



An Roinn Leanaí, Comhionannais,
Míchumais, Lánpháirtíochta agus Óige
Department of Children, Equality,
Disability, Integration and Youth

Review of Regulations for Early Learning and Care

Public Consultation

Background Paper

Introduction

The regulation of early learning and care (ELC) services is provided for in the [Child Care Act 1991 as amended by Part 12 of the Child and Family Agency Act 2013 \(the Act\)](#) and the [Child Care Act 1991 \(Early Years Services\) Regulations 2016 \(the Regulations\)](#). The Act provides substantial powers to the Tusla Early Years Inspectorate (Tusla EYI), the independent statutory regulator for the sector, in relation to registration, inspection and enforcement. The Regulations set out **the minimum standards** ELC services must meet in order to register with the Tusla EYI and to operate an ELC service.

In 2019, the then Minister for Children and Youth Affairs announced that a review of the enforcement powers of the Tusla EYI would be undertaken by the Department and that the Chair of Tusla had been consulted to get the views of the Board on the matter. In particular, the Minister wished to extend Tusla's powers to enable it to close down or suspend services immediately, where it had significant safety or welfare concerns in relation to a service. The review was to also consider how parents can be informed at the earliest possible opportunity of serious concerns about a service being investigated by Tusla EYI.

While work on the review commenced in 2019, it was, by necessity, paused during the Covid-19 pandemic. The Minister for Children, Equality, Disability, Integration and Youth recommenced this important work in 2021. As the regulation of ELC services impacts a wide range of stakeholders including providers, early years educators, parents and children, the Minister also wishes to obtain the views of those stakeholders and the wider public on the review.

Scope of the Review

While the review will primarily focus on Tusla EYI's powers of enforcement, the DCEDIY will also take the opportunity to conduct a wider but limited examination of lessons learned from the implementation of the Regulations since 2016. This will include examination of whether the implementation of the Regulations is meaningful and pragmatic, whether requirements can be streamlined or administration reduced without impacting quality, whether there are any

significant gaps in the Regulations and whether there is sufficient provision for information sharing with parents in relation to the enforcement of the Regulations.

This review does not include an examination of regulatory requirements for school-age childcare or childminders as these issues will be examined in separate processes. Nor does it include a review of the structure of the Inspectorate. Finally, due to the recent publication of “Nurturing Skills: The Workforce Plan for Early Learning and Care (ELC) and School-Age Childcare (SAC), 2022-2028”, there are no plans to include any assessment of qualification requirements for early years educators in this review.

The Public Consultation

The consultation involves a call for submissions and an online survey. In addition, topics will be identified from the submissions and survey responses for further discussion in a series of focus groups. If required, the DCEDIY may decide to host further consultation events.

All information in relation to the consultation is available here

<https://www.gov.ie/en/consultation/bef61-public-consultation-on-a-review-of-regulations-for-early-learning-and-care/>

Content to be covered in Consultation

The primary focus of this public consultation is on enhancement of the enforcement powers of the Regulator. However, it also offers an opportunity for interested parties to comment on learning from the experience of implementation of the Regulations since 2016. Participants in the consultation are asked to consider their contribution under three key themes:

- 1. Does the Regulator have sufficient powers to address poor quality?**
- 2. Are there issues arising in implementation of the Regulations that require changes to legislation or to the Regulations?**
- 3. Are there changes to legislation or the Regulations that would give parents better access to information on the quality of services?**

A summary of each of the areas for consideration under these three themes is set out below:

Section 1 - Does the Regulator have sufficient powers to address poor quality?

The Tusla Early Years Inspectorate (Tusla EYI) is the independent statutory regulator for the sector with responsibility for registering services, inspecting against the Regulations and bringing enforcement action where necessary. The 2013 amendment of the Act and the 2016 Regulations together provided substantial new powers to Tusla EYI, including the powers to maintain a register, refuse to register a service, apply certain conditions to a registered service, remove a service from the register if they are not operating in line with the Regulations, prosecute a person who is operating an unregistered service, and prosecute a person who does not comply with a condition of registration.

Since the implementation of the Regulations there have been a very small number of incidences where the effectiveness of these powers has been tested. While Tusla EYI can remove a service from the register for a serious and persistent breach of the Regulations, this can be a lengthy legal process. Tusla does not have the power to immediately and temporarily close a service, even where there are concerns about significant breaches of the Regulations.

Where a service is operating without registration, Tusla may seek a Court Order to enter the service, may instruct the service to cease operating and may bring a prosecution against the service; however, it does not have the power to immediately shut the unregistered service.

The DCEDIY is now considering the introduction of powers to enable Tusla to close an unregistered service or to immediately and temporarily close a registered service where it has significant welfare or safety concerns. These are the most significant changes being considered and would impact only a very small number of services.

The DCEDIY is also considering including some additional enforcement powers in legislation which may enable Tusla EYI to take swift action where it has a significant concern about a service or a particular aspect of a service but where closure of the service is not necessary or appropriate. This might include statutory improvement notices, statutory immediate action notices and penalties for non-compliance. Depending on the severity of the non-compliance, these actions could be taken immediately or as part of an escalated enforcement path.

The DCEDIY is seeking views in relation to whether the additional powers referenced above (and / or others) should be provided in legislation.

Section 2 - Are there issues arising in implementation of the Regulations that require changes to legislation or to the Regulations?

While this is not a full review of all aspects of the Regulations, it provides an opportunity to address issues that may have arisen during implementation of the current Regulations since they came into force in 2016.

The purpose of the Regulations is to secure the health, safety and welfare and promote the development of children attending early learning and care services, and they set **the minimum standards** required for services to register with Tusla and to operate an ELC service.

Lack of clarity or unnecessary administrative burden can have a negative impact on the quality of services so it is important to consider whether the current regulatory requirements are clear, whether language needs to be clarified or further detail included under any aspect of the Regulations, and whether the administration required to comply with the regulations is unnecessary in any respect or whether it can be streamlined or reduced without negatively impacting on service quality. This may include requirements in relation to registration, management and staffing, information and records, care of children, safety, premises, notifications and complaints, and inspection.

This review does not extend to the minimum qualification requirement for early years educators, which has already been reviewed in the context of Nurturing Skills: the Workforce Plan for Early Learning and Care and School-Age Childcare (Government of Ireland, 2021).

Section 2a - Are there issues arising in implementation of the Regulations that require changes to legislation or to the Regulations? – Outdoor Services

Over the past two years services have been asked to focus more on outdoor play and there has also been an increase in services operating fully outdoors. However, there is currently no definition of an “outdoor service” in the Regulations and there are no minimum space requirements for an outdoor service or for outdoor spaces in services that operate indoors.

DCEDIY would like to address this gap in the Regulations and include specific minimum requirements for outdoor services and outdoor spaces attached to services. Introduction of specific regulatory requirements in relation to outdoor space would provide clarity to services

and would set the minimum standards against which the Regulator can inspect services. It is acknowledged that some services have limited or no outdoor space in their service and so any proposed change to the Regulations would need to take this into account.

Section 3 - Are there changes to legislation or the Regulations that would give parents better access to information on the quality of services?

Services and parents share information on an ongoing basis on a range of issues but there is currently no legal requirement for services to share inspection outcomes or to notify parents if they are subject to regulatory enforcement action. Tusla EYI does not have access to parents' contact details and is not able to share information directly with parents but it does publish inspection reports and the date of last inspection of a service (where the report is not yet finalised).

The DCEDIY is seeking views on changes to legislation or the Regulations that would give parents better access to information on the quality of services, what information should be shared with parents in relation to concerns the Tusla EYI may have about poor quality services or in relation to enforcement action being taken against a service and when that should be shared. The DCEDIY would also welcome views on where responsibility for sharing of information should sit e.g. with Tusla EYI, the service provider or somewhere else.