

Guidance for Accountable Body assessor

1.1 ***Rationale for Financial Risk Assessment*** The Accountable Body has the role to make binding agreements with all Local Action Group (LAG) approved projects as well as financially bankroll them in lieu of payments being made by the Rural Payments Agency. Projects will not have a binding agreement with LAGs or the RPA, so the Council (as Accountable Body) must take steps to ensure against significant financial risk and fraud by projects before contracting with the project organisations.

1.2 There is potential for unchecked expenditure to have a serious impact on the Council both bureaucratically and politically. This would hamper its dealings and ability to act as Accountable Body for LAGs, as well as the operation of the wider RDPE and other EU programmes in Wiltshire. Poor performance in this area could lead to financial sanctions from the Managing Authority, DEFRA, SWRDA or Audit Commission for wasted public expenditure. It would also lead to a general lack in confidence in the Council.

1.3 Carrying out Financial Risk Assessments for all LAG proposed projects is therefore essential to protect the Council's interests and ensure best possible performance of economic development and regeneration activities in the County.

1.4 Furthermore, the regulations for RDPE at Key Control 3 state that checks should (amongst other things) include:

- The eligibility of the operation for which support is requested
- Compliance of the operation with applicable national and Community rules (e.g. public procurement, State aid and other obligatory standards)
- The reasonableness of the costs proposed
- Reliability of the applicant with reference to any previous co-financed operations undertaken since 2000

2.1 ***Purpose of Financial Risk Assessment*** The Financial Risk Assessment identify whether the proposed scheme contains significant financial risks that ought to be, and are able to be mitigated by the Accountable Body or by shared action with the LAG management team.

2.2 The Accountable Body should be aware of risks that are innate within a project and be able to separate the acceptable risks made through "sensitive costs" from ones that should be avoided, or flagged for due consideration by the LAG.

2.3 The Financial Risk Assessment should not try to change the scope, direction or essence of a project proposal however poorly conceived or difficult the performance may seem to the assessor. The FRA is simply about ensuring proposals stack-up financially and that the financial risks to the Accountable Body are identified and minimised.

2.4 Therefore, where it is simply a difference of opinion over the merits of a project, or where the scheme does not align with the policies of the County, the Financial Risk Assessment should not attempt to devise financial reasons to reject the proposal. This includes the assessment of "sensitive costs" which are costs to the project that are naturally risky due to future uncertainty in the wider economic conditions. These decisions should be left to the LAG.

2.5 The Financial Risk Assessment should:

- identify at an early stage the financial implications to the Accountable Body,
- flag-up serious failings in financial accountability

- identify and investigate alleged false claims in the scheme's proposed budget
- unearth risks that ought and can be avoided.

2.6 This will encourage best practice and add overall value to all investments made using public money in Wiltshire.

2.7 Whilst carrying out an FRA, the Accountable Body assessor may deem to comment on the merits of a project's financial planning, but only record and escalate clear financial risks.

3.1 **Risk Tolerance** It is understood that with LEADER projects, a degree of innovation is encouraged. Projects are often attempting to counter market failures and develop new ideas. The Accountable Body should accept a level of risk associated with community and SME led projects, as has traditionally been the case with LEADER, Rural Renaissance and similar programmes. However, the Accountable Body cannot remain passive where it identifies significant threats to its legal and financial accountability, or schemes that threaten the LAG programmes by excessive financial risk.

4.1 **Operation of Financial Risk Assessment** At the point of receiving a project application, each LAG will arrange for an independent appraisal of the proposal. In summary, this will look into the beneficial merits of the scheme, its fit with the Delivery Strategy, the relative costs and benefits and take into account how the proposal will operate day-to-day.

4.2 The Financial Risk Assessment will be carried out on the instruction of LAG manager simultaneously with the independent LAG appraisal. There are 2 parts to the Assessment. Firstly, 5 investigations and secondly, 2 risk reporting forms.

4.3 **Part 1** The Financial Risk Assessment will make 5 specific enquiries into the proposal and report findings to the Accountable Body Programmes Manger and the LAG programme management. The report will be sent to the LAG management team, who on presenting the final proposal to the LAG should include the FRA reports.

4.4 Section 5 of the Partnership Agreement between the LAG and the Accountable Body makes reference to the further risk assessment. The FRA is the embodiment of that clause, and it is expected that the LAG take into account the findings at the point of deciding whether to approve the proposal for funding. The approving officer at the SEEDA or SWRDA will also see a copy of the Assessment.

4.5 Instruction from LAG management to be accompanied by copy of:

- Expression of interest
- Application form (plus business plan where available)
- Project budget breakdown

4.6 Financial Risk Assessment limited to the following investigations:

1. Eligible expenditure and costs check within RDPE regulations
2. State Aid implications
3. Reasonable costs assessment
4. Financial probity of the project organisation
5. Fit with the LAG programme's financial profile

4.7 **Part 2** The Assessment should be reported to LAG manager and Accountable Body management in 2 linked reports:

- Financial Risk Assessment form
- Risk Management Register

4.8 **Timescale** To be done within 14 days of receipt of request

PART 1 - The 5 Investigations

Investigation 1 Eligible expenditure and costs check within RDPE regulations

A three stage process to establish that the project can actually be funded through RDPE.

Steps to take

- a. Using the information in the application form and proposed budget, check against the Measure Code(s) identified by the LAG management team that the type of project activity being proposed can be funded through this RDPE measure. If the proposed scheme does not match with any of the RDPE LAG Measure Codes, contact the LAG management team immediately to discuss the situation. Measure codes and eligible costs are found at: <http://www.defra.gov.uk/rural/rdpe/pdf/progdoc/chapter5.pdf>
- b. When you are certain you have identified the most appropriate Measure Code, using DEFRA guidance and any subsequent interpretation on eligible expenditure from the relevant regional agency, check that all the proposed activity fits with the eligible expenditure and activity criteria for that Measure.

Actions to follow

- c. On the Financial Risk Assessment form record all proposed ineligible activities or expenditure.

Investigation 2 State Aid implications

DEFRA have issued State Aid guidance which is at <http://www.defra.gov.uk/rural/rdpe/index.htm>

A useful summary of the Decision Process has been produced by WEFO and is found at: <http://www.wefo.wales.gov.uk/default.asp?action=page&ID=2192> Referred to below,

The main point of reference for State Aid issues is with contact to Dept. BERR, primarily via: <http://www.berr.gov.uk/whatwedo/businesslaw/state-aid/>

If there is any doubt, the Council's legal department can also be consulted for advice.

WEFO (Welsh Office) guidance

In assessing whether your project or scheme has the appropriate State Aid cover you need to address the following questions:

Question 1: Does the activity provide support to undertakings involved in commercial activities?

Definition of support: Support can take the form of direct payment of State resources in the form of grants and subsidies as well as indirect benefits that affect the public budget such as tax breaks, rate rebates, low interest loans, selling of public land below market value and the provision of services for free or below market rates.

Definition of an undertaking: An undertaking is defined as any entity, regardless of its legal status, which is engaged in economic activity and where there is a market in comparable goods or services. It does not have to be profit making so long as the activity carried out is one which in principle has commercial competitors. It can include voluntary and non-profit-making public or private bodies when they are engaged in economic activity. Charities, universities, research institutions, voluntary entities, social enterprises and public sector bodies may be deemed to be undertakings when they are engaged in economic activity.

If Yes: Proceed to Question 2

If No: No further consideration of State Aid required.

Question 2: Is the support classed as State Aid?

There is State Aid where all the following conditions are met:

- Support is granted by the state or through State resources;
- The 'grant' confers an advantage on the recipient;
- The 'grant' favours certain undertakings or the production of certain goods;
- It distorts or has the potential to distort competition; and
- It has a potential or actual effect on trade between EU Member States.

Note: The European Courts interpret the application of the tests widely. Further advice should be sought if you are unsure whether or not the conditions apply.

If Yes: Proceed to Question 3

If No: No further consideration of State Aid Required

Question 3: What State Aid cover is in place for the proposed funding?

Where support is deemed to be State Aid, there is a need to ensure that the relevant State Aid cover is in place, either:

- Under an existing notified scheme, or
- Under one of the block exemptions, or
- By direct notification of an Aid scheme or individual Aid (in line with the Guidelines and Frameworks, or directly under the Treaty), or
- Aid is awarded in line with the *de minimis* regulation (NOTE: Under the Temporary State Aid Framework until 31 December 2010, the *de minimis* threshold is €500,000)

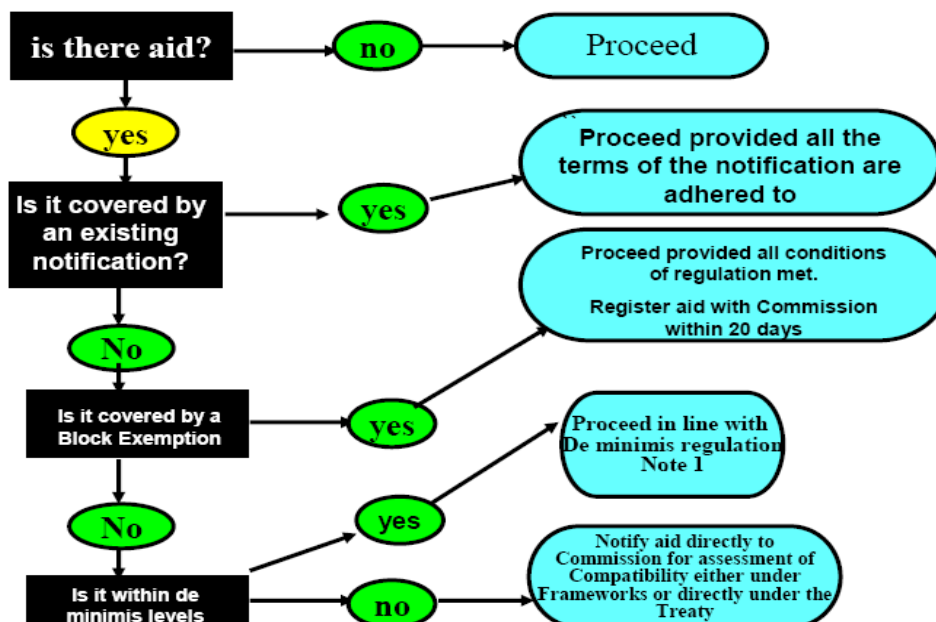
Under the RDPE (Rural Development Regulation EU Reg 1698/2005) many Measures fall within existing notified schemes. Measures that are subject to these arrangements where State Aid grants are exempted are:

Code	Measure	Rate %	State Aid rules
122	Improving economic value of forests	50	RDPE investments must be within <i>de minimis</i> threshold
123	Adding value to agricultural products	40 for SMEs	SME block exemptions apply
		25 for intermediate enterprises	SME block exemptions apply
123	Adding value to forest products	40 (micro-enterprises only)	<i>De minimis</i> threshold rules apply
124	Cooperation on new products, processes and technologies	100 for fundamental research 60 for industrial research 35 for pre-competitive development	SME block exemption applies, non-SMEs require separate notification
125	Infrastructure for adaptation of forestry and agriculture – access	Not stated in guidance	<i>De minimis</i> rules will apply for Forestry
311	Farm diversification	50	<i>De minimis</i> threshold rules apply
312	Creation of micro enterprise	50	<i>De minimis</i> threshold rules apply
313	Encouragement of tourism	100	Non-agri <i>de minimis</i> rules apply
321	Basic Services	100	<i>De minimis</i> threshold rules apply
322	Village renewal	100	<i>De minimis</i> threshold rules apply
323	Rural Heritage	100	<i>De minimis</i> threshold rules apply
331	Training (non-agricultural)	100	Training block exemption applies
341	Training for LAGs etc	100	<i>De minimis</i> threshold rules apply

Adapted from information at: <http://www.defra.gov.uk/rural/rdpe/pdf/progdoc/chapter5.pdf>

The following WEFO decision tree provides further guidance on the process for ensuring that the appropriate State Aid cover is in place

State Aid decision process



Note 1: To comply with the de minimis regulation Aid providers must have adequate systems in place to ensure:

- Beneficiaries are informed of the de minimis nature of the Aid;
- The de minimis threshold will not be breached;
- Detailed records of Aid provided under de minimis are kept for 10 years.

Investigation 3 Reasonable Costs Assessment

A proportional approach should be taken, with larger valued projects demanding more scrutiny than less valuable proposals. The Accountable Body should carry out an examination of the costs and benefits appropriate to the value of the proposal. Reference to the SWRDA thresholds and approval system should be made.

Whilst it is not the intention to carry out a full cost-benefit analysis for each proposal, the test should be that the Council is confident that due diligence has been taken in putting the proposal together. It should ensure the budget figures balance and financial assumptions are reasonable.

There will often be temptation to put forward modifications to the proposed budget with the intention to deliver more benefit, and/ or at less cost. The assessment of the relative merits of opting for an alternative budget should be left to the LAG appraisal. However, where following the proposal clearly shows that costs will significantly outweigh benefits, this should be reported in the Risk Register which will be passed to the LAG.

Reasonable Costs Assessment

At the heart of the assessment is an enquiry into the:

- Veracity of the proposed budget
- Realism or otherwise of financial assumptions
- Use of accurate market values for costs and benefits.

Costs need to be assessed for realism in order to guard against:

- Fraud
- Financial Impropriety
- Overly optimistic proposals
- Imbalance against benefits

Benefits and revenues need to be assessed to guard against:

- Under or non-valued benefits which ought to be costed into the budget
- False or unrealistic claims that distort the balance of the proposed budget
- Overly optimistic claims which cannot be realised through the proposed budget
- Imbalance against costs

a. Costs

Steps to take - Assess the proposed budget and identify costs and revenues. For those which do not appear to be at market rate (either above or below), there may be reason to:

- Carry out desk-top (internet/ telephone) research to establish the actual market rate
- Carry out further investigation with LAG and project about whether there is good reason for this
- Consider whether salary costs are correctly calculated (these should include pensions, national insurance and allowances)
- Consider whether overheads cost are reasonable
 - Is there any indication about how the calculation has been made?
 - Has the calculation been made reasonably?
- Consider the useful lifetime of any assets being purchased
- Consider whether there is a State Aid implication

There is no standard process to establish market rates, so the assessment should be contextual to the proposal and the particular asset or service being purchased. Obtaining estimates and quotes for valuable items or sub-contractors should have been included by the project proposal. Guidance suggests a threshold of upwards of £500 needing to have comparable quotes, though adherence to the County's own procurement rules should suffice.

Actions to follow - List any significant non-market costs on the Financial Risk Assessment form for consideration for the Risk Register.

Where fraudulent claims on costs is alleged, refer to Investigation 4 (below – under *Fraudulent or negligent claims*)

b. Benefits

Steps to take - Identify the proposed benefits of the scheme. Often benefits have not been fully explained or quantified monetarily. If the benefits are not clear at all, this should be reported in the Financial Risk Assessment form for consideration for the Risk Register.

Assessment of benefits should answer the following:

- Has the proposal ascertained the value of benefits in monetary terms?
 - This may take the form of a feasibility study or business case and draw upon a variety of techniques used to make valuations of 'non-market impacts.'
- Do the proposed benefits appear to justify the costs?

Actions to follow - List any significant issues regarding benefits on the Financial Risk Assessment form for consideration for the Risk Register.

Where fraudulent claims on benefits of the proposal are alleged, refer to Investigation 4 (below – under *Fraudulent or negligent claims*)

Investigation 4 Financial probity of the project organisation

The Accountable Body should make a basic investigation into the probity of an organisation and following the information gathered at Investigation 3 take action to safeguard its accountability.

Steps to take - From the application form and/ or business plan and following the assessment at Investigation 3: Is there any reason to doubt the financial standing or claims made by the organisation applying to the LAG due to:

1. Previous performance with funds from LEADER/ ERDP/ RDPE / EAFRD since 2000
2. The current financial standing of the proposing organisation
3. The proposal making fraudulent or negligent claims that have financial implication

Actions to follow

1. *Previous performance*
 - If there are questions over the performance of an organisation under EAFRD since 2000, an enquiry should be made with the LAG management team to ascertain which part of the EAFRD scheme the allegations of poor performance originate from. This may mean subsequently contacting the previous LEADER scheme or officers at GOSW, SWRDA/SEEDA, Natural England, Forestry Commission, Rural Payments Agency or DEFRA.
2. *Current financial standing –*
 - If there are doubts to the current financial standing, the following options are available:
 - Assessors should always carry out a free basic check on all applicant companies for the key information held by Companies House. This can be done easily using the WebCheck service. A small charge is made for actual documents:
<http://wck2.companieshouse.gov.uk/f0f45873966655c11c46b988fd0e3344/wcframe?name=accessCompanyInfoUse>
 - A more advanced paid-for search can be obtained where there is a need for further investigation or where the amount being granted is significantly high. Credit checking services are available commercially:
 - Graydon <http://www.graydon.co.uk/UKContent/UKPublicHTMLPages/index.html>
 - One Source <http://www.onesource.com/>
 - D&B <http://www.dnb.co.uk/>
 - Experian <http://www.experian.co.uk/>
3. *Fraudulent or negligent claims*
 - If a statement or claim is made that appears to be fraudulent or negligent about the proposed performance of the scheme this should also be investigated where appropriate with the LAG management team and/ or senior management with Wiltshire Council and in turn representatives from SWRDA.
 - Where there is no satisfactory response from the investigation, and it is deemed appropriate, reference should be made to RDPE Ancillary control 4.3 which requires the exclusion of beneficiaries [project organisations] where a false declaration is made intentionally.

Any other significant issues – Where the investigation identifies clear risks, but which are not fraudulent or seriously negligent, these should be listed on the Financial Risk Assessment form for consideration for the Risk Register.

Investigation 5 Fit with the LAG programme's financial profile

This is a simple check of the current and projected expenditure of the LAG to see if the proposal fits within the forecast for each FY.

Steps to take - The Local Delivery Plan contains a spending profile based on the budget available for the LAG. The Plan should indicate the budget's alignment to the standard RDPE measures. The proposal can then be assessed against the:

- Proportion of the total budget for the LAG programme
- Proportion of the budget indicated for the measure(s) for which the proposal relates

Actions to follow - Where the proposal does not align with the Plan, an enquiry to the LAG management and/ or Accountable Body representative should be made to ascertain whether the LAG is taking a significant risk by going outside its plan of action.

List any significant outstanding issues on the Financial Risk Assessment form for consideration for the Risk Register.

PART 2 – Risk Reports

Risk Reports help identify to the Accountable body and the LAG the pertinent financial issues that need to be addressed. This should be done in two stages.

First the Risk Assessment Form captures all relevant issues flagged up in the FRA. Then the Risk Register takes forward actions and responses to those issues that place significant risk to the Accountable Body. In practice, the Risk Assessment Form should be used to record findings of the FRA. The issues raised should be populated directly into the form.

The Risk Register is reserved for issues that need to be controlled through some sort of action. The decision whether to log issues on the Register should be based on the findings of the Assessment Form where there are risks that are significant and the cost of action is not disproportionate to the risk being controlled. Where no action is required because the risk is accepted and tolerated, the risk should not go onto the Register.

The risk assessment is an inexact science, so definitions of 'significant' and 'probability' need to be looked at in light of previous performance, professional experience and the context of the RDPE LEADER programme.

Both forms should be made available to the LAG manager by the agreed deadline so that this information can be put to the LAG approving committee.

Further issues (financial or non-financial) that have been uncovered by the FRA should be commented upon, but only if the Accountable Body assessor feels that some value can be added to the approval process, and where these are of significant interest to the Accountable Body.

1. Financial Risk Assessment Form

Include in the Financial Risk Assessment Form

Investigation 1 – Eligible expenditure

- Record all proposed ineligible activities or expenditure.

Investigation 2 – State Aid

- Record any State Aid issues which need further action – such as notification to the EC, use of block exemption or *de minimus* declarations

Investigation 3 – Reasonable Costs

The Financial Risk Assessment should assess the veracity of the figures, not the uncertainty that might affect them.

- Record:
 - Any apparently fraudulent or negligently made claims on costs or benefits
 - All significant under/over valuation of costs or benefits, using market rates as basis for assessment of how significant
 - Capital costs above a threshold of £??? that are not backed by estimates or quotes.
 - Any unvalued benefit that is not justified by costs

Investigation 4 – Financial Probity

- Where previous performance under EAFRD funding is questioned, provide detail the programme, period, value of project and other relevant details, such as project manager and type of project

- Reference to / detail from any reports from commercial credit checking agencies
- Make reference to and brief detail of any alleged fraudulent or negligent claims

Investigation 5 – Fit with LAG Delivery Plan

- List any significant outstanding unresolved issues concerning the financial profile and projections in the LAG Delivery Plan.

Exclude

- Details of “sensitive costs.” This refers to the analysis of costs to the project against future uncertainty and risk. These decisions should be left to the LAG.
 - Examples of variables that are likely to be both inherently uncertain and fundamental to a LAG appraisal are the growth of real wages, forecast revenues, demand and prices.

2. Risk Register

Risk Register should be reserved for those issues where action is needed. The decision whether to log issues on the Register should be based on the findings of the Assessment Form where there are:

- higher probabilities that the risk will occur,
- the potential risk will have a significant impact
- the risk has further implications for other parts of the project or the entire LAG programme

In the first two columns carry forward the issues that are significant from the Risk Assessment Form.

The third column ‘Suitable responses to risk’ describe the proposed response using one of the headings:

- *Prevention* – This proposed action would be about rejecting the project proposal. This is the ultimate use of the Accountable Body influence and should be used very sparingly and only where it is clear that a fraudulent or negligent proposal has been submitted
- *Reduction* – This proposed action relates to recommendations of action to be taken by the project or LAG to change the proposal and reduce or eliminate the risk. This must be carried out in conjunction with the LAG and the project organisation.
- *Transference* – This means proposing action to carry out further investigation using a third party such as legal department or transferring the risk eg; insisting on the project taking an insurance policy
- *Contingency plans* – These are proposed future arrangements and controls that should be taken up if the risk occurs.

The fourth column is to be used to explain what has been done in response to the previous proposed ‘suitable response’ to control the risk.

The fifth and final column is to be used to keep an up-to-date log of what has been done with each issue registered.

CONFIDENTIAL

Wiltshire Council LAG Project Financial Risk Assessment

Details required by Assessor from LAG manager as formal instruction for FRA

Proposed Project Title	
Local Action Group name	
Name of Organisation	
Project Manager	
Contractor Address	
Telephone(s)	
Email	
Date of instruction	
Officer completing FRA	
Date of completion of this report	

Project details

RDPE Measure code that will fund project	[LAG manager to insert RDPE Measure Code]
Application form enclosed	TICK
Appraisal / development notes	TICK
Proposed Budget enclosed	TICK
Expression of interest enclosed	TICK

Comments on findings of the Financial Risk Assessment

All five investigations were carried out... and ...

A number of issues arose which whilst not risks may be of interest to the LAG. These are:

-

