



Skills Funding  
Agency



European Union  
European  
Social Fund

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

## Version 2

This document sets out the rules for funding the 2014 to 2020 European Social Fund (ESF) Programme. These rules apply from November 2015.

January 2016

Of interest to further education and skills training providers

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WITHHOLD DRAFT

## 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.
2. The rules apply to all providers funded by the European Social Fund through the Skills Funding Agency (SFA).
3. The funding and performance-management rules form part of the terms and conditions of the funding agreement between the Secretary of State for Business, Innovation and Skills acting through the Skills Funding Agency and providers who receive European Social Funding. 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](#)

You can also access the [Individualised Learner Record Specification](#) and the [ESF Funding Rates and Formula](#) documents on the [ESF page](#) of GOV.UK.

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 SFA and we will take action as set out in the funding agreement.
5. The SFA 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 'SFA' refers to the Skills Funding Agency which is an executive agency of the Department for Business, Innovation and Skills and exercises functions on behalf of the Secretary of State for Business, Innovation and Skills.
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
  - 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 Central Delivery Service (CDS)

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

## Overview of the 2014 to 2020 ESF Programme

13. The European Social Fund (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 this is managed by the Department for Work and Pensions Managing Authority. 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

## Entering the Register of Training Organisations (the Register)

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 can access the SFA Register of Training Organisations on [GOV.UK](#).

## Staying on the Register of Training Organisations

18. To continue to be listed on the Register of Training Organisations you and any subcontractors listed on the Register must successfully complete the Register Refresh and update your information when we ask you to. If you fail, or do not update when we ask you to, you must apply at the next opening of the Gateway. During this period you and any relevant subcontractors:
  - a. will not be listed on the Register
  - b. will not be invited to tender, and
  - c. will not be able to increase contract value through growth cases
19. If your organisation does not apply at the next opening of the Gateway, or you fail the application process, we will review your funding arrangements.
20. We will not agree any request for an increase in funding where you intend to increase the value of a subcontract with a subcontractor who has failed to refresh their information. If the subcontractor's application fails the Gateway, the lead provider must end their subcontract.
21. If you give false information when completing the Gateway, we will remove you from the Register.
22. If you are the subject of our Intervention Policy, we will not invite you to tender or consider you for an increase in funding. We may remove or suspend you from the Register and we will review your funding arrangements.

23. 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.

## Subcontracting

A subcontractor is a legal entity that has an agreement with you to deliver education and training funded by us.

These funding and performance-management rules are intended to minimise the risks to public funding associated with subcontracting.

The Common Accord and Supply Chain Management: a good-practice guide for the post-16 sector were produced to support providers in their supply chain management. We highly recommend that you routinely refer to these two documents during all stages of the contracting process. You can find them on the Association of Employment and Learning Providers ([AELP website](#)).

24. Your governing body / board of directors and your accounting officer (senior responsible person) must be satisfied that all subcontracting you undertake meets your strategic aims and enhances the quality of your offer to participants. Examples of the senior responsible person are: chief executive, managing director, principal or their equivalent. The reasons for subcontracting set out in your published supply chain fees and charges policy must reflect your strategic aims. You must not subcontract to meet short-term funding objectives.
25. You must only use subcontractors if you have the appropriate knowledge, skills and experience within your organisation to successfully procure, contract with and manage those subcontractors.
26. You must only use subcontractors who your governing body / board of directors and your accounting officer (senior responsible person) determine are of a high quality and low risk.
27. We expect you to have robust procedures in place to ensure that subcontracting does not lead to the inadvertent funding of extremist organisations.
28. We reserve the right to move subcontractors into a direct contractual relationship.
29. You are responsible for all the actions of your subcontractors connected to, or arising out of, the delivery of the services which you subcontract.
30. You must inform us if your subcontractor goes into administration or liquidation. This requirement continues to 31 December 2030.

31. We can, at any time, assess your arrangements for subcontracting. We can also require you to commission an independent report on these arrangements from a third party, such as your external auditors.

## **Selection and procurement of subcontractors**

32. If you have not previously subcontracted provision we fund, you must get our approval in writing before awarding a contract to a subcontractor. You can find details on our [website](#).
33. We expect that your tender allowed you to start delivery immediately and so you would have included the partners that you need. If you need new partners / subcontractors, you must select subcontractors through a procurement competition following the Managing Authority [procurement guidelines](#).
34. If you add new subcontractors during the life of your contract, you must submit an updated subcontractor declaration form.
35. When appointing subcontractors, you must avoid conflicts of interest and you must:
  - a. tell us, in writing, about any circumstances (for example, where you and your proposed subcontractor have common directors) which might lead to an actual or perceived conflict of interest
  - b. not award the contract without our permission in writing, and
  - c. send your request to your Central Delivery Service ESF compliance adviser
36. You must carry out your own due diligence checks when appointing subcontractors. You must not use the Register of Training Organisations as a substitute for carrying out your own due diligence checks.
37. You must not appoint any subcontractors with a contract value of £100,000 or greater for each funding year unless they are listed on the Register of Training Organisations first.
38. This also applies if the subcontract from you would take the total value of subcontracts that the subcontractor holds to deliver education and training funded by us to £100,000 or greater.
39. You must obtain this information from each proposed subcontractor and also refer to the latest published List of Declared Subcontractors and Register of Training Organisations on [GOV.UK](#).
40. If a subcontractor you are using exceeds the £100,000 threshold and is not listed on the Register of Training Organisations, you must immediately end your subcontract with that organisation. This applies regardless of whether you were the provider whose contract took the subcontractor over the threshold.
41. We expect you to make sure any subcontractor you appoint continues to meet the Register of Training Organisations' requirements and that they receive all the necessary support from you.



42. If any of the following circumstances apply, you must not enter into new subcontracting arrangements or increase the value of your existing arrangements. These conditions will continue until we are satisfied that the concerns have been addressed and the circumstances below no longer apply.
  - a. If Ofsted has rated your leadership and management as inadequate.
  - b. If you do not meet our [Minimum Standards](#).
  - c. If the outcome of your annual financial health assessment we carry out is inadequate.

### **Entering into a subcontract**

43. All participants who are provided with education and training under a subcontract remain your responsibility. If your subcontractor fails to deliver, you will be responsible for making alternative arrangements for the delivery of education and training, protecting the audit trail and/or repaying Skills Funding Agency or ESF funding.
44. You must only award contracts for delivering funded provision to legal entities. If the legal entity is a registered company, it must be recorded as 'active' on the Companies House database.
45. You must not award a subcontract to any organisation if:
  - a. it has an above-average risk warning from a credit agency
  - b. it has passed a resolution (or the court has made an order) to wind up or liquidate the company, or administrators have been appointed, or
  - c. its statutory accounts are overdue
46. You must make sure that participants and employers supported through subcontracting arrangements know about your roles and responsibilities and your subcontractor's roles and responsibilities in providing the learning.
47. You must have a legally-binding contract with each subcontractor that includes all the terms set out below in paragraphs 50 to 63.
48. You must have a contingency plan in place for participants in the event that:
  - a. you need to withdraw from a subcontract arrangement
  - b. a subcontractor withdraws from the arrangement, or
  - c. a subcontractor goes into liquidation or administration
49. We need assurance that education and training provided by subcontractors will keep to our funding and performance-management rules. You must make sure that the terms of your subcontracts allow you to:
  - a. monitor the subcontractor's activity
  - b. have control over your subcontractors, and
  - c. monitor the quality of education and training provided by subcontractors

## Terms that must be included in contracts with subcontractors

50. We do not provide a template for subcontracts, but you must make sure your subcontracts include the contents of this section. You must take your own legal advice on the wider terms and conditions of contracts you enter into with subcontractors.
51. Subcontractors must keep to our funding and performance-management rules.
52. Subcontractors must provide you with ILR data so your data returns to us accurately reflect your subcontractor's delivery information.
53. Subcontractors must give us, and any other person nominated by us, access to their premises and all documents relating to ESF provision.
54. Subcontractors must give you sufficient evidence to allow you to:
  - a. assess their performance against Ofsted's Common Inspection Framework
  - b. incorporate the evidence they provide into your self-assessment report, and
  - c. guide the judgements and grades within your self-assessment report
55. Subcontractors must always have suitably qualified staff available to provide the education and training we fund.
56. Subcontractors must co-operate with the lead provider to make sure that there is continuity of learning if the subcontract ends for any reason.
57. Subcontractors must tell you if evidence of any irregular financial or delivery activity arises. Irregular activity could include, but is not limited to:
  - a. non-delivery of training when funds have been paid
  - b. sanctions imposed on the subcontractor by an awarding organisation
  - c. an inadequate Ofsted grade
  - d. complaints or allegations by participants, people working for the subcontractor or other relevant parties, and
  - e. allegations of fraud
58. You must ensure that the subcontractor's evidence meets the contractual evidence requirements in these funding rules and also carry out checks to ensure this is the case.
59. You must ensure that your subcontractors maintain the evidence and audit trail in these funding rules, and provide access to it, until 31 December 2030.
60. All clauses from your funding agreement with us must be included in the subcontract.
61. Subcontractors must not use our funding to make bids for, or claims from, any European funding on their own behalf or on our behalf.
62. Subcontractors must not use payments made through this funding agreement as match funding for ESF direct bid projects.

63. All contract documentation remains the property of the Secretary of State. If the subcontractor ceases trading you must recover all contract paperwork and then reconcile your claims to us against the recovered paperwork.

### **Subcontractor monitoring**

64. You must robustly manage and monitor all of your subcontractors to ensure that high-quality delivery is taking place that meets the specific funding requirements for each programme being delivered.
65. You must carry out a regular and substantial programme of quality-assurance checks on the education and training provided by subcontractors, including visits at short notice and face-to-face interviews with staff and participants. The programme must:
  - a. cover whether the participants exist and are eligible
  - b. involve direct observation of initial guidance
  - c. involve direct observation of assessment, and
  - d. involve direct observation of the delivery of learning programmes
66. The findings of your assurance checks must be consistent with your expectations and the subcontractor's records.
67. You must ensure your subcontractor's evidence meets the requirements of these funding rules and is maintained and is accessible until 31 December 2030.

### **Second-level subcontracting**

68. You must get our approval in writing each year if you want to subcontract to a second level. We will only allow second-level subcontracting in exceptional circumstances. You can find more information on our [GOV.UK](https://www.gov.uk).
69. You must declare any second-level subcontracting on your Subcontractor Declaration Form by ticking the relevant box.

### **Reporting subcontracting arrangements**

70. You must provide a fully completed Subcontractor Declaration Form by the exact dates we will give you on our website. If you do not return the form on time, we will suspend your payments. If you do not subcontract, you must still provide a nil return form to confirm this.
71. You must also update and return your Subcontractor Declaration Form if your subcontracting arrangements change during the year.
72. You must report all subcontracted learning in the ILR.

## Distributing income between you and your subcontractors

By law, we must make the best use of resources when securing the provision of education and training. We will monitor the fees and charges associated with subcontracting to make sure enough funding is being allocated for providing high-quality education and training.

73. Your supply-chain fees and charges policy must be reviewed and signed by your governing body / board of directors and your accounting officer.
74. You must publish your supply-chain fees and charges policy on your website before entering into any subcontracting agreements for the 2015 to 2016 funding year.
75. Your fees and charges policy must only include 'provision subcontracting'. Provision subcontracting is when you subcontract the delivery of full programmes or frameworks. It is not subcontracting the delivery of a service as part of the delivery of a programme (for example, buying the delivery of part of an apprenticeship framework or outreach support). If you are not sure whether your subcontracting arrangements are defined as 'provision subcontracting', please discuss this with your Central Delivery Service ESF compliance advisor.
76. You must, as a minimum, include the following in your supply-chain fees and charges policy.
  - a. Your reason for subcontracting.
  - b. Your contribution to improving your and your subcontractor's quality of teaching and learning.
  - c. The typical percentage range of fees you retain to manage subcontractors, and how you calculate this range.
  - d. The support subcontractors will receive in return for the fee you charge.
  - e. If appropriate, the reason for any differences in fees charged for, or support provided to, different subcontractors.
  - f. Payment terms between you and your subcontractors; timing of payments in relation to delivering provision and timescale for paying invoices and claims for funding received.
  - g. How and when the policy is communicated to, and discussed with, current and potential subcontractors.
  - h. Timing for policy review.
  - i. Where the policy is published.
77. You must also publish the actual level of funding paid and retained for each of your subcontractors in each academic year. This data must be published within 30 days of each academic year's ILR closing.
78. The actual level of funding paid and retained must only include 'provision subcontracting', which is defined in paragraph 75.

79. You must, as a minimum, include the following in your published supply-chain fees and charges.
- a. Name of the subcontractor.
  - b. The UKPRN number of the subcontractor.
  - c. Contract start and end date.
  - d. Type of provision (for example, 16 to 18 apprenticeships, 19+ apprenticeships, ESF, classroom learning, workplace learning).
  - e. Funding we have paid to you for provision delivered by the subcontractor in that academic year.
  - f. Funding you have paid to your subcontractor for provision delivered in that academic year.
  - g. Funding you have retained in relation to each subcontractor for that academic year.
  - h. If appropriate, funding your subcontractor has paid to you for services or support you have provided in connection with the subcontracted provision.
80. You must publish this information on actual fees and charges alongside your supply-chain fees and charges policy.

### **Subcontracting evidence**

81. You must hold and retain the following.
- Minutes of governing body / board of directors' meetings and written evidence of accounting officer (senior responsible person) sign-off. The strategic aim must reflect the reasons for subcontracting set out in the published fees and charges policy.
  - Curriculum vitae of staff procuring, contracting with and managing subcontractors.
  - Written evidence from the accounting officer confirming that appointed subcontractors are of a high quality and low risk.
  - A request to subcontract, including an external audit report from an independent and qualified external auditor, and a copy of approval from us.
  - Written details of anything that could be considered to give rise to a conflict of interests, and a copy of the response from us.
  - Evidence that the subcontractor is on the Register of Training Organisations and the UK Register of Learning Providers (UKRLP), and their UK Provider Registration Number (UKPRN).
  - Copies of the process you follow and checks you carry out when appointing subcontractors.
  - Copies of your subcontracts with each subcontractor.

- A request to second-level subcontract and copy of approval to second-level subcontract.
- An up-to-date and fully filled-in Subcontractor Declaration Form.
- Minutes of governing body / board of directors' meetings and written evidence of accounting officer sign-off.
- Evidence of a published supply-chain fees and charges policy, as set out in these funding and performance-management rules.
- Evidence of funding paid and retained in relation to supply-chain fees and charges, as set out in these funding and performance-management rules.

WITHDRAWN

# ESF 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.

European Social Fund support has no upper age limit. However, European Social Fund 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 European Social Fund support, but refugees are and this is detailed in the Managing Authority [eligibility guidance](#).

On the 2014 to 2020 European Social Fund Programme, the place where the activity is taking place – that is, where the provision is – will be where the European Social Fund 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.

82. 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.
83. To be eligible for funding from the European Social Fund, 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 or older
84. To be eligible for funding from the European Social Fund, you must only support employers in line with EU competition law and State Aid principles.
85. 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 and still at school).
86. You must have documentary evidence of a participant's eligibility.

87. 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.
88. 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.
- Less developed: Cornwall and Isles of Scilly
  - More developed: all other areas not less developed or transition areas
  - 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>	All of the LEP area Halton 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 Torridge 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

89. Eligible activity for each service is set out in the relevant service specification.
90. 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 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.
91. 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.
92. Unless otherwise defined in the specification, you will allow participants to receive any number of learning aims 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.

## 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](http://GOV.UK).

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

93. You, your subcontractors and grant recipients must adhere to the [ERDF and ESF publicity](#) requirements above.
94. 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. ensuring all electronic materials produced for projects acknowledge and reference the funding received by displaying the appropriate logo
  - d. 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, must acknowledge and reference the funding received by displaying the appropriate logo

- e. 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.

- 95. 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)
- 96. 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 public duty under the 2010 Equality Act.
- 97. 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.

## 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 which 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.

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

98. Where the rules on State Aid apply, you must assess the employer for the State Aid they have received.
99. Where an employer has exceeded the de minimis threshold, you must contact the SFA to obtain written guidance on how to proceed.
100. 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.
101. 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.
102. In the event that any funding paid under this contract is deemed to constitute unlawful State Aid, the SFA reserves the right to require immediate repayment of any such funding.

### Programme rules evidence required

103. You must hold and retain the following.
  - Learner and employer eligibility declaration.
  - ESF-branded materials.

- 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.
- State Aid Block Exemption form, if de minimis is not suitable, including evidence of employer contribution.

## Reporting and evidence rules

The Skills Funding Agency will reclaim ESF funds paid to providers from the European Commission and these claims will be audited by the Commission or their agents. 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 SFA to the European Commission 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 European Commission 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 European Commission and you should avoid them. The ILR 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

104. 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.
105. Some evidence will come from specific business processes, and some as part of your day-to-day working. Evidence can be naturally occurring.

106. 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)
  - f. of why other funding has been claimed, such as progressions into employment or further training, sustained progressions and any additional actual costs
107. You must have evidence that the learner exists and is eligible on the first day of funding.
108. You must have evidence to show the learning is taking or has taken place. This will depend on the methods you use and could include registers, reviews, online software and so on. Attendance at a location, such as a classroom or training centre, is not sufficient on its own to evidence learning has taken place.
109. If a learner withdraws from learning without achieving, you must only claim funding up to the last date where you have evidence that the learner was still in learning.

### **Learning agreement**

110. 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.
111. It may be in paper, electronic or a mixture of formats. It could include enrolment forms, data-capture forms, induction checklists, initial assessments, training plans, confirmation letters to learners, self-declarations, attendance records, copies of certificates, result forms and so on. 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.
112. The learning agreement must show the evidence needed to support the funding claimed and must be available to us if we need it.
113. 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 is correct.
114. If the time spent in learning is short, the level of evidence we would require will reflect this.
115. 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, 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. For 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 learner or employer contribution through State Aid.
  - h. Additional programme costs and actual 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-declarations on their status relating to benefits, unemployment and gaining a job.
  - k. All records and evidence of achievement of learning aims.
116. 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.

### **Confirmation and signatures**

117. 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.
118. 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.
119. 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**

120. The start date for a learner on the ESF Programme is the start date of the ST01 Participant Assessment and Plan deliverable.
121. 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.
122. 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.
123. 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.

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

124. 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.
125. 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 126) 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**

126. If your contract includes the deliverables that cannot be paid through an ILR submission (AC01 Actual Costs, CG01 Community Grant Payment, CG02 Community Grant Management Cost or SD01-SD10 Specification Defined Deliverables) you will be required to submit ESF Supplementary Data. 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

127. Any learner self-declarations must confirm the learner's details and describe what the learner is confirming. This can be in electronic format.
128. 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' which means that you and we have to maintain an audit trail for the funding you receive and the participant activity. You have to 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.

129. 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.
130. 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.
131. 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

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

## Evidencing actual costs expenditure

The majority of the ESF deliverables will be paid on contract costs, the value of the learning aim and a unit price for the progression and sustained progression deliverables.

Where appropriate, you will be paid on actual costs and the evidence criteria as set out below.

Claims based on actual eligible expenditure can cover staff, participants and other costs. There is a distinction between direct and indirect costs.

Direct costs are those costs which are directly related to activity supported by an ESF project, for example, salaries of staff directly engaged on ESF activity, participant costs such as allowances and childcare costs and other costs such as stationery and consumables.

Indirect costs are shared organisational costs and so cannot be connected directly to project activity and which are difficult to attribute to the project, for example, telephone costs, gas, electricity and water.

135. Your actual costs claims must be for funds that have been spent before your claim is made.
136. Expenditure declared must be justified by supporting paid invoices or other appropriate accounting documents.
137. You will cost items either in direct or indirect costs; the same item must not appear in both.
138. You must calculate staff costs and indirect costs using the methods in this document.
139. The claim must be based on actual salary costs relating to time spent on ESF activity. Your staff costs can include employer's national insurance and superannuation costs. Staff costs may include those costs covered in a person's contract of employment that are taxable incentives linked to pay and pension contributions.
140. Staff employed wholly or for a specific part of their duty on ESF-related activity must have a letter of appointment and job description that clearly states starting and finishing dates (if appropriate) and makes clear that they will be wholly employed on ESF-related activity.
141. Staff who also do work that is not related to the ESF must record their time spent on a time sheet, diary, recording system and so on.
142. Sick or maternity pay must be claimed in line with the organisation's staff policy or on the individual's contract of employment. Alternatively an organisation may claim for replacement staff costs but only if maternity or sick pay is not being claimed. If an organisation is entitled to claim statutory sick pay back from

HMRC it must do so and offset any such payments received against its claim for ESF.

143. If a staff member is working full-time but only working part of their time on ESF, you must use the following calculations. Work out how many hours they work in a year and their hourly rate. This is 52 weeks multiplied by five days, less the number of days of annual and public holidays they are entitled to, multiplied by the number of hours they work each day; and divide their annual salary and on-costs by the number of hours worked as above to establish their hourly rate. Claims for ESF must then be based on the number of hours worked on ESF multiplied by the hourly rate.
144. Staff costs evidence will include the payroll to confirm salaries.
145. The costs of training in connection with ESF activity can be claimed, although it is expected that all organisations who submit an application are in a position to deliver the project. Staff training costs can be claimed only if an individual has specific needs for training that could not have been identified before the project began. This needs to relate to the acquiring of specialist knowledge.
146. Where a building which is wholly used for ESF activity is rented or leased, the rental or lease costs can be claimed as eligible expenditure.
147. Any asset, including a building, must have a fixed useful life. The length of a building's life varies according to its type and purpose. An organisation's accounting policies must set out the period of time and the way in which the amount of depreciation claimed has been calculated. Any depreciation claimed must be in line with the organisation's policy on calculating depreciation. Depreciation costs are ineligible if the cost of the building has already received EU support. Generally, we expect that a permanent building used for training purposes would depreciate in the range of 2% to 5% each year on a straight-line basis (the same amount each year), reflecting a uniform life of between 20 and 50 years. A list of the assets for which depreciation will be claimed, and the basis on which depreciation will be applied, must be provided in the ESF application.
148. Where equipment is used exclusively by ESF participants the actual costs of leasing such equipment, including VAT, where this applies, is eligible for the period of time covered by ESF activity.
149. Finance leases: these are similar to hire-purchase agreements. The lessee (the person who leases the equipment from someone else) is responsible not just for maintaining the equipment but also for insurance, repairs and so on. At the end of the lease the equipment becomes the property of the lessee. The costs of leasing equipment under a finance lease are not eligible. Rather, the item leased must be treated as a fixed asset and depreciated (the loss in its value) in line with the organisation's accounting policy.
150. Operating leases: under this type of lease, the equipment remains the property of the lessor (the person who leases the equipment). The costs of operating leases can be claimed if it can be shown that the costs of the lease are competitive and are similar to the rates charged in the market place. However, if a leasing charge for equipment (in any one year) goes over, or closely matches, the full cost of buying the item, it would be seen as an attempt to

introduce capital expenditure as an eligible item under a different heading, and capital expenditure (over £1,000) is not eligible.

151. The calculation of depreciation must be in line with the organisation's accounting policy. Claims must be based on the actual costs of equipment owned. Depreciation can be claimed on second-hand equipment provided it has not previously been claimed for. Depreciation can be calculated in many different ways, the most common being straight-line and reducing-balance methods (depreciation is calculated each year on the value of the assets in the books at the start of the year). It is normally expected that the fewest number of years over which an item can be depreciated is three years.
152. If an organisation has received capital grants towards the costs of fixed assets, these grants must be deducted from the costs before calculating depreciation costs for ESF. Where deferred credits are used to offset depreciation costs, the amount of the deferred credit must be deducted from the depreciation costs for ESF purposes. An accountant will be able to advise if deferred credits have been used.
153. Working papers must be kept to show how depreciation costs have been calculated for the ESF project. These must include the costs and descriptions of the items purchased, when they were purchased, how the depreciation was calculated, how long the items were in use, where they are now, and an estimate of their current value. When applying for ESF it will be necessary to provide a list of items to be depreciated and details of how the depreciation costs together are to be calculated.
154. VAT is an eligible item of expenditure only if it cannot be reclaimed by the organisation. The treatment of VAT will vary depending on the status of the organisation, so it is very important for your VAT status to be agreed with HMRC. Evidence of VAT status will be required to reclaim VAT as an item of ESF expenditure.
155. Computer software must be treated in line with the usual accounting policy of the organisation.
156. The ESF Regulations precludes: 'the purchase of furniture, equipment, vehicles, infrastructure, real estate and land'. It is recognised that there might be a need to purchase small items of equipment in the form of non-capital items.
157. No single item can cost £1,000 or more (this is the full cost of the item including VAT). There is no set limit to the number of small items of equipment under £1,000 which can be claimed, but the total expenditure on small items of equipment will be taken into account when assessing the project's value for money, bearing in mind that ESF is not a capital programme.
158. Indirect costs, as with direct costs, must meet eligibility rules. Indirect costs are costs which cannot be connected directly to ESF and where it is difficult to attribute expenditure and so are apportioned. Indirect costs are defined as:
  - a. central/support staff and personnel costs - where the ESF element of their duties cannot be extracted from general duties and put on timesheets – for example, reception, central finance

- b. equipment (no single item can cost £1,000 or more see para 1577) and premises costs where these are not used wholly for ESF activity
  - c. telephone and postage costs
  - d. electricity, gas and water
  - e. insurance
159. Higher-management salary costs must not be included in flat-rate calculations – activities at this level are expected to be costed under direct costs and be supported by timesheets.
160. You will apportion indirect costs by using the ratio of ESF staff time against total available staff time in the organisation for the given period.
161. Where you include personal information in an actual cost claim, you must inform the individual that their information is being used to evidence your claims and will be audited by the Skills Funding Agency and other auditors. You must inform them that the data will be held for audit purposes until December 2030.

### **Use of certain non-regulated aims**

On the 2014 to 2020 ESF Programme we will be use specific unregulated 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, wrap-around support such as advice sessions, help with CV writing and softer outcomes will be captured under a non-regulated Preparation for Work aim, or a Foundations for Learning & Life if a learner is still at school or employed.

There are other non-regulated aims that could be used on a programme. The full range of regulated and non-regulated aims that you can use on ESF is available on [the Hub](#).

You can find the list of regulated aims (qualifications and units) for 2015 to 2016 in the Learning Aims Reference Service (LARS). You will be able to search for the aims using the 'Learning Aims' search on [the Hub](#) (using a new check box in the validity categories section). Alternatively, you will be able to search using the downloadable databases from the downloads section.

162. You must use the following aims for:
- a. wrap-around support at any level
  - b. work placements that are not a progression
  - 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>
Z0007872	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, up to 12 hours, PW A
Z0007873	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 13 to 20 hours, PW A
Z0007874	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 21 to 44 hours, PW A
Z0007875	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 45 to 68 hours, PW A
Z0007876	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 69 to 92 hours, PW A
Z0007877	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 93 to 100 hours, PW A
Z0007878	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 101 to 196 hours, PW A
Z0007879	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 197 to 292 hours, PW A
Z0007880	Non-regulated SFA formula funded provision, no defined level, Preparation for Work, 293 to 388 hours, PW A
Z0007881	Non regulated SFA formula funded provision, no defined level, Preparation for Work, 389 to 580 hrs, PW A
Z0007882	Non regulated SFA formula funded provision, no defined level, Preparation for Work, 581 to 1060 hrs, PW A
Z0007883	Non regulated SFA formula funded provision, no defined level, Preparation for Work, 1061 + hrs, PW A
Z0007884	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, Up to 12 hrs, PW A
Z0007885	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 13 to 20 hrs, PW A
Z0007886	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 21 to 44 hrs, PW A
Z0007887	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 45 to 68 hrs, PW A
Z0007888	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 69 to 92 hrs, PW A
Z0007889	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 93 to 100 hrs, PW A
Z0007890	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 101 to 196 hrs, PW A
Z0007891	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 197 to 292 hrs, PW A

Z0007892	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 293 to 388 hrs, PW A
Z0007893	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 389 to 580 hrs, PW A
Z0007894	Non regulated SFA formula funded provision, no defined level, Foundations for Learning and Life, 581 to 1060 hrs, PW A
Z0007895	Non regulated SFA 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>
Z0007860	Work experience/placement, Up to 12 hours, PW A
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>
Z0007848	Non-regulated SFA formula funded provision, mixed-sector subject areas, up to 12 hrs
Z0007849	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 13 to 20 hrs
Z0007850	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 21 to 44 hrs
Z0007851	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 45 to 68 hrs
Z0007852	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 69 to 92 hrs
Z0007853	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 93 to 100 hrs
Z0007854	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 101 to 196 hrs
Z0007855	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 197 to 292 hrs
Z0007856	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 293 to 388 hrs
Z0007857	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 389 to 580 hrs

Z0007858	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 581 to 1060 hrs
Z0007859	Non-regulated SFA formula funded provision, Mixed Sector Subject Areas, 1061 + hrs

### **Contract closure and reconciliation**

163. You will prepare for contract closure in the last three months of the contract. This will include ensuring:
- a. ILR and supplementary data submissions are reconciled and accurate
  - b. the audit trail for all of the deliverables claimed is in place
  - c. the further evidence requirements detailed in this document are in place
  - d. you are preparing to archive the delivery evidence
164. 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.
165. We will take into account any recoveries from audits, compliance checks and any identified ineligible activity when we reconcile your contract.
166. We will correct any audit errors found from the audits and ensure all necessary action has been taken.

### **Retention of documents**

Your ESF contract will be audited by the European Commission or other programme authorities. 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 could be audited more than 18 months after we paid you. Additionally, you could be audited by the European Court of Auditors up to 2030.

The paperwork evidencing the delivery of the ESF project must be kept for six years after the final payments have been made to England from the Commission. The 2014 to 2020 final payments will be made in 2024 (spend can continue up to the end of 2023 and the final claim will be the following year) and so documentation will need to be kept for audit until 2030.

167. 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 31 December 2030. You must maintain the documents for yourself, your subcontractors and grant recipients.
168. 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.



169. 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**

170. 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
  - d. a summary of the project, its achievements and lessons learned

### **Reporting and evidence**

171. 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.
- Actual cost evidence.
- Archiving plans.
- Publicity material, case studies and good news stories.
- Project evaluation.

# Performance-management rules

## General

172. We will pay you on the basis of 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.
173. 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.
174. 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

175. 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 time period it must cover.

## Reducing your contract value

176. 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 January and July each year; we will confirm the dates for 2016 to 2017 in July 2016. The performance-management timetable is shown in Diagram 1 and the process is shown in Diagram 2 of Annex A.
177. We will 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.
178. The 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).

179. We will 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

180. 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**

181. 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 October and April each year; we will confirm the dates for 2016 to 2017 in July 2016. 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).

182. 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 written narrative in support of your request. You must submit your request by the published dates when these are confirmed. You can ask for a cost-neutral change by sending a growth and virement request form to [ESFperformance@sfa.bis.gov.uk](mailto:ESFperformance@sfa.bis.gov.uk). We will not accept any requests that are sent after the deadlines or to a different email address.

### **Increasing your contract value**

183. After the first six months of your contract, you can ask for an increase to your contract value at the performance-management points. 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.)

184. 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 written narrative 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 [ESFperformance@sfa.bis.gov.uk](mailto:ESFperformance@sfa.bis.gov.uk). We will not accept any requests that are sent after the deadlines or to a different email address.

185. 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
186. 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 88.) 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.
187. 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 are listed on the Register of Training Organisations and have completed the capacity and capability questions successfully
  - c. you have a good track record
  - d. you can prove there is evidence of demand from the intended participants of your ESF contract
  - e. you are not under notice for Failure of Inspection, Financial Health or Financial Control
  - f. we are confident that awarding an increase to your contract value is a good use of public funds
188. 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 paragraph 187, 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.
189. 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**

190. 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.

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

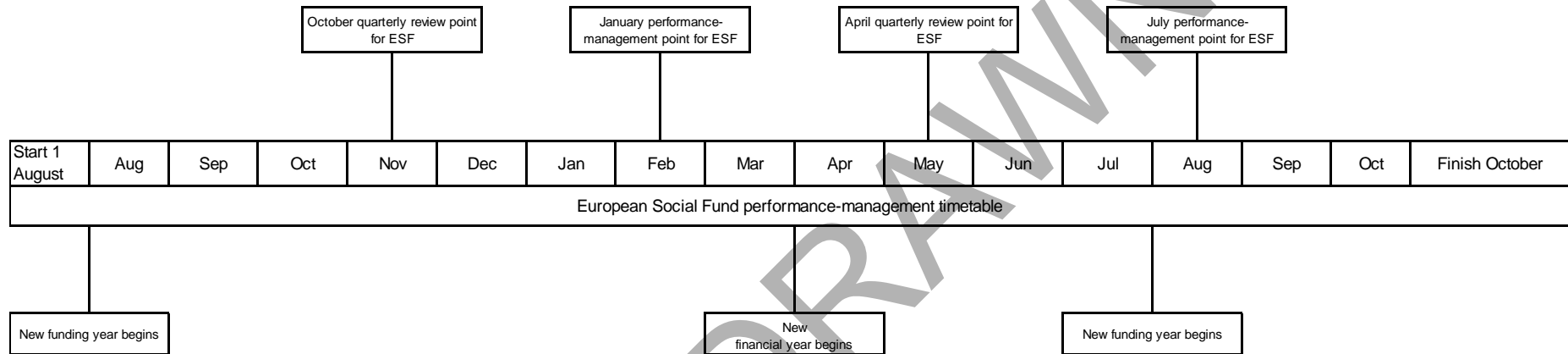
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## Glossary

Term	Description
Annual Implementation Report	This is a report produce by the Managing Authority that provides a narrative on how the Programme is progressing.
Central Delivery Service	Team in the SFA that manages provider contracts and acts as a single point of contact for providers.
Direct costs	These are costs directly incurred by delivering ESF-funded activity.
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.
Indirect costs	These are overheads or apportioned costs that cannot be attributed 100% to ESF funding.
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 SFA <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> .

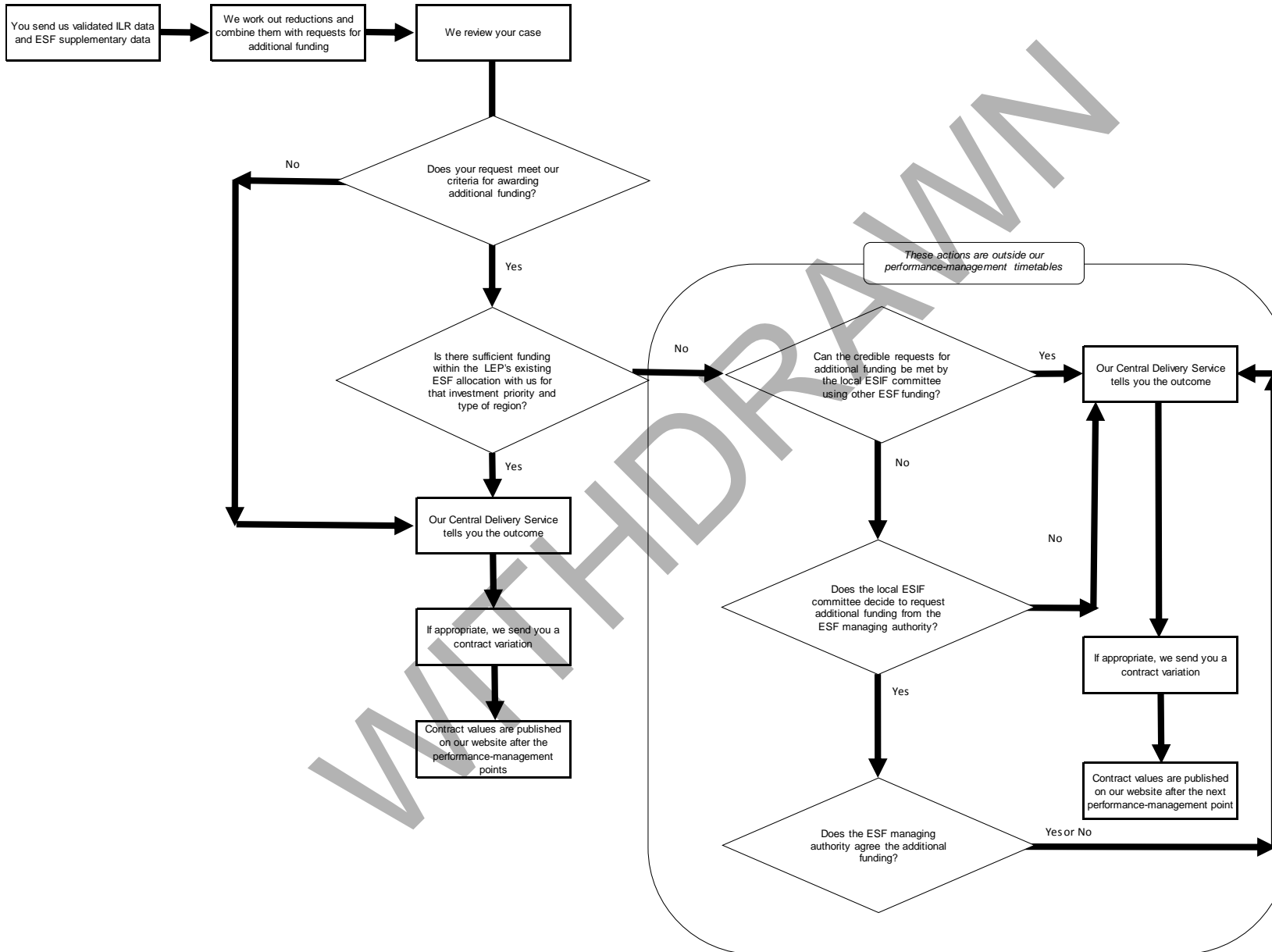
# Annex A: Performance-management diagrams and tables

Diagram 1. European Social Fund performance-management timetable



[Please see the Operational Performance-management Rules 2015 to 2016 for non-ESF activity](#)

Diagram 2: performance-management process for European Social Fund contracts





**Table 1: performance-management tolerances for European Social Fund contracts**

Remaining time to deliver contract	Contract duration		
	24 months	18 months	12 months
up to 24 months	First six months		
up to 18 months	15%	First six months	
up to 12 months	10%	10%	First six months
up to six months	5%	5%	5%

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