EXPLANATORY MEMORANDUM TO

THE CHILDCARE (MISCELLANEOUS AMENDMENTS) (INSPECTION OUTCOMES) (ENGLAND) REGULATIONS 2025

2025 No. 1261

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, Parliamentary Under-Secretary of State at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Madeleine Percival, Deputy Director for Early Years Entitlements, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Robert Bell at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: EY.Stakeholders@education.gov.uk. Alternatively, the Department can be contacted by telephone: 0300 000 2288.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 On 9 September 2025 the Office for Standards in Education, Children's Services and Skills ("Ofsted") announced changes to their inspection framework and the introduction of a new five-point grading scale. This followed the government's announcement in October 2024 that it intended to make changes to Ofsted inspections to boost school standards and increase transparency for parents. These Regulations amend four instruments relating to early years and childcare that refer to Ofsted inspection outcomes in consequence of these changes.

4.2 The instruments being amended are: the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147), the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134), the Childcare Providers (Information, Advice and Training) Regulations 2014 (S.I. 2014/2319), and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938).

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) 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 Following consultation[1], Ofsted announced on 9 September 2025 changes to their inspection framework and the introduction of a new five-point grading scale. Inspection reports have been replaced with report cards that include a five-point grading scale across a range of evaluation areas, replacing the use of overall effectiveness grades for all types of education provider. The new grades are: "urgent improvement", "needs attention", "expected standard", "strong standard", and "exceptional". Safeguarding will also be graded as either "met" or "not met". Ofsted confirmed inspections of state schools, nurseries and childminders under the new inspection framework will commence from 10 November 2025 and inspections of independent schools inspected by Ofsted will commence from 5 January 2026. Ofsted inspection grades are used in instruments relating to early years as follows.

Early Education and Childcare Entitlements

5.2 English local authorities have statutory duties to secure provision of the free early education and childcare entitlements ("the free entitlements") for eligible children in their area. The free entitlements are the universal entitlement for 3- and 4-year-olds ("the universal entitlement"), the entitlement for working parents of children aged 9 months to 4 years old ("the working parent entitlement"), and the entitlement for 2-year-olds from families receiving additional support entitlement ("the FRAS entitlement"). The two sets of regulations governing the free entitlements require local authorities to make arrangements for free of charge provision with an early years provider of the parents' choice. This duty to make arrangements with the parents' choice of provider is disapplied in certain circumstances, including where the chosen provider fails to achieve specified Ofsted grades in its most recent inspection report. Local authorities are also required to include provision in their arrangements with providers enabling the local authority to terminate the arrangements if a provider fails to achieve these Ofsted grades. There is no requirement to terminate the arrangements and local authorities can continue to fund these settings, for example in cases of low sufficiency or where they feel quality improvements are being made.

Provision of Information, Advice and Training

5.3 Local authorities are also required to secure the provision of information, advice and training to early years providers registered with Ofsted on the Early Years Register, where the provider receives specified Ofsted inspection grades at its most recent inspection. Local authorities may offer such support to providers regardless of their latest Ofsted inspection outcome but can only require it is taken up if the provider receives one of the specified grades.

Experience Based Route (EBR)

5.4 The EBR is an optional route that early years providers may use to include experienced staff who do not hold the required qualifications in their staff:child ratios at level 3 following a period of supervised practice. This route is only available to providers and staff who meet the eligibility criteria set out in the Early Years

[1] Ofsted consultation response: Improving the way Ofsted inspects education: report on the responses to the consultation - GOV.UK.

Qualification Requirements and Standards document[2], which includes the provider receiving a specified grade at their last Ofsted inspection.

5.5 The thresholds referred to in the instruments being amended do not align with the new Ofsted five-point grading scale and therefore require updating so local authorities can continue to secure free childcare at safe, high-quality provision and for providers to continue offering the EBR.

What was the previous policy, how is this different?

Early Education and Childcare Entitlements

5.6 Prior to these amendments, the thresholds allowing local authorities to refuse to make arrangements or terminate funding for the free entitlements differed according to the type of provision, the date of inspection, and the early education and childcare entitlement under consideration. Providers delivering the FRAS entitlement are subject to higher thresholds than providers delivering the other entitlements, to reflect the particular need for high quality provision for eligible children. This remains the case. The lever for LA intervention specified in this instrument broadly aligns, so far as possible, with the previous provision.

5.7 For state-funded schools inspected under section 5 of the Education Act 2005, including maintained nursery schools, and inspected before the removal of overall effectiveness grades for state-funded schools on 2 September 2024, the specified overall effectiveness grades were "requires improvement" or below for the FRAS entitlement and "inadequate" for the working parent and universal entitlements. For inspections since 2 September 2024, these thresholds were "significant improvement" or "special measures" for all entitlements. For the FRAS entitlement, the specified grades also meant an inspection outcome of "requires improvement" or "inadequate" in the Early Years provision[3].

5.8 For early years providers registered with Ofsted and inspected under section 49 of the Childcare Act 2006 prior to 10 November 2025, and for independent schools inspected by Ofsted under section 109(2) of the Education and Skills Act 2008, the specified overall effectiveness grades were "requires improvement" or below for the FRAS entitlement and "inadequate" for the working parent and universal entitlements.

5.9 The Regulations did not previously make provision for independent schools inspected by an independent inspectorate under section 109(3) of the Education and Skills Act 2008, and this is now included to provide clarity for local authorities of the powers made available to them.

5.10 This instrument amends the Regulations so that local authorities will be able to refuse to make or continue arrangements with a provider if its most recent inspection report identifies that safeguarding is "not met" for all entitlements, or if leadership and governance is graded "needs attention" or below for the FRAS entitlement, and leadership and governance is graded "urgent improvement" for the working parent and universal entitlements. For state-funded schools, including maintained nursery schools, and childcare providers registered with Ofsted this applies to any inspection occurring from 10 November 2025. For independent schools inspected by Ofsted, this

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

[3] Except in the case of provision by the governing body of a maintained nursery school. As these providers did not receive an Early Years judgement the same threshold as the working parent and universal entitlements applied.

applies to any inspection occurring from 5 January 2026. For independent schools inspected by an independent inspectorate, the specified grades are "not met" for safeguarding or "not met" for leadership and governance as these schools receive grades of "met" or "not met" rather than grades from across a five-point scale. However, if the early years provision at an independent school is registered in the early years register, the specified grades are those relating to Ofsted's inspection framework.

Provision of Information, Advice and Training

5.11 Prior to these amendments local authorities were required to secure the provision of information, advice and training for registered early years providers following an Ofsted inspection outcome of "requires improvement" or "inadequate" for overall effectiveness.

5.12 This instrument amends the Regulations so the new threshold is an outcome of safeguarding being "not met" or leadership and governance being graded "needs attention" or "urgent improvement".

Experience Based Route

5.13 Prior to these amendments early years providers were able to offer the EBR to their staff provided the setting was graded "good" or "outstanding" by Ofsted for overall effectiveness at its most recent Ofsted inspection For state-funded schools inspected during the 2024/25 academic year, the school must not have been judged to require "significant improvement" or "special measures".

5.14 This instrument amends the Regulations so that for providers inspected on or after 10 November 2025, the new Ofsted criteria for the EBR is where a provider is graded as "expected standard" or above in leadership and governance and "met" in safeguarding. For independent schools inspected by Ofsted this applies to any inspection occurring from 5 January 2026. For independent schools inspected by an independent inspectorate approved by the Secretary of State they must be graded "met" for safeguarding and "met" for suitability of staff, supply staff and proprietors. This aims to ensure that safeguarding and staff suitability checks are in place in settings for them to offer the EBR. Use of Suitability of staff was considered more appropriate as an equivalent to the Ofsted eligibility criteria for EBR as this focuses on decision-making about the quality, recruitment and retention of staff in settings. The use of leadership and governance in this context would also lead to a risk of providers being excluded from offering EBR for relatively minor issues (which is not the case for the free entitlements as local authorities have a discretion as to whether to take action following an adverse inspection grade). This will allow providers inspected after these dates to continue to be eligible to offer EBR to their staff should they meet the criteria.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 7 of the Childcare Act 2006 places a duty on local authorities to secure free early years provision for eligible children. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147) made under section 7 identify the children who should benefit from free early years provision, the type and amount of free early years provision and how local authorities should discharge their duty to secure free early years provision.

6.2 Section 1(1) of the Childcare Act 2016 places a duty on the Secretary of State to secure that childcare is available free of charge for qualifying children of working parents. This duty is delegated by the Secretary of State to English local authorities by the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134). Part 6 of the 2022 Regulations sets out that local authorities must secure that childcare is made available free of charge, the type and amount of free childcare and how local authorities must discharge the duty to secure free childcare.

6.3 Section 13(1) of the Childcare Act 2006 places a duty on English local authorities to secure provision of information, advice and training to childcare providers in their area. The Childcare Providers (Information, Advice and Training) Regulations 2014 (S.I. 2014/2319) identify the circumstances in which local authorities are required to secure the provision of information, advice and training to early years providers, and the subject matter of that provision.

6.4 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.

6.5 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 a revised version of the Qualifications Document dated 3 December 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 further amendments were made in September 2025 by the Childcare (Miscellaneous Amendments) (England) Regulations 2025 (S.I. 2025/841) to complete the introduction of the EBR by amending the staff:child ratios in the Early Years Foundation Stage statutory framework.

6.6 The existing legal framework relating to inspections of maintained schools, academies and non-maintained special schools is contained in the Education Act 2005 and the Education (School Inspection) (England) Regulations 2005 (S.I. 2005/2038). Those Regulations were amended by the Education (School Inspection) (England) (Amendment) Regulations 2024 (S.I. 2024/908), to ensure that the intervals between inspections would continue to work as intended in the absence of overall effectiveness judgements.

6.7 Ofsted also inspects early years providers under section 49 Childcare Act 2006 (applicable to providers registered in the early years register) and section 109 of the Education and Skills Act 2008 (applicable to registered independent educational institutions).

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 Between 3 February and 28 April 2025, Ofsted consulted on proposals to improve education inspections and the introduction of new report cards for early years providers (except childminder agencies and those on the general childcare register), state-funded schools, non-association independent schools, further education and skills providers and initial teacher education providers[4]. Ofsted received more than 6,500 responses to the consultation with 75% of responses coming from education professionals.

7.2 On 9 September 2025, after reviewing the consultation responses Ofsted confirmed their changes to their inspection framework, including the introduction of report cards and a new five-point grading scale[5].

7.3 The Department also consulted over the same period on the principles of school accountability, the introduction of school profiles, and the approach to improvement and support for state-funded schools. The Department's consultation response was also published on 9 September 2025[6].

7.4 The Department has consulted Ofsted on the proposed change to the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (regulation 2 of this instrument) as required by section 43(2) of the Childcare Act 2006. Ofsted were supportive of the proposal.

7.5 The Department has not consulted more widely on the amendments made by this instrument as they are being made as a consequential change, following the government's decision to reform how education institutions are inspected and Ofsted's subsequent consultation on its renewed education inspection framework. The lever for LA intervention specified in this instrument broadly aligns, so far as possible, with the previous provision. The Department has, however, engaged with Ofsted and a selection of local authorities and bodies representing early years providers to better understand the practical significance of the changes made in this instrument. The need to update the thresholds was broadly recognised, with an agreed position that the health, wellbeing and safety of children should remain at the core of the updated lever for intervention.

8. Applicable Guidance

8.1 There is statutory guidance to support local authorities to discharge their duty to secure the free entitlements in their area including the requirement to secure the provision of information, advice and training to providers[7]. The Department will update the statutory guidance to reflect the specified grades according to provider type and the date of inspection as part of a wider review of the content. The Department plans to update the guidance in January 2026, on GOV.UK, to coincide with these changes coming into effect.

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[4] Ofsted consultation response: Improving the way Ofsted inspects education: report on the responses to the consultation - GOV.UK

[5] Ofsted press notice confirming their reforms: Ofsted confirms changes to education inspection and unveils new-look report cards - GOV.UK

[6] Department for Education consultation response: School accountability reform - GOV.UK

[7] Early Education and childcare statutory guidance - https://www.gov.uk/government/publications/early-education-and-childcare--2

8.2 The Department issued guidance directly to local authorities on 11 September 2025 confirming the proposed new Ofsted thresholds for the free childcare entitlements and the information, advice and training requirements, now being implemented in this instrument. The Department intends to issue a further update with guidance in the days following the laying of this instrument to support local authorities and providers in understanding and implementing the changes when the Regulations come into force.

8.3 Guidance to support early years providers implementing the EBR policy was published on 28 January 2025[8]. This will be updated to reflect the amendments to the Regulations. The Department plans to update and publish the guidance in January 2026 to coincide with these changes coming into effect.

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 these changes are made in consequence of reforms to Ofsted inspection grades and are not expected to have any significant impact on local authorities or early years providers. This is a technical change to enable local authorities to continue to secure high quality free early education and childcare for eligible children in their area and for providers to continue to be eligible to offer the EBR to their staff following new inspections, therefore they broadly maintain or replicate the existing provisions.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this is a consequential change following reforms to Ofsted's inspection framework.

9.3 The legislation does not impact small or micro businesses.

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 For the powers available to local authorities concerning the free childcare entitlements and requirement to secure the provision of information, advice and training the approach to monitoring this legislation is to maintain regular, ongoing engagement with local authorities regarding the provision of childcare entitlements in their area. Regarding the EBR there will be regular evaluation of the impact of the changes conducted and responses to feedback from the sector, as needed.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Olivia Bailey, Parliamentary Under-Secretary of State at the Department for Education has made the following statement:

"A review would be disproportionate when taking into account the economic impact of the regulatory provision on the qualifying activity."

[8] The Experience-Based Route for Early Years non-statutory guidance - https://assets.publishing.service.gov.uk/media/67c09ff972e83aab48866c2c/The_experience-based_route_for_early_years.pdf

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").