EXPLANATORY MEMORANDUM TO

THE ADULT SKILLS (SPECIFIED QUALIFICATION IN INFORMATION TECHNOLOGY) 2020

2020 No. 67

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument enables specified qualifications in information technology, commonly referred to outside of legislation as "basic digital qualifications", to be provided for free to certain persons aged 19 or over.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department for Education relies on section 13 of the Interpretation Act 1978 in relation to section 114 of the Digital Economy Act 2017 to make this instrument. As is discussed in more detail below, section 114 amends the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act") to give the power to make this instrument.

3.2 Other amendments made by section 114 to the 2009 Act make, in conjunction with the provision made by this instrument, a complete legislative framework relating to the free provision of specified qualifications in information technology. The Department considers that it is expedient to rely on section 13 of the Interpretation Act in relation to section 114 because it considers it desirable for reasons of clarity and certainty that the whole regime comes into force at the same time. The Department intends to commence section 114 to coincide with the coming into force of this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 When commenced, section 114 of the Digital Economy Act 2017 will make amendments to section 88 of, and Schedule 5 to, the Apprenticeships, Skills, Children and Learning Act 2009. These amendments impose a duty on the Secretary of State for Education to ensure that specified qualifications in making use of information technology are provided for free to certain persons aged 19 and over.

6.2 "Free", for the purposes of the Act, means that no tuition fees are payable by anyone other than the Secretary of State or a body specified by the Secretary of State.

6.3 The amendments to Schedule 5 to the 2009 Act, firstly, insert a power to specify in secondary legislation the qualifications in information technology to which the duty in section 88 applies.

6.4 Secondly, the amendments insert paragraph 5A into Schedule 5, which provides that the level of attainment demonstrated by the qualification to which the duty applies must be the level that the Secretary of State considers is the minimum required by persons aged 19 or over in order to be able to operate effectively in day-to-day life.

6.5 The amendments also have the effect that the duty on the Secretary of State under section 87 of the 2009 Act to provide facilities for a course, applies to specified courses in information technology.

6.6 Similar provision is already made in relation to literacy and numeracy qualifications for learners aged 19 and over, as well a first full level 2 and/or level 3 qualification for learners aged 19-23, under the 2009 Act. The Adult Skills (Specified Qualifications) Regulations 2010 (S.I. 2010/733) specify qualifications in literacy and numeracy, level 2 and level 3, for the purposes of the 2009 Act. Our instrument amends these Regulations in respect of specified qualifications in information technology.

7. Policy background

What is being done and why?

7.1 Skills in information technology ("digital skills") are increasingly important for life and work, yet research by Lloyds Bank in 2019 estimated that around one in five adults lack essential digital skills[1].

7.2 In recognition of the importance of digital skills for employability and participation in society, the government is introducing a legal entitlement to fully funded qualifications in information technology for adults with no or low digital skills. This legal entitlement will ensure that adults who lack essential digital skills will have the opportunity to undertake a relevant qualification free of charge, thereby encouraging them to take steps to improve their digital skills. This will be alongside the existing legal entitlements to fully funded literacy and numeracy qualifications for adults aged 19 and over, as well as the first full level 2 and/or level 3 qualification for adults aged 19-23.

7.3 This instrument enables the Secretary of State for Education to specify which qualifications in information technology will be eligible to receive funding via the payment of tuition fees. The Secretary of State will make available the list of qualifications approved for funding via the Education and Skills Funding Agency - the agency accountable for funding education and skills for children, young people and adults. The list will be updated on a monthly basis.

7.4 Under this instrument, adults with no or low digital skills will have the opportunity to undertake a qualification in information technology, at entry level or level 1, free of charge, where a qualification is available at a publicly funded provider.

7.5 The qualifications eligible to receive public funding will be based on the 'national standards for essential digital skills'[ii], which set out the digital skills needed for life and work. The national standards were developed through an extensive 12 week consultation with a range of stakeholders, including providers, awarding organisations and digital inclusion organisations. The standards are informed by the Essential Digital Skills framework[iii] which defines the skills needed to safely benefit from, participate in, and contribute to the digital world today and in the future. The following five skills areas are covered:

- Using devices and handling information e.g. solving simple technical problems or carrying out searches to find information;
- Creating and editing e.g. capturing and editing an image;
- Communicating e.g. identifying and using appropriate modes of online communication;
- Transacting e.g. buying an item or service online; and
- Being safe and responsible online e.g. protecting personal information and privacy.

7.6 This instrument enables providers to determine whether an adult is eligible to undertake a specified qualification, by undertaking an assessment of the adult's digital skill level in order that they may be enrolled on a level above that at which they have been assessed.

7.7 An adult who has previously obtained an information technology qualification, but who is assessed as having digital skills below level 1, would be funded to study a further qualification. An adult who does not hold a qualification in information technology but is assessed as already having digital skills at level 1 or above would not be funded under the entitlement to study a further information technology qualification.

7.8 The Adult Skills (Specified Qualifications) Regulations 2010 exclude from the scope of the literacy and numeracy legal entitlements an adult who is undertaking an apprenticeship. This is because it is a requirement for an apprentice to study English and maths as part of their apprenticeship arrangements, if they are not already qualified to the level considered by the Secretary of State to be the minimum required to operate effectively in day-to-day life. There is no such requirement for apprentices to study a qualification in information technology and therefore they are not excluded from the scope of the provisions in this instrument.

7.9 The provision of fully funded specified qualifications in information technology will be funded through the adult education budget. In relation to certain parts of England, the relevant adult education functions have been transferred to specified combined authorities by way of orders made under section 105A of the Local Democracy Economic Development and Construction Act 2009 and delegated to the Mayor of London under section 39A of the Greater London Authority Act 1999. It will be the responsibility of those mayoral authorities to make provision for funding as part of their devolution deal alongside the literacy, numeracy, level 2 and level 3 statutory

entitlements. For non-devolved areas, the Education and Skills Funding Agency will provide the adult education budget funding. Devolved and non-devolved areas will use the same list of specified qualifications approved for funding under the statutory entitlements.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation of the relevant legislation is not intended.

10. Consultation outcome

10.1 In October 2018, the Department for Education held a 12 week consultation on plans to improve adult basic digital skills, including introducing a legal entitlement to basic information technology qualifications, mirroring the existing legal entitlements in literacy and numeracy. The consultation received 170 responses from education providers, industry, digital inclusion organisations, awarding organisations, local authorities, representative bodies and others. The consultation response[iv] was published in April 2019.

10.2 The consultation asked whether publicly funded qualifications in information technology should be offered up to and including level 1 as part of the legal entitlement. 86% of respondents answered 'yes'. Many respondents, including employers, welcomed the government's ambition to support adults to develop the essential digital skills needed to participate fully in society, and welcomed placing digital skills on an equal footing to English and maths as a national entitlement.

10.3 The consultation also asked whether providers should carry out a thorough initial assessment to determine whether an individual should be fully funded to undertake a digital skills qualification. 70% of respondents answered 'yes'. Many respondents commented on the need for initial assessments to identify differing levels of knowledge, skills and understanding.

10.4 As part of the response to the consultation on improving adult basic digital skills, the Department published an Equality Impact Assessment[v] of the national standards for essential digital skills and the introduction of the legal entitlement on people with protected characteristics under the Equality Act 2010. This concluded that the national standards and legal entitlement should be accessible and appeal to all adults and that there are a number of appropriate and available means of mitigation where potential challenges to individuals with protected characteristics or learning difficulties have been identified.

11. Guidance

11.1 The Education and Skills Funding Agency will publish the list of information technology qualifications approved for public funding under the entitlement on a monthly basis at https://www.gov.uk/government/publications/qualifications-getting-approval-for-funding.

11.2 For non-devolved areas, the Education and Skills Funding Agency adult education budget funding and performance management rules, are published on an annual basis and will set out the rules applying to the full funding of information technology qualifications. The rules for 2020/21 will be published in spring 2020 at https://www.gov.uk/government/publications/adult-education-budget-aeb-funding-rules-2019-to-2020.

11.3 Devolved authorities will publish the rules for their own areas.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is anticipated to be an increase in demand for publicly funded qualifications in information technology.

12.3 In April 2019, the Office of Qualifications and Examinations Regulation (Ofqual) published an assessment of the regulatory impact[vi], in terms of cost, savings or other benefits of designing and delivering 'Essential Digital Skills qualifications' – one of the new qualification types which will be eligible to receive funding under the entitlement. In due course, Ofqual will publish a regulatory impact assessment of new 'digital Functional Skills qualifications' – a further qualification type which will in future be eligible to receive funding under the entitlement.

12.4 An Impact Assessment has not been prepared for this instrument because there is no significant impact on business brought about by the duty imposed on the Secretary of State to ensure that specified qualifications in making use of information technology are provided free to certain persons aged 19 and over.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring the impact of this legislation is to track participation and achievement in publicly funded information technology qualifications following the introduction of the entitlement, and to assess whether participation and achievement increases as a result of full funding for eligible adults. This will be done by adding figures on participation and achievement into the Further Education and Skills release which covers, separately, participation and achievement for the legal entitlements in literacy and numeracy and which is published on a quarterly basis. We will continue to monitor the digital capability of adults in England to help evaluate the impact of the digital entitlement.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Sophie Davies at the Department for Education (Telephone: 07584335709 or email: sophie.davies@education.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Richard Simper, Deputy Director for Careers and Basic Skills at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Michelle Donelan MP, Parliamentary Under Secretary of State for Children and Families at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.

[i] https://www.lloydsbank.com/assets/media/pdfs/banking_with_us/whats-happening/LB-Consumer-Digital-Index-2019-Report.pdf

[ii] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796596/National_standards_for_essential_digital_skills.pdf

[iii] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/738922/Essential_digital_skills_framework.pdf

[iv] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796173/Improving_adult_basic_digital_skills_-_government_consultation_response.pdf

[v] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796393/Improving_adult_basic_skills_-_equality_impact_assessment.pdf

[vi] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796811/6500-2_Decisions_on_the_regulation_of_Essential_Digital_Skills_Qualifications_Post_12.45pm_version.pdf