

Apprenticeships



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Introduction

The government is committed to boosting the use of apprenticeships, recognising them as a crucial means of developing the skills needed by employers. Since the introduction of the statutory apprenticeship under the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA) and the introduction of the apprenticeship levy in 2017, the use of apprentices has become far more common.

This Inbrief provides an overview of the law and current practice relating to apprentices. It focuses mainly on the Approved English Apprenticeship regime but touches on some of the other types of apprenticeship. We also highlight the main pitfalls to avoid when recruiting apprentices.

What is an apprenticeship?

Apprenticeships are work-based training programmes. They allow apprentices to train and learn in conjunction with receiving practical work experience in order to achieve a recognised qualification.

Apprenticeships are available to anyone over the age of 16. Apprentices work towards a "Standard" – that is, a curriculum designed to ensure that the apprentice gains the skills and knowledge needed to obtain their qualification. Apprenticeship Standards have equivalent educational levels, spanning from Intermediate Level 2 (equivalent to GCSE) to Degree Level 6 and 7 (equivalent to a bachelor's or master's degree).

Hundreds of Apprenticeship Standards are available, with new ones released regularly. These range from more traditional apprenticeships, such as electrical installation and plumbing, to less conventional areas such as serious and complex crime investigation and museum curation.

An Approved English Apprenticeship (see further below) will have the following components:

- **Practical period**, during which the apprentice works and attends training. This must last for a minimum of 12 months
- **Off-the-job training**, during which the apprentice attends classes or other training away from their place of work. This must be completed during normal working hours and constitute a minimum of 20% of their total working hours during their apprenticeship
- **End-point assessment** - after the practical period, the apprentice will be assessed to ensure they have met the Standard and can be awarded their qualification.

Types of apprenticeship

When entering into or reviewing an apprenticeship, it is important to understand which type it is.

Common law apprenticeships

These are the oldest form of apprenticeship. While they are rarely chosen nowadays in

England or Wales due to the statutory framework that exists for more modern apprenticeships, there are still apprenticeships which do not fall within the statutory regime and which may be deemed a common law apprenticeship. Moreover, the ASCLA does not apply to apprenticeships in Scotland, which means that all apprenticeships in Scotland are common law apprenticeships.

There is no prescribed-form apprenticeship contract for this category, but the key issue to bear in mind is that common law apprentices have enhanced protection against dismissal. Unlike with statutory apprentices, employers have much less scope for terminating a common law apprentice before the end of the fixed term, even if there are serious performance or conduct concerns. Essentially, there need to be problems that render the apprentice "unteachable". Redundancy can only be a valid reason for dismissal of a common law apprentice in cases of business closure or fundamental change to the business.

Ending a common law apprenticeship without proper grounds to do so could result in breach of contract claims for damages covering the remainder of the apprenticeship and even future career loss. As a result of these enhanced rights, employers should where possible ensure that the statutory requirements are followed to avoid inadvertently creating a common law apprenticeship.

Apprenticeship Agreement

Introduced by the ASCLA in 2009, the Apprenticeship Agreement provides for a statutory form of apprenticeship for England and Wales. This was predominantly introduced to encourage the use of apprenticeships and to tackle the issue of enhanced protections under the common law apprenticeship. Individuals under an Apprenticeship Agreement work within an apprenticeship "Framework" which is primarily qualification-focused, as opposed to Standards which are more skills-focused.

Apprenticeship Agreements must be in a prescribed form and include a statement of the trade or occupation for which the apprentice is being trained under the applicable Framework. Apprenticeship Agreements are usually for a fixed term and the normal requirement to

provide a statement of employment particulars under section 1 of the Employment Rights Act 1996 applies.

Amendments to the ASCLA introduced the Approved English Apprenticeship with effect from May 2015, since when the Apprenticeship Agreement has rarely been used in England since. From 1 August 2020, all apprenticeships in England must follow a Standard, which means that, unless already entered into, Apprenticeship Agreements can no longer be used in England. They do, however, continue to be available for use in Wales.

Approved English Apprenticeships

As the name suggests, Approved English Apprenticeships apply only to apprenticeships in England and must also be in a prescribed form. They are usually for a fixed term. Broadly speaking, in addition to the usual section 1 statement requirements, an Approved English Apprenticeship must detail:

- the fact that it is a qualifying apprenticeship
- That the agreement is governed by the laws of England and Wales
- the start and end dates for the apprenticeship
- the length of the practical period
- the Standard the apprentice is working towards and the level of that Standard
- the amount of off-the-job training

Separately, apprentices will be provided with a Commitment Statement in which the apprentice, employer and training provider commit to certain minimum requirements during the apprenticeship.

Where an organisation receives levy funding directly from the Education and Skills Funding Agency (ESFA), it must submit an Individualised Learner Record. Failure to comply with the statutory requirements could risk the arrangement falling into the common law regime and being ineligible for levy funding.

Falsely advertising as a statutory apprenticeship

It is an offence for training providers to brand a course or training as a statutory apprenticeship

if it is not one. The government's purpose in introducing this offence was to protect the term "apprenticeship" from misuse, such as it being associated with poor quality courses. Note, however, that the offence applies only to the person providing the training (which is hardly ever the employer).

Employment rights of apprentices

Apprentices under either of the statutory apprenticeship schemes have "employee" status and in most instances acquire the same employment rights as other employees, such as discrimination and unfair dismissal rights. They do not have enhanced dismissal protections like common law apprentices, but if dismissing an apprentice with two years' service or more, it is important to identify a permissible reason for doing so and follow a fair process.

If an employer wants to terminate an apprenticeship at the end of the fixed term, after the apprentice has completed their training and end-point assessment, in most cases this is likely to be a dismissal for "some other substantial reason" rather than redundancy. If the apprentice's employment continues and they move into a qualified role, the employer should offer a new contract to clarify the terms of that role. The apprentice will have continuous service from the date their apprenticeship started.

Terms of Approved English Apprenticeship agreements can be varied in the usual way. If an employer wishes to vary the agreement to such an extent that it is no longer an Approved English Apprenticeship, written notice must be given of this otherwise the variation has no effect.

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 do not apply to any category of apprentice, which means that an apprentice's contract does not need to be equivalent to that of a comparable permanent employee. Employers should nonetheless be mindful of other potential causes of action where there is a difference in treatment, such as age discrimination.

Finally, apprentices are entitled to the national minimum wage. There is a special

Apprenticeship Rate applicable to apprentices under 19, or over 19 but in the first year of their apprenticeship. An apprentice who is over 19 and has been in their apprenticeship for more than 12 months, is entitled either to the Development, Adult or Living Wage rate (depending on their age).

The apprenticeship levy

The apprenticeship levy applies to all employers in the UK whose pay bill exceeds £3 million in a tax year. It is essentially a tax, equal to 0.5% of an employer's pay bill and paid through the PAYE system.

In addition to the money paid by the employer, the levy is topped up by 10% from the government, with the total funds being available for employers to use towards the cost of the off-the-job training for their apprentices. Levy funds cannot be used to pay for apprentices' salaries nor any other costs of employment.

Whilst the levy applies across the UK, the use of levy funding by employers is a devolved matter. Funds contributed must be used within two years and use of levy funds in England is subject to compliance with the ESFA rules which are updated annually. For other UK regions, funding is administered by Skills Development Scotland, the Welsh government and the Department for the Economy in Northern Ireland.

Employers in England who are using levy funds cannot clawback or request repayment of training costs from apprentices in the event they leave their training or employment earlier than expected. Even employers not using levy funds, with a contractual agreement to clawback costs, will need to consider whether an attempt at recovery could be an unlawful deduction from wages, or whether the clause may be an unenforceable penalty clause.

For more detailed information, please see our separate [Inbrief on the apprenticeship levy](#).

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