EXPLANATORY MEMORANDUM TO

THE EAST MIDLANDS COMBINED COUNTY AUTHORITY (ADULT EDUCATION FUNCTIONS) REGULATIONS 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 These regulations use the Secretary of State's powers under the Levelling-up and Regeneration Act 2023 ("the 2023 Act") to transfer to East Midlands Combined County Authority ("East Midlands") certain adult education functions. As a Combined County Authority ("CCA"), East Midlands will be able to exercise these functions and manage the associated Adult Skills Fund ("ASF") (that will be transferred by DfE to enable them to use these functions) starting from the 2025/26 academic year.

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 DfE Adult.SkillsDevolution@education.gov.uk can be contacted with any queries regarding the Instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this legislation is to transfer adult education powers and duties from academic year 25/26 (i.e. 1st August 2025) from the Secretary of State for Education to East Midlands.

4.2 The legislation transfers key adult education functions in the Apprenticeships, Skills, Children and Learning Act ("the 2009 Act") to East Midlands in relation to the area of that authority. It sets conditions for some functions and applies the 2009 Act with modifications.

Where does the legislation extend to, and apply?

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

4.4 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 On 30th August 2022, a devolution deal was agreed between the Government and East Midlands which included the transfer of specified adult education functions (also referred to in this memorandum as the "devolution of adult education"). Currently 62% of the ASF is devolved to 9 Mayoral Combined Authorities (MCAs) and the Greater London Authority (GLA). The East Midlands deal forms part of a wider tranche of deals with the York and North Yorkshire Combined Authority and the Cornwall Council, where devolution of adult education functions is due to begin on 1st August 2025.

5.2 The English Devolution White Paper set out the Government's commitment to continuing and expanding these arrangements, ensuring local areas have the autonomy to shape adult education provision in line with regional priorities, building on impact of devolved adult education to the 9 MCAs and GLA.

5.3 The Memorandum of Understanding ("MOU") is an agreement between the Government and local authorities such as East Midlands. The MOU sets out broad terms for how local authority areas and Government will work together, including procedures for avoiding and resolving disputes.

5.4 The Adult Education Budget (AEB) was introduced from the start of the 2016/17 academic year (1 August 2016), replacing what had previously been three separate budget lines:

- Funding for adult vocational education outside of apprenticeships
- Community Learning
- Learner Support

5.5 The ASF replaced the AEB on 1st August 2024. The purpose of the ASF is to support adult learners in England to gain skills which will lead them to meaningful, sustained, and relevant employment, or enable them to progress to further learning which will deliver that outcome.

5.6 The ASF funds skills provision for eligible adults aged 19 and above from pre-entry to level 3 (equivalent of A-levels), to support them to gain the skills they need for work, an apprenticeship, or further learning. This includes four statutory entitlements to full funding for adult learners:

- English and maths, up to and including level 2, for individuals aged 19 and over who have not previously attained a GCSE grade A* - C or grade 4 or higher (or who have been assessed as no longer possessing these skills), and/or
- First full qualification at level 2 for individuals aged 19 to 23, and/or
- First full qualification at level 3 for individuals aged 19 to 23
- Essential digital skills qualifications, up to and including level 1, for individuals aged 19 and over who have digital skills assessed at below level 1

5.7 The ASF also funds colleges and providers to help adult learners to overcome barriers which prevent them from taking part in learning. This includes learner support to help learners with a specific financial hardship, and learning support to meet the additional needs of learners with learning difficulties and/or disabilities.

What was the previous policy, how is this different?

5.8 Currently, DfE is responsible for adult education functions within East Midlands.

5.9 Devolving adult education functions and associated funding to East Midlands will provide them with a more prominent role in managing and shaping their own economic prosperity and delivering training which meets the needs of local residents, thereby extending the benefits of devolution more widely.

5.10 This will enable East Midlands to carry out a range of functions, to better meet the skills needs in their area, including:

- identifying needs in their area and the education and training needed to address them
- identifying and procuring the providers they wish to fund to deliver education and training and having provider performance management arrangements in place
- identifying any learner priority groups (e.g. the unemployed or low waged) to be funded
- identifying the types of further education provision they wish to fund
- setting funding rates for the provision they wish to fund
- having financial systems and processes in place to pay providers

5.11 DfE set readiness criteria to ensure that East Midlands demonstrate they can manage their devolved functions and meet the statutory tests that conferring these functions is (i) likely to improve the economic, social and environmental wellbeing of some or all of the people who live or work in the area or areas to which the Regulations relate; and in making the Regulations, (ii) is appropriate with regard to the need to secure effective and convenient local government, and (iii) is appropriate with regard to the need to reflect the identities and interests of local communities. To assess this DfE requested East Midlands submit their Strategic Skills Plan (SSP), which identifies how devolved ASF will be used to meet key local priorities alongside national objectives, governance arrangements, draft funding rules including local flexibilities they will be introducing in the devolved area, proposed audit and assurance processes, and the systems they will have in place to manage their provider base.

5.12 DfE assessed the evidence provided, and from this concluded that the statutory tests have been met. This is based on East Midlands outlining how they will use devolved adult education functions to better respond to their local skills priorities, including focussing on tackling economic inactivity amongst specific demographic groups or areas of highest deprivation, and focussing on priority sectors such as health, retail and manufacturing. East Midlands also demonstrated their organisational capacity to effectively manage their devolved adult skills functions. It is important to the Secretary of State to ensure that all of these criteria are met before transferring these powers to East Midlands. This ensures that East Midlands is prepared and equipped to effectively achieve the objectives of devolving the ASF.

6. Legislative and Legal Context

How has the law changed?

6.1 The core powers and duties to be transferred from the Secretary of State to East Midlands are set out below. These functions are currently held by the Secretary of State by virtue of the 2009 Act.

6.2 Section 86 2009 Act:

East Midlands must secure appropriate facilities for education and training for individuals aged 19 and over, excluding those under 25 with an Education, Health and Care (EHC) plan. This excludes functions related to apprenticeships and persons subject to adult detention.

6.3 Section 87 2009 Act:

East Midlands must secure provision of appropriate facilities for relevant education or training (literacy, numeracy, IT, vocational level 2 qualifications) in its area for those aged 19 and over who lack these qualifications or one at comparable or higher level (or for those who have been assessed as losing these skills).

6.4 Section 88 2009 Act:

East Midlands must exercise powers under this part to secure free courses of study for relevant qualifications (literacy, numeracy, IT) for over 19s in its area who don't have the qualification in question or a comparable/higher one (or for those who have been assessed as losing these skills). Additionally, level 2 vocational qualifications and specified level 3 qualifications (the statutory entitlements) must be free for those over 19 (but under 24) who lack these qualifications or a comparable/higher one (or for those who have been assessed as losing these skills)

The duties outlined above in relation to sections 86, 87 and 88 of the 2009 Act will be solely exercisable by East Midlands in relation to its area.

6.5 Section 90 2009 Act:

East Midlands must encourage participation in education and training for individuals over 19, including encouraging employer participation and contribution to the costs of education and training for such persons, including entering an apprenticeship or contract of employment in connection with which training is provided. This duty will be exercisable concurrently with the Secretary of State.

The Statutory Instrument to transfer this power excludes functions relating to apprenticeships, and any functions relating to individuals subject to adult detention.

6.6 Apprenticeships, Skills, Children and Learning Act 2009 s.100(1) – provision of financial resources:

This is the general funding power for the ASF which will enable the Secretary of State or East Midlands to secure the provision of financial resources to:

- persons providing education or training
- persons providing goods or services in connection with the provision by others of education/training
- persons receiving education/training (including those aged 18)
- persons making loans to others receiving education/training
- persons undertaking research relating to education/training
- persons providing information, advice or guidance about education or training or connected matters

6.7 Apprenticeships, Skills, Children and Learning Act 2009 s100(1B)- provision of financial resources:

This is a general funding power that will enable the Secretary of State or East Midlands to secure financial resources to fund approved technical education qualifications or approved steps towards occupational competence.

The funding powers in s100(1) and s100(1B) will be exercisable concurrently by East Midlands and the Secretary of State in relation to its area.

6.8 The following are exceptions and conditions to the above:

- Powers under the 2009 Act referred to above will exclude functions relating to apprenticeships training, persons subject to adult detention, or any power to make Regulations or Orders.
- Where East Midlands adopts rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100 of the 2009 Act, it must adopt such rules in accordance with any direction given by the Secretary of State. This is normally provided via a Letter of Direction. This may be for the purpose of ensuring that a consistent approach is taken as to the eligibility of persons who have a specified connection to the United Kingdom. In this paragraph and in paragraph 1 of the Statutory Instrument which this Explanatory Memorandum accompanies, "award" has the same meaning as in regulation 2 of the Education (Fees and Awards) (England) Regulations 2007.

6.9 For s100(1B) specifically:

This power is subject to an exception for adults aged under 25 who are in receipt of an EHC Plan; and those subject to adult detention.

Why was this approach taken to change the law?

6.10 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 For any functions that were not included as part of a proposal by the CCA, appropriate consent must also be given by each appropriate authority. DfE has obtained the consent of East Midlands and its constituent authorities in relation to the transfer of the power at s100(1B) of the 2009 Act. The remainder of the functions being transferred were included within a proposal submitted by East Midlands to the Secretary of State pursuant to section 47 of the 2023 Act. This proposal included confirmation that the relevant constituent authorities consented to the transfer of these powers.

7.2 A consultation, as required by section 48 of the 2023 Act, has been carried out. The public consultation, which informed the devolution proposal for East Midlands, was held from November 2022 to January 2023. It focused on the transfer of Adult Education functions in sections 86, 87, 88, 90 and 100(1) of the 2009 Act, set out in a proposal made by East Midlands under Section 47 of the 2023 Act. This consultation was conducted by the four Constituent Councils prior to the establishment of the East Midlands Combined County Authority. A total of 4,869 participants engaged in the consultation, including residents, businesses, community groups, and other organisations from the CCA area, covering Derbyshire, Nottinghamshire, Derby, and Nottingham. The majority of responses (4,751) were submitted online via the official response form. The majority of responses supported the proposals related to skills, with 2,504 in favour and 1,534 against. Having received a summary of the consultation responses and reviewed this, DfE considers that no further consultation is necessary.

7.3 DfE also conducted a public consultation on the transfer of the funding power in section 100(1B) of the 2009 Act to Combined Authorities (CA)s and CCAs for new

reformed technical qualifications at levels 2 and 3. This consultation, pursuant to s48 of the 2023 Act, sought views on the implementation of these changes and opened on 8 November 2024. The consultation ran for four weeks, closing on 6 December 2024. To ensure broad engagement, the consultation was also promoted by MCAs and included an online survey, stakeholder events, and a webinar to provide additional context and encourage participation. The feedback gathered was used to inform the approach to the transfer of powers, which is essential to allow CAs and CCAs to fund the new qualifications by August 2025. The consultation received 20 responses, all submitted via the online consultation form. Of these, one response was from a CA directly affected by the proposal, and they agreed with transferring the funding powers under section 100(1B) of the 2009 Act. Five responses (25%) came from organisations or individuals based in affected areas, all of whom supported the proposal. The remaining 14 responses were from organisations or individuals outside the affected areas, including six with a national remit. Overall, 85% of respondents agreed that the Secretary of State should transfer the funding powers to the CAs.

8. Applicable Guidance

8.1 In exercising the functions mentioned in regulations 3 and 4, East Midlands must have regard to guidance issued by the Secretary of State (as amended from time to time or as replaced by a subsequent document).

8.2 The guidance was first published on 23rd July 2018 and is available at: Exercising devolved adult education functions - GOV.UK[1].

8.3 Copies of the guidance are also available on request from the DfE, Sanctuary Buildings, 20 Great Smith Street, London SW1P 3BT. The guidance covers key areas that a local 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 impact on businesses, charities, and voluntary sectors.

9.2 The impact on the public sector is that conferring additional functions to East Midlands should lead to improvement in the exercise of the statutory functions. This transfer will take the form of a proportion of the ASF moving from the DfE to East Midlands, enabling it 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 significant impact on business including small or micro businesses, charities or voluntary bodies, because the legislation pertains solely to the transfer of powers to devolved 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.

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

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The DfE will continue to work and engage with East Midlands once their adult education functions are devolved. Additionally, East Midlands will submit Annual Assurance Reports which will provide an overview of East Midland's delivery of their devolved functions over the previous academic year, which will be discussed in Annual Skills Stocktakes.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

None.

12. European Convention on Human Rights

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

"In my view the provisions of The East Midlands Combined County Authority (Adult Education Functions) Regulations 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").