

Summary of Changes- ESFA Funding Rules 2021/2022

ESFA have released their clarification (consultation) version of the proposed funding rules for the 2021/2022 academic year, which commences on 1st August 2021.

To help you unpack what the changes mean for your business, **Rachel Roby, Strategic Apprenticeship Lead** at Cogent Skills, summarises the main points below.



Rachel Roby
Strategic Apprenticeship Lead

The summary of changes and full funding rules can be found [here](#). The ESFA have requested any feedback to be sent via fundingrules.comments@education.gov.uk by Friday 16 July 2021.

Functional Skills Qualifications Flexibilities

The functional skills flexibilities allowing apprentices to take end-point assessment before achieving their functional skills will have ended, and requirements will return to original ones when the new funding rules come into force on 1st August.

There has been an extension to the rule for Level 2 apprentices which means they do not have to show evidence of working towards and attempting Level 2 assessments to include learners with a planned end date up to and including 31st December 2021.

As of 1st January 2022, the following rules will apply for **ALL** apprentices:

For a Level 2 apprenticeship standard - Level 1 Functional skill qualifications are required before entering gateway with evidence of upskilling to Level 2, including evidence of sitting a formal assessment is required. *(For clarification on which functional skill qualifications are required, please check the standards assessment plan.)*

For a Level 3 and above- Level 2 Functional skill qualifications are required before entering gateway. *(For clarification on which functional skill qualifications are required, please check the standards assessment plan.)*

Employer Funding Rule reference: E8

Rachel's view:

"Work with your provider to ensure that adequate time is being put aside for functional skills delivery. This may have been adapted to an online model during the pandemic. Functional skills are vitally important for the overall development of apprentices, and it is my view that just because a flexibility is in place from ESFA on gateway requirements/Level 2 learners efforts should remain to ensure your apprentices are achieving their functional skills during the practical training period. Functional skills will support wider development and the embedding of English and maths can be beneficial throughout the apprenticeship in multiple areas (research and report writing, carrying out mathematical tasks, analysing data as some examples)."

Programme Eligibility, Funding and Additional Support Requirements

There is some clarity around the expectations of identification and recognition of relevant prior learning, diagnostic assessments, and investigation of potential learner support needs prior to sign up and how funding should be adjusted given prior learning evidence.

There is also clarity on the extent that the main provider should be assessing existing knowledge, skills, and behaviours against those required to achieve occupational competence. An appraisal should be carried out and take into consider the following:

- Prior work experience, particularly where the apprentice is an existing employee, or is beginning their apprenticeship after completing another programme with a relevant work placement (T-Levels, Kickstart and Traineeships should be taken into consideration)
- Prior education or training and associated qualifications in a related sector subject area
- Any previous apprenticeship undertaken (Do any of the knowledge, skills and behaviours map across from a previous programme?)

Employer Funding Rule reference: E16

Employer Funding Rule reference: E54.1

Main Provider Funding Rule reference: P59-63

There have been some new rules added to the Main Provider funding rules to ensure that assessments for additional support (and subsequent claiming under the Additional Learner Support fund) are carried out when a diagnosed difficulty or disability is declared or where the provider has identified a difficulty/disability when no official diagnosis is present BUT the assessment must not be part of a standard enrolment process and generic assessments are not permitted.

Main Provider Rule reference: P86

Rachel's view:

"Programme Eligibility and Funding - It is right that providers should only charge and ultimately funding (levy or non-levy) should only be claimed for what is required to be taught/delivered during an apprenticeship. This is also the case for the reduction of time on programme for learners who can demonstrate prior learning, so they are not held back. All providers should be carrying out robust initial assessments against the standard so please ensure you are not agreeing any costs/programme lengths/training plans until all assessments have taken place and do not be afraid to negotiate with your provider."

Rachel's view:

"Additional Learning Support - ESFA want to discourage providers using diagnostic assessments at enrolment to be used to identify previously unidentified/un-diagnosed difficulties/disabilities to enable them to draw down additional funding for their learners. Evidencing ALS has always been a tricky area for providers and is often an area of focus and subsequent claw-back through ESFA audits."

Providers, employers, and learners should not be discouraged to identify or discuss potential difficulties/disabilities as additional support is available through the ALS fund, but any claim must be evidenced clearly for each month the claim is being made for."

This subject may be worth further discussions with your providers as there are frustrations growing around this rule being introduced which some people believe contravenes policies within ESFA and Ofsted's Education Inspection Framework."

Minimum Duration

The practical training period must be at least 12 months to meet minimum duration requirements. This is based on a 30hr contracted employee. If contracted hours are less, the minimum duration will increase. Your provider will share more information on how they calculate this.

There are minor exemptions to this rule including:

- The learner is made redundant with more than six, but less than 12 months remaining before their final day. In these cases, they may seek a further apprenticeship agreement, which takes their prior apprenticeship experience into account. This further agreement may provide for a duration of less than 12 months;
- The learner transfers onto a newer version of the same standard (where the standard code remains the same);
- The learner transfers between main providers but remains on the same standard; and
- The learner returns to the same apprenticeship after a break in learning or withdrawal.

Employer Funding Rule reference: E32

Rachel's view:

"ESFA and DfE are doubling down on the rule around an apprenticeship being a minimum of 12-month programme. This is to maintain the quality and integrity around apprenticeships in England, fulfilling the definition of an apprenticeship being about developing substantial new knowledge, skills, and behaviours.

It is good to see that there is some clarity around learners who have been made redundant but can demonstrate learning and those who move providers, move standards, or return after a break in learning.

Cogent understands the frustrations that can go alongside the 12-month minimum timeframe, but it does not look like those rules are going to change in the short-term future, so we will continue to work with you to make apprenticeships work for all in as flexible a way as possible. We will also continue to work with government to let them know of your frustrations and challenges and work with them collaboratively when exploring levy flexibilities or other possible options for flexible apprenticeship models."

End-point assessment

There are two new rules coming into effect from 1st August in relation to End-point Assessment. Firstly, dialogue must commence at least 6 months before the planned end date with the End-point Assessment Organisation and the employer must select and negotiate the price with the EPAO at least 6 months prior to gateway (end of practical training period).

Employer Funding Rule Reference: E154 & E156

Rachel's view:

"I believe this is the right direction to provide clarity for all parties when it comes to End-point assessment. Agreeing the EPAO with at least 6 months left on programme gives all parties time to prepare for end-point assessment using any available resources made available from the EPAO; it ensures that the main provider can tailor any final learning/assessment and any mock EPA carried out in line with the individuals EPAOs expectations and it also ensure the EPAO can forecast and plan the timescales for end-point assessment; ensuring they can resource the assessments within the gateway window."

Subcontracting Rules

There are multiple clarifications and new rules being put in place to ensure a more robust relationship with subcontractors take place. The funding rules clarify that the main provider must maintain the relationship with the employer, not allowing the subcontractor to lead the relationship. They are also ensuring through a new rule that learners should be fully supported through the subcontracting process and fully understand the roles and responsibilities of all parties (main provider, subcontractor, employer responsibilities).

ESFA have also introduced new rules on Safeguarding and Prevent responsibilities and the rigor that is taken to ensure compliance to both sets of regulations for a subcontractor.

There is also additional clarity on what should be included within a contract between the main provider and the subcontractor

Main Provider Funding Rules reference: P167-218

Rachel's view:

"If you are working with a training provider/college/university that does outsource some of the delivery to a subcontractor it is vitally important that you are made aware of this. The main provider should be open about this formal arrangement.

As the funding rule clarifies, the main provider holds all the responsibilities so if you have any issues/concerns/feedback then this should immediately be reported to the main provider.

Subcontracting can be an issue in some sectors and within some elements of apprenticeship provision, but there are also some excellent subcontractors out there who are doing a great job to support the main providers. They sometimes hold the niche knowledge and skills required to ensure the learners get the best learning experience from their apprenticeship."

Co-investment

ESFA have provided some clarification on co-investment rules, including one that final payment may be held back until there is sufficient evidence that all co-investment payments have been made into the main providers financial system. There is also clarification that the schedule of payments you agree to make with the main provider does not need to match payments made by ESFA.

Employer Funding Rules reference: E193 & E194

Rachel's view:

"ESFA have provided clarity to ensure that employers and providers are adhering to the co-investment rules and to also give some flexibilities as to when the co-investment payments are required. Providers may have varying models of when co-investment payments are made so discuss this with your provider, you may wish to set SLAs against payments, or stagger the payments throughout the duration."

Levy Transfer Service

ESFA have provided some more clarification in relation to the funding rules behind the new Levy Transfer service (online matching service) that launches in August.

The funding rules stipulate that:

- a. *“Where applicable, you must agree with the receiving employer the criteria of the apprenticeship which you will fund and the price that they have agreed with their chosen main provider and end-point assessment organisation. You will need to approve these details through the apprenticeship service and ensure you do not exceed your transfer allowance”*
- b. *“You must not impose conditions on the transfer, such as choosing the receiving employer’s main provider or end-point assessment organisation for them. This does not include any criteria that you may have set around your transfer pledge”*
- c. *“Before entering the details on your apprenticeship service account, you must:*
 1. *agree the transfer details with the sending employer (either by an approved pledge application or by a direct transfer connection)*
 2. *agree with the main provider which apprenticeship standard your apprentice will be undertaking*
 3. *confirm the price that you have negotiated with your main provider. All parties will need to approve these details through the apprenticeship service”*

Employer Funding Rules reference: E241, E245, E258

Rachel’s view:

“The new levy matching service that launches in August is an important development in the apprenticeship landscape. I believe it will support smaller businesses engage with apprenticeships, allowing them to take more on with the help of bigger companies who have surplus Levy. I hope that bigger companies (and I know that some already have great levy transfer programmes in place) are researching options and looking within their supply chains or throughout their charitable/outreach partners to see where funds can be transferred to.

Of course, with this service comes official rules that need to be observed and I think these will be amended again once the service goes live. We will all need to watch this space and Cogent will be a source of information when more is made available in the summer.”

Changing to a new version of a standard

There are a new set of rules applicable for when existing apprentices wish to move to a different version of the same standard.

This change is allowed when the ST code for the standard remains the same. All parties must agree, and reassurances must be made that all training and assessment the apprentice receives delivers occupational competence in order for them to pass end-point assessment.

Where an existing apprentice moves versions, they will continue on the same funding band that they started on. Re-negotiations may take place for the new version, if the overall price you negotiate is more than the maximum allowed by the funding band for the standard that the apprentice started on, then you must pay in full the difference between the band maximum for the original standard and the total negotiated price.

Employer Funding Rules Reference: E288-E297

Rachel's view:

"Now that standards are going through revision processes (formally a review can take place every 3 years, and when they fall within the wider Institutes Route Review cycles) it is important that some clarity is provided about learners who may wish to move onto new standards. This could be because the standard is moving to a Core and Options standard that offers more specialist training for the apprentices, or through a redesign of the assessment plan that may provide an end-point assessment with better assessment methods to suit their learning style. Either way this is a good development within the funding rules and should support learners and employers who want to change programmes for their apprentices. Please remember though, changes can only be made when the ST code remains the same."

Eligibility Criteria

This is the first full academic year since Brexit so there are some changes around eligibility and evidence that needs to be demonstrated. These changes include new residency categories for UK nationals who have been living in the EEA, EEA nationals in the UK, non-UK national, family members of UK and EEA nations, and further rules for family members of nations with Calais Leave to remain (under section 67) and an update to the Child of a Turkish Worker section.

Employer Funding Rules Reference: E322-E350.

Rachel's view:

"The provider has overall responsibility to ensure that the correct documentation is gathered to demonstrate eligibility for funding, but as an employer you may be asked to get involved at the enrolment/sign up stage. The guidelines and evidence that providers follow is similar, if not the same as general HR processes that you will have in place.

If you have any concerns or queries about eligibility, it is best to discuss these with your providers as they will be able to check with the ESFA and provide clarification on the correct documentation to submit, timescales etc."

If you have any further questions or require further support in understanding the funding rules in more details, please do not hesitate to contact Rachel Roby, Cogent Skills, Strategic Apprenticeship Lead Rachel.Roby@cogentskills.com