



Apprenticeship FAQs

This FAQ document addresses some common queries in relation to the development of apprenticeships and engaging an apprentice in England.

As education and training is devolved, these FAQs apply to employers in England only.

Please also refer to our guidance *Apprenticeship Funding FAQs* for further information relevant to all employers in England.

What Are Apprenticeships?

Apprenticeships are work based training programmes available to those aged 16 or above.

Apprentices must spend at least 20% of their time on 'off the job' training and apprenticeships must last for at least 12 months.

Apprentices work towards an apprenticeship standard (or framework, where there is no standard yet in place) to achieve recognised qualifications, up to degree level.

What Types of Apprenticeships Exist in England?

There used to be only one type of apprenticeship available, being a common law 'contract of apprenticeship'.

In 2011, a new form of apprenticeship agreement was introduced under the Apprenticeships, Skills, Children and Learning Act 2009. This aimed to encourage apprenticeships by reducing the significant and substantial enhanced protection afforded to common law apprentices, provided that

the agreement entered into satisfied the prescriptive requirements stipulated in the legislation.

In 2015, further changes were made to the apprenticeship system resulting in apprenticeship agreements in England being replaced by new 'approved English apprenticeship agreements' (subject to transitional provisions). The aim was to allow for more flexible arrangements, simplify the statutory framework and allow employers to design apprenticeship standards for their own sectors.

What Other Action has Been Taken to Encourage Apprenticeships in England?

The government want to encourage businesses to engage apprentices and enhance the status of apprenticeships to make them more desirable to potential candidates.

In early 2016, the government made a commitment for there to be three million new apprenticeships by 2020. In addition to the regime changes detailed above, the government has:

- protected the term 'apprentice' by making it an offence to use the term for lower quality courses
- simplified and changed the way apprenticeships are funded (including the introduction of the apprenticeship



Gareth Edwards
Partner

0117 314 5220
gedwards@vwv.co.uk



Charlotte Williams
Solicitor

0117 314 5219
cwilliams@vwv.co.uk

 Follow us on Twitter
[@VWVEmployment](https://twitter.com/VWVEmployment)

levy which will require larger employers - those with an annual pay bill of £3 million or more - to make a contribution to the funding of apprenticeships from April 2017). Please refer to our guidance 'Apprenticeship Funding FAQs' for more information.

- developed a digital apprenticeship service to assist all employers in identifying training providers and assessors, and recruiting apprentices

Do All Businesses Need to Engage Apprentices?

There is no obligation to engage apprentices in England. However, the changes to the way apprenticeships are funded mean there will be more government funding available to support apprenticeships. This may present an opportunity for some businesses.

What Is the Status of Apprentices?

Apprentices are employees. An apprentice engaged under an apprenticeship agreement or an approved English apprenticeship agreement is entitled to the same rights and protections as afforded to other employees only.

However, where the apprentice is engaged under a common law contract of apprenticeship, he or she will benefit from significant enhanced rights and protections including:

- entitlement to enhanced damages on termination (damages for loss of earnings and training during the remainder of the term and for loss of future career prospects).
- a higher standard of misconduct is applied. Misconduct in the normal employment context will not be sufficient to effect a fair dismissal of a common law apprentice.
- a common law apprentice cannot be dismissed by reason of redundancy unless there is a closure of the business or the employer's business undergoes a fundamental change in its character.

Where an agreement does not meet the requirements of an apprenticeship agreement or an approved English apprenticeship agreement (or there is no written agreement in place), a common law contract of

apprenticeship is likely to be in place. It is therefore important to ensure an appropriate and effective apprenticeship agreement is entered into.

What Agreement Should We Put in Place?

An approved English apprenticeship agreement must be in place in order that an apprenticeship standard is met and can be certified. This agreement must:

- provide for an individual to work as an apprentice in a sector for which the Secretary of State has published an approved apprenticeship standard
- provide for the apprentice to receive training in order to assist them in achieving the approved apprenticeship standard
- satisfy any other conditions specified by the Secretary of State in regulations

The agreement should also include particulars of employment as set out in section 1 of the Employment Rights Act 1996. Further best practice points should be considered including providing for a mentor, regular reviews and appraisals, and repayment of course fees.

Is There an Approved Apprenticeship Standard Which Applies to Our Business?

There is a full list of apprenticeships standards 'ready for delivery' and apprenticeship standards in development on the government website: www.gov.uk/government/collections/apprenticeship-standards

What if There Is no Approved Apprenticeship Standard Which Applies to Our Business?

The aim is that from academic year 2017/2018, all new apprenticeships will be based on new apprenticeship standards and, from 2020, the old framework regime will be phased out entirely.

However, where there is no approved apprenticeship standard in place, the old frameworks continue to be valid and the arrangement is subject to the old statutory regime as set out in the Apprenticeships, Skills, Children and Learning Act 2009. This means the agreement must be in the form prescribed in this legislation.

For further advice and support, please contact Gareth Edwards or Charlotte Williams.

What Others Say...

"They understand how our business works and make their advice as commercial as possible."

Chambers & Partners

"The advice is always provided in a timely manner that clearly explains legally issues using plain English that meets our legal obligations whilst taking account of our business needs."

Director of HR

"VWV provides an efficient and reliable service. The employment law advice provided is written in concise and understandable language."

Client