

**Annexes**

**to the**

**National  
Commissioning  
Framework**

**16 November 2009**

**This document is for consultation and therefore may be  
subject to change and amendment.**

This document is intended to be used by local authorities, learning providers and other stakeholders in 16-19 education and training

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## Consultation on the National Commissioning Framework

This document is a draft of the National Commissioning Framework (NCF) for the new planning, commissioning and funding systems for the education and training of:

1. young people aged 16-19
2. those aged 19-25 for whom a learning difficulty assessment is in place
3. education and training for children and young people in youth custody aged 10-18.

### Scope of the consultation

The document is aimed at key stakeholders in the 16-19 education and training world and offers them the opportunity to comment on the proposed planning, commissioning and funding systems set out in the Framework.

We are **not** consulting on the principle of devolving responsibility for the provision of 16-19 training and education to the local level, or Local Authorities lead role, which was outlined in the DCSF's document *Delivering 14-19 Reform: Next Steps* and will be given effect by the Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act 2009).

### The consultation process

The Framework has been developed and shaped so far through discussions with colleagues at Department for Children, Schools and Families (DCSF), the Learning and Skills Council (LSC), the Local Government Association, the Association of Colleges and others through a number of testing and dry run exercises.

This draft of the Framework will be open for public consultation for 12 weeks, from 16 November 2009 to 5 February 2010. Comments will be considered carefully and a formal consultation response will be published by the Young People's Learning Agency (YPLA) at the same time as the final NCF to provider feedback on how we have dealt with each of the responses and how they have influenced the final Framework.

### How to Respond to the Consultation

There are a number of questions in the accompanying Consultation Question paper on which we would welcome your views. You can also provide more general views on the Framework and proposed process as a whole. (Consultation Questions on the NCF are reproduced overleaf.)

Consultation responses should be sent to [NCFConsultation@lsc.gov.uk](mailto:NCFConsultation@lsc.gov.uk) by 17:00 on 5 February 2010; however, we would be grateful for earlier responses.

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by Government and its agencies. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies.

**Please indicate clearly in your response if you want us to keep your response confidential.**

If you request confidentiality in your response you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

## National Commissioning Framework Annexes Consultation Questions

Please provide answers to the questions below:

### **Annex 1 – Commissioning Provision for Learners with Learning Difficulties and/or Disabilities**

18. Is it clear how provision for learners with learning difficulties and/or disabilities will be commissioned within the NCF and is the process practical and deliverable? If not, how could it be improved?
19. Does the commissioning process for learners with learning difficulties and/or disabilities take account of the experience of learners and their parents/carers? If not, how should these needs be addressed?

### **Annex 3 – Commissioning 16-19 Apprenticeships**

20. Is it clear how 16-19 Apprenticeships will be commissioned within the NCF and is the process practical and deliverable? If not, how could it be improved?

### **Annex 4 – Commissioning Education and Training for Young Offenders in Youth Custody**

21. Is it clear how youth custody education and training will operate within the NCF and is the process practical and deliverable? If not, how could it be improved?
22. How can this process be effectively integrated and aligned with wider mainstream planning and commissioning?

### **Any additional comments**

23. Do you have any further comments which could help the effectiveness and deliverability of the NCF, and ensure we achieve our outcomes?

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Please note that all dates stated are best estimates

## Annex 1: – Commissioning Provision for Learners with Learning Difficulties and/or Disabilities (LLDD)

### Overview

The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act 2009) sets out the duties of local authorities, agencies and other organisations with regard to provision of learning opportunities for young people 16-19 including those with a learning difficulty assessment (as described in Section 139A of the Learning and Skills Act 2000), and for young people up to age 25 where a learning difficulty assessment is in place or arrangements have (or are required to have) been made for such an assessment. A summary of the relevant key clauses from the ASCL Act 2009 is set out below:

- Responsibility for all learners aged 16-19 rests with local authorities.
- Learners aged 19-25 with LDD who have a learning difficulty assessment are the responsibility of local authorities, regardless of the outcome of the learning difficulty assessment.
- Learners aged 19-25 with LDD who have not had a learning difficulty assessment are the responsibility of the Skills Funding Agency (SFA) for securing and funding their learning offer.

A number of factors impact on the arrangements for planning and commissioning this provision and on the changes which may be introduced over the period leading up to 2015 when the participation age has been raised to 18. Not least of these is the review by Ofsted of the arrangements for securing delivery of special educational needs (SEN) and LLDD provision. The review is due to report in 2010 - <http://www.Ofsted.gov.uk/Ofsted-home/News/Ofsted-s-2009-10-review-of-the-framework-for-children-and-young-people-with-special-educational-needs-and-or-disabilities>.

Arrangements which may follow any recommendations made by Ofsted, including alignment between pre- and post-16 provision for LDD, should inform changes introduced to the system more widely to reflect the move towards full entitlement to learning for young people, and full participation to age 18 by 2015. Initially at least, there will continue to be an individual learner placement process as part of the overall local authority commissioning framework for provision for this group of learners.

### Legal Position

- 1 It is important to set out the commissioning steps for LLDD provision in the context of the duties and powers relating to provision for this group of learners, and to be clear about those in relation particularly to learners aged 19-25 with LDD for whom local authorities have a responsibility.
- 2 The Education and Skills Act 2008 amended the Learning and Skills Act 2000 to move the obligation to arrange assessment of learners' education and training needs from the Secretary of State to local authorities. Under section 139A of the Learning and Skills Act 2000 local authorities have a **duty** to arrange an assessment for those young people with a statement of SEN during their last year at school (not necessarily the last year of compulsory schooling), where the local authority believes they will leave school to receive post 16 education or training or higher education. Authorities also have a **power** to conduct assessments for persons in their last year of compulsory schooling or over

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compulsory schools age and under 25 who appear to the authority to have a learning difficulty and are receiving, or are likely to receive, post-16 education or training or higher education .

- 3 Since local authorities' policies on statementing vary, there will also be some young people identified as school action or school action plus approaching school leaving age or progression, for whom consideration needs to be given to making a learning difficulty assessment. A provider or learner may also ask a local authority to consider the completion of a learning difficulty assessment where a learner has acquired a disability. In such cases, if a decision is taken to complete a learning difficulty assessment, responsibility for securing and funding the young person's learning provision up to the age of 25 would fall to the local authority.
- 4 Draft statutory guidance for local authorities covering the arrangements for carrying out section 139A assessments was issued for consultation in April 2009. Final guidance is expected to be issued shortly. Section 15ZA of the Education Act 1996 inserted by the ASCL Act 2009 places on local authorities the duty to secure suitable education and training for all 16-19 year olds as well as for those aged 19-25 who are 'subject to learning difficulty assessment'<sup>1</sup>. Responsibility for those learners with learning difficulties and/or disabilities aged 19 or over who do not have a section 139A assessment and are therefore accessing mainstream provision will rest with the Skills Funding Agency (SFA). Local authorities have existing duties to encourage, enable and assist participation of all young people with learning difficulties and/or disabilities up to 25 years and also in respect of transport arrangements. It is important that all of these duties are aligned in the interests of the learner.
- 5 For a young person aged 16-19, a learning difficulty assessment can determine one of two routes:
  - a) The learning programme (education or training) can be delivered through the route/s of mainstream further education (FE), school sixth form, sixth form college, higher education institution (HEI), Academy or other provider or through Apprenticeships. Under these circumstances, the provision will be included in the processes for planning and funding set out elsewhere in the National Commissioning Framework (NCF), and could be supported through Additional Learning Support (ALS)<sup>2</sup>; or
  - b) Learner needs necessitate some higher level of specialist support. In this case, the learning assessment will drive the decision on the programme which may be delivered with specialist arrangements and support which, illustratively, could be through an Independent Specialist Provider (ISP), an FE provider, a sixth form college, a school sixth form or training provider, or any combination of these with, for example, support from Third Sector providers. This provision could be, but need not be, residential. Where the provision is commissioned through ISPs, it is procured through a separate contract placement schedule and these contracts will, in the short term, be agreed and managed through the Young People's Learning Agency (YPLA). For provision delivered through all other providers, the

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<sup>1</sup> Schedule 2 to the ASCL Act 2009 amends the Education Act 1996 and sets out that a person is subject to learning difficulty assessment if:

- a learning difficulty assessment has been conducted in respect of the person, or
- arrangements for a learning difficulty assessment to be conducted in respect of the person have been made or are required to be made

<sup>2</sup> Detailed arrangements for Additional Learner Support (ALS) for the 2011/12 academic year are under development.

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contracts will be agreed and managed through local authorities. They will need to have oversight of changes in demand for extra support.

- 6 Where a person aged 19-25 has a learning difficulty assessment by a local authority there are three possible outcomes:
- that the learning programme does not require specialist arrangements and the support required is available **through the Additional Learning Support (ALS)** element of the national funding formula (See Appendix 7). The host local authority can therefore commission and procure the learner's programme delivered through the mainstream learning providers or through Apprenticeships;
  - that the learner needs a level of support **beyond the scope available through the ALS** element of the formula, but the provision they require is available in the mainstream learning providers **or** through an Apprenticeship. Under these circumstances the commissioning local authority will be responsible for securing the provision required as set out at paragraph 8b above. The needs identified through the learning difficulty assessment will be wholly funded by local authorities including ALS and programme costs;
  - that, regardless of cost, the learner needs a programme which cannot be delivered through a mainstream learning provider or an Apprenticeship offer. In these circumstances the local authority will secure such specialist provision as appropriate up to age 25 for that person and where the specialist **provision is delivered through ISPs** the YPLA will initially contract on behalf of the local authority. Specialist provision is also provided by General FE colleges and would be commissioned by the host local authority.

### The Process

- 7 This section sets out the steps for planning, setting commissioning priorities, and procuring provision to enable local authorities to fulfil their duties for securing the entitlement to learning for learners with LDD. It should be emphasised that this process can entail ongoing dialogue between professionals, providers, the local authority, parents/carers and the learner to arrive at an agreed position on whether a learning difficulty assessment will benefit the learner. It sets out the roles of key players in the process for securing this provision, and builds on other processes set out in the NCF including the strategic planning process, commissioning priorities and data provision.

#### Step process for planning, commissioning and procuring LLDD provision

Strategic analysis	May-September	Include supply and demand for LLDD provision; quality and performance relating to provision and providers; mix and balance of provision locally, sub regionally and regionally
Local authorities and partnerships review 14-19 plan	May-September	Identify priorities to develop and secure provision to meet entitlement, including duty towards LLDD, within local area; priorities for strategic development and investment for increasing local LLDD provision where it is cost effective and value-for-money to do so

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Local authorities forecast LLDD	July to September	Local authorities assess forecast need for LLDD provision based on young people approaching end of compulsory school or learning, continuing learners with LDD, and known & anticipated 19-25 assessments. Local authorities make initial assessment of provision which will need to be procured from ISPs and inform YPLA
S139A and <i>Learning for Living and Work (LLW)</i> assessments	September onwards	Local authorities collate information from assessments made on an ongoing basis (including s139A assessments) and make provisional decisions
National Statement of Priorities	October-November	Provided by the YPLA setting out the national commissioning environment in which local authorities should operate including for LLDD provision.
Regional Statement of Priorities	October - November	Identifies regional approach to meeting Government and national priorities, and securing provision to meet entitlement across region
Local commissioning statement	October-November	Includes provision for LLDD which cannot be secured within the local authority
Anticipated funding allocation to Regional Planning Group (RPG)	November-December	For LLDD this will be calculated from info supplied on need (see above) and on all relevant spend including that on LLDD and SEN in previous year
National funding rates	November-December	Local authorities make costed forecasts against national funding rates of their provisional assessment decisions, continuing provision and forecast need
	Ongoing	YPLA updates budgetary information for RPGs based on costed forecasts
Establishing learner numbers	January-March	Local authorities negotiate on a provisional basis directly with schools, FE and other providers for LLDD provision based on assessments
Aggregating learner numbers to Sub-Regional Groups (SRGs)/RPGs	February	Local authorities aggregated learner numbers, needs, provision, costs and gaps. Considered by SRG/RPGs.
Indicative learner numbers identified	February	Regional assessment and endorsement of plans through RPGs
YPLA approval of RPG LLDD plan proposals	March	YPLA agree plans as collectively delivering LLDD entitlements, moderating allocations when required within budget
Provider allocations/contracts agreed	March	YPLA confirms allocations to RPG and lead commissioning authorities. Local authorities confirm assessments and contract provision. YPLA contracts with ISPs, for notified provision
ISP numbers confirmed	July	
Contracts & schedules issued	March to July	This will continue beyond March if learning difficulty assessments are late. Legal agreements in place to confirm delivery arrangements

[Timings stated are best estimates]

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- 8 Planning and funding for LLDD provision will align to some but not all of the arrangements and processes for the bulk of 16-19 learning. Differences will include, in particular:
  - a. funding flow, assurance and control, which will initially be on the basis of a contract and individual learner schedule, not an allocation (grant in aid or otherwise);
  - b. arrangements for appeals.
- 9 This annex does not currently include arrangements for development funding, capital or other funding for innovation which might be made available. In 2008-09 the LSC invested £16m in development funding to increase more sustainable local high quality provision and resources. It is expected that this funding will continue, subject to resources, and further guidance will be issued.

### Planning and commissioning priorities

- 10 A Local authorities' strategic planning for the learning needs of its residents will take account of the learning requirements for learners with SEN statements or LLDD. The 14-19 Partnership will be influential in identifying changing needs. As members of the Partnership, providers have a role in informing the strategic analysis of needs and shaping local delivery to meet them. The key role of members of the 14-19 Partnership, including learning providers, is set out in Partnership Guidance (<http://publications.dcsf.gov.uk/DownloadHandler.aspx?ProductId=DCSF-00170-2009&VariantID=14-19+Partnerships+and+planning+PDF&>). It will be for individual local authorities and Children's Trusts to determine the Partnership structures required to support them in discharging their duties. The Children's Trust and 14-19 Partnership will need to reflect in their governance and management arrangements the different age range of young people with LLDD for whom they are responsible. These arrangements should achieve co-ordination and coherence in terms of all the services required by young people with SEN statements or LLDD aged between 14 and 25. Local authorities need to be aware of how to manage the transition at 25 to adult services, and the interface with the SFA for continued learning support.
- 11 Local authorities' commissioning plans, which will be endorsed through SRGs and RPGs and agreed by the YPLA, will take account of local requirements for LLDD provision, local and sub regional priorities to meet those requirements, and a clear indication of where those requirements will be met, from within and beyond the sub regions and region.
- 12 The integrated analysis provided by YPLA and, critically, the local authority's own information on young people with LLDD moving through the school system, will provide a clear understanding of existing and likely continued needs. Local authorities will take account of the breadth and scale of provision available locally, regionally and nationally when considering how best to meet their duties for these individual learners in an appropriate and cost effective way. It is not expected that local authorities will seek to replicate a resource locally to meet all learner requirements which exist or emerge: this will not necessarily be in the learners' best interests, nor will it be cost effective or demonstrate value for money. Local authorities will be expected to implement the *Learning for Living and Work* strategy by investing in the development of high quality and an increased quantity of provision available locally for learners with LDD. This will be agreed within a regional context to ensure that investment decisions are made in a sound strategic context and achieve good value for money.

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- 13 Local authorities through SRGs will make proposals for commissioning decisions to the RPG which will consider and endorse the Plans, and determine the aggregated position for the region and the affordability of proposals before passing them to the YPLA for agreement. In many cases local authorities will need to bring together social care and health resources as well as education resources in support of the young person. The RPG when it considers local authorities' proposals for drawing on the LLDD placement budget, and the YPLA when it agrees the RPGs' proposals will need to satisfy themselves that the funding being requested for placements is for educational provision. Where necessary, local authorities should secure appropriate contributions from other parts of their own budgets or from the budgets of Children's Trust partners for other elements of the provision.

#### **A framework for individual placement assessments and local authority decisions**

- 14 Local authorities have the continued responsibility for undertaking learning difficulty assessments for young people, including those up to age 25. Guidance for this is provided by DCSF in the *Guidance on s139A* published for consultation in April with a final version due to be published shortly. In many cases this will be organised by Connexions services for local authorities.
- 15 The *Learning for Living and Work* (LLW) Strategy (LSC, October 2006) made recommendations for a closer alignment of decisions on funding with the assessment of need. The LLW framework links the assessment of need to funding, by collecting information on learners' education, training, care and employment needs and aspirations. The LLW framework will form an integral part of the learning difficulty assessment under s139A, and place the decision making and judgement firmly with the local authority.
- 16 The *Learning for Living and Work* Framework (*LfLW*) which arose out of a pilot in the East of England, demonstrated gains for learners and funders by taking a multi-agency approach including Connexions services, health services and social services, and negotiating support packages which met learner needs more closely and was more financially efficient than the usual procurement process relying on the LSC and Connexions. This will be linked to the s139A guidance.
- 17 The overall assessment arises out of two elements (s139A and LLW framework) and will comprise the information which sets out the local authority's decision on the appropriate requirements to meet the needs of an individual learner. It is the aggregation of these which determines the commissioning requirements for a local authority, SRG and RPG.. Where the assessment requirements can be delivered through the route of FE, schools and other providers, associated commissioning priorities will be conveyed through 16-19 Commissioning Plans. Where requirements to meet needs will be secured through ISPs, these commissioning requirements will be aggregated and endorsed through the RPG, and YPLA requested to ensure a coordinated and coherent procurement of the provision. Further detail on procurement is set out at paragraphs 25-26 below.

#### **Allocations**

- 18 The home local authority for a young person with an SEN statement or learning difficulty assessment has the legal responsibility to secure appropriate learning provision for that young person. An indication of each region's anticipated funding allocation will be given by YPLA to RPGs in October 2010 based on:
- a. the cost of last year's learner provision for LLDD and SEN;

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- b. local authority spend on SEN learners who will become 16 in the coming year; and
  - c. forecast need based on analysis of additional support needs pre-16, continuing learners and anticipated 19-25 learning difficulty assessments. Revised allocations are notified in January, updated to reflect national funding rates.
- 19 In setting out the indication of anticipated need, the YPLA will take into account the fact that additional LLDD placements are likely to be needed through the year to take account of appeals, late assessments and young people acquiring LDD, and will ensure that some funding remains available for these purposes.
- 20 A responsibility remains with local authorities to seek maximum value for money from placement assessments. Local authorities will have responsibility from 2010 for both Further Education funding and social care funding and will be in a good position to use budgets to maximise the efficient use of these for the benefit of learners. Through Children's Trusts and strategic partnerships it will be important to secure appropriate contributions from health services such as primary care trusts, for identified support needs on placements such as speech therapy. This approach will enable a more responsive match to learner need and enable the creation of support packages for learners.
- 21 Initially RPGs will receive an indication of the likely need for specialist placements from the YPLA on an historic basis, and it will be for them to decide how far to pass on indications to individual local authorities. Local authorities will be able to use their planning processes to more accurately predict profound and complex disabled young people (who are likely to have high-cost needs), coming through the education system and identify support needs early. Decisions must be based on the needs of the learner. We expect local authorities to use these processes and partnerships to control expenditure and manage budgets effectively. Through annual LLDD allocations YPLA will aim to ensure that the indications match needs at RPG level. Placement decisions which are made outside this process will risk not being funded by the YPLA.

### Procurement of provision

- 22 Local authorities will undertake learning difficulty assessments on a continuing basis for young people who will be moving on from school or learning. Local authorities will not confirm commissioning decisions until all requirements are costed and aggregated to a level of affordability agreed through the RPG and YPLA. The decisions regarding learning provision to meet individuals' needs can be made provisionally and in the context of budgetary indications. When allocations are finalised, and reflect expected procurement of provision through ISPs by YPLA, decisions can be confirmed to learners and providers. Local authorities will procure provision through the funding instrument appropriate to the provider type, and for a transitional period, YPLA will contract with ISPs for agreed provision and learners on behalf of local authorities
- 23 Whilst local authorities will make the commissioning decisions, the YPLA will fund (and therefore procure provision from) ISPs for individuals with a learning difficulty assessment, aged up to 25 in 2010/11 and in 2011/12. During 2011/12 (if not before) a decision will be reached as to the arrangements for procuring provision from ISPs for those with a learning difficulty assessment aged up to 25 from 2012/13 onwards. Although local authorities are not initially responsible for contracting with ISPs, they will take on this responsibility as soon as it is feasible for them to do so. The aim is that this should be for 2012/13.

### ISP funding methodology

- 24 Work is already underway to model, develop, test and consult on an allocations based framework for commissioning and procuring provision for learners with a learning disability assessment. The proposed funding model would attach a particular sum to young people according to needs for which they have been assessed. These sums would then pass through the system in much the same way as funding for learners without a learning difficulty assessment. The system would include a national funding formula applied at the level of the institution.
- 25 The data inputs to enable a funding allocations model to work are not currently required from ISPs, but the individualised learner record (ILR) is being piloted with this group of providers from September 2009 with a full return for new learners starting from academic year 2010. A complete dataset (i.e. for all learners) will be available for the year 2011/12 to inform provider allocations for the year 2013/14. This may be influenced by any system changes which are introduced to support the raising the participation age (RPA) agenda. Work is in progress to match data requirements and ensure compatibility.

### LLDD Review Process

- 26 An LLDD Review Process is available to learners and their parents/carers. After seeking a review by a relevant local authority, a learner or parent may ask for a local authority decision about funding for a placement at an independent specialist college to be reviewed by an independent panel established by the YPLA. The process encourages dialogue between the learner and local authority about appropriate provision for the learner while the review procedure operates to achieve agreement about appropriate provision for the learner.
- 27 The YPLA Review Panel process is designed to;
- determine if local authorities have followed processes following the local authorities own complaints procedures; and
  - assess the reasonableness of the decisions being questioned, in particular is the decision one that an authority properly directing itself as to the relevant law and guidance, could reasonably have reached on the material placed before it.
- 28 To determine such issues a YPLA Review Panel, chaired by an independent chairperson and staffed by a group of local authority representatives drawn from regional groups (who have sufficient knowledge and understanding of the relevant law and process to incur the confidence and respect of learners, parents and local authorities) will meet regularly during the placement approvals process from March to September to avoid unnecessary delays.
- 29 Decisions made by the Panel will be:
- to recommend that the local authority reviews its decision and that (unless a LA has acted outside of the processes or timescales described in the NCF) the YPLA ensures sufficient funding is available to fund the education elements of a placement or appropriate provision; or
  - to confirm a decision made by a local authority.
- 30 As part of the statutory guidance included in the NCF, local authorities are expected to follow the outcomes of the Review Panel process. Further details about the operation of the Panel will be found in the document *Funding Guidance; Placement for Learners with Learning Difficulties and/or Disabilities at Independent Specialist Providers 2010/11*, to be published shortly.

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## Annex 2: – Provider Quality Assurance System

### Overview

This annex sets out the new post 16 quality assurance system.

The majority of schools, colleges and other training providers are already delivering good outcomes for their learners and local communities, but even the best institutions need to improve continuously. Our aim is to create a strong and effective post-16 education and training sector which is characterised by a culture of continuous self improvement.

Post-16 quality assurance will be focused on ensuring that the system delivers high quality education and training, leading to improved outcomes for learners and employers. They are being designed to set out:

- The standards expected of all providers..
- Consistent, fair and transparent performance indicators across the post-16 sector.
- The roles and accountabilities of providers, commissioners and stakeholders for determining how effectively providers are performing against the standards.
- Consistent arrangements for monitoring and reviewing provider performance, including applying clear processes for interventions to address provider underperformance.
- Clear arrangements for providing support and development.

The Quality Assurance System will be underpinned by a range of tools and processes that set and evaluate standards of performance. Clear guidance will also be developed on when and how intervention will happen to ensure that quality of learner progress and outcomes are achieved.

Partners have provided advice on the design principles for the Quality Assurance System and the most effective structures through which to implement it, and they will continue to be involved to ensure that the quality assurance arrangements are introduced as efficiently as possible.

### Quality Assurance (QA)

1. As now, providers will have primary responsibility for managing their own performance and taking action to improve services, based on rigorous annual self assessment and external validation through periodic inspection. However, school and college governing bodies and oversight bodies/boards of independent training providers will also continue to play a key role in the day to day performance management of providers and hold the leadership team to account. Commissioners will ensure that the evaluation of provider performance is founded on robust and timely intelligence and that arrangements are consistent and fair. They will clearly set out how information is interpreted and used to inform funding decisions.
2. Local authorities and the Skills Funding Agency (SFA) will not be responsible for managing the day to day performance of providers, but will hold providers that they fund to account for their performance and make judgements about their comparative performance with other providers to inform commissioning decisions. In cases where a provider receives funding from both the SFA and the local authority, commissioners will jointly review performance evidence to agree the analysis, performance assessment and outcome in respect of funding decisions. In cases where there are shared interests

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with the Department for Work and Pensions (DWP), there will be potential need for joint discussions between all three funding bodies.

3. Each provider's performance will normally be managed through a single sponsoring agency. Lines of accountability for different types of provider are as follows:
  - Performance of schools and sixth form colleges will sit with the host local authority
  - In the case of sixth form colleges performance, the local authority will operate under guidance from the Young Peoples Learning Agency (YPLA).
  - Responsibility for Academies performance will sit with the YPLA.
  - responsibility for the performance of further education (FE) colleges and independent training providers will sit with the SFA.
  - Performance of Apprenticeship providers will be the responsibility of NAS.
4. Local authorities will be the lead commissioner for all 16-19 provision (apart from for Apprenticeships, which will be secured through the National Apprenticeship Service (NAS); and Academies, which will be procured by the YPLA). It is absolutely vital that high expectations of success are set for all providers and that providers are aware of and share those expectations and accept the consequences that will follow from poor performance.
5. Local authorities (and the SFA) will need to invest in the best provision. They will make their funding decisions accordingly, allocating funding to providers who meet minimum standards and taking action to withdraw funds or require improvements in underperforming provision.
6. Local authorities will inform providers of the outcomes of their annual assessments, based on judgements about performance using a range of information and contextualising the way that data are interpreted. For example, the trend of overall provider performance over time and capacity to improve will be critical factors for commissioners in determining the degree of direction and challenge that the provider should experience in cases where provision is being delivered less well than expected. Annual assessments will primarily draw upon Framework for Excellence (FfE) results and the provider's own self assessment, and will include inspection outcomes as appropriate following inspection of the provider.
7. The arrangements for provider performance management are summarised in the table overleaf.

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New Provider Performance Management Arrangements from 2010					
Component	Schools	Sixth Form Colleges	FE Colleges – pre 19	FE Colleges Post 19	Independent Training Providers
User Choice	Learners and Parents / Carers			Learners and Employers (& carers for vulnerable adults under 25)	Learners and Parents / Carers
Institutional Management	Head Teachers and Governing Bodies	Principals and Governing Bodies			Oversight Bodies/Boards/ Trustees
Commissioning / Funding decisions	Local Authorities			Skills Funding Agency	Skills Funding Agency post-19 and LAs pre-19
Identifying and managing underperformance, intervention	Local Authorities		Skills Funding Agency		
Support and Challenge / Improvement Activity	School Improvement Partners, National Strategies		Learning and Skills Improvement Service		
Inspection	Ofsted				
Data	DCSF data services group	FE data service			

#### Self Assessment

8. Rigorous self assessment lies at the heart of well managed and effective provider improvement. It is based on evidence about the standards achieved by learners, the quality of teaching and learning and effectiveness of leadership and management. Self assessment is a key element of the Ofsted inspection framework and this will continue to be central to the new performance management arrangements.
9. Schools will be required to complete and maintain an on-line self assessment, identifying their own strengths and weaknesses and the action being taken as a result. All providers will be expected to use FfE data as it becomes available to compare and benchmark their performance with other providers, using peer review as appropriate to inform their self assessment and development plans. Governors, boards of directors and trustees need to be committed to the aims of self assessment and self improvement and actively and fully involved with evaluating the effectiveness of these processes for their organisations.

#### Consistent performance indicators across the sector

10. All post-16 providers will be held publicly accountable for their achievements and will be assessed annually against a clear set of national measures. In order to make valid comparisons between all post-16 providers and types of provision, provider performance data will be based on the FfE.
11. FfE is a central feature of the new provider quality assurance arrangements proposed in

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*Raising Expectations: Enabling the system to deliver* (Department for Children, Schools and Families (DCSF), March 2008).

12. From 2009/10, FfE applies to almost all providers of further education, including colleges, independent training providers, adult learning and training provision made by local authorities, and independent specialist providers. This year, it is being extended to the post-16 schools sector to create a framework that provides a comparable assessment of all post-16 provision and providers. The detail of how this will operate in future is being developed by piloting FfE in over 100 schools with sixth forms and 23 local authorities, with the intention of extending the framework to include school sixth forms from 2010.
13. It is intended that post-16 provider performance results will be published annually in an FfE report card. This will sit alongside the new School Report Card (SRC) which is being developed for provision for young people up to the age of 16 years, to ensure that an overall view of secondary school provision can be considered. Following further development work, the SRC will be piloted over two years from autumn 2009. The Department for Business, Innovation and Skills (BIS) and DCSF will work together with other national partners on development of the SRC and FfE report card to ensure they are aligned appropriately.
14. FfE provides common and universal methodologies for calculating and measuring quantitative performance indicators. A sufficient range of common indicators in future will mean that local authorities can make fair comparisons about provider performance when making commissioning decisions. However, some of the FfE performance indicators are still being developed. Until FfE becomes fully established for use across all post-16 providers, local authorities should draw upon a range of performance evidence to inform their commissioning decisions. For example, this may mean considering achievement/pass rates where they are comparing colleges with schools <http://www.dcsf.gov.uk/performance/tables/>, while using success rates where they are comparing colleges with one another <http://www.lsc.gov.uk/providers/Data/statistics/sfr/>. DCSF is working with stakeholders to develop a set of quality standards for school sixth forms until FfE evidence is available. Further guidance on how this process will work in practice will be published by Spring 2010.
15. As FfE is further developed, it will provide a more rounded view of performance which takes account of other factors which influence learner outcomes. DCSF expect that FfE will supersede the post-16 Achievement and Attainment Tables (AATs) in the longer term, although there is no intention to create new post-16 tables using the FfE results.

#### **Standards of provider performance expected**

16. Local authorities and the SFA will require all providers to maintain at least minimum standards in order to secure continued funding and as part of good practice, to agree challenging targets for self improvement in their self assessment and development plans. For example, Schools Improvement Partners, on behalf of local authorities will play an increasing role in endorsing a school's Self Evaluation for post-16 provision, including discussion of improvement targets as appropriate.
17. DCSF will work closely with sector representative bodies to review how improvement targets are currently set across all types of 16-19 provision to ensure that the processes are aligned and that targets that providers set for themselves are sufficiently challenging and effective in raising standards. In cases where a provider falls below acceptable minimum standards (see Minimum Levels of Performance below), they will be required

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to agree improvement targets with either the SFA or the local authority to bring about necessary improvements within an agreed timescale.

#### Minimum Levels of Performance (MLP)

18. Local authorities will be expected to develop appropriate mechanisms to secure high quality provision for 16-19 year olds and eliminate weak provision to ensure that learners are not disadvantaged. MLPs are currently used in further education and Apprenticeship provision to be transparent about the level below which provision will not be funded. MLP in its current form will continue to apply in 2010. There are no MLP applied to school sixth form provision but work is underway to establish comparable success rates, on which MLP are based, across post 16 providers. Until then interim arrangements will be put in place for considering post 16 school outcomes.
19. The use of minimum levels or standards by lead commissioners is expected to continue. The YPLA, working closely with the SFA and NAS will review and evaluate the current methodology for establishing and operating MLP for qualification success rates and consider how minimum standards/levels might be continued and extended as appropriate to all types of post-16 provision by different commissioners. Apprenticeship provision will also be subject to MLP and NAS will work with DCSF and BIS to ensure coherence of MLP for Apprenticeship provision across the different age groups.
20. DCSF will consult widely with key stakeholders and sector provider representative bodies during 2010/11 to develop proposals on setting and monitoring future minimum standards or levels. DCSF and BIS will retain joint overall responsibility for agreeing the minimum standards or levels that might apply.

#### Links with Commissioning

21. Local authorities will use available performance evidence to analyse and evaluate where there are areas of weakness and of particular strength. The local authority will then approach commissioning decisions with a clear focus not only on filling gaps and responding to growth and shifting demand, but also on tackling and eliminating weak providers and provision and expanding on the best provision.
22. Annual commissioning dialogues between the local authority and provider will start from a position of transparent, up-to-date, information. Until FfE becomes fully established for use across all post-16 providers, local authorities will need to draw upon a range of available performance evidence, including available FfE datasets and the post-16 Achievement and Attainment Tables, Ofsted inspection reports and other local evidence, including provider self assessments as appropriate.

#### Roles and accountabilities in Quality Assurance

##### Local Authorities and quality assurance in School Sixth Forms and Sixth Form Colleges

###### Schools Sixth Forms

23. For school sixth forms, the local authority will, as now, have the power to intervene where provision is weak or failing.
24. Under the ASCL Act 2009, the Secretary of State has powers to direct local authorities to consider the use of a warning notice when the standards of pupil performance at a

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school are unacceptably low; and powers to require local authorities to take advisory services where they have a disproportionate number of schools where standards are unacceptably low and the local authority has been ineffective in remedying these low standards. The Secretary of State also has wider powers to direct local authorities to secure proper performance of the local authority's functions where it is failing to perform functions to an adequate standard or at all.

#### Sixth Form Colleges

25. Performance management of sixth form colleges will be the responsibility of the home local authority but:
  - The local authority will have a duty to notify the Secretary of State and YPLA before intervention.
  - The YPLA must prepare a published policy statement for local authorities to follow (cleared with the Secretary of State and laid before Parliament).
  - In exceptional circumstances the YPLA may itself intervene and direct a sixth form college.
26. For sixth form colleges, the LSC's powers of intervention will transfer to the home local authority and the YPLA from 2010. The local authority will also be expected to inform the Skills Funding Agency if they are intending to intervene to ensure the SFA can consider the impact on any post 19 provision offered by the sixth form college.
27. The SFA Chief Executive will be required to notify the responsible (home) local authority and the YPLA where it has concerns about the post-19 provision in the sixth form college. The local authority and the YPLA when exercising reserve performance management powers must have regard to these concerns in deciding whether to use their powers of intervention.

#### FE Colleges

28. For FE Colleges, the current Learning and Skills Council (LSC) powers of intervention will transfer to the SFA from 2010, which include intervention strategies for those colleges 'under notice to improve'. Where a local authority has a concern about the quality of a college's 16-19 provision, it will be under a duty to notify the SFA Chief Executive of its concerns who will be required to have regard to those concerns when deciding whether to exercise his powers of intervention.

#### The Young People's Learning Agency (YPLA)

29. The YPLA will have the same powers as are currently held by the LSC to develop schemes for the assessment of the quality of provision. This will include working jointly with the SFA to set clear standards of performance expected for all providers and development of a common set of performance indicators through the FfE.
30. For academies, the intention is that the Secretary of State will ask the YPLA to undertake a range of functions on his behalf including funding, supporting and challenging academies (across the full age range for each academy, not just for 16-19 provision).
31. The YPLA will rely on local authorities and the SFA to normally resolve provider quality issues for themselves, but will have reserve powers to direct sixth form colleges in limited circumstances. In the event that the YPLA feels the need to intervene, it will need to consult the DCSF Secretary of State before exercising these reserve powers.

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32. The YPLA will support local authorities in carrying out their duties with respect to commissioning 16-19 provision and will have powers to intervene and arbitrate in the event that local authorities cannot fulfil their new duties to secure sufficient and suitable provision for young people up to the age of 19 in their areas.
33. The YPLA will have a key role to ensure consistent approaches are adopted between all local authorities and support them to be intelligent commissioners and ensuring that the commissioning cycle runs smoothly. The YPLA will expect local authorities to annually evaluate and assess the performance of all providers they fund, operating within national parameters to ensure consistent and fair commissioning decisions which are provider-neutral.
34. YPLA will be responsible for supporting local authorities with data and analysis and specialist knowledge in relation to assessing the quality of the 16-19 provision they commission. Although the YPLA will not be accountable for the local authorities' performance, it will have access to performance data and information from the national data service and Government Offices (GOs), which may signpost poor commissioning decisions and alert YPLA to the need to intervene in particular local authority areas. YPLA intervention on commissioning, if needed, will be proportionate to the scale of the problem.

#### **The Skills Funding Agency (SFA)**

35. The SFA will provide the performance management oversight and single point of contact for FE colleges and independent training providers.

#### **National Apprenticeship Service (NAS)**

36. The NAS has end-to-end responsibility for the delivery of the Apprenticeship programme. Apprenticeships can be delivered by the full range of providers under contract to the NAS or SFA. The SFA will provide the performance management overview of FE Colleges and providers delivering Apprenticeships as a core shared service for the NAS.
37. Although small numbers, the preferred option for managing Apprenticeships delivered by schools or sixth form colleges is for this to rest with the SFA as the commissioning body and contract holder, on behalf of NAS. This avoids creating additional layers of management. Importantly, the SFA will be asked to develop and clarify clear routes for local authorities to raise concerns about the quality of provision and where needed, to feed into performance management arrangements.

#### **Government managing the Quality Assurance System**

38. Overall responsibility for the new unified post-16 (pre- and post-19) quality assurance system will rest jointly between BIS and DCSF.
39. In respect of the YPLA, it will be fully accountable to DCSF Ministers and Parliament. DCSF will manage and regulate the performance of YPLA and agree its annual remit and funding in respect of 16-19 provision. The Secretary of State will have powers to provide guidance to the YPLA and direct the YPLA when it has failed to discharge a duty or has acted/proposing to act unreasonably in the performance of its functions. The National Audit Office will be the auditor and will have rights to review the work of the YPLA. Additionally, Parliamentary Select Committees will have the right to scrutinise any aspect

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of the YPLA's performance.

Similar arrangements will apply to the Chief Executive of the SFA for post-19 provision.

#### Government Offices

40. It is not the role of YPLA to performance manage local authorities. This is the role for the Secretary of State, supported by the GOs.
41. Local authorities will continue to be held to account for their performance through Local Area Agreements (LAAs). New arrangements for performance management of local authorities are being introduced through the new *Local Performance Framework*.
42. At local level, GOs will support and challenge local authorities to improve their performance through identifying and sharing best practice, using knowledge and data to improve performance, negotiating and supporting the new statutory LAAs and reviewing how local and national priorities are being delivered. GOs will also monitor development of local authorities' 14–19 plans and participate in the Regional Planning Group (RPG) discussions on commissioning 16-19 provision. The GO will consult the YPLA if there are any emerging issues so that the YPLA can consider if an intervention strategy is needed.
43. The GO reviews will draw on the assessments of the Comprehensive Area Assessment (CAA). This will be a key driver for improvement at the local level – helping to deliver high quality services for children, young people and their families. We expect GOs to hold local authorities to account for the overall performance of all providers they fund in the local area as part of delivering against the National Indicator Set (NIS).

#### Inspection

44. Inspection by Ofsted of both schools and FE provision will continue and will trigger support and intervention as now.
45. The YPLA, local authorities and the SFA will share information in coming to decisions about actions to be taken with providers. Ofsted will draw on FfE indicators (when they are fully developed), to support Post-16 inspection activities. Although the inspection process covers many aspects of provision that are not covered explicitly by the System, it will provide a set of consistent indicators that may contribute to the evidence used by inspectors' in making their judgements.
46. Ofsted will use a range of available data including FfE to determine the urgency/priority of a provider/service for inspection and so inform inspection planning.

#### Intervention

47. Support and challenge is vital to raise the standards and performance of all providers i.e. encouraging good schools, colleges and work-based learning providers to become excellent as well as providing a focus on underperforming ones. Underperformance will be identified on the basis of inspection evidence, evidence of financial health and analysis of FfE results.
48. Local authorities and the SFA need to support and challenge all providers as part of our drive to improve standards. Local authorities will be expected to monitor and review key aspects of provider performance on a regular basis so that problems can be identified at an early stage and decisive action to rectify them can be taken. Prevention not intervention will be the aim.

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49. The SFA and local authorities will work closely to discuss appropriate action for those providers who are underperforming and which they have an interest, but no direct performance management responsibility. For example, where a local authority has a concern about the quality of a general FE college's 14-19 provision, then they will escalate to the SFA (through the local authority with the strategic commissioning relationship for that college) to form part of the performance reviews between the SFA and the college.
50. Where provider interventions are needed, they will be proportionate, targeted and differentiated to meet provider needs. Local authorities and the SFA will intervene:
- where there is evidence of weaknesses in providers' performance and there is an urgent need to take swift action to get performance back on track to ensure that no learners are being disadvantaged;
  - in cases of failure to meet with minimum levels of performance;
  - where serious concerns are raised about financial health and financial management and control;
  - inadequate provision identified through inspection;
  - where it is judged that there are serious risks to learner health, safety and welfare arrangements; and
  - where concern is related to Apprenticeship provision, the NAS may also be involved in the discussions.
51. The statutory intervention powers for different types of providers are set out below.

#### **Academies**

52. Academies are currently supported and challenged by DCSF. It is intended that the YPLA will take on functions related to Academies, acting on behalf of the Secretary of State mainly related to funding, supporting and challenging academies. It is intended that this will provide a stable platform for the expansion of the Academies programme. The FfE will include Academies and several are already included in the 2009/10 pilot of FfE in school sixth forms.
53. Local authorities will include numbers for open Academies in their commissioning plans and take into account the future Academy roll out programme in preparing coherent commissioning plans. An Academy would have recourse to the YPLA – as the Secretary of State's agent – if it disagreed with the local authority's commissioning plans (for additional places at the Academy). The YPLA will make the final decision about the number of places to be funded for an Academy as described in Annex 12.
54. Calculation and payment of grants will be a function undertaken by the YPLA on behalf of the Secretary of State. Academies will continue to be regulated by their Funding Agreements which the Secretary of State will retain responsibility for negotiating and signing. The Secretary of State will retain responsibility for deciding whether a new Academy will have a sixth form following consultation with the local authority to ensure this fits with their local commissioning plans.

#### **Arrangements for support and development**

55. Improvement support bodies will provide professional challenge and support to providers, helping their leadership to evaluate its performance, identify priorities for improvement and plan effective change.

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56. For 16-19 provision, local authorities will work closely with School Improvement Partners, Learning and Skills Improvement Service (LSIS), National Strategies, Training Development Agency (TDA), National College for School Leadership (NCSL) and other improvement support bodies to offer a comprehensive programme of support to providers to enable them to improve quality and outcomes for learners. In practice, this is likely to mean that FE non-financial improvement activity will be outsourced to LSIS and support for schools with sixth forms will continue to be provided by School Improvement Partnerships and National Strategies.
57. Priorities for support will be agreed between the SFA, local authority and the provider in discussion with the appropriate support body. It is likely that the support agency will prioritise working with those providers whose provision has either been judged inadequate by Ofsted or where significant issues have been raised by the funding bodies.
58. Local authorities will also encourage providers to find their own improvement solutions through facilitating peer review and other approaches to sharing good practice.
59. Further work is needed to align specific improvement support activities and levels of engagement with all post-16 providers to ensure consistency and equity of support arrangements across all post-16 provision.

#### **Approved Supplier Register (ASR)**

60. A new Approved Supplier Register (ASR) is currently being developed by BIS and DCSF, with the intention of ensuring a streamlined and integrated process for accrediting post-16 providers. The ASR will set the minimum standards, including quality, capability and capacity that will facilitate entry to the market and become an important tool to support ongoing commissioning and funding processes. Providers meeting these standards will subsequently be monitored through the post-16 performance management processes, particularly through reporting against FfE results.
61. Once accredited, a provider will be eligible to receive funding from the SFA, but this will not guarantee funding. DCSF are exploring use of the system by local authorities for 16-19 providers (including school sixth forms).

#### **What will success look like?**

62. Improving provider quality and effectiveness requires that regular high quality information is available and applied in reviewing and evaluating performance against common standards. Setting clear minimum national standards expected, coupled with improvement targets against a common set of national performance indicators will be critical to this. A successful Quality Assurance System will:
  - Provide clear accountabilities for the achievement of national and local targets, including outcomes for 14-19 area partnerships.
  - Drive up standards of post-16 provision.
  - Improve efficiency and effectiveness in planning and commissioning activities.
  - Create more transparency to inform choices made by individuals in their learning.
  - Secure public and Government confidence in the Post-16 education and training system.

#### **Recognising and rewarding top performers**

63. It is important to recognise and celebrate learners' success and achievements, and recognise high-quality teaching and training and effective and well managed institutions.

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We must also learn from success, so that it helps all providers on their journey to excellence.

64. DCSF will review whether our current reward and recognition schemes for organisations, staff and learners are coherent and fit for purpose. The YPLA and SFA will publish proposals for how future excellence awards will support performance improvement across the sector.

## ANNEX 3: – Commissioning 16-19 Apprenticeships

### Overview

Government set out its ambition<sup>3</sup> that, by 2020, one in five young people will have started an Apprenticeship before their 18<sup>th</sup> birthday.

The Apprenticeship, Skills, Children and Learning Act 2009 (ASCL Act 2009) established a statutory basis for Apprenticeship programmes:

- All suitably qualified young people will have an entitlement to an Apprenticeship place from 2013.
- National Apprenticeship Service (NAS) through duty placed on the Chief Executive of Skills Funding, will be required to secure sufficient and appropriate Apprenticeship places to fulfil the entitlement for each suitably qualified young person who wants one.
- Schools will be required to provide advice about Apprenticeships so that young people are properly informed about Apprenticeships as a career choice.

This Annex sets out how, in practice, the commissioning of 16-19 Apprenticeship provision will take place.

### Policy commitments

1. *World Class Apprenticeships* (Jan 2008) set out the Government's commitment to the expansion of Apprenticeships as a mainstream option for 16-19 year olds. Ministers committed that by 2020 1 in 5 young people will have started an Apprenticeship before the end of the academic year in which they reach their 18th birthday.
2. In addition, we have committed that from 2013, all suitably qualified young people will be entitled to an Apprenticeship place. This entitlement is set out in the ASCL Act 2009 and will establish a statutory basis for the Apprenticeships programme. It will, for the first time, place duties on the Chief Executive of the SFA who will delegate responsibility to the NAS to secure sufficient and appropriate Apprenticeship places to fulfil the entitlement for each suitably qualified young person who wants one. The Act will also ensure schools provide advice about Apprenticeships so that young people are properly informed about Apprenticeships as a career choice.
3. In *Raising Expectations: enabling the system to deliver* (March 2008) Government committed that local authorities would be responsible for commissioning all 16-19 provision. In relation to Apprenticeships it said that local demand will be identified by each local authority working with the NAS, and this will be aggregated within the region and the overall volume agreed with the NAS. It will then be the task of the NAS to provide the necessary Apprenticeship places to deliver the entitlement in every part of the country (the SFA will contract and fund providers on behalf of the NAS). Funding will be transferred to the SFA/NAS at national level to reflect total agreed demand; and the NAS will be accountable to the Department for Children, Schools and Families (DCSF) for the delivery of sufficient places for 16 -19 year-olds. The NAS will be accountable to both Department for Business, Innovation and Skills (BIS) and DCSF for quality assurance and intervention in relation to Apprenticeship delivery.

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<sup>3</sup> World Class Apprenticeships; BIU January 2008

#### Intended statutory duties and powers from 2010

4. Raising Expectations proposed a new set of arrangements between local authorities, the YPLA and the NAS from 2010. These are given effect by the ASCL Act 2009 in the following form:
  - The **NAS**, housed within the SFA will be responsible for ensuring that sufficient Apprenticeship places are available in number and sector for there to be suitable Apprenticeship places for all suitably qualified young people. NAS has dedicated employer teams across the country who work with employers to increase the number of Apprenticeship opportunities offered.
  - **Local authorities'** duty will be to ensure that there are enough sufficient and suitable places in learning for all 16-19 year olds resident in their area. In doing this local authorities should encouraging diversity and increasing opportunities for individuals to exercise choice.
  - Local authorities will also be under a duty to co-operate with the NAS to identify local demand in terms of number, level and sector and agree this with the NAS.
  - Local authorities will be responsible for stimulating demand for Apprenticeship places from young people to ensure the Apprenticeship Entitlement is delivered and that the Apprenticeship trajectory is met.
  - The **YPLA** will have a duty to ensure coherence and sufficiency in local authority commissioning plans.

#### Planning, commissioning and funding arrangements for 16-19 Apprenticeships

##### Planning

5. Medium-term strategic planning:
  - DCSF and BIS will agree the overall funding envelope and anticipated volumes for Apprenticeship places for the spending review period, broken down by 16-19 and 19+.
  - DCSF – in consultation with the NAS, YPLA and local authorities – will break down the Apprenticeships trajectory to a provisional regional and probably sub-regional basis.
  - DCSF – in consultation with the YPLA and BIS/NAS/SFA to ensure consistency – will agree the high-level funding model for Apprenticeships.
  - The FE Data Service will collect participation and success (starts and completions) data for Apprenticeship places to inform commissioning and procurement decisions and performance management. It will provide this to YPLA which – working with NAS – will analyse and provide this data to local authorities as part of the integrated data sets designed to inform their commissioning decisions.
6. The annual planning process will begin with local authorities, through their 14-19 Partnerships engaging in discussions with local providers and other stakeholders, including with work-based learning providers or their representatives where appropriate to identify their area's strategic priorities for delivering the 14-19 entitlement, including the Apprenticeship Entitlement. They will draw on an integrated data set provided by YPLA, including Apprenticeship information. They will also discuss demand from young people for Apprenticeships with the NAS, who will also provide data and supporting information about current Apprenticeship participation and any expected increases, support of employers locally, and overall performance of young people following an Apprenticeship.
7. Following this, the YPLA will issue a National Commissioning Statement for 16-19 funding setting out specific national priorities for the following year and indicative

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national funding amounts needed for different post 16 routes. It will work with the NAS to ensure this statement includes expected national budgets and volumes of Apprenticeship places, based on NAS targets and what is deliverable in year.

8. From this, the YPLA will set regional indicative total allocations and volumes to reflect patterns of participation, demographics and economic forecasts for all 16-19 learning, working with the NAS to include Apprenticeship delivery.
9. Working from this national statement, each Regional Planning Group (RPG) will develop a Regional Commissioning Statement setting out regional priorities, including Apprenticeships. The RPG will bring together key players such as Regional Development Agencies (RDAs), Government Offices (GOs), YPLA and SFA with local authorities. The NAS will need to be part of this group to help ensure that local authority plans take account of regional Apprenticeship priorities and delivery.
10. At this stage it will also be necessary to consider the sectoral mix of places given that the Apprenticeship Entitlement commits to provide an Apprenticeship place in one of two sectors of a young person's choice. While the overall proposal will be for an overall volume of Apprenticeships within a region, the NAS will respond through its procurement to the anticipated sectoral demand for Apprenticeships as discussed with local authorities previously. Delivery of Apprenticeships will be dependant upon employer support in all cases.
11. Local authorities will use the national and regional statements to finalise development of their annually reviewed 14-19 plan. This will set out a local area's strategic commissioning needs.

#### Information, Advice and Guidance (IAG)

12. In order to ensure that young people make the right choice for themselves based on high quality careers education, advice, guidance and impartial information, local authorities will be responsible for delivering personalised guidance and targeted support through IAG services and integrated youth support services. Within this the NAS field force and Connexions will need to work closely together to ensure that up to date and relevant information about the labour market and Apprenticeship opportunities is accessible and communicated effectively to young people and their advocates.
13. We have committed that the Common Application Process and Area Prospectus (which all local authorities will be developing by 2010) will be aligned to Apprenticeship vacancies. There is significant further work to be done to ensure that systems can be aligned to support this process.

#### Commissioning

14. Local authorities' strategic commissioning needs will be developed – through dialogue at the Sub-Regional Group (SRG) level – into an annual 16-19 commissioning plan which for each authority will identify how learning places will be commissioned. For Apprenticeships this will include:
  - Provision for its resident learners, including an assessment of the number and type of Apprenticeship places needed.
  - The SFA (on behalf of NAS through a shared services arrangement) will engage in provider dialogue locally to discuss with providers their potential contribution to providing Apprenticeships. This will need to include improving the quality of provision, and where expansion might come from. Further work

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needs to be done to ensure that any planning of provision through open competitive tendering (OCT) meets the timescales required.

- In order to come to this assessment on Apprenticeship numbers and type, the local authorities within the SRG will have to engage with the NAS to determine what is a realistic assessment of what can be delivered in that particular year locally. Apprenticeship places will have to be delivered within a reasonable travel to work area. This may require the SFA (on behalf of NAS) to source provision outside SRG boundaries.
- Given the expected growth of Apprenticeships it is expected that where providers currently deliver a high quality programme, the commissioning process will seek to further develop this work, thereby ensuring more young people are able to access Apprenticeships with employer support. In the case of the National Employer Service (NES), initial analysis will include the Apprenticeship volumes delivered locally by large employers, and the procurement process will build upon this, by growing provision with new or existing large employers to offer more Apprenticeships to young people.
- Having been supported by the SRGs, the 16-19 commissioning plans will then be endorsed by the RPG to ensure that they address the Regional priorities and learning needs for 16 -19 year olds and are within the regional funding allocation. The NAS will need to be involved in this process, to ensure that plans meet Government priorities and targets.
- Ultimately the YPLA will have responsibility for approving all plans submitted by the RPGs to ensure they cohere and are affordable. The NAS will need to be involved in this final process given their responsibility for ensuring that the entitlement is delivered, including the need to meet sectoral demands.

#### Funding

15. Once plans have been agreed by YPLA, there will be an agreement between YPLA (on behalf of local authorities) and NAS for a given volume of Apprenticeships regionally, supported by information about the given mix of sectors and levels in different areas of the country.
16. The NAS will carry out quarterly reviews on performance and discuss the outcomes with the YPLA and DCSF. Where performance differs from plan, the profile and funding may be changed to reflect this. Any significant impact this may have on a local authority will be discussed with that authority and the YPLA.
17. The NAS will be responsible for payment and performance management of providers but will deliver this function through a shared services arrangement with the SFA, set out in a service-level agreement. The NAS, through this arrangement, will have financial and delivery accountability for Apprenticeship provision to meet the agreed Apprenticeship provision within areas. The SFA will ensure provider delivery takes place within prescribed regions and any changes to this will need to be agreed jointly between the YPLA and the NAS.

#### Contracting

18. The SFA will agree contracts with providers, on behalf of the NAS. In managing the contracted provision, the SFA will monitor delivery and take-up of provision, including quality issues. The SFA, on behalf of the NAS, will need to inform local authorities of the providers that it has contracted with 16-19 Apprenticeship provision on their behalf.

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#### Quality assurance and intervention

19. Performance management of providers will start from a position of transparent, open and published data across all providers, including 16-19 Apprenticeship providers, based on the Framework for Excellence (FfE). Work is currently underway to look at the feasibility of including Minimum Levels of Performance (MLP), which are used to identify and address underperformance and to inform commissioning decisions, within the FfE from autumn 2009.
20. From 2010, as specific information relating to the 16-19 element of a provider's performance will be needed, MLP for all providers including Apprenticeship providers will be disaggregated by age range (i.e. pre and post 19). The intention is that MLP will be uniform and consistent across pre and post-19 Apprenticeship provision. However, as BIS and DCSF Ministers will approve MLP levels, potential for flexibility is built into the system.
21. The SFA will carry out the Performance Management overview of general FE Colleges and providers delivering Apprenticeships as a core shared service for the NAS. Local authorities will need to have the accurate and timely in-year performance information on Apprenticeship delivery across all provider types to be able to challenge delivery of Apprenticeship provision for their learners in-year. This will be included as part of the integrated analytical services provided by the YPLA, which will include data on their residents who are on APPS. Any challenge to provider performance should be raised by local authorities (probably through their SRG) with the NAS.
22. The NAS will discuss performance locally with SRG where overall underperformance indicates action may be required to agree jointly any action required to bring about improvements. Where there are significant issues that affect the quality and performance of Apprenticeship provision, the NAS will discuss this with the affected local authorities.
23. Local authorities will carry out the performance management of school sixth forms using the 'Data dashboard' and other data sets such as the Achievement and Attainment Tables and Ofsted inspection reports to scrutinise sixth form performance until FfE is available for schools.
24. For Apprenticeships delivered by schools (small numbers) or sixth form colleges there are 2 options as to how this performance management conversation should take place. Either local authorities could oversee performance for Apprenticeship delivery in schools and sixth form colleges so as not to introduce an additional body, or the function could rest with the contract owner i.e. the SFA. We are currently considering this issue further.

#### Formal arrangements between agencies

25. Formal governance arrangements will be in place between the agencies to support this work.

## Annex 4: – Commissioning Education and Training for Young Offenders in Youth Custody

### Overview

The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act 2009) sets out new responsibilities for local authorities towards young people detained in youth custody. This covers young people in the youth justice system (either on remand or sentenced) who are detained in Young Offender Institutions (YOIs), Secure Training Centres (STCs) or Secure Children's Homes (SCHs). This includes young people aged from 10 to 17, and some 18 year olds who remain in youth custody because they are near the end of their sentence.

The new legislation in relation to young offenders in custody has been designed to ensure that provision of education and training in youth custody is aligned with arrangements for their peers in the community. Local authorities, as the strategic commissioners of services for young people, are in the best position to use their expertise to commission learning provision in the mainstream sector, to foster improvements in the delivery of education and training in youth custody, and to ensure that it is aligned with the 14-19 curriculum reforms and the arrangements to raise the participation age.

The nature of secure custody for young people and the different stakeholders and partners involved, means that the commissioning process for learning in custody needs to be different to the processes for commissioning learning in the mainstream sector for young people in the community. This annex explains the new legal provisions regarding education for young people in youth custody and provides guidance on the commissioning process and how this should link to local authority commissioning of mainstream provision.

This annex does not address the commissioning of education and training for young offenders who are in the community because learning for this group of young people should be addressed in the same way as learning for any other child or young person in the community. Therefore it is important that local authorities' 14-19 planning includes consideration of the needs of young people in the youth justice system in the community, as this group of young people are particularly vulnerable and often struggle to engage in learning. It is especially important that provision for young offenders is available throughout the year, rather than solely at the beginning of the academic year, particularly for young people leaving custody. Youth Offending Teams (YOTs) are well placed to contribute to planning and commissioning plans in respect of this group, and should play an integral role in this process.

This annex does not cover learning for young people aged 18 and over who are held in either 'young adult' prison or 'adult prison'. It is the responsibility of the Skills Funding Agency (SFA) to fund and commission learning in young adult and adult prison.

### Context

1. The vast majority of young people are law-abiding citizens, although a small minority become involved in the youth justice system. For young people who become involved in crime, there is a range of interventions and only around 3-4 per cent of young offenders are placed into secure custody (around 7,000 per year, and around 2,600 at any one point in time).

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2. There are currently 28 custodial establishments for young people in England located in 22 different local authorities. They vary in size from very small establishments that hold, for example only five young people, to large establishments holding up to 460 young people. The configuration of the custodial sites mean that when a young person is detained in custody they are often detained in an establishment within a local authority area which is different (and sometimes some distance away) from the local authority in which they usually live. The Youth Justice Board (YJB) is responsible for overseeing the youth justice system and for commissioning places in secure custody for young people remanded or sentenced to custody by contracting with custodial establishments to purchase 'beds' for young people. The YJB is also responsible for facilitating the placement of most children and young people who are remanded or sentenced to custody into a custodial establishment, taking into account a range of factors in doing so (e.g. the persons level of vulnerability, closeness to home, etc).
3. The average length of stay for a young person in youth custody is between only three and four months although this can vary across different juvenile establishments. For example, Feltham YOI based in Hounslow holds a high proportion of young people on remand who are awaiting sentence and therefore the average length of stay is much shorter (less than a week in this establishment). However, some young people spend a lengthy period in custody, sometimes several years. Young people can also transfer to different establishments during the course of their detention in custody.
4. Although young offenders are a comparatively small group of young people, they can have a large impact in their local communities. Research suggests that education and training is a critical factor in rehabilitation for young offenders, for example in improving their life chances and reducing their risk of re-offending. Custodial establishments and YOTs, working as part of integral youth support in the community, should seek to secure engagement and achievement in education and training, alongside tackling young people's other barriers to rehabilitation. This can have an important impact on a wide range of local authority agendas and performance, specifically on those not in education, employment or training (NEET) and the Raising the Participation Age (RPA) agendas, as well as ensuring that 90 per cent of young offenders are engaged in education, training and employment by the end of their sentence.
5. The youth justice system covers both England and Wales although, as 'education' is a devolved policy, this guidance covers England only. The legislation in the ACSL Act 2009 covers both England and Wales, and the Welsh Assembly Government will be issuing guidance in relation to Wales. In Wales, the Welsh Assembly Government will cover similar functions to the role of the Young Peoples Learning Agency (YPLA) in relation to young offender education in custody. Because the youth justice system operates across England and Wales, this means that young people from England can be placed in custody in Wales (and vice versa). There is one Private YOI and one SCH based in Wales.
6. Because the Youth Justice System operates across England and Wales, this means that young people from England can be held in custody in Wales (and vice versa). The Welsh assembly will be responsible for arranging the learning provision for young people in custody in Wales, including for young people who usually reside in England. This guidance applies only to the provision of education and training in youth custody based in England and similar guidance will be produced by the Welsh Ministers for youth custody based in Wales.
7. There are four types of custodial establishments for young people, and arrangements for the provision of education historically vary in each of these as described in the

paragraphs 8-14 below

#### **(1) Prison Service Young Offender Institutions (Prison Service YOIs)**

8. There are currently 14 Prison Service YOIs in England –four of which include a girls unit (the others are male only). These YOIs are managed by Her Majesty’s Prison Service and tend to be the largest establishments (many cater for several hundred young people). They take young people aged 15-17, and also hold some 18 year olds who are near the end of their sentence.
9. Education and training in Prison Service YOIs is currently delivered by learning providers who hold contracts to deliver this service with the Learning and Skills Council (LSC). New contracts began from August 2009 and are for a period of three years, plus two years. The prison service also delivers personal development activities and some training opportunities which are integrated into wider prison regimes.

#### **(2) Private Young Offender Institutions (Private YOIs)**

10. There is currently only one Private YOI in England and this is managed by a private contractor through a long term Private Finance Initiative contract. Private YOIs hold young people aged 15-17, and some 18 year olds who are near the end of their sentence. Education and training is currently included within the contracts for managing these establishments.

#### **(3) Secure Children Homes (SCHs)**

11. There are currently 10 SCHs in England who hold contracts with the YJB to hold young people in the youth justice system. These are currently all managed by local authorities, and hold young people aged 10 to 17. They are the smallest type of establishment and typically house between four and 25 young people.
12. Education provision in SCHs is currently included in the contracts with the YJB, who purchase places in these establishments for young offenders on the basis of a “per bed” price (which includes education). It is therefore currently the role of the YJB to commission education in SCHs.

#### **(4) Secure Training Centres (STCs)**

13. There are currently four STCs in England. They are privately managed under long term Private Finance Initiative (PFI) contracts and cater for young people aged 12-17, and some 18 year olds near the end of their sentence. These typically hold 40-80 young people per establishment.
14. Education has been funded as part of the contract for operating the establishment. Some STCs choose to deliver this directly, whilst others contract this out to learning providers.

#### **Legal provisions**

15. The ASCL Act 2009 brings children in custody under education legislation for the first time. The Education Act 1996 (and subsequent Acts read as one with this), will apply to children and young people in youth custody, and new sections inserted into the Act make specific provisions towards persons in youth custody.
16. The new duties towards children and young people in youth custody include the

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following:

- A duty on local authorities with youth custody establishments in their area (i.e. 'host' local authorities), to ensure that enough suitable education and training is provided to meet the reasonable needs of children and young people detained in youth custody. In doing this, local authorities must have regard to the following:
  - the persons' age, abilities and aptitudes, any special educational needs (SEN) or learning difficulties they may have;
  - the desirability of enabling persons to complete any courses or training already begun;;
  - any relevant curriculum and desirability that education received should be comparable with that which they could be expected to receive if they were attending school , or institution implementing a relevant curriculum; and
  - the desirability of the core and additional entitlements being satisfied for those young people over compulsory school age but under 19 who have elected for them.

17. This means that host local authorities will have responsibility for commissioning learning provision for young people detained in youth custody in their area. They will commission a range of provision capable of being adapted to meet the likely needs of the young people who will be detained in custody in their area. The host local authority cannot be expected to commission individual provision for specific young people who find themselves in custody<sup>4</sup> because we are unable to predict which young people will end up in custody and what their educational needs will be. Therefore, the host local authority will rely on historical information and intelligence from partners about the likely learning needs of young people who spend time in custody and use this to commission a menu of provision – which the provider can then use to provide young people in custody with appropriate learning provision. The YPLA has a duty to fund host local authorities so that they can fulfil this duty.

18. The ASCL Act 2009 provides additional duties towards young people who have statements of special educational needs (SEN) prior to entering custody. For young people with SEN statements, on entering custody the host local authority must use their 'best endeavours' to ensure that appropriate provision, corresponding to that specified in the person's statement is provided whilst the person is in custody. Further guidance on this will be contained within the "Learning for young people in youth custody" guidance. The ASCL Act 2009 also allows regulations to be made to enable host LAs to recoup the cost of this additional provision from the local authority in whose area the person belongs. For young people with SEN statements, host local authorities will need to decide whether the existing provision which they have commissioned in custody is sufficient to meet that person's needs as set out in their SEN statement and if not, in this scenario the local authority will need to commission additional provision to meet those needs and can then recoup the cost of this.

19. The ASCL Act 2009 also includes wider related duties and powers about education and training for young people in youth custody including the following:

- For young people who had a SEN statement prior to entering custody, the statement must be revived and reviewed on their release from custody by the authority responsible for maintaining it.
- For young people in custody, the persons 'home' local authority (the authority where they are ordinarily resident (excluding any period when the person is subject to a detention order) or, in relation to a child or young person who

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<sup>4</sup> Except for young people with statements of SEN, where it will sometimes be necessary for host LAs to commission individual provision.

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immediately before their detention was, or at any time since then has been, looked after by an authority under the Children Act 1989, the local authority that is or was most recently looking after the person), will have a duty to promote the fulfilment of the persons learning potential whilst they are in custody and on their release. This means for example, that the persons home LA must ensure that they obtain and transfer the persons' educational records so that this can inform their learning provision in custody. They should also ensure that the person has appropriate education or training arrangements set up for them to continue or commence as soon as possible on their release from custody.

- The provisions create the power for any person who has provided education or training for a detained person to supply information relating to the detained person to the home local authority and the host local authority. This enables the person's school, or other place of learning, and the provider in custody to share information with the home and host authority for the purposes of securing the provision of education both during their period of detention and on their release. The provisions also create a duty on local authorities to comply with requests for such education information made by a YOT, another local authority, a custodial operator or any provider (or proposed provider) of learning to the young person. This framework of provisions allows educational information to be transferred by the home or host local authority to those who will be providing education or involved in the persons education in custody and on their release.
- YOTs have a duty to notify home and host local authorities when a young person enters custody, when they transfer custodial establishments and when they are released. YOTs therefore have a pivotal role in ensuring that local authorities are aware of which young people they are responsible for.

#### Scope of this guidance

20. This guidance focuses on the commissioning process for education and training in youth custody and how this aligns with commissioning arrangements for provision in the mainstream sector.
21. More specific guidance entitled 'Learning for Young People in Youth Custody' will be published to supplement this and will include, for example, further guidance on the range of education and training to be commissioned in youth custody and to meet young peoples special educational needs/learning difficulties and disabilities, etc.
22. The more detailed guidance on 'Learning for Young People in Youth Custody' will also cover wider local authority responsibilities including the wider provisions in the ASCL Act 2009 relating to the education and training for young people in youth custody.

#### Timescales for implementation

24. Currently there is a mix of arrangements for the provision of education and training in youth custody and it is planned that implementation of the reforms for learning in youth custody will be introduced in different establishments at different times.
25. Learning in Private YOIs, STCs and SCHs currently forms part of wider contracts with custodial operators and will be introduced according to the nature of individual contracts. Therefore, the arrangements outlined in this document will initially apply for the provision of learning in youth custody in Prison Service YOIs only.
26. For YOIs managed by the prison service, the LSC currently holds contracts with learning providers to deliver learning in these establishments which are for 3 years, plus 2 years.

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From April 2010, these contracts will be transferred to the YPLA. It is anticipated that from September 2010 these contracts will transfer to host local authorities. These contracts have been set up on a regional basis – so that host local authorities may choose to collaborate and manage them on a regional basis or they may choose to disaggregate them so that host local authorities can manage their own contract for provision in their area. Local authorities will inherit an agreed ‘bed-price’ formula for YOIs which is tied in with these contracts, which is based on a national ‘education cost per place’ in these establishments.

27. We expect that the 2011/12 commissioning year will be the first year in which host local authorities will be able to undertake the full commissioning cycle as outlined in this document. At this point, local authorities with Prison Service YOIs in their area may choose to continue with the existing contracts, or they may choose to end the existing contracts and re-commission.

#### **Definitions and duties of host and home local authorities**

28. As explained above, ‘commissioning’ responsibilities for education and training in custody will rest with the ‘host’ local authority. A host local authority is defined, for the purposes of learning in youth custody, as the local authority in which the custodial establishment is located. This means that there are currently only 22 host local authorities across England.
29. These host local authorities with youth custodial establishments located within their area will be responsible for securing education for children and education and training for young people detained in youth custody in their area, and will receive funding from the YPLA to undertake this.
30. In most cases the host local authority will therefore lead on commissioning learning provision in the youth custodial establishments in their area. However, local authorities could also choose to exercise their duties through a different local authority, or for example, a consortium of local authorities, or a sub-regional or regional grouping (subject to the agreement of relevant parties). A different local authority (or consortium, or ‘grouping’) could act as the ‘lead local authority/grouping’ in terms of managing the commissioning process for learning in custody. Although, in this scenario, the host local authority would still be legally responsible for fulfilling their duties under the ASCL Act 2009 and would need to ensure that the ‘lead local authority/grouping’ were fulfilling their responsibilities effectively on their behalf. host local authorities must secure agreement on which local authority (or consortium, or grouping) will act as the lead commissioner, prior to September 2010.
31. The remainder of this annex is drafted on the basis that the host local authority is fulfilling its commissioning responsibilities directly, although subject to the scenario outlined above this could be substituted for the ‘lead local authority/grouping’.
32. The definition of the home local authority is the local authority where the young person is ordinarily resident (excluding any period when the person is subject to a detention order) or, in relation to a child or young person who immediately before their detention was, or at any time since then has been, looked after by an authority under the Children Act 1989, the local authority that is or was most recently looking after the person.
33. The home local authority does not have any direct responsibility for the commissioning of education or training for young people in custody. However, the home local authority will have a duty to promote the fulfilment of the persons learning potential whilst in custody

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and on release by, for example, transferring the young person's learning records and other relevant information. Home local authorities may however want to work with the host local authority (and their designated learning provider in custody) to provide advice on which learning courses they consider that their young people should participate in (from the range of provision that the host local authority has commissioned in the establishment).

34. In some cases, the home local authority and host local authority will be the same. In this instance, the local authority concerned should adhere to the same arrangements as detailed above.

#### Process

35. This annex provides an overview of the commissioning process for education and training in youth custody and demonstrates how this links to commissioning of education and training for young people in the community. This document should be read in conjunction with more specific guidance for local authorities on 'Learning for Young People in Youth Custody', which will provide further detail to support local authorities in fulfilling their new duties under the ASCL Act 2009.

#### National requirements

36. *Legislative requirements:* The duties in the ACSL Act 2009 set out the legislative requirements for local authorities in respect of education and training in youth custody. The detailed guidance for 'Learning for Young People in Youth Custody' will provide further detail and interpretation to support local authorities in fulfilling their duties.
37. *YPLA Grant Letter and Statement of Priorities:* The grant letter and the statement of priorities for the YPLA will set out the funding central government has dedicated for learning in youth custody and will set out how this should be used to fulfil the local authority's responsibilities towards education and training for young people in youth custody. The YPLA may pass on requirements to local authorities through 'conditions of grant'.

#### Needs Assessment

38. Host local authorities will need to undertake a needs assessment to establish the education and training provision needed for children and young people in youth custody in their area. This should take into account a range of information, including, for example:
- The number and age range of young people expected to be held in the establishment(s) during the year.
  - Historical information and data about the needs of the custodial population, including information about the level of learning and any SEN or Learners with Learning Difficulty and/or Disability (LLDD) considerations.
  - The facilities and capital infrastructure available for the provision of education and training in the secure estate.
  - Information about the wider training and personal development activities delivered and commissioned by the custodial operator which make up the wider regime in custody.
  - The amount of provision needed throughout the year in terms of the amount of hours and classes to be provided, including the need for year-round provision (rather than just adhering to term-times).
  - Any apparent patterns in where the young people tend to come from and return

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- to before and after their time in the establishment which have a bearing on learning provision needed.
- The average length of stay in the establishment(s).
39. The host local authority will need to work in partnership with a range of stakeholders to conduct the needs assessment. This includes the custodial operator, the national and regional YJB, the National Offender Management Service (NOMS) within the region and the YPLA:
- The YJB will provide information on the number of places in the establishment and the population type in the establishment, including for example, whether the establishment has any 'vulnerable young people units'.
  - The YPLA will provide historical information on learning and achievement for young people in the establishment.
  - The custodial operator will be able to contribute detailed information about the usual population held in the establishment, what has been delivered previously, the views of the young people, the facilities in the estate, information about the wider regime, and their views on what is needed and information about the general needs of the population, including SEN and LLDD.
40. The needs assessment should be agreed between the custodial operator, the YJB, the regional YPLA and NOMS and this should be used to inform the planning stage. Gaining joint agreement will be critical in ensuring that all relevant partners sign up to what is needed and to ensure that the education provision commissioned can be fully integrated into the wider custodial regime.

#### **Specification, planning and securing provision**

41. The host local authority will lead on specifications for the provision of learning in youth custody and will need to develop this in partnership with wider stakeholders including the custodial operator, the regional YJB, the YPLA and NOMS.
42. The specification will be developed in light of:
- The 'needs assessment' detailing the partners collective view of what is needed in terms of delivery of learning in youth custody.
  - The legal requirements and underpinning guidance on 'Learning for Young People in Youth Custody'. This guidance will include expectations about the core learning that we expect to be delivered in custody (such as, a focus on literacy and numeracy) and the flexibilities around the curriculum where local authorities will want to consider the young people's needs as well as the facilities and expertise available when determining provision.
  - Information from the YJB about the secure establishments and the number of beds in the establishment.
  - Information from the YPLA about the projected level of funding.
43. It should include detail on exactly what provision needs to be delivered and how this fits in the facilities and wider regime in the custodial establishment. It should include for example, information about the amount of delivery needed, the staffing levels required, and the amount of learning support and SEN and LLDD support required. It should also be clear on how the learning provision should link with Information Advice and Guidance (IAG) services in custody.
44. Host local authorities will consider how best to secure the provision of the learning agreed in the specification in order to secure the best provision and value for money. This could be through, for example, a procurement exercise where the local authority

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would go out to tender and invite bids from organisations such as, colleges, private providers, third sector providers, or a consortium of providers, etc for the delivery of the service. Alternatively host local authorities could, subject to their procurement rules, appoint a provider (such as a local school, college or voluntary sector provider) whom they see fit to deliver this, or they could decide to deliver the service directly by for example, employing teachers directly, etc. Local authorities should encourage the involvement of third sector organisations and should play a role in developing the market for the provision of education and training in juvenile custody with the aim of driving up quality and standards.

45. Plans for the provision of learning in youth custody should be included in the local authorities wider commissioning planning processes and will therefore need to be agreed by the Children's Trust, Sub-Regional Group (SRG), and the Regional Planning Group (RPG) as part of the wider planning process. The YPLA will need to agree the host local authority plans for learning in youth custody and will seek to ensure coherence of plans and value for money in youth custody across the country.
46. Local authorities will be able to appoint contracts for longer than 1 year where they see fit to do so (in line with their procurement and commissioning arrangements and rules), although for any arrangements that are anticipated to last for longer than one year, it is good practice for local authorities to build in an annual review of provision to ensure that the planned provision continues to be appropriate to meet needs.

#### **Allocation of funding**

47. Dedicated funding to the host local authority will be provided through the YPLA. This will be specified in the annual grant letter to the YPLA.
48. The YPLA will allocate funding to host local authorities based on the number of places in youth secure establishments in the local authority area. The YPLA will develop funding formulas to allocate the funding to host local authorities which will take into account factors such as, the type of custodial establishment (e.g. whether it is a large YOI or a small SCH catering for the youngest and most vulnerable young people), a London weighting, as well as the number of youth justice secure 'beds' in the establishments in the local authority area.
49. The funding formula will also take account of factors such as, the small class sizes necessary for young people in custody, the high needs of this group of young people (including for example, the higher incidence of SEN and LLDD).
50. Host local authorities will be required to spend the dedicated funding for learning in custody specifically for this purpose. Any surplus funds should be reinvested to provide further provision.
51. The YPLA's provision of funding to host local authorities will change over time to reflect any changes in the youth secure estate such as, the decommissioning of some establishments and any newly appointed youth custody establishments.

#### **Monitoring and performance management**

52. Local authorities must develop monthly performance management arrangements with their providers to monitor the learning delivery and outcomes for young people in youth custody. Local authorities should use these arrangements to ensure that they are fulfilling their responsibilities for education and training for young people in youth custody

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and to ensure their designated learning providers are effectively delivering on their behalf. Local authorities should develop partnership arrangements with the custodial operator, YJB and YPLA to monitor delivery and provide a vehicle for discussing and resolving joint issues.

53. Local authorities should expect their appointed learning providers in custody to report performance data using the Individualised Learner Record (ILR) data arrangements (consistent with data arrangements in the mainstream learning sector) and data via the Youth Offender Learning 1 returns (YOL1) (a custody based reporting of learning). This data will be aggregated by the Skills Funding Agency and YPLA shared data service and will be used by the YPLA to monitor performance nationally.
54. Ofsted and Her Majesty's Prison Inspectorate will continue to inspect the provision of education and training in youth custody to foster continued improvement in provision.
55. The YPLA will have a power to intervene if it is satisfied an local authority is failing or is considered likely to fail in their duties regarding the provision of learning for children and young people detained in youth custody.

#### Summary of commissioning cycle

56. The commissioning cycle will comprise

- Central Government provides the YPLA with a dedicated budget for learning in juvenile custody detailed in the annual grant letter: **October 2010**
- The YPLA provides indication of the funding allocations and informs host LAs: **October**
- Host local authorities undertake a needs assessment, in partnership with relevant stakeholders and develop specification for commissioning: **October-December**
- Host local authorities work with partners to plan provision and feed this into wider mainstream planning processes: **January-March 2011**
- Plan is considered and agreed by YPLA: **Mid March**
- Host local authorities procure/appoint provider(s) to deliver in youth custody: **March-July**
- Provision delivered in custody: **Sept 2011**
- Host local authorities implement monthly performance monitoring through partnership agreements with relevant partners.

[Dates stated are best estimates]

## ANNEX 5: – National Funding Formula

### Overview

This annex sets out the National Funding Formula for 16-19 Learning. The key principle underpinning the national funding formula for 16-19 learning is that the funding allocated should reflect the relative costs of efficiently delivered provision. The elements of the formula are designed to take account of the main drivers of differential costs, and to provide an incentive to maximise learners' achievement.

1. The national funding formula has five key elements:

- Learner numbers (full and part time).
- Standard Learner Numbers (SLN), which is a measure of the 'size' of learners programmes (similar to 'full time equivalent', but taking account of variations in the size of full-time programmes).
- A provider factor for each institution/Apprenticeship provider, aggregating programme weighting, disadvantage, area costs and success factor.
- National base rate funding (£ per SLN), determined by the overall 16-19 funds made available and the learner numbers that are required to be delivered for those funds.
- Additional Learning Support (ALS), which provides extra funding to meet the needs of learners with learning difficulties and/or other special requirements.

### Learner numbers and Standard Learner Numbers

2. The learner numbers recruited by institutions and providers are the key driver of their overall funding allocations. The volume of activity in each institution/provider is measured by Standard Learner Numbers (SLNs). One SLN is a course of 450 guided learning hours (broadly, teaching time) – the minimum for a full-time programme. Part time courses are a fraction of an SLN. Courses can be funded up to an annual maximum of 1.75 SLNs. Provision planned in each institution/provider is aggregated to create a total SLN value for the year.

### The provider factor

3. The provider factor takes account of the main elements that cause institutions/providers to incur differential costs when delivering comparable learning programmes. In addition to the main elements – programme weighting, disadvantage, area costs and success factors – adjustments are made for short part time programmes, and to enable institutions with residential 16-19 learners to meet the requirements of the Care Standards Act 2000.

4. Programme weighting takes account of the costs of courses that require specialist facilities or smaller group sizes – so, for example, construction and engineering have higher weightings than humanities courses. Disadvantage funding is primarily related to the home location of the learner, linked to the Index of Multiple Deprivation 2004, which is used widely across Government. Area costs reflect the extra costs associated with delivery provision in certain areas of England – mainly London and the South East. The success factor takes account of the degree to which institutions/providers retain learners and enable them to achieve their qualification aims. The factor is based on a weighted average of the success rates for the programmes that the institution/provider delivers.

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#### National base rate funding

5. The national base rates of funding per SLN are determined by the funds made available by Government for school sixth forms, 16-19 FE and Apprenticeships, and the number of learners to be supported. The base rates take account of inflation costs, and any efficiency gains required by Government.

#### Additional Learning Support

6. The elements of the funding formula are combined to produce an allocation of funding:

$$£ = (\text{SLNs} \times \text{provider factor} \times \text{national base rate}) + \text{ALS}$$

7. The principle purpose of the ALS is to support learners to participate and achieve. ALS is allocated at two levels:
  - a) lower cost support (up to £5,500) which for most providers is funded partly (60%) by formula (based on learners' prior achievements measured by GCSE points scores in English and Maths), and partly (40%) on local discretion:
    - The number and range of learners with disabilities and/or learning difficulties.
    - To support the convergence to the Funding Formula approach where a provider experiences a continued negative impact from the changes of a formula driven approach. Note this is not to prop up historical allocations but to ease the transition. Convergence towards the new approach should be demonstrated.
    - To promote actions to meet the needs of learners with learning difficulties and/or disabilities (LLDD) and those who would otherwise be not in education, employment or training (NEET).
    - The provider's capacity to meet the needs of learners who may have good GCSE grades (16-19) and/or be working at or above level 2 but have additional needs such as dyslexia or mental health difficulties.
    - The provider's contribution towards the Learning for Living and Work and Mental Health Strategies.
  - b) higher cost support (over £5,500) which is funded through an assessment of the specific additional requirements of individual learners and historical spend, in discussion with institutions/providers.
8. Further details of the formula can be found in the Learning and Skills Council (LSC) current funding guidance.

## Annex 6: – European Social Fund (ESF)

### Overview

This annex covers the arrangements for the European Social Fund post April 2010. The Learning and Skills Council (LSC) is a regional Co-financing Organisation (CFO) in each English region within the 2007-2013 European Social Fund (ESF) programme. From 1 April 2010, this role will be performed as a shared service of the Skills Funding Agency (SFA) and the Young People's Learning Agency (YPLA). The shared service will be located in the SFA, and the SFA will take on the Co-financing Organisation (CFO) status.

### ESF requirements

1. CFOs have responsibility for using ESF to procure additional employment and skills provision to complement domestic funding and programmes.
2. The key requirements that a CFO must fulfil include:
  - a. ensuring ESF adds value to and does not substitute for domestic funding;
  - b. procuring ESF provision through open and competitive tendering;
  - c. identifying the required match funding;
  - d. operating at regional level; and
  - e. complying with European Union (EU) financial, audit and Management Information (MI) rules.
3. The full requirements are set out in ESF Guidance Manuals ([http://www.esf.gov.uk/info\\_for\\_cfo\\_and\\_projects/guidance.asp](http://www.esf.gov.uk/info_for_cfo_and_projects/guidance.asp)), particularly Manual 2: Co-financing Beneficiary Guidance and Requirements.
4. The European Social Fund Division of Department of Work and Pensions (DWP), as the ESF Managing Authority, will set out the process to confirm the SFA as the successor CFO to the LSC in each English region and in the Convergence area of Cornwall and the Isles of Scilly, operating on behalf of the YPLA and local authorities as the lead/accountable body.

### 2007-2010 LSC CFO agreements

5. The LSC has ESF funding agreements with DWP ESF Division covering ESF allocations for 2007-2010 in each English region and in Cornwall and the Isles of Scilly. These agreements fund provision that can continue in some regions until 2011. These agreements will be transferred to the SFA CFO. Likewise the LSC's ESF contracts with providers will be transferred to the SFA CFO as part of the overall transfer of responsibilities.

### 2011-2013 SFA/YPLA CFO

6. The SFA will be a regional CFO in each English region and in Cornwall and the Isles of Scilly. It will have a similar scope to the current LSC CFOs in tendering for both 14-19 and adult skills provision (including Apprenticeships delivered through the National Apprenticeship Service).

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7. The regional SFA CFOs will enable both SFA and YPLA to draw on the ESF expertise and systems developed by the LSC. It will avoid the additional administrative costs and duplication of having separate SFA and YPLA CFOs.
8. The regional SFA CFOs will work with the Department for Children, Schools and Families (DCSF) and local authorities through the Regional Planning and commissioning of domestic 14-19 provision. This will significantly enhance local authorities' role in ESF, without imposing substantial ESF administrative burdens on them.
9. DCSF will provide policy guidance to the regional SFA CFOs on its priorities for using ESF funding to add value to and complement domestic 14-19 funding within the priorities set in the ESF Operational Programme 2007-1013.
10. The regional SFA CFOs will involve local authorities, Sub-Regional Groups (SRGs) and Regional Planning Group (RPG), on the development of their regional Joint ESF Co-financing Plans for 2011-2013. The regional SFA CFOs will also consult other CFOs in their regions to ensure that their ESF Co-financing Plans are complementary. The Co-financing Plans will be appraised by the ESF Managing Authority to ensure that they comply with ESF rules, the England and Gibraltar ESF Operational Programme and the relevant regional ESF framework, and will be subject to endorsement by the Regional ESF Committee.
11. The regional SFA CFOs will request input from local authorities on the development of specifications for 14-19 activity, through SRGs and the RPG, within the framework of their agreed 2011-2013 Co-financing Plans.
12. The regional SFA CFOs will contract ESF funding to providers through open and competitive tendering. This will follow 14-19 business cycles where possible, although timescales may differ due to the possibility of differing SFA business cycles, or EU requirements or funding cycles.
13. Contract and performance management of ESF contracts is still to be ascertained, but may reflect the way the SFA will performance manage FE college provision.
14. Audit requirements for ESF (and ESF match funding activity) will be different to those established in the NCF i.e. the "one provider one audit" aspiration. ESF is subject to regulatory audit set out by the European Commission which requires the CFO, the Managing Authority and the Audit Authority to carry out monitoring and audit activity during the lifetime of the project. The European Commission and European Court of Auditors also retain a right to audit projects.
15. The regional SFA CFOs will be responsible for ensuring that the local authorities' match funding is identified, evidenced and complies with ESF requirements, and will therefore agree this process through a Service Level Agreement with local authorities.
16. The transition from the LSC to the SFA/YPLA should not affect the CFO status of the four existing local authority CFOs (i.e. Central Bedfordshire Council, East Midlands Local Authority Consortium, London Councils and Luton Council), but they may find that the new arrangement negates any need for them to operate outside of the joint arrangements.

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## ANNEX 7: – Data Provision

### Overview

This Annex covers the broad requirements for the data which will inform the commissioning process. The data needs of both the Young People's Learning Agency (YPLA) and local authorities are covered, along with indicative timetables for the availability of data for the commissioning year 2010/11.

### Learner data

1. The commissioning processes for 16–19 provision will be supported by relevant and timely data. The data collected will be based upon the Individualised Learner Record (ILR), Termly School Census Data and a variety of other sources which will allow local authorities, Government Offices (GOs) and the YPLA to receive analysis on funding, learner participation and success by programme type and qualification aim at individual institution level and by age, gender, ethnicity and disability. Post code analysis of learners will also identify travel to learn patterns to inform 14–19 planning, Sub-Regional Group (SRG) dialogues and total allocation moderation by Regional Planning Groups (RPGs).
2. Completion of the ILR for YPLA funded learners will be a condition of Grant for local authorities who will in turn make it a condition of funding for all colleges and providers
3. Currently, data from school sixth forms is not based on ILRs but on completion of the Termly School Census Returns, which will be made to the Data Services Group in the Department for Children, Schools and Families (DCSF) and passed to the FE Data Service before coming to the YPLA for subsequent distribution.
4. Completion of Termly School Census Returns data will be required for all YPLA funded school sixth forms, and together with ILR and the Connexions service Client Caseload Information System (CCIS) will provide a cohort and participation wide picture at a local authority level. Local authorities will also need information on what non-learners are doing (are they in employer funded training, jobs without training, unemployed, or unavailable to the labour market) which is available from the Connexions database (CCIS) to attract young people who are not currently in learning to participate.

### Data returns

5. Schools, colleges and providers will be required to submit data within agreed timeframes to meet the requirements of the commissioning cycle. The arrangements and systems for data collections will be managed by the FE Data Service, housed within the SFA and the Schools Data Service within the DCSF. Both Services will be required to provide the YPLA with validated data from these returns to agreed standards and timescales. YPLA will then model and present the data in a nationally consistent format on a regional and local basis to inform local authority commissioning.
6. Failure to submit accurate data within deadlines for returns will mean that the LA and Regional Planning Group (RPG) will be unable to guarantee that allocations will be made within the agreed times.

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7. Indicative data returns currently used for allocation purposes are:

#### School Sixth Forms

Data	Availability	Application
Historic PLASC data	September	Trend analysis
Termly census data	Initial October Final January	Update of participation figures
Awarding Body data	Initial October Final January	Achievement data. Used to update provider factor
Autumn census data	Initial November Final January	Recruitment figures. Used to determine baseline figures for the next academic year

#### FE and Training Providers

Data	Indicative Availability	Application
Aggregate Return	November	Early response from providers to show participation volumes to inform early provider dialogue
L01	December	First return to show 16 -19 recruitment. Used to determine baseline numbers for the next academic year
L02	February	Mid year return – includes adult participation and ESF activity
L03	May	Mainly used for ESF activity
L04	September	Full academic year participation and retention data – very little achievement data. Used for internal modelling of total allocations
L05	December	Final return giving data on participation

[Timings stated are best estimates.]

8. It is not intended that the core sources of data for 2010/11 Allocations will be changed, although it is likely that there will be changes to the school census to enable accurate calculation of success rates for school sixth forms. Timings for submission of data and formal returns will be changed to prevent delays in the commissioning cycle. An aggregate return made to the FE Data Service in mid November will provide an early view of participation to inform initial Provider dialogues. It is also intended to change the date when validated school data is available from 1 December to 15 November.
9. The final return of L05 has been moved to an earlier date, ensuring that allocations are confirmed on time
10. Local authorities and providers who make ILR returns should refer to The Information Authority Board website for the most up to date information regarding return requirements [www.theia.org.uk](http://www.theia.org.uk) .
11. These changes will be agreed through the Information Authority.

#### **Apprenticeships**

12. YPLA and local authorities will receive participation and performance data on 16-19 Apprenticeships from the FE Data Service to inform commissioning, but local authorities will commission volumes through the National Apprenticeship Service (NAS).

#### **Control of total allocations**

13. There will be nationally controlled, locally and regionally applied, planning and allocations spread sheets. This system will enable:
  - LAs to apply the national funding methodology, convert volumes into funding and model affordability.
  - Allocations and total allocations to be aggregated and modelled at SRG and RPG level.
  - Control and moderation of unit costs.
  - The YPLA to sign off regional plans within the cash limit of the 16-19 budget .
  - Payment profiles to be set against agreed volumes and budgets.
14. Data input into the spreadsheets will be uploaded into the Allocations Management and Payments System (AMPS) to generate payments and Participant Assessment, Planning and Support system (PAPS) to enable in year adjustments and the saving of historic trend data for planning purposes.

#### **Minimum Levels of Performance (MLP) and Framework for Excellence (FfE)**

15. Subject to the revisions of FfE already underway it is intended that MLP reports (which are dependent on and aligned with the final L05 and final work-based learning (WBL) (ILR returns) are made available through the FE Data Service and will be integrated into the FfE data pack. The Skills Funding Agency (SFA) will be responsible for the overall management of these strategies but through a joint governance arrangement between DCSF and the Department for Business, Innovation and Skills (BIS). Both YPLA and SFA will receive FfE performance data to inform its commissioning decisions. The SFA will provide the YPLA with the data reports needed at key times in the commissioning cycle.
16. The first FfE data output availability for schools will not be until May 2012 to inform 2013/14 commissioning. The LSC has commissioned a national 'Data dashboard' from a contractor to support the 08/09 dialogue for 09/10 commissioning and school sixth form support and challenge arrangements. Arrangements are in hand to map this Data dashboard across to and align with the Framework for Excellence outputs to provide YPLA and local authorities with sufficient transition data pending the full availability of FfE data which will apply to the rest of the FE sector and provide an aligned data set for all post 16 providers.

## Annex 8: – YPLA Intervention

### YOUNG PEOPLE'S LEARNING AGENCY'S STATEMENT OF ITS INTERVENTION POLICY IN RESPECT OF LOCAL AUTHORITY COMMISSIONING FOR 16-19 YEAR OLDS POST 2010 – EARLY PRINCIPLES - PRE-CONSULTATION

1. Local Authorities have the prime responsibility for managing their own performance and taking action to improve services. Local Authorities will continue to be held to account for their performance by Government Office through Local Area Agreements. Intervention is an exceptional measure. The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act 2009).
2. Clause 67 requires the Young Peoples' Learning and Agency (YPLA) to intervene in a local authority if it is failing or likely to fail in its duty:
  - a. under section 15ZA(1) of the Education Act 1996 (duty to secure provision of enough suitable education and training for persons over compulsory school age); or
  - b. under section 18A(1) of that Act (duty to secure provision of enough suitable education and training for persons subject to youth detention)

The ASCL Act 2009 also states that the YPLA must consult with the Secretary of State before exercising its power.

3. Clause 73 of the ASCL Act 2009 provides that the YPLA must prepare a statement of its policy with respect to the exercise of its intervention powers. In developing this policy the National Commissioning Framework provides an opportunity to set the structure and indicative content of the draft intervention policy which will be subject to consultation later in the year. Any early comments received on the consultation of the NCF and this annex will be considered in shaping the future consultation document on the Intervention Policy.

#### Context

4. Local authorities have the statutory responsibility for commissioning 16-19 education. In the event that the YPLA seeks to exercise its powers a preceding period of dialogue and due process will have taken place. The powers will be used only as a last resort and after all options of support and challenge have been explored and exhausted.
5. The YPLA's role is to support local authorities in meeting their duties as set out in Clause 41 of the ASCL Act 2009 and in developing their 16-19 commissioning plans. Prior to exercising any of its powers of intervention local authorities will be given every opportunity, with appropriate support, to improve and to put agreed remedies in place. In the extreme case of statutory intervention being implemented a local authority will be given the opportunity to make representations about the nature of the proposed intervention.

#### Role of Local Authorities

6. From 2010, local authorities will have new duties and powers in respect of 16-19 year olds (and for learners with learning difficulties and/or disabilities (LLDD) up to the age of 25) in their remit including securing sufficient provision for education and training in terms of:

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- **Quantity:** the local authority must ensure that there is sufficient provision to meet the requirements of young people in their area for education and training
- **Quality:** the local authority must take into account the quality of provision commissioned when making commissioning decisions
- The local authority must act with a view to encouraging **diversity** in the education and training available to individuals and act with a view to increasing opportunities for individuals to exercise choice
- **Location and times** at which the education is provided
- The provision must be suitable to **meet the requirements** of individuals, for both full time and part time education and training, as well as with regard to the person's age, abilities and aptitudes.
- Ensuring that 16-19 year olds within their area will have access to courses of study within all the Diploma entitlement areas.

#### Role of the Young People's Learning Agency

7. The YPLA will support and enable local authorities to carry out their new functions. It will ensure local commissioning decisions are made within a consistent national framework, secure national budgetary control, provide a strategic analysis service to local authorities, and support the local, sub-regional and regional infrastructure.
8. The YPLA will work with Government Offices (GOs), which have the support and challenge function with local authorities to ensure that any statutory intervention **will typically occur only at the end of a lengthy process of support and dialogue.**

#### Risk based approach to intervention

9. The YPLA will adopt a transparent, risk based approach to managing intervention. It will work with other partners and Agencies, including the GO, Ofsted and other local authorities (this may be from other local authorities working in the same sub-regional group) to develop, agree, provide and monitor effective, appropriate support and challenge before any intervention takes place. The YPLA will also ensure that it is fully aware of the range of demands on a local authority so that its capability in respect of 16-19 commissioning is not compromised.

#### Principles underpinning the intervention policy

10. In developing and operating its intervention policy it is proposed that the YPLA actions will be underpinned by the following principles:
  - Intervention will derive solely from the duty set out in paragraph 1 above and would not seek to go more widely. The scope of the policy would be made clear, for example the use of intervention powers would not be used if a local authority assessed itself at risk of failing to meet its commissioning duty. The YPLA wants to establish a relationship with local authorities where risk is identified and managed as early as possible.
  - The intervention process will be transparent and provide an opportunity for a local authority to make representations.
  - Intervention will only occur as a last resort and be evidence based.
  - The circumstances that trigger formal intervention will be set out to make clear at what point support and opportunities to improve are considered to be exhausted and when the powers to intervene will need to be exercised.
  - The process of intervention will be clear and time-bound and set out how long each stage of the process would be expected to take.

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- Individuals taking and communicating decisions will be identified by postholder e.g. Secretary of State, local authority chief executive, Director of Children's Services (DCS).
- The level of intervention will be proportionate to the risk to learners, providers (eg withdrawing funds from providers) and public funding.
- Any actions as a result of intervention will be agreed, as far as possible, between the local authority, the YPLA and any other appropriate bodies (appropriate bodies would include GO, other government departments).
- The policy will be clear about the checks and balances in place to ensure the YPLA does not exercise the powers arbitrarily or go beyond its remit, for example the final decision to exercise its powers would not be delegated below the YPLA's Board which includes local authority representatives.

#### The consultation document

11. The consultation document proposing a draft intervention policy will be issued later this calendar year and will be widely promulgated to promote and attract a fair response. The consultation will meet Cabinet Office consultation standards, including a 13 week period in which to respond.
12. The consultation document will include:
  - A description of activity that takes place prior to intervention.
  - Triggers for intervention.
  - How the statutory powers will be exercised in terms of the process (flowchart, timeline, roles and responsibilities, how evidence might be arrived at).
  - Actions that might be taken as a result of intervention.
  - Communications – when and in what circumstances intervention might be communicated or become public.
  - Checks and balances to prevent the YPLA acting unreasonably or going beyond its remit.

#### Proposed triggers for intervention

13. The statutory powers of intervention may be exercised by the YPLA, with the agreement of the Secretary of State, if one or more of the following triggers apply:
  - Non co-operation or obstruction by a local authority to engage with and implement support and actions to address risks of failure over a reasonable timescale. In these circumstances, when a way forward cannot be agreed, and it is considered that all possible alternative approaches to instigate change have been exhausted the YPLA may seek to exercise its statutory powers of intervention.
  - Where there is an immediate and exceptional risk to the commissioning activity, or an exceptional risk to learners or an exceptional risk to public funding and urgent action is required, the YPLA may need to exercise its powers of intervention more immediately than a staged approach allows. For example these circumstances might include serious misuse of public funds, fraud or deception or outright failure in management.
  - That the local authority is continuing to perform less well, after a reasonable period of support and dialogue, in respect of its commissioning duties, than in all circumstances might be reasonably expected and is **still** failing to meet its duties to secure enough suitable education and training to meet the reasonable needs of persons in their area.

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#### **Timeline for consultation for the intervention policy**

14. The YPLA needs to have its Intervention Policy in place for its inception on 1 April 2010. The National Commissioning Framework (NCF) consultation process will run until February 2010. Should any early comments on the NCF include comments on this particular annex they will be used to inform the formal consultation on the Intervention Policy. The consultation on the Intervention Policy, is scheduled to begin in December 2009. This will allow the YPLA to start its operation with a policy statement in place.
15. Any NCF consultation comments received after December 2009 will be considered as part of the consultation on the Intervention Policy consultation.

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## ANNEX 9: – Learner Eligibility

### Overview

This Annex provides an outline of the conditions for learners to be eligible to access 16-19 learning provision funded by the Young People's Learning Agency (YPLA).

1. For funding purposes, the eligibility of the learner must be established at the start of his or her programme. In order for a learner to be eligible for funding for their learning programme, the learner must have the legal right to be resident in the United Kingdom at the start of their programme. Any person subject to a Home Office deportation order will ordinarily be ineligible for funding until their situation has been resolved to the satisfaction of the Home Office, as funding should only be claimed for learners who can complete their programmes. Learners who can evidence making legal applications and appeals against Home Office decisions may, however, be eligible under paragraph 18 of this Guidance.
2. Local authorities should expect that all colleges and providers should determine the eligibility for funding of learners they enrol. In determining learner eligibility, providers should also satisfy themselves that there is a reasonable likelihood that the learner will be able to complete their programme of study before seeking funding for the learner. This should include the practicality of providing a place for a learner who may be unable to complete their programme if they are likely to leave the country permanently during their learning programme. Once a learner is enrolled by a college or provider, then colleges and providers are expected to take all reasonable steps to ensure that the learner can complete their programme.
3. All eligibility references to a spouse should be read to include a person who has participated in either a formal state-recognised marriage or a state-recognised civil partnership ceremony.

### Learner eligibility

4. In the learner eligibility paragraphs below, the term 'relevant date' refers to 'the first day of the first academic (or teaching) year of the course' defined as:
  - 1 September if the academic year starts between 1 August and 31 December.
  - 1 January if the academic year starts between 1 January and 31 March.
  - 1 April if the academic year starts between 1 April and 30 June.
  - 1 July if the academic year starts between 1 July and 31 July.
5. The following persons will be eligible for funding (these groups correspond to the groups listed in the Education (Fees and Awards) (England) Regulations 2007), namely:
  - A person on the 'relevant date' who is 'settled' in the UK, and who has been ordinarily resident in the UK and Islands (that is including the Channel Islands and the Isle of Man) for the three years preceding the 'relevant date' (see paragraph 12 above), and whose main purpose for such residence was not to receive full-time education during any part of the three-year period. 'Settled' means having either indefinite leave to enter or remain (ILE/R) or having the right of abode in the UK. British citizens and certain other people have the right of abode in the UK:
    - Those with European Community–United Kingdom of Great Britain and Northern Ireland passports.

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- British Dependent Territory Citizens (now known as British Overseas Territory Citizens)
  - Those whose passports have been endorsed to show they have right of abode in the UK
  - Those who have a certificate of naturalisation or registration as a British citizen.
- A national of any European Union (EU) country or the spouse, civil partner or child of an EU national who has been ordinarily resident in the European Economic Area (EEA) for the three years preceding the 'relevant date'.
  - An EEA migrant worker or the spouse, civil partner or child of an EEA migrant worker who has been ordinarily resident in the EEA for the three years preceding the 'relevant date'.
  - Anyone who is recognised as a refugee by the UK Government (granted refugee status) who has remained ordinarily resident in the UK and Islands since being so recognised, or the spouse or civil partner or child of such a refugee.
  - Anyone refused refugee status but who has been granted leave to stay by the Secretary of State, granted humanitarian protection (HP) or discretionary leave (DL), or was granted exceptional leave to enter or remain (ELE/ELR) by the UK Government, and who has remained ordinarily resident in the UK and Islands since being so recognised, or the spouse, civil partner or child of such a person.
  - Learners studying under reciprocal exchange agreements.
  - Learners who are children of Turkish workers where the Turkish worker has been lawfully employed and resident in the UK at any time in the past and where the learner has been resident in the EEA and Turkey for the full three-year period prior to the commencement of their programme.
6. For funding eligibility purposes, the EEA is defined as all members of the EU and Iceland, Liechtenstein, Switzerland and Norway. The Fees and Awards Regulations now confer extended eligibility on EEA citizens and their extended family members (such as grandchildren and grandparents). Providers should consult their commissioning local authority before refusing eligibility to any EEA citizens or family members with more than three years' residency in the EEA area. Learners from certain British Overseas Territories and learners from equivalent European Overseas Territories will also be eligible for funding, subject to the usual three-year rule on residency.
7. In addition to the groups outlined above, the following groups of learners can be considered to be eligible for funding:
- People who have legally been living in England for the three years immediately preceding the start of the programme, ignoring temporary absences (this does not include people with time-limited leave to remain as a learner (or student) whose leave to remain does not extend to the expected end date of the proposed learning aim of study).
  - People with humanitarian protection (HP) or discretionary leave (DL) or exceptional leave to enter or remain (ELE/ELR), their spouses, civil partners and children.
  - People with recently settled status (this means those having been granted indefinite leave to enter or remain, right of abode or British citizenship within the three years immediately preceding the start of the course).
  - The spouse or civil partner of a person with settled status, who has been both married (or has undertaken a recognised civil partnership ceremony) and resident in the UK for one year.
8. The following groups of learners will also be considered to be eligible for funding:
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- Asylum seekers who have legally been in the UK pending consideration of their claim by the Home Office for longer than six months.
- Asylum seekers refused asylum but eligible and granted support under Section 4 of the Immigration and Asylum Act 1999.

All learners accepted as eligible under this paragraph must be reassessed for eligibility at the start of each and every programme they undertake. The concession available to learners under paragraph 7 is not available to this group of learners as their circumstances are expected to be confirmed before they undertake subsequent programmes.

9. In addition to the groups above, the following groups of 16- to 18-year-old learners are considered as eligible for funding:
- 16- to 18-year-olds who are accompanying or joining parents who have the right of abode or leave to enter or remain in the UK, or those who are children of diplomats.
  - 16- to 18-year-olds who are dependants of teachers coming to the UK on a teacher-exchange scheme.
  - 16- to 18-year-olds entering the UK (where not accompanied by their parents) who are British citizens, or 16- to 18-year-olds whose passports have been endorsed to show they have the right of abode in this country.
  - All 16- to 18-year-old asylum seekers.
  - All 16- to 18-year-old learners (including unaccompanied asylum seekers) who are placed in the care of social services.

#### **Provision for offenders**

10. Any provider delivering agreed funded programmes to learners detained in English prisons may treat detainees as learners eligible for funding without the usual evidence required under paragraphs 14-19 above. This concession only applies to learners detained in prison and not to learners serving community sentences, those under supervision in the community or those detained in immigration centres.

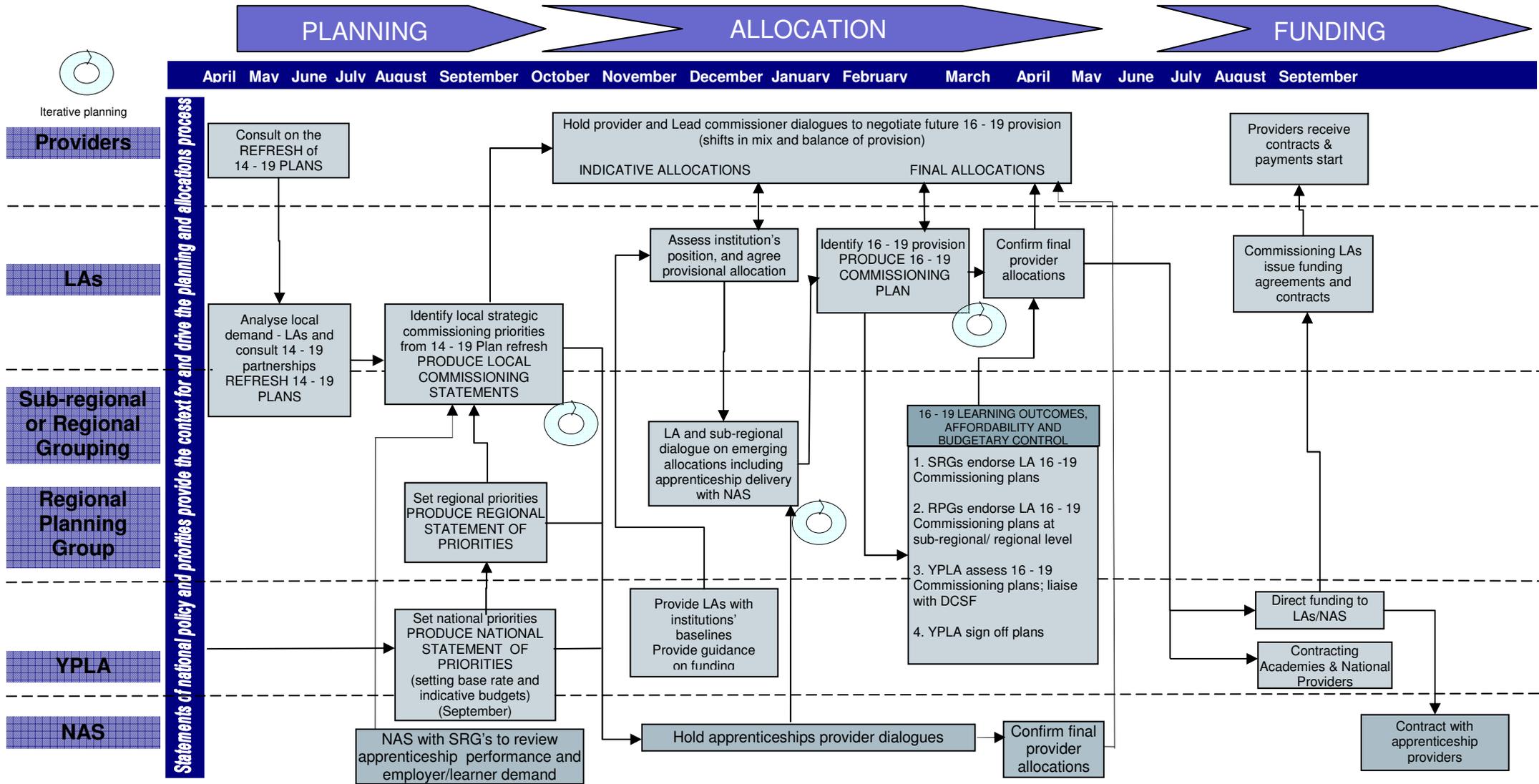
#### **Learners from Wales, Scotland or Northern Ireland**

11. Colleges and providers are reminded that Wales, Scotland and Northern Ireland have their own funding arrangements. There may be exceptional circumstances where, on occasion, individual Scottish or Welsh learners may wish to travel to or reside in England to study when specialist provision is not offered locally. There will be reciprocal arrangements with the funding councils for Wales and Scotland for colleges and providers close to the borders. However, it is not expected that colleges and providers in England will recruit entire groups of learners from outside their local area. Such learners should be referred to the possibility of a distance-learning or Ufi programme delivered by their local provider or hub in Wales or Scotland. If the learning programme is not available through this route, permission to enrol the learners must be sought from the lead commissioning local authority.

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### Annex 10: – Diagram and Timetable for the new 16-19 collaborative commissioning cycle



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#### Timetable for Planning, Allocation and Funding cycle

1. The National Commissioning Framework (NCF) sets out arrangements for planning, commissioning and funding provision for learning provision to be commissioned by local authorities for academic year beginning in September 2011. The planning and allocation process for 2010/2011 is through transitional arrangements involving local authorities wherever possible.

<b>Timings</b>	<b>Step in the process</b>	<b>Outcomes</b>
May – September	14-19 planning to identify strategic priorities. Implementation of the September Guarantee	<i>14-19 Strategic Plan refreshed and used to communicate local priorities</i>
September – October	Start provider dialogues informed by local, national and regional priorities and the quality of provision offered	<i>16-19 strategic contexts are understood at a national, regional and local level to ensure there are shared expectations about the year's planning priorities</i>
October – November	Agree local priorities across a sub-region; regional and national commissioning needs identified	<i>Commissioning priorities agreed sub-regionally and national/regional commissioning needs identified</i>
November – January	Continue provider commissioning dialogues (informed by actual student learner numbers from previous year)	<i>Baseline volumes and consequent allocations and changes to previous year's allocations identified for each provider</i>
End January	Finalise the 16-19 commissioning plan	<i>Plans agreed by local authorities</i>
ongoing but complete by mid February	Plans moderated in the SRG	<i>Plans endorsed by SRGs</i>
End February	Regional assessment and sign off of plans	<i>Plans endorsed by RPGs</i>
Mid March	YPLA approval of plans	<i>Plans agreed for funding as collectively meeting the priorities and needs of young people's learning and affordable.</i>
Before the end of March	Allocations agreed and confirmed to providers by local authorities, YPLA and volume of Apprenticeships agreed with National Apprenticeship Service (NAS)	<i>Allocations confirmed</i>
April to July	Contracts and funding agreements raised. Delivery and payment profiles established and agreed	<i>Legal agreements in place to confirm delivery requirements</i>
August	New academic year payments start	<i>Providers deliver learning</i>

[Timings stated are best estimates.]

## Annex 11: – Funding, Payment and Assurance

### Overview

This annex provides specific information on:

- The definitions of provider types
- The Young People’s Learning Agency (YPLA) procurement and contracting processes
- A definition of payment instruments
- The core content of funding agreements with colleges

### Definitions of provider types

#### Provider types for funding purposes

A provider is any organisation delivering learning. For the purposes of funding flows and assurance providers are defined to be in the following categories:

- A general FE college corporation.
- A sixth form college corporation.
- A local authority operating division (local authority maintained school with sixth form, adult education college, specialist school for SEN or other local authority controlled training organization e.g. Connexions service).
- A Third Sector organisation (e.g. including social enterprises, community sector and charities) or an independent specialist college (ISP – who may be charitable or commercial providers) for learners with learning difficulties and/or disabilities (LLDD) or specialist school for SEN.
- A higher education institution.
- A private company e.g. Apprenticeship providers or some providers of learner for offenders in custody.
- Academies

### YPLA’s procurement and contracting

[Timings stated are best estimates.]

#### YPLA direct procurement from providers by OCT

In some circumstances the YPLA may need to procure direct from providers by open and competitive tendering.

**Step 1: *September 2010*:** The YPLA identifies funding streams that may need to go to open and competitive tendering. The YPLA then opens the Provider Qualification Framework maintained by the SFA for new and updated expressions of interest by providers.

**Step 2: *December 2010*:** The YPLA identifies the value of allocations within these funding streams that need to go to open and competitive tendering. It notifies providers on the PQF through the Bravo portal. The YPLA organises provider briefings and workshops where needed.

**Step 3: *January 2011*:** Qualifying providers are notified by the YPLA of their success through Bravo. There is no appeal by unsuccessful providers.

**Step 4: *February 2011*:** YPLA invites qualified providers to tender.

**Step 5: *March-April 2011*:** YPLA evaluates tenders and organises internal contract award panels leading to decisions on which providers have been awarded how much funding for

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which activity. Providers are notified. There is no appeal.

**Step 6: May 2011:** YPLA enters SLNs and provider factors awarded onto its allocations management systems. YPLA establishes new providers on its standing data systems. YPLA prepares appropriate schedules to funding agreements or contracts for values awarded and issues to providers for signature.

**Step 7: August 2011:** Payment begins for academic year 2011/12.

#### YPLA Negotiated Allocations to ISPs

**Step 1: March 2011:** Local authorities estimate likely demand for ISP places from their authority, these will be aggregated in the Sub-Regional Group (SRG) and across the region in the Regional Planning Group (RPG) and notify the YPLA. The YPLA tests whether these are Independent Specialist Provider (ISP) placements or can be funded through other Additional Learning Support (ALS). The YPLA reviews the sufficiency of ISPs it funds direct for type and volume of provision.

**Step 2: May 2011:** Local authorities confirm demand for ISP places and the YPLA aggregates demand for individual ISPs it funds. The YPLA opens discussions with ISPs on capacity and funding. The YPLA establishes new providers on its standing data system.

**Step 3: July 2011:** The YPLA sets funding values on its allocations management systems, and prepares and issues schedules and purchase orders for individual learners at each ISP. ISPs sign and return the contracts.

**Step 4:** Payments begin for academic year 2011/12.

#### YPLA Negotiated Allocations to NFF funded providers, especially Academies

**Step 1: Continuation from Allocations Process: March 2011:** The YPLA confirms to providers their allocations based upon Standard Learner Numbers (SLNs) and provider factors negotiated with providers.

**Step 2: April 2011:** The YPLA establishes new providers on its standing data system and it sets up allocations on its allocations management system. YPLA prepares appropriate schedules to funding agreements or contracts for values awarded and issues to providers for signature.

**Step 3:** Payment begins for academic year 2011/12.

### Payment instruments - definition

#### Payment instruments in relation to 16-19 Funding

**Grant-in-aid** describes a funding relationship of significant mutual obligations and broad accountability of the funded to the funder. The relationship is suited to funding arms' lengths bodies for strategic and operational achievement of objectives closely aligned with those of the funding body. The majority of the recipient's running costs and priced outcomes may both be funded. Surpluses generated from grant-in-aid may not be distributed outside the funded organisation's business and proper and regular use must be made of all the funded body's income.

**Grant** is a relationship of controlled funding for a specific purpose or defined and priced outcomes, although recent Treasury guidance now explicitly allows running costs to also be funded. It tends to be used where the funding body does not provide most of the funding and the funding agency exerts more control over what the money is spent on. The same restrictions as for grant-in-aid apply on surpluses and use of funds. Both grant-in-aid and

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grant are instruments of public law.

**Contracts** are used for all other procurement. Obligations are limited to delivery of priced outcomes for the volumes and quality specified. There is no interest in the uses to which earned funds are put and contracts come under contract law.

### Core content of funding agreements with colleges

#### Core content of Funding Agreements with colleges

Responsibilities of local authorities, the YPLA and the college

Allocations of funding to colleges

Payment of funds

Capital transactions: consents needed for acquisition and disposal of capital assets

Borrowing: consents needed

College companies: consents needed

College financial reporting

Audit

Procurement and contracting

Provision of information

Interpretation

Repayment of funds

## Annex 12: – Factors Influencing Local Authority Planning and Allocation

### Overview

This annex provides information on the wide range of factors which influence local authority planning and allocation process, and includes:

- 14-19 Partnerships and strategic planning
- Stakeholder and provider engagement in planning
- Other support to 16-19 year olds on planning
- Addressing equality and diversity in planning
- Health and safety in relation to commissioning
- Post-16 transport arrangements
- Local authority engagement in cross local authority border planning to secure the entitlement
- Local planning within a national policy and resourcing framework
- The role and relevance of Public Sector Agreement (PSA) targets on strategic priorities
- Implications arising from capital development
- Planning in relation to young people in or leaving care
- Most vulnerable young people
- Barriers to participation
- Specialist providers
- Third Sector
- Foundation learning
- Planning and allocations requirements in Academies

### 14-19 Partnerships and strategic planning

1. Local authorities already lead the delivery of the 14-19 Reforms and develop and deliver 14-19 Plans within the broader framework of their Children and Young People's Plan. From 2010, Local authorities will be given the additional responsibility for the planning, commissioning and funding of 16-19 education and training.
2. This will provide them with a unique opportunity to accelerate the implementation of their plans and increase coherence across the full range of 14-19 activity, including between learning provision and the wider support available to young people, as well as across the local authorities' wider responsibilities 0-19. In anticipation of these new responsibilities, The Department for Children, Schools and Families (DCSF) has set out its proposals for local authorities to further develop their planning activity<sup>5</sup> which can be found at: <http://publications.dcsf.gov.uk//DownloadHandler.aspx?ProductId=DCSF-00170-2009&VariantID=14-19+Partnerships+and+planning+PDF&>
3. In this instance, a strategic plan tells the end-to-end story about how the local partners will move from assessing the needs of its population to delivering services that will drive improvements in outcomes. It reflects the local priorities agreed with the population and partners. It will be underpinned by delivery plans setting out how these long term local goals will be realised.
4. The strategic plan and underpinning delivery plans reflect the role of the local authority

<sup>5</sup> 14-19 Partnerships and planning DCSF January 2009

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in delivering against the needs of today while also planning for the needs of tomorrow.

5. The strategic plan should include the current context, vision, goals, initiatives, initiative implementation plans, risks to manage, in-year monitoring of initiatives, how success will be measured and who will be accountable for delivery.
6. These 14-19 Plans need to provide the foundation for delivering the 14-19 Reforms including:
  - Raising the participation age (RPA) by securing progression for all at 16 and 17, including provision for those in jobs without training.
  - Delivery of the September Guarantee to all young people of academic age 16 and 17.
  - Delivery of the 14-19 entitlement.
  - For all young people to receive independent Information Advice and Guidance (IAG) to support real and informed choice across all four learning routes<sup>6</sup> and qualification pathways post 16.
  - Reflection of local and regional economic drivers and skill needs.
  - Delivery of integrated youth support.
  - Delivery of the five outcomes of Every Child Matters.
  - Raising the educational achievement of all young people to support the delivery of the Level 2 and 3 PSA targets for 19 year olds.
  - Narrowing the gap in educational achievement for those from disadvantaged backgrounds and those within key priority groups.
  - Ensuring high quality provision is available for young people in disadvantaged neighbourhoods.
  - Increasing the number of young people on the path to success and reducing the proportion not in education, employment or training (NEET).
  - Addressing the needs of young people in care or leaving care.
  - commissioning learning provision for 16-19 year old young people and for those 19-25 year olds for whom a learning difficulty assessment has been carried out.
  - Engagement of young offenders in education, training or employment by the end of their sentence.
  - Ensuring compliance with the principles in the Third Sector Compact.
  - Planning to evolve all provision toward the 4 National Suites/Frameworks by 2013 in line with 14 to 19 qualifications strategy.
  - Meeting the local authority's duty to ensure young people aged 16-19 and 19-25 year olds with LDD who have a learning difficulty assessment.

#### Stakeholder and provider engagement in planning

7. It is widely recognised that the ambition contained in the 14-19 Reforms cannot be delivered by local authorities alone.
8. The 14-19 Plan will be developed by the local authority and the 14-19 Partnership to be comprehensive in scope, ensuring an integrated and coherent 14-19 strategy is in place for each of the elements of the Children and Young People's Plan. It will need to set out priorities, strategies, targets and milestones for the delivery of IAG which will enable young people to make informed choices about Apprenticeship and Diploma routes alongside those for general qualifications and for Foundation Learning programmes. The 14-19 Plan should provide a clear line of sight to drive delivery plans for a wide range of services including **the 16-19 Commissioning Plan**.

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<sup>6</sup> Diploma; Apprenticeship; Foundation Learning; General Qualifications

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9. The active engagement of providers in 14-19 Partnerships throughout the year is essential and provides the mechanism through which local authorities can work with providers to develop and plan for changes to the required pattern of delivery for 100 per cent participation and successful outcomes for all young people.
10. Apprenticeship providers often specialise in delivery in one or more occupational areas and work across many local authority areas, but they will not be able to effectively engage with multiple 14-19 Partnerships. Consequently, local authorities and their Sub-Regional Groups (SRGs) will need to agree how they will ensure that Apprenticeship providers can participate effectively in partnership planning. Most Apprenticeship providers are members of sub-regional provider networks/consortia and SRGs will need to establish effective engagement with these groups both to support the promotion of Apprenticeships to young people and to discuss delivery of the Apprenticeship trajectory.
11. Local authorities will be able to draw out from 14-19 Plans their **Statement of 16-19 Commissioning** i.e. those priorities, targets and strategies which they need to take forward through the commissioning of 16-19 learning provision for the young people who live in the local authority area. The 16-19 Commissioning Statement should include specific reference to the demand for Apprenticeship from employers and from young people at 16, 17 and 18 that NAS will need to procure.

#### Other support to 16-19 year olds on planning

12. As well as helping young people to progress successfully through 14-19 learning, Information, Advice and Guidance (IAG) can also make an important contribution to local planning of 14-19 provision. Decisions about the courses and qualifications made available should be influenced by young people's aspirations. Through guidance interviews, school and college careers co-ordinators and IAG leaders, together with Connexions personal advisers, a lot of intelligence can be gathered about the opportunities that young people are seeking to move on to. At the start of every year, Connexions services record the Intended Destinations of young people leaving compulsory education at 16 as part of the delivery of the September Guarantee. This information should be a significant element of the evidence base informing local planning of the curriculum offer. Consequently, local authorities and 14-19 Partnerships will need to ensure that IAG providers are appropriately represented in priority setting and planning activity.
13. From 2011, management information from the 14-19 Prospectus and Common Application Process (CAP) will provide additional data to inform commissioning arrangements and allow 14-19 Partnerships to develop a more intelligent system for targeting support to ensure that young people get the right support at the right time.

#### Addressing Equality and Diversity in planning

14. All public bodies are responsible for meeting the public equality duties set out in legislation. Local Authorities should assure themselves that the providers they plan to commission with are compliant with all relevant legislation relating to gender, race, disability, sexual orientation, religion/belief, age and transgender equality, and the statutory codes of practice for education published by the Equality and Human Rights Commission. Regardless of whether individual providers are subject to the public duties, local authorities must ensure that the provision they fund enables them to meet their own duties to:
  - Promote equality of opportunity by race, gender and disability.
  - Eliminate unlawful discrimination and harassment by race, gender and disability.

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- Promote good relations between people of different racial groups.
  - Promote positive attitudes towards disabled people.
  - Encourage participation by disabled people in public life.
  - Take steps to take account of people's disabilities, even where that involves treating disabled people more favourably than others.
15. Local authorities should use commissioning arrangements and evidenced based monitoring to satisfy themselves that learning providers have policies and processes in place to ensure learners and potential learners from all groups have a fair and equal chance of access, success and progression.

### Health and Safety in relation to Commissioning

16. In commissioning provision, health, safety and welfare law places the main duties on the 'employer'; in relation to school provision the 'employer' is deemed to be the local authority. For provision commissioned by a local authority through another post 16 provider, that provider has primary responsibility and local authorities will wish to satisfy themselves that the provider's arrangements are suitable for the needs of the learner. For Apprenticeships commissioned through the Skills Funding Agency (SFA)/National Apprenticeship Service (NAS), employers have primary responsibility. Providers funded by SFA/NAS to deliver and place apprentices with employers will exercise their judgement on the employer's arrangements for health, safety and welfare of apprentices according to the risk and environment and satisfy themselves that the arrangements are adequate for the needs of the learner.

### Post 16 Transport arrangements

17. Local authorities will need to consider young people's access to education and training provision in developing their sub-regional 16-19 commissioning plan. Transport arrangements will need to support 16-19 commissioning plans to ensure young people are able to participate in education and training. Synergy between commissioning plans and transport arrangements should be sought at the outset of the planning process to avoid misalignment at a later stage. An early joined up approach between local authority departments will reduce the risk of young people facing unforeseen barriers to their participation and the likelihood of unexpected additional costs to the local authority of providing transport or financial support to young people for travel expenses to enable their participation. It will also ensure that commissioning approaches support the duty on local authorities to promote sustainable transport.
18. Local authorities have a duty to prepare an annual transport policy statement for young people aged 16-19 (including those with Learning Difficulties and/or Disabilities(LDD)) and, under the ASCL Act 2009, for learners with LDD aged 19-25. The statement must currently be published by 31 May each year and must specify the transport arrangements and arrangements for financial assistance which the authority will make to facilitate young people's participation in learning. Local authority transport policies should support the sub-regional 16-19 Commissioning Plan, and statutory guidance relating to the implementation of the post-16 transport duty will make this clear. Sub-regional groupings will want to consider any differences between local authority transport policies with a view to ensuring that all young people in the sub-region receive equitable support to access education and training. This includes considering how local authority transport policies will support young people's reasonable choice to travel to provision in local authorities other than their home local authority. Regional Planning Groups will have a role in ensuring that access and transport have been considered by sub-regional groupings in the development of 16-19 Commissioning Plans.

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#### Local authority engagement in cross local authority border planning to secure the entitlement

19. Local authorities will need to share and discuss their **16-19 Commissioning Statements** with neighbouring authorities, within and beyond their SRG area. Local Networks and collaborative working within and between SRGs will be crucial in engaging with providers in and across areas and to ensuring provision is planned which:
- Is relevant to young people's needs and which reflects their choices and aspirations.
  - Delivers the 14-19 entitlement and the September Guarantee.
  - Gives young people access to specialist provision and facilities.
  - Gives young people accessible and high quality learning opportunities.
  - Gives young people access to learning opportunities throughout the academic year.
  - Maximises progression for young people within and between learning routes.
20. This collaborative working will also enable the SRG to engage with the NAS to ensure that the Apprenticeship trajectory is factored into commissioning plans and to aggregate the demand for Apprenticeships which will need to be communicated to the NAS via the Regional Planning Group (RPG)/YPLA

#### Local planning within a national policy and resourcing framework

21. Local planning by local authorities working together across SRG areas will take place within the context of:
- DCSF policy for 14-19 Reform
  - DCSF/BIS decisions on the funding envelope for 16-19 Apprenticeship places for the CSR period
  - DCSF trajectory for 16-19 Apprenticeship volumes at sub-regional level produced in consultation with NAS and YPLA
  - DCSF decisions on the participation trajectories and funding envelope for School Sixth Form, Academies and FE college provision
  - Commissioning frameworks determined by the YPLA.

#### The role and relevance of Public Sector Agreement (PSA) Targets on strategic priorities

22. Whilst overall responsibility and accountability for PSA targets rests with DCSF, local authorities are expected, through their 14-19 plans, to set out:
- The high level strategy and priorities for delivering the 14-19 entitlement including improving participation and attainment and preparing for the raising of the participation age.
  - The operational elements to deliver that strategy.
  - Targets and milestones for achieving national priorities including attainment and NEET PSA targets, full participation by 2013/15, the Diploma entitlement..
  - Analysis of the local context and current performance to support these targets and trajectories.
  - The roles of partners in delivering these (including financial roles and relationships).
  - Mechanisms for monitoring and evaluating the effectiveness of delivery.
23. Where a local authority has chosen a PSA target as one of their indicators in their Local

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Area Agreement they will be held to account, through the Comprehensive Area Assessment, for their performance against that target. Government Offices (GOs) will provide challenge and support to local authorities about the achievement of PSA targets through priorities conversations and 14-19 Progress Checks. We expect GOs to hold local authorities to account for the overall performance of all provision they fund in the local area as part of delivering against the National Indicator Set

#### Implications arising from Capital Development

24. Local authorities and SRGs should take account of the impact of planned capital developments in Commissioning Statements and in Commissioning Plans. Where such developments are coming on stream these should be reflected in commissioning planning in relation to new or replacement provision together with the expected impact of any resultant commissioning and decommissioning requirements across the SRG area and/or the wider travel to learning area.
25. The NAS will take account of recent capital developments when discussing Apprenticeship demand for young people. Where projects include assumptions about future Apprenticeship delivery to young people, it is expected that these will have been discussed with those partners likely to be affected, including local authorities and the NAS. Where planning assumptions include Apprenticeship growth, it will be a priority to support this where it is aligned to employer support, and this will need to be discussed as part of the local planning process.

#### Planning in relation to Young People in or leaving care

26. Strategic planning will need to take into account the specific responsibilities and duties that local authorities have towards young people who are in or leaving care. In particular, local authorities have a statutory duty to promote the educational achievement of young people in care. To support this, all young people who are in care have a Personal Education Plan (PEP) which is reviewed regularly and forms part of the statutory care plan. The local authority has a duty to ensure that the PEP, as part of the care plan, is reviewed regularly and that the actions contained within it are being carried out. The PEP builds on the care plan required for every looked after child and will set out a route map to independence for these young people. The Personal Adviser should co-ordinate the services set out in the plan.
27. Young people who are in or are leaving care are less likely than their peers to continue in education or training and improving outcomes for these young people should be a priority for local authorities and reflected in the Children and Young Persons Plan. Local authorities are encouraged to have a Children in Care Council and consulting this group is good practice when developing strategic planning and commissioning. A particular issue for looked after children and care leavers is that they often live and are educated in a different authority than the local authority which is their corporate parent. This presents particular challenges and these will also need to be taken into account as part of strategic planning. Commissioners are encouraged to liaise with those in the local authority who lead on looked after children's education and on services for care leavers to ensure that planning takes account of the needs of these young people.

#### Most Vulnerable Young People

28. Vulnerable young people are at a much greater risk than their peers of not engaging with the system and becoming NEET. For the first time, local authorities will be directly responsible for providing high quality support and learning services to the most vulnerable young people and this represents a significant opportunity to support more of these young people to engage in productive learning, gaining the skills and

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qualifications they need to succeed. Specific opportunities will include:

- The opportunity to commission both support services and learning services together for the most vulnerable young people so that these complement each other and make innovative use of the different funding streams available.
- Making sure that learning provision for the most vulnerable young people is a core part of all commissioning plans.
- Ensuring that the most vulnerable young people can participate, progress and achieve (particularly in relation to Raising the Participation Age).
- Working in partnership with Children's Trusts, colleges, schools, health and other social care services, and other providers to ensure that both the support and the learning needs of these young people are met.
- Ensuring the provision is flexible enough to suit the needs of these young people, both in relation to start dates so that young people can re-engage quickly and in terms of the timing and delivery of the provision (e.g. evening, weekend opportunities).
- Ensuring that the needs of those in jobs without training are met.

### Barriers to Participation

29. In considering commissioning priorities local authorities should take account of the need to address barriers to participation in education and learning that can arise including for example from parenting and/or caring responsibilities, homelessness, drug or alcohol use, physical or mental health problems, learning difficulties or disabilities and to promote the inclusion of learners.

### Specialist Providers

30. Specialist Providers include colleges specialising in land based learning provision (including Agriculture and Horticulture), Art and Design, Technology, Music or Sports.
31. Commissioning for all specialist providers, other than LLDD in Independent Specialist Providers (ISPs) (See Annex 1), will normally be the same as for other college provision - undertaken by a lead commissioning local authority, usually the host local authority. The host local authority, the SRG and other feeder local authorities may agree that a different local authority, other than the host, may be better placed to lead the Commissioning for one or a group of specialist providers. Where the SRG and feeder local authorities agree that no single local authority is capable of being the lead commissioner for a particular specialist provider the YPLA may consider undertaking the procurement of the provision local authorities indicate is required.
32. Local authorities, in preparing their strategic Commissioning Statement, should consider the changing and developing needs within specialist sectors met through specialist providers. Such providers take learners from a more extensive area and strategic needs may need to be co-ordinated across SRG areas and Regions.
33. Specialist Providers often have a high level of knowledge and data in relation to current and developing employment, economic and skill needs within their specialist sector and in relation to regional or national needs or priorities. Through their involvement in 14-19 Partnerships and dialogues with local authorities this can be beneficial in local authority planning and commissioning for future specialist provision.
34. In commissioning, local authorities should recognise the particular expertise Specialist Providers can have and the contribution they can make to identifying the developing needs of the sector/specialism they service.

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#### Third Sector

35. Learning providers in the Third Sector are not only providers of learning but key players in the design and planning of services to young people. They often have particular skills and experience in engaging young people who are not yet ready for more formal education or training, and those who are NEET or need additional support to re-engage, working holistically with both them and their families. The sector often offers the best integrated commissioning and in some instances it may be beneficial to allow 'restricted' tendering to help ensure small Third Sector providers can be included in bidding for provision directly rather than as sub-contractors to larger less specifically focused providers.
36. Local authority commissioning and funding processes with third sector providers will need to be compliant with the Third Sector Compact.  
<http://www.thecomcompact.org.uk/homepage/100016/home/>
37. Local authorities will be responsible for commissioning 16-19 learner responsive provision, including from independent and third sector providers. In most circumstances the host local authority will commission provision from providers based in their area. In some circumstances it may be appropriate for local authorities within a SRG to decide to delegate the procurement, contracting and payment of providers to a lead local authority or possibly, in exceptional circumstances, to agree with the YPLA that they take on this role. The decision – which will rest primarily with local authorities and, in cases where they are asked to take on the role, with the YPLA – as to whether or not to delegate these responsibilities will be based upon factors such as the geographical spread of provision, the number of learners, and the range and type of provision. The YPLA will want to ensure that there is consistency in the approach adopted by local authorities who decide to take on the lead arrangements.

#### Foundation Learning

38. Foundation Learning is one of the four 14-19 national qualification suites, focusing on learners working predominantly at entry level and level 1. By 2010/11, all local areas are expected to be delivering some Foundation Learning for 14-19s. In the post-16 sector, from 2010/11, Foundation Learning will encompass all existing programmes at Entry Level and Level 1 for 16-19 year olds, including E2E. Foundation Learning focuses on personalising and accrediting individual learning designed to help learners achieve 'destinations' at Level 2 (Diplomas, Apprenticeships, GCSEs) or, where appropriate, independent living and supported employment. Successful planning and commissioning of Foundation Learning will therefore promote the achievement of PSA targets, including the reduction of those young people not in education, employment or training (NEET) and the narrowing of attainment gaps. Working with 14-19 Partnerships, local authorities will want to ensure full availability of accessible Foundation Learning programmes, including for those who may have been doing Foundation Learning or equivalent provision at Key Stage 4. They will also want to ensure there are suitable level 2 programmes in place onto which learners on Foundation Learners programmes can progress so they can achieve their full potential. Plans developed in 2009/10, including in response to Gateway 4, will be highly relevant here.

#### Planning and Allocations requirements in Academies

##### Existing Academies

39. Commissioning for 16-19 provision in existing Academies will be based on dialogue

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between local authorities and Academies in the context of local/sub regional identified priorities identified in 14-19 strategic plans, and the Secretary of State's guidance about the factors to be taken into account in relation to quality and other matters. Academy places will be included in the local authorities commissioning plan, and funds for those places would flow direct from YPLA to the Academy in accordance with its Funding Agreement. Any reductions or increases in the number of funded places will be reflected in Academies' post-16 admission arrangements.

40. Where an Academy puts forward proposals to offer a range of courses with evidence about the quality and demand for those courses and the places on them, then those places should be agreed locally and funded by the YPLA. Where there is disagreement locally, the YPLA will seek to facilitate local agreements and will ultimately make the funding decisions where such agreement is not possible. The YPLA's decision would take into account regional and local intelligence; evidence from both the academy and the local authority (e.g. about demand from learners), evidence of quality, the expected growth trajectory agreed with the Secretary of State before opening, and the considerations set out below.
41. The YPLA would take into account guidance from the Secretary of State both on 16-19 provision and its Academy functions before reaching its decision. The commissioning and funding process will need to take account, amongst other things, of:
  - The need to support and nurture relatively new 16-19 providers, including but not limited to Academies who may face initial diseconomies of scale as they grow their numbers and capacity; taking account of the ultimate size of the sixth form envisaged in each Academy's funding agreement.
  - The value of sixth form provision at schools in challenging circumstances in raising standards and aspiration at 11-16, and rates of staying on in education/training after 16.
  - The need to 'narrow the gap' by raising standards and participation in more disadvantaged neighbourhoods, particularly as the participation age is raised.
42. The Secretary of State would need to consider any representations from the local authority or Academy, if either disagreed with the YPLA decision, that the YPLA was acting unreasonably in carrying out its Academies functions.
43. For an Academy without a sixth form that wants to add a new sixth form, the Secretary of State will continue to decide whether or not to agree the proposals. This would be in consultation with the local authority, the Academy, its Sponsor and the YPLA.
44. The YPLA would not be allowed to amend an existing funding agreement, although it will certainly be in a good position to advise the Secretary of State on the issues relevant to the proposed expansion. Changes to an Academy's age-range would require the re-negotiation and signing of its Funding Agreement.

### New Academies

45. For establishing new academies, the process will remain as it is. Before a new academy opens, the Secretary of State will discuss with the Academy what it believes to be the right level of post 16 provision to meet the needs of the children it serves. Following consultation with the local authority and the academy sponsor, he will approve the number of post-16 places that the academy will offer. The approved number represents the eventual size of the sixth form after its numbers have built up, but the initial numbers may be considerably smaller. Through this mechanism the local 14-19 Partnership's Strategic Plan and the local authority's commissioning plans will feed into that decision, as will the YPLA's assessment of affordability.

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46. For an academy without a sixth form that wants to add a new sixth form, the Secretary of State will continue to decide whether or not to agree the proposals. This would be in consultation with the local authority, the Academy, its Sponsor and the YPLA.
47. The YPLA would not be able to amend an existing funding agreement, although it will advise the Secretary of State on the issues relevant to the proposed expansion. Changes to an academy's age-range would require the re-negotiation and signing of its Funding Agreement.

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#### Annex 13: – Glossary of Terminology used in the NCF.

Throughout this document the following terms are used as defined below.

**[To be expanded.]**

Terminology	Definition
Commissioning Statement	Produced at the beginning of the cycle to set out the inputs for the cycle; priorities and framework for the commissioning cycle. Produced at national and local levels. YPLA produces National Statement for local authorities and RPGs. Local authorities produce Local Statements for Providers and for other local authorities. RPGs produce a Regional Statement for local authorities. SRGs produce a sub regional Statement for member local authorities.
Commissioning Plan	Produced at the end of the cycle to set out the outputs of the cycle Produced at local and national levels. Host local authority produced Plan for Providers in its area. SRG produces aggregated plan for member local authorities. RPG produces aggregated plan for the region. YPLA produces aggregated national plan.
Host local authority	Local authority where the provider to be commissioned is based.
Home local authority	Local authority where the learner is resident.
Feeder local authority	Local authority with learners accessing provision with a provider in another local authority area.
LLDD	Learners with Learning Difficulties and/or Disabilities.
Youth custody/Juvenile custody	Custodial establishments for children and young people aged 10-18, including: Young Offender Institutions (those managed by the Prison Service and those managed by private contractors) Secure Children's Homes Secure Training Centres
Learning Provider	Includes all learning providers such as Academies, School Sixth Forms, Sixth Form Colleges, FE Colleges, Specialist Colleges, Third Sector Providers, Work Based Learning Providers, Special Schools with 16-19 provision, Independent Specialist Providers, Independent/Private Colleges etc.
ASCL Act 2009	Apprenticeship, Skills, Children and Learning Act 2009

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### **Section of Samples and Examples**

#### **Other Annexes: – with example content, spreadsheet etc.**

(to be developed)

**Including:**

Sample content of a Strategic Analysis

Sample content of local authority 16-19 Commissioning Statement

Sample spreadsheet for building, costing and moderating baselines

In web based version of the NCF this will include links to specific commissioning and funding example Case Studies e.g. Commissioning LLDD provision, Commissioning education and training provision in youth custody establishments.