EXPLANATORY MEMORANDUM TO

THE ADULT SOCIAL CARE NEGOTIATING BODY FOR ENGLAND REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Alison McGovern MP, Minister of State for Social Care and Mental Health at the Department of Health and Social Care, confirms that this Explanatory Memorandum meets the required standard.

2.2 Rose Thomas-Willis, Deputy Director for Adult Social Care Pay and Careers, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Steph Goodwin at the Department of Health and Social Care can be contacted by email at the following address with any queries regarding the instrument: ASCFPA@dhsc.gov.uk. Alternatively, the department can be contacted by telephone: 0300 790 4007.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Regulations, which are made under the powers in Part 3, Chapter 2 of the Employment Rights Act 2025 (the Act), establish the Adult Social Care Negotiating Body for England (ASCNB) which will be responsible for convening employer and worker representatives supported by an independent chair and others to engage in collective bargaining to reach a negotiated Fair Pay Agreement (FPA) for Adult Social Care (ASC) workers in England. The agreement will then be ratified, meaning that any new negotiated pay, terms and conditions, or wider matters will then become legally enforceable in covered worker's contracts.

4.1.1 The ASCNB is free to negotiate on any matters from within the statutory remit, including pay, terms and conditions, and wider matters such as training and development, career progression and human resources policies and procedures. The Regulations set out which workers and matters fall within the remit of the ASCNB. They also set out the process for the Secretary of State for the Department of Health and Social Care (Secretary of State) to initiate negotiations by issuing a remit letter. The letter may specify matters that the ASCNB must consider, as well as factors, consultation requirements, conditions and deadlines that the ASCNB must take into account or meet when negotiating an agreement. The ASCNB may also consider other matters within its remit at its own discretion. In considering referred matters, the

ASCNB must have regard to any specified factors and consultation outcomes and comply with any specified deadlines and conditions.

4.1.2 The ASCNB must report whether agreement has been reached and submit to the Secretary of State any agreement reached about matters subject to consideration. The Secretary of State may ask the ASCNB to reconsider an agreement, in part or in full, where specified circumstances arise. The Secretary of State may also amend or withdraw a referral, or specify new matters, if there is an error or material change in circumstances. Where the ASCNB does not reach an agreement or meet a deadline, the Secretary of State may extend the deadline.

4.1.3 If the ASCNB fails to reach an agreement, then Regulations state that the Chair must notify the Secretary of State of that fact. In this circumstance, the Secretary of State is enabled to determine an outcome on specified matters through the power to deal with matters in section 48 of the Act.

4.1.4 The Schedule to the Regulations sets out an appointments process which empowers the Secretary of State to seek nominations, and subsequently appoint members including; voting members who are employer representatives and Trade Union officials representing the interests of workers, where appropriate non-voting members including those representing the interests of Local Government and observers or independent specialist advisers. The Secretary of State must also appoint an independent Chair who will oversee the process, bring members together, lead negotiations and ensure all voices are heard. The Secretary of State is empowered to pay fees and expenses to the Chair, and to members of the ASCNB. The Secretary of State may also terminate any appointment on certain grounds, and the Regulations also confirm that the validity of the ASCNB's proceedings, its Chair, and member groups are not affected by any vacancies or appointment defects.

4.1.5 The Schedule also makes provision about the Terms of Reference (ToR) for the ASCNB. The ToR provides the detailed operating framework for the ASCNB, including quorum, voting arrangements and dispute resolution processes. The Chair must ensure that a ToR is developed and published, and in lieu of this, the Secretary of State may impose their own until a revised ToR is agreed by the ASCNB and published.

Where does the legislation extend to, and apply?

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

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is limited to England.

5. Policy Context

What is being done and why?

Scale of the problem and degree of public interest

5.1 The ASC workforce is large, with around 1.5 million people working in the sector in England in 2025/26[1], equivalent to c. 5% of all adults in employment. This makes

[1] The size and structure of the adult social care sector and workforce in England 2026 (skillsforcare.org.uk) https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/workforceintelligence/resources/Reports/National/The-size-and-structure-of-the-adult-social-care-sector-and-workforce-in-England-2026.pdf

ASC comparable to the NHS, and larger in headcount terms than the construction, transport, or food and drink industries. ASC is a historically low paid sector - most care workers are paid at or just above the National Living Wage, and most care workers are employed by private sector providers who set their pay and terms and conditions, independent of central government. Most of the workforce are frontline care workers. 4% of the sector is made up of regulated professions like social workers, nurses, and occupational therapists. It is 78% female, although male participation is trending slightly upwards. Various studies cite the difficulties of working in ASC, as a sector that has historically been undervalued. In addition, over half of (56%) workers said they do not have enough, or do not have any financial security when asked about existing pay, and terms and conditions[2].

5.1.1 The number of staff leaving a role during the year as a proportion of all staff is a key indicator of workforce sustainability. Turnover rates in health and social care were higher than most industrial sectors and the UK average in 2022/23[3]. The staff turnover rate in ASC was 23.1% in 2024/25[4]. Turnover rates are higher for new starters, and for younger workers: care workers with less than one year of experience in the sector had a turnover rate of 4.35% in 2024/25, more than double the turnover rate of care workers who had worked in the sector for between ten and nineteen years (16.8%). On average, 1 in 10 workers leave ASC each year to move to another industry, unemployment or inactivity[5]. The care sector faces competition from hospitality, retail and cleaning sectors. These are often much less demanding jobs for the same or better rates of pay [6].

5.1.2 Turnover and staffing levels in the sector have improved since 2021/22, however, this has in part been driven by international recruitment from predominantly lower-income countries. Although international recruitment has helped bolster the workforce, it has also resulted in an increase in exploitative employment practices, therefore changes to immigration rules mean out of country applications for care worker roles are no longer permitted, as of July 2025.

Benefits

5.1.3 The policy will have a positive impact on low-income groups. ASC is a low pay sector with an estimated 1 in 5 workers experiencing in-work poverty.

5.1.4 The ASC workforce in England has a higher share of female workers and workers who are Black, African, Caribbean or Black British than the UK population. A policy

[2] Work-related quality of life of the adult social care workforce in 2025 - GOV.UK https://www.gov.uk/government/publications/work-related-quality-of-life-of-the-adult-social-care-workforce-in-england-in-2025

[3] CIPD (2024), Benchmarking employee turnover: What are the latest trends and insights? https://www.cipd.org/uk/views-and-insights/thought-leadership/cipd-voice/benchmarking-employee-turnover/

[4] The state of the adult social care sector and workforce in England, 2025 https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/workforceintelligence/resources/Reports/National/The-state-of-the-adult-social-care-sector-and-workforce-in-England-2025.pdf

[5] DHSC estimate based on Skills for Care data

[6] Ekosgen (2019) The Implications of National and Local Labour Markets for the Social Care Workforce: Final Report for Scottish Government and COSLA. https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2020/03/implications-national-local-labour-markets-social-care-workforce-report-scottish-government-cosla/documents/implications-national-local-labour-markets-social-care-workforce-final-report-scottish-government-cosla/implications-national-local-labour-markets-social-care-workforce-final-report-scottish-government-cosla/govscot%3Adocument/implications-national-local-labour-markets-social-care-workforce-final-report-scottish-government-cosla.pdf

that distributes funds to the ASC workforce is likely to have significant positive impacts on people who share these characteristics and to enhance equality of opportunity.

5.1.5 Benefits to unpaid carers within the workforce or as a result of improvements in formal care may enhance equality of opportunity, as unpaid carers are more likely to be female, older, or disabled than the population as a whole.

5.1.6 Increases in ASC pay, and terms and conditions are likely to increase the attractiveness of ASC relative to competing sectors. These sectors may experience greater challenges in attracting and retaining staff as a result.

5.1.7 Demand for ASC, and especially public expenditure on ASC, tends to be concentrated in more deprived areas. An FPA could disproportionately impact on these areas, both in terms of benefits and risks.

Risks

5.1.8 There is a risk that negotiations result in an FPA outcome that is not affordable to providers, or to local authorities and the NHS. The government is addressing this risk by setting out a remit letter for the ASCNB, which will include an initial funding envelope of £500 million grant funding for local authorities in 2028/29 as a condition that must be met.

5.1.9 We also intend for the remit letter to require the ASCNB to have regard for affordability for purchasers of care, including the NHS and self-funders, in addition to local authorities.

5.1.10 There is a risk that providers are not able to pass through costs to local authorities, the NHS, and self-funders. If businesses are unable to pass through all the costs associated with meeting the terms of an FPA, this could lead to a reduction in profits, reduced employment in the sector, and/or work intensification.

5.1.11 Self-funders may not be able to afford the increase in the cost of care resulting from an FPA. In some cases, this may result in individuals delaying or reducing their use of formal care services. This may place additional pressure on unpaid carers and informal support networks.

Fair Pay Agreement policy background

5.1.12 The Make Work Pay agenda is the Government's programme to improve workers' rights and job security, and the introduction of an FPA in ASC was a government manifesto commitment to improve pay and conditions for care workers. The Act provided for many reforms, including stronger protections for workers, changes to trade union rights, enhanced sick pay and employment protections. The Act also created a framework for establishing the FPA process in ASC, empowering the Secretary of State to establish an ASCNB for England. Together, these reforms aim to improve pay, working conditions, job security and workforce retention across key sectors, supporting fairer and more secure employment.

Policy aims

5.1.13 The objective of FPAs is to ensure that workers in the ASC sector are recognised and rewarded for the work they do by empowering trade unions and employer representatives to negotiate for pay and employment terms. By making the sector more attractive, the FPA is expected to improve the recruitment and retention of domestic ASC workers. This intervention will ensure that people can access quality

care, which has many positive social outcomes including reduced pressure on the NHS. This is also expected to support the living standards of the care workforce and their households, helping to reduce inequalities The FPA policy is also intended to support wider government objectives, including supporting productivity and reducing economic inactivity and reliance on overseas recruitment.

5.1.14 The Regulations establish the ASCNB as an advisory non-departmental public body. It will be an independent arm's length body of the Department of Health and Social Care (DHSC). It is comprised of representatives of workers and employers to negotiate pay, terms and conditions, and other related employment matters for the ASC workforce. The ASCNB will be led by an independent chair who oversees the negotiation process, brings members together, leads meetings, and ensures all voices are heard. The Chair will be appointed by the Secretary of State through the public appointments process, supporting an open, fair and transparent appointment.

5.1.15 The chair will also be supported by a central secretariat and ultimately leads the ASC Negotiating Body to finalising agreements to put to the Secretary of State.

5.1.16 Once ratified, an FPA will be legally enforceable through workers' contracts, supported by clear guidance for providers, commissioners and workers, regarding enforcement and compliance.

5.1.17 The Fair Work Agency underpins enforcement of pay elements, alongside existing enforcement routes for wider terms and conditions.

What was the previous policy, how is this different?

5.2 Previously, pay, terms and conditions in ASC were determined by individual employers independent of central government, subject to statutory minimum requirements. There was no sector-wide mechanism for employers and trade unions to engage in sectoral collective bargaining in order to negotiate terms that apply across the workforce.

5.2.1 The new policy establishes the ASCNB to bring employer and worker representatives together to negotiate an FPA on pay, terms and conditions and other employment matters. Once ratified, the agreement will apply to covered workers and become legally enforceable through their contracts, creating a consistent sector-wide approach.

6. Legislative and Legal Context

How has the law changed?

6.1 The Act created a broad legislative framework for establishing an ASCNB for England but left a number of operational and procedural matters to be specified in Regulations.

Why was this approach taken to change the law?

6.2 This approach was taken because the Regulations are necessary to give practical effect to the framework set out in the Act. The matters addressed in these Regulations, including the constitution of the body, its remit, voting arrangements and the consideration and determination of agreements, require legal effect and cannot be established through non-statutory guidance or administrative arrangements alone.

7. Consultation

Summary of consultation outcome and methodology

7.1 Between 30 September 2025 and 6 March 2026, the government carried out a public consultation on the design of the FPA process in England[7] (the consultation). The consultation sought views from a range of stakeholders, including ASC providers, employer representative organisations, trade unions, local government, people with experience of care and support, and other interested organisations.

7.1.1 The consultation considered key elements of the proposed model, including the scope of the negotiating body, its membership, the matters that could be negotiated, and the process for reaching and ratifying agreements. In some areas the consultation set out specific recommendations or options, such as the form and operation of the body, and for others sought general views and insights on the issues, such as compliance and enforcement.

7.1.2 The consultation received 1,221 responses across the standard and easy read consultations. The government response to the FPA process in ASC consultation[8] was published on 16 July 2026. Responses highlighted broad support across the range of specific proposals put forward, while also raising points about affordability, implementation, representation across a diverse provider market, and the need for clear guidance. The government response to the consultation sets in out in detail respondents views of proposals and out how issues raised have been considered.

7.1.3 The consultation analysis found that there was strong engagement with the proposed FPA process. Respondents welcomed the opportunity to create a sector-wide negotiating body that brings together employer and worker representatives to address long-standing workforce challenges. The response confirmed the government's intention to proceed with establishing the ASCNB, recognising its potential to support recruitment, retention, workforce stability and better outcomes for people drawing on care. It also reflected stakeholder feedback on representation, affordability, implementation and guidance, helping shape a practical and inclusive model for the sector.

7.1.4 DHSC has engaged with the devolved governments as appropriate. The instrument extends to England, Wales and Scotland but applies in practice to ASC in England only.

8. Applicable Guidance

8.1 No guidance has yet been prepared. Guidance on implementation and compliance with FPAs will be co-produced and co-published by DHSC and the ASCNB, and will be made available around the time of ratification of the first FPA.

[7] public consultation on the design of the Fair Pay Agreement process in England https://www.gov.uk/government/consultations/fair-pay-agreement-process-in-adult-social-care

[8] government response to the Fair Pay Agreement process in adult social care consultation https://www.gov.uk/government/consultations/fair-pay-agreement-process-in-adult-social-care/outcome/fair-pay-agreement-process-in-adult-social-care-government-response#part-2-outcomes-from-the-consultation

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A de minimis impact assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The de minimis impact assessment covers the establishment of the ASCNB framework which then allows for negotiations to take place. The establishment of the ASCNB alone does not set pay or impose new employment terms. Therefore, this assessment considers the costs to businesses from taking part in negotiations as members of the ASCNB. The Statutory Instrument establishes the framework for the ASCNB rather than implementing a Fair Pay Agreement. On this basis, we judge that the Regulations do not meet the threshold for a full options assessment. We are therefore including a de minimis assessment alongside these Regulations. The government intends to publish a broader impact assessment considering the impacts of any negotiated agreement alongside the ratified FPA.

9.1.1 To note: this de minimis impact assessment is a different scope to the previous consultation-stage impact assessment[9] published in January 2026, which covered the broader negotiated FPA potential outcomes.

Impact on businesses, charities and voluntary bodies

9.2 The legislation is not anticipated to have a disproportionate impact on business, charities or voluntary bodies, as sector representatives will represent the interests of employers and workers. Therefore businesses, charities and voluntary bodies are not expected to participate directly in the ASCNB or change their pay, terms or conditions at this stage. Direct business costs are expected to be limited, mainly relating to participation by a small number of sector representatives coordinated centrally, with secretariat support and expenses funded by DHSC.

9.3 The legislation does impact small or micro businesses as above.

9.4 The impact on the public sector is expected to be in the form of a secretariat staffed by Civil Servants to support the ASCNB.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 DHSC will keep these Regulations under review to ensure they continue to deliver their intended policy objectives following the first negotiation cycle.

10.1.1 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The establishment of a fair pay agreement process is a manifesto priority for government.

[9] consultation-stage impact assessment https://assets.publishing.service.gov.uk/media/68f621191c9076042263f0a2/fair-pay-agreement-process-in-adult-social-care-impact-assessment.pdf

12. European Convention on Human Rights

12.1 The Minister of State for Social Care and Mental Health has made the following statement regarding Human Rights:
"In my view the provisions of the Adult Social Care Negotiating Body for England Regulations 2026 are compatible with the Convention rights.

12.1.1 This instrument amends the Public Records Act 1958 to include a reference to the Adult Social Care Negotiating Body so that records of the body will be public records.

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").