The 2018 to 2019
Funding & Performance Management
Rules for Training Providers

V6 May 2017 to July 2018

Update

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Agenda

Funding Rules – Scope

Rule Changes & Impact

Actions
Binding Terms and Conditions with Sanctions

As a ‘Main Provider’ The Funding Rules are part of yours and the employer’s Terms and Conditions for delivering apprenticeships using funds in an employer’s digital account or through co-investment

They sit alongside your funding agreement & the ILR Specification
Employers – also have responsibilities

- The levy employer signs the **ESFA Agreement for Employers** and through this is bound by the Funding Rules and agrees to:
  - ‘Comply ..[..].. at all times with the requirements detailed in the Funding Rules’ [clause 5.1a]
  - Assist and cooperate with the Training Provider to enable them to deliver the training in compliance with the Funding Rules …[clause 5.1c]
  - ‘The employer may not, without the prior written consent of the EFA, assign, transfer, subcontract, or in any other way make over to any third party the benefit and/or the burden of this agreement.’ clause 19.1
V6 Scope & Themes

- Only for starts until **July 2018**. This changes the version 5 timeline, which was until March 2019.
- New rules due *‘shortly’* covering August 2018 to July 2019......pending what:
  - 10 % transfer changes?
- Applies to all apprenticeship programmes starting on or after 1 May 2017, (unless indicated).
- Clarification, new rules, updates, terminology
- Confirms the role of IfA in approving apprenticeships e.g. definitive list of standards is now on their website not on .GOV.UK
- **NEW**- Apprentices are wider than ‘Contract for Employment’ now Contract for Service. Cover non-standard employment which can be apprenticeships (police and ministers)
- Impact of 2017 Apprenticeships (Miscellaneous Provisions) Regulations e.g. learning planned end-date (called the ‘final day’ for Standards).
- Differentiates more clearly on audience: e.g.
  - EPAOs to refer to their ‘Conditions of Acceptance Documents’ on what is eligible for funding
  - This version is for Training Providers. Providers delivering to their own staff must use the ‘Rules for Employer-providers’
- Updates terms e.g. AAO to EPAO
- Increasing expectation about transparency of what is included and excluded in your ‘negotiated Price
Main Significant Changes

• Off the Job Training Clarifications and evidence
• Commitment Statement
• EPA Retakes
• Ineligible Costs – procurement and membership fees
• 10 % Transfers
  – You can’t deliver to anyone you transfer funds to
  – State Aid
FUNDING RULES IN PRACTICE
Approach

What is the new Rule

What is this attempting to achieve

Where might this impact – what action is needed

Remember new rules are due ‘soon’ that apply from August 2018

1. REVIEW current apprenticeships
2. UPDATE leaflets, information - web & paper
3. REVISE Evidence Pack & Checklists
4. BRIEF everyone – staff and employers (TPR ?)
5. CHECK that changes have been actioned
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| P29.1        | The apprentice must have a **contract of service** with an employer, or an [ATA], which is long enough for them to **complete the apprenticeship successfully** (including the EPA if applicable). Apprentices must be employed until after the EPA. | • Take care that your current contract durations and particularly your ILR Planned End Date/ Final Day allows sufficient time to complete the EPA  
• Update employer responsibilities leaflets, recruitment eligibility leaflets and checklists, Commitment Statements  
• Check contracts / Apprenticeship Agreements  
• Allow time for retakes  
• Update Evidence Pack checklists |
| ALSO P46     | **NEW (from April 2018):** Confirmation of employment to include where an apprentice is funded by transfer of funds. | |
| P65          | You must have confirmation from the employer that the apprentice is employed by that employer or a connected company or charity as defined by HMRC. | • Update employer declarations to include transferred funding arrangements  
• Create a checklist for transferred funding apprentices |
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| P29.4        | As well as appropriate support this must include supervision on the job | • Impact on who can be an apprentice?  
• Update employer leaflets and information, C Statement, employer declarations.  
• Collect supervisor contact details  
• Confirm with employers as part of contracting how supervision will take place e.g. name of and nature of supervision – line manager, mentor etc  
• Cover the importance of this at induction  
• Check in Tri-partite reviews – agenda item |
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<td>P61.3</td>
<td>You need to check this is not the case</td>
<td>• Update employer /apprentice leaflets and declarations</td>
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<td>Other funded DfE funded FE/HE programmes includes those on sandwich placements</td>
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| P61.4 | Confirmation that apprenticeship funding is the ‘full negotiated price’ and rules apply to this full amount – employers cant claw back additional funding they contribute | • Check current contracts and Apprenticeship Agreements - *Ask* employers what is in their employment contracts / schemes |
| apprentice must not be asked not to be asked to contribute financially to the **direct cost** of training, on programme or EPA. [...] Direct costs include any co-investment or additional training and assessment costs above the funding band [...] |

<p>| P85 | NEW | • Check current contracts |
| eligible costs include: cost to resit an exam linked to a mandatory qualification, even where no additional learning is required. | • Update employer leaflets and information |
| | | • Cover at Induction |
| | | • Check at TPR meetings / exit meetings when an apprentices leaves early |</p>
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| P168. Where the **employer is the delivery subcontractor** you must only pay them for **actual costs of delivery**. Employers must not profit from apprenticeship delivery to their own employees. | You need to check that what is being charged to you is actual costs and | • Update leaflets/ information for employer-providers  
• Check your subcontract terms  
• Create a checklist for employer provider costings and delivery  
• See evidence *before* delivery starts – contract annex?  
• Update your employer eligibility checklist and declaration( and your Evidence Pack ) |
| P174 You **must not offset** the negotiated price with the costs of any service provided by the employer. If the employer is legitimately delivering relevant training or an eligible cost supported by these rules then this must be included into the overall price. **The cost of the apprenticeship must be transparent** | You can’t discount the value of training employers are delivering from their price. The exchange of funds and employer contribution must be visible  
BUT 192.4 employer providers are exempt from paying the 10% co-investment | • Check current contracts  
• Update leaflets/ information for employer-providers  
• Ensure the employer makes their full levy contribution then invoices you for their delivery matched in your finance records with a payment |
# Ineligible Costs

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<td>P91.16</td>
<td><strong>specific services not related to the delivery and administration of the apprenticeship.</strong> This includes [... managing agents, brokerage services (to an employer or provider) and the costs of memberships or other costs paid to employers, or their representatives, associated with procurement registers or opportunities to secure business</td>
<td>New exclusions specified account for public sector/NHS procurement arrangements Beware of any partnership agreements/arrangements that have costs that are not for evidenciable teaching and learning or administration; specifically anything that looks or feels like a ‘finders fee’ however this is described.</td>
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|               |                    | • Update employer and apprentice guidance - be clear on what is not eligible for funding and what you offer ‘free’  
• Complete the funding table in the C Statement with what is not eligible for funding but is still paid for by you or the employer  
• Ensure employer engagement staff are aware that this rule is in place  
• Fund employer engagement arrangements from outside your apprenticeship delivery structure and funding i.e. a separate budget |

P94 Incentives and inducements must not be paid to EPAOs
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| The evidence pack must include the following:  
243.1 details of the cost negotiated by the employer and provider. By details we mean that it should be clear that only eligible costs have been included in the price.  
243.2 details of how the 20% ‘off-the-job’ training, excluding English and maths, will be quantified and delivered. By details we mean a plan of delivery and evidence of delivery taking place against that plan  
243.3 details of how English and maths will be delivered. | That it should be clear in the evidence pack that the price should only contain the applicable eligible costs. | • Consider creating / publishing a costing summary for employers for each apprenticeship  
• Update employer and apprentice guidance - be clear on what is not eligible for funding and what you offer ‘free’  
• Complete the funding table in the C Statement with what is not eligible for funding but is still paid for by you or the employer  
• Create a module breakdown setting out clearly the activity and calculations. Track this learning and monitor progress |
## State Aid

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| Transfers of funds are subject to state aid regulations. For any transfer an employer receives, 10% of the transferred funds will count towards their de minimis state aid limit. | State aid New rule (from April 2018): Confirmation that levy transfers are subject to state aid regulations  
• You must ensure the employer completes a state aid declaration for funding they receive.  
• You are responsible for retaining a copy of this declaration in the evidence pack. | • Update employer info / responsibilities leaflets, and checklists  
• Update your employer declaration / create a State Aid Declaration  
• Update your pre-start/operational signoff checklist  
• Update your Evidence Pack Checklist |
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<td>P89. The employer and the endpoint assessment organisation agree the price of the end-point assessment</td>
<td>The Provider does not ‘have a role’ in this process .... -</td>
<td>• Where you have pre-existing arrangements with EPAOs ensure you’re very clear with employer that others are available e.g. EPA options leaflet</td>
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| P132 You must form a contract in writing with the end-point assessment organisation [...] The written agreement must [...] include arrangements for a change of circumstances, which may delay, or lead to the cancellation of, the end-point assessment. | Agreement must include arrangements for change of circumstance. | • Review/ raise an addendum with your current contracts  
• Update your EPAO contract template  
• UVAC Template updated as part of GDPR update  
• Ensure EPAO funding is contingent on taking the EPA |
### Documentation

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| Commitment Statement      | Removal of the need for parent signature for under 18 | • Update employer and apprentice leaflets and information,  
                                 |                                                                                   | • Change your C Statement template (UVAC template one will change as we update for GDPR) |
Data – GDPR

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<td>P215. Training providers must comply with their obligations under data protection legislation, in particular any notification requirements and the duty to appoint a data protection officer. P216. Data protection legislation means (i) the Data Protection Act 1998 and, for the periods when they are in force, (ii) the General Data Protection Regulation (Regulation (EU) 2016/679) and the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing laws as amended from time to time, and (iii) the Data Protection Act 2018 (subject to royal assent).”</td>
<td>• You must update any current contracts (UVAC templates in for review currently)  • You must provide apprentices with the ESFA ILR statement, and privacy statement link  • Update your Commitment Statement, Induction, apprentice leaflets and handbook</td>
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Off the Job Training

P32. Off-the-job training is training received by the apprentice, during the apprentice’s normal working hours, for the purpose of achieving their apprenticeship. It is not training delivered for the sole purpose of enabling the apprentice to perform the work for which they have been employed.

P33. Off-the-job training must be directly relevant to the apprenticeship framework or standard, teaching new knowledge, skills and behaviours required to reach competence in the particular occupation. It can include training that is delivered at the apprentice’s normal place of work and can include the following:

33.1 the teaching of theory (for example, lectures, role playing, simulation exercises, online learning, and manufacturer training)
33.2 practical training, shadowing, mentoring, industry visits, and attendance at competitions
33.3 learning support and time spent writing assessments/assignments

P34. Off-the-job training does not include:

34.1 training to acquire skills, knowledge and behaviours that are not required in the standard or framework;
34.2 progress reviews or on-programme assessment required for an apprenticeship framework or standard;
34.3 training which takes place outside the apprentice’s paid hours
Off the Job Training

• P35. If planned off-the-job training is unable to take place as scheduled, **you must ensure this is rearranged**. All off-the-job training must take place **during paid hours**. Apprentices may choose to spend additional time on training outside their paid hours, but this must not be required to complete the apprenticeship.

• P36. At least 20% of the apprentice’s paid hours, **over the planned duration of the apprenticeship**, must be spent on off-the-job training. Apprentices may need more than 20% off-the-job training (see paragraph P37). **Evidence must be available to support the training delivered**. By **paid hours** [NEW – was paid working hours] we mean the apprentice’s contracted hours (e.g. 30 hours per week x 52 weeks x 0.2 = 312 hours off-the-job training per year).
NEW RULES IN THE CURRENT V6 FUNDING RULES
10 % Transfers

Transfers functionality is still being developed. As a result, the rules in this section and the rules for employers may be subject to change.’

• P203. From April 2018, levy-paying employers will be able to transfer up to 10% of their levy funds, which were declared for the previous tax year to other employers, including
  – apprenticeship training agencies (ATAs). The 10% transfer allowance is calculated on declared levy multiplied by English percentage, along with the 10% automatic top up from Government. This allowance is recalculated every tax year.

• P204. Employers receiving transferred funds will only be able to use them to pay for training and assessment for apprenticeship standards, for new starts from 1 May 2018.

• Employers will not be able to use transferred funds to pay for training and assessment for apprenticeship frameworks, or apprentices that started before 1 May 2018.

• P205. Where receiving employers fund apprenticeships with transferred funds they are treated as levy-paying employers. This is set out in their employer agreement.
10 % Transfers - Delivering apprenticeship training to receiving employers

- P206. If you are a training provider who is also a levy-paying employer, you must not deliver training to apprentices you are funding through a transfer. This includes where you are acting as a main provider or a sub-contractor.
- P207. You must ensure the receiving employer is aware of the requirement to follow the apprenticeship funding rules for employers for all of their apprenticeships funded by a transfer.
- P208. You must agree the details of the apprenticeship with the receiving employer on the apprenticeship service.
- P209. You must fully explain to the receiving employer the requirement to pay co-investment if the full cost of the apprenticeship cannot be met with a transfer or from the employer’s apprenticeship service account. You must arrange to collect co-investment as set out in the co-investment section.
- P210. You are responsible for confirming that a receiving employer has arranged a transfer to fund their apprenticeship from the outset. Only apprenticeships that are funded by either levy funds or a transfer should be entered on the apprenticeship service. You must not approve any apprenticeships on the service which are not eligible for either funding method.
- P211. Non-levy paying employers may have apprentices funded by both transfers and government-employer co-investment. If you do not have a contract with us to deliver training to non-levy employers, you are only eligible to deliver training to these employers where it is funded by a transfer.
- P212. You must not agree a commitment on the apprenticeship service where the apprenticeship would be eligible for support for small employers. Funding for these apprenticeships must be claimed as set out in the ‘support for small employers’ section.
Apprenticeships funded by transfers of levy funds – ACTIONS

- Create an information leaflet for Transfer employers and one for those in receipt of transfer funds
- Update employer declarations - check employer size and ownership
- Create / include the evidence in your pre-start checklist / Operational Signoff
- Ensure employer engagement teams are fully briefed
Questions

For help Contact:

• **NEW DETAILS** - SDE.servicedesk@education.gov.uk (formerly servicedesk@sfa.bis.gov.uk) or by telephone on 0370 2640001

• ESFA Provider Manager

• Any queries or anomalies - email me r.rhodes@bolton.ac.uk
2017 Regulations Definition of an Approved Apprenticeship

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Apprenticeships, Skills, Children and Learning Act 2009. Any changes that have already been made by the team appear in the content and are referenced with annotations.

**F1A1** Meaning of “approved English apprenticeship” etc

1. This section applies for the purposes of this Chapter.

2. An approved English apprenticeship is an arrangement which—
   a) takes place under an approved English apprenticeship agreement, or
   b) is an alternative English apprenticeship,

   and, in either case, satisfies any conditions specified in regulations made by the Secretary of State.

3. An approved English apprenticeship agreement is an agreement which—
   a) provides for a person (“the apprentice”) to work for another person for reward in a sector for which the Secretary of State has published an approved apprenticeship standard under section A2,
   b) provides for the apprentice to receive training in order to assist the apprentice to achieve the approved apprenticeship standard in the work done under the agreement, and
   c) satisfies any other conditions specified in regulations made by the Secretary of State.

4. An alternative English apprenticeship is an arrangement, under which a person works, which is of a kind described in regulations made by the Secretary of State.

5. Regulations under subsection (4) may, for example, describe arrangements which relate to cases where a person—
   a) works otherwise than for another person;
   b) works otherwise than for reward.

6. A person completes an approved English apprenticeship if the person achieves the approved apprenticeship standard while an approved English apprenticeship.