EXPLANATORY MEMORANDUM TO

THE WELFARE FOOD (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2026

2026 No. 1092

1. Introduction

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

2. Declaration

2.1 Rt Hon Dame Diana Johnson DBE MP, Minister of State for Public Health and Patient Safety at DHSC, confirms that this Explanatory Memorandum meets the required standard.

2.2 Claire Pringle, Deputy Director for Healthy Weight and Nutrition at DHSC, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Amy Rodd at DHSC, telephone: 020 7210 4860 or email: Amy.Rodd@dhsc.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 amends the Welfare Food Regulations 1996[1] ("the 1996 Regulations") to update the definition of childcare providers that may participate in the Nursery Milk Scheme ("the NMS"). In England, eligibility is aligned with early years childcare providers to whom section 40 of the Childcare Act 2006 (c. 21)[2] applies. In Wales, eligibility is aligned with part 2 of the Children and Families (Wales) Measure 2010[3] or to an exemption from registration specified in article 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010[4]. The amendments provided by this instrument mean that early years childcare providers registered with a Childminder Agency ("CMA") can participate in the NMS on the same basis as those registered with the Office for Standards in Education, Children's Services and Skills ("Ofsted") or providers registered with the Welsh Ministers in Wales.

4.2 The instrument also amends relevant provisions in the 1996 Regulations to align with the updated definition of "childcare provider" and removes or replaces outdated references to childcare categories and registration terms that have been updated since the 1996 Regulations came into force.

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[1] The Welfare Food Regulations 1996: https://www.legislation.gov.uk/uksi/1996/1434
[2] The Childcare Act 2006 (c.21): https://www.legislation.gov.uk/ukpga/2006/21
[3] Measures of the National Assembly for Wales - Children and Families (Wales) Measure 2010: https://www.legislation.gov.uk/mwa/2010/1
[4] The Child Minding and Day Care Exceptions (Wales) Order 2010: https://www.legislation.gov.uk/wsi/2010/2839

4.3 The practical effect of the instrument is to ensure parity between comparable early years childcare providers in England and Wales in terms of their eligibility for the NMS.

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. The instrument does not need to extend to Scotland or Northern Ireland where separate arrangements apply.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales. However, the policy change relating to CMA-registered early years childcare providers only has practical effect in England because CMAs do not operate in Wales.

5. Policy Context

What is being done and why?

5.1 The NMS is a statutory scheme under section 13 of the Social Security Act 1988[5]. It enables eligible early years childcare providers operating in England and Wales, including childminders and nurseries, to reclaim the cost of providing one-third of a pint of milk (189 millilitres) each day to a child under five years who is provided with two hours or more of childcare on that day. Eligible providers may also reclaim the cost of providing one-third of a pint of dried milk to babies under the age of one.

5.2 The NMS contributes to the Government's objective of giving children the best start in life and supporting their health and wellbeing by reimbursing eligible early years childcare providers for the provision of cows' milk, which is recognised by the Scientific Advisory Committee on Nutrition as an important contributor to young children's dietary intakes[6].

5.3 The 1996 Regulations establish the statutory basis for the NMS. A childcare provider must be eligible and comply with the requirements of these Regulations in order to register with the Nursery Milk Reimbursement Unit (NMRU), be approved as a supplier, and submit reimbursement claims for the milk they provide to eligible children in their care.

5.4 The majority of early years childcare providers in England are registered with Ofsted. However, in 2014, the Department for Education (DfE) legislated via the Children and Families Act[7] to allow childminders and providers of childcare on domestic premises to choose to register with either Ofsted or a CMA. The CMAs are themselves registered with and regulated by Ofsted and the CMAs are responsible for quality-assuring the providers registered with them. As of 31 March 2026, there were four active CMAs operating in England, representing 1,790 childcare providers[8]. In comparison, there were 24,700 childminders and 210 providers of childcare on domestic premises registered with Ofsted.

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[5] Social Security Act 1988: https://www.legislation.gov.uk/ukpga/1988/7

[6] Office for Health Improvement and Disparities (2025) "SACN and COT assessment of the health benefits and risks of consuming plant-based drinks: summary": https://www.gov.uk/government/publications/plant-based-drinks-health-benefits-and-risks/sacn-and-cot-assessment-of-the-health-benefits-and-risks-of-consuming-plant-based-drinks-summary

[7] Children and Families Act 2014: https://www.legislation.gov.uk/ukpga/2014/6

[8] Department for Education (2026) "Main findings: childcare providers and inspections as of 31 March 2026": https://www.gov.uk/government/statistics/childcare-providers-and-inspections-as-at-31-march-2026/main-findings-childcare-providers-and-inspections-as-at-31-march-2026#childminder-agencies

5.5 The provider categories originally used in the 1996 Regulations reflected the childcare registration framework that existed when those Regulations were made, meaning they did not recognise registration with a CMA. This meant that early years childcare providers registered with a CMA could not participate in the NMS on the same basis as comparable providers registered directly with Ofsted. CMAs assure the quality and suitability of childcare provided to children in the same way that Ofsted does, and their exclusion from the NMS was not by design.

5.6 The Government announced in January 2026[9], as part of the report stage debate on DfE's Children's Wellbeing and Schools Bill, its intention to extend eligibility of the NMS to include childminders (meaning both those with and without domestic premises) and childcare providers on domestic premises registered with CMAs, so that they can claim reimbursement under the NMS for milk provided to eligible children in their care, in the same way as Ofsted-registered providers. This instrument enacts this change.

What was the previous policy, how is this different?

5.7 As explained in paragraph 5.5, the provider categories in the 1996 Regulations did not previously recognise registration with a CMA because legislation allowing for the creation of CMAs was only enacted in 2014. This meant early years childcare providers registered with a CMA could not participate in the NMS, even where a comparable provider registered directly with Ofsted could do so. Under the amended policy and regulations, NMS eligibility in England is aligned with the early years statutory frameworks, enabling CMA-registered providers to participate in the NMS in the same way as Ofsted-registered providers. The instrument does not change any other aspect of the NMS, such as the age of eligible children or the amount or type of milk for which claims can be made.

6. Legislative and Legal Context

How has the law changed?

6.1 The 1996 Regulations establish the statutory basis for the NMS. Regulation 18 defines the childcare providers eligible for the scheme, the children for whom reimbursement may be claimed, and the milk or dried milk entitlement. Regulations 19 and 20 govern approval of suppliers and reimbursement. Regulation 21A provides for functions of the NHS Business Services Authority (NHSBSA), and Schedule 5 specifies information required for applications and claims.

6.2 This instrument's amendments to the 1996 Regulations are made using powers under section 13(1)(c), (3), (4) and (5) of the Social Security Act 1988[5] and section 175(3) to (5) of the Social Security Contributions and Benefits Act 1992[10].

6.3 Regulation 5 of this instrument amends regulation 18 of the 1996 Regulations and identifies eligible childcare providers in England by reference to providers to whom section 40 of the Childcare Act 2006[2] ("the 2006 Act") applies. Section 40 requires specified early years providers to implement the Early Years Foundation Stage

[9] Hansard Record of Report Stage Debate on Children's Wellbeing and Schools Bill, 21 January 2026: https://hansard.parliament.uk/Lords/2026-01-21/debates/4A7DD5BA-3127-4448-B9E4-E26270CA3092/Children%E2%80%99SWellbeingAndSchoolsBill

[10] Social Security Contributions and Benefits Act 1992: https://www.legislation.gov.uk/ukpga/1992/4

(EYFS) statutory frameworks[11,12]. The practical effect is that childcare providers who have a duty to implement the EYFS are eligible for the NMS, including childminders and providers of childcare on domestic premises registered with CMAs. Early years childcare providers who would be eligible for the NMS under the current childcare registration regime (those registered with Ofsted) remain eligible, and providers that were not previously eligible for the NMS, such as informal care provided by a relative, remain excluded. Updating the definition using section 40 of the 2006 Act provides a more durable basis for eligibility than listing individual provider categories.

6.4 Eligibility of early years childcare providers in Wales continues to be linked to registration under the relevant Welsh legislation (the Children and Families (Wales) Measure 2010)[3] or to an exemption from registration specified in article 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010[4] ("the 2010 Order"). Regulations 3, 5 and 10 of this instrument include technical amendments to ensure that the updated definition of childcare provider is operable for Wales and reflects Welsh legislation that has been repealed and replaced since the 1996 Regulations were made. Regulation 10 of this instrument prospectively amends the reference to the 2010 Order within the definition of childcare for Wales, making consequential provision, to take account of the coming into force of the Child Minding and Day Care Exceptions (Revocation and Transitional Provision) (Wales) Order 2026[13] on 1 April 2027. Article 16 of this Order replaces article 14 of the 2010 Order, but introduces an age qualification that requires providers who provide care for children under the age of 3 to be registered. There is no intention to change the Welsh childcare providers' eligibility for the NMS in practice, meaning those eligible under the 1996 Regulations remain eligible under this instrument (subject to providers who previously benefited from the exemption under article 10 of the 2010 Order being required to be registered with effect from 1 April 2027).

6.5 Regulation 3(b) of this instrument removes some definitions from the 1996 Regulations that are obsolete or no longer applicable, including "daycare" and "daycare provider". Regulations 4, 6, 7, 8 and 9 of this instrument amend Part V of the 1996 Regulations, including regulations 19, 20, 21A and Schedule 5, to align the terminology with the definition of an eligible childcare provider in the updated regulation 18(2).

6.6 Regulation 9 of this instrument allows applicants to provide an assigned reference number (either a 'Get Information About Schools' number or a Unique Reference Number provided by DfE), a certificate of registration or other document, as evidence of eligibility for the NMS. This reflects the different identifiers and evidence held by different categories of provider and allows for future changes to the relevant administrative systems. Further details will be set out in the NMRU guidance, as referred to in paragraph 8.1 below.

6.7 Other than the change arising from the replacement Welsh legislation described in paragraph 6.4, the amendments do not affect the continued eligibility of existing

[11] Department for Education (2026), "Early Years Foundation Stage Statutory Framework for childminders": https://assets.publishing.service.gov.uk/media/6a5f8e320dd52549f5f96c8c/EYFS_childminders_from_September_2026.pdf

[12] Department for Education (2026) "Early Years Foundation Stage Statutory Framework for group and school-based providers": https://assets.publishing.service.gov.uk/media/6a5f8e4fb00f3323bf1a23a1/EYFS_group_and_school_based_from_September_2026.pdf

[13] The Child Minding and Day Care Exceptions (Revocation and Transitional Provision) (Wales) Order 2026: https://www.legislation.gov.uk/wsi/2026/100/made

providers or the processing of applications, approvals or claims made before the amendments come into force. No further transitional or saving provision is therefore required.

Why was this approach taken to change the law?

6.8 The eligibility requirements for the NMS are set out in the 1996 Regulations, and any amendment to them is required to be by legislation (either primary or secondary). Secondary legislation using the existing powers in section 13 of the Social Security Act 1988[5] and section 175 of the Social Security Contributions and Benefits Act 1992[10] was considered a more appropriate use of the Parliamentary timetable to update the 1996 Regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 DfE has long-standing relationships with the CMAs and discussed the policy change with them. The CMAs are supportive of the change.

7.2 There was no statutory or common law requirement to conduct a public consultation. This instrument makes a targeted technical change to correct an anomaly in the operation of the existing NMS (extending eligibility to include early years childcare providers registered with CMAs). DHSC secured cross-government agreement to make the policy change and drafted the instrument in collaboration with DfE, as the department responsible for early years policy and the early years statutory frameworks.

7.3 DHSC engaged with officials in the Welsh Government on the drafting of this instrument and, in accordance with section 13(2) of the Social Security Act 1988[5], the Secretary of State for Health and Social Care consulted with and secured agreement from Ministers in the Welsh Government.

7.4 DHSC also engaged with the NHSBSA, which administers the NMS on behalf of the Secretary of State, on the operational implications of this instrument, including arrangements for validating registration for CMA-registered childcare providers.

8. Applicable Guidance

8.1 Guidance on the NMS is currently available on the NMRU website[14]. It explains provider and child eligibility, product eligibility, registration and claiming arrangements, and audit requirements. The guidance on the NMRU website will be updated to explain the new eligibility of CMA-registered providers and the process for registration to the NMS, in accordance with the amended 1996 Regulations. The updated guidance will be available on the NMRU website when this instrument comes into force.

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 impose any regulatory requirements on businesses and so does not meet the threshold for an impact assessment under the Better Regulation Framework.

[14] Nursery Milk Reimbursement Unit Website: https://www.nurserymilk.co.uk/

9.2 The amendment is technical, enabling a small cohort of additional early years childcare providers in England to participate in an existing statutory scheme. As noted in paragraph 5.4, the majority of early years childcare providers in England are registered with Ofsted and were therefore already eligible to participate in the NMS under the 1996 Regulations.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities, or voluntary bodies. This instrument gives eligible CMA-registered providers the option of registering for the NMS and reclaiming costs of milk provided to eligible children in their care. Providers that choose to participate in the NMS may incur limited administrative costs associated with registration and submitting claims, however, these would be minor considering the reimbursement available, and participation in the NMS remains voluntary.

9.4 The instrument may positively affect some small and microbusinesses by giving eligible providers access to reimbursement under the NMS.

9.5 There is no, or no significant, impact on the public sector because the majority of early years childcare providers were already eligible for the NMS under the 1996 Regulations. Reimbursement payments made through the NMS in England are funded by DHSC and the Welsh Government, and administered on their behalf by the NHSBSA. DHSC estimates that extending the NMS to include CMA-registered early years childcare providers will cost around £850,000 each year. The total annual cost of the NMS is between £60-65 million.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument will be monitored through the NHSBSA's routine management of the NMS, including the number of CMA-registered early years childcare providers that register for and claim under the NMS, claim frequency and average claim value.

10.2 Separately, a wider evaluation of the NMS is being undertaken by researchers at Sheffield Hallam University, funded by the National Institute for Health and Care Research. The study aims to evaluate how the NMS operates and contributes to the dietary intakes of children, and the value, cost-effectiveness and equitability of the scheme[15]. It is due to conclude in May 2028.

10.3 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015[16], Minister of State for Public Health and Patient Safety at DHSC, Dame Diana Johnson, has made the following statement:

"A review would be disproportionate when taking into account that this instrument does not place any regulatory requirements on businesses. It makes technical amendments to enable a small cohort of additional early years childcare providers in England to participate in an existing statutory scheme."

[15] National Institute for Health and Care Research – evaluation of the Nursery Milk Scheme: https://www.fundingawards.nihr.ac.uk/award/NIHR208579

[16] Small Business, Enterprise and Employment Act 2015: https://www.legislation.gov.uk/ukpga/2015/26

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 There are 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").