EXPLANATORY MEMORANDUM TO

THE COMBINED AUTHORITIES (ADULT EDUCATION FUNCTIONS) (AMENDMENT) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education ("DfE") and is laid before Parliament by Command of His Majesty.

1.2 This Order uses the Secretary of State's powers under the Local Democracy, Economic Development and Construction Act 2009 ("the Local Democracy Act"):

(a) to confer an additional funding power in relation to certain adult education functions under the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act") on the combined authorities listed below at 5.2 in relation to those combined authorities' areas; and

(b) to apply certain provisions of the 2009 Act with modifications to the combined authorities for the purpose of the combined authorities exercising the conferred functions.

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

2. Declaration

2.1 Baroness Smith of Malvern, Minister of State for Skills on behalf of the Secretary of State for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Bo Emecheta, Deputy Director for Further Education & Adult Skills at the DfE confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Camilla Frappell at the DfE, email: Adult.SkillsDevolution@education.gov.uk, can be contacted with any queries regarding the Statutory Instrument.

Part One: Explanation, and context, of the Statutory Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Mayoral Combined Authorities ("combined authorities") are corporate bodies established by Statutory Instrument ("SI") in the form of Orders. The combined authorities exercise some functions in relation to the local areas within the combined authority, instead of the Secretary of State exercising those functions.

4.2 Adult education functions were transferred to nine existing combined authorities between 2018 and 2024.

4.3 This Order transfers an additional funding power to the nine combined authorities so that they can fund new technical qualifications for adults which will be available from the beginning of the academic year 2025/26 (i.e. from 1 August 2025). It does this by

amending the Orders which were used to transfer adult education functions to the combined authorities and inserting the new power into those Orders.

4.4 The transfer to these combined authorities of the adult education functions (also referred to in this memorandum as the "devolution of adult education") forms part of the Government's wider devolution agenda and is focused on giving local areas a prominent role in managing and shaping their own economic prosperity. Through the transfer of the adult education functions, each of the combined authorities and their elected Mayors are able to better shape adult education provision that is available to their residents to ensure it meets the needs of the combined authority's economy. However, as a result of the reform of post-16 qualifications, new technical qualifications will become available in 2025/26, and the combined authorities do not currently have the relevant statutory power to fund those qualifications.

4.5 In accordance with the requirements of section 105B(1) of the Local Democracy Act, each combined authority and its constituent councils have consented to the making of this Order. The Secretary of State considers that for the reasons set out at para. 4.12, 4.13, 6.3 and 6.4 (a) the making of the Order is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the areas to which that Order relates and (b) the making of this Order is appropriate having regard to the need to secure effective and convenient local government and reflect the identities and interests of local communities.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Funding for adult learners is currently managed through the Adult Education Budget (now called the Adult Skills Fund (ASF)) by DfE. DfE funds skills provision for eligible adults aged 19 and above from pre-entry to level 3 (the equivalent of A-levels). This provision supports adults to gain the skills they need for work, an apprenticeship or further learning.

5.2 Since 2019/20 certain adult education functions in the 2009 Act have been transferred to nine combined authorities in relation to their respective areas by Orders made under the Local Democracy Act. These areas are Tees Valley, Liverpool City Region, West Midlands, Greater Manchester, Cambridgeshire & Peterborough, West of England, the North East, South Yorkshire, and West Yorkshire.

5.3 These combined authorities are responsible for the exercise of the relevant adult education functions and the associated ASF in their areas.

5.4 DfE continues to be responsible for adult education functions in areas of England where the ASF has not been transferred to combined authorities. In 2024/25 approximately 62% of the total ASF was managed by combined authorities (and the Greater London Authority), with the remainder managed centrally by DfE in relation to areas which do not fall within a combined authority. This is expected to increase to 67.5% of the total ASF in 2025/26 following the approval of three new devolution deals.

5.5 As a result of the Skills and Post-16 Education Act 2022, the Institute for Apprenticeships and Technical Education was granted the power to approve technical qualifications at level 2 (equivalent to GCSE), level 3 (equivalent to A levels) and above. These technical qualifications are funded nationally under section 100(1B) of the 2009 Act. Combined authorities do not currently have this power transferred to them, which means they will be unable to use their ASF to fund newly reformed level 2 and level 3 technical qualifications when they become available from the start of the 2025/26 academic year.

5.6 To achieve the ambition of a streamlined, high-quality technical education landscape, reformed technical qualifications must be available for delivery in all areas of England. This includes ensuring availability for adult learners. Reformed qualifications that are aligned to employer needs are essential to develop the skills pipeline in local areas. A failure to put in place the necessary legislation to allow combined authorities to use the ASF to fund these new qualifications will result in regional disparities whereby adults in some geographical regions will not have access to the same high-quality qualifications as other areas. This would significantly undermine the qualifications reform programme.

5.7 It is essential that DfE transfers the section 100(1B) power therefore, so that combined authorities can fund technical qualifications at level 3 and below in their areas.

5.8 For the nine existing combined authorities DfE has the following in place which supports its working relationship with them (1) 'Memorandum of Understanding: Devolution of Adult Education Functions' can be found at Devolution of adult education functions: MoUs - GOV.UK[1]; (2) 'Statutory Guidance on Exercising Devolved Adult Education Functions' can be found at Exercising devolved adult education functions - GOV.UK[2]; (3) Letters to Mayoral Combined Authorities setting out adult education budget (AEB) grant payments for 2019 to 2020 can be found here Adult education budget: S31 grant determination letters 2019 to 2020 - GOV.UK[3].

5.9 For new areas whose devolution of adult education is currently being established, the DfE will transfer the section 100(1B) powers to them as part of the overall legislative process to transfer adult education functions to them. It is intended that the documents listed at 4.8 above will be updated/extended to new devolved areas prior to their new adult education powers coming into effect.

What was the previous policy and how is this different?

5.10 Adult education functions are transferred from the Secretary of State to combined authorities by SIs made under the power in the Local Democracy Act (section 105A and section 105B). This allows the Secretary of State to make provision for a function of the Secretary of State to be a function of the combined authority in relation to its area.

5.11 The procedure governing the making of an SI is set out in section 105B which states that an order under s.105A can only be made if:

(a) A proposal for making the order in relation to the combined authority has been made to the Secretary of State by the appropriate authorities; or

(b) The appropriate consent is given, and the Secretary of State considers that the making of the order is likely to improve the economic, social and environmental well-

[1] https://www.gov.uk/government/publications/devolution-of-adult-education-functions-mous
[2] https://www.gov.uk/government/publications/exercising-devolved-adult-education-functions
[3] https://www.gov.uk/government/publications/adult-education-budget-s31-grant-determination-letters

being of some or all of the people who live or work in the areas to which the order relates (this test has been met for the reasons outlined below)

5.12 These changes have been made in accordance with the procedure in paragraph 4.11(b) above. Each of the nine combined authorities and their constituent councils have consented to the making of this Order. The Secretary of State considers that making the Order is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the areas to which the Order relates because it will enable them to access reformed qualifications that are designed to lead to sustainable occupations. Without the transfer of this power, these combined authorities cannot fully exercise their functions in the local area as they would be unable to fund the full range of adult education qualifications, thereby undermining the purpose of devolution.

5.13 In addition, the Secretary of State considers that the test set out in s.113(1)(aa) of the Local Democracy Act is met, and that the Order is appropriate having regard to the need to secure effective and convenient local government, and to reflect the identities and interests of local communities. The Secretary of State has considered the views expressed by the combined authorities as well as responses to the public consultation on transferring the additional funding power. The test is met because the transfer of the additional power will enable combined authorities to provide the full range of technical qualifications that have been approved for adults. No additional administrative burdens were identified. Transferring this power will remove a burden and potential barrier for combined authorities, as they would otherwise need to assess first whether they were able to fund a particular type of qualification as part of the adult skills provided to learners in their locality. It ensures that learners in combined authority areas have access to the same qualifications as learners in non-devolved authority areas.

5.14 There is a requirement in section 105B(9) for the Secretary of State to lay a report before Parliament at the same time as the Order, explaining the effect of the Order and why the Secretary of State considers it appropriate to make it. A report has been laid at the same time as the Order, and a copy of the report will be published in the National Archives.

6. Legislative and Legal Context

How has the law changed?

6.1 This Order will transfer section 100(1B) of the 2009 Act to the combined authorities, with effect from the day after the day on which the Order is made. The new qualifications (which combined authorities will be able to fund, using the section 100(1B) power) will only become available from 1 August 2025. Transferring section 100(1B) by July 2025 enables combined authorities to prepare to exercise this new funding power from August 2025.

6.2 The additional funding power will be transferred by amending the SIs for each existing combined authority to include the additional power. The following SIs will be amended:

(a) The Greater Manchester Combined Authority (Adult Education Functions) Order 2018 (S.I. 2018/1141);

(b) The Liverpool City Region Combined Authority (Adult Education Functions) Order 2018 (S.I. 2018/1142);

(c) The West of England Combined Authority (Adult Education Functions) Order 2018 (S.I. 2018/1143);

(d) The West Midlands Combined Authority (Adult Education Functions) Order 2018 (S.I. 2018/1144);

(e) The Tees Valley Combined Authority (Adult Education Functions) Order 2018 (S.I. 2018/1145);

(f) The Cambridgeshire and Peterborough Combined Authority (Adult Education Functions) Order 2018 (S.I. 2018/1146);

(g) The Barnsley, Doncaster, Rotherham and Sheffield Combined Authority (Functions and Amendment) Order 2020 (S.I. 2020/806);

(h) The West Yorkshire Combined Authority (Election of Mayor and Functions) Order 2021 (S.I. 2021/112);

(i) The North East Mayoral Combined Authority (Establishment and Functions) Order 2024 (S.I. 2024/402).

6.3 The section 100(1B) power has been transferred concurrently (which means the Secretary of State can still use the power in combined authorities' areas). This reflects the way that the existing section 100(1) funding power has been transferred.

6.4 Section 100(1B) is a general funding power that allows the Secretary of State and the combined authorities to secure financial resources to relevant persons in connection with approved technical qualifications or approved steps towards occupational competence.

6.5 The section 100(1B) power is transferred with the following exceptions:

(a) The function will be exercisable only in relation to those aged 19 and over.

(b) The function is not intended to be exercisable in relation those aged under 25 for whom an Education, health and care plan (EHC Plan) is maintained. This is consistent with the terms of the 2009 Act which excludes those with an EHC Plan who are aged under 25 from the scope of the duties and functions in relation to adult education. Those under 25 with an EHC Plan fall within the 16-19 budget rather than the adult education budget.

6.6 The existing Orders in relation to the combined authorities also modify the 2009 Act so that references to the Secretary of State are to be read as references to the combined authority, where appropriate. This Order adds further modifications to the 2009 Act so that references to the Secretary of State in relation to the exercise of the function in section 100(1B) are to be read as references to each of the combined authorities.

6.7 This Order, transferring the section 100(1B) power, will come into effect on the day after the day on which the Order is made, in advance of reformed technical qualifications being made available in England from 1st August 2025.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes to the existing combined authorities' functions and powers.

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation, as required by section 113(2) of the Local Democracy Act, was carried out between 8th November and 6th December 2024 to seek views and gather

feedback on the anticipated impact of the transfer of the additional power on local communities and, specifically, whether the transfer is likely to improve the economic, social, and environmental well-being of people who live or work in the area. Additionally, it sought to determine whether the transfer is appropriate with regard to securing effective and convenient local government and reflecting the identities and interests of local communities. A short 4-week consultation period was selected because each of the nine combined authorities are already exercising adult education functions, and the change proposed was considered small because it amounted to the transfer of an additional power to the combined authorities which they could choose to exercise or choose not to exercise.

7.2 The consultation was promoted by each combined authority in their respective areas and also via the government website. The consultation included an online survey, stakeholder events and a public webinar. The public webinar was conducted by DfE on 20th November 2024, and was attended by 85 people, to explain the purpose of the consultation and respond to any questions.

7.3 The consultation received 20 responses, all submitted via the online consultation form. Of these, one response was from a combined authority directly affected by the proposal, and they agreed with transferring the funding powers under section 100(1B) of the 2009 Act. Overall, 85% of respondents agreed that the Secretary of State should transfer the funding powers to the combined authorities. Of the three respondents who disagreed, only two provided a reason for their decision. None of these respondents were from the combined authority areas in scope of the consultation.

Statutory Tests

7.4 An order can be made to make provision for conferring on a combined authority in relation to its area a function corresponding to a function that a public authority has in relation to another area if the ”appropriate consent is given and the Secretary of State considers that the making of the order is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the areas to which the order relates.” The appropriate consent is that of the combined authority and constituent councils of the combined authority. Before laying the Order referred to in this memorandum, DfE sought and obtained the consent of each specified combined authority and constituent council in relation to the Order. The Secretary of State considers, in relation to the Order, that (a) the making of the Order is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the areas to which the Order relates; and (b) that the Order is appropriate having regard to the need to secure effective and convenient local government, and reflect the identities and interests of local communities in the area of the specified combined authorities for the reasons outlined at 4.12 and 4.13 above [and for the reasons outlined in the report laid at the same time as the Order].

8. Applicable Guidance

8.1 The SIs referred to at para 5.2 above which are amended by this Order require the combined authority to have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document) in exercising the relevant functions, which will include the new power in section 100(1B) which is transferred to the combined authorities. The guidance was first published on 23rd

July 2018 and is available at Exercising devolved adult education functions - GOV.UK[4].

8.2 Copies of the guidance are also available on request from the Department for Education, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT. This guidance covers key areas that a combined authority is required to pay regard to when taking decisions in respect of commissioning adult education provision.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full regulatory impact assessment has not been prepared as this instrument will have no, or no significant, impact on businesses, charities, and voluntary sectors.

9.2 The impact on the public sector is that conferring the additional funding power under section 100(1B) to the existing combined authorities will enable them to determine how the funds are spent in line with local priorities. This change is expected to improve the exercise of statutory functions by ensuring that decisions on adult education provision are tailored to the specific needs of the area.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business including small or micro businesses, charities or voluntary bodies because the Order pertains solely to the transfer of powers to combined authorities. This change does not impose any new regulatory requirements, financial obligations, or operational impacts on these groups as it primarily affects administrative functions within the public sector. There will be no impact on the public sector. The transfer of the additional funding power to the combined authorities will not result in an associated transfer of funds to each combined authority and is not expected to create an additional burden on combined authorities. DfE has confirmed the adult skills budgets for each specified combined authority for the 2025/26 academic year in early 2025.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This Order provides for functions to be conferred on the nine existing combined authorities. As part of their devolution agreements with the government, these combined authorities are required to implement an extensive programme of monitoring and evaluation in relation to the devolved adult education functions. This includes submitting Annual Assurance Reports, which offer a detailed overview of the delivery and performance of their devolved functions for the preceding academic year. These reports are reviewed as part of the Annual Skills Stocktakes, which facilitate discussions between the government and combined authorities on progress, challenges, and areas for improvement in relation to adult skills. Furthermore, the combined authorities are held accountable through the established Accountability Framework, ensuring transparency and alignment with agreed objectives.

[4] https://www.gov.uk/government/publications/exercising-devolved-adult-education-functions

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Section 105B(9) of the Local Democracy Act provides that, at the same time as laying a draft of a statutory instrument containing an order under section 105A(1) of the Local Democracy Act before Parliament, the Secretary of State must also lay a report explaining the effect of this order which confers public authority functions onto the combined authority, and why the Secretary of State considers it appropriate to make the order.

11.2 There are no other matters of special interest to Parliament.

12. European Convention on Human Rights

12.1 Baroness Smith of Malvern, Minister of State for Skills, has made the following statement regarding Human Rights:

"In my view the provisions of the Combined Authorities (Adult Education Functions) (Amendment) Order 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (''relevant European Union Acts'').