide the resources, for example, to deliver shared services with the Chief Executive of Skills Funding.

Section 62: Financial resources: conditions

192. This section enables the YPLA to set certain conditions on the financial resources it provides. The conditions may include information, operational and repayment conditions.
193. Under *subsection (3)* information conditions may require:

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

- the YPLA, or a person designated by the YPLA (such as an accountant or the National Audit Office) to have access to the accounts and records, including computer records of the person to whom financial resources are provided; and
 - that the person must give the YPLA such information as it requests for the purpose of exercising any of its duties and powers.
194. *Subsections (4) and (5)* provide that operational conditions may require providers of education and training to make arrangements:
- to charge fees, make awards and recover costs from other persons in accordance with criteria established by the YPLA; and
 - to make the provision specified in a report of a learning difficulty assessment (conducted under section 139A or 140 of the Learning and Skills Act 2000).
195. Under *subsection (6)* the YPLA may require repayment (which may be with interest) where the conditions subject to which the sums were paid were not complied with.

Section 63: Performance assessments

196. This section enables the YPLA to:
- adopt existing schemes, such as the Framework for Excellence, when assessing evaluating the performance of providers for whom it is proposed it provides funding in local education authority commissioning plans; and
 - develop performance assessment schemes, for example tools for scrutiny of local education authority commissioning plans or self-assessment tools for local education authorities to use when ensuring quality of provision in their commissioning plans.

Section 64: Means tests

197. This section enables the YPLA to carry out, or to arrange for others to carry out on its behalf, tests against eligibility criteria (financial or otherwise) which may be taken into account when the YPLA is securing financial resources for those receiving, or proposing to receive, education and training under its powers in section 61. This will enable the YPLA to administer grants or allowances to learners or prospective learners according to clearly defined criteria. For example, it will enable the YPLA to administer the Education Maintenance Allowance scheme to 16 to 19 year olds.

Section 65: Prohibition on charging

198. This section requires the YPLA to ensure, so far as is practicable, that no charge is made for education or training funded by the YPLA that is provided for young people over compulsory school age.
199. The Secretary of State may specify through regulations the circumstances under which charges are to be treated as made for the purposes of this section. These regulations could ensure that tuition fees would be prohibited for these learners, but may allow providers of education to apply fees where appropriate, such as in relation to the conditions of attendance to free examination entry, charges for equipment, and charges for learners from overseas. The YPLA would then be able to enforce this through the conditions it imposed on its funding.
200. This section does not cover education provided at a school maintained by a local education authority, for example in a school sixth form, because these institutions are already required by law to provide free education.

Securing provision of education and training

Section 66: Securing provision of education or training

201. This section gives the YPLA the power to commission education or training for persons over compulsory school age but under 19, for learners aged 19 but under 25 for whom a learning difficulty assessment has been or is required to be made and for children subject to youth detention. This power will enable the YPLA to secure provision directly, for example:
- from the small number of national providers from whom it may be appropriate to commission at national rather than local level;
 - where sub-regional groups of LEAs are not yet ready to take on this role; or
 - where a local education authority is failing or is likely to fail to fulfil its duty under the new sections 15ZA and 18A of the Education Act 1996 (as inserted by sections 41 and 48) to commission suitable education or training.
202. The circumstances under which the YPLA would be expected to exercise these powers will be set out by the Secretary of State in his remit letter to the YPLA. When exercising this power the YPLA must have regard to things done by local education authorities in the performance of their duties under sections 15ZA(1) and 18A(1) of the Education Act 1996.

Section 67: Intervention for purpose of securing provision of education and training

203. This section gives the YPLA the power to make directions where it is satisfied that a local education authority is failing, or likely to fail, in its new duty under *section 15ZA* of the Education Act 1996 (section 41) to secure enough suitable education and training for young people aged over compulsory school age but under 19, and those aged 19 or over but under 25 for whom a learning difficulty assessment has been or is required to be conducted. It also gives the YPLA the power to make directions where it is satisfied that a local education authority is failing, or likely to fail, in its new duty under section 18A of the Education Act 1996 (section 48).
204. The directions may be for the purpose of ensuring that the LEA secure suitable education and training, or may require the LEA to permit specified action to allow the YPLA itself, or another body, to take on the local education authority's functions on its behalf. The YPLA may give a direction under this section only with the approval of the Secretary of State.
205. *Section 73* requires the YPLA to publish a statement that sets out the circumstances under which it will intervene under this section and the nature of that intervention.

Provision of services and assistance

Section 68: Provision of services

206. *Section 68* gives the YPLA the power to provide and receive payment for services to those persons or bodies listed in *subsection (4)* in connection with any of the recipient's functions relating to education and training. Those listed are the Secretary of State, the Welsh Ministers, the Scottish Ministers, a Northern Ireland department, the Chief Executive of Skills Funding, any person wholly or partly funded from public funds who has functions in relation to education or training, and any other person specified by order made by the appropriate national authority.
207. Examples of these services could include:
- providing accommodation and other facilities; and

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- support services such as software management systems, management information systems, payroll administration, human resources functions, finance services and procurement services.
208. For example, the YPLA would be able to use this power to provide shared services with the Chief Executive of Skills Funding, or the YPLA and Chief Executive could provide services on each other's behalf for reasons of efficiency.
209. In Wales, Scotland and Northern Ireland, arrangements for such services will be made only with the consent of the respective devolved administrations. Separate consent will be required from each administration for each type of service. The YPLA will also need to obtain the consent of the Secretary of State before making arrangements to provide support services to a person or body operating in Wales, Scotland or Northern Ireland.

Section 69: Assistance with respect to employment and training, Section 70: Assistance with respect to employment and training: Northern Ireland

210. Both of these sections allow the YPLA to take part in arrangements in relation to Wales, Scotland and Northern Ireland for assisting persons to select, train for, obtain and retain employment. Consent of the Welsh and Scottish administrations will be required for arrangements made by the Secretary of State in relation to Wales and Scotland but this is not required in respect of Northern Ireland. The consent of the Secretary of State will be required for arrangements made by all the devolved administrations which involve the YPLA.

Miscellaneous

Section 71: Research, information and advice

211. **Section 71** gives the YPLA the power to carry out research relating to any matter relevant to any of its functions. This is likely to include, for example, collating and analysing regional research and intelligence to support local education authority 14 to 19 partnership plans and 16 to 18 commissioning plans.
212. It enables the Secretary of State to require the YPLA to provide information or advice, and gives the YPLA the power to provide information or advice to the Secretary of State, in relation to any of its functions.
213. The YPLA will have the power to provide information to any person designated by the Secretary of State. This will, for instance, enable the YPLA:
- To provide local education authorities with analysis of provider performance covering all types of provision they will be required to secure under their new powers conferred upon them under this Act (see Part 2 of this Act).
 - To inform local education authorities about the type and extent of the support their learners are receiving.
214. In order to carry out these functions, the YPLA must establish systems for collecting information designed to secure that YPLA decisions are made on a sound basis.
215. The YPLA may also secure facilities and services for providing information, advice or guidance about education, training or connected matters including employment.

Section 72: Guidance by YPLA

216. **Section 72** requires the YPLA to issue guidance to local education authorities about:
- the performance of their duties to secure that all young people in their area over compulsory school age but under 19, persons aged 19 and over but under 25 subject to learning difficulty assessment, and children subject to youth detention have

access to enough suitable education and training provision to meet their reasonable needs,

- the performance of their duty to co-operate in the performance of their duties under section 15ZA(1),
- the performance of their duty to encourage employers to participate in the provision of education and training for young people over compulsory school age but under 19 and persons aged 19 and over but under 25 subject to learning difficulty assessment.

217. Before issuing this guidance, the YPLA must consult local education authorities in England and other persons as it thinks appropriate. Local education authorities must have regard to this guidance. The main guidance to be issued under this power will be the *National Commissioning Framework and Supporting Guidance*, which will cover how local education authorities should work independently and together in sub-regional groupings to develop commissioning plans that will set out how they intend to secure education and training provision for learners within their area. The YPLA also has the power to issue guidance about other matters in respect of which it has a function.

Section 73: Intervention powers: policy statement

218. The YPLA will be required to prepare and consult on a policy statement which sets out the detail of its policy on its powers of intervention. It will set out the triggers for, and the nature of, such interventions. Having considered representations made during consultation, the YPLA must send a copy of the final policy statement for approval by the Secretary of State, and then publish the approved statement. The YPLA must then have regard to the latest published statement when exercising its powers to intervene. *Subsection (6)* sets out the instances in which the YPLA has powers of intervention, which are under section 67 of this Act (YPLA powers to intervene for the purposes of securing appropriate education and training for young people); section 56H of the Further and Higher Education Act 1992 and section 56I of that Act (inserted by Schedule 8 to this Act) which concern powers to intervene in sixth form colleges.

Section 74: Power to confer supplementary functions on YPLA

219. The Secretary of State may by order (subject to the negative resolution procedure) give the YPLA supplementary functions that are both exercisable in relation to a function of the Secretary of State and relevant to the provision of education and training within the YPLA's remit. Education and training within the YPLA's remit is defined in section 80. This could, for example, include conferring additional functions on the YPLA in relation to the provision of a new learner support grant for young people.

Chapter 3: YPLA's Functions: Supplementary

Section 75: Directions by Secretary of State

220. This section requires the YPLA to comply with directions from the Secretary of State. Directions under *subsection (1)* may set objectives that the YPLA should achieve in carrying out its functions and time limits within which they are to be achieved. They may also relate to the management of the YPLA.
221. *Subsection (2)* provides that if the Secretary of State considers that the YPLA has failed to carry out a statutory duty or has acted, or is proposing to act, unreasonably in carrying out its functions, a direction may be given which relates to the performance of the YPLA's functions, even where the YPLA has discretion in the exercise of its functions.
222. Under *subsection (4)* directions under this section may not relate to the funding of activities carried on by particular individuals or bodies. For example, the Secretary of State could not require the YPLA to fund a particular provider to deliver a particular course in respect of a young person. This is to ensure that the YPLA has sole

responsibility for individual funding decisions without influence from the Secretary of State.

Section 76: Guidance by Secretary of State

223. This section requires the YPLA, in performing its functions, to have regard to any guidance provided to it by the Secretary of State. That guidance may include provision about who the YPLA must consult, and from whom it must take advice, in connection with particular decisions.

Chapter 4: Academy Arrangements

Section 77: Academy arrangements

224. This section will enable the Secretary of State to require the YPLA to enter into arrangements with the Secretary of State, under which the YPLA may be required to carry out specified functions of the Secretary of State relating to Academies, city technology colleges (“CTCs”) and city colleges for the technology of the arts (“CCTAs”). Under the arrangements, the YPLA would carry out these functions on the Secretary of State’s behalf.
225. Several of the Secretary of State’s functions relating to these schools are functions arising under funding agreements entered into by the Secretary of State under section 482 of the Education Act 1996. This section makes provision for the setting up and running of schools known as Academies. Under a previous version of section 482 of the 1996 Act, provision was made for the setting up of CTCs and CCTAs.
226. Under this section the Government intends that, from April 2010, the YPLA may be required to provide, on the Secretary of State’s behalf, support to and performance management of, Academies, CTCs and CCTAs. For example, the YPLA may be required to carry out the following of the Secretary of State’s functions: calculating and paying grants; supervising budgets; managing specific cases concerning admissions, exclusions and special educational needs; monitoring and enforcing funding agreements; monitoring the standard of performance of pupils; managing school building work. *Subsection (4)* specifies functions of the Secretary of State which the YPLA is not permitted to carry out. These include signing Academy funding agreements. Under *subsection (5)* the arrangements must set out a complaints procedure so that Academies and others may complain to the Secretary of State if they are concerned by the conduct of the YPLA under the arrangements.
227. The YPLA may be required to report to the Secretary of State in accordance with the arrangements.

Section 78: Grants for purposes of Academy arrangements functions

228. This section allows the Secretary of State to pay grants to the YPLA in order for the YPLA to carry out the functions specified in the arrangements. *Subsection (2)* allows the Secretary of State to make the payment of grant subject to conditions. For instance, the Secretary of State may require the YPLA to use the grant for a specific programme of improvement related to literacy and numeracy in Academies or to repay all or part of the grant if such a programme is not carried out.

Section 79: Academy arrangements: information sharing

229. This section enables the persons listed in *subsection (3)* to provide information to each other in order to carry out a relevant function. *Subsection (4)* defines “relevant function”.
230. This section does not affect other information sharing powers, or authorise disclosure of information that would have otherwise been prevented by legislation or any Act of

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Parliament. For instance, this means that any information sharing carried out under this section must still be carried out in accordance with the provisions of the Data Protection Act 1998.