EXPLANATORY MEMORANDUM TO

THE CHILDREN'S WELLBEING AND SCHOOLS ACT 2026 (ESTABLISHMENT OF SCHOOLS) (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2026

2026 No. [XXXX]

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 and the Secondary Legislation Scrutiny Committee. The instrument amends primary legislation and is therefore subject to the affirmative resolution procedure.

2. Declaration

2.1 Georgia Gould MP, Minister of State for School Standards at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Matt Collins, Deputy Director for Admissions, School Organisation and Transport, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jane Whitfield at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: schoolorganisation.notifications@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 makes consequential amendments arising out of the commencement of provisions in the Children's Wellbeing and Schools Act 2026 ("the CWSA 2026") relating to the establishment of new schools. These amendments are necessary to ensure consistency across the statute book and to update provisions to ensure they are compatible with the new legislative framework. The amendments are minor and technical in nature and do not introduce significant new policy.

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.

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?

5.1 The CWSA 2026 amends provisions in Part 2 of and Schedule 2 to the Education and Inspections Act 2006 ("the EIA 2006") relating to the establishment of new schools. Section 6A of the EIA 2006 has been repealed and arrangements for inviting proposals for new schools are set out in an amended section 7. The practical effect of this change is to remove the legal presumption that new schools should be academies and allow proposals for other types of school to be put forward where a new school is needed, including proposals from local authorities for a new community, community special, foundation, foundation special school or pupil referral unit.

5.2 Sections 10 and 11 of the EIA 2006 have been replaced by an amended section 10 which sets out arrangements for making proposals for new schools outside of the invitation process in section 7.

5.3 This instrument removes references to section 6A and section 11 in primary and secondary legislation and replaces them with appropriate references to sections 7 and 10. These amendments are necessary to ensure that the statute book is consistent and provides legal clarity.

5.4 A pupil referral unit may now be established pursuant to the EIA 2006, as amended by the CWSA 2026, and may do so to replace an independent school. This instrument therefore amends primary legislation relating to the pay and conditions of teachers at maintained schools that replace independent schools to extend the provision to teachers at pupil referral units that have replaced independent schools.

5.5 As set out above, the amendments made by the CWSA 2026 provide a new statutory procedure for opening new pupil referral units. This instrument amends secondary legislation relating to the governance of new maintained schools to enable a local authority to make governance arrangements for new pupil referral units. The amendments clarify that governance arrangements may only be put in place in anticipation of approval of proposals for a maintained school or pupil referral unit where a single proposal for the establishment of a new school or pupil referral unit has been published.

What was the previous policy, how is this different?

5.6 The statute book referred to the provisions for establishing new schools contained in sections 6A, 7, 10 and 11 of the EIA 2006. There was no statutory procedure for the establishment of pupil referral units. Sections 65 and 66 of the CWSA 2026 have removed sections 6A and 11. New schools are now established under sections 7 and 10 (as amended) and it is possible to establish new pupil referral units under these provisions. This instrument ensures the statute book is consistent with these changes by removing references to section 6A and 11 across legislation and by extending relevant provisions in legislation to pupil referral units.

6. Legislative and Legal Context

How has the law changed?

6.1 The CWSA 2026 has amended the provisions in Part 2 of and Schedule 2 to the EIA 2006 relating to establishing new schools, necessitating consequential amendments to other primary and secondary legislation.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 As these changes are consequential to the changes being introduced through the CWSA 2026 and do not introduce any significant policy changes, a consultation has not been undertaken. A summary of the changes relating to extending existing legislation to pupil referral units was sent to the Association of Directors of Children's Services for information.

8. Applicable Guidance

8.1 The instrument does not require guidance. Guidance has been published on the new framework for establishing new state schools[1], as amended by the CWSA 2026.

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 does not impact on business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument only makes consequential amendments to ensure consistency across the statute book and to make other minor and technical amendments.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this instrument only makes consequential amendments to ensure consistency across the statute book and to make other minor and technical amendments.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Given its limited impact there is no plan to monitor or review this instrument.

10.2 The instrument does not include a statutory review clause.

[1] https://www.gov.uk/government/publications/opening-new-schools

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument amends primary legislation and is therefore subject to the affirmative resolution procedure.

12. European Convention on Human Rights

12.1 The Minister of State for School Standards has made the following statement regarding Human Rights:
"In my view the provisions of the Children's Wellbeing and Schools Act 2026 (Establishment of Schools) (Consequential Amendments) Regulations 2026 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").