

# Child Care (Amendment) Bill 2024

## Regulatory Impact Analysis

June 2024

<b>Department/Office:</b> Department of Children, Equality, Disability, Integration and Youth	<b>Title of Legislation:</b> Child Care (Amendment) Bill 2024
<b>Stage:</b> Bill for Publication	<b>Date:</b> June 2024
<b>Related Publications:</b>  Report on the public consultation on Part VIIA of the Child Care Act 1991: <a href="https://www.gov.ie/en/publication/f5942-report-on-a-public-consultation-on-a-review-of-regulations-for-early-learning-and-care/">https://www.gov.ie/en/publication/f5942-report-on-a-public-consultation-on-a-review-of-regulations-for-early-learning-and-care/</a>  Report on Pre-Legislative Scrutiny of the General Scheme of a Child Care (Amendment) Bill 2023: <a href="https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_children_equality_disability_integration_and_youth/reports/2023/2023-06-28_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-a-child-care-amendment-bill-2023_en.pdf">https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_children_equality_disability_integration_and_youth/reports/2023/2023-06-28_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-a-child-care-amendment-bill-2023_en.pdf</a>	
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### Policy objectives:

Part VIIA of the Child Care Act 1991 relates to the regulation of Early Learning and Care (ELC) and School-Age Childcare (SAC) services by the Tusla Early Years Inspectorate (Tusla EYI). The Act provides powers to the Tusla EYI, the independent statutory regulator for the sector, in relation to registration, inspection and enforcement. Part VIIA of the Act and the Regulations made under that Part set out the minimum standards ELC and SAC services must meet in order to register with the Tusla EYI and to operate.

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 enhance Tusla EYI'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 could be informed at the earliest possible opportunity of serious concerns about a service being investigated by Tusla EYI.

The objectives of the Bill in relation to Part VIIA are:

- to build on the enforcement options available to Tusla to address the limitations that have been identified by it as the independent regulator, such as immediate closure of unregistered services, temporary suspension of service registrations and putting the enforcement path on a legislative footing,
- to introduce a formal mechanism for sharing of certain information related to quality of a service with parents,
- the introduction of a "fit person" regulation to empower Tusla to assess the suitability of a person applying to be a registered provider, and
- the removal of the exemptions relating to childminders to facilitate the future extension of regulation to all paid, non-relative childminders and to allow the Minister to introduce childminder specific regulations at a future date.

The purpose of these proposals is to ensure that Tusla EYI has the appropriate enforcement powers to address serious non-compliance with the Regulations and that parents have access to information in relation to the quality of services. The intention is not to increase enforcement action but instead streamline it and address some of the limitations of the current legislation, making it more effective and so improve overall compliance within the sector.

**Policy options:**

1. Do nothing
2. Make legislative amendments to streamline and enhance enforcement options and facilitate the future extension of regulation to all paid, non-relative childminders
3. Made administrative changes to streamline and enhance current enforcement processes and facilitate the future extension of regulation to all paid, non-relative childminders

**Preferred option:**

**Option 2** is the preferred option.

The streamlining and enhancement of legislative enforcement options will ensure that Tusla EYI has the appropriate enforcement powers to address serious non-compliance with the Regulations and that parents have access to information in relation to the quality of services. Tusla EYI has already made administrative amendments to its enforcement processes to ensure they are more efficient and effective, and the potential for any further enhancement without legislative change is very limited.

Legislative amendments are required to facilitate the future extension of regulation to all paid, non-relative childminders as an administrative approach is not possible due to the current exemptions provided in the 1991 Act. The proposed enabling amendments will allow the Minister bring childminding specific Regulations into force in Q3 of 2024 and the Regulations will be subject to a separate RIA.

Comparison of Options			
	Costs	Benefits	Impacts
<p><b>Option 1</b> (<i>Do nothing</i>) is not appropriate as the review has identified areas where there are weaknesses in the Tusla EYI's enforcement powers which, if left unaddressed, could hinder its ability to enforce the regulations.</p> <p>This is not appropriate in relation to childminders as it will preclude Tusla EYI from ensuring minimum standards are met and also preclude parents from accessing subsidies where children attend childminders.</p>	<p>There are no additional costs associated with this option. However, there is an opportunity cost of the resources the Tusla EYI is putting into addressing poor quality services through protracted enforcement action.</p>	<p>There are no benefits arising from this option.</p>	<p>The identified shortcomings in the current legislation regarding Tusla EYI's powers to promptly and effectively address instances of extreme poor quality in services would go unaddressed.</p> <p>There is an opportunity cost whereby parents are excluded from subsidies as childminders are not able to register with Tusla and childminders would not be able to access supports from the State.</p>
<p><b>Option 2</b> (<i>Make legislative amendments to streamline and enhance enforcement options</i>) will ensure that Tusla EYI has the appropriate enforcement powers to address serious non-compliance with the Regulations and that parents have access to</p>	<p>Minor financial costs, if any.</p> <p>This option provides additional enforcement options to respond to non-compliances in a proportionate manner. There is potential for some additional legal</p>	<p>Tusla EYI will have new tools and powers to respond rapidly and effectively to instances of serious or persistent non-compliance with regulations.</p>	<p>Enhanced enforcement powers will encourage a more rapid redress of regulatory breaches.</p>

<p>information in relation to the quality of services.</p> <p>Option 2 will also ensure that the exemption for childminders from registration is removed.</p>	<p>costs for new enforcement options but these may be offset by an overall streamlining of enforcement.</p> <p>While there are some costs involved in opening State subsidies to parents availing of childminders and some initial costs for some childminders to meet regulatory requirements, these will be dealt with in the separate RIA being prepared in relation to the childminding-specific regulations that are currently being reviewed following the completion of public consultation.</p>	<p>Parents will have access to information on enforcement.</p> <p>A 'fit person' requirement for registered providers would mean those unsuitable or with a history of non-compliance may not become registered providers.</p> <p>There is a re-balancing of rights in favour of the right of children to quality services.</p> <p>It also provides an opportunity to address some inconsistencies and issues around interpretation in the current Act.</p> <p>There will be access to State subsidies for parents availing of childminders.</p> <p>Childminders will have access to both general and specific State supports such as the Childminding Development Grant.</p>	<p>Processes will be streamlined for the regulator but with little or no additional administrative burden for services.</p> <p>The enforcement path will be clearly set out in legislation, providing clarity for providers and the courts.</p> <p>In combination, these provisions will support improved quality in the sector.</p> <p>Increased numbers of childminders registered with Tusla.</p>
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		Childminders will have access to increased quality supports.	
<p><b>Option 3</b> (<i>Made administrative changes to streamline and enhance the current enforcement processes</i>) - Tusla EYI has already made a number of administrative changes to address some of the issues identified. The scope for further administrative changes is limited.</p> <p>It is not possible to undertake the necessary changes on an administrative basis for childminders.</p>	Minor financial costs, if any.	Administrative changes may be introduced more quickly than change through legislative amendment.	The impact of this option is very limited as the issues identified cannot be addressed effectively without legislative change.

**Summary and comment on why preferred option chosen**

**Option 2:** Make legislative amendments to streamline and enhance enforcement options.

The streamlining and enhancement of legislative enforcement options will ensure that Tusla EYI has the appropriate enforcement powers to address serious non-compliance with the Regulations and that parents have access to information in relation to the quality of services. The intention is not to increase enforcement action but instead streamline it and address some of the limitations of the current legislation, making it more effective and so improve overall compliance within the sector.

For childminders, the removal of the exemption on registering is in line with commitments made in the National Action Plan for Childminding 2021-2028. The intention is that the regulations, which will be phased over a transition period, will be proportionate and appropriate to the home and family setting, to respect the unique way in which childminders work. The Action Plan also commits to providing supports to childminders to help them meet regulatory requirements.

It also provides an opportunity to address some inconsistencies and issues around interpretation in the current Act. Furthermore, it aligns with the Department’s proposal to amend the wider Act.

## Section 2: Description of Policy Context and Objectives

### 2.1 Policy context

The regulation of ELC and SAC services is provided for in the [Child Care Act 1991 \(as amended by the Child and Family Agency Act 2013\)](#), the [Child Care Act 1991 \(Early Years Services\) Regulations 2016](#) and the [Child Care Act 1991 \(Early Years Services\)\(Registration of School Age Services\) Regulations 2018](#). The Act provides powers to the Tusla EYI in relation to registration, inspection and enforcement of ELC and SAC services. The Regulations set out the minimum standards services must meet in order to register with the Tusla EYI and to operate a service.

#### **Policy Objectives: Review of Part VIIA of the Act**

A review of the enforcement powers of the regulator was instigated in 2019 following an RTÉ Investigates Programme (“Crèches – Behind Closed Doors”) which made allegations of serious and significant breaches of regulations in three services.

The then Minister for Children and Youth Affairs wrote to the Chair of Tusla to ask what additional powers the Tusla EYI might need in order to strengthen enforcement. Tusla EYI’s response set out a range of additional powers that might be provided to Tusla EYI, including the power to immediately close a service and to inform parents where there are concerns. Legal advice provided at the time noted that a provision in primary legislation would be required to allow for most of the changes requested and, in particular, the power to close a service with immediate effect.

It was decided that a full review of the enforcement powers of the Tusla EYI would be undertaken by the Department in consultation with Tusla EYI. In particular, the Minister wished to explore the extension of Tusla EYI’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 included a comprehensive public consultation that ran from March to October 2022. Further details on the public consultation are available [here](#). In addition to the public consultation and the ongoing consultation with Tusla EYI, research into legislation in other sectors and in other jurisdictions was also undertaken by the Department.

The review found that while the Act and the 2016 Regulations had provided substantial powers to Tusla EYI, changes are required to address instances where there are significant and serious breaches of regulations. While such instances are not common, where they do occur they can pose a risk to the children attending the service.

It is also proposed to use the opportunity created by the reform of Part VIIA of the Act to change the legal status of childminders in line with the commitments in the National Action Plan for Childminding 2021-2028. The proposals will allow for the development of childminding-specific Regulations and for childminders to register with Tusla EYI following the commencement of the reforms and the regulations. This will allow parents access to the National Childcare Scheme for Tusla EYI-registered childminders. The proposed amendments include a proposed phased transition period of three years, which is intended to give

childminders the time to prepare for and meet the new regulation and registration requirements that will be put in place.

The childminding-specific regulations are currently being developed in consultation with Tusla EYI, childminders and sectoral representatives. A RIA of the extension of regulation to all paid, non-relative childminders is also under development and will be brought to Government with draft regulations in Q3 2024. The childminding-specific RIA will also address the [EU Directive 2018/958](#) of the European Parliament and Council which concerns the proportionality test before adoption of new regulation of professions. The Directive was transposed into Irish law in August 2022 ([SI 413/2022](#)).

### **Section 3: Summary of Child Care (Amendment) Bill 2024**

The objectives of the Child Care (Amendment) Bill 2024, amending Part VIIA of the Child Care Act 1991, are:

- to build on the enforcement options available to Tusla to address the limitations that have been identified by it as the independent regulator, such as immediate closure of unregistered services, temporary suspension of service registrations and putting the enforcement path on a legislative footing,
- to introduce a formal mechanism for sharing of certain information related to quality of a service with parents,
- the introduction of a “fit person” regulation to empower Tusla to assess the suitability of a person applying to be a registered provider, and
- the removal of the exemptions relating to childminders to facilitate the future extension of regulation to all paid, non-relative childminders and to allow the Minister to introduce childminder-specific regulations at a future date.

The Bill addresses issues that have been identified in the review. It introduces a clear statutory enforcement path for Tusla EYI and provides for a streamlined approach to enforcement. It also provides clarity to the courts when enforcement cases are heard.

The intention is not to increase enforcement action but instead streamline it and address some of the limitations of the current legislation, making it more effective and so improving overall compliance within the sector.

At all times consideration is given to the need to balance Tusla EYI’s powers to investigate and take enforcement actions against ELC and SAC services with the requirements for fair process and the rights of service providers to earn a living and the right of the child to access a safe service. Overall, however, the experience of recent enforcement cases, shows the need for a rebalancing to give stronger powers to Tusla EYI.

While the review was initially focused on enhancement of regulatory enforcement powers and better communication of information on quality to parents, it also provided an

opportunity to consider other issues that have arisen during implementation of the current Regulations since they came into force.

## Section 4: Policy Analysis

### 4.1 Costs

It is worth noting that the enforcement processes discussed in this document are not common. Since the introduction of the 2016 ELC Regulations, Tusla EYI has found only 29 confirmed cases of services operating without registration<sup>1</sup>. However, Tusla EYI has reported that it spends a disproportionate amount of time on the small number of unregistered services it is made aware of.

Under the current approach, where a service is operating without registration, Tusla EYI 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 close the unregistered service. The remedies available to Tusla EYI can be time-consuming, during which time the unregistered service may continue to operate, without any oversight or quality assurance and without having met the minimum standards required for registration throughout that period.

If an unregistered service refuses to engage with the regulator this can result in a drawn out process. The maximum time taken to reach resolution was 39 months, the minimum 1 month, the statistical average was currently 13 months.

#### *4.1.1 Option 1: Do Nothing*

There are no additional costs associated with this option. However, the opportunity cost of the resources the Tusla EYI is putting into addressing poor quality services through protracted enforcement action will continue. The identified shortcomings in the current legislation regarding Tusla EYI's powers to promptly and effectively address instances of extreme poor quality in services would go unaddressed.

There are no additional costs associated with this option in regards to childminding.

#### *4.1.2 Option 2: Make legislative amendments to streamline and enhance enforcement option and facilitate the future extension of regulation to all paid, non-relative childminders*

The purpose of this proposal is to ensure that Tusla EYI has the appropriate enforcement powers to address serious non-compliance with the Regulations and that parents have access to information in relation to the quality of services. The intention is not to increase enforcement action but instead streamline it and address some of the limitations of the

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<sup>1</sup> The figures contained in this RIA are from the time of the Review in 2022.



current legislation, making it more effective and so improve overall compliance within the sector.

These reforms will require Tusla EYI to change its current processes and enable it to introduce a more streamlined approach and as such, the impact on resources should be limited. Many of the statutory amendments proposed would place existing administrative processes on a statutory footing or would directly address issues that Tusla EYI has advised are time-consuming and drawn out. Enhanced enforcement powers will encourage a more rapid redress of regulatory breaches. The full impact on resources is unknown but as numbers of serious non-compliances are relatively low, the overall impact on resources should also be low.

There will be some costs associated with the opening up of State subsidies to parents availing of childminders, specific supports for childminders, the increase in staffing required for the Tusla EYI and the need to meet regulatory requirements for childminders. These will be monitored over the course of the transition period and will be further detailed in the RIA for the childminding-specific Regulations, which is currently being prepared following the completion of public consultation on the draft childminding regulations.

#### *4.1.3 Option 3: Make administrative changes to streamline the enhance current enforcement processes and facilitate the future extension of regulation to all paid, non-relative childminders*

The financial costs to the Exchequer would be minor, if any costs arose. However, there would be a risk of an opportunity cost of the resources the Tusla EYI expend on enforcement if the administrative changes alone are not adequate to full address the protracted enforcement process and the associated costs described above.

There would be no costs associated with the administrative regulation of childminders as it is not possible without legislative amendments.

## 4.2 Benefits

It is worth noting that there are over 4,040 ELC services and over 860 standalone SAC and so Tusla EYI regulate a very large sector.

Tusla EYI receives approximately 100 complaints annually in relation to services operating without registration although, following investigation, only a small percentage are found to be actually operating as an “unregistered service”. Since the introduction of the 2016 ELC Regulations, Tusla EYI has found only 29 confirmed cases of services operating without registration and the vast majority of these closed when Tusla EYI began enforcement proceedings.

Since the introduction of the 2016 Regulations there have been 9 incidents of a service remaining open during an appeal of a removal from the register where Tusla EYI had identified an immediate concern to children that was not addressed.

The enforcement processes discussed in this document only occur in exceptional cases and where there is a significant risk to children. The enforcement process is not something that the majority of services experience, as the overwhelming majority of services are compliant with Tusla EYI regulations or any non-compliances found on inspection are quickly remedied through the Corrective and Preventative Action (CAPA) process without the need for further enforcement actions.

#### *4.2.1 Option 1: Do Nothing*

There are no benefits arising from this option. The current processes have had risks identified by Tusla EYI, described above.

For childminding, there are no benefits arising from this option.

#### *4.2.2 Option 2: Make legislative amendments to streamline and enhance enforcement option and facilitate the future extension of regulation to all paid, non-relative childminders*

This approach would provide an opportunity to address some inconsistencies and issues around interpretation in the current legislation. The amendments to legislation would also allow for a re-balancing of rights in favour of the right of children to quality services. The Department and Tusla EYI are both of the view that the rights of the children to be safe needs to be given greater prominence in legislation.

The benefits can be considered under the areas for legislative change that are currently being proposed.

#### Enhanced Enforcement Tools

Section 58(D)1 of the Child Care Act 1991 (the Act), provides that “A person shall not provide a prescribed early years service unless his or her name is entered in the register as a provider of that service.” Registration of ELC and SAC is granted where Tusla EYI is satisfied that the premises, operation and location of the setting poses no unmanaged risk to children.

Services that are operating without registration may include those that have never applied for registration, those that have applied to be registered and have commenced operation before their application has been approved, those who are operating outside their registration e.g. registered for SAC provision but also operating an ELC service, and those that were removed from the register by Tusla EYI but are still operating.

Where a service is operating without registration, Tusla EYI 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 close the unregistered service. The remedies available to Tusla EYI can be time-consuming, during which time the unregistered service may continue to operate, without any oversight or quality assurance and without having met the minimum standards required for registration throughout that period.

This situation could pose a significant risk to the safety and well-being of any children attending.

Tusla EYI receives approximately 100 complaints annually in relation to services operating without registration although, following investigation, only a small percentage are found to be actually operating as an “unregistered service”. Since the introduction of the 2016 ELC Regulations, Tusla EYI has found 29 confirmed cases of services operating without registration.

Tusla EYI does not have the power to close such services with immediate effect. Tusla EYI’s current policy is to write to the provider to advise them to cease and desist; however, it cannot enforce a closure without prosecuting the service. Tusla EYI has advised that there can be a number of different outcomes in these cases. Of the 29 cases of unregistered services identified by Tusla EYI, the majority (16) of these services decided to stop operation until registered, 1 continued operation, 9 closed when threatened with prosecution and 3 are ongoing. Tusla EYI has advised that two of the cases led to initiation of prosecutions based on concerns for the care of children. While only a small number continued operating when challenged by Tusla EYI, the risk to children in such cases warrants granting additional more rapid enforcement powers to Tusla EYI.

The Tusla EYI has reported that it spends a disproportionate amount of time on the small number of unregistered services it is made aware of. If a service refuses to engage with the regulator this can result in a drawn out process. The maximum time taken to reach resolution was 39 months, the minimum 1 month, the statistical average is currently 13 months. During this time, the Tusla EYI has no way to compel action on behalf of any person providing an unregistered ELC/SAC service, whereas with a registered provider The Tusla EYI has the power to demand a range of safeguarding actions to take place.

Allowing the service to continue operation without being registered could endanger the well-being and safety of children attending that service. This may include an immediate and grave danger to children. The Tusla EYI has identified cases where children attending unregistered services continued to receive sub-standard care while lengthy court cases were ongoing. This proposed amendment would assist the Tusla EYI in ensuring that children can quickly be protected from danger.

The current legislative framework gives the Tusla EYI the power to enforce the Regulations but the enforcement path is not set out in primary legislation in a clear and transparent way. The Tusla EYI has developed an enforcement process on an administrative basis; however, the fact that it is not set out in the legislation has proved a hindrance to successful prosecutions and drawn criticism from judges presiding over cases brought by the Tusla EYI. It also means the only legal action available to the Tusla EYI to enforce the Regulations are at the extreme end of the enforcement process (attaching conditions to a service’s registration, removing a service from the register, or prosecution).

In some cases, where services have appealed the Tusla EYI’s decision to remove them from the register it has resulted in the Court placing a stay on the removal until the appeal is heard (which may take months). Adding to the lengthy enforcement process, this has allowed

services to operate for a year or longer after an inspector has initially identified serious non-compliance and no evidence has been provided that these non-compliances have been corrected. The Tusla EYI has advised that in two cases relating to removals from the register, the courts have placed significant value on the rights of the provider to earn a living even where the Tusla EYI argued robustly that children had been adversely impacted by ongoing breaches of regulations.

The Tusla EYI will have new tools and powers to rapidly respond to instances of serious non-compliance with regulations through this option. Setting out the enforcement path in primary legislation, in a transparent way, will provide the Tusla EYI with the appropriate tools to address concerns in a more efficient manner. During its review of District Court cases in relation to both prosecutions and appeals against removals from the register, the Tusla EYI has observed that the Court may seek to avoid removals from the register by compelling providers to make improvement. The introduction of statutory improvement notices, immediate action notices and temporary closure notices/orders would provide balance in the legislation, would provide the Tusla EYI with the powers to address child welfare concerns quickly, and in cases where enforcement escalated to closure, would provide the Court with the assurance that lesser remedies have been attempted and that fair procedures have been demonstrated.

Under the current legislation, the Tusla EYI must prosecute a service through the courts to enforce a closure. As a successful prosecution will require strong evidence that an unregistered service is operating, the Tusla EYI must seek access to the premises to gather this evidence. To access a premises, Tusla EYI is required to seek a court ordered warrant. Warrants that Tusla EYI can obtain are usually single-use to enter and inspect, there is no requirement for the person in charge to co-operate, and Tusla EYI has no power to remove copies of records or obtain and use parents' information.

The current proposals will allow Tusla EYI to apply for a warrant to the local District Court to enter a premises on multiple occasions if necessary within the dates of validity of the warrant. The proposals will also grant Tusla EYI the power to request, copy and take away documents as required during the course of an inspection.

The introduction of temporary prohibition orders would be an additional power for Tusla EYI and it would have the benefit of running side by side with the current process of removals from the register. It is a serious measure that would allow Tusla EYI to take immediate action where this is a concern for the welfare and safety of children and would demonstrate to all services the seriousness of non-compliances that are deemed to be a significant risk to the health, safety and wellbeing of the children in the service.

#### Formal Information Sharing with Parents

While Tusla EYI's inspection reports are all published on its website, there is currently no legal requirement for services to share inspection outcomes with parents or to notify parents if they are subject to regulatory enforcement action. Moreover, the current legislation does not permit Tusla EYI to inform parents of the commencement of regulatory enforcement

procedures. Tusla EYI does not have access to parents' contact details and is not able to share information directly with parents. This issue has arisen previously where Tusla EYI had safety concerns for the children in a service but was not in a position to share this information with all parents using the service. There is also no statutory requirement for the service to share the information with parents. Parents continued to use this service with no knowledge of the quality concerns of the regulator.

A requirement to share information with parents in an open way would encourage quality improvements by giving parents information that they can also follow up on. The Department understands that under the current legislation Tusla would face difficulty if it chose to inform parents of the outcome of an inspection prior to the completion of the regulatory process.

Many services already share information with parents on the quality of their service, inspection dates, and draft reports, but there is currently no requirement for them to do this. If parents are not receiving information on inspection outcomes then they do not have the most up to date information on the quality of the service they are using and, if enforcement actions progress to removal from the register, parents have very little warning time to consider their options or encourage the service to come back in to compliance.

It is important to balance the need to inform parents with the rights of a service provider to due process and to earn a living. While proceeding through the enforcement steps, Tusla EYI works with providers to come into compliance and, according to Tusla EYI, many services manage to do so. To alert parents to potential non-compliances at an earlier stage may impact negatively on the provider's ability to conduct business and earn a living; if they suffer material damage, they may choose to take a cause of action against the State.

The introduction of new enforcement tools through legislation would provide the opportunity to address the issue of keeping parents informed of the enforcement process and also making the information publicly available by requiring the service to share this information with all those affected by it (and define that is to include staff and parents) and by publishing a notice either on site or online or both. This approach would not interfere with due process, as Tusla EYI would only be making public information at specific action points such as when the threshold for the issuing of temporary prohibition order is reached and not during an enforcement process.

As certain non-compliances may immediately be resolved or may be of a relatively minor nature, it is proposed that Tusla EYI shall make such arrangement as the Agency considers appropriate and necessary to bring the contents of decisions to the attention of the public where to do so is in the interests of the health, safety and welfare of children attending ELC or SAC services. This will address concerns that have been raised in the public consultation in relation to unnecessarily overloading parents with regulatory information.

It may be necessary in certain circumstances for Tusla EYI to have the power to obtain and use parents contact details in order to keep parents informed regarding the welfare of their children. This would be best achieved through primary legislation as it is personal information.

## Introduction of a “Fit Person” Regulation

A ‘fit person’ requirement for registered providers would mean those unsuitable or with a history of non-compliance may not become registered providers.

Under the current legislation a registered provider must submit a vetting disclosure to Tusla EYI in order to be registered and previous convictions are the sole consideration available to Tusla EYI in determining whether a person is a fit or competent person to operate an ELC or SAC service. Tusla EYI has advised that it cannot refuse a registration even if there is a history of serious ongoing non-compliance with a registered provider. There have also been cases in which Tusla EYI reports that it has received applications from persons it deems unsuitable but it had no grounds to refuse the applications.

Additional criteria for Tusla EYI to assess the suitability of a person to become a registered provider would allow it to make a more comprehensive assessment on the applicant and bring its powers into line with other social care regulators. For example, under the Health Act 2007, HIQA must be satisfied that the provider and people participating in management of a designated centre are ‘fit persons’ in order to register or re-register. If HIQA considers that a provider or management are not ‘fit persons’ it may use this as grounds to remove registration, vary or add conditions to registration at any time.

In line with the [EU Directive 2018/958](#) on Proportionality, the Department is finalising the assessment of the proportionality of this measure in advance of the legislation being finalised.

## Childminding

There will be access to State subsidies for parents availing of childminders. Childminders will have access to both general and specific state supports such as the Childminding Development Grant. Childminders will have access to increased quality supports. Further details on this will be examined in the RIA on childminding-specific Regulations.

### *4.2.3 Option 3: Make administrative changes to streamline and enhance current enforcement processes and facilitate the future extension of regulation to all paid, non-relative childminders*

The benefits of this option are limited as the issues identified are cannot be addressed effectively without legislative change.

It is worth noting that since 2021, Tusla EYI has been making administrative changes in order to address the risks and issues identified above. There have been some administrative changes in relation to improving parents’ awareness of the Inspectorate’s actions, such as advertising when Tusla EYI inspectors are on site conducting an inspection and encouraging parents to send feedback to Tusla EYI following an inspection. Tusla EYI also now publishes the date of last inspection of a service in cases where the inspection report is not yet finalised. Additionally, Tusla EYI issues press statements on removals from the register.

These steps have been beneficial in ensuring that there is increased engagement with parents around inspection, and some regulatory processes have been streamlined. In 2022 amendments were made to the ELC Regulations and the SAC Regulations to allow for the streamlining of the process of re-registration for ELC and SAC services, which resulted in a significant reduction in administration for services.

The new process permits services to re-register without having to re-submit all of the documentation provided at registration. Instead, providers are required to sign a declaration confirming the details of the service and are only required to submit supporting documentation in relation to proof of insurance and evidence of Garda Vetting.

However, administrative changes cannot address the full extent of the issues that have been described.

It is not possible to undertake the necessary changes on an administrative basis for childminders.

## Section 5: Impacts

There are no direct impacts relating to national competitiveness, North-South or East West relations, Gender Equality, people with disabilities or rural communities.

### 5.1 Socially excluded and vulnerable groups.

The proposed legislative changes will have a positive impact for all children, including those in socially excluded or vulnerable groups. The impact of the policy approach will be an improvement in the quality of services due to timely and proportionate enforcement action. This should reduce the time it takes for improvements to be made in a service. In the rare cases where a service poses a risk to the children attending, Tusla EYI will be able to take prompt action by issuing a temporary prohibition order to the service while improvements are implemented. In the case of unregistered services, Tusla EYI will be able to act swiftly to close such services.

There is no evidence to suggest poor quality ELC and SAC services are more likely to operate within areas that serve the needs of disadvantaged communities. Nonetheless, the issuing a temporary prohibition order to a service may have a greater impact on children from disadvantaged backgrounds or communities as there may not be the same ability for families to give supports to children or to find alternative provision.

The current practice for service closures is that the State, through the City and County Childcare Committees (CCCs), supports parents in finding alternative provision.

### 5.2 The rights of citizens

Experience to date suggests that the Courts tend to place a significant emphasis on the rights of the service provider to earn a living in legal cases involving ELC and SAC services. The proposed legislative amendments seek to redress the balance of rights to ensure that the rights of children to quality and safe ELC and SAC provision is also taken into account. It also seeks to enhance the right of parents to access information about the quality of services.

It is anticipated that this power to suspend a service will be used rarely as it would only be used in cases where children are at risk of harm. It is anticipated that a graduated model of statutory enforcement action will make it less likely that poor quality in a service will persist to the point where a service needs to be deregistered or closed.

Service providers will retain a right of appeal of enforcement decisions by the Agency and there will no longer be an automatic prohibition on operating an ELC or SAC service where a person was found guilty of an offence under the Act. This gives Tusla EYI and the courts greater discretion and is part of providing for more proportionate action.

The publication of information on enforcement action has the potential to impact on the reputation of a provider, but publication will only take place where the threshold has been met for the enforcement action. In such a case, the regulator has already determined that concerns about the provider's quality of service provision are significant, sufficient to warrant legal enforcement action, and in such cases the benefits to parents and children of knowing about the enforcement action outweigh the impact on the provider's reputation.

### **5.3 Quality Regulation**

The reforms proposed are intended to provide enhanced and improved arrangements for the delivery of an effective and standardised service for children and families.

A robust quality assurance regime, which includes key levers such as standards, regulation, inspection and self-evaluation, is an essential element of the early childhood system, helping to meet and raise quality standards, safeguard and achieve positive outcomes for babies and young children, and give confidence to parents.

### **5.4 Small Medium Enterprises**

The proposed amendments will not significantly increase the existing regulatory burden on service providers in the sector. Instead, the majority of the proposed changes relate to enforcement by the regulator. The Tusla EYI is the independent statutory regulator for the sector and will be responsible for exercising any new enforcement powers. The legislation will provide Tusla EYI with new enforcement powers and tools to ensure compliance, rather than place new obligations on registered providers. There should be no significant increase in the compliance burden for service providers as the regulatory standards remain largely unchanged (e.g. adult-to-child ratio, minimum space requirements, staff qualifications, maintenance of records and policies, etc.). The exception to this is the introduction of a 'fit-person' regulation; however, this is merely an enhancement of the existing provision for registering service providers.



## 5.5 Employment

The removal of the exemption from registration for childminders is not expected to result in significant change to the number of childminders. Rather, it will bring more childminders into formal self-employment within the State where they register with Tusla EYI and avail of State supports. The expected impact of regulation on childminders will be further examined in the RIA that is being prepared on the draft childminding regulations.

Opening up the NCS to childminders will increase parental choice with regard to subsidised early learning and childcare, supporting parental engagement in employment and training

## 5.6 Industry costs

The proposed amendments will not significantly increase the existing regulatory burden on service providers in the sector. Instead, the majority of the proposed changes relate to enforcement by the regulator. There may be some costs for childminders associated with the need to meet regulatory requirements once the childminding-specific Regulations have been finalised. This will be addressed in the related RIA that is being prepared on the draft childminding regulations. The total value of the annual Childminding Development Grant has been doubled in 2024 Grant. The Grant provides funding for childminders to enhance quality and safety in their service through the purchase of toys, childcare equipment, safety equipment, equipment to support inclusion and early learning, as well as through a contribution to IT equipment to assist childminders to engage with training and registration processes.

## Section 6: Consultation

To inform the policy proposals, the Department undertook a public consultation that ran from March to October 2022. Phase 1 included a call for submissions and an online survey. 20 submissions were received and 504 people completed the online survey, while 25 individuals took part in focus groups during Phase 2 of the consultation process.

Participants were asked to consider their contribution under three key themes:

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

All participants in Phase 1 were invited to participate in Phase 2 of the consultation, and all the responses were analysed for the final report and to feed in to Phase 2 of the consultation. Phase 2 comprised of five focus groups to further develop the key issues that were identified following the detailed analysis of Phase 1 results.

The [consultation report](#), published in April 2023, notes that while the majority of respondents considered that Tusla EYI has sufficient regulatory powers to address poor quality, there was support for strengthening the regulations in particular areas such as temporary closure/suspension of a registered service where significant welfare or safety concerns arise and immediate closure of unregistered services.

While the consultation noted support for temporary closures due to welfare or safety concerns, this support was dependent on a number of safeguards being implemented. The most commonly requested safeguard was consistency in the application of the Regulations by inspectors. Connected to this, there was broad agreement that there should be transparency around the types of non-compliances that might trigger these new enforcement powers with several participants proposing a grading system of risks and breaches.

There was considerable support for an expansion of the Regulations to enable Tusla EYI to assess, at registration and re-registration, whether a proposed registered provider/person in charge is a “fit person” to operate a service, and to assess, at any point in the registration period, whether a proposed registered provider/person in charge remains a “fit person” to operate a service.

There was also support for provision of additional enforcement options in legislation such as immediate action notices and improvement notices.

There were mixed views in relation to sharing of information with parents. While 75% of respondents overall thought that parents had sufficient access to information about the quality of services, there was broad agreement that parents should be informed directly and quickly about serious breaches and immediate action notices. Parents felt they should also be informed directly about improvement notices but there were mixed views from other stakeholder groups. Some providers and educators expressed concern about sharing information on other actions/notices or minor non-compliances with parents as this might cause undue concern or damage their reputation.

The consultation also captured a range of views and suggestions in relation to changes to the regulations and the inspection process. While these cannot be addressed through amendment to the primary legislation, they will be taken into consideration in the Department’s engagement with both the Tusla EYI and the Department of Education Inspectorate, including through the *First 5* commitment to bring together the functions carried out by the two inspectorates into a single body that provides integrated care and education inspections.

The [Heads of Bill and General Scheme](#) also went for [Pre-Legislative Scrutiny by the Joint Oireachtas Committee on Children, Equality, Disability, Integration and Youth, in May 2023](#). The Committee provided feedback and recommendations to the Department to be incorporated into the legislation. The report welcomed the proposed amendments but raised concerns around areas such as the regulatory and administrative burden on providers and the impact of ‘fit person’ regulations. This feedback was taken into account in the drafting of the Bill.

Alongside the public consultation, there has been ongoing engagement with the Tusla EYI.

## **Section 7: Enforcement and Compliance**

Tusla is the independent statutory regulator for the sector and will be responsible for exercising any new enforcement powers. The legislation will provide the Tusla EYI with new enforcement powers and tools to ensure compliance, rather than place new obligations on registered providers.

There should be no significant increase in the compliance burden for service providers as the regulatory standards remain largely unchanged (e.g. adult-to-child ratio, minimum space requirements, staff qualifications, maintenance of records and policies, etc.). The exception to this is the introduction of a 'fit-person' regulation; however, this is merely an enhancement of the existing provision for registering service providers. The majority of the proposed changes relate to enforcement by the regulator.

## **Section 8: Review**

The operation and implementation of the legislation will be kept under review by the Department in conjunction with the Tusla EYI. The Minister will be advised of any relevant issues arising.

## **Section 9: Publication**

The Regulatory Impact Assessment ("RIA") will be published on the Department's website ([www.gov.ie/dcediy](http://www.gov.ie/dcediy)). This will be done to coincide with the publication the Bill to amend the Child Care Act 1991.