EXPLANATORY MEMORANDUM TO

THE CHILDCARE (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2025

2025 No. 841

1. Introduction

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

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

2. Declaration

2.1 Stephen Morgan, Minister for Early Education at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Harjit Athwal, Deputy Director for the Early Years Quality, Recovery and Welfare Division in the Early Years, Childcare, Families and Analysis Directorate of Families Group at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mairead Faulkner at the Department for Education (Mairead.FAULKNER@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 This instrument amends four statutory instruments relating to childcare and early years. These changes give effect to updated versions of the two Early Years Foundation Stage ("EYFS") statutory frameworks (for childminders and for group and school-based providers respectively)[1] and the Early Years Qualification Requirements and Standards document[2] ("the Qualifications Document") to include strengthened safeguarding requirements and nutrition guidance, to make changes in consequence of the introduction of the experience-based route and to make changes to the arrangements for assessing children. The instrument also amends the data items to be collected from early years providers in the Early Years Census and makes other minor updates and clarifications.

Where does the legislation extend to, and apply?

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

[1] https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2
[2] https://www.gov.uk/government/publications/early-years-qualification-requirements-and-standards

4.3 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? What was the previous policy, how is this different?

5.1 The EYFS statutory framework sets the standards early years providers in England must meet to ensure that children learn, develop well, and are kept healthy and safe. It was first introduced in 2008 and has undergone a number of revisions since its introduction, most recently in November 2024. In January 2024 the EYFS document was separated into two documents to improve accessibility, one applicable to childminders (the "childminder EYFS") and one applicable to group and school-based providers (the "group and school-based provider EYFS").

Safeguarding changes

5.2 This instrument amends the EYFS documents to strengthen the safeguarding requirements. DfE continually monitors and reviews safeguarding requirements for early years settings to ensure they are comprehensive and suitably robust to help providers keep children as safe as possible. A consultation was held to seek views on proposals to strengthen EYFS safeguarding requirements (as detailed further in section 7 below).

5.3 The safeguarding changes were informed by extensive engagement with providers, health professionals, sector stakeholders and safeguarding experts and using lessons learned from previous incidents. The changes include:

- Amendments to promote safer recruitment, including: requirements to obtain references and a requirement for safeguarding policies to include procedures to help ensure that only suitable individuals are recruited.
- Creation of new requirements for providers to follow up if a child is absent for a prolonged period of time and amendments to ensure that providers hold additional emergency contact details where possible.
- Creation of new requirements to ensure safer eating.
- Creation of a safeguarding training criteria annex and a requirement for safeguarding policies to include details of how safeguarding training is delivered, including how practitioners are supported to put it into place.
- Amendments to ensure that early years students and trainees are required to hold a valid and current paediatric first aid qualification, in order for them to be included in staff:child ratios.
- Amendments to ensure that children's privacy during nappy changing and toileting is considered and balanced with safeguarding considerations.
- A small number of other minor changes to the structure and wording of the safeguarding requirements to improve clarity.

Experience-Based Route

5.4 This instrument amends the group and school-based provider EYFS to implement the second part of the introduction of the experience-based route ("EBR") for early years educators. The group and school-based provider EYFS sets out mandatory staff:child ratios, including how many staff at different qualification levels an early years setting needs to meet children's needs and ensure their safety. The Department for Education defines 'full and relevant' qualifications in the Qualifications Document, which allow

the holder to be included within these ratios at different levels. The EBR is an optional route providers may use to enable experienced staff without full and relevant level 3 qualifications to be counted in the staff:child ratios at level 3 without obtaining a new qualification. This route was introduced on 3 March 2025 by the Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2025 (S.I. 2025/132), enabling early years providers to start undertaking the route with their staff[3]. This instrument now amends the staff:child ratio requirements that early years providers must meet to enable staff who have completed the EBR to work within the ratios at level 3.

5.5 Staff who meet the EBR eligibility criteria can begin a supervised practice period in their setting to gain any skills and knowledge they are missing from the Early Years Educator (Level 3) criteria. Once this period is completed, and the early years provider is satisfied that sufficient evidence has been provided demonstrating that all criteria have been met, the individual will be eligible to work within the ratios at level 3, subject to meeting other requirements in the EYFS statutory framework and Qualifications Document.

5.6 Following introduction of the EBR, the Department for Education is working with awarding organisations to design an assessment route for individuals who have demonstrated that they have the skills and experience to operate at level 3 to gain a full and relevant qualification and continue working in the staff:child ratios at this level.

Nutrition changes

5.7 This instrument amends both EYFS documents to help meet the existing requirement that, where children are provided with meals, snacks and drinks, these must be healthy, balanced and nutritious. This change is made following calls from the sector for more clarity and guidance to support early years providers in this area. New nutrition guidance has been developed with nutrition and sector experts. Research and engagement indicated that the 'example menus for early years settings in England' guidance, which was previously signposted to in the EYFS, was outdated in its nutritional advice and also underused, with many educators finding it too long, inaccessible and not engaging.

5.8 Following a targeted consultation with nutrition and early years sector experts and Ofsted, the new guidance[4] has replaced the 'example menus' guidance. There is a new requirement for providers to have regard to the nutrition guidance, meaning they must take it into account and should follow it unless there is good reason not to.

Assessment arrangements changes

5.9 This instrument gives effect to amendments to Annex B of the group and school-based provider EYFS which include additional digital elements of the Reception Baseline Assessment ("RBA") introduced from academic year 2025/26 onwards. The RBA is an age-appropriate assessment of early mathematics and early literacy, communication and language. It is delivered in English and is administered within the first 6 weeks of a pupil starting reception. For the first four years of the RBA, the

[3] The Explanatory Memorandum to the Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2025 gives more information about the experience-based route: https://www.legislation.gov.uk/uksi/2025/132/pdfs/uksiem_20250132_en_001.pdf

[4] https://assets.publishing.service.gov.uk/media/6839b752210698b3364e86fc/Early_years_foundation_stage_nutrition_guidance.pdf

Standards and Testing Agency ("STA") contracted the National Foundation for Educational Research ("NFER") to develop and deliver the assessment. NFER were responsible for delivering the RBA beginning from the 2021/22 academic year. For academic year 2025-26 onwards, the STA are now responsible for developing and delivering the RBA.

5.10 STA has introduced additional digital elements and a new assessment framework for the RBA. The RBA's purpose of assessing early mathematics and early language, communication and literacy remains unaltered. Annex B to the group and school-based provider EYFS has been amended to reflect this change, as well as to include minor clarifications.

5.11 Both EYFS documents have also been amended to add an exception to the requirement to complete the EYFS Profile assessment for all children in the final term of the academic year in which they reach the age of 5. Occasionally children remain in EYFS provision beyond the age of 5 and this exception allows teachers (after discussion and in agreement with parents/carers) to delay completion of the EYFS Profile assessment until the end of the child's time in the EYFS before the child moves into year 1. This exception reflects current practice and is outlined in the EYFS Profile Handbook, which is non-statutory guidance for providers[5].

5.12 Through engagement with the sector, both EYFS documents have also been amended to make minor drafting changes to improve clarity.

Early Years Census changes

5.13 Early years providers are required to provide prescribed information about the young children in their care to local authorities for onward transmission to the Secretary of State. For each child receiving a government-funded childcare entitlement place the Department currently collects data through the early years census on whether the child has an Education, Health and Care plan or is receiving Special Educational Needs ("SEN") support. This instrument amends the Childcare (Provision of Information About Young Children) (England) Regulations 2009 (known as the "Census Regulations") to provide that the data items to be collected in the early years census about individual children with SEN are the child's SEN type, the primary and secondary ranking of those types if there is more than one, and which SEN provision type is being made for them. The first collection of the new SEN data items in the early years census will take place in January 2027.

5.14 These changes will align the SEN information collected from early years providers with that collected from schools and will provide valuable information to support early intervention and policy development to improve provision for children aged 0 to 5 with SEN and disabilities, including our understanding of the support needed for children who are born with complex needs.

5.15 SEN type and SEN type rank will be collected annually from January 2027 for all children who are recorded on the EY Census as having either 'SEN support' or 'EHCP' recorded as their SEN provision. The SEN type codes are the same as those collected in the school census, as listed in the Common Basic Data Set database[6].

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5 https://assets.publishing.service.gov.uk/media/6747436ba72d7eb7f348c08b/Early_years_foundation_stage_profile_handbook.pdf

6 https://www.gov.uk/government/publications/common-basic-data-set-cbds-database

5.16 This instrument also replaces 'Gender' with 'Sex' as a data item to be collected in the EY Census, to reflect current practice and to align with other statutory data collections. Whilst the word 'gender' was used synonymously with 'sex' in data collections, the changing use of language has meant that the word may be interpreted in different ways. Consistency of language throughout the Department's collections will improve the understanding of the data and will ensure they are in line with the recommendations of the UK Statistics Authority's Inclusive Data Taskforce.

5.17 The instrument also updates an out-of-date reference in the Census Regulations to the "assessment scales" of the EYFS, and replaces it with a reference to the assessment rating for a child against the early learning goals specified under section 41(2)(a) of the Childcare Act 2006. The early learning goals are set out in section 1 of the group and school-based provider EYFS, and Annex C to the childminder EYFS.

Local Authority Targets changes

5.18 This instrument also amends the Local Authority Targets (Well-Being of Young Children) Regulations 2007 (S.I. 2007/1415) which set out the process by which the Secretary of State may set targets for local authorities for the improvement of well-being and the reduction of inequalities between young children in their areas. The amendment removes an outdated reference to the "assessment scales" of the EYFS and instead provides that any local authority targets set under the Regulations must be set by reference to children's attainment of one or more of the early learning goals.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 39(1) of the Childcare Act 2006 ("the 2006 Act") requires the Secretary of State to specify learning and development requirements and welfare requirements, together known as the EYFS. These requirements are prescribed in the Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (S.I. 2007/1772) ("the 2007 Order") and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938) ("the 2012 Regulations"). Section 44(1) of the 2006 Act enables these instruments to refer and give effect to provision in a document, as well as making provision in the instruments themselves.

6.2 Section 40 of the 2006 Act imposes a duty to implement the EYFS on early years providers registered under Chapter 2 of Part 3 of the Act, and on certain schools making early years provision that is exempt from the requirement to register by virtue of section 34(2) of the Act. This instrument amends the 2007 Order and the 2012 Regulations to give effect to new versions of the EYFS documents dated 14 July 2025 (but effective from 1 September 2025).

6.3 Regulation 3(2)(b) of the 2012 Regulations provides that the Qualifications Document, to the extent that it specifies qualifications and training requirements to be met by early years providers other than early years childminders, has effect for the purposes of specifying the welfare requirements under section 39(1) of the 2006 Act. This instrument amends regulation 3(4) of the 2012 Regulations to give effect to the revised version of the Qualifications Document dated 14th July 2025. The Qualifications Document was previously amended in March 2025 by the Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2025 (S.I. 2025/132) to introduce the EBR and this instrument completes the introduction of the EBR by amending the staff:child ratios.

6.4 This instrument also amends the Childcare (Provision of Information About Young Children) (England) Regulations 2009 (S.I. 2009/1554) made under section 99 of the 2006 Act, which enables regulations to make provision requiring early years providers to provide individual child information to the Secretary of State or any prescribed person.

6.5 Section 1 of the 2006 Act imposes a general duty on English local authorities to improve the well-being of young children in their area and reduce inequalities between young children in their area. By section 1(3), the Secretary of State may set targets for local authorities for the achievement of these aims in accordance with regulations. These are the Local Authority Targets (Well-Being of Young Children) Regulations 2007 (S.I. 2007/1415). In exercising their functions, a local authority must act in the manner best calculated to secure that any such targets are met. This instrument amends an out-of-date reference in the Regulations. Once amended, any targets set under the Regulations must be set by reference to children's attainment of the early learning goals specified under section 42(1)(c) of the 2006 Act.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

Safeguarding consultation

7.1 There is a statutory requirement in section 43(2) Childcare Act 2006 to consult the Chief Inspector (Ofsted) and such other persons as appropriate before amending the welfare requirements. This requirement has been met as outlined below.

7.2 A public consultation on EYFS safeguarding changes was launched on 22 April 2024 and closed on 17 June 2024. In total, the consultation received 1470 responses. The highest proportion of consultation responses came from private, voluntary or independent ("PVI") group setting managers (40.7%, 598), followed by Other (12.4%, 182), Local Authorities (9.7%, 142) and Primary school teachers (9.4%, 138). There were also a good number of responses from Ofsted-registered childminders (9.3%, 136).

7.3 There was clear agreement from respondents that the proposed changes to the EYFS safeguarding requirements would improve children's safety and align with current best practice in early years settings. Additionally, respondents asked for:

- Clear and comprehensive guidance in the EYFS on whistleblowing procedures.
- New expectations to help ensure employers provide references including details of any safeguarding concerns in a timely manner.

7.4 The consultation response published in October 2024[7], provides further detail on each of the safeguarding proposals individually, setting out the responses to the consultation and the reasons behind the decisions made.

[7] https://assets.publishing.service.gov.uk/media/6705184530536cb927482dd6/Early_years_foundation_stage_safeguarding_reforms_-_response.pdf

Consultation on EBR changes

7.5 The Department for Education held a 4-week public consultation on the EBR between 22 April and 20 May 2024. The Government's response to the consultation was published on 28 January 2025[8].

7.6 In total the consultation received 1159 responses. The highest proportion of responses (55%) came from private, voluntary and independent (PVI) early years setting managers.

7.7 The consultation sought views on the decision-making model, eligibility criteria and process requirements. All proposals received an agreement rate of between 52 and 92%. Taking consultation responses into account, the Department for Education implemented the EBR proposals.

Targeted expert consultation on nutrition changes

7.8 Between 4 February and 3 March 2025, a targeted consultation on the proposed EYFS nutrition change was conducted with nutrition and early years sector experts. A smaller-scale, expert consultation that ensured the relevant interests were taken into account was appropriate for this relatively minor change.

7.9 The consultation received 10 responses from nutrition and sector experts, including Ofsted, as well as one unified response from an early years nutrition coalition group, including: 5 early years sector organisations, 6 early years academic organisations, 5 local authorities, 11 food and nutrition charities and non-government organisations.

7.10 Responses to the consultation were overwhelmingly in favour of the EYFS nutrition change, with 90% of respondents strongly agreeing or agreeing with replacing the example menus with the new nutrition guidance, and 80% agreeing or strongly agreeing with adding a new expectation into the EYFS that providers 'should' follow the new guidance (with those who disagreed wanting stronger mandatory standards).

7.11 Additionally, specific amendments to the wording and structure of the guidance were requested throughout the guidance. Where these suggestions aligned with the objectives of the guidance and the latest health advice, they were actioned.

Assessment arrangement changes

7.12 There is a statutory requirement in section 42(A1) of the Childcare Act 2006 to consult Ofqual and such other persons as appropriate before making a learning and development order specifying assessment arrangements. As Ofqual and Ofsted have been specifically consulted, this requirement has been met. A public consultation was not considered appropriate for the changes to the assessment arrangements as the routine changes to Annex B are minor and the purpose of the RBA remains unaltered. RBA 2025 has already been tested extensively over several years with schools, pupils and relevant experts as part of the Standard and Testing Agency's test development process. The change to the EYFS profile assessment merely formalises existing practice.

8. Applicable Guidance

8.1 The revised versions of the childminder EYFS and the group and school-based provider EYFS have been published on 14 July 2025 enabling early years providers to see the changes before they come into force on 1 September 2025.

[8] https://assets.publishing.service.gov.uk/media/67ab67805d27cee6cccec493/Experience-based_route_for_early_years_practitioners_-_government_consultation_response.pdf

8.2 Guidance to support early years providers implementing the EBR policy was published on 28 January 2025[9]. No new EBR guidance is required for the changes introduced in this instrument.

8.3 The EYFS nutrition guidance[10] was published on 17 April 2025.

8.4 Guidance for schools on the Reception Baseline Assessment[11] was published on 2 June 2025.

8.5 Guidance for early years providers on the EYFS Profile assessment is contained in the EYFS Profile Handbook[12], published on 28 November 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

Safeguarding changes

9.1 A low regulatory impact assessment (LRIA) in relation to the safeguarding changes is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

9.2 An Impact Assessment in relation to the EBR changes was published on 10 February 2025[13], alongside the Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2025 (S.I. 2025/132).

Impact on businesses, charities and voluntary bodies

9.3 Although this legislation applies to small businesses, such as nurseries and childminders, which make up a large proportion of the childcare market, most changes will have no, or no significant, impact on business, charities or voluntary bodies because they are for clarification and formalise existing best practice. Those with minor impact on the sector are for safety purposes to ensure the health and wellbeing of the children looked after.

9.4 To minimise the impact of the requirements on small or micro businesses, these changes will be supported by a programme of effective communications and engagement through which we will work with the sector to ensure they understand the changes being made to the EYFS, which changes are mandatory, which are optional as long as new minimums are met, and how settings can best implement the changes. We plan to provide a set of documents to concisely explain the changes, as well as events and vodcasts hosted via Foundation Years (a platform the Department owns and uses to connect and engage with the sector) where the changes are explained with opportunities for questions from practitioners. We will also work with Ofsted and local authorities.

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[9] https://assets.publishing.service.gov.uk/media/67c09ff972e83aab48866c2c/The_experience-based_route_for_early_years.pdf

[10] https://assets.publishing.service.gov.uk/media/6839b752210698b3364e86fc/Early_years_foundation_stage_nutrition_guidance.pdf

[11] https://www.gov.uk/government/publications/reception-baseline-assessment-administration-guidance/2025-reception-baseline-assessment-administration-guidance

[12] https://assets.publishing.service.gov.uk/media/6747436ba72d7eb7f348c08b/Early_years_foundation_stage_profile_handbook.pdf

[13] https://www.legislation.gov.uk/uksi/2025/132/impacts

9.5 For the clarificatory and safeguarding changes, there is no, or no significant, impact on the public sector.

9.6 There is expected to be an impact on business, charities and voluntary bodies where staff undertake the EBR, as this is likely to include familiarisation costs, an increased wage bill, and costs associated with monitoring and assessing staff. There are expected to be revenue benefits for early years providers from being able to offer additional childcare places. EBR is an optional flexibility for early years providers.

9.7 The EBR policy is expected to impact small or micro businesses. As it is an optional flexibility, the approach taken for small and micro businesses is the same as that taken for larger businesses.

9.8 The impact on the public sector of EBR is expected to be the same as that for business, charities or voluntary bodies.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The operation of this instrument will be kept under review on a regular periodic basis. Different policy teams will regularly evaluate the impact of the changes and respond to feedback from the sector, as needed.

10.2 The instrument does not include a statutory review clause although two of the instruments amended (the 2007 Order and the 2012 Regulations) already contain statutory review clauses. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, Parliamentary Under Secretary of State (Minister for Early Education), Stephen Morgan, has made the following statement:

"A review would be disproportionate when taking into account the economic impact of the regulatory provisions on the qualifying activity, as it does not have a significant annualised net impact on business and would involve high costs of undertaking a review, with limited scope for change".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument fulfils a commitment made to the Joint Committee on Statutory Instruments in relation to the Early Years Foundation Stage (Miscellaneous Amendments) and Childcare Fees (Amendment) Regulations 2021 (S.I. 2021/432), which was reported in the Fourth Report of Session 2021-22 for failing to specify the manner of publication of delegated supplementary provision. This instrument amends article 3D(3) of the 2007 Order to specify that the manner of publication is on the gov.uk website.

12. European Convention on Human Rights

12.1 As this Instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

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").