EXPLANATORY MEMORANDUM TO

THE CHILDCARE (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2026

2026 No. 796

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.

2. Declaration

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

2.2 Michael Davies, Deputy Director for the Early Years Workforce and Practice Division in the Early Years Directorate of Families Group at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mairéad Faulkner at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: Mairead.Faulkner@education.gov.uk. Alternatively, the Department can be contacted by telephone: 0370 000 2288.

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 include giving effect to revised versions of the Early Years Foundation Stage (EYFS) statutory frameworks[1] and closing a gap in provision by requiring providers of childcare on domestic premises (CoDP) to notify Ofsted or a Childminder Agency (CMA) of changes to the persons aged 16 years or older living or working on any domestic premises from which childcare is provided. This instrument also amends the Early Years Qualification Requirements and Standards document[2] ("the Qualifications Document").

4.2 This instrument also amends the registration requirements and ongoing requirements applicable to early years providers, later years providers and voluntarily registered

[1] EYFS statutory framework for childminders: https://assets.publishing.service.gov.uk/media/6874e14383d39f474eb7d373/Early_years_foundation_stage_statutory_framework_for_childminders_.pdf and EYFS statutory framework for group and school-based providers: https://assets.publishing.service.gov.uk/media/68c024cb8c6d992f23edd79c/Early_years_foundation_stage_statutory_framework_-_for_group_and_school-based_providers.pdf.pdf

[2] Early years qualification requirements and standards: https://www.gov.uk/government/publications/early-years-qualification-requirements-and-standards

providers to prohibit the provision of registered childcare from any premises where a banned dog breed is present or kept. Slightly different requirements apply to home child carers (nannies).

4.3 Other minor updates and clarificatory changes to the EYFS statutory frameworks are also made.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) 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.

5. Policy Context

What is being done and why?

5.1 This instrument amends requirements for those registered on the Early Years Register (for the care of children aged 0-5), Part A of the General Childcare Register (the compulsory childcare register for the care of children aged 5-7) and Part B of the General Childcare Register (the voluntary register, for providers who are exempt from compulsory registration, e.g. those caring for children aged 8-17, nannies and activity-based providers).

5.2 This instrument amends the registration requirements and requirements governing activities for early years providers, later years providers and voluntarily registered providers to prohibit the provision of registered childcare from any premises where a banned dog breed is kept or otherwise present. This will help to ensure that children in registered childcare settings are suitability protected from the risks associated with banned dog breeds by ensuring that such breeds are not kept or otherwise present at premises where childcare is provided. Nannies must not take banned dog breeds to the relevant premises and must ensure, so far as reasonably practicable, that no banned dog breed is present at the relevant premises when childcare is being provided. This requirement is different to that of childcare providers to reflect that nannies do not have full control over the premises.

5.3 If a childcare provider currently operates from a premises where a banned dog breed is kept or present, they have the option to register their childcare to be delivered from a different premises, or alternatively to stop providing childcare or euthanise their dog.

5.4 Banned dog breeds are those types of dogs to which section 1 of the Dangerous Dogs Act 1991 (c. 65) applies, namely the Pit Bull terrier, the Dogo Argentino, the Fila Brasiliero, the Japanese Tosa and the XL Bully.

5.5 This instrument addresses a gap in the requirements for registered early years providers in England to notify Ofsted or their CMA of changes to persons aged 16 or over living or working on domestic premises where childcare is provided. This requirement already applied to childminders working on domestic premises and is now extended to apply to providers of childcare on domestic premises (CoDP). Providers of CoDP are providers who fall outside the statutory definition of "early years childminding" in section 96(4) Childcare Act 2006, because they work with more than 4 others (see section 96(5)) (or more than 3 others if a person was

registered (or had applied to be registered) to provide early years CoDP before 1 November 2024).

5.6 The notification requirement for providers of CoDP will be enforced in the same way as the existing requirement for childminders, meaning failure to comply without reasonable excuse is a criminal offence.

5.7 This instrument also changes the requirement for early years providers, later years providers and voluntarily registered providers to notify Ofsted or their CMA of allegations of 'serious harm' to allegations of 'harm' in respect of harm to or abuse of a child. 'Harm' has the same meaning as in section 31(9) of the Children Act 1989. This is because any harm to a child by a person living, working or caring for children in an early years setting should be considered serious and reported. This aligns with the existing test for suspension in regulation 9 of the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 (S.I. 2008/976).

5.8 The Qualifications Document sets out the minimum qualification and experience requirements that group and school-based providers must ensure their staff meet to be recognised as level 2, level 3 or level 6 members of staff for the purpose of working within the EYFS staff:child ratios.

5.9 The Qualifications Document is being amended to make minor clarifications to other existing policy already included within the document. This includes clarifying that to be included in the staff:child ratios at level 3 staff who have started their full and relevant level 3 or above qualification on or after 1 September 2014 must also hold a suitable level 2 English qualification (paragraphs 1.18, 1.25 and 1.26).

5.10 The EYFS statutory frameworks set the standards early years providers in England must meet to ensure that children learn, develop well, and are kept healthy and safe. There is one framework applicable to childminders (the "childminder EYFS") and one applicable to group and school-based providers (the "group and school-based provider EYFS"). All the changes made by this instrument are made to the welfare and safeguarding requirements in section 3 of the EYFS documents. There are no changes to the learning and development requirements or assessment arrangements.

5.11 This instrument amends the EYFS to clarify the welfare requirements for babies' and children's sleeping arrangements in early years settings. Early years providers are required to meet the safer sleep requirements set out in the EYFS frameworks, which previously linked to NHS safer sleep guidance. To make the safer sleep requirements clearer, the requirements are now set out in the EYFS frameworks themselves.

5.12 This instrument also amends the EYFS to impose a new requirement for providers to have regard to new screen use guidance for early years settings. This builds on the published parent guidance[3] to support settings in managing screen use, working in partnership with parents.

5.13 This instrument also updates the EYFS in consequence of changes made to the Safeguarding Vulnerable Groups Act 2006 (c.47) by the Crime and Policing Act 2026 (c. 20). Previously, supervised volunteers were not considered to be carrying out regulated activity but from 1 September providers must obtain an enhanced criminal records check for all volunteers (except those helping out on an occasional basis, such as parents on a trip).

[3] Screen time guidance for under 5s: https://beststartinlife.gov.uk/screen-time-under-5s/

5.14 This instrument also makes a small number of other minor clarificatory changes to the EYFS statutory frameworks.

What was the previous policy, how is this different?

5.15 The requirements regarding banned dog breeds and the requirement to have regard to the screen use guidance are new additions with no prior equivalent within the EYFS framework. The updates to safer sleep, changes to notification requirements, qualifications, enhanced criminal records checks and the other minor clarifications to the EYFS all build on existing requirements. Further details on these changes can be found in paragraphs 5.1–5.14 above.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 39(1) of the Childcare Act 2006 ("the 2006 Act") (c. 21) 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 Learning and Development Order") and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938) ("the Welfare 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 Learning and Development Order and the Welfare Regulations to give effect to new versions of the EYFS documents dated 13th July 2026 (but effective from 1 September 2026).

6.3 Regulation 3(2)(b) of the Welfare 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 Welfare Regulations to give effect to the revised version of the Qualifications Document dated 13th July 2026.

6.4 This instrument also amends the prescribed requirements for registration in the Childcare (Early Years Register) Regulations 2008 (S.I. 2008/974) ("the Early Years Register Regulations") and the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008/975) ("the General Childcare Register Regulations"), as well as the requirements governing activities in the General Childcare Register Regulations.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 There are statutory requirements in sections 43(2), 59(2) and 67(2) of the 2006 Act to consult the Chief Inspector (Ofsted) and such other persons as appropriate before amending the welfare requirements and the regulations governing the activities of later years and voluntary registered providers. The Chief Inspector has been consulted on all the changes made to these instruments including the changes to the EYFS documents. Additional consultation has also been carried out as outlined below.

7.2 An information-gathering exercise and targeted consultation on proposals to introduce specific legislative requirements on the presence of banned dog breeds in childcare settings was carried out between 24 February and 25 March 2026. The consultation sought views on the following options:

- Do not legislate;
- Prohibit banned dog breeds in settings;
- Prohibit banned dog breeds in settings, unless strict conditions could be met.

7.3 Within these broad options, the Department for Education asked for views on how each should apply to both registration requirements and ongoing requirements applicable to all registered childcare providers. It was therefore possible for respondents to combine views in relation to new providers only, or to existing providers, or both.

7.4 The stakeholders consulted included organisations and bodies across the early years and childcare sector and those with an interest and specific expertise in children's safety and animal welfare.

7.5 The Department contacted 53 stakeholders, held initial meetings with 25 stakeholders and received 14 formal consultation responses. General feedback on the consultation document was also received from 3 stakeholders (including from the Dog Control Coalition which comprises of 11 member organisations) in letter format and they did not express any preferences on the proposed options.

7.6 Overall, stakeholders overwhelmingly prioritised child safety. The majority of stakeholders who submitted a formal response to the consultation expressed a preference to prohibit banned dog breeds in settings. Respondents expressed that changes should be made to legislation applicable to both new and existing settings (including settings registered on later years and voluntary registers), both domestic and non-domestic. The animal welfare organisations the Department spoke with supported ensuring children's safety in settings but disagreed with proposals to legislate against banned dog breeds, as they do not agree that breed specific legislation is effective. Overall, it was considered that preventing banned breed dogs from being present or kept at early years and childcare premises was in the interests of children's safety.

Ofsted and CMAs have been specifically consulted in relation to the change to the notification requirements for providers of CoDP. They all supported the change.

7.7 Ofsted, early years sector representatives and childminding agencies were consulted in relation to removing the word "serious" from the existing requirement for providers to report any allegations of serious harm or abuse by anyone living, working, or

looking after children at the premises. Overall, consultees supported the change stating it was sensible, removed ambiguity, was in line with Local Authority Designated Officer (LADO) referral thresholds and stated they did not consider it to be a substantive change.

7.8 Ofsted has been specifically consulted along with experts in infant sleep and infant death, namely The Lullaby Trust and a consultant paediatrician, on the proposed safer sleep wording for the body of the EYFS. The aim is to make the existing requirements currently linked to via the NHS safer sleep page clearer within the EYFS frameworks. The proposed wording was developed with The Lullaby Trust and the consultant paediatrician.

8. Applicable Guidance

8.1 The revised versions of the childminder EYFS and the group and school-based provider EYFS were published on 13th July 2026, enabling early years providers to see the changes before they come into force on 1 September 2026. At the point of publishing, communications were issued from the Department to the sector to announce the changes.

8.2 Prior to this publication date, early years settings were notified of the intention to introduce a number of changes (safer sleep, changes to notification requirements for providers of CoDP, screen use guidance) by ministerial letter in late March, and of the intention to hold a targeted consultation on banned dog breeds. Following the conclusion of the banned dog breeds targeted consultation, stakeholders who were part of the consultation were notified of the outcome. This included Ofsted and CMAs, who then informed early years settings of the forthcoming change in early May.

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 it will not affect a large number of businesses, and the cost or benefit to business of regulation does not exceed £10 million. However, a Lower Regulatory Impact Assessment has been completed on the measure relating to banned dog breeds. On the overall business impact, it found a negative impact due to familiarisation costs (through reading amended EYFS guidance) for all private childcare providers and compliance costs for childcare providers who own banned dog breeds. In the impact assessment, the Department outlined that Ofsted is aware of 7 childminders with a banned dog breed living at the premises and the Department estimated that there could theoretically be 59 childcare providers with dangerous dogs in England. The Department is continuing work with Ofsted and the Department for Environment, Food and Rural Affairs (DEFRA) to obtain information which will assist it identifying any registered providers with banned breeds on the premises.

Impact on businesses, charities and voluntary bodies

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

9.3 The legislation does impact small or micro businesses. They are not exempted as they are the specific target populations for the proposals.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that it 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. The Learning and Development Order already contains a statutory review clause, which changes made through this instrument will be covered by. Other changes being made by this instrument to the Welfare Regulations, the Early Years Register Regulations and the General Childcare Register Regulations are not covered by existing statutory review clauses, however in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister for Early Education Olivia Bailey 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.'

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative 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").