



Education & Skills
Funding Agency

Reforms to subcontracting education for learners over 16

Government consultation

Launch date 4 February 2020

Respond by 17 March 2020

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Introduction

A consultation on the future arrangements for subcontracting of post 16 education and training.

The subcontracting of education and training for learners over the age of 16 is a long established and widespread practice in the sector. Our analysis indicates that currently there are 674 prime providers that subcontract education and training for 576,000 learners to 2,288 subcontractors. The total value of subcontracted provision is £484.5m which is, as a proportion of total ESFA funding, 10.6%. Given the scale of this activity, we want to be assured that it is good value for money, leads to good outcomes for learners and is regulated, managed and overseen appropriately.

Where subcontracting is done well and for the right curriculum reasons, it can:

- enhance the opportunities available to young people and adults
- fill gaps in niche or expert provision, or provide better access to training facilities
- support better geographical access for learners
- offer an entry point for disadvantaged groups.

However, we are aware that in some instances subcontracting is not entered into for the right reasons and we continue to see cases where subcontracted provision is not appropriately controlled, overseen or managed by the lead provider.

We are committed to strengthening ESFA's oversight of the approach to subcontracting in the sector, and reducing the overall volume of subcontracted activity, by eliminating that which is undertaken for the wrong reasons and/or is poorly managed and delivered. The review aims to improve our approach to:

- ensure public funds are properly and effectively spent, maximising the benefit for learners
- strengthen our monitoring and improve our assessment of risk to identify problems earlier
- work with Ofsted to ensure that inspection arrangements for subcontracting reflect risks
- intervene more quickly and decisively when required
- harmonise and clarify the rules and requirements across post-16 funding streams where it makes sense to do so

- improve oversight of subcontracted activity in the sector and improve the outcomes and experience for students
- eliminate subcontracting that is undertaken for purely financial reasons
- retain subcontracting that meets niche or specialised needs, improves access and provides opportunities for disadvantaged learners
- on site subcontracting, particularly where provision is niche. This can be deployed more quickly and cost effectively to deliver better outcomes than through direct provision.

The purpose of this consultation is to hear from those who have an interest in subcontracted delivery to inform our thinking about the nature and extent of reforms to subcontracting arrangements and the timing of them. We want to implement as much of the required change to these arrangements as is practicable for the 2020/21 academic year, but recognise that some elements of the changes may require a period of transition to enable providers to adjust their existing arrangements to ensure compliance with the new rules, and to ensure that there is no disruption to learners' existing programmes.

The proposals set out here are high level principles for operating. Final operating principles will have more implementation and application detail. More information will be provided in our published response to this consultation.

Subcontracting touches on several aspects of the system – for example the operation of the Register of Training Organisations and the Register of Apprenticeship Training Providers. Any changes to the operation of the registers will take into account the implications for our subcontracting requirements.

There are a number of other reviews and pieces of development activity and, where relevant, subcontracting will be taken into account in that work. This includes the wider strategy for independent training providers and the reforms to financial monitoring arrangements.

Who this is for

- We welcome responses to the consultation from those working in, or with, the post 16 education and training sector, public bodies, and representatives of those otherwise involved in the provision of post 16 education and training.
- By subcontracting we mean provision delivered by a third party organisation with whom the provider, directly funded by the ESFA, has entered into contractual arrangements for the delivery of a proportion of the education

provision funded by the ESFA, and for which payments are dependent on student numbers and/or formula funding values.

Issue date

The consultation was issued on 4 February 2020.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team on:

By email:

Subcontracting.CONULTATION@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in May 2020.

About this consultation

Our analysis of subcontracting declarations made via <https://skillsfunding.service.gov.uk/> and from the information submitted on the individualised learner record and school census returns shows that subcontracting is widespread in the post 16 sector. To ensure that our changes are sensible, practical and deliverable we would like to hear from as wide a range of interested parties as possible.

For European Social Fund (ESF) provision that was awarded through a competitive tendering exercise for the period April 2019 to July 2021, some of the proposals will not apply as we recognise the delivery model for this provision differs from other types of provision. We indicate where ESF provision is not in scope in the proposals below.

We would like to hear your views on our proposals.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email

Subcontracting.CONSULTATION@education.gov.uk

By post

Anita Flora
Education and Skills Funding Agency
Cheylesmore House
5 Quinton Road
Coventry
CV1 2WT

Deadline

The consultation closes on 17 March 2020.

Proposal 1 : Ensure that Subcontracting adds value

Background

We only want subcontracting to occur where it is purposeful and in the learners' interest. We propose the introduction of a new 'rationale for subcontracting' requirement. It will require providers, as part of their subcontracting declaration, to state the educational intent for entering into subcontracting arrangements and that governors and Boards have agreed this. We would require the statement to be published on the provider's website, along with their management fee structure, and a list of their subcontracting partners.

We expect all subcontracting activity to be demonstrably meeting one or more of the following objectives:

- enhance the opportunities available to young people and adults
- fill gaps in niche or expert provision, or provide better access to training facilities
- support better geographical access for learners
- offer an entry point for disadvantaged groups
- address the needs of areas identified as 'cold spots' for delivery.

We do not consider entering into subcontracting arrangements for financial gain to be an acceptable reason for doing so.

Proposal

To what extent do you agree or disagree with the proposal to introduce a reason for subcontracting that is approved by the Governors or Board, and published on the lead's website?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 2 : Limiting Subcontracting at Geographical Distance

Background

We propose to introduce stronger criteria for subcontracted provision delivered at a distance. Distance arrangements increase risks to the quality of provision, because of the difficulties of managing such arrangements effectively. In formulating our proposal, we are reflecting on the implications of geographical distance for travel to learn, to teach, to work and to oversee and manage subcontracted provision.

In assessing what constitutes a distance arrangement we will be looking at Local Authority and Mayoral Combined Authority boundaries, and Local Enterprise Partnership areas. As a broad rule of thumb, we believe that subcontracting partners should be no more than one hour away from the prime contractor by car.

We recognise that in some instances, for example working with national employers, a distance arrangement is beneficial. In other cases, for example the delivery of sports provision, we do not see the need for such an arrangement, other than where a national body, such as the Football Association, can bring expertise and a national perspective.

Prior to entering into any distance arrangements, we propose that providers will be required to submit a case to ESFA for approval within a specified period, and must obtain the agreement of ESFA before delivery can commence. In addition to meeting at least one of the criteria set out at proposal 1 above, providers would need to explain why the arrangement cannot be made between a more local provider and the subcontractor.

For European Social Fund (ESF) provision, we recognise that geographical considerations were included as part of the competitive process, and existing ESF models of delivery will not be in scope for this proposal.

We propose that providers that currently have distance subcontracting arrangements in place will be required to inform ESFA of these arrangements and set out their rationale for retaining the arrangements beyond 2020/21. ESFA will consider these on a case by case basis. In our response to the consultation, we will inform you about the dates when such cases should be submitted.

Proposal

To what extent do you agree or disagree with the proposal to introduce stronger criteria including prior approval for distance subcontracting?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 3: Controls on the Volume of Subcontracting by a Lead

Background

We propose to introduce controls on the volume/value of provision that can be subcontracted by a provider. Directly funded providers should directly deliver most of their provision. They should only enter into subcontracting arrangements to meet one or more of the benefits identified at proposal 1 above.

We propose to limit the volume of provision that a provider may subcontract by introducing a percentage cap on subcontracted provision of 25% of ESFA post 16 income in 2021/22 and further reducing that percentage to 17.5% in 2022/23 and to 10% in 2023/24.

ESF provision is not in scope for this proposal.

Proposal

To what extent do you agree or disagree with the proposal to introduce volume controls on the value of provision that can be subcontracted?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 4: Restricting Whole Programme Subcontracting

Background

From 2021/22 we propose to introduce stricter controls on the circumstances in which the whole of a learner’s programme can be subcontracted. Whole programme subcontracting divorces the learner from the provider with which they are enrolled and raises questions about the extent to which they can be properly considered to be learners of the directly funded provider.

In future, providers that wish to subcontract the whole of a learner’s programme will be required to make a case to ESFA and must obtain agreement to such arrangements before delivery can commence.

We are particularly interested to hear from Local Authorities on this proposal and recognise that some choose to use the direct funding that they receive from the ESFA as commissioners rather than providers.

ESF provision is not in scope for this proposal.

For providers that are currently subcontracting the whole of some learners’ programmes, they will be required to inform ESFA of these arrangements and set out their rationale for retaining the arrangements beyond 2020/21. ESFA will consider these on a case by case basis. Timings for the provision of such business cases will be confirmed in our response to this consultation.

Note: Schools are already precluded from whole programme subcontracting.

Proposal

To what extent do you agree or disagree with the proposal to require prior agreement from ESFA before entering into whole programme subcontracting arrangements?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don’t know
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Comments:

Proposal 5: Restricting the Volume and Value of ESFA Funds Held by a Subcontractor

Background

We propose to exercise greater oversight of the volume and value of provision that can be delivered by a single subcontractor. A single subcontractor can work with a multiple number of directly funded providers and the aggregate value of the provision that they are delivering under subcontracting arrangements can be significant. ESFA believes that it should monitor and control the level of financial exposure to ESFA in such circumstances.

Where the aggregate value of a subcontractor's delivery exceeds more than £3m of ESFA funded provision, ESFA proposes to make a referral to Ofsted for the subcontractor to be subject to a direct inspection.

Where we assess that the volume and value of subcontracted provision undertaken by a subcontractor poses a high risk, we will convene a case meeting with all the primes concerned and seek assurance over the arrangements. We will reserve the right to require a reduction in the value and volume of the provision where we consider the level and risk of exposure to ESFA to be too high.

Proposal

To what extent do you agree or disagree with the proposal to introduce volume controls on the value of ESFA funds that can be held by a subcontractor?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 6: Sports Subcontracting

Background

We are particularly concerned about the delivery of sport related provision for young people delivered under subcontracting arrangements. While we recognise that it provides access for some learners who might otherwise be disengaged, there have been cases where weaknesses in oversight arrangements have given cause for concern.

Problems have arisen as there is generally also a sports club involved as a third party in the programme which may provide specialist coaching, and the boundaries between the funded education programme and the associated coaching activities become blurred.

In future, we propose to make it a requirement that the lead provider must have a direct contractual arrangement with both the subcontractor and the sports club. There would be no financial transactions between a subcontractor and the sports club – all financial arrangements would be directly with the lead provider. The lead provider would also ensure that it has oversight of all activity at the sports club relating to education and training including those for safeguarding and keeping learners safe.

Proposal

To what extent do you agree or disagree with our proposal to require a direct contractual relationship between a lead provider and a third party providing specialist input?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 7: Understanding Compliance

Background

We recognise that most providers deliver subcontracted provision that is of high quality and represents value for money for the taxpayer. We want to help schools, academies, colleges, private training providers, and others to understand our rules and make it straightforward for providers to demonstrate compliance. To that end, we intend to look at how we can have one set of common funding rules across the various different funding streams.

Proposal

To what extent do you agree that we should introduce one set of funding rules for subcontracting?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Please use this opportunity to tell us what will help providers to more easily understand our subcontracting rules and to demonstrate compliance.

Comments:

Proposal 8: Publishing Information about Funding Retained

Background

We propose to extend the requirement for providers to publish information about the funding it retains under its subcontracting arrangements for all ESFA funded provision (ie extend to 16-19 provision). A check on the funding retained will be a standard part of ESFA audit and assurance work.

We do not expect the funding retained to exceed 20%, and we will require an explanation of the rationale for the arrangement in such cases. Instances where more than 20% of the funding is retained raises questions about the capacity of the subcontractor to make effective provision if they require excessive support. It also raises questions about the quality of the provision to be delivered at such a reduced rate of funding.

Proposal

To what extent do you agree or disagree with the proposal to extend the requirement to publish information about funding retained for all subcontracted provision, and for ESFA to also publish this information annually?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 9: Introducing a Standard for Management of Subcontracting

Background

We are considering the introduction of externally assessed standards for subcontracting management to improve practise across the sector. We may adopt an existing standard currently in use in other government departments, or we may opt to develop our own internal system. Once developed, only providers meeting the standard would be permitted to subcontract ESFA funds.

Proposal

To what extent do you agree or disagree with the proposal to introduce an externally assessed standard for management of subcontracting?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Proposal 10: Implementation

Background

We propose to introduce the changes set out in these proposals as quickly as possible from the 2020/21 academic year onwards. Do you agree that this is reasonable? If you disagree please explain your reasons.

Proposal

To what extent do you agree or disagree with our proposal to implement changes in 2020/21 where possible.

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
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Comments:

Equalities Analysis

This section asks for your help in identifying any potential impacts of our proposals on people sharing the protected characteristics of age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race (including ethnicity), religion or belief, sex, and sexual orientation.

Question on Equalities Analysis

Please provide any representations and/or evidence on the potential impact of our proposals on people sharing protected characteristics for the purposes of the Public Sector Equality Duty (under section 149 of the Equality Act 2010).

Comments:

Aims and Impact of our proposed reforms

We believe that the proposed changes set out here will transition the system to less but more purposeful and better regulated provision. This does not mean that we are aiming to eradicate subcontracting activity in its entirety, but we wish to strengthen our oversight to ensure that such activity is better regulated, providing stronger safeguards for students and apprentices and for public money. In addition to these proposals we intend to strengthen our data collection and use, be more specific in our funding rules to strengthen due diligence undertaken by leads, be clear about contract management expectations, and respond to and act on indicators of risk earlier.

We recognise that these proposals are significant and will have an impact on the existing delivery arrangements for some providers. That is why we are keen to hear from as many organisations as possible, to ensure that we make changes sensibly and sensitively, and to a suitable timescale, allowing for a period of transition where it is right to do so.



Education & Skills
Funding Agency

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