



# Apprenticeships, Skills, Children and Learning Act 2009

## 2009 CHAPTER 22

### PART 1

#### APPRENTICESHIPS, STUDY AND TRAINING

### [<sup>F1</sup>CHAPTER 2

#### STUDY AND TRAINING

### [<sup>F1</sup>40 **Employer support for employee study and training**

- (1) The Employment Rights Act 1996 (c. 18) is amended as follows.
- (2) After Part 6 (time off work) insert—

### “PART 6A

#### STUDY AND TRAINING

### 63D **Statutory right to make request in relation to study or training**

- (1) A qualifying employee may make an application under this section to his or her employer.
- (2) An application under this section (a “section 63D application”) is an application that meets—
  - (a) the conditions in subsections (3) to (5), and
  - (b) any further conditions specified by the Secretary of State in regulations.

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- (3) The application must be made for the purpose of enabling the employee to undertake study or training (or both) within subsection (4).
- (4) Study or training is within this subsection if its purpose is to improve—
  - (a) the employee's effectiveness in the employer's business, and
  - (b) the performance of the employer's business.
- (5) The application must state that it is an application under this section.
- (6) An employee is a qualifying employee for the purposes of this section if the employee—
  - (a) satisfies any conditions about duration of employment specified by the Secretary of State in regulations, and
  - (b) is not a person within subsection (7).
- (7) The following persons are within this subsection—
  - (a) a person of compulsory school age (or, in Scotland, school age);
  - (b) a person to whom Part 1 of the Education and Skills Act 2008 (duty to participate in education or training for 16 and 17 year olds) applies;
  - (c) a person who, by virtue of section 29 of that Act, is treated as a person to whom that Part applies for the purposes specified in that section (extension for person reaching 18);
  - (d) a person to whom section 63A of this Act (right to time off for young person for study or training) applies;
  - (e) an agency worker;
  - (f) a person of a description specified by the Secretary of State in regulations.
- (8) Nothing in this Part prevents an employee and an employer from making any other arrangements in relation to study or training.
- (9) In this section—
  - “agency worker” means a worker supplied by a person (the “agent”) to do work for another person (the “principal”) under a contract or other arrangement between the agent and principal;
  - “compulsory school age” has the meaning given in section 8 of the Education Act 1996;
  - “school age” has the meaning given in section 31 of the Education (Scotland) Act 1980.

### 63E Section 63D application: supplementary

- (1) A section 63D application may—
  - (a) be made in relation to study or training of any description (subject to section 63D(3) and (4) and regulations under section 63D(2));
  - (b) relate to more than one description of study or training.
- (2) The study or training may (in particular) be study or training that (if undertaken)—
  - (a) would be undertaken on the employer's premises or elsewhere (including at the employee's home);

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- (b) would be undertaken by the employee while performing the duties of the employee's employment or separately;
  - (c) would be provided or supervised by the employer or by someone else;
  - (d) would be undertaken without supervision;
  - (e) would be undertaken within or outside the United Kingdom.
- (3) The study or training need not be intended to lead to the award of a qualification to the employee.
- (4) A section 63D application must—
- (a) give the following details of the proposed study or training—
    - (i) its subject matter;
    - (ii) where and when it would take place;
    - (iii) who would provide or supervise it;
    - (iv) what qualification (if any) it would lead to;
  - (b) explain how the employee thinks the proposed study or training would improve—
    - (i) the employee's effectiveness in the employer's business, and
    - (ii) the performance of the employer's business;
  - (c) contain information of any other description specified by the Secretary of State in regulations.
- (5) The Secretary of State may make regulations about—
- (a) the form of a section 63D application;
  - (b) when a section 63D application is to be taken to be received for the purposes of this Part.

### 63F Employer's duties in relation to application

- (1) Subsections (4) to (7) apply if—
- (a) an employer receives a section 63D application (the “current application”) from an employee, and
  - (b) during the relevant 12 month period the employer has not received another section 63D application (an “earlier application”) from the employee.
- (2) The “relevant 12 month period” is the 12 month period ending with the day on which the employer receives the current application.
- (3) The Secretary of State may make regulations about circumstances in which, at an employee's request, an employer is to be required to ignore an earlier application for the purposes of subsection (1).
- (4) The employer must deal with the application in accordance with regulations made by the Secretary of State.
- (5) The employer may refuse a section 63D application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to the application.

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- (6) The employer may refuse part of a section 63D application only if the employer thinks that one or more of the permissible grounds for refusal applies in relation to that part.
- (7) The permissible grounds for refusal are—
  - (a) that the proposed study or training to which the application, or the part in question, relates would not improve—
    - (i) the employee's effectiveness in the employer's business, or
    - (ii) the performance of the employer's business;
  - (b) the burden of additional costs;
  - (c) detrimental effect on ability to meet customer demand;
  - (d) inability to re-organise work among existing staff;
  - (e) inability to recruit additional staff;
  - (f) detrimental impact on quality;
  - (g) detrimental impact on performance;
  - (h) insufficiency of work during the periods the employee proposes to work;
  - (i) planned structural changes;
  - (j) any other grounds specified by the Secretary of State in regulations.

### **63G Regulations about dealing with applications**

- (1) Regulations under section 63F(4) may, in particular, include provision—
  - (a) for the employee to have a right to be accompanied by a person of a specified description when attending meetings held in relation to a section 63D application in accordance with any such regulations;
  - (b) for the postponement of such a meeting if the employee's companion under paragraph (a) is not available to attend it;
  - (c) in relation to companions under paragraph (a), corresponding to section 10(6) and (7) of the Employment Relations Act 1999 (right to paid time off to act as companion, etc.);
  - (d) in relation to the rights under paragraphs (a) to (c), for rights to complain to an employment tribunal and not to be subjected to a detriment, and about unfair dismissal;
  - (e) for section 63D applications to be treated as withdrawn in specified circumstances.
- (2) In this section “specified” means specified in the regulations.

### **63H Employee's duties in relation to agreed study or training**

- (1) This section applies if an employer has agreed to a section 63D application, or part of a section 63D application, made by an employee in relation to particular study or training (the “agreed study or training”).
- (2) The employee must inform the employer if the employee—
  - (a) fails to start the agreed study or training;
  - (b) fails to complete the agreed study or training;

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- (c) undertakes, or proposes to undertake, study or training that differs from the agreed study or training in any respect (including those specified in section 63E(4)(a)).
- (3) The Secretary of State may make regulations about the way in which the employee is to comply with the duty under subsection (2).

### 63I Complaints to employment tribunals

- (1) An employee who makes a section 63D application may present a complaint to an employment tribunal that—
- (a) the employer has failed to comply with section 63F(4), (5) or (6), or
  - (b) the employer's decision to refuse the application, or part of it, is based on incorrect facts.

This is subject to the following provisions of this section.

- (2) No complaint under this section may be made in respect of a section 63D application which has been disposed of by agreement or withdrawn.
- (3) In the case of a section 63D application that has not been disposed of by agreement or withdrawn, a complaint under this section may only be made if the employer—
- (a) notifies the employee of a decision to refuse the application (or part of it) on appeal, or
  - (b) commits a breach of regulations under section 63F(4), where the breach is of a description specified by the Secretary of State in regulations.
- (4) No complaint under this section may be made in respect of failure to comply with provision included in regulations under section 63F(4) because of—
- (a) section 63G(1)(a) or (b), if provision is included in regulations under section 63F(4) by virtue of section 63G(1)(d), or
  - (b) section 63G(1)(c).
- (5) An employment tribunal may not consider a complaint under this section unless the complaint is presented—
- (a) before the end of the period of three months beginning with the relevant date, or
  - (b) within any further period that the tribunal considers reasonable, if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (6) The relevant date is—
- (a) in the case of a complaint permitted by subsection (3)(a), the date on which the employee is notified of the decision on the appeal;
  - (b) in the case of a complaint permitted by subsection (3)(b), the date on which the breach was committed.

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### 63J Remedies

- (1) If an employment tribunal finds a complaint under section 63I well-founded it must make a declaration to that effect and may—
  - (a) make an order for reconsideration of the section 63D application;
  - (b) make an award of compensation to be paid by the employer to the employee.
- (2) The amount of any compensation must be the amount the tribunal considers just and equitable in all the circumstances, but must not exceed the permitted maximum.
- (3) The permitted maximum is the number of weeks' pay specified by the Secretary of State in regulations.
- (4) If an employment tribunal makes an order under subsection (1)(a), section 63F and regulations under that section apply as if the application had been received on the date of the order (instead of on the date it was actually received).

### 63K Supplementary

Regulations under this Part may make different provision for different cases.”

- (3) After section 47E (protection from suffering detriment in employment: flexible working) insert—

#### “Study and training

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employee's employer done on the ground that the employee—
  - (a) made (or proposed to make) a section 63D application,
  - (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,
  - (c) brought proceedings against the employer under section 63I, or
  - (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
- (2) This section does not apply if the detriment in question amounts to dismissal within the meaning of Part 10.”

- (4) After section 104D (unfair dismissal: pension enrolment) insert—

#### “Study and training

An employee who is dismissed is to 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 the employee—

- (a) made (or proposed to make) a section 63D application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F,
- (c) brought proceedings against the employer under section 63I, or

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(d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”

(5) Schedule 1 makes amendments to employment legislation relating to the provision made by this section.]

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**Textual Amendments**

**F1** Ss. A9, A10 inserted (4.7.2016) by [Enterprise Act 2016 \(c. 12\)](#), **ss. 24(1), 44(2)(c)**

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**Commencement Information**

**I1** S. 40 in force at 6.4.2010 for specified purposes by [S.I. 2010/303](#), art. 4, **Sch. 3** (with arts. 9-11)

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**Changes and effects yet to be applied to :**

- s. 40 coming into force by [S.I. 2010/303 art. 7Sch. 6](#) (Effect not applied to [legislation.gov.uk](#). Art. 7, Sch. 6 omitted (21.3.2011) by virtue of [S.I. 2011/882](#), art. 2)

**Commencement Orders yet to be applied to the Apprenticeships, Skills, Children and Learning Act 2009**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2009/3341 art. 2](#) commences (2009 c. 22)
- [S.I. 2010/2413 art. 2](#) commences (2009 c. 22)
- [S.I. 2011/829 art. 2](#) commences (2009 c. 22)
- [S.I. 2011/882 art. 2](#) amendment to earlier commencing [SI 2010/303 art. 7 Sch. 6](#)