

# APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Apprenticeships, Study and Training**

##### *Chapter 1: Apprenticeships*

#### **Completing an apprenticeship**

##### *Section 1: Meaning of “completing an English apprenticeship”*

40. **Section 1** sets out the circumstances in which a person completes an English apprenticeship in relation to an apprenticeship framework (defined in section 12). The requirement is that the person meets the standard English completion conditions or the alternative English completion conditions. The standard completion conditions are set out in *subsection (3)*. They require the person concerned to have entered into an apprenticeship agreement (see sections 32 to 36) which, at the date on which it was entered into, related to a recognised English apprenticeship framework. The conditions also require the person, while working under the agreement, to have completed a course of training for the qualification identified by the framework in question as the “competencies qualification”, and to have met all the other requirements specified in the apprenticeship framework for the award of a certificate.
41. *Subsection (4)* modifies the effect of subsection (3) where a person has been party to a succession of apprenticeship agreements relating to the same framework while working towards the competencies qualification specified, or has taken two or more courses of training leading to the competencies qualification. The person can still be entitled to an apprenticeship certificate in these circumstances.
42. *Subsections (5) and (6)* enable regulations to be made which cater for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. The power to make regulations might be exercised, for instance, give a self-employed person or someone working as an unwaged volunteer an entitlement to an apprenticeship certificate, provided they had met all the other requirements specified for the award of a certificate.

##### *Section 2: Meaning of “completing a Welsh apprenticeship”*

43. **Section 2** sets out the circumstances in which a person completes a Welsh apprenticeship in relation to an apprenticeship framework (defined in section 12). The requirement is that the person meets the standard Welsh completion conditions or the alternative Welsh completion conditions. The standard completion conditions are set out in *subsection (3)*. They require the person concerned to have entered into an apprenticeship agreement (see sections 32 to 36) which, at the date on which it was entered into, related to a recognised Welsh apprenticeship framework. The conditions

also require the person, while working under the agreement, to have completed a course of training for the qualification identified by the framework in question as the “competencies qualification”, and to have met all the other requirements specified in the apprenticeship framework for the award of a certificate.

44. The effect of *subsection (4)* is as described in paragraph 41.
45. *Subsections (5) and (6)* enable the Welsh Ministers to make regulations to provide for circumstances where a person has not entered into an apprenticeship agreement but is working under alternative working arrangements. This power might be exercised also in the instances described in paragraph 42.

### **Apprenticeship certificates: England**

46. *Sections 3 to 6* make provision about apprenticeship certificates, and specify when an apprenticeship certificate must, or may, be issued to a person.

#### ***Section 3: Duty to issue: England***

47. *Subsection (1)* places a duty on the “English certifying authority” to issue an apprenticeship certificate to a person who appears to the certifying authority to have completed an English apprenticeship in relation to the apprenticeship framework and meets the other requirements within the section. (The “English certifying authority” is defined in section 6 as being the Chief Executive of Skills Funding.)

#### ***Section 4: Power to issue: England***

48. This section gives discretion to the English certifying authority to issue an apprenticeship certificate to a person who applies to it who is not within section 1. This may apply to a person who is not within section 1 but who has successfully completed all the requirements of an apprenticeship framework for England.

#### ***Section 5: Issue by the English certifying authority: supplementary***

49. *Subsection (1)* makes provision for English certifying authority to charge a fee for issuing an apprenticeship certificate where authorised to do so by the Secretary of State in accordance with the regulations. *Subsection (2)* allows the Secretary of State to make regulations to enable the English certifying authority to supply duplicate certificates, and *subsection (3)* specifies that these regulations may also include provision for the English certifying authority to charge a fee for that service.

#### ***Section 6: The English certifying authority***

50. This section provides that the “English certifying authority” is the Chief Executive of Skills Funding. The Government’s intention is that the Chief Executive of Skills Funding will delegate this responsibility to the Chief Executive of the National Apprenticeship Service (see Notes to section 82), who may sub-delegate it to sub-contractors.

#### ***Section 7: Duty to issue: Wales, Section 8: Power to issue: Wales, Section 9: Issue by the Welsh certifying authority: supplementary, Section 10: The Welsh certifying authority***

51. *Sections 7 to 10* make provision about the issue of apprenticeship certificates in Wales. In particular, Section 10 provides that the certifying authority for apprenticeships in Wales will be persons designated for that purpose by the Welsh Ministers or the Welsh Ministers themselves.

### ***Section 11: Contents of apprenticeship certificate***

52. This section applies to England and Wales. It sets out the required contents of an apprenticeship certificate whether issued under sections 3, 4, 7 or 8.

### **Apprenticeship frameworks: England and Wales**

53. **Sections 12 to 22** relate to apprenticeship frameworks. An apprenticeship framework is a high level curriculum for an apprenticeship in a specified career. The frameworks typically include an integrated programme which contains a competence element; a knowledge element; transferable or key skills; and employment rights and responsibilities. The frameworks require a person to obtain a qualification such as an NVQ at level 2, 3 or 4 in a particular subject to meet the competence and knowledge elements, as well as key skills in literacy and numeracy. These sections set out the procedures for the issue of apprenticeship frameworks, as developed by employers, Standard Setting Bodies and Sector Skills Councils according to the specification of apprenticeship standards in England and Wales. The separate provision for a specification of apprenticeship standards for England in sections 23-27 and for Wales in sections 28-31 enables variations between the specification of apprenticeship standards for England and the specification of apprenticeship standards for Wales and the related recognised frameworks.

### **Apprenticeship Frameworks: England**

#### ***Section 13: English issuing authority***

54. This section enables the Secretary of State to designate a person to issue recognised English apprenticeship frameworks relating to a particular sector. However, this would still allow Sector Skills Councils and other sector bodies to issue frameworks over more than one sector. A person designated under this section is referred to as “the English issuing authority”. *Subsection (2)* provides that there is to be only one person authorised to issue frameworks for a particular apprenticeship sector. The Government’s intention is that, in England, frameworks will be issued by Sector Skills Councils working in partnership with Standard Setting Bodies. *Subsection (3)* requires a person authorised to issue apprenticeship frameworks to comply with directions and guidance given by the Secretary of State in carrying out this function.

#### ***Section 14: Issue: England***

55. This section allows the English issuing authority to issue apprenticeship frameworks only if the authority is satisfied that the framework meets the requirements of the specification of apprenticeship standards for England. Recognised English frameworks will remain current until withdrawn. *Subsection (2)* allows a recognised English framework to be withdrawn at any time by the English issuing authority or, if the issuing authority has ceased to exist, by the Secretary of State.

#### ***Section 15: Recognised English frameworks: notification and publication***

56. This section requires the English issuing authority to publish recognised English frameworks which it issues and to notify the Chief Executive of Skills Funding of the issue of a framework and send him a copy of the framework. *Subsection (3)* requires a person withdrawing a framework to publish notice of this and to advise the Chief Executive of Skills Funding of the withdrawal. *Subsection (4)* permits the English certifying authority to publish a recognised English framework or a notice of withdrawal however it chooses; but the effect of section 13(3) is that in doing so the English certifying authority would still be required to have regard to guidance from the Secretary of State.

***Section 16: Submission of draft framework for issue: England***

57. This section sets out the procedure when individuals and organisations submit a draft apprenticeship framework to the English issuing authority, and request that it be published as a framework. If the authority decides not to issue the framework in the form of a draft, it must give the individual or organisation who has submitted the draft reasons for its decision. The authority can require the individual or organisation to provide information which it needs to assess the framework against the specification of apprenticeship standards for England. In practice, this section will be relevant when learning providers and employers submit new draft apprenticeship frameworks, for occupations or sectors which do not have a framework in place.

***Section 17: Transitional provision: England***

58. This section enables the Secretary of State to make an order providing that a framework already existing as at the date when section 14 comes into force is to be treated as if it were a framework issued under section 14 (a “deemed framework”). This would enable a person to enter into an apprenticeship agreement relating to a framework of this type. The effect of *subsection (4)*, though, is that an order under this section will not be able to permit a person to enter into a first apprenticeship agreement, in relation to an order of this type, after the date specified in that subsection, which is no later than the day after the day that is the school leaving date for 2013. This will provide a reasonable period for deemed frameworks to continue while arrangements are made to issue new frameworks under the specification of apprenticeship standards for England. If new frameworks are issued before that date that would replace deemed frameworks, the Government intends to withdraw the deemed framework. *Subsection (3)* sets out provision which an order under this section must include.

**Apprenticeship frameworks: Wales**

***Section 18: Welsh issuing authority, Section 19: Issue: Wales, Section 20: Recognised Welsh frameworks: notification and publication, Section 21: Submission of draft apprenticeship framework for issue: Wales, Section 22: Transitional provision: Wales***

59. These sections relate to apprenticeship frameworks in Wales. In particular, section 18 provides Welsh Ministers with the power to designate a person to issue apprenticeship frameworks in Wales, relating to a particular sector. The sections also make provision about the publication of apprenticeship frameworks in Wales. Broadly speaking, these provisions mirror those made by sections 13 to 17 in relation to England.

**Specification of apprenticeship standards: England**

60. *Sections 23 to 27* make provision about the preparation, modification and contents of the specification of apprenticeship standards for England. Apprenticeship frameworks must conform to the requirements of the specification of apprenticeship standards for England if they are to be issued by the English issuing authority as “recognised English frameworks”. The specification could contain, for example, requirements as to competence and knowledge based elements, transferable skills such as key skills in literacy and numeracy or functional skills in English and Maths, employment rights and responsibilities and clear progression routes. It must require each recognised English framework to identify a qualification that is the “competencies qualification” for the purposes of the framework.

***Section 23: Duty to prepare and submit draft specification: England***

61. This section empowers the Secretary of State to direct the Chief Executive of Skills Funding to produce a draft specification of apprenticeship standards for England and to consult on the draft with those designated under section 13; with representatives

of employers, FE institutions and training providers; with other persons specified in regulations; and with other persons the Chief Executive of Skills Funding thinks appropriate.

***Section 24: Order bringing specification into effect***

62. This section empowers the Secretary of State to give effect by order, which is subject to the negative resolution procedure, to the specification of apprenticeship standards for England, provided the contents comply with section 27. *Subsection (3)* requires that there may be only one specification of apprenticeship standards for England at any time.

***Section 25: Modification: England***

63. This section allows the Secretary of State to direct the Chief Executive of Skills Funding to modify the specification of apprenticeship standards for England provided the contents of the specification, as modified still complies with section 27.

***Section 26: Replacement or modification: recognised English frameworks***

64. If a new specification of apprenticeship standards for England is given effect to under section 24, or if an existing specification is modified under section 25, frameworks that have already been issued under section 14 may not comply with the requirements of the new or modified specification. *Subsection (1)* provides that a recognised English framework that fails to comply with a new or modified specification will not automatically cease to be recognised. But *subsection (2)* provides that an order under section 24, which would be subject to the negative resolution procedure, may provide for such a framework to cease to have effect as a recognised English framework.

***Section 27: Contents of specification of apprenticeship standards for England***

65. This section sets out what must be included in the specification of apprenticeship standards for England. *Subsection (1)* provides that the specification must specify requirements in relation to the content of recognised English frameworks at level 2 (known as Apprenticeships); and level 3 (known as Advanced Apprenticeships); and that it may specify requirements in relation to the content of recognised English frameworks at other levels. For instance, the specification might make provision about the content of recognised English frameworks for level 4 apprenticeships (known as Higher Apprenticeships). The effect of *subsection (2)* is that the specification must require English frameworks to specify requirements for the issue of apprenticeship certificates, including that a certificate may be issued only if the person has received both on-the-job and off-the-job training; that the qualification or qualifications taken together demonstrate the relevant occupational competencies and relevant technical knowledge; and levels of attainment required for the award of a certificate. It must also require each framework to identify the competencies qualification in respect of that framework.

**Specification of apprenticeship standards: Wales**

***Section 28: Specification of apprenticeship standards for Wales, Section 29: Modification: Wales, Section 30: Replacement or modification: recognised Welsh frameworks, Section 31: Contents of specification of apprenticeship standards for Wales***

66. These sections make provision in respect of the specification of apprenticeship standards for Wales, and are similar to sections 23 – 27 for England. The Welsh Ministers are given the power to prepare and consult on a draft specification of apprenticeship standards for Wales.

## **Apprenticeship agreements: England and Wales**

### ***Section 32: Meaning of “apprenticeship agreement”***

67. This section applies to both England and Wales. The apprenticeship agreement will be a contract entered into between the employer and the apprentice. The Government expects that it should set out both the on-the-job training and the learning away from the workstation that will be delivered; make clear what job role an apprentice will be qualified to hold upon completion; and stipulate the supervision that an apprentice will receive throughout the period of the apprenticeship.
68. *Subsection (2)* sets out the conditions which must be satisfied by an apprenticeship agreement. The agreement must be in a form to be prescribed by the Secretary of State. *Subsection (3)* gives the Secretary of State the power to specify provisions which must and must not be included in an apprenticeship agreement. *Subsection (4)* enables an apprentice to enter into successive apprenticeship agreements relating to the same framework, even where that framework has ceased to be a recognised English or Welsh framework.

### ***Section 33: Ineffective provisions***

69. This section provides that if terms are included in an apprenticeship agreement which conflict with provisions that the Secretary of State has required to be included in the agreement, those terms have no effect.

### ***Section 34: Variation***

70. A variation to an agreement might be such that the agreement ceases to be an apprenticeship agreement. Section 34 provides that a variation of this type will not have effect unless, before it is made, the employer gives the apprentice written notice that it will have this effect.

### ***Section 35: Status***

71. This section provides that an apprenticeship agreement is not to be treated, for common law or statutory purposes, as being a contract of apprenticeship (as recognised at common law) but is instead to be treated as being a contract of service.

### ***Section 36: Crown servants and Parliamentary staff***

72. This section makes particular provision for Crown servants, members of the armed forces and Parliamentary staff. *Subsection (5)* empowers the Secretary of State to modify the application of the Act, or of provisions amended or inserted by the Act, in relation to Crown servants, members of the armed forces, and Parliamentary staff. This power is needed to make the Act work properly in relation to these classes of person, given their particular circumstances: for instance the fact that they may not have contracts of employment.

### ***Section 37: Duty to participate in education or training: apprenticeship agreements.***

73. This section amends section 2 of the Education and Skills Act 2008. The effect is that a person may satisfy the participation duty imposed by section 2 (duty to participate in education or training) by participating in training in accordance with an apprenticeship agreement.

## **General**

### ***Section 38: Apprenticeship sectors***

74. This section requires the Secretary of State to specify apprenticeship sectors. The Government intends that these will be based upon the current sectoral coverage of Sector Skills Councils which are employer-led, independent organisations whose goals are to reduce skills gaps and shortages, improve productivity and increase opportunities to boost the skills and productivity of everyone in the sector's workforce.