



Education & Skills  
Funding Agency



# **Funding and Performance- management Rules 2014 to 2020 European Social Fund (ESF) Programme**

## **Version 7**

This document sets out the rules for funding the 2014 to 2020 European Social Fund (ESF) Programme.

These rules apply from 1<sup>st</sup> April 2019

September 2022

Of interest to providers

## Contents

<b>Introduction and purpose of the document</b> .....	<b>4</b>
Understanding the terminology .....	4
How this document can help you .....	5
Contacting our ESF Management and Delivery Team.....	5
<b>Overview of the 2014 to 2020 ESF Programme</b> .....	<b>5</b>
<b>Contracting and subcontracting</b> .....	<b>5</b>
Horizontal principles.....	11
State Aid .....	13
Programme rules evidence required .....	14
<b>Reporting and evidence rules</b> .....	<b>15</b>
Principles of evidence for learning .....	15
Learning agreement.....	16
Confirmation and signatures .....	17
Starting, participating and achieving .....	17
Individualised Learner Record (ILR) .....	18
Supplementary Data .....	18
Self-declarations by learners.....	19
Control systems .....	19
Deliverables evidence .....	19
Higher Level Skills.....	20
Use of certain non-regulated aims .....	20
Contract closure and reconciliation .....	23
Retention of documents .....	24
Evaluation, surveys and annual implementation reporting .....	24
Reporting and evidence .....	24
<b>Performance-management rules</b> .....	<b>25</b>
General .....	25
First six months.....	25
Reducing your contract value.....	26
Neutral changes to your contract value.....	26
Increasing your contract value .....	27
Working with LEPS.....	28
<b>Glossary</b> .....	<b>28</b>

**Table of Changes.....32**

## Introduction and purpose of the document

1. This document sets out the funding and performance-management rules for the European Social Fund (ESF) 2014 to 2020 Programme for contracts operating from 1 April 2019.
2. The rules apply to all providers funded by the ESF through the Education and Skills Funding Agency (ESFA).
3. The funding and performance-management rules form part of the terms and conditions of the Contract for Services between the Secretary of State for Education acting through the Education and Skills Funding Agency and providers who receive ESF. They must be read together with the:
  - Funding Agreement (Contract for Services)
  - ESF Service Specification
  - [Individualised Learner Record \(ILR\) Specification](#)
  - [ESF Funding Rates and Formula](#)
  - [ESF Supplementary Data Collection Guidance](#)
4. You must operate within the terms and conditions of the funding agreement, funding and performance-management rules, appropriate ESF service specification and the ILR specification. If you break these funding and performance-management rules you are in breach of (have broken) the funding agreement with the ESFA and we will act as set out in the funding agreement.
5. The ESFA reserves the right to make changes to the rules set out in this document. We will publish any changes on our website.

## Understanding the terminology

6. The term 'we', 'our', 'us' and 'ESFA' refers to the Education and Skills Funding Agency which is an executive agency of the Department for Education and exercises functions on behalf of the Secretary of State for Education.
7. When we refer to 'you' or 'providers', this includes colleges, training organisations, local authorities and employers who receive ESF funding from us to deliver education and training. We will use the individual type of provider if the requirements apply only to that specific type of provider.
8. We use the term 'funding agreement' to include the:
  - Contract for Services – Education and Training – European Social Fund (ESF) Funding Agreement
  - ESF Service Specification
9. We use the terms 'participant' or 'learner' to cover all those who receive education or training we have funded.

## How this document can help you

10. This document is divided into sections containing the funding and performance-management rules. Each section may include:
  - the context of the rule
  - the rule itself in a numbered paragraph
11. We have included a glossary to explain technical terms.

## Contacting our ESF Programme and Delivery Team

12. For further information or clarification regarding the ESF Funding and Performance-management Rules document, you can contact your ESF Performance and Delivery adviser.

## Overview of the 2014 to 2020 ESF Programme

13. The ESF is part of the European Structural and Investment Funds (ESIF) Growth Programme for England in 2014 to 2020. The European Commission (EC) owns these programmes and sets the Europe-wide ESF Programme requirements. The EC governs this Programme through its rules and regulations. In England, the Department for Work and Pensions Managing Authority manages this. The Managing Authority will deliver the Programme's priorities in England to increase labour market participation, promote social inclusion and develop the skills of the potential and existing workforce. The ESF is designed to increase sustainable economic and social inclusion in the European Union, by helping people who have difficulties finding work, and improving the skills of the workforce. You can access an overview of the Programme on [GOV.UK](https://www.gov.uk).

## Contracting and subcontracting

14. We will only fund organisations that have a current funding agreement with us either:
  - a. as a single legal entity (college, private or public organisation), or
  - b. with other legal entities (for example a consortium) on a joint-and-several basis (this means the contract can be enforced against all or one of the legal entities)
15. All lead providers and subcontractors must register on the UK Register of Learning Providers (UKRLP) and hold a valid UK Provider Reference Number (UKPRN) to be eligible to receive funding from us, either directly or through a

subcontracting arrangement. Organisations registered outside of the United Kingdom do not need to be registered on the UKRLP, however, they must complete our separate due diligence process to receive funding from us.

16. You can find the register on the UK Register of Learning Providers [website](#).
17. You do not have the right to transfer your contract to another organisation. If you do not want to continue delivering education and training, you must inform us, and we will then take a decision on the transfer of the provision.

### **Register of Training Organisations**

The Register of Training Organisations (ROTO) main purpose was to act as a market entry point for organisations interested in receiving ESFA funding. Since the last time ROTO was open in 2016, it is no longer fit for the purpose of procuring AEB or ESF provision. As such, ROTO was formally decommissioned on 31 July 2021. For subcontractors who wish to deliver over £100k they previously have had to be listed on ROTO. We have now established what our interim measures will be until the externally assessed standard is introduced in 2022 to 2023. This information is available in the ESFA Update further education: 9 September 2020 and any future funding opportunities will be communicated via GOV.UK.

### **Subcontracting**

For funding year 2021 to 2022 the ESFA has taken the decision to both simplify and unify the subcontracting funding rules that apply to all providers of education and training who receive AEB, ESF and 16 to 19 funding. By subcontracting we mean any delivery to a learner's programme of learning by a third party. As such, this document does not contain a section on subcontracting. The subcontracting funding rules that apply from the 1<sup>st</sup> August 2021 are [here](#)

# European Social Fund Programme rules

## Eligibility

The ESF Programme is governed by European Regulations, notably [1303/2013](#) and [1304/2013](#), and [England Managing Authority Operational Programme](#), requirements and guidance. These documents lay out the scope of the ESF programme and who is eligible for support.

ESF support has no upper age limit. However, ESF support is for individuals who will contribute to the growth of the economy through employment or increased skills levels.

Asylum seekers are individuals who are seeking international protection who claim they are unwilling or unable to avail themselves to the protection of the authorities in their home or habitual country of residence. Refugees are people who have been granted international protection and have been given permission to stay. Asylum seekers are not usually eligible for ESF support, but refugees are. Further details on eligibility for these groups is set out in the Managing Authority [eligibility guidance](#).

On the 2014 to 2020 ESF Programme, the place where the initial activity is taking place – that is, where the initial provision is – will be where the ESF support is counted as occurring for eligibility purposes.

Employment status and eligibility for ESF is decided by referring to a participant's status on the day they begin their programme of learning. If a participant leaves or changes to another ESF-funded project, their eligibility is based on their status when they start the new programme of learning.

Any work with employers must be in line with EU competition law and adhere to State Aid rules.

The ESF will not fund provision linked to statutory/legislative training for any participants or statutory/legislative employer requirements (including licence to practice), to employed participants.

18. You, your subcontractor, and grant recipients must only engage participants and employers who meet the service-specific eligibility criteria set out in the relevant service specification.
19. To be eligible for funding from the ESF, you must only support individuals who are:
  - a. legally resident in the UK,
  - b. able to take paid employment in a European Union member state;
  - c. 15 years old (at risk of NEET only) or older.
20. To be eligible for funding from the ESF, you must only support employers in line with EU competition law and State Aid principles.

21. You must show that participants will contribute to the growth of the economy through employment or increased skills levels (except where the participant is 15 years old, at risk of becoming NEET and still at school).
22. You must have documentary evidence of a participant's eligibility.
23. You will allow any eligible individual with reasonable access to the opportunity to be supported. Any specific geographic priorities are set out in the relevant service specification and your delivery location must be within these areas for the delivery to be eligible.
24. Each specification is targeted at a single category of region (less developed, more developed and transition) and your delivery location must be within that type of region.
  - a. Less developed: Cornwall and Isles of Scilly
  - b. More developed: all other areas not less developed or transition areas
  - c. Transition, see table below

<b>Local Enterprise Partnership (LEP) area</b>	<b>Transition area(s) Unitary/District</b>
<b>Cumbria</b>	All of the LEP area Carlisle Allerdale Copeland South Lakeland Eden Barrow-in-Furness
<b>Tees Valley</b>	All of the LEP area Darlington Hartlepool Middlesbrough Redcar and Cleveland Stockton-on-Tees
<b>North Eastern</b>	County Durham only
<b>Liverpool City Region</b>	Knowsley Liverpool Sefton St. Helens Wirral
<b>York and North Yorkshire</b>	East Riding of Yorkshire
<b>Humber</b>	All of the LEP area East Riding of Yorkshire Kingston upon Hull, city of North Lincolnshire North East Lincolnshire
<b>Sheffield City Region</b>	Rotherham Sheffield Barnsley



	Doncaster
<b>Leeds City Region</b>	Barnsley
<b>Greater Lincolnshire</b>	All of the LEP area West Lindsey Lincoln East Lindsey North Kesteven Boston South Kesteven South Holland North Lincolnshire North East Lincolnshire
<b>Heart of the South West</b>	West Devon South Hams Teignbridge Exeter East Devon Mid Devon North Devon Plymouth Torrige Torbay
<b>Stoke-on-Trent and Staffordshire</b>	All of the LEP area Staffordshire Moorlands Stoke-on-Trent Stafford South Staffordshire Cannock Chase Newcastle-under-Lyme East Staffordshire Lichfield Tamworth
<b>Lancashire</b>	All of the LEP area Blackpool Burnley Chorley Fylde Hyndburn Lancaster Pendle Preston Ribble Valley Rossendale South Ribble West Lancashire Wyre Blackburn with Darwen
<b>Greater Birmingham and Solihull</b>	East Staffordshire Lichfield

	Cannock Chase Tamworth
<b>The Marches</b>	Telford and Wrekin Shropshire

25. Eligible activity for each service is set out in the relevant service specification.
26. ESF provision must not displace government policy. If government policy changes, the change may be reflected in your contract. This includes provision for young people that must take into account mainstream provision funded by the Education and Skills Funding Agency.
  - a. Traineeships 16 to 24 (inclusive).
  - b. 16 to 18 apprenticeships.
  - c. 16 to 19 study programmes.
  - d. 16 to 24 supported internships.
27. For services to young people, you must fully adhere to the principles of re-engagement provision as set out in the Statutory Guidance for Raising of the Participation Age.
28. Unless otherwise defined in the specification, you will allow participants to receive any number of learning aims required to meet their identified needs to ensure they progress, however, you must manage this within the budget constraints of the learning funding lines so that all participants have adequate learning.
29. For employed learners, you must not deliver any learning aims that are identified as Category 20 – Standalone and Licence to Practice, as detailed on [Find a Learning Aim](#).

## Publicity

The ESF Programme has strict requirements on publicity that will be audited and failure to adhere to these will lead to financial penalties. You can find these publicity requirements on [GOV.UK](#).

The requirements are different for the 2014 to 2020 Programme; please do not reuse 2007 to 2013 Programme publicity materials.

30. You, your subcontractors and grant recipients must adhere to the [ERDF and ESF publicity](#) requirements above.
31. The publicity requirements include:
  - a. displaying at least one poster with information about the project at a location readily visible to the public,

- b. ensuring that all printed documents and publications produced acknowledge and reference the funding received by displaying the correct logo and ensuring it is visible in a prominent position,
- c. Websites developed specifically for a project funded by the ESF, the ESF logo must be displayed on the main page, whereas if the project is on the organisation's main website the ESF logo needs to be placed on the main project page. The ESF logo must be immediately visible on these landing pages without the need to scroll down. The ESF logo may also be placed on the organisations home page.
- d. ensuring all electronic materials produced for projects acknowledge and reference the funding received by displaying the appropriate logo,
- e. ensuring all materials and documents produced for an event in advance, on the day and after the event including invitations, tickets, press releases, exhibition stands, and presentation slides, acknowledge and reference the funding received by displaying the appropriate logo
- f. ensuring that all participants who are taking part in activities associated with the project are informed about the support from the specific fund and the European Union at the start of their activity (this can be evidenced by learners signing forms with the ESF logo on); online videos are available from the EC [website](#).

## Horizontal principles

The objectives of the ESF Programme will be pursued in line with the principle of sustainable development, including the aim of preserving, protecting and improving the quality of the environment as well as the need to prepare for expected changes to the environment and climate.

The programme will promote equal opportunities and non-discrimination. The Managing Authority and all delivery partners will adhere to the principles and processes set out in EU and UK equality legislation.

These areas are detailed in the [European Social Fund Operational Programme page](#) of GOV.UK. and in the following guidance: [Horizontal Principles Guidance](#)

32. You must have sustainable development governance, policies and implementation plans in place within two months of the start of the contract which explain:
- a. your commitment to promoting sustainable development and complying with relevant EU and domestic environmental legislation, and
  - b. how the commitment will be turned into action at project level (we will put in place a monitoring mechanism to assess implementation and compliance during the delivery of the service).

33. You must ensure that the principle of equal opportunities is embedded in your service delivery and that you promote gender equality. You must ensure that your activities are fully accessible to disabled people in line with your duty under the 2010 Equality Act.
34. You must monitor the impact of your equality opportunities policies across the provision you are delivering in line with the wider ESF programme targets detailed in the Operational Programme. This will include details of any actions to address increased participation from under-represented groups and evaluation of the success of any such initiatives.
35. You must promote the ESF Gender Equality/Equal Opportunities and Sustainable Development Awards held during Festival of Learning week both internally and to subcontractors.

## State Aid

Where support is made to individuals in employment and/or their employers then you must adhere to EU competition law and State Aid rules for the provision to be eligible. State Aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union.

The definition of State Aid is very broad because 'an advantage' can take many forms. It is anything that an undertaking (an organisation engaged in economic activity) could not get on the open market.

State Aid rules can (amongst other things) apply to the following:

- Grants.
- Loans.
- Tax breaks.
- The use or sale of a state asset for free or at less-than-market price.

The rules can apply to funding given to charities, public authorities and other non-profit-making bodies where they are involved in commercial activities.

As agreed with the department of Business, Energy, and Industrial Strategy (BEIS) the activity listed below, delivered by the ESFA (including ESF) is Education and Training which is funded under the National Academic Framework. This provision is not considered to represent State Aid and, is exempt under State Aid rules.

The following has been defined as being **exempt** from State Aid:

- Full funding for literacy and numeracy at all levels
- Shared investment (employer and public funding) for ESOL at all levels
- Full funding for all Apprenticeships (including Advanced) delivered to learners aged 16 to 18
- Co-funding for Apprenticeships
- Co-funding for first Advanced Apprenticeships
- Full funding for first Level 2
- Full funding for Level 3 jumpers
- Full funding for first full level 3 for learners aged 19 to 25

When our ESF provision falls outside of these exemptions, we use two measures to comply with State Aid rules: *de minimis* and Training Aid.

You can find guidance on State Aid on [GOV.UK](https://www.gov.uk).

36. Where the rules on State Aid apply, you must assess the employer for the State Aid they have received previously and the impact of this provision.

37. Where an employer has or will exceed the de minimis threshold, you must contact the ESFA to obtain written guidance on how to proceed.
38. We may require you to obtain a contribution towards the cost of the services delivered under this funding agreement from the employer of any participant. Where a contribution is required, we will confirm to you in writing the exact percentage of the contribution.
39. Where we require you to obtain a contribution towards the cost of the services in this funding agreement, you must provide evidence that the contribution has been received.
40. In the event that any funding paid under this contract is deemed to constitute unlawful State Aid, the ESFA reserves the right to require immediate repayment of any such funding.

### **Programme rules evidence required**

41. You must hold and retain the following:
  - Learner and employer eligibility declaration.
  - ESF-branded materials.
  - Dated photo of your ESF poster in your premises.
  - Induction narrative outlining the contribution from the ESF.
  - Documentation with the ESF logo on it signed by the participant to show they are aware of the ESF funding.
  - Sustainable development policy and implementation plan.
  - Equal opportunities policy and evidence of its implementation.
  - Evidence of promoting gender equality.
  - State Aid de minimis assessment.
  - Training Aid Block Exemption form, if de minimis is not suitable, including evidence of employer contribution.

## Reporting and evidence rules

The ESFA will reclaim ESF funds paid to providers from the EC and the EC or their agents will audit these claims. It is vital that your data and information is correct, and the audit trail behind them is complete and unchanged, so that the claims made by the ESFA to the EC will also be correct and can be audited successfully.

As well as the data collection requirements outlined in the contract, ESF providers must be aware of the use of their data in our claims process and the need for it to be accurate when it is submitted. Late changes to data can incur audit penalties. Unlike our cumulative mainstream programmes, the ESF programme operates on a quarterly basis and so data must be complete and correct when it is submitted.

The data is used by the EC to report on the performance of the programme and they can only use complete data sets. Although the ILR specification allows for 'unknowns' these will impact on the data quality supplied to the EC and you should avoid them. The ILR and supplementary data must be as complete as possible.

If your audit trail is not in place to evidence the data submissions you have made then we will recover the funds we paid to you. Errors found in a sample of your data could be extrapolated to give an error over your whole ESF contract.

### Principles of evidence for learning

42. You need to provide evidence to assure us that you have delivered education and training in line with our funding agreement and the funding and performance-management rules.
43. Some evidence will come from specific business processes, and some as part of your day-to-day working. Evidence can be naturally occurring.
44. You must hold evidence:
  - a. that the learner exists,
  - b. that the learner is eligible for funding, and at the rate of funding being claimed,
  - c. that the education and training being delivered is eligible for funding,
  - d. that the learning activity is taking place or has taken place,
  - e. that the achievement of learning aims is certified, if applicable (that is, a certificate has been issued by an awarding organisation), and
  - f. of why other funding has been claimed, such as progressions into employment or further training.
45. You must have evidence that the learner exists and is eligible on the first day of funding.

46. You must have evidence to show the learning is taking or has taken place. This will depend on the methods you use and could for example include registers, reviews and online software. Attendance at a location, such as a classroom or training centre, is not sufficient on its own to evidence learning has taken place.
47. If a learner withdraws from learning without achieving their learning aim, you must only claim funding up to the last date where you have evidence that the learner was still in learning.
48. You should only make claims for delivery through the ILR and supplementary data where the required contractual evidence is in place prior to submission.

## **Learning agreement**

49. A learning agreement can be a single document, or a collection of information brought together to form a single point of reference relating to the learning that is taking place.
50. It may be in paper, electronic or a mixture of formats. It could include enrolment forms, data-capture forms, induction checklists, initial assessments, individual learning plan (ILP), training plans, confirmation letters to learners, self-declarations, attendance records, copies of certificates and result forms. This collection of documents could also include employment records held by the employer. It is your responsibility to ensure that the evidence is retained and accessible when required.
51. The learning agreement must show the evidence needed to support the funding claimed and must be available to us if we need it.
52. You and the learner must confirm that the information in the learning agreement is correct and, therefore, the information you have reported to us in the ILR and supplementary data is correct.
53. If the time spent in learning is short, the level of evidence we would require will reflect this.
54. It is good practice for the learning agreement to confirm at least the following:
  - a. All information reported to us in the ILR, and if it applies, supplementary data and the supporting evidence of the data being reported.
  - b. The assessment of eligibility for funding and a record that you have seen evidence provided by the learner.
  - c. All initial, basic skills and diagnostic assessments.
  - d. Recognition of prior learning and entry or exit requirements.
  - e. For 'personalised learning programmes', for example, non-regulated learning, full details of all the aspects of the learning to be carried out, including the planned hours.
  - f. A description of how you will deliver the learning and skills and how the learner will achieve.



- g. The reason why the learner has been given the level of funding that they have, and details of any employer contribution resulting from State Aid.
  - h. Additional programme costs need to be identified through the learner's initial assessment and how these will be met including evidence of delivery.
  - i. Records of learning (including evidence of attendance and participation in a work placement).
  - j. A learner's self-declaration on their status relating to benefits, unemployment and gaining a job.
  - k. All records and evidence of achievement of learning aims.
55. If a subcontractor delivers any provision to the learner, it must clearly give your name as well as theirs in the learning agreement, and the learner must know this. This must match the subcontractor information reported to us in the ILR and supplementary data if applicable.

### **Confirmation and signatures**

56. You must record evidence of the learner's and employer's confirmation of information. This can include, but is not restricted to, electronic formats, such as electronic platforms, scanned data and digital signatures. When you collect a signature, we accept either handwritten or suitable electronic format.
57. Digital signatures, electronic evidence and the wider systems of control must give your management team assurance that learners are eligible for funding and that they exist. You must make sure you have systems in place to monitor learner activity, including that they are continuing to learn and achieve. Good electronic signature systems would offer:
- Authentication – linking the originator to the information
  - Integrity – allowing any changes to the information provided to be easily detected
  - Non-repudiation – ensuring satisfaction (in a legal sense) about where the electronic signature has come from
58. You must make sure you keep effective and reliable evidence to support funding claims. You are responsible for making the evidence you hold easily available to us when we need it.

### **Starting, participating and achieving**

59. The start date for a learner on the ESF Programme is the start date of the ST01 Participant Assessment and Plan deliverable.

60. The start date for a specific learning aim is when activity directly related to the learning aim has begun. We do not consider pre-work such as enrolment, induction, prior assessment, diagnostic testing or similar activity to be the start of a learning aim as this is captured under the separate deliverable, ST01.
61. You must provide evidence of learning reported in the ILR. If you do not have any evidence of learning taking place and you have claimed funding, we have the right to make you repay that funding.
62. You must apply for, and give to learners, the certificates that awarding organisations issue for achieving a learning aim. You must evidence in the learning agreement that this has happened.
63. You must ensure that 16-18 learners who are entitled to Free Meals meet the eligibility criteria described in [16 to 19 education: free meals in further education guidance](#)

### **Individualised Learner Record (ILR)**

64. The ILR data reported to us is not evidence but is the basis on which our payments are made to you. The information contained in the learning agreement must support the ILR data you have reported. The ways in which you collect data may form part of your evidence. For example, you may include forms used to collect ILR data, such as enrolment forms, in the learning agreement.
65. You must accurately complete all ILR fields as required in the ILR Specification, even if they are not used for funding. We will use the ILR and ESF Supplementary Data (see paragraph 03) to monitor your compliance with the funding and performance-management rules. Where we find that your data does not support your funding claim, we will take action to get this corrected, which could include us reclaiming funding.

### **Supplementary data**

66. If your contract includes the deliverables that cannot be paid through an ILR submission (CG01 Community Grant Payment, CG02 Community Grant Management Cost or SD01 Progression in Work or SD02 Delivery Plan) you will be required to submit ESF Supplementary Data. You will also need to use this data collection where funding needs to be adjusted for information that cannot be processed through our funding calculations using the ILR, with agreement from us. Where we find that your supplementary data does not support your funding claim, we will take action to get this corrected, which could include us reclaiming funding.

## Self-declarations by learners

67. Any learner self-declarations must confirm the learner's details and describe what the learner is confirming. This can be in electronic format.
68. Where the self-declaration relates to prior attainment you must check this against any information held in the personal learning record (PLR). If the PLR contradicts the self-declaration, you must challenge the information supplied by the learner. The PLR will not automatically override the learner's self-declaration.

## Control systems

The ESF regulations require that the funding you receive is 'regular and legal' that means that you and we must maintain an audit trail for the funding you receive and the participant activity. You must maintain the evidence for each deliverable and make that available for audit. Failure to maintain the audit trail will lead to funding being recovered. Your control systems will be an important element in the management of your audit trail.

69. You must put in place adequate control systems to ensure that the ILR and ESF Supplementary Data submissions you make to us are accurate, complete and have a complete audit trail to justify them. Your control systems must allow you to recover evidence for audit quickly and accurately. Your control systems must extend to your subcontractors.
70. You must regularly test your control systems and your subcontractor's control systems and the learner evidence that they maintain and provide evidence to us that your systems operate correctly.
71. At the start of the contract, you must supply examples of your learning paperwork and processes that meet the evidence criteria set out below for the deliverables in your contract.

## Deliverables evidence

72. When requested, you must provide us with the evidence described in the [ESF Specifications Deliverables Evidence Requirements](#) for each deliverable on your contract.
73. At the start of the contract you must provide us with evidence examples for us to review their appropriateness.
74. Initial progressions must be within 28 days of completing the final learning aim.

## Higher Level Skills

75. Where the delivery of higher level skills are included as eligible activity in your contract, you may deliver them from the set of regulated Level 3 and above qualifications and their components that are flagged for ESF funding in Find a Learning Aim (FALA).
76. The higher level aims that will be flagged as available for ESF funding will be:
  - Regulated qualifications and their components at Level 3 and above that are under 15 credits or 150 guided learning hours and meet Education and Skills Funding Agency [eligibility principles](#).
  - Non-regulated aims at notional Level 3 and above that allow the reporting of delivery up to 150 hours (101-196 hours aims) and meet eligibility rules set out in the [funding rules](#). You must evidence you have delivered less than 150 guided learning hours.
77. ESF funded delivery must not be used where either the legal entitlements apply or where the learner could obtain an Advanced Learner Loan to fund the learning. The number of units that you deliver to each participant must not make up the whole qualification that should be funded through loans or legal entitlements. We would not expect large number of units to be delivered to each learner. You must not use non-regulated qualifications to deliver regulated activity that should be funded through loans or legal entitlements. You must not use ESF offer to deliver qualifications that are no longer available as part of legal entitlements to 19-23-year-old participants who have not yet attained a first qualification at level 3 (see AEB funding rules).

## Use of certain non-regulated aims

On the 2014 to 2020 ESF Programme we will use specific non-regulated learning aims to capture elements of an unemployed/employed or NEET support programme and to capture tasters of regulated learning that do not lead to a regulated qualification. For example, support for independent living or community learning will be captured under a non-regulated Preparation for Work aim whilst employability skills will be captured under Foundations for Learning & Life.

Other non-regulated aims could be used on a programme. The full range of regulated and non-regulated aims that you can use on ESF is available on [Find a Learning Aim](#).

78. You must use the following aims for:
  - a. wrap-around support at any level,
  - b. work placements that are not a progression, and
  - c. taster sessions for mixed-sector subject areas.

The term PW in the table below refers to Programme Weighting.

<b>Learning aim reference</b>	<b>Wrap-around support aim title</b>
Z0009066	Non regulated ESFA formula funded provision, No defined level, Preparation for Work, 7 to 12 hrs, PW A
Z0007873	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 13 to 20 hours, PW A
Z0007874	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 21 to 44 hours, PW A
Z0007875	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 45 to 68 hours, PW A
Z0007876	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 69 to 92 hours, PW A
Z0007877	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 93 to 100 hours, PW A
Z0007878	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 101 to 196 hours, PW A
Z0007879	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 197 to 292 hours, PW A
Z0007880	Non-regulated ESFA formula funded provision, no defined level, Preparation for Work, 293 to 388 hours, PW A
Z0007881	Non regulated ESFA formula funded provision, no defined level, Preparation for Work, 389 to 580 hrs, PW A
Z0007882	Non regulated ESFA formula funded provision, no defined level, Preparation for Work, 581 to 1060 hrs, PW A
Z0007883	Non regulated ESFA formula funded provision, no defined level, Preparation for Work, 1061 + hrs, PW A
Z0009062	Non regulated ESFA formula funded provision, No defined level, Foundations for Learning and Life, 7 to 12 hrs, PW A
Z0007885	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 13 to 20 hrs, PW A
Z0007886	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 21 to 44 hrs, PW A
Z0007887	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 45 to 68 hrs, PW A
Z0007888	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 69 to 92 hrs, PW A
Z0007889	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 93 to 100 hrs, PW A
Z0007890	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 101 to 196 hrs, PW A
Z0007891	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 197 to 292 hrs, PW A
Z0007892	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 293 to 388 hrs, PW A

Z0007893	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 389 to 580 hrs, PW A
Z0007894	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 581 to 1060 hrs, PW A
Z0007895	Non regulated ESFA formula funded provision, no defined level, Foundations for Learning and Life, 1061 + hrs, PW A

<b>Learning aim reference</b>	<b>Work experience aim title</b>
Z0009070	Work experience/placement, 7 to 12 hrs, PW A (ESF funding only)
Z0007861	Work experience/placement, 13 to 20 hrs, PW A
Z0007862	Work experience/placement, 21 to 44 hrs, PW A
Z0007863	Work experience/placement, 45 to 68 hrs, PW A
Z0007864	Work experience/placement, 69 to 92 hrs, PW A
Z0007865	Work experience/placement, 93 to 100 hrs, PW A
Z0007866	Work experience/placement, 101 to 196 hrs, PW A
Z0007867	Work experience/placement, 197 to 292 hrs, PW A
Z0007868	Work experience/placement, 293 to 388 hrs, PW A
Z0007869	Work experience/placement, 389 to 580 hrs, PW A
Z0007870	Work experience/placement, 581 to 1060 hrs, PW A
Z0007871	Work experience/placement, 1061 + hrs, PW A

<b>Learning aim reference</b>	<b>Tasters aim title</b>
Z0007849	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 13 to 20 hrs
Z0007850	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 21 to 44 hrs
Z0007851	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 45 to 68 hrs
Z0007852	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 69 to 92 hrs
Z0007853	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 93 to 100 hrs
Z0007854	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 101 to 196 hrs
Z0007855	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 197 to 292 hrs
Z0007856	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 293 to 388 hrs
Z0007857	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 389 to 580 hrs
Z0007858	Non-regulated ESFA formula funded provision, Mixed Sector Subject Areas, 581 to 1060 hrs

**N.B** For learners who **complete their learning aim or achieve a positive progression defined by the contract** in less or more hours than originally forecast, the Learning Aim Reference must be amended to reflect the hours completed.

### Contract closure and reconciliation

79. You will prepare for contract closure in the last three months of the contract. This will include ensuring:
- ILR and supplementary data submissions are reconciled and accurate,
  - the audit trail for all of the deliverables claimed is in place,
  - the further evidence requirements detailed in this document are in place, and
  - you are preparing to archive the delivery evidence.
80. You will provide the final submission of ILR and supplementary data by the second collection after the contract end-date. We will reconcile and close the contract on the data available in this collection.
81. We will take into account any recoveries from audits, compliance checks and any identified ineligible activity when we reconcile your contract.
82. We will correct any audit errors found from the audits and ensure all necessary action has been taken.

### Retention of documents

The EC or other programme authorities will audit your ESF contract. You must ensure that evidence is available to support the payments we have made to you. The main audits happen on a calendar-year basis so in the normal course of the programme you may be audited more than 18 months after we paid you. Additionally, the European Court of Auditors could audit you up to 2034.

All supporting documentation evidencing the delivery of the ESF project must be kept for a period of three years from 31 December following the submission of the accounts in which the expenditure of the programme is included. The retention of Documents date is currently 31 December 2034, but you will be notified of any change to this date.

83. You must maintain original invoices, delivery evidence, management information returns and all other documents necessary to verify the services in relation to this contract until at least 31 December 2034, but you will be notified

of any change to this date. You must maintain the documents for yourself, your subcontractors and grant recipients. Documents must be stored in line with the following guidance: [ESF Guidance on Document Retention](#)

84. You must notify us in writing at the end of the contract where you have archived the contract documents and your processes for retrieving them.
85. At any time during the delivery of the services under this contract, where you are unable to provide the required evidence for any deliverable (as set out in this document) you must write to us. You must provide the reason(s) why you are unable to comply with the evidence requirements and give full details of alternative evidence to be considered. We will review the request and notify you in writing of any revisions to the evidence requirements which shall form part of the terms and conditions of the contract, if we decide to accept the alternate evidence. In all such reviews, our decision shall be final.

### **Evaluation, surveys, and annual implementation reporting**

86. To enable us to report on our ESF activity for evaluations, surveys, and the Managing Authority's Annual Implementation Report, you must, when asked, be able to give us examples of:
  - a. measures taken to provide information and publicise the services,
  - b. putting the horizontal principles of equal opportunities and sustainable development into practice,
  - c. case studies of good-practice projects, and
  - d. a summary of the project, its achievements and lessons learned.

### **Reporting and evidence**

87. You are required to hold and retain the following:
  - Evidence according to the evidence requirements in [ESF Specifications Deliverables Evidence Requirements](#).
  - Evidence of control system checks for you and your subcontractors.
  - Example evidence for the deliverables in your contract.
  - Archiving plans.
  - Horizontal principles policies and plans
  - Publicity material, case studies and good news stories.
  - Project evaluation.



# Performance-management rules

## General

88. We will pay you based on your actual delivery each month. We will work out the value of your actual delivery using the latest validated ILR and ESF supplementary data you provide.
89. We will not pay for any delivery above the value of the individual deliverable line shown in your funding agreement unless we agree an increase to the value of the contract in accordance with these rules.
90. We will set out any agreed changes to your contract in a contract variation which must be signed by you and us before we can implement any increase. This must take place before your funding agreement ends.

## First six months

91. We will measure your performance against the delivery profiles we have agreed with you and against the wider 'deliverables' set out in your funding agreement. Where we identify under-performance in the first six months of your contract, you must produce an action plan setting out how you will improve your performance. We will agree with you the format of the action plan and the period it must cover.

## Reducing your contract value

92. After the first six months of your contract, we will measure your performance at the next timetabled performance-management point. We will then measure it at each timetabled performance-management point until the end of your contract. The performance-management points will be in April and October each year. The performance-management timetable is shown in Diagram 1 of Annex A.
93. We may reduce your contract value where your performance against your profile for the period in question is outside our published tolerance levels. The tolerance levels that we will apply vary according to the time left to deliver your contract at that performance-management point. The tolerance levels are set out in Table 1 of Annex A.
94. Any reduction will reflect some or all of the value of the under-delivery to date. We will base any reductions to the future profile of your contract on a complete assessment of your ability to deliver the amount of provision the funding agreement covers. This includes how your delivery profile fits with the timescales you have left to deliver the rest of the contract. The changes will reflect the specification requirements and be consistent with the ratios in your

current contract (for example, the proportion of learner achievements to learner starts).

95. We may apply the reduction unless:
  - a. you demonstrate that you were impacted by data issues outside your control
  - b. the value of the under-delivery is less than £25,000
96. If your delivery against your profile for the period in question is outside our published tolerance levels, we will not agree an increase to that contract value unless:
  - a. you demonstrate that you were impacted by data issues outside your control
  - b. the value of the under-delivery is less than £25,000

### **Neutral changes to your contract value**

97. After the first six months of your contract, you can request changes to the mix of deliverables in your contract at the performance-management points or at quarterly review points. The quarterly review points will be in January and July each year. The quarterly review points are shown in Diagram 1 of Annex A. These changes must reflect the specification requirements and be consistent with the ratios in your current contract (for example, the proportion of learner achievements to learner starts). These changes must be cost-neutral, that is, your proposed changes must not change the value of your contract or the unit value of the deliverable(s).
98. You must discuss your intention to request changes with us in advance and provide a proposed profile of delivery in the same format as the one in your contract, plus a robust business case in support of your request. You must submit your request by the published dates when these are confirmed. We will not accept any requests that are sent after the deadlines.

### **Increasing your contract value**

99. After the first six months of your contract, you can ask for an increase to your contract value at the performance-management points where performance is at a minimum of 80% of profiled activity. Your request for growth must reflect the specification requirements and keep to the same ratios or better than in your original contract. (For example, if your original contract specifies a minimum of 60% of learners must achieve their learning aim, you can request to increase this, but we will not agree to reduce it.) Contract values can be increased by a maximum 50% of the original ITT specification value.
100. You must discuss your intention to request growth with us in advance and provide a proposed profile of delivery in the same format as the one in your contract, plus a robust business case in support of your request. You must

submit your request by the published dates when these are confirmed. You can ask for an increase by sending a growth and virement request form to your ESF Performance and Delivery adviser. We will not accept any requests that are sent after the deadlines.

101. You must not request growth for a subcontractor if:
  - a. it would take the total value of the subcontracts that that subcontractor holds to deliver education and training funded by us to £100,000 or more, and
  - b. the subcontractor is not on the Register of Training Organisations
102. Contract values within a LEP area can only be increased using the LEP's existing ESF allocation with us for that priority and type of region. ('Type of region' is explained in the Glossary to this document and set out in paragraph 81.) That is, if all the funding available to us has been contracted, there have to be under-spends from other contracts in the same LEP area for the same priority and type of region that can be redistributed to fund an increase to your contract.
103. We will increase your contract value if:
  - a. funds are available within the LEP's existing ESF allocation with us for that priority and type of region
  - b. you have a good track record
  - c. you can prove there is evidence of demand from the intended participants of your ESF contract
  - d. you are not under notice for Failure of Inspection, Financial Health or Financial Control
  - e. we are confident that awarding an increase to your contract value is a good use of public funds
104. If there are insufficient funds within the LEP's ESF allocation with us for that priority and type of region but you meet the other criteria in the paragraph above, we will recommend your growth request to the local area ESIF committee. The committee may consider using other ESF funding that it has or it may request additional funds from the ESF Managing Authority.
105. Where the local area ESIF committee agrees to increase your contract value from their wider ESF budget or requests additional funding from the ESF Managing Authority, any increase to your contract value may not be agreed within the performance-management timetable at Table 1 of Annex A.

## **Working with LEPs**

106. We will report your contract performance to the local area ESIF committee and its LEP. You must co-operate with the LEP in any reviews that it undertakes.

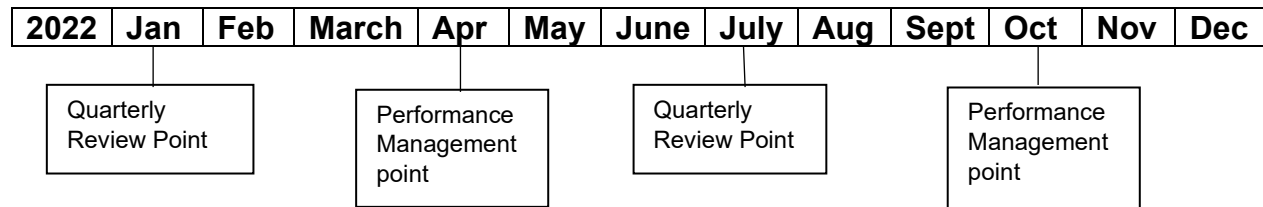
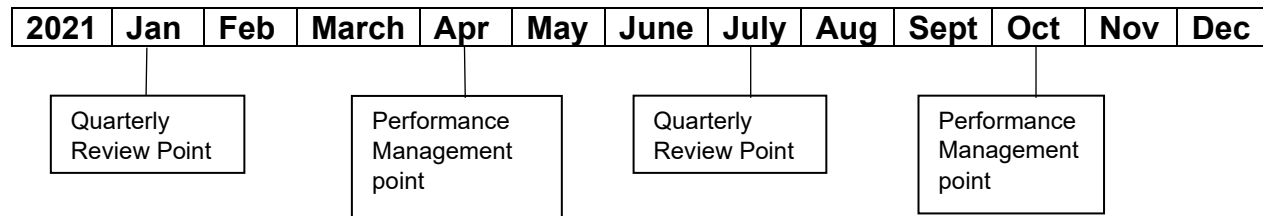
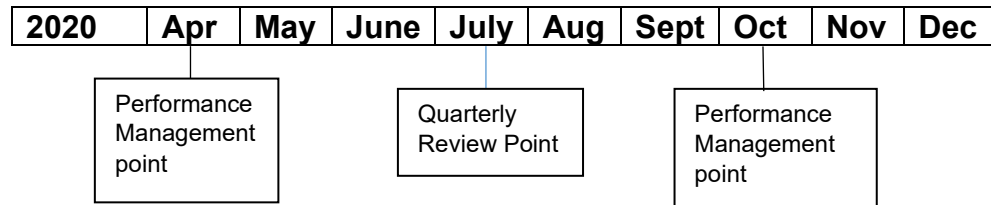
107. You must co-operate with the commissioning LEPs during the delivery of the service and provide reports to support the performance information. We recommend you have a Data Sharing Agreement with the commissioning LEP.
108. If the LEP asks you for data about learners or their learning you must adhere to data protection legislation.

## Glossary

Term	Description
Annual Implementation Report	This is a report produced by the Managing Authority that provides a narrative on how the Programme is progressing.
ESF	<a href="#">European Social Fund</a> .
ESIF Committee	Part of the ESF Programme governance. Advises the Managing Authority on local aspects of the Programme.
European Regulations	The rules that govern the ESF Programme.
Horizontal Principles	These are sustainability and equal opportunities themes that run through all activity on the ESF Programme.
ILR	<a href="#">Individualised Learning Record</a> , data about the learners used for funding and management information.
LEP	<a href="#">Local Enterprise Partnership</a> .
Non-regulated Aims	An aim is a learning activity or qualification. A non-regulated aim is not controlled by an awarding body and the contents can be defined by the provider delivering the aim.
Operational Programme	The document that describes what the ESF Programme in England will buy and who it will support.
Progression	This is moving off the ESF-funded activity and into an apprenticeship, for example. The Programme does not fund the job or learning that has been progressed into.
PW Programme Weighting	The aims have a programme weighting that can uplift the value of the aim.
Regulated Aims	An aim is a learning activity or qualification. Regulated aims are those controlled by an awarding body.
ESF Supplementary Data	Data about delivery that cannot be captured in the ILR.
The Register of Training Providers	The ESFA <a href="#">register of providers</a> who have met minimum due diligence requirements
Types of Region	Three types of region separated by the contribution to Gross Domestic Product. These are less developed, more developed and those that are in transition.
UKLRP	<a href="#">UK Register of Learning Providers</a> .

# Annex A: Performance-management diagrams and tables

Diagram 1 – Performance Management Timetable



**Table 1: Performance management tolerances for European Social Fund contracts**

Remaining time to deliver contract	Contract Duration				
	48 months	36 months	24 months	18 months	12 months
Up to 48 months	First six months				
Up to 36 months	15%	First six months			
Up to 24 months	15%	15%	First six months		
Up to 18 months	15%	15%	15%	First six months	
Up to 12 months	10%	10%	10%	10%	First six months
Up to 6 months	5%	5%	5%	5%	5%

## Table of Changes

Date	Original	Current	Addition	Deletion	Date Applicable
April 2020	Not applicable	Not applicable	Years 2021 and 2022 in the Performance Management Timetable	Not applicable	April 2020
August 2020	Contracting and Sub-Contracting section	Contracting and Sub-Contracting section	Updating of this section	Updating of this section	August 2020
June 2021	State Aid narrative	State Aid narrative	Updating of the narrative to include Education and Training deemed exempt by BEIS.	No deletion – further information added	April 2019
June 2021	Contracting and Sub-Contracting section Paragraph 44	Contracting and Sub-Contracting section Paragraph 44	44. You must obtain an annual report from an external auditor if the ESFA funded contracts with your delivery subcontractor(s) will exceed £100,000 in any one funding year. The report must: a. Provide assurance on the arrangements to manage and control your subcontractors, b. Comply with any guidance issued by us.	44. You must obtain an annual report from an external auditor if contract with your subcontractor will exceed £100,000 in any one funding year. The report must: a. Provide assurance on the arrangements to manage and control your subcontractors, b. Comply with any guidance issued by us.	June 2021
June 2021	Increasing your Contract Value - Paragraph 139	Increasing your Contracting Value - Paragraph 139	139. After the first six months of your contract, you can ask for an increase to your contract	No deletion – further information added.	June 2021

			value at the performance-management points where performance is at a minimum of 80% of profiled activity.		
July 2021	Not applicable	New Paragraph 70 added.	70. For employed learners, you must not deliver any learning aims that are identified as Category 20 – Standalone and Licence to Practice, as detailed on Find a Learning Aim.	No deletion – subsequent paragraph numbers changed	July 2021
July 2021	Use of certain-non regulated aims	Updated to reflect change to Find a Learning Aim	Other non-regulated aims could be used on a programme. The full range of regulated and non-regulated aims that you can use on ESF is available on <a href="#">Find a Learning Aim</a>	Deletion of reference to Learning Aim Reference Service (LARS)	July 2021
September 2021	Contracting and sub-contracting	Sub-contracting updated to reflect new sub-contracting rules	Removal of requirement to comply with ROTO and link to new sub-contracting rules	Deletion of paragraphs 18 to 58	August 2021
September 2022	Retention of Documents	Updated to reflect the change in the retention date	Retention of Documents date 31 December 2034	Deleted original date of 31 December 2030	September 2022