

EXPLANATORY MEMORANDUM TO
THE APPRENTICESHIPS (MISCELLANEOUS PROVISIONS) REGULATIONS
2017

2017 No. 1310

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory instruments.

2. Purpose of the instrument

- 2.1 This instrument:
- makes it a requirement that off-the-job training be provided during the course of an approved English apprenticeship; and that approved English apprenticeship agreements (i) specify the amount of off-the-job training that the apprentice is to receive and (ii) last for at least 12 months (unless the exception applies for certain apprentices who were made redundant);
 - defines alternative English apprenticeships (certain arrangements under which the apprentice does not have to work for an employer or for reward) and provides for them, first for the purposes of allowing certain apprentices who were made redundant to complete their apprenticeship training under a new approved English apprenticeship agreement, and second for certain office holders;
 - allows the Institute for Apprenticeships to charge fees for things done in connection with the carrying out by it of evaluations of apprenticeship assessments; and
 - amends the Public Sector Apprenticeship Targets Regulations 2017 (SI 2017/513) (“the Target Regulations”) to bring (i) academy school proprietors within the scope of the public sector apprenticeship target regime, and (ii) police constables who are members of police forces maintained by local policing bodies in England within the definition of headcount for the purposes of the apprenticeship target regime.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The free issue procedure has been applied in the interests of transparency for users of the legislation as, whilst a key purpose of the instrument is to introduce the policy explained above in relation to apprenticeships, it also rectifies an issue with the Target Regulations.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Under section A1(2) and (3)(c) of the Apprenticeships, Skills, Children and Learning Act 2009 (“the Act”) the Secretary of State may specify in regulations conditions for approved English apprenticeships and approved English apprenticeship agreements.
- 4.2 Under section A1(4) and (5) of the Act the Secretary of State may make regulations providing for alternative apprenticeships.
- 4.3 Section A2B(4) of the Act enables the Secretary of State to make regulations to authorise the Institute for Apprenticeships to charge fees for things done in connection with the carrying out by it of evaluations of apprenticeship assessments.
- 4.4 The Target Regulations were made under section A9(1), (5)(d) and (6) of the Act. This instrument amends the Target Regulations to ensure that the Target Regulations properly reflect the original policy intention underpinning them.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The following sections are separated into parts that correspond with the structure and substance of the instrument.

Part 2: Approved English Apprenticeships

- 7.2 All apprenticeship programmes should ensure that apprentices receive the appropriate training to enable them to gain the necessary knowledge, skills and behaviours to become occupationally competent in the occupation to which the apprenticeship standard relates. To do this each apprentice must receive off-the-job training to help them achieve the standard and undertake work as an apprentice for a minimum of 12 months (“the 12-month rule”), as specified in the apprenticeship agreement.
- 7.3 In determining the period for which the apprentice is expected to work and receive training under an apprenticeship agreement the employer must consider the apprentice’s knowledge and skills, whether the apprentice will be engaged on a full or part-time basis, and the standard to which the agreement relates. The final day of this period may be revised in circumstances where there has been a break in the apprenticeship or a change in the basis on which the apprentice is engaged.

- 7.4 There is an exception to the 12-month rule when an apprentice made redundant seeks to complete the apprenticeship on the same standard with a new employer. The time already spent on an apprenticeship should be taken into account when determining, for the purposes of the new apprenticeship agreement, the final day of the apprenticeship with the new employer.
- 7.5 The apprenticeship agreement must also specify the amount of off-the-job training that the apprentice is to receive.
- 7.6 Alternative English apprenticeships are certain arrangements under which the apprentice does not have to work for an employer or for reward. They are to apply in the following circumstances. First, they are to allow apprentices made redundant within six months of their final day to complete their apprenticeships without an apprenticeship agreement.
- 7.7 Secondly, they are to provide for office holders who are (a) police constables who are members of police forces maintained by local policing bodies in England or (b) ministers or trainee ministers of religious denominations. This provision is necessary for these people to do apprenticeships under the Act, because they are office holders and not employees who can be employed under an apprenticeship agreement.

Part 3: Fees for the carrying out of evaluations of apprenticeship assessments

- 7.8 An important feature of new apprenticeship standards is the introduction of end-point assessments. The end-point assessments for each apprenticeship standard give employers confidence that, by completing an apprenticeship, an individual has demonstrated that they have the knowledge, skills and behaviours necessary to be competent in their occupation.
- 7.9 As different end-point assessment organisations are able to deliver assessments for the same standard, all assessments are subject to external quality assurance (“evaluations of the quality of apprenticeship assessments”) which is undertaken by an external body and covers all of the assessment organisations delivering against a particular standard. This is intended to ensure that there is consistency of quality and approach to assessments across an apprenticeship standard, regardless of which end-point assessment organisation has delivered the assessments and where and when the end-point assessments are carried out.
- 7.10 The fee for apprenticeship assessments charged by end-point assessment organisations includes any costs related to external quality assurance of the end-point assessments. In line with our long-standing principle, all external quality assurance bodies are required to deliver this service on a not-for-profit basis.
- 7.11 The cost of external quality assurance for a particular type of end-point assessment will be proportionate to how many apprentices take that end-point assessment – this is because external quality assurance ensures consistency of approach, and the more apprentices that are assessed, the greater the demands in terms of ensuring consistency. For this reason, the fee for external quality assurance of end-point assessment is charged per apprentice who is assessed, so the overall cost for external quality assurance, from the perspective of an end-point assessment organisation, would be directly proportionate to the number of apprentices that they assessed. This approach ensures that costs are recovered on a fair and equitable basis. Furthermore, although end-point assessments vary, the Institute for Apprenticeship’s external quality assurance system’s approach will be the same for each apprenticeship

standard. For this reason, the same fee will apply, regardless of which standard's assessment is being externally quality assured.

- 7.12 The maximum fee of £56 permitted by this instrument is set at a level that is intended to allow the Institute to recover the bulk of the costs of running their external quality assurance system.

Part 4: Amendment of the Public Sector Apprenticeship Targets Regulations 2017

- 7.13 The public sector will play a key role in meeting the government's target of 3 million apprenticeship starts by 2020.
- 7.14 The Target Regulations (which came into force in March 2017 and published on gov.uk¹) set apprenticeship targets for prescribed public bodies with 250 or more staff in England. Public bodies in scope of the target are required to have regard to the target. They are also required to publish certain information annually about their progress towards the target.
- 7.15 Since the Target Regulations were enacted, two issues became apparent:
- (i) academy proprietors (which are also known as Academy Trusts or Multi-Academy Trusts) were excluded from the apprenticeship target regime. This was contrary to the original policy intention underpinning the Target Regulations that all public bodies with 250 or more employees that employ the staff of any school (other than independent schools) should be subject to the target.
 - (ii) police officers were excluded from the definition of headcount for the purposes of the apprenticeship target regime. This is because police constables who are members of police forces maintained by local policing bodies in England are office holders and do not fall within the definition of "worker" or "Crown employment" set out in Target Regulations. The effect of this was that under the Target Regulations, police forces maintained by local policing bodies in England did not have to include their police constables in their headcount when calculating their target. This was contrary to the original policy intention underpinning the Target Regulations for police forces' targets to include their workforces in the broadest sense, including police constables who are members of police forces maintained by local policing bodies in England. The overall policy aim was for the public sector to deliver its fair share of apprenticeships.
- 7.16 This instrument is made to address both these issues, by bringing academy school proprietors in scope of the apprenticeship target regime, where they have 250 or more staff in England, and bringing police constables who are members of police forces maintained by local policing bodies in England within the definition of headcount for the purposes of the apprenticeship target regime. The target period for academy proprietors in scope will run from 1 April 2018 – 31 March 2021.
- 7.17 The new provision in relation to police forces has the effect that all members of a police force are to be counted for the purpose of determining headcount. Necessarily, since this provision cannot apply retrospectively, headcount will only include police officers from the coming into force of the relevant amending regulations. However, this new provision does not affect any obligations to which a police force may have been subject from the coming into force of the Target Regulations, since the

¹ https://www.legislation.gov.uk/ukxi/2017/513/pdfs/ukxi_20170513_en.pdf

regulations would have applied to police forces with 250 or more civilian staff from that time.

- 7.18 This instrument also includes provisions clarifying that: (i) the proprietors of independent schools that are not academies are excluded from the apprenticeship target regime; and (ii) that the governing bodies of foundation, voluntary, or foundation special schools are included in the apprenticeship target regime even if they are a charity (as charities are excluded from the apprenticeship target regime in most circumstances). These amendments are not seeking to change anything about the way that the Target Regulations have worked, but are simply considered helpful in clarifying these provisions in light of the amendments that have been necessary to bring academy school proprietors in scope.

Consolidation

- 7.19 There are no plans for consolidation.

8. Consultation outcome

Part 2: Approved English Apprenticeships

- 8.1 The policy reflected in this part of the Regulations was subject to the Education and Skills Funding Agency consultation on the Apprenticeship Funding and Performance Management Rules 2017 – 2018 in Autumn 2016.²

Part 3: Fees for the carrying out of evaluations of apprenticeship assessments

- 8.2 There is no statutory requirement to consult in relation to allowing the Institute for Apprenticeships to charge fees for things done in connection with the carrying out by it of evaluations of apprenticeship assessments. However, the Institute has informally discussed the likely fee with stakeholders.

Part 4: Amendment of the Public Sector Apprenticeship Targets Regulations 2017

- 8.3 The Government consulted on the policy development of the public sector apprenticeship targets with public sector organisations that could potentially have been in scope of the policy, and therefore the Target Regulations and this instrument, during the passage of the Enterprise Act 2016 (which inserted the provisions connected to the apprenticeship target regime into the 2009 Act). This consultation ran from 26 January 2016 to 4 March 2016 and received 180 responses including from NHS trusts, local authorities, schools, police and fire services and other Government Departments via the write-round process. The duration of the consultation was 6 weeks to inform drafting of clauses in the 2016 Act. The Government's response to the consultation was published in January 2017.
- 8.4 As this instrument intends to bring the legislative framework for the target in line with existing policy, no formal consultation on this part of the instrument has taken place and there is no statutory requirement to do so.

9. Guidance

Part 2: Approved English Apprenticeships

² <https://www.gov.uk/government/publications/apprenticeship-funding-and-performance-management-rules-2017-to-2018>

- 9.1 Further guidance on this part is available in the Education and Skills Funding Agency’s Apprenticeship Funding and Performance Management Rules 2017 – 2018 and also through www.gov.uk.³ Those rules are consulted on and updated at least annually and, if required, more frequently. Guidance is also available on off-the-job training and published on gov.uk⁴:

Part 3: Fees for the carrying out of evaluations of apprenticeship assessments

- 9.2 Information on the Institute for Apprenticeships’ approach to external quality assurance can be found in Annex F of its “*How to develop an apprenticeship standard: guide for trailblazers*”.⁵

Part 4: Amendment of the Public Sector Apprenticeship Targets Regulations 2017

- 9.3 The Secretary of State issued statutory guidance on the Target Regulations in April 2017, and published this on www.gov.uk.⁶ No further guidance is needed with respect to this part of this instrument.
- 9.4 The Department has also issued non-statutory guidance to schools on apprenticeships to support them in using apprenticeships as part of their workforce.⁷ This sets out specific information for schools about the public sector apprenticeship target and how it applies to schools. This guidance was published in March 2017.

10. Impact

Part 2: Approved English Apprenticeships

- 10.1 The impact on business, charities or voluntary bodies is minimal, as the areas covered in this part are to a large extent addressed in the Education and Skills Funding Agency’s Apprenticeship Funding and Performance Management Rules 2017-18 (“the rules”), with which employers will need to comply in order to receive public funds. Although apprenticeship agreements will be required to specify information which may not have been previously specified in those agreements, that information is already specified in the statement of commitment in accordance with the rules.
- 10.2 The impact on the public sector is the same as for other employers (see para 10.1).
- 10.3 An impact assessment is submitted with this Explanatory Memorandum and will be published alongside it on the legislation.gov.uk website.

Part 3: Fees for the carrying out of evaluations of apprenticeship assessments

- 10.4 Any fee charged by the Institute for Apprenticeships to the end point assessment organisation is likely (but need not) to be passed on to the employers in the form of a fee for apprenticeship assessment. Levy-paying employers are able to use their

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646244/17_18_apprenticeships_funding_and_pm_rules_V4.pdf

⁴ <https://www.gov.uk/government/publications/apprenticeships-off-the-job-training>

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620011/How_to_guide_for_trailblazers.pdf

6

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606955/Public_Sector_Statutory_Guidance.pdf

7

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/598603/Schools_guide_to_apprenticeship_reforms.pdf

apprenticeship service funds to pay the costs of apprenticeship assessment. These employers will therefore be indirectly affected by the regulation. When the end point assessment organisation does not pass these costs on to employers, there will be no impact on business.

10.5 There is no additional impact on the public sector.

Part 4: Amendment of the Public Sector Apprenticeship Targets Regulations 2017

10.6 There is no impact on business, charities or voluntary bodies.

10.7 The impact on the public sector is that the academy school proprietors that have 250 or more staff in England will have to have regard to and report their progress towards the target, and police forces will have to include police officers within their headcount to calculate their target. As such the measure is likely to place little additional burden on these organisations for the following reasons:

- The measure will only be reported on an annual basis and will be calculated by taking a single percentage of those who began working as apprentices within the total headcount. The measure will allow for bodies in scope to provide extra information where suitable to provide context around this number.
- Bringing academies proprietors within scope of the target and police officers within the definition of headcount reflects the original policy intention and published guidance. The measure states that organisations need to ‘have regard’ to the measure. To ‘have regard’ can mean simply when a new post becomes available or if development of an existing employee is needed, that apprenticeships are considered. The Government expects the public sector to lead the way, and organisations who believe their staffing structure has acted as a material barrier to achieving the target can say so in their reporting.
- An Impact Assessment has not been prepared for this instrument, nor was it prepared for the previous Regulations. As this measure only affects publically funded bodies, with no costs to business, the Better Regulation Executive confirmed that no Impact Assessment was required in relation to the Target Regulations. A full Impact Assessment was prepared for all measures included in the Enterprise Act 2016.⁸

Although Part 4 of this instrument applies to schools, it comes into force on 31st March 2018. The Department acknowledges that this is not in line with its commitment made to the Legislative Scrutiny Committee to generally adopt 1 September as the commencement date for statutory instruments that apply to schools.⁹ In this case, it has been necessary to adopt the March 2018 date in order to align this provision with the Public Sector Targets Regulations 2017 which it amends. This date is critical for determining apprenticeship targets across the whole of the public sector.

11. Regulating small business

Part 2: Approved English Apprenticeships

11.1 The legislation applies to activities that are undertaken by small businesses that choose to engage apprentices. We expect the burden to be minimal and to fall mainly on the provider, who will supply the necessary information to the employer in relation to setting out the content of off-the-job training in the apprenticeship agreement.

⁸ <http://www.parliament.uk/documents/impact-assessments/IA15-009F.pdf>

⁹ <https://publications.parliament.uk/pa/ld201011/ldselect/ldmerit/49/4909.htm>

Part 3: Fees for the carrying out of evaluations of apprenticeship assessments

- 11.2 The legislation does not apply specifically to activities that are undertaken by small businesses, although there may be an indirect impact, should the costs of external quality assurance be passed on to a small business employer via the end point assessment organisation. Likewise, if the end point assessment organisation is a small business, it would be affected by this regulation.
- 11.3 No specific action is proposed to minimise regulatory burdens on small businesses.

Part 4: Amendment of the Public Sector Apprenticeship Targets Regulations 2017

- 11.4 This part of the legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

Part 2: Approved English Apprenticeships

- 12.1 The Department will review the impact of this part of these Regulations through the normal course of business.

Part 3: Fees for the carrying out of evaluations of apprenticeship assessments

- 12.2 The Department will engage with the Institute for Apprenticeships to ensure that the fees charged for its external quality assurance service are monitored and reviewed on an annual basis. This will also enable the Department to review appropriate fees for delivering external quality assurance on a not-for-profit basis, as the external quality assurance market develops and the Department gains more intelligence on the fees charged by different external quality assurance bodies.

Part 4: Amendment of the Public Sector Apprenticeship Targets Regulations 2017

- 12.3 The Target Regulations as amended by these Regulations require organisations in scope to report on progress towards meeting the apprenticeship targets annually. The first returns from organisations in scope of the Target Regulations will be due by 30 September 2018 and returns from academy school proprietors will be due by 30 September 2019. We will use this information to monitor the efficacy and impact of the measure and will amend the Target Regulations if appropriate.

13. Contact

- 13.1 Philip Edmeades at the Department for Education, telephone: 07775 407581 or email: Philip.Edmeades@education.gov.uk, can answer any queries regarding the instrument.