EXPLANATORY MEMORANDUM TO

THE EARLY YEARS FOUNDATION STAGE (WELFARE REQUIREMENTS) (AMENDMENT) REGULATIONS 2025

2025 No. 132

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 Stephen Morgan, 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 Early Years Markets, Strategy and Workforce at the Department for Education, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Daniel Blenkley at the Department for Education (daniel1.blenkley@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 gives effect to a revised version of the Early Years Qualification Requirements and Standards document ("the Qualifications Document"), which sets out the minimum qualification requirements that staff working in the early years must meet to be recognised as level 2, level 3 or level 6 for the purpose of working within the staff:child ratios set out by the Early Years Foundation Stage (EYFS).

4.2 The Qualifications Document is being amended to introduce the experience-based route policy, which will allow early years providers to count staff who meet certain eligibility criteria in the ratios at level 3, even if they do not meet the usual qualifications requirements.

4.3 The Qualifications Document is also being amended to make minor clarifications to other existing policy already included within the document.

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?

Experience-based route

5.1 Early years and childcare are a key focus in the Government's drive to break down barriers to opportunity. From September 2025, eligible working parents will be entitled to 30 hours a week of early education and childcare from the term after their child turns 9 months.

5.2 The EYFS statutory framework for group and school-based providers[1] 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 that allow the holder to count within these ratios at different levels. There are experienced individuals already working, or wanting to work, in early years but who do not hold a full and relevant level 3 qualification, which previously prevented them from being counted as qualified within the ratios. Previously, the only way for these people to work as level 3 staff was to obtain a new full and relevant qualification.

5.3 The experience-based route offers a route for staff without full and relevant level 3 qualifications to be able to count in the ratios at level 3 without obtaining a whole new qualification. Subject to meeting certain eligibility criteria, staff will complete a period of supervised practice in their setting to gain any missing skills and knowledge. Once the period of supervised practice has been completed, and the early years provider is confident that sufficient evidence has been provided demonstrating how any missing criteria have been met, the individual will be able to work within the ratios at level 3 (subject to meeting other existing requirements set out in the EYFS and Qualifications Document).

5.4 The experience-based route is an optional flexibility, and early years providers retain discretion as to whether it should be used in their setting(s).

Other Clarifications

5.5 The Qualifications Document is also being amended to make minor clarifications to other existing policy already included within the document and the EYFS statutory framework for group and school-based providers. This includes clarifying that students and apprentices can be included in the ratios below their level of study (paragraph 1.3); that Paediatric First Aid qualification requirements apply to those holding a level 2 and 3 qualification achieved after 30 June 2016 (paragraphs 1.10 and 1.13); that non-degree level 6 qualifications must meet the level 3 Early Years Educator criteria to be full and relevant (paragraph 1.15); and that only Qualified Teacher Status, Early Years Teacher Status, or Early Years Professional Status allow the holder to be included in the ratios at level 6 (paragraph 1.17).

What was the previous policy, how is this different?

Experience-based route

5.6 The previous version of the Qualifications Document allowed only holders of full and relevant qualifications to count within the ratios at level 3 (subject to meeting other

[1] https://assets.publishing.service.gov.uk/media/670fa42a30536cb92748328f/EYFS_statutory_framework_for_group_and_school_-_based_providers.pdf

requirements set out in the EYFS). This amendment offers early years providers the flexibility to use the experience-based route in their setting(s), which provides an opportunity for those without a full and relevant qualification to gain competence to work at level 3.

5.7 Following a public consultation, the experience-based route is being introduced with the following eligibility criteria and process requirements for any early years provider or member of staff wishing to use it:

Decision-making model

a. Early years providers will make assessment decisions about their staff's knowledge, skills and experience, and will decide whether they meet the criteria to work in the ratios at level 3.

Eligibility criteria

b. Individuals wishing to undertake the experience-based route must hold either a full and relevant level 2 qualification, or a level 3 or above qualification that is relevant to the care or education of children, but is not full and relevant. Individuals may also hold qualifications equivalent to the required level 2 or level 3 qualifications, that have been achieved outside England.

c. Individuals wishing to undertake the experience-based route must have worked with early years children (aged 0 to 5) in an early years setting or a related sector in England, for a minimum of one year.

d. Early years providers must have received a good or outstanding judgement for overall effectiveness in their most recent Ofsted inspection to offer the experience-based route to their educators who meet the eligibility criteria. For state-funded schools inspected during academic year 2024/25 (who will not receive overall effectiveness judgements), the school must not be judged to require significant improvement or special measures.

Process requirements

e. An individual's existing knowledge, skills and experience must be assessed against the level 3 early years educator criteria in order to undertake the experience-based route, and again to be considered for use in the ratios at level 3.

f. Individuals undertaking the experience-based route must complete a minimum of between 751 and 900 hours of relevant work and supervised practice before the assessor can undertake a final assessment and decide whether they have met the criteria to work in the ratios at level 3.

g. Individuals who have completed the experience-based route must also hold a suitable level 2 English qualification, and a Paediatric First Aid qualification before they can be counted in the ratios at level 3.

h. The person making a decision about an individual's experience-based route status must hold a full and relevant qualification at level 3 or above, and must have worked in an early years setting for a minimum of two years.

i. Staff involved in supervising an individual during the experience-based route must hold a full and relevant qualification at level 3 or above, and must have worked in an early years setting for a minimum of two years.

j. Providers must keep records of individuals undertaking the experience-based route, alongside evidence of their assessments and decision-making.

k. An individual's experience-based route status will not be automatically transferable between early years providers.

l. No more than 50% of staff with experience-based route status will be able to count in the ratios at level 3 at any one time at a particular premises.

5.8 The amendments to the Qualifications Document will allow providers and staff to begin to undertake the experience-based route in their setting. Allowing staff who have completed the experience-based route to then count in the ratios at level 3 requires an amendment to the EYFS statutory framework for group and school-based providers. It is anticipated that this will take place in September 2025. Individuals will not be able to count in the ratios using the experience-based route until this later amendment has been made.

5.9 Following introduction of the experience-based route, the Department for Education intends to work 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.

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) 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 instrument itself. The 2012 Regulations give effect to the welfare requirements in section 3 of the EYFS statutory frameworks for childminders and group and school-based providers, as well as the Qualifications Document. Section 40 of the Childcare Act 2006 imposes a duty on registered early years providers and certain schools exempt from the requirement to register, to implement the EYFS.

6.2 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. Before the enactment of this instrument, regulation 3(4) of the 2012 Regulations referred to the date of the (now superseded) previous Qualifications Document (i.e. 8th December 2023). This instrument amends regulation 3(4) of the 2012 Regulations to give effect to the revised version of the Qualifications Document dated 10th February 2025.

Why was this approach taken to change the law?

6.3 This is the only possible approach to introduce the experience-based route.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department for Education held a 4-week public consultation on the experience-based route between 22 April and 20 May 2024. The Government's response to the consultation was published on 28 January 2025. This is available to view at Experience-based route for early years practitioners - GOV.UK.[2]

7.2 In total, the consultation received 1159 responses via the Citizen Space online portal and by email. The highest proportion of responses (55%) came from private, voluntary and independent (PVI) early years setting managers.

7.3 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 regulations. As a public consultation has been held and the Chief Inspector has been specifically consulted this requirement has been met.

7.4 The consultation sought views on the proposed decision-making model, eligibility criteria and process requirements. The Government's position on each proposal included in the consultation is set out in the official response. All proposals received an agreement rate of between 52 and 92%. Taking responses to the consultation into account, the Department for Education will proceed with implementing most of the proposals in relation to the experience-based route, with some amendments. The Government amended the following proposals:

a. The eligibility criteria that an early years provider must have received a good or outstanding judgement for overall effectiveness in the most recent Ofsted inspection to offer the experience-based route to its staff will be introduced as an interim measure following the removal of single-headline grades for state-funded schools and as further changes to Ofsted inspection outcomes are proposed.

b. The consultation proposal that a person making a decision about a staff member's experience-based route status, or involved in supervising a staff member during the experience-based route, must have been working in an early year setting for a minimum of six months, has been increased to a minimum of two years.

c. Although not a specific proposal in the consultation the Department for Education also intends that, subject to meeting the eligibility criteria, individuals who have gained their qualifications outside of England will be able to undertake the experience-based route. To meet the qualifications criteria, these individuals will need to hold a qualification that is equivalent to level 2 or level 3. This is in response to feedback from some respondents that the eligibility criteria for the experience-based route should recognise equivalent qualifications achieved outside of England.

8. Applicable Guidance

8.1 The Government has published the revised version of the Qualifications Document upon laying of this statutory instrument. It has also published accompanying non-statutory guidance[3] to support those planning to use the experience-based route.

[2] https://www.gov.uk/government/consultations/experience-based-route-for-early-years-practitioners
[3] Non-statutory guidance on the experience-based route is available at: https://www.gov.uk/government/publications/experience-based-route-for-early-years-staff

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is likely to be in terms of familiarisation costs, an increased wage bill, and costs associated with monitoring and assessing staff undertaking the experience-based route. There are expected to be revenue benefits for early years providers from being able to offer additional childcare places. The experience-based route is an optional flexibility for early years providers.

9.3 The legislation does impact small or micro businesses. Based on data collected in the 2024 survey of childcare and early years providers, most school-based and group-based providers are small or micro businesses. As the experience-based route policy is an optional flexibility, the approach taken for small and micro businesses is the same as that taken for larger businesses.

9.4 The impact on the public sector 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 Department for Education intends to use its annual survey of childcare and early years providers, along with any additional surveys, to monitor take-up of the experience-based route and the impact it is having on providers. The Department for Education will also monitor this legislation through gathering insights from stakeholders. The approach to monitoring this legislation will be kept under 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 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”).