

**THE EDUCATION AND SKILLS ACT 2008
DUTIES RELATING TO THE PARTICIPATION OF YOUNG PEOPLE IN
EDUCATION, EMPLOYMENT OR TRAINING
STATUTORY GUIDANCE FOR LOCAL AUTHORITIES**

ABOUT THIS GUIDANCE

1. This is statutory guidance from the Department for Education. A local authority must have regard to it when exercising its functions relating to the participation of young people in education or training. The annex to this guidance contains departmental advice to help recipients understand what the Department considers the statutory provisions to mean in particular circumstances.
2. Apart from the elements identified in this statutory guidance, it is for local authorities to determine their approach. Local authorities should meet any costs incurred from their overall budgets, including central government grants.

REVIEW DATE

3. This guidance is being published in advance of the commencement of the relevant sections of Part 1 of the Education and Skills Act 2008 (ESA 2008) in order to support local authorities to plan for implementation for the raising of the participation age. The Department will review this guidance by June 2014.

WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?

4. This guidance is being issued under sections 18 and 68(4) of ESA 2008 in relation to sections 10, 12 and 68 of that Act. This guidance replaces the existing guidance on section 68.

WHO IS THIS GUIDANCE FOR?

5. This guidance is for all local authorities in England.

RESPONSIBILITIES OF LOCAL AUTHORITIES

6. The Government's approach is to give local authorities freedom and flexibility to decide how to fulfil their statutory duties. That is why we are only specifying key activities to help them to fulfil their duties. It is a requirement that local authorities will have regard to the following guidance when deciding how to organise and resource their services.

BACKGROUND

7. Local authorities have existing responsibilities to support young people into education or training, which are set out in the following duties:
 - **Secure sufficient suitable education and training provision** for all

young people aged 16-18 (inclusive) in their area¹.

- Make available to young people below the age of 19 support that will **encourage, enable or assist them to participate in education or training**².

In order to fulfil these duties, local authorities are expected to track the participation of young people in education and training, and ensure that young people who are not in education, employment or training (NEET) are supported to participate.

8. From September 2012, schools have been under a duty to secure access to independent and impartial careers guidance³ for their pupils in years 9-11 on the full range of post-16 education and training options, including Apprenticeships. Schools will be expected to engage, as appropriate, in partnership with external, expert providers and to have regard to statutory guidance on careers⁴. They are otherwise free to make arrangements for careers guidance for young people that fit the needs and circumstances of their students. Academies and Free Schools are subject to an equivalent requirement in their funding agreements. There is no longer an expectation that local authorities should provide universal careers services although some are choosing to deliver careers guidance on a traded basis.
9. Local authorities should, however, continue working with schools in their area - this is key to having the data needed to deliver their duties and the September Guarantee (see also paragraph 24).
10. In addition, local authorities are expected to lead the September Guarantee process, which underpins the delivery of these duties. This is the process by which local authorities aim to ensure that all 16-17 year olds receive an offer of a suitable place in education or training by the end of September each year⁵. This helps to ensure a good match between young people and suitable education and training provision, as well as helping target support on those young people who do not have a suitable place.

GUIDANCE ON EXISTING DUTIES

11. The guidance in paragraphs 12-15 is in relation to local authorities' existing duty under section 68 of ESA 2008. This applies to their work with young people age 19 or below and those aged 20 to 24 with learning difficulties.

¹Sections 15ZA and 18A of the Education Act 1996 (as inserted by the Apprenticeships, Skills, Children and Learning Act 2009))

² Section 68 Education and Skills Act 2008

³ The Education Act 2011 inserted a duty, section 42A, into Part VII of the Education Act 1997,

⁴<http://media.education.gov.uk/assets/files/pdf/s/statutory%20guidance%20for%20schools%20on%20careers%20guidance.pdf>

⁵<http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/transitionintoeducationandtraining/a0064102/offersofeducationandtraining>

12. The local Client Caseload Information System (CCIS) provides local authorities with the means of recording young people's post-16 plans and the offers of education or training they receive, together with their current circumstances and activities. The National CCIS Management Information Requirements⁶ (NCCIS) set out the six data areas that should continue to be reported to the national system each month from the local CCIS system.
13. Information on the number and proportion of young people in each area who receive an offer under the September Guarantee, are participating in education, employment or training, who are NEET, or whose current activity is not known, will be taken from the data reported to Department for Education (DfE) and made available publically the via the DfE website. Data will be broken down by age, gender, ethnic group and disability where available.
14. Local authorities should continue to maintain close links with Jobcentre Plus to ensure that young people who are NEET receive a complementary package of support to find employment (with training for 16-17 year olds) or to re-engage in education or training. This responsibility is best met by the development of local partnership agreements, which set out the ways in which local authorities and Jobcentre Plus will work together to ensure that a seamless and comprehensive service is provided for all young people.
15. 16-17 year olds are, in certain circumstances, eligible to claim Job Seeker's Allowance (JSA), Income Support (IS) or Employment Support Allowance (ESA). Whilst decisions about the payment of benefits will be made by Jobcentre Plus, any young person wishing to make a claim must first register with the local authority. The requirement to register with the local authority is in primary legislation and is a condition of benefit entitlement for those under 18. Supporting processes are currently in place to let Jobcentre Plus know that a young person has registered with local authority and maybe eligible for benefit. The young person's details should then be recorded on CCIS as 'NEET – seeking employment, education or training'. Local authorities are expected to follow the processes set out in the 'Benefits Liaison Guidance'⁷ issued by DWP to ensure that benefit regulations are adhered to.

NEW STATUTORY DUTIES

16. Part 1 of ESA 2008 sets out that all 16 and 17 year olds will be under a duty to continue in education or training. This is happening in two phases: from 2013, **all young people will be under a duty to participate in education or training until the end of the academic year in which they turn 17. From 2015, this will rise to their 18th birthday.** Advice on the definitions of participation in education or training is set in the Annex to this guidance.

⁶<http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/a0074374/national-client-caseload-information-system-nccis-management-information-required-from-ccis>
⁷<http://www.dwp.gov.uk/publications/specialist-guides/supporting-young-benefit-claimants>

17. This will ensure that every young person continues their studies or takes up training and goes on to successful employment or Higher Education. The Government's strategy for achieving full participation of all young people is set out in *Building Engagement, Building Futures*⁸.
18. In addition to the existing duties described in paragraph 7, Part 1 of ESA 2008 places two new duties on local authorities **to promote the effective participation of young people in education or training, and to have in place arrangements to identify those not participating**, as follows:
 - A local authority in England must ensure that its functions are (so far as they are capable of being so exercised) exercised so as to **promote the effective participation in education or training** of persons belonging to its area to whom Part 1 of ESA 2008 applies with a view to ensuring that those persons fulfil the duty to participate in education or training⁹.
 - A local authority in England must make arrangements to enable it to **establish** (so far as it is possible to do so) **the identities of persons** belonging to its area to whom Part 1 of ESA 2008 applies but who are **failing to fulfil the duty to participate in education or training**¹⁰.

GUIDANCE ON NEW DUTIES

19. The guidance in paragraphs 20-28 and the advice in the Annex, relates to young people who are included in the duty to participate – that is 16 year olds (until the end of the academic year in which they turn 17) from summer 2013, and 17 year olds from summer 2015. Local authorities are free to consider the application of this guidance to other young people.

PROMOTION OF EFFECTIVE PARTICIPATION

20. The participation of young people in education and training should be actively supported through local authorities' wider functions wherever possible and practical. This might include their education and children's services, Youth Offending Teams, Troubled Families Teams and pre-16 Education Team, social services and economic development amongst others.
21. Specific examples of this are:
 - Local authorities should ensure they are mindful of supporting the participation of all young people when preparing their post-16 transport policy statement¹¹.
 - Local authorities could consider wider areas, such as economic regeneration policies which include Apprenticeship places for young people or working with local employers to facilitate training opportunities for young employees.

⁸ <http://www.education.gov.uk/a00200853/building-engagement-building-futures>

⁹ Section 10 ESA 2008

¹⁰ Section 12 ESA 2008

¹¹ In accordance with their duty under section 509AA of the Education Act 1996

22. Local authorities may find it useful to consider how best to work with and influence partners locally to support participation. Local authorities may wish to consider:
- Having agreements in place for working with neighbouring authorities – and where needed, having arrangements for supporting and tracking young people across local authority boundaries.
 - Developing a strategic plan for implementing RPA to maximise impact from the range of funding sources supporting this area – including funding for education and training places, re-engagement provision supported by the European Social Fund, and Youth Contract provision for the most vulnerable young people. Local authorities may also wish to agree ways of working with wider agencies including the Voluntary and Community Sector, and other relevant bodies, including the employers of young people.
23. Sections 14-17 of ESA 2008 provide data sharing powers¹² to support this; and section 13 places a duty on all educational institutions (maintained schools, Academies, colleges, and education and training providers – including Apprenticeship providers) to tell a local authority when a young person is no longer participating. This duty is applicable if a young person leaves an education or training programme before completion (i.e. ‘drops-out’). Local authorities may also want to ensure that they are aware of young people completing shorter courses who need help to continue their education or training. In the event of a local authority being told that a young person from another local authority is not participating, they should inform the home authority as quickly as possible.
24. Local authorities may wish to also consider working with schools (and other pre-16 education providers – e.g. alternative provision) to identify and support those pupils at risk of not being in education or training post-16. Tools such as risk of NEET indicators may support this¹³.

IDENTIFYING YOUNG PEOPLE NOT PARTICIPATING

25. The duty to participate in education or training applies only to those young people resident in England. In certain circumstances, local authorities may need to make judgements about whether young people are resident in England and therefore are required to participate (for example, if a young person is in the country for an extended temporary period). Local authorities have discretion to make these decisions themselves based on the individual’s circumstances. The Education Funding Agency funding regulations¹⁴ set out the criteria for eligibility for funding and this may be helpful in making these decisions.

¹² This is related to the existing provisions in section 72 of ESA 2008.

¹³ <http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/rpa/a0075564/rpa-past-projects>

¹⁴ <http://www.education.gov.uk/childrenandyoungpeople/youngpeople/studentsupport/funding/a00209794/funding-guidance-2012-to-13>

26. As set out in paragraph 12, local authorities must follow the management information requirements of the NCCIS¹⁵. The NCCIS will function as the main source of evidence that local authorities are meeting their duty under section 12 of ESA 2008. Therefore, all local authorities should ensure that the information contained on their local CCIS database is as complete and up to date as possible – and includes information relating to all young people resident in that local authority.
27. The Government recognises there will always be a very small number of young people who require a temporary break in education or training (such as new mothers or the very ill). It is important that local authorities are satisfied that they have in place the appropriate support mechanisms in their area to enable these young people to re-engage in education or training as soon as is reasonably possible.
28. Whilst the legislation that provides for an ‘enforcement’ process for RPA will not be commenced for the time being, local authorities must be aware that young people (aged 16 and 17) are under a duty to participate and authorities should be doing all they can to support them to meet that duty. Government will review RPA in the round on an annual basis and implement the enforcement provisions if necessary.

¹⁵<http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/a0074374/national-client-caseload-information-system-nccis-management-information-required-from-ccis>

ANNEX - DEFINING PARTICIPATION

1. In order for local authorities to fulfil their duties, they will need to have regard to provisions in Part 1 of ESA 2008 and in the regulations made under that Act, including:
 - The duty to participate in education or training applies to all young people in England (from 28 June 2013) until the end of the academic year in which they turn 17; and from 26 June 2015, this is to their 18th birthday.
 - Where young people have accepted an offer of a place in education or training, or are participating, there is no requirement for them to participate during the usual breaks in learning (e.g. school/college holidays).
 - Where young people have attained 2 or more A levels or the other prescribed qualifications¹⁶, they are no longer *required* to participate but may benefit from support to continue their education or get a job.
2. The three primary routes to participation are:
 - a) Full-time education.
 - b) An Apprenticeship.
 - c) Full-time work with part-time education or training alongside.

WHAT COUNTS AS FULL-TIME EDUCATION

3. The great majority of young people will meet the duty to participate by participating in full time education.
4. Where a young person is attending full-time education at a school, local authorities need to assure themselves that the young person is enrolled and attending.
5. For young people attending other full-time education – whether that be a sixth form college, general further education college, independent college, or otherwise apart from the settings below (paras 6& 7) – the definition of full-time participation is at least 540 hours of guided learning a year. In accordance with the principles of 16-19 study programmes¹⁷, wider forms of education such as work experience can be included within those hours. In general, young people enrolled on a full-time study programme will be meeting the duty to participate.
6. For young people who are being home educated, no hourly requirement of education applies: the amount and content of that education is at the discretion of the home educator. Where a young person claims to be

¹⁶ **[DN – provisional to be confirmed]** These are: the International Baccalaureate Diploma; an Advanced Apprenticeship, and two Cambridge Pre-University qualifications.

¹⁷ <http://www.education.gov.uk/schools/teachingandlearning/curriculum/a00210755/16-19-study-programmes>

home educated in response to a local authority query, if the authority believes there is some doubt in the matter they may wish to seek confirmation of this from the parent or guardian.

7. For young people who have been absent from the education system and are now attending a re-engagement programme, no hourly requirement of education applies. Local authorities should be satisfied, particularly where they commission this provision, that the express intention of the programme is to support that young person to move into full-time education at a school or college, an Apprenticeship, or full-time work with part-time training alongside. Once re-engagement onto one of those routes is secured, the wider requirements for participation apply. A suggested set of non-statutory principles that re-engagement provision should look to satisfy has been developed by the DfE and representatives from the sector¹⁸.

APPRENTICESHIPS

8. Entering into a contract of Apprenticeship (including Access to Apprenticeships programmes) satisfies the duty to participate and so no further monitoring of that young person's training or employment is needed. Apprenticeship providers are included in the requirement to notify a local authority if a young person is no longer participating ('drops-out' of learning).

FULL-TIME WORK WITH PART-TIME EDUCATION OR TRAINING

9. Sections 5, 6 and 8 of ESA 2008 detail the requirements of this route. In order to be considered as participating, a young person must both be in full-time work and undertaking part-time education or training. The key definitions that local authorities will need to have regard to are that:
 - To count as full-time work, the job must be for 8 or more weeks consecutively and for 20 or more hours per week. Where a young person's employment hours vary, employment of 40 or more hours over a two week period can be considered as meeting the requirement. Part-time work (e.g. a weekend or evening job) is not affected by these requirements.
 - Full-time self-employment, holding a public office or working other than for reward (e.g. volunteering) should all be regarded in the same way as full-time employment. For volunteering placements, it is recommended that a written agreement is in place between the young person and the placement organiser, but it is not the local authority's responsibility to monitor this.
 - Part-time education or training alongside full-time work must be of at least 280 guided learning hours (GLH) per year. There is no set pattern for how these hours should be taken: at a given time a young person might not be undertaking education or training as long as it is clear that over the course

¹⁸[DN – include link when ready]

of the year the hourly minimum will be met. Part-time education or training pursued alongside full-time work must constitute education or training leading towards an accredited qualification and therefore have a GLH value attached. This education or training may be provided directly by an employer or by another organisation.

YOUNG PEOPLE WITH FULL-TIME CARING RESPONSIBILITIES

10. Local authorities may consider full-time caring responsibilities as full-time work depending on individual circumstances, so part time education or training alongside that work would count as full participation. This is only likely to be appropriate where the young person is on the local authority's register of carers and/or is in receipt of carers' allowance. Young people who are parents caring for children would not be covered by this provision, as they would be expected to participate full-time and may qualify for Care to Learn¹⁹ funding to enable them to do so. As set out in para 27 of the guidance, a reasonable period of maternity leave is, of course, justified.

YOUNG PEOPLE IN JOBS WITHOUT TRAINING

11. Whilst all employment is beneficial, long-term outcomes for young people in jobs without training are only marginally better than outcomes for young people who are NEET. Therefore those in jobs without training should also be supported to take up suitable part-time education or training alongside their work. This will enable them to gain the qualifications and skills that will support future employment and increase their earnings. It is for local authorities to determine their own arrangements for supporting young people in work to meet their duty to participate, though they may wish to consider: using existing employer networks to discuss the training needs of young people; communications to raise awareness about the duty on young people to participate; or support and encouragement for employers to convert existing jobs to Apprenticeships.
12. Infrequently, a young person's working hours may prevent them from attending their chosen part-time education or training programme. Local authorities should be aware of their duty to secure appropriate provision²⁰ for all young people and so ensure that flexible provision is in place where needed. In cases where it is not possible to provide suitable provision to fit around working patterns, local authorities should work with employers to find an amicable solution.

YOUNG PEOPLE TAKING GAP YEARS

13. Most young people who take gap years do so at 18 or older and will be unaffected by this legislation. For the small group of 16 and 17 year olds who are considering taking a gap year, the legislation applies in the following way:
 - Where the gap year is taken abroad, a local authority may need to make a

¹⁹ <http://www.education.gov.uk/childrenandyoungpeople/youngpeople/studentssupport/funding/a00203090/care-to-learn>

²⁰ Section 15ZA and 18A of the Education Act 1996 (as inserted by the ASCL Act 2009)

judgement about whether that young person will be resident in England (paragraph 25 of the Guidance).

- Those remaining in England to work or volunteer would be expected to comply with RPA and undertake education or training in accordance with the duties set out in paragraphs 1 and 2 of this Advice.

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