EXPLANATORY MEMORANDUM TO

THE APPRENTICESHIPS (ALTERNATIVE ENGLISH COMPLETION CONDITIONS AND MISCELLANEOUS PROVISIONS) (AMENDMENT) (CORONAVIRUS) REGULATIONS 2020

2020 No. 1120

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.

2. Purpose of the instrument

2.1 These Regulations enable an apprentice, on either an apprenticeship standard or framework, to complete their apprenticeship otherwise than under an apprenticeship agreement if they are at least 75% of their way through their apprenticeship when they are made redundant.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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)

3.2 This entire instrument applies to England only because the only provision it makes is to amend instruments which apply only in relation to England.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the purpose of this instrument is to provide for the completion of apprenticeships, which is within the devolved legislative competence of the Northern Ireland Assembly, the Scottish Parliament and the Senedd Cymru. The instrument does not deal with an excepted matter or a reserved matter under the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly. The instrument does not relate to a reserved matter under the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament. The instrument does not relate to a reserved matter under the Government of Wales Act 2006 and is not otherwise outside the legislative competence of the Senedd Cymru.

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 The Minister for Apprenticeship and Skills has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Apprenticeships (Alternative English Completion Conditions and Miscellaneous Provisions) (Amendment) (Coronavirus) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations amend the Apprenticeships (Alternative English Completion Conditions) Regulations 2012 (S.I. 2012/1199) ("the 2012 Regulations") and the Apprenticeships (Miscellaneous Provisions) Regulations 2017 (S.I. 2017/1310) ("the 2017 Regulations").

6.2 The 2012 Regulations were made under powers in section 1 of the Apprenticeships, Skills, Children and Learning Act 2009 ("the Act"). Section 1 provided for the completion of English apprenticeships in relation to apprenticeship frameworks (defined in section 12). Apprenticeship frameworks are being phased out in England. Accordingly, section 1 and related provisions were repealed by Schedule 1 to the Deregulation Act 2015 but continue to have effect (with modifications, and subject to the provision made for phasing out of frameworks) by virtue of paragraph 3 of the Schedule to the Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015 (S.I. 2015/994). The 2012 Regulations also continue to have effect. Section 1 of the Act provides that, in order to complete an English apprenticeship in relation to an apprenticeship framework, a person must meet either the "standard English completion conditions" (set out in section 1) or the "alternative English completion conditions". The 2012 Regulations specify the alternative English completion conditions, which apply where a person is working otherwise than under an apprenticeship agreement.

6.3 The 2012 Regulations currently specify conditions which allow for an apprentice who is made redundant to complete their apprenticeship by completing their course of training under alternative arrangements within 6 months. These Regulations amend the 2012 Regulations so that they also allow for a redundant apprentice to complete their apprenticeship in this way if they have already completed at least 75% of the course. In these cases, there is no restriction on the period within which the course must be completed. This only applies if the dismissal occurs on or after the day on which these Regulations come into force.

6.4 These Regulations also amend the 2017 Regulations. The 2017 Regulations were made under section A1 of the Act, which provides for the completion of an "approved English apprenticeship" by achieving an approved apprenticeship standard. An approved English apprenticeship takes place under an approved English apprenticeship agreement or is an alternative English apprenticeship. Regulation 6 of the 2017 Regulations prescribes the circumstances where an alternative English apprenticeship applies. These are arrangements under which an apprentice may work otherwise than for another person or for reward in order to complete their

apprenticeship. Regulation 6 of the 2017 Regulations currently prescribes circumstances which allow for an apprentice who is made redundant to complete their apprenticeship under such alternative arrangements where there is less than 6 months of the "practical period" left to run when the apprentice is made redundant (the "practical period" being the period during which an apprentice is expected to work and receive training under their apprenticeship agreement). These Regulations amend regulation 6 so that it also allows for the completion of an apprenticeship under such alternative arrangements where an apprentice is made redundant and at least 75% of the practical period under the agreement has been completed, irrespective of whether there is less than 6 months of that period left to run. This only applies if the dismissal occurs on or after the day on which these Regulations come into force.

7. Policy background

What is being done and why?

7.1 Currently the Education and Skills Funding Agency (ESFA) continues to fund the apprenticeship to completion if an apprentice is made redundant within six months of their final day of training. This is to allow apprentices that are close to the end of their apprenticeship to continue their training while they look for another employer to complete their apprenticeship with, or, if they are unable to find one, allow them to complete their apprenticeship without an employer.

7.2 The impact of Covid-19 is expected to see an increase in the number of apprentices being made redundant and more apprentices are therefore relying on this policy. The economic impact of the outbreak may also mean that there are fewer opportunities available for apprentices looking for new employers to continue their apprenticeship with.

7.3 Since the policy was first introduced apprenticeships have undergone significant transformation and now last longer on average. The expected time to complete an apprenticeship has increased from around 16 months in 2015/16 to around 20 months in 2018/19. This means there are an increasing number of apprentices who may have completed a substantial majority of their apprenticeship at the point of redundancy, but who are nevertheless six months or more from the end of their apprenticeship and unable to complete it.

7.4 We are therefore extending the current offer to also fund to completion all apprentices who are at least 75% of their way through their apprenticeship at the point of redundancy. Training providers will calculate the number of days passed from the start date as a percentage of the total planned days.

7.5 Following consultation with the Institute for Apprenticeships and Technical Education, we concluded that for apprentices with six months or longer remaining on their apprenticeship (e.g. those not covered by the current policy) it will not generally be practicable to attain occupational competence if more than a quarter of their apprenticeship is still to be completed at the point of redundancy. This is because access to on-the-job training and experience is a crucial element of an apprenticeship. We have therefore set this policy as only applying to apprentices who have completed at least 75% of their apprenticeship at the point of redundancy.

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 There are no plans for consolidation.

10. Consultation outcome

10.1 There was no statutory duty to consult on these regulations and we did not undertake a public consultation on the Regulations.

11. Guidance

11.1 The Secretary of State intends to issue non-statutory guidance in respect of these Regulations. It will be placed on the Department for Education website.

12. Impact

12.1 There is no impact on business, the public sector, charities or voluntary bodies.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to allow all training providers to choose whether to access continued funding for their apprentice and provide non-statutory guidance to support that choice.

14. Monitoring & review

14.1 We will monitor data on redundant apprentices and use this information to monitor the efficacy and impact of the measure and will amend the Regulations if appropriate.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Rory Macfarlane at the Department for Education email: rory.macfarlane@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jonathan Childs, Deputy Director for Apprenticeships Covid-19 Response Team at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Gillian Keegan, Parliamentary Under Secretary of State for Apprenticeships and Skills at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.