EXPLANATORY MEMORANDUM TO

THE INTER-AUTHORITY RECOUPMENT (ENGLAND) (AMENDMENT) REGULATIONS 2026

2026 No. 686

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

2.2 Paul Baker, deputy director for funding policy at the Department for Education, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Haseeba Ahmed at the Department for Education can be contacted by email at the following address with any queries regarding the instrument: Haseeba.Ahmed@education.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Inter-authority Recoupment (England) Regulations 2013 (S.I. 2013/492) ("the 2013 Regulations"), which provide the circumstances in which a local authority in England (a "home authority") is required or authorised to pay an amount to another local authority in England or Wales (a "providing authority"), where the providing authority provides education for a person who belongs to the area of the home authority. Separate legislation, the Education (Inter-authority Recoupment) Regulations 1994 (S.I. 1994/3251) make provision for the recoupment of costs by home authorities in Wales.

4.2 The purpose of this instrument is to clarify how such recoupment of costs operates between local authorities in England where the provision of education from 1st September 2026 is for a looked after child with an education, health and care ("EHC") plan or attending a special school. It introduces a new requirement that prescribes how much a home authority in England must pay to a providing authority in England, where the authorities fail to agree how much should be paid within 6 months of the providing authority submitting its claim for payment.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) of which the instrument forms part of the law) is England and Wales.

4.4 The 2013 Regulations apply in relation to provision for education which is made by a providing authority in England or Wales in respect of a person who belongs to the area of a home authority in England. With the exception of the amendment made to

regulation 3 of the 2013 Regulations (interpretation) by regulation 2(3), the amendments made to the 2013 Regulations by this instrument apply and have a practical effect only in relation to the provision for education which is made by a providing authority in England in respect of a person who belongs to the area of a home authority in England.

4.5 Regulation 2(3) of this instrument (which omits the definition of "special school" from regulation 3 of the 2013 Regulations) applies in relation to the provision for education which is made by a providing authority in England or Wales in respect of a person who belongs to the area of a home authority in England. See paragraph 6.2 for further details.

5. Policy Context

What is being done and why?

5.1 Where a local authority in England or Wales provides primary education, secondary education, or education under section 562C of the Education Act 1996 ("the 1996 Act") (detention of persons with special educational needs: appropriate special educational provision) for a person who belongs to the area of a home authority in England, section 207(1) of the Education Act 2002 ("the 2002 Act") (recoupment: adjustment between local authorities) gives the Secretary of State the power to make regulations authorising or requiring the home authority to pay to the providing authority such amount as the authorities agree or, failing agreement, such amount as may be determined by or under the regulations. The Secretary of State has exercised the power in section 207(1) of the 2002 Act in relation to home authorities in England by making the 2013 Regulations.

5.2 The 2013 Regulations did not provide local authorities in England with enough clarity either about the circumstances in which such payments were required, or the amounts to be paid, when a looked after child with an EHC plan or attending a special school was placed by a home authority in England in the area of another providing authority in England. There was evidence of an increasing number of disputes between home and providing authorities, with some authorities relying on established custom and practice that the home authority should meet the costs involved and others adopting a different approach that favoured the costs remaining with the providing authority. Despite the Department for Education having issued guidance, disputes continued to increase with more urgent calls from local authorities for a clear mandatory recoupment framework that would apply across England.

What was the previous policy, how is this different?

5.3 Under regulation 5 of the 2013 Regulations, where a providing authority in England incurs costs by making provision for the education of a looked after child in another, third, local authority in England or Wales, a home authority in England is required to pay to the providing authority such amount as the home authority and the providing authority agree. However, regulation 5 does not provide any mechanism for determining an amount payable by the home authority where agreement cannot be reached.

5.4 Furthermore, regulation 5 requires the involvement of a third local authority as the location for the education, despite that third authority not incurring any unfunded costs of provision, and does not apply to looked after children with an EHC plan who are above compulsory school age, for example in a secondary school sixth form.

5.5 To address these concerns, this instrument amends regulation 5 so that it applies only to education provided up to 31st August 2026 and inserts a new regulation 5A into the 2013 Regulations, which makes provision for determining how much a home authority in England must pay to a providing authority in England where they cannot agree how much should be paid. New regulation 5A applies to education provided from 1st September 2026 for any looked after child who has an EHC plan or attends a special school.

5.6 Where the authorities cannot agree how much the home authority must pay within 6 months of the providing authority submitting its claim for payment to the home authority, new regulation 5A requires the home authority to pay an amount equal to any expenditure incurred by the providing authority in making provision for the education of the looked after child, including expenditure on home to school transport costs. To avoid a providing authority receiving an amount of funding twice for the same looked after child, new regulation 5A provides that the amount paid by the home authority must exclude any amount received by the providing authority in respect of the looked after child through the Dedicated Schools Grant for the period to which the claim for payment relates. The Dedicated Schools Grant is the primary grant by which the Department for Education provides education funding to local authorities in England.

5.7 The purpose of these amendments is to clarify when recoupment is required, by establishing a consistent framework under which financial responsibility rests with a home authority in England, a providing authority in England can recover relevant expenditure, including costs, and a clear mechanism is prescribed for determining the amount payable where agreement cannot be reached.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 2(2) of this instrument amends regulation 2 of the 2013 Regulations (citation, commencement, and application) to provide that regulation 5 now applies to education provided during the period commencing on 1st April 2013 and ending immediately before 1st September 2026, and new regulation 5A applies to education provided on or after 1st September 2026.

6.2 Regulation 2(3) of this instrument omits the definition of "special school" from regulation 3 of the 2013 Regulations, which is no longer applicable. The omission of the definition of "special school" does not change the meaning of a "special school" for the purposes of the 2013 Regulations. Regulation 3 defined "special school" as having the meaning given in section 6(2) of the 1996 Act (nursery schools). Section 6(2) of the 1996 Act was repealed with effect from 1st September 2014 by paragraph 2(2) of Schedule 3 to the Children and Families Act 2014 (special educational needs: consequential amendments). Since 1st September 2014, a "special school" in England or Wales has been defined by section 337 of the 1996 Act (special schools). A school in England is a "special school" if it meets the requirements of section 337(1) of the 1996 Act and a school in Wales is a "special school" if it meets the requirements of section 337(2) of the 1996 Act. Section 337 of the 1996 Act applies to section 207 of the 2022 Act, the 2013 Regulations and this instrument by virtue of section 212 (2) and (3)(i) of the 2002 Act (general interpretation), which provides that section 207 of the 2002 Act is to be construed as if it were contained in the 1996 Act.

6.3 Regulation 2(4) of this instrument amends the heading of regulation 5 of the 2013 Regulation to make it clear that regulation 5 now applies to education provided during

the period commencing with 1st April 2013 and ending immediately before 1st September 2026.

6.4 Regulation 2(5) inserts new regulation 5A (cases in which recoupment is required for education provided from 1st September 2026: English home authority, English providing authority) into the 2013 Regulations. New regulation 5A applies to education provided on or after 1st September 2026 by a providing authority in England for any looked after child with an EHC plan or attending a special school who belongs to the area of a home authority in England. Under regulation 5A, the home authority is required to pay to the providing authority such amount as the home authority and the providing authority agree or, failing agreement within 6 months of the providing authority submitting its claim for payment to the home authority under regulation 10 of the 2013 Regulations (claims for recoupment), an amount equal to the expenditure in regulation 5A(3).

6.5 The amount required to be paid by the home authority under new regulation 5A(3) is an amount equal to all expenditure incurred by the providing authority making provision for the education of the looked after child, including home to school transport costs (regulation 5A(3)(a)), but excluding any amount of funding received by the providing authority in respect of the looked after child through the Dedicated Schools Grant for the period to which the claim for payment relates (regulation 5A(3)(b)). New regulation 5A(4) defines the "Dedicated Schools Grant" for the purposes of new regulation 5A(3)(b).

6.6 Regulation 5(1) of the 2013 Regulations applies to education for a "looked after child" who is a "child" with an EHC plan (regulation 5(1)(a)), or who is a "person" attending a special school (regulation 5(1)(b)). This means that although regulation 5(1)(b) applies to any looked after child attending a special school, regulation 5(1)(a) only applies to a looked after child who is not above compulsory school age with an EHC plan, as explained in paragraphs 6.7 and 6.8.

6.7 "Looked after child" is defined in regulation 3 of the 2013 Regulations as a person who, for the purposes of section 22(1) of the Children Act 1989 ("the 1989 Act") (general duty of a local authority in relation to children looked after by them), is looked after by a local authority. Section 22(1) of the 1989 Act provides that a child who is looked after by a local authority is a "child" who is in the care of a local authority or is a "child" who is provided with accommodation by a local authority pursuant to social services functions. For the purposes of section 22 of the 1989 Act, a "child" is defined in section 105(1) of that Act (interpretation) as a person under 18, subject to paragraph 16 (interpretation) of Schedule 1 to the Act (financial provision for children). Paragraph 16 of Schedule 1 to the 1989 Act provides that a "child" includes a person who has reached the age of 18 where an application is made under paragraph 2 (orders for financial relief for person over eighteen) or 6 (variation etc. of orders for periodical payments) of Schedule 1 to that Act where the person is, or will be, receiving education or training.

6.8 For the purposes of section 207 of the 2002 Act and the 2013 Regulations, however, a "child" is defined in section 579(1) of the 1996 Act (general interpretation) and means a person who is not over compulsory school age. Pursuant to section 212(2) and (3) of the 2002 Act, section 207 of that Act is to be construed as if it were contained in the 1996 Act. The term "child" is not specifically defined in the 2002 Act for the purposes of section 207, or in the 2013 Regulations, which means the definition of "child" in section 579(1) of the 1996 Act applies.

6.9 New regulation 5A is not so limited to education provided to a looked after child who is a "child" with an EHC plan; it applies to any looked after child with an EHC plan or who attends a special school.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department for Education undertook a consultation with local authorities in England, between 14th July and 20th August 2025, seeking views on proposed changes to the recoupment framework for looked after children placed out of area, and received 166 responses.

7.2 There was unanimous support for a single, consistent national approach to the recoupment of education costs for looked after children placed out of area.

7.3 A majority of respondents (70%) supported a model requiring the home authority to meet the full costs of education (excluding core funding).

7.4 There was also majority support (66%) for extending recoupment to include home to school transport costs.

7.5 The Welsh and Scottish Governments were informed of the consultation and outcome and have also been informed about these regulations.

8. Applicable Guidance

8.1 Guidance is expected to be available by 31st July 2026 on this webpage https://www.gov.uk/government/publications/high-needs-funding-arrangements-2026-to-2027.[1]

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 relates to the transfer of costs between local authorities in England and implements an approach that, following consultation, has received overwhelming support from authorities.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business, charities or voluntary bodies because this instrument is about the transfer of their costs which have already been met by local authorities.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is beneficial as the changes introduced have been those sought by local authorities, and are intended to reduce the scope for disputes between authorities about costs incurred, and reduce the resources that would otherwise be needed to resolve those disputes.

[1]https://www.gov.uk/government/publications/high-needs-funding-arrangements-2026-to-2027.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Department for Education will keep this instrument under review in the context of wider funding reforms and any changes to the recoupment legislation that may be proposed in future by the Welsh Government; and will monitor the impact of the revised 2013 Regulations, to ensure that they are working effectively.

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").