EXPLANATORY MEMORANDUM TO

THE SURREY COUNTY COUNCIL (ADULT EDUCATION FUNCTIONS) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

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

2.2 Rosie Milton, Deputy Director for Skills Systems at the Department for Education, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Officials at the Department for Education can be contacted by email at the following address with any queries regarding the Instrument: Skills.DEVOLUTION@education.gov.uk

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 the academic year 2026/27 (i.e. 1 August 2026) from the Secretary of State for Work and Pensions to Surrey County Council (Surrey).

4.2 The legislation transfers key adult education functions in the Apprenticeships, Skills, Children and Learning Act 2009[1] (the 2009 Act) to Surrey in relation to the area of that authority. It sets conditions on those functions and applies the 2009 Act with modifications.

4.3 Surrey will be able to exercise these functions and manage the associated Adult Skills Fund (ASF) (that will be transferred by the DWP to enable Surrey to use these functions) from the academic year 2026/27.

Where does the legislation extend to, and apply?

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

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

[1] https://www.legislation.gov.uk/ukpga/2009/22/contents/2025-05-20

5. Policy Context

What is being done and why?

5.1 On 6 March 2024, a devolution framework agreement was made between the previous Government and Surrey[2], which included the transfer of specified adult education functions (also referred to in this memorandum as the "devolution of adult education"). Currently 67% of the Adult Skills Fund (ASF)[3] is devolved to 13 Authorities. The Surrey deal forms part of a wider tranche of deals with Buckinghamshire Council and Warwickshire County Council, where devolution of adult education functions is due to begin on 1 August 2026.

5.2 The English Devolution White Paper[4] 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 the impact of devolved adult education. The Devolution Priority Programme[5] will see the creation of six new mayoral strategic authorities, where devolution of adult education functions is due to begin on 1 August 2027.

5.3 A Memorandum of Understanding[6] (MOU) is an agreement between the Government and local authorities such as Surrey. The MOU will set 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 1 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* to 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

[2] https://www.gov.uk/government/publications/surrey-level-2-devolution-framework-agreement/surrey-level-2-devolution-framework-agreement
[3] https://www.gov.uk/government/publications/adult-skills-fund-funding-rules/adult-skills-fund-funding-rules-2025-to-2026
[4] https://www.gov.uk/government/publications/english-devolution-white-paper-power-and-partnership-foundations-for-growth/english-devolution-white-paper
[5] https://www.gov.uk/government/news/devolution-revolution-six-areas-to-elect-mayors-for-first-time
[6] https://www.gov.uk/government/publications/devolution-of-adult-education-functions-mous

- 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, DWP is responsible for adult education functions within Surrey.

5.9 Devolving adult education functions and associated funding to Surrey 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. This will enable Surrey to deliver a range of functions to 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

5.10 Prior to the Machinery of Government (MOG) change[7], the Department for Education (DfE) set readiness criteria to ensure that Surrey demonstrate they can manage their devolved functions and satisfy the Secretary of State that the statutory test is met. The statutory test requires the Secretary of State to be satisfied that making the regulations is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area to which the regulations relate. To assess this, DfE requested that Surrey 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.

5.11 The Secretary of State assessed the evidence provided, and from this concluded that the statutory test is met in relation to Surrey. This is based on Surrey outlining how they will use devolved adult education functions to better respond to their local skills priorities. These included improving the wellbeing of local residents, responding to demographic needs of a rapidly ageing population, and focusing training on priority sectors such as hospitality, adult social care and agriculture. Surrey 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 Surrey. This ensures that Surrey is prepared and equipped to effectively achieve the objectives of devolving the ASF.

[7] https://questions-statements.parliament.uk/written-statements/detail/2025-09-16/hcws930

6. Legislative and Legal Context

How has the law changed?

6.1 The Regulations use the Secretary of State's powers under the Cities and Local Government Devolution Act 2016[8] (the 2016 Act) to transfer to Surrey the core powers and duties of the 2009 Act set out below. These functions are currently held by the Secretary of State by virtue of the 2009 Act.

6.2 Section 86 of the 2009 Act: Surrey must secure appropriate facilities for education and training for individuals aged 19 or over, excluding those under 25 with an Education, Health and Care (EHC) Plan.[9]

6.3 Section 87 of the 2009 Act: Surrey 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 or 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 of the 2009 Act: Surrey must exercise powers under Part 4 to secure free courses of study for relevant qualifications (literacy, numeracy, IT) for those aged 19 or over in its area who do not have the qualification in question or a comparable/higher one (or for those assessed as losing these skills). Additionally, level 2 vocational qualifications and specified level 3 qualifications (the statutory entitlements) must be free for those aged 19 or over (but under 24) who lack these qualifications or a comparable/higher one (or for those who have been assessed as losing these skills).

6.5 The duties outlined above in relation to sections 86, 87 and 88 will be solely exercisable by Surrey in relation to its area.

6.6 Section 90 of the 2009 Act: Surrey must encourage participation in education and training for individuals aged 19 or over, including encouraging employer participation and contribution to the costs of education and training for such persons.

6.7 Section 100(1) of the 2009 Act- provision of financial resources: This is the general funding power for the ASF which will enable Surrey 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

6.8 Section 100(1B) of the 2009 Act- provision of financial resources: This is a general funding power that will enable Surrey to secure financial resources to fund approved technical education qualifications or approved steps towards occupational competence.

[8] https://www.legislation.gov.uk/ukpga/2016/1
[9] https://www.gov.uk/children-with-special-educational-needs/extra-SEN-help

6.9 Section 90, as well as the funding powers at section 100(1) and 100(1B), will be exercisable concurrently by Surrey and the Secretary of State in relation to the area.

6.10 The following are exceptions and conditions to the above:

- Powers under the 2009 Act referred to above will exclude functions relating to apprenticeship training, persons subject to adult detention, or any power to make Regulations or Orders.
- Where Surrey adopts rules of eligibility for awards by an institution to which it makes grants, loans or other payments under section 100, 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 regulation 5 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.[10]

6.11 For section 100(1B) specifically: This power is subject to a further exception for adults aged under 25 who are in receipt of an EHC Plan.

6.12 Regulation 6 and the Schedule to the Regulations apply certain provisions of the 2009 Act with modifications to Surrey for the purpose of it exercising the transferred functions.

Why was this approach taken to change the law?

6.13 The English Devolution and Community Empowerment Bill[11], if enacted, will confer adult education functions on strategic authorities. However, Surrey is not a strategic authority. This is the only possible approach to make the necessary changes for Surrey.

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no statutory requirement to consult. However, the DfE and DWP have engaged closely with Surrey who have consented to making the Regulations.

8. Applicable Guidance

8.1 In exercising the functions mentioned in regulations 3 and 4 of the Regulations, Surrey 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 Exercising Devolved Adult Education Functions guidance[12] was first published on 23 July 2018.

8.3 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.

[10] https://www.legislation.gov.uk/uksi/2007/779/regulation/2
[11] https://bills.parliament.uk/bills/4002
[12] https://www.gov.uk/government/publications/exercising-devolved-adult-education-functions

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this Instrument because this Instrument will have no impact on businesses, charities, and voluntary sectors.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant impact on business, charities or voluntary bodies because the legislation pertains solely to the transfer of powers to the local authority. 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.

9.3 This legislation does not impact small or micro businesses.

9.4 The impact on the public sector is that conferring additional functions on Surrey 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 DWP to Surrey, 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.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring the legislation is to continue to work and engage with Surrey once their adult education functions are devolved. Additionally, Surrey will submit Annual Assurance Reports which will provide an overview of Surrey's delivery of their devolved functions over the previous academic year, which will be discussed in Annual Skills Stocktakes. It is asked that that the Annual Assurance Report is published on Surrey's website.[13]

10.2 This Instrument does not include a statutory review clause because it does not make or amend regulatory provision in relation to any qualifying activity for the purpose of the Small Business, Enterprise and Employment Act 2015.[14]

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Section 17(1) of the 2016 Act provides that the Secretary of State may only make regulations under section 16 if:

- the relevant local authority consents to the making of the regulations; and
- the Secretary of State considers that the making of the regulations is likely to improve the economic, social and environmental well-being of some or all of the people who live or work in the area.

[13] https://www.gov.uk/government/publications/english-devolution-accountability-framework/english-devolution-accountability-framework

[14] https://www.legislation.gov.uk/ukpga/2015/26/contents

11.2 Section 17(6) of the 2016 Act provides that, at the same time as laying a draft of a Statutory Instrument containing regulations under section 16(1) of the 2016 Act before Parliament, the Secretary of State must also lay a report explaining the effect of these regulations which confer public authority functions onto the local authority, and why the Secretary of State considers it appropriate to make the regulations.

11.3 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 on behalf of the Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of The Surrey County Council (Adult Education Functions) Regulations 2026 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").