

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

Regulatory Enforcement Policy
Tusla Early Years Inspectorate

Regulatory Enforcement Policy

1.0 Introduction

Tusla's Early Years Inspectorate is responsible for inspecting preschools, playgroups, day nurseries, crèches, day care, and similar services which cater for children aged 0–6 years in Ireland. Collectively these organisations are referred to as 'Early Years Services' and described in legislation as 'preschool services'. The Early Years Inspectorate is committed to the safeguarding and well-being of all children who attend early years services. This is achieved through the registration and inspection process.

It is the legal responsibility of all early years service providers to ensure that their service complies with the requirements of the Child Care Act 1991 (Early Years Services) Regulations 2016 at all times. Regulatory compliance is a specific requirement of Article 58G of the Child and Family Agency Act 2013, which states: "It shall be the duty of every person providing an early years service to take all reasonable measures to safeguard the health, safety and welfare of children attending the service".

The purpose of this document is to explain to early years service providers and the public how legislative and regulatory requirements are enforced by Tusla Early Years Inspectorate in early years services in a manner that is clear and transparent. It describes and outlines the procedures that are applied when the requirements of the Child Care Act 1991 (Early Years Services) Regulations 2016 are not met and provides a framework to facilitate consistent use of the enforcement provisions contained in legislation.

2.0 Legislation

[The Child Care Act 1991 \(Early Years Services\) Regulations 2016](#) were published in May 2016 and were enacted in June 2016. The regulations are the statutory instrument for the regulation of preschool services (early years services) catering for children under the age of 6 years who are not attending primary school.

[The Child Care Act 1991 \(Early Years Services\) \(Amendments\) Regulations 2016](#), which made slight amendment to the regulations became effective from 31 December 2016.

[Part 12 of the Child and Family Agency Act amended the Child Care Act, 1991](#) (as inserted by section 92 of the Child and Family Agency Act) known as Part VIIA. describes the legal provisions for the supervision of early years services.

The Child Care (Pre-School Services) Regulations 2006 (the previous legislation surrounding early years services) ceased with the commencement of the 2016 regulations.

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3.0 Principles of early years regulatory enforcement

The principles of enforcement as outlined in this policy are underpinned by all relevant legislative requirements and best practice guidelines, including, but not limited to, the requirements of the Government's 2004 white paper *Regulating Better*, and international best practice.¹

The approach to regulatory enforcement in early years service provision is underpinned by the following principles:

- safeguarding the well-being of children who attend early years services
- promoting regulatory compliance through appropriate engagement with the early years sector
- taking effective and proportionate enforcement action where an early years service has not met the requirements of regulations
- ensuring that regulatory enforcement procedures are instigated in order to achieve regulatory compliance and quality outcomes for children in early years services.
- ensuring that enforcement actions by the Tusla Early Years Inspectorate are based on legitimate concerns for the health, safety and well-being of children.
- ensuring that all regulatory enforcement action is reasonable and necessary in order to protect the health, safety and well-being of young children, and to promote quality early years service provision in Tusla-registered early years services.
- operating in a fair, transparent and accountable manner.
- providing information to early years services in relation to their right of appeal.
- operating in a timely manner when dealing with matters relating to regulatory enforcement.
- working collaboratively with all Government Departments and state agencies to enhance the efficiency and effectiveness of the Tusla Early Years Inspectorate and its regulatory enforcement processes and procedures.

Promoting consistency in the regulatory and enforcement process is a priority. However, as the levels and extent of non-compliance vary considerably, the enforcement actions applied will be specific to the level and extent of non-compliance in each individual case.

¹ *Regulating Better: A Government White Paper setting out six principles of Better Regulation*, Department of the Taoiseach, 2004, <https://assets.gov.ie/3477/281118144439-cf60aac3e3504e6f9f62f0ccda38f203.pdf>

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Information and guidance relating to regulatory enforcement, including legislation, rights of appeal and complaints procedures, are available on the Tusla website:

<https://www.tusla.ie/services/preschool-services/a-guide-to-regulatory-enforcement-in-early-years-settings/>

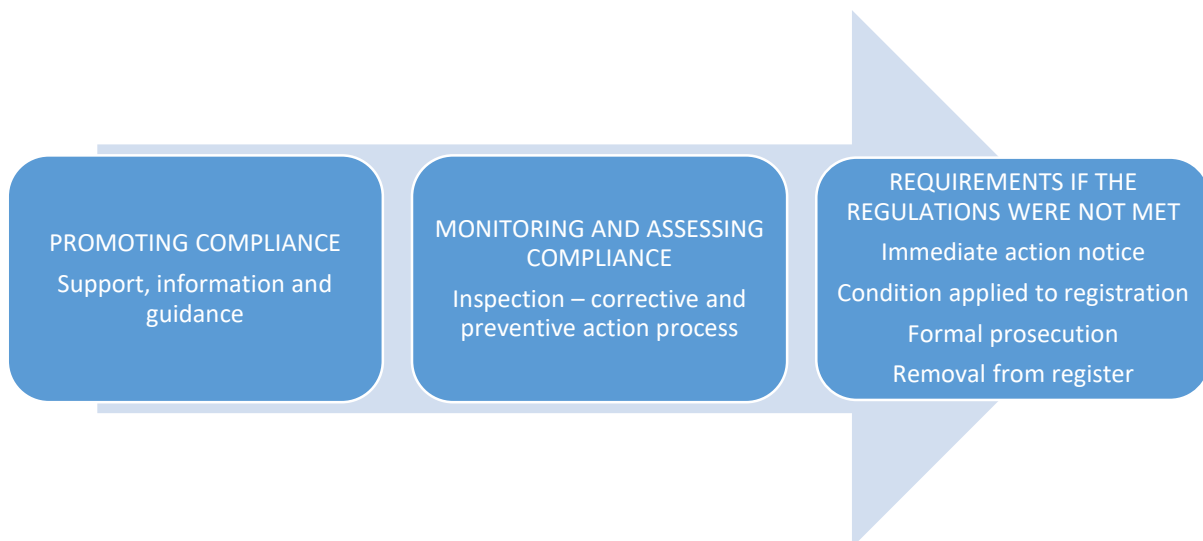
4.0 The Regulatory Enforcement Policy

4.1 The enforcement continuum

The policy for enforcement of early years services legislation is based on a compliance and enforcement continuum which includes:

- promoting compliance through promoting improvement
- monitoring and assessing compliance
- responding to non-compliance.

The compliance and enforcement continuum



4.2 Promoting compliance

Tusla's Early Years Inspectorate believes that promoting compliance is an effective enforcement tool which can prevent or minimise non-compliance. In many cases, promotion of compliance and improvement can deliver intended outcomes for children without the need for enforcement action. The Early Years Inspectorate supports providers to sustain compliance with the regulations by providing information and guidance on the legislative requirements and by proactively engaging with providers and other stakeholders through workshops, seminars, webinars, conferences, and targeted

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events. The Tusla Early Years Inspectorate also promotes compliance through the information and support provided directly through inspection and enforcement activities.

4.3 Assessing compliance

Regulatory compliance is assessed through the inspection process. Inspection processes are subject to ongoing monitoring and review by the Tusla Early Years Inspectorate senior management team in order to reduce risk and ensure positive outcomes for children. Information collated in the early years inspection reports is publicly available on Tusla's website: <https://www.tusla.ie/services/preschool-services/creche-inspection-reports/>

4.4 Responding to areas where regulatory requirements have not been met

Where the requirements of the regulations have not been met, action will be taken to clearly communicate the nature of the non-compliance to the early years service provider. This is necessary in order to ensure clarity and understanding of the actions required to resolve the issues and minimise the risk to children.

Tusla's aims in engaging with services where regulatory compliance has not been met are to:²

- protect children in a timely manner.
- respond in a manner proportionate to the nature of the issues identified on inspection.
- provide early years services with opportunities to improve practices and processes

Tusla's response will take account of:

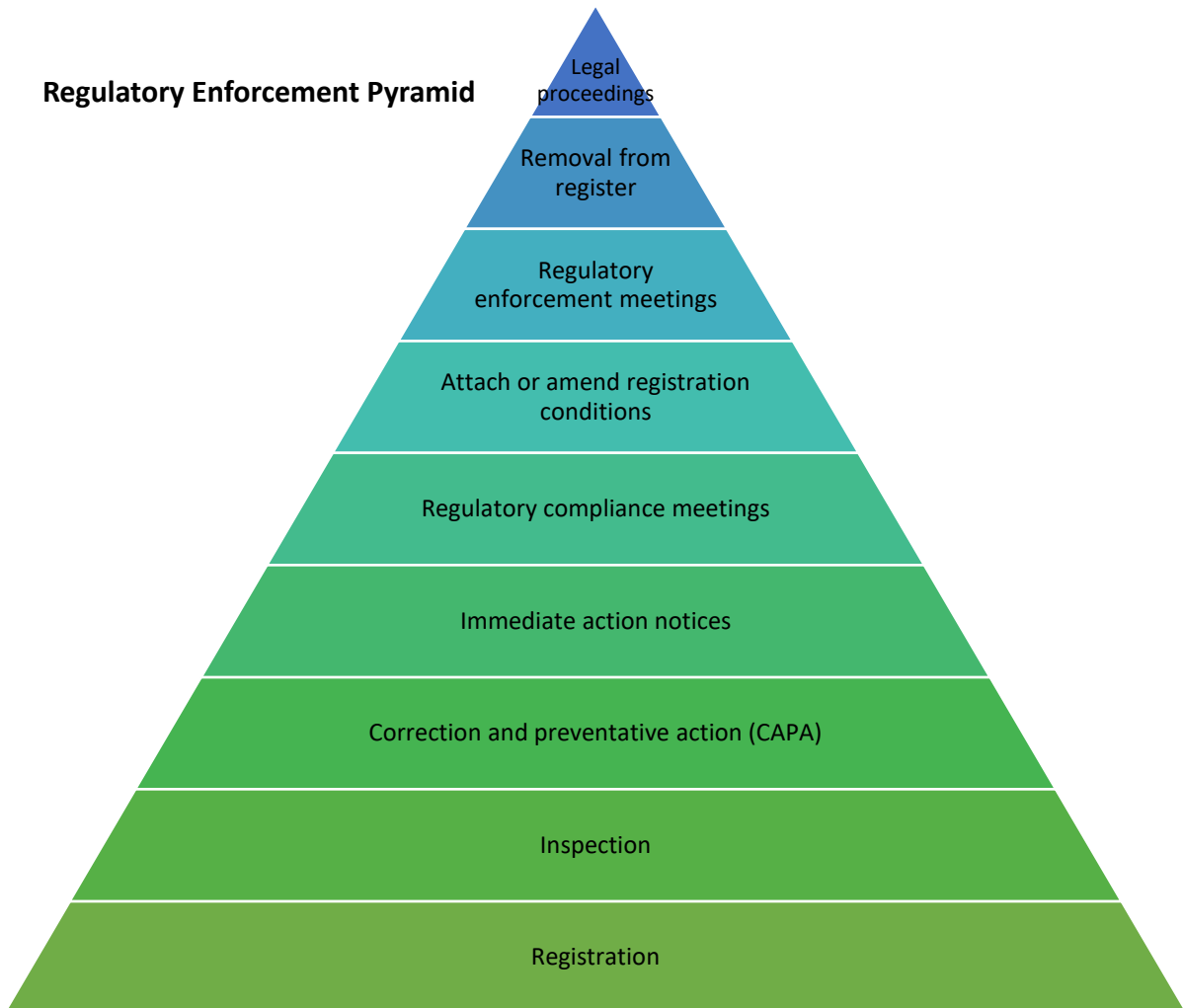
- the risk presented to children as a result of regulatory requirements not being met
- the registered provider's history of inspection and compliance with regulation
- the registered provider's response to the non-compliance including proposed remedial actions and evidence to support these actions
- the registered provider's ability to implement and sustain robust governance structures and associated practices.

² Adapted from Macrory RB (2006) *Regulatory Justice: Making Sanctions Effective. Final Report*. London: Better Regulation Executive. Available at: <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44593.pdf>

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5.0 Regulatory enforcement process

Where enforcement action is required, the regulatory enforcement process involves a number of steps. The Early Years Inspectorate is guided by the regulatory enforcement processes outlined in the legislation detailed above. The regulatory enforcement pyramid (below) illustrates the steps in the regulatory enforcement process. It is important to note that escalation of regulatory enforcement



action is not always linear. The enforcement pathway will be determined by the specific circumstances of each service.³

³ Adapted from Ayres and Braithwaite (1992) *Responsive Regulation: Transcending the deregulation debate* Oxford University Press.

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It is important that all registered early years service providers are aware that regulatory enforcement is a legal process and may result in the application of conditions of registration, removal from the register of early years services, court proceedings, and/or prosecution.

5.1 Inspection – immediate risks

- Where non-compliance is identified which poses an immediate risk to the safety, health and welfare of children, the Early Years Inspector will require the registered provider to implement immediate controls. These controls should either eliminate the risk or minimise it to a level where there is no longer an immediate risk to children. If there is an immediate risk on the day of inspection, the Early Years Inspector will highlight this at the closing meeting, and it will be the responsibility of the registered provider to put controls in place to mitigate the risk.

5.2 Immediate action notice

- An immediate action notice will be issued to the registered provider following an inspection where an immediate concern about the safety, health and welfare of children has been identified. The immediate action notice will direct the registered provider to take immediate action with regard to the specific issue(s) within a limited time frame.

5.3 Corrective and preventive action

- Corrective and preventive action (CAPA) is requested by the Early Years Inspectorate where it has been identified on inspection that the requirements of the regulations have not been met.

5.4 Regulatory compliance meeting

After an inspection has been carried out, the Inspection and Registration Manager (IRM) for the area may convene a regulatory compliance meeting where:

- significant and/or persistent risk to the safety, health and welfare of the children was identified during the inspection
- there has been limited or no engagement in the CAPA process
- ongoing significant and/or persistent non-compliance persists following the CAPA process.

The purpose of the regulatory compliance meeting is to clearly communicate the nature of the non-compliance to the early years service provider in order to ensure clarity regarding the action(s) which must be taken to resolve the issue(s) and to minimise the risk to children.

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5.5 Conditions of registration

The Early Years Inspectorate may propose to attach a condition or conditions to the registration of the early years service. The purpose of conditions of registration is to reduce the risk associated with unresolved non-compliance in the early years service. Conditions may apply limitations to how the service can operate which correlate directly to the non-compliance identified in the service. For example, a condition may stipulate that the service cannot not have children under a certain age in the service until such time as certain issues are resolved and/or certain criteria are met. Alternatively, conditions may require the service to provide specific evidence of remedial actions taken to address non-compliance within a defined timeframe. Before conditions are attached the registered provider will have an opportunity to demonstrate how the relevant issues / risks have been resolved. The registered provider has the right to make representation to Tusla in relation to the proposal of a condition or to appeal the proposal through the district court.

5.6 Regulatory enforcement meeting

If there is unresolved significant and/or repeated non-compliance, a regulatory enforcement meeting may be convened. The purpose of this meeting is to advise the registered provider of the outstanding non-compliant issues and to offer a final opportunity for the registered provider to demonstrate how these issues have been, or will be, resolved.

5.7 Proposal to remove from the register of early years services

Removal from the register of early years services may be considered when a service provider has failed to achieve and/or sustain compliance, and where the Early Years Inspectorate believes, on reasonable grounds, that persistent and/or significant risk to the safety, health and/or welfare of children remains. The registered provider has the right to make representation to Tusla in relation to the proposal of a condition or to appeal the proposal through the district court.

5.8 Removal from the register of early years services

The Early years Inspectorate's National Registration Enforcement Panel⁴ has the authority to remove an early years service from the register of early years services. The panel will proceed to issue a notice of removal of the service from the register where it is not assured that the provider has made sufficient progress to ensure and sustain the safety of children attending its service. The registered provider retains a right to appeal through the district court.

⁴ The National Registration Enforcement Panel is authorised by Tusla to oversee the application of registration enforcement legislation carried out under the remit of Children's Services Regulatory functions.

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