



# Education and Skills Act 2008

## 2008 CHAPTER 25

### PART 1

#### DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND

VALID FROM 28/06/2013

#### [<sup>F1</sup>CHAPTER 3

#### EMPLOYERS]

##### Textual Amendments

- F1** Words in Act substituted (5.5.2010) by [The Local Education Authorities and Children's Services Authorities \(Integration of Functions\) Order 2010 \(S.I. 2010/1158\)](#), [Sch. 2 para. 15\(2\)](#)

PROSPECTIVE

#### *Interpretation*

#### **19 Contracts to which Chapter applies**

- (1) In this Chapter, “relevant contract of employment” means a contract of employment—
- (a) under which the employee is required to work for at least 20 hours per week,
  - (b) which—
    - (i) has a fixed term of 8 weeks or longer, or
    - (ii) does not have a fixed term but can reasonably be expected to be, or has been, in force for at least 8 weeks, and

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- (c) under which the place of work, or one of the places where the employee may be required to work, is in England.
- (2) But a contract is not a “relevant contract of employment” if—
- (a) the employer has undertaken to provide the employee with sufficient relevant training or education in each relevant period, and
  - (b) by virtue of the contract, the employee is in full-time occupation for the purposes of this Part.

## **20 Appropriate arrangements**

- (1) For the purposes of this Chapter, a person to whom this Part applies has made appropriate arrangements for training or education if—
- (a) the person has enrolled on a course or courses constituting relevant training or education (or arrangements have otherwise been made for the person to receive relevant training or education), or
  - (b) the person is participating in full-time education or training.
- (2) References in this Chapter to appropriate arrangements made by the person are to the arrangements (of whatever kind and whether or not made by the person) for the person to receive the training or education in question.

PROSPECTIVE

### *Commencement of employment*

## **21 Appropriate arrangements to be in place before employment begins**

- (1) A person must not, as employer, enter into a relevant contract of employment with a person to whom this Part applies without being satisfied, having taken all such steps as are reasonable to ascertain, that the person has made appropriate arrangements for training or education.
- (2) In the case of a relevant contract of employment which provides for commencement of the employment to be conditional on the employee's having made such arrangements—
- (a) subsection (1) does not apply, but
  - (b) the employer must not permit the employment to commence, at a time when the employee is a person to whom this Part applies, without being satisfied, having taken all such steps as are reasonable to ascertain, that the employee has made appropriate arrangements for training or education.
- (3) Failure to comply with this section in relation to a contract of employment is not to be taken to affect the validity of the contract.

## **22 Financial penalty for contravention of section 21**

- (1) Where a relevant [F<sup>1</sup>local authority] is satisfied that a person (“the employer”) has contravened section 21, the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.

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- (2) The amount of the financial penalty is to be determined in accordance with regulations.
- (3) A penalty notice must state—
  - (a) particulars of the contravention of section 21 in respect of which the penalty is imposed,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given),
  - (e) the steps that the employer may take if the employer objects to the giving of the penalty notice, including how the employer may appeal against it, and
  - (f) the consequences of non-payment.
- (4) For the purposes of subsection (1), a [F1local authority] is a relevant [F1local authority] in relation to a contract of employment under which a person to whom this Part applies is employed if—
  - (a) the person belongs to the authority's area, or
  - (b) the person's place of work, or one of the places at which the person works, under the contract is in the authority's area.
- (5) Without prejudice to section 166(6), regulations under subsection (2) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).

### **23 Withdrawal or variation of penalty notice given under section 22 following notice of objection**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 by a [F1local authority].
- (2) The employer may, by giving notice (a “notice of objection”) to the authority, object to the giving of the penalty notice on either or both of the following grounds—
  - (a) that the employer did not commit the contravention of section 21 stated in the penalty notice;
  - (b) that the amount of the penalty stated in the penalty notice is too high.
- (3) A notice of objection—
  - (a) may be given to the authority only during the period of 2 weeks beginning with the day on which the penalty notice was given to the employer, and
  - (b) must state the grounds of the objection and the employer's reasons for objecting on those grounds.
- (4) A [F1local authority] must consider a notice of objection given under subsection (2) and, by giving notice (a “determination notice”) to the employer—
  - (a) withdraw the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 22(2) is smaller than the amount stated in the penalty notice, replace the penalty with the smaller amount, or
  - (c) confirm the penalty notice.

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- (5) The determination notice must be given within the prescribed period beginning with the day on which the notice of objection was given.
- (6) Where, under subsection (4)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.

#### **24 Appeal against penalty notice given under section 22**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 22 and—
  - (a) the period during which a notice of objection may be given in relation to the penalty notice has expired, and
  - (b) if a notice of objection has been given in relation to the penalty notice, a determination notice has been given in relation to the notice of objection.
- (2) The employer may appeal to the First-tier Tribunal against the giving of the penalty notice on one or more of the following grounds—
  - (a) that the employer did not contravene section 21 in the way stated in the penalty notice;
  - (b) that the circumstances of the contravention of section 21 stated in the penalty notice make the giving of the notice unreasonable;
  - (c) that the amount of the penalty stated in the penalty notice is too high.
- (3) On an appeal under this section, the First-tier Tribunal may—
  - (a) allow the appeal and cancel the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 22(2) is smaller than the amount stated in the penalty notice, allow the appeal and replace the penalty with the smaller amount, or
  - (c) dismiss the appeal.
- (4) Where, under subsection (3)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.
- (5) In subsection (1), “notice of objection” and “determination notice” have the same meanings as in section 23.

#### **25 Further power to withdraw penalty notice given under section 22**

- (1) This section applies where—
  - (a) a penalty notice has been given to a person (“the employer”) under section 22 by a [<sup>F1</sup>local authority], and
  - (b) any appeal made under section 24 in respect of the penalty notice has not been determined.
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer.

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## **26 Withdrawal or variation of penalty notice given under section 22: further provisions**

- (1) If a penalty notice is withdrawn under section 23 or 25, any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (2) If the amount of a penalty is reduced under section 23, any sum already paid or recovered must, to the extent that it was paid or recovered in respect of any amount in excess of the reduced amount, be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (3) In this section “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

PROSPECTIVE

*Employer to enable participation in education or training*

## **27 Duty to enable participation: initial arrangements**

- (1) This section applies where—
  - (a) a person to whom this Part applies is employed under a relevant contract of employment, and
  - (b) before commencement of the employment the person notified the employer in accordance with subsection (3) of appropriate arrangements which the person had made.
- (2) The employer must permit the employee to participate in training or education in accordance with those appropriate arrangements.
- (3) A person notifies an employer (or a prospective employer) of appropriate arrangements in accordance with this subsection by giving a notice which—
  - (a) specifies the arrangements,
  - (b) states the times when the person would need to be not at work in order to participate in training or education in accordance with those arrangements, and
  - (c) if so required under subsection (4), is given in writing.
- (4) Such a notice need not be given in writing, but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing.
- (5) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (3)(b) which falls during normal working time, for the employer—
  - (a) if the contract was entered into before the notice was given, to offer to vary the terms and conditions of the contract of employment so as to secure that that time does not fall during normal working time, or
  - (b) in any case, to permit the employee to take that time off.

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- (6) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

## **28 Duty to enable participation: arrangements subsequently notified**

- (1) This section applies where—
- (a) a person to whom this Part applies is employed under a relevant contract of employment, and
  - (b) after commencement of the employment the person notifies the employer in accordance with subsection (4) of appropriate arrangements which the person has made.
- (2) The employer must, so far as is reasonable having regard to the matters mentioned in subsection (3), permit the person to participate in training or education in accordance with those appropriate arrangements.
- (3) Those matters are—
- (a) the needs of the person in order to fulfil the duty imposed by section 2;
  - (b) the circumstances of the employer's business;
  - (c) the effect of the person's absence from work on the running of that business.
- (4) A person notifies an employer of appropriate arrangements in accordance with this subsection by giving a notice which—
- (a) specifies the arrangements,
  - (b) states the times when the employee needs to be not at work in order to participate in education or training in accordance with those arrangements, and
  - (c) if so required under subsection (5), is given in writing.
- (5) Such a notice need not be given in writing but, if it is not, the employer may, on the occasion when the notice is given, require it to be given in writing; and, if the employer does so, the notice is not to be treated as having been given until given in writing.
- (6) The obligation in subsection (2) operates as a requirement, in relation to each of the times specified in the notice under subsection (4)(b) which falls during normal working time, for the employer—
- (a) to offer to vary the terms and conditions of the contract of employment so as to secure that, so far as is reasonable having regard to the matters mentioned in subsection (3), that time does not fall during normal working time, or
  - (b) so far as is reasonable having regard to those matters, to permit the employee to take that time off.
- (7) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

## **29 Sections 27 and 28: extension for person reaching 18**

- (1) This section applies where—

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- (a) a person to whom this Part applies is employed under a relevant contract of employment,
  - (b) the person reaches the age of 18, and
  - (c) at that time the person is participating in a course of education or training for the purpose of fulfilling the duty imposed by section 2.
- (2) The person is to continue to be treated, for the purposes of sections 27, 28 and 30 to 36, as a person to whom this Part applies until one of the following occurs—
- (a) the course of education or training concludes;
  - (b) the person reaches the age of 19;
  - (c) the person ceases to be resident in England;
  - (d) the person attains a level 3 qualification.

### **30 Contravention of section 27 or 28: enforcement notice**

- (1) This section applies where a person to whom this Part applies is employed under a relevant contract of employment.
- (2) Where a relevant [<sup>F1</sup>local authority] in England is satisfied that the employer has contravened section 27 or 28, the authority may give the employer a notice (an “enforcement notice”).
- (3) An “enforcement notice” means a notice requiring the employer to take such steps as are specified in the notice.
- (4) The steps that may be specified in the notice are—
  - (a) to offer to vary the terms and conditions of employment in the manner specified in the notice;
  - (b) to permit the employee to take time off during normal working time at the times specified in the notice.
- (5) But—
  - (a) any variation specified under subsection (4)(a) must be a variation only for the purpose of securing that normal working time does not include any time when, in order to be able to participate in education or training in accordance with appropriate arrangements notified to the employer under section 27(1) (b) or 28(1)(b), the employee needs to be not at work;
  - (b) any time specified under subsection (4)(b) must be a time when the employee needs to be not at work in order to participate in education or training in accordance with appropriate arrangements so notified to the employer;
  - (c) in the case of an enforcement notice given in respect of a contravention of section 28, any steps specified in the notice must be steps which it would be reasonable for the employer to take having regard to the matters mentioned in subsection (3) of that section.
- (6) An enforcement notice must also specify—
  - (a) particulars of the contravention of section 27 or 28 in respect of which the notice is given, and
  - (b) the consequences of failure to comply with any requirement imposed by it.
- (7) Where an enforcement notice requires the employer to offer to vary the terms and conditions of employment under subsection (4)(a)—



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- (a) the employer must make the offer within the time specified in the notice,
  - (b) the employer's offer must not be made directly or indirectly conditional on the employee's agreeing to any other variation of the terms and conditions of employment, and
  - (c) if the employee accepts the employer's offer to vary the terms and conditions of employment, those terms and conditions have effect subject to the variation (but subject to any subsequent variation that may be agreed between the employer and employee).
- (8) Where an enforcement notice requires the employer, under subsection (4)(b), to permit the employee to take time off at specified times during normal working time, the enforcement notice remains in force until—
- (a) the last of the times so specified, or
  - (b) if earlier, the termination of the contract of employment.
- (9) For the purposes of subsection (2), a [F1local authority] is a relevant [F1local authority] in relation to a contract of employment under which a person to whom this Part applies is employed if—
- (a) the person belongs to the authority's area, or
  - (b) the person's place of work, or one of the places at which the person works, under the contract is in the authority's area.
- (10) In this section, “normal working time”, in relation to a contract of employment, means any time when, in accordance with the contract, the employee is required to be at work.

### **31 Financial penalty for non-compliance with enforcement notice given under section 30**

- (1) This section applies where a [F1local authority] has given an enforcement notice to a person (“the employer”) under section 30.
- (2) Where the [F1local authority] is satisfied—
- (a) that the employer has failed to comply with the notice, or
  - (b) in the case of an enforcement notice requiring the employer to offer to vary the terms and conditions of employment by virtue of section 30(4)(a), the employee has agreed to the variation but the employer has failed to give effect to the variation,
- the authority may by notice (a “penalty notice”) require the employer to pay a financial penalty.
- (3) The amount of the financial penalty is to be determined in accordance with regulations.
- (4) A penalty notice must state—
- (a) particulars of the failure by the employer in respect of which the penalty notice is given,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which the penalty must be paid (which must be not less than 4 weeks beginning with the date on which the notice is given),



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- (e) the steps that the employer may take if the employer objects to the giving of the penalty notice, including how the employer may appeal against it, and
  - (f) the consequences of non-payment.
- (5) Without prejudice to section 166(6), regulations under subsection (3) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid).

### **32 Withdrawal of enforcement notice given under section 30**

- (1) This section applies where—
- (a) an enforcement notice has been given to a person (“the employer”) under section 30 by a [F1local authority], and
  - (b) if a penalty notice has been given in respect of the enforcement notice under section 31, any appeal made under section 34 in respect of the penalty notice has not been determined.
- (2) The [F1local authority] may withdraw the enforcement notice by giving notice of the withdrawal to the employer.
- (3) After the withdrawal, no penalty notice may be given under section 31 in respect of—
- (a) any failure to comply with the enforcement notice, or
  - (b) any failure to give effect to any variation of terms and conditions of employment required by the enforcement notice to be offered,
- which occurred before the enforcement notice was withdrawn.
- (4) Where an enforcement notice is withdrawn—
- (a) any penalty notice given under section 31 in respect of the enforcement notice ceases to have effect, and
  - (b) any sum paid or recovered in respect of any such penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (5) In subsection (4)(b) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).
- (6) A notice of withdrawal under subsection (2) must state the effect of the withdrawal (but a failure to do so does not make the notice of withdrawal ineffective).

### **33 Withdrawal or variation of penalty notice given under section 31 following notice of objection**

- (1) This section applies where a penalty notice has been given to a person (“the employer”) under section 31 by a [F1local authority] in respect of a failure of a kind mentioned in subsection (2) of that section relating to an enforcement notice.
- (2) The employer may, by giving notice (a “notice of objection”) to the authority, object to the giving of the penalty notice on one or more of the following grounds—
- (a) that the employer did not contravene section 27 or 28 in the way stated in the enforcement notice;
  - (b) that the requirements imposed by the enforcement notice were unreasonable;

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- (c) that the employer did not fail in the way stated in the penalty notice;
  - (d) that the amount of the penalty stated in the penalty notice is too high.
- (3) A notice of objection—
- (a) may be given to the authority only during the period of 2 weeks beginning with the day on which the penalty notice was given to the employer, and
  - (b) must set out the grounds of the objection and the employer's reasons for objecting on those grounds.
- (4) A [<sup>F1</sup>local authority] must consider a notice of objection given under subsection (2) and, by giving notice (a “determination notice”) to the employer—
- (a) withdraw the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 31(3) is smaller than the amount stated in the penalty notice, replace the penalty with the smaller amount, or
  - (c) confirm the penalty notice.
- (5) The determination notice must be given within the prescribed period beginning with the day on which the notice of objection was given.
- (6) Where, under subsection (4)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.

### **34 Appeal against penalty notice given under section 31**

- (1) This section applies where a penalty notice has been given to a person under section 31 in respect of a failure of a kind mentioned in subsection (2) of that section in relation to an enforcement notice and—
- (a) the period during which a notice of objection may be given in relation to the penalty notice has expired, and
  - (b) if a notice of objection has been given in relation to the penalty notice, a determination notice has been given in relation to the notice of objection.
- (2) The person may appeal to the First-tier Tribunal against the giving of the penalty notice on one or more of the following grounds—
- (a) that the person did not contravene section 27 or 28 in the way stated in the enforcement notice;
  - (b) that the circumstances of the contravention of section 27 or 28 stated in the enforcement notice make the giving of an enforcement notice under section 30 unreasonable;
  - (c) that the requirements imposed by the enforcement notice were unreasonable;
  - (d) that the person did not fail in the way stated in the penalty notice;
  - (e) that the circumstances of the failure stated in the penalty notice make the giving of the notice unreasonable;
  - (f) that the amount of the penalty stated in the penalty notice is too high.
- (3) On an appeal under this section, the First-tier Tribunal may—
- (a) allow the appeal and cancel the penalty notice,
  - (b) if the amount of the penalty determined in accordance with regulations under section 31(3) is smaller than the amount stated in the penalty notice, allow the appeal and replace the penalty with the smaller amount, or

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(c) dismiss the appeal.

- (4) Where, under subsection (3)(b), the amount of a penalty stated in a penalty notice is replaced with a smaller amount, the notice is to have effect as if it had originally stated the smaller amount.
- (5) In subsection (1), “notice of objection” and “determination notice” have the same meanings as in section 33.

### **35 Further power to withdraw penalty notice given under section 31**

- (1) This section applies where—
- (a) a penalty notice has been given to a person (“the employer”) under section 31 by a [<sup>F1</sup>local authority], and
  - (b) any appeal made under section 34 in respect of the penalty notice has not been determined.
- (2) The authority may withdraw the penalty notice by giving notice of the withdrawal to the employer.

### **36 Withdrawal or variation of penalty notice given under section 31: further provisions**

- (1) If a penalty notice is withdrawn under section 33 or 35, any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (2) If the amount of a penalty is reduced under section 33, any sum already paid or recovered must, to the extent that it was paid or recovered in respect of any amount in excess of the reduced amount, be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered.
- (3) In this section “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838 (c. 110).

*Supplementary*

PROSPECTIVE

### **37 Right not to suffer detriment**

After section 47A of the Employment Rights Act 1996 (c. 18) insert—

#### **“47AA Employees in England aged 16 or 17 participating in education or training**

- (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that, being a person entitled to be permitted to participate in education or training by section 27 or 28 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.

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- (2) This section does not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).”

PROSPECTIVE

### 38 Dismissal to be treated as unfair

After section 101A of the Employment Rights Act 1996 insert—

#### “101B Participation in education or training

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that, being a person entitled to be permitted to participate in education or training by section 27 or 28 of the Education and Skills Act 2008, the employee exercised, or proposed to exercise, that right.”

### 39 Other amendments of Employment Rights Act 1996

- (1) The Employment Rights Act 1996 is further amended as follows.
- (2) In section 63A (right to time off for young person for study or training), after subsection (5) insert—
 

“(5A) References in this section to an employee do not include a person to whom Part 1 of the Education and Skills Act 2008 (duty to participate in education or training for 16 and 17 year olds in England) applies, or is treated by section 29 of that Act (extension for person reaching 18) as applying.”;

and, in the title, after “young person” insert “ in Wales or Scotland ”.
- (3) In section 105 (redundancy), after subsection (4A) insert—
 

“(4B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was that specified in section 101B.”
- (4) In section 108 (qualifying period of employment), after subsection (3)(dd) insert—
 

“(de) section 101B applies.”.
- (5) In section 194 (House of Lords staff), in subsection (2)(c), after “47,” insert “ 47AA, ”.
- (6) In section 195 (House of Commons staff), in subsection (2)(c), after “47,” insert “ 47AA, ”.

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