EXPLANATORY MEMORANDUM TO

THE YORK AND NORTH YORKSHIRE COMBINED AUTHORITY (ADULT EDUCATION FUNCTIONS) 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 These regulations use the Secretary of State's powers under the Local Democracy, Economic Development and Construction Act 2009 ("The Local Democracy Act") to transfer to York and North Yorkshire Combined Authority ("York and North Yorkshire") certain adult education functions. As a Combined Authority ("CA"), York and North Yorkshire 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.

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 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. 1 August 2025) from the Secretary of State for Education to York and North Yorkshire.

4.2 The legislation transfers key adult education functions in the Apprenticeships, Skills, Children and Learning Act 2009 ("the 2009 Act") to York and North Yorkshire 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 1st August 2022, a devolution deal was agreed between the Government and York and North Yorkshire, 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 York and North Yorkshire deal forms part of a wider tranche of deals with the East Midlands Combined County 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 York and North Yorkshire. 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 York and North Yorkshire.

5.9 Devolving adult education functions and associated funding to York and North Yorkshire 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 York and North Yorkshire 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 York and North Yorkshire 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 Order relates; and making the Order (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 York and North Yorkshire 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 York and North Yorkshire outlining how they will use devolved adult education functions to better respond to their local skills priorities, to transition to Carbon Negative, deliver economic growth and ensure opportunities are available for all local residents. They will achieve this by widening access & participation, including raising awareness of local adult skills provision to residents and developing more flexible provision which responds to local economic needs. York and North Yorkshire 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 York and North Yorkshire. This ensures that York and North Yorkshire are 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 York and North Yorkshire 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:

York and North Yorkshire 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:

York and North Yorkshire 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:

York and North Yorkshire 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 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 York and North Yorkshire in relation to its area.

6.5 Section 90 2009 Act:

York and North Yorkshire 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 York and North Yorkshire 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 York and North Yorkshire to secure financial resources to fund approved technical education qualifications or approved steps towards occupational competence.

The funding powers at s100(1) and s100(1B) will be exercisable concurrently by York and North Yorkshire 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 York and North Yorkshire 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 CA, appropriate consent must also be given by each appropriate authority. DfE has obtained the consent of York and North Yorkshire 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 York and North Yorkshire to the Secretary of State pursuant to section 112A of the Local Democracy 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 113(2) of the Local Democracy Act has been carried out. A public consultation on the proposed devolution deal for York and North Yorkshire ran for six weeks, from 21 October to 16 December 2022, to gather views on its implementation. It included the transfer of Adult Education functions in sections 86, 87, 88, 90 and 100(1) of the 2009 Act. This consultation was conducted by the two Constituent Councils (York Council and North Yorkshire Council) prior to the establishment of York and North Yorkshire, as part of York and North Yorkshire's

establishment Order (York and North Yorkshire Combined Authority Order 2023). The majority of responses supported the proposals related to skills, with 919 (60% of total responses) in favour and 336 (22% of total responses) against. 253 responses (17% of total responses) selected 'Neither support or oppose' and 23 responses (2% of total responses) selected 'Don't know'. 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 CAs and Combined County Authorities (CCAs) for new reformed technical qualifications at levels 2 and 3. This consultation, pursuant to section 113 of the Local Democracy 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, York and North Yorkshire 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 York and North Yorkshire 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 York and North Yorkshire, enabling it to determine how the funds are spent in line with local priorities. This change is expected to improve the exercise of statutory

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

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.

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 York and North Yorkshire once their adult education functions are devolved. Additionally, York and North Yorkshire will submit Annual Assurance Reports which will provide an overview of York and North Yorkshire'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

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

"In my view the provisions of The York and North Yorkshire Combined Authority (Adult Education Functions) 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").