



Llywodraeth Cymru
Welsh Government

www.wales.gov.uk



Welsh European Funding Office

Eligibility Rules and Conditions for Support from the European Structural Funds 2014-2020

Version 11

December 2023

Cronfeydd yr UE:
Buddsoddi yng
Nghymru
EU Funds:
Investing in Wales



VERSION HISTORY

Version	Date	Comments
1.0 (ERDF only)	23 December 2014	Not published on EU Funding pages of the Welsh Government website. Issued directly to ERDF applicants.
1.1 & 1.1b (ERDF and ESF)	2 April 2015	Version 1.0 expanded to include ESF. Updated to reflect latest procurement legislation and rules. Version 1.1b is identical to Version 1.1 other than slightly amended wording in Section 25 regarding when written confirmations from third parties may be accepted.
2.0	August 2016	Clarification of topics e.g. agency workers, unit costs for project staff costs, ineligible participants attending ESF funded activities/ operations, procurement process to be adopted within schemes being delivered by Intermediate Bodies and refresh of Annex D to replicate WEFO document entitled, 'Guidance on assessing participant eligibility'.
3.0	January 2018	Statement from CIFAS – sharing information with fraud prevention agencies. E-cohesion – paragraph removed timeline for incorporation has lapsed. Vouchers & Tokens, amended when considered paid. Clarification on the apprenticeship levy – not a direct cost but can be recovered via the flat rate (indirect cost.) Paragraph added to reinforce the need to keep records so that cost claimed/ calculations can be checked by audit/ MVT. Clarification on sick pay calculations added. Monthly hourly rate calculation added. Line added to state that Booking Fees are eligible if unavoidable. Clarification that an asset register must be used for spend over £5k despite own policies. Best practice note added regarding keeping an inventory log of all equipment purchased using structural funds. Note advising that the Work Programme is closed to new entrants. Travel and subsistence costs for ESF participants – clarification of evidence requirements. Match Funding – clarification of what can/ cannot be used as MF. Net Revenue – line added to clarify that revenue generated must be declared. In line with Durability Rules a note has been added to inform beneficiaries of visits WEFO Management & Verifications Team will carry out post completion. Procurement section overhauled for clarification also example of minimum requirements. Clarification on State Aid: GBER & De-Minimis Schemes added. Line added regarding Schedule 3 of WEFO

		funding agreements and the need for them to be signed by each joint beneficiary prior to the lead beneficiary including their costs within claims to WEFO. Annex D removed and beneficiaries directed to the guidance entitled 'European Social Fund 2014-2020: Guidance on Assessing Participant Eligibility.' Template 3 - Example of best practise secondment letter.
4.0	May 2019	Update to reflect changes to Structural Fund Regulations following the adoption of the 'Omnibus' Regulation 2018
5.0	September 2020	Update to reflect : Eligibility of direct staff costs for ESF Priority 5 Public services reform and regional working and ESF Health Priority. Changes (a) to Simplified Cost Options Flat-rate 40% via the 'Omnibus' Regulation' and (b) made by HM Revenue & Customs to the Employment Allowance as of 6 April 2020. Use of email confirmation to confirm/ declare eligibility to participate in ESF/ ERDF supported operations
6.0	November 2021	Update providing further clarification in respect of: Section 9.2.5, Redundancy and Severance Schemes i.e. additional/ special payments offered at the discretion of an employer, and, Part 4, Section 20, Rule [35] - support to 'undertakings in difficulty' due to reasons of the COVID-19 pandemic
7.0	April 2022	Update to reflect: Sections 9.1 & 9.2, eligibility of Health and Social Care Levy. Section 19.6.5 Unit cost for direct staff costs for ESF supported operations based upon a fixed rate per participant. Update to add Frequently Asked Questions documents: <ul style="list-style-type: none"> • COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes • EU Structural Funds programme: purchasing during the coronavirus crisis • EU Exit Transition & Post Transition Period and EU Structural Funds 2014-20 Programmes: FAQs

8.0	July 2022	<p>Update providing further clarification in terms of:</p> <ul style="list-style-type: none"> • Section 20, Rule 35 - undertakings in receipt of de-minimis aid from 24 April 2020, no longer regarded as 'undertakings in difficulty' • Annex F, question 11 and Annex H, question 9 - State Aid COVID Temporary Framework will end 30 June 2022
9.0	December 2022	Update to Annex H, Q9 - the UK Subsidy Control Act
10.0	March 2023	<p>Updates to:</p> <ul style="list-style-type: none"> • Section 7.6, Rule [19] – clarification of what costs can be paid, by exception, outside the agreed financial lifetime of an operation • Section 34 – providing clarification in terms of commemorative plaques and permanent plaques/ billboards • Annex I – EU Structural Funds 2014 to 2020: Procurement Contract Modifications - additional guidance for WEFO beneficiaries/ project partners. Guidance first published on Welsh Government website October 2021 and last updated September 2022. Inserted at Annex I for ease of reference for beneficiaries
11.0	December 2023	<p>Update to:</p> <ul style="list-style-type: none"> • Section 32, Rule B – clarification of the revised monitoring period associated with operations that generate revenue post completion

GLOSSARY

Us, our, we	The Welsh European Funding Office (WEFO), a part of the Welsh Government and the designated programme managing authority and certifying authority.
You, your	The beneficiary of the EU funds as defined in the separate guidance 'WEFO Delivery Models 2014-2020'.
EC, the Commission	European Commission
ERDF	European Regional Development Fund
ESF	European Social Fund

EU, the Union	European Union
Programmes	The Wales Structural Funds Operational Programmes, being the formal programming documents adopted by the EC.
Operations, projects	The proposals set out in your funding application and approved by us or by an Intermediate Body where designated by us. The terms are explained further in the separate guidance 'WEFO Delivery Models 2014-2020' available on the EU Funding pages of the Welsh Government website.
Regulations, EU Regulations, EU legislation	EU law with binding legal force throughout every EU Member State, on a par with national laws. The Structural Funds legislative package is listed below [#]
Structural Funds	ERDF and ESF

The Structural Funds EU legislation is subject to ongoing amendment and addition but at the time of publication comprises:

- Regulation EU 1303/ 2013, 17 December 2013 (The ESI Fund Common Provisions and Structural Funds General Provisions)
- Regulation EU 1301/ 2013, 17 December 2013 (The ERDF Regulation)
- Regulation EU 1304/ 2013, 17 December 2013 (The ESF Regulation)
- Regulation EU 288/ 2014, 25 February 2014 (Commission Implementing Regulation)
- Regulation EU 184/ 2014, 25 February 2014 (Commission Implementing Regulation)
- Regulation EU 480/ 2014, 3 March 2014 (Commission Delegated Regulation)
- Regulation EU 215/ 2014, 7 March 2014 (Commission Implementing Regulation) as amended by Regulation EU 1232/ 2014, 18 November 2014
- Regulation EU 522/ 2014, 11 March 2014 (Commission Delegated Regulation)
- Regulation EU 821/ 2014, 28 July 2014 (Commission Implementing Regulation)
- Regulation EU 1011/ 2014, 22 September 2014 (Commission Implementing Regulation)
- Regulation EU 207/ 2015, 14 February 2015 (Commission Implementing Regulation)
- Regulation EU 2015/ 1970, 8 July 2015 (Commission Delegated Regulation)
- Regulation EU 2018/ 276, 23 February 2018 (Commission Implementing Regulation)
- Regulation EU 2018/ 277, 23 February 2018 (Commission Implementing Regulation)
- Regulation EU 522/ 2014, 11 March 2014 (Commission Delegated Regulation)
- Regulation EU 240/ 2014, 7 January 2014 (Commission Delegated Regulation)
- Commission Implementing Decision 2014/ 190/ EU
- Commission Implementing Decision 2014/ 99/ EU
- Commission Decision of 19.12.2013
- Commission Recommendation of 6 May 2003
- Regulation (EU, Euratom) 2018/ 1046

Contents

PART 1: INTRODUCTION

1	Background	10
2	Purpose	10
3	Applicability	10
4	Scope and Dimensions of Eligibility	11

PART 2: GENERAL RULES AND CONDITIONS

5	Basic Rules	13
5.1	Clarifications and Guidance	14
5.1.1	Basis of Support	14
5.1.2	Treatment of Errors and Fraud	15
5.1.3	Substitution of Ineligible Costs	15
5.1.4	Audit Trails	15
5.1.4.1	Document Retention Periods	16
5.1.4.2	Format of Documents	16
5.1.4.3	Documents not held at the Beneficiary's Premises	21

PART 3: ELIGIBLE COSTS

6	Methods of Calculating and Declaring Eligible Costs	23
7	Real Costs	24
7.1	Definition of Real Costs	24
7.2	Rules – Real Costs	24
7.3	Clarifications and Guidance	24
7.3.1	Definition of 'Incurred'	24
7.3.2	Definition of 'Paid'	25
7.3.3	Definition of 'Identifiable and Verifiable'	26
7.3.4	Paying for Goods or Services in Advance	26
7.3.5	Retentions, Contingency Sums, Escrow Accounts and Payment Schemes	27
7.4	Rules – Value for Money	28
7.5	Clarifications and Guidance	28
7.5.1	Value for Money	28
7.5.2	Recurring Purchases of Low-value Items	28
7.5.3	Double-financing Rule	29
7.5.4	Use of the Beneficiary's Facilities, Assets and Other Equipment	29
7.6	Rules – Eligibility Dates	30
7.7	Clarifications and Guidance	30
7.7.1	Retrospective Approval of Operations	30
7.7.2	Preliminary Costs (Works Contracts)	31
8	Cost Categories: Direct Costs	
8.1	Definition of Direct Costs	31

	8.2	Allocation of Direct Costs	32
	8.3	Definition of Indirect Costs	36
9		Direct Staff Costs	36
	9.1	Rules	36
9.2		Clarifications and Guidance	38
	9.2.1	Time Recording	40
	9.2.2	Staff Training	44
	9.2.3	Inward Secondments	44
	9.2.4	Exceptional Paid Leave	45
	9.2.5	Redundancy and Severance Schemes	45
	9.2.6	Discretionary Payments	46
	9.2.7	Recruitment, Relocation and Disruption Payments	46
10		Office and Administrative Costs	47
	10.1	Clarifications and Guidance	47
	10.1.1	Hospitality and Entertaining	47
	10.1.2	Statutory and Obligatory Costs	47
	10.1.3	Insurance	48
	10.1.4	Use of Beneficiary's Premises and Equipment	48
11		Travel and Subsistence for Direct Staff	48
12		External Services and Experts	49
	12.1	Payments to Incentivise Engagement in WEFO Programme Evaluations	50
13		Equipment	51
	13.1	Method of Acquisition: Purchase, Rent or Lease	51
	13.2	Depreciation Charges	51
	13.3	Second-hand Equipment	52
14		Capital Expenditure	52
	14.1	Site Preparation	53
	14.2	Asset Registers	53
15		Direct Costs of Providing Financial Support to Others	53
16		Cost Categories: Indirect Costs	54
17		Contributions In-Kind	55
	17.1	Rules, Clarifications and Guidance	55
	17.1.1	Unpaid Work (Volunteers' Time)	57
	17.1.2	Donations of Land and Buildings	58
	17.1.3	Accounting for Contributions In-Kind	58
18		Summary and Further Clarification of Ineligible Costs	59
19		Simplified Costs	61
	19.1	Introduction	61
19.2		Key Features	61
19.3		Applicability of Simplified Costs	63
19.4		Exclusion of 'Fully Procured' Activities, Projects or Operations	64
19.5		Project Phases and Simplified Costs: WEFO Mobilisation Phase	64
19.6		Simplified Costs Rates, Terms and Conditions	65
19.6.1		Flat-rate 15% for Indirect Costs	65
	19.6.2	Flat-rate 25% for Indirect Costs (RD&I)	65
	19.6.3	Flat-rate 40% for Direct and Indirect Costs	67
	19.6.4	Flat-rate 20% for Direct Staff Costs	68

19.6.5 Unit Costs for Project Staff Costs	68
---	----

PART 4: FUND-SPECIFIC RULES: ERDF

20	Eligible ERDF Activities	70
21	Geographic Eligibility of ERDF Operations	71
22	Major Projects	72

PART 5: FUND-SPECIFIC RULES: ESF

23	Eligible ESF Activities	75
24	Geographic Eligibility of ESF Activities	76
	24.1 Activities Taking Place Outside of the EU	77
25	Geographic Eligibility of ESF Participants	77
	25.1 Detailed Rules	77
26	ESF Participants Time (Contributions in-kind from Employers)	82
27	Care Costs to Enable Individuals to Participate in ESF Activities	84
28	Participant Eligibility	85
	28.1 General Criteria	85
28.2	Project-Specific Criteria	85
28.3	Assessment of Eligibility and Audit Trail	86
29	Rules for Award of Bursaries, Scholarships, Allowances, Stipends and Similar	
	Direct Financial Support to Participants	88
30	Additional Value for Money Considerations	90

PART 6: OTHER FUNDING CONDITIONS

31	Eligible Activities	91
32	Revenue	92
33	Match Funding	97
34	Publicity Rules and the Visibility of EU Funding	99
35	Durability Rules	102
36	Compliance with Applicable Laws and Regulations (EU, UK, Wales)	103
	36.1 EU Laws and Regulations	103
36.2	UK and Wales Laws and Regulations	104
36.3	Procurement Rules	104
	36.3.1 Compliance with Procurement Legislation	105
	36.3.2 Contracts Outside the Scope of the Procurement Legislation	106
	36.3.3 Organisations Falling within the Scope of the Wales Public	
	Procurement Statement	109
	36.3.4 Minimum Standards for all Purchasing and Procurement	109
	36.3.5 Organisations/ Small to Medium Sized Enterprises (Beneficiaries)	
	Receiving Direct Financial Support via a Grant Scheme Subject to State Aid	
	Rules	111
	36.3.6 Handling (Actual or Perceived) Conflicts of Interest	111
36.4	State Aid Rules	115
37	Technical Assistance Rules and Conditions	118
38	Combining Support from More Than One EU Fund	119

ANNEX A	WEFO Collaborative Operations	121
ANNEX B	Audits and Verifications	123
ANNEX C	Audit Trails	125
ANNEX D	Simplified Cost Options	129
ANNEX E	Procured Delivery of Workplace Safety Training (ESF)	135
ANNEX F	COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes	137
ANNEX G	Guidance for Contracting Authority beneficiaries to consider for the purchase of supplies, services, and works needed to address the Covid-19 crisis	150
ANNEX H	EU Exit Transition and Post Transition Period and EU Structural Fund Programmes 2014-2020: FAQs	155
ANNEX I	EU Structural Funds 2014 to 2020: Procurement Contract Modifications - additional guidance for WEFO beneficiaries/ project partners	167
TEMPLATE 1:	Time Sheet to Record Direct Staff Time	
TEMPLATE 2:	Employer's Declaration of Participant's Time	
TEMPLATE 3:	Example of secondment letter	

PART 1: INTRODUCTION

1. Background

The rules and conditions governing the use of the European Structural Funds are determined partly by EU legislation and partly by national rules established by the Welsh European Funding Office (WEFO).

Welsh national rules apply in the absence of a specific rule in the EU legislation or when the national rules are stricter than EU requirements. The Welsh national eligibility rules are just as important as the EU rules and to disregard them has the same consequence of making the associated expenditure ineligible for EU support.

2. Purpose

The purpose of this document is to help beneficiaries, and potential beneficiaries, understand and apply both the national and the European rules by avoiding, wherever possible, technical terms, legal references and jargon, and providing answers to practical questions and examples of best practice.

3. Applicability

The rules and conditions in this document apply to the four European Structural Funds programmes in Wales that contribute towards the 'Investment for jobs and growth' EU objective, namely:

- European Regional Development Fund Programme for East Wales
- European Regional Development Fund Programme for West Wales and the Valleys
- European Social Fund Programme for East Wales
- European Social Fund Programme for West Wales and the Valleys

4. Scope and Dimensions of Eligibility

The rules and conditions relate exclusively to **grants and repayable assistance**. Repayable assistance (sometimes called 'repayable grants') is direct financial support that, in certain circumstances, must be repaid to us in part or in full.

Separate rules and conditions will be published in due course for Financial Instruments – repayable investments such as equity, loans and guarantees – supported by the Wales Structural Funds programmes.

Finally, the Ireland-Wales European Territorial Cooperation programme, funded by the ERDF, has its own programme eligibility rules and so is also excluded from the scope of this document.

OVERVIEW: Dimensions of Eligibility

EU support is paid in relation to the eligible expenditure of beneficiaries. The eligibility of expenditure is a much broader concept than just the eligibility of costs. There are many dimensions of expenditure that make it eligible for a contribution from the Structural Funds:

Geographic eligibility	The EU supported activities may need to take place in a specified geographical area. Businesses or people receiving support from a project may also need to be located in a certain geographical area.
Scope of intervention	There are restrictions on the types of activity and industries that can be supported by the Structural Funds.
Costs	Some types of costs are always ineligible and others are only eligible subject to certain conditions. The ability to demonstrate a direct link of a cost to an eligible project activity may also influence its eligibility status (whether an 'indirect' or a 'direct' cost).
Timing of expenditure	There are rules on the period in which expenditure and activity can take place, including special rules on expenditure that has taken place before a grant funding agreement is concluded.
Level or incidence of expenditure	Eligible expenditure is only 'counted' at agreed points in the payments chain, depending on who is making the payment and when the funds are actually paid out.
Other EU/ UK/ Welsh laws and regulations	All activities financed by the EU Funds must comply with EU rules and policies such as public procurement, competition, the environment and equal opportunities as well comply with UK/ Welsh laws and regulations. Support must comply with EU State Aid rules and where those rules are stricter than Structural Funds rules, they always take precedence.
Information and publicity requirements	The support from EU Funds must be well publicised by beneficiaries.
'real costs' rules	With the exception of depreciation charges and third party contributions in-kind, only costs actually borne by a beneficiary, and supported by invoices or equivalent documents, are eligible.
'simplified costs' rules	Eligible costs must be calculated and declared in compliance with the applicable terms and conditions set out in our grant funding agreement. Simplified costs cannot be used to declare the eligible costs of fully procured activities, projects or operations.
Audit trails	Evidence of expenditure, activities, outputs and of compliance with all applicable funding conditions must be kept until the beneficiary has been

	informed by WEFO that they are no longer required.
Durability of projects	In some cases, investments/ activities/ assets must be maintained for a certain time beyond the end of the project implementation period to avoid needing to repay the EU support.

PART 2: GENERAL RULES AND CONDITIONS

5. Basic Rules

- [1] You must comply with the rules and conditions set out in this document.
- [2] Costs are only eligible if they are **necessary** for managing, initiating or implementing the activities and actions approved by us.
- [3] Project activity and spending must be **lawful**, complying with all applicable Welsh, UK, EU and international laws and regulations.
- [4] A suitable cost **budget** line must be approved by us for the types of cost that you intend to declare as eligible (staff costs, capital expenditure, indirect costs etc.). This will be evidenced in the financing plan and delivery profile or related documents approved by us.
- [5] You must comply with the general and specific conditions set out in our **grant funding agreement** and any applicable EU **State Aid** rules, which may go beyond the rules and conditions described in this document.
- [6] You must ensure that all relevant **accounting records and supporting documents** are retained, both financial and non-financial information, to demonstrate compliance with the rules and conditions. These must be retained until we notify you that they are no longer required.
- [7] You must maintain an up-to-date record of the name and address of all organisations that you have agreed can **retain project records**, including joint beneficiaries, contractors and other delivery partners.
- [8] The **audit trail** must be verifiable, readily accessible and held in a format that protects their authenticity and integrity.
- [9] Accounting records and supporting documents **must be accessible** for audits, verifications and any related investigation. Please see Annex B for more about 'audits and verifications'. We will aim to provide as much notice as possible but EC auditors are only legally obliged to provide 12 working days' notice of audit visits, therefore you should ensure that your records management arrangements are sufficiently robust to cater for such requests.
- [10] You must **facilitate access** to project records if requested by us, the designated national audit and control bodies or the relevant EU institutions (European Commission, European Court of Auditors, European Anti-fraud Office).

5.1 CLARIFICATIONS AND GUIDANCE

5.1.1 Basis of Support

The EU support paid to you will be a non-repayable grant unless identified as 'repayable assistance' in your grant funding agreement. 'Non-repayable grant' means that the EU financial contribution does not need to be repaid to us as long as the funding rules and conditions are satisfied.

5.1.2 Unintentional Mistakes ('Errors') and Fraud

Although errors are relatively infrequent, and fraud even rarer, we must protect the EU budget by putting measures in place to prevent, detect and correct any errors and to thoroughly investigate any suspicions of fraud.

Expenditure that does not comply with the EU or national rules is irregular (an 'irregularity') and cannot therefore be declared to the EC as expenditure that qualifies for EU support. If the EU support has already been paid out by us to a beneficiary, the EC requires us to seek recovery of the amounts unduly paid.

Fraud, in the context of the EU programmes, means intentionally doing something or declaring something that you know is false and results in, or could have resulted in, EU funds being paid out in error. It also means intentionally not doing something or not declaring something that you know would (or could) result in EU funds being paid in error. Therefore, this definition applies to overstating eligible expenditure and understating - or not reporting - project revenue and receipts, as well as non-compliance with other reporting and notification obligations set out in our grant funding agreement.

We have a **zero tolerance approach to fraud** and any suspicions of fraud will be investigated. We also have a regulatory obligation to inform the European Anti-Fraud Office (OLAF) of both suspected and actual fraud cases.

FRAUD PREVENTION

Please note that we may share data you provide to us with fraud prevention agencies and third parties for the purposes of preventing and detecting fraud. In order for us to comply with the fair processing principle of data protection we need to advise you how your personal data may be used.

The information we collect from you will be shared with fraud prevention agencies who will use it to prevent fraud and money-laundering and to verify your identity. If fraud is detected, you could be refused certain services, finance or employment in future. Further details of how your information will be used by us and these fraud prevention agencies, and your data protection rights, can be found by contacting dataprotectionofficer@gov.wales

Further information is also available at

<https://gov.wales/privacy-notice-welsh-government-grants>

If you have any queries on this please get in touch with WEFO

5.1.3 Substitution of Ineligible Costs

If our verifications or audits identify that some of your declared eligible costs are, in fact, ineligible for EU support, you will not be allowed to replace that amount with new replacement expenditure. In other words, the total eligible costs approved for your project will, in effect, be reduced by the amount of the ineligible costs and the EU contribution that would have been paid for that part of the expenditure will be lost. We will re-use this cancelled EU contribution for the benefit of other operations supported by the EU programme.

5.1.4 Audit Trails

The audit trail comprises two elements: accounting records and supporting documents.

‘**Document**’ means either an electronic medium (digital records, records that originate in digital form or hard-copy documents converted into digital form) or paper records (a ‘hard-copy’) that contains relevant information or data [see article 2(17) EU 1303/ 2013].

‘**Accounting Records**’ means the financial records for the eligible expenditure, match funding, project revenue and other receipts that are coded/ charged to the project and underpin the amounts that you declare to us in your regular payment claims.

You must ensure that an adequate audit trail is maintained to demonstrate the effective and compliant implementation of your project and the eligibility of expenditure declared.

You must ensure that all relevant records and documents are made available on request as set out in the grant funding agreement, for example to facilitate verifications, audits or any related investigations.

Annex C provides further practical guidance.

5.1.4.1 Document and Record Retention Periods

Unlike previous programming periods, retention periods for beneficiaries are no longer linked to the Programme closure process, meaning that average retention periods will reduce to between 5 and 10 years from the date that you declare expenditure to us or, if applicable, to an Intermediate Body.

In most cases, the retention period will be around **3 years following the end of your operation**.

However, if the total eligible expenditure approved for your operation does not exceed €1m, the retention period in most cases will be much shorter – around **4 years from the submission of each payment claim** to us or the Intermediate Body.

You will be informed in writing of the actual retention periods that apply to your operation.

The detailed rules for determining the precise retention period are set out in the box below.

NOTE FOR WEFO STAFF

WEFO must inform beneficiaries in writing of the **start date** for determining the document retention period and the **retention period**. The retention period will either be:

- for operations where the total approved eligible expenditure is less than EUR €1m, **3 calendar years** from the 31 December that follows the inclusion of the **annual eligible expenditure** in the accounts submitted by WEFO to the EC each March.
- for all other operations, **2 calendar years** from the 31 December that follows the inclusion of the **final eligible expenditure** that signifies the completion of the operation.

The pounds sterling value of the €1m threshold is only considered at operation approval stage.

The beneficiary may still need to retain documents for a longer period if required by the applicable State Aid rules or if audits or investigations are underway and the beneficiary is specifically advised to retain the audit trails until further notice.

See EU 1303/ 2013, article 140, para 1 and 2.

The task of informing aid scheme beneficiaries of the start date can be performed by WEFO or delegated to the Intermediate Body (if an IB is managing the aid scheme operation).

5.1.4.2 Format of Documents

Documents can be retained in any of the following formats:

- Documents that originate and exist only in their native digital form i.e. so-called **'born digital'** records such as e-mails, database records, spreadsheets and word processing files etc. This extends to both structured and unstructured records

and includes, for example, electronic records management systems; digital file formats, such as PDF, JPEG and TIF when created and then transmitted digitally; databases; video clips, digital photography etc.

- Electronic/ digital **versions of** original paper documents held on commonly accepted data carriers such as microfilm, digitised/ scanned/ replica images etc.
- Original **paper** documents.
- Certified true **copies** of an original paper document.

[See article 140 of EU 1303/ 2013].

Conditions for accepting documents that originate in electronic/ digital form

To ensure that the authenticity and integrity of 'electronic/ digital only' records so that they can be relied upon for legal and audit purposes, you must be satisfied that the ICT/ information management systems in place are designed to conform to accepted security standards in the UK. Specifically, the system must be designed to conform to **British Standard BSI BIP0008-1:2014** or **ISO 27001:2013**.

Where an alternative security standard is utilised by a beneficiary advance notification of the system must be provided to WEFO together with, where available, evidence to substantiate the system is comparable to British Standards/ ISO requirements. WEFO will then confirm whether the alternative is an accepted security standard in the UK.

You should obtain the relevant assurances on security standards from your ICT/ Information Assurance Officer or management team. This approach extends to seeking assurance on records held on the ICT systems of any joint beneficiaries or contracted/ third party deliverers holding documents electronically/ digitally.

For the purposes of our verifications and audits, you should keep a document that describes the procedures you have undertaken to obtain the necessary assurances that adequate security standards are in place to rely on the information held electronically/ digitally.

If you are unable to obtain the necessary assurances on the security standards, then the records will not be acceptable for EC/ WEFO compliance purposes [article 140(6) of EU 1303/ 2013].

Conditions for accepting digitised, scanned, replica digital versions of original paper documents

Beneficiaries using scanning, e-archiving or image processing systems (where original paper documents are scanned and stored in digital form) must ensure that **certification processes and controls** are in place that, at least:

- Guarantee that each 'e-document' (scanned image) is identical to the paper original.
- Prevent or detect the scanning of the same paper document to produce several different e-documents of the same original document (each e-document remains unique and cannot be re-used for any other than its initial purpose).
- Where the document evidences a financial transaction, the approval, accounting and payment process for each e-document should be unique (it should not be possible to approve, account for, or pay the same e-document twice).
- Once scanned, processes and controls prevent or detect the amendment of e-documents or the creation of altered copies (or amended/ altered versions are held as separate versions and the original, unaltered version of the image remains available for audit purposes).

Verifications and audits may ask to examine the policies and procedures in place to provide assurance of the above certification processes and controls, and may also ask to observe the scanning and certification process taking place in real time.

Certified true copies of original paper documents (photocopies)

The photocopied document must contain a 'certification statement'. The certification declaration must be annotated on, or appended to, the copy. The original document does not need to be marked.

If a document contains multiple pages then the first page should be certified and the number of attached pages indicated on the front page (alternatively, each page could be certified).

The certification statement must be authorised/ signed and dated by an employee who can vouch that the copy is a true replica image of the original.

The certification statement is added at the time that the copy is made. Alternatively, the certification statement can be added shortly afterwards if the signatory can recall seeing the original and is therefore still able to confirm that the copy is satisfactory.

The 'certification statement' can be chosen by each beneficiary but must, at least, contain the following:

- Signature [or similar evidence of authorisation]
- Date
- 'True copy', 'certified copy', 'certified' [or similar phrase to signify what the signature and date represents]

It is recommended, but not mandatory, that the certification statement also includes the printed name/ position of the signatory or other unique reference (such as employee/ payroll number) so that future project staff and/ or auditors are able to easily identify the signatory if required.

The following is an example of a compliant certification statement:

I certify this document as a true copy of the original

SIGNATURE:

DATE:

PRINTED NAME/ POSITION IN ORGANISATION [optional]:

NAME OF ORGANISATION [optional]:

NUMBER OF PAGES CERTIFIED IN THIS DOCUMENT [if applicable]:

If more efficient, a single certification declaration can be used for a batch of photocopies. The certification statement must include:

- a unique batch reference number/ code to identify the batch.
- the number of documents – and pages if individual documents contain more than one page – included in the certified batch.
- the references/ numbers of each of the documents included in the batch. If the documents are not already referenced/ numbered, then references/ numbers should be added to each document prior to batch certification.

Other considerations

When deciding on the most appropriate document format, please remember that records may need to be retained for a longer period than your normal organisation records retention policy requires. You may need to label and store EU project records to prevent their premature destruction. You will also need to consider practical issues such as storage space and the risk of damage or technological obsolescence.

You should give particular consideration to the risk of technical obsolescence of digital records, both the ICT hardware or software applications used to access the records. Organisations holding records will need to ensure that original records are retrieved from all electronic records systems that risk becoming obsolete or no longer accessible.

To be clear, there is no expectation or requirement by WEFO or the European Commission that hard-copy documents or 'wet signatures' must be used or are preferable to digital records. Indeed, the EC and Welsh Government fully encourage beneficiaries to maximise the opportunities to embrace the benefits of paperless administration, including participation in the e-Cohesion system.

Beneficiaries should therefore note the guidance in 5.1.4.2 above and consider how technology can provide suitable methods to, for example, identify and authenticate a

document, or demonstrate the authorisation of a transaction, information or decisions.

September 2020 update: Use of email confirmation to confirm/ declare eligibility to participate in ESF/ ERDF supported operations. Following further research on the use of email to provide electronic confirmation/ declaration of eligibility, WEFO has incorporated the following into its Eligibility rules:

Email confirmation/ declaration from a participant/ individual employee within a SME/ business organisation can be accepted in place of a 'wet' or fully electronic (eIDAS) signature in the following circumstances:

- Where it is as clear as possible that the email used is that of the participant – for example is accompanied by other correspondence to that address e.g. enrolment form, other correspondence.
- Where it is supported by a package of evidence confirming that individual's eligibility – for example; ESF - evidence of right to live and work in the UK along with priority/ project level eligibility, ERDF – evidence of eligibility of SME/ business organisation via a completed SME declaration and evidence of individual employees attendance at workshops.
- For ESF, evidence that the four step process has been followed for assessing and evidencing a participant's eligibility.

NB: This approach can also apply to a text message declaration from ESF participants, however only where used as a last resort and evidence in place to demonstrate that (a) the telephone number of the participant reconciles with other evidence noting the number for the particular participant and (b) the declaration cannot be obtained by any other means.

The above can then be considered to meet the fundamental requirement set out for the electronic execution of documents - 'intention to authenticate clearly expressed & with corresponding audit trail to support intention'. Therefore, if it can be evidenced that these arrangements are in place, this will negate the requirement to retrospectively revisit evidence at a future point in time and once COVID 19 restrictions have been lifted.

The following conditions also apply:

- Where the conditions set out above cannot be evidenced then beneficiaries will still be required to revisit evidence, as per normal requirements, at a future point in time and once it is possible to do so.
- As always the case for EU projects, beneficiaries to note that, when subject to future audit, the auditors may, on occasion, seek additional evidence to support the eligibility of specific participants, should they conclude that the documentation originally provided is not sufficient to meet eligibility requirements. However, it is important to note that the auditor will also take into

consideration the guidance and restrictions in place at the time. Please refer to Annex F of this guidance entitled, 'COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes', specifically to Questions 6 & 6a for a non-exhaustive list.

- This approach is advised only for ESF participant eligibility evidence and certain ERDF operations where SME eligibility and individual employee attendance at training events/ workshops required. For other documents, such as signature of Funding Agreements, and other such legal documentation, we will still expect the usual procedures to be adopted wherever possible – only where this cannot be demonstrated will there be a need to follow up in the future.

5.1.4.3 Records and Documents not held on the Beneficiary's Premises

Accounting records and supporting documents could be held by:

- beneficiaries (lead beneficiary, joint beneficiaries, aid scheme beneficiaries); or
- third party delivery partners such as procured contractors/ service providers.

It is the beneficiary's responsibility (or the lead beneficiary if joint beneficiaries are present) to ensure that the audit trail requirements are explained to joint beneficiaries and other delivery partners.

Contracts, agreements and protocols with delivery partners/ providers must therefore set out the audit trail rules.

All records must be readily accessible for audits, verifications and any related investigations. We will aim to provide you with as much notice as possible when we need to examine project records but, particularly as the EC is only required to provide 12 working days' notice for their audits, you should ensure that arrangements are sufficiently robust to cater for such requests.

If records are unavailable during these visits, the related expenditure could immediately be declared as ineligible.

Where records are held at locations other than a lead beneficiary's premises – such as off-site storage facilities or the premises of partners/ delivery partners and service providers/ contractors – then the **beneficiary must undertake regular spot-checks** to ensure that:

- Records are retrievable and accessible;
- Partners/ delivery partners/ providers allow full access to records at their premises, including where applicable, access to view 'born digital' or digitised records using a suitable ICT device or workstation; and

- Records are complete; structured and well-organised; in good condition; and in an acceptable format that meets WEFO requirements.

You must keep a record of these regular spot-checks performed on partner/ delivery partner organisations, including details of any remedial action taken when the results of the spot-checks prove unsatisfactory.

Where it is clear that partners/ delivery partners/ providers are not able to satisfy these standards, all records must be transferred and held by the beneficiary.

Where the beneficiary considers it necessary, they should also consider requiring the transfer of original documents at the time that joint beneficiaries/ delivery partners/ providers submit their invoices or expenditure declarations.

Photocopies, scanned images and digital records held by partners/ delivery partners/ providers can be acceptable records subject to the usual safeguards on their authenticity as described in 5.1.4.2.

Similarly, where the beneficiary is informed, or suspects, that a partner/ delivery partner/ provider may shortly cease trading (close down, dissolved, liquidation etc.) or other imminent event that may impair the ability to comply with all record-keeping requirements, it must arrange for the records to be transferred and held at its own premises.

You are reminded that the absence of an adequate audit trail, or the inability to access records during audits and verifications, will lead to the associated expenditure being declared as ineligible with a corresponding reduction in EU grant. This will occur regardless of whether the problem is caused by the beneficiary's own actions or that of a partner/ delivery partner/ provider. It is therefore very important that the beneficiary clearly sets out the requirements with its partners from the start.

Finally, as set out in the grant funding agreement, you must at all times retain an up-to-date list of the location of all project records.

See **Annex C** for further information on audit trails.

PART 3: ELIGIBLE COSTS

6. Methods of Calculating and Declaring your Eligible Costs

When you apply for funding, we will work with you to identify the options for forecasting, calculating and reporting eligible expenditure. The amount of EU grant we will pay you is determined by the eligible expenditure you declare to us. The options are:

Real costs

- See **Section 7**. Eligible costs are calculated by reference to the costs that you have incurred and paid, together with, if applicable, contributions in-kind from third parties and depreciation charges

Flat-Rates

- See **Section 16**. Using the 'simplified costs' approach, eligible costs are calculated by applying a flat-rate percentage to certain other categories of costs. For example, indirect costs calculated as a percentage to your staff costs

Unit costs or lump

- See **Section 16**. Using the 'simplified costs' approach, eligible costs are calculated on the basis of performing agreed activities or achieving agreed outputs/ results.

Mixed

- Combinations of the above methods within the same operation. Some categories of costs – or entire activities/ projects – reimbursed using 'simplified costs' and others using 'real costs'.

In certain projects, or for certain categories of costs, not all these options may be available – see **Section 19**.

7. Real costs

7.1 Definition of 'Real Costs'

Costs actually borne and paid by beneficiaries and declared as eligible expenditure in your payment claim to us or, where applicable, to the Intermediate Body designated by us to receive your claim.

In addition to costs actually incurred and paid by you, 'real costs' also includes:

- Contributions in-kind from third parties – see **Section 17**.
- Depreciation charges – see **13.2**.

For each individual cost claimed, there must be evidence that the amounts have already been paid out by you, together with receipted invoices - or equivalent documents - that prove the reality of the declared costs.

7.2 RULES

[11] Real costs must be identifiable, verifiable and recorded in your accounting records and using your usual cost accounting practices and applicable UK accounting standards. In other words, you must not change your cost accounting policies and practices simply because your project is partly funded by EU funds.

[12] You must only submit your claim to us, or where applicable to the Intermediate Body, when the costs have already been incurred and paid, other than for depreciation charges and contributions in-kind as those amounts are not actually paid out by you.

[13] Salaries or allowances paid by a third party, normally an employer, for the benefit of ESF participants and duly certified, are real costs (contributions in-kind).

7.3 CLARIFICATIONS AND GUIDANCE

7.3.1 Definition of 'Incurred'

Costs for which a beneficiary is liable, i.e. contractual, legal or a similar obligation to make a payment. It is not necessarily the same as the date of invoice as invoicing dates could be before or after the 'incurred' date. The payment of invoices issued before goods or services have been received or delivered are only considered as being both 'incurred and paid' in the circumstances set out in 7.3.4.

Eligible costs must be genuinely incurred by a beneficiary approved by us – not by a third party, even if the beneficiary enjoys the benefits of those purchases.

Payments of invoices arising from contracts let by beneficiaries are 'costs incurred by the beneficiary' even if an external procurement service provider/ central purchasing body was engaged to carry out the procurement procedures (the beneficiary is still the legal entity contractually liable to pay the contractor).

7.3.2 Definition of 'Paid'

'Paid' means disbursed by the beneficiary that incurred the cost i.e. funds debited from the beneficiary's bank account and transmitted to the contractor, employee, organisation to be paid etc.

Sometimes, your project will make a payment or internal transfer to another part of your organisation, either on a notional/ accounting entry basis (e.g. book-keeping entries between different cost centres) or through an 'actual cost' payment transaction between separate bank accounts and supported by internal invoices. These payments could be based on: standard 'charge-out' organisationally-agreed rates; recharges of actual costs; or on an arms-length 'trading' basis (cost plus a profit margin). In all cases, the transaction is only recognised by us as 'paid' when funds leave the organisation's bank account(s) and are being transmitted to the external contractor/ service provider or an employee - not when funds are moved between different parts, or bank accounts, of the same organisation.

Payments/ transfers of funds between you and any collaborative partners (outside of contracted delivery e.g. transfer of funds from a lead beneficiary to a joint beneficiary – or – joint beneficiary to/ from another joint beneficiary) are not considered to be 'paid' until payments are disbursed to a third party e.g. suppliers, contractors or salary costs paid to employees.

Real costs are 'paid' when they complete the payment process, specifically:

Type of payment	When deemed to be 'paid'?
Electronic/ automated payments: <ul style="list-style-type: none"> • Direct-debits • Standing orders • BACS • CHAPS • Funds transfers 	Debit transaction posted to beneficiary's bank account
Cheque	Debit transaction posted to beneficiary's bank account
Debit card	Debit transaction posted to

	beneficiary's bank account
Credit card (corporate/ organisation's credit or charge card – not personal cards of staff members).	Transaction posted to credit card account (regardless of when the credit card balance is eventually repaid)
Cash (petty cash)	When the recipient is handed the cash and signs/ issues a receipt.
Vouchers and tokens	When the voucher or token is paid for by the beneficiary, not when used by the recipient

7.3.3 Definition of 'Identifiable and Verifiable'

You must account for real costs either using separate bank accounts operated exclusively for this purpose or by using accounting codes that uniquely link the transactions to the EU project.

You will need to provide us with a list of individual payments and receipts for each claim period and this list must reconcile with the amounts declared in your payment claim.

This transaction list of costs and receipts should be generated directly by your accounting system or, if produced manually, must be capable of being reconciled to your accounting records.

In collaborative operations, or aid schemes managed by Intermediate Bodies, each beneficiary – lead beneficiary, joint beneficiary or aid scheme beneficiary – must comply with this condition for the eligible expenditure they report to the lead beneficiary/ Intermediate Body. The separate 'WEFO Delivery Models 2014-2020' guidance explains collaborative operations and aid schemes.

7.3.4 Paying for Goods or Services in Advance

If you are **required to** pay for goods or services in advance, including deposits, you may include these costs in you claim to us as a 'paid' cost but only where:

- these are the standard business terms of the supplier or contractor and is at their request or unavoidable; and
- to secure the best price or secure significant discounts (for example, travel tickets and accommodation); or
- to secure the best quality (e.g. book early to secure the best venue for a key event integral to the success of the project).

You must not voluntarily offer this arrangement to suppliers or misuse the rule to speed up access to the EU funds. If you are subsequently unable to use the goods or services due to circumstances outside of your control (for example, cancellation of a trip or event, bad weather etc.) you must document the full circumstances in your project records as part of the audit trail.

You must also ensure that the goods are delivered or services are performed before the end of your project. If the contract is not fulfilled, you must seek a refund and your eligible project expenditure must be reduced accordingly so that the EU grant is not claimed.

7.3.5 Retentions, Contingency Sums, Escrow Accounts and Similar Industry-Specific Payment Bonds.

Payments for contingency sums, typically used in construction contracts, is considered as incurred and paid at the point that you pay the contractor if required as part of their standard contract terms and conditions.

Contingency sums are however limited to 10% of total eligible costs for the operation (calculated after the exclusion of the contingency amounts).

In addition, you must ensure that the funds are released, returned or replaced with real costs in line with the contract terms and, at the latest, before 31 December 2023. Expenditure still held by a contractor as a contingency sum after 2023 is ineligible for support and will need to be removed from your declared eligible costs.

The same approach applies where you are required to deposit funds into an escrow account or similar type of payment bond held in a third party bank account until certain contract terms are fulfilled. These rules only apply where such arrangements are customary or standard business terms for the type of works, supplies or services in question. Costs will not be considered as 'paid' if such arrangements are instigated at the initiative of the beneficiary to bypass the usual 'paid out' eligibility rule.

If you retain part of the payment due to a contractor until satisfactory completion of all works, please let us know so that your payment profile reflects this. Note that the final payment must be made to the contractor or service provider before 31 December 2023 to be eligible.

7.4 VALUE FOR MONEY & SOUND FINANCIAL MANAGEMENT

RULES

[14] Real costs must be reasonable, justifiable and deliver value for money.

[15] Real costs must clearly be necessary to manage and implement your project in the manner described in the funding application approved by us or the Intermediate Body.

[16] The 'double-financing' rule: You must ensure that you submit an item of expenditure (i.e. a specific cost item) for reimbursement **only once** and must not submit the item of expenditure to different EU funding sources separately in order to obtain financial support from more than one source for the same cost item.

7.5 CLARIFICATIONS AND GUIDANCE

7.5.1 Value for Money

The principle of 'economy' requires that the resources are made available in due time, in appropriate quantity and quality and at the best price.

The principle of 'efficiency' concerns the best relationship between resources employed and results achieved.

The principle of 'effectiveness' concerns the attainment of the specific objectives set and the achievement of the intended results.

It therefore follows that unnecessary, unapproved, excessive or reckless expenditure will not be supported by the EU Funds.

7.5.2 Achieving Value for Money in Recurring Low-value Purchases of the Same, or Similar, Goods or Services

Costs may be considered to be excessive, and therefore ineligible, if there is evidence that you are paying significantly more for supplies, goods and services than the prevailing market rates.

Where our, or your own, purchasing/ procurement rules (see Section 36.3) do not require you to obtain more than a single quote, you are still expected to make reasonable efforts to consider price comparisons or carry out benchmarking exercises for goods and services that you will be purchasing on a recurring basis. This is not required in relation to staff costs or where the aggregate value of the recurring purchase is forecast to be less than £1,000 over the project's lifetime.

In WEFO collaborative operations (lead beneficiary and one or more joint beneficiaries) the lead beneficiary must ensure that the price comparisons and benchmarking is assessed across all projects in the operation i.e. one beneficiary should not be paying significantly more for the same product or service compared to other beneficiaries in the operation.

If a beneficiary is involved in more than one operation funded by the EU Funds in Wales, the price comparisons/ benchmarking assessments should be undertaken across all the corresponding operations if the same or similar goods or services are being purchased.

You must retain evidence of these price comparisons for future verifications and audits including, if applicable, recording your justification for not obtaining price comparisons (legitimate use of a single supplier, bespoke/ specialist provision etc.).

The purpose of this control is to achieve value-for-money by demonstrating that beneficiaries do not pay more than the generally accepted price range for similar goods and services. It does not mean that the 'cheapest' goods or services must always be selected – price is only one element of value-for-money considerations.

7.5.3 The 'Double-Financing' Rule

While double-financing the same cost item is clearly prohibited as set out in rule above, you may allocate an item of expenditure between more than one EU project or EU fund but must agree a method of cost allocation. For example, allocating shared marketing costs where your project or group of projects are supported by more than one EU fund.

If you implement more than one operation at the same time, there must be mechanisms in place to demonstrate that expenditure items are only declared for reimbursement once and no more than 100% of each cost is claimed in total.

7.5.4 Use of the Beneficiary's Existing Facilities, Assets and other Equipment

We expect you to make use of any available/ unused accommodation, assets and equipment if they are suitable for the project's needs rather than buy new items or rent accommodation.

Where this is the case, you can claim the costs of maintenance, repairs, consumables etc. that arise due to the project's use of those facilities and equipment.

7.6 ELIGIBILITY DATES

RULES

[17] Real costs must be incurred **and** paid on or after 1 January 2014 and no later than 31 December 2023.

[18] Your eligibility start date will be confirmed in the grant funding agreement and will usually be the date that we approve your project. We can consider approving costs incurred or paid before this date, but not before 1 January 2014, on a case-by-case basis (see 'preliminary costs' and 'retrospective approval' below).

[19] Costs must be incurred and paid during the implementation period of your operation. If you purchase any goods/ services during the implementation period that are ultimately for use once the operation has ended, these costs will be ineligible for EU funds support. The Financial Completion Date of the operation sets out the final date by which costs can be incurred and defrayed. There are two exceptions we can accept – outlined below:

- NI, tax and pension costs – linked to staff salary payments. Where it is not possible for you to pay these costs within the same month as the associated salary costs. Only applicable to salary costs that are paid within the agreed financial lifetime of your operation
- Final evaluation costs – if/ where you experience a delay in your final evaluation, with the payment date for this cost falling outside your operation closure date. You will need to seek agreement from us in order to claim the cost as part of your final claim. Please see WEFO guidance entitled, 'EU Structural Funds 2014-2020: Project Closure FAQs', for further details.

[20] If we change our programmes with the EC to add new activities that can be supported for the first time, any costs that then become eligible because of the change are only eligible from the date that we submit our revised programme to the EC for their approval. We will confirm this date in the grant funding agreement.

7.7 CLARIFICATIONS AND GUIDANCE

Costs incurred before 2014 are ineligible for support even if paid in later years.

7.7.1 Retrospective Approval of Operations

We can consider approving funding for your operation even if it has already started and costs have been incurred and paid. We cannot however award you funding if, at the time that your formal application for funding is submitted to us, the operation is

fully implemented or **physically complete**, irrespective of whether you have made all the related payments.

Operations can be considered for retrospective approval as far back as **1 January 2014**.

We will only use this flexibility if we are satisfied that you can demonstrate that the operation has **complied with all applicable rules and conditions** set out in your funding agreement, for example: separate accounting codes for financial transactions; compliance with applicable cost eligibility rules; adequate audit trails; full compliance with Public Procurement and State Aid legislation etc.

For these reasons, any activities that you enter into, or costs that you incur, before we approve your operation must be at your own risk.

For clarity:

- The rule applies at the level of the operation – not at the level of individual projects, actions, activities or other delivery strands within an operation.
- If physical completion or full implementation occurs after the formal submission of the funding application to us - but before we make the funding decision - this is acceptable and can be considered for support.
- ‘Complete’ means that no further activity is required to complete the investment, the works are complete and received in conformity with the requirements foreseen by the national legislation (if applicable). The reference to ‘national legislation’ means, for example, all necessary health & safety measures/ testing has been successfully completed and the investment is therefore ready for its intended use/ ready to be operated.
- ‘Physically complete’ applies to tangible, physical investments (e.g. infrastructure, buildings, assets, equipment) where their state of completion is self-evident and ‘fully implemented’ applies to other operations. Fully implemented means that the planned activities and actions set out in the business plan have taken place.

7.7.2 Preliminary Costs (Works Contracts)

For building, construction and works projects, we can consider reimbursing real costs incurred and paid during the project preparation/ contract preparation phase, even if incurred and paid before the funding was formally approved. This can include the actual costs incurred and paid for site investigation works, site surveys, environmental appraisals, architects fees, cost benefit analyses, feasibility studies, design costs, and preparation of tender documents for procurement.

If you decide to let a contract before you receive and accept our Funding Agreement, this is of course entirely at your own risk.

If we approve such costs, they must be incurred and paid on or after 1 January 2014. Your Funding Agreement will also confirm the eligibility of any preliminary costs.

8. COST CATEGORIES: Direct Costs

Remember that costs are only eligible when they relate, directly or indirectly, to an eligible project activity or, for ESF projects, relate to eligible participants.

‘Cost categories’ means expenditure items with similar characteristics and purpose.

8.1 Definition of ‘direct’ Costs

Direct costs are the costs of initiating and implementing the agreed project activities where a **direct link** between the cost and the EU supported activities can be demonstrated and **easily quantified** without the need to consider arbitrary apportionment methodologies (cost drivers based on square-footage of space occupied by the project, headcount, staff hours etc.).

Contracts let by beneficiaries are direct costs, even if the contract pricing terms enable the contractor to receive payments for what the contract may describe as their ‘indirect costs’.

8.2 Allocation of Direct Costs

Situation 1: Identifiable eligible direct costs listed in an invoice/ contract/ statement alongside other unconnected or ineligible costs.

These costs are directly related to the EU supported activity, and a direct link can be demonstrated, but the invoice – or equivalent document – aggregates the costs with other items that are not directly linked to the specific EU project. Therefore, it is necessary to identify and allocate the costs that relate to the EU project. These amounts can then be treated as direct costs.

Audits and verifications will need to see supporting records to verify the basis for the cost allocations.

Examples:

- Telephone lines and call charges traceable to the individual EU project staff or to a workspace occupied solely by the EU project team.
- Beneficiary’s head office/ corporate centre pays a contracted service provider a fixed amount for each staff member in the organisation (e.g. to provide ICT services or software licences charged per user). The EU project could claim these costs as ‘direct costs’ for the staff working on the EU project if those services are actually used and the EU project benefits from the services. An audit trail is required to identify the named individuals benefitting from the services and evidence of the amounts being paid to the contractor.

Situation 2: Costs that relate in full to eligible activities that directly benefit more than one WEFO operation. The costs to be attributed to the respective WEFO operations can be measured through a pro-rata cost allocation agreed in advance by us.

This situation arises where eligible costs or activities relate to more than one WEFO operation, for example 'all-Wales' schemes funded by operations in both the East Wales region and the West Wales and the Valleys regions.

In these situations, individuals or teams could be undertaking eligible activities that cross-cut a number of operations such as a shared marketing, events and publicity team working **exclusively** on a number of WEFO operations.

Such costs can be treated as direct costs and **allocated** to the corresponding WEFO operations that benefit from the activities. The full value of the costs cannot include any ineligible items e.g. work not directly benefitting WEFO operations. Where the costs include some elements that do not relate to WEFO operations and it is not possible to quantify the precise amount, the entire cost becomes an 'indirect cost' (but see situation 3 below for all-Wales schemes supported by only one programme region).

A pro-rata cost allocation will be agreed with us in advance based on the relative share of forecast outputs or results, assessed at approval stage for the various operations benefitting from the shared costs/ common activities.

Where more than one type of common output indicator is present, we will determine which indicator will be used for the basis of the cost allocation percentages.

Example: Single marketing and publicity team for two WEFO operations running concurrently.

- ERDF operation 1 – aiming to support 400 enterprises (allocate 40% of the shared marketing costs to this operation)
- ERDF operation 2 – aiming to support 600 enterprises (allocate 60% of the shared marketing costs to this operation)

To support simplification for beneficiaries and to minimise administrative costs, the pro-rata allocation percentages do not need to be modified even if actual outputs are higher or lower than expected. However, if we re-evaluate any of the operations (increasing or decreasing eligible costs and/ or the corresponding output targets on which the cost allocation calculations were based), the allocation percentage must be recalculated and will apply for all claims declared to us following such a change (but no retrospective calculations are needed).

Where the WEFO operations do not share a common output or results indicator, it will clearly not be possible to use the above cost allocation approach.

In such cases, we will agree an allocation percentage based on a pro-rata share of the **approved eligible expenditure** for the associated operations that will benefit from the shared costs/ common activities. A revised percentage is required if we re-evaluate any of the operations in line with the previous paragraph.

In all cases, allocation methodologies must not result in more than 100% of the eligible costs being declared to us. Beneficiaries must retain sufficient supporting documents and calculations to demonstrate that this is the case.

Where one operation comes to end, or an additional operation is approved, a revised apportionment percentage (based on one of the two allocation approaches explained above) must be agreed with us for claims submitted from that point forward to ensure that 100% of eligible costs can continue to be declared and that each operation absorbs their fair share of the costs.

Situation 3: Costs of all-Wales schemes/ projects where WEFO is only providing support from the West Wales & the Valleys programme and not from the East Wales programme (or vice versa).

For example, a beneficiary rents office space and uses that space exclusively to implement an all-Wales support scheme/ project but only the West Wales & the Valleys region is supported by WEFO. The East Wales part of the scheme is fully funded by national funding.

The costs can be treated as a 'direct cost' for the WEFO operation subject to the methodology and conditions set out below.

Where a common output indicator (or a suitable 'immediate results' indicator) exists between the approved project(s) across the two regions

For example, agreed forecast number of participants or enterprises to be assisted, even though we are only providing support to one of the two Wales regions.

If such a common indicator exists, then use a pro-rata percentage based on the common indicator (e.g. 10,000 participants forecast all-Wales, WW&V forecast 7,500 participants forecast, so allocate 75% of office rent costs to the WEFO operation).

The pro-rata percentage is established at approval stage (based on forecasts) and does not need to be updated during implementation to reflect outturn.

The pro-rata percentage would however need to be modified if the projects change their forecast/ WEFO approved targets during implementation if the indicator is the basis of the cost allocations. If this occurs, the revised allocation percentage would apply from that point forward i.e. the month of the modification to the forecasts.

If no such common output or immediate result indicator exists, the pro-rata percentage can be based on forecast/ approved costs.

- Region supported by WEFO = Total eligible expenditure approved by WEFO in grant funding agreement.
- Region not supported by WEFO = Total forecast costs.

Conditions

You must be willing to make available to future verifications and audit staff, sufficient and adequate supporting documents to prove the accuracy of the figures quoted for the projects not being supported by WEFO (i.e. the planned outputs/ results or the total forecast costs) and to check that no more than 100% of each cost item is charged in total.

This extends to accessing the project records at any point during implementation to ensure that the forecast has not been changed without informing us (i.e. without modifying the agreed pro-rata percentage split).

The above rules are summarised in this table:

#	Question	Answer
1	Is the cost directly attributable, in full , to one WEFO operation (WEFO Online 'case ID') and where a direct link to the operation's eligible activities can be demonstrated or is self-evident?	YES = Direct cost NO = Go to 2
2	Is the cost directly attributable, in part , to one WEFO operation - where a direct link to the operation's eligible activities can be demonstrated or is self-evident - and the precise amount attributable to the specific operation can easily be established?	YES = Direct cost (situation 1 above) NO = Go to 3
3	Is the cost directly attributable to a group of WEFO operations , where a direct link to the corresponding operations' eligible activities can be demonstrated or is self-evident (i.e. the benefits accrue exclusively to the group of WEFO operations) but the precise amount attributable to the each operation cannot easily be established?	YES = Direct cost (situation 2 above) NO = Go to 4
4	Is the cost directly attributable to an all-Wales scheme/ group of related projects where the project(s) in West Wales and the Valleys region is supported by WEFO but the East Region is wholly funded by national funds (or vice versa)?	YES = Direct cost (situation 3 above) NO = Go to 5
5		= Indirect cost

	All other costs	reimbursed via a flat-rate (simplified cost)
--	-----------------	--

8.3 Definition of 'indirect' Costs

Indirect costs are, by default, all other eligible costs that do not meet the above definitions of a direct cost. See **Section 16**.

In brief, these will be eligible costs or activities that your project **benefits** from in some way but where the value of those costs cannot be directly linked to your specific project because it is **difficult, or impossible, to quantify a precise amount** attributable solely to a single operation/ project.

Remember, even if it was possible to demonstrate the link and quantify the precise amount, the costs would still only qualify as an eligible direct cost if it met all the other general rules and conditions e.g. clearly necessary to advance your project in the way described in the funding application; value for money use of EU funds; full supporting documents and audit trails.

'Indirect costs' must always be clearly distinguished from 'direct costs' in the agreed forecast budget, delivery profile and subsequent expenditure claims.

9. Direct Staff Costs

9.1 RULES

[21] Direct staff costs must relate to managing, administering, or delivering of your project.

[22] The direct costs of staff in public administrations undertaking activities to discharge their core statutory responsibilities and functions are not eligible for EU support. This exclusion does not apply to projects that have been approved by WEFO under (a) Priority 5 Public services reform and regional working (b) ESF Health Priority. Priority 5 will primarily focus upon institutional capacity building for public administrations, stakeholders such as social partners and individuals within these organisations – enabling activity such as the development of new methods, procedures and tools. Activity supported via Priority 5 is expected to align with the Regionalisation Agenda and Well Being of Future Generations Act. The ESF Health Priority, a new health investment priority will enhance access to healthcare systems via support for (a) additional National Health Service (NHS) costs for final year medical students (b) recently retired doctors and nurses, drafted in to assist in the fight against COVID-19 and (c) personal protective equipment (PPE) costs.

[23] Direct staff costs are eligible only to the extent that they relate to activities which you would not carry out if the project was not undertaken.

[24] Staff must be remunerated in accordance with your established pay, grading and related HR terms and conditions. If you are a newly established organisation, e.g. set up purely to implement the EU project, then you must follow the principle of

value for money when setting pay rates, particularly in relation to only paying reasonable market rates necessary to attract the candidates with the required skill set needed for the EU project tasks. In all cases, the remuneration paid to staff should not be significantly more than prevailing market rates for the nature of the work to be performed.

[25] Costs can include salaries, employers' national insurance contributions (inclusive of the health and social care levy, as noted below at Section 9.2), employers' pension contributions, non-consolidated pay awards, and other costs directly linked to the salary payments in line with the employer's usual employment policies that respect equal treatment of all personnel. Where your organisation is eligible to claim Employment Allowance you must account for this within any claims you submit to WEFO for receipt of structural fund support. You will also need to have a robust mechanism in place to record the amount of employment allowance received in order to demonstrate that the de-minimis threshold of €200,000 over three fiscal years is not exceeded/ breached. WEFO will not contribute towards any amount received as Employment Allowance.

[26] The costs of training and developing project staff are eligible if suitably justified as being necessary for the effective and efficient implementation of the project. Project staff may participate in corporate learning and development activity – and treat the related time as eligible project time – where mandatory for all employees or linked to the individual's performance/ development plan.

[27] Costs of providing taxable benefits to employees that form part of the standard employer-wide contractual terms and conditions are also eligible. Examples include childcare costs, crèche facilities, lunch vouchers and 'all-staff' bonus payments (but not performance-related or tax-free bonus payments).

[28] Similarly, if in line with the employer's general policy or written into an employment contract, the following are also eligible: paid sick pay (but only amounts that are not recoverable from the UK Government), maternity and paternity benefits (including paid adoption leave), pre-retirement benefits and other family benefits.

[29] The cost of replacement staff – to cover for an employee temporarily away from the workplace on maternity, paternity or long term sick leave – is eligible. You may need to consider asking us for an increase in your staff costs budget to accommodate paying the replacement staff as well as the employee temporarily absent.

[30] Overtime payments are eligible if directly related to the project. Where an employee is entitled to take time off in lieu instead of, or in addition to, overtime payments, the time spent not working on the project (when the lieu time is used) can also be considered as eligible project time.

[31] Costs of 'external staff' - individuals (but not contracts with firms/ companies as these are classified as 'external services') directly contracted by the beneficiary to temporarily work on the project - are eligible subject to the following conditions:

- > the person works under the beneficiary's instructions and, unless agreed by the beneficiary, on the premises of the beneficiary.
- > the results of the work carried out belongs to the beneficiary/ the benefits accrue to the EU project.
- > the costs are not significantly different from those for staff performing similar tasks that are employed by the beneficiary (if such tasks are performed by the beneficiary).

9.2 CLARIFICATIONS AND GUIDANCE

The costs of staff assigned to manage or implement the EU supported activities, including general project management, control and administration.

These individuals could be:

- 'INTERNAL STAFF':
 - employed by a beneficiary (the employer); or
 - inward secondment from another organisation (contract with home employer but working for the beneficiary who is the host employer).
- 'EXTERNAL STAFF':
 - agency workers/ casual staff (agent pays the worker; beneficiary pays the agent); or
 - costs arising from a direct contract between an individual – but not a firm/ company – and the beneficiary where not through a contract of employment e.g. self-employed traders, independent contractors, independent consultants, freelancers/ piecemeal / portfolio workers. This definition therefore recognises remuneration paid to people in return for work directly related to the operation/ project but contracts with 'one-person' firms/ companies are 'external services' and not 'external staff'.

External staff costs for workers contracted through employment agencies are eligible for support from the structural funds. The audit trail will need to include documents to demonstrate the amounts paid to the worker from the agency, inclusive of any national insurance and pension contributions. A beneficiary will need to exclude agent's commissions and fees when calculating an operation's indirect costs using

the flat-rate 15% simplified cost option. If the agency is unwilling or unable to provide the required supporting documents detailing the amounts paid to the worker – the associated staff costs cannot be included in the calculation of the operation's indirect costs using the flat-rate 15% simplified cost option.

Tax free bonuses or other non-taxable benefits are ineligible costs, as are exceptional or extraordinary provision of pension or redundancy rights, i.e. beyond the standard scheme rules or statutory requirements.

Where an employer pays for an employee's membership and subscription fees for professional bodies and similar professional or networking groups, the costs are only eligible if the EU project role requires the post-holder to hold the qualification(s) in question. This must be evidenced by a job description, job advertisement or similar document that confirms the necessity of the qualification for the post-holder to carry out the work on the EU Structural Funds project.

Travel and subsistence costs, and other costs connected to business trips, are not direct staff costs for the purposes of flat-rate calculations (simplified costs) based on direct staff costs.

The costs of paying consultancy firms, professional services companies and other 'contracts for services' with firms are not 'staff costs' even if the work is performed by one persons – these are 'expert and external services' (see **Section 12**).

The apprenticeship levy, which came into force in April 2017, is not a direct staff cost, however is considered to be an indirect cost which is recoverable through the applicable flat rate (simplified costs).

Unpaid volunteer project workers are also not direct staff costs and therefore cannot be included within the calculation of the flat rate (simplified costs) based on direct staff costs. The applicable hourly/ annual rates of pay associated with unpaid volunteer time that can be claimed by a beneficiary are listed at section **17.1.1**.

Costs associated with the health and social care levy introduced in April 2022 are a direct staff cost and therefore eligible.

Staff costs relating to the management, administration and control of WEFO collaborative operations

Where we approve a collaborative operation involving a lead and joint beneficiaries, the following activities of the lead beneficiary will be eligible and deemed a necessary cost.

- Providing joint beneficiaries with a copy of the WEFO grant funding agreement and all other WEFO rules and guidance documents aimed at beneficiaries.
- Co-ordination of administrative arrangements, reporting and claims processes, exchanges of information etc.

- Progress monitoring: reviewing the amounts committed and spent by partners, activities delivered; outputs/ results achieved etc.).
- Reasonability checks of expenditure and revenue reported by joint beneficiaries to the lead beneficiary for inclusion in the claim to us. This check is to ensure that amounts reported are in line with expectations, nothing unusual, corresponds to expected activities etc.
- Overall management, governance and oversight of the operation.
- Where the joint beneficiary has insufficient resources or expertise to perform its own internal controls on the eligibility of expenditure and revenue reported to the lead beneficiary, the lead beneficiary can help joint beneficiaries to perform these tasks if necessary.
- Supporting and facilitating WEFO/ EC/ Audit Authority audits and verifications of the joint beneficiary's project.
- Spot-checks on joint beneficiaries to ensure accounting records and supporting documents are being kept in the correct form and for the correct document retention period.

For clarity, the following tasks are undertaken by us, or designated by WEFO to an Intermediate Body, and are not therefore eligible activities for lead beneficiaries:

- Verifying that expenditure declared by (joint) beneficiaries has been incurred and paid, or correctly calculated if simplified costs are used, and that it complies with applicable laws and regulations, the operational programmes and the conditions of support set out in this document and the WEFO grant funding agreement.

See **Annex A** for further guidance on matters relevant to collaborative operations.

9.2.1 Time Recording

Staff working on an EU project full-time or a fixed number of hours are not required to record their working hours in a time sheet as a basis for justifying the costs. However, the individual's job description, letter of secondment, employment contract, or similar document (e.g. correspondence from HR department) must verify that the role relates to work on the specific EU project(s), whether full-time or fixed number of hours. See Annex C for details on documents required for audit.

For the purposes of this guidance, 'full-time' means all the hours in the individual's standard contractual working week. In addition to staff working full-time on an EU project, staff costs could be:

- A fixed percentage of contracted time worked on the EU operations per month [no time sheet needed];
- Flexible number of hours worked on the EU operation per month [time sheet is required]; or
- On an hourly basis [time sheet required].

Staff costs for individuals working a fixed percentage of time on the EU operation can be calculated using a fixed percentage of gross eligible employment costs without a need to use a working time registration system (time sheet). The fixed percentage of time must however be verifiable to employment documents such as job description, employment contract or appointment decision.

Staff costs for flexible/ variable hours (i.e. not full-time and not fixed number of regular hours) are eligible if a time registration system is in place, completed by the worker and verified by their supervisor or another more senior colleague who is able to confirm the accuracy of the information. The time records must cover 100% of the contracted working time of the employee.

Time records to support flexible/ variable hours can be daily, weekly or monthly and can be electronic/ automated or a paper 'time sheet' (see [TEMPLATE 1](#) for an example). The time registration system must allow for the identification of actual time spent on the managing, delivering or administering the EU project. For verification and audit purposes beneficiaries will be required to provide this evidence of hours actually worked. Where applicable this can also be supported by evidence such as leave records and flexi sheets.

Staff costs for individuals who, according to their employment documents, work on an hourly basis, for example zero hours contracts, must be calculated using the hourly rate specified in their employment contract multiplied for the time actually worked on the project (evidenced by time sheet).

Hourly Rates are calculated as follows:

Annual eligible staff costs [divided by] annual productive hours per standard employment contract terms

'Annual productive hours' excludes time not spent at work - paid annual leave, paid public holidays, and other paid leave entitlements set out in the employment contract and/ or employer's HR policies.

As this hourly rate calculation recognises annual paid leave entitlements, no eligible hours must be entered on time sheets when the individual is taking their paid leave.

Below are two worked **examples** of how hourly rates can be calculated on either an annual or monthly basis.

Worked Example – calculated on ANNUAL basis

Calculation	Explanation
Annual eligible staff costs = £28,500	<i>basic salary £25,000 employers NI contribution £2,500 employers pension contribution £1,000</i>
Weekly contracted paid hours = 40	<i>per contract</i>

Paid annual leave, public holidays and other contractual paid leave = 35	<i>25 days annual leave 10 public holidays</i>
Annual productive hours = 1,800	<i>40 (hrs a week) x 52 weeks = 2,080 hrs 35 days paid leave x 8 hours per day = 280 hours productive hours = 2,080 (paid) less 280 (paid but not in work) = 1,800</i>
Hourly staff rate = £15.83 claimed for each hour actually worked on the EU project (nothing claimed when employee takes their paid leave).	<i>£28,500/1,800</i>

Worked Example – calculated on MONTHLY basis

Calculation	Explanation
Monthly eligible staff costs = £2,375	<i>As per the relevant payslip / payroll report for that month i.e. gross salary, employers NI contribution & employers pension contribution</i>
Total hours actually worked = 150	<i>Total actual hours worked (not including any annual or sick leave taken) as recorded on the monthly timesheet.</i>
Hourly staff rate = £15.83 claimed for each hour actually worked on the EU project (nothing claimed when employee takes their paid leave).	<i>£2,375 / 150</i>

Whatever calculation used, beneficiaries must ensure no more than 100% of eligible costs are claimed over the life of the project. An ad-hoc reconciliation could be requested by WEFO verification staff where it is deemed necessary – for example where potential for significant discrepancies has been identified.

If the individual does not utilise their contractual paid leave entitlement and it is forfeited - or works on the EU project during periods of paid leave - this time can follow the 'overtime rules' (unless the unused paid leave is carried forward to later years) if such practices are permitted by the employer's HR policies and procedures.

Staff working on more than one WEFO operation

A staff member working full-time or a fixed number of contracted hours on a single WEFO operation will not need to record their time unless specifically requested by us

or required by the applicable State Aid rules. The latter situation could arise where an operation comprises several separate activities that are treated differently for State Aid purposes and the costs must be distinguished.

Time recording may also be needed if an individual works on more than one project within the same operation i.e. if we require eligible expenditure of each project to be separately accounted for to facilitate audits. The 'WEFO Delivery Models 2014-2020' guidance explains the definition of distinct projects in one operation.

Time sheets must contain a brief description - or a coding system that leads to more detailed descriptions - to signify that the recorded hours relate to the specific EU supported project.

Please see **Annex C** for additional guidance on staff costs and time recording.

Where employees work full-time or a fixed number of contracted hours exclusively on a number of WEFO operations, we can agree a pro-rata cost allocation methodology (fixed percentage of costs charged to each WEFO operation) rather than requiring the completion of time sheets.

This approach can be offered **only where we agree that it is not possible** to accurately allocate the work to each of the various operations that benefit from the activities performed. For example, the staff costs of a project marketing team or payments claim administration team that performs activities that benefit all the EU projects and it is not possible – or would clearly be administratively burdensome – to try and accurately distinguish the time spent on each WEFO operation.

The pro-rata cost allocation method must be robust, objective and not used as a mechanism to intentionally charge a disproportionate amount of costs to projects that have highest EU grant intervention rates. You must therefore agree a cost allocation basis with us using the methodology used for allocation of direct costs as set out in section 8.2. Evidence of the cost allocation basis agreed for your operation must be maintained and must be available to auditors/ verification officers.

Sick Pay

Sick pay is an eligible cost where declared in accordance with section 9.1, rule 28. In order to calculate the costs for the individual who is on sick leave, the basis on which staff costs were identified for the operation at approval must be used.

For example, staff working a fixed number of hours can claim in accordance with the agreed number of hours and/ or percentage of time the individual has been scheduled to work on the operation (as agreed in their job description/ secondment letter/ employment contract).

Where an hourly unit cost has been agreed (simplified costs), the rate detailed within your funding agreement must be used.

Where WEFO has agreed that the costs for the individual staff member can be allocated across projects on a fixed percentage basis (e.g. a 50/ 50 split) then the sick leave costs can be allocated in the same way. However, care needs to be taken if the split across projects is based on set/ fixed days as costs should only be declared for those days. For example, if the individual was only absent on the set/ fixed days agreed for a particular project then all costs should only be allocated to that project.

For staff working flexible/ variable hours, justification for the methodology used to calculate the amount of sick leave claimed must be retained and made available upon request. For example a beneficiary could carry out an analysis of historical data (minimum of 3 months where possible) to determine how much to claim.

9.2.2 Staff Training Costs

External paid training provision for project staff is eligible if:

- Necessary for the compliant implementation of the project, e.g. statutory or regulatory requirement for project staff to be able to carry out the EU project activities.
- Necessary to comply with any other applicable EU, UK or Welsh laws and regulations.

External training that is not compulsory or mandatory is not usually eligible but we can consider this on a case-by-case basis if you can provide justification on how the project will benefit from the training and how it represents **value for money** when taking into account the anticipated benefits. Paid training that exclusively benefits the individual, but not the project, would therefore be ineligible.

Significant time spent away from the project on learning and development activities – e.g. secondments, work shadowing, structured management development programmes – will not be supported and must be excluded from the eligible time charged to the project (significant is defined as more than 5% of the individual's weekly working hours that would usually be charged to the EU Structural Funds project(s). This can be assessed using averages over a month or, at the most, quarters (Jan-Mar, Apr-Jun, Jul-Sep, Oct-Dec).

9.2.3 Inward Secondments

The employment terms and conditions of the 'home employer' apply to all staff costs in this document unless you have a contractual arrangement in place to apply your own policies and remuneration during the period of the secondment.

9.2.4 Exceptional Paid Leave: suspension; disciplinary procedures; absence from work during investigations into potential wrongdoing or employment contract disputes; ‘gardening leave’; and similar additional exceptional paid leave

Staff costs during these periods are not eligible for support because it represents time not spent on the EU project and we do not consider it to be the core remuneration terms and conditions that ‘staff costs’ are intended to cover.

9.2.5 Redundancy and Severance Schemes

WEFO will consider eligibility on a case-by-case basis applying the following principles:

- Staff must be working on a Wales Structural Funds project at the point at which the redundancy or severance decision is taken.
- The post must become redundant. Costs are ineligible if the post/ role is continuing and is intended to be ‘back-filled’ using recruitment or a transfer of existing staff.
- There must be a statutory or contractual requirement to pay redundancy or severance costs under UK employment law.
- Payments made to the staff member must adhere to the corresponding statutory provisions/ thresholds and/ or contractual obligations.
- Additional/ special payments that form part of a redundancy package, including enhanced pension or redundancy rights, but which are offered at the discretion of the employer and in excess of statutory or contractual requirements, are ineligible costs.
- Payments related to voluntary redundancy/ a voluntary severance scheme where the post is not being made redundant are ineligible.
- Eligible expenditure on redundancy costs will be calculated pro-rata in relation to the number of years and months of continuous service working on EU Structural Fund projects (including from previous programming periods).
- Costs will also be calculated on a pro-rata basis if the employee only currently works part of their contractual weekly hours on EU Structural Fund projects, regardless of whether the individual worked full-time on EU projects in the past.
- Staff assigned, transferred, or promoted to a Structural Funds project from another role in the organisation must work on the EU project for a minimum of 2 years before redundancy/ severance costs can be considered as eligible.

These rules mean that, while we are able to support the usual, contractual employment costs of staff working on Structural Funds projects – including directly related costs such as employers’ pension and NI contributions - the scope to support redundancy and severance costs is possible but more constrained.

Even where redundancy/ severance costs are eligible for support, the availability of a 'staff costs' budget line in the corresponding Structural Funds project is not automatic and will depend on the availability of programme funds to support such unexpected staff costs (i.e. if not already built into the budget profile at project approval stage).

9.2.6 Discretionary Payments to Staff or Former Staff

These costs are ineligible.

This includes: enhanced redundancy/ severance terms; non-contractual payments on dismissal; employment tribunal costs; compensation for loss of office; the costs of investigating, defending or settling legal/ contractual disputes with employees or former employees; 'out-of-court' settlements; damages, compensation for loss of office.

9.2.7 Recruitment Costs, Relocation Packages and Disruption Allowances

The costs of **relocation packages** are eligible where the job advertisement states that relocation expenses form part of the remuneration package. The job in question should cover, at least, the full duration of the EU project and demonstrate value for money i.e. clearly added value benefits for the project compared with not offering a relocation package.

We will assess each case on its merits and will ask you to provide:

- A detailed analysis of the expected costs, which must be reasonable and comparable to, or lower than, public sector rates;
- Your standard HR policy setting out the terms and conditions for deciding when to offer relocation packages; and
- Clear justification supporting the appointment of the individual concerned, based on objective and auditable criteria (their experience, skills, knowledge etc.).

Staff **recruitment** costs are eligible, including the reimbursement of candidates and interviewer/ facilitator costs for attending interviews and assessment exercises.

The following documents should be retained:

- Job advertisement, invitation for assessment, invitation to interview or similar documents that inform candidates that travel and subsistence costs will be reimbursed; and
- Employer's standard HR or recruitment policies and procedures that confirm that reimbursement of travel and subsistence costs can be offered to candidates or for external interviews/ assessors/ panel members etc.

Disruption allowances are eligible if confirmed in writing and to receive such payments it is set out in the employer's standard HR policies or the employees' contract. A disruption allowance means additional payments to staff when staff are required, or strongly encouraged, to relocate to another premises as part of a wider organisational premises/ location strategy. It also means payments to staff in recognition of temporary adverse changes to the working environment (noise or inconvenience caused by building improvements etc.).

10. Office and Administrative Direct Costs

Costs are eligible if they satisfy the general rules (section 5) and the definition of 'direct cost' (section 8.1).

10.1 CLARIFICATIONS AND GUIDANCE

10.1.1 Hospitality and Entertaining

Entertainment costs exclusively for staff are ineligible. Entertainment activities that are part of your agreed business plan may be supported, for example, awards ceremonies or similar awareness raising or promotional events. If such activities are not evident from your business plan, you must obtain our written approval to provide assurance of value for money and necessity.

Hospitality costs – room hire, refreshments, food etc. – are eligible costs if the meeting/ event is necessary and the amounts claimed are in line with the beneficiary's usual policy and limits.

10.1.2 Statutory and Obligatory Costs

If your project gives rise to additional statutory payments or similar costs arising from mandatory/ regulatory obligations – such as the purchase of licenses and permits, specialist staff training, additional health and safety measures, insurance, taxes and levies – these are eligible as long as the project activity itself is not the beneficiary's core statutory responsibility or function as a public body/ administration.

For clarity, we cannot provide financial support to help you discharge your normal statutory functions and responsibilities but can assist you to fund any additional costs incurred as a direct consequence of implementing your project, for example, the cost of Disclosure and Barring service checks for new project employees, if such checks are necessary.

10.1.3 Insurance

Insurance premiums are eligible if the insurance is directly related to your project and meets the standard eligibility rules in terms of being necessary, directly related to the project etc.

If your organisation has a policy of internal self-insurance rather than using commercial insurance policies (for example, central government and other large public sector organisations), you must follow your usual accounting policy unless we tell you that we require you to arrange an insurance policy.

10.1.4 Use of Beneficiary's Premises and Equipment

It is expected that beneficiaries utilise unused space in their premises for locating project administration staff and, if applicable and suitable, for delivery activities. Direct costs that arise from using such space are eligible (depreciation charges for assets used exclusively by the project, directly attributable telephone/ utilities costs etc.). Where no existing space is available, or the available space is unsuitable, we can consider supporting rent of external premises, and related costs, and account for this in the operation's financing plan and delivery profile.

The same principle applies to office equipment.

11. Travel and Subsistence for Direct Staff

These are the costs of transportation, overnight accommodation and subsistence costs, allowances and travel insurance for the management and delivery of your project.

Costs are eligible if they satisfy the general rules (section 5) and the definition of 'direct cost' (section 8.1).

Your usual internal staff policies and rates, including mileage rates paid out to staff, apply when calculating the eligible amounts but in the absence of such established rules and rates, the following rules will apply:

- Most economic means of transport and the most direct route
- Trains and flights - standard/ economy class only
- Mileage reimbursement rates of 45 pence per mile (50 pence if carrying passengers who are part of the EU project team and this replaces a separate claim from the passenger).

'Per diem' allowances (fixed amounts paid to the traveller to cover likely subsistence costs but without the need for evidence of receipts etc.) are eligible if these are part of the employer's standard travel costs policy.

External staff; Joint beneficiaries; beneficiaries of aid schemes managed by Intermediate Bodies

Remember that all references to the ‘usual staff and HR policies and procedures’ throughout this document means the policies of the relevant **employer** (each beneficiary, whether lead, joint or organisations awarded support from an Intermediate Body) – it does not mean that the lead beneficiary’s or the Intermediate Bodies staff and HR policies can be used for all beneficiaries in the operation.

12. External Services and Experts

This means contracts and agreements with external firms relating to professional services and expertise needed to successfully implement your project, e.g. legal fees; costs of technical and financial experts; consultancy fees; control and audit costs; studies, or surveys; language translations; services related to provision of venues, etc.

It does not include ‘external staff’ – see section 9.2 for definitions.

CLARIFICATIONS AND GUIDANCE

Booking fees are eligible if it can be demonstrated that they are reasonable, justifiable and deliver value for money

Charges for processing financial transactions are eligible if it can be demonstrated that they are reasonable, justifiable and deliver value for money.

Bank charges for opening or administering accounts are only eligible where we tell you that a separate account must be opened as a condition of the EU support.

Fees and charges for breaching your bank account conditions are ineligible, as are charges applied to credit cards, charge cards, or other debt or credit arrangements.

Charges and interest for overdrafts/ debit balances/ exceeding credit limits are ineligible.

Professional services (legal advice, notary fees, technical and financial experts, consultancy, accountancy and auditors) are eligible if they are directly linked to the project and are necessary for its effective management or implementation.

Audit and control costs are eligible if they are directly linked to the project and are necessary for its preparation or implementation or if we ask for them.

Fines, financial penalties and expenditure on legal disputes and litigation are ineligible. Legal costs arising from instigating or defending legal action/ litigation are ineligible – see Section 18.

The travel and subsistence expenses of external experts and incurred by those contractors/ service providers as part of their service contract and do not fall into the scope of the ‘travel and subsistence’ eligible costs rules set out in this document.

Where expenditure is incurred in pounds sterling, by a lead/ joint beneficiary and which has to be converted into euros upon submitting a claim to WEFO for payment, the expenditure must be converted into euro using the monthly accounting exchange rate of the European Commission for the month in which the costs were incurred and defrayed. Please note, where a beneficiary receives an invoice in a foreign currency and which has to be converted into its national currency, the beneficiary can follow its own established internal exchange rate policy. The policy must adhere to national accounting standards, provide details as to where and when the exchange rate is obtained and specify how the rate is applied – where all these elements are demonstrated the cost will be eligible for support.

12.1 Payments to Incentivise Engagement in WEFO Programme/ Operation Evaluations

Where justified, we can agree modest financial incentives (to be paid to respondents in an evaluation, at Programme/ Operation level. Value-for-money remains a fundamental principle for the eligibility of expenditure and so the following safeguards apply:

- First, it has to be assessed whether the financial incentives contribute to achieving the result sought, i.e. an evaluation which is reliable and representative, and that in the absence of these financial incentives this result will not be achieved.
- Second, the payment of financial incentives must respect the general principle of sound financial management/ value for money. The payment of financial incentives to respondents in the evaluation must therefore be the most efficient and effective option for achieving the result sought, i.e. an evaluation which is representative and reliable and the level of the incentives **should not be higher than what is necessary to ensure participation.**
- Third, the payment of financial incentives needs to be in compliance with applicable EU and national laws. In case of payments of financial incentives to homeless people and disadvantaged groups (individual persons), there is no Union law that would prohibit these payments.

It is important that there is a robust, evidence based justification for the use of financial incentives. Prior agreement for their use, together with the amount/ level of financial incentive will be required from WEFO and will need to be recorded. Where a firm is procured to undertake evaluations, the contract terms can include incentive payments, providing all of the above have been adhered to.

13. Equipment

These are tools or devices that you purchase, rent, hire or lease where necessary to successfully implement your project: ICT hardware; laboratory equipment; small moveable machines and instruments; and other equipment needed for the project.

Please also refer to 'asset register' requirements in **section 14.2**.

Exclusive use

If other parts of your organisation - or other organisations or individuals – also make use of the EU funded equipment, you must only charge a fair and equitable share of the costs for your project. We can provide advice on a suitable method of apportionment if this case arises. In terms of the ESF Health Priority exclusions will apply and will need to be discussed with WEFO.

13.1 Method of Acquisition: Purchase, Rent or Lease

The key consideration must be value for money assessed over the duration of the project and the expected economic life of the equipment, including the estimated sale or scrap value when no longer needed. You do not have to choose the lowest cost option - effectiveness and efficiency are equally valid considerations.

We will only reimburse costs during the project implementation period and contractual payments beyond this point will not be supported.

The EU funds cannot be used to reimburse finance or debt servicing costs. Therefore, any interest and finance charges on lease, hire purchase, or rental contracts are ineligible and you must therefore fund those elements in full.

13.2 Depreciation Charges

Depreciation charges are eligible if the use of buildings, equipment or other asset is necessary, with a direct link to the implementation of your project. The total depreciation charges charged to the project for a particular asset must not exceed its original purchase price.

The charges must relate exclusively to the period of support for the project and you must apply your usual accounting policy and practices for calculating the depreciation charges. An accounting method is not 'usual' if it has been customised for a particular project or for EU support.

Depreciation charges for assets that were acquired in full or in part with the support of a government grant/ public funds – from any source, EU or UK – is ineligible.

It does not matter when the item has been purchased, even if this is before we approved your project or before 1 January 2014, as long as the item's economic lifetime has not been exceeded according to your usual depreciation policy for such items.

13.3 Second-hand Equipment

These costs are eligible subject to these conditions:

- The purchase cost must not exceed its current market value, taking into account its age and condition.
- The cost must not exceed the price of similar new equipment.
- The seller must provide a written declaration (an e-mail or short note will suffice) confirming that the equipment was not purchased with a contribution from UK or EU public grants.

14. Capital Expenditure

For the purposes of this document, this means the purchase, construction or enhancement of an asset. An asset means physical, tangible items expected to provide benefits to your organisation lasting more than 12 months and where the usual accounting practice is to recognise such items as an 'asset' in your organisation's Balance Sheet, or equivalent statement of assets and liabilities.

Typically, this definition would therefore include:

- (a) land and buildings;
- (b) plant and machinery; and
- (c) fixtures, fittings, tools and equipment.

Capital expenditure must **be specifically approved by us** and confirmed in the grant funding agreement. Therefore, all approved eligible costs are presumed to be operating/ revenue costs unless we have approved a capital grant for your project.

Your organisation may decide not to recognise smaller value assets or short-life assets in your Balance Sheet and instead treat them as a revenue cost this does not affect 'capital' classification for the purpose of our rules. However, for structural funds purposes any physical assets/ equipment purchased, built or enhanced using support from the structural funds, where the cost of each is greater than £5k, will require a **project asset register**. All beneficiaries lead and joint must adhere to this requirement irrespective of their organisation's standard accounting/ capitalisation policy.

You can claim the full asset cost as an eligible cost even if the asset's expected economic life extends beyond the project implementation period, if the best value for money option was to purchase the item, rather than rent, lease, or hire it.

If we have not approved any capital expenditure, you can still claim depreciation costs during the period when the project is utilising your organisation's assets, as described in 'depreciation' section above.

14.1 Construction and Building Projects: Site Preparation Costs

The following costs are eligible: site clearance; site servicing including preliminaries confirmed in the Bill of Quantities; and site decontamination costs where the project is delivering an eligible economic benefit.

14.2 Asset Registers (inclusive of equipment bought/ supported via the ESF Health Priority in response to COVID-19)

You must maintain an asset register to register all capital assets/ equipment purchased, built or enhanced using support from the EU funds. You may either use your organisation's corporate asset register or you can set up a project-specific asset register. The register must record at least:

- Date of purchase/ acquisition
- Cost
- Description of item and/ or unique asset number
- Location
- Depreciation charged to date (if applicable)
- Net 'book value' (original cost less depreciation charged to date)
- Sale/ disposal date and amount (if applicable)

If a project-specific asset register is used, it must be possible to reconcile the asset values (cost, depreciation, net book value) and asset categories through to the aggregated information presented in the corporate asset register. Adequate explanations must be provided for any variances.

To Note: Best practice is to retain and maintain an inventory log of all equipment purchased using support from EU funds, in order to support any audit challenges. Equipment with an asset life of less than one year can be regarded as a revenue cost.

15. Direct costs of Providing Financial Support to Others

This means providing direct financial support to other organisations or to individuals.

The 'WEFO Delivery Models 2014-2020' document explains the management and control arrangements necessary to implement direct financial support schemes, including clarification of whether this can be carried out by a beneficiary or only by us and/ or an Intermediate Body.

The support could be based on the reimbursement of actual costs incurred and paid by the grant applicant/ recipient (grants, wage subsidy schemes etc.) or an amount that the recipient can use without the need to account for how the funds are actually spent (ESF participant allowances, scholarships, bursaries etc.).

These costs are only eligible if agreed with us in advance and form part of your Business Plan and agreed delivery approach.

16. COST CATEGORIES: Indirect Costs

As explained in section 8.3, these are costs generated inside your organisation that the EU project benefits from, but which cannot be linked or attributed to the project in a direct or precise way.

Typical 'indirect costs' include:

- Indirect staff (central accounting services, general clerical support, custodial/archiving services, corporate customer services, senior management/executives/ directors not engaged directly on the project but with general oversight and governance responsibilities;
- General corporate supplies (furniture, consumables, stationary, photocopying);
- Office rent for shared workspaces;
- Materials and equipment rental or leasing (not used exclusively by the EU project);
- Utilities (electricity, heating, water, drainage);
- Maintenance, cleaning, repairs, security services;
- ICT systems, WIFI and Broadband connections;
- Communication (telephone, fax, internet, postal services, business cards);
- General insurances (property insurances, public liability, life assurance etc.);

Calculation Methods

Where we agree that your operation/ project is likely to give rise to indirect costs, eligible costs can be declared as a **flat-rate** percentage of certain direct costs ('simplified costs'). No audit trail is therefore required for the real indirect costs and there is no need to consider the use of arbitrary apportionment methodologies to charge costs to your project, e.g. charge-out rates based on headcount, square footage etc.

The detailed arrangements are set out in **Section 19**.

Indirect costs are given a discrete budget line in the WEFO delivery profile. Therefore, **all other costs in the delivery profile are direct costs** and must meet the definitions provided in Section 8.

Q&A - distinguishing between a direct and an indirect cost

Q: Are the beneficiary's general administrative running costs/ establishment/ premises costs always 'indirect'?

A: No. These costs could be direct or indirect, in line with the above definitions, and so varies case-by-case depending on the arrangements in each operation/ project.

Administrative expenses would be 'indirect' if unable to precisely identify the amount attributable to the EU project(s). For example, 'central services' such as: recruitment/ HR support, WIFI/ broadband; general accounting services; corporate general management; cleaning; security; telephony, ICT facilities; water or electricity expenses, and so on.

Alternatively, all these costs could also potentially be 'direct' costs if provided exclusively for the EU project(s) with an audit trail to the invoices and proof of payment etc.

Q: Are rent, rates and utilities bills 'indirect costs'?

A: Same response as previous question.

If the EU project is the only occupant of a building or rented space, these types of costs could be directly attributable in full in the EU project(s) (as direct costs).

These costs will be 'indirect' where unable to establish the precise amounts attributable to/ consumed by the EU project(s). Where the beneficiary uses 'charge-out' system or similar apportionment approach to shared costs, this indicates that the costs are 'indirect'.

Q: Are 'apportioned' costs 'indirect costs'?

Apportioned costs are indirect costs.

For this purposes of these rules, 'apportioned costs' refers to where an organisation uses an arbitrary methodology to determine the amounts to be charged to projects departments to enable the organisation to recover the costs actually paid out. A suitable cost driver is chosen (e.g. staff hours; square footage of space occupied; headcount) as a basis for sharing out the costs to those that benefit from them.

17. CONTRIBUTIONS IN-KIND

17.1 RULES, CLARIFICATIONS AND GUIDANCE

In addition to costs actually incurred and paid out by a beneficiary, eligible expenditure can also take the form of contributions in-kind donated to the project by third parties and for which no payment is made.

Contributions in-kind are another form of 'real costs' along with depreciation charges and costs actually incurred and paid.

These contributions could be:

- The provision of works, goods, materials or services (including professionals and researchers)
- Unpaid project work (volunteers who help manage and/ or deliver the project)
- Donations of land and/ or buildings for which no cash payment has been made by the beneficiary.

For clarity, 'third parties' excludes the beneficiaries of the operation (lead, joint or aid scheme beneficiary) and so, for example, a joint beneficiary cannot make a contribution in-kind to the lead beneficiary in the same operation.

The following rules apply:

- In all cases, the total public support (EU funds and national public match funding) actually received by the operation must not exceed total eligible expenditure excluding contributions in-kind. Put another way, the value of all contributions in-kind must not exceed the contribution of the beneficiaries to the eligible costs of the operation.
- This threshold is assessed at the end of the operation. The rule is to ensure that beneficiaries do not receive more public funds than is needed to pay for project costs.
- Contributions must be provided specifically to be used on the named operation/ project and not a general purpose 'any project' donation to the beneficiary. This is particularly important to ensure that the same contribution is not registered to more than one EU project.
- The value of the contributions must be determined **either** by:
 - the **costs** actually incurred by the third party and supported by accounting documents to confirm the costs, less depreciation charged to date where applicable (i.e. depreciable assets acquired, purchased or constructed more than 12 months before the donation to the EU project); **or**
 - the **market value** at the point of the donation to the EU project. This will be the cost that the project would have to pay to acquire the goods or services at the current market price;
- The value of the contribution must be capable of being independently assessed and verified. We cannot accept a value simply asserted by the third party. Therefore, if there is difficulty in obtaining evidence of 'current market value', the 'cost actually incurred' option should be used instead.
- Regardless of the method used to attribute a value to the contribution in-kind, the resulting amounts are still classified as 'in-kind' costs – not actual costs incurred and paid.
- The receipt/ reality of the contribution and its cost or value must be capable of being independently assessed and verified. There must be evidence that your

project received and utilised the contribution. For clarity, the rule is that the value and the delivery of an in-kind contribution should be possible to assess and verify independently: it does not impose an obligation to do so at the point that the contribution is recorded as an eligible cost. In effect it sets out a requirement for an audit trail – it must be possible to assess and to verify, that the value attributed to each in-kind contribution is compliant with the valuation methods listed above and it must be possible to verify that the in-kind contribution has indeed been made/ delivered.

The exception to this rule is the value of land or buildings, which must be certified by an independent qualified expert or duly authorised official body before the value is declared as an eligible cost.

The value attributed to an in-kind contribution should approximate the price which you would pay for this contribution on the market under normal circumstances. The current 'market value' of an in-kind contribution can be established in different ways: based on statistics, market surveys, comparable transactions, standard rate card/ professional hourly charge out rates etc.

For clarity, the following are not 'contributions in-kind' to an EU project:

- Price discounts and similar business price negotiations.
- Credit notes.
- 'Buy one get one free' and similar 'free' products or services.

The 'paid out' rule (see section 7.3.2) does not apply to contributions in-kind. The value of the contribution is usually best measured using its current value in the market, regardless of its historic cost. Sometimes, the best (or only) way of valuing the contribution will be by reference to its purchase price/ original cost. This can be verified to receipted invoices from the third party, or similar accounting documents, but in all cases it is not necessary to obtain proof that the invoice was 'paid' by the third party organisation.

17.1.1 Unpaid Work (Volunteers' Time)

The value of the work is recorded as the verified time and the rate of remuneration for **equivalent work**. The hourly rates are determined by us with reference to statistical labour market data and which are updated from time to time. The current rates are listed below and previous rates, if applicable, will be provided in an annex to this document.

The rates below are obtained from the UK Annual Survey of Hours and Earnings (ASHE) (October 2018). The rates are for the UK but excluding London and the South East. Please note the rates will be applicable to projects approved by WEFO from 1 July 2019 onwards. Projects approved prior to this date will only utilise the revised rates upon re-profile/ re-evaluation where this constitutes a significant

change in finances. The latter to be discussed and agreed with the WEFO Project Development Officer.

Job Title	SOC Code ¹	Hourly Rate (£)	Annual Rate (£)
Project Manager	2424	23.07	45,011
Project Researcher	2426	17.06	32,833
Project Coordinator	3539	13.57	25,932
Trainer	3563	14.25	28,141
Project Administrator	4159	10.42	20,285

Volunteer work is not categorised as ‘staff costs’ as they do not arise out of a contract of employment or contract for paid services carried out by an individual. Similarly, volunteer project workers are not ESF participants although there is no restriction on volunteer project workers also seeking to receive assistance from the same operation as an ESF participant.

17.1.2 Donations of Land and Buildings

The rule requiring no cash payment for the contribution in-kind does not apply in relation to making a nominal payment for the purposes of a lease agreement, but no more than £1 per year.

The value of the land or buildings must be certified by an independent qualified expert or duly authorised official body.

Contributions are ineligible if they are land (not built on or built on) with a value exceeding 10% of the total eligible expenditure of your project. For derelict sites and for those formerly in industrial use which comprise buildings, this limit may be increased to 15%. In exceptional and duly justified cases, a higher percentage (>15%) may be considered for environmental conservation projects. Please contact us to discuss all cases exceeding 10%.

17.1.3 Accounting for Contributions In-Kind

You must account for contributions in-kind as follows:

- Include as an eligible cost in your payment claim using the most appropriate cost category. This will generate a grant payment at the agreed grant rate.

¹ Standard Occupational Classification

- Include, in the same claim, a corresponding entry as 'match funding', recognising that the in-kind costs have been, in effect, funded fully by the third party donor.
- Both entries must be for the same value.

18. Summary and Further Clarification of Ineligible 'real costs'

- Costs that are unnecessary.
- Purchase of assets that were previously acquired using EU support.
- Costs deemed ineligible by the corresponding State Aid rules, where applicable.
- Company dividends paid to shareholders, even if intended as an alternative to a salary.
- Costs of activities that are in breach of applicable EU, UK or Wales Laws and Regulations.
- Costs reimbursed by other European Union actions or programmes.
- VAT that can be recovered from the relevant tax authority (normally HMRC) under the applicable VAT legislation, even if you choose not to recover it. For clarity, VAT that you have paid but where you can demonstrate that you are unable to recover from the tax authorities, is an eligible cost if you retain the VAT invoice, or equivalent prime document of the transaction, for future inspection during verifications and audits.
- Interest and financial charges on debt, including credit or charge cards, except for grants given in the form of an interest rate subsidy or guarantee fee subsidy. Financial charges, includes charges arising from currency conversions (exchange losses).
- Costs arising from deferring or renegotiating payments to creditors.
- Legal costs of instigating, or defending, litigation/ legal proceedings arising from the operation's activities, including employment-related or other contractual disputes. Where legal work is necessary to implement the operation's approved activities in the way described in your business plan, and with estimated costs included in the approved delivery profile, these costs are eligible (examples: legal advice to comply with applicable laws and regulations; costs relating to exercising a compulsory purchase order etc.).
- For ERDF: Purchase of land (built on or not built on) in the amount exceeding 10% of the total eligible expenditure for the project. For derelict sites and for those formerly in industrial use which comprise buildings, this limit shall be increased to 15%. In exceptional and duly justified cases, a higher percentage may be permitted for projects concerning environmental conservation.
- Notional/ theoretical costs, even if the beneficiary has reasonable grounds to assume that the cost is close to 'real costs' or its market value. For example, internal 'charge-out' rates without a direct link to actual amounts paid out by the

organisation or 'estimated commercial value' rates for use of unoccupied premises.

- Estimated or budgeted costs (this does not mean depreciation charges).
- Opportunity costs, being amounts that you believe represents income foregone as a direct result of the project/ project activity.
- Accounting estimates and valuations such as provisions, reserves, contingent liabilities, write-downs, bad debt provisions, amortisation of intangible assets and asset impairment charges.
- Bad debts or similar accounting/ debtor 'write-offs', including write-off of staff loans.
- Donations or gifts to political parties and other payments for activities of a party political nature.
- Any profit margin (mark-up, cost plus pricing etc.) that you add to your own internal costs.
- For ESF operations, the following are always ineligible: land, buildings, plant and fixed machinery, infrastructure and networks (the purchase or the construction/ renovation of infrastructure and networks).
- Payments or fees for late payments to your creditors.
- Costs involved in winding up a legal entity.
- Voluntary payments to staff or former members of staff i.e. payments beyond the amounts due if strictly applying contractual or statutory terms. For example, direct ('out-of-court') settlements for unfair dismissal or grievance claims against an employer.
- Compensation or similar payments to former employees in respect of unfair dismissal settlements.
- Gifts, the purchase of prizes, donations and similar voluntary payments (fails the 'necessary' eligibility test).
- Entertaining staff or third parties (but see 'hospitality and entertainment' section regarding eligibility of events, ceremonies etc.).
- Criminal fines, penalties and damages.
- Statutory fines, penalties and damages.
- Parking fines, motoring related fines.
- Costs incurred by employers in setting up or closing down pension schemes.
- Costs incurred in winding up/ closing down a company (whether enforced or voluntary), including the costs arising from entering, or exiting, administration, bankruptcy, liquidation or similar measures.
- Any interest and finance charges on lease, hire purchase or rental agreements.

19. Simplified Costs

Please also refer to the comprehensive '*simplified costs: detailed guidance for beneficiaries (V3 May 2019)*' published on the EU Funding pages of the Welsh Government website

The simplified costs currently available for ERDF and ESF operations in Wales are set out in **Annex E**.

19.1 Introduction

In short, simplified costs are an alternative way of calculating and reporting your eligible project costs. They use estimated costs, agreed and fixed in advance, rather than the costs that you actually incur and pay.

Simplified costs can significantly reduce project administration time and effort; ease audit and inspection burdens; and reduce document management and retention costs.

These simplified methods are an alternative to the 'real costs' approach explained in Sections 7 to 18 and have the potential to reduce the risk of payment claim and compliance errors.

Please take time to ensure that you and, if applicable, joint beneficiaries fully understand the terms and conditions set out below and in the WEFO funding agreement letter.

19.2 Key features – at a glance

Rules & Conditions	Simplified costs	Real costs
Each cost item must be individually coded to the EU project or separated in your accounting system	X	√
You must provide us with a list of individual costs incurred and paid	X	√
You must be able to provide proof of payment for each payment, such as a bank statement	X	√
You must retain receipted invoices, or equivalent accounting documents, for each individual payment	X	√

You must retain expenditure documents (invoice/ proof of payments) until we notify you that they can be destroyed, potentially for up to 10 years	X	✓
We, and possibly the EC, will audit and verify on the costs you have incurred and paid	X	✓
Each cost incurred and paid must comply with the 'real costs' rules (EC and Wales rules) set out in this document	X	✓
We and the EU institutions retain the right to examine your general accounting records for statistical, methodological or fraud-prevention and detection purposes.	✓	✓

So, most of the 'real costs' rules in sections 7-18 would not be considered during audits and verifications of any categories of costs - or entire activities - that are being reimbursed using the simplified costs approach, for example, checks that each individual cost item was:

- incurred by a beneficiary
- paid by a beneficiary
- value for money
- separately identifiable and verifiable in the beneficiary's accounting system via a unique code or a separate accounting system
- directly linked to an eligible activity
- necessary, not excessive, not reckless
- not a specifically disallowed cost under Welsh national eligibility rules

Some of these factors will be considered when you apply for a simplified cost option – any flat-rate or unit cost agreed by us cannot be based on ineligible costs or activities for example – but once agreed with us **in advance**, the above areas are not examined during the implementation of your project.

Please note that within an operation/ project, some costs may be reimbursed using 'real cost' rules while others may use the 'simplified costs' methods. The rules in the above table apply to the selected option for each cost category – not to the entire operation/ project.

There are two types of simplified cost options currently offered in Wales:

- Flat-rate financing ('flat-rates')
- Unit costs

Flat-rate financing means that eligible expenditure for specified cost categories will be deemed to be an agreed percentage of the eligible costs declared for certain

other cost categories. We currently use this method for calculation of all indirect costs (ERDF, ESF) and there is an option to use a 40% flat-rate to cover all costs other than staff costs.

Unit costs means that reimbursement will be based on fixed unit costs for an agreed level of activity or results, regardless of the real costs you incur and pay to carry out those activities or produce those results.

In Wales, we currently offer the following unit cost options: (a) hourly staff costs and (b) a fixed rate per ESF participant. If used, eligible staff costs will be calculated using an agreed hourly rate or an agreed fixed rate per ESF participant, agreed in advance and confirmed within the grant funding agreement.

In both cases, the real costs are not considered and the simplified cost arrangement may subsequently turn out to be higher or lower than your real costs. You must therefore carefully consider this financial risk and the feasibility of addressing any potential shortfall. You will not be able to request additional EU funds to address a shortfall arising from the use of simplified costs.

See Section 9 for rules on staff costs.

19.3 Applicability of simplified costs

Simplified costs (flat-rates) are the only method available for calculating indirect costs. Indirect costs cannot be declared on a 'real cost' basis.

Simplified costs are also mandatory for small operations where the planned public support to operation is less than €100,000 (see **Annex D**).

Other simplified costs are optional but **we strongly encourage** all beneficiaries to consider using simplified costs because they are likely to reduce administration and audit burdens, reduce financial errors and free up project staff to focus on delivery and achieving results – rather than compliance and back-office processes.

In some cases, simplified costs are **not available**:

- Activities, or entire projects/ operations, that are being implemented exclusively through contracting i.e. delivered or implemented via procured works, goods or services. This applies to both public procurement and to contracts let by private bodies. Where contracting within a project is limited to incidental, secondary or support costs but you still directly deliver or implement the project or activity rather than use contracting/ outsourcing – simplified cost options can be used.

Simplified costs **may** not be a good option in the following cases:

- You, and your partners if applicable, are unwilling or unable to accept the financial risk that your real costs may not be fully reimbursed.

- You, and your partners if applicable, are unwilling or unable to account for surplus receipts i.e. where simplified costs turn out to be higher than your real costs incurred and paid. We will not undertake any checks on the existence or handling of any surplus.
- Your match funding providers are unwilling to contribute to the operation/ project if costs are not based on actual project costs.
- Your project is subject to State Aid rules and the related conditions do not support 'simplified costs' or State Aid document retention requirements means that the benefits of simplified costs are reduced.

19.4 Exclusion of 'Fully Procured' Activities, Projects or Operations

If a project is implemented exclusively through procurement, then you cannot chose simplified costs as a basis for reimbursement from us **for those costs** – we can only reimburse you based on real costs (i.e. the contract invoice costs).

If only part of a project is implemented via procurement, then simplified costs are available. To qualify, the project, and all its delivery activities, must be implemented by you – you keep full control on the management and implementation of the project/ activity even if some of the budget lines or expenditure items within the project are acquired via contracting procedure (e.g. part of the project implementation such as cleaning services, external expertise such as a qualified trainer, purchase of furniture).

Where a project comprises discrete delivery activities (strands):

- Strands of activity fully implemented via procurement (i.e. managed/ delivered by a contractor) cannot access simplified costs.
- The 'other' strands (managed/ delivered by the beneficiary) can access simplified costs.

In relation to this rule, 'procurement' applies to all procurement including contracts below the thresholds established by EU public procurement directives.

19.5 Project Phases and Simplified Costs: WEFO Mobilisation Phase

You have the option of using the 'real costs' approach during the mobilisation phase of your operation and then change to simplified costs for the delivery phase.

You will however need to choose your preferred basis of reimbursement in advance of each phase so that the terms and conditions can be included in your funding

agreement letter. We will need to provide a revised funding agreement before the start of the delivery phase.

You will not be able to change from simplified costs to real costs once the operation has started, even if your operation has a mobilisation phase.

19.6 Simplified Costs Rates, Terms and Conditions

19.6.1 Flat-rate 15% for Indirect Costs

This rate is available to all operations where we are satisfied that the operation is likely to give rise to indirect costs.

Eligible indirect costs are calculated by applying a flat rate of 15 % of eligible direct **staff costs**. *Please see Section 9.2 where employment agency workers are employed to deliver/ implement the activities of an operation.*

The 15% rate is established in EU Regulation article 68(1b) of EU Regulation 1303/ 2013 and so does not need to be justified in advance by us or beneficiaries.

19.6.2 Flat-rate 25% for Indirect Costs (Research, Development & Innovation)

Indirect costs for qualifying research, development and innovation operations are calculated by applying a 25% flat rate to all **applicable direct costs**.

The 25% rate is established in EU Regulation 1290/ 2013 (rules for participation and dissemination in Horizon 2020) and the possibility of using this rate and method for the ESI funds is set out in article 68(1c) of EU Regulation 1303/ 2013. The rate does not need to be justified in advance by us or the beneficiary.

When this rate is used, indirect costs are determined by applying a flat rate of 25 % of the total **applicable direct costs**. Applicable direct costs means all eligible direct costs but excluding the following:

- (1) costs of sub-contracting (contracted delivery of operations, projects or discrete activities)
- (2) costs of resources made available by third parties which are not used on the beneficiary's premises
- (3) financial support to third parties.

This rate is an alternative, not in addition to, the '15% of staff costs' option available to all operations described above.

NOTE FOR WEFO STAFF

Operations (or projects within an operation) qualify for this rate if they are coded by WEFO as falling into the following ‘intervention fields’ and programme priorities.

For the ERDF

QUALIFYING INTERVENTION FIELDS

Research and development and innovation:

- *Code 056 - Investment in infrastructure, capacities and equipment in SMEs directly linked to research and innovation activities*
- *Code 057 - Investment in infrastructure, capacities and equipment in large companies directly linked to research and innovation activities*
- *Code 060 - Research and innovation activities in public research centres and centres of competence including networking*
- *Code 061 - Research and innovation activities in private research centres including networking*
- *Code 062 - Technology transfer and university-enterprise cooperation primarily benefiting SMEs*
- *Code 063 - Cluster support and business networks primarily benefiting SMEs*
- *Code 064 - Research and innovation processes in SMEs (including voucher schemes, process, design, service and social innovation)*
- *Code 065 - Research and innovation infrastructure, processes, technology transfer and cooperation in enterprises focusing on the low carbon economy and on resilience to climate change*

AND corresponding to one of the following

ERDF THEMATIC OBJECTIVES AND INVESTMENT PRIORITIES:

Strengthening research, technological development and innovation by:

- ***Priority 1; SO1.1 (research capacity)*** *enhancing research and innovation (R&I) infrastructure and capacities to develop R&I excellence, and promoting centres of competence, in particular those of European interest;*
- ***Priority 1; SO1.2 (commercialisation)*** *promoting business investment in R&I, developing links and synergies between enterprises, research and development centres and the higher education sector, in particular promoting investment in product and service development, technology transfer, social innovation, eco-innovation, public service applications, demand stimulation, networking, clusters and open innovation through smart specialisation, and supporting technological and applied research, pilot lines, early product validation actions, advanced manufacturing capabilities and first production, in particular in key enabling technologies and diffusion of general purpose technologies;*

Enhancing the competitiveness of SMEs by:

- **Priority 2: SO2.1 (access to finance) and SO2.2 (start-ups)** promoting entrepreneurship, in particular by facilitating the economic exploitation of new ideas and fostering the creation of new firms, including through business incubators;
- **Priority 2: SO2.3 (business growth) and SO2.4 (ICT exploitation)** supporting the creation and the extension of advanced capacities for product and service development;

Supporting the shift towards a low-carbon economy in all sectors by:

- **Priority 3: SO3.1 (increase number & testing of wave/ tidal and/ or multiple equipment energy devices within and off Welsh coastal waters), SO3.2 (small scale renewable energy schemes) and SO3.3 (increase energy efficiency of existing Welsh housing stock, particularly in areas of fuel poverty)** promoting the production and distribution of energy derived from renewable sources, promoting energy efficiency and renewable energy in enterprises, supporting energy efficiency, smart energy management and renewable energy use in public infrastructure, including in public buildings, and in the housing sector, promoting research and innovation in, and adoption of, low-carbon technologies

For the ESF

QUALIFYING INTERVENTION FIELDS

- *ESF Secondary Theme Code 04: strengthening research, technological development and innovation.*

AND corresponding to the following

THEMATIC OBJECTIVES AND INVESTMENT PRIORITY:

- *Skills for growth priority: SO3 (R&I skills) strengthening research, technological development and innovation through the development of post-graduate studies and entrepreneurial skills, the training of researchers, networking activities and partnerships between higher education institutions, research and technological centres and enterprises;*

19.6.3 Flat-rate 40% for Direct and Indirect Costs

This rate is available to all operations.

Eligible direct costs, other than staff costs, and indirect costs are calculated by applying a flat rate of 40 % of eligible direct **staff costs**.

Staff costs means direct contracts with individual workers carrying out work for the project and therefore includes internal and external staff (self-employed, agency workers) but not contracts with firms/ companies/ incorporated bodies.

Please note for ERDF & ESF operations: as from 2 August 2018 in-kind contributions dispersed by a third party i.e. salaries and allowances paid to participants, can be declared **in addition to the eligible direct staff costs and to the 40% flat rate applied to the eligible direct staff costs.**

19.6.4 Flat-rate 20% for Direct Staff Costs

This rate is available to all operations.

Eligible direct staff costs are calculated by applying a flat rate of 20% of the direct costs other than staff costs of that operation.

The flat-rate can be used and does not require to be justified in advance by us or the beneficiary. Where this option is used, no other direct costs can be calculated using a flat-rate (direct costs must be 'real costs' to form the basis of the staff costs flat-rate calculation).

19.6.5 Unit Costs for Project Staff Costs

(a) A fixed hourly rate for project staff is established in your funding agreement letter and this can be used when submitting your payment claims.

The key benefit of using this option is that throughout the implementation of the operation, verifications and audit will not examine payroll financial records or bank statements to confirm the amounts were paid out.

Hourly costs are established by dividing the latest documented annual gross employment costs by 1,720 hours. The latest gross employment costs can include all eligible staff costs as set out in Section 3 (salary, employers' taxes and pension contributions etc.). Alternatively, you can use the actual productive hours as confirmed in contracts of employment or the standard human resource policy (this will be explored during checks and audits).

The agreed rates can be set for individual members of staff or, more likely, for groups of staff using grade averages/ bands.

The annual estimate of productive hours (1,720) is determined by EC Regulations and can be used without further justification. Alternatively, should you choose not to use the standard annual working time of 1,720 hours: - you will need to provide/

justify to WEFO details of the **latest** annual gross employment costs (as documented via your accounts, payroll records, etc. ;) together with the proposed annual productive hours. This will enable WEFO to verify and agree the staff hourly rates to be used by you, with the rates being documented in your funding agreement letter. For further details please see Section 5 of the WEFO 'Detailed Guidance on using simplified costs'. The agreed rates can be set for individual staff members or, more likely, for groups of staff using grade/ band averages.

If staff hourly unit costs have been in place for at least two years, you may request that the rate be revised to reflect the latest documented employment costs at the time of the review.

(b) A unit cost based upon a fixed rate per ESF participant referred/ supported by the operation for calculating project staff costs and which is established in your funding agreement letter and which can be used when submitting your payment claims.

The fixed rate per participant is established by application of historical staff costs incurred against or divided by the number of participants supported over a 36 month period (as documented via accounts, payroll records, other documentation etc.) which will enable WEFO to verify and agree a participant rate to be used by you, with the rates being documented in your funding agreement letter.

If fixed participant rates have been in place for at least two years, you may apply to/ request WEFO revisit the rate in order to reflect the latest values used for the agreed calculation that the rate be revised to reflect the latest documented employment costs/ number of participants supported at the time of the review.

We currently offer the fixed rate per participant unit cost to calculate project staff costs to ESF supported operations only. However, it is possible for ERDF supported operations to utilise standard scales of unit costs based upon outputs and/ or results. If you are interested in adopting a unit costs approach/ methodology for your ERDF supported operation, please see the 'Further Information and Advice on Simplified Costs' section below.

Further Information and Advice on Simplified Costs

Please contact us to discuss the 'ready-made' simplified costs set out above or if you are interested in the possibility of using unit costs or lump sums (eligible costs determined exclusively by **performance of activities** or **achievement of outputs or results**) – these are explained in the separate '*simplified costs: detailed guidance for beneficiaries*' document published on the EU Funding pages of the Welsh Government website.

PART 4: ERDF FUND-SPECIFIC RULES

20. Eligible ERDF Activities

Activities can be supported by the ERDF if assessed and agreed by us when we make our funding award decision, either during the initial funding decision or a later revision.

In addition, the ERDF Regulation EU 1301/ 2013 determines that the scope of support must fall into one or more of the activities described in article 3 of that Regulation.

We will assess compliance with the Regulation and the Wales ERDF Operational Programmes when you submit your funding application to us.

INELIGIBLE ACTIVITIES

The following are outside the scope of the ERDF and will not be supported:

[32] Decommissioning or construction of nuclear power stations;

[33] Investment to achieve the reduction of greenhouse gas emissions from activities falling under Annex I of EC Directive 2003/ 87/ EC;

[34] Manufacturing, processing and marketing of tobacco and tobacco products;

[35] 'Undertakings in difficulties' as defined under EU State Aid rules. **Please note:** as from 24 April 2020, undertakings receiving **de-minimis aid** will not be regarded as 'undertakings in difficulty' for the purposes of receiving ERDF support. This also applies to undertakings that entered into difficulty as a result of the COVID-19 outbreak and have received support complying with the COVID-19 Temporary Framework for State aid measures (see Annex F, question 11 for more detail).

[36] Airport infrastructure unless related to environmental protection or accompanied by investments necessary to mitigate or reduce its negative environmental impact.

Please note that these rules apply to financial support (beneficiaries, enterprises supported) as well as to those receiving non-financial direct support from an ERDF operation.

21. Geographic Eligibility of ERDF Operations

We generally expect operations to be **implemented within** the programming region that provides the funding. The programming region, including any off-shore areas, is defined in the Operational Programme documents available on the EU Funding pages of the Welsh Government website.

RULES

We can also consider supporting operations implemented **outside the programme region** if all the following conditions are met:

[37] The 'out of area' activities will directly benefit the programme area.

[38] The Wales Programme Monitoring Committee agrees that the operation, or the type of operation/ activity, will deliver benefits to the programme region even though it takes place in another region or country. We will take forward the arrangements for seeking the agreement of the Committee. For operations conducting research, development and innovation approved under Thematic Objective 1, approval from the Committee will not be required where the 'out of area' activity occurs within the European Union.

[39] Implementing the activities outside of the programme region is the best – or only – way of maximising the benefits to the programme region.

[40] Implementation takes place within the European Union.

[41] If your operation receives support to undertake **promotional activities**, these may take place **outside the EU** if it benefits the programme region. You must seek our approval for this type of expenditure in advance so that we can confirm that it is necessary and check that adequate management, control and audit arrangements are in place. 'Promotional activities' should be understood as activities which aim to raise awareness and disseminate information, for example, business opportunities and knowledge transfer at trade fairs.

[42] If only part of your operation is implemented outside the programme region (e.g. one project or specified activities/ tasks) you will need to account for the activities and costs connected to the 'out of area' element of the project and report this to us in your payment claim.

Please note that there is a limit of this type of flexibility and so we may be unable to support your operation even if it meets the above criteria. We will advise you on this at the time of your application. The total amount allocated under the programme for activities or operations implemented outside the programme region must not exceed 15 % of the support from the ERDF at the level of each programme priority.

If benefits clearly accrue to other regions or countries in the EU – rather than exclusively to the programme region providing the funding – we will need to determine the pro-rata benefits attributable to the programme area. The eligible costs for those activities will then be limited to the agreed percentage. If this applies to your operation, please contact us to discuss a suitable basis of apportionment.

In the case of infrastructure and productive investment the location of the project is self-evident (the location of the assets/ productive activity). In other cases, the 'location of the operation' can be determined by the location of the supported activities or by determining where the results of these activities are used. The latter may be case for research and development operations where some activities may involve work in other regions or countries, but the results of the work are exploited/ developed exclusively by the programme region. This also applies in the case of study trips.

The location of corporate or administrative offices, including the location of the EU project management and administration teams, is not – in itself - a factor in determining geographic eligibility.

Finally, remember that, in addition to the rules set out above, you must also comply with any geographical eligibility rules established in your agreed WEFO business plan or arising from State Aid rules.

22. Major Projects

You should be aware that special approval procedures apply before funding can be awarded for actions where the eligible costs exceed €50 million. The threshold is increased to €75 million for some types of transport and network infrastructure actions – we will advise you if this applies.

In the context of this rule, the terms 'actions' has a specific meaning:

*A project, or group of projects, consisting of a series of works, activities or services to accomplish an **indivisible** task of a precise economic or technical nature which has clearly identified goals.*

The principle is a Major Project is a self-sufficient unit of analysis, i.e. comprising of technical lots, administrative or financial phases that **cannot be regarded as being operational in themselves** [EU Regulation 2015/ 207, Annex III, section 2.1.3].

Put another way, separate projects do not have to be aggregated and treated as one Major Project if:

- each project can be regarded as being operational in themselves, able to succeed in achieving the project objectives without the 'other' projects.
- the overall group of projects consists of tasks that are divisible – economically, technically and in relation to the goals to be achieved by each project.

The fact that separate, but related, projects are managed by the same beneficiary organisation or the same personnel do not make those projects a single Major Project. Similarly, a single marketing team, common branding, publicity or other information and communication measures has no bearing on whether the separate projects need to be aggregated for assessment as a single Major Project.

The application process for major projects is generally more rigorous and requires either:

- an Independent Quality Review (IQR), undertaken by a suitably qualified expert, before we select the operation (the EC is notified of the selection decision and has three months to raise an objection) **or**
- The European Commission assesses and approves the operation.

The IQR approach, if used, will either be provided and funded by the European Commission's technical assistance activity or an alternative independent expert can be proposed by us if agreed by the EC.

If these rules apply to your project, we will guide your application through the process and keep you updated on progress.

NOTE FOR WEFO STAFF

- Major projects are restricted to those identified in the 'list of major projects' contained in the Operational Programmes. See article 102(5) of EU 1303/ 2013.
- The €75m threshold applies for operations contributing to thematic objective 'promoting sustainable transport and removing bottlenecks in key network infrastructure' – article 9(7) of EU 1303/ 2013. Refer to ERDF Operational Programme document to identify the corresponding priority axes.
- The EUR-GBP major project threshold value is only assessed pre-approval. Changes to exchange rates post-approval do not result in an operation being re-classified as a 'major project'.
- Financial Instruments are exempt from 'major project' procedures.
- Where WEFO selects and approves a Major Project following a positive IQR, WEFO must notify the EC of the major project selection decision. The EC then has three months to refuse the proposed financial contribution to the major project. The financial contribution will be deemed to be approved in the absence of a Commission response within three months. The Commission can only refuse if it establishes a significant weakness in the IQR. See article 102(1) of EU 1303/ 2013.
- Major Project expenditure may be included/ declared within a payment application upon submission of the required information to the Commission.

Where independent experts will appraise a major project and (a) all necessary information has been provided to the experts to facilitate this and (b) the Commission has been notified of this appraisal route, WEFO will be able to include/ declare the major project expenditure within the payment application to the Commission. The declared expenditure must be cancelled/ withdrawn if the EC subsequently refuse to approve the financial contribution to the operation. See article 102(6) of EU 1303/ 2013.

- Special procedures apply for decisions on major projects subject to phased implementation (spanning more than one programming period) - See article 103 of EU 1303/ 2013.

PART 5: ESF FUND-SPECIFIC RULES

23. Eligible ESF Activities

The general eligibility rules for activities (Section 31) apply to ESF operations but you should also note the following ESF-specific cases:

Procured delivery of workplace safety training courses

You should note that certain workplace safety training activities must be delivered by a procured provider and not delivered directly by a beneficiary. **Annex F** provides further details. The direct costs of beneficiaries directly implementing such measures are therefore ineligible for support from the ESF.

Individuals participating in the UK Government Work Programme may not be eligible for support from the Wales ESF programmes

Individuals participating in the UK Government Work Programme will only be eligible where it can be clearly demonstrated that the ESF is adding value to core Work Programme provision funded by the UK Government.

We are required by the EC to demonstrate the added value of ESF investments and this means, for example, ensuring that ESF funded support does not duplicate or substitute existing national publicly-funded schemes/ provision. This applies whether the schemes/ provision are led by the UK Government, Welsh Government or regional/ local public authorities.

Therefore, any WEFO operation designed to help people into work seeking to include Work Programme participants will need - in addition to the general evidence requirements for participants - to obtain documentary evidence from the relevant Work Programme prime provider confirming that each participant requires access to the ESF funded provision to complete their pathway into sustainable employment because it is not funded within the Work Programme contracts.

This evidence is required to demonstrate the added value of ESF employment-related support and to obtain sufficient assurance that such support would complement, rather than substitute, existing national publicly-funded support arrangements.

Each operation will agree the target groups with us in the Business Plan. We do not expect any ESF provision to be utilised as part of conditionality-based support to individuals.

Please note that the Work Programme ceased to accept new entrants as of April 2017.

Rules for wage subsidy schemes

Where agreed in the business plan/ funding proposal, and subject to any applicable State Aid rules, eligible costs in wage subsidy schemes can include: salaries, allowances, employers' national insurance contributions and employers' pension contributions.

Where an employer pays the participant a higher amount than the agreed rate, the excess amount is an ineligible cost.

Where intermediate labour market projects provide training allowances, the amounts paid must be the equivalent of the UK National Minimum Wage.

Wage subsidies can be used to support either temporary or permanent jobs but must lead to enhanced employability or stable employment, including self-employment. Projects must therefore be able to demonstrate an improvement in the participant's job skills at the end of the support.

24. Geographic Eligibility of ESF Activities

We generally expect activity to take place in the programming area providing the funding (either East Wales or West Wales and the Valleys) as defined in the ESF Programmes.

Remember that, in addition to the rules set out below, you must also comply with any geographical eligibility rules established in your agreed WEFO business plan or arising from State Aid rules.

ESF activities could also take place in other regions and countries – but within the EU – if the benefits clearly accrue to the funding programme area and undertaking the activity outside the programme area is the best – or only – way of delivering the required support or achieving value for money. Where expenditure is incurred outside the programme area which provides the funding, and where that expenditure clearly has benefits to both the programme area providing the funding and the programme area where expenditure is incurred, expenditure can be allocated to these areas on a pro rata basis based on objective criteria.

These rules relate to the location of ESF activities, for example, where training or support activities actually takes place – it does not preclude contracting with suppliers/ providers whose corporate or administrative offices are based outside of Wales (or outside the EU) or undertaking one-off trips outside the EU if incidental to the main ESF activity, for example, 'train the trainer' trips where this is necessary and the best value option.

Where the location of the ESF activity is outside of Wales, you must agree this with us in advance so that we can ensure that suitable arrangements for management, control and audit can be put in place and understand why this is the best value-for-money option compared to delivering the activity in Wales.

These rules are designed to ensure that the benefits of the EU funds accrue to the economy and people of the region providing the funding.

24.1 Activities Taking Place Outside of the EU

Up to a limit of 3 % of the budget of each ESF Programme, we may choose to approve expenditure that can be incurred **outside the EU** provided that it concerns the thematic objectives under Article 3(1)(a) of the ESF Regulation (promoting sustainable and quality employment and supporting labour mobility) or Article 3(1)(c) (investing in education, training and vocational training for skills and life-long learning),

This is possible where the Wales Programme Monitoring Committee agrees that the activity will deliver benefits to the programme region even though it takes place outside of the EU. We will take forward the arrangements for seeking the agreement of the Committee.

As with activity outside of Wales, this flexibility is dependent on suitable arrangements being put in place for management, control and audit and justification for the necessity and value-for-money of the proposal.

25. Geographic Eligibility of ESF Participants

Individuals must live or work in the ESF programme region that is providing the funding for the project, regardless of where the ESF activity takes place. In addition, individuals studying full-time at educational institutions located in the programme region are also eligible even if they live in an adjacent region and regularly travel to/from their place of study.

For clarity, individuals who do not live, work or study in the programming region are not eligible for support even if the activity takes place in the funding programme area.

Beyond these general rules, each project may determine narrower rules on who qualifies for support. This will be evident from the business plan/ project proposal approved by us or the grant funding agreement.

25.1 Detailed Rules

We can support:

[43] Individuals who currently **live** in the programme area (their home address). Where individuals normally live in the programme area but are temporarily living in another region, we can consider support on a case-by-case basis if there is a reasonable expectation of the individual returning to the region at the end of the temporary activity (e.g. university or college course, temporary job, short-term contract, secondment, offenders in custody) and where a 'home address' in Wales can be clearly identified and evidenced (participants expected to return to their family home/ own home) for the basis of determining which ESF programme region can fund the support.

[44] Individuals currently **working** in the programme area, even if they live in a neighbouring region.

[45] Individuals currently **studying** at educational institutions in the programme area, even if they live in a neighbouring region.

[46] Eligibility is determined at the **point of entry** - when the individual first attends each individual ESF activity/ first receives support. If a series/ programme of support has been approved for an eligible participant consisting of a number of inter-related interventions, eligibility can continue until the end of agreed support plan even if the individual moves address or changes their employment/ study status. Where an individual begins a new, separate intervention/ activity within the same WEFO operation, eligibility must be assessed again at the point of entry to the new activity.

[47] If your project provides support to employers (i.e. employing ESF participants via a wage subsidy scheme) these employers must be located in the programming area.

'Working' means both employed and self-employed.

'Workplace/ work address' means the where the individual usually performs their paid work – not the administrative, regional or corporate headquarters (if different). Homeworkers' work addresses will therefore be the same as their 'home address'.

'Place of study' is determined by the address of the educational institution where the individual attends for the majority of their timetabled term-time week. For example, students at the University of South Wales who normally study at the Cardiff campus are studying in the East Wales region even though the institution has other locations in in West Wales and the Valleys.

'Home address' means where the individual normally resides overnight for the majority of each week, assessed at the point of entry to the ESF activity.

Individuals that are potentially eligible for support from both East Wales and West Wales and the Valleys Programmes

It is possible some individuals may satisfy more than one of the geographic eligibility criteria, for example where a participant lives and works in the programme region. Similarly, where an 'all-Wales' national ESF support scheme is in place, an individual could potentially qualify for support from both regions (East Wales or West Wales and the Valleys).

To clearly identify which eligibility criteria is being applied (and needs to be evidenced) and to determine which region should provide the support (particularly important when different grant intervention rates apply), an order of precedence needs to be established.

The following rules apply for determining which programme can provide the financial support and must be followed in the majority of cases. However, projects supported via Priority 3, Specific Objective 2 of the European Social Fund programmes will be able to access an exemption where certain conditions are in evidence. These are outlined below, under the heading 'Priority 3, SO2: To reduce the number of those at risk of becoming Not in Education, Employment or Training (NEET), amongst 11-24 year olds':

	Participants in work (employed/ self-employment)	Participants not in work (<i>unemployed/ economically inactive/ in training or education</i>)
First rule	Work address	Home address
Second rule (only use if individual does not satisfy first rule)	Home address	Training/ study location
Third rule (only use if individual does not satisfy first and second rule)	Training/ study address (but see paragraph 45 for limitations on this rule).	N/A. Individual is not eligible for support if not living or training/ studying in the ESF programme region(s).

Fourth rule	N/A. Individuals in work are not eligible for support if not working, living or training/ studying in the ESF programme region(s).	N/A
--------------------	--	-----

Priority 3, SO2: To reduce the number of those at risk of becoming Not in Education, Employment or Training (NEET), amongst 11-24 year olds:

The region responsible for support will be determined by the criteria for the application of the respective Local Authority Early Identification Tool, the study location of the participant and the origin of the match funding, for illustrative purposes only:

- Participant lives in Carmarthenshire (WW&V), attends school/ FE/ HE institution in Powys (EW).
- ESF 'all-Wales' project applies differing Early Identification Tools and match funding packages, dependent upon Local Authority/ EU programme area.
- Participant wishes to enrol for the 'all-Wales' ESF supported course. Order of precedence for determining which region should provide the support is applied i.e. home address which denotes WW&V programme will be applicable.
- The activity being supported via the WW&V 'all-Wales' ESF supported course does not contain all the elements/ strands of activity being administered via the EW project and this is most suitable for the participant.
- EW programme/ project and the respective Local Authority utilising its Early Identification Tool are content to support the participant as the normal/ daily study location of the individual is EW. The Local Authority will also provide the necessary match funding for the individual.

Ineligible participants attending ESF funded activities/ operations

Where ineligible individuals are allowed to attend, observe or participate in an ESF funded activity/ operation you will need to ensure that:

- additional costs or time related to the ineligible participants are not claimed as eligible expenditure, e.g. where eligible ESF participants make up the majority of the course attendees via a classroom style provision, the fixed costs of the delivery can be charged in full to the ESF operation, but any additional costs related to the minority of the ineligible participants (e.g. one-to-one tutoring) must be excluded from any claim;
- quality of support to the eligible participants is not impaired;

- fees paid by or on behalf of the ineligible participants to attend the ESF funded activity/ operation must be recorded as a project receipt and offset against eligible costs (this will reduce the ESF grant). Documentary evidence will be required to demonstrate the following (a) the normal standard charge/ s associated with the course/ event and (b) details of the receipt/ s from ineligible individuals;
- the ineligible individuals, together with the results they achieve, must not be reported to WEFO as an output, or result, and;

Where it is envisaged that an ESF funding activity/ operation has the potential to include ineligible individuals, you are advised to take the following action – this will assist in assessing the quality of the course/ event:

- agree the arrangements with WEFO in advance;
- limit the number/ percentage of ineligible individuals participating in each course/ event – ensuring the majority of attendees are eligible participants;
- consider requesting eligible participants to complete feedback forms or surveys – so providing information as to whether they felt their learning experience had been lessened/ compromised by the attendance of ineligible individuals

Homeless participants

Where an individual's personal circumstances means that they do not have, or cannot evidence, a home address (see examples below) then it is recognised that it can be difficult to provide documents to show where the individual is living and the address could change frequently.

In such cases, eligibility will be based on the programme region where the participant spends most of their time during a typical week – this must be either East Wales or West Wales and the Valleys to receive ESF support from the Wales ESF programmes.

Written confirmation from a local authority official or a relevant third party that has been assisting the individual and has an understanding of their current circumstances (for example, NGO, voluntary organisation, charity, third sector/ not-for-profit organisation, social services or other professional providing support and guidance etc.) can be considered as suitable evidence but must always be independent of the ESF project management and delivery team.

As an alternative to written confirmation from the official or case worker, access to original case notes and supporting records are also acceptable. Photocopies of these records must be obtained by the beneficiary/ delivery partner and should be suitably redacted to remove sensitive personal data. Alternatively, where photocopies are inappropriate or not permitted, a written agreement from the official or case worker can be accepted if it confirms that WEFO/ EC officials can access the original case notes and records upon request.

These special rules are only intended for homeless participants, for example, when the participant is:

- temporarily staying with friends or family
- staying in a hostel, bed and breakfast or other emergency housing
- living somewhere that they have no legal right to stay in (e.g. a squat)
- sleeping outdoors and/ or other areas not designed as a residential dwelling.

26. ESF Participants' Time (employers' contributions in-kind)

Participant's salary declared as a match funding contribution in-kind from their employer

The eligible employment costs paid by the employer for the benefit of a participant, and duly certified to the project by the employer, can be treated as eligible participant costs even though not paid by you. These are treated as contributions in-kind.

The value of this contribution is determined using the same rules as for eligible staff costs (see above), e.g. salary, employers national insurance contributions, employer's pension contributions etc.

Alternatively – but not in addition to – where an employer needs to pay replacement staff to cover the absence of an ESF participant, those additional costs incurred and paid by the employer for the replacement staff can be treated as an eligible ESF participant cost if the amounts paid are the market rate for the tasks normally performed by the ESF participant.

There must be an audit trail to support the amounts claimed.

Projects will therefore need to retain evidence of the following in order for the expenditure, and corresponding in-kind match funding, to be eligible:

- 1) Evidence to confirm the value of the salary or allowances payable to the ESF participant for the period of the ESF project activity. This will generally be the employer's payroll-related records but where only the gross salary/ allowances are being declared as the eligible contribution – and not national insurance or pension scheme contributions – the employee's payslip and employment contract could also be considered as suitable evidence.
- 2) Evidence of the time actually spent on the ESF-funded activity (time sheets, attendance sheets etc.).
- 3) A declaration from the employer to confirm that they are providing a contribution in-kind to your project. The declaration must include the employee's name; the name of the ESF project; time period; value of contribution (hourly eligible costs); and be authorised/ signed and dated by the employer. Where the employee is attending a number of activities or events, the employer can provide a single

declaration but time sheets/ attendance sheets are still required for each hour of actual attendance.

Where the evidence of salary or allowance is not obtained before the amounts are declared to us, the declaration from the employer can be accepted if it states the eligible amounts and provides a written agreement that future audits, verifications or investigations will be allowed to inspect the source payroll records in order to validate the amounts quoted in the declaration.

See [TEMPLATE 2](#) for example of an employer's declaration.

Employers must agree to provide access to the source records for audits, verifications and investigations. Remember that all records must be capable of being retrieved and examined within as little as 12 working days.

Where this approach is used, the beneficiary/ delivery partner must put in place a system of **regular spot-checks** on employer declarations, requesting sight of the employers payroll records for a sample of participants to provide assurance that employers remain willing and able to comply with the audit requirements set out in their declaration.

Alternatively, the beneficiary/ delivery partner could examine the payroll records and retain certified photocopies at the same time as declaring the contribution/ match funding and retain the copies with other project records.

When deciding on the best approach, the beneficiary should consider the operational risks of needing to access employer's payroll records in the future, for example, when an organisation ceases to trade; new management potentially unwilling to provide access to records; organisation merges with another organisation etc.

If an employer is unable, or unwilling, to provide access to payroll records, and where the employee's latest payslip and employment contract does not provide adequate proof of the value the contribution – for example, where employer's national insurance contributions or pension contributions are being declared - the amounts must not be declared to us as eligible expenditure or match funding.

Travel and subsistence costs for ESF participants

Participants may sometimes incur travel costs to travel to the location where the ESF support is delivered.

If the participant is employed and the employer reimburses their travel costs, the employer can declare these payments as contributions in-kind in the same way as 'staff costs'.

If the participant is employed but the employer will not reimburse their travel costs: the participant's costs can be an eligible project cost in line with project staff travel cost rules. The participant's employer's usual travel policies and rates must be

followed, not those of the ESF beneficiary, and you must obtain, and retain, these details for verifications and audits. These costs are classified in the same way as project staff travel and subsistence costs. They are actual project costs – payments by the beneficiary/ provider direct to the participant - and **not a contribution in-kind** from the participant's employer.

If the participant is unemployed at the time of the trip, self-employed, or their employer does not have a travel policy or standard rate, the following rules must be adopted:

- Most economic means of transport and the most direct route, usually this will be public transport but hire cars and taxis are also eligible if cheaper or public transport is unavailable, impractical, or considered unsafe.
- Trains and flights – standard class only ('economy' or equivalent)
- Mileage reimbursement rate of 45 pence per mile (50 pence if carrying passengers if this replaces a separate claim from the passenger i.e. another ESF participant or EU project staff member).

Where a beneficiary will reimburse a participant for travel costs to the ESF supported intervention – this will be considered an eligible cost where contained within the approved business plan/ delivery profile. There may be a number of joint beneficiaries involved in the delivery of the operations – then each joint beneficiaries/ organisations T&S policy will need to be followed to establish the procedure that should be followed to enable/ demonstrate payment of the participant travel costs.

For travel tickets, the beneficiary will need to request and retain evidence of the journey undertaken, for example travel tickets, invoices or purchase receipts to confirm the amounts. WEFO will expect to see defrayment evidence to show that the beneficiary/ provider – has paid the costs to the participant, including cash receipts if payment in cash.

The above-mentioned policies will be key – however, WEFO would expect to see a claim form from the participant to the lead/ joint beneficiary, together with the respective travel ticket (for example, a bus ticket) – which will demonstrate, date/ time of travel and possibly destination. Evidence may be maintained in electronic format. During audit/ verifications the payment method then adopted by the lead/ joint beneficiary will determine whether to examine either accounting records that clearly show defrayment to a participant or (where a cash payment made to a participant by a lead/ joint beneficiary) a receipt signed by that participant upon receipt of reimbursement of the cost of travel.

Where an overnight stay is required, overnight accommodation and subsistence costs can also be eligible on the same basis as travel and subsistence rules for project staff.

27. Care Costs to Enable Individuals to Participate in ESF Activities

Participants may sometimes need to pay a care provider/ crèche/ child-minder to look after their dependents so that they can attend an ESF activity.

These costs are eligible if paid to a suitably registered care provider/ company and supported by invoices and proof of payment. This can include payments to relatives if they are qualified and registered but the amounts charged must be verifiable to standard market rates or evidence to show that the carer has a record of providing care to others (but not to relatives) at the same rate.

28. Participant Eligibility

28.1 General Criteria

Participants must have the legal **right to live** in the United Kingdom during the period of the ESF support. Where a participant currently works in the UK or where the ESF support is designed to help them into employment, the individual must also have the legal **right to work** in an EU member state, including compliance with applicable UK registration, permit or visa rules. Where a permit/ visa records a status of 'no recourse to public funds', the individual will still be eligible for ESF support, where all other criteria are met i.e. legal right to live and/ or legal right to work. The classification of 'public funds' is determined via UK Immigration Policy and does **not** include European Structural Funds.

In all cases, participant eligibility is determined by the participant's circumstances on the day that they first begin the main activity – for example, the first day of learning, tutoring or advice.

The beneficiary/ provider must check compliance with these rules before the ESF support begins and documentary proof must be retained within the project records. Please refer to the WEFO guidance entitled, 'European Social Fund 2014-2020: Guidance on assessing participant eligibility'.

28.2 Project-specific Criteria

Project-specific entry conditions established by the beneficiary are as important as the above general eligibility rules established by WEFO and the EC.

For example, an ESF project approved to provide support exclusively to people who are unemployed means that this is an entry condition that must be checked before support is provided. In such cases, support to employed individuals would not be an activity approved by us and therefore would be ineligible expenditure.

For this reason, audits and verifications will need to see **evidence of compliance** with such conditions in addition to the general/ geographic eligibility rules described above.

As with other funding rules and conditions, supporting documents must be retained to demonstrate that the criteria was assessed and this evidence must then be retained for future inspection during audits and verifications.

To achieve the required audit trail standards expected of EU-funded projects, self-declarations from potential ESF participants are not suitable for demonstrating that entry conditions were met.

Project-specific entry conditions are determined by the project proposal/ business plan approved by us or agreed in writing with us at a later point. This could be:

- a specified type of activity
- a specified target group of people
- a specified geographical area
- combinations of the above.

For example, if a business plan is approved on the basis of supporting a certain target group of individuals, then that target group becomes an eligibility rule (an entry condition).

This profile of individuals to be supported will vary from project to project and could be derived from:

- EU Regulations that describe the ESF thematic objectives, investment priorities and specifically excluded actions or activities;
- State Aid rules and definitions, general or aid scheme specific, which establish rules on who can be supported.
- Wales ESF Operational Programmes that describe the priorities, specific objectives and indicative activities for the ESF in Wales.
- Business plan negotiated and agreed between the beneficiary and WEFO.
- Output targets/ indicators set by WEFO.
- Funding agreement letter issued by WEFO.

If support is available to all possible recipients – e.g. an ESF project where participants could be employed, self-employed or unemployed – then information about employment status/ type may be requested but it is **not an eligibility condition** that needs to be evidenced at entry stage if the support offered is not affected by the employment status. In this example, if the support is more generous to certain groups, e.g. self-employed, then evidence of employment status is required.

28.3 Assessment of Eligibility and Audit Trail

European Social Fund 2014-2020: Guidance on Assessing Participant Eligibility provides a list of common ESF entry conditions together with examples of suitable documents.

As each project could aim to help a different profile group of people, it is not possible to provide an exhaustive list in this document but, if unsure, beneficiaries can seek advice from us (via the Project Development Officer) on potential documents that would be suitable to evidence entry conditions.

Remember that checks of supporting documents are only required where the entry conditions exist. So, for example, proof of age is not required where an ESF project has no age-related entry conditions.

Frequently asked questions

Q: If a participant's eligibility is validated by a referral, or similar correspondence from DWP/ Job Centre Plus or Careers Wales, does the beneficiary/ provider need to substantiate how that organisation was able to provide such confirmation?

A: No, the referral/ document can be accepted in good faith at face value in the absence of any information to the contrary (and such referrals are not considered 'self declarations').

Q: What if the project-specific criteria is a negative 'absence of' condition e.g. eligible if the individual does not have certain further/ higher education or vocational qualifications or the level/ number of such qualifications?

While we expect unemployment status to be checked (see Part 4 of the European Social Fund 2014-2020: Guidance on assessing participant eligibility), it is clearly not possible to 'prove a negative' such as the lack of higher level qualifications and so the participant can self-declare their eligibility in this scenario.

Note however that it is considered reasonable to request evidence of GCSE qualifications results, or equivalent examinations, where there is a project/ programme specific eligibility criterion.

Q: Are there any exceptions? The participant is unable to provide any of the documents in PART 4 – PREFERRED EVIDENCE TO CONFIRM PARTICIPANT IS ELIGIBLE TO RECEIVE ESF SUPPORT of the European Social Fund 2014-2020: Guidance on assessing participant eligibility - do we refuse to provide them with ESF support?

There will inevitably be some exceptional cases where, for good reasons, a participant is unable to provide any of the documents listed in PART 4 –of the European Social Fund 2014-2020: Guidance on assessing participant eligibility.

Remember that the preferred list is a non-exhaustive list of documents that the majority of participants should be able to provide. The list is provided as an aid to beneficiaries and providers as it gives them comfort that the documents will be readily accepted by verifications and audit staff.

But it is not exhaustive – alternatives can be considered on a case-by-case basis and we welcome suggestions for additions to the list.

The core requirement is that the project's audit trail must include suitable justification of an assessment of participants' fulfilment of the entry conditions for receipt of ESF grant

WEFO's approach is therefore:

- In the majority of cases, we expect the beneficiary/ delivery partner/ deliverer to obtain the items from the preferred list (e.g. adults will normally have a national insurance number; workers should have a payslip; those who rent or own a home will have a utility bill).
- If the participant cannot provide these, the beneficiary/ delivery partner/ deliverer needs to explore what other methods are available to satisfy themselves that they believe the individual meets the eligibility conditions.
- If the beneficiary/ delivery partner/ deliverer is not convinced/ not satisfied that the individual meets the eligibility conditions, they must refuse to provide support.
- If the beneficiary/ delivery partner/ deliverer obtains sufficient assurance from independent/ third party sources (including perhaps the beneficiary's own knowledge of the individual from non-ESF related activity), then they can make a risk-based judgement to accept the participant but must clearly document the assessment and decision. The records must explain why the participant was unable to provide any of the items from the preferred list and why the beneficiary was satisfied with the alternative evidence provided. Note that alternative evidence/ documentation of exceptions still need to be retained for examination by verifications/ audits.

29. ESF Bursaries, Scholarships, Allowances, Stipends and Similar Direct Financial Support to Participants

The maximum value of support that will be offered to each individual, without evidence of what the funds are actually used for must be agreed in advance with us via inclusion in the approved business plan or related document.

This type of support must only be offered on a genuine 'needs basis' i.e. the project activity/ desired outputs or results are unlikely to occur in the absence of such payments.

The amounts offered must be comparable with similar support schemes in Wales or the UK such as learner finance, amounts paid/ recommended by research councils, or other reference to national or regional publicly-funding financial support schemes.

The personal financial circumstances of each ESF participant needs to be assessed on a case-by-case basis by the beneficiary or provider before offering such financial support. Specifically, the applicant must be asked for details of their savings and income in order to establish whether the financial support is justified.

Suitable documentation must be obtained to support the value of savings and income declared by the applicant, e.g. bank statements or payslips. The applicants most recent bank statement, covering at least one full month, must however always be obtained in order to validate the information provided regarding income.

No documentation is required where an applicant states that they have no savings and this can be accepted in good faith in the absence of any information to the contrary.

The personal financial circumstances of the applicant's partner and family are not relevant to the assessment of need, neither are assets or long-term investments such as equities, pensions and life assurance policies – only 'cash'/ 'near cash' such as savings accounts accessible without penalty at short notice.

The beneficiary must decide and document their chosen criteria for making funding award decisions – including the level of savings or income that will be deemed to rule out a funding award - and ensure that the criteria is fair, equitable, non-discriminatory and applied consistently to all applicants. A sliding scale of support can be used to avoid 'all or nothing' funding decisions where applicants have a modest amount of savings or income.

We do not prescribe the funding criteria that beneficiaries must use as it will need to reflect the particular circumstances of each support scheme, the desired outputs or results and the target group to be supported.

If further guidance is required, beneficiaries should discuss their proposed funding assessment and selection criteria with us.

Where funding is awarded to individuals in this way, the grant recipient must be provided with written terms and conditions that, at least, inform them of the purpose why the funding has been awarded and conditions requiring the repayment of the support, in full or in part, if the conditions are not fulfilled e.g. individual does not complete their course, does not attend meetings or participate, does not obtain the

qualification etc. The conditions can require just a partial repayment of funds if some, but not all, progress has been made towards the agreed objectives.

Repayments of support from grant recipients in this way must be treated as project income/ project revenue (see Section 32) – the repaid amounts do not represent irregular expenditure and the original cost of providing the support declared to us remains eligible.

Similarly, beneficiaries must take all reasonable measures to recover the support from individuals where conditions are not met but the operation itself will not suffer a reduction in EU support or removal of eligible expenditure declared to us as long as the beneficiary/ provider has carried out their procedures correctly.

30. Additional Value for Money Considerations in ESF Projects

Project records/ participant files must contain sufficient evidence to show that the ESF activity was suitable to the specific needs of the participant and the objectives of the project and is therefore an effective use of EU funds. In particular:

- The 'suitability' assessment must be undertaken before the start of support and must be documented for future audits and verification checks.
- Consideration should be given as to whether the planned support duplicates current or previous support the individual has received from EU funded or national schemes. The ESF support is intended to provide 'added value' to the participant. While this does not preclude an individual from receiving similar, or potentially repeating the same support, it is essential that such cases are suitably justified and documented in the participant's records.

PART 6: OTHER FUNDING CONDITIONS

31. Eligible Activities – General Rules

In addition to the fund-specific rules set out in Part 4 (ERDF) and Part 5 (ESF), costs are only eligible if they relate to implementing an eligible project and eligible activities.

Projects are eligible if they aim to deliver the priorities and objectives agreed between us and the EC in the associated Programmes. We will check this before we award you funding based on the information in your funding application. It is a condition of your funding that you notify us of any changes to the project so that we can check that it still remains eligible for support.

Similarly, your plans for achieving the project's objectives ('activities' 'actions') must be approved by us to ensure compliant.

The following general rules apply:

RULES

[48] All SMEs in the agri-food, maritime and fisheries sectors can potentially benefit from relevant ERDF or ESF support. Similarly, farmers can potentially become ESF participants. In all cases, this approach excludes ESF/ ERDF support for the **primary production of agricultural products** as defined in the EU Treaties and related State Aid legislation. Where activities could potentially be supported by more than one of the Wales ESI Fund programmes, co-ordination and complementarity mechanisms have been put in place between the programme authorities to avoid duplication or funding gaps. We will signpost you to the relevant fund if unclear.

[49] We cannot normally fund public administrations to help them deliver services that are their normal statutory responsibility or duty, for example, provision of statutory school age education; primary health services; public parks and libraries. As per Rule [22] at Section 9.1 of this document, this exclusion does not apply to projects that have been approved by WEFO under Priority 5 Public services reform and regional working or the ESF Health Priority. Please refer to Rule [22] for further details.

[50] The EU Structural Funds are aimed at providing added value that would not be achieved by the Member State acting alone and therefore funds cannot be used to substitute existing or planned public funding programmes.

[51] The Structural Funds cannot substitute national/ regional public or private match funding to EU projects/ programmes directly managed by the EC. Similarly, EU projects/ programmes that are directly managed by the EC cannot substitute national/ regional public or private match funding to Structural Funds operations.

32. Revenue

EU grants must not have the intention or effect of producing a profit within the framework of the EU supported actions (the 'no-profit principle'). Where a profit/ surplus is made, a percentage of that profit – corresponding to the EU contribution towards the eligible costs that generated that profit – may have to be returned depending on whether the revenue arises during the implementation period of a project or the, post-completion, exploitation phase of a project.

Definitions

Revenue means cash in-flows directly paid by users for the goods or services provided by the operation/ project:

- Contributions from final users of infrastructure built by the operation (tariffs, service fees, charges).
- Income from the sale of products, or by-products, produced by the operation on the market.
- Income from sale of other project related services e.g. enrolment fees or similar receipts directly generated by the operation.
- Income from the sale of land or buildings rehabilitated or built by the operation.
- Income from the rent of land or buildings rehabilitated or built by the operation.

Revenue is not:

- EU grant receipts.
- Contributions in-kind.
- Match funding where an amount of 'net revenue' (see definition below) is generated during project implementation. The 'net revenue' amount cannot be utilised as match funding and must be declared to WEFO.
- Payments you receive arising from a contractual condition on a breach of contract between you and third parties (i.e. contractual penalties) or as a result of the withdrawal of an offer by a third party chosen in public procurement rules (i.e. forfeiture of deposit) is not considered as revenue and therefore does not need to be deducted from the your eligible expenditure (you can retain 100% of such receipts).

Operating costs means recurrent costs to operate and maintain the assets created by the project during the period corresponding to the generation of revenue. This includes replacement costs of short-life equipment. Operating costs may be fixed

costs (staff, maintenance and repair, general management and administration, insurance) or variable (consumption of raw materials, energy, consumables).

Operational cost savings means net cash in-flows arising because operational costs have decreased as a result of project implementation. These are treated the same way as 'revenue'.

Note: Operational cost-savings that arise as a result of the implementation of energy efficiency measures and which occur after the completion of a project, are no longer treated as net revenue. Net revenue means Revenue **plus** Operational Cost Savings **less** Operating Costs. Operational Cost Savings can be excluded if they are offset by an equal reduction in operating subsidies (and therefore are not an overall financial benefit). You will need to provide details of the total revenue amount generated by the project during its implementation. This will enable WEFO to calculate how much of the total revenue has been used to cover operating cost and therefore the correct amount of 'net revenue' applicable to your project.

The rules to follow will depend on the type and nature of the operation. We will inform you in your grant funding agreement of which rules applies to your operation:

<ul style="list-style-type: none"> • Operation meets the definition of 'revenue generating project.' • No flat-rate percentage provided by the EC – or WEFO/ beneficiary does not want to use flat-rate. • Able to objectively forecast future revenues at funding application/ appraisal stage. 	<p>Rule A</p> <p>ERDF ONLY</p>
<ul style="list-style-type: none"> • Operation meets the definition of 'revenue generating project.' • No flat-rate percentage provided by the EC – or WEFO/beneficiary does not want to use flat-rate. • Not able to objectively forecast future revenues. 	<p>Rule B</p> <p>ERDF ONLY</p>
<ul style="list-style-type: none"> • Operation meets the definition of 'revenue generating project.' • A flat-rate percentage revenue estimate is provided by the EC. • WEFO and the beneficiary agree that the flat-rate approach is suitable. 	<p>Rule C</p> <p>ERDF ONLY</p>
<ul style="list-style-type: none"> • Operation does not meet the definition of a 'revenue generating project' but still generates income. 	<p>Rule D</p> <p>ESF and ERDF</p>

Definition of a 'Revenue Generating Project' (RGP)

These are ERDF operations where ALL of the following criteria are met:

- You expect to generate net revenues **beyond the completion date** of your operation (during the exploitation phase).
- The operation is **not subject to State Aid rules**.
- Total forecast **eligible costs exceed € 1 million** at the time of funding approval decision.
- All or part of the EU support is provided as a **non-repayable grant**. Fully repayable assistance is exempt from the RGP rules.

Put another way, the operation is not a RGP if it is subject to State Aid rules; or not expected to generate net revenues beyond completion; or has total eligible costs below €1m.

The operation will also be exempt from the classification as a RGP if you intend to be reimbursed on the basis of unit costs or lump sums – rather than real costs – if anticipated revenue has been fully taken into account when the value of the agreed unit costs/ lump sums is approved.

State Aid

Operations that are subject to State Aid rules are not classified as RGP. To clarify, this means public support which constitutes:

- De minimis State Aid.
- Compatible State Aid to SMEs, where the aid intensity or an aid amount limit is applied in relation to the State Aid.
- Compatible State Aid, where an individual verification of financing needs in accordance with the applicable State Aid rules has been carried out.

Rule A

This rule requires a full **funding gap analysis** over full economic life of the investment. The calculations are only concerned with revenue directly attributable to the funded actions – does not cover revenue generated by non-EU funded activities or from ineligible expenditure/ ineligible activity.

Only the revenue cash-flows relating exclusively to the project owner and/ or operator (i.e. the economic entity, or entities, that activates the project) will be considered. If the owner and operator are not the same legal entity, the consolidated total revenue will be calculated but excluding cash flows between the owner and operator.

Only 'incremental' cash flows are taken into account, i.e. the additional costs and benefits arising compared to what would have happened in the absence of the project.

If your project is classified as a RGP, the planned **EU funding support will be adjusted in advance** taking into account the potential of the project to generate net revenue over a specified reference period that covers both the implementation of the project **and a period beyond completion**.

Your project's potential net revenue will be determined in advance by estimating your project's eventual funding gap, i.e. how much EU support is needed given the anticipated revenue that the project will generate.

Calculation of discounted net revenue of the project, taking into account:

- the reference period appropriate to the sector or subsector applicable to the project
- the profitability normally expected of the category of investment concerned
- application of the polluter-pays principle
- considerations of equity linked to the relative prosperity of the Member State or region concerned

When this method is used, the net revenue generated during implementation of the project, resulting from sources of revenue not taken into account in determining the potential net revenue, must also be declared and deducted from the eligible expenditure of the project, no later than your final payment claim.

Where not all the investment cost is eligible for EU funding, the net revenue can be allocated pro rata to the eligible and non-eligible parts of the project cost.

The full methodology for calculating the discounted net revenue of operations generating net revenue is set out in articles 16-19 of EU Regulation 480/ 2014.

The calculations required are complex and require familiarity with a number of financial and accounting concepts. We will guide you through the process and provide detailed instructions.

Rule B

If you have a revenue generating project and where it is objectively not possible to determine the future revenue in advance, the net revenue generated within three years of the completion of your operation, or until at least 31 July 2025 (unless an earlier date is otherwise confirmed in writing, by us), whichever is the earlier, will need to be deducted from eligible expenditure. You must inform us of all net revenue generated after the submission of your final payment claim until the three-year period, or (i) until at least 31 July 2025 or (ii) unless an earlier date is otherwise confirmed in writing by us, has expired. You must maintain records of any revenue

generated from the period of your last claim until you receive further written confirmation from us.

Rule C

As a simplified approach, we can agree to apply a flat-rate net revenue percentage for the sector or subsector applicable to the project:

Sector		Flat rates
1	ROAD	30%
2	RAIL	20%
3	URBAN TRANSPORT	20%
4	WATER	25%
5	SOLID WASTE	20%

Source: Annex V of EU 1303/2013

The EU support is then determined in advance by adjusting the forecast eligible costs using this formula:

$\text{EU support} = \text{Eligible Costs} * (1 - \text{flat-rate } \%) * \text{grant intervention rate}\%$

Example

Rail project with £2m of eligible costs and a grant intervention rate of 50%:

$$\text{EU support} = \text{Eligible Costs} * (1 - \text{flat-rate } \%) * \text{grant rate } \%$$

$$\text{EU support} = £2\text{m} * (1 - 0.20) * 0.50$$

$$\text{EU support} = £2\text{m} * 0.80 * 0.50$$

$$\text{EU support} = £1.6\text{m} * 0.50$$

$$\text{EU support} = £800,000$$

Before the revenue generation calculation, the project would have received £1m of ERDF support (eligible costs * 50%). The effect of the flat-rate adjustment is to reduce eligible expenditure by £400k and so EU support falls by £200k. The project's eligible costs are still recorded as £2m (not £1.6m) and match funding is required for £1m (not £1.2m).

The project does not have to account for the apparent funding gap of £200k – £2m eligible costs less the £1.8m to be received from EU and match funding - the assumption is that future revenue will meet this gap but this is not monitored by us or the EC.

For clarity, where the flat-rate method is used **all** the net revenue actually generated during implementation and beyond completion during the exploitation of the investment **is considered to have been taken into account and settled** by the application of the flat rate and is therefore not deducted subsequently from the eligible expenditure.

Rule D

If your project is not a RGP but your project activities directly generate revenue during its implementation period, your project's **eligible costs must be reduced/offset by the amount of the net revenue received**, this will reduce the amount of EU grant payable.

Any payment you receive arising from a contractual condition on a breach of contract between you and third parties (i.e. contractual penalties) or has occurred as a result of the withdrawal of an offer by a third party chosen in public procurement rules (i.e. deposit) is not considered as revenue and therefore does not need to be deducted from your eligible expenditure (you keep all of such receipts).

You must inform us of such receipts as soon as possible and no later than in the final payment claim that you submit to us.

If only parts of your total project costs are eligible costs, you only need to apply a proportion of the revenue. The net revenue must be allocated pro-rata to the eligible and non-eligible parts of the total project costs.

You only need to tell us about revenue generated **during project implementation period** - you do not need to inform us of any revenue generated beyond the implementation of your project.

Rule D also applies to ESF operations e.g. enrolment fees paid by participants, sale of goods or services produced by the project.

33. Match Funding

Although the Structural Funds can provide significant support towards the eligible costs of a project, you will also normally be required to contribute towards meeting these costs. You may do this direct from your own resources and/ or from funding from external funding sources. We can also recognise eligible contributions in-kind (non-financial resources made available free of charge to the project from third parties) in developing the overall funding package.

Structural Funds support is expected to be the minimum required for the project to progress. Any additional costs above this value is 'match funding' (sometimes referred to as national 'co-financing' or 'co-funding'). As part of our application process we will let you know the level of match funding that you will need to provide for your project. The amount required will be within the range set out in our Programmes and will respect any applicable limitations set by State Aid rules.

Match funding must be 'clean' funding, meaning that it has not been declared for other projects as a basis of receiving financial support from EU funds and must not have originated from any other EU funding source.

You cannot use EU funds to match fund your project - these funds must be co-financed by national or regional, public or private funds. This means for example, that funds received from another EU programme, like Horizon 2020 or European Territorial Cooperation, cannot be used to provide the required national match funding to a Structural Funds project.

However, funds borrowed from the European Investment Bank Group (EIB and EIF) can generally be used to finance the national or regional contribution to a project under European Structural and Investment Funds.

We examine your match funding proposals when we assess your funding application. You must let us know if the amount or source of match funding changes during the implementation of the project.

For clarity, the following is not match funding:

- Revenue/ income generated by a project – see section 32.
- 'Cashback', credit notes or refunds from suppliers, service providers or contractors.
- Financial contributions from third parties to fund ineligible costs.

SPECIFIC CASE: Financial contributions by employers to support their employees to gain access to ESF support

This situation arises where:

- The ESF activity involves providing support to employed people;
- The beneficiary requires the participants' employers to make a direct financial contribution towards the cost of the ESF activities; and
- The contribution is a real 'cash' contribution i.e. payments received by the beneficiary or provider contracted by the beneficiary.

Clear rules are needed to clarify whether these payments are project revenue – as is the case for participant enrolment fees and similar charges paid by the participants themselves – or match funding from the employers.

The contributions from employers are match funding subject to the conditions set out below.

CONDITION 1: *Assess whether the operation will generate 'net revenue' during its implementation (see section 32, revenue rule D).*

The operation will be considered to generate 'net revenue' if the approved total eligible expenditure for the ESF operation is lower than **the sum of**:

- ESF contribution;
- Match funding; and
- Cash contributions to be received from the employers.

As long as contributions from employers is used directly to cover the costs of the operation, these receipts do not need to be treated as revenue and deducted from the eligible expenditure. As the employers' contributions to the costs of the operation will not be 'net revenue', they can therefore be considered as match funding.

If the above calculation confirms that 'net revenue' will be generated, those amounts will have to be deducted from eligible expenditure in line with section 32.

In summary, if the contributions received from employers exceeds the operation's approved eligible expenditure (when added to the ESF contribution and other sources of match funding), the excess amounts are treated as project revenue.

CONDITION 2: *The private or public nature of the match funding from employers must be based on the private or public nature of the employer.*

Cash contributions paid by a private sector employer of the participant must be recorded as private match funding and contributions of public employers as public match funding.

In cases where the cash contribution would not stem from the employer individually, but from financial resources collectively contributed by groups of employers and workers, this contribution may be considered as **public** match funding [article 2(15) EU 1303/ 2013].

34. Publicity and the Visibility of EU Funding

EU funding is conditional on beneficiaries taking the steps necessary to provide information to, and communicate with, the public on the support provided by the EU.

During implementation of your operation and through its information and communication measures, you must inform the public and participants about the EU support.

You must also set out similar provisions in your contractual arrangements with service providers, contractors and other delivery partners so that the contribution of the EU funds is communicated as widely as possible.

Evidence to demonstrate compliance with these requirements will form an integral part of inspection and audit visits and reviews of projects.

Publication of Information

- You must allow basic details to be published (electronically or otherwise) by us. Basic details includes the beneficiary's name, name of the operation, its location, output targets and results, the amount of EU funds allocated, and the amount of EU funds paid after final completion.

Use of Logo and Referencing of the Fund

- All information and communication activities (e.g. press notices, documents, web/ social/ digital media, events, promotional items etc.) undertaken by the beneficiary must acknowledge support from the relevant EU Fund (ERDF or ESF) to the operation by displaying:
 - the ERDF or ESF fund **logo** available from us, which must comply with the technical characteristics (graphic standards and definition of standard colours) laid down in WEFO's Information and Publicity Guidelines document.
 - a reference to the **European Regional Development Fund** or to the **European Social Fund**. For small promotional objects, there is no need to make reference to the Fund.
- The Fund logo must always be displayed in colour on websites. The Fund logo must be displayed in colour in all other media but a monochrome version may be used in justified cases. Beneficiaries should contact us if unable to publish a colour emblem.
- The Fund logo must always be clearly visible and placed in a prominent position, its position and size appropriate to the scale of the document or material being used.
- Where an information or communication measure relates to an operation or to several operations supported by more than one European Structural and Investment (ESI) Funds (ERDF, ESF, EAFRD, EMFF), the reference to the specific EU Fund may be replaced by a reference to the **European Structural and Investment Funds**. A logo for the European Structural and Investment Funds (available from WEFO) can also be used where a beneficiary is in receipt of two or more ESI funds.

- If other logos are also displayed on websites, documents or other publicity material, the Fund logo must be at least the same size, measured in height or width, as the largest of the other logos.

Websites

- Where a beneficiary website exists, the beneficiary must publish a short description of the operation, proportionate to the level of support, including its aims and results, and highlighting the EU financial support.
- When the Fund logo is displayed on a beneficiary website:
 - The Fund logo must be visible when landing on the website, inside the viewing area of a digital device, without requiring a user to scroll down the page.
 - The reference to the Fund must be made visible on the same website.

Posters, Billboards, and Plaques

- During implementation of an operation, the beneficiary must place at least one **poster** at a location readily visible to the public and participants, such as the entrance or reception area of a building. A design template will be provided by WEFO for best practice purposes, but as a minimum, the poster must be **at least A3 size** and include the name of the operation; its main objective; the amount of EU financial support, the statement: **‘EU funds: Investing in Wales’**; and the respective Fund name and logo.
- The beneficiary must also display a permanent commemorative plaque (supplied free of charge by WEFO), which bears the Fund logo, in a prominent location that is clearly visible to the public, staff, and participants. Please see, **‘March 2023 update’** below for further details.
- Where individuals or organisations participate in or are assisted by an operation, the beneficiary must ensure that those taking part have been informed that the operation is supported by the EU Fund. Any document relating to the implementation of the operation which is used for the public or those taking part in the activities supported by the operation, including any attendance or other certificate, must include a statement to the effect that the operational programme was supported by the ERDF or ESF. If the document includes other logos, the Fund logo must also be used.

- During implementation of an ERDF infrastructure or construction operation and where public support exceeds €500,000, the beneficiary must put up a **temporary** billboard of significant size at a location readily visible to the public. The billboard must include the Fund logo covering at least 25 per cent of its area. 'Public support' includes both national and EU support. If your operation uses pounds Sterling, the EUR exchange rate is assessed only at the point that we send you a funding agreement letter.
- No later than three months after final completion of an ERDF infrastructure or construction operation, the beneficiary must display a **permanent** billboard (design template provided by WEFO) of significant size at a location readily visible to the public. Please see '**March 2023 update**' below for further details.

March 2023 update:

- commemorative plaque – for ESF supported operations there is no requirement to continue to display a commemorative plaque once an operation has closed.
- permanent commemorative plaque – will only apply in the case of capital ERDF supported operations (*i.e. infrastructure or construction*) where public support exceeds €500,000. In addition, a beneficiary will have the option to display a permanent plaque or billboard upon final completion and by no later than three months after this date. This requirement aligns and is consistent with point 5 of Annex XII of EU Regulation 1303/ 2013.

You must also comply with any additional publicity, information and communication conditions set out in the WEFO funding agreement letter and WEFO's Information and Publicity Guidelines.

Fund logos and commemorative plaques are supplied by us. Design of posters, other plaques, billboards and other materials must be agreed by us to help comply with the technical characteristics set out in the EU Regulations and WEFO's Information and Publicity Guidelines.

For clarity, activities and costs necessary to meet publicity and information conditions are eligible costs (as an essential project management and administration cost).

Source / further information: article 115(3) of EU Regulation 1303/ 2013

35. Durability Rules

If your operation is an investment in infrastructure or productive investment, the EU grant contribution must be repaid to us if, **within five years of our final payment to you** (or within the period set out in applicable State Aid rules if longer), any of the following events occur:

- The productive activity ends.
- The project activity is relocated outside of the funding programme region that provided the EU support (relocation to another part of the programme region is acceptable but you must inform us of this).
- There is a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage.
- There is a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.

Productive investments are investments made to increase the productive capacity of an enterprise.

If these events occur, you must let us know and we will recover the EU contribution in proportion to the period for which the requirements have not been fulfilled, i.e. sliding scale from 100% to 0% during the five year period.

In cases concerning investments or jobs created by SMEs, we may decide to reduce the time limit from five to **three years**, unless State Aid rules impose a longer period.

Where the beneficiary is not an SME, the beneficiary must also repay the EU contribution if productive activities are relocated outside of the European Union within **ten years** of the final payment (or within the period of time set out in the State Aid rules if applicable). For clarity, SMEs are exempt from this rule.

Exceptions to the durability rules:

- ESI fund projects that are not investment in infrastructure or productive investments are exempt from these rules (unless the applicable State Aid rules impose an obligation to maintain the investment and where a cessation or relocation of productive activity takes place within the period specified in those State Aid rules).
- These rules do not apply to contributions to or by Financial Instruments
- An operation that ceases productive activity due to a (non-fraudulent) bankruptcy is also exempt.

[Article 71 of EU 1303/ 2013]

Assets held after the completion of your project

If you no longer use an asset that was purchased using EU support, you may sell it but note that the sale proceeds may need to be reported to us as 'revenue' – see section 7 for cases where revenue beyond project completion still need to be reported.

If you sell or donate an asset to another project funded by the ESI funds, that project will be unable to claim the purchase costs as an eligible project cost or a contribution in-kind.

Please note WEFO Management Verification Team will undertake project visits to check compliance with durability rules – the visit will occur at least once within the five years upon completion of an operation.

36. Compliance with all Applicable Laws and Regulations (EU, UK, Wales)

36.1 EU Laws and Regulations

Compliance with applicable EU rules and policies is a fundamental condition of the eligibility of expenditure for reimbursement from the Structural Funds. The most important, but not the only, areas in practice are **public procurement, State Aid, environmental protection and equal opportunities**.

The EC applies a scale of financial corrections for breaches of EU public procurement rules, the maximum penalty being 100% for complete disregard of tendering requirements in public contracts. It recommends the EU Member States apply the same scales of penalties as set out within the Commission Decision of 19.12.2013 entitled 'Guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement', where it is identified that a Contracting Authority has breached public procurement rules. WEFO has accepted the EU recommendation and will utilise & apply corrections in accordance with these guidelines. Additionally, where appropriate and reasonable to do so, WEFO may also use these guidelines to apply corrections to Non-Contracting Authorities that are in breach of established procurement rules/ processes, & which do not demonstrate the principles of fairness, openness & transparency.

As regards State Aid, when the EU Funds co-finance aid to businesses the total public aid (national and EU sources) must remain within the financial ceilings or aid intensity limits laid down for the State Aid scheme in question.

You are reminded that State Aid rules and requirements are **in addition to** the rules and conditions in this document. In particular, different rules will sometimes apply in relation to document retention periods, revenue generation, and maintaining productive investments for a period of time beyond the end of your project.

36.2 UK and Wales Laws and Regulations

Project activity and expenditure must comply with all applicable national laws, regulations and similar provisions, including compliance with tax and social security legislation.

You must seek legal advice where required to ensure you meet all such obligations.

Any unforeseen obligatory, contractual, legal or statutory costs that you incur as a consequence of implementing your project may be eligible if they meet the rules in

this document but we are not obliged to increase your approved eligible expenditure to cover such costs. All additional costs are your responsibility and not the responsibility of WEFO, the EC or other project funders, even if such costs are unavoidable.

36.3 Procurement Rules

You must carry out procurement and purchasing procedures in a way that demonstrates **value for money** or, if appropriate, the lowest price. In doing so, you must also take account of any, perceived or actual, **conflict of interests**.

When procuring a contract beneficiaries must demonstrate value for money through fair, open and transparent competition.

Beneficiaries must comply with all applicable EC, UK and Welsh laws/ government policies when letting contracts partly funded by the EU funds, including the UK Public Contracts Regulation 2015 that implement European Public Procurement Directives 2014.

36.3.1 Compliance with Public Procurement Legislation (Public Contracts)

Public procurement legislation regulates the purchasing by public sector bodies, or certain bodies in the utilities sector, defined in the legislation as ‘contracting authorities’. Beneficiaries are required to determine their own contracting status and ensure that their procurement policy reflects their status

The body doing the buying is a ‘contracting authority’. The definition is wide and includes **central government, local authorities, associations formed by one or more contracting authorities and other ‘bodies governed by public law’** (e.g. universities and housing associations).

The National Procurement service promotes Welsh public sector procurement collaboration. Public sector procurement guidance and advice can be found here: [Public sector procurement | Sub-topic | GOV.WALES](#)

The European Commission has also published guidance on how to avoid the most common errors in procurement.

<https://gov.wales/docs/wefo/publications/180625-guidance-public-procurement-en.pdf>

Beneficiaries who are ‘contracting authorities’ (within the meaning of the UK Public Contracts Regulation 2015) must comply with the corresponding rules set out in that Regulation. This includes the obligation to **inform private contractors of the existence of any ‘subsidised contract’** and the requirement for those private contractors to comply with the applicable Public Contracts legislation.

There are six stages of procurement:

- i. Preparation and planning
- ii. Invitation to bid/ advertising e.g. Sell2Wales
- iii. Submission and selection of bids
- iv. Evaluation of bids
- v. Awarding the contract
- vi. Contract implementation

Documenting the entire procurement process and justifying all key decisions is a critical requirement to ensure that the regularity of expenditure can be subsequently verified or audited.

36.3.2 Contracts outside the Scope of the Public Procurement Legislation (Private Contracts/ Private Sector Procurement)

Beneficiaries who are non-contracting authorities are not subject to the Public Contract legislation, other than the two exceptions below (Subsidised Public Contract and Public Works Concession Contract - see points a) & b) at the end of this section), but must still follow the rules that they usually follow for purchasing and, if applicable, the advertising, selection and award of contracts.

To demonstrate value for money, beneficiaries must at least request several quotations and obtain a minimum of three where possible.

NB: WEFO's minimum standards – three quotations (or invitations to bid/ tender) for purchases > £5k (net of VAT); one quotation if <£5k (net of VAT) and adherence to the 'conflicts of interests' rules – apply to all beneficiaries, even where they have established purchasing/ procurement rules – see section 36.3.4 for further details.

Beneficiaries **must** also follow the 'conflicts of interest' rules set out 36.3.6.

Any selection and award of contracts must adhere to the following EU Treaty principles:

- Non-Discriminatory;
- Equal Treatment and
- Transparency

The publication of a call for tenders/ invitations to tender is not normally necessary for private procurement, unless required by your own established purchasing/ procurement procedures. The reference to 'established purchasing/ procurement procedures' does not necessarily mean a formal procurement strategy or policy statement (but if they exist, they need to be adhered to) – existing procedures could be operational procedures/ desk instructions that document how the organisation's employees must consider value for money/ competition when buying large value items/ entering into contracts. This will vary from SME to SME but could include for example:

- Obtaining quotations (oral or written) before placing orders;
- Approval, authorisation, second person reviews prior to placing orders (perhaps different levels of authority depending on value of purchase/ contract);
- Checking track record of suppliers before placing another order;
- Review by external expert/ peer review (before placing order/ signing contract);
- Review/ approval by board of directors/ executives;
- Thresholds, or other factors, that determine whether to run an open advertisement (invite to quote or invite to tender) rather than direct approach to selected potential contractors.

- Beneficiaries which are outside the scope of the Public Contracts Regulations i.e. non-contracting authorities must still use fair and open practices, including competitive tendering, when entering into contracts of any kind for which you intend to claim funding from the Structural Funds.

In the absence of such policies the following is a best practice example of where to begin:

- You must put in place a process which assesses the merits of the bids on an impartial basis: (Business case, with a genuine pre-estimate of cost and need)

A contract description which is non-discriminatory, you cannot refer to a particular brand, qualification, certification of a specific origin or trademarks; for the purpose of demonstrating mutual recognition you should make it clear that equivalents will be equally valid (Evidence of pre tender engagement and/ or market research, Specification of Requirement)

- Design the process so that there is no direct or indirect discrimination of bidders from other Member States e.g. Stating the company must be Welsh
- Making available the same information about the contract opportunity to all interested parties (providing all information up front, including estimated value where possible, in the instructions to Bidders/ Specification/ Advert/ Contract Notice, making all documents freely available in the same place, documenting and publishing any correspondence or answers to clarifications to all interested Bidders)
- Putting in place appropriate time limits to allow bidders to consider the contract and submit a meaningful bid. As well as ensuring that any extensions/ amendments to the notice are conveyed to all potential bidders (maintaining a record of expressions of interests/ request to participate)
- Recording in writing and managing potential conflicts of interest (see section 36.3.6)
- Ensuring that applicable rules of the bidding process including award criteria, are communicated in writing to potential bidders at the outset (Advert/ Contract Notice)
- Applying the communicated bidding process rules in the same way to all

applicants throughout the process (tender evaluation document, copies of communication, interviews, presentations held with bidders)

- Awarding the contract to a bidder on the merit of their bid and in line with the procedural rules set out at the start of the process and retain evidence to confirm how a decision was made (retaining all bids received, justification paper evidencing key decisions taken and why, award letters, award notice/ announcements)

The rules need to be sufficiently detailed and procedural in nature to enable audits/ verifications to determine whether the rules have been followed or not. High-level policies or strategies (e.g. 'staff will consider value for money') would therefore not meet this requirement.

Documenting the entire procurement process and justifying all key decisions is a critical requirement to ensure that the regularity of expenditure can be subsequently verified or audited.

Helpful/ useful document:

<https://gov.wales/docs/wefo/publications/180625-guidance-public-procurement-en.pdf>

In Summary: If the beneficiary is not a Contracting Authority and is not undertaking a subsidised public contract then it is not subject to public procurement rules. WEFO does not prescribe any particular rules or procedures on how a company needs to conduct its procedures other than demonstrating value for money, adhering to WEFO's minimum standards and the management of conflicts of interest. If the beneficiary has its own procurement procedures in place then it should also adhere to/ follow these procedures for purchasing. Audits/ verifications will check whether a beneficiary has followed its usual procedures set out in its procurement policy in addition to WEFO's minimum standards.

Public Contracts let by private bodies

Although private sector bodies are not usually subject to public procurement legislation, there are two exceptions:

a) Subsidised Public Contracts

A subsidised public contract is a contract awarded by a body other than a Contracting Authority/ Contracting Entity but where:

- A contracting authority directly contributes **more than 50%** of the amount to be paid under the contract (this includes the contribution from the EU Funds but also includes other contributions to be provided by other contracting authorities); **and**
- the contract is a 'subsidised public works contract' for civil engineering activities; building work for hospitals; facilities intended for sports, recreation and leisure; school and university building; or buildings for administrative purposes; or
- the contract is a subsidised public services contract in connection with the subsidised public work contract (as defined above).

Where this applies, the public authority awarding the grant is obliged to make it a condition of the grant that the subsidised body (private body) complies with public procurement legislation as if it were a public authority.

See Regulation 13 of The Public Contracts Regulations 2015 for further details.

b) Public Works Concession Contracts

These are contracts where a contractor is given rights to exploit the works – e.g. toll roads, toll crossings – and the winning concessionaire is required to comply with certain OJEU advertising requirements for works contracts that it intends to award to third parties.

36.3.3 Organisations Falling within the Scope of the Wales Public Procurement Statement (WPPS)

Public sector organisations in Wales are reminded that, in line with the ministerial statement on Wales Procurement Policy (6 December 2012), the **Welsh public sector** are expected to advertise all contracts over £25k on [sell2wales: Welcome to Sell2Wales - Sell2Wales \(gov.wales\)](https://sell2wales.gov.wales) and adhere to the other provisions set out in the statement, including:

- Community Benefits – delivery of added value through Community Benefits policy must be an integral consideration in all public sector procurement.
- Use of SQUID approach as standard to supplier selection.
- Ensure adequate skills and resources are in place to carry out effective procurement and contract management.

36.3.4 Minimum Standards for all Purchasing and Procurement

All beneficiaries must always adhere to WEFO's minimum standards for purchases as well as their own established procurement strategy, policies and standards.

All beneficiaries must also adhere to the 'conflicts of interests' rules at section 36.3.6.

In the absence of any applicable EU, UK or Wales procurement legislation and rules, we allow beneficiaries to use their own established policies and procedures if there

are supporting documents available, if so requested, to demonstrate that those procedures have been followed by the beneficiary for their own spending/ contracts not supported by public funds.

The table below sets out the minimum standards:

Purchase Value	Requirements
< £5000 (net of VAT)	One quote written or verbal must be obtained
> £5000 (net of VAT)	<u>Minimum of three</u> written quotations or three invitations to submit a bid/ tender must be obtained (unless unable to identify three potential providers)
Framework Agreements	Where an established framework agreement is used, the 'call off' procedures laid down in that agreement must be adhered too (Note: The procurement of the Framework Agreement will be subject to the same audit requirements)

The £5,000 threshold means the total value of the purchase, order or contract (net of VAT where applicable). It does not mean the value of EU grant or public support received by the beneficiary.

For 'Public Contracts' only

£25,000 up to applicable EU Public Procurement Thresholds

Formal tender process, advertise on Sell2Wales, seek minimum of 3 bids (award procedure – contract award)

[All threshold figures exclude VAT].

Unable to source three quotes/ three potential bidders

If unable to source three quotations, you must keep supporting evidence and a record of the suitably justified reasons why you were unable to source three potential suppliers/ providers.

If only one provider/ supplier available or feasible (e.g. unique, specialised/ customised equipment or services, only available from one company) you must keep

records and evidence to explain and justify the reasons for concluding that there are no alternative providers for the desired product or specification and that competition is absent (this will be tested in subsequent audits).

Where the price is negotiable (i.e. not a standard tariff/ fixed manufacturers list price etc.) there must also be an attempt to negotiate the lowest possible price and keep evidence to demonstrate this.

36.3.5. Organisations/ Small to Medium Sized Enterprises (Beneficiaries) Receiving Direct Financial Support via a Grant Scheme Subject to State Aid Rules

In Wales such operations are managed by an Intermediate Body. For further information, please see WEFO document entitled, 'Delivery models'.

Organisations/ small to medium sized enterprises (SMEs) are allowed to adopt their own established procurement policies – inclusive of policies that require fewer and/ or more than the minimum standard of 3 quotes - however this will be subject to an assessment by the Intermediate Body in relation to reasonability of price/ choice of contractor/ value for money. The fundamental requirement is to ensure the compliant application of your established procurement process.

Where organisations/ SMEs do not have an established procurement process, the Welsh Government approach must be adopted, for contracts valued at <£5k and >£5k, as set out at 36.3.4 above. In cases where it is not possible to source 3 quotes for a contract valued at >£5k, the contract can be awarded, as long as written records are maintained by the SME and Intermediate Body justifying why:

- it was not possible to obtain 3 quotes, and
- the SME and Intermediate Body were satisfied that the agreed price represented value for money

Please note: where organisations/ SMEs have to adopt the Welsh Government approach, they will be expected to work with the Intermediate Body to develop appropriate procurement/ purchasing procedures, so ensuring all future purchases adhere to a value for money principle.

The rules concerning conflicts of interest (as outlined at 36.3.6 below) will apply throughout the procurement/ purchasing process.

36.3.6 Handling (Actual, Potential or Perceived) Conflicts of Interest

It is possible that a beneficiary's staff, management or directors/ owners, or persons connected with them (such as relatives, business partners or friends) may wish to tender for a contract being offered by the beneficiary.

This is not prohibited but the beneficiary will need to put appropriate safeguards in place so that they conduct the procurement procedure as openly and as transparently as possible.

If the staff, management or directors/ owners of the beneficiary, or any person connected with them, has an interest in any of the potential bids for a contract offered by a beneficiary:

- that person must **declare the interest** in writing to the Chair of the beneficiary (or most senior officer if the Chair is the individual concerned), copied to the most senior executive (Chief Executive/ Chief Operating Officer/ Managing Director etc.). If the beneficiary has existing policies on handling of potential conflicts, the potential conflict can be reported to the officers identified in that policy.
- that person with an interest should **take no part** whatsoever in any of the procurement process
- the beneficiary should consider how its procurement guidelines should be applied to ensure not only that the procedure is fair to all bidders but can be **seen to be** fair as well;
- if the contract would normally be subject to a single tender procedure/ direct contract award (i.e. less than £5000 (net of VAT)); it is recommended that the beneficiary obtains further written quotes from at least two other suppliers/ providers to demonstrate the fair, market-based pricing of the contract;
- every stage in the procedure must be recorded formally and the records retained on file and be made available for inspection.

The purpose of these guidelines is to ensure that there is fairness and propriety in the spending of public money and that the integrity of the beneficiary is not undermined.

If the beneficiary has established conflicts of interest procedures that, at least, meet the same standard as set out above, their own procedures can be followed.

Lowest price or best value for money?

You must base your purchases on the best value for money considering the quality of the service, good or works proposed (the 'best price-quality ratio') **or** on the lowest price.

For the best price-quality ratio, price is an essential aspect — together with quality criteria, such as technical quality, running costs, delivery times, after-sales service and technical assistance, etc. — but it is not automatically necessary to select the offer with the lowest price.

The criteria defining 'quality' must be clear and in line with the proposed purpose of the purchase.

General rules on procured delivery of ESF/ ERDF supported activities ('outsourcing'/ contracted delivery)

If you do not have the capability or capacity to manage or implement some elements of the project yourself, you may engage external companies to provide those services, goods or works, subject to the rules below.

Contracts let at standard commercial terms can include a profit margin and the supplier does not have to comply with the eligibility rules in this document unless you ask them to. A properly let contract, adhering to the principles of transparency and equal opportunities for all potential bidders, provides assurance of value for money and proper use of EU funds.

Beneficiaries must ensure the successful contractor agrees to provide verifications staff and auditors with the necessary access rights to carry out checks, reviews, audits and investigations on the EU supported activities performed by a contractor (procured delivery of project activities), including related EU conditions such as publicity/ billboards etc. It is the beneficiary's responsibility to ensure that this obligation is accepted by the contractor before contracts are awarded.

Contracts let before the start of your project

You may make use of existing contracts, including framework contracts/ call-off arrangements, if they were originally let in full compliance with EC public procurement requirements at that time. If you were not a 'contracting authority/ contracting entity' as defined in the EC directives, you must evidence that the contract award process complied with your own organisation's policies and represents value for money.

This means that the records relating to the original procurement process must be available for inspection and will be regarded as part of your project records. Access

to these records is required for the document retention period confirmed in your funding agreement.

If you are unable to access or retrieve the original procurement records, or it was not let in a compliant manner, contract costs are ineligible for support from the EU funds.

The rules are summarised in this table and related to the beneficiary responsible for the procurement/ purchasing procedure – a sole, lead or joint beneficiary.

#	Question	Answer
1	Are you a contracting authority/ sub-central contracting authority as defined in the Public Contracts Regulations 2015?	<p>YES > You must comply with the public contract regulations, including contracts below the applicable EU thresholds.</p> <p>If you fall within the scope of the WPPS, you are also expected to follow those requirements as well as your own internal policies and procedures.</p> <p>NO – Go to 2</p>
2	Does your organisation fall within the scope of the WPPS?	<p>YES – You must comply with the requirements of the WPPS, as well as your own internal policies and procedures.</p> <p>NO – Go to 3</p>
3	Are you a private company letting a ‘subsidised public contract’?	<p>YES – You must comply with the Public Contract Regulations 2015 as well as your own established internal policies and procedures.</p> <p>NO – Go to 4</p>
4	Do you have established internal rules on buying/	YES – You can follow

	<p>procurement that include obtaining competitive quotations and/ or inviting expressions of interest/ contract tenders?</p> <p>Can you provide evidence, if needed, that these procedures have been followed when purchasing/ procuring for contracts not supported by external public funds?</p>	<p>your own established internal procedures subject to the minimum standards</p> <p>NO – You must follow the rules set out in 36.3.4.</p>
--	--	---

Please contact us for clarification if your particular situation is not covered in this document.

36.4 State Aid

State Aid is an EC term for public resources provided selectively to commercial undertakings that has the potential to affect competition and trade within the EU.

This type of public assistance - State Aid - could distort the market, which in turn could result in lower competitiveness for business, less innovation and ultimately higher prices for consumers.

The definition of State Aid stems from Article 107 and 108 of the EU Treaty and translates to the 5 tests set out below. **All five tests** have to be met for the State Aid rules to apply.

1. Aid is granted by an EU Member State OR through state resources such as European funds managed by national public administrations or the distribution of lottery funds.
2. Aid confers an advantage on the recipient.
3. It favours certain commercial undertakings OR the production of certain goods i.e. it is selective in its nature.
4. It distorts competition OR has the potential to distort competition.
5. The activity is tradable between EU Member States and the aid has the potential to affect that trade.

State Aid has a wide application as it can relate to any support provided to undertakings. An 'undertaking' is defined as any entity, regardless of its legal status engaged in economic activities or that competes with commercial organisations.

The undertaking does not have to be profit making so long as the activity carried out is one which **in principle has commercial competitors**. Public organisations, charities, universities, voluntary entities, social enterprises and not for profit organisations can all be classed as 'undertakings' when they engage in economic activity.

The potential to distort competition and affect trade criteria is very broad - even small amounts of aid could potentially distort competition and it is sufficient that a product or service is subject to trade between Member States even if the aid recipient does not itself trade with other Member States.

Whilst the European Treaty sets out that State Aid is incompatible with the common market, there are circumstances where State Aid can be allowed.

These circumstances are set out in the **State Aid rules** - a series of frameworks, guidelines and exemptions. These rules enable Member States to provide support to achieve desirable policy outcomes.

Where the support is classed as State Aid, the aid provider/ aid administrator needs to ensure that they have the necessary approvals, exemptions and/ or notifications are in place.

We can only award funding when it is satisfied that the potential for State Aid to be present has been properly assessed and, if required, such support is allowed by the State Aid rules. State Aid could potentially exist at a number of levels in a WEFO operation:

- Where WEFO awards financial support to a beneficiary.
- Where WEFO awards financial support or to a lead beneficiary who passes on the support to and one or more joint beneficiaries approved by WEFO to carry out some elements of the operation.
- Where WEFO authorises an 'Intermediate Body' to award financial support to beneficiaries on WEFO's behalf.
- Where a delivery organisation, contracted by a WEFO beneficiary, provides financial or non-financial support to end users/ end recipients that meets the five State Aid tests, e.g. where a contracted service provider is used to distribute financial support to companies on behalf of the beneficiary.
- It is essential that beneficiaries manage any State Aid requirements in the appropriate way. Beneficiaries must ensure that they implement the correct processes and procedures to manage the treatment of any state aid.
- For beneficiaries utilising a registered GBER scheme then they must ensure that it fits the activity being undertaken in the operation. The beneficiary must ensure that it writes to the organisation that is receiving the aid and establishes how much aid they have received to date and maintain a record of this. The beneficiary is also required to maintain a record of all aid given out and complete an annual return to the State Aid Team each year.
- For beneficiaries utilising the De Minimis scheme there is a 200,000 euro threshold and beneficiaries must ensure the aid recipient does not exceed this threshold over a 3 year fiscal period. The beneficiary must establish how much aid they have received to date before the award of any aid. The beneficiary must

also write to the aid recipient and inform them of the value of the de-minimis aid provided to them.

- Where your organisation is eligible to claim Employment Allowance you must account for this within any claims you submit to WEFO for receipt of structural fund support. You will also need to have a robust mechanism in place to record the amount of employment allowance received in order to demonstrate that the de-minimis threshold of €200,000 over three fiscal years is not exceeded/breached. WEFO will not contribute towards any amount received as Employment Allowance.

For more detailed information on State Aid then please visit the State Aid website via the following link:

<https://gov.wales/state-aid>

To note: As of July 2016 Member States are required to publish the beneficiaries of all individual aid awards above €500,000 notified to the Welsh Government using the online reporting tool provided on :

<https://gov.wales/state-aid>

37. Technical Assistance Rules and Conditions

Where described in the business plan/ funding application and approved by us, the European Structural Funds may support actions for:

- programme preparation, management, monitoring, and evaluation;
- programme monitoring committee meetings and any sub-committees;
- programme information and communication measures, including the costs of language translation and interpreters;
- networking connected to the efficient and effective implementation of the programmes;
- complaint resolution;
- programme control and audit, including anti-fraud and corruption measures;
- actions to reduce the administrative burden for beneficiaries, including the introduction of electronic data exchange systems ('e-Cohesion');
- only where envisaged in the Operational Programmes adopted by the Commission, actions that reinforce the capacity of the programme authorities, and beneficiaries to administer and use the EU Funds; and
- actions to reinforce the capacity of, and exchange best practices between, relevant partners; and
- remuneration of publically appointed expert members and chair of the programme monitoring committee.

These actions may concern the 2014-2020 programme period as well as the preceding or subsequent programming periods, if this is covered in the approved business plan.

Technical Assistance support is excluded from the rules regarding revenue set out in Section 32

Structural Funds Technical Assistance cannot support Rural Development Programme activities – and vice versa – and so the following arrangement is used to allocate the costs of common activities that benefit all the ESI Funds managed by the Welsh Government, such as the single Programme Monitoring Committee and other ESI funds co-ordination activities.

Costs are allocated on a pro-rata basis for each of the five ESI Fund programmes managed directly by the Welsh Government (two ESF, two ERDF, one EAFRD), measured by the pro-rata percentage share of the overall **EU funding contributions** as set out in the UK Partnership Agreement adopted by the EC in 2014.

Activities can be implemented outside the funding programme area, but within the EU, provided that the project is for the benefit of the operational programme providing the funding.

Technical Assistance expenditure may be incurred outside the EU if it benefits the programme area but you must seek our approval for this type of expenditure in

advance from us so that we can confirm that it is necessary and check that adequate management, control and audit arrangements can be put in place.

Technical Assistance actions linked to the functions and tasks necessary for the implementation of the Structural Funds programmes are fulfilled by:

- the managing authority (WEFO)
- the certifying authority (WEFO)
- the audit authority (Welsh Government, European Funds Audit Team)
- any intermediate bodies fulfilling designated functions and management tasks

In some cases, other bodies can fulfil some of these functions, for example, coordination of programme implementation, but technical assistance funds must not be used to support **functions not necessary** for the efficient and effective implementation of the Structural Funds programmes.

SPECIFIC CASE

Intermediate Bodies (IBs)

Technical Assistance can be provided for eligible costs incurred in carrying out the functions and management tasks designated by WEFO. The IB eligible costs must relate only to the specifically-named operations agreed in writing with WEFO.

38. Combining Support from More Than One EU Fund

Cross-fund flexibility (ERDF and ESF)

It is possible for the ERDF to support, in a complementary manner, a part of your ERDF operation for which the activities are eligible for support from the ESF.

Similarly, it is possible for the ESF to support, in a complementary manner, a part of your ESF operation for which the activities are eligible for support from the ERDF.

If we approve this flexibility, you will then be able to administer this multi-fund investment as a single WEFO operation.

If this option is approved by us, the basis of eligibility falls within the rules applicable to the **fund under which the activities are (usually) eligible**, and must be necessary for the satisfactory implementation of the operation and directly linked to it.

For example, if the ESF programme supports an ESF operation (80% of total project costs) and also supports some activities usually eligible under the ERDF (20% of total project costs) – the ERDF eligibility rules will apply to the 20% ERDF activities that take place within this ESF operation.

We can only use this flexibility up to a limit of 10% of the EU grant contribution allocated to each Operational Programme priority and so you should check with us to see whether there is scope to offer you this type of flexibility.

If we approve this cross-fund flexibility, we may require any subsequent project evaluations to consider and report on the effectiveness of the cross-fund support.

Further Information: See article 98 of EU 1303/ 2013

Funding your project from more than one EU Fund or Programme

It is possible for your project to receive EU support from one or more of the European Structural and Investment Funds or from one or more programmes and from other EU instruments, provided that each expenditure item included in a request for payment for reimbursement by one of the Funds does not receive support from another Fund or EU instrument, or support from the same Fund under another programme.

In addition to clearly separating the expenditure items, it is essential to identify which funding source has generated which outputs, results and other project outcomes.

Other EU or ESI funds **cannot be used as national match funding** for your project.

More flexible rules exist for investments supported by both Horizon 2020 and the Structural Funds but this is outside the scope of this guidance note.

ANNEX A - Collaborative Operations

A collaborative operation is managed, or managed and delivered, by more than one organisation, i.e. a lead beneficiary and one or more 'joint beneficiaries' agreed with us in advance. Please see our separate guidance note '**WEFO Delivery Models 2014-2020**' available on the EU Funding pages of the Welsh Government website.

When we approve a collaborative operation, the costs and activities of the partner organisations can be supported from the EU funds if compliant with all applicable rules for beneficiaries.

From our perspective, the lead beneficiary is fully and solely responsible for the compliant and effective use of the EU funds but the lead beneficiary can put agreements in place to share, or transfer, risks to its collaborative partners.

These risk-sharing agreements can include, for example, agreeing how financial liabilities will be handled for any funding cancelled or recovered by us if we find that funding rules and conditions have not been met for the expenditure declared by the partner organisations.

Expenditure

Costs incurred and paid by joint beneficiaries can be included in the lead beneficiary's payment claims only if the lead beneficiary is satisfied that the other beneficiaries are aware of, and in a position to comply with, the beneficiary rules set out in this document and the funding agreement.

Costs incurred and paid by joint beneficiaries can be included in the lead beneficiary's payment claims only if the joint beneficiary has confirmed their acceptance of the beneficiary rules set out in this document and the funding agreement, by signing the relevant Schedule 3 in the funding agreement for the operation.

While lead beneficiaries do not carry out 'verifications' on expenditure declared by its partners – this is a task reserved for WEFO and would therefore create unnecessary duplication and costs – the lead beneficiary is expected to:

- Perform regular checks that joint beneficiaries are adhering to the terms of the partnership agreement/ service level agreement.
- Satisfy itself that each joint beneficiary understands the beneficiary rules and conditions set out in the WEFO Funding Agreement and expenditure eligibility rules and guidance documents.
- Satisfy itself that each joint beneficiary has put in place effective processes and controls to prevent and detect any errors or fraud before eligible expenditure is reported to the lead beneficiary.

- Where a joint beneficiary does not have the resources or expertise to perform such processes and controls themselves, the lead beneficiary may assist with carrying out these controls.
- Validate the expenditure and receipts declared by joint beneficiaries by checking completeness and accuracy of transaction lists; performing a 'reasonability check' on the amounts and types of costs claimed; and seeking assurance that eligible costs relate only to activities/ actions approved by us.

Other than spot-checks in connection with the above, the lead beneficiary should not routinely vouch for the costs and receipts reported by joint beneficiaries to their supporting documents: these controls are performed by WEFO and, as an unnecessary task, cannot be claimed by the beneficiary as an eligible use of staff time. A lead beneficiary may perform their own 'verifications' type checks on joint beneficiaries but the associated staff time/ staff costs would be ineligible. Therefore, lead beneficiaries should consider strengthening their partnership agreements if they have concerns about the recovery of amounts unduly paid and/ or cancellation of EU grant attributable to a joint beneficiary.

Lead beneficiaries must not add notional amounts to the costs incurred by its partners when submitting a claim to us, e.g. service charges, management charges, mark-up, cost-plus pricing etc.

Project Revenue

Lead beneficiaries must ensure that any revenue received by joint beneficiaries and any other beneficiary/ delivery partner is recorded and reported in the same way as the lead beneficiary's obligations set out in Section 32.

Contributions In-kind

Joint beneficiaries and delivery partners are not 'third parties' of the operation and cannot therefore provide in-kind contributions to the operation. Contributions of joint beneficiaries/ delivery partners to the project are therefore treated as 'own resources' match funding within the meaning of section 33 and not in-kind match funding.

A partner may provide the project with the use of already owned assets, property, equipment, furniture etc. This could be for the partner to use on the project or provided to other partners or the lead beneficiary's to use. The same principle applies as when this happens at lead beneficiary level – the purchase cost of such items are ineligible but asset depreciation charges and repairs and maintenance costs can be claimed where justified – see 7.5.4.

ANNEX B - Audits and Verifications

General

'Verifications' mean the checks that WEFO performs on operations and projects. These could be 'desk-based' checks performed remotely from our offices or may involve visits to where records are kept and, if different, where the project activities take place. WEFO may ask contractors or Intermediate Bodies to carry out verifications work on its behalf.

'National audits' mean audits undertaken by the Welsh Government's European Funds Audit Team, being the designated programme 'Audit Authority' in Wales for the EU Structural Funds programmes. These audits involve visits to where records are kept and, if different, where the supported activities take place.

'EC audits' mean audits undertaken by the staff of the European Commission. It does not mean audits performed by the European Court of Auditors.

For statistical or fraud prevention and detection purposes, it may be necessary for verifications and audit staff to access a beneficiary's general accounting records, even where a project is financed by way of lump sums, unit costs or flat rates (simplified costs rather than 'real costs'). These checks, however, will **not** be used for questioning the values of the flat-rate, unit costs or lump sums already agreed by us in your funding award letter.

Measures to Avoid the Duplication of Audits

To avoid excessive audits, the following approach is taken:

- Smaller value operations (total eligible expenditure not exceeding EUR 400,000 for ERDF or EUR 300,000 for ESF) will not be audited more than once by EC auditors or national auditors **during the lifetime** of the operation. This period begins from the award of funding and will last until WEFO provides the EC with its annual accounts for the accounting year (July to June) in which the operation is considered 'fully completed'.
- All other operations exceeding the respective fund's threshold will not be audited more than once by EC or national auditors **in the same year** (1 July to 30 June).
- Operations will also not be subject to an audit by EC or national auditors in any year if there has already been an audit in that year by the European Court of Auditors. This rule will only apply if the EC or national auditors are satisfied that the results of the audit work performed by the European Court of Auditors can be accepted for the purpose of fulfilling their respective tasks.

As an exception to the above rules, EC or national auditors reserve the right to carry out audits of operations where they, or the European Court of Auditors, have established a **specific risk of irregularity or fraud**, in the case of evidence of

serious deficiencies in the effective functioning of the programme's management and control system.

The EC may also, for the purpose of assessing the work of the national audit authority, review the audit trail of the audit authority or take part in the on-the-spot audits of the audit authority and, where, in accordance with internationally accepted audit standards, it is necessary for the purpose of obtaining assurance as to the effective functioning of the audit authority, the EC may carry out audits of operations.

Further Information: article 148 of EU 1303/ 2013.

ANNEX C – Audit Trails

ACCOUNTING RECORDS

Financial accounting records at the beneficiary level (lead; joint; or aid scheme beneficiary) must provide detailed information about costs actually incurred and, where applicable, paid out, together with funds received such as financial match funding from third parties; revenue generated by the project; and other receipts or credits such as refunds, the return of deposits, 'cashback' payments, release of contingency sums, and credit notes.

Beneficiaries must clearly distinguish the EU project transactions from other business transactions, either by using a separate accounting system or by using accounting codes – manual or system-based - that uniquely link the transactions to the EU project.

The accounting records must, at least, show the **date** of the transaction, the **value** of each item, and sufficient **identifying information** to enable the transaction to be matched to the supporting documents.

In addition, the beneficiary's usual cost accounting practices and internal control procedures must facilitate a **direct reconciliation** between the amounts declared to WEFO, the amounts recorded in their accounts and the amounts stated in the supporting documentation.

Manual interventions into the accounting records – such as adjustments and journal transfers - must be traceable, documented and justified.

For items of expenditure relating to more than one EU funded operation, the allocation of costs between the operation and the other operations must be set out in supporting working papers and ensure that no more than 100% of each cost is claimed.

In collaborative operations, the lead beneficiary aggregates each beneficiary's eligible costs and receipts into a single payment claim for submission to WEFO. The lead beneficiary must retain working papers to demonstrate how the aggregated payment claim reconciles to the underlying costs and receipts declared by each beneficiary in the operation.

In all cases, eligible expenditure must be capable of being **linked with the corresponding activities** that gave rise to those costs. For example, **presence sheets, attendance sheets, and proof of delivery** for supported activities must be traceable to the associated cost invoices and staff costs (including if applicable, staff time records). This is a key consideration when verifications and audits look to test **the reality of the project's activities**: not just whether the costs can be proven.

SUPPORTING DOCUMENTS

Each operation is different but the general rule is that beneficiaries must retain **all documents necessary to demonstrate that the funding rules and conditions have been met**.

Beneficiaries must keep **appropriate** and **sufficient** evidence to prove the proper implementation of their project and eligibility of the expenditure declared. '**Sufficiency**' relates to the quantity of evidence; '**appropriateness**' relates to its quality.

Evidence is considered sufficient and appropriate if it is persuasive enough for acceptance by verifications and audit staff, who will be guided by generally accepted audit standards.

All supporting documents must be verifiable, auditable and readily accessible.

Therefore, while it is not possible to provide an exhaustive list of supporting documents, the most common types:

- Proof that costs were actually incurred: receipted invoices, bills or statements together with purchase orders; goods received notes (if applicable); payroll records; contracts etc.
- Proof that costs were paid out: bank statements, BACS/ CHAPS reports, copies of paid cheques.
- Proof of the cost (or value) of contributions in-kind and proof that the contribution was actually delivered to/ utilised by the project.
- Documents to prove the reality of reported outputs and results.
- Evaluation reports.
- Procurement and contract management records, including details of unsuccessful bids.
- Inventory or register for equipment and other assets.
- Evidence proving compliance with all other funding conditions explained in this document and the grant funding agreement – State Aid rules; information and publicity measures, cross-cutting themes, environmental compliance etc.
- For expenditure declared on the basis of unit costs (simplified costs): adequate records and other supporting documentation to prove the number of units declared. Beneficiaries do not need to identify the actual eligible costs covered or to keep or provide supporting documentation (such as accounting statements) to prove the amount declared per unit.
- For expenditure declared on the basis of flat-rates (simplified costs): adequate records and other supporting documentation to prove the eligibility of the costs to which the flat-rate percentage is being applied. The beneficiaries do not need to identify the costs covered or provide supporting documentation (such as accounting statements) to prove the eligible expenditure amounts declared on a

flat-rate basis. However, beneficiaries must still keep a record of the names of staff working on the project in each claim period, which must then be supported by relevant employment documents such as contracts, secondment letters, time sheets (if necessary) etc.

- For expenditure declared on the basis of lump sums (simplified costs): adequate records and other supporting documentation to prove that the corresponding milestones or events, as set out in the grant funding agreement, were implemented properly. The beneficiaries do not need to identify the actual eligible costs covered or provide supporting documentation (such as accounting statements) to prove the amount declared as a lump sum.
- Photographs of billboards, plaques, and posters.
- Copies of promotional brochures, training materials, qualification and completion certificates/ awards.

Supporting Documents for Staff Costs

For staff costs (whether 'real costs' or 'unit costs'), beneficiaries may need to keep **time records** for the number of hours declared in each claim period. The time records must be signed/ authorised by the staff member and their supervisor, at least monthly but preferably weekly.

For persons working exclusively on a WEFO operation/ project, there is no need to keep time records if either:

- (a) the employment contract, secondment written terms and conditions, job description (or similar document) clearly assigns the individual to work all their contracted hours **or** a fixed number of regular contracted hours on the operation; or
- (b) the beneficiary signs a declaration confirming that the staff concerned have worked on the WEFO operation for all their contracted hours or a fixed number of contracted hours. This declaration must be dated and authorised/ countersigned for acceptance by the staff member concerned and there should be a clearly justified reason why the EU project work was not specified in the relevant employment documents in advance.

Beneficiaries must be able to justify and, where applicable, provide supporting documents to demonstrate a link to the EU project work undertaken and results achieved for the staff hours declared as eligible costs. This applies whether staff costs are claimed on a 'real costs' or 'simplified costs' basis.

The staff costs audit trail must be detailed per individual staff member (and not aggregated to a summary level) carrying out work.

The eligible staff costs must reconcile to the beneficiary's usual accounting records (i.e. general ledger transactions, financial statements) and supporting documentation

(i.e. employment contracts, collective labour/ trade union agreements, time records, bank statements showing disbursement of the salary payments to the individuals, etc.).

In the absence of structured time recording systems (computerised or paper-based 'time sheets'), verifications and audits may – at their discretion – consider accepting alternative evidence supporting the number of hours declared if they consider that it offers a level of assurance equivalent to that provided by structured time sheets. Possible alternative evidence may be considered at the discretion of the verifications/ audit staff, such as (non-exhaustive list): travel documents proving participation in a meeting or activity (boarding pass, travel tickets, hotel invoice, etc.) and minutes of the meeting/ event; attendance lists; working papers; log books; professional/ personal diaries; documents related to presentations; publications; correspondence such as letters, notes, memos, emails; etc.

Time Registration Systems/ Time Sheets Must Include:

- name and reference ('case ID') of the WEFO operation(s).
- name of the employer/ beneficiary.
- full name (forename & surname), date and authorisation/ signature of the person working on the EU project.
- number of hours per working day declared for the EU project.
- supervisor's/ project manager's full name and authorisation/ signature
- a brief description - or codes that link to further detail/ supporting documents - of the activities carried out, to understand and show what work was carried out to easily verify that the work carried out matches the activities approved by WEFO.

We provide a template paper-based time sheet – see [TEMPLATE 1](#) - and an Excel version is also available on request.

Information included in time sheets must match other records, for example, records of annual and sick leave taken, and work-related travel.

ANNEX D - Simplified Cost Options

For ERDF Operations			
Costs calculated using simplified costs	Type of simplified cost	Description	Availability
INDIRECT COSTS	Flat-rate: 15% of eligible direct staff costs	Eligible indirect costs are calculated using the flat-rate calculation without any need to justify the rate. No audit trail for the real indirect costs is required. The expenditure calculated using the flat-rate is then treated as if actually incurred and paid out by the beneficiary, including for match funding purposes.	All operations that clearly benefit from indirect costs.
INDIRECT COSTS	Flat-rate: 25% of eligible direct costs .	As above. The following eligible direct costs are not considered to significantly impact on a beneficiary's real indirect costs and must therefore be excluded from the calculation by deducting them from eligible direct costs before the 25% is calculated: <ul style="list-style-type: none"> - sub-contracting costs (i.e. full <u>contracted delivery</u> of operations, projects or activities) - costs of resources made available by third parties but not used on the beneficiary's premises - direct financial support provided to third parties (e.g. grants, stipends etc.) 	Qualifying research and innovation projects: see qualifying rules in Section 19.
STAFF COSTS	Unit cost: £ hourly rate for beneficiary staff managing and delivering projects.	Hourly rate(s) agreed case-by-case for each beneficiary based on the latest actual eligible staff costs for the individual staff members – or groups of staff at similar grades/ similar experience – over the preceding 12 months. Hourly rates can be updated every 2 years on request. When calculating an hourly rate, the annual productive working hours of the employees are used	All operations.

		(requires justification to supporting documents) or presumed hours of 1,720 can be used without justification.	
INDIRECT COSTS, CONTRIBUTIONS IN-KIND, DEPRECIATION, AND DIRECT COSTS (other than direct staff costs)	Flat-rate: 40% of eligible direct staff costs	<p>The only eligible costs verified to accounting records and supported documents are <u>direct staff costs</u>. All other costs are deemed to be covered by the 40% flat-rate. However, as per Section 19.6.3 for ERDF & ESF operations: as from 2 August 2018 in-kind contributions dispersed by a third party i.e. salaries and allowances paid to participants, can be declared <u>in addition to the eligible direct staff costs and to the 40% flat rate applied to the eligible direct staff costs.</u></p> <p>The direct staff costs can also be claimed on a unit cost (hourly rate) basis – see below - including the use of 1,720 annual hours, without justification.</p> <p>‘Staff costs’ means employees of the beneficiary; personnel seconded to work on the EU project; costs of individuals working on the project under a direct contract (external staff) but this does not include: service contracts with firms (even if ‘one person’ companies); volunteer project workers; or ESF participants’ time.</p>	All operations.
DIRECT STAFF COSTS	Flat-rate: 20% of other direct costs	<p>Eligible direct staff costs are calculated by applying a flat rate of 20% of the direct costs other than staff costs of that operation.</p> <p><u>The flat-rate can be used and does not require to be justified in advance by us or the beneficiary.</u> Where this option is used, no other <u>direct</u> costs can be calculated using a flat-rate (direct costs must be ‘real costs’ to form the basis of the staff costs flat-rate calculation).</p>	All operations.

For ESF Operations where the Public Support is <u>at least €100,000</u>			
Costs calculated using simplified costs	Type of simplified cost	Description	Availability
INDIRECT COSTS	Flat-rate: 15% of eligible direct staff costs	Eligible indirect costs are calculated using the flat-rate calculation without any need to justify the rate. No audit trail for the real indirect costs is required. The expenditure calculated using the flat-rate are then treated as if actually incurred and paid out by the beneficiary, including for match funding purposes.	All operations that clearly benefit from indirect costs.
INDIRECT COSTS	Flat-rate: 25% of eligible direct costs .	<p>As above. The following eligible direct costs are not considered to significantly impact on a beneficiary's real indirect costs and must therefore be excluded from the calculation by deducting them from eligible direct costs before the 25% is calculated:</p> <ul style="list-style-type: none"> - sub-contracting costs (i.e. full <u>contracted delivery</u> of operations, projects or activities) - costs of resources made available by third parties but not used on the beneficiary's premises - direct financial support provided to third parties (e.g. grants, stipends etc.) 	Qualifying research and innovation projects: see qualifying rules in Section 19.
INDIRECT COSTS, CONTRIBUTIONS IN-KIND, DEPRECIATION, AND DIRECT COSTS (other than direct staff costs)	Flat-rate: 40% of eligible direct staff costs	The only eligible costs verified to accounting records and supported documents are <u>direct staff costs</u> . All other costs are deemed to be covered by the 40% flat-rate. However, as per Section 19.6.3 for ERDF & ESF operations: as from 2 August 2018 in-kind contributions dispersed by a third party i.e. salaries and allowances paid to participants, can be declared <u>in addition to the eligible direct staff costs and to the 40% flat rate applied to the eligible direct staff costs.</u>	All operations.

		<p>The direct staff costs can also be claimed on a unit cost (hourly rate) basis – see below - including the use of 1,720 annual hours, without justification.</p> <p>'Staff costs' means employees of the beneficiary; personnel seconded to work on the EU project; costs of individuals working on the project under a direct contract (external staff) but this does not include: service contracts with firms (even if 'one person' companies); volunteer project workers; or ESF participants' time.</p>	
STAFF COSTS	Unit cost: £ hourly rate for beneficiary staff managing and delivering projects.	Hourly rate(s) agreed case-by-case for each beneficiary based on the latest actual eligible staff costs for the individual staff members – or groups of staff at similar grades/ similar experience – over the preceding 12 months. Hourly rates can be updated every 2 years on request. When calculating an hourly rate, the annual productive working hours of the employees are used (requires justification to supporting documents) or presumed hours of 1,720 can be used without justification.	All operations.
DIRECT STAFF COSTS	Flat-rate: 20% of other direct costs	<p>Eligible direct staff costs are calculated by applying a flat rate of 20% of the direct costs other than staff costs of that operation.</p> <p><u>The flat-rate can be used and does not require to be justified in advance by us or the beneficiary.</u> Where this option is used, no other <u>direct</u> costs can be calculated using a flat-rate (direct costs must be 'real costs' to form the basis of the staff costs flat-rate calculation).</p>	All operations.
DIRECT STAFF COSTS	Unit cost: £ fixed rate per participant for calculating beneficiary direct	A unit cost agreed case by case for each beneficiary. A fixed rate per ESF participant is based on historical staff costs incurred by the beneficiary and the number of participants supported over a 36 month period. When calculating the participant rate, it has been determined by application of historical staff costs incurred by	All operations

	staff costs	the beneficiary against or divided by the number of participants supported over a 36 month period. Rates may be updated every 2 years upon application/ request.	
--	--------------------	---	--

For Operations where the Public Support <u>does not exceed €100,000</u>			
Costs calculated using simplified costs	Type of simplified cost	Description	Availability
ALL ELIGIBLE COSTS	Flat-rates Unit costs Lump sums	<p>WEFO is able to consider agreeing simplified costs arrangements for all eligible costs based solely on a draft budget presented by the beneficiary. No other justification of the agreed simplified cost rates/ amounts are required beyond a review of the draft budget.</p> <ul style="list-style-type: none"> – Flat-rates can be considered for all cost categories but <u>indirect costs flat-rates must never exceed 25%</u> of eligible direct costs. – Unit costs and lump sums are also available based on the draft budget and expected volume of activities or outputs. – WEFO will assess the draft budget for reasonableness and will need to understand the budget cost assumptions. 	Operations where the planned public support (EU and national) does not exceed €100,000 (assessed only at funding approval stage)

For Operations where the Public Support <u>does not exceed €100,000</u>			
Costs calculated using simplified costs	Type of simplified cost	Description	Availability
ALL ELIGIBLE COSTS	Mandatory use of Flat-rates, unit costs and Lump sums	<p>Simplified costs <u>must be used</u> for all eligible costs. Real costs – costs actually incurred and paid out, depreciation charges and contributions in-kind – will not be accepted as eligible expenditure.</p> <p>There are two exceptions:</p> <ul style="list-style-type: none"> - The rule does not apply to operations supported within the framework of a State Aid scheme OR in cases where simplified costs are not applicable because they will be implemented exclusively through procurement. - Where flat-rates are used, the categories of costs to which the flat-rate % will be applied <u>can</u> be reimbursed on the basis of real costs incurred and paid by the beneficiary. In other words, 'real costs' are only allowed where they will be used as the basis for a flat-rate simplified cost. 	Operations where the planned public support (EU and national) does not exceed €100,000 (assessed only at funding approval stage)

NOTES

- For the thresholds denominated in Euros, WEFO examines the exchange rate that applies on the day that the operation is approved.
- Where an operation clearly gives rise to indirect costs, these can only be calculated using flat-rate simplified costs. No alternative 'real costs' method is available.
- Where a project potentially qualifies for more than one flat-rate intended to cover indirect costs (15%, 25%, or 40%), only one flat-rate can be selected for each project. In other words, the percentages cannot be accumulated - they are mutually exclusive. It is however possible for different projects within the same operation to qualify for different levels of flat-rate for their particular indirect costs.
- The costs of paying contractors/ service providers for fully procured activities or projects in an operation must be declared using 'real costs' – simplified costs are not applicable for that part of the operation.

ANNEX E – Procured Delivery of Workplace Safety Training (ESF)

Further to the information provided in the **WEFO Delivery Models 2014-2020** guidance document, the delivery of workplace safety training courses for employees must be procured (i.e. contracted delivery - not direct delivery by the beneficiary).

Meaning of ‘Workplace Safety Training’

This means training that is primarily aimed at supporting safety in the workplace. It includes, for example, health and safety measures and first-aid training. A non-exhaustive list of typical training courses is set out below.

Background

The ‘WEFO Delivery Models 2014-2020’ guidance explains that where an activity is ‘economic’ in nature, delivery of the activity should usually be procured. The key consideration is whether there are indications that an active marketplace exists for the activity in question.

In recent years we have received representations from a number of training firms from across Wales who have pointed out that they provide workplace safety training on a commercial basis and their businesses could be impacted by public subsidies being used by WEFO beneficiaries to carry out the this activity.

We have therefore concluded that, irrespective of the State Aid position, that there is clear evidence that an active marketplace exists for delivering workplace safety training for employees in Wales. Consequently, delivery of workplace safety training courses must be procured.

By exception, where workplace safety topics are covered as part of longer, more substantial training courses or learning and development programmes (such as apprenticeships), the workplace safety component need not be separately procured as a result of this rule.

Beneficiaries are reminded that statutory training obligations (training that employers are required to provide to their staff under EU/ UK laws and regulations irrespective of the existence of the WEFO operation) are ineligible for support from the ESF.

Non-exhaustive List of Typical Workplace Safety Training Courses

- Working at heights
- Asbestos awareness
- Abrasive wheels
- COSHH / principles of COSHH
- Emergency First Aid / First Aid at work
- Manual handling
- Food safety / food hygiene
- Risk assessment
- Supervising teams safely
- Fire safety / fire risk assessment
- Ladder safety
- Display Screen Equipment (DSE) assessor
- Hand arm vibration
- Legionella awareness
- Scaffolding safety
- Site safety
- Confined spaces
- Client Contractor National Safety Group (CCNSG) Safety Passport
- CompEx
- Personal Protective Equipment
- PASMA Towers / Access
- IOSH managing safely / working safely
- NEBOSH diploma / certificate

The above list is non-exhaustive and any other courses not listed that primarily aims to support safety in the workplace should be regarded as falling into this same category.

ANNEX F - COVID-19 Conditions for Support and Frequently Asked Questions for ERDF, ESF & Ireland Wales European Territorial Co-operation Programmes

Coronavirus (COVID-19) & European Structural Funds supported projects

The COVID-19 crisis creates significant challenges for us all. WEFO recognises that this is affecting the way in which European Structural Funds projects are being delivered. We ask that you continue to try and deliver project activity, as best you can, whilst ensuring that a robust audit trail is kept at all times. However we are committed to working flexibly and pragmatically with all of our beneficiaries to ensure stability in the short term and to support the recovery that will be needed post crisis.

Government guidance has been produced to assist individuals and businesses in preparations to minimise the risks and impact of COVID-19 and we recommend beneficiaries should familiarise themselves with this, if not already done so.

If you should experience any impact on the delivery of your structural fund project as a result of coronavirus (COVID-19), please refer to the relevant WEFO contact for further advice. WEFO recognises that this situation is evolving very quickly with advice likely to change at short notice. Taking this into account, we will look to make decisions as early as possible and on a case by case basis, making allowances where possible and appropriate. In the meantime this FAQ document has been produced for beneficiaries to reference before contacting WEFO.

1. Eligibility of project costs – will project costs continue to be eligible where official restrictions are in place which affect ‘business as usual’ activity?

Any necessary costs that have already been approved by WEFO, are featured within the operation’s Business Plan and included within the agreed Delivery Profile will continue to be eligible, even in situations where offices have been forced to close and staff are working at home or project activity is reduced. For example rental costs, other accommodation costs (including Flat Rates) and staff costs. As with all costs agreed by WEFO, there is an expectation that value for money is secured and where savings or reductions can be made then these options should be explored where possible.

NB: Organisations must not duplicate or ‘double fund’ where any of these costs are covered by other government grants received to deal with the impact of COVID-19.

2. Can Staff Costs continue to be claimed?

Yes Staff costs for beneficiary staff contracted to work on the operation continue to be eligible and should continue to be claimed in line with the organisation's own policies and in accordance with WEFO's eligibility rules, as has always been the case. Where the beneficiary's policies cover extraordinary circumstances (for example special leave for school closures) these costs continue to be eligible. Additionally where beneficiaries policies allow for staff to continue to work at home whilst self-isolating then these costs will continue to be considered eligible. WEFO will accept official emails as evidence to confirm what the organisation policy is for circumstances related to Coronavirus. Sick pay continues to be eligible if claimed in accordance with the WEFO eligibility rules.

Where these staff work across a number of operations the method for claiming their staff costs will continue to be determined by each individual contract i.e. whether a job description/ contract of employment/ letter of secondment specifies a fixed number of hours or percentage of time to be allocated to certain projects/ operations being supported by the structural funds then they should continue to be claimed in this way.

Where staff are employed on a flexible basis/ variable hours, the lead and/ or joint beneficiary must retain justification for the methodology used to claim these costs. For example, beneficiaries can use an historical average (minimum of 3 months where possible) in order to determine how much to claim. Any other method must be agreed with the Project Development Officer (PDO)/ Operations Officer (OO). Please ensure that all documentation relating to the analysis is maintained for audit purposes.

NB: Where a beneficiary decides to access the UK Government Coronavirus Job Retention Scheme, or the Irish Government's Temporary Wage Subsidy Scheme, any staff costs associated with the delivery of the approved operation will not be eligible for structural fund support as receipt of these payments will be considered 'double funding'.

2a. What about organisations that need to use the Government Furlough scheme?

Whilst we have confirmed that WEFO funded staff costs can continue to be claimed where project activity is reduced, we recognise that some organisations will need to make a decision on the use of the UK Government's Furlough scheme for their staff, particularly where staff costs are being matched by their own or other funds.

Organisations must not duplicate or 'double fund' staff costs, i.e. claim funding from HMRC through the Coronavirus Job Retention Scheme (CJRS) or the Irish Government's Temporary Wage subsidy Scheme, as well as the usual grant funding received from WEFO to cover staff costs. This would be an

inappropriate use of public money and WEFO will seek to recover 'double funding' that has been claimed and paid.

Therefore, upon receipt of these furlough payments beneficiaries will need to ensure deductions are made from claims to WEFO for staff costs during/ for this period.

The WEFO claim form declaration has been amended to include the following statement:

I confirm, to the best of my knowledge that:

- all the details on this form are correct;
- all of the expenditure declared has been defrayed (paid out) on eligible activities in relation to the Operation;
- none of the expenditure declared has also been claimed or covered by other funding sources (double funded) e.g. from other grant funders, COVID-19 Emergency Funding/Furlough Schemes etc.
- I have adhered to the User Terms and Conditions and all applicable WEFO conditions of funding, rules and guidance that may apply to this claim form.

Private and Third Sector Bodies - receiving support via the structural funds whom may also be dependent on income from other sources, including commercial activities, fees and/ or charges:

The decision to furlough staff and apply to the UK Government Coronavirus Job Retention Scheme (CJRS) is a decision for each & every organisation to make in discussion/ agreement with their employees. Upon applying to the JRS, you must claim in a proportionate manner e.g. where a loss of 50% of income only 50% of the associated staff costs to be claimed via JRS. Where you have an established organisation wide policy which enables the top up of the furlough payment i.e. the 20% gap, structural funds will be able to assist you in supporting this cost for those employees employed & undertaking activity on a supported operation/ project. However, please note this assistance will only be at the rate of the agreed intervention rate for the operation/ project, not the full 20% amount.

NB: The UK Government continues to issue updates to this guidance, beneficiaries using the CJRS must ensure that they are familiar with these changes before submitting claims to WEFO.

2b. If an organisation decides to pay the 20% top up of the furlough payment, are these costs eligible?

If a beneficiary has made an organisation-wide decision to top up the furlough payment received via the UK Government Coronavirus Job Retention Scheme (CJRS), this can be considered an eligible cost for staff contracted to work on

structural funded operations, but only on the basis that this policy is also applicable to **all other staff** within that organisation. This will also apply to/ include national insurance and pension contributions, where the full amount of such payments are not met via the UK CJRS. This is subject to there not being any increased cost implications to the operation and a reminder that WEFO will only pay at the approved intervention rate of the 20% salary amount.

2c. What evidence will need to be provided to show that project/ operation staff have been placed on furlough?

Where project/ operation staff have been placed on furlough & are in receipt of furlough payments, the following evidence requirements will apply:

- Where furlough payment equates to 80% of staff salary and the beneficiary organisation is **not** paying the remaining 20% of staff salary – sight of organisation policy in respect of the furlough process, together with a list of the project/ operation staff placed on furlough and (a) payroll audit trail showing furlough payments to project/ operation staff, (b) letter from the beneficiary to project/ operation staff confirming placed on furlough
- Where furlough payment equates to 80% of staff salary and the beneficiary organisation **will** pay the remaining 20% of staff salary - sight of organisation policy in respect of the furlough process, inclusive of confirmation of the 20% top up of salary being paid to all employees of the organisation, together with a list of the project/ operation staff placed on furlough and (a) payroll audit trail showing furlough payments and defrayment of NI/ pension costs for project/ operation staff, (b) letter from the beneficiary to project/ operation staff confirming placed on furlough & top up of 20% of salary being applied by the beneficiary organisation.

3. Restrictions on travel abroad.

This concerns operations/ projects that contain costs for travel abroad within approved business plans and/ or those operations/ projects where individual journeys abroad have been authorised by WEFO. Where travel has been booked & it is to a country/ territory that the UK Foreign & Commonwealth Office (FCO) has advised 'against all travel' or 'against all but essential travel' – a beneficiary will firstly need to approach its own travel insurance provider (where applicable) & claim against the insurance. If for any reason, the travel insurance policy will not reimburse the cost of travel, the reasons for this will need to be provided to WEFO. Pending the reasons for the insurance policy not paying out & where WEFO accepts as being reasonable/ justified to claim from structural funds, then the foregone travel costs will be considered eligible. Insurance excess fees are considered to be an eligible cost.

4. What is the impact of having to extend projects and increase costs with little or no increase in targets and outputs?

If beneficiaries are unable to deliver their projects as planned because of the virus, we will consider the situation on a case by case basis, as we would for any other situation which prevents a beneficiary from delivering their contractual obligations as planned. We will of course be sympathetic to this, and will consider extensions etc; as appropriate but being mindful that these dates cannot go beyond the Programme eligibility date of 31st December 2023, with a preference for dates not to be later than June 2023 in order to enable all closure activity to occur. Your WEFO Project Development Officer (PDO)/ Operations Officer (OO) will be the point of contact to discuss this in detail.

5. Would cancellation fees be eligible?

Where a beneficiary has incurred costs which turn out to be fruitless because of events or decisions beyond their control e.g. meetings are cancelled by third parties or following Government advice, that expenditure will not be made ineligible for EU funding, as long as reasonable steps have been taken to minimise that cost e.g. they have made any possible insurance claims. Looking ahead beneficiaries should exercise caution when booking attendance at events and avoid doing so whilst movement/ travel restrictions are in place, unless there is a fully refundable option in such scenario.

6. Can alternative methods of providing participant evidence be used – for example scanned/ electronic signatures, email confirmation and scanned copies where not possible to have sight of original copies?

Yes scanned copies of identification or emailed enrolment forms can be accepted as evidence for management verifications, the same applies to participant results that can be self-declared under existing rules. For example we will accept email confirmation from a participant (e.g. please see attached my application form), this along with the email could replace the signatures for the time being. It has also been agreed that we will allow passports etc; to be provided without being certified. These flexibilities have been introduced on the condition that, at a future date, projects will need to go back over this evidence as per normal requirements and at the earliest opportunity. Beneficiaries **must continue** to ensure that GDPR rules are taken into account whilst implementing these revised measures.

6a. September 2020 Update: Use of email confirmation to confirm/ declare eligibility to participate in ESF/ ERDF supported operations. Following further research on the use of email to provide electronic confirmation/ declaration of eligibility, WEFO has incorporated the following into its Eligibility rules:

Email confirmation/ declaration from a participant/ individual employee within a SME/ business organisation can be accepted in place of a 'wet' or fully electronic (eIDAS) signature in the following circumstances:

- Where it is as clear as possible that the email used is that of the participant – for example is accompanied by other correspondence to that address e.g. enrolment form, other correspondence.
- Where it is supported by a package of evidence confirming that individual's eligibility – for example; ESF - evidence of right to live and work in the UK along with priority/ project level eligibility, ERDF – evidence of eligibility of SME/ business organisation via a completed SME declaration and evidence of individual employees attendance at workshops.
- For ESF, evidence that the four step process has been followed for assessing and evidencing a participant's eligibility.

NB: This approach can also apply to a text message declaration from ESF participants, however only where used as a last resort and evidence in place to demonstrate that (a) the telephone number of the participant reconciles with other evidence noting the number for the particular participant and (b) the declaration cannot be obtained by any other means.

The above can then be considered to meet the fundamental requirement set out for the electronic execution of documents - 'intention to authenticate clearly expressed & with corresponding audit trail to support intention'. Therefore, if it can be evidenced that these arrangements are in place, this will negate the requirement to retrospectively revisit evidence at a future point in time and once COVID 19 restrictions have been lifted.

The following conditions also apply:

- Where the conditions set out above cannot be evidenced then beneficiaries will still be required to revisit evidence, as per normal requirements, at a future point in time and once it is possible to do so.
- As always the case for EU projects, beneficiaries to note that, when subject to future audit, the auditors may, on occasion, seek additional evidence to support the eligibility of specific participants, should they conclude that the documentation originally provided is not sufficient to meet eligibility requirements. However, it is important to note that the auditor will also take into consideration the guidance and restrictions in place at the time.

This approach is advised only for ESF participant eligibility evidence and certain ERDF operations where SME eligibility and individual employee attendance at training events/ workshops required. For other documents, such as signature of Funding Agreements, and other such legal documentation, we will still expect the usual procedures to be adopted wherever possible – only where this cannot be demonstrated will there be a need to follow up in the future

7. Can electronic signatures be used on the assumption that the organisation's own policies and procedures allow for this?

There is no WEFO or EC requirement that hard copy documents or 'wet signatures' are used or are preferable to digital records and the use of electronic systems, where at all possible, is encouraged. If alternatives to 'wet signatures' are used then the beneficiary must conform to the requirements set out in section 5.1.4.2 of the WEFO 'Rules' so as to ensure that the authenticity and integrity of the records can be relied upon for legal/ audit purposes, there are the required certification processes and controls in place and the ICT systems used conform to the required BSI standards.

Further information can also be found in the link below, to the UK Gov site document, which contains a link to a UK regulation and the eIDAS regulation.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/545098/beis-16-15-electronic-signatures-guidance.pdf

8. Redeployment of staff – where operation/ project staff are being redeployed to other core critical services to address the impacts of COVID-19 will operation/ project staff costs still be eligible for support via the structural funds?

Where there is a need for operation/ project staff to be redeployed to undertake urgent work on minimising the impact of COVID-19, please contact your WEFO Project Development Officer (PDO)/ Operations Officer (OO) and provide the following information:

- (a) copy of the organisation policy or similar evidence which enables redeployment of staff – e.g. organisation email/ bulletin or terms of employment contract;
- (b) details of the operation/ project staff members to be re-deployed;
- (c) time period of redeployment i.e. start and end dates (latter where known);
- (d) redeployment activity & wider benefits of undertaking the activity, particularly if/ where the activity has some alignment with the original WEFO approved operation aims/ objectives/ activity.

The above will enable the PDO/ OO to provide informed advice & will ensure a sufficient audit trail for the future.

Please be mindful of the final paragraph at question 2 should a beneficiary exercise their right via the UK Government's Coronavirus Job Retention Scheme or the Irish Government's Temporary Wage Subsidy Scheme.

NB: Where operation/ project staff are redeployed and excess hours are worked i.e. they work over their normal agreed contracted hours. Any overtime payments which they will qualify for as a result of working over their normal agreed contracted hours, will have to be met via the beneficiary's own resources/ budget. This also includes any travel and subsistence costs associated to the redeployment. Overtime payments are only classed as eligible for Structural Funds support when they relate directly to the delivery of an EU operation. There should be no increase to the usual/ agreed budgets for staff costs claimed on the EU operation.

9. Will deadlines for claim submissions, verification checks and review findings be extended under the current circumstances?

Claims will still be invited in line with the individual Operation's delivery profile with an expected date towards the end of the third week following the end of the claim period. This has always been a target date and Operations can submit before or after this date if necessary.

WEFO would like operations to submit claims in line with their delivery profiles. If beneficiaries are struggling to submit claims, please contact the Lead Payment Officer or Project Development Officer (PDO)/ Operations Officer (OO) so we can assist in any way we can. Missing a claim "deadline" does not mean the opportunity to claim is lost.

You will be aware that since March 2020 MVT has offered an option for beneficiaries to defer their verifications. This was in direct response to the COVID-19 pandemic which found many beneficiaries at a disadvantage as they had to leave their premises at short notice and many did not have the IT capabilities that allowed them to provide the necessary evidence remotely. However, since that time beneficiaries have been able to adapt and have found ways to be able to deliver the evidence required. As a result the vast majority of beneficiaries who are now offered the option to defer are turning down that offer and are choosing to continue with their verifications. Therefore, WEFO's Programme Performance Board have decided to end the option to defer, for any samples issued from 14th September 2020.

However, we appreciate that beneficiaries may still be experiencing difficulties providing full and complete audit trails for some evidence items. If this is the

case, then please contact MVT to discuss your situation with them and they will consider what flexibilities MVT can implement on a case-by-case basis. If you are experiencing difficulty in submitting your claims, please contact your Lead Payment Officer or Project Development Officer (PDO)/ Operations Officer (OO).

10. Face-to-face support to participants and businesses has now ceased and is being delivered remotely i.e. telephone/ email/ skype. Can alternative methods of providing evidence of this support be used, such as:

- **notes of the discussion**
- **email verifications for registration/ attendance records/ achievements of results that are not signed by the participant/ business**
- **Microsoft forms that gather registration information and audit trail consent from participants/ businesses**

Under the current circumstances WEFO will accept this approach. All notes of discussions should be retained alongside the date/ time. When the COVID-19 crisis ends, beneficiaries should ensure that the participant/ business signs and dates the relevant paperwork required to confirm that the support has taken place.

11. Is the European Commission considering changes to regulations to respond to COVID-19 e.g. state aid?

Yes. The European Commission has introduced a series of flexibilities under the Coronavirus Response Investment Initiative (CRII), Coronavirus Response Investment Initiative Plus (CRII+) and the Temporary Framework for State Aid in response to the current situation. One such flexibility has been the update to the European Regional Development Fund (ERDF) Regulation EU 1301/ 2013, effective from 24 April 2020, to enable support to businesses that (a) have been in existence for more than 3 years and (b) have been experiencing financial difficulty as from 31 December 2019 **due to reasons of the COVID-19 pandemic**. Prior to this date the ERDF Regulation did not allow support to be provided to 'undertakings in difficulty' as defined under EU State Aid Rules and as outlined/ contained within the WEFO eligibility rules for both the ERDF/ ESF Programmes and Ireland Wales Programme. WEFO has decided to highlight this particular flexibility in order to provide clarification to beneficiaries.

WEFO will continue to maximise the flexibilities that have been put in place and will work directly with beneficiaries, where required/ necessary. If you have any further questions on this please contact your PDO/ OO.

Please note that the new REACT EU Regulatory Package of proposals published by the European Commission on 28 May 2020 does not apply to the UK.

The European Commission has announced that the State Aid COVID Temporary Framework will not be extended beyond 30 June 2022. Please see attached European Commission news item:

https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2980

12. Are there any changes to procurement rules as a result of COVID-19? Can I release advance payments to my suppliers to ensure continuity once the crisis is over?

The procurement regulations already contain provisions to enable a response in cases of extreme urgency. Where beneficiaries intend to use these they should obtain the appropriate procurement advice.

Additionally the following note also applies in Wales - UK Government Cabinet Office Policy [Note - Supplier relief PPN02 /20](#).

<https://www.gov.uk/government/publications/procurement-policy-note-0220-supplier-relief-due-to-covid-19>

Due to the current COVID-19 crisis it may be that advance payments to suppliers are unavoidable, in order to support those suppliers at risk to ensure that they are better able to cope and resume normal service delivery and fulfil their contractual obligations when the crisis is over. Therefore payments in advance for services as part of an approved contract & which are applied in line with the Cabinet Office Policy Note will be eligible for support.

In addition the WEFO eligibility rules already accommodate paying for goods and services in advance where:

- these are the standard business terms of the supplier or contractor and is at their request or unavoidable; and
- to secure the best price or secure significant discounts (for example, travel tickets and accommodation); or
- to secure the best quality (e.g. book early to secure the best venue for a key event integral to the success of the project).

Further guidance entitled WEFO COVID-19 Guidance for Contracting Authority Beneficiaries is now available [link below]. Beneficiaries should only consider

following the guidance for buying goods or services that are needed as a direct result of the COVID-19 pandemic.

<https://gov.wales/eu-structural-funds-programme-purchasing-during-coronavirus-crisis>

Non-contracting Authorities will need to follow their existing established procurement policies for any procurement activity undertaken during this period. The existing policies may detail processes to be adopted where exceptional measures are encountered e.g. COVID-19. A robust audit trail will need to be maintained of any procurement activity undertaken during the period and/ or as a direct result of COVID-19. A link to the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis can also be found below

[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN)

12a. Due to remote working, how do organisations ensure that 2 people are present in the opening of tender documents?

It is important to ensure transparency with regards to procurement even during this period. If possible & the technology is available, the tender could be opened via skype or any type of video call with a second person and the process documented for audit purposes.

13. Will the European Commission waive the obligation to comply with applicable management and control requirements?

Despite the exceptional flexibilities laid out in the EC Coronavirus Response Investment Initiative (CRII) and the Coronavirus Response Investment Initiative Plus (CRII+), the Commission has made very clear in its communications that the legislative framework for the implementation of the European Structural and Investment Funds programmes remains fully applicable even under the current exceptional circumstances.

Therefore, beneficiaries must continue to maintain their already agreed/ established accounting/ management & control/ monitoring systems for operations/ projects, in order to claim support from the structural funds & satisfy audit requirements.

It has been recognised however that some verifications and audits are currently not possible and the regulations already allow for these to be performed at a later date. Desk-based verifications/ audits will be undertaken, where possible,

until such time as it is safe for staff to perform visits again. Please see question 9 for more detail relating to verifications.

13a. Has there been any change to the rules on defrayment as a result of COVID-19?

No. As outlined in the above question, there has been no change to the rules on management and control systems. All expenditure must be fully incurred and defrayed before it can be included in a claim form to WEFO. For example, where beneficiaries have chosen to take up the HMRC option to defer National Insurance payments, then we would not expect those payments to be included in a claim until they have been paid to HMRC.

14. Can we change our project activity under current rules to help respond to the situation?

We recognise that there are opportunities for existing projects to amend their approach or refocus their support to respond to the current situation. These will be considered by WEFO on a case by case basis. In the first instance you should contact your Project Development Officer (PDO)/ Operations Officer (OO) setting out all of the changes that you anticipate and they will inform you of WEFO's decision.

15. Outcome reporting by beneficiaries of ESF employability projects/ operations where the achievement of the immediate result indicator, 'participants in employment upon leaving', will potentially be affected by the impact of COVID-19.

Where a participant is ready to leave an ESF intervention due to a job offer, however, cannot then commence the employment until COVID-19 restriction measures are relaxed/ removed. The beneficiary organisation can consider the following options:

- retain the individual as an 'active' participant i.e. do not exit them from the ESF supported intervention until they are less than 4 weeks away from a genuine employment start date, beyond the employer's COVID-19 shutdown. Where this option is taken the beneficiary organisation will need to ensure the 'active' participant is supported/ advised during the extended period, in order to justify treatment as an 'active' participant. Support/ advice could involve: continued engagement by the project mentor/ advisor to maintain the 'active' participant's motivation and work preparedness/ work-ready status, sharpening up employability skills ready for the first few months in work.

- where necessary to exit a participant from the ESF intervention and employment does not commence within the required 4 week period, the immediate result indicator, 'participants in employment upon leaving', cannot be captured. However, it will be recognised as a valuable metric and can be captured via evaluations, surveys etc.

16. Upon preparing for project activity post easing of the COVID-19 lockdown measures, will beneficiaries be able to request structural fund support for costs associated with adaptation to project/ operation premises and the provision of Personal Protective Equipment (PPE)?

Any costs necessary for the delivery of an EU funded project/ operation are eligible where in line with the beneficiary organisations policy and with any relevant UK/ Welsh/ International guidance and/ or legal requirements on adaptations to project premises for the return of project staff and project activity post COVID-19.

Where a beneficiary's standard/ established policy exceeds UK/ Welsh/ International guidance and /or legal requirements, requests will need to be submitted to the assigned WEFO Project Development Officer/ Operations Officer for the project/ operation along with a robust justification as to why such adaptations are considered necessary for the delivery of the project/ operation. WEFO will address such requests on a case by case basis.

However, beneficiaries will need to be mindful that any necessary adaptations to premises/ additional consumables etc.; that are deemed eligible by WEFO will need to be funded via existing project budgets.

16a. Is the provision of office furniture (i.e. desks, chairs) for home working an eligible cost?

Beneficiary organisations will have statutory obligations in ensuring the Health & Safety of its employees therefore the expectation is that the costs of purchasing items that allow staff to work from home safely are covered by the organisation's core expenditure. Where requested from EU funds, WEFO would expect there to be an organisational policy in place supporting the provision of desks to all staff, not just those funded by EU Structural Funds. The provision of office furniture can therefore only be considered eligible on an exceptional basis and where a business case to support this is provided

If the purchase of desk(s) is deemed as eligible to the operation then consideration must be given the following:

- (a) that the desk is used for the delivery of the EU operation, if the staff member undertakes work on anything else other than the EU operation then the pro-rata cost of the desk must be allocated to the operation accordingly;
- (b) there will be no increase in cost(s) to the operation, these cost(s) will be funded via existing budgets;
- (c) the cost(s) will be paid at the agreed intervention rate for the operation and
- (d) that all purchases are recorded appropriately on the operation's asset register.

Annex G - Guidance for Contracting Authority beneficiaries to consider for the purchase of supplies, services, and works needed to address the Covid-19 crisis

Adapted from Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01) For the full guidance please use this link: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN)

Please also refer to the WEFO COVID-19 Conditions for Support and Frequently Asked Questions at Annex F.

Note to beneficiaries: WEFO originally published the guidance held within this Annex G, 16 April 2020. **For clarification, beneficiaries should only consider following this guidance for buying goods or services that are needed as a direct result of the Covid-19 pandemic.**

1. COVID-19 is a health crisis that requires swift and smart solutions and agility in dealing with an immense increase of demand for similar goods and services while certain supply chains are disrupted.
2. In the first instance, beneficiaries should approach their WEFO Project Development Officer to discuss any proposed changes to their procurement activity as a result of the Covid-19 pandemic. Each case will be reviewed on an individual basis, however this document pulls together some of the information and guidance available for beneficiaries to use around procuring during the Covid-19 pandemic.
3. Options and flexibilities under the public procurement framework
4. Public buyers have several options they can consider:
 - a. Firstly, in cases of urgency they can avail themselves of possibilities to **substantially reduce the deadlines** to accelerate open or restricted procedures.
 - b. Should those flexibilities not be sufficient, **a negotiated procedure without publication** can be envisaged. Eventually, even a direct award to a preselected economic operator could be allowed, provided the latter is the only one able to deliver the required supplies within the technical and time constraints imposed by the extreme urgency.
 - c. In addition, public buyers should also consider looking at **alternative solutions and engaging with the market.**

5. This guidance focusses especially on procurements in cases of extreme urgency, which enable public buyers to buy within a matter of days, even hours, if necessary.
6. The **negotiated procedure without publication** allows public buyers to acquire supplies and services within the shortest possible timeframe. Under this procedure, as set out in Art. 32 of Directive 2014/24/EU (the 'Directive') (2), public buyers may negotiate directly with potential contractor(s) and there are no publication requirements, no time limits, no minimum number of candidates to be consulted, or other procedural requirements. No procedural steps are regulated at EU level. In practice, this means that authorities can act as quickly as is technically/physically feasible – and the procedure may constitute a de facto direct award only subject to physical/technical constraints related to the actual availability and speed of delivery.
7. In addition, Article 72(1)(c) of the Directive also allows for **contract modifications without a new procurement procedure** in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50% of the value of the original contract or framework agreement. In fact, this provision allows for the modification of contracts when such modification results from circumstances which the contracting authority could not foresee.
8. Art 72(1)(e) of Directive 2014/24/EU allows for non-substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms.
9. In order to speed up their procurements public buyers may also consider to:
 - contact potential contractors in and outside the EU by phone, e-mail or in person,
 - hire agents that have better contacts in the markets,
 - send representatives directly to the countries that have the necessary stocks and can ensure immediate delivery,
 - contact potential suppliers to agree to an increase in production or the start or renewal of production.
10. However, confronted with situations of an exceptional increase in the demand of similar goods, products and services coupled with a significant disruption of the supply chain, it may be physically/technically impossible to procure using even the fastest available procedures. If so, public buyers may consider engaging with the market and looking for alternative innovative solutions.
11. Public buyers are fully empowered under the EU framework to engage with the market and in matchmaking activities. There are various ways to interact with the

market to stimulate the supply and for the medium term needs, the application of urgent procedures could prove a more reliable means of getting better value for money and wider access to available supplies.

12. Choice of procedures and deadlines under the EU public procurement framework – especially in cases of urgency and extreme urgency

13. For contracts falling within the scope of the Directive, the contracting authority can choose to award the contract following an open or a restricted procedure (Article 26(2) of the Directive)

a. For **open procedures** subject to the Directive, a deadline of 35 days for the submission of tenders applies (8).

b. In the case of **restricted procedures**, the Directive foresees a deadline of 30 days for the submission of requests to participate followed by an additional deadline of 30 days for the presentation of tenders (9). This last deadline may, where the national legislation has implemented this option, be agreed between sub-central contracting authorities, such as regional or local authorities, and the participants; if an agreement cannot be reached, then a minimum deadline of 10 days may be applied (10).

14. **In addition, in both open and restricted procedures, these deadlines may be shortened:**

- (1) either in case of a prior information notice not used as a means of calling for competition, but which included all the information required for the contract notice in Section I of Part B of Annex V and was sent for publication between 35 days and 12 months before the date on which the contract notice was sent;
- (2) or in case of urgency duly substantiated by the contracting authority and that renders impracticable the applicable time limit (see point 2. hereafter).

In cases of urgency – shortened deadlines:

15. If urgency requires it, the Directive foresees a substantial reduction of the general deadlines: under the open procedure, the deadline for the submission of tenders may be reduced to 15 days in cases of duly justified urgency (11); under the restricted procedure, the deadline to submit a request for participation may be reduced to 15 days (12) and to submit an offer to 10 days (13). This allows for a speedy award of the contract.

16. Using an ‘accelerated’ open or restricted procedure complies with the principles of equal treatment and transparency and ensures competition even in cases of urgency. In cases of urgency that render the applicable time limits under normal

circumstances impracticable, contracting authorities may shorten the deadlines, which are applicable to an open or a restricted public procurement procedure in line with the Directive.

Procedure	Minimal Regular deadlines	Minimal Shortened deadlines
Open Procedure	35 days	15 days
Restricted procedure (step 1: Request for participation)	30 days	15 days
Restricted procedure (step 2: Submission of the tender)	30 days	10 days

In cases of extreme urgency – negotiated procedure without publication

17. With the ‘negotiated procedure without publication’, Union law provides an additional tool, which will allow for a faster awarding of contracts to provide for COVID-19 pandemic related needs.
18. Contracting authorities may award public contracts by a negotiated procedure without publication ‘insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority.’ (Article 32(2)(c) of the Directive).
19. As contracting authorities derogate in this case from the basic principle of the Treaty concerning transparency, the European Court of Justice requires that the use of this procedure remains exceptional. All the conditions have to be met cumulatively and are to be interpreted restrictively.
20. Each contracting authority will have to evaluate whether the conditions for using such a ‘negotiated procedure without prior publication’ are met. It will have to justify its choice of such a procedure in an individual report (19). In the individual assessment of each case the following cumulative criteria will have to be fulfilled:
 - a. *Events unforeseeable by the contracting authority in question* - The specific needs for hospitals, and other health institutions to provide treatment, personal protection equipment, ventilators, additional beds, and additional intensive care and hospital infrastructure, including all the technical equipment could, certainly, not be foreseen and planned in advance, and thus constitute an unforeseeable event for the contracting authorities.
 - b. *Extreme urgency making compliance with general deadlines impossible* - It cannot be doubted that the immediate needs the

hospitals and health institutions (supplies, services and public works) have to be met with all possible speed. (Whether this makes it impossible to respect even the very short deadlines of the accelerated open or restricted procedure (15 and 10 days respectively to submit the offers) will have to be assessed on a case-by-case basis. [For more detail on this, see the full guidance]

- c. *Causal link between the unforeseen event and the extreme urgency* - For the satisfaction of the immediate needs of hospitals and health institutions within a very short timeframe the causal link with the COVID-19 pandemic cannot reasonably be doubted.
- d. *Only used in order to cover the gap until more stable solutions can be found* - Negotiated procedures without prior publication may offer the possibility to meet immediate needs. They cover the gap until more stable solutions can be found, such as framework contracts for supplies and services, awarded through regular procedures (including accelerated procedures).

PPN 01/20 and PPN 02/20 – Procurement Policy Notes from UK Government

- 21. PPN 01/20 and PPN 02/20 are UK Government Cabinet Office Policy Notes which the Finance Minister for Wales has confirmed will both apply to Wales, and as such will be taken into consideration by WEFO when and if they are applicable.
- 22. Link to PPN 01/20: [Procurement Policy Note 01/20: Responding to COVID-19 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policy-notes/procurement-policy-note-0120-responding-to-covid-19)
- 23. UK Government Cabinet Office Policy Note - Supplier relief PPN02 /20. Are there any changes to procurement rules as a result of COVID 19? Can I release advance payments to my suppliers to ensure continuity once the crisis is over? Link to PPN 02/20: [Procurement Policy Note 02/20: supplier relief due to coronavirus \(COVID-19\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/policy-notes/procurement-policy-note-0220-supplier-relief-due-to-coronavirus-covid-19)
- 24. Due to the current COVID-19 crisis it may be that advance payments to suppliers are unavoidable, in order to support those suppliers at risk to ensure that they are better able to cope and resume normal service delivery and fulfil their contractual obligations when the crisis is over. Therefore payments in advance for services as part of an approved contract & which are applied in line with the Cabinet Office Policy Note will be eligible for support.
- 25. From an eligibility perspective, as noted in the FAQ, WEFO eligibility rules already provide options for advanced payments for goods. Section 7.3.4 notes that: If you are required to pay for goods or services in advance, including

deposits, you may include these costs in your claim to us as a 'paid' cost but only where:

- *these are the standard business terms of the supplier or contractor and is at their request or unavoidable; and*
- *to secure the best price or secure significant discounts (for example, travel tickets and accommodation); or*
- *to secure the best quality (e.g. book early to secure the best venue for a key event integral to the success of the project).*

26. All beneficiaries in taking this approach will also need to ensure that they have a full justification for any advance payments and that they record/ document & maintain all decisions taken and reasons for doing so, **thereby ensuring a robust audit trail for all the decisions taken for making such advance payments and which will potentially form the basis of future audits by WEFO/ WG/ WAO and/ or the EC.**

Note to beneficiaries: Beneficiaries must still comply with all applicable EC, UK and Welsh laws/ government policies when letting contracts partly funded by the EU funds. When following any of the above procedures, please remain aware of the importance and need to record and document all decisions taken and reasons for doing so, and keep the records for future audit purposes.

If you should experience any impact on your procured contract/ procurement process as a result of Coronavirus (COVID-19), please refer to your relevant WEFO contact for further advice.

ANNEX H - EU Exit Transition & Post Transition Period and EU Structural Funds 2014-20 Programmes: FAQs

This FAQ aims to provide beneficiaries of Structural Fund operations with further detail on how the EU Exit transition & post transition period may directly impact on the running of existing operations. However, it is important to note that, for the majority of EU funded operations, there will be very little change after the end of the transition period on 31 December 2020.

Under the terms of the Withdrawal Agreement, which was agreed between the UK and EU in late 2019, the UK will continue to participate in EU programmes funded through the current 2014-2020 Multiannual Financial Framework. This includes all European Structural and Investment Funds (ESIFs):

- European Regional Development Fund (ERDF)
- European Social Fund (ESF)
- European Territorial Cooperation (ETC) programmes
- Ireland Wales programme
- European Agricultural Fund for Rural Development (EAFRD)
- European Maritime and Fisheries Fund (EMFF).

This means that there is no change in the existing arrangements for beneficiaries of current EU-funded projects. This applies to all aspects of managing projects including the submission and payment of claims, verification checks and, importantly, retention of relevant records.

Further information can be found at [Brexit and EU funded projects](#).

1. What is the transition period and when will it end?

As part of the Withdrawal Agreement agreed between the UK and EU in late 2019, the UK formally left the European Union on 31 January 2020 and entered in to what is called a 'Transition Period' (sometimes called implementation period) while the UK and the EU negotiate the future relationship. Under the terms of the transition, most EU law continued to apply to the UK which meant that not much changed in terms of the UK's relationship with the EU. At the end of the transition period on the 31 December 2020, there are likely to be some changes that may impact on some existing EU funded operations.

2. Will anything change in terms of delivering the Structural Fund Programmes post transition period?

No, there will be no change to the existing arrangements for the current EU funded operations. As referenced in Article 138 of the [Withdrawal Agreement \(on GOV.UK\)](#), all operations will continue to receive EU funding under the normal rules and you should continue to deliver your operation as you currently do. Under the terms of the Withdrawal Agreement, which was signed in January 2020, the UK will

remain in the 2014-2020 ESIF programmes with EU funding until December 2023, when they will be closed.

No changes are required to your existing Funding Agreement and all obligations arising from those Funding Agreements will continue to remain in effect.

3. Will operations continue to be funded post transition period?

Yes, beneficiaries will continue to receive EU funding over the lifetime of operations and within the dates agreed in your delivery profile. Any changes to these dates will need to be discussed and agreed with your assigned WEFO Project Development Officer (PDO). In order to assist with/ enable the orderly closure of the 2014-20 programmes, the majority of operations supported by WEFO will complete by June 2023. There are some exceptions, however, these are minimal. You should continue to use WEFO Online to submit claims and update information.

4. Will existing rules and conditions continue post transition period?

Yes, all existing rules and conditions will continue to apply post transition and that is a requirement of the Withdrawal Agreement between the EU and UK. This includes the ESI regulations themselves, procurement, state aid and GDPR. You should continue to refer to the same WEFO eligibility rules and guidance documents and follow all applicable EU law.

5. Operations currently being developed

If you are working on potential operations, you should continue to develop your plans with us.

6. Will the General Data Protection Regulation (GDPR) still apply post transition period?

During the transition period the GDPR continued to apply to the UK and there was a requirement to continue to follow existing law and guidance. As from 1 January 2021, the GDPR has been brought into UK law (with minor amendments to make it function properly in a UK-only context) & is now termed 'UK GDPR'. The Data Protection Act 2018 will continue to apply. The UK Government has said that transfers of data from the UK to the European Economic Area (EEA) will not be restricted. This means that data protection law and standards will continue, much as before, and the flow of data both within the UK and from the UK to the EU will not be affected. Therefore, most operations will be unaffected after the transition period. See response below for data transferred from outside of the UK.

7. What about restrictions on the transfer of data from EU/EEA to the UK?

In June 2021, the EU adopted adequacy decisions which enabled personal data to continue to flow freely between Europe and the UK for a period of up to four years. This followed a 6 month interim period which also allowed for the free-flow of data.

Beneficiaries must therefore continue to follow (a) the EU data protection law (as at 31 December 2020) and (b) the procedures/ processes currently in place for reporting/ providing such data to WEFO.

For information, please find below hyperlinks to (a) the Information Commissioner's Office (ICO) statement in response to the adequacy decision, (b) the European Commission's announcement on adoption of the adequacy decisions.

[ICO statement in response to the EU Commission's announcement on the approval of the UK's adequacy](#)

[Commission adopts adequacy decisions for the UK \(europa.eu\)](#)

This will mostly affect operations in the Ireland Wales programme. WEFO has notified beneficiaries of these operations and, if necessary, will ensure that appropriate safeguards are established and maintained in order to enable continued data flow.

8. What will happen to the public procurement rules post transition period?

EU public procurement rules must continue to apply to all EU funded operations after 31 December 2020. Therefore, in order to be able to meet the related requirements, beneficiaries must continue to advertise contracts that exceed the specified thresholds and publish notices on the Official Journal of the European Union (OJEU) and Tenders Electronic Daily (TED). The European Commission has confirmed that the UK will continue to have access to the OJEU and TED until the end of the Programmes. Beneficiaries must therefore continue to advertise these contracts/ publish award notices via Sell2Wales and, to ensure these procurements are advertised on OJEU and TED, beneficiaries will need to tick the 'EU funded' box when completing the contract notice creation form on the Sell2Wales system.

January 2022 update: From 1 January 2022, any EU funded procurement must apply the new UK thresholds as set out in the [Procurement Policy Note](#) on GOV.UK.

This means that, along with the application of the revised thresholds, contracting authorities must also now include VAT within their contract value estimates when establishing whether procurement thresholds are reached. This is because the UK is now an independent member of the Government Procurement Agreement (GPA) and sets their own thresholds in accordance with the standard GPA methodology adopted by non-EU GPA members. The exclusion of VAT in threshold values is an internal EU measure and which is no longer appropriate to be applied in the UK after EU Exit. As the UK is no longer a Member State, the EU is no longer required to publish the sterling value of any revised thresholds. Therefore, it is no longer practicably feasible for UK beneficiaries of EU funds to comply with the requirement to follow the thresholds set out in the EU directives and they should instead follow the new UK thresholds as outlined in the above PPN. Beneficiaries based within Southern Ireland, and in receipt of support from the Ireland Wales Programme, will need to continue to adhere to the EU thresholds/ directives when undertaking/ applying respective procurement policies/ processes.

July 2021 update: Sell2Wales has issued a [news item](#) (external link) confirming that, from July 2021, any new procurements for EU funded projects will be published on OJEU, TED and Sell2Wales only (these procurements will not appear within the UK 'Find a Tender Service' (FTS). Legal advice has confirmed that this action is required

in order to avoid a breach of Article 52 of the EU Public Procurement Directive 2014/24/EU, i.e. contract notices must be published on OJEU and TED before any publication at national level (FTS), unless 48-hours has elapsed from the notice being issued to OJEU and TED. Publishing on FTS in advance or at the same time as the OJEU and TED will constitute a breach of Article 138 of the Withdrawal Agreement.

For EU funded operation procurements that are below the EU threshold and which will be advertised/ awarded by contracting and non-contracting authorities as from 1 January 2021. Beneficiaries will still need to adhere to the EU Treaty principles of transparency, non-discrimination and equal treatment as well as adhering to their own established procurement policies and WEFO's minimum standards (as noted at Section 36 of 'WEFO Eligibility Rules and Conditions for Support from the European Structural Funds 2014-2020'). Any breach of these could result in WEFO applying a financial correction as outlined within the Commission Decision of 19.12.2013 entitled, 'Guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement'.

For information - details on public procurement policy can be located via the [Sell2Wales website](#).

9. Will State Aid rules continue to apply to my operation post transition period?

As set out in the Withdrawal Agreement, our continued participation in the EU Structural Fund Programmes is dependent on the continued adherence to applicable EU Law, this includes State Aid rules. Therefore, the EU State aid rules will continue to apply to our Programmes post transition period and you must continue to comply with the EU State aid Rules for the duration of your operations and up until closure.

The UK Subsidy Control Regime which became operational as from 1 January 2021 will have no impact on EU funded programmes/ rules and in line with the Subsidy Control Act 2022, support provided via EU funds is not subject to the additional requirements of the UK Subsidy Control Regime. Therefore, EU State aid rules, including de-minimis, must continue to be applied to EU Programmes.

For operations that have already been approved and have State aid cover (including state aid schemes that were originally due to expire at the end of 2020. Please note these schemes, in the majority of cases have now been extended until 31 December 2023), the rules and the applicable State aid cover continue to apply to the entirety of the delivery of the operation.

All operations approved from 1 January 2021 and that require State aid cover, inclusive of de-minimis cover, will receive a funding agreement referencing the applicable State aid cover e.g. Welsh Government GBER scheme, Higher Education, Further Education and Local Authority led GBER schemes (where such schemes exist and/ or have been raised by UK Government), cover via the Coronavirus Response Investment Initiative (CRII)/ CRII+ State Aid Temporary Framework, etc;. Where beneficiaries introduce new activity into already approved

structural fund supported operations and for which new State aid cover is required, WEFO will again issue a new funding agreement referencing the applicable State aid cover. In terms of the various elements of State aid cover, please see additional information provided below:

Welsh Government/ WLGA/ HE & FE GBER Registered Schemes as from 1 January 2021

Welsh Government (WG) State Aid Unit is currently re-registering all WG GBER schemes & assisting in the extension of all WLGA/ HE & FE led GBER schemes, extending their duration until 31 December 2023. Beneficiaries will therefore be able to continue to use these GBER schemes for their operations approved by WEFO from 1 January 2021 and will need to ensure continued compliance with the requirements of each GBER scheme – as currently exercised.

COVID-19 State Aid Temporary Framework Scheme:

The EC published a Temporary Framework for State Aid measures on 19 March 2020 (with subsequent updates 3 April, 8 May) to accommodate the flexibilities afforded by the EC via the Coronavirus Response Investment Initiative (CRII) and subsequently CRII+. The scheme was originally extended until June 2021, with a subsequent extension granted to June 2022. The European Commission has confirmed that the scheme will not be extended beyond 30 June 2022. Please see attached European Commission news article:

https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2980

De-minimis Scheme

Beneficiaries of EU Programmes will need to continue to abide by the previous requirements associated with de-minimis aid i.e. (a) ensuring aid recipient does not receive aid including any 'Small Amounts of Financial Assistance' (SAFA)s or 'Minimal Financial Assistance' (MFA) received under the UK Subsidy Control Regime) that will exceed the de minimis threshold over a 3 year fiscal period and (b) providing aid recipient with details of the value of the de-minimis aid being awarded.

10. Will EU citizens still be eligible for operations delivered by the European Social Fund?

Anyone who can evidence their legal right to live/work in the UK would meet the basic eligibility rule for ESF funding whether they come from the EU or rest of world and that will continue to apply.

EU, EEA or Swiss citizens, resident in the UK by 31 December 2020, will need to apply to the EU Settlement Scheme to continue living in the UK. This requirement will also be applicable where you qualify as a family member of an eligible person of

Northern Ireland – further details of the qualification criteria can be found in the [EU Settlement Scheme](#) (external link). The deadline for this is 30 June 2021.

Please note this requirement does not, in the majority of cases, apply to Irish citizens as they are not required to request permission to enter/remain in the UK. There are some exclusions and details of these can be found within the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020, Part 1, Section 2](#) (external link).

After 1 January 2021, EU participants can also provide confirmation of their EU settlement scheme/ status to confirm their eligibility for ESF support. This will only apply to EU participants recruited onto ESF operations from 1 January 2021 and a retrospective exercise on current/ approved ESF operations/ participants will not be required.

The following presentation explains some of the practicalities about how the [EU Settlement Scheme](#) (external link) will work and the evidence beneficiaries may be required to collect to determine participant eligibility:

The main points are:

- Successful applicants will receive digital proof of their status through an online service: gov.uk/view-prove-immigration-status. A physical document will not be provided, not unless you are from outside the EEA and do not already have a biometric residence card. Progress of applications can be tracked online
- Both pre-settled status and settled status will enable a successful applicant to continue to live, work and study in the UK beyond 30 June 2021

11. Will EU document retention periods still apply post transition period.

Yes, the same document retention requirements will continue to apply and you should not destroy any documentation until advised to do so by WEFO in writing, as referenced in both the Funding Agreement and WEFO eligibility rules – Section 5.1.4.1 Document Retention and Record Retention Periods.

12. Will verification and audits continue as usual after the transition period?

Yes, all current verification and audits will continue as usual after the transition period. This includes WEFO's Management Verification Team, European Funds Audit Team, European Commission auditors and European Court of Auditors. You will still be required to maintain all relevant documentation and comply with all audit requirements.

13. (Ireland Wales specific question) Can a UK Lead Beneficiary continue to undertake all the existing functions and responsibilities or should we now look to find a lead partner from a Member State?

The Withdrawal Agreement between the UK and EU means that the UK will continue to participate in current programmes until the end. UK organisations acting as lead

beneficiaries in operations should therefore continue to undertake all functions and responsibilities as at present.

Beneficiaries, particularly those in the public sector, may have recently received a letter from H M Treasury (Dear Accounting Officer) concerning, 'Managing Public Money', DAO 02/ 21, dated 15 January 2021. The letter advises that as the UK has completed its transition from the European Union (EU), then as from 1 January 2021 public bodies no longer need to adhere to EU policies, frameworks, processes in managing public funds. This does not apply to the EU Structural Fund Programmes as per the terms of the Withdrawal Agreement (Article 138). Therefore, all beneficiaries in receipt of support from the EU Structural Funds must continue to comply with EU laws and requirements as stated within their funding agreements for the duration/ entirety of their operations and inclusive of the required document retention periods.

If you have any further queries, please discuss them with your PDO in the first instance.

ANNEX I – EU Structural Funds 2014 to 2020: Procurement Contract Modifications - additional guidance for WEFO beneficiaries/ project partners

This note is designed to give WEFO beneficiaries/ project partners further guidance on contract modifications that may be required throughout the delivery of ESF and ERDF funded operations. It sits alongside and forms part of the following national rules for Structural Funds:

- ['Eligibility Rules and Conditions for Support from the European Structural Funds 2014-2020'](#)
- [Ireland Wales Co-operation Programme 2014-2020 Programme eligibility rules and guidance](#)

The current economic climate in the UK (and wider) has brought about some market volatility, particularly in the construction sector, and is having several impacts on contracts, such as unforeseen price increases and significant disruption in supply chains.

In the first instance, in order to mitigate against the potential impacts, beneficiaries/ project partners are advised to consider the following:

- Include contingencies where possible in your ITT and Specifications to allow for percentage price increases or alternative products if the supply chain is disrupted once the contract has started.
- Consider using Early Contractor Involvement principles when contracting, e.g. two stage route and Design & Build approaches.
- Use benchmarking for showing up to date costs, in order to show that value for money was obtained.
- Identify potential risks upfront, wherever possible, and how these will be managed throughout the contract.

Contracting Authorities – Over OJEU (Irish beneficiary) and/ or UK Public Procurement thresholds (Welsh beneficiary). (Please note OJEU thresholds changed as from 1 January 2022. In addition, and following the UK's exit from the EU, procurement thresholds in the UK are now known as Find a Tender Service (FTS) thresholds. These were set for the UK on 1 January 2022 and are inclusive of VAT when calculating the estimated value of a contract to determine whether the regulations apply. Beneficiaries/ project partners will need to ensure compliance with the new thresholds for any procurements that commenced as from this date. Beneficiaries based within Southern Ireland, and in receipt of support from the Ireland Wales Programme, will need to continue to adhere to the EU thresholds/ directives when undertaking/ applying respective procurement policies/ directives).

All beneficiaries/ project partners who are contracting authorities (i.e. regulated by public procurement legislation) must comply with the UK Public Contract Regulations

2015 (Wales) and European Union (Award of Public Authority Contracts) Regulations 2016, European Union (Award of Contracts by Utility Undertakings) Regulations 2016, and European Union (Award of Concession Contracts) Regulations 2017 (Ireland). For any contract modifications:

- Regulation 72 of the UK Public Contract Regulations 2015 and European Union (Award of Public Authority Contracts) Regulations 2016 will apply, with
- Regulation 97 being the equivalent for European Union (Award of Contracts by Utility Undertakings) Regulations 2016, and
- Regulation 43 being the equivalent for European Union (Award of Concession Contracts) Regulations 2017

The EU Commission has made it clear, at the outset of the Covid-19 pandemic, that the EU public procurement framework (which the UK Public Contract Regulations 2015 and European Union (Award of Public Authority Contracts) Regulations 2016 aligns with) provides the necessary flexibility for public buyers to buy products and services compliantly within the rules set out in the directives. In the same way, contract modifications will need to be made in line with the allowances outlined in Regulation 72 of the Public Contracting Regulations 2015 and European Union (Award of Public Authority Contracts) Regulations 2016, and beneficiaries/ project partners are advised to carefully consider which option is applicable to their contract modification, to document how they made the decision, and to keep a record of all decisions and information considered when making the decision. Beneficiaries/ project partners are also advised to consider whether VAT should be included when extending the value of a contract and particularly where reliance will be placed upon the use of Regulation 72(5)(a). Appropriate authorisation (subject to the beneficiary's/ project partners own procurement policy) of any modifications should also be fully documented.

It is important that beneficiaries/ project partners retain full evidence to confirm which part of Regulation 72 they have relied upon for the contract modification, including where there have been any price increases as a result of the current market situation. Further guidance on Regulation 72 can be located at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560262/Guidance_on_Amendments_to_Contracts_-_Oct_16.pdf,

and

<https://www.gov.ie/en/publication/c23f5-public-procurement-guidelines-for-goods-and-services/>

Contracts outside the scope of public procurement legislation (private sector and below OJEU (Irish beneficiary) and/ or UK Public Procurement thresholds (Welsh beneficiary))

Whilst there is no requirement for these contracts to follow the Public Contract Regulations, beneficiaries/ project partners are still reminded of the requirement to comply with the EU Treaty principles of non-discrimination, equal treatment and transparency when letting and managing any procured contracts. This means that any contract modifications over and above what was originally tendered for must be genuine and the reasons must be sufficiently documented. We would also not expect these costs to be significant in value. As a general rule we would not expect such costs to exceed 50% of the total contract value, however each modification would be considered on a case by case basis and must be supported by robust evidence to support any modifications.

Although not an exhaustive list, we would expect modifications to fall into at least one of the following categories:

1. Genuinely unforeseen – costs that could not have been factored in during the initial tender exercise for justifiable reasons
2. Additional necessary costs where it can be evidenced the initial scope of the contract has not been altered and another contractor would not have been awarded the work if the additional work had been in the original procurement.
3. A change which was provided for in the initial tender documents, i.e. does not include additional work/costs which other bidders could have potentially tendered for had they been included in the initial tender exercise.
4. Unable to change contractor due to work that has been undertaken as part of the procurement – the delivery of the initial contract means that it is not genuinely possible for another contractor to do the additional works due to being unable to work with the equipment that has been installed, or the service that has been delivered through the original contract, without considerable costs being made or inconvenience."

Where there is any doubt that the above cannot be evidenced then beneficiaries/ project partners should consider going out to tender for any additional work/expenditure that arises throughout delivery. Where in doubt please contact your WEFO Project Development Officer or Ireland Wales Operations Officer for further advice.

It is vital that all records are retained to support any contract modifications and that these are made available to WEFO/SRA/WG officials and/or WG/EU auditors.

In all cases, we would usually expect to see a variation report, or similar, which records that a modification has been fully considered, along with the potential impacts, and for the modification to be signed off with appropriate authorisation (subject to the beneficiary's own procurement policy) at the time it was undertaken.

The information set out in this document is neither legal advice nor statutory guidance and is not intended to be exhaustive. Nor is it intended to override existing legal obligations applicable to Welsh and/ or Irish Public Sector contracting authorities – contracting parties should seek their own independent legal advice as appropriate. Please also note that the law is subject to constant change and advice should be sought in individual cases.



UNDEB
EWROPEAIDD
EUROPEAN
UNION



Llywodraeth Cymru
Welsh Government