



**European Social Fund
Programme for England 2014-2020**

National Eligibility Rules

March 2016

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1. Purpose

1.1 This document forms part of the legal basis for the implementation of projects supported by the English European Social Fund (ESF) Operational Programme for the 2014-20 programme period.

1.2 These Rules will be supplemented by guidance and action notes giving details of how these Rules should be interpreted for the Programme and projects. All guidance referred to within this document will be located on the European Structural and Investment Funds (ESIF) website pages on GOV.UK at <https://www.gov.uk> or www.gov.uk/european-growth-funding.

1.3 All guidance notes will be regularly reviewed and updated as necessary.

Please note it is the grant recipient's responsibility to ensure continued compliance with the National Eligibility Rules and any associated guidance, by taking account of any amendments to these documents.

2. Introduction

2.1 This document sets out the National Eligibility Rules for the 2014-2020 ESF Programme in compliance with [Article 65 of EC Regulation 1303/2013](#) (the Common Provisions Regulation (CPR)). All projects must comply with eligibility rules. Failure to do so can lead to financial penalties of up to 100%. If the European Commission considers that there has been systemic failure on eligibility issues, they could enforce a flat rate correction to the whole of a Programme.

2.2 To attract ESF support, expenditure by projects must be eligible in terms of the appropriate Operational Programme (OP), the relevant EU Regulations and the National Eligibility Rules. The CPR states that the eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in or on the basis of this Regulation or the Fund-specific rules. **ESF eligibility rules apply to all project spend included in the eligible costs, including match funding. Further detail in specific Regulations relevant to the 2014-2020 England programme can be found in Section 3.**

2.3 The ESF programme in England in 2014-2020 will be delivered through two frameworks Co-financing organisations (CFOs) and non CFOs.

2.4 The national co-financing organisations (CFOs) are:

- Department for Work and Pensions

- Skills Funding Agency
- Big Lottery Fund
- National Offender Management Service

2.5 During the course of the 2014-2020 ESF programme we expect to appoint a number of local CFOs. Arrangements that apply to national CFOs will also apply to the local CFOs.

2.6 A proportion of ESF will be delivered through the non CFO route – that is through individual direct call projects in the same way as all European Regional Development Fund (ERDF) programme calls are made.

2.7 It is important to ensure that the rules are strictly adhered to both during the project selection process and after approval. If there is any doubt, the ESF Managing Authority (MA) should be consulted. Eligibility rules applying to other (non ESF) sources of match funding cannot be used to justify departure from ESF eligibility rules.

2.8 This document sets out what is eligible and ineligible for ESF support. Projects must comply with applicable rules covering State Aid, Procurement and revenue generation.

2.9 These rules are applicable to all projects from their effective date of expenditure (see paragraphs 6.3).

3. Specific Rules – European Union Regulations

3.1 Eligibility of expenditure for the European Social Fund can be found in **Regulation (EU) No 1303/2013 (the Common Provisions Regulation)** http://ec.europa.eu/regional_policy/information/legislation/index_en.cfm

- Article 65 - Eligibility
- Article 68- Flat rate financing for indirect costs and staff costs concerning grants and repayable assistance.
- Article 69 - Specific eligibility rules for grants and repayable assistance
- Article 70 - Eligibility of operations depending on location

Regulation (EU) No 1304/2013 (European Social Fund Regulation)

- Article 3 – Scope of support
- Article 13 – Eligibility of expenditure
- Article 14 – Simplified cost options

4. Participant Eligibility

4.1 To be eligible for support from the ESF an individual must be:

- legally resident in the UK,
- able to take paid employment in a European Union member state

4.2 It is expected that ESF support for unemployed people will be used to move individuals into work or closer to employment by providing vocational training, advice, guidance and information. Similarly support for individuals already in employment will be designed to increase their skills levels.

Age

4.3 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. It will be the responsibility of applicants for ESF support to show that participants meet these criteria.

4.4 As an exception to the general rule that ESF is only available to people who can work in the EU, the ESF Operational Programme in 2014-2020 allows additional ESF support for at risk young people age 15 to prevent them becoming NEET (not in education, employment or training).

Youth Employment Initiative (YEI)

4.5 Participants in YEI provision must be NEET, aged 15 to 29 and reside in an area which is eligible for YEI funding, as defined in the Operational Programme. NUTS 2 region with youth unemployment rates above 25% in 2012.

4.6 There are four NUTS 2 regions in England which are eligible for YEI funding: Inner London, Merseyside, Tees Valley & Durham, and West Midlands. In addition, the following NUTS3 areas are eligible: Leicester, Nottingham, Kingston upon Hull, Thurrock.

4.7 By NEET the Managing Authority means any young person aged between 15-29 who is not currently in any form of employment or undertaking any education or training.

Full time students are not eligible for YEI support.

Refugees and asylum seekers

4.8 Asylum seekers are individuals who are seeking international protection who claim they are unwilling or unable to seek protection from the authorities in their country of origin or habitual 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.

4.9 Asylum seekers are not generally allowed to work while their claims are being decided. However, since February 2005, they have been allowed to apply for permission to work if they have waited for over a year for an initial decision on their asylum claim or further submissions. This is the result of an EU directive on reception conditions for asylum seekers.

4.10 If the asylum seeker's claim has been rejected, they may request permission to work if they have made asylum-based further submissions which have been outstanding for more than 12 months.

4.11 Where asylum seekers have been given permission to work they will normally be able to access the full range of ESF support.

4.12 From the 9 September 2010, changes in the Immigration Rules came into effect. These confirm that the permission to work rules applies to both initial asylum claims and further submissions for protection based reasons. However, the amended rules also introduced new restrictions on all asylum seekers' employment rights. An asylum seeker given permission to work will not be allowed to become self-employed and will only be allowed to take up a job which is included on the list of shortage occupations published by the Home Office.

4.13 Asylum seekers who do not have permission to work may be supported through ESF pre-vocational provision which might take the form of:

- Initial English for speakers of other languages, other basic skills (literacy, numeracy and IT) where they are not part of provision that is designed to lead to employment.
- Orientation provision to raise awareness of UK labour market needs asylum seekers' rights and responsibilities.
- Provision of information about further education and voluntary work they can take part in.
- General advice about life in Britain for those given leave to remain (information about law, culture, housing, welfare, health, educating and employment).
- Involvement in voluntary activity.

4.14 Those individuals whose asylum claim is deemed to be unfounded and have not obtained permission to work may only be supported by ESF in the following circumstances:

- where they have signed up to return home as soon as they can and are taking all reasonable steps to leave the UK and that they meet one of the following criteria;
- where they are unable to leave due to physical impediment to travel or other medical reason;

- if in the opinion of the Secretary of State, there is no safe route of return for them;
- if permission has been granted for a Judicial Review; and,
- if support is necessary to avoid a breach of ECHR examples.

Croatian Citizens

4.15 From 1st July 2013, as European Economic Area (EEA) nationals, Croatian nationals have been able to move and reside freely in any European Union (EU) Member State. However, Croatian nationals wanting to work in the UK need to obtain work authorisation (permission to work) before starting any employment, unless they are exempt from this requirement. Work authorisation is normally in the form of an accession worker authorisation certificate (or “purple registration certificate”).

4.16 A Croatian national with an offer of employment in the UK must obtain this document from the Home Office before commencing work. This document will contain an endorsement restricting the holder to a particular job or type of employment. Those qualifying for a purple registration certificate will generally be skilled workers who meet the criteria for the issue of a certificate of sponsorship. Where a Croatian completes a 12 month period of lawful employment in line with the conditions of their purple registration certificate they will become exempt from worker authorisation from that point and will be able to work freely in the UK.

4.17 Further information can be found on the Home Office web site:
<https://www.gov.uk/government/organisations/home-office>

Self employed

4.18 Self-employed people who want to access ESF must be able to show that they are genuinely self-employed and that their business activities are registered with HM Revenue and Customs.

People in prison

4.19 ESF is primarily aimed at people who are available to work in the job market. The following eligibility criteria apply to people in custody:-

- people sentenced to less than three years can access ESF at any point during their sentence, and;
- people sentenced to more than three years can only access ESF during the last three years of their sentence.
- people sentenced to an indeterminate tariff (including life prison sentence and Imprisonment for Public Protection - IPP) must have regular reviews to determine eligibility status based on the likely length of sentence to be served during the lifetime of the Operational Programme; and

- Individuals who are on remand are eligible for ESF support. When their status changes their eligibility will be reviewed in the context of the two bullet points above.

Economically inactive

4.20 Economically inactive people i.e. those who do not satisfy the International Labour Organisation definition of unemployed (available to work and are actively seeking) are eligible for ESF support.

People at risk of redundancy

4.21 ESF can support those at risk of redundancy whether or not they have received notice of redundancy.

4.22 Support for those at risk of redundancy must not involve wage subsidies, but may include eligible activities such as retraining, up-skilling, careers advice etc.

5. Location of Project

5.1 In ESF, beneficiaries mean the providers whilst individuals being supported by activities are participants. For ESF in 2014-2020 the place where the activity is taking place – that is where the provision is – should be in England and this will be where the ESF support is counted as occurring. Any eligible individual with reasonable access to the opportunity may be supported. Different rules apply to projects funded under the Youth Employment Initiative (see paragraph 4.6), since participants must reside in an area which is eligible for YEI funding.

6. Eligible Expenditure

The following paragraphs from 6.1 to 6.30 are relevant to both Co-financing Organisations (CFOs) and non CFOs.

Subcontracting

6.1 It is recognised that organisations delivering provision directly AND via a sub-contracting arrangement will incur both running costs (e.g. staff, administration) and also contract costs submitted from a sub-contractor.

6.2 Specific details on eligible and ineligible expenditure incurred through both or either of these routes is covered throughout this section.

Effective date of expenditure

6.3 The effective date for incurring eligible ESF expenditure is the date the project is formally selected into the programme at outline application stage for non CFO projects. Any expenditure incurred by a non CFO project prior to this date is ineligible. Outline approval of a project does not guarantee it full approval.

Actual Expenditure

6.4 Non CFO and Technical Assistance expenditure must be declared on the basis of actual ESF expenditure (including match funding). Expenditure declared must be justified by supporting paid invoices or other appropriate accounting documents.

6.5 Claims based on actual eligible expenditure can cover staff, participant 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 e.g. 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 e.g. telephone costs, gas, electricity and water.
- Projects including indirect costs within their eligible costs must use the Simplified Cost Option, using a flat rate of either 15% or 40%. Further guidance on how to calculate this is given within the ESF Guidance Document

Staff costs

6.6 Staff costs can include employer's national insurance and superannuation costs. The application for funding must include any expected increases in grade or pay scales for the staff involved. Staff costs may include those costs covered in a person's contract of employment that are taxable incentives linked to pay and pension contributions. The claim must be based on actual salary costs relating to time spent on ESF activity. The claim can be evidenced in the following ways:-

- staff employed wholly or for a specific part of their duty on ESF related activity need to 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.
- Sick or maternity pay can be claimed if it is 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 should do so and offset any such payments received against its claim for ESF.

6.7 If a staff member is spending all of their time on ESF activity the organisation should claim actual salary costs for the period they are employed on the project. If a staff member is working full-time but only working part of their time on ESF, then only those hours spent on ESF can be claimed. The hourly rate applicable will be calculated by dividing the latest documented annual gross employment costs by 1720 hours.

6.8 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.

Participant costs

6.9 For employed participants, wages and allowances paid by their employer for the time they spend on the ESF funded activity may be claimed; this can include employers' National Insurance and superannuation contributions. Alternatively, the cost of employing replacement staff to cover for a staff absence on ESF funded activity may be claimed but not both. All costs must have supporting evidence of actual salary and time sheets. Daily travel costs for participants must have evidence to show the actual cost for each participant for each day. For costs relating to external courses, the length of the course, and the cost of travel, board and lodging must be shown. Costs for external courses should be claimed under 'other costs'. Costs for caring for children or other dependants should show the net weekly or hourly costs involved, excluding any contributions from participants towards these costs.

Participant allowances

6.10 If used as part of the project, participant allowances can be claimed. Although there is no upper limit for the allowances paid to participants, it is important to consider the following:-

- The managing authority will decide if allowances conform to levels within the locality and if the allowance represents value for money.
- Allowances may affect the level of benefits participant are entitled to, so this issue should be discussed beforehand with the local Jobcentre Plus office.

- HM Customs and Revenue may regard some allowances as taxable benefits, so it is imperative to check with them before setting the allowance levels.

Match Funding

6.11 Since ESF only covers part of the costs of a project, Non CFO projects will be required to provide additional match funding when applying for ESF assistance to cover the balance of the costs of the project. The match funding must meet all of the eligibility rules described here and all of the other ESF requirements. Since the match funding is financing part of the cost of the project, it is clear that it must be integral to the project, its activities and its objectives. Applicants must set out in their applications sufficient detail about their match funding sources and provide assurances that the match will be in place from the outset of the project.

Premises

6.12 This should include rent, rates, heat, light and service charges associated with the premises where it can be clearly demonstrated that these are incurred by the organisation solely for the ESF (non CFO) project.

Rent and leasing of buildings

6.13 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.

Depreciation of buildings

6.14 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.

6.15 Generally, Government 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 premises for which depreciation will be claimed and the basis on which depreciation will be applied must be provided in the ESF application.

Hire and lease of equipment

6.16 Where equipment is used exclusively by ESF participants the actual costs of leasing such equipment, including VAT where this applies (see notes on VAT), is eligible for the period of time covered by ESF activity.

6.17 **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 should be treated as a fixed asset and depreciated (the loss in its value) in line with the organisation's accounting policy.

6.18 **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 .

Depreciation of equipment

6.19 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 providing it has not been claimed for previously. 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 smallest number of years over which an item can be depreciated is three years.

6.20 If an organisation has received capital grants towards the costs of fixed assets, these grants should 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.

6.21 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.

Consumables

6.22 A list of required consumables, with the estimated expenditure, should be included in the application. Computer software should be treated in line with the usual accounting policy of the organisation.

Small items of equipment

6.23 It is recognised that there might be a need to purchase small items of equipment in the form of non-capital¹ items. Accordingly, a list of required small items, with the estimated expenditure, should be included in the application form.

6.24 No single item can cost £1,000 or more. 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.

Fees

6.25 This should include any work done by an independent consultant if the work was essential to the project and the costs were reasonable. Costs of independent project evaluations can be included if the work is essential to the project and/or a condition of grant. In both cases there should not be any double counting of fees under capital expenditure. Accounting and audit costs can be claimed if they relate to requirements imposed by the Managing Authority. The cost of guarantees provided by a bank or other financial institution to the extent to which the guarantees are required by National or community legislation can be included. Bank transaction costs are eligible but not debt interest.

Volunteer time

6.26 Previous experience of using volunteer time as match has been that for some organisations the obligations have proved too rigorous. In order to mitigate this, the use of volunteer time as match must be agreed by the Managing Authority. The Managing Authority would expect that projects should also have as a minimum 10% cash (which can include staff time) match funding.

6.27 Unpaid voluntary work may be eligible as match funding in kind. In

¹ Non Capital items may include normal running expenses such as stationery and repairs, equipment rentals etc. Capital items are assets that tend to be any pieces of equipment you use in your business that will be useful for more than about a year for example 'plant and machinery'.

addition to the normal rules for match funding, the following conditions will apply:

- beneficiaries cannot be treated as volunteers during their time on the project;
- volunteer-time contributions must be calculated using the method and guidance set out;
- volunteers must be made aware from the beginning that they are helping the project in their own private time and they are not employed on the project;
- projects will need to show final claim entries for volunteer time. The project management should hold complete, accurate and up-to-date records which show not only the time sheets of volunteers but also a description of their activities. Projects should be able to match the information held to annual reports or final reports when the project ends. If they cannot do this, then the relevant report entries will be not be classed as eligible;
- if any paid employee performs additional duties on a voluntary basis, the costs are not eligible;
- the tasks performed by the volunteer should match the job titles and the notional rates given in the guidance;
- if a volunteer performs a task which is outside the range of the job titles provided, this activity cannot be claimed as match. The MA will need written evidence to justify technical or specialist rates to be agreed prior to the project making any claims;
- if a volunteer does the same or similar duties as paid staff, the rate allowed for the volunteer will be either the notional rate or the salary rate of the paid employee, whichever is lower.

Other Revenue

6.28 This should include any eligible revenue expenditure not covered in the categories above provided it can be clearly demonstrated that these are directly related to the delivery of the project. Any expenditure related to marketing and publicity should also be included here.

6.29 Examples of eligible staff costs, hire of equipment; consumables and second hand equipment will be contained in the Guidance for ESF.

Ineligible expenditure

6.30 The following costs are not eligible expenditure:-

- expenditure referred to in EC Regulation 1303/2013 (the Common Provisions Regulation (CPR)) Article 69 paragraph 3, and Regulation (EU) No 1304/2013 (European Social Fund Regulation) Article 13 Paragraph 4;
- Payments that support activity intended to influence or attempt to influence the UK Parliament, Government, political parties, European

Union Institutions, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action in the United Kingdom or the European Union”.

Co-financing Organisations.

Paragraphs 6.31 to 6.42 are relevant to CFOs only.

Effective date for expenditure

6.31 For Co-financing organisations the effective date for expenditure is generally when their application is selected (approved) into the programme.

Retrospection

6.32 Exceptions will be made for retrospection back to 1st January 2014 for ESF Co-financing Organisations and may also be agreed by the MA for individual, specific operations:

- Retrospection arrangements will end on 31 January 2016, unless a specific exception to this is agreed by the MA.
- All exceptions must be supported by clear, strong, written evidence and agreed by the MA in advance of any payments being made.
- Each call for applications must include an annex stating whether retrospection does/does not apply to that call, the terms and conditions of any retrospection and the earliest applicable date for retrospection applicable to that call.

6.33 All cases for retrospection must be subject to:

- The applicant agreeing, in writing, that any expenditure incurred prior to formal selection, is at their own risk and will not necessarily be reimbursed.
- The applicant and operation meeting all MA retrospection criteria.
- The case for retrospection being supported by strong, clear, written evidence and subsequently fully agreed by the MA.
- Any additional retrospection tests to be carried out by the MA being fully undertaken and passed before payment is made.

Initial Advance Payments

6.34 CFOs may also make an initial advance payment to their providers to help ease cash flow. As such advance payments are contractual payments; they can legitimately be claimed by the CFO from the managing authority / Intermediate Body (IB) in the next claim.

Administration costs

6.35 In the CFO model, actual delivery to participants is undertaken by sub-contractors. The CFO incurs its own costs for the procurement and management of these providers. Unlike in non CFO projects, the amount of money which can be spent on these administration costs is capped.

6.36 This section explains what the administration costs can cover and how the costs involved in delivering ESF effectively should be recorded as supporting evidence for the claim to the managing authority (Staff and other costs). It should be noted that the administration costs must be based on actual activity and cannot be more than a maximum of 10% of the total declared costs incurred.

6.37 The activities below are eligible for support:-

Contracting:

- consulting and publicity events for the prospectus and tendering documents
- preparing the Co-financing prospectus and tendering document
- handling tenders from providers
- negotiations after tenders have been received
- financial appraisal
- appraising contract quality with providers

Developing and implementing policy, systems and processes for:

- managing contracts
- information management including IT systems
- Innovative activity to support ESF delivery
- monitoring the performance of providers
- monitoring the quality of providers
- auditing providers including retention and collation of evidence
- evaluating and researching projects
- publicising the projects
- preparing claims for ESF support
- preparing and submitting ESF monitoring returns
- attending monitoring and committee meetings
- financial management
- training on ESF systems and processes.

6.38 The claim for administration costs must be supported by evidence that the activity has taken place (for example staff time sheets or invoices for non-staff activity) and that the amount claimed is both reasonable and represents proper value for money. The claim must be based on actual costs (salary and

other costs) plus any eligible overheads. Other costs must be supported by relevant documentation such as invoices.

6.39 Note that if CFOs intend to include eligible overheads in their claims they must agree with the Managing Authority which overheads will be included and the basis on which they will be calculated. The claim can be evidenced in the following ways:-

- Staff employed wholly or for a specific part of their duty on ESF related activity need to 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.
- Staffs who also carry out work that is not related to ESF must record their time spent on ESF on a time sheet, diary, recording system etc.
- Any overhead expenditure included must be based on real costs, be related to the implementation of ESF and be allocated on a fair and equitable basis.

6.40 Records of either staff time or invoices relating to other costs (that is non-staff) need only be kept at a national agreement level rather than the priority level.

Match Funding

6.41 Co-financing Organisations will continue to utilise match in the same way as they have in the 2007 – 13 ESF programme. The Skills Funding Agency; National Offender Management Service and the Department for Work & Pensions use the contracted costs of domestic programmes that are delivering similar, eligible activities to ESF to match against European Programmes. They will continue to use separate but eligible public contracts to match with ESF.

6.42 Big Lottery will use cash match for its ESF contracts.