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FE Digest

Winter 2024

Latest news from the Further
Education sector

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Welcome to this latest edition of FE Digest.

In this issue we highlight the forthcoming closure of the ESFA and its transfer back into the Department for Education. We also look at new guidance issued in relation to funding assurance that should help Colleges comply with the complex rules of funding.

We highlight the project underway looking at whether Colleges will be required to change their year end and also take a look at the complexities around reporting Environmental, Social and Governance (ESG) matters.

Finally, we note the implementation of the new Procurement Act and have a little look into what 2025 might hold.

If there are any issues or topics you wish to discuss further, please contact a member of the FE sector team.

Best wishes,
Further Education sector team

ESFA Closure

On the 11 September 2024, it was announced that the Education and Skills Funding Agency (ESFA) is set to close on the 31 March 2025.

The ESFA was created on the 1 April 2017 in order to create a single agency accountable for funding education and skills for children, young people and adults. Under the new structure, this work will continue, but will be delivered from within the department, giving education settings a single point of contact for financial management and support.

This follows the reclassification of the FE Sector and it is hoped that it will result in greater consistency of experience and greater clarity for support functions such as HM Treasury Permissions.

The closure will happen in two stages, the first stage will see the ESFA's Schools Financial Support and Oversight (SFSO) teams move to Regions Group from 1 October. This will support the launch of Regional Improvement Teams by January 2025. The remaining functions will then move over by 31 March.





Guidance to support post-16 funding assurance audits

With relatively little fanfare, on the 4 September the **ESFA published guidance** aimed at providers that return ILR data, and others who wish to understand the ESFA assurance process and the funding assurance review process.

This incredibly useful document demystifies some of the uncertainties and unknowns on some of the funding rules and the processes that funding audits take. There is a 35 step-by-step guide on how a funding audit

should be run, and there is an 11 page guide that illustrates the evidence requirements for apprenticeship funding. The latter document on apprenticeship funding contains 139 steps which illustrates just how complex this funding regime is.

Finally there is also a handy handy guide of **Common findings from funding assurance work on post-16 education providers: 2022 to 2023** – this report is produced annually so one to keep on your reading list. This guidance is an absolute ‘must read’ for the student records team as it gives valuable insight into how the ESFA Funding Audits are conducted and gives the opportunity for the team to use these checklists when performing checks on the College’s ILR data.

Streamlined energy and carbon reporting for college corporations

ESG Reporting

In October 2024, the ESFA issued guidance on [Streamlined energy and carbon reporting for college corporations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/streamlined-energy-and-carbon-reporting-for-college-corporations). It is important to note that, as corporations (and not registered Companies), Colleges do not fall within the mandatory reporting rules so compliance with Streamlined energy and carbon reporting (SECR) reporting is still voluntary. However, the ESFA acknowledges that this is a government backed initiative and there is growing expectations from College stakeholders that Colleges will be assessing and monitoring their environmental impact. The College Accounts Direction and the Casterbridge Financial Statement model (kindly offered by the AoC) includes details on the disclosure requirements of SECR and how these can be included within the College's Financial Statements. This new guidance offers a practical guide as to how a College can measure its various energy requirements. However, the new guidance does suggest that instead of containing the disclosures within the financial statements, the College can provide this information on its website which would be more accessible to stakeholders.

ESOS Reporting

In a similar vein, the Department for Environment, Food and Rural Affairs (DEFRA) oversees the Energy Savings Opportunity Scheme (ESOS). Colleges are required to comply with this Scheme if they:

- Employ 250 or more people; or
- Have a turnover which exceeds £44.1m and a Balance Sheet total which exceeds £37.9m

However, public sector organisations do not usually need to comply with ESOS, and those organisations which meet the definition of a 'public body' need not comply.

The Public Contracts Regulations broadly state that organisations are public bodies if:

- 1 they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- 2 they have legal personality;
- 3 they have any of the following characteristics:
 - i. they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law
 - ii. they are subject to management supervision by those authorities or bodies, or
 - iii. they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law

DEFRA openly admit that it is not straightforward to determine whether or not an organisation meets the definition of a public body, and recommend that specialist legal or tax advice is sought. Our interpretation (which should not be taken as professional advice) of section 3) above is that most FE Colleges are public bodies on the basis that over 50% ("for the most part") of their income will derive from the ESFA ("the State").

Higher Education Institutions (HEIs) should arguably consider whether they can reasonably be defined as public bodies more closely, however, as we understand that tuition fees received from Student Loans Company, privately from individuals, or from the award of bursaries from privately-funded endowment funds represent 'commercial' sources of income and thus do not fall under section 3) above.



Procurement Act 2023

In our Summer edition, we highlighted to you the forthcoming changes to procurement as the UK moves away from the EU-based Public Contract Regulations 2015. These changes are effective from 28th October 2024.

The 'PA2023', as it has become known, will be a significant challenge for implementation as it was widely reported that many institutions failed to comply with the 2015 EU regulations. However, the thrust behind this new act is to simplify public procurement for the wider public benefit by increasing transparency, scrutiny and value for money.

A helpful short guide on its requirements can be found here: [The Procurement Act 2023: A short guide for suppliers \(HTML\) - GOV.UK \(www.gov.uk\)](#). This can be read in conjunction with the Crown Commercial Services prepared guidance: [How to prepare for the Procurement Act 2023 – Procurement Essentials - CCS \(crowncommercial.gov.uk\)](#). These are good guides for Governors to review in order to ensure the College has implemented the requirements of the new Act.

It's important to note that the Act is not retrospective, so only affects agreements entered into after the effective date of 28th October. Existing agreements, however, must still comply with the old 2015 regulations, so be aware of the dual regulatory environment.

Full guidance on the PA2023 can be found here: [Procurement Act 2023 - Guidance documents - GOV.UK \(www.gov.uk\)](#).



A sneak peak into 2025....

1

Post-16 Audit Code of Practice 2024 – upcoming consultation

The Post-16 Audit Code of Practice is about to undergo a significant review. Following the publication of the College Financial Handbook, which has been widely well-received, the justification for a standalone audit code has come into question. Consideration is therefore being given to whether the code can be, in part, incorporated into the Handbook (largely in respect of the duties and responsibilities of the College) as well as to developing a new audit framework document for external parties such as external and internal auditors. The ESFA are planning to review this during the back half of 2024 with a view to gaining opinions from the sector in early 2025 - so keep an eye out as your input and contributions will be welcome.

2

Accounting year end

Following reclassification, HM Treasury notified the ESFA that it would seek to change the financial year end for further education institutions to 31 March. A working group has been formed and is looking at how an assurance framework can be implemented that would allow the July year end to be retained whilst providing interim assurance to HMT that can be incorporated into the Whole Government Accounts. The interim assurance may take the form of a financial return that will require some level of assurance to enable the DfE to incorporate the results of the FE sector into the Whole Government Accounts. The project has glimmers of hope as, under current plans, the FE Sector may not be required to be included within the Department's consolidated accounts which may afford a lighter touch regime. We hope that this project will conclude this year and a decision will be made in time for an effective date in 2026.

3

VAT126 Status

We had hoped this would be a key budget announcement and some very welcome news for the sector. Alas, there was little positive news from the Spring 2024 budget but we remain optimistic that the FE sector will be given the same VAT status that the academy sector currently enjoys.

Meet our Further Education sector experts



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