

# EDUCATION ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 7: Post-16 Education and Training**

#### **Abolition of the Young People's Learning Agency for England**

#### ***Section 66: Abolition of the Young People's Learning Agency for England***

323. **Section 66** repeals the provisions in ASCLA 2009 that established the Young People's Learning Agency for England (the YPLA), an arm's length body. The section therefore abolishes the YPLA and its functions will be discharged by the Secretary of State. The Government intends that the functions will be carried out by a non-statutory agency within the Department for Education, as proposed in *The Importance of Teaching: the Schools White Paper* (2010).

#### ***Section 67: abolition of the YPLA: consequential amendments***

324. **Section 67** gives effect to Schedule 16 which removes references to the YPLA from some legislation and amends other legislation to replace references to the YPLA with references to the Secretary of State, where applicable. Section 67 also enables the Secretary of State to make changes to subordinate legislation by order in consequence of section 66.

#### ***Schedule 16***

325. **Schedule 16** makes amendments to primary legislation consequential on the abolition of the YPLA. Many of the amendments simply remove references to the YPLA from other Acts, but some substitute references to the YPLA with references to the Secretary of State. This approach is necessary, for example, in provisions that refer to funding received by the YPLA which will in the future be provided by the Secretary of State (see, for example, the amendment made to the Education (Fees and Awards) Act 1983 by *paragraph 5*, the amendment made to the Employment Act 1988 by *paragraph 7*, the amendment made to section 123 of EIA 2006 by *paragraph 30* and the amendments made to sections 13, 72 and 132 of ESA 2008 by *paragraphs 41, 42 and 44*).

326. Some of the functions of the YPLA are to be continued by the Secretary of State. So, for example, *paragraph 11* inserts a new section 15ZD into EA 1996 providing that local authorities must have regard to guidance issued by the Secretary of State in performing their duties in relation to education and training for persons over compulsory school age. This replaces section 72 of ASCLA 2009, which made similar provision about guidance to be issued by the YPLA.

327. Other functions of the YPLA that are transferred to the Secretary of State include consultation by a governing body proposing to discontinue a school providing full-time education to pupils over compulsory school age (see the amendment to section 30 of SSFA 1998 made by *paragraph 12*) and the function of receiving any proceeds received by trustees from the sale of land when a sixth form college is discontinued

(see the amendments made to section 144 of LSA 2000 by [paragraph 15](#)). Some of the information-sharing powers of the YPLA are also transferred to the Secretary of State, such as the power under section 77 of ESA 2008 (see [paragraph 43](#)) and the power under section 122 of ASCLA 2009 (see [paragraph 48](#)).

### ***Section 68: Abolition of the YPLA: transfer schemes***

328. [Section 66](#) gives effect to Schedule 17, giving power to the Secretary of State to make a scheme to enable the transfer of staff, property, rights and liabilities from the YPLA to the Secretary of State (to provide, for example, for transfers to the Department for Education).

## **Apprenticeships**

### ***Section 69: The apprenticeship offer***

329. [Section 69](#) places a new duty on the Chief Executive of Skills Funding (“the Chief Executive”) to prioritise funding for apprenticeship training for specified groups of young people. It also gives effect to [Schedule 18](#) which repeals sections 91 to 99 of ASCLA 2009 (which have not been commenced), which placed a duty on the Chief Executive to secure an apprenticeship place for all suitably qualified young people in these groups.
330. [Section 69](#) inserts sections 83A and 83B into ASCLA 2009.
331. New section 83A places a duty on the Chief Executive of Skills Funding (the “Chief Executive”) to fund apprenticeship training by securing the provision of proper facilities for every young person in certain specified groups who has secured an apprenticeship opportunity. The effect of this section is to give higher funding priority for apprenticeship training for these young persons. This duty is known as “the apprenticeship offer”. The apprenticeship offer applies in England only.
332. An apprenticeship opportunity is defined in section 83A(3) as being an opportunity to enter an apprenticeship agreement; a contract of employment in connection with which training in accordance with an apprenticeship framework will be provided; or an opportunity to undertake other kinds of working in relation to which the apprenticeship alternative completion conditions in section 1(5) of ASCLA 2009 apply.
333. Proper facilities are defined in section 83A(8) as being those which are of a sufficient quantity and adequate quality to meet the reasonable needs of individuals. The training must be suitable to the apprentices’ needs, and in determining this, the Chief Executive must have regard to the factors in section 83(2) and (3) of ASCLA 2009. The Chief Executive must make best use of resources.
334. The persons who are eligible for the new apprenticeship offer are the same as those who are eligible for the current apprenticeship offer in ASCLA 2009, and are:
- all young people aged 16 to 18;
  - people aged 19 to 24 who are care leavers (explained below); and
  - people aged 19 to 24 with a disability or learning difficulty who are of a prescribed description (as set out below).
335. For the purposes of the apprenticeship offer, a “care leaver” is a person aged under 21 who was looked after by the local authority before and after turning 18 and to whom a local authority owes duties under section 23C of CA 1989, or a person to whom an authority owes duties under section 23CA of that Act (that is, a person to whom the authority no longer owes duties under section 23C, but who wishes to pursue education or training). The duties provided for by section 23CA may continue to be owed until the person reaches the age of 25.

336. Section 83A(6)(b) provides a regulation-making power to specify descriptions of persons who will be eligible for the apprenticeship offer. It is intended that these will be people with disabilities or learning difficulties, and that the definition of the people to be included in the prescribed description will be based on the advice of external disability experts. These regulations will be subject to the negative resolution procedure.
337. Section 83A(12) gives the Secretary of State powers to amend the description of the persons covered by the apprenticeship offer by order subject to the affirmative resolution procedure.
338. New section 83B limits the scope of the apprenticeship offer by specifying that the duty to fund apprenticeship training under the offer applies to one completed apprenticeship at each apprenticeship level. This would mean that a person who has already completed an apprenticeship or holds an apprenticeship certificate at that level has no right to be funded under the apprenticeship offer to train for a second apprenticeship in a different skill, trade or occupation at the same level. Other evidence of experience and attainment at a similar or higher level could also be taken as equivalent to an apprenticeship certificate.

### ***Schedule 18***

339. This Schedule repeals sections 91 to 99 of ASCLA 2009, which have not been commenced. These sections place a duty on the Chief Executive to secure an apprenticeship place for every suitably qualified person within specified categories of people, set out the terms of this offer and criteria for its fulfilment, specified eligibility criteria and gave the Secretary of State powers to suspend the offer. This Schedule also repeals section 104 of ASCLA 2009, in consequence of the repeal of sections 91 to 99. The Chief Executive retains a power to provide assistance and support under section 110(6) of ASCLA 2009.
340. This Schedule also makes consequential amendments related to the repeal of sections 91 to 99 and 104 of ASCLA 2009, and to the new sections inserted by section 69.

### ***Section 70: Securing the provision of apprenticeship training***

341. **Section 70** amends the duty on the Chief Executive in section 85 of ASCLA 2009 so that the Chief Executive is under a duty to make reasonable efforts to secure employers' participation in apprenticeship training for all young people within the specified groups which are covered by the redefined apprenticeship offer set out in [section 69](#). These groups are young people aged 16 to 18; young people aged 19 to 24 with a disability and/or learning difficulty assessment; and young care leavers. (Other persons may be prescribed through regulations). This replaces the existing duty on the Chief Executive in section 85(1)(a) of ASCLA 2009 to promote apprenticeships for young people to employers and encourage them to employ young people as apprentices.
342. It also amends section 118 of ASCLA 2009 to specify that any guidance issued by the Secretary of State to the Chief Executive under this section must include guidance about this duty.

### ***Section 71: apprenticeship certificates***

343. **Section 71** replaces section 6 of ASCLA 2009. The new section provides that the certifying authority for apprenticeships in England will be the person designated for that purpose by the Secretary of State. Where a person has not been designated, the Secretary of State will be the English certifying authority. Subsection (2) provides that only one person at any one time may be designated to issue apprenticeship certificates for a particular sector and subsection (3) provides that the designated person must comply with directions and have regard to guidance given by the Secretary of State. Subsection (4) allows the Secretary of State to amend or revoke the designation.

344. The effect of the amendments made by section 71 is that the Chief Executive of Skills Funding is no longer the English certifying authority. Section 6 of ASCLA 2009 is now largely similar to the arrangements for Wales in section 10 of the same Act.
345. The section also makes minor and consequential amendments to ASCLA 2009 relating to the new section 6.

## **The Chief Executive of Skills Funding**

### ***Section 72: Consultation by Chief Executive of Skills Funding***

346. **Section 72** inserts new section 118A into ASCLA 2009. The new section provides a power for the Secretary of State to direct the Chief Executive of Skills Funding to consult with specified people or descriptions of persons on matters associated with the performance of the Chief Executive's functions. A direction issued under this section can also set out the way in which the consultation is to be carried out. For example, the direction could specify that the consultation must take place through the establishment of a formal advisory group consisting of specified individuals or representatives of specific named bodies. The new section does not prevent the Chief Executive from carrying out other forms of consultation, including with individuals and representative bodies who are not named in any direction.

### ***Section 73: Functions of the Chief Executive of Skills Funding***

347. **Section 73(2)** amends section 88 of ASCLA 2009 so that the entitlements to fee remission on the first full vocational qualification at level 2 and specified qualification at level 3 are restricted to those aged over 19 and under 24.
348. **Section 88** places a duty on the Chief Executive of Skills Funding to ensure that students will not be liable to pay fees for courses of study provided as a result of section 87, which places a duty on the Chief Executive to secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications. This section amends the section 88 duty on the Chief Executive to restrict it to the first full specified vocational qualification at level 2 and specified level 3 qualifications for those over the age of 19 and under 24.
349. The definitions of level 2 and level 3 qualifications are set out in Schedule 5 to ASCLA 2009:
- level 2 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Secondary Education in five subjects, each at Grade C or above;
  - level 3 is the level of attainment (in terms of breadth and depth) which, in the opinion of the Secretary of State, is demonstrated by the General Certificate of Education at the advanced level in two subjects.
350. **Subsection (3)** repeals sections 112 to 114 of ASCLA 2009 and so removes the power of the Secretary of State to specify a body to set out a strategy for the delivery of education and training in a specified area in England and keep it under review; and the requirement for him to provide, by regulations, for the establishment of such a body in relation to Greater London. This repeal also removes the requirement for the Chief Executive of Skills Funding to carry out any function to which any such strategy relates, in accordance with that strategy.
351. Subordinate legislation made under these provisions currently provides for three such bodies – in London, Manchester and Birmingham. While the repeal of this legislation removes the statutory basis for these bodies, it does not prevent them from agreeing strategies and priorities with their local training organisations and colleges. Those relationships may proceed on the basis of a shared concern to meet the skills needs of the local economy rather than a requirement for one body to exert control over the others.

## **Raising the participation age: commencement**

### ***Section 74: Duty to participate in education or training: commencement***

352. Part 1 of ESA 2008 places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier) and is commonly known as “Raising the Participation Age”. Section 74 amends section 173(9) and (10) (the commencement provisions) of ESA 2008 to give the Secretary of State more flexibility as to the timing of the commencement of elements of Part 1 of that Act.
353. This amendment will not affect the commencement of sections 1 to 10 of ESA 2008, including the duty on young people to participate in education and training and the duty on local authorities to promote fulfilment of that duty. These sections must still be brought into force in part by 2013, and fully by 2015.
354. However, the amendment enables the remainder of Part 1 to be commenced at a point decided by the Secretary of State. In particular, the Secretary of State will keep under review the appropriateness of commencing Chapter 5 of Part 1, which provides for an enforcement mechanism involving local authority enforcement notices, panels, penalty notices, and ultimately a criminal offence for failure to comply with an attendance notice. The commencement of other duties may be affected, including those on employers, parents, and the requirement on local authorities to identify those young people not meeting the central duty.