



RESEARCH PAPER 09/14
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Apprenticeships, Skills, Children and Learning Bill: **apprenticeship & training provisions**

Bill 55 of 2008-09

The *Apprenticeships, Skills, Children and Learning Bill* was presented on 4 February 2009 and the House of Commons Second Reading is scheduled for 23 February.

The Bill would provide for a statutory framework for apprenticeships and would create a right to an apprenticeship for suitably qualified 16-18 year olds. It also includes provisions that would aim to ensure that young people in schools receive information about apprenticeships and vocational training opportunities.

It would introduce a right for employees to request time away from their duties to undertake training. Employers would have a corresponding duty to seriously consider the request and be able to refuse it only for specified reasons relating to the business.

The Bill also includes other measures on education, training and children's services. These parts are covered separately in Library Research Paper 09/15.

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Summary of main points

The number of people in apprenticeships in England has increased in recent years from around 180,000 in 1999/00 to 240,000 in 2006/07. However, in his report on skills, Lord Leitch proposed that the number should increase to 500,000 in the UK by 2020. The Government set out its proposals to reach an equivalent target of 400,000 apprentices in England in its 2008 *World Class Apprenticeships* White Paper.

Following this White Paper, a National Apprenticeships Service has now been established, as well as a matching service to help potential apprentices find employers. Other proposals in the White Paper required primary legislation; a draft *Apprenticeships Bill* was published for scrutiny and consultation in July 2008. The Children, Schools and Families and the Innovation, Universities, Science and Skills Select Committees both examined the draft Bill.

Similar provisions to the draft Bill are now included within this Bill. It would set up a statutory scheme for apprenticeships. This scheme is made up of three key elements: a statement of apprenticeship standards, an apprenticeship framework (a high level curriculum for an apprenticeship in a specified career) and an apprenticeship agreement, a contract between an employer and an apprentice.

Chapter 1 of Part 1 also sets out when and how apprenticeship certificates would be issued. Clause 35 would include apprenticeships within the careers advice that must be given within secondary schools. Separate clauses are included for both England and Wales; these broadly mirror each other but allow differences in schemes between England and Wales.

The Bill would also establish a duty on the new Chief Executive of Skills Funding to provide sufficient, suitable, apprenticeship places for every suitably qualified young person who wants one. It also places a duty to provide or secure facilities to assist people to find apprenticeships.

Clause 39 of the Bill would provide a right for employees to make a request to their employer for time to train and/or study. It would then give the employer a corresponding duty to consider seriously the request and be able to refuse it only for specified reasons relating to the business. The time to train request is modelled on the right already given for certain employees to be able to request a flexible working pattern. This new right is in effect a right to request a flexible working pattern in order to train. It is not a right for employees to have a training course paid for, nor for them to have paid time off work to do the training. Government hopes that initiatives like 'Train to Gain' will help to support this new right.

The provisions on apprenticeships relate to England and Wales only, while the right to request training also covers Scotland.

The Bill includes other measures on education, training and children's services. In particular, it includes provisions on the establishment of the Young People's Learning Agency for England, the Office of the Chief Executive of Skills Funding, the Office of Qualifications and Examinations Regulation and the School Support Staff Negotiating Body. These are covered in Library Research Paper 09/15.

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I Background

The *Apprenticeships, Skills, Children and Learning Bill* was presented on 4 February 2009 and the Commons Second Reading is scheduled for 23 February. This paper looks at the provisions relating to apprenticeships and the right to request training.

The press release that accompanied the Bill said:

The ASCL Bill provides the first complete overhaul of Apprenticeships legislation for nearly 200 years. The new legislation will put apprenticeships on a statutory basis, establish the entitlement to an apprenticeship place for every suitably qualified young person who wants one and will ensure a good quality apprenticeship for apprentices and employers alike.

[...]

The legislation also gives all employees the right to request training during their working lives and puts in place a stronger, more accountable and effective infrastructure to oversee further education and training. Local authorities will take on responsibility for securing education and training for all 16 to 19 year olds, to create a single, joined up offer for all children and young people from 0 to 19, while the new Skills Funding Agency will oversee a new demand-led approach to education and training provision for adults, better tailored to the needs of businesses and learners themselves.¹

Chapter II of this paper looks at apprenticeships. In particular, it covers how the system and policy has developed before looking in detail at the provisions of the Bill and responses to the draft Bill that was published in July 2008.

Chapter III looks at the provisions to give employees a right to request time to train and employers a duty to consider that request.

Other provisions in the Bill are considered in Library Research Paper 09/15.

The remainder of this chapter looks at the UK skills situation in general and recent policy in the area.

A. The Skills Strategy

The Government set out its *Skills Strategy* on 9 July 2003 in a White Paper published by the Department for Education and Skills (DfES), the Department of Trade and Industry (DTI), the Treasury and the Department for Work and Pensions.² On 22 March 2005 the Government published a follow up to the 2003 White Paper titled *Skills: Getting on in*

¹ Department for Children Schools and Families/Department for Innovation, Universities and Skills press release, *New bill to equip the country in meeting the education and skills needs of the economy*, 5 February 2009

² Department for Education and Skills, *21st Century Skills, Realising Our Potential, Individuals, Employers, Nation*, July 2003, Cm 5810

*business, getting on at work.*³ The delivery of education and training are devolved matters. Therefore, the two *Skills Strategy* White Papers relate primarily, although not exclusively, to England.

The 2003 *Skills Strategy* White Paper acknowledged the need to support and encourage individuals to start learning and continue to improve their skills. The Government said that the report was not about new initiatives but about integrating existing programmes and making them more effective. It did introduce a guarantee of a level two skills qualification and an adult learning grant.⁴ The 2005 White Paper included measures on adult skills, particular for those in, or about to enter, the labour market. It confirmed the national extension of the Employer Training Programme (which became Train to Gain) and developed the role of Sector Skills Councils (which have a UK-wide remit).

In December 2004 the Government commissioned the Leitch Review of Skills to identify the UK's "optimal skills mix in 2020 to maximise economic growth, productivity and social justice, and to consider the policy implications of achieving the level of change required". The Leitch Review of Skills published its interim report on 5 December 2005. It stated that:⁵

The UK's skills profile is unimpressive in comparison with other countries. A significantly larger proportion of the adult population in the UK has low qualifications and a significantly smaller proportion holds intermediate level qualifications than many comparator countries. [...]

The UK is consistently out-ranked by countries such as Sweden and Finland, the USA and Germany. In strict terms, the UK performs at or around the OECD mean, though this figure incorporates the qualification profiles of countries such as Mexico, Portugal and Turkey.

More information on the UK skills situation is available in a Library Standard Note.⁶

The Chancellor announced in the 2006 Budget Report that the review would be extended to include better alignment of measures to support "labour market flexibility, better employment outcomes and greater progression to productive and sustainable jobs for those with skill needs".⁷ The Final Report of the Leitch Review of Skills was published on 5 December 2006.

This report projected a sharp decline in low-skilled jobs up to 2020 and the increasing importance of high-tech jobs, particularly in the face of growing international competition. Significantly, it called for a demand-led skills system that meets the needs of, and engages, individuals and employers rather than being centrally planned. Lord Leitch used the initial performance of the Train to Gain programme as an example of the

³ DfES, *Skills: Getting on in business, getting on at work*, March 2005, Cm 6483

⁴ For more information see House of Commons Library Standard Note SN/EP/2589, *The Skills Strategy* [last updated 29 August 2003]

⁵ Leitch Review of Skills, *Skills in the UK: The long-term challenge – Interim Report*, December 2005, p43

⁶ House of Commons Library Standard Note SN/EP/4504, *Skills: statistics and recent developments* [last updated 22 October 2008]

⁷ HM Treasury, *Budget 2006*, HC 968 2005-06, March 2006, p64 (Chapter 3)

success of a demand-led approach. The report outlined a number of objectives for 2020:⁸

- 95% of adults to achieve the basic skills of functional literacy and numeracy, an increase from levels of 85% and 79% respectively in 2005;
- More than 90% of adults qualified to at least level two, an increase from 69% in 2005. A commitment to go further and achieve 95% as soon as possible;⁹
- Shifting the balance of intermediate skills from level two to level three.¹⁰ This would require 1.9 million additional level three attainments over the period and an increase in the number of Apprentices to 500,000 a year; and
- More than 40% of adults qualified to level 4 and above, up from 29% in 2005, with a commitment to continue progression.

Despite these “stretching” objectives and the comments made in the Interim Report on international comparisons, the Final Report did note that in recent years the UK’s education and training program had improved “significantly”:¹¹

The number of working age people in England qualified to level two is estimated to have risen by over 1 million since 2003. The proportion of adults with a high qualification has risen from 21 per cent in 1994 to 29 per cent in 2005. The proportion of people with no qualifications has nearly halved, down from 21 per cent to 13 per cent.

In response to the Leitch Review, the Government published *World Class Skills: Implementing the Leitch Review of Skills in England* in July 2007.¹² The provisions outlined in the paper are designed to help over four million adults learn new skills and improve existing ones over the next three years and, by 2020, “make Britain’s workforce one of the most skilled in the world”. The Government also adopted the targets for 2020 of the Leitch Review as set out above, and stated a further target for 68% of the adult population to be qualified to level three. The key announcements to help achieve these targets were as follows:

- The creation of a new UK Commission for Employment and Skills, Local Employment and Skills Boards and reform of Sector Skills Councils to give employers further influence over both the content and delivery of skills and employment programmes.
- Employers will be given a leading role in the reform and development of vocational qualifications for their sector, and make it easier for them to have their own training programmes accredited.

⁸ Leitch Review of Skills, *Prosperity for all in the global economy – world class skills – Final Report*, December 2006, p37

⁹ Level two refers to a standard equivalent to five GCSEs at A* -C or a National Vocational Qualification at level two.

¹⁰ Level three refers to a standard equivalent to two A levels or a National Vocational Qualification at level three.

¹¹ Leitch Review of Skills, *Prosperity for all in the global economy – world class skills – Final Report*, December 2006, p40

¹² DIUS, *World Class Skills: Implementing the Leitch Review of Skills in England*, Cm 7181, July 2007

- Skills Pledges outlining individual employers' commitment to support their employees to become more skilled and better qualified, with Government help.
- Expansion of Train to Gain.
- The creation of Skills Accounts and the new adult careers service with the aim of providing tailored employment and skills.
- The merger of the Information, Advice and Guidance (IAG) services of learndirect and nextstep providers into a new, universal adult careers service in England, working in partnership with Jobcentre Plus.
- Legislation to strengthen the current funding entitlement for adults to free training in basic literacy and numeracy and to achieve first full level two qualifications.

II Apprenticeships

Apprenticeships hold characteristics that make them unique as a method of learning skills. A 2001 report described these as:

First, they involve on-the-job training, which gives trainees experience of the day-to-day pressures and conventions of working life. Second, they enable a young person to earn while learning. This is an enormously attractive feature to young people who do not want to study full-time and would otherwise not learn, and quite possibly not work either. Third, and linked to this, they closely involve employers; this gives individual firms an opportunity to fashion the training of apprentices to their own requirements, and gives apprentices the chance not only to train but also to engage in a continuing relationship with an employer.¹³

The broad structure of the current system of apprenticeships was launched in 1994 as the Modern Apprenticeships programme. This chapter first looks at the current system before looking at how apprenticeship policy has been developed.

A. History of apprenticeships

Apprenticeship in the United Kingdom can be dated back to the Middle Ages when it originated with the mediaeval craft guilds. By the Tudor period, apprenticeship was generally accepted as a means of technical training in many occupations, although was still undertaken by relatively few children. This system can be described as an "old-style" apprenticeship was the system where:¹⁴

"indentures were drawn up, binding servant to master and vice versa; in which the master personally taught the apprentice; took responsibility for the latter's moral welfare; and gave him board and lodgings"

The 1563 *Statute of Artificers* introduced a national system of training. Among the conditions were that masters were limited to a maximum of three apprentices and that

¹³ Report of the Modern Apprenticeship Advisory Committee, *Modern Apprenticeships – the Way to Work*, September 2001, p5

¹⁴ Charles More, *Skill and the English Working Class*, Croom Helm, 1980, p41

seven years training was required before an apprentice could exercise his trade. These apprenticeships were not always voluntary.¹⁵

This system continued through the 17th and 18th centuries and was the main route for advancement for children. However, the general popularity of apprenticeships waned partly due to conditions in factories and exploitation of young apprentices. In 1814 the 1563 Act was repealed and compulsory apprenticeship was abolished.

Apprenticeship did, however, remain popular in the professions and in occupations where practical skills were important. By the end of the 19th century apprenticeship had spread to newer industries of engineering, shipbuilding, plumbing and electrical work. At a very rough estimate there were over 340,000 apprentices in any year in the early 20th century and apprenticeship was seen as the major means of recruitment into many engineering, shipbuilding, building and woodworking occupations.

Apprenticeships remained important throughout the 20th century. By the mid-1960s, around a third of male school leavers aged 15-17 entered apprenticeships. Harris puts the mid-1960s as the “high water mark” for apprenticeships in Britain:¹⁶

Despite having undergone no major reform, modernisation or expansion, apprenticeships had remained important for much of the twentieth century, though continued to differ from European models in both the limited extent of Government involvement and their lack of compulsory examinations at the conclusion of the apprenticeship term. Nevertheless, the mid-1960s represent the high water mark for apprenticeship in Britain. From the latter years of this decade, the number of apprentices fell precipitously.

In 1970, a pamphlet for the Institute of Personnel Management found that apprenticeships had not coped with changing skill needs and that syllabuses were obsolete, that the system was not integrated with further education and that training was not of a good quality.¹⁷

Nevertheless, as recently as 1974, just under a third of 15-year-old boys leaving school entered apprenticeships. But, figures from the Labour Force Survey show that the number of apprentices in employment fell from around 370,000 in 1979 to 180,000 in 1995.¹⁸

B. Modern Apprenticeships

Proposals for a new apprenticeships scheme were announced at the time of the 1993 Budget.¹⁹ David Hunt, then Secretary of State for Employment, said:²⁰

¹⁵ Mike Harris, *Modern Apprenticeships: an assessment of the Government's flagship training programme: Institute of Directors Policy Paper*, August 2003, Chapter 2: Apprenticeship in Britain and the Development of the Modern Apprentice

¹⁶ *ibid*, p14

¹⁷ Singer and MacDonald, *Is apprenticeship outdated*, Institute of Personnel Management, 1970

¹⁸ [HC Deb 14 June 1993 c450W](#); [HC Deb 10 November 2000 c438W](#)

¹⁹ [HC Deb 30 November 1993 c931](#)

"We must tap the potential of our young people to reach higher levels of achievement and skills if we are to beat our competitors and stay ahead. That is why I plan a new approach to apprenticeship, offering young people work-based training leading to technician, supervisor and similar level qualifications - in other words, modern apprenticeships. We and the Training and Enterprise Councils will be working closely with employers and sector training bodies to prepare for a major increase in the number of apprenticeships available. We are aiming to increase to over 40,000 the number of young people reaching NVQ Level three through training in England - roughly tripling the current number. "

"Young people will also be offered more and better careers guidance to help them choose the best options for gaining qualifications."

"We will be running the apprenticeships using the new and successful arrangements for Youth Credits. Credits will be available nationally to all 16 and 17 year old school leavers from 1995/6, a year earlier than we had originally planned."

In the Budget debate, Mr Hunt gave more details and expanded his vision of the Modern Apprenticeships (MA) scheme:²¹

I am today inviting training and enterprise councils to prepare to offer a full range of modern apprenticeships to young people in all parts of the country. I am also asking them to prepare to offer youth credits to all young people who leave school at 16 or 17 by 1995, so that credits will be the mechanism to give young people access to modern apprenticeships, as well as to other forms of work-based training.

I am also inviting industry training organisations to work up model schemes of training to national vocational qualification level three or above. As the House will know, that is equivalent to A-level standard. Those schemes will describe what young people can expect to achieve and set out clearly the milestones on the way to becoming qualified.

I want apprenticeships to be developed in all sorts of sectors and occupations. Of course, we need modern apprenticeships in engineering. We want electronics and mechanical engineering skills to be brought together, for example. We also want new, modern apprenticeships in areas such as financial services, in hotel and leisure management, in catering, in distribution, in the care sector and in science-based technology industries such as biotechnology. We want apprenticeships in information technology, as it applies across a whole range of sectors and right across the chemical, petrochemical and plastics industries.

I also want to involve small and medium-sized employers as well as big employers. I want to see apprenticeships offered equally to young women as well as to young men. The modern apprenticeship needs to be open to every young person to whom it would be of benefit. I want every apprentice to sign an apprenticeship pledge with an employer. That will clearly set out the training the apprentice can expect to receive, and what, in turn, the employer will expect by

²⁰ Department of Employment Press Release, *David Hunt announces new modern apprenticeship scheme to boost Britain's skills*, 30 November 1993

²¹ [HC Deb 2 December 1993 c1192-3](#)

way of progress and it will enshrine the commitment of each party to see the training through to successful completion. Ideally, it will set out an intended path to a job once the apprenticeship has been successfully completed.

I want to see apprenticeships on offer to the school leavers of 1995 and I want to be able to run pilot schemes in 1994. That will be a challenge because there is a great deal of work that needs to be done and many people will need to play a part. Today, I have written to invite all the main organisations to come in for consultations, including, of course, the national council of the training and enterprise councils and the Confederation of British Industry. I have written to the Trades Union Congress, the National Council for Education and Training Targets and the National Council for Industry Training Organisations. I look forward to receiving their views and also to seeing the first training models that industry will develop in consultation with my Department as soon as possible.

Pilots started running in 40 TEC areas and in 14 sectors from September 1994.²² The scheme was expanded across England from September 1995.²³ Accelerated Modern Apprenticeships were announced in May 1994.²⁴ These were aimed at 18 and 19 year olds. According to Harris, in his review of MAs for the Institute of Directors:²⁵

Modern Apprenticeships (MAs) attempted to combine the traditional strengths of apprenticeship with innovations designed to address its weaknesses. Like their antecedents, MAs incorporated a written agreement between employer and apprentice, specifying the training and qualifications to be undertaken and which was underwritten by the local Training and Enterprise Council (TEC). The Modern Apprentice was also to have employed status and be paid a wage. Gone, however, was the emphasis on time serving, replaced by the competence-based NVQ within training frameworks developed by the National Training Organisations (NTOs). Furthermore, the required NVQ was to be at Level three, thereby distinguishing MAs from previous publicly funded youth training programmes, such as YT, which had led to a level two NVQ.

National Traineeships were launched in 1996 as “a progression route into apprenticeship for those young people who were not ready to enter a level three programme.”²⁶

By September 1998, 225,000 young people had started a Modern Apprenticeship in England and Wales, and 126,000 were in training. The sectors with the most apprenticeship starts were business administration, engineering manufacture and retailing. Early recruitment to MAs was mainly of men, because of the sectors included in the pilots, but by 1998 around half those undertaking MAs were women. Most

²² Department of Employment Press Release, *"Modern Apprenticeships - It's full speed ahead!"* says David Hunt, 27 April 1994; Department of Employment Press Release, *Modern Apprenticeships will be a success story with your help. Ann Widdecombe tells CBI*, 9 May 1994. The sectors were agriculture, business administration, chemicals, child care, electrical installation, engineering manufacturing, engineering construction, information technology, marine engineering, Merchant Navy, polymers, retail, steel and travel service

²³ [HC Deb 23 February 1995 cc274-5W](#); Unemployment Unit Working Brief 60, Dec 1994/Jan 1995, "Signing the Pledge"

²⁴ [HC Deb 24 May 1994 c198](#); *Competitiveness: Helping Business to Win*, HMSO, Cm 2563, 1994

²⁵ Mike Harris, *Modern Apprenticeships: an assessment of the Government's flagship training programme: Institute of Directors Policy Paper*, August 2003, pp18-19

²⁶ [HC Deb 29 March 1996 c1032](#); These became known as Foundation Modern Apprenticeships

employers of apprentices were small firms and very few firms employed more than five apprentices.²⁷ Modern Apprenticeships were hailed as a success by both apprentices and employers.²⁸

C. Policy development from 1997

Despite the early success, there remained some issues with the scheme. A study published in the *National Institute Economic Review* said:

MA has increased the contribution of youth programmes to national skill supplies. Like Youth Training before it, the programme contains some excellent training. Overall, however, its contribution has been limited, leaving MA well short of the mark set by German apprenticeship. Rates of qualification and completion remain low, as does employer involvement. Apprenticeship activity appears not to have increased, despite an unprecedented rate of subsidy. Opportunities to secure high quality vocational preparation remain hard for young people to find.²⁹

In its second report in 1999, the National Skills Task Force made recommendations to improve the quality and standing of apprenticeships, including more vocational training in higher education (graduate apprenticeships) and changing National Traineeships into Foundation Apprenticeships as a step towards a full MA. Following this, there were a number of Government-sponsored enquiries into apprenticeships which led to the *World-Class Apprenticeships* White Paper and the apprenticeship provisions in this Bill.

1. Modern Apprenticeship Advisory Committee

In 2000, the then Department for Education and Employment (DfEE) ran a consultation on reforming Modern Apprenticeships. In March 2001, Tessa Blackstone, then Education and Employment Minister, announced the establishment of the Modern Apprenticeship Advisory Committee under the chairmanship of Sir John Cassels.³⁰ The DfEE Press Release set out its task:³¹

It is charged with drawing up a three-year action plan for the development, promotion and delivery of modern Apprenticeships. It has also been asked to advise on arrangements for replacing 'other training' - work-based training not covered by apprenticeship frameworks - with more suitable provision.

The Committee's report, *Modern Apprenticeships – the Way to Work*,³² was submitted to the Department for Education and Skills (DfES) and Learning and Skills Council (LSC) in

²⁷ "Modern Apprenticeships: four years on", *Labour Market Trends: February 1999*, Office for National Statistics, pp75-82

²⁸ "Employers welcome the Modern Apprentices", *Times Educational Supplement: FE Focus*, 5 September 1997

²⁹ Ryan and Unwin, "Apprenticeship and the British Training Market", *National Institute Economic Review*, 2001

³⁰ Department for Education and Employment Press Release, *Tessa Blackstone announces extra £180 million for thousands more Modern Apprenticeships*, 27 March 2001

³¹ *ibid.*

³² Report of the Modern Apprenticeship Advisory Committee, *Modern Apprenticeships – the Way to Work*, September 2001

September 2001. It contained a number of recommendations covering a national framework for Apprenticeships, content and certification, and delivery and promotion of Apprenticeships. In November 2001, the Government announced that it would introduce some of the recommendations made by the Committee including:³³

- a national framework for Apprenticeships which defines basic standards and strengthens the relationship between the employer and apprentice;
- an entitlement to a Modern Apprenticeship place for all 16 and 17 year olds with five or more GCSE passes at grades A* to G, from September 2004;
- a £16 million marketing campaign, over three years from January 2002 to promote Apprenticeships and boost take-up among employers and young people;
- new technical certificates for Modern Apprenticeships which ensure in-depth technical knowledge is a key component of the Apprenticeship Diploma; and
- a new leaflet calling on public sector organisations to embrace the next generation of Apprenticeships.

2. Modern Apprenticeships Task Force

The Modern Apprenticeships Task Force was announced in November 2002. It was charged with looking at employers' issues with MAs including those of small and medium-sized enterprises, the MA framework, particular problems faced by some sectors in recruiting and training young people, and measures to support improved completion rates.³⁴ The taskforce was launched in February 2003, chaired by Sir Roy Gardner, chairman of Centrica.³⁵

The Government's 2003 *Skills Strategy* White Paper also raised some concerns about Apprenticeships:³⁶

Our best Modern Apprenticeship programmes already match the best in the world. But there have been concerns about the quality of some programmes, the completion rates, and the wide variation between sectors in the quality of training and outcomes. We must ensure that all Modern Apprenticeships are of sufficiently high quality to attract many more learners and employers.

In May 2004, the Government announced significant changes to the Modern Apprenticeships scheme.³⁷ These represented both a further response to the Cassels Report and to the first year of the Modern Apprenticeships Task Force. The main points were:

³³ Department for Education and Skills Press Release, *Morris, Brown and Hewitt announce new plans for Modern Apprenticeships*, 29 November 2001

³⁴ HM Treasury, *Pre-Budget Report 2002*, HC 592 2001-02, November 2002, para 3.86

³⁵ HM Treasury, *Modern Apprenticeships Taskforce launch*, 25 February 2003; HM Treasury press release, *Apprenticeships come of age to plug skills gap*, 25 February 2003; "Apprenticeship scheme goes national and aims for greater employer input", *Times Higher Education*, 28 February 2003

³⁶ DfES, *21st Century Skills, Realising Our Potential, Individuals, Employers, Nation*, July 2003, Cm 5810, para 5.23

³⁷ DfES press release, *New Apprenticeships will widen opportunity and boost business – Clarke*, 10 May 2004; "Radical reforms to apprenticeships", *LSC Apprenticeships News*, Issue 2, May 2004; "Clarke announces apprenticeships shake-up", *The Guardian*, 10 May 2004

- brand new 'Young Apprenticeships' for 14-16 year olds. They will be a high quality opportunity for motivated pupils who could spend up to two days a week in the workplace learning a trade. Initial opportunities will be in engineering, automotive industries, business administration, logistics, and the arts and creative industries;
- a 'Pre-Apprenticeship' offer. This will be based around the very popular 'Entry to Employment' programme for young people that have potential but are not yet ready or able to enter an Apprenticeship or maybe currently disengaged and disenfranchised from learning;
- 'Apprenticeships' at level two (replacing the Foundation Modern Apprenticeship);
- 'Advanced Apprenticeships' (equal to 2 good A Levels or Level three qualification and replacing the Advanced Modern Apprenticeship);
- opening up of 'Apprenticeships' to adults by scrapping the arbitrary 25 year old age limit. Development work will begin immediately with the licensed Sector Skills Councils.

With demand from young people outstripping the supply of places on offer from employers, the launch will be backed up by a major Learning and Skills Council advertising and marketing campaign targeted at increasing the number of employers offering places.

The final report of the Taskforce was published in July 2005.³⁸ It recommended:

- The Ministerial Steering Group for Apprenticeships should ensure that the LSC allocates marketing resources to generate a higher level of Apprenticeships vacancies. The LSC should make greater use of 'sector champions' and their SSCs to involve companies in their sectors.
- A primary role of the proposed National Employer Training Programme (NETP) brokerage service should be to identify new employer Apprenticeships vacancies.
- There are a variety of models of delivery of Apprenticeships that reduce the administrative burden on employers. SSCs, with their employers and relevant providers should be encouraged to explore models most appropriate to their sector and facilitate their adoption.
- Public sector procurement policies should assign priority to skills development and DfES should review progress in its report to the Ministerial Steering Group.
- Careers advice and guidance should be assigned higher weighting in schools and colleges inspections. Schools should publish information on pupils numbers going into Apprenticeships.
- The Government and LSC need to introduce a number of changes to encourage greater diversity in Apprenticeships.
- LSC and its partners need to identify and prioritise the management information that needs to be collected and analysed in order to improve the operational management of Apprenticeships.

It also supported the development of a blueprint for apprenticeship frameworks, and of putting Sector Skills Councils at the forefront of determining their content.

³⁸ Apprenticeships Task Force, [Apprenticeships Task Force: Final Report: The Business Case for Apprenticeships](#), July 2005

3. Other reports on the apprenticeships system

The House of Lords Economic Affairs Committee looked at apprenticeships in the 2006-07 session.³⁹ It found that, in Britain, “many who could and should benefit from apprenticeship have not done so”. Among the problems that it highlighted were:

- Many children leave school without the basic functional literacy and numeracy required for apprenticeship.
- Many schools fail to inform pupils about apprenticeship.
- Individual employers have had too little say in how apprenticeships are run.
- There has been an emphasis on quantity over quality, with completion rates for advanced apprenticeships being unacceptably low.
- Progression though the different levels of apprenticeship and on to higher education needs to be improved.

It concluded by saying:

Successive Governments, not least the present Government, have provided poor leadership in tackling these problems. They have unveiled a stream of policy initiatives. But most have failed to deliver. These failures stem from poor implementation, frequent reorganisations, and the absence of a single Government body to take responsibility for apprenticeships.

A 2008 report from the Nuffield Review of 14-19 Education and Training in England and Wales suggested that participation in apprenticeships could be increased by improved information, advice and guidance on apprenticeship; an increase in the availability of work placements and pre-apprenticeship ‘tasters’; a ‘youth ambassador’ system to collate information on the career pathways of former apprentices; more employers from both the public and private sectors offering apprenticeships; a ‘clearing-house’ for apprenticeships similar to the UCAS model and modernised group training agreements. It also felt that participation by women in traditionally male sectors, and vice versa, should be encouraged as well as encouragement by both black and ethnic minority young people and employers.⁴⁰

A second Nuffield paper looked at the quality of apprenticeships.⁴¹ It saw a challenge in balancing the different aims of government, employers and learners:

The challenge, then, is to produce a regulatory regime that encourages innovation and flexibility in apprenticeship programme design, while also offering some guarantees about the quality of the learning opportunities and experience so that apprenticeship is in the long-term interests of learners.

³⁹ House of Lords Economic Affairs Committee, *Apprenticeship: a key route to skill*, HL 138-I 2006-07, 20 July 2007

⁴⁰ Nuffield Review of 14-19 Education and Training, *Apprenticeship I: Prospects for growth*, Issues Paper 3, January 2008

⁴¹ Nuffield Review of 14-19 Education and Training, *Apprenticeship II: A high-quality pathway for young people?*, Issues Paper 4, January 2008

The Conservative Party published a policy statement on apprenticeships in July 2008. It proposed work-focussed apprenticeships, including direct payments to employers and simplified inspection regimes. The Train to Gain programme would be refocused to provide £775 million for apprentices of all ages. This would create 100,000 additional apprenticeships each year and provide full funding for training for which there is currently an employer contribution. There would also be a £2,000 payment for each apprenticeship at a small or medium-sized business and support for group training associations.⁴²

D. The current system

The current apprenticeship system differs across the UK. In England, apprenticeships are available at level two (Apprenticeship) and level three (Advanced Apprenticeship).

In England, the apprenticeships programme is administered by the Learning and Skills Council (LSC). From April 2009, a new unit, the National Apprenticeships Service will become operational within the LSC (and later the new Skills Funding Agency). Sector Skills Councils are responsible for drawing up apprenticeships frameworks within their sectors. They set out the contents of an apprenticeship and the level of achievement required

An apprenticeship framework must contain these four elements:

- A competence-based element - a National Vocational Qualification (NVQ) at level two or three that is assessed in the workplace;
- A knowledge-based element – a technical certificate, for instance a BTEC National or City and Guilds vocationally-related qualification;
- Transferable skills – this must include key numeracy and communication skills at level one (for Apprenticeships) and level two (for Advanced Apprenticeships) and must normally include an assessment by test;
- Employer rights and responsibilities – a requirement to develop knowledge and understanding of the world of work. This can be included within the NVQ, the technical certificate or as part of an induction programme.

The LSC provides full funding for the courses of 16 to 18 year old apprentices; for those aged 19 and over, an employer contribution is required. In 2008/09 the contribution is 42.5% and this will rise to 50.0% by 2010/11. There is not a set level of funding for a particular apprenticeship, it depends on the elements required to complete a framework. From August 2008, a new, demand-led, funding model was used. This involves a standard value for each 16-18 or 19 & over learner, multiplied by different coefficients for each element and then by the employer contribution. As an example, the LSC put the

⁴² Conservative Party, *Building Skills: Transforming Lives: A Training and Apprenticeships Revolution: Opportunity Agenda Green Paper No. 7*, Conservative Party, July 2008; “Cameron pledge on apprenticeships”, BBC News, 23 July 2008

funding in wood construction at around £8,660 for a 16-18 learner and £5,080 for one aged 19 & over.⁴³

Adult apprenticeships, for those aged 25 and over, were introduced from August 2007, aimed at priority groups.⁴⁴

Apprentices are normally paid a wage. The current minimum is £80 and this is planned to increase to £95 from August 2009.⁴⁵ This is below the minimum wage, although the average wage for apprentices is around £170 per week.⁴⁶

There is no fixed length for an Apprenticeship. They can last between one and five years depending on the particular course and level. The average length of stay for new apprenticeship recruits has been put at 23 months (it is a little lower, 17 months, for those who were recruited from within the business).⁴⁷

Young apprenticeships are available for those aged 14-16. Students spend up to two days per week in the workplace. They were launched in September 2004. They do not follow all of the characteristics of an apprenticeship, but are seen as a useful way to introduce children to the workplace.

Around 12% of employers offer apprenticeship places.⁴⁸ The Apprenticeship Ambassadors Network, an employers group that promotes apprenticeships, lists some advantages of apprenticeships for employers. These include increased staff retention and higher employee satisfaction.⁴⁹ The Network also published research in January 2009 showing that expenditure on apprentices was paid back within three years in engineering and just over one year in the hospitality sector.⁵⁰

Following the 2007 Comprehensive Spending Review, DIUS and DCFS jointly announced plans to expand funding to the LSC for apprenticeships over the period to 2010/11 with the aim of 400,000 learners in England (281,000 aged 16-18 and 125,000 aged over 19) compared with approximately 250,000 in 2006/07.⁵¹ In the 2008/09 academic year, funding was originally just under £1 billion, made up of £630 million for

⁴³ Learning and Skills Council, *Example funding rates for apprenticeships: 2008/09*, August 2008

⁴⁴ LSC, *LSC Funding Guidance 2008/09: Principles, Rules and Regulations*, October 2008, pp53-56; The priority groups are adults working within priority sectors either locally, regionally or nationally; those without employment, including those on incapacity benefit who wish to retrain; individuals seeking an atypical career (e.g. women in construction, men in healthcare)

⁴⁵ DIUS press release, *Denham and Balls announce increase to minimum apprenticeship earnings*, 9 September 2008

⁴⁶ DIUS, *Apprenticeship Pay: 2007 Survey of Earnings by Sector*, Research Report 08/05

⁴⁷ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, p95

⁴⁸ *HC Deb 10 June 2008 c200W*; BERR, *Small and medium enterprise statistics* 2007. There were around 1 million businesses with employees in England

⁴⁹ Apprenticeship Ambassadors Network website, *Why recruit?*
LSC Apprentices website, *The benefits*

⁵⁰ Warwick Institute for Employment Research, *The Net Benefit to Employer Investment in Apprenticeship Training*, November 2008; Apprenticeship Ambassadors Network press release, *Apprentices pay their way*, 6 January 2009

⁵¹ DIUS press release, *Ambitious plan to help boost nation's job prospects*, 16 November 2007

16-18 apprenticeships and £330 million for those aged 19 and over. In January 2009 additional expenditure of £140 million was announced.⁵²

The system of apprenticeships in Wales is similar to that in England and is the responsibility of the Welsh Assembly Government's Department for Children, Education, Lifelong Learning and Skills.⁵³ Foundation Modern Apprenticeships are the equivalent of level two in England and Modern Apprenticeships are the equivalent of level three.⁵⁴ In 2005/06, there were around 16,450 learners on FMAs and 10,880 on Welsh MAs. Wales never had the restriction on over 25s undertaking apprenticeships that was removed in England in 2007; in 2005/06, more than 45% of apprentices were aged 25 or over.⁵⁵

In Scotland, apprenticeships are administered by Skills Development Scotland. In the Scottish Budget passed in February 2009, an additional £16 million was allocated to apprenticeship funding in Scotland.⁵⁶ It is estimated this will increase the number of places by 7,500 to a total of 18,500.⁵⁷ In Northern Ireland, the Department for Employment and Learning is responsible for apprenticeships.⁵⁸ This Bill does not cover apprenticeships in Scotland or Northern Ireland.

1. Statistics

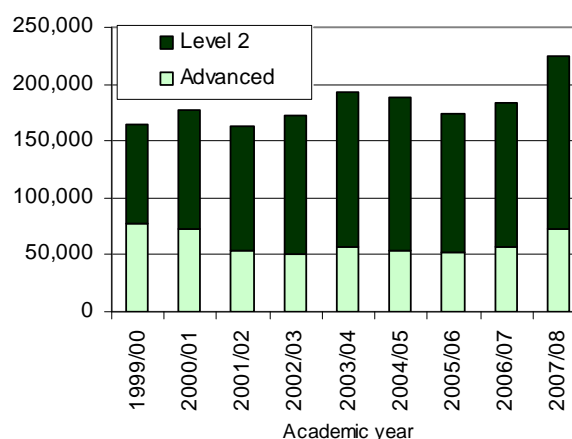
Chart 1 shows the number of apprenticeship starts each year.

The number of starts in 2007/08 was a record at 224,200. There were 151,300 level two apprenticeships started and 72,900 advanced apprenticeships. The number of advanced apprenticeships increased by 28% in 2007/08, taking the number back up to the level of 2000/01.

Figures for earlier years are not directly comparable, but show 75,000 starts on Modern Apprenticeships in 1997/98.⁵⁹

Chart 1: Apprenticeship starts:

England: 1999/00-2007/08



⁵² LSC, *Our statement of priorities: better skills, better jobs, better lives*, November 2007; LSC, *Government Investment Strategy 2009–10, LSC Grant Letter and LSC Statement of Priorities*, November 2008; DIUS press release, *35,000 additional apprentices to help beat downturn and take advantage of the upturn*, 7 January 2009

⁵³ See: <http://new.wales.gov.uk/topics/educationandskills/learners/worklearning/apprenticeships/?lang=en>

⁵⁴ Welsh Assembly Government, *A guide to funding for adult learners*, 2008

⁵⁵ Welsh Assembly Government statistical report, *Further education, work-based learning and community learning in Wales statistics: 2005/06*, 31 January 2008

⁵⁶ Skills Development Scotland website, *Training opportunities*

⁵⁷ Scottish Government news release, *Budget passed by Scottish Parliament*, 4 February 2009

⁵⁸ <http://www.delni.gov.uk/index/successthroughskills/apprenticeshipsni.htm>

⁵⁹ HC Deb 23 July 2002 c991W; HC Deb 3 November 2008 c171W

However, in their report on apprenticeships from 2007, the House of Lords Economic Affairs Committee noted that much of the increase in apprenticeships has been due to the introduction of level two apprenticeships and that the numbers in Advanced Apprenticeships fell between 1999/00 and 2005/06. The total number of young people in government supported work-based learning had not increased.⁶⁰

Provisional data for August to October 2008 show the number of learners starting apprenticeships increasing by 6.3% compared with the same period of 2007. However, within this the numbers of 16-18 year olds and 19-24 year olds starting apprenticeships both fell. This was offset by the expansion of adult apprenticeships (for over 25 year olds) from around 1,600 to 16,800.⁶¹ Planned total starts for 2008/09 are 227,000, rising to 237,000 in 2009/10

The total number of apprentices in LSC-funded learning in England was 239,100 in 2006/07, 22% higher than 1999/00, but 5% lower than in 2005/06. 2007/08 figures have not been published for the number of people participating in apprenticeships.

Completion/success rates

Table 1 shows that completion rates have clearly increased in recent years, at all levels and for all age groups.

There is a Public Service Agreement target to increase the number of apprentices completing a full framework to 130,000 by 2010/11.⁶²

In 2007/08 there were 112,600 completions, a 0.7% increase from the previous year. Targets for 2008/09 and 2009/10 are 118,000 and 129,000 respectively.

Participation by Sector

In 2006/07, there were 20,700 apprenticeship starts in construction, 11% of the total. Hairdressing, business administration and customer service were the next largest sectors. For advanced apprenticeships, electrotechnical and engineering had the highest numbers of starts (see Table A3 in Appendix A for more details).

Table 1

Apprenticeship completion rates by age			
England	Per cent		
	2005/06	2006/07	2007/08
Level 2 apprenticeships			
16-18	51.7	60.1	64.1
19+	50.7	59.9	64.6
All ages	51.3	60.0	64.3
Advanced apprenticeships			
16-18	44.6	57.0	60.8
19+	41.2	55.8	64.3
All ages	42.9	56.3	62.7
All apprenticeships			
16-18	49.6	59.3	63.2
19+	46.7	58.2	64.5
All ages	48.4	58.9	63.7

Source: *Post 16 Education: Learner participation and outcomes in England 2007/08*, The Data Service, December 2008, Table 2

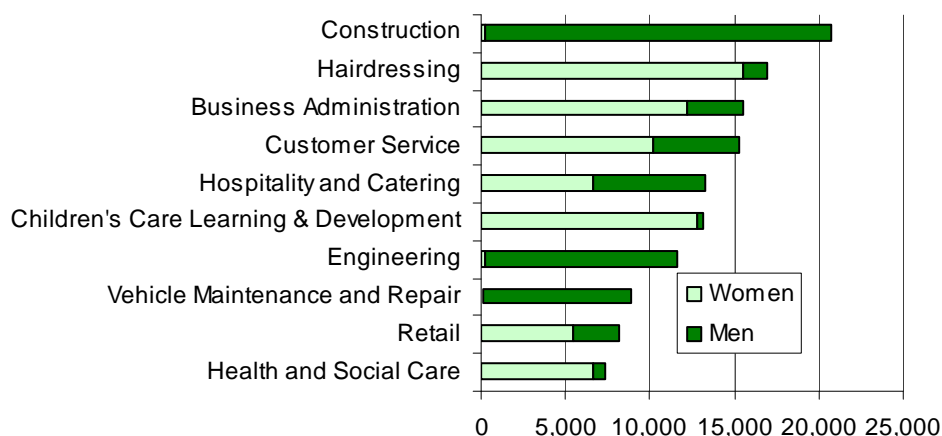
⁶⁰ House of Lords Economic Affairs Committee, *Apprenticeship: a key route to skill*, HL 138-I 2006-07, 20 July 2007, para 25

⁶¹ *The Data Service, Post-16 Education: Learner participation and outcomes in England 2007/08*, SFR 1 v2, 18 December 2008. These are provisional data, the Data Service expect the 2008/09 figures to increase by around 5% once late returns are received

⁶² HM Treasury, *Public Service Agreement 2: Improve the skills of the population on the way to ensuring a world-class skills base by 2020*, October 2007, para 3.11

In the same year, 46% of apprenticeship starters were female. The percentage was higher for level two apprenticeships than for advanced (48% to 42%). The sectors with the most female apprenticeships were hairdressing, childcare and business administration while for men the highest were construction, engineering and vehicle maintenance. Chart 2 shows which of the top ten sectors are predominantly male or female.

Chart 2: Apprentice starts by sector and gender: 2006/07



E. “World Class Apprenticeships”

The final Leitch report on skills, published in December 2006 also contained some specific recommendations on apprenticeships, including increasing the number of apprenticeships to 500,000 per year by 2020 (in the UK). The report noted that there had been some increase in participation but highlighted low completion rates and a view from employers that the process was complex and bureaucratic. Leitch proposed that “the Government should consider creating a new entitlement as resources allow so that every young person with the right qualifications should be able to take up an Apprenticeship place” and that employers should drive the content of apprenticeships through their Sector Skills Council.⁶³

The Government’s strategy for apprenticeships was published in January 2008. This is the policy basis for provisions in the current Bill. The starting point of the review was the aspiration derived from Lord Leitch’s recommendation that there should be 500,000 apprentices in learning in the UK by 2020.⁶⁴ The main proposals were:

The plan sets out objectives to make apprenticeships a mainstream option for 16-18 year olds, alongside other education and training routes, and to ensure that an apprenticeship place is available for all qualified young people by 2013, with significant growth in apprenticeships for older learners as well.

⁶³ Leitch Review of Skills, *Prosperity for all in the global economy – world class skills – Final Report*, December 2006, p37

⁶⁴ An equivalent target of 400,000 for England was used.

As we grow a high-quality programme on this scale, taking up an apprenticeship may become attractive to even more young people. We will maintain our commitment to meeting the demand from suitably qualified young people, so that if more come forward we will work with employers to expand the programme further. On this basis, we anticipate that one in five of all young people will be undertaking an apprenticeship within the next decade.

Further measures include:

- A new National Apprenticeship Service to lead the expansion and improvement of the apprenticeship programme;
- Action to make it easier for employers to improve the range of apprenticeships by, for example, enabling them to include their own accredited qualifications;
- A pilot wage subsidy programme for small businesses, to make it more attractive for them to offer high quality apprenticeship places;
- A new drive to increase apprenticeships in the public sector, setting targets in key areas;
- A task force to improve the take up of apprenticeships in London, where there is a current shortfall; and
- Examining how to use the public procurement process to encourage companies that benefit from significant Government-funded contracts to offer apprenticeships as a good way of meeting their responsibility to train and develop their staff

Some of the proposals within WCA have already been initiated. The National Apprenticeship Service will be set up from April 2009.⁶⁵ As well as having overall responsibility for the apprenticeships programme, the NAS will manage the National Apprenticeship Vacancy Matching Service which came into operation in January 2009.⁶⁶ An apprenticeships expansion programme was launched in November 2008 aimed at encouraging employers already participating in the apprenticeships programme to take on more apprentices.⁶⁷

F. The Bill

1. Overview

The Queen's Speech in November 2007 confirmed that the Government would bring forward draft legislation on apprenticeships in the 2007-08 session, while the forward legislative programme in July 2008 confirmed that measures relating to apprenticeships would be included in an education and skills bill in the 2008-09 session.

⁶⁵ DIUS press release, *New Chief Executive of National Apprenticeship Service appointed*, 8 December 2008

⁶⁶ LSC presentation, *The National Apprenticeships Service*; LSC, "A perfect match: Employers and training providers have already placed more than 3,000 Apprenticeship vacancies online", *Apprentice Newsletter*, January 2009

⁶⁷ LSC press release, *Government announces £10 million apprenticeship expansion*, 1 December 2008; LSC, *Apprenticeships Expansion Programme Trial Prospectus*, January 2009

A *Draft Apprenticeships Bill* was published on 16 July 2008. Explanatory notes and an impact assessment were also published and it was announced through a Written Ministerial Statement.⁶⁸ The foreword to the Draft Bill announced that the public consultation would run until 8 October and that the Children, Schools and Families and the Innovation, Universities, Science and Skills Select Committees would both scrutinise the draft legislation.⁶⁹

The Bill itself was published on 4 February.⁷⁰ It would set up a statutory scheme for apprenticeships. This scheme is made up of three key elements which are set out in clauses 1-34:

- Apprenticeship framework – a high level curriculum for an apprenticeship in a specified career;
- Apprenticeship standards – a statement of the standards that all apprenticeship frameworks must conform to;
- Apprenticeship agreement – a contract between an employer and an apprentice.

Chapter 1 of Part 1 also sets out when and how apprenticeship certificates would be issued. Clause 35 would include apprenticeships within the careers advice that must be given within secondary schools. Separate clauses are included for both England and Wales; these broadly mirror each other but allow differences in schemes between England and Wales.

The Bill would also establish a duty on the new Chief Executive of Skills Funding⁷¹ to provide sufficient, suitable, apprenticeship places for every suitably qualified young person who wants one. It also places a duty to provide or secure facilities to assist people to find apprenticeships.

2. Draft bill: scrutiny and consultation

The Innovation, Universities, Science and Skills and the Children, Schools and Families Select Committees both scrutinised the draft Bill. The CSF committee concentrated on proposals that would specifically affect young people of school age, while the IUSS committee took a broader view.

In its enquiry, the IUSS Select Committee held three oral evidence sessions and received 19 written memoranda.⁷² The Government have submitted responses to the two Committee reports. These will be published before Second Reading.⁷³

⁶⁸ [HC Deb 16 July 2008 c26-27WS](#)

⁶⁹ DIUS/DCSF, *Draft Apprenticeships Bill*, July 2008, Cm 7452

⁷⁰ [Bill 55 of 2008-09](#). Explanatory notes are also available on the Parliament website while a delegated powers memorandum and impact assessment are published on the [DCSF website](#).

⁷¹ The new body that the Bill would set up to fund post-19 education in England

⁷² All published in written evidence, along with a very detailed government response to a questionnaire from the committee.

⁷³ They will be available on the committee websites at <http://www.parliament.uk/iuss/> and <http://www.parliament.uk/csf/>

The summary to the IUSS Committee report broadly welcomed the draft Bill:

Setting aside the question of detailed information, we conclude that the legislation is, on balance, justified because it has the potential to strengthen the structure for apprenticeships in England. But we have one major concern. As one witness put it: "Simply to go for volume at the expense of quality will just consign this programme to the dustbin". The Government must ensure that the draft Bill is re-written to promote, monitor and report on the quality of apprenticeships. Without provisions underpinning quality, the legislation risks the devaluation of apprenticeships, and employers, parents and young people as well as adults will cease to see apprenticeships as a progressive route through to a future career.⁷⁴

The CSF committee welcomed much of the Government's policy on apprenticeships but also expressed some concerns that the quality of apprenticeships could suffer:

We welcome much of the Government's policy in seeking to raise the standards of apprenticeships, including some of the measures contained within the Draft Apprenticeships Bill.

[...]

The real bite in the Draft Bill lies in the duty to be placed on the Learning and Skills Council (and, in due course, successor bodies), to secure the availability of apprenticeship places for anyone above compulsory school age but under 19, and who holds the necessary entry level requirements. Given the economic downturn, we have grave doubts about whether such a statutory duty can be met. Even if it can, we fear that the pressure of that duty could lead to the quality of apprenticeships being compromised.⁷⁵

DIUS and DCSF also asked for public responses on the draft bill. A report on these responses was compiled by the COI Consultancy. This found that the majority of submissions made encouraging comments about the aims of the Bill. The consensus of opinions was that "the proposed legislation will have a constructive effect on the accessibility and public impressions of apprenticeships – provided what are seen as the ambitious obligations it imposes can be met."⁷⁶

The Enterprise and Learning Committee of the Welsh Assembly also received evidence from the Deputy Minister for Skills in the Welsh Assembly Government and Confederation of British Industry (CBI) in Wales. It had been asked to comment on the draft Bill by the IUSS Committee.⁷⁷

The draft Bill has been 'tidied' in some places and clauses introduced to legislate for apprenticeships in Wales. Duties that were placed on the Learning and Skills Council in the draft bill are placed on the new Skills Funding Agency. Other changes include:

⁷⁴ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, p3

⁷⁵ Children, Schools and Families Select Committee, *The Draft Apprenticeships Bill*, HC 1082 2007-08, 5 December 2008, p3

⁷⁶ COI Strategic Consultancy, *A report relating to responses to the public consultation on the Draft Apprenticeships Bill*, October 2008, p4

⁷⁷ National Assembly for Wales, Enterprise and Learning Committee, *Draft Apprenticeships Bill – Consultation Response*, 8 October 2008

- The eligibility criteria for apprenticeships have been extended to include the self-employed and people not receiving a wage, for instance in the voluntary sector (clause 1(6)).
- The explanatory notes say that clause 35 on careers advice will now be supported by statutory guidance.
- The requirements for entering an apprenticeship at each level have been changed so that they do not exclude a person with an existing (non-apprenticeship) qualification at either level two or level three from support for entering an apprenticeship at that level. This was an issue that had been raised by the CSF committee.

This paper does not cover all of the issues raised in the draft Bill consultation and scrutiny. Readers are encouraged to look at the committee reports and evidence for more information.

3. The need for legislation

Both Committees considered whether this legislation was necessary. The Children, Schools and Families Committee had been told in evidence by Lord Young of Norwood Green, Parliamentary Under-Secretary of State for Skills and Apprenticeships at the Department for Innovation, Universities and Skills that there was “symbolic importance” in embedding in legislation the value of developing the skills base. The Committee questioned whether it was a good use of Parliamentary time to consider “symbolic” legislation.⁷⁸

The IUSS committee considered the same question but concluded that the right to an apprenticeship in the draft Bill justified the use of legislative time:⁷⁹

26. While the evidence we received showed support for the draft Bill, there is an open question whether legislation is necessary. The draft Bill would put much of the current arrangements on a statutory basis. But, as we have noted, the current arrangements have produced a substantial expansion in the number of apprenticeships without the need for legislation.

28. We conclude that the legislation is justified as it creates a new entitlement that every young person with the right qualifications should be able to take up an apprenticeship and to make provision for some of the functions of the putative National Apprenticeship Service. The contribution that the legislation will make to the expansion, improvement and status of apprenticeships will depend on its implementation.

⁷⁸ Children, Schools and Families Select Committee, *The Draft Apprenticeships Bill*, HC 1082 2007-08, 5 December 2008, para 19

⁷⁹ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, para 28

4. Clauses

This section goes through the clauses relating to apprenticeships, with comments from the consultation and scrutiny process.

a. *Clauses 1-9: Apprenticeship certificates*

Clauses 1-9 deal with apprenticeship certificates, in particular who can issue them, what they should contain and what fees are applicable.

Clause 4 enables the Secretary of State to designate a certifying authority for England. It is envisaged that this would be the Chief Executive of Skills Funding who would in turn delegate this responsibility to the National Apprenticeship Service.

Clause 1 would place a duty on this certifying authority to issue a certificate to an apprentice where the authority believed the relevant conditions are met, the apprentice had provided the required evidence and had paid any relevant fee. The relevant conditions, listed in clause 1(2) are that there was an apprenticeship agreement between the employer and apprentice about a recognised apprenticeship framework and that the training course for the main qualification listed in that framework had been completed. Clause 2 gives a discretionary power to the certifying authority to issue a certificate when the applicant has not entered into an apprenticeship agreement. Clause 3 allows for regulations that allow a fee to be charged for a duplicate copy of a certificate and Clause 9 specifies the contents of a certificate.

Clauses 5 to 8 cover Wales and provide for Welsh Ministers to designate a separate Welsh certifying authority.

One issue that was raised in consultation was the question of charging a fee for a certificate. Responses to the departmental consultation suggested that charging a fee for a certificate could act as a barrier to entry. In response to a question from the IUSS committee, the Government said that the intention was that there would not be a fee for the first issue of a certificate but that the certifying authority could charge for a duplicate.⁸⁰

The IUSS committee concluded that it was right that the NAS should issue certificates:

We conclude that the Government's proposal to replace completion certificates issued by Sector Skills Councils with a "national" certificate issued by the National Apprenticeship Service fits with the proposals in the draft Bill to achieve national recognition for apprenticeships. We also conclude that the draft Bill will not, and should not, substantially change the existing structures and roles played by the Sector Skills Councils.⁸¹

⁸⁰ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, p56

⁸¹ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, para 64

b. Clauses 10-20: Apprenticeship frameworks

Apprenticeship frameworks would be set up as a specification of requirements, which if met, would allow an apprentice to be issued with an apprenticeship certificate. The requirements must be specific as to the skill, trade or occupation and the apprenticeship sector. They should also specify the level of the requirement.⁸² Clause 10 generally describes an apprenticeship framework in both England and Wales while clauses 11-14 relate to England and 16-20 relate to Wales. Clause 11 gives the Secretary of State the power to set up an issuing authority. The explanatory notes explain that this would be the relevant Sector Skills Council working with Standards Setting Bodies.

Clause 13 deals with the notification and publication requirements on the issuing authority. In particular, the Chief Executive of Skills Funding must be notified. Clause 14 allows persons to submit draft frameworks to the issuing authority. The issuing authority could ask for extra information and could refuse publication, although it must give reasons.

Clause 15 deals with transitional arrangements. This would allow existing specifications of apprenticeships to be treated as “frameworks”. To do this the Secretary of State would need to pass an order that, among other things, specified the date by which the transitional framework would be withdrawn. This date could not be later than the school leaving date in 2013.

Almost identical provisions are made in clauses 16 to 20 for Wales. The issuing authorities in Wales would be designated by Welsh Ministers. On publication of a framework, the issuing authority would need to notify Welsh Ministers (rather than the Chief Executive of Skills Funding in England).

The report on the departmental consultation found praise for the mechanism of allowing employers and Sector Skills Councils to submit evidenced frameworks to the Secretary of State. It was argued this reflected business needs but allowed for accountability and objectivity.⁸³ There was the view across all submissions from business that the Bill reduced bureaucracy and that the apprenticeship frameworks reflected the needs of employers. The CBI were positive:⁸⁴

By making sure that employers can have the power to design their own frameworks and make sure that the skills the apprentice is going to be learning and the qualifications they are going to be working towards are relevant to that sector, that is the most important point in this Bill.

In terms of whether [the National Apprenticeship Service] will be a success, it really has to focus on helping employers reduce the time they spend on bureaucracy, encouraging more young people of all abilities to take an apprenticeship.

⁸² Whether it is level two, or level three.

⁸³ COI Strategic Consultancy, *A report relating to responses to the public consultation on the Draft Apprenticeships Bill*, October 2008, p5

⁸⁴ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-II 2007-08, 5 December 2008, evidence Q5, Q40

c. Clauses 21-29: Apprenticeship standards

Clauses 21 to 29 relate to apprenticeship standards. Again, there are separate clauses for England and Wales. Each apprenticeship framework would have to conform to a general specification of standards. These standards would be drafted by the Chief Executive of Skills Funding (clause 21) and introduced by order by the Secretary of State. The explanatory notes outline requirements that a specification of standards could contain including competence and knowledge-based elements, numeracy and literacy or functional skills. The specification must require each framework to specify a qualification that is the “principal” qualification for the framework.

In Wales, the draft specification would be prepared by Welsh Ministers who would also be responsible for putting it into effect.

There is an existing blueprint for apprenticeship standards.⁸⁵ Lord Young said in evidence that the Government was going to make it much more rigorous. He added that it would be ready for Second Reading.⁸⁶ At the time of writing this has not been published, but consultation on a Specification for Apprenticeship Standards in England is expected to begin before Second Reading.

In the Departmental consultation:

Just under half of respondents were satisfied that the legislation appropriately deals with apprenticeship standards, a greater number, while not necessarily negative, appeared unsure of whether the section is “right”.⁸⁷

d. Clauses 30-34: Apprenticeship agreements

The Bill would set up an apprenticeship agreement between the employer and the apprentice. This would include the on-the-job learning and the learning away from the workstation that would be provided. It should also specify the job role that an apprentice would be qualified to hold once the apprenticeship was completed and it must stipulate the supervision that would be provided. These clauses cover both England and Wales.

Clause 33 would set the status of an apprentice agreement as that of a contract of service, rather than being treated as a contract of apprenticeship (as recognised at common law). This is a significant change to the rights of an apprentice. A Court of Appeal judgment in 2006 found that a contract under the Modern Apprenticeships scheme was a contract of apprenticeship and therefore that an employer was under an obligation to try to find an alternative employer for the apprentice. If that failed then the

⁸⁵ LSC, *LSC Funding Guidance 2008/09: Principles, Rules and Regulations*, October 2008, Annex J (p110)

⁸⁶ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, para 77

⁸⁷ COI Strategic Consultancy, *A report relating to responses to the public consultation on the Draft Apprenticeships Bill*, October 2008, p6

employer could not dismiss the apprentice within the training period unless the business failed completely.⁸⁸

In their evidence to the IUSS Committee, the TUC supported the principle that apprentices should have additional rights as they sacrifice earnings for training and have a reasonable expectation that the training would be completed. The Government argued that if apprenticeships retained these rights it would undermine the goal of increasing apprenticeship provision. In a written response to the Committee they said that employers would be able to “terminate apprentices in the event of a recession. Wherever possible, we would expect the National Apprenticeship Service to find the apprentice a place with another employer.”⁸⁹

The Committee made a recommendation:

We conclude that a provision to enshrine an obligation to attempt to find an alternative placement on an employer, who does not wish to continue to provide an apprenticeship, could go against the grain of the Government's policy to encourage employers to offer more apprenticeships. We recommend, however, that where an apprenticeship, to which the provisions at clause 21 applied, is terminated because of redundancy as defined at section 139 of the Employment Rights Act 1996 or because of insolvency, the former apprentice's right to an apprenticeship, and concomitant duty on the National Apprenticeship Service, be reinstated even if he or she has attained the age of 19.

This issue was also raised in the Departmental consultation. Employer groups welcomed the clause, although welfare groups were concerned and wanted further clarity.⁹⁰ The Equality and Human Rights Commission said:

We would like assurances that this legal definition will address issues about whether positive action is lawful in relation to apprenticeships because of the employee status of the apprentice.’

Clause 34 makes allowance for the fact that crown servants, members of the Armed Forces and Parliamentary staff may not have contracts of employment and that the application of the Bill may need to be modified for these groups.

e. Clause 35: Careers education

Clause 35 would amend the *Education Act 1997* to require the governing body of a secondary school, or its proprietor and head teacher, or local education authority and head of a pupil referral unit to include apprenticeships within the careers education that they provide. The explanatory notes state that the government intends to introduce statutory guidance to support this provision.

⁸⁸ [Flett v Matheson](#) [2006] EWCA Civ 53; “Making it modern”, *Thompsons Labour and European Law Review*, June 2005; “Employers warned over shock court ruling on apprentice status”, *Personnel Today*, 16 February 2006

⁸⁹ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, para 97

Evidence to the CSF committee criticised the draft Bill for not going far enough in the provisions on careers advice. The Committee's report contrasts the stated intention in *World Class Apprenticeships* to "require schools to include comprehensive information about Apprenticeships in the materials they make available" with the draft Bill's requirement to take into account whether apprenticeships would be in the best interests of pupils. They argued that the provisions should be strengthened:

Despite the greater stringency of the requirements placed upon schools by the Education and Skills Bill shortly to complete its passage through Parliament, we nonetheless believe that any approach which leaves discretion to schools-based careers advisers as to what would be in a particular young person's best interests is an unnecessarily risky one. In the short term, the effects of the obligations on schools imposed by legislation now before Parliament should be assessed; but we fear that the issue may need to be revisited if experience shows that they do not have the necessary traction. We believe that legislation should be made stronger, by requiring schools to include clear and comprehensive information about apprenticeships in the materials made available to learners.

The Departmental consultation also revealed some concerns that the clause could have been stronger:⁹¹

Despite the general commendation of this section's inclusion, many respondents felt that the legislation could have gone further. Some employer organisations suggested that the wording may be too weak and that apprenticeships should be presented to all learners as a viable career option, removing the teacher discretion provided by a potentially broad interpretation of 'best interests of the pupils'.

f. Clause 36: Duty to participate in education or training

Clause 36 would amend the *Education and Skills Act 2008* so that it includes apprenticeship agreements within the other types of education and training that meet the duty of under 18s without an existing level three qualification to participate in education or training. Existing apprenticeships are already included within the scope of this Act.

g. Clause 37: Apprenticeship sectors

This clause would require the Secretary of State to specify apprenticeship sectors which cover the "full range of skills, trades and occupations". According to the explanatory notes, these would be based on existing coverage of the Sector Skills Councils.

⁹⁰ COI Strategic Consultancy, *A report relating to responses to the public consultation on the Draft Apprenticeships Bill*, October 2008, p7

⁹¹ COI Strategic Consultancy, *A report relating to responses to the public consultation on the Draft Apprenticeships Bill*, October 2008, p10

h. Clauses 79-91: Right to an apprenticeship and the duties of the Chief Executive of Skills Funding

The Bill would set up an Office of the Chief Executive of Skills Funding within the Skills Funding Agency. Clauses 79 to 91 would place duties on the Chief Executive relating to apprenticeships.

Clause 79 gives the power to the Secretary of State to direct the Chief Executive to designate a person to carry out apprenticeship functions on his behalf. This is expected to be the Chief Executive of the National Apprenticeships Service (NAS). The Secretary of State may define and regulate the relationships between the two Chief Executives and may set out reporting requirements to the Chief Executive of NAS.

All apprenticeship functions in the Bill would be conferred on the Chief Executive of Skills Funding, rather than the Chief Executive of NAS or another designated person. The Bill would allow for regulations to clarify which provisions would apply to the designated person.

Clauses 80 and 81 set out the general powers that would allow the Chief Executive to secure apprenticeship places for young people over compulsory school age but under 19 and also for people who are aged between 19 and 25 and subject to learning difficulty assessment. This Bill would make local education authorities responsible for the training and education of these groups (clause 40) and clause 81 enables the Chief Executive of Skills Funding to enter into arrangements with local education authorities when securing apprentice training and it requires the Chief Executive to co-operate with authorities when deciding how many apprenticeship places should be made available.

Clause 82 is a general duty on the Chief Executive of Skills Funding to promote apprenticeships to employers. Clause 83 would place a duty on the Chief Executive of Skills Funding to secure sufficient apprenticeship places for every suitably qualified young person⁹² who wants one. This duty relates to England only. Clauses 84 to 91 set out how this duty would operate; this is the “apprenticeship scheme”.

The existing qualifications required to be eligible for each level of apprenticeship are set out in clause 87. To enter for a level two apprenticeship a person must hold specified level one qualifications, specified qualifications in English and mathematics, not hold an existing apprenticeship certificate at level two or above and be available for employment. Equivalent provisions are included for level three apprenticeships. The CSF committee had received evidence that the provisions in the draft Bill would prevent someone with a level two qualification entering a level two apprenticeship, even though they may not be qualified to enter a level three apprenticeship. This has been changed in the current Bill.

A person who satisfies the qualifications requirement can then choose two sectors in which they want to undertake an apprenticeship. Someone qualified at both level two and level three must also nominate which level they want their apprenticeship to be at.

⁹² The duty to provide sufficient places would apply to young people above compulsory school age but under 19.

An apprenticeship place is defined as both a place on a training course leading to the appropriate qualifications and a place for employment under an apprenticeship agreement. An apprenticeship place would be suitable (clause 84) if it was in one of the nominated sectors, at the appropriate level and within a reasonable travel area. Under clause 86, the Secretary of State must specify travel areas. These are intended to be “travel to work areas” as defined by the Office for National Statistics.

Clause 89 gives a power to the Secretary of State to suspend the apprenticeship scheme in a specific area, sector and level for up to two years. The explanatory notes suggest that this might be the case where economic difficulties were so severe that the duty to provide sufficient places could not be fulfilled. Clause 90 allows for an order to be introduced to amend the age range or level of qualification for the scheme.

In their 2007 report, the House of Lords Economic Affairs Committee pointed out that the entitlement to apprenticeship had been recommended by the Modern Apprenticeship Advisory Committee in 2001 and the Government had proposed it would come into effect in 2004.⁹³

The CSF committee doubted whether the duty to secure places could be met:

We have grave doubts about whether a statutory duty on the Learning and Skills Council (and in due course the National Apprenticeship Service) to secure sufficient apprenticeship placements can be met, or met without compromising on quality. The definition in the Draft Bill of what constitutes an apprenticeship framework and the requirement to specify the standards to be met by apprenticeships will serve as controls but not necessarily as a guarantee of quality; and it is difficult to see how employers can be compelled to offer apprenticeships against their will. We note, with approval, that the Government has judged any requirement upon employers to provide apprenticeship places to be wrong and counterproductive.⁹⁴

It also felt that group training associations should be encouraged to increase the number of apprenticeships offered. This is where an organisation employs apprentices and has links with smaller employers who would not, on their own, be able to offer the breadth of work required for an apprenticeship.

The IUSS committee made a number of recommendations around the right to an apprenticeship:⁹⁵

It is unclear what the right given at clause 21 of the draft Bill to all suitably qualified young people to an apprenticeship will mean in practice. We

⁹³ House of Lords Economic Affairs Committee, *Apprenticeship: a key route to skill*, HL 138-I 2006-07, 20 July 2007, para 126

⁹⁴ Children, Schools and Families Select Committee, *The Draft Apprenticeships Bill*, HC 1082 2007-08, 5 December 2008, para 47

⁹⁵ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, recommendations 28-31

recommend that the Government make a statement setting out its intention when the Bill comes before the House. (Paragraph 88)

We recommend that in responding to this Report the Government explain in detail, and with examples, the circumstances in which it would suspend the right to an apprenticeship at clause 21. (Paragraph 89)

If the "right" to an apprenticeship is defined and made meaningful, the Government should provide it to those aged 19 and over. (Paragraph 90)

We conclude the academic qualifications required for the statutory right to apprenticeships at clause 21 are too rigid and recommend that the Government relax them. We recommend that the Government explore the option of using a portfolio of evidence, rather than formal academic qualifications alone. (Paragraph 94)

The IUSS committee asked how an apprentice could complain about the quality of the training they were receiving. The Government felt that the ultimate recourse was through an Employment Tribunal but that the expectation was that the apprentice would raise the issue with the employer, training provider and NAS in the first instance. The Committee recommended that the final legislation included a provision to require the NAS to establish a mediation service.⁹⁶

Respondents to the departmental consultation commended the duty to secure apprenticeship places but many noted that, "not least in the current economic climate, a commitment to provide places to all qualified persons was over-ambitious and did not sufficiently take market forces into account".⁹⁷

i. Clause 101: National Apprentice Vacancy Matching Service

As noted above, the National Apprentice Vacancy Matching Service was launched in December 2008. Clause 101 places a duty on the Chief Executive of Skills Funding to provide or secure services to assist people to find apprenticeships and therefore provides a statutory basis for the NAVMS.

j. The consultation process

Both the IUSS and CSF Select Committees undertook scrutiny of the draft legislation. In their reports, both published on 5 December 2008, both Committees complain that the Government had not consulted on its announcement that they would both scrutinise the Draft Bill and that:⁹⁸

⁹⁶ Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, para 101

⁹⁷ COI Strategic Consultancy, *A report relating to responses to the public consultation on the Draft Apprenticeships Bill*, October 2008, p8

⁹⁸ Children, Schools and Families Select Committee, *The Draft Apprenticeships Bill*, HC 1082 2007-08, 5 December 2008, para 3; Innovation, Universities, Science and Skills Select Committee, *Pre-legislative Scrutiny of the Draft Apprenticeships Bill*, HC 1029-I 2007-08, 5 December 2008, para 7

We urge the Government, however, to bear in mind that scrutiny of draft legislation takes time if it is to be done properly. We take issue with the statement made in the Foreword to the Draft Bill that this Committee (and the Innovation, Universities, Science and Skills Committee) would scrutinise it. We remind the Government that Committees decide upon their own programmes, and assumptions should not be made about how they will spend their time.

The IUSS committee also recommended that in future there should be comprehensive documents published with a draft Bill. In particular they felt that there was not enough information about the operation of the NAS and that there should have been a draft specification of apprenticeship standards.

The Committee also had concerns about consultation with the Welsh Assembly Government and the National Assembly for Wales. They said:

We have grave concerns that the Departments have treated consultation with the Welsh Assembly Government and the National Assembly for Wales as an afterthought. The consultation on the operation of apprenticeships in Wales and on the application of the draft legislation to Wales has clearly been inadequate and we recommend that the Government rectify this deficiency before the provisions in the draft Bill are finalised.

III Employer support for employee study and training

Part 1, Chapter 2 (Clause 39) of the Bill would provide a right for employees to make a request to their employer for time away from their normal work duties to train and/or study.

A. Consultation and territorial extent

In June 2008 the Department for Innovation, Universities and Skills (DIUS) published a consultation on a new right to request *time to train* for employees in England.⁹⁹ A similar consultation was published by the Welsh Assembly Government on 18 September 2008¹⁰⁰ and by the Scottish Government on 28 September 2008.¹⁰¹ The new right would be for employees throughout Great Britain, but as skills and training are generally devolved matters, it was announced that “the package of support in each country will be different and will be tailored to reflect the different skills systems across the UK.”¹⁰²

In December 2008 a summary of responses to the consultations conducted by the DIUS, the Welsh Assembly Government and the Scottish Executive was published together as one document by DIUS (the TtT Consultation Summary).¹⁰³

The DIUS website reports that Ministers in Northern Ireland are considering the position and are “likely to launch a public consultation in the New Year.”¹⁰⁴ A consultation has not yet been launched. Northern Ireland will introduce its own legislation if it decides to take forward the right to request time to train.¹⁰⁵

Clause 254 of the Bill confirms that the time to train part of the Bill would extend to England, Wales and Scotland.

B. Background

The final report the *Leitch Review of Skills, Prosperity for all in the global economy - world class skills*, (the Leitch Review) set a goal for the UK to be a “world leader on skills by 2020”, estimating that delivering such skills could bring “net benefits of at least £80 billion over 30 years driven by increased productivity.”¹⁰⁶

⁹⁹ Department for Innovation, Universities & Skills, *Time to Train*, June 2008

¹⁰⁰ Welsh Assembly Government, *Consultation on the Right to Request Time to Train for Employees in Wales*, 18 September 2008

¹⁰¹ Scottish Government, *Consultation on the Right to Request Time to Train for Employees in Scotland*, 28 September 2008

¹⁰² Department for Innovation, Universities and Skills press release, *25 million will gain right to request time to train*, 3 December 2008

¹⁰³ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008

¹⁰⁴ Department for Innovation, Universities and Skills website, *Time to Train* [on 3 February 2009]

¹⁰⁵ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008

¹⁰⁶ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 1.10

The DIUS consultation on Time to Train (the TtT Consultation) explained that the OECD¹⁰⁷ has rated the UK as 16th out of 29 on proportion of working age population with low skills; 19th out of 29 on intermediate skills and joint 11th out of 30 on high skills.¹⁰⁸ The consultation goes on to explain that “these poor relative skills are a significant contributor to the productivity gaps that exist between the UK and key competitor nations.” It highlighted that output per hour worked is 20% higher in France, 13% higher in Germany and 18% higher in the USA. It said that “up to one fifth of that productivity gap is attributable to skills.”¹⁰⁹ The TtT Consultation goes on to highlight how increased skills can be good for businesses:

Evidence from the UK shows that increasing the proportion of employees trained in a firm by 5% is linked to a 4% increase in productivity, and that firms with a high level of training are likely to grow at a faster rate and achieve above average profitability.¹¹⁰

It also provides evidence of how many employers are failing to invest in training:

Although total employer spend on training is estimated by employers to have risen to some £38.6 billion a year, we also know that 33% of employers do not provide any sort of training for their employees, only 35% have a training budget, and around 8m employees receive no training each year.¹¹¹

The new right to request time to train is therefore being billed by Government as something which would “spark the skills revolution we need.”¹¹²

As a result of the Leitch Review, the UK Commission for Employment and Skills (UKCES) was created on 1 April 2008 to, amongst other things, assess the progress being made towards the aim of becoming a world leader in skills by 2020.¹¹³ In 2010 UKCES is expected to make recommendations on whether further action is required to “deliver the integration of employment and skills services.” Part of this would have been to consider whether employees should have a legal right to workplace training where they lack at least a level two qualification (equivalent to 5 A-C GCSEs).¹¹⁴ In the TtT Consultation the Government said that if the right to request time to train goes ahead, this part of the review would be deferred until 2014 as “testament to the importance we attach to time to train.”¹¹⁵

¹⁰⁷ OECD, *Education at a glance*, 2006.

¹⁰⁸ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 1.5

¹⁰⁹ *Ibid*, para 1.6

¹¹⁰ *Ibid*, para 1.7

¹¹¹ *Ibid*, para 1.11

¹¹² *Ibid*, foreword

¹¹³ *UK Commission for Employment and Skills website* [on 3 February 2009]

¹¹⁴ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 2.4

¹¹⁵ *Ibid*, para 2.4

1. Right to request flexible working

The TtT Consultation explains that the model for time to train requests will be based on the model already used to request flexible working.¹¹⁶ The *Employment Act 2002* first gave employees with children aged under six or disabled children under eighteen, the right to apply to their employers to request a flexible working pattern. It introduced a new Part 8A (“Flexible Working”) into the *Employment Rights Act 1996 (ERA)*. The right to request flexible working first became available to employees in April 2003.

A flexible working request can include changes to hours, times or a request to work from home.¹¹⁷ To qualify, an employee must have worked for their employer continuously for 26 weeks. The right does not extend to agency workers or members of the Armed Forces. The *ERA* imposes a duty on employers to consider such requests seriously and in accordance with laid down procedures. Employers are not required to accept requests when there is a genuine business reason to reject it. These are set out in section 80G(1)(b) of the *ERA*:

- (i) the burden of additional costs,
- (ii) detrimental effect on ability to meet customer demand,
- (iii) inability to re-organise work among existing staff,
- (iv) inability to recruit additional staff,
- (v) detrimental impact on quality,
- (vi) detrimental impact on performance,
- (vii) insufficiency of work during the periods the employee proposes to work,
- (viii) planned structural changes, and
- (ix) such other grounds as the Secretary of State may specify by regulations.

The *Work and Families Act 2006* provided powers to make regulations for the extension of the right to request flexible work to carers of adults. These regulations came into force on 6 April 2007. On 6 November 2007 the Prime Minister announced a review to consider whether to extend the right to request flexible working to parents with older children. The review has subsequently recommend that the right should be extended to parents of children aged 16 or under. This extension is now expected to come into effect from April 2009.¹¹⁸

The TtT consultation states that the right to request flexible working has proved to be a “powerful driver of cultural change” and has “contributed to a “change in attitudes and behaviour in the workplace”.¹¹⁹ For this reason, Government believes that introducing a right to request time to train using an analogous framework to the one used for flexible working could “have an equally powerful effect on attitudes and behaviour in relation to skills.”¹²⁰ It also expects that using an existing framework would make the system easier for employers to administrate:

¹¹⁶ Ibid, chapter 3

¹¹⁷ Section 80F, *Employment Rights Act 1996*

¹¹⁸ HC Deb 17 Dec 2008 c1095

¹¹⁹ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 3.2

¹²⁰ Ibid, para 3.15

To make it easier for employers to manage the new right, we propose to base the processes for the new right to request time to train on the existing model of the right to request flexible working. Employers are used to dealing with requests under these arrangements and are likely to have well developed and understood processes for managing the flow of requests. It is envisaged these processes could be easily adapted and extended to support a new right to request time to train.¹²¹

The TtT Consultation cites evidence to show that employers have not found the costs associated with this scheme “to be a particular problem for them”. It also looks at how it has changed employer attitudes:

The Chartered Institute of Personnel and Development (CIPD) found that employers have not found the cost associated with the right to request flexible working to be a particular problem for them.¹²² In addition, 87% of employers surveyed by the CBI¹²³ reported that the existing law has had either a positive or no impact on their business.

The introduction of the right to request flexible working has contributed to a much wider change in employer attitudes and behaviour in relation to flexible working: 92% of employers reported that they would consider a request to change a working pattern from any employee, despite legislation only requiring employers to do so for some employees. There has also been a significant increase in the number of employers who actively promote flexible working.¹²⁴

The Institute of Directors, in their response to the TtT Consultation however, questioned whether the right to request flexible working really had driven such a “cultural change”, suggesting that employers had already voluntarily chosen to introduce flexible working:

This, however, is an entirely erroneous narrative. The legislation did not drive culture change – increasing numbers of employers were already offering flexible working arrangements voluntarily prior to 2003, for sound business reasons, on their own initiative.

[...]

Moreover, a June 200 survey of directors revealed that 86% of IoD Members’ organisations operated flexible working practices. Tellingly, 93% of them said that they would operate flexible working practices even if there was no legislative basis for them. Indeed, the weakest driver for the implementation of flexible working was legislative compliance.

It should be clear, then, that the argument presented in the consultation document that the introduction of a right to request flexible working “stimulated a real change in cultural attitudes” is, at best, a flimsy one. The Government’s belief that a similar right to request training would have a corresponding effect in the skills field is consequently misplaced.¹²⁵

¹²¹ Ibid, para 4.2

¹²² CIPD, *A parent's right to ask: a review of flexible working arrangements*, October 2003

¹²³ CBI *Employment trends survey 2004*

¹²⁴ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 3.12-3.13

¹²⁵ Institute of Directors, *Time to Train response to Government Consultation*, September 2008

Similarly in their response to the Scottish Government's *Consultation on the Right to Request Time to Train for Employees in Scotland*, Unison Scotland said that there was little evidence to support the claim that flexible working had driven "real" change:

The consultation paper contends that the right to request flexible working has "stimulated a real change in cultural attitudes to flexible working, and a real increase in flexible working arrangements." They then suggest that this will be also true for the proposed right to ask for time off to train. UNISON's own research indicates there is little evidence to support this claim that there has been a real change.¹²⁶

Two PQs from September 2008 set out the most up-to-date figures of requests for flexible working made, accepted and refused:

Flexible Working

Mr. Jenkins: To ask the Secretary of State for Business, Enterprise and Regulatory Reform (1) how many requests for flexible working by (a) (i) mothers and (ii) fathers were refused by employers in each year since 2003 and (b) carers were refused by employers in 2007; [216192]

(2) how many requests for flexible working by (a) (i) mothers and (ii) fathers were accepted by employers in each year since 2003 and (b) carers were accepted by employers in 2007. [216193]

Mr. McFadden: The following answer provides information on the number of requests for flexible working accepted or rejected by working parents by gender. The Department does not have the requested information for each year since 2003 and does not have evidence on the number of requests accepted or rejected by carers.

The Department does periodically conduct a Work-Life Balance Employees' Survey.

The last employee survey (Third Work Life Balance Employees' Survey) was conducted in 2006 (before the implementation of the extension of the right to request to carers therefore no evidence related to these requests is available).

Across the survey as a whole, 17 per cent. of employees had made such a request. 22 per cent. of mothers said that they had made a request to change the way that they work in the past two years as compared to 14 per cent. of fathers.

Data on acceptance and refusal rates are given in the following table; the numbers do not sum up to 100 per cent. because at the time of the survey some requests were awaiting decisions.

	Percentage making a request	Percentage requests accepted by employer	Percentage requests refused by employer
All	17	78	17

¹²⁶ Unison Scotland, *Time to Train response to Scottish Executive Consultation*, October 2008

Mothers	22	83	13
Fathers	14	71	23

The Second Work-Life Balance Employees' Survey was carried in early 2003. Data on acceptance and refusal rates from requests made by mothers and fathers were not identified separately and so this information is not available.

Data on acceptance and refusal rates are given in the table below; the numbers do not sum up to 100 per cent. because at the time of the survey some requests were awaiting decisions.

	Percentage making a request	Percentage requests accepted by employer	Percentage requests refused by employer
All	17	77	20
Mothers	29	-	-
Fathers	12	-	-

Stephen Williams: To ask the Secretary of State for Business, Enterprise and Regulatory Reform (1) how many working parents were (a) eligible to request, (b) asked for and (c) were refused flexible work in the most recent year for which figures are available; [216892]

(2) how many employers (a) were eligible to be asked to provide flexible working, (b) were asked by an employee for flexible working arrangements and (c) refused an employee's request to work flexibly in the most recent year for which figures are available. [216893]

Mr. McFadden: The following answer gives evidence on the number of parents eligible to request flexible working and the outcome of these requests, in addition we are also providing information related to employers receiving a request. We do not have information on the number of employers who are eligible to be asked to provide flexible working.

Three surveys carried out by the department provide evidence on the information requested.

The Regulatory Impact Assessment carried out in 2002 <http://www.berr.gov.uk/files/file11440.pdf> estimated that, prior to the introduction of the right to request flexible working for parents of young and disabled children, 3.7 million employees would be entitled to make a request to work flexibly.

Evidence on employees is provided by the Third Work-Life Balance Employees' Survey, conducted in 2006, which indicated that 17 per cent. of eligible working parents made requests to their employer for flexible working. Of these requests 78 per cent. were accepted, 17 per cent. were refused, while 5 per cent. were awaiting decisions at the time that the survey was conducted.

Evidence on employers comes from the Third Work-Life Balance Survey of Employers conducted in 2007, which found that 40 per cent. of workplaces had received a request from an employee within the previous 12 months to work flexibly. The survey also found that 90 per cent. of employers had accepted all requests and 9 per cent. reported they had turned down at least one request.

We do not have data on the number of employers who are eligible to be asked to provide flexible working.¹²⁷

For more information about the right to request flexible work, see Library Standard Note, [Flexible Working](#), SN/BT/1086, 16 January 2009.

C. The Bill: how the right would work

Time to train is defined by Government as essentially a right for employees to have “a serious conversation with their employer about their skills development.”¹²⁸ As a result, it is right to request time to train. It is not therefore a right to have a training course paid for, nor is it a right to have paid time off work to do the training, although employers could choose to offer this if they wish. It is in effect a right to request a flexible working pattern in order to train. The TtT Consultation gives examples of how the time to train could be fitted around the employee’s job:

It would be for each employee and their employer to consider and agree what would work best for them. Employees might take time away from their main duties to undertake training at work, or they might agree with their employer that their training need would best be met by their taking time off work to undertake training. In cases where an employee undertook training away from the workplace this could be achieved through negotiating changes to working arrangements to accommodate the training, or by the employer agreeing to give the employee paid time off to undertake training.¹²⁹

Subject to the passage of the Bill through Parliament, the Government expects that the right would be introduced from 2010.¹³⁰

To provide the right, Clause 39(2) of the Bill would insert a new part 6A, into the *Employment Rights Act 1996 (ERA)*, to give new sections 63D-F. It would also insert into the *ERA* two new sections 47F and 104E. In the Bill, time to train is referred to as “employer support for employee study and training”. The application to request time to train is sometimes referred to as a “Section 63D application.”

Schedule 1 of the Bill makes minor and consequential amendments to other Acts to allow the system to operate in employment law as described below.

¹²⁷ HC Deb 15 September 2008 c2121-23W

¹²⁸ Department for Innovation, Universities & Skills, [Time to Train](#), June 2008, introduction

¹²⁹ Department for Innovation, Universities & Skills, [Time to Train](#), June 2008, para 4.21

¹³⁰ Department for Innovation, Universities and Skills press release, [25 million will gain right to request time to train](#), 3 December 2008

a. Definition of training and study

The Government explained that it wanted the request to cover a broad scope of training and qualifications so that all employees, of any educational background, could exercise the right:

So, people would be able to request time to address a particular skills need, for example working with spreadsheets, as well as full qualification-bearing programmes such as National Vocational Qualifications (NVQs) or English for Speakers of Other Languages courses. Such a broad scope for the right would mean that all employees – whatever their prior level of skills attainment – could exercise the right, thereby maximising its potential as a lever for cultural change, and maximising its direct impact on the skills of the workforce.¹³¹

Indeed, new Section 63E(1) of the *ERA* would provide that an application could be made for study or training “of any description”. New Section 63E(1)(b) would provide that a single application could request time to train for more than one course of training or study. One possible limitation on this wide description of training however, is that under new Section 63D(2)(b), further regulations could be made by the Secretary of State to specify “further conditions” about the training. New Section 63E would further provide for a very broad definition of where the training or study could be undertaken; it specifies that there does not necessarily have to be any level of supervision for the training:

- (2) The study or training may (in particular) be study or training that (if undertaken)—
- (a) would be undertaken on the employer’s premises or elsewhere (including at the employee’s home);
 - (b) would be undertaken by the employee while performing the duties of the employee’s employment or separately;
 - (c) would be provided or supervised by the employer or by someone else;
 - (d) would be undertaken without supervision;
 - (e) would be undertaken within or outside the United Kingdom.

New Section 63E(3) shows that the study or training would not need to be intended to lead to the award of a qualification. As explained in the TtT Consultation, it would also be up to the employee and employer to agree how much time to train is appropriate; there is nothing in the Bill which sets a minimum or a maximum limit.¹³²

New Section 63D(8) also shows that the time to train provision in the Bill would not prevent an employer and employee agreeing any other arrangements for training.

b. Who has the right to apply?

New section 63D of the *ERA* would provide the statutory right to make the request to take time off to train or study. New section 63D(6) sets out that an employee would qualify for the right to make the request, provided that they meet two conditions:

¹³¹ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 4.7

¹³² Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 4.18-19

- (a) satisfies any conditions about duration of employment specified by the Secretary of State in regulations, and
- (b) is not a person within subsection (7).

Subsection (7) would therefore effectively exclude the following groups from the right to make the request:

- (a) a person of compulsory school age (or, in Scotland, school age);
- (b) 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) applies;
- (c) a person who, by virtue of section 29 of that Act, is treated as a person to whom that Part applies for the purposes specified in that section (extension for person reaching 18);
- (d) a person to whom section 63A of this Act (right to time off for young person for study or training) applies;
- (e) an agency worker;
- (f) a person of a description specified by the Secretary of State in regulations.

The right to request flexible working only applies to employees who have 26 weeks or more continuous service with their employer. It was proposed in the TtT Consultation that the continuity of service requirements would be the same for the time to train request. Under new section 63D(6)(a), this would now be provided for in regulations. The Government had explained that it would want requests to be made only by those who had “developed a substantial working relationship” with their employer and had “demonstrated a degree of loyalty to the business.”¹³³

c. *The purpose of the training*

New section 63D(3) confirms that the right would be for time off to enable the employee to undertake study or training, or both. Section 63D(4) would provide a two-stage test to make clear that the training must also be for the purposes of improving both:

- (a) the employee’s effectiveness in the employer’s business, and
- (b) the performance of the employer’s business.

Although not made explicit in the Bill, the TtT Consultation Summary explained that the right would not cover training for personal development, unless it could be shown that there is some demonstrable benefit to the business.¹³⁴

d. *Reasons for refusing a request*

If it cannot be shown that either of the two tests above could be met, then they would be legitimate grounds for an employer to refuse a request. These and the other permissible grounds for refusal would be given in new Section 63F(7); these other grounds are the same as those for permissible reasons to reject a flexible working request:

¹³³ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 4.5

¹³⁴ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008, para 44

The permissible grounds for refusal are—

- (a) that the proposed study or training to which the application, or the part in question, relates would not improve—
 - (i) the employee's effectiveness in the employer's business, or
 - (ii) the performance of the employer's business;
- (b) the burden of additional costs;
- (c) detrimental effect on ability to meet customer demand;
- (d) inability to re-organise work among existing staff;
- (e) inability to recruit additional staff;
- (f) detrimental impact on quality;
- (g) detrimental impact on performance;
- (h) insufficiency of work during the periods the employee proposes to work;
- (i) planned structural changes;
- (j) any other grounds specified by the Secretary of State in regulations.

New section 63F(5) states that an employer could refuse a request only if one or more of these specified grounds applies. They would therefore not be able to reject a request for any other reason. Similarly, new Section 63F(6) shows that an employer could refuse part of a request (i.e. reject one training course out of two applied for), only on the specified grounds. The TtT Consultation makes clear that each request should be judged on its own merits; that just because a similar request has been agreed before, there may be a good business reason for rejecting something similar later.¹³⁵

e. Information required in the application to make the request

The Bill defines the obligatory information that an employee would need to set out in their application to make the request. New Section 63E(4) would require the following information:

- (4) A section 63D application must—
 - (a) give the following details of the proposed study or training—
 - (i) its subject matter;
 - (ii) where and when it would take place;
 - (iii) who would provide or supervise it;
 - (iv) what qualification (if any) it would lead to;
 - (b) explain how the employee thinks the proposed study or training would improve—
 - (i) the employee's effectiveness in the employer's business, and
 - (ii) the performance of the employer's business;
 - (c) contain information of any other description specified by the Secretary of State in regulations.

New Section 63E(5) would allow for regulations to be made about the exact form of the application. The TtT Consultation had said that the requests would have to be made in writing.¹³⁶ The Consultation Summary highlighted concern from some respondents that

¹³⁵ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 4.18

¹³⁶ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 4.15

the amount of detail required may put some people off applying for time to train.¹³⁷ In response to this, the Government said that it would make provision for the application to be prepared by another person if the employee is unable to complete it themselves. This has not been provided for in the Bill, but there may be provision for it to be provided for later by powers to make regulations under Section 63E(5).

New Section 63F(1) would give the employee the right to make an application only once in a twelve month period. However, under the power to make regulations in section 63F(3), the Secretary of State would be able to set out circumstances when an employer could be required to disregard an application that has been submitted.¹³⁸ No indication has been given either in the TtT Consultation, the Consultation Summary of the Bill's Explanatory notes as to what sort of circumstances this would cover.

f. The right to be accompanied at meeting relating to a time to train application

New Section 63(G) would give the Secretary of State power to make further regulations about how applications should be dealt with. The Explanatory Notes to the Bill give further details about what sort of procedure the Government intends here:

The Government intends that regulations made in exercise of this power will set out the procedure for employers to follow. For example, they would include requirements concerning the holding of a meeting to discuss the application; for the employer to give the employee notice of the employer's decision on the application; about the procedure for exercising the right of appeal; for applications to be treated as withdrawn in certain circumstances; and in relation to companions which the employee may bring to meetings.¹³⁹

New Section 63G also specifically states that regulations could be made for, in summary: giving the employee a right to be accompanied by a specified person when attending any meetings regarding their application; the right for the meeting to be postponed if this companion is unavailable; and the right to paid time off for someone to act as a companion.

New Section 63G(1)(a) suggests that in the regulations, the Secretary of State could give a "specified description" of who may be a companion. This was not the suggestion given by the Government in the TtT Consultation:

We propose that employees should be able to ask that they are accompanied to any meeting with their employer about the request for time to train, and we would not propose to specify or limit who that companion might be. In practice,

¹³⁷ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008, para 57

¹³⁸ *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Explanatory Notes, p16

¹³⁹ *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Explanatory Notes, p16

employees might want to be accompanied by a friend, colleague or their Union Learning Representative.¹⁴⁰

In the Consultation Summary it was shown that the Federation of Small Businesses (FSB) had asked for a relaxation of the rules relating to the right to be accompanied, for firms with fewer than 20 employees. The FSB were concerned that this right would “create an extra layer of bureaucracy for the employer.” They suggested instead that firms with fewer than 20 employees should be allowed to “hold informal, ‘one to one’ meetings to discuss TtT requests, without the need for union representation.”¹⁴¹ The Government confirmed however, that it thought that its original proposal was “the right one” and said that it will “continue to work with FSB, and will call on their expertise to help us develop TtT guidance as we take forward the legislation.”¹⁴²

g. *Withdrawal of time to train support and alteration to what was agreed*

The TtT Consultation Summary explains that Government wants employers to be able to withdraw their support for an agreed request in certain circumstances, for example if the employee is not attending the agreed training. However, it explained that “withdrawal of consent should be a matter for discussion and agreement between the employer and the employee” and said that it did not propose making specific provision for this in the legislation.¹⁴³ There is indeed nothing about this in the Bill.

Instead, the Government said that it would issue further guidance on the matter and recommend that the parties should agree at the time the circumstances in which support could be withdrawn.¹⁴⁴ New Section 63H would provide that if an application has been agreed that the employee then has a duty to inform their employer if they:

- (a) fails to start the agreed study or training;
- (b) fails to complete the agreed study or training;
- (c) undertakes, or proposes to undertake, study or training that differs from the agreed study or training in any respect (including those specified in section 63E(4)(a)).

h. *Challenging an employer’s decision*

An employee who wants to challenge a decision about time off to train would first have to appeal against the decision to their employer. Only after they have done this would they then be able to bring a complaint to an employment tribunal under new Section 63I. An exception to this would be provided by new Section 63I(3)(b). This relates to where the

¹⁴⁰ Department for Innovation, Universities & Skills, *Time to Train*, June 2008, para 4.16

¹⁴¹ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008, para 34

¹⁴² *Ibid*, para 56

¹⁴³ *Ibid*, paras 49-52

¹⁴⁴ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008, para 50

employer has breached a provision of a regulation made under powers in new Section 63F(4). These regulations, if made, relate to how applications should be dealt with by an employer.

A complaint to an employment tribunal would only be allowed on specified grounds given in new Section 63I(1), which are:

- Where the employer has failed to comply with the duties concerning the consideration of a request (including procedural requirements); and
- Where the employer's decision to refuse a request, or part of it, was based on incorrect facts.¹⁴⁵

New Section 63I(5) would provide that a complaint to an employment tribunal must be brought within three months of the date on which the request was rejected on appeal to the employer, or within three months of the date on which the new Section 63F(4) regulations were breached. New Section 63I(5)(b) would provide an exception for this where the tribunal could decide that a further time period is reasonable if "the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months."

Remedies for the employment tribunal to use if they do uphold a complaint are set out in new Section 63J. Under new Section 63J(1) an employment tribunal could:

- (a) make an order for reconsideration of the section 63D application;
- (b) make an award of compensation to be paid by the employer to the employee.

New Section 63J(3) would permit regulations to be made to specify the maximum amount of compensation that could be awarded, which would be specified in terms of a number of weeks' pay.

i. Unfair dismissal and protection from detriment in employment

Part V of the *ERA* sets out situations where there is statutory protection from suffering detriment in employment. Clause 39(3) of the Bill would insert a new Section 47F into this part of the *ERA* to provide that an employee would have the right not to be subject to detriment by their employer for having:

- (a) made (or proposed to make) a section 63D application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F [to have their application considered in the specified way],
- (c) brought proceedings against the employer under section 63I, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

This is broadly similar to the provisions against protection of detriment for flexible working requests in Section 47E of the *ERA*. The Government's Business Link website explains that examples of detrimental treatment may include the denial of promotion,

¹⁴⁵ *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Explanatory Notes, p16-17

facilities or training opportunities which would normally be made available to the employee.¹⁴⁶

In a similar vein, Part X of the *ERA* sets out situations where if dismissed, an employee can be regarded as unfairly dismissed. It provides that in various specified cases a tribunal is obliged to hold that the dismissal was unfair if particular reasons for dismissal are established. Colloquially, these are referred to as cases of “automatically unfair” dismissal.

Clause 39(4) of the Bill would insert a new Section 104E into this part of the *ERA* to provide that an employee who is dismissed would be regarded as being unfairly dismissed, if the reason for dismissal is that the employee:

- (a) made (or proposed to make) a learning support application,
- (b) exercised (or proposed to exercise) a right conferred on the employee under section 63F[to have their application considered in the specified way],
- (c) brought proceedings against the employer under section 63I, or
- (d) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.”

It is not clear why this section uses the term “learning support application” rather than a “section 63 D application” as per language used in other parts of the Bill. The explanatory notes appear to suggest that it means the same thing:

New section 104E ensures that an employee would be able to claim that they were unfairly dismissed if the reason for their dismissal was that they made, or proposed to make, a request for “time to train” or submitted a claim to an employment tribunal under section 63I, or alleged circumstances that would justify such a claim.¹⁴⁷

D. Support for the time to train request

The right would not be for paid time off to train, nor would there be any obligation on the employer to pay for the training itself. The Government hopes that with support of the Train-to-Gain scheme,¹⁴⁸ employers would be able to provide funding:

Would I have to pay for training?

This legislation will not force you to pay for training - but obviously most businesses will choose to do so if it is related to what the business does. The Government has recently increased the funding available for some training and employers can get advice on this from their local Train to Gain broker or their local training provider.

¹⁴⁶ Business Link website, [protection against detriment or dismissal](#) [on 6 February 2009]

¹⁴⁷ *Apprenticeships, Skills, Children and Learning Bill*, Bill 55 2008-09, Explanatory Notes, p17

¹⁴⁸ For further information about the Train to Gain scheme, see Library Standard Note, [The National Employer Training Programme](#) (Train to Gain), SN/EP/3162, 10 January 2008

Is there funding to cover the wage costs of someone who is on a training course?

There is some Government help for businesses with fewer than 50 employees. They can receive a wage subsidy when releasing eligible employees for training through the Government's training programme 'Train to Gain'. You can get further advice on this from <http://www.traintogain.gov.uk> . Further advice on how to access funding is available from a Train to Gain broker and training providers.¹⁴⁹

The TtT Consultation Summary gave further information about how Government would support employers in each country:

...in England employers will be encouraged to seek advice from a Train to Gain broker to help them invest in the skills of their employees.

We will also ensure that employees are able to make the best use of their right to request time for training. Again, each country will develop its own offer. In England, a new, universal adult advancement and careers service (aacs) and a national system of Skills Accounts will be available nationally from 2010. These initiatives will offer focussed support and information to enable learners to make informed decisions about their training and development needs.

In Wales, businesses and employees will – subject to the usual eligibility criteria - be able to access support to identify training needs through Human Resources Development Advisors, and funding from the Workforce Development Programme, which acts as a gateway to mainstream programmes such as Apprenticeships, as well as Discretionary Funding tailored to company's specific needs. The Scottish Executive is considering the support they will offer to help employers and their employees to make the most of the new right.

In Scotland advice on what support is available to small businesses in relation to the new right for employees to request time off to train will be provided by Skills Development Scotland, who will establish a dedicated helpline based around the inherited expertise of the *Ids4business* service. Individuals will continue to have access to high quality information, advice and guidance via Skills Development Scotland.¹⁵⁰

E. The costs of time to train

The Bill's Impact Assessment divides the "principal" costs associated with the new time to train request for business under three main headings:

- Implementation costs – the one off costs which would be incurred mainly in the period when the legislation comes into force, such as the cost of communicating

¹⁴⁹ Department for Innovation, Universities and Skills press release, *25 million will gain right to request time to train*, 3 December 2008

¹⁵⁰ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008, paras 34-37

the new right to employees. The Impact Assessment says that this cost should be “negligible”.¹⁵¹

- Procedural costs arising from exercise of the right to request time to train. The principal cost here is expected to be the time of employees in making the request during working hours and the time of managers in considering the request. Using the flexible working model as a basis to work on, the impact assessment estimates that two hours of employee time and three hours of management time would be spent per request, which it estimates to cost in total £70 per request.¹⁵² Further costs would be encountered if the request was turned down and was then appealed. An internal workplace appeal is estimated to cost £140 per request, whereas the average cost to an employer of an application to an Employment Tribunal is given as £4,980.¹⁵³
- The cost of accommodating such requests when they are accepted. This heading includes things such as the cost of re-organising work schedules or readjusting IT systems. It may also include the cost of hiring additional staff to cover any reduction in working hours requested. Again using the flexible working model as a basis, the Impact Assessment gives an accommodation cost of £217.50 per request.¹⁵⁴

The Impact Assessment also sets out that the uptake of time to train would bring benefits:

It is estimated that a 1% increase in the proportion of workers trained in an industry leads to a 0.3% increase in the industry wages and a 0.6% increase in the value added per worker.¹⁵⁵

Wider social benefits listed in the Impact Assessment also include helping individuals to find work, stay in work and also better social mobility and health.¹⁵⁶

Taking all the costs and benefits into account, overall the Impact Assessment concludes that the time to train initiative would have a net benefit for Great Britain of £396 million.¹⁵⁷

F. Reaction to time to train

In a debate on the Queen’s speech on 8 December 2008, the Shadow Secretary of State for Innovation, Universities and Skills, David Willetts MP said that the Conservatives hope that the time to train proposals succeed, but suggested that it should be carefully monitored to ensure that employers are not overburdened:

¹⁵¹ Apprenticeships, Skills, Children and Learning Bill, Bill 55 2008-09, Impact Assessment, p72

¹⁵² Ibid, p73

¹⁵³ Ibid, p73

¹⁵⁴ Ibid, p75

¹⁵⁵ Ibid, p69

¹⁵⁶ Ibid, p69-71

¹⁵⁷ Ibid, p77

We hope that the proposals for “time to train” will work, but the Secretary of State will doubtless be aware of the comments of the CBI, for example, which is concerned that the impact of “time to train” on employers

“would have to be carefully monitored given the large number of employees who will be eligible to submit requests.”

It would be very useful to hear from the Secretary of State about something that he did not cover in his speech: the steps that he will be taking to ensure that employers are not overburdened as a result of the new right that he is proposing to implement. Surely, as a minimum, he needs to make a commitment to this House that he will monitor the effectiveness of this new right, to ensure that it is not coming with a disproportionate burden for employers.¹⁵⁸

In January 2009 the Innovation, University and Skills Committee published its report *Re-skilling for recovery: after Leitch, implementing skills and training policies*.¹⁵⁹ The report called the time to train proposal a “considerable step back” from the previous policy of a 2010 review of whether employees should have a legal right to workplace training up to a level two qualification.¹⁶⁰ It recommended that the effectiveness of time to train should be monitored annually:

Whilst it is an important first step, at this early stage in the development of the proposal, we are not yet convinced that the impact is likely to be of the scale necessary to make a significant contribution to the Leitch targets. Assuming that the measure is passed by Parliament, we recommend that the effectiveness of the right to request time off for training be monitored and reported annually.¹⁶¹

The Institute of Directors, in their response to the TtT Consultation, said that they thought using legislation to try to promote skills in the workforce, was “a serious mistake” due to the regulatory burden it would place on business. Instead, they advocated a reduction in the regulatory and tax burdens so that “employers have more resources to invest in skills development”, and said that Government should “simultaneously raise awareness of initiatives such as Train to Gain to help organisations access skills advice and support.”¹⁶²

In contrast, the campaign charity, the National Institute of Adult Continuing Education (NIACE) said that “we need to remedy a situation where at least a third 33% of employers do not provide any sort of training for their employees and over 8 million employees receive no training at all.” They said that the time to train measure could be a “significant step towards redressing the balance of training, building a culture of lifelong learning in workplaces and meeting UK skill needs.”¹⁶³

¹⁵⁸ [HC Deb 8 December 2008 c319](#)

¹⁵⁹ Innovation, University and Skills Committee, first report session 2008-09, *Re-skilling for recovery: after Leitch, implementing skills and training policies*, HC 48-I, 16 January 2009

¹⁶⁰ Equivalent to 5 A-C grade GCSEs

¹⁶¹ Innovation, University and Skills Committee, first report session 2008-09, *Re-skilling for recovery: after Leitch, implementing skills and training policies*, HC 48-I, 16 January 2009, para 207

¹⁶² Institute of Directors, *Time to Train response to Government Consultation*, September 2008, p4

¹⁶³ National Institute of Adult Continuing Education (NIACE) website, *Requesting Time to Train* [on 6 February 2009]

The education charity, Campaign for Learning, expressed concern that the list of legitimate reasons for employers to refuse a request was too “all-encompassing”. It suggested that where a request is refused there should be an automatic assumption that the employee’s case will be reconsidered after a short period of time.¹⁶⁴

The professional body, the Institution of Engineering and Technology (IET) said that care would need to be taken so that employers did not assume that responsibility for training would shift from them to their employees; that it was not seen as a relinquishment of an employer’s duty to train.¹⁶⁵

The Consultation Summary showed that the TUC were in favour of going further than the provision in the Bill, asking for employers to be made to provide for paid time off to train. The CBI and other employer representative bodies however were reported to have argued strongly against any compulsion on employers to fund training.¹⁶⁶

¹⁶⁴ Campaign for Learning, *Time to Train response to Government Consultation*, September 2008

¹⁶⁵ IET, *Time to Train response to Government Consultation*, September 2008

¹⁶⁶ DIUS, *Time to Train Consultation on a new right to request time to train for employees in Great Britain: Summary of responses to the consultations conducted by the Department for Innovation, Universities and Skills; the Welsh Assembly Government (DCELLS) and the Scottish Executive*, December 2008, para 4.10

Appendix A: Statistical tables

Table 1

Apprenticeship starts and participation: 1999/00-2007/08

England

	Starts			Learners (year average)		
	Advanced	Level Two	Total	Advanced	Level Two	Total
1999/00	76,800	88,300	165,100	130,000	65,400	195,400
2000/01	72,400	104,100	176,500	125,700	86,600	212,300
2001/02	54,000	108,300	162,300	111,800	101,600	213,400
2002/03	50,400	122,200	172,600	110,600	123,100	233,700
2003/04	57,000	136,600	193,600	104,800	143,100	247,900
2004/05	53,900	135,100	189,000	101,800	153,800	255,600
2005/06	52,100	122,300	174,400	98,000	154,300	252,300
2006/07	57,000	126,900	183,900	97,000	142,100	239,100
2007/08	72,900	151,300	224,200	n/a	n/a	n/a

Notes: Rounded to nearest hundred

Sources: Data Service First Release DS/SFR1v2, 22 December 2008

<http://www.thedataservice.org.uk/statistics>

Learning and Skills Council First Release ILR/SFR14, December 2007

<http://www.lsc.gov.uk/providers/Data/statistics/sfr/>

Table A2

Apprenticeship starts by age and level: 2005/06-2007/08

England

	Level 2			
	16-18	19-24	25+	Total
2005/06	76,600	45,600	100	122,300
2006/07	80,300	46,500	100	126,900
2007/08	81,500	55,200	14,600	151,300
	Level 3			
	16-18	19-24	25+	Total
2005/06	22,400	29,500	200	52,100
2006/07	24,800	32,100	100	57,000
2007/08	25,500	34,900	12,600	72,900
	Total			
	16-18	19-24	25+	Total
2005/06	99,000	75,200	300	174,400
2006/07	105,100	78,600	300	183,900
2007/08	107,000	90,100	27,200	224,200

Sources: Data Service First Release DS/SFR1v2, 22 December 2008

<http://www.thedataservice.org.uk/statistics>

Learning and Skills Council First Release ILR/SFR14, December 2007

<http://www.lsc.gov.uk/providers/Data/statistics/sfr/>

Table A3

Apprenticeship starts by sector, level and gender: 2006/07
 England: Top 10 sectors

	Number of starts	% of total	% women
Advanced apprenticeships			
1 Electrotechnical	6,428	11%	1%
2 Engineering	5,841	10%	3%
3 Children's Care Learning & Development	5,267	9%	98%
4 Construction	4,161	7%	1%
5 Business Administration	4,073	7%	83%
6 Customer Service	3,640	6%	71%
7 Hairdressing	3,229	6%	94%
8 Hospitality and Catering	2,966	5%	51%
9 Vehicle Maintenance and Repair	2,731	5%	1%
10 Plumbing	2,325	4%	1%
All advanced apprenticeships	56,932	100%	42%
Apprenticeships			
1 Construction	16,535	13%	1%
2 Hairdressing	13,752	11%	91%
3 Customer Service	11,608	9%	66%
4 Business Administration	11,443	9%	78%
5 Hospitality and Catering	10,264	8%	50%
6 Children's Care Learning & Development	7,940	6%	97%
7 Retail	7,041	6%	66%
8 Vehicle Maintenance and Repair	6,107	5%	2%
9 Engineering	5,732	4%	2%
10 Health and Social Care	5,343	4%	90%
All level 2 apprenticeships	127,408	100%	48%
All apprenticeships			
1 Construction	20,696	11%	1%
2 Hairdressing	16,981	9%	92%
3 Business Administration	15,516	8%	79%
4 Customer Service	15,248	8%	67%
5 Hospitality and Catering	13,230	7%	51%
6 Children's Care Learning & Development	13,207	7%	97%
7 Engineering	11,573	6%	3%
8 Vehicle Maintenance and Repair	8,838	5%	1%
9 Retail	8,141	4%	66%
10 Health and Social Care	7,383	4%	90%
All apprenticeships	184,340	100%	46%

Source: Apprenticeships performance data 2006-07, LSC
<http://www.apprenticeships.org.uk/About-Us/Performance-data/2006-07.aspx>