EXPLANATORY MEMORANDUM TO

THE PUBLIC SECTOR APPRENTICESHIP TARGETS REGULATIONS 2017

2017 No. [XXXX]

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 are made further to provision in the Apprenticeship, Skills, Children and Learning Act 2009 ("the 2009 Act") which permits the Secretary of State to set apprenticeship targets for prescribed public bodies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England.

3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P 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.

4. Legislative Context

4.1 These Regulations are made in exercise of the powers conferred by sections A9(1), (5)(c) and (d) and (6), and A10(1)(b), (3) and (7) of the 2009 Act. Those powers include the power to prescribe which public bodies are in-scope of the target, the target itself, and additional information which the Secretary of State may require a prescribed body to provide. Those provisions were inserted into the 2009 Act by way of the Enterprise Act 2016 ("the 2016 Act"). This is the first time that those powers are being used.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State, Robert Halfon MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Public Sector Apprenticeship Targets Regulations 2017 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Government has set a manifesto commitment of achieving 3 million apprenticeship starts by 2020. The public sector will play a key role in meeting this target. Government intends for the public sector to act as a model employer regarding apprenticeships, and for apprentices to be considered regularly in public sector workforce planning.

In order to achieve these objectives the Government introduced a power in the 2009 Act, by way of the 2016 Act to enable the Secretary of State to set apprenticeship targets for prescribed public sector organisations and to compel those organisations to have regard to the target and provide information on the extent to which that target has been met.

Government consulted on the policy development of the public sector apprenticeships target with public sector organisations that could potentially have been in scope of the policy, and therefore the regulations, during the passage of the 2016 Act. This consultation ran from 26 January 2016 to 4 March 2016 and received 180 responses including those from NHS trusts, local authorities, police and fire services and other Government Departments via the write-round process. The duration of the consultation was 6 weeks to inform drafting of clauses in the 2016 Act.

The consultation proposed:

- that public sector organisations with 250 or more staff in England be in scope of the target, to avoid including smaller organisations which would not be able to comply;
- the methodology behind the public sector target, which was designed to ensure that the public sector delivered its fair share of the 3 million apprenticeship target, as a proportion of the overall workforce in England; and
- the information that public sector organisations would have to send to the Secretary of State for the purposes of monitoring and compliance.

The Government's response to the consultation was published in January 2017. It can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584246/Apprenticeship_targets_for_public_sector_bodies_government_consultation_response.pdf.

It provides detail on the approach that the Government is taking in the Regulations, and outlines their key features. In particular, the Government's response confirms that the target is for the number of apprentices who start to work for a prescribed public body during the four-year target period to equal 2.3% per cent of its workforce. It also confirms:

- the public bodies which are subject to the target. Government set out in the consultation the proposal to use the Office for National Statistics (ONS) classification for public bodies for National Accounts as a starting point for determining organisations in scope. This was refined during the consultation exercise to remove certain organisations (e.g. BBC and Channel 4, which was included in the ONS list for reporting purposes only, and various other organisations which are listed in Schedule 2 to the Regulations). Public bodies with 250 or more staff in England will, subject to a limited number of exceptions, be subject to the target. Bodies in scope of the target include but are not limited to: Government Departments, Local Authorities, NHS Trusts, Fire and Police services and local authority maintained schools.
- the target itself, which, as outlined above, is to employ an average of at least 2.3% of staff in England as new apprentices over the period 2017-2021, with the target coming into effect from 1 April 2017. This target figure was consulted upon via a public consultation exercise and is designed to ensure that the public sector delivers its fair share of apprenticeship growth in order to help reach the 3 million apprenticeships target.
- how in-scope organisations should calculate that target as it applies to them. The Regulations make detailed provision for this. In particular, an in-scope organisation will be required to determine headcount in England by reference to the number of employees working for it on 31st March in 2017, 2018, 2019 and 2020 in order to determine its target.
- the period over which the target is to be met, which begins with 1st April 2017 and ends with 31st March 2021.
- additional information which in-scope organisations will have to provide to the Secretary of State. This will include information on headcount, apprenticeship starts, and progress towards the target.

8. Consultation outcome

8.1 The outcome of the consultation referenced in section 7 has influenced the policy upon which the regulations have been drafted. The key outcomes were that:

- Almost all respondents were supportive of apprentices in the workplace and the value that they add to the workforce.
- Government will continue to use the Office of National Statistics list of public sector bodies as a basis for bodies in scope.
- There were concerns from local authorities about the target being based on headcount, rather than full-time equivalent (FTE), as these organisations have a high proportion of part-time workers. However, while Government recognises these concerns, on balance we have decided to continue using headcount in order to drive apprenticeship growth.
- Government will, however, set out in its response to the consultation that where bodies employ large numbers of part time workers, or have legitimate and unavoidable reasons for failing to meet the target, they can explain this as part of their annual report. In addition, Government will introduce additional flexibility for public sector organisations by making the target an average across the years' that the target applies, from 2017/18 to 2020/21, so that in-scope bodies can manage peaks and troughs in recruitment.

- Government changed the date at which the target will take effect to April 2017 in order to coincide with the introduction of the levy and the establishment of the Institute for Apprenticeships.

As such there has been no specific additional consultation on these regulations and there is no statutory requirement to do so.

9. Guidance

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

10. Impact

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

10.2 The impact on the public sector is that those in scope will have to have regard to and report their progress towards the target. As such the measure is likely to place little additional burden on in-scope organisations for the following reasons:

- The measure will only be reported on an annual basis and will be calculated by taking a single percentage of those in apprenticeships within the total headcount. The measure will allow for in-scope bodies to provide extra information where suitable to provide context around this number.
- The measure states that organisations need to 'have regard' to the measure. To 'have regard' can mean simply when a new post becomes available or if development of an existing employee is needed, that apprenticeships are considered. The Government expects the public sector to lead the way, and organisations who believe their staffing structure has acted as a material barrier to achieving the target can say so in their reporting.
- An Impact Assessment has not been prepared for this instrument. As this measure only affects publically funded bodies, with no costs to business, the Better Regulation Executive confirmed that no Impact Assessment is required in relation to these regulations. A full Impact Assessment was prepared for all measures included in the 2016 Act and can be found at http://www.parliament.uk/documents/impact-assessments/IA15-009F.pdf.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The regulations require in-scope organisations to report on progress towards meeting the apprenticeship targets annually, with first complete returns sent by Autumn 2018. We will use this information to monitor the efficacy and impact of the measure and will amend the regulations if appropriate.

13. Contact

13.1 Amit Thapar at the Department for Education Telephone: 07388 372520 or email: amit.thapar@education.gov.uk can answer any queries regarding the instrument.