

July 2010

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2. Skills Funding Agency Guidance Notes form part of the Chief Executive's Funding Requirements and are therefore contractual for all colleges and training organisations that are funded by the Agency.

Additional investment for Apprenticeships in 2010/11 academic year

3. The Agency is pleased to announce that it is able to reallocate £54 million of existing funds to support post-19 Apprenticeship delivery. These funds have been released through underspend on Train to Gain delivery in 2009/10 and unallocated Apprenticeship funds in 2010/11. Of the £54m, £9m has been ring-fenced for specific exceptional cases already being considered and includes a small contingency fund. The remaining £45m will be allocated formulaically to all post-19 Apprenticeship providers. Train to Gain only training organisations will not be awarded any of the reallocated funds. The amount each college or training organisation will receive is based on their current share of the allocated 2010/11 post-19 Apprenticeship budget with a weighting increase for Apprenticeship only providers.
4. This reallocation will enable additional resource to be given to those training organisations that deliver Apprenticeships only, as they have not been able to draw on Train to Gain funds to expand Apprenticeship delivery. Training organisations with Apprenticeship only contracts will be awarded twice as much as those with contracts for both Apprenticeships and Train to Gain.
5. The Agency is also intending to reallocate an additional £30million of funding for 16-18 Apprenticeships. These funds have been released through underspend on 16-18 Apprenticeship delivery in 2009/10 and unallocated Apprenticeship funds in 2010/11. These funds will be allocated on the basis of known demand from employers, which cannot be met through current allocations.
6. In both cases, funding will be released in August and funding agreements and contracts will be adjusted accordingly. Revised Funding Statements will be issued before the end of July to confirm changes made to 2010/11 allocations.
7. The Agency will shortly write to all colleges and training organisations to request that they make contact with their Account Manager, as a matter of urgency, if they believe they will struggle to make a shift from Train to Gain delivery into Apprenticeships, particularly where they cite lack of demand as a problem. This will enable the National Apprenticeship Service to focus its resource on stimulating employer demand and referring the sector to that.

Performance management arrangements for 2010/11 (single budget)

8. Please note that performance management arrangements for programmes *outside* the single budget (e.g. ESF, Programmes for the Unemployed) remain unchanged. This Guidance Note applies to the arrangements for the single budget only.

Payment and performance management of colleges¹ (single budget)

Payments

9. The table below summarises payment arrangements for colleges:

	Single budget Includes	Single budget excludes*	Single budget payment covers	Basis on which single budget payments made
Adult Learner Responsive	ALR participation funds	Additional Learning Support	ALR participation funds	Monthly on profile (11 th working day of each month)
		Learner Support		
		ESOL Additional Learner Support		
		OLASS		
		Programmes for the Unemployed		
		Adult Safeguard		
		Formal First Step		
		Family Learning Impact Fund		
Employer Responsive	Train to Gain		Train to Gain	Monthly on actuals (11 th working day of the following month)
	19-24 Apprenticeships (including ALS)		19-24 Apprenticeships (including ALS)	
	25+ Apprenticeships (including ALS)		25+ Apprenticeships (including ALS)	
		16-18 Apprenticeships (including ALS)	16-18 Apprenticeships (including ALS)	

*The Joint Investment Programme and ESF are also excluded from the single budget

10. The Skills Funding Agency will pay each college an amount each month that is a combination of their Adult Learner Responsive and Employer Responsive funding. This will also include a

¹ The term 'college' in this context also applies to any public sector provider that has a Condition of Grant with the Agency: please refer to Guidance Note 4 for clarification.

payment for 16-18 Apprenticeships although 16-18 Apprenticeships are outside the scope of the single budget.

11. For the purposes of the single budget, Adult Learner Responsive is defined as Adult Learner Responsive participation funds. It does not include Learner Support Funds or Additional Learning Support (ALS). These funds should remain targeted on the recruitment and teaching of the appropriate learners (this was clarified in the Frequently Asked Questions document on Guidance Note 4). Employer Responsive is defined as the total of 19-24 and 25+ Apprenticeships (including ALS) and Train to Gain.
12. Whilst 16-18 Apprenticeships are not part of the single budget, the Agency will make payments for this provision on the same date as the new combined Adult Learner Responsive and Employer Responsive payment. It is important to note that 16-18 Apprenticeships will continue to be paid on actuals, monthly in arrears.
13. The single amount will be paid as per the current Adult Learner Responsive profile (i.e. the agreed monthly percentages of the total allocation). The Agency has consolidated the current Adult Learner Responsive and Employer Responsive payment dates into one payment date: this will be the 11th working day of each month. This is 5 working days earlier than the current Adult Learner Responsive payment date.
14. The amounts paid for Employer Responsive activity will be the profiled payments for that month (rather than the payment in arrears for actual delivery as used to be the case). This means that colleges that deliver Employer Responsive activity will receive 2 payments in August 2010: a payment relating to period 12 for 2009/10 Employer Responsive delivery and a profile payment for the single budget (Adult Learner Responsive and Employer Responsive) for that month.

Performance

15. For colleges, there will be no performance management or reconciliation of the single budget in-year. It is at the Agency's discretion as to whether any college's allocation/maximum contract value is increased in year. There will be no automatic payment for over-performance and the Agency will not pay for any over-delivery on Train to Gain.
16. The Agency will expect colleges to provide a Mid-Year Estimate in February 2011, an End Year Estimate in September 2011 and a Final Claim in November 2011. The returns will encompass both Employer Responsive and Adult Learner Responsive delivery. Whilst the Agency will not reconcile funding in line with the Mid-Year Estimate, it will take account of any forecast cash under-delivery in agreeing allocations for 2011/12.
17. The claim forms for these returns have been updated and will be made available on the Agency's website in August.
18. The Agency will work with BIS and the sector to agree the suite of data that will be regularly published, at institutional and sector level, to show how the sector is responding to Government ambitions and the needs of local communities, stakeholders and employers. Our expectation is that this will be based on existing data returns and will not require any further information to be collected.

Payment and performance management of training organisations (single budget)²

Payments

19. The Skills Funding Agency will continue to pay training organisations based on their actual delivery each month. In period 1 (August 2010) the payment received will relate to the last period of the 2009/10 year. Period 2 will be the payment for activity in period 1.

² Any training organisation or employer that is in receipt of both Adult Learner Responsive and Employer Responsive funds will continue to receive separate payments for these funding streams. These organisations only receive a single post-19 Employer Responsive budget.

20. The amount paid will be subject to there being sufficient funds in the post-19 Employer Responsive maximum contract value (MCV) in the 8 month and 4 month periods (August to March and April to July) of the contract. The Agency will not pay for any Train to Gain delivery that exceeds the individual Train to Gain MCV in the 8 month and 4 month periods of the contract.

Performance

21. In 2010/11, the Agency will introduce an automated approach to performance management as this has the potential to make the process simpler and less resource intensive, both for training organisations and the Agency. This approach will also offer a greater degree of predictability about how contracts will be adjusted if performance varies from expectation.
22. As part of this approach, it is the intention of the Agency to introduce performance tolerances against which the performance of training organisations will be managed. The Agency will review performance against profile on a quarterly basis in November, February, May and July. Standard tolerances and performance adjustments will then be applied to ensure underperformance is tackled consistently and funds are released back into the sector to respond to learner and employer demand.
23. There may be circumstances where it would not be appropriate either to adjust for under-performance, or to allow the tolerances, and Account Managers may propose overriding the automatic contract change, in part or in full, at the quarterly intervention point. **The Agency expects these instances to be rare and exceptional (typically no more than a small handful of cases)** and all cases will need to be agreed by the relevant Senior Account Director (who, in the case of Apprenticeships, will discuss this with the National Apprenticeship Service.)
24. As this approach is new, and the changes involved in business processes and systems will be significant, the Agency is keen to ensure that tolerances are set at the right level to avoid perverse consequences when they are applied. As such, detailed modelling work is now underway to test a range of tolerances (cash and %) against historic delivery data. The Agency will work with sector representatives to test these and confirm, by September 2010, which performance tolerances will be applied.
25. The Agency's performance management approach seeks to achieve the right balance between consistency, equity and new freedoms and flexibilities for the sector. The Agency does not wish to over-engineer the performance framework but, where training organisations are not responding to the Government ambitions, it may be necessary to make performance adjustments at programme level in between quarterly intervention points. This will only happen where there is systematic under-delivery in a training organisation and intervention is therefore in the interests of learners, employers and the wider sector.
26. It should also be noted that the transition between the 8 month and 4 month academic and financial year periods occurs in Quarter 3. The need to manage within the financial year MCV will override any tolerances if necessary at that point.
27. Guidance Note 4 set out the intention of the Agency to replace individual provider profiles with one single national profile based on standard payment patterns. The profile below is the standard profile for post-19 Employer Responsive delivery to be adopted from the start of the 2010/11 year **for all training organisations**. This has been based on sector average patterns of delivery and has been adjusted to take account of the financial and academic year split.

Standard profile for post-19 Employer Responsive delivery (payments made on actuals)

P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P11	P12
6.8%	7.8%	8.2%	8.3%	7.7%	8.3%	8.5%	9.2%	8.8%	8.3%	8.5%	9.8%

Payment and performance management of 16-18 Apprenticeships

28. The 16-18 Apprenticeships budget is outside the single budget for colleges and training organisations. As such, it will be subject to in-year performance management and tolerances will be applied (to colleges and training organisations) as this will enable funds to be moved in line with demand.
29. In addition to the standard profile for post-19 Employer Responsive activity, a standard profile has also been created for 16-18 Apprenticeships. This will be the profile used in 2010/11 **for all colleges and training organisations** that deliver 16-18 Apprenticeships: This is set out below:

16-18 standard profile

P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P11	P12
7.4%	9.7%	8.5%	8.1%	7.7%	8.1%	8.2%	8.0%	7.7%	7.5%	8.2%	10.8%

Reallocation of funds from underperformance

30. The Agency is currently developing the process for how it will re-allocate money in-year. Details of this will be published in September 2010. In broad terms, this will be led by Account Management teams, in consultation with Regional Apprenticeships Directors and Regional Skills Directors. The Agency will be seeking to direct funding to those organisations that have demonstrated strong performance in delivering Apprenticeships, and are able to provide evidence of further demand.

Funding of provision delivered through the single budget

31. Whilst the creation of the single budget for colleges means that funds will no longer be 'tied' to one funding stream, it is imperative that all employer based delivery of competency and Skills for Life qualifications is coded on relevant ILRs as Employer Responsive activity and delivered in line with the appropriate funding requirements.
32. Colleges are reminded that, through their grant-in-aid funding relationship with the Skills Funding Agency, they must ensure their use of public funds is consistent with the purposes for which the funds have been given.

Quality and Intervention

33. The coalition Government is committed to 'setting free' colleges from state control, whilst ensuring that only high quality colleges and training organisations receive public funding to deliver high-quality provision. This section of the Guidance Note clarifies how the Skills Funding Agency will implement these principles. In doing so, it restates the operational arrangements for the assessment of quality and intervention should standards be breached.

Eligibility for public funding – Approved College and Training Organisation Register (ACTOR)

34. All colleges, training organisations and employers will need to be on the Skills Funding Agency's Approved College and Training Organisation Register (ACTOR) in order to be considered for funding from the Agency. As well as holding information on organisations that currently have contracts with the Agency, the process of registering on ACTOR will be used to filter potential contractors to ensure that minimum benchmarks are achieved before they are eligible to receive public funding. ACTOR will also streamline current procurement arrangements.
35. Inclusion on ACTOR will not automatically result in public funding being made available; this will be determined by contracting needs and the availability of funding. If a college, training organisation or employer breaches minimum criteria, they may be removed from ACTOR and

will no longer be eligible for funding. More information on ACTOR, including the process for potential contractors, will be issued in the autumn.

Minimum levels of performance

36. As part of its commitment to fund only high quality provision, the Agency will continue to apply Minimum Levels of Performance (MLP) to both Learner Responsive (16-18 and 19+) and Employer Responsive (Apprenticeship and Train to Gain) funded provision in 2010/11. The approach to MLP for 2010/11 will be one of minimum change. The MLP levels for 2010/11 will be published by the end of September 2010.
37. Should provision fall below MLP thresholds, without mitigating circumstances, public funding will be removed and/or a Notice to Improve (Ntl) will be served (for colleges). If there are other concerns about performance, actions will be agreed and where necessary, improvement indicators will be set.
38. Some colleges and training organisations have had Apprenticeship frameworks removed from their publicly-funded provision because the Apprenticeship provision was below MLP. If this occurred in spring 2009 or earlier and the organisation wishes to resume publicly-funded delivery of the frameworks in 2010/11, it needs to raise this with its Account Manager. In so doing it should provide evidence of employer demand and describe actions that it has taken to improve success rates for Apprenticeships overall and in particular for these frameworks. Account Managers, supported by National Apprenticeship Service colleagues, will assess the evidence presented to ensure that the interests of learners are protected. Following this assessment, all requests for reinstatement of publicly-funded Apprenticeship frameworks will be subject to moderation. Organisations will be notified of the moderation outcome and the implications for public funding of the provision.
39. Financial health will continue to be monitored formally twice a year on the basis of the audited financial statements and the three year financial plans of colleges. In addition, the Agency will continue to monitor the financial health of colleges outside these formal assessments where new information suggests there may be a significant adverse effect on financial health.
40. There will be increased scrutiny of the accuracy and integrity of the data used to identify underperformance. Colleges and training organisations will be able to access their reports via the Provider Gateway. The closing date for the FE ILR will be **22 November 2010**. The Employer Responsive ILR closing date remains unchanged:

Type	Data source	Availability of the reports (* subject to confirmation)
Apprenticeships	2009/10 Period 15 data	w/c 06/12/2010*
Train to Gain	2009/10 Period 15 data	w/c 06/12/2010*
Learner-responsive initial report	F05 data – 2009/10	w/c 06/12/2010*
Learner-responsive final report	F05 data close – 2009/10	w/c 06-12/2010*

41. The accuracy of data returns is vital; colleges and training organisations' data returns cannot be revised once the ILRs have closed.

Case conferences

42. The triggers for underperformance are still being modelled, but are likely to include existing measures such as Ofsted outcomes (in particular grades for leadership and management and overall effectiveness), Framework for Excellence data, Notices To Improve, and/or where there is information about a provider entering into a re-organisation or merger phase.

43. For those colleges and training organisations that have been identified as being of concern, the Agency will convene a case conference. This is a formal meeting involving the college or training organisation, the Agency and other organisations (e.g. Young People's Learning Agency). In some cases it may be appropriate to include other agencies such as the Higher Education Funding Council for England (HEFCE) or the Learning and Skills Improvement Service (LSIS). The purpose of a case conference is to agree the actions necessary to address the Agency's concerns, and the responsibilities of each organisation in taking these forward. The Agency will convene case conferences at regular intervals until all concerns have been satisfactorily addressed.

Intervention

44. Under the Further and Higher Education Act 1992 (as amended by the Apprenticeship, Schools, Children and Learning Act 2009) the Chief Executive of Skills Funding has statutory powers of intervention in college corporations (other than sixth form colleges). These powers may be used if the Chief Executive is satisfied that certain conditions have been met as laid down in the Act. If this is the case, the Chief Executive may:

- remove any or all of the members of the institution's governing body;
- appoint new members of the governing body if there are vacancies (however arising);
- give directions to the governing body (including directions to make collaboration arrangements and directions to consider the case for dismissal of a member of staff).

45. The Agency will be consulting on a revised and simplified Statutory Intervention Policy over the next few months with the aim of seeking Secretary of State approval for publication in October 2010. Until the revised policy is published the Learning and Skills Council's Statutory Intervention Policy published in October 2008 will be followed with all references to the Learning and Skills Council replaced by Chief Executive of Skills Funding.

46. For all other training organisations with which the Chief Executive has a contract or funding agreement the intervention process will be as set out in the contract or funding agreement. Those falling below minimum levels of performance or where other findings trigger concerns, and who fail to respond to opportunities to improve, may be removed from ACTOR.

Audit and Financial Assurance

47. As part of the implementation of freedoms and flexibilities in 2010/11, and wider simplification of the funding system for 2011/12, the Agency is seeking to reduce the audit regime for colleges and training organisations. The National Audit Office will need to agree any changes the Agency wishes to make to current practice so as yet, no firm detail can be provided on the scope of the changes proposed. The consultation on *A Simplified Further Education and Skills Funding System and Methodology* (published on 22nd July and available at <http://www.bis.gov.uk/FE-funding-consultation>) requests views from the sector on how audit requirements can be simplified.

Minimum Contract Level

48. The Agency has previously set out in Guidance Notes 2, 3 and 4 its intention to introduce a minimum contract level to achieve efficiencies through rationalising the number of direct contracts it manages. This will allow efficiencies to be realised, through a reduced Agency role, economies of scale, and more opportunities for shared services, across the sector. The Agency's initial plan had been to introduce a minimum contract level of £250,000 to those organisations that only deliver Train to Gain but, following the decision of the new Government to introduce a single budget (as set out in Guidance Note 4), it is no longer appropriate to implement the minimum level in this way. Instead, the threshold and application of the minimum

contract level is something that is being considered as part of the funding simplification consultation.

49. The final threshold for the minimum contract level will be announced alongside the outcomes of the funding consultation (*Simplification of the Wider Further Education and Skills Landscape*) in the autumn. The Agency will therefore cease to issue direct contracts to organisations for less than the minimum contract level for 2011/12 (subject to any exceptions agreed following the consultation.)
50. Those organisations that hold relatively small contracts with the Agency will want to consider their options for continuing to be part of the delivery chain. The Agency would want to encourage high quality smaller providers, particularly those delivering niche or specialist provision, to consider their options for joining other organisations to form consortia or to operate through a sub-contracting relationship with a larger provider.
51. Once the minimum contract level has been announced, Account Managers will work with all organisations that fall below (or only marginally above) the level based on their 2010/11 allocation. They will work with each organisation in order to consider either: what options might be available to them should they wish to continue to deliver; or what the arrangements would be to wind down their current contract. Where organisations want to start considering options now, prior to the announcement of the level, their Account Manager will be able to inform them of the other Agency funded organisations in their area. The Agency will not make any recommendations, and it will be the college or training organisation's responsibility to undertake any necessary due diligence before entering into a relationship with another organisation.
52. The Agency is considering the application of minimum contract levels to the majority of funds for which it is responsible, including ESF. Given that ESF commissioning for 2011 activity may well begin before decisions are reached, the Agency may have to let contracts under the current arrangements, whilst clearly signalling a move to minimum contract levels.
53. One of the expected consequences of the introduction of a minimum contract level is that there will be an increased level of sub-contracting as well as other forms of collaboration. The Agency is keen to retain high quality provision, particularly that delivered through small or niche providers. It is therefore in this context that the Agency has revisited the requirements for sub-contracting to ensure that the arrangements take account of the risk to public funds while allowing effective sub-contracting relationships to take place.

Sub-contracting framework

54. The Agency has consulted with the Association of Colleges, Association of Learning Providers and the Third Sector National Learning Alliance in developing a framework on sub-contracting. This sets out clear expectations for lead contractors and sub-contractors, as well as benchmarks for services and payments between the two parties. The full framework is set out in the Agency's *Funding Requirements 2010/11*.
55. Currently, sub-contracted delivery accounts for an important minority of provision and there has always been guidance and requirements in connection with this delivery. However, as the level of sub-contracting is likely to increase, it is important all parties are aware of their duties and obligations in this area. In summary, the framework sets out:
 - the nature of the relationship between the Skills Funding Agency and the legal entities with which it contracts
 - the main responsibilities of direct contractors with regard to their sub-contractors
 - the provision of information on sub-contracting
 - the monitoring role of the Agency.

56. The Agency is now developing arrangements for how sub-contracting requirements will be enforced and will look to publish more information on this, as well as best practice from across the sector, in due course. In the meantime, Account Managers will work with organisations that wish to collaborate to provide guidance, where appropriate; and to assess whether the proposed commercial and governance arrangements deliver value for money and maintains choice for learners and employers.

Programme Led Apprenticeship (PLA) Transition

57. Colleges and training organisations must continue to ensure that they manage the transition away from non-employed Programme Led Apprenticeships to Apprentices that are employed. To help manage this transition, colleges and training organisations can continue to start Apprentices between August 2010 and the end of March 2011 as a PLA, but the learner must be moved into an employed status within a period of no longer than 6 months (i.e. anyone starting a PLA up to the end of March will have six months to become an employed Apprentice). **It is important to note that six months is an absolute maximum and the majority of learners should be moved to an employed status well before this point.** From the start of April 2011 no new PLA starts will be fundable as they will no longer meet the requirements set out in the Apprenticeship agreement.

58. However, the Agency and the National Apprenticeship Service are aware that, for a handful of third sector providers, these transition arrangements may mean some vulnerable learners (i.e. those currently NEET or learners with learning difficulties and disabilities) will not be able to participate in any form of learning as they are not able to take up places in FE or be guaranteed that an employed opportunity will be found within the required 6 months. To provide support for these learners during the transition period, the Agency and the National Apprenticeship Service will work with specified third sector organisations to agree exceptional arrangements that will enable this category of 16-18 learners to start a PLA without the automatic 6 month limit. Whilst this flexibility will be enabled by deferring the 6 month cut off for starts, up until the end of March 2011, we will expect these specified third sector organisations to continue to look at ways to move all learners into an Apprenticeship with employed status.

59. The arrangement to support the period of transition is temporary and does not change the new legal status and framework for employed Apprenticeships that comes into force from April 2011. These exceptions will be agreed between the Agency, the National Apprenticeship Service and each specified third sector organisation on a case by case basis where it is clear the short term interests of young people will be put at risk where no alternative provision is available. Colleges and training organisations will already be discussing their plans to manage the transition from PLAs into employed status Apprenticeships. The Agency will work with these organisations, where it has already been identified there are young people requiring further support. As agreed with Ministers, the National Apprenticeship Service and the Agency will work with a representative group of third sector providers to ensure that eligible providers and learners can be identified in a consistent way.