



# Employment Act 1988

## 1988 CHAPTER 19

### PART II

#### EMPLOYMENT AND TRAINING

24 .....<sup>F1</sup>

#### Textual Amendments

**F1** S. 24 repealed by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), s. 29(4), [Sch. 7 Pt. I](#)

#### 25 **Functions of the Secretary of State and of the Commission.**

- (1) For sections 2 and 3 of the 1973 Act (functions of the Commission and control of the Commission by the Secretary of State) there shall be substituted the following sections—

##### **“2 Functions of the Secretary of State.**

- (1) The Secretary of State shall make such arrangements as he considers appropriate for the purpose of assisting persons to select, train for, obtain and retain employment suitable for their ages and capacities or of assisting persons to obtain suitable employees (including partners and other business associates).
- (2) Arrangements under this section may—
- (a) include arrangements for providing temporary employment for persons in Great Britain who are without employment;
  - (b) include arrangements for encouraging increases in the opportunities for employment and training that are available to women and girls or to disabled persons;

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- (c) subject to the restriction of paragraph (a) of this subsection to persons in Great Britain, be made in respect of employment and training anywhere in the United Kingdom or elsewhere;
  - (d) include provision for the making of payments by the Secretary of State, by way of grant or loan or otherwise, to persons who provide facilities in pursuance of the arrangements, to persons who use those facilities and to other persons specified in or determined under the arrangements;
  - (e) include provision for the making of payments to the Secretary of State by other parties to the arrangements and by persons who use those facilities;
  - (f) include arrangements for securing that assistance in relation to the matters mentioned in subsection (1) of this section is provided by persons other than the Secretary of State.
- (3) The payments for which arrangements under this section may provide—
- (a) shall include the payment to a person by the Secretary of State of an allowance pending a time when payments will be or may be made to that person in respect of his use of facilities which will be or may be made available to him under any such arrangements;
  - (b) shall not include the payment of any such allowance to a person—
    - (i) for any period after that person has attained the age of eighteen years; or
    - (ii) for any period for which child benefit is payable in respect of that person;
 and
  - (c) shall not include any payment by any person to the Secretary of State, other than a payment for publications issued in pursuance of the arrangements, in respect of the seeking or obtaining for that person of any employment under a contract of service or apprenticeship.
- (4) Without prejudice to paragraph (f) of subsection (2) of this section, the Secretary of State may wholly or partly perform his duty under subsection (1) of this section by authorising or directing the Commission to act on his behalf—
- (a) in the making of arrangements under this section in such cases or for such purposes as may be specified in or determined under the authorisation or direction;
  - (b) in the taking of such steps for the purposes of, or in connection with, the carrying out of any arrangements under this section (including any made otherwise than by the Commission) as may be so specified or determined;
  - (c) in the carrying out of such of the Secretary of State's functions under sections 11(3) and 12(4) of this Act as may be so specified or determined.
- (5) No payments shall be made by or on behalf of the Secretary of State by virtue of any power conferred by this section, other than payments under section 11(3) or 12(4) of this Act, unless the Treasury have approved—
- (a) the amounts of the payments or the manner of determining those amounts; and

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- (b) the terms on which they are made or the manner of determining those terms.
- (6) The powers of any Minister of the Crown to give authorisations or directions under this section or the following section shall include power to revoke or vary any authorisation or direction so given.

### **3 Functions of the Commission.**

- (1) Subject to the following provisions of this Act, the functions of the Commission shall be—
- (a) a power to do all such things as it is authorised to do under the preceding section and to do such other things in connection with training for employment, or otherwise with employment or unemployment, as it may be authorised to do by any Minister of the Crown;
  - (b) a duty to do all such things as it is required to do under that section and to do all such other things in connection with training for employment, or otherwise with employment or unemployment, as may be specified in or determined under a direction given to it by any Minister of the Crown.
- (2) The Commission shall—
- (a) from time to time submit to the Secretary of State particulars of what it proposes to do for the purpose of carrying out its functions; and
  - (b) ensure that all its activities are in accordance with such proposals submitted by it to the Secretary of State as have been approved by him and with such modifications (if any) of any proposals so submitted as are notified to the Commission by the Secretary of State.
- (3) The Secretary of State shall have power to give directions to the Commission imposing such general or specific requirements on it as to the carrying out of any of its functions as may be specified in or determined under the directions.
- (4) The Commission shall have power to do anything (except borrow money) which is calculated to facilitate, or is conducive or incidental to, the carrying out of any of its functions.
- (5) The power of a Minister of the Crown by virtue of paragraph (a) or (b) of subsection (1) of this section to authorise or direct the Commission to do anything shall include the power to delegate powers conferred on him by any enactment; but nothing in this section shall authorise any Minister of the Crown to delegate a power to make subordinate legislation (within the meaning of the Interpretation Act 1978).”
- (2) Schedule 2 to this Act (which for purposes connected with the provisions of subsection (1) above further amends the 1973 Act and provides for transitional and other matters) shall have effect.

## **26 Status of trainees etc.**

- (1) Where it appears to the Secretary of State that provision has been made under section 2 of the 1973 Act [<sup>F2</sup>, or under section 2(3) [<sup>F3</sup> or section 14A] of the Enterprise and New Towns (Scotland) Act 1990,] for persons using facilities provided in pursuance

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of arrangements under [<sup>F4</sup>any of those three sections] to receive payments from any person in connection with their use of those facilities, the Secretary of State may by order provide—

- (a) that those persons are, for the purposes and in the cases specified or described in or determined under the order, to be treated in respect of their use of those facilities as being or as not being employed;
- (b) that where those persons are treated as being employed they are to be treated as being the employees of the persons so specified, described or determined and of no others;
- (c) that where those persons are treated as not being employed they are to be treated as being trained, or are to be treated in such other manner as may be so specified, described or determined; and
- (d) that those payments are to be treated for the purposes of such enactments and subordinate legislation as may be so specified, described or determined in such manner as may be so specified, described or determined.

[<sup>F5</sup>(1A) Where it appears to the Secretary of State that provision has been made under section [<sup>F6</sup>61(4)(a) or 100(1)(c) or (d) of the Apprenticeships, Skills, Children and Learning Act 2009 or section]34(1)(c) of the Learning and Skills Act 2000 for trainees to receive payments from the [<sup>F7</sup>Young People’s Learning Agency for England, the Chief Executive of Skills Funding] or the [<sup>F8</sup>National Assembly for Wales], the Secretary of State may by order provide—

- (a) that those trainees are, for the purposes and in the cases specified or described in or determined under the order, to be treated in respect of the training as being or as not being employed;
- (b) that where those trainees are treated as being employed they are to be treated as being the employees of the persons so specified, described or determined and of no others;
- (c) that where those trainees are treated as not being employed they are to be treated in such other manner as may be so specified, described or determined; and
- (d) that those payments are to be treated for the purposes of such enactments and subordinate legislation as may be so specified, described or determined in such manner as may be so specified, described or determined;

and for the purposes of this subsection trainees are persons receiving or proposing to receive training.]

- (2) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and such an order may—
  - (a) modify any enactment or subordinate legislation;
  - (b) make different provision for different purposes and for different cases; and
  - (c) contain such incidental, consequential and transitional provision as appears to the Secretary of State to be appropriate.
- (3) The consent of the Treasury shall be required for the making of any order under this section which contains provision for the manner in which any payment is to be treated for the purposes of the Income Tax Acts.
- (4) In this section—
  - “enactment” includes an enactment contained in this Act or in any Act passed after this Act; and

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“subordinate legislation” has the same meaning as in the <sup>M1</sup>Interpretation Act 1978.

**Textual Amendments**

- F2** Words in s. 26(1) inserted (1.4.1991) by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), s. 38(1), [Sch. 4 para. 16\(a\)](#)
- F3** Words in s. 26(1) inserted (30.8.1993) by [1993 c. 19, s. 49\(2\)](#), [Sch. 8 para. 38\(a\)](#); S.I. 1993/1908, art. 2(1), [Sch. 1](#)
- F4** Words in s. 26(1) (as substituted by [Enterprise and New Towns \(Scotland\) Act 1990 c. 35](#)) substituted (30.8.1993) by [1993 c. 19, s. 49\(2\)](#), [Sch. 8 para. 38\(b\)](#); S.I. 1993/1908, art. 2(1), [Sch. 1](#)
- F5** S. 26(1A) inserted (1.10.2000) by [2000 c. 21, s. 149](#), [Sch. 9 para. 14](#) (with s. 150); S.I. 2000/2559, art. 2(1), [Sch. Pt. I](#)
- F6** Words in s. 26(1A) substituted (1.4.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments\) \(England and Wales\) Order 2010 \(S.I. 2010/1080\)](#), art. 1(2)(a), [Sch. 1 para. 14\(a\)](#) (with art. 2(3))
- F7** Words in s. 26(1A) substituted (1.4.2010) by [The Apprenticeships, Skills, Children and Learning Act 2009 \(Consequential Amendments\) \(England and Wales\) Order 2010 \(S.I. 2010/1080\)](#), art. 1(2)(a), [Sch. 1 para. 14\(b\)](#) (with art. 2(3))
- F8** Words in s. 26(1A) substituted (1.4.2006) by [National Council for Education and Training for Wales \(Transfer of Functions to the National Assembly for Wales and Abolition\) Order 2005 \(S.I. 2005/3238\)](#), art. 1(1), [Sch. 1 para. 11](#) (with art. 7)

**Modifications etc. (not altering text)**

- C1** S. 26 modified (11.11.1999) by [1999 c. 30, ss. 60\(8\), 72, 89\(4\)\(a\)](#)

**Marginal Citations**

- M1** [1978 c. 30](#).

<sup>F9</sup>27 .....

**Textual Amendments**

- F9** S. 27 repealed (01.07.1992) by [Social Security \(Consequential Provisions\) Act 1992 \(c. 6\)](#), ss. 3, 7(2), [Sch. 1](#) (subject as mentioned (6.3.1992) in [Local Government Finance Act 1992 \(c. 14\)](#), s. [118\(5\)\(7\)](#) (with s. [118\(1\)\(2\)\(4\)](#))).

**28 Amendment of section 4 of the 1973 Act.**

(1) In subsection (3)(e) of section 4 of the 1973 Act (power of Secretary of State or Commission to disclose information obtained under the <sup>M2</sup>Statistics of Trade Act 1947 to certain persons so far as it relates to certain matters), after the word “to”, in the first place where it occurs, there shall be inserted the words—

“(i) any person who is or is to be engaged in the carrying out on behalf of the Secretary of State or the Commission of any research or survey relating to matters connected with training for employment, with industrial relations or otherwise with employment or unemployment; or

(ii)”.

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(2) In subsection (5) of that section (limitation on use to which disclosed information may be put), after paragraph (c) there shall be inserted the following paragraph—

“(cc) in the case of information given to such a person as is mentioned in paragraph (e)(i) of that subsection, a purpose related to the carrying out of the research or survey in the carrying out of which that person is or is to be engaged;”.

#### Marginal Citations

M2 1947 c. 39.

## 29 Membership of training boards.

(1) In Schedule 1 to the <sup>M3</sup>Industrial Training Act 1982, after sub-paragraph (b) of paragraph 3 (membership of boards) there shall be inserted the following sub-paragraph —

“(c) any additional persons appointed by the Secretary of State, being persons whom it appeared to the Secretary of State to be appropriate to appoint in addition to those appointed by virtue of sub-paragraph (a) or (b) above;”

F10 M4F10 F10 F10  
 ... ..

(2) For paragraph 6 of Schedule 1 to the Industrial Training Act 1982 (voting on matters relating to the imposition of a levy) there shall be substituted the following paragraph —

“6 Only members appointed by virtue of sub-paragraph (a) of paragraph 3 above after such consultation with organisations or associations of organisations representative of employers engaging in the industry as is required by that sub-paragraph shall vote on any matter relating to the imposition of a levy; and, accordingly, no such matter shall be decided except in accordance with the votes of the majority of the members who were so appointed.”

(3) Subsection (4) of section 1 of the Industrial Training Act 1982 (consultation required before an industrial training order is made) shall not apply in relation to the making of any order under that section which amends one or more other orders under that section and contains a statement that the only amendments made by the order are amendments which appear to the Secretary of State to be necessary or expedient in consequence of the preceding provisions of this section.

#### Textual Amendments

F10 Words in s. 29(1) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 2 Group 2

#### Modifications etc. (not altering text)

C2 S. 29(1) repealed so far as relating to the Industrial Training Act 1982 by Employment Act 1989 (c. 38, SIF 43:1), s. 29(4), Sch. 7 Pt. 1

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**Marginal Citations**

**M3** 1982 c. 10.

**M4** 1982 c. 9.

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