

LEARNING AND SKILLS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I - the Learning and Skills Council for England

Sections 1 to 29 and Schedules 1 to 3

34. These sections and Schedules make provision for the establishment of the LSC, its functions, the establishment of local councils and other committees, and powers of the Secretary of State in relation to the LSC.

Section 1 and Schedule 1: the LSC

35. **Section 1 and Schedule 1** provide for the establishment of a new corporate body, the LSC. In making appointments to the LSC, the Secretary of State must have regard to the desirability of appointing people with experience relevant to the LSC's functions. The *LSC Prospectus* has stated that, in performing this duty, the Secretary of State intends to have regard to people with current or recent business experience. The LSC's functions are to be carried out only in relation to England.
36. **Schedule 1** makes provision about members of the LSC which will include the chief executive, the appointment and employment of staff and about procedural matters, including the LSC's accounts. It makes provision for the Secretary of State to remove any member from office on the grounds of persistent non-attendance, inability or unfitness for office. The LSC is permitted to set up committees and to delegate functions. The Schedule sets out provisions for disclosure of members' interests. The LSC will not be an agent of the Crown and its staff will not be civil servants.

Sections 2 to 4: the main duties of the LSC

37. **Section 2** sets out the duty of the LSC to secure the provision of 'proper' facilities for the education and training of people from the age of 16 up to the age of 19. Facilities are 'proper' if they are of sufficient quantity and adequate quality to meet the reasonable needs of young people. **Section 3** sets out the duty of the LSC to secure the provision of 'reasonable' facilities for the education and training of people of age 19 and over. Facilities are 'reasonable' if they are of a quality and quantity which the LSC can reasonably be expected to provide taking account of the resources available to it. The effect of the wording of sections 2 and 3 on the exercise of these two duties is that the LSC will give priority to meeting the learning and skills needs of the younger age group. The duties do not extend to the provision of higher education which is the responsibility of the Higher Education Funding Council.
38. In performing the duties in respect of both age groups the Council must take into account a number of factors, including the education and training required in different sectors of employment. The Government has recognised that National Training Organisations (NTOs) have particular expertise and expect that the NTOs will advise the LSC in this area. The Council will also bear in mind that other bodies, both statutory and private bodies, also provide education and training and therefore that it might reasonably expect

education and training to be secured by other bodies without drawing on the Council's resources.

39. The LSC must make the best use of its resources, and in particular, avoid provision that might give rise to disproportionate expenditure. Disproportionate expenditure is that which, although not necessarily wasteful, is too much or too little in view of the LSC's overall functions and expenditure. Sections 2(4) and 3(4) specify that provision is not to be considered as giving rise to disproportionate expenditure simply because that provision is more expensive than comparable provision (for example provision for people with disabilities in a specialist institution may be more expensive than provision for people with disabilities in a mainstream FE institution).
40. Unlike the duties of the FEFC under the 1992 Act, no distinction is drawn between full- and part-time education in the education and training provision which the LSC must secure for the two age groups. Nor is there a limitation on the education which may be secured by reference to a particular type of course. The LSC will secure provision of education and training in school sixth forms (through funding LEAs, see section 7), in FE colleges and in work-based training on the premises of employers, and with private training providers and voluntary organisations.
41. The reference to 'organised leisure-time occupation', which is included in the definition of further education in section 2 of the Education Act 1996, covers a wide range of organised activities offering opportunities for non-formal types of learning and of learning which does not lead to a qualification.
42. **Section 4** sets out the LSC's duty to promote participation of individuals and employers in post-16 education and training and to encourage employers to get involved in its support and delivery. The LSC prospectus gives an outline of the broad range of activities that it may undertake. For example, there will be advertising and marketing activities, research into the benefits of learning and dissemination of the results of that research. Other functions of the LSC will also support this duty, such as its planning and funding of information, advice and guidance services to adults in connection with learning opportunities, its promotion of individual learning accounts and its support for the Investors in People standard.

Sections 5 and 6: provision of financial resources

43. **Section 5** sets out the powers of the LSC to give funding to other persons for the purpose of fulfilling its duties and exercising its powers. Under section 5 the LSC will have the power to pay persons who provide or are proposing to provide post-16 education and training, and to pay persons who may not be providers themselves but who supply services which support the delivery of post-16 education and training by providers. A person may be any natural or legal person and would include FE colleges, schools and private training providers, whether incorporated or unincorporated, and individuals. The LSC may also make direct grants to students. Payments may include money intended for awards to students which is distributed by institutions, for example, the Access Funds.
44. The LSC's powers under section 5 can be used to pay persons for activities including:
 - the start-up costs to persons proposing to provide post-16 education or training, including the establishment of an institution in the FE sector;
 - a limited range of higher education provision of a vocational and professional nature;
 - secondary education for those of compulsory school age provided by FE and HE institutions (see also section 142);
 - research and development activities related to education and training generally;

*These notes refer to the Learning and Skills Act 2000
(c.21) which received Royal Assent on 28 July 2000*

- the provision of work experience and links between the education world and employers (see also section 8);
 - information, advice and guidance to people on learning opportunities and related issues, including employment.
45. In paying persons for anything which the LSC is empowered to do, the LSC may:
- use its own financial resources, for example, the grant provided by the Secretary of State (see section 27);
 - assist in the transfer of financial resources from one person to another;
 - do either of these jointly with other persons or assist in the transfer of financial resources from other persons who are acting jointly.
46. If the LSC makes its own financial resources available to persons it may attach conditions to those payments. **Section 6** provides that such conditions may require:
- that the LSC must have access to the education and training provider's accounts and records, including computer records; or another person specified by the Council (such as an accountant or the National Audit Office) must be able to have such access;
 - that the post-16 education and training provider must give the LSC such information as it requires for the purpose of exercising any of its duties and powers;
 - that persons providing post-16 education and training must set fees, make awards and recover costs from other persons in accordance with criteria established by the LSC;
 - that the post-16 education and training provider must publish statements in respect of its facilities for disabled people (section 30 of the Disability Discrimination Act 1995 provided a similar power to the FEFC in respect of institutions in the FE sector);
 - that resources provided be repaid to the Council, with interest, if any of the conditions attached to the provision of the resources are not complied with;
 - that the provider of post-16 education and training must make provision of a type specified in an assessment of learning difficulties made under section 140.

Section 7: school sixth form funding

47. Between June and October 1999, the Government consulted on two options in relation to recurrent LEA maintained school sixth form funding, as outlined in the consultation paper *Learning to Succeed: school sixth form funding*.
48. Following the consultation, the Government concluded that the LSC should fund LEAs for their sixth form provision. LEAs would continue to allocate funds to schools in their area, and would retain their power to provide additional funding to schools if they so wish. Following further consultation begun in January 2000, it was announced in May that these changes would be introduced from 2002-03. There will be further consultation in the autumn of 2000 on the details of how the changes will be implemented. The Government committed itself in the 1999 consultation paper to maintaining school sixth forms' funding levels in real terms (where pupil numbers do not fall). The later announcements confirmed that this guarantee will operate on a baseline year of 2000-01. There are no plans to change the capital funding system in relation to schools sixth forms.
49. **Section 7** secures the LSC's power to fund LEAs in respect of their school sixth form provision, including (by virtue of regulations under section 46 of the School

Standards and Framework Act 1998) that made in non-maintained special schools and independent schools approved for the requirements of pupils with special educational needs. This is for recurrent funding not capital expenditure which by virtue of the regulations under section 46 of the 1998 Act is excluded from the local schools budget. No new primary legislation is required to facilitate the implementation of the new mechanisms for the distribution of recurrent funding from LEAs to school sixth forms; the necessary provisions are in the 1998 Act and regulations made under that Act.

Sections 8 to 11: other main powers of the LSC

50. **Section 8** gives the LSC powers to secure provision of work experience for those in their last two years of compulsory schooling and those in education up to the age of 19; and to provide for 'education business links' between, on the one hand, the world of work and, on the other, all pupils of compulsory school age, young people in education or training up to the age of 19 and teachers. The Secretary of State intends that the LSC will have a key role in ensuring that local partners (such as Education Business Partnerships) work closely together to provide opportunities of a high quality for young people which meet the needs of schools and the business community.
51. In **section 9** the LSC is given the power to assess the quality of the provision it funds, and take judgements about quality into account in deciding which providers it will continue to fund. This will form part of the LSC's quality improvement strategy. The intention is that the LSC secures value for money and that learners are offered provision of a high quality. Findings from the two inspectorates, OFSTED and ALI, may inform these judgments, but their input will not provide regular, comprehensive information on all providers. Therefore, it is intended that the LSC will take steps to investigate on its own behalf the quality of the provision it funds, through for example, visiting providers, putting arrangements in place for investigating complaints and acting on those which are well-founded. It will also have clear published performance indicators and benchmarks against which to measure quality of provision. The LSC may also draw up a list of accredited provision which meets certain quality thresholds, and cease to fund provision which does not.
52. **Section 9** also provides for the LSC, when making resources available to individual students, to calculate the amount made available by reference to fees and charges and also to other expenses associated with education and training such as transport or childcare.
53. **Section 10** provides for the role of the LSC in relation to Individual Learning Accounts (for details of the nature of the scheme known as Individual Learning Accounts and how this Act provides for the scheme see sections 104 to 109). The LSC is given the power to be involved in the promotion of Individual Learning Accounts and to be involved in the administration of qualifying arrangements under section 105. It is also given power to enter into arrangements with the Secretary of State to make grants, to specify the kinds of learning provision which qualify for the grants and to approve providers so as to make them eligible to offer learning provision which qualifies.
54. **Section 11** provides a power for the LSC to appoint up to two additional governors to the governing body of an institution in the FE sector which mainly serves the population of England. It may wish to use this power, for example, where it considers there might be mismanagement or potential mismanagement by the governing body, or where there are signs that the educational provision at the institution is failing.

Sections 12 to 18: other functions of the LSC

55. **Section 12** sets out the role of the LSC in relation to research and the provision of information, advice and guidance.
56. The LSC will be under a duty to report to the Secretary of State on such matters as he may require and will have the power to offer such information and advice to the

Secretary of State as it thinks fit. In practice, this is likely to include information about progress towards the Government's National Learning Targets connected with post-16 learning (and advice on the setting of future targets); analysis of the learning and skills performance of England in comparison with other countries; a description of the LSC's learning and skills strategy, based on an analysis of local skills needs; and information on the quality and quantity of provision available locally to meet learning needs.

57. The section also gives the LSC the power to secure the provision of facilities for providing information, advice and guidance about education, training and connected matters, including employment. The intention of the Secretary of State is that the LSC, through its local councils, will fund the provision of information, advice and guidance services to adults, while services for 13-19 year olds will be arranged through the Connexions Service (see sections 114 to 122).
58. The section also gives the LSC power to provide information to any person designated by the Secretary of State. This will, for instance, enable the LSC to provide the Qualifications and Curriculum Authority (QCA) with information to assist with the establishment and maintenance of the framework of qualifications and monitoring of the standards of qualifications.
59. **Section 13** requires the LSC to pay particular regard to the needs of people with learning difficulties when performing its duties to secure facilities for education and training under sections 2 and 3, when providing resources for education and training under section 5(1)(a) to (d) and (g) and when exercising its powers to secure facilities for work experience under section 8. In particular, the LSC must have regard to a report of an assessment of a person's needs made under section 140. Learning difficulties are defined at section 13(5). This definition is derived from provisions for further education in section 4 of the Further and Higher Education Act 1992 which is repealed by this Act.
60. **Section 13** also describes the LSC's main responsibilities regarding the funding of boarding accommodation for those with learning difficulties. For those between the ages of 16 and 19, the LSC must provide boarding accommodation where it is satisfied that it cannot make arrangements for individuals which are sufficient in quantity and adequate in quality unless it also secures boarding accommodation. For those between the ages of 19 and 25, the LSC must provide boarding accommodation where it is satisfied that it cannot secure the provision of reasonable facilities for individuals unless it also secures boarding accommodation. For those over the age of 25, the LSC has a power to make such arrangements if it is satisfied that provision for individual learners would not otherwise be reasonable. Those provisions should be read alongside the LSC's main duties at clauses 2 and 3.
61. **Section 14** requires the LSC to have due regard to the need to promote equality of opportunity between people from different racial groups, between men and women, and between people with a disability and people without. It must make an annual report on what arrangements it has made during the year, how effective they were and its plans for the following year. It must send a copy of the report to the Secretary of State. The Government has outlined, in pages 31-33 of the *LSC Prospectus*, some of the practical steps which it expects the LSC to take with regard to this duty.
62. **Sections 15 and 16** set out the planning the LSC is required to undertake. Two separate types of plan will be prepared: an annual business plan and a three-year rolling strategic (corporate) plan. Its annual business plan must include any measures the LSC intends to take to meet objectives the Secretary of State may set, and its financial plans for the year. The LSC's three-year plan will set out its strategy for the future development of activities and provision funded by the LSC. This will include its strategy for workforce development.
63. **Section 17** provides for the LSC to have regard to any information received from a body designated by the Secretary of State. This might include, for instance, the Qualifications and Curriculum Authority (QCA) which holds information on the nature

and availability of accredited provision in particular areas and on issues of financial propriety connected with this provision. This information is likely to be relevant to the activities of the LSC.

64. **Section 18** gives the LSC additional general powers which it may exercise to enable it to perform its other functions. The powers enabling the LSC, with the Secretary of State's agreement, to form or participate in companies may be used to facilitate appropriate partnership-working at the local and national levels for local workforce development, regeneration and economic development objectives. Section 18 also enables the Secretary of State to confer by order additional functions relevant to education or training in England on the LSC. (Section 8(4) of the Further and Higher Education Act 1992 contains a similar power in respect of the FEFC.)

Sections 19 and 20 and Schedule 2: local councils

65. **Section 19** and **Schedule 2** provide for the establishment of local learning and skills councils for each area specified by the Secretary of State. The Secretary of State has already announced that he is specifying 47 such local areas. His intentions, and the boundaries of those areas, are set out in the *LSC Prospectus*. **Section 20** provides that the local LSC's duties and powers will be those of the national LSC which it chooses to delegate. It also provides for local LSCs to perform duties and exercise functions outside their local area. This may be necessary, for example, to allow a single local LSC to contract with and fund a learning provider operating throughout England, or fund an institution which attracts students from outside its local area.
66. The Secretary of State has set out in the *LSC Prospectus* those activities which he expects the local LSCs to engage in. They include:
- planning to meet the National Learning Targets locally;
 - ensuring that all local young people, including those with disabilities and learning difficulties, have access to learning of high quality to meet their individual needs;
 - encouraging adults to engage in learning;
 - identifying and meeting local needs;
 - working to improve the quality of local provision;
 - promoting excellence, widening participation and promoting equal opportunities;
 - deploying locally-managed development budgets to meet learning, skills and workforce development needs and using discretionary expenditure to provide support for activities such as:
 - workforce development;
 - adult and community learning;
 - education-business links;
 - promoting equality of opportunity in learning and information;
 - information, advice and guidance to adults on learning opportunities.
67. **Schedule 2** makes provision about members and staff of local LSCs, and about delegation of functions.

Sections 21 to 24: guidance to local councils and their plans

68. **Sections 21 and 22** set out details of the planning arrangements the LSC and local councils must put in place. The LSC must prepare guidance and local LSCs must prepare and publish plans. In preparing a plan, a local LSC must consult any relevant

Regional Development Agency (including the London Development Agency), local authorities (including local education authorities) within its area and any other body which the Secretary of State specifies. The Secretary of State will, in practice, specify Local Learning Partnerships under this provision, and may specify other bodies such as the Connexions Service. Local LSCs must have regard to the RDAs' regional economic strategies and include in their plans a statement setting out how their learning and skills responsibilities will contribute to local economic regeneration activities. They must also have regard to the local authorities' strategies for the promotion of economic, social and environmental well-being provided for in the Local Government Act 2000.

Sections 25 to 29 and Schedule 3: miscellaneous

69. **Section 25** allows the Secretary of State to give directions to the LSC, with which the LSC must comply. Directions may not relate to the funding of activities carried on by individuals or individual bodies. This is to ensure that the LSC has sole responsibility for individual funding decisions without influence from the Secretary of State. The Secretary of State currently has a similar power to give directions to the FEFCE (see section 56 of the Further and Higher Education Act 1992.) The Secretary of State will be able to intervene if he considers that the LSC has failed to discharge a statutory duty or has acted or is proposing to act unreasonably in the exercise of its functions.
70. **Section 26** introduces **Schedule 3** which requires the LSC to set up a young people's learning committee and an adult learning committee (as well as giving the LSC the power to establish such other committees as it thinks fit). These two committees will advise the LSC on the learning needs, respectively, of young people (up to the age of 19) and of adults. Schedule 3 specifies the remit of the young people's and adult learning committees and contains general provisions about committees of the LSC.
71. **Section 27** gives the Secretary of State the power to fund the LSC by making grants, which may be subject to conditions including conditions on the funding of others by the LSC. Those conditions may not relate to the funding of particular individuals or of individual bodies. **Section 28** requires the LSC to report annually on its activities. The report will include a financial report. The Secretary of State will present the report to Parliament. **Section 29** defines the LSC's financial year.