EXPLANATORY MEMORANDUM TO

THE ADULT SKILLS (SPECIFIED QUALIFICATIONS) REGULATIONS 2010

2010 No. 733

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The primary purpose of the regulations is to make clear which qualifications are relevant for duties which are placed on the Chief Executive of Skills Funding ("the Chief Executive") to secure the provision of proper facilities and to ensure free tuition in respect of certain education and training for adult learners. The regulations also make clear that the duties do not apply to those who are undertaking a relevant qualification as part of an apprenticeship programme and cover other miscellaneous matters.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None

4. Legislative Context

4.1 These regulations replace, with appropriate modifications, the Adult Skills (Specified Qualifications) Regulations 2009 ("the 2009 Regulations") which were made under sections 4A, 4B and 4C of and Schedule 1A to the Learning and Skills Act 2000 ("the 2000 Act).These regulations are made under sections 87, 88, and 89 of and Schedule 5 ("the Schedule") to the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act"). In summary, section 87 places a duty on the Chief Executive to secure the provision of proper facilities to enable adults who lack skills to obtain relevant qualifications. Section 88 places a duty on the Chief Executive to ensure that learners will not be liable to pay fees for courses of study leading to specified qualifications.

4.2 The broad standards of achievement (or "learning aims") which are relevant to these duties are set out in the Schedule. These are literacy and numeracy at levels required to function on a daily basis, level 2 and level 3. The Secretary of State may make regulations to specify the qualifications, or descriptions of qualifications at these levels. The primary purpose of these regulations is to make clear how qualifications are to be specified and confer functions on the Chief Executive for this purpose. The Chief Executive only has functions in relation to England.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

Policy objectives

7.1 In 2004, the government commissioned Lord Leitch to carry out an independent review of the UK's long term skills' needs. The Final Report of the Leitch Review of Skills - *"Prosperity for all in the global economy – world class skills"* – was published on 5 December 2006[1]. In July 2007 the government published its response: *World Class Skills: Implementing the Leitch Review of Skills.* [2] This included a proposal to "introduce legislation to support adults accessing basic literacy and numeracy programmes and training leading to their first full level 2 qualification."

7.2 The duties in the 2009 Act include giving learners undertaking literacy, numeracy, or a first full[3] vocational level 2 qualification, a similar level of priority for funding as that given to learners aged 16 -18, by placing a duty on the Chief Executive to ensure the provision of "proper" rather than "reasonable" facilities for these adult learners. They will also be able to undertake courses for relevant qualifications free of charge. This gives legal force to what we call our "adult entitlements". By making courses free to learners, we are encouraging greater take up of these courses and improving the skills level in the country. This represents the Government's strong commitment to adults with few skills.

7.3 We have included learners aged 19 up to 25 seeking a first full[4] level 3 qualification in the scope of the duty to pay tuition fees as this is one of the areas where the UK fares least well compared to other countries. Many young adults do not quite reach the level 3 threshold by the end of formal education. This measure is aimed at addressing this gap by helping this group 'catch up' in their late teens and early twenties.

7.4 The commitment to supporting adults to gain skills at these basic and intermediate levels was confirmed in the national skills strategy *Skills for*

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[1] Copies of the report are available at: http://www.hm-treasury.gov.uk/leitch_review_index.htm
[2] Copies of the response are available at: http://www.dius.gov.uk/reports_and_publications/leitch
[3] A "full" level 2 qualification is one that in terms of breadth and depth is demonstrated by 5 GCSEs at grade C or above.
[4] A "full level 3 qualification is one that in terms of breadth and depth is demonstrated by 2 GCE A levels.

Growth[5] which was published in November 2009.

Specified qualifications

7.5 The Chief Executive will produce and maintain a list the list of specified qualifications because the Skills Funding Agency will have readily available databases of qualifications and the full list would be too long to include in regulations. In addition, new qualifications are accredited and become available to learners on a reasonably frequent basis. Providing the specified qualifications in this way, means that the lists can be kept up-to-date with the latest qualifications without the need for frequent amendment of the regulations.

7.6 The Chief Executive must make the list of specified qualifications available to the public. This will mean that learners will be able to see which courses they can expect to access as part of the entitlement to free tuition. Examples of qualifications that will be specified and included on the list that the Chief Executive will make available are: the Certificate in Adult Literacy at Level 1 and National Vocational Qualification in Social Care at Level 2.

Apprentices

7.7 Regulation 8 excludes from the scope of these provisions anyone over the age of 19 who is undertaking a course for a specified qualification as part of arrangements known as an Apprenticeship or under any other apprenticeships programme. This exclusion is made primarily in order to preserve current arrangements under which employers are expected to make a contribution to the cost of the apprenticeship training.

7.8 Apprenticeships are an excellent programme for increasing the levels of skill in industry. However, we require employers to make a contribution to the training costs of apprentices aged over 18 because adult apprentices are often more work-ready than young people and are able to make a more immediate contribution towards business outcomes; and in recognition of the importance of the shared responsibility to invest in skills, with employers being asked to contribute most where they see the greatest private returns.

Re-training for literacy and numeracy

7.9 The effect of regulation 9 is that a person who had already obtained a literacy or numeracy qualification in the past, but whose skills have deteriorated over time, would be able to do a further course to regain those skills. This is because literacy and numeracy skills are key to adults gaining sustainable employment and securing better life chances. Regulation 10 enables education and training providers to assess whether an individual has the requisite literacy and numeracy skills, at the levels set out in the Schedule, and gives them a discretion to select a suitable test, assessment or tool, for this purpose.

[5] Copies of the strategy are available at http://www.bis.gov.uk/policies/skills-for-growth

7.10 Regulation 11 makes provision to require the Chief Executive to ensure that relevant literacy and numeracy learners will not have to pay the cost of preliminary skills assessments or the costs of examinations at those levels.

8. Consultation outcome

8.1 *The Skills Challenge: A Public Debate February 2007*[6] was designed to trigger a public debate on skills issues. This fed into the Government's response to the Leitch Review. A wide range of stakeholders took part including employers, education and skills providers, young people and members of the general public. A key theme for discussion was how best to encourage individuals to improve their skills. After further consultation with stakeholders *World Class Skills: Implementing the Leitch Review of Skills* (July 2007) included a proposal to introduce legislation to support adults accessing skills training in literacy, numeracy and full level 2.

8.2 For *World Class Apprenticeships* (2008)[7] we consulted employers and others on strengthening Apprenticeships and boosting employer supply. The consultation took place between October and December 2007 and received 104 responses. Employers gave a positive response to the proposals for greater flexibility and more responsive provision, and to Apprenticeships in general. There were some concerns about the cost implications of off the job training on smaller employers. More details are included in the *World Class Apprenticeships Impact Assessment* (attached).

8.3 During the process of preparing the new provisions for the 2000 Act (which were inserted by the Education and Skills Act 2008 ("the 2008 Act")) and the 2009 Regulations, the Department consulted and worked with the Learning and Skills Council, as the body on which the new responsibilities would be placed.

9. Guidance

9.1 The LSC issued guidance[8] in the summer of 2009 to support the implementation of the provisions in the 2000 Act and the 2009 Regulations. This guidance is aimed at further education colleges and providers, and advice and guidance services that have contact with learners. The LSC also issued funding guidance to all learning providers, including those offering courses which comprise part of an Apprenticeship programme. This guidance will be updated and re-issued by the Chief Executive.

9.2 The Apprenticeships website, www.apprenticeships.org.uk run by the National Apprenticeship Service promotes apprenticeship programmes and

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[6] Copies of the report can be found at:
http://www.dcsf.gov.uk/skillsstrategy/uploads/documents/The%20Skills%20Challenge%20-%20A%20Public%20Debate%20Report%20FINAL%2012%2003%2007.pdf

[7] Copies of this document can be found at:
http://www.dius.gov.uk/~/media/22C55A80D0A242B7A108D362479690FB.ashx

[8] http://www.lsc.gov.uk/adultentitlement

provides information, advice and guidance to employers, potential apprentices, intermediaries and stakeholders on various issues including funding.

10. Impact

10.1 The impact on business, charities or voluntary bodies is:

- for the general adult skills provisions: negligible as business, charities and voluntary bodies will not be asked to contribute to tuition fees for individuals. These costs will be drawn from public funds; and

- for the Apprenticeships exclusion: negligible. When, as is the case when adults undertake Apprenticeships programmes, employers are expected to contribute to the cost of the programme then this is in line with current practice. No **additional** financial burdens are placed on employers as a result of these regulations.

10.2 The impact on the public sector is:

- for the general adult skills provisions: the impact is set out in the Impact Assessment which was prepared for the purposes of the 2008 Act. We assumed an increase of 5% in learner numbers as a result of the adult skills provision resulting in an average annual cost to Government of £28.5m. This is based on the 3 years between 2008 and 2011.

- for the apprenticeships exclusion: negligible as the Regulations maintain current practice of expecting an employer contribution to the cost of adult Apprenticeships.

10.3 An Impact Assessment has not been prepared for this Instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 In the 2007 Spending Review, the Department for Innovation, Universities and Skills (now Business, Innovation and Skills) signed up to Skills PSA targets to 2011 as follows:

- 597,000 adults to achieve at least Level 1 literacy and 390,000 to achieve a first entry level 3 or above numeracy qualification between 2008 and 2011;
- 79% of working age adults to be qualified to at least Level 2 by 2011 (up from 70.7% in 2007) – with around 1.2 million first full Level 2 achievements between 2008 and 2011;
- 56% of working age adults qualified to at least Level 3 by 2011 (up from 50.5% in 2007) – with around 500,000 first full level 3 achievements between 2008 and 2011;

- 130,000 full framework apprenticeship achievements by 2010/11.

12.2 The Department monitors progress against these targets and reports to Ministers regularly. The Department will review the regulations annually.

13. Contact

13.1 Andrew Price at the Department for Business, Innovation and Skills, Tel: 0207 215 1955 or email: Andrew.Price@bis.gsi.gov.uk, can answer any queries regarding the instrument.