

# SLIM - *Comment*

## The Apprenticeships, Skills, Children & Learning Bill 2009

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The Apprenticeships, Skills, Children & Learning Bill 2009 was debated at Second Reading on 23 February. The House of Commons agreed for it to be sent to a Public Bill Committee that will scrutinise the Bill in detail. The committee consideration of the Bill should be winding up around about now.

The Bill is extremely 'eclectic' having to bring together DCSF and DIUS and can be seen to be linking their ultimate twin ambitions of making the UK the best place in the world in which to grow up, and, achieving achieve world-class skills by 2020. The Bill sets out the following important changes relevant to the skills arena:

- A statutory framework for apprenticeships
- A right to an apprenticeship for suitably qualified 16-18 year olds
- Introduces a right for employees to request time away from their duties to undertake training, and places a corresponding duty on employers to consider such requests seriously and to be able to refuse them only for specified business reasons
- Dissolves the Learning and Skills Council
- Transfers the responsibility for funding education and training for 16-18-year-olds to local authorities
- Makes provisions with respect to the education of offenders
- Creates the Young Person's Learning Agency
- Creates the Skills Funding Agency
- Creates a new regulatory body for qualifications (Ofqual)
- Creates a new agency to carry out the non-regulatory functions currently performed by the Qualifications and Curriculum Authority

I hope you find this *SLIM-Comment* useful

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## Introduction

The Bill contains provisions on a range of policies which span the responsibilities of both DCSF and DIUS. The Bill incorporates proposals previously published in July 2008 as the *Draft Apprenticeships Bill*.

A key element of the Bill is the continued reform of 14 to 19 education and training. Most notably the move to a more demand-led system placing increasing emphasis upon the employer, and secondly the move to increase the participation in education age that builds on the Education and Skills Act 2008, which raised the age of participation in education or training to 18 for all young people from 2015. In line with proposals originally included in the March 2008 White Paper *Raising Expectations: Enabling the system to deliver*, the Bill will put in place the underpinning legislation required to deliver this policy.

Responsibility for funding education and training for young people over compulsory school age but under 19 is transferred from the Learning and Skills Council to local education authorities. Local education authorities will also take on responsibility for the education of young people in custodial establishments, and for the education and training of certain learners with learning difficulties or disabilities up to the age of 25.

The Bill will also establish the Office of Qualifications and Examinations Regulation (Ofqual) as a new independent regulator of qualifications and assessments, while the Qualifications and Curriculum Authority (the QCA) will continue to exercise its non-regulatory role under the new name of the Qualifications and Curriculum Development Agency (the QCDA).

A further body will also be created - the Young People's Learning Agency for England (YPLA), which will support local education authorities in their new role. It will also create the office of Chief Executive of Skills Funding. The holder of this office will head the Skills Funding Agency (SFA). The Chief Executive of Skills Funding will be responsible for establishing and leading a new, demand-led system of skills provision for adults.

## Content

### **Reforms to delivery of post-16 education and training**

The Learning and Skills Council (LSC) is currently responsible for the planning and funding of all post-16 education. It is proposed that from 2010 local authorities will have responsibility for commissioning and funding all education and training for young people up to the age of 19, making them the strategic lead for all children's services from 0-19. A new 'slim-line' body, the Young People's Learning Agency (YPLA) will support and enable local authorities to carry out their new duties.

The LSC's responsibility for post-19 education and training (other than Higher Education) will transfer to the chief executive for skills funding who will head up the new Skills Funding Agency (SFA). The Agency will oversee a new demand-led approach to adult education and training, which will be supported by strengthened advice and support services for adults and employers in the form of a new Adult Advice and Careers Service (AACCS), National Employer Service and National Apprenticeship Service (NAS) .

The SFA will manage the new AACCS, NAS and the existing Train to Gain service. It will also be required to work with agencies involved in skills and employment matters, such as Jobcentre Plus.

### **Provision for 16- to 19-year-olds**

Responsibility for securing education for all 16- to 19-year-olds will be transferred to local authorities, who will plan, commission and fund provision for young people in their area. Because many young people may live in one local authority but receive education in another, local authorities will work together in sub-regional and regional groupings to ensure that commissioning plans are coherent and reflect the ways young people travel for provision across local authority boundaries.

The primary purpose of the YPLA will be to support and enable local authorities to carry out their new responsibilities by providing national frameworks to support planning and commissioning, ensuring coherence of plans, managing the national funding formula, and providing strategic data and analysis. In theory this will work as follows:

1. Once local authority commissioning plans are agreed by the sub-regional group and the regional planning group, the YPLA will check these to ensure that they cohere and are affordable.
2. The YPLA will then fund local authorities to meet their agreed commissioning plans.
3. The YPLA will intervene where there is significant risk that local authorities will not be able to develop robust commissioning plans within the time constraints of the commissioning cycle.

4. The YPLA will perform a number of functions on the Secretary of State's behalf in relation to open Academies.

### **Provision for adults**

The new Skills Funding Agency (SFA) will be responsible for funding post-19 education. It will take a demand-led approach, (*funding will be provided to training-providers on the basis of the students they are able to attract*). The SFA is not intended to undertake a planning or commissioning function. There will be a new duty on colleges and providers to cooperate with each other in the delivery of adult skills provision.

### **Sixth-form Colleges**

Legally, sixth-form colleges are currently part of the further education (FE) sector. Though they have, and will continue to have, many features in common with FE colleges, they have also always maintained a distinct identity, which will now be reflected in a separate legal definition. It is envisaged that the main difference between sixth-form Colleges and general FE colleges is that they will have a closer relationship with their home local authority and a single commissioning and performance management relationship with that authority. The choice of whether to be a sixth-form FC or FE College will rest on whether an institution meets the criteria for sixth-form designation and its own assessment of where its core business lies.

### **16-18 Transport**

As a consequence of the dissolution of the LSC, the role it currently takes in relation to post-16 transport will cease. To take this forward will require a new transport policy statement aimed at the local authority duty - to improve transparency and local accountability.

### **Offender learning**

The aim here is to more closely align the education young offenders receive whilst in custody, with that available in the mainstream sector. The responsibility for securing education for young people in juvenile custody will be placed with local authorities. (Currently, education in juvenile custody is provided through a mix of arrangements in different establishments, some of which is commissioned by the LSC.) The new process should work as follows:

1. Local authorities with juvenile establishments in their area will be under a new duty to commission and fund provision.
2. They will be required to collaborate with relevant partners to develop commissioning plans and to submit these to the YPLA for approval.
3. YPLA will work to ensure that plans are consistent across the country.
4. Funding will then be routed through the YPLA to the local authorities.

Many young people come from one local authority area but are placed by the Youth Justice Board in custody in a different local authority area; a duty will therefore also be placed on the 'home' local authority to promote the young person's educational attainment. This will help to ensure continuity of education as young people move into and then leave custody.

Responsibility for learning and skills provision for adults in prison currently rests with the LSC and the SFA will take on this responsibility.

## **Apprenticeships**

The Bill incorporates proposals that were originally published on 17 July 2008 as the Draft Apprenticeships Bill, and support the Government's plans for the expansion and strengthening of the Apprenticeship programme set out in *"World-class Apprenticeships: Unlocking Talent, Building Skills for All"* (January 2008). The proposals:

1. Place the Apprenticeships programme on a statutory footing. The frameworks will be developed by employers or Sector Skills Councils, but in England can only be issued by one 'issuing authority', (such as a Sector Skills Council).
2. Guarantee that all suitably qualified young people will be entitled to an apprenticeship place.
3. Ensure that young people in schools receive proper information, advice and guidance about vocational training opportunities.
4. Give the SFA Chief Executive the ultimate responsibility for carrying out 'apprenticeship functions', but the bill gives them the power to delegate those functions to the CEO of the new National Apprenticeship Service, who will report directly to the Secretaries of State at both DIUS and DCSF.
5. Will ensure delivery of the Apprenticeship Scheme, whereby sufficient suitable apprenticeship places must be secured to meet the needs of every suitably qualified young person aged 16-18 who wants one. The 'place' has to comprise both a place on a training course and a place for employment. It has to be in one of two chosen sectors, at the appropriate level and within a reasonable travel area. The SFA CEO will work with LAs to decide the number of places that will enable both the LAs and the CEO to fulfil their respective duties.

In practice every apprentice will have to enter into a contract between the employer and the apprentice. The agreement will have a prescribed format, and will set out training, supervision, and the role that the apprentice will be qualified to hold upon completion. The awarding of the final certificate is expected to be carried out by the National Apprenticeship Service.

Importantly, schools will have to include apprenticeships as part of careers education.

## **Establishment of Ofqual and QCDA**

The regulator, Ofqual, was established in interim form in April 2008, and took on the regulatory functions of the Qualifications and Curriculum Authority (QCA). This new Bill will provide for the set up of Ofqual on a formal basis, equipping it with new powers.

The QCA will evolve into the Qualifications and Curriculum Development Agency, which will be responsible for developing and advising ministers on the curriculum and related qualifications. The Agency will also develop and have certain delivery roles in relation to National Curriculum and Early Years Foundation Stage assessments.

## **Right to request time to train**

All employees will be given a right to request from their employer time away from their core duties to undertake training. The employer must consider the request carefully, but can decline it for a good business reason. There will be no obligation on employers to meet the costs of the training or to pay an employee's salary during the training.

## **Further announcements**

There were a number of important new announcements relating to Children and Schools, plus one announcement on Foundation Degrees. In summary these announcements were:

1. Children's Trusts - The Bill will strengthen Children's Trusts by putting Children's Trust Boards on a statutory footing. The Bill will extend the existing duty to cooperate to promote children's well-being to include all maintained schools, Academies, SFCs, FE colleges and Jobcentre Plus. It will also place a duty on the CT Board to prepare, publish and monitor a strategic Children and Young People's Plan.
2. Sure Start children's centres - The Bill will give Sure Start children's centres a specific statutory basis so they become an established part of the universal services available for young children and their families. It places new duties on local authorities to make arrangements for there to be sufficient Sure Start children's centres to meet local needs.
3. Funding of entitlement to free education for 0- to 5-year-olds - Changes will be made so that private, voluntary and independent early years providers as well as maintained providers will be funded from the individual schools budget and be subject to the school funding regulations.
4. School warning notices - Local authorities currently have powers to issue warning notices to enable them to take early and effective action to tackle weak school performance before they result in school failure. If governing bodies do not comply with a notice to the local authority's satisfaction, the local authority can require a school to make arrangements for advisory services or to take a partner to support them. Alternatively,

the local authority may take back a school's delegated budget, add additional governors or replace the governing body with an interim executive board (IEB).

5. Compliance with School Teachers' Pay and Conditions Document (STPCD).
6. Creation of support staff negotiating body - to negotiate on, and agree, a framework for all schools in England to use when determining school support staff pay and conditions, in a similar way that the School Teachers' Pay and Conditions Document does for teachers.
7. Behaviour and attendance improvement partnerships.
8. Alternative provision in Pupil referral units. The Bill proposes measures to require local authorities to replace failing PRUs with a specified alternative, and to hold a competition for replacement PRUs, bringing the intervention regime for PRUs into line with that for mainstream schools.
9. Recording incidents of force to control or restrain pupils.
10. The Bill will extend the powers schools and colleges currently have to search for weapons to cover alcohol, drugs and stolen items.
11. Complaints service - the Bill will reform the current system to give the Local Government Ombudsman the power to resolve complaints which it has not been possible to resolve at school level.
12. School inspection health checks - legislation is required to enable Ofsted to publish the health check statement and to provide for its distribution.
13. Welsh FE colleges will be given equivalent powers to English FE colleges to award foundation degrees.
14. Collection of information (schools and children's services) - the Bill will amend the School Standards and Framework Act 1998 to require local authorities to prepare and publish statements of children's services expenditure.
15. Individual voluntary agreements and student loans - the Bill will close a loophole which allows students to have their student debt wiped out by entering into individual voluntary agreements.

## SLIM-Comments

Though this Bill has been criticised for being rather eclectic (less positive viewers have described it as a dog's dinner) this was always likely to be the case given the Bill's scope and relevance to the work of two Departments. Some critics have suggested that in a recession the need for a Bill to deliver 'up-skilling' may be less essential than one to provide 're-skilling'.

The Bill continues the 'employer-demand-led skills focus' that has dominated 14+ education since Leitch, and does so to increasing criticism from FE and others concerned about the impact on 'traditional provision'. Nonetheless there is much to welcome here. Though the battle to establish vocational education as being as worthy as academic education seems as far from winning as it has ever been, the significant expansion of Apprenticeships over the last 10 years could signal that, as the TUC puts it "a renaissance is underway."

The ambitious plans to guarantee young people an apprenticeship place will be difficult to achieve, particularly in a recession, and may require some innovative solutions – we may need to look at joint apprenticeships and even the clustering of apprenticeships between a number of employers. Greater use may need to be made of levers to increase employer engagement – such as the use of public procurement, sector levies and license to practice arrangements to expand the number of places. But it should still be welcomed.

There has been criticism from the likes of the University and College Union (UCU) that Adult education will be cut off from the rest of the sector and forced to shrink its curriculum offer in line with the Leitch 'demand-led' agenda. The UCU state: "Courses will only be funded if they supply the narrow skills acceptable to employers. Given their past record, UCU has no confidence in employers to fund training of their workforces and given the recession this is even more unlikely."

Sector Skills Councils should be well placed to develop Apprenticeship frameworks – so long as they adequately involve social partners and training providers who have considerable expertise to bring to the table.

SLIM welcomes the right for employees to request time away from their duties to undertake training, and the corresponding duty on employers to consider such requests seriously and to be able to refuse them only for specified business reasons.

The dissolution of the Learning and Skills Council and transfer of responsibilities for funding education and training for 16-18-year-olds to local authorities could provide greater flexibilities and innovation – so long as the SFA and Government are able to resist the temptation to micro-manage – and so long as local authorities are able to grasp the challenges successfully without

losing site of evidence-based skills needs and the benefits that could accrue from working across boundaries.

Ultimately, this Bill provides tremendous opportunities to employers, Sector Skills Councils and other demand-side bodies to influence the provision of skills. It will be intriguing to see how they respond.

## Related Links

### Press Release

[http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn\\_id=2009\\_0025](http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2009_0025)

### The Bill

<http://www.publications.parliament.uk/pa/cm200809/cmbills/055/2009055.pdf>

### Explanatory Notes

<http://www.publications.parliament.uk/pa/cm200809/cmbills/055/en/2009055en.pdf>

### BBC Coverage

<http://news.parliament.uk/2009/03/apprenticeships-skills-children-and-learning-bill-committee/>

### Times Education Supplement Coverage

<http://www.guardian.co.uk/education/2009/feb/05/apprentice-bill-training>

### UCU Comment

[http://www.ucu.org.uk/media/docs/l/8/ucu\\_acslbriefing\\_feb09.doc](http://www.ucu.org.uk/media/docs/l/8/ucu_acslbriefing_feb09.doc)

### LGA Comment

<http://www.lga.gov.uk/lga/aio/1638691>

### Association of Colleges

[http://www.aoc.co.uk/en/Policy\\_and\\_Advisory\\_Work/Public\\_Affairs/apprenticeship-skills-children-and-learning-bill.cfm](http://www.aoc.co.uk/en/Policy_and_Advisory_Work/Public_Affairs/apprenticeship-skills-children-and-learning-bill.cfm)

### TUC

<http://www.tuc.org.uk/skills/tuc-15489-f0.pdf>



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