EXPLANATORY MEMORANDUM TO

THE DUTY TO PARTICIPATE IN EDUCATION OR TRAINING (ALTERNATIVE WAYS OF WORKING) REGULATIONS 2013

2013 No. [XXXX]

AND

THE APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009 (CONSEQUENTIAL AMENDMENTS TO PART 1 OF THE EDUCATION AND SKILLS ACT 2008) ORDER 2013

2013 No. [XXXX]

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 The two Instruments covered by this Explanatory Memorandum are being made in order to implement Part 1 of the Education and Skills Act 2008 ("the Act") which will come into force in June 2013:

(i) The Duty to Participate in Education and Training (Alternative Ways of Working) Regulations 2013 prescribe ways of working (other than under a contract of employment) which could be considered as a full-time occupation for the purposes of section 5 of the Act.

(ii) The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Part 1 of the Education and Skills Act 2008) Order 2013 makes amendments to Part 1 of the Education and Skills Act 2008 in consequence of the provisions made by Part 7 of the Apprenticeships, Skills, Children and Learning Act 2009.

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

3.1 None

4. Legislative Context

4.1 Part 1 of the Act places a duty on young people to participate in education or training until they are 18 or have completed a prescribed Level 3 qualification. The duty

applies to young people who are resident in England and are older than the compulsory school age. Section 2 of the Act sets out that there are three ways in which a young person may meet the duty - by participating in appropriate full-time education, under an Apprenticeship contract, or by combining full-time employment with part-time education or training. The legislation is being commenced so that from 2013 it will be compulsory for young people to participate up to the end of the academic year in which they turn 17, and from 2015 up to the age of 18.

4.2 Chapter 1 of Part 1 of the Act sets out a number of definitions, and the draft Duty to Participate in Education or Training (Miscellaneous Provisions) Regulations 2013 provide the detail of these definitions (including the definition of Level 3 qualification). Our intention is to make these Regulations if the Duty to Participate in Education or Training (Alternative Ways of Working) Regulations 2012 and the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Part 1 of the Education and Skills Act 2008) Order 2012 are approved.

4.3 The Duty to Participate in Education or Training (Alternative Ways of Working) Regulations 2013 ensure that young people who meet the duty by combining employment with education and training will be meeting the duty if, rather than working under an employment contract, they are self-employed, an office holder, or work other than for reward (e.g. undertake voluntary work).

4.4 Chapter 2 of Part 1 of the Act provides local authorities with a number of functions, including a duty to promote participation, and a duty to make arrangements to identify persons not meeting the Section 2 duty. Local authorities are also required to have regard to guidance given by the Secretary of State, which is intended to support authorities in meeting these duties. The guidance will be published on the Department for Education website.

4.5 Chapter 3 of Part 1 of the Act puts duties on employers to take certain actions in respect of young people who meet the duty by combining work with education / training. These duties will not be brought into force at this stage, and the possibility of commencing them will be kept under review.

4.6 Chapter 4 of Part 1 of the Act provides for local authorities to take certain enforcement action against parents of young people who are not fulfilling their duty to participate. Chapter 5 of Part 1 of the Act provides for attendance notices, attendance panels, and rights of appeal. This is a procedure that a local authority may follow if it considers that a person is failing without reasonable excuse to fulfill the duty to participate. These chapters will not be brought into force at this stage, and the possibility of commencing them will be kept under review.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

6.1 The Minister of State for Schools, David Laws, MP, has made the following statements regarding Human Rights:

In my view the provisions of the Duty to Participate in Education or Training (Alternative Ways of Working) Regulations 2013 and the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Part 1 of the Education and Skills Act 2008) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Part 1 of The Education and Skills Act 2008 requires all young people (16 and 17 year-olds) in England to participate in education or training until the age of 18 or until attaining a level 3 qualification if earlier. This is known as Raising the Participation Age (RPA). This change is happening in two phases: from summer 2013 all young people will be required to participate in education or training until the end of the academic year in which they turn 17, and from summer 2015 onwards, they will be required to participate until their 18th birthday.

7.2 The participation age is being raised because continuing in education or training beyond age 16 brings benefits for young people, the economy and wider society. Young people who continue in learning post-16 are more likely to attain higher levels of qualifications, have increased earnings over their lifetime and are less likely to be involved in anti-social behaviour, suffer from depression and use drugs. They are also better able to gain the skills and qualifications that employers look for, increasing their likelihood of finding sustained skilled employment.

7.3 In addition to undertaking full time education or an Apprenticeship, young people will also be able to meet the duty to participate through employment of more than 20 hours per week combined with part-time education or training. There are other activities that young people engage in which can help them to gain similar skills and experiences to employment – self-employment, holding an office and working not for reward. We do not want to discourage young people from engaging in these important activities. The Duty to Participate in Education or Training (Alternative Ways of Working) Regulations 2013 prevents this by defining these three activities as equivalent to employment for the purposes of RPA.

7.4 The Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Part 1 of the Education and Skills Act 2008) Order 2013 makes amendments to Part 1 of the Education and Skills Act 2008 in consequence of the provisions made by Part 7 of the Apprenticeships, Skills, Children and Learning Act

2009. Part 7 of the 2009 Act established the Office of Qualifications and Examinations Regulation, which regulates academic and vocational qualifications in England, taking over those functions from the Qualifications and Curriculum Authority ("the QCA"). The 2009 Act also amended provisions in the Education Act 1997 so that they apply only in Wales. The 2009 Act gives power to make amendments to other legislation by order which are consequential on these provisions and this power is being used to amend the references to the QCA and to the Education Act 1997 in sections 3 and 8 of the Act and to amend the references to external qualifications and accredited qualifications in sections 3, 6 and 8 of the Act so as to reflect the terminology used in the 2009 Act.

8. Consultation outcome

8.1 A 12 week public consultation was undertaken between 20th January and 13th April 2012. In addition, a number of consultative meetings were held with key partners and representative bodies. The consultation sought views on the policy approach to be implemented via these regulations.

8.2 176 responses were received to the consultation, 40% of which were from Local Authorities. Colleges, the Voluntary and Community Sector, representative bodies and parents provided the next most numerous responses.

8.3 In relation to "ways of working" over 90 % of respondents agreed that self-employment, volunteering and holding an office could combine with part time study to meet the duty to participate. As these are all suitable and valid options for young people we are regulating to allow these to count in the same way as employment for the purposes of RPA.

8.4 A detailed analysis of the results is provided in the Government's response to the consultation, published in July 2012 on the Department for Education website at: http://www.education.gov.uk/childrenandyoungpeople/youngpeople/participation/rpa/a00210946/consultation-response

9. Guidance

9.1 We are providing Statutory Guidance for local authorities to set out their responsibilities in relation to Raising the Participation Age. This will be published on the DfE website.

9.2 We have also published a range of fact sheets for local authorities, parents, education and training providers, young people and employers on the DfE website at: http://education.gov.uk/childrenandyoungpeople/youngpeople/participation/rpa/a00201391/useful-information-what-does-raising-the-participation-age-mean-for-me and are using the Department's communication channels to provide information to key partners.

10. Impact

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

10.2 There is no impact on the public sector.

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 The overall aim of Raising the Participation Age is to ensure that young people in England continue in education or training until at least age 18.

12.2 The impact of Raising the Participation Age will be reviewed annually. If it is not achieving this aim, we will consider what further action should be taken, including introducing those duties not initially being commenced if necessary.

13. Contact

Andrew Ettinger at the Department for Education (Tel: 020 7340 8248 or email: Andrew.ettinger@education.gsi.gov.uk) can answer any queries regarding the instrument.