

EXPLANATORY MEMORANDUM TO
THE APPRENTICESHIPS (MISCELLANEOUS PROVISIONS) (ENGLAND)
(AMENDMENT) (NO. 3) REGULATIONS 2022

2022 No. 1341

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations will add to the list of eligible standards for the alternative English Apprenticeship created by [The Apprenticeships \(Miscellaneous Provisions\) \(Amendment\) \(England\) Regulations 2022](#).

2.2 The alternative arrangement created ‘flexi job apprenticeships’ which require employers taking on a flexi-job apprentice to undertake a minimum 3-month commitment, instead of the 12-month commitment under an approved English apprenticeship agreement.

2.3 This allows apprentices on flexi-job apprenticeships to move between different arrangements (i.e. discrete blocks of employment with training) throughout the course of their apprenticeship.

2.4 This will allow apprentices on the Portable Flexi-job Apprenticeships Pilot Programme to undertake apprenticeships as part of the pilot programme in the following standards:

- (a) Adult Care Worker
- (b) Customer Service Practitioner
- (c) Data Analyst
- (d) Information Communications Technician
- (e) Lead Adult Care Worker
- (f) Leader in Adult Care
- (g) Healthcare Assistant Practitioner
- (h) Healthcare Support Worker
- (i) Senior Healthcare Support Worker
- (j) Civil Engineering Senior Technician
- (k) Construction Quantity Surveying Technician
- (l) Construction Design and Build Technician
- (m) Civil Engineering Technician
- (n) Content Creator

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These Regulations amend [The Apprenticeships \(Miscellaneous Provisions\) Regulations 2017](#) (“the 2017 Regulations”), which were made under the powers conferred by sections A1(2), (3)(c) and (4) and (5), A2B(4), A9(1), (5)(d) and (6) and 262(3) of the Apprenticeships, Skills, Children and Learning Act 2009.
- 6.2 The 2017 Regulations specify the conditions of an approved English apprenticeship, including the circumstances where an alternative English apprenticeship applies.
- 6.3 This is the third amendment to The Apprenticeships (Miscellaneous Provisions) Regulations 2017 to be completed in 2022. The first amendment ([The Apprenticeships \(Miscellaneous Provisions\) \(Amendment\) \(England\) Regulations 2022 \(legislation.gov.uk\)](#)) created the Alternative Arrangements needed to support Flexi Job Apprenticeship, the second created the Alternative Arrangement needed to support prisoners undertaking apprenticeships while Released on Temporary Licence.

7. Policy background

What is being done and why?

- 7.1 The Apprenticeships (Miscellaneous Provisions) (Amendment) (England) Regulations 2022 created the Portable Flexi-job Apprenticeship. This change allowed apprentices undertaking specified apprenticeship standards to move between different arrangements throughout their apprenticeship. The creation of these regulations allowed us to launch a pilot programme to test the policy and the regulations.
- 7.2 Under previous legislation, the minimum duration of any approved English apprenticeship agreement was 12 months, with employers having to commit to employing the apprentice for the full minimum duration at the start of the apprenticeship. Employers have told us that this is not practical in all sectors. One of the key barriers to employing apprentices in certain sectors is varied and flexible employment patterns – for example in the creative and construction sectors – where employment is often short-term and project-based.
- 7.3 We want to support apprentices and employers to make use of apprenticeships in these sectors where short-term, project-based employment is the norm. In these sectors, apprentices will be able to take their apprenticeship learning and experience with them as they move between arrangements, enabling them to complete their apprenticeship across a series of work placements.
- 7.4 To do this we adapted the requirement for employers to commit to employing an apprentice for the full duration of the apprenticeship. The regulations now allow

apprentices undertaking specified apprenticeship standards to move between different arrangements throughout their apprenticeship.

- 7.5 During the pilot an apprentice and provider will commit to the full duration of the apprenticeship, which is a minimum of 12 months, while each employer will commit to a minimum 3-month arrangement, following which the apprentice will begin a new arrangement either with the same, or with a new employer, carrying their learning and progress with them and continuing their apprenticeship. This will continue until the combined arrangements have passed the programme minimum 12-month duration, and the apprentice is ready to be entered into end-point assessment. Where a new arrangement cannot be found or does not start immediately, the apprentice will take a break in their learning until the next arrangement begins.
- 7.6 The core principles and requirements of all apprenticeships continue to apply:
- 12-month minimum on-programme duration in total (on-programme refers to the time the apprentice is employed and in training);
 - Substantial new training, including a minimum 20% of the apprentice's working time spent in off-the-job training
 - Independent end point assessment
- 7.7 As part of the initial change to regulations, we limited the standards to which the regulations could apply to a short list of 24 apprenticeship standards. These standards were identified by sectors such as the creative industry, digital and construction as being impacted by non-standard employment models. As part of the pilot plan, we said we would look to expand the pilot in a second phase to include some further standards.
- 7.8 In August/September 2022 we ran an expression of interest to invite providers to apply to deliver new standards as part of the pilot programme. Providers were required to explain the occupational need for the portable flex-job apprenticeship method of delivery and evidence employer demand as part of the selection process. The successful providers evidenced sectoral need and employer demand as well as describing their planned delivery models, which were designed to protect the apprentice and employer experience and ensure quality provision.
- 7.9 Apprenticeship standards detail the knowledge, skills and behaviours that an apprentice needs to demonstrate by the end of their apprenticeship. They are approved by the Institute of Apprenticeships and Technical Education. Full details of all standards can be found here:
<https://www.instituteforapprenticeships.org/apprenticeship-standards/>
- 7.10 This SI will increase the number of apprenticeship standards that can be delivered by approved providers under the pilot. We are adding 14 further standards to the pilot programme. This will increase the total number of apprenticeship standards that can be delivered to 38, allowing us to respond to employer demand and test the policy across a wider range of employers and occupations.
- 7.11 The standards listed above were requested by providers, based on feedback from employers they work with. Employer and provider awareness of the portable flex-job apprenticeship model is increasing resulting in interesting in testing the approach in new occupations that share the same characteristics as the original standards e.g. non-standard employment model and frequent moves between employers.

- 7.12 Should the pilot be successful, we will consider making flexi-job apprenticeships available for other apprenticeship standards where such arrangements are required for specific occupations and sectors.
- 7.13 While initial recruitment on the pilot has been lower than initially anticipated employer feedback has reflected that the longer-term impact of the global pandemic and the speed of recovery in some sectors is a factor. The current economic climate is also having an impact on smaller employers and their skills needs. By widening the scope of the pilot we aim to fully test the principles of portable flexi-job apprenticeships while responding to the changes in the economy.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no plans for consolidation.

10. Consultation outcome

- 10.1 There was no statutory duty to consult.
- 10.2 Informal engagement originally took place with sector representatives from the creative sector, including the Royal Opera House, Disney Theatrical Productions, the National Trust and Historic England, and the construction and digital sectors.
- 10.3 The recent expression of interest invited all sectors and employers to engage with the pilot, with most of the responses coming from engineering and construction and healthcare.

11. Guidance

- 11.1 We will issue operational guidance to relevant employers, providers and apprentices in respect of the pilot.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is to remove the commitment to employ an apprentice for 12 months if they are undertaking a flexi-job apprenticeship in those listed standards. This will allow relevant businesses to employ apprentices and make use of apprenticeships in line with their normal employment models. This will allow them to access government funding, covering up to 100% of the costs of the apprenticeship delivery.
- 12.2 There is no, or no significant, impact on the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This policy is anticipated to have a positive impact on small businesses within relevant sectors to support the employment of apprentices. Currently these businesses struggle to access apprenticeships as they cannot commit to the 12-month employment minimum. This change to legislation will allow eligible occupations to

access apprenticeships and, by extension, could help to fill skills gaps, develop the skills of existing workers, and improve access to high quality jobs.

14. Monitoring & review

- 14.1 The Pilot began in Spring 2022 to assess the value and impact of this policy. We estimate the pilot will last for 18-24 months. We will review the progress of the pilot at 9, 12 and 18 months, updating the list of approved standards at these key points if there is evidenced sector need and employer demand, ensuring the pilot can take account of relevant changes to skills needs and sector behaviours. This SI has been generated following the 9 month review.
- 14.2 These Regulations do not include a statutory review clause.

15. Contact

- 15.1 Shona Hutton at the Department for Education email: shona.hutton@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jonathan Childs, Deputy Director for Apprenticeships at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Robert Halfon, (Minister for Skills, Apprenticeships and Higher Education) at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.