

EDUCATION AND SKILLS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Local education authority

Legal background

Part 1: Duty to participate in education or training: England

Chapter 6: Miscellaneous

63. For the purposes of Part 1, *section 61* enables regulations to state who is to be treated as the employer in relation to ways of working prescribed under section 5, and to modify provisions in their application to these prescribed ways of working, to reflect different circumstances. One effect of this section is that persons who are not normally regarded as employers (for example, the person in charge of a young person's voluntary work) could be treated as employers for these purposes.
64. *Section 62* sets out how Crown employees are to be treated in relation to Part 1 of the Act. They are to be treated as if employed under contracts of employment.
65. Although the duties on employers in Chapter 3 of Part 1 apply in relation to employment in the House of Lords and House of Commons respectively in the same way that they do to employment of all other young people, *section 63* and *subsection (3) of section 64* provide that the powers for local authorities to take enforcement action not to apply.
66. *Section 65* provides that financial penalties are payable to the local education authority and that funds from them can only be used for specified functions, which it is intended will be the process of giving and administering of penalty notices, or paid to the Secretary of State. Where a penalty notice has been given to an employer, it is not enforceable whilst a notice of objection or an appeal is outstanding.
67. *Section 67* enables the Secretary of State, by order, to make provision for Wales corresponding to the duties on employers in sections 19 to 36, and related provisions in sections 37, 38, 39, 61, 62 and 65. This power would apply only if the National Assembly for Wales made a Measure that appeared to the Secretary of State to correspond to section 2 of the Bill – effectively a Measure raising the participation age in Wales. The National Assembly for Wales could not currently make such a Measure, but could gain the competence to do so in future through a Legislative Competence Order under section 95 of the Government of Wales Act 2006. This section ensures that if the participation age were raised in Wales in future, the duties on employers could be applied in Wales too, and would apply in the same way to employers on either side of the border. Before an order can be made under this section the Welsh Ministers must be consulted.