

EXPLANATORY MEMORANDUM TO

THE EARLY YEARS FOUNDATION STAGE (LEARNING AND DEVELOPMENT, EARLY YEARS REGISTER AND WELFARE REQUIREMENTS) (AMENDMENT) REGULATIONS 2023

2023 No. 1338

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Education and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Early Years Foundation Stage Statutory Framework (“EYFS”) that all early years providers in England must follow. Changes to the EYFS will offer providers more flexibility and reduce known burdens, as well as improving clarity and usability. The aims of these changes are to better enable practitioners to provide quality early education and childcare for children and families who need it and make it easier for practitioners to join the workforce and progress their careers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The application of this instrument (that is where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 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) (“the 2007 Order”) 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. Section 40 of the Childcare Act 2006 imposes a duty on early years providers to implement the EYFS.
- 6.2 This instrument also amends the Childcare (Early Years Register) Regulations 2008, which prescribes requirements early years providers must meet to be registered in the

early years register, or with an early years childminder agency under Part 3 of the Childcare Act 2006.

7. Policy background

What is being done and why?

- 7.1 The EYFS sets the standards all early years providers in England must meet to ensure that children learn, develop well, and are kept healthy and safe. It was first introduced in 2008 and has undergone a number of revisions since its introduction, most recently in September 2023.
- 7.2 The changes made by this instrument do not alter the substance of the transformative EYFS education reforms that were introduced from September 2021. Those reforms aimed to strengthen teaching and learning, improve outcomes for children and reduce paperwork for teachers and practitioners. The Department for Education continues to provide support to settings to help embed those reforms and realise the benefits.
- 7.3 Following public consultation, this instrument amends the EYFS to offer providers increased flexibility and alleviate known burdens, provide clarification in areas that have been causing confusion in the sector, and make the EYFS a more practical and usable document for different types of providers. This is to enable practitioners to provide quality, safe early education and childcare, and to make it easier for practitioners to join the workforce and progress their careers. This is especially important in the context of the expansion of early years entitlements following the 2023 Budget, as delivering on the ambition of the Budget’s commitments will require a significant expansion of the workforce.

Provider-Specific Versions

- 7.4 This instrument amends the definition of the “the Document” in both the 2007 Order and the 2012 Regulations, so that instead of referring to a single EYFS Document, the existing requirements for each provider type have been separated into two provider-specific versions of the Statutory Framework, one applicable to childminders and the other to group and school-based providers.
- 7.5 This change is intended to make things easier for providers; the Department understands that the document can be time consuming and complicated to use, especially for childminders who must filter through many requirements that do not apply to them. The two versions set out the requirements that are specific to the provider type: childminder or school and group-based setting. The intent is to create two commensurate, but more targeted, documents.

Changes to Requirements

- 7.6 The instrument also makes some substantive changes to a number of requirements in the EYFS.
- 7.7 For group and school-based providers, these changes include:
- (a) Allowing students and apprentices to count in staff:child ratios (see paragraph 3.50 in the group and school-based providers version of the EYFS, paragraph references below also refer to this document).
 - (b) Removing the requirement for level 3 early years practitioners to hold a GCSE or equivalent in maths, and instead applying this requirement to setting managers (see paragraph 3.38).

- (c) Clarifying that, while qualifications must be verified, employees do not have to provide physical copies of their qualifications (see paragraph 3.10).
- (d) Clarifying the wording on the validity of Paediatric First Aid (PFA) certificates, to make it explicit that all staff who have obtained a level 2 and/or level 3 qualification, since 30 June 2016, must also hold a valid PFA qualification to be included in the required staff:child ratios (see paragraph 3.32).

7.8 For childminders, these changes include:

- (a) Allowing ‘kitchens’ to be considered as an area within floor space requirements (see paragraph 3.66 in the childminder version of the EYFS, paragraph references below also refer to this document).
- (b) Clarifying safeguarding responsibilities when childminders are working in a group to make clear that each childminder is responsible for meeting the requirements of their own registration, but that childminders have a joint responsibility when working together for the welfare of all the children present (see paragraph 3.5).
- (c) Clarifying wording within the ‘suitable person’ requirements, to make it explicit that ‘suitable’ means childminders, and any assistants, must have the relevant qualifications, training and have passed any required checks to fulfil their roles and that Ofsted or their Childminder Agency is responsible for checking suitability (see paragraphs 3.10 and 3.11).
- (d) Clarifying that areas for confidential discussion with parents/carers should be available to parents/carers on request, rather than needing to be permanently available (see paragraph 3.71).
- (e) Removing the requirement for childminders to display PFA certificates, and instead make these available on request (see paragraph 3.36).
- (f) Allowing childminders to display a copy of their certificate of registration digitally, rather than physically, and must be made available on request (see paragraph 3.85).

7.9 For all providers, these changes include:

- (a) Changing wording on English as an Additional Language (EAL) requirement, from providers “must” take reasonable steps to provide opportunities for children to develop and use their home language in play and learning to “may” (see paragraph 1.9 in the childminder version and paragraph 1.14 in the group and school-based providers version).
- (b) Ensuring that providers’ safeguarding policies include how “other electronic devices with imaging and sharing capabilities” (as well as cameras and mobile phones) are used in the setting (see paragraph 3.7 in each version of the EYFS).
- (c) Clarifying the existing position on collection of physical evidence, to make it explicit that the collection of physical evidence by practitioners for EYFS assessment purposes is not required (see paragraph 2.2 in each version of the EYFS).

7.10 Additionally, this instrument removes the requirement in paragraph 3A of Schedule 1 to the Childcare (Early Years Register) Regulations 2008 for a childminder applicant to complete a course designed to enable the applicant to meet the EYFS learning and development requirements and the EYFS welfare requirements. Childminders will still be required to understand, and be able to implement, the EYFS learning and development requirements and the EYFS welfare requirements (see paragraph 3.26 in the childminder version of the EYFS).

Early Years Qualification Requirements and Standards document

- 7.11 This instrument also amends the 2012 Regulations to give effect to the Early Years Qualification Requirements and Standards document. This document imposes requirements on providers to ensure that early years practitioners hold appropriate qualifications and meet the standards necessary to count towards the staff:child ratios set out in the group and school-based providers EYFS. It also sets out the Early Years Practitioner (level 2) criteria; the Early Years Educator (level 3) criteria; the process by which early years qualifications are approved by the Department for Education as meeting these criteria; and the process for overseas candidates to show they meet the requirements to work within the staff:child ratios.
- 7.12 The policy aim of introducing the Early Years Qualification Requirements and Standards document is to bring together all early years qualification requirements into one single document, making these requirements more easily accessible and understandable to users.
- 7.13 All changes follow public consultation.
- 7.14 Quality and safety of provision remains a priority, as this is integral to the ambition of increasing access to quality early education and childcare through entitlements expansion, and the Department will continue to monitor this.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 There are no current plans to consolidate the relevant regulations.

10. Consultation outcome

- 10.1 The Department carried out an 8-week public consultation that opened on 31 May 2023 and closed on 26 July 2023.
- 10.2 The Government response to the consultation was published on 27 October 2023. This is available here: [Early years foundation stage \(EYFS\): regulatory changes - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/early-years-foundation-stage-eyfs-regulatory-changes)
- 10.3 In total, the consultation received 2,667 responses through the online portal and via email. The highest proportion of responses to the consultation came from private, voluntary and independent (PVI) childcare setting managers/owners. There were a good number of responses from childminders, maintained nurseries, PVI practitioners, local authorities, and parents/carers. However, the number of people whose views have been considered as part of this process is likely far greater as many representative organisations canvassed their members before responding.
- 10.4 The Government's position on each consultation proposal is set out in the official response. Most of the proposals the government will be implementing were supported by over 70% of respondents, or received high levels of support.
- 10.5 The two most controversial proposals from the consultation are not being taken forward. These were proposed changes to qualification requirements outside of peak hours, and reducing the percentage of Level 2 qualified staff required per ratio from

‘at least half’ to 30% or 40% of all other staff. Neither of these changes are being implemented.

- 10.6 The Government also intends to proceed with the following changes, but at a later date. These are 1) to introduce an experience-based route to working in ratios (for group and school-based providers only) and 2) to clarify that practitioners can only operate in Level 6 staff:child ratios if they hold Qualified Teacher Status (QTS), Early Years Teacher Status (EYTS) or Early Years Professional Status (EYPS) (for group and school-based providers only).
- 10.7 The intention is to introduce these changes at a later date, to allow time to work with stakeholder experts and the sector to develop policy and processes.
- 10.8 Alongside the consultation, the Department ran a survey of providers, to gather evidence regarding likely impacts of the changes proposed within the consultation. This received 1,349 responses. The survey of providers is available here: [Early years foundation stage consultation: a survey of providers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/early-years-foundation-stage-consultation-a-survey-of-providers)
- 10.9 The Department has consulted with Her Majesty’s Chief Inspector on a continuous basis throughout the drafting of the changes to the EYFS framework and formally as part of the consultation launched on 31 May 2023, as required under section 43 of the Childcare Act 2006.

11. Guidance

- 11.1 The Government will publish the revised versions of the EYFS statutory framework and the Early Years Qualifications Requirements and Standards document upon laying of this statutory instrument.
- 11.2 These changes will be supported by a programme of communications and engagement. Relevant existing guidance documents which support practice regarding the EYFS will be updated to reflect the changes as necessary. The Department will work with the sector and local authorities to ensure they understand the changes being made to the EYFS, including where flexibilities are offered, and how they can best implement the changes.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is likely to be familiarisation costs. The changes could lead to an increase in wage bills through increased recruitment of staff.
- 12.2 The impact on the public sector (including for example school-based settings) is likely to be the same as identified above for business, charities or voluntary bodies.
- 12.3 The expected net effect of the legislation is a total net present social value of £456.3m, business net present value of £340.6m, and a net cost to businesses per year of £39.6m.
- 12.4 A Regulatory Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 This legislation applies to small businesses such as nurseries and childminders, which make up a large proportion of the childcare market.

- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), these changes will be supported by a programme of effective communications and engagement through which we will work with the sector to ensure they understand the changes being made to the EYFS, which changes are mandatory, which are optional as long as new minimums are met, and how settings can best implement the changes. We plan to provide a set of documents to concisely explain the changes, as well as events and vodcasts hosted via Foundation Years (a platform the Department owns and uses to connect and engage with the sector) where the changes are explained with opportunities for questions from practitioners. We will also work with Ofsted and local authorities.
- 13.3 The basis for the final decision on what action to take to assist small businesses included the responses to the 8-week public consultation, which included sizeable representation from small businesses such as nurseries and childminders, responses to the provider pulse survey, and the Regulatory Impact Assessment which is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is the operation of this instrument will be kept under review on a periodic basis.

15. Contact

- 15.1 Sarah Pinder at the Department for Education. Telephone: 07487743881 or email: sarah.pinder@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Harjit Athwal, Deputy Director for Early Years Quality, Recovery and Welfare, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Johnston at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.