



Department
for Education

The exercise of devolved adult education functions

**Statutory guidance for Combined
Authorities**

July 2018

Contents

Summary	3
About this guidance	3
What legislation does this guidance refer to?	4
Who is this guidance for?	4
What combined authorities should know and do	5
The functions	5
What approach should a CA take to commissioning adult education provision?	5
When making and communicating its adult funding decisions what should a CA take into account?	6

Summary

About this guidance

1. This guidance relates to the transfer of certain adult education functions in the Apprenticeships, Skills, Children and Learning Act 2009 to combined authorities (CAs) by the Secretary of State. The relevant functions of the Secretary of State have been transferred to specified CAs by way of orders made under the Local Democracy, Economic Development and Construction Act 2009, each order applying to a specified CA in relation to the area of that CA (“a relevant order”). Each relevant order requires the CA to have regard to guidance issued by the Secretary of State when exercising the specified functions.
2. The transfer of the specified adult education functions (also known as the ‘devolution’ of adult education functions) will enable the CA to determine adult education provision in relation to their area for academic year 2019/20 and thereafter, and to manage the associated adult education budget (AEB).
3. This guidance provides support to the CAs when exercising the specified adult education functions. This should be considered alongside the Memorandum of Understanding¹ that will be agreed between each CA the Department for Education (DfE) and the Education Skills Funding Agency (ESFA)² and will set out the detail of the operational relationship that will underpin the successful devolution of the adult education functions.
4. This guidance is also intended to ensure that funding and provider management arrangements are agreed by CAs with providers in a way that minimise costs and maximises consistency and transparency.
5. The CA, DfE and ESFA through the Memorandum of Understanding or as part of the Single Pot Assurance Framework³ will agree any further areas as required. A Single Pot approach to funding is a significant fiscal agreement between Government and CAs, which consolidates funding lines and reduces ring-fences.
6. Prior to making any amendments to the section of this guidance entitled ‘What combined authorities should know and do’ the Secretary of State will consult with each CA.

¹ Due Autumn 2018

² The Education Skills Funding Agency is an executive agency of DfE and responsible for funding education and skills for children, young people and adults

³ [The government requires local authorities in receipt of a Single Pot to write an assurance framework that explains how they will appraise, monitor and evaluate Single Pot investments schemes to achieve value for money.](#)

What legislation does this guidance refer to?

- The Greater Manchester Combined Authority (Adult Education Functions) Order 2018
- The Liverpool City Region Combined Authority (Adult Education Functions) Order 2018
- The West of England Combined Authority (Adult Education Functions) Order 2018
- The West Midlands Combined Authority (Adult Education Functions) Order 2018
- The Tees Valley Combined Authority (Adult Education Functions) Order 2018
- The Cambridgeshire and Peterborough Combined Authority (Adult Education Functions) Order 2018
- The Apprenticeships, Skills, Children and Learning Act 2009 (“the 2009 Act”).

Who is this guidance for?

This guidance is for:

- Combined authorities exercising adult education functions under a relevant order.

What combined authorities should know and do

The functions

A relevant order transfers to the specified CA adult education functions under section 86 to 88 of the Apprenticeships, Skills, Children and Learning Act 2009 ('the 2009 Act') with the exception of such functions relating to apprenticeships training, adult detention or any power to make regulations or orders. The functions under section 86 to 88 are as follows, and will be exercisable by the CA in relation to the area of the CA.

- a) section 86 (education and training for persons aged 19 or over and others subject to adult detention);
- b) section 87 (learning aims for persons aged 19 or over: provision of facilities);
- c) section 88 (learning aims for persons aged 19 or over: payment of tuition fees)

The order also provides for the transfer of the Secretary of State's functions under section 90 of the 2009 Act which relate to the encouragement of education and training for persons aged 19 or over, and section 100(1) of the 2009 Act which relates to the provision of financial resources, to be exercisable by the CA in relation to its area. These functions are exercisable by the CA concurrently with the Secretary of State.

The order contains conditions on the exercise of the transferred functions, namely that in addition to the requirement to have regard to guidance, that the CA must adopt rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100 of the 2009 Act in accordance with any direction given by the Secretary of State.

What approach should a CA take to commissioning adult education provision?

Providers are key to the delivery of the adult education system. Many education providers are complex organisations that rely on a variety of public funding to operate their business. CAs, as public bodies funding education and training provision, must have regard to best value for the public purse and securing the best outcomes for students. It is also important to make sure that arrangements by public bodies for securing and funding provision are fair and reasonable and that demands made of providers are clear, transparent and timely.

A provider may secure funding from numerous sources and funding from CAs may form a relatively small proportion of this overall funding. A CA will make its own decisions about the type of provision it wants or requires to meet local skills needs. Most education

providers will have become accustomed to how they have been funded for adult provision previously and have their systems and arrangements aligned with that regime. Given this, when exercising their functions in relation to the commissioning of adult education provision, a CA should give consideration to the following:

- a) the fairness, reasonableness and proportionality of their requests of the providers through consideration of the entirety of that provider's overall business.
- b) ensuring that all providers are given an equal opportunity to compete for funds in any competitive process.
- c) how the CA's commissioning approach aligns to the existing adult education funding key milestones that a provider operates under when commissioning.
- d) when a CA determines that it is appropriate to deviate from the ESFA commissioning process they should give a reasonable notice period⁴ to allow providers to adapt.

CAs should give consideration to these areas and work jointly with providers at the design and planning stage on their proposed funding arrangements with a view to:

- building positive relationships;
- enabling providers to understand and meet CA needs;
- enabling CAs to understand what providers need to plan and respond properly to deliver adult education for the CA.

When making and communicating its adult funding decisions what should a CA take into account?

A CA should:

- a) consult with representative providers on its approaches to funding and performance management rules, funding rates and funding formula.
- b) publish a conflicts of interests policy for the allocation of relevant funds that includes:
 - i. requirements on all those involved in decision-making and all those receiving funding from this budget to declare and record actual and perceived conflicts of interest; and

⁴ A reasonable notice period should be considerate of the nature of the change and the potential impact on provider's usual business cycle.

- ii. appropriate external checks, including an internal monitoring process and external input to decisions.
- c) publish in advance of the start of the funding year (traditionally 1 August) conditions of funding against which providers should deliver. This should be published on a website in a manner which recognises accepted web accessibility standards and which allows for the content to be:
 - i. downloadable; and
 - ii. published in such a way that search engines can index it.
- d) give consideration to the ESFA's adult funding key milestones⁵ when communicating funding plans and allocations including methodologies. This will help those providers that may be in receipt of adult funds from both the ESFA and a CA to plan their overall adult provision staffing and delivery and to manage their business model and income appropriately and efficiently to ensure value for money;
- e) ensure that providers have a point of contact in the event that they need to discuss their delivery, payments or funding arrangements. This should be established early in the relationship.
- f) identify for providers how and to whom they can complain in the event that they believe they have grounds to do so.
- g) conduct appropriate due diligence in establishing which providers will deliver AEB-funded provision, complying with Public Contracts Regulations 2015, as appropriate.
- h) have a clear commercial strategy to undertake legally compliant exercises and put in place contract/performance management regimes.
- i) have clear market entry arrangements that are available to potential providers.
- j) have a clear funding reduction and/or exit requirements strategy.

⁵ For example; publication of funding rules, publication of funding rates/formula, notification of funding allocations to providers and contracts/agreements issued for the upcoming academic year.



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