# EXPLANATORY MEMORANDUM TO

# THE APPRENTICESHIPS (MISCELLANEOUS PROVISIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2022

## 2022 No. 86

## 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.

## 2. Purpose of the instrument

2.1 These Regulations will create an additional arrangement for an alternative apprenticeship in England. This will 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.

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

2.3 This will enable us to run a pilot of flexi-job apprenticeships beginning in April 2022. At the end of this pilot, we will consider whether further amendments to the legislation are required.

## 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 is England and Wales.

4.2 The territorial application of this instrument 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.

## 7. Policy background

***What is being done and why?***

7.1 Under current legislation, the minimum duration of any approved English apprenticeship agreement is 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.

7.2 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.

7.3 To do this we need to adapt the requirement for employers to commit to employing an apprentice for the full duration of the apprenticeship. These regulations will allow apprentices undertaking specified apprenticeship standards to move between different arrangements throughout their apprenticeship.

7.4 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 go on a break in learning until the next arrangement begins.

7.5 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

7.6 Use of flexi-job apprenticeships is limited by these Regulations to the approved apprenticeship standards below:

- Creative Venue Technician
- Live Events Technician
- Props Technician
- Museums and Galleries Technician
- Archaeological Technician
- VFX artist or Technical Director
- Junior VFX Artist
- Camera Prep Technician
- Broadcast and Media Systems Technician

- Photographic Assistant
- Cultural Heritage Conservation Technician
- Junior Content Producer
- Cultural Learning and Participation Officer
- Game Programmer
- Software Development Technician
- Software Developer
- DevOps Engineer
- Advanced Carpentry and Joinery
- Stonemason
- Industrial Coatings Applicator
- Smart Home Technician
- Construction Site Supervisor
- Bricklayer
- Rail Infrastructure Operator

7.7 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/

7.8 The standards listed above were chosen because of the suitability of the occupations for this type of apprenticeship delivery model. These are all occupations wherein non-standard employment models are common.

7.9 Initially this will enable us to run a pilot of flexi-job apprenticeships and assess their effectiveness. The pilot will be limited to the standards listed above and, we estimate, will last 18-24 months with review points throughout.

7.10 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.

## 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 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.

## 11. Guidance

11.1 We will publish guidance to employers, providers and apprentices in respect of the pilot. This will be published on gov.uk ahead of the pilot start date.

## 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. This will allow relevant businesses to employ apprentices and make use of apprenticeships in line with their normal employment models.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no significant impact to the public sector and positive impact on the business 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 We are running a pilot beginning 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.

14.2 These Regulations do not include a statutory review clause.

## 15. Contact

15.1 Mara Sankey at the Department for Education email: mara.sankey@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jonathan Childs, Deputy Director for Apprenticeships Policy, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alex Burghart, Parliamentary Undersecretary of State (Minister for Skills) at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.