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Guidance

Guidance notes for the agreement between an employer and ESFA

Updated 20 January 2021

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This guidance has been developed as a result of user research and feedback from employers. It does not form part of the employer agreement, but employers may find it helpful to refer to.

All employers must accept the employer agreement to access funding to pay training providers for apprenticeship training. If you have any additional questions about the employer agreement, [contact ESFA](#).

1. Intellectual property rights - clause 7

This clause does not give ESFA any rights to the employer's intellectual property (IP) or to use it. It just protects ESFA's own IP.

2. Confidentiality - clause 8

ESFA has the right to share information with:

- any of their contractors or consultants
- other government departments
- Parliament

Consultants include organisations like ESFA's external auditors, not the employer's competitors.

If ESFA need to share any confidential information, they will do this as sensitively and securely as possible.

3. Data protection - clause 10

Both the employer and ESFA must comply with UK data protection regulations as updated and amended, including:

- the Data Protection Act 1998
- the Data Protection Act 2018
- the General Data Protection Regulation (Regulation (EU) 2016/679)
- the Law Enforcement Directive (Directive (EU) 2016/680)

4. Limitation of liability - clause 12

Some employers have asked for their liability under the agreement to be capped.

ESFA's responsibility through the service is to direct funds for apprenticeships, so the employer agreement covers our complete liability for this. The employer's responsibility is far wider. For example, employing an apprentice, supporting the successful delivery of the apprenticeship, being responsible for instructing who receives funds and what they purchase. It would therefore not be acceptable to expose ESFA to any legal or financial risk arising from the employer's activities.

ESFA is not doing anything which could give rise to any risk for the employer, so this provision does not apply equally to both parties. As a public sector organisation, ESFA has a responsibility to manage taxpayers' money effectively, and it would be imprudent to agree to accept any risk from the activities of the employer in this situation. The Crown must, however, apply proper and reasonable care when enforcing this agreement. While a number of organisations have raised this concern, ESFA's responsibility is often taken into account when employers decide to sign the agreement.

ESFA makes funding available for apprenticeship training, which the employer can choose to take advantage of or not. ESFA do not think it would be appropriate to be exposed to any legal or financial risk arising from the activities of the employer, as a consequence of making that funding available to them.

5. Termination - clause 14

Both the employer and ESFA can end the agreement for any reason, by giving 30 days' notice. ESFA also has the right to immediately end the agreement, for reasons such as:

- the employer breaching the agreement
- insolvency
- fraud

This ensures that ESFA can act promptly to protect public funds.

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