

ESFA Apprenticeship Funding Rules 2022 – 2023
Questions Concerns and Comments – DRAFT 2 280622
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Section 1 - General implications from the Rule changes

1. With increasingly large programmes spanning tens of apprenticeship standards in higher education, implications on resourcing and time to implement in this next academic year are posing real concerns for providers in higher education. In some case we are simply unable to respond with the limited notice provided for rule changes and will be unable to comply with the rules for some of our apprenticeships without recourse to employers for additional information from processes conducted some weeks or even months in the past.
2. We think that the funding rule implementation needs to be planned differently in future years to allow higher education providers with high volumes and complex apprenticeship programmes to respond in time.
3. We have some concerns that the funding rules in practice are not supporting other elements of government policy; specifically the desire to increase the level of apprenticeships within higher education and to increase engagement of small to medium size employers. We would highlight the following areas in particular about the impact of the 2022 to 2023 funding rules as currently proposed :

Time needed to implement the changes – this is insufficient notice for August 2023 starts

4. In many cases the changes proposed are within processes that have been completed or the task is simply too big to be completed in time for the start of the funding year - for example; adding in a mandatory discussion at the initial assessment stage with every employer or adding an extra progress review. Simple calculations about the impact of undertaking this kind of the task with 700 apprentices and potentially 200 starts in September or October would make this immediately apparent.
5. Further; for those universities who operate roll on roll off and deliver throughout the year, and those with significant size programs it is too late to implement activity with employers that takes place during the onboarding. In many cases this is already completed and would require a lengthy exercise to go back to employers to collect information, for example, as to why they did not want to use recruit an apprentice, to implement the changes for the documented discussion and others. This places an unnecessary burden on employers.
6. The funding rules need to state that they apply to apprentices **‘whose recruitment commenced from August 1st**, not to those who physically started their programme. This will provide the flexibility to have a conversation employer in April, complete their onboarding for September starts without dropping in the middle of two sets of rules and having to repeat activity

Funding rules implementation

7. We believe that the Agency need to announce funding rule changes far earlier in the year to allow providers to implement the changes by 1 August. We would suggest that this is at the latest January of the year in which the funding rules will apply.
8. We would appreciate your consideration of the practical implications of implementing the rules ahead of deciding the timeline by which the rule must be implemented. As illustrated above it is already now impossible to implement some of the rules from August 1 for every apprentice. The timetable of publishing the Rules is not keeping pace with the roll-on roll off nature of apprenticeship starts or the growth in programme size or complexity.

The loss of employer and apprentice flexibility

9. For some of the proposed changes and in particular the requirement for active learning each month, the burden of meeting the evidence will fall at least equally on the apprentice and employer whilst removing the flexibility for the individual to manage round their workload and other commitments and employer to avoid the busy times in the year.

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10. Providing and collecting evidence for some of the rules will require the apprentice to complete documentation on time every month in order to ensure that the four-week rule is being met. Rules will also have substantial impact on employer resource, for example increased tripartite reviews or discussions during onboarding.

Disproportionate impact on long programmes

11. The other aspect that particularly impacts higher education delivery of apprenticeships is the typical length of our programmes. This has the twin impact of asking employers and apprentices to sustain the changes required by an apprenticeship over far longer periods of time during which apprentices are more likely to experience personal changes including illness, moving employers, and other home and work changes.
12. We feel that some of the rules proposed, particularly requirement for a monthly learning activity are not considering how an apprentice manages their time over a very long programme. Apprentices have far more flexibility during longer modules to manage their own learning to best suit them and this learning management is a critical part of their academic and apprenticeship learning outcomes.

The impact on recruitment of mid-career learners and SMEs:

13. We would also highlight that requirements, and in particular evidence for RPEL and initial needs assessment, the mandatory approach to discounting learning, and duration mitigate against programs focused on midcareer learners. These are now a high risk in compliance terms compared to learners their first role. Or concern is that combined the rules as described now will make some programs unviable to deliver or deem too high risk to retain. As we have raised previously, this has left some in or sector wondering whether this is a deliberate policy change designed to push funding back to young, entrant level apprentices.
14. We would highlight the challenges that increasing detailed within the rules poses for small to medium size employers who will be disproportionately affected by the detail and resource requirements placed on employers as set out in the rules. This seems to go against the drive in government to increase the take up of small and medium size enterprises in higher education and degree apprenticeships.

The impact of additional costs and inflation on viability

15. Finally we would highlight that the cost of initial assessment, mandatory reduction in price and increases in the cost of delivery will have an impact on the viability of some programmes. We would like to understand how the ESFA is responding to the increases in cost of delivery in particular through the funding rates.

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Section 2 – Feedback on specific rules – queries and questions

A 'learning activity' every 4 weeks and BIL after 4 weeks without a 'learning activity' [P 32.2 .2]

17. The rule specifies that 'active learning' must take place at least every 4 weeks (or a break in learning must be used). In long programmes over 3 to 5 years it is quite common to have learning activity at certain points less frequent than this e.g. when apprentices are engaged in on the job project activity in the workplace required for their EPA.
18. ESFA have explained that this is because Treasury deemed that paying this monthly means there must be monthly activity, however this is not what you are buying. You are buying a number of learning hours delivered over the life of an apprenticeship to a plan supposedly led by employers. This removes the flexibility of the employer to decide how the programme is delivered to meet the ebb and flow of their own work. It also makes asking the employer about such things completely irrelevant. This is creating very inflexible programme for apprentice and employer.
19. The impact on costs of delivery arising are very significant when combined - from the off the job learning logging, tracking, monitoring, admin chasing of employer and apprentice, Apprenticeship Service changes, employer liaison, apprentice tracking - all for a gain for the apprentice that we cannot truly see – what exactly are the issues in HE apprenticeship delivery that we are trying to fix?

'This doesn't properly reflect the way that our programmes work, particularly as they work around employer needs regarding when the training is delivered.'
20. Why is this element so specific, unlike OTJ which is an 'average of 6hrs a week over the apprenticeship', not 'exactly 6 hrs a week'. This better reflects the flexibility and choice in the programme for employer and apprentice.
21. We think this proposal will result in a significant increase in BILs and is unworkable and unimplementable. Much of the burden will be now placed on the apprentice who must submit learning logs monthly (every four weeks) without fail throughout the life of a 3, 5 or even 7 year programme and is no longer able to manage their learning to a pattern which best suits them . We feel that this rule introduces a wide range of negative impacts for apprentice and employer without any discernible benefit to the programme outcomes:
 - a. removing the apprentice and employer choice in scheduling learning when best suits them and their home/work arrangements.
 - b. excess impact on routine movements in learning for example apprentices unavoidably absent from learning activities in week 4 due to illness that could have easily been rescheduled in week 5 must now be retrospectively on a BiL, but is actually immediately back in learning.
 - c. disproportionately affecting/pressurising certain sectors- health and care during the winter flu season, retail in December pre-Christmas and January sales, term time only apprentices and SME employers who need coverage during the mid-July to mid-September holiday period.
 - d. we understood the rules stipulated that a break in learning was at the apprentice's request and is not something that we can force on an apprentice or employer.
 - e. disproportionately affecting apprentices who are struggling to manage their learning due to home circumstances or mental health for example, who, given time, we may be able to coach through rather than placing them immediately on a break in learning. This goes against BIL and support good practice - We would typically only discuss a BIL when other attempts to engage and progress the apprentice, with their employer engaged, have failed. Surely this is the point of the BiL being a criterion in the Monitoring Framework?

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- f. Apprentices will be engaged in self-directed study, online recorded lectures or research elements that typically they schedule to their own timetable - Managing a 4 week 'activity' **cannot** be done by the provider alone unless the apprentice is updating their learning log and submitting this every month. Implementing this rule therefore is entirely dependent on apprentices to both undertake activity when this is may not fit with work based learning activity and to submit learning logs every month on time. And what sanctions do we invoke when they are repeatedly late with each month's mandatory time logging? We do not have the means to control this activity. Apprentice must research and learn outside the tutor led sessions.
 - g. Make block release an issue to deliver for those who have agreed this specific design with their employers and as above, who deliver England wide. The purpose of block is to concentrate the learning time because this model better supports the occupation at work. Apprentices typically then schedule their own time to continue their sessions at their own pace having been out of the office for a week.
 - h. Every break in learning will require a pause by the employer on their apprenticeship service account- creating additional bureaucracy for them as apprentices go on and off their breaks. This will be hugely disruptive and resource intensive. Do employer realise this is the implication? . For employers with large and complex programmes across many providers, for example a typical large local authority might have 50 providers and 400 apprentices using 20 plus Standards, this will create an unmanageable workload and confusion.
 - i. Funding will start and stop, creating confusion and difficulty for employers trying to manage their levy draw down and reconcile their funding.
 - j. P45.3.2 contradicts itself in the BIL diagram on page 75 (flowchart) where the rule stipulates that a learner that is 'just behind' their plan cannot be placed on a BIL.
22. There are also some impacts for HE :
- a. Degree provision design and approval is part of formal university regulations. It is possible that this change would require a redesign and a formal revalidation of many degree apprenticeships. We may have to stop starts immediately for this redesign /revalidation to take place.
 - b. This will also potentially change provision for other apprentices already on programme.
 - c. HE teaching staff, who cannot take holidays for most of the rest of the year, tend to take these during August so delivery, particularly in specialist areas with fewer staff, may not be possible in every programme during this time due to staffing constraints.

The change from 20 % OTJL to 6 hours a week off the job training [P40]

23. In the degree apprenticeship, teaching covers normally more than 6 hours per week. We are mindful that the comms to employers must be VERY clear that this is an absolute minimum – we will be far in excess of this in many HE apprenticeships. In addition please clarify:
- a. What happens when the apprenticeship leaves early ? How do we calculate the statutory leave time?
 - b. With logging OTJ in general, if an apprentices take 60 hours to complete an estimated 70 hour module, does this mean we would need to go back and update the training plan to reflect the actual hours taken?
 - c. Is this based on the actual dates / day of the week or taking the first full week in which they start and finish? If they start on Friday and we consider this is now a full week then they are already starting behind.

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Documenting off the job training [P 44]

24. Could the requirement to submit actual OTJ hours in the ILR in the event of a change in circumstance be included in the 'Summary of action following change of circumstance' section (P291)? The list of what counts as a change of circumstance in P251 states that it is not an exhaustive list. It would be useful to understand exactly which changes of circumstance require actual OTJ hours to be reported.

Delivering off the job training - Rescheduling learning [P 45.2]

25. Where an apprentice needs to reschedule learning it will not be possible to always reschedule 'so that the full complement of training set out in the training plan can still be delivered'; for example to rerun a live lecture (for one person) or to run a discussion session with other apprentices that surfaces the right learning points needed in the session. The reschedule is likely to be filled by a recording or a one-to-one coaching session after additional self-study for example and may be shorter in time than the original session.
26. There needs to be flexibility over how the apprentice can still access learning. Suggest redrafting the extract above to state '**so that the planned learning content is covered**'

Evidencing off the job training [P46.1]

27. Can you confirm whether evidencing off the job training requires a narrative comment or statements for every hour from the apprentice? However, if the activity is clearly listed in the learning plan and the apprentice confirms that they undertook it, is a reflective analysis of how it helps develop their KSBs still required?

Part-time employment hours (<30 hours per week) [P 33]

28. Could the formulas be amended to specify 'average contracted weekly hours'? Someone may be contracted to work 28 hours per week, but usually work over 30 hours per week. The current wording is ambiguous. 'Average contracted weekly hours' would cover the scenario of someone who is contracted to work different hours in different weeks but avoid confusion over whether their typical overtime (paid or not) should be included.

Eligible and ineligible costs [P 95]

29. This new list does not align with the IfATE Apprenticeship Costing Template which does not include elements now eligible for funding - the IfATE are out of sync with ESFA policy change – please address this with IfATE colleagues
30. Can you share the outcome of the eligible / ineligible cost review we can see changes in response but have not seen the full outcomes
31. If an employer has a mentor formally embedded in the programme, does this constitute subcontracting ? [P 95.2.1]

Using Recruit an Apprentice [P 21]

32. It is not mandatory to use the service, but we are required to keep evidence of the reason behind the refusal. What is the data to be used for and when/how will it be collected by ESFA? Without this collection asking for the information seems a bit pointless and employers will ask us what this is used for and who will see their details.
33. It is too late to collect this for apprenticeship vacancies for Sept 22 starts - these are largely already in progress. This would require returning to employers to collect information. Text could helpfully be amended to say '**for all new apprentice recruitment that starts on or after 1 August**'

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We would also highlight that many employers and in particular those in the public sector do not want to use "recruit an apprentice" because they have very specific rules around recruitment procedures and this would not be something they would use

Initial assessment [P 22/23]

The 'Productive Job

34. Please provide a definition of what this is and the evidence required to make this judgement .
35. The 'productive job' discussion takes place usually at the employer Training Needs Analysis or in early discussions as we map the right apprenticeship to the employers' requirements and roles- This might be months ahead of the skills scan:
- a. Are you now saying this must all be one process ?
 - b. That this discussion must be documented ?
- What audit evidence is needed for this – a JD..? an employer declaration, an apprentice declaration ? Could you please specify.

Employer support and supervision

Can you confirm that you are not expecting any direct intervention to "police" that employers are providing "the individual with the appropriate support and supervision, even where the apprentice is working from home?.

Skills Scan

36. ESFA are asked to consider and respond to the following queries :
37. A matrix is required to assess prior learning "scores" which can be used to make peer comparisons and make consistent decisions in relation to funding allocations. It is too late to collect this for many apprenticeship vacancies for Sept 22 starts - these are already in progress or have been completed. This would require returning to employers to collect information. The draft text could helpfully be amended to say '**for all new apprentice recruitment that starts on or after 1 August**'
- a. Where the rule stipulates 'diagnostic testing of occupational competence and diagnostic testing of English and maths prior attainment (where relevant) we assume that 'where relevant' applies to English and maths only' – all apprentices must have a diagnostic/skills scan. If this is not the case could you specify what would be the criteria for relevance?
 - b. Please clarify your definition of 'occupational competence'
 - c. Does someone currently in the role need to be 'not competent' to be eligible, rather than for example be extending their skills to cover the full range of competencies or indeed to be confirming that what they are doing is reaching the competencies using the apprenticeship?
 - d. Exactly what are we measuring competence against? Is this now not the occupational competence in the standard i.e. the KSBs ?
 - e. Is diagnostic testing **in addition** to the skills scan...? If so; why – the skills scan is an occupational test against the KSBs – what is the diagnostic intended to add in addition ?
 - f. What is the required evidence for the diagnostic ? Is an interview script with the prospective learner sufficient? If not please specify the evidence required

The INA 'documented discussion'

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38. Does 'discussion' mean a meeting and not an email discussion and document exchange as it typical ow? This will add considerable time to the application process and is too late for September 2023 starts- recruitment is already underway.
39. Can we have a group discussion with apprentice and their line manager ? What about a cohort form a single employer? Would a group discussion be acceptable?
40. In some public sector apprenticeship there are hundreds of starts in the same employer s e.g. Police, paramedics who may have the same line manager for early stages of their apprenticeship e.g. with the apprentice coordinator who may have multiple apprentice this will be very onerous on the employer.
41. Does this rule mean these conversations surrounding the skills scan have to take place at the same time? We will already have confirmed that the apprenticeship is fit for purpose based on the job roles proposed with the employer earlier in the process.
42. The new rule stipulates a 'documented' discussion with the employer and individual following initial assessment – Does the signed commitment statement/training plan meet this requirement or is there another document now needed e.g. notes form the discussion or a signed declaration from the employer that they agree with the training plan and have had the opportunity to discuss the proposed plan of learning?.
43. As outlined the start of this document it is already too late to implement this funding for a proportion of 2022/23 starters. For providers who are delivering start dates all year round including August and September onboarding has long finished before August for many.
44. Assessing prior learning and skills is typically delivered through a self-assessment and application process with oversight by the course team on areas requiring investigation. Interviews with apprentice are carried out depending on institution and occupation practice. Any proposed change here needs to pragmatic. Exchange of findings or information with employers tends to be via email and has been sufficient previously. It this about the employer accepting the training plan, even though this is already signed for in the Commitment Statement / training plan ? . What more is expected or needed to confirm that the employer is content with the learning planned ?
45. The impact of a forensic conversation with every employer and apprentice replacing this self assessment would be very time consuming - For example; Civil Engineering has 28 KSBs in the published Standard. Below is just one of the 28:

The mathematical, scientific and engineering principles, methods and modelling that underpin the design and construction of civil engineering infrastructure. This will include understanding structural and ground responses, properties of materials and their predicted behaviour as part of integrated systems. Examples include, knowledge of the design and construction of buildings, transportation systems, water and wastewater networks, foundations and temporary works, coastal protection, understanding slope stability, retaining walls, ground water movement, elastic/plastic and failure behaviour of materials such as concrete, steel, asphalt and timber, behaviour of structural elements such as beams, land surveying and formulating applicable mathematical solutions through suitable software
46. Scheduling a detailed conversation during august with employers to include this now may not be possible and w will need a longer lead in time to schedule this. Most are carried out
47. What do ESFA want to see as evidence of the 'discussion' ? What are the actual areas or decisions is this process attempting to demonstrate that we need to include in the discussion ?
48. How do we assess accurately in the skills scan? The RPL definition, evidence test for accepting a judgement, and the action expected needs to be far clearer – this is a black art as much as a science:
 - a. what evidence is wanted to prove that there has been a robust assessment ?
 - b. What do we do when evidence points to partial meeting part of an element of the KSB or learning programme? Are we expected to count this partial meeting of the KSB in the

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calculation when in reality they could not pass the module without this being included in the context of the learning plan?

- c. How do you evidence that 'this information will inform a tailored training plan'?
- d. How can we discount 'duration'? Being exempt from module 2 in year 1 does not change the planned end date or the schedule of other learning in the programme.
- e. What is the status of the apprentice during the time they are exempt? . If they can't be on a BiL because they may be in learning preparing for future modules or working on project, but their time shouldn't be counted in the 6 hours a week either as they have achieved the KSB so don't need any other learning either how do we account for this time?.
- f. What do we do if the apprentice undertakes learning in this time that should count towards the 6 hours – do we 'ban' them from learning during this time ?.

RPEL and the new calculation for reducing funding for prior learning [P 33]

49. The self-assessment gives the apprentice as much time as they need to consider their outcome and to discuss with their employer. Recording this discussion outcomes, e.g, the employer submitting their views on the skills scan as part of the skills scan submission would be more effective than a discussion.

50. We need guidance on the assessment and how exact this needs to be and on the acceptable evidence. The ESFA are asked to advise on the list of scenarios below :

- a. Where a learner meets 10 out of 40 KSBs, so 25%, and the standard planned hours for a programme is 800, are you expected a 200 hours reduction even if this does not actually match the planned modules or % of time allocated to the elements exempted ?
- b. Programmes led by professional bodies often have stipulations regarding hours which must be achieved regardless of RPL, for example Nursing only allows 50% max RPL and stipulates a set number of placement hours. How do we respond when the teaching must proceed vs requiring a mandatory reduction in price ?
- c. Universities typically have strict timelines for previously acquired learning experience and qualifications which may conflict with the requirement to discount all previous learning experience. RPL is a much more nuanced process than the rule seems to allow. Can you confirm for example that the qualification achieved can still result in no exemption, if that qualification syllabus is out of step with current KSBs? In HE this timeline is typically 7 years.
- d. What is the correct approach when modules have different costs i.e. Can KSBs be weighted according to the % of time or cost that it takes to deliver them?
- e. Where the RPL calculation in the Rules clashes with the university RPL regulations in how can we obtain a prompt response and advice on the acceptable action to take?
- f. What is the correct process when an apprentice scores 'some knowledge' or '4 out of 10' on the range from 'no skill' to 'expert in this skill element' on a skill scan - does this mean we must discount this whole element even though they don't have the evidence for a full exemption, or make a partial discount ?
- g. This makes mid-career apprentice applicants much higher risk to engage.

51. Re the calculation and its impact :

- a. Can there be a max or min cut off to indicate percentage or levels of reductions to recognise that a programme must be viable to deliver
- b. This calculation does not take into account that some learners will learn slower and cost providers significantly more than the funding band.

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- c. Could the formulas be amended to specify ‘**average contracted weekly hours**’? Someone may be contracted to work 28 hours per week, but usually work over 30 hours per week. The current wording is ambiguous. ‘Average contracted weekly hours’ would cover the scenario of someone who is contracted to work different hours in different weeks.

Price [P 196.2]

- 52. Where a learner who started on programme prior to August 2022 changes employer and their new employer would be liable for residual charges in excess of the funding band, how do we reflect this – do we include these residual charges in excess of the MFB in the TNP3? Only for learners who have a gap in their employment of over 30 days so are therefore a restart? Or for learners with an employment gap of under 30 days too?

Reducing Duration of a programme [P 24.4.1]

- 53. It is not possible to reduce the planned end date (duration of an apprenticeship), unless the apprentice is exempt from the final module. In addition, the action in response to an exemption is not simply somebody sitting out the relevant module for example there may still need to complete the assignment because this underpins learning elsewhere in the apprenticeship.
- 54. In addition we need clear advice on how to process ‘duration’ in the following scenarios – what are we required to do with the calculation :
 - a. It is not possible to reduce duration where content is taught in timetabled units.
 - b. Learning activities encompass a blend of KSBs. Where a single workshop covers KSBs that a learner already has in addition to KSBs that they don’t, the learner must attend the workshop anyway.
 - c. The IfATE encourages the inclusion of postgraduate awards, even where this is not mandated by the standard. In order to meet the academic requirements of academic awards, full units must be taken – this means it is not possible to reduce programme duration. Previously, we have reduced the planned learning hours to account for RPL (on the grounds that the learner would require less guided reading and would be able to complete assignments more quickly) but we did not reduce the duration. We did of course also reduce the price. The new rules as proposed would remove this flexibility. It is not clear how we could deliver via timetabled units or how we could include postgraduate awards as part of the apprenticeship.
 - d. Where a programme has recognised minimum learning hours for example nursing stipulated by the professional body, how do we respond if the apprentice does have prior learning?
 - e. Are you now stating that all apprentices who are exempted from any element must be placed on a break in learning during this time? Which case why is this still included in the apprenticeship monitoring framework as a criteria for concern? Why are providers being punished for implementing a rule? Break in learning is for this purpose should be outside of the calculations
- 55. The ESFA are asked to note that overall duration of the apprenticeship and the required volume of off-the-job training may not remain the same following a break in learning. This does not allow for restrictions in training timetabling or learning opportunities in the workplace that may not be possible to reschedule to match the original duration. Although the planned hours would likely be the same, the duration may therefore be longer or shorter.

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The Training Plan [P 49]

56. With standards, what evidence of 'the plan' to achieve competency is required-will the list of academic modules, assignments be acceptable with mode, hours and approximate timeline e.g. start/ finish month be enough ?
57. For withdrawal and insufficient progress, the rule will penalise providers in situations where an apprentice is off sick which becomes extended and then results in a break in learning as their sickness lasts longer than 4 weeks, for example.
58. What is the timescale for replanning of training? If it needs to take place at the 4 weeks trigger, this may not be possible or practical not least as this must be agreed with the employer and this may not be convenient or possible.

Progress review frequency [P 52]

59. We would advise that it is currently no simple task to persuade employers that three progress reviews a year is possible as a routine investment of their time particularly at their busiest time of the year or for small employers with limited staff. Employers do sometimes struggle to meet the tripartite review and most importantly to be sufficiently prepared to add value to the progress discussion. We believe that employers generally may not necessarily support the imposition of a further review.

'The move from 3 to 4 Progress reviews, increases our adviser FTE by 25%. in our NHS Trusts the employer is represented by Educational supervisors and that will increase that workload by the same amount. If Trusts cannot afford this resource it will significantly reduce the number of apprentices they can employ (or affect quality and compliance) reducing the number of trained health professionals in the workforce and missing Gov targets set on numbers of apprentices in their workforce'.

60. We have already outlined the significant resource implications of adding a single extra tripartite review over 12 months when there are hundreds of apprentices. Again, for 700 apprentices this is an additional 35 weeks of time per year of staff resource. This requires recruitment. For employers with multiple apprentices this is a further significant investment in employer time.
61. Just giving us a minimum figure for the desired Tri-partite reviews per year would be simpler - we can timetable these as appropriate to best suit the programme, employer and apprentice. Currently the intent and implementation are a bit unclear– this makes a significant difference as illustrated below:
 - a. The Tri-partite review frequency differs based on whether we calculate this over the full year (52 weeks) or the working year (i.e. 52 weeks minus their 5 weeks leave). Which is the eligible year'
 - b. Dividing the frequency of Tri-partite reviews into either definition does not produce a round figure so do we round up or down - e.g.:
 - i. $52/12 = 4.33$. is this 4 or 5 per year ?
 - ii. $47/12 = 3.91$. is this 3 or 4 per year ?
62. Please confirm that this applies only to NEW STARTS from 1st August.
63. Tri-partite review attendance is as much an issue for employers and their time. What evidence and messages do you have that will be persuasive from employers already that more frequent reviews will help them ?
64. And what sanctions will ESFA apply when employers repeatedly do not show up for planned and diarised reviews and do not respond to written reminders, verbal reminders, formal letters or other escalations setting out the importance of this to the programme?:
 - a. What is your expectation – can we terminate the apprenticeship – which punishes the apprentice?

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- b. How will this affect our QARs and monitoring framework scores ? Is this an accepted 'no fault' [on our part] withdrawal?
 - c. What evidence is expected if any, when the above applies ?
65. To note that the employer is the only party, even though this is their fault, that does not receive any sanctions when they fail to meet their responsibilities in the apprenticeship .

PAYE Scheme [P26.1]

66. Employer leads will not hold information about their payroll and are often confused by their PAYE, particularly when organisational structures are complex. Any kind of evidence may be hard for the employer to provide without the assistance of their own HR, payroll or other teams so is unlikely to be easily obtainable.

67. We believe that an employer declaration that this data is accurate should be sufficient and would raise the following questions if the ESFA do not believe this is the case :

a. Is this request of employers GDPR compliant and as usual we would welcome a public line on exactly who has access to, and how the data is used -we assume only in matching the Apprenticeship Service record with HMRC but this already generates significant concerns from employers regarding confidentiality, bureaucracy and time delays.

b. What is the appropriate evidence for PAYE for those already employed ? Pay slip? Or a P 60 ?

c. What is acceptable evidence if the apprentices are not yet on the employer's payroll ?? This is not present for example on an employee contract – is an employer declaration sufficient? OR an email from HR with the payroll number and NI number? Involving HR teams may take time.

d. What is then needed after new staff join the new employer - is further evidence required? a pay slip - which they won't get until the end of their first month? Some of these take time to emerge in the first few weeks and will not be there before they start their programme, to evidence requirements cannot state 'must be in place before the apprentice start their programme'.

e. The rule should not stipulate when this is required but state '**evidence of payroll must be in place**' to allow time for the employer time to run their payroll and generate the evidence

'PAYE is very complex and the employer name on the Apprenticeship Service account doesn't always tally with the employer name. For example, we have examples where two separate employers have nearly identical names in the Apprenticeship Service - the only difference being between "&" and "and" in their name'.

However much we try and prompt to prepare the employer if they do not have easy access this information themselves can be consuming to produce and is not usually in the gift of the apprenticeship lead

Seconded Apprentices [P 26.3]

68. 'The apprentice must **spend the majority** of their apprenticeship duration with their employer, who remains responsible for the apprenticeship and the apprentice's wages' :

a. Does the seconding of apprentices changes inadvertently affect reciprocal placements in Health and Social Care sector? e.g. where they have to do primary care exposure for example even if employed with a hospital trust?

b. What evidence is required as proof of 'majority' of time or that the employer is responsible for the apprentice wages

c. This wages structure is not technically usually what happens in a formal secondment – in this case the receiving employer takes over the wages by paying these to the sending employer – is this acceptable ?

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- d. Does this need to be in the training plan?. Can it be agreed at any time and be reflected in an updated training plan ?
- e. What is the reason for the majority of the apprenticeship duration having to be with the employer? This rule risks making those who work under more complex organisational arrangements – particularly in the NHS – ineligible for apprenticeships.

'Staff employed by the NHS do work day to day at another organisations. We would not treat this as a secondment as it is not a temporary arrangement; rather we would accept the funding comes from the organisation by which they are paid and compliance documentation must be signed by someone who is authorised to act on behalf of that employer. The work-based mentor however may be from the workplace at which the learner is based, as they are in a position to provide support, opportunities and guidance that the employer is not'.

Apprentice wages [P 31.2]

69. This rule does not specify the action required or the evidence expected. When an apprenticeship has been terminated our access may be limited to employer and apprentice, for example if the apprentice has left or is subject to disciplinary action. We do not think it is the provider's responsibility to remind employer about their legal responsibilities. If the ESFA do not agree, we would also counsel that it may simply not be possible to take any further action or requested evidence may not be forthcoming:
- a. What actions required by the provider when the apprentice withdraws to confirm that they are being paid the legal wage ?
 - b. What evidence will satisfy this requirement? We would ask that the ESFA set reasonable evidence requirements given what can be a sensitive situation with employer and apprentice and allow evidence that the employer has been informed e.g. an email confirming their responsibilities

Additional payments [P 107]

70. In some cases it is difficult to get an employer to take any sort of payment including the basic additional payments for apprentices. This is usually because this task is with the company's finance team and it is not a priority for them. This will no doubt be the same or potentially harder when requesting a receipt for payment received.
71. We would ask that that the Agency set reasonable and achievable evidence requirements that respond to this situation i.e. evidence of chasing emails to the apprentice lead when it has proved impossible to persuade them to generate any sort of receipt.

Delivering online learning as the main provider [P163]

72. There has always been a rule that you cannot deliver an 'online only' apprenticeship. The new rule states that the main provider in a subcontract must not '**only** deliver elements taught online or by distance learning'. This will affect some degree apprenticeship programmes where the main provider delivery is online to complement the subcontractor face to face in a blended learning design.
73. We would reject the suggestion that face-to-face is now, after successful delivery in the pandemic, the only successful mode of learning. What is important is live and interactive learning whether this is online or in person. Would also argue that high quality recorded provision is equally as beneficial allowing learners the ability to learn at their own pace, so these formats are not lesser; just different.
74. Would therefore raise the following questions and points:
- a. What is the desired model for the main provider with a subcontractor - live face to face *in person only* ? Is live face to face online not acceptable despite this working during Covid? Where tutor is interacting live with apprentices through a webinar or a tuition or a project group is this not then classified as face-to-face learning?

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- b. Why does this apply to the main provider only ?
 - c. What about employer choice?. They have to agree the delivery model in a subcontracted apprenticeship - this is already a Funding Rule. Is this more about the employer agreeing to the model proposed than stopping the model all together?
 - d. What is this rule trying to address ? if a blended programme is acceptable, why must the main provider only be required deliver some face to face?
 - e. Universities have a wide geographic reach for their programmes for example when they are the Employer's preferred provider for all staff across England or where they have a specialism that is in limited supply which attracts employers from across England. For delivery that is cost effective for employers, blended learning including online delivery is part of the design that employers want. Excluding online delivery will prevent these arrangements from taking place.
75. Having evidenced adequate online engagement mechanisms throughout the pandemic, why has rule now been updated? Does this create a disparity for standards with and without subcontract provisions.

Changing to a new version of the standard [P 282]

76. Can this be expanded to include learners who have been withdrawn but wish to return to the version of the standard they were on before withdrawing, even where it has been closed to new starts? E.g. where the withdrawal is due to an employer change with a gap in employment of over 30 days or due to a break in learning instigated by the employer (i.e., not the learner's decision) which must be processed as a withdrawal and restart.

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