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Guidance

# 16 to 19 education (non apprenticeship): market entry

Information about how to get ESFA funding for post-16 education and training.

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## Background

This guidance contains information on how to get Education and Skills Funding Agency (ESFA) funding for education and training for students aged 16 to 19 and for high needs learners up to 25 with an education health and care plan.

Organisations wishing to tender for funding to deliver education and training for adults were previously required to apply to be on the register of training organisations. This has now been decommissioned and all future opportunities to apply for funding will be communicated via GOV.UK.

Training organisations wanting to offer apprenticeships are required to apply to join the [register of apprenticeship training providers](#).

## How to get ESFA funding for post-16 education and training

There are a number of ways to enter this market dependent on the type of institution and the type of provision proposed.

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It is a legislative presumption under the Education Act 2011 all new schools should be academies. You can apply to open different types of academy including:

- academies
- free schools
- university technical colleges (UTCs)
- studio schools

Some of the processes for establishing these types of institution are subject to fixed application windows.

## **Periodic tendering opportunities**

### **Gaps in provision**

Under EU procurement law, we do not always have to tender for the delivery of education and training opportunities for this age group. However, when we do fund a new provider or new provision there is an expectation processes and procedures are fair and transparent.

Therefore, we use a mix of local negotiation and tendering appropriate to the circumstances in each case.

In support of local authorities' statutory duty to secure provision in an area, we will consider their requests to fill a gap in provision. Where evidenced gaps cannot be filled through negotiation with good existing providers they are put out to tender through open competition and advertised through [ESFA's Update](#) and on [Contracts Finder](#).

Local authorities may submit a case regarding a gap in provision at any point in the year. Cases should be made using a standard template:

[Market entry local authority gaps application template](#) (ODT, 46.5 KB)

We will apply standard criteria to ensure the gap is well evidenced prior to securing additional places.

## **Replacement provision**

We may seek to replace provision lost through a market failure or forced exit by government intervention or a voluntary exit created by a provider's own business decision.

Subject to circumstances we may negotiate with local providers about replacing provision. Where replacement provision cannot be secured through an appropriate existing provider(s) it will normally be put out to tender through open competition and advertised through [ESFA's Update](#) and on [contracts finder](#).

Where the need to secure alternative provision for existing students is urgent, ESFA may elect to make a single tender award in line with its internal scheme of delegation.

## **New high-quality provision**

We want to ensure opportunities for developing new outstanding provision are always available.

ESFA will fund new provision where it adds value and is a high quality addition to the existing offer for young people. To this end, we are open to discussions about new provision for young people aged 16 to 19 with independent learning providers without an ESFA contract for delivery to 16 to 19s currently holding (or receive in the course of the year) an Ofsted rating of grade 1 outstanding for overall effectiveness.

We will only support new provision as part of this process. The need for this provision must also be evidenced by local authorities. We will not consider approaches seeking to move sub-contracted provision to a directly funded contract.

## Understanding the difference between types of institution

### Types of schools

Information is available about submitting:

- [applications to open a free school](#)
- [applications to open a UTC](#)

There are also a number of other ways organisations interested in delivering education and training can enter the education and training market.

### Establishing a further education or sixth-form college

As specified in Section 33C of the Further and Higher Education Act 1992, any person or body can request that Secretary of State establish, by order, a new sixth-form college corporation:

The legal power to establish and incorporate FE corporations sits with the Secretary of State through the Further and Higher Education Act 1992.

Further information about the process can be found within the document [dissolution, merger and establishment of FE corporations](#), in the section 'The merger consultation process for Type A and Type B mergers', available from the Association of Colleges.

### Expanding a school or academy by adding a sixth-form

A maintained school can apply to its local authority if it wishes to extend the age range of its school to add a sixth-form. For more information, see the guidance about [changes to a school and expansions](#).

The Secretary of State retains responsibility for decisions to make

significant changes to academies. If an academy wishes to extend its age range to add a sixth-form it should submit a business case using the [ESFA enquiry form](#).

In order to make a decision, the Secretary of State will need to know:

- the rationale for the proposal, including the demand for the additional provision and the educational benefits to students
- the degree of support from the local authority, the local community and parents
- evidence of the school's ability to deal with the change, specifically in terms of leadership and governance
- any proposed changes to the way the school is governed and suggested changes to admissions arrangements
- issues around the existing school site, including any plans for capital adaptations, additions, refurbishments and land transfers needed
- cost effectiveness in terms of capital and recurrent funding (the proposal should include some indicative costings and proposals for how costs might be met)

Read the guide on [making significant changes to an existing academy](#) for more information.

## **Other ways 16 to 18 education and training can be funded**

There are other ways post-16 provision can be funded.

### **High needs students 16 to 25 years**

The [due diligence process](#) for special post-16 institutions, is the means by which the Department for Education (DfE) assures itself institutions commissioned by local authorities for 10 or more high needs places are suitable to receive public funding from ESFA for the delivery of high needs provision.

## T Levels

The final T Levels are being rolled out in 2022 and 2023. From 2023, all providers with a funding agreement/contract to deliver study programmes for 16 to 19 year olds will be able to deliver T Levels from 2023.

Once T Levels are fully rolled out, local authorities will be able to submit evidence to us of local gaps in technical education so that we can review these and take action.

More information on [T Levels](#) is available.

## Sub-contracting

As part of our funding guidance, DfE publishes sub-contracting control regulations, which set out our expectations and requirements of directly funded institutions entering into sub-contracting arrangements in respect of ESFA-funded provision.

Maintained schools and academies are reminded it's a requirement sub-contracted activity is recorded in the school census return.

We have published [subcontracting funding rules for ESFA funded post-16 funding \(excluding apprenticeships\) for 2022 to 2023](#).

## Contract transfer

Organisations cannot novate or transfer ESFA contracts. In limited circumstances we may sanction the transfer of a contract from a lead contractor to an existing sub-contractor.

Contract transfer to a sub-contractor can only occur with the written agreement of the lead contractor. The written agreement of the lead must include confirmation that they are willing to relinquish the funding associated with the subcontracted provision in the year in which it transfers. We must also be satisfied the sub-contractor

has the capacity and facilities to deliver high quality provision in its own right.

Any such applications should be sent using the [ESFA enquiry form](#).

The appropriate funding limit for the existing sub-contractor will be set as part of the financial information supplied as part of due diligence.

## **Mergers, takeovers and other structural change**

Organisations should inform DfE of any plans involving merger or takeover of the provider, or of any other change which will have a material bearing upon the contract or funding agreement it holds with ESFA, as soon as it becomes aware of such a change.

It is a requirement of the funding agreement with ESFA providers give a minimum of at least 12 weeks notice in advance of the proposed date of effectiveness of the change in such cases. Giving notice of a change in business model does not constitute consent to a transfer of our contract.

DfE will review any proposed changes on a case by case basis and will undertake the due diligence and other assurances it considers necessary according to the circumstances of each case. We reserve the right to terminate the contract where any proposed assignment, novation, disposal or other dealing gives cause for material concern.

## **Independent learning providers providing education and training to children of compulsory school age**

Independent learning providers are required to register with DfE that they are running an independent school if they meet the definition of an independent school set out in law. The [registration of independent schools guidance](#) explains the requirements.

Those responsible for running an independent learning provider



that meets the definition of an independent school that is not registered as such would be committing an offence (under section 96 of the Education and Skills Act 2008 - “the 2008 Act”) and may be liable to prosecution.

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