EXPLANATORY MEMORANDUM TO

THE EDUCATION (FREE SCHOOL LUNCHES IN MAINTAINED NURSERY SCHOOLS) (UNIVERSAL CREDIT) (ENGLAND) ORDER 2026

2026 No. 706

1. Introduction

1.1 This Explanatory Memorandum has been prepared by Department for Education and is laid before Parliament by Command of His Majesty.

2. Declaration

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

2.2 Matthew Collins, Deputy Director for School Food at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Adam Cunnane at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: freeschoolmeal.queries@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 extends free school meal (FSM) eligibility to include children attending maintained nursery schools so that they are treated consistently with those attending other state-funded schools.

4.2 FSM are to be provided on request to any pupil at a maintained nursery school in England where a child, their parent or their guardian is in receipt of Universal Credit.

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 only.

5. Policy Context

What is being done and why?

5.1 State-funded schools in England are under a duty to provide free school meals (FSM) to eligible children. Currently, FSM are provided to 2.2 million disadvantaged children, 90,000 low-income students in Further Education and around 1.3 million infants through the Universal Infant Free School Meal policy.

5.2 Children from families receiving certain income-related benefits, including those on Universal Credit whose annual income is no more than £7,400 are eligible for

targeted FSM. Transitional protections for FSM, in place since 2018, have ensured no one who has gained FSM eligibility would lose it while universal credit was rolled out.

5.3 In June 2025, the government announced its decision to expand eligibility for free meals to all children from households in receipt of Universal Credit from September 2026, alongside ending transitional protections for FSM. The Children's Wellbeing and Schools Act 2026 ensures that this is a legal requirement for all other settings where FSM are currently delivered and this instrument extends this entitlement to pupils at maintained nursery schools.

What was the previous policy, how is this different?

5.4 Under the old system, children from families receiving Universal Credit whose annual income is more than £7,400 were not eligible for FSM. Expanding FSM eligibility means over half a million more pupils will become eligible for FSM across all settings. This instrument ensures children from maintained nursery schools are also in scope of the expansion.

6. Legislative and Legal Context

How has the law changed?

6.1 The Order provides that maintained nursery school pupils whose parents are in receipt of Universal Credit (regardless of income) are brought within the eligibility criteria for FSM by treating them as if they were included in section 512ZB(4A) of the Education Act 1996 ("the 1996 Act").

6.2 Pupils whose parents are in receipt of Universal Credit and whose income is £7,400 per annum or less are already eligible for FSM as they fall within section 512ZB(4) of the 1996 Act.

6.3 Pupils must also meet the criteria set out in section 512(3) of the 1996 Act and in regulations made under section 512(3), namely, those receiving nursery education must be either receiving full-time nursery education or receiving education both before and after the lunch period, and a request for FSM must have been made on their behalf.

Why was this approach taken to change the law?

6.4 Section 512ZB of the 1996 Act was amended by section 32 of the Children's Wellbeing and Schools Act 2026 to expand eligibility for FSM to pupils at maintained schools and pupil referral units in England if they or their parents are in receipt of Universal Credit.

6.5 Expanded FSM eligibility under section 512ZB(4D) of the 1996 Act does not include pupils of maintained nursery schools. This is because section 512ZB(4D) only applies to registered pupils at "maintained schools" (or pupil referral units). The definition of "Maintained Schools" in section 512ZB(4C) of the 1996 Act (used for the purposes of section 512ZB(4D)) does not include maintained nursery schools.

6.6 This Order extends eligibility to pupils at maintained nursery schools by bringing those pupils within the scope of section 512ZA(4A).

7. Consultation

Summary of consultation outcome and methodology

7.1 There is no legal requirement to consult prior to making this Order. However, the impact of extending FSM to pupils whose parents are in receipt of Universal Credit (including children in this younger age bracket) was widely considered prior to the passing of the Children's Wellbeing and Schools Act 2026 and was widely supported by stakeholders and parents.

8. Applicable Guidance

8.1 Guidance helping schools (including maintained nursery schools) and local authorities understand their obligations around FSM is published here: https://www.gov.uk/government/publications/free-school-meals-guidance-for-schools-and-local-authorities

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment of the effect of extending free school meals to all settings where it is currently delivered (including maintained nursery schools) was prepared for the Children's Wellbeing and Schools Act 2026 and published on gov.uk: https://assets.publishing.service.gov.uk/media/67dd4859c6194abe97358be9/DfE_RP_01_CWS_Bill_Regulatory_Impact_Assessment_as_amended_in_the_House_of_Commons.pdf

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the measure applies to state-funded education provision and is delivered by maintained nursery schools.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is focused on maintained nursery schools and local authorities. We expect maintained nursery schools and local authorities will draw on existing arrangements and expertise to provide free and nutritious meals to newly eligible pupils.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will include monitoring uptake using school census returns. DfE is developing a robust monitoring and evaluation plan to monitor the impacts of the expansion and effects on take-up. DfE also intends to commission an external evaluation however exact methodology and approach is still to be confirmed.

10.2 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 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").