



# Employment Act 1988

## 1988 CHAPTER 19

### PART II

#### EMPLOYMENT AND TRAINING

#### 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>F1</sup>, or under section 2(3) [<sup>F2</sup>or section 14A] of the Enterprise and New Towns (Scotland) Act 1990,]for persons using facilities provided in pursuance of arrangements under [<sup>F3</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>F4</sup>(1A) The Secretary of State may make an order under subsection (1B) where it appears to the Secretary of State that provision has been made for trainees to receive payments—

- (a) from the Secretary of State under section 14 of the Education Act 2002,
- (b) <sup>F5</sup>...or
- (c) from the Welsh Ministers under section 34(1)(c) of the Learning and Skills Act 2000.

(1B) An order under this subsection may provide—

---

*Changes to legislation: Employment Act 1988, Section 26 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- (a) that the 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 the 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 the 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 the 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.

For the purposes of subsection (1A) and 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
  - “ subordinate legislation ” has the same meaning as in the <sup>M1</sup> Interpretation Act 1978.

#### Textual Amendments

- F1** 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)**
- F2** 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**
- F3** 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**
- F4** S. 26(1A)(1B) substituted for s. 26(1A) (1.4.2012) by [Education Act 2011 \(c. 21\)](#) , s. 82(3) , **Sch. 16 para. 7** ; S.I. 2012/924 , art. 2
- F5** S. 26(1A)(b) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#) , s. 115(3)(g) , **Sch. 14 para. 34**

#### 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](#) .

**Changes to legislation:**

Employment Act 1988, Section 26 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

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

- s. 26(1A) words substituted by [2022 asc 1 Sch. 4 para. 4\(2\)](#)