



Education & Skills  
Funding Agency

# **Funding guidance for young people 2017 to 2018**

**Subcontracting control regulations**

**From 1 August 2017**

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## Subcontracting control regulations

1. This document is one of 4 booklets issued by the Education and Skills Funding Agency (ESFA) that outline the main features of the ESFA funding arrangements for young people each year. The regulations set out in this document are an integral part of the ESFA's funding agreements for young people aged 16 to 19 and those aged 19 to 24 with an Education Health and Care (EHC) plan. The following documents comprise the complete suite of ESFA funding guidance for young people:

- funding regulations
- funding rates and formula
- ILR funding returns
- subcontracting controls regulations (this booklet)

2. This document includes the 2 significant new restrictions introduced from 2016 to 2017. The first applies to maintained schools and academies that have whole programme subcontracting arrangements (both local and at a distance). We advise maintained schools and academies that such whole programme subcontracting should only be in place (where already agreed by ESFA in 2016 to 2017) for 2017 to 2018 for students continuing on programmes they started in 2016 to 2017, and must cease completely after 2017 to 2018. Schools and academies with existing whole programme subcontracting arrangements must take the required actions as set out in paragraphs 24 to 31. The second applies to colleges subcontracting provision wholly or substantially to a special school for provision for 19 to 25 HNS. The ESFA advises institutions to note those changes and take the required actions as set out in paragraphs 32 to 36.

3. This document explains the additional management controls and procedures required of ESFA-funded institutions over their individual subcontracting arrangements for young people's study programmes. The additional management controls and procedures in this document are compulsory for all directly funded institutions.

4. All ESFA-funded young people's provision subcontracted by directly funded institutions must comply with the eligibility and other requirements set out in the funding regulations and funding rates and formula guidance. Each directly funded institution is fully responsible for all aspects of the provision delivered under subcontracting arrangements, including all aspects of student and programme eligibility, performance and safeguarding of young people. In accordance with funding regulations paragraph 16, institutions must not charge tuition fees to any young person attending a study programme at an institution receiving either direct- or subcontracted funding from the ESFA.

5. All ESFA young people's funded education and training delivered by organisations without direct funding from the ESFA must be treated as subcontracted provision and be subject to the arrangements set out in this document unless it falls within the exceptions in paragraph 8.

## **Aim of this document**

6. This document sets out the ESFA additional compliance and control regulations for all directly funded institutions that use third parties to deliver study programme provision for young people that is funded by the ESFA. Directly funded institutions include all institutions that are either directly funded by the ESFA or are directly funded by local authorities using ESFA funding. This covers all maintained schools, academies, free schools, sixth-form and FE colleges and charitable and commercial providers (CCP). Institutions with no third party delivery arrangements will not need to use this document.

7. This document forms part of the funding arrangements between the ESFA and all directly funded institutions that have subcontracted a proportion of their ESFA-funded provision for young people. Directly funded institutions must apply this compulsory guidance in accordance with one of the following documents:

- Conditions of Funding Agreement
- Conditions of Funding Grant
- Funding Agreement
- Contract for Services

## **Provision outside the scope of this document**

8. These regulations do not apply where directly funded institutions agree to collaborate with each other in their individual local delivery arrangements to students. Collaborative arrangements are those where 2 (or more) institutions directly funded by ESFA agree to share part of the delivery of education and training to students, where the majority of each student's education and training is delivered by the student's home institution and where the home institution records the student on either the ILR or school census for funding purposes.

## **Direct delivery definition**

9. Direct delivery arrangements are where institutions use their own staff in their own buildings. This includes buildings that form part of the institution's own infrastructure including any that may be rented or leased, usually on a long-term basis.

## **Subcontracted delivery definition**

10. Subcontracted delivery is defined as provision delivered by a third party organisation with whom the institution directly funded by the ESFA has entered into contractual arrangements for the delivery of a proportion of the education provision funded by the ESFA, and for which payments are dependent on student numbers and/or formula funding values.

11. The amount of study programme funding retained by the directly funded institution must be proportionate to the costs they incur in the management and administration of the contract, and to be determined through due diligence and risk assessment processes.

## **Declaring subcontracting provision**

12. All institutions receiving ESFA funding must record subcontracted provision in line with the published guidance for completion of the school census and of the ILR. The ESFA is likely to publish annually a summary of this information including the names of subcontractors and the number of students on subcontracted provision.

## **Why the ESFA require additional controls and procedures in respect of subcontracted provision**

13. Some subcontracting arrangements have created substantial financial and reputation issues for institutions in the past, particularly where the subcontracted delivery has taken place at a distance from the directly funded institution. One particular concern is how the funding body has assured the proper use of public money, when funding is being transferred by publicly funded institutions to the independent sector. Directly funded institutions must properly monitor and control all subcontracted delivery of study programmes. Institutions must not make artificial distinctions or distortions when describing delivery arrangements in order to avoid the application of these regulations.

## **ESFA intervention**

14. When the ESFA has concerns about a subcontracting arrangement between an institution directly funded by the ESFA and a third party, we will carry out an assessment to determine if the arrangements comply with the detail, spirit and intention of this guidance. The assessment will take into account:

- the funding eligibility
- the management and control of the contract

- the welfare of the young people involved
- students' access to the full entitlement of study programmes and student support
- the overall quality of the education and/or training being delivered under the subcontracting arrangement

## **ESFA penalties for failure to comply with funding guidance for young people**

15. The ESFA reserves the right to take a range of actions (in accordance with the funding agreement/contract) where institutions are not compliant with the guidance set out in this document, relating either to ineligible provision or failures in management and control of the provision.

### **Ineligible provision within study programmes**

16. For non-existent or ineligible subcontracted activity either recorded or claimed by funded institutions, the ESFA will seek recovery of funds paid for the ineligible activity or students, including grant-in-aid funding not usually subject to any reconciliation arrangements. This is usually through adjusting lagged funding values but in the case of serious error or irregularity the ESFA may also remove the grant-in-aid relationship and require in-year funding recovery. Where institutions have recorded ineligible activity in funding returns the ESFA will normally recover any funding associated with the ineligible activity for the current year, and up to 6 previous funding years, in accordance with normal public sector accounting rules for the protection of public funds.

### **Management, monitoring and control within study programmes**

17. When directly funded institutions do not appropriately manage and monitor subcontracted delivery, the ESFA may remove student numbers and the associated funding from their allocation even if there are no concerns over the subcontracted provision's quality. The ESFA may also require the institution to discontinue the subcontracting arrangement either with immediate effect or from the end of the current funding year.

18. The DfE will apply its intervention policy, and the ESFA may apply recruitment restrictions when an institution has failed. The ESFA will also consider subcontracted provision under the control of a failed institution to be inadequate. Failed institutions must not enter into any new, or extend existing, ESFA-funded subcontractor arrangements. The funding agreements set out the action that may follow intervention. An institution fails when:

- Ofsted assess it as overall inadequate
- it does not meet 16 to 18 national minimum standards

- the ESFA assess it as in financial failure
- it does not meet any other quality threshold set out by the DfE/ESFA

19. When subcontracted provision does not meet the ESFA expected quality standards, the ESFA may take one or both of these actions:

- remove the student numbers and associated funding from lagged funding allocations for the directly funded institution
- require the institution to discontinue the subcontracting arrangement, either with immediate effect or from the end of the current funding year

## **Advice for accounting officers of directly funded institutions on managing subcontracted provision within study programmes**

20. Heads and chief executives of directly funded institutions (accounting officers in grant-in-aid institutions) need to ensure full compliance with this guidance regardless of whether the funding body has commissioned any funding audit work on the delivery. This advice also applies to the lead institution where subcontractors have multiple contracts for the delivery of ESFA-funded provision. The definitions of lead responsibilities are set out in paragraphs 72 to 74.

21. Institutions' management are required to satisfy themselves that:

- all subcontracted delivery arrangements comply with the evidential requirements set out in companion document Funding regulations: Section 6: Evidence of student existence and eligibility
- the controls set out in this document are in place and operating for all subcontractor arrangements
- they are making appropriate systematic checks to ensure that students enrolled by subcontractors on their behalf and recorded in their records are correctly described in their own student record system and were actually receiving the scheduled provision described

22. When appointing subcontractors, institutions' management must take steps to avoid any conflicts of interest and/or any circumstances (for example, common directorships) which might give rise to an actual or perceived conflict of interest.

23. Institutions' management must satisfy themselves that the detailed guidance in this document from paragraph 57 has been appropriately carried out. Lead institutions must ensure that there is no risk of double funding for subcontractors with multiple subcontracts with directly funded institutions.

## **Significant restrictions on subcontracting activity affecting maintained schools and academies effective since August 2016**

24. The ESFA reviewed the increasing volume of subcontracting activity undertaken by maintained schools and academies. We concluded that the legislation on pupil registration and attendance meant that the practice of subcontracting the whole of a young person's programme by maintained schools and academies should cease as soon as is practicable. All such arrangements must cease in their entirety by the end of the 2017 to 2018 academic year.

25. The reason that we require this activity to cease is to ensure maintained schools and academies are compliant with the Education (Pupil Registration) (England) Regulations 2006. These regulations apply to academies and maintained schools, cover the age range up to 18 and state that a school's roll can only include 'pupils at the school'. Section 3 of the Education Act 1996 defines 'pupil' as someone 'for whom education is being provided at the school'.

26. The Regulations and the 1996 Act make clear that pupils should physically attend the school for at least some of the time. Although schools have powers to arrange some educational activities away from their premises, these are not intended to allow the whole of a pupil's education to be delivered somewhere, and by someone, other than the school. This means that all whole programme subcontracted provision is in breach of the regulations.

27. We will continue to allow subcontracted provision in maintained schools and academies provided it is compliant with this regulation, that is the pupils under the subcontracted arrangement attend the school 'at least some of the time'. Our expectation, and for these purposes our definition of what is meant by 'at least some of the time' is that students will be attending the school or academy for an element of their programme throughout the academic year. Attendance at the school or academy should be at least once a week for the provision not to be considered whole programme subcontracted activity.

28. We therefore gave notice in the 2016 to 2017 subcontracting guidance that we expected maintained schools and academies to cease subcontracting of the whole of a student's programme as soon as possible. We recognised that there might be circumstances where this was not possible immediately without significantly disrupting a young person's programme of study. We expect that schools and academies will now have made the required changes, or will be in the process of winding down any such arrangements, and we confirm that all such arrangements must have ceased in their entirety by the end of the 2017 to 2018 academic year.

29. Institutions were informed that they must not enter into any new contracts for whole programme subcontracting arrangements from the end of July 2016. Existing contracts for 2016 to 2017 were permitted to continue for that year and we considered wind down arrangements in exceptional cases for 2017 to 2018 on a case-by-case basis.

30. All schools and academies with whole programme subcontracting arrangements for 2017 to 2018 were required to inform us of those arrangements by the end of September 2016. Institutions that have entered into 2017 to 2018 wind down arrangements without the knowledge and agreement of the ESFA should notify us of such arrangements immediately. We will consider any whole programme subcontracted provision in 2017 to 2018 that we have not approved for wind down to be ineligible for funding.

31. For the avoidance of doubt, this restriction only applies to whole programme subcontracting arrangements. We do not propose to prohibit collaboration with local partner schools, or subcontracting with other local partners for some elements of a student's programme, where this is serving their educational needs and is managed and monitored in line with this guidance.

## **Subcontracting 19 to 25 high needs provision to special schools within study programmes**

32. In 2014, the DfE legislated to restrict local authorities in their funding of special schools in respect of 19 to 25 year old students. This restriction effectively prevents special schools from routinely enrolling young people aged 19 to 25. This was in support of the objective of the SEND reforms to prepare young people for adulthood. Allowing students to potentially remain in a single setting from age 5 to 25 could severely prejudice their chances of preparing for employment and independent living, and would simply push back the 'cliff edge' described by many parents when their children leave education. Requiring young people to move into further education if their Education, Health and Care (EHC) plans continue post-19 is far more likely to prepare them for adulthood. This provision, where appropriate, should include opportunities to experience the world of work, develop independent living skills and make independent choices and decisions in an adult context.

33. We do not expect colleges to enter into subcontracting arrangements with special schools for the whole, or for a substantial proportion of a students' programme where they are aged 19 to 25. Where such arrangements are currently in place, institutions must not recruit more students and must wind down the arrangement. Special schools have the option to set up a legally and financially separate entity to make provision for 19 to 25 year olds as advised in the [High needs funding: operational guide 2017 to 2018](#) on GOV.UK.

34. Colleges that had such arrangements with special schools were required to provide details to the ESFA by the end of September 2016 and to indicate the wind down period required for that arrangement, which should be no longer than 2 years. If any such arrangements have not been notified to the ESFA, colleges should do so immediately.

35. Arrangements may continue between colleges and special schools for part of a students' programme where appropriate, for example where this is serving the student's educational needs, or to access a sensory room or speech and language therapy. Such arrangements should not be for more than one day per week.

36. We will also continue to allow students to stay on for another year at a special school to finish a course of secondary education started before they were 18.

## **Prevent duty**

37. The [prevent duty](#), which requires that institutions, when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism, extends to any subcontracted provision. It is a condition of funding that all further education and independent training providers must comply with relevant legislation and any statutory responsibilities associated with the delivery of education and safeguarding of learners, and this includes learners receiving provision under a subcontracting arrangement.

## **Distant subcontracted delivery within study programmes**

38. Distant provision is that which is outside the normal recruitment area of the directly funded institution, that is the area from which most ESFA-funded students travel to learn at the institution as explained in companion document funding regulations section 3. There are inherent difficulties for directly funded institutions in exercising the appropriate levels of control over distant subcontracted provision, thereby increasing the risk of poor provision being delivered, of safeguarding and/or funding irregularity.

39. Distant subcontracting arrangements, for the whole of a student's programme, should be by exception only and maintained schools and academies must completely discontinue them, as set out in paragraphs 24 to 31. For institutions with subcontractors that recruit students on distant provision the advice in this document will assist them in making sure they are only recording eligible students within their funding data returns.

40. If a college or other FE provider believes there is good reason for the ESFA to fund, by exception, distant subcontracted provision of a whole programme then the

institution must consider the funding implications and assure itself that the arrangement is compliant with this guidance in advance of any recruitment. Institutions must take responsibility for ESFA funding to ensure that they and their proposed subcontractors can comply with these controls regulations before entering into such arrangements and before they recruit students.

41. To satisfy the ESFA that appropriate controls are in place the ESFA will request funding auditors to undertake sample checks of the arrangements in place for such provision. Where the arrangements are found not to be compliant, the ESFA reserves the right to take actions in line with penalties set out in this document and/or in the contract/funding agreement clauses. This means that where a funded institution decides that it can justify an exceptional arrangement for the delivery of a student's whole programme at distance it must also evidence the reasons for the arrangement and the required controls and monitoring.

42. A range of relevant factors will be considered by the ESFA and funding auditors in deciding whether provision delivered outside the institution's normal recruitment area may be considered compliant with the regulations, including but not limited to:

- the provision must comply with the principles of study programmes as set out in funding regulations
- the extent to which the directly funded institution is involved in delivery (for example teaching part of the programme or just providing financial and quality assurance)
- the amount of funding retained by the directly funded institution should be proportionate to the costs they incur in the management and administration of the contract
- the extent to which the provision being made available is already available via directly funded institutions in the locality and is accessible to students in the area where the proposed subcontract is to operate
- the extent to which a gap in the provision of the type to be delivered under the proposed subcontract has been identified or supported by the local authority or an employer
- the location of delivery and the nature of travel to learn/travel to work patterns
- the extent of student contact with the directly funded institution

## **Controls and procedures for all subcontracting within study programmes**

### **Procurement**

43. All institutions must ensure that that they comply with current and relevant procurement regulations. Each institution must ensure that they select their

subcontractor(s) fairly and that they have sufficient capacity, capability, quality and business standing to deliver the provision that is being subcontracted. All publicly funded bodies must ensure they comply with relevant UK and European regulations when procuring the services of a subcontractor.

44. An institution must not subcontract, without written ESFA permission, with any provider in the following categories. The contract between the directly funded institution and the subcontractor should allow immediate or early termination if these circumstances arise during the contract:

- a subcontractor that is inspected in its own right and found to be inadequate or under-performing by Ofsted
- a subcontractor that is subject to intervention by the ESFA
- where the institution is not permitted to recruit students in the 16 to 18 age group, for example, an 11 to 16 school

45. Institutions must take all necessary steps to verify any actual or perceived conflicts of interests in potential subcontractors, and eliminate such subcontractors from the process.

46. How institutions choose to meet these procurement requirements and monitor them is a matter for them to determine. However, the ESFA reserves the right to ask all institutions for additional evidence that support their decisions within this process to resolve any eligibility issues.

47. Institutions remain responsible for checking the details provided by the successful subcontractor and neither the ESFA nor the Secretary of State will accept any liability in respect of the directly funded institution procurement of any subcontractor.

## **Due diligence**

48. Institutions are responsible for carrying out their own due diligence to manage the reputational and other risks of contracting with the proposed subcontractor. This process will consider non-financial as well as financial issues. The governing bodies of colleges, schools and academies must determine the nature and extent of these procedures but in financial terms they would be expected to include the steps set out below.

49. Institutions must only award contracts to registered companies or charities. The status of companies should be recorded as 'active' on the Companies House register.

50. Institutions must assess the financial health of the proposed subcontractor on at least an annual basis to ensure that they have the financial standing and capacity to deliver the subcontract. This will involve obtaining and reviewing their statutory accounts (financial statements), and possible reference to credit agency checks.

Institutions must exercise extreme caution where a credit agency limit is low, or where the company has high levels of borrowing or poor indicators of financial solvency.

51. In addition contracts must not be awarded to companies with any of the following:

- risk warnings (that is, above average risk warning from an agency)
- legal notices (that is, intention to dissolve, winding up petition/order, compulsory or voluntary liquidation, etc)
- overdue statutory accounts

52. Institutions must not award contracts to brand new companies who:

- are yet to submit their first statutory accounts, or
- have a legal relationship with a company falling into categories listed above

53. In an exception where an institution wishes to contract with a newly established company, it will obtain sufficient information to verify financial capacity, for example through a costed business plan.

54. In order to gather information about the proposed subcontractor institutions may wish to refer to our Register of Training Organisations. This would provide some assurance that an organisation included on the register has successfully passed a due diligence process and has had their capability to deliver programmes assessed by another funding body.

## **Contracts for subcontracted delivery within study programmes**

56. As part of showing compliance with this guidance institutions must have a written contract governing their subcontractor arrangements that clearly sets out the respective responsibilities of both the institution and the subcontractor. This contract must entitle the institution to exercise the management controls over the subcontractor's activity, including access by auditors appointed by either the institution or the funding body. Each institution will wish to take its own legal advice before entering into contracts.

## **Controls over students, tutors and provision within study programmes**

57. Additional controls in respect of subcontracted provision are required for a number of reasons:

- to ensure that the quality of the education provision delivered through a subcontracting relationship is actively managed and monitored by the directly funded institution to the same standards as directly delivered provision
- to ensure that the risks to public funding are actively managed by the directly-funded institution

- to protect the reputation of the sector, individual institutions and the ESFA

58. The management and control exercised by the directly funded institution must be able to demonstrate the following key elements are in place:

- an institution being able to enrol or reject students as it would do if the students were to be taught on its own site
- a learning agreement, signed by the student, entered into at the time of enrolment that reflects the outcome of initial guidance and assessment (IAG) for an individual student and sets out their study programme
- that the student eligibility for ESFA funding is confirmed through their individually signed enrolment form and/or learning agreement which must include the name and logo of the directly funded institution
- a learning programme and its means of delivery that have been clearly specified by the institution
- arrangements for assessing the progress of individual students, and
- procedures for the institution to regularly monitor the delivery of programmes provided in its name

59. Subcontractors must not subcontract any part of the delivery of ESFA-funded provision to other organisations or self-employed individuals. The ESFA do not allow multiple level sub-contracting in any funded delivery for young people study programmes. For example, if the trainers used normally provide their services as self-employed contractors, the subcontractor must create an employment relationship with them.

60. The delivery of provision should be by the subcontractor's directly employed staff. In the case of volunteers, the control will be 'as if they were employed'.

61. It is not acceptable for subcontractors or institution staff with a financial interest in the subcontractor to undertake any management control activities. This includes signing time sheets or invoices as well as organising and/or performing any monitoring activity or visits about the subcontractor delivery.

## **Controls over qualifications and curriculum within study programmes**

62. The directly funded institution should normally be the centre approved by the awarding body for the qualifications being offered by means of subcontracted provision. The institution should be able to demonstrate that it is monitoring the activities of the approved centre, in particular its relationship with the awarding body, and that it is exercising control over, and making appropriate arrangements for, the quality assurance of all provision.

63. Where the institution is making subcontracted provision in curriculum areas not normally covered by the institution, it must be able to demonstrate that it can exercise

effective control over the provision. In these circumstances, the institution should employ an independent person with appropriate expertise in the curriculum area to provide advice on subcontracted arrangements and undertake the necessary checks on the operation of the arrangements, including monitoring of the quality of provision. This person must not have a financial relationship with the subcontracted firm or organisation.

## **ESFA-funded young people attending more than one institution**

64. The student's home institution must draw down all the funding for an ESFA-funded student. A student cannot enrol at more than one directly funded ESFA institution for different components of their programme of study. Where a student is attending different institutions for different components of their programme of study, the home institution must record all these components, and indicate on the individualised learner record or school census which elements are delivered via a subcontracting arrangement (see paragraphs 11 and 12). All institutions, whether funded directly or through subcontracting arrangements, should ensure that before any ESFA funding is claimed for any subcontracted students no 'double funding' is being claimed for them. They should be assured that the subcontracted students are not enrolled, and being funded by the ESFA via another institution. Institutions must not record funding for any additional study programmes (such as additional learning aims) for students already enrolled at other funded institutions in the funding year. All individual students recorded for funding purposes must have the correct unique learner number recorded.

## **Monitoring (control) visits and spot-checks within study programmes**

65. Institutions must address all the monitoring, management and control issues over their subcontracted delivery set out in this document for themselves. The following paragraphs give some advice on the management controls and monitoring required from ESFA-funded institutions on their subcontracted delivery arrangements.

66. Spot-check visits should be carried out regularly in cases where the provision runs throughout the year. In other cases, the scheduled spot-check visits should take account of the pattern of provision so that they are applied to a significant proportion of students on a regular basis. Systematic spot-check visits should involve the institution making unannounced visits in-year to each subcontractor. A sample of sites must be included for provision being delivered by each subcontractor, rather than simply revisiting the same site. The checks should be proportionate to the risk and volume of the provision and contract. They should also be undertaken during the year at times that are proportionate to the periods in which funding is being claimed.

67. Institutions should ensure that they meet and interview a sample of students and staff. Institutions must ask students to name the institution they are enrolled at, and

must also ask if they are at the same time, or have been recently, a student at another ESFA-funded institution. Other evidence sought should include:

- marketing material
- copies of registers
- learning agreements
- registration documents for awarding bodies
- visit notes from external moderators
- evidence of certification

68. Institutions must use systematic checks to confirm that the provision exists and is consistent with their expectations and records. The number and characteristics of students should accord with the institution's expectations and records. For example, they should investigate any obvious mismatch between the apparent and expected age of the students.

69. The ESFA-funded institution must carry out an investigation at their own cost if there is any evidence of a subcontractor's irregular financial or delivery activity and report the outcome of the investigation, in writing, to the ESFA within 10 days of the investigation ending.

70. Monitoring of provision must include checks on eligibility of provision and direct observation of the initial guidance and assessment process and at appropriate intervals, of the delivery of the study programmes, which may include reviewing examples of student work. Monitoring activities should be similar to those considered appropriate for external verification or moderation, sufficient to ensure that student progress can be monitored, and used to gather regular student feedback.

## **Subcontractors with multiple institution contracts within study programmes**

71. Directly funded institutions must establish which of their subcontractors work with other directly funded ESFA institutions. Subcontracted provision (particularly distance provision) has had the highest number of historic double funding problems and the ESFA regards such arrangements as high risk. The ESFA expects any institution with subcontracted provision to use the advice below to reduce their risk in recording ineligible provision. If double funding occurs then the ESFA will treat the distant delivery as ineligible for funding and recovery of funds will take place.

72. The ESFA regard the best practice for this control activity to be that a subcontractor should report on a regular basis to each ESFA directly funded institution with which it has a subcontract. The report must confirm the volume and value of all contracts, and to confirm that each individual student only has funding claimed by one institution. Institutions will find that accurate recording, use and exchange of unique learner numbers (ULNs) simplifies this work.

73. The institution with the largest contract (or the longest historical contract) shall usually be regarded by the ESFA as having the lead responsibility for the study programme provision where any necessary funding audit work is required. For these purposes, institutions should treat all companies or organisations that are in the same common ownership or control as one subcontractor.

## **Transferring provision from institution**

74. When a directly funded institution ceases a subcontracting arrangement and the subcontractor transfers the provision to a different prime contractor, the ESFA may remove one or both institutions from the lagged allocation process to ensure that the funding follows the learner.

75. When an institution stops a subcontracting arrangement, they must make sure there is continuity of provision for those students already on the programme and that there is no gap in provision created as a result. We remind institutions that students on subcontracted provision are their responsibility. They are responsible for ensuring that existing students are funded to the end of their programme either by a phased withdrawal from the relationship or by transferring funded numbers to another institution that has agreed to pick up the continuing students.

76. If an institution plans to stop a subcontracting arrangement, we expect them to give the subcontractor sufficient notice. This must be at least 3 months, but may need to be longer. The prime institution must work with the subcontractor to put plans in place to ensure that students who are part way through their programme are supported to complete.

77. When a subcontracting arrangement stops, the ESFA will decide whether to remove the former directly funded institution from the lagged approach to reflect this. If so, the ESFA will adjust their allocation to remove the subcontracted numbers. The decision on whether to make an adjustment to lagged numbers will depend on the scale of the subcontracted provision, the timing and process followed in ceasing the contract, and the nature of any resulting gap.

78. If we adjust the allocation for the former directly funded institution, the funding for continuing students would usually transfer to the new prime institution. We would then consider an evidence-based business case from the new prime to fund any planned new starts. As set out in this guidance, we expect subcontracted provision to be local and distant subcontracted provision to be the exception.



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