

14 December 2010

Introduction

1. This Guidance Note reflects the publication of the *Skills for Sustainable Growth: Strategy Document (Skills Strategy)* and *Further Education – New Horizon, Investing in Skills for Sustainable Growth* by the Coalition Government. Together, the strategies set out the Coalition Government's plans for the reform of the further education system. This reform is founded on the principles of fairness, shared responsibility and greater freedom:
 - Fairness means supporting those in need, including prioritising young adults; the unemployed on active benefits; and those without basic literacy and numeracy skills.
 - Shared responsibility acknowledges that employers and citizens must join the Government in taking responsibility for ensuring their own skills needs are met.
 - And greater freedoms will be realised through greater accountability to citizens, employers and communities rather than Government.
2. The documents also set out the intention to invest in skills training with an emphasis on securing growth in Adult Apprenticeships, particularly at Level 3 and for young adults; ensuring the unemployed on active benefits are able to access training that will help them enter work; maintaining a focus on the low skilled; and protecting the Adult Safeguarded Learning Budget.
3. Further funding policy changes still to be announced by the Department for Education (DfE) and the Young People's Learning Agency (YPLA) will have an impact on 16-18 Apprenticeships but these have not been included within this note. The Skills Funding Agency (The Agency) will notify the sector of these arrangements when they become available.
4. This Guidance Note complements the two skills documents by setting out the technical and operational details of how they will be implemented through the Agency.
5. 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.

Contents

This Note covers the following areas:

- 2011/12 changes to **Funding Policy**
- **Skills provision for the unemployed**, including the wind down of Programmes for the Unemployed contracts and claims post March 2011
- Information regarding **Programme Led Apprenticeships (PLAs)**
- The 2011/12 **Allocations** methodology, including **Accountability**

- Details of other allocations including **Adult Safeguarded Learning, Formal First Steps, Additional Learning Support, Discretionary Learner Support, Offender Learning and Skills Service (OLASS)** and planned **European Social Fund** procurement
- Details of the proposed **Outcome Incentive Payments**, including the implementation of Job Outcome Incentive Payments for 2011/12
- **Minimum Contract Level**
- Funding rules governing **Sub-contracting**
- Information regarding the Statutory **Intervention** policy.

2011/12 Changes to Funding Policy

6. Over the period of the Spending Review, up to 2014-15, the further education budget for adults will reduce by 25% in real terms. Dealing with these reductions will be a challenge and individuals, training organisations and colleges will have to adapt. This has stimulated fresh thinking about priorities and how they are financed. The Coalition Government has set out its intention that funding should be targeted at those who need it most, such as those with very low levels of skills. There is an expectation of a greater contribution towards the costs of education and training from individuals and employers, particularly for intermediate and higher level skills.
7. From 1 August 2011, there will be a number of changes to funding eligibility, rates and entitlements to enable a greater focusing of resource on those most in need.
8. Funding rate changes, including the Skills for Life programme weighting, will apply to all learners, i.e. new and continuing carry over learners. However, to be consistent with previous policies, any changes to funding eligibility and fee remission will be applied only to new learners. That means learners already in learning and continuing into another funding year will not become ineligible as a consequence of these policy changes and are encouraged to successfully complete and achieve their learning aims.

Funding Rates

9. Post-19 funding rates will reduce by 4.3% in 2011/12 compared with the 2010/11 funding year. In 2011/12, the national base rate of funding per Standard Learner Number (SLN) for post-19 adult skills provision will be **£2,615**. For 25+ Apprenticeships this will be **£2,092**.
10. In addition, the programme weighting for Adult Skills for Life and Functional Skills provision for post-19 learners will be reduced to 1.0. This includes English for Speakers of Other Languages (ESOL), literacy and numeracy provision except for Numeracy qualifications at Entry Level which will remain at 1.4.

Changes to Funding Eligibility

11. The Skills Strategy sets out the Government's intention to focus funding on those who need it most. The intention is to change the statutory entitlements to fully funded provision. As this will require new legislation, it will not be possible to implement the change until 2012/13 at the earliest.
12. Therefore, from 2011/12, the following learners will be entitled to fee remission:
 - Learners (of all ages) studying their first full Level 2 qualification
 - 19-24 year old learners studying their first full Level 3 qualification

- Level 3 jumpers of all ages (those taking a full Level 3 without having a full Level 2 qualification)
- Those taking learning aims that are funded as Adult Skills for Life and Functional Skills in literacy and numeracy, excluding Skills for Life ESOL
- Those people who are on Job Seekers Allowance (JSA) (including the partner where the claim is joint) or Employment Support Allowance (ESA) in the Work Related Activity Group. Further guidance will be issued to colleges and training organisations on this. Fully funded provision for these learners can include units as well as full qualifications.

13. This means that, from 2011/12, the following groups will no longer be able to use the following benefits to claim fee remission:

- Those in receipt of Council Tax Benefit
- Those in receipt of Housing Benefit
- Those in receipt of Income Support
- Those in receipt of Working Tax Credit
- Those in receipt of Pension Credit
- Those in receipt of contribution based ESA (unless in the Work Related Activity Group)
- The unwaged dependants (as defined by Department for Work and Pensions (DWP)) of those listed above.

14. There will also be changes to the eligibility rules surrounding ESOL. From 2011/12, ESOL will continue to be co-funded for eligible learners, as previously set out in the [learner eligibility guidance](#) and will be:

- Fully-funded for those who are on JSA or ESA in the Work Related Activity Group
- Ineligible where ESOL is delivered in the workplace. Public funds should not be substituted for employer investment in this way.

15. Changes to eligibility for fee remission will apply from 1 August 2011/12, to new learners only.

Workplace Delivery

16. Resources will continue to be focused on delivering Apprenticeships – this includes a renewed emphasis on securing the additional 50,000 Apprenticeships announced earlier this year. In addition the wider workplace learning offer will include those employed individuals with an entitlement and support for the training needs of small and medium sized enterprises (SMEs), i.e. those with fewer than 250 employees.

17. From 2011/12, the Agency will continue to co-fund 19+ Apprenticeships at 50%. Our expectation is that employers will contribute the other 50% of costs, for all learners (ie including those that have an entitlement)

18. For non Apprenticeship workplace training, the Agency will continue to provide co-funding for those individuals undertaking second level 2 qualifications who are employed within an SME. Co-funding for second level 2s for individuals in companies with 250 or more employees will no longer be available.

19. Non Apprenticeship Level 3 provision and that which is outside the current entitlement (first level 3 for 19-24 year olds) will no longer be eligible for co-funding in the work place for employers of any size.

20. As previously stated, ESOL delivered in the workplace will no longer be funded.

21. As set out above, the focus for Government funding will be on individuals with entitlements and Apprenticeships. There will be an increased focus for workplace training in SMEs. In the limited instances where provision is delivered to large employers (1,000+ employees) the reduced funding rate will continue to apply.

Fee Assumption/ Employer Contribution

22. In 2011/12 the assumed fee/employer contribution will continue to be 50%. Collection of fees from individuals and contributions from employers remains a priority and the Agency will continue to monitor this. We will consult in January 2011 further with the sector on how best to maximise fees and employer contributions, with the expectation of reflecting non-collection in future allocations, probably through an incremental implementation process. Key Skills and Functional Skills within Apprenticeship Frameworks will continue to have an expected employer contribution of 17.5%.

Skills Provision for the Unemployed

Wind down of Programmes for the Unemployed

23. Contracts for the recession related Programmes for the Unemployed and the Employability Skills Programme expire on 31st March 2011. From 2011/12 there will no longer be ring-fenced provision for the unemployed, outside of ESF. We will ensure that, where relevant, payments are made to providers for eligible learners on these courses, who move into employment after March 2011. The Agency will shortly publish a brief technical note setting out the process for this.

Provision for the Unemployed from April 2011

24. From 2011/12, the Agency will expect colleges and training organisations to use their Adult Skills Budget to respond to the needs of the unemployed. As the existing Programmes for the Unemployed end in March 2011, it is imperative that the FE sector is positioned to respond to these needs. Colleges and training organisations will be expected to engage with Jobcentre Plus locally in order to meet the needs of those claiming Jobseekers Allowance or the Employment Support Allowance, in the Work Related Activity Group. We will also expect colleges and training organisations to support Service Academies as they are rolled out next year. Service Academies will combine work placements with pre-employment training, leading to guaranteed interviews with employers. The final details are still being agreed and we will provide further information as soon as we can.

25. In order to incentivise and reward provision that links to work, and which helps learners enter and stay in work, we will be introducing a Job Outcome Incentive Payment (see below). We will shortly publish a brief technical note setting out the arrangements for this.

Skills Conditionality

26. The Government is committed to ensuring that individuals who are able to look for work or prepare for work, should be required to do so as a condition of receiving benefit, and those who fail to meet their responsibilities, without good cause, should face a sanction in the form of loss of benefit. Skills conditionality involves Jobcentre Plus referring

claimants aged 16 and over to skills support with potential benefit sanctions for non-participation. For those aged 19 and over this will be at the Next Step careers service (or the new all-age service that will replace it from April 2012).

27. DWP launched a consultation on 9 December 2010 regarding implementation of skills conditionality. DWP and BIS are seeking responses from colleges, training organisations and **all** partners (including Next Steps contractors).

Programme Led Apprenticeships (PLAs)

28. Colleges and training organisations were advised of the maximum 6 month time limitation applied to PLA starts from August 2010 through guidance issued at the start of the 2010/11 contracting year. This applied to starts of all ages except where the National Apprenticeship Service (NAS) had agreed an exemption i.e. in the case of a limited number of Third Sector providers.

29. Colleges and training organisations need to continue to update the Individualised Learner Record (ILR) for those learners that are moving into employment from PLA provision. The Agency is currently reviewing PLA provision across all regions. This will enable Account Management teams to have discussions with those providers who still have learners on PLA provision after the 6 month deadline. Further details will be made available early in 2011.

30. Under the terms of the Apprenticeships, Skills, Children and Learning Act, 2009, from April 2011 all apprentices will need to be working under an Apprenticeship Agreement i.e. a contract of service. This will mark the end of PLA provision altogether. Colleges and training organisations will not be able to recruit apprentices onto PLA provision from April 2011.

2011/12 Allocations Methodology

31. *Further Education – New Horizon, Investing in Skills for Sustainable Growth* sets out the impact of the spending review on Further Education and Skills funding from 2011-12 (actual budget), 2012-13 (indicative budget) and headline figures for 2013-14 and 2014-15 along with the high level principles to be adopted by the Agency.

Accountability

32. The Coalition Government is committed to removing central controls over the FE sector, in order to create a truly demand-led skills system. These greater freedoms come with greater accountability for colleges and training organisations to communities, businesses and learners. In setting out the funding requirements for 2011/12, the Agency wants to be clear about these expectations.

33. Colleges and training organisations are given the freedom and flexibility to decide on the mix and balance of provision needed and demanded by the communities, businesses and learners in the markets they serve. This provision will mainly relate to those qualifications available through the Qualifications and Credit Framework, as well as Skills for Life and residual NQF provision.

34. However, there are a number of areas where the Agency, acting on behalf of Government, will continue to take an active role, to ensure delivery. These are:

- a. Growth in Apprenticeships.
The Agency will monitor delivery against the overall growth trajectory and will reserve the right to remove funding from colleges and training organisations where Apprenticeship delivery falls below that agreed during the allocations process.
- b. Increased fee contributions from employers and individuals.
The Agency expects the sector to increase the level of income secured from individuals and employers during 2011/12. However, if it appears that levels of fee income are not increasing, then the Agency may need to intervene. This could entail reducing future years' allocations where there is non collection of fees. We will consult with the sector in January 2011 to determine how best to apply this.
- c. Utilisation of budget.
Colleges and training organisations will be expected to fully utilise their budget. This will be managed at the mid-year point for colleges and quarterly for training organisations, as is the case currently.
- d. Quality of provision
The Agency will continue to fund only high quality provision and will use Minimum Levels of Performance to remove funding from poor quality provision.

Single Adult Skills Budget

35. The allocations process reflects the Coalition Government's determination to give the sector the freedoms and flexibilities it needs to respond to demand. This includes the consolidation of various funding streams (Adult Learner Responsive, Train to Gain and Apprenticeships) into a single Adult Skills Budget, which will be available to all colleges and training organisations receiving an allocation in 2011/12.
36. All colleges and training organisations must be on the Approved College and Training Organisation Register (ACTOR) in order to be considered for funding for 2011/12. This will require all colleges and training organisations to submit a response to at least one of the Invitations to Tender (ITT) on ACTOR on or before **31 December 2010**. The areas that colleges and training organisations complete in their ITTs (which can include classroom and workshop based provision) will determine which areas of provision they are able to deliver. All colleges and training organisations will need to take the following action on or before 31 December in order to be on ACTOR and considered for funding for 2011/12:
- a. Organisations holding contracts for the delivery of Education & Vocational Training for the 2010/11 Academic Year or those organisations successful at the last freeze date (September 2010) of the Agency Qualified Provider Framework have a one year pass through due diligence but will be required to complete this by 31 December 2011. **They must complete any relevant ITTs** on ACTOR by 31 December 2010. This includes Apprenticeships, ESF, Adult Learner Responsive, Train to Gain, Programmes for the Unemployed and Adult Safeguarded Learning.
 - b. All other organisations including those interested in delivering ESF only provision **must complete the due diligence** Pre-Qualifying Questionnaire and at least one of the **ITTs**.

Allocations Methodology

37. The Coalition Government has set out its ambition for the sector, including investment to expand the existing Apprenticeship programme and a greater reliance on employer investment for work based learning.
38. The funding that the Agency is allocating through the Adult Skills Budget allocation for the 2011/12 academic year is £2.4bn. (Please note, this exclude Adult Safeguarded Learning, Additional Learner Support linked to the former Adult Learner Responsive budget, Formal First Steps etc, which will be allocated in January,)
39. Colleges and training organisations will receive an Adult Skills Budget, based on their 2010/11 allocation (covering former Adult Learner Responsive, Train to Gain and Apprenticeships), adjusted to reflect the funding available in 2011/12, and actual delivery in 2009/10 and 2010/11.
- For colleges, this baseline will be adjusted where there is evidence of any under delivery in 2009/10 or where the college forecasts under-delivery in the 2010/11 mid-year estimate
 - For training organisations, we will use the latest data on the Maximum Contract Value, initially through the Quarter 1 review update (for use with indicative allocations) which will then be updated at Quarter 2 (to inform the final allocation)
 - Colleges will also be able to update the Agency on their latest position for delivery of Apprenticeships at Quarter 2. This will then inform their final allocation.
40. At a national level, the funding available equates to a 1% reduction overall in the Adult Skills Budget in the 2011/12 academic year, although at college and training organisation level this will vary, depending on the proportion of Apprenticeship provision, and any other adjustments to the baseline.
41. Each allocation will protect current levels of Apprenticeship delivery and consolidate this, with further funding to enable growth in Apprenticeships. Initially, this growth funding will be set at 11%, although this will be subject to discussions with Account Management teams.
42. The remaining Adult Skills Budget (ie for non Apprenticeship delivery) will see an overall reduction of 3%.
43. As part of your indicative 2011/12 allocation, the Agency has also identified an amount of funding to be used for Job Outcome Incentive Payments. This equates to 2.5% of your 2011/12 indicative Adult Skills Budget allocation and is shown as a potential payment on your Funding Statement. We will consult with sector representatives on the details of how colleges and training organisations can earn this funding, by the end of January, with a view to setting out clearly the process and measures by the end of March 2011.
44. The Agency has also held back a reserve of £50m. This will be used to fund exceptional ALS, and to reflect any shifts in Apprenticeship delivery between Quarter 1 and Quarter 2. We expect the majority of this funding to be allocated by the end of March 2011.

Discussions with colleges and training organisations

45. The protected Apprenticeship baseline – i.e. Apprenticeship spend at Quarter 2 – will be the minimum expectation of delivery. As part of the discussion around allocations the Agency will expect colleges and training organisations to give Account Management teams confidence that they can deliver this level of Apprenticeship delivery plus the additional growth factored into allocations. This will be particularly important where colleges/training organisations have previously held a large Train to Gain budget which will increasingly have to be used to deliver Apprenticeships and provision leading to Apprenticeships.

Timescales

46. The Agency will publish indicative Adult Skills Budget 2011/12 allocations by 15 December 2011. Final allocations will be issued by 31 March 2011. Early notification of allocations will allow colleges and training organisations to manage the implications of any carry-in learners.

47. These will be subject to any changes relating to :

- Delivery (e.g. college mid-year estimate Quarter 2 Performance Management)
- Impact of Minimum Levels of Performance
- Changes to allocations as a result of the introduction of a Minimum Contact Level (e.g. a provider 'gaining' a new sub-contractor with a notional allocation).

Impact of Minimum Levels of Performance (MLP)

48. Minimum Levels of Performance will continue to be calculated and applied at an aggregate level across all ages, for each provider. The methodology is unchanged from previous years. The minimum thresholds have been agreed by Ministers in BIS and DfE. There is an increase to some of the thresholds; this reflects Ministers' desire to continue to drive out poor provision and reflect the increases in success rates (Minimum Levels of Performance thresholds have not increased for the last 2 years).

Programme/Qualification type	Minimum level
FE long qualification Level 1	63 per cent
FE long qualification Level 2	63 per cent
FE long qualification Level 3	63 per cent
A-levels	75 per cent
FE long qualification Level 4 or higher	61 per cent
FE short qualification (all levels/5 to 24 weeks)	65 per cent
Apprenticeships (full framework)	53 per cent
Advanced Apprenticeships (full framework)	53 per cent
Train to Gain	68 per cent

49. For Employer Responsive provision, the impact of MLPs will be calculated as detailed within the [MLP guidance](#) which will be published in December 2010.
50. In 2010/11, Adult Learner Responsive provision, delivered in 2009/10, will be analysed against MLP separately for short and long qualification provision and where emerging performance issues are evident, the Agency will discuss the reports on MLP as part of the provider dialogue. The extent of underperformance will determine the scale of any actions.
51. Where there is a need to remove provision, the amount will be deducted as part of the final allocations stage, for those above and below the MCL. At this stage the Agency will update the indicative allocation.
52. Employer Responsive MLP reports are now available on the [Gateway](#). Adult Learner Responsive MLP reports will be made available week commencing 13 December which will allow colleges and training organisations to assess the potential impact on their funding by Sector Subject Area.

Impact of Minimum Contract Level

53. Each college and training organisation above the Minimum Contract Level (MCL) of £500,000 as determined by their original 2010/11 allocation will receive an Adult Skills Budget allocation. The Agency will also calculate a notional allocation for all colleges and training organisations falling below the MCL, which will help inform their options and decisions about whether to enter into alternative delivery arrangements (for further information on MCL see below).

Learners with Learning Difficulties and /or Disabilities (LLDD)

54. Learners with Learning Difficulties and/or Disabilities remain a priority for the Government. The Adult Skills Budget will include provision for LLDD and the Agency expects colleges and training organisations to recognise the needs of these groups within their local communities when planning delivery.
55. The Agency is working closely with the YPLA to review arrangements for funding LDD learners. Further details regarding this will be provided in early 2011.

19+ learners funded in Sixth Form Colleges

56. Agency allocations to Sixth Form Colleges will include funding to cover the costs of 16-18 year olds turning 19, as well as all 19+ provision. We are currently working with the YPLA to agree how this funding will be administered most effectively.
57. We are currently working with the YPLA to agree that this funding is transferred to them, so that Sixth Form Colleges have a single relationship for all their funding.
58. Where a Sixth Form College only has an Agency allocation for entitlement learners turning 19, they will not be required to be on ACTOR. However, where a Sixth Form College wants to deliver other post-19 activity funded through the Agency, we will require them to be registered on ACTOR.

Other Allocations

59. The following allocations will be made outside of the Adult Skills Budget:
60. **16-18 Apprenticeships.** Funding for 16-18 Apprenticeships will be made available through a separate allocation process. The timetable for this will follow once the DfE grant letter has been published.
61. **Adult Safeguarded Learning (ASL).** This budget is protected at £210m but there will be greater flexibility across the four existing budget lines (Neighbourhood Learning in Deprived Communities; Personal and Community Development Learning, Wider Family Learning and Family Literacy; Language and Numeracy) which will be rationalised into one single budget. A single ASL budget will be allocated, which will comprise the previous four budget lines, however, colleges and training organisations will be responsible for continuing to deliver a balanced offer that meets the policy imperatives of the four elements, and is responsive to the needs of the local community. The current 2010/11 ASL allocation will be rolled over to the 2011/12 allocations. Colleges and training organisations are expected to ensure that learner numbers are increased where possible, through efficiencies in the use of the budget and by collecting more revenue in fees.
62. **Formal First Step.** The Agency has previously identified a proportion of the former Adult Learner Responsive budget to support Formal First Step provision – the purpose of which is actively to promote progression into formal learning. This budget will be allocated in January, alongside Adult Safeguarded Learning.
63. **Additional Learning Support (ALS).** The Agency is aligning the current approaches for ALS across all funding streams in line with the move to a single Adult Skills Budget. For 2011/12, the ALS previously allocated alongside Adult Learner Responsive provision will remain, and the current rules will apply. This will be a separate budget and it will not be possible to vire into the Adult Skills Budget. Employer Responsive ALS will be included within the Adult Skills Budget allocation. However, during 2011/12, we will confirm with providers their spend on Apprenticeship ALS so that we can allocate as one single pot in 2012/13.
64. Exceptional ALS will still be available for those learners whose needs require more than £19,000 of support.
65. **Discretionary Learner Support Funds (dLSF).** The Skills Strategy states that we will move incrementally to a single Learner Support Fund by 2012/13. For 2011/12 and to support incremental change, the 19+ dLSF will be calculated using a simplified cash approach based on 2010/11 19+ dLSF allocations, adjusted for affordability within the budget. This approach is consistent with the proposed allocations process for the Adult Skills Budget and moves towards a single Learner Support Fund in 2012/13.
66. **Offender Learning and Skills Service (OLASS).** *Further Education – New Horizon, Investing in Skills for Sustainable Growth* published the BIS contribution to the OLASS budget. However, the final amount will need to be agreed by BIS and the Ministry of Justice, and then confirmed to colleges and training organisations which hold contracts. The Review of Offender Learning is due to report in December and will provide more detail on any changes to the provision for offenders in custody and the community.
67. **European Social Fund (ESF).** The £475m being made available for adults through ESF co-financing plans will be procured from early 2011. The allocations will cover the

period 2011 to 2013 but provision will be allowed to be delivered up to July 2015. This will provide skills training for:

- unemployed and employed people, with a particular focus on disadvantaged groups including those under notice of redundancy;
- those not in education, employment or training;
- those who lack basic skills and qualifications.

68. ESF funding will support provision for the unemployed in the period between the end of Programmes for the Unemployed in March 2011, and the inclusion of provision for these learners in the Adult Skills Budget in August 2011 and will then run in parallel until August 2012. Procurement will take place in early 2011 to enable contracts to be in place for delivery from April 2011

69. Contracts will be let with due regard to the MCL threshold.

Outcome Incentive Payments (OIP) - Jobs

70. *Investing in Skills for Sustainable Growth* sets out plans to introduce Outcome Incentive Payments (OIPs) in order to incentivise and reward the FE sector to deliver wider economic outcomes. In 2011/12, the Agency will pilot this approach through the introduction of funding for job outcomes. This will equate to 2.5% of the Adult Skills Budget which will be used to incentivise colleges and training organisations to get people into work.

71. The job outcome payment will focus on those on Jobseekers Allowance and the Employment Support Allowance (Work Related Activity Group) at the start of their learning programme. The Agency will be working with sector representatives, in early 2011, to develop and communicate our approach here.

Minimum Contract Level (MCL)

72. In previous Guidance Notes the Agency has set out its intention to introduce a Minimum Contract Level. The threshold and application of this was considered as part of the consultation, *A Simplified FE and Skills Funding System and Methodology*. The introduction of a Minimum Contract Level will create efficiencies within the Agency and economies of scale across the sector.

73. The MCL threshold for 2011/12 has been set at **£500,000**. Any decision to increase the threshold in future years will be subject to an impact assessment of the introduction of MCL in 2011/12.

74. The MCL for 2011/12 will be applied on the basis of the total funding allocation made by the Agency for 2010/11, which included the following funding streams:

- Adult Learner Responsive
- Employer Responsive (including Train to Gain and Apprenticeships)
- European Social Funding (academic year proxy figure)
- Adult Safeguarded Learning including Family Learning Impact Fund and First Steps
- Discretionary Learner Support Funds

Please note that the Agency is currently in discussions with DfE about the application and impact of the MCL on 16-18 Apprenticeships. It is therefore not possible to confirm

if the policy will apply to those providers below the MCL threshold who deliver 16-18 Apprenticeships. We expect this to be clarified and the approach communicated in early January 2011.

75. The Minimum Contract Level will not take into account funds allocated in 10/11 for:

- the following Programmes for the Unemployed:
 - i. Employability Skills Programme
 - ii. Response to Redundancy
 - iii. 6 month offer
 - iv. Young Persons Guarantee – Routes into Work (including Care First Careers)
 - v. Young Persons Guarantee – Work Focused Training
- 16-18 Learner Responsive
- OLASS.

76. The MCL threshold will not take into account any in-year adjustment based on performance during 2010/11, nor will it take account of the application of Minimum Levels of Performance for 2011/12. Both of these factors will inform the final funding allocations for 2011/12, which will form the basis for MCL for 2012/13.

77. The following types of college/training organisation/employer will be exempt from the application of a Minimum Contract Level due to the specific nature of the contractual relationships that the Agency has with them:

- General FE colleges
- Specialist Colleges (e.g. of Art and Design)
- Large employers contracted to the National Employer Service
- Sixth Form Colleges (see below)
- Higher Education Institutions (see below).

78. Providers currently delivering only ESF activity which is due to end before 31 December 2011 are exempt from the application of MCL as they are already in the last year of their contract.

79. ESF only providers delivering Community Grants or 16-18 provision for those not in education, employment or training will be exempt from the application of a Minimum Contract Level due to the specific nature of the activity being delivered. However, the MCL will apply to the letting of ESF contracts for 19+ skills activity.

80. The Agency and the YPLA are currently considering the most efficient and effective way of managing Sixth Form College funding. This will include consideration of the impact of the Minimum Contract Level.

81. In addition, the Agency is also working with the Higher Education Funding Council for England to explore how to manage the funding of Higher Education Institutions (HEIs). Whilst the implications of this are being considered, MCL will not apply to HEIs.

82. The Learning and Skills Improvement Service is working with the sector to identify which delivery arrangements are being considered and will work with the Agency in order to understand how these different arrangements will be treated.

83. Further detailed guidance for providers can be found at Annex A to this Guidance Note and includes the process and timetable for 2012/13.

Sub-contracting

84. The Agency requirements for sub-contracting are set out in the Funding Requirements documents for 2010/11. It is likely that levels of sub-contracting will increase as a result of the introduction of MCL in 2011/12. The Agency is therefore working with the sector to develop further operational guidance and this will be published in early 2011.

Levels of sub-contracting

85. Currently sub-contractors may not further sub-contract provision except in exceptional circumstances, which include specialist provision for ESF and then only with the written approval of the Chief Executive of Skills Funding. This could affect some existing direct contractors who currently sub-contract, but then choose to enter a sub-contracting relationship themselves as a result of MCL. We are working with sector representatives to be clearer about what are considered to be exceptional circumstances for the 2011/12 requirements. This will be included in further operational requirements published in early 2011.

Administration fees

86. As part of their funding agreement with the Agency, lead contractors are required to submit details of their sub-contracting arrangements. These details should be submitted by returning the 'Declaration of Sub-contractors' spreadsheet, which is available from the [Skills Funding Agency website](#).

Details of how to submit this form are given on the spreadsheet and all providers should have already submitted a return for 2010/11.

87. In line with the Government's transparency agenda, the Agency will publish information on the administration fees of sub-contracted provision included in the 'Declaration of Sub-contractors', which the Agency plans to publish by 20 December. The information will be shared with providers prior to publication and will inform those organisations looking to become sub-contractors. It will also reflect the Coalition Government's commitment to transparency in showing the way public funding is used through sub-contracting relationships. While there is no defined limit on administration fees, the current requirements set an expectation that this should be proportionate to the costs incurred and would not normally exceed 15%.

Assurance of sub-contractors and use of ACTOR

88. It is the responsibility of the lead contractor to satisfy itself that the sub-contractor has been selected fairly and has the sufficient capacity, capability, quality and business standing to deliver the provision that is being sub-contracted. The current sub-contracting requirements are clear that colleges and publicly funded bodies must ensure they comply with relevant UK and European regulations when procuring the services of a sub-contractor. Although the regulations governing private providers are less prescriptive, the Agency will still expect the selection of sub-contractors to be equally fair, open and transparent.

89. How colleges and training organisations choose to meet these requirements and monitor them going forward is a matter for them to determine. However, the Chief Executive of Skills Funding reserves the right to ask lead contractors for additional evidence in support of their due diligence process. Colleges and training organisations that fail to oversee their sub-contractors appropriately will lose the right to sub-contract and may be suspended or removed from ACTOR themselves.
90. Colleges and training organisations intending to subcontract provision are encouraged to use the Agency's Approved College and Training Organisation Register (ACTOR). It can significantly simplify the process by which colleges and training organisations carry out due diligence checks of potential sub-contractors. The process for including organisations on ACTOR meets the requirements of the UK's procurement regulations and provides assurance that an organisation included on ACTOR has successfully passed a due diligence process and has had their capability to deliver the Agency's programmes assessed.
91. Colleges and training organisations remain responsible for checking the details provided by the successful sub-contractor and the Agency will not accept any liability in respect of the sub-contractor.

Intervention

92. The Skills Strategy sets out the intention to 'act decisively to tackle unacceptable performance'. Further policy announcements will be made in Spring 2011 and as part of this we will consult on a revised and streamlined policy for Statutory Intervention. 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.

Annex A - Minimum Contract Level

Additional Guidance for colleges, training organisations and employers

Implementation timetable and process

1. The MCL threshold will apply from the start of the 2011/12 academic year¹; the Agency will therefore cease to issue direct contracts to organisations for less than the Minimum Contract Level for 2011/12 (taking into account any exemptions).
2. Now that the Minimum Contract Level has been formally announced, the Agency is writing to all providers below the threshold (and that are not in one of the exemption categories) to confirm that it will cease to contract directly with them from August 2011. Providers should note that the position on 16-18 Apprenticeships is still being considered and it is therefore not possible to confirm whether the policy will apply to those providers delivering 16-18 Apprenticeships. It is hoped that this will be clarified and the approach communicated in early 2011. The letter will confirm the next steps and implementation process as per the table below:

Date	Action
September 2010	22/09/10 - Skills Funding Agency allocations published
October 2010	20/10/10 - Approved College and Training Organisation Register (ACTOR) opens for all existing contract holders to register
November 2010	16/11/10 - Minimum Contract Level announced Providers enter into discussions on alternative arrangements
	30/11/10 - Account Teams write to those providers affected by the Minimum Contract Level
December 2010	15/12/10 - Indicative 2011/12 funding allocation issued to all providers whether above or below the Minimum Contract Level Providers begin to enter into new delivery arrangements if this is their preferred route Providers can notify the Agency at any point between December and the end of March of their final and formal course of action. 31/12/10 - First ACTOR freeze date
December to March 2011	Continued dialogue between provider and account manager. New contract arrangements formed.
January 2011	Minimum levels of performance (MLP) applied to all providers, taking into account exemptions and exceptions 11/01/11 Providers affected by the Minimum Contract Level give an initial indication to the Agency of their planned course of action: <ul style="list-style-type: none"> ○ new delivery arrangement being formed (sub-contract, consortia, merger/acquisition, new legal entity) ○ run-down contract

¹ For new ESF contracts the threshold will apply from their date of issue.

	ACTOR reopens for the update of information on new contracting arrangements (e.g. new sub contractors) and registration of new lead providers.
February 2011	MLP outcomes agreed
March 2011	31/03/11 - Final funding calculations issued to all providers. This will include an adjustment for MLP but will not reflect any changes arising from the formation of new delivery arrangements
	31/03/11 - Providers affected by the Minimum Contract Level to give a final and formal notification to the Agency of their arrangements. New arrangements will need to have been submitted on ACTOR. Provider and contract lead confirm in writing to the Agency that they are working together.
	31/03/11 - Second ACTOR freeze date: this is the freeze date that will include the evaluation of any new delivery arrangements that have been entered into.
April 2011	Providers using ACTOR notified whether they have been successful
May 2011	31/05/11 - Allocations to lead providers adjusted to take account of new delivery arrangements that have been formed
June 2011	30/06/11 - Contracts and funding agreements issued to direct contractors for 2011/12
July 2011	31/07/11 – Learners ILR data migrated to lead providers; contract novations completed.

New delivery arrangements – responsibilities of providers

3. The Agency will not make any recommendations or provide any advice on new delivery arrangements that might be adopted by providers affected by the introduction of the Minimum Contract Level.
4. It is the responsibility of providers to migrate to new delivery arrangements if they wish to do so and it is the college's or training organisation's responsibility to undertake any necessary due diligence and to seek legal advice before entering into a relationship with another organisation.
5. In moving to new delivery arrangements, it is also the responsibility of providers to check whether there is the potential of a Transfer of Undertakings and Protection of Employment (TUPE) transfer. The employees of the outgoing organisation or the management of the incoming organisation must seek their own counsel on this issue.

New delivery arrangements – processes to be followed

6. The Agency has previously required providers to deliver at least half of the value of their contract directly. This restriction was to ensure that the nature of the service did not change and therefore alter the procurement procedures that would need to have been followed. Our latest legal advice is that the delivery model adopted by the provider does not alter the nature of the service that is being procured. Therefore, provided that contracts are limited to providing educational and vocational training services, the proposed delivery model or the total proportion of provision to be sub-contracted does not matter.

7. This means that the Agency will no longer place any restrictions on the type of delivery model a provider is required to have. The Agency will need to evaluate each proposal on the basis of value for money, risk capacity, capability and resource to deliver and the Minimum Contract Level.
8. For any new legal entity created as a result of existing providers entering into collaborative arrangements the Agency will need to be assured that it is able to meet the existing and future liabilities and commitments of the provision it is taking responsibility for. This assessment will be undertaken through ACTOR and Provider Financial Assurance assessments. Through these assessments the Agency will need to be satisfied that the new legal entity has robust and legally binding guarantees in place with its shareholders / partners / sub-contractors that will ensure that public money is safe guarded.
9. Where a provider impacted by MCL forms a new contracting arrangement, be this through a new sub-contracting relationship or a new collaborative arrangement between providers the following general actions and principles apply:
 - The providers forming new arrangements will need to be existing Agency contractors and approved on ACTOR
 - Where an existing provider is taking on new sub-contractors, the lead provider must be an existing Agency direct contractor and already approved on ACTOR
 - Where a new legal entity is being created to hold the contract, and therefore sub contract to a group of existing providers, it must become approved on ACTOR
 - The lead provider must have a legally binding agreement with each and all of its sub-contractors
 - The lead provider will determine the proportion of provision they wish to sub-contract (lead provider can choose to sub-contract 100% of the provision if they wish to do so)
 - The level of allocation given to a sub-contractor is a matter between the lead provider and sub contractor(s)
 - Once the new arrangement is formed, the Agency will only deal with the lead provider
 - If a disagreement arises between the lead provider and the sub-contractor, the Agency will not intervene
 - The lead provider retains ultimate responsibility for all aspects of the provision that it is contracted to deliver, including elements that it chooses to sub-contract
 - The sub-contractor cannot 'port' their share of provision to another lead provider at some point in the future as this belongs to the lead provider.

Approved College and Training Organisation Register (ACTOR)

10. As noted above all providers wishing to hold contracts with the Agency must be approved on ACTOR and to this end the initial registration process for ACTOR is currently ongoing, with a closing deadline of 31 December 2010, for all existing providers.

Run-down allocations and contracts

11. It will be necessary to issue run-down contracts to those providers that choose to exit from Agency delivery, either in year or at the start of 2011/12, and also to those that fail to enter new delivery arrangements. Run-down allocations will be calculated on the

basis of a consistent national formula which will utilise the calculations within the Provider Financial Report.

12. Run-down allocations will only be calculated when a provider notifies the Agency of the decision to wind up their contract. In order to make the calculation, a clear understanding of the current level of activity will need to be provided.

Contract termination

13. Where a provider chooses to terminate their contract with the Agency, the provider is required to give due notice, as per the terms and conditions of their contract and is expected to see out this notice period.
14. In the interests of learners and employers, we expect providers to notify the Agency at the earliest possible opportunity if this is their preferred course of action so that alternative provision can be sourced.
15. The Agency will issue providers with clear guidance on the actions it needs to take in order that learners can be transferred to another provider(s).
16. Where such learners are taken on by another provider the funding required to meet their training commitment will also be transferred to that provider.

Providers currently in consortia wishing to be direct contractors

17. As this type of provider does not have a direct contract with the Agency, they will be treated as any other sub-contractor (i.e. not offered a direct contract even if what they deliver is above the Minimum Contract Level).
18. However any provider may apply to become approved on ACTOR and access new funding opportunities through that route.

Application of Minimum Levels of Performance

19. Minimum Levels of Performance in 2011/12 will be based on 2010/11 delivery. When contracts novate/ transfer, the lead provider/direct contractor assumes responsibility for MLP of all sub-contractors/consortia members and as such the MLP will be the collective MLP of all provision delivered through the contract.
20. The same process will apply where a new legal entity or holding company is created. The provision delivered by such a contract holder will not be classified as immature as the provision will have a history of delivery, albeit with a different contract holder.

Process and timetable for providers looking to make arrangements for 2012/13 and beyond

21. Providers currently above the threshold are free to enter into arrangements as they see fit and should consider the implications and ambitions of both the Comprehensive Spending Review and the Skills Strategy on their future activity and allocations rather than await any change in the threshold.
22. As has been stated previously no commitment has been made to increase the MCL threshold until after the impact of its initial introduction has been assessed. However this does not mean that it will not rise in future years. Should the decision be made to

raise the threshold all providers will be given adequate notification.

23. As part of the allocations process for each academic year from 2012/13 onwards, an assessment will be made as to whether the threshold should be raised and whether any providers have fallen below the MCL threshold to be implemented.
24. Regardless of whether the threshold rises or not in any future year MCL will apply with regard to a provider's allocation for the previous year.

Role of the Agency once new delivery arrangements are in place

25. All contract holders will fall under the relevant performance management processes for 2011/12.
26. The Agency will maintain a one-to-one relationship with the providers with whom it holds contracts as is the case with the account management structure currently.
27. Where new contracting arrangements exist, be that increased sub-contracting or with a new legal entity, the Agency will take a risk based approach to the level of monitoring required to safeguard public funding. This may include closer monitoring, audit or inspection as appropriate to the level of funding and measured risk.

Further support and guidance

28. Account Managers will be working with all those providers impacted by MCL in order to understand the arrangements that they are considering and ultimately entering into.
29. Whilst the Agency is keen to maintain a close dialogue with providers throughout this process it will not be able to give advice on preferred arrangements. Independent guidance and advice is available:
- The Learning and Skills Improvement Service (LSIS) are putting in place a support programme for providers impacted by MCL including a series of fact sheets on provider contracting models. More information on this programme can be found via the [LSIS website](#)

Queries and complaints

30. Any queries should be directed to your Account Manager in the first instance.
31. The Agency will not operate a business case or appeals process for providers to challenge the application of the policy. Complaints should be raised through the normal Agency complaints procedure. Details of the complaints procedure are available on the [Skills Funding Agency website](#).

Frequently asked questions

32. A set of FAQs have been published following the MCL seminars delivered by ALP during October 2010. The latest FAQ can be accessed through the [ALP website](#).