



Early Years Services Registration

A Guide to Building Safety - Fire and Planning Requirements

QMS Reference	EYI-GDE01.5
Version	3.0
Date	26/07/2022

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Acknowledgements

This document was produced by the Children’s Services Regulation Division of the Child and Family Agency’s Quality and Regulation Directorate. This guidance would not have been possible without the expertise and consultative partnership of the following persons and organisations.

The Association of Chief Fire Officers of Ireland

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1.0 Introduction & Purpose

The suitability and safety of premises for use as a care and learning setting is a primary concern of the assessment of quality provision for early years children. Part 12, Section 58 G of the Child & Family Agency Act 2013, places an onus on providers to ensure that they take all reasonable measures to safeguard the health, safety and welfare of children.

Part VII, Article 29 of the Child Care Act 1991 (Early Years Services Regulations) 2016 requires registered providers to ensure that premises are sound, stable, safe and secure. This guidance document is designed to assist existing applicants and new providers to address these requirements of safety as evidenced by confirmation of fire and planning for new service applications, or in instances of change of circumstances applications for existing services.

Responsibilities for providers of early year's settings are detailed in the Fire Services Acts 1981 and 2003 and the Building Control Acts 1990 and 2007. This legislation is regulated by the Local Authority.

On the 1st March 2014 the Building Control (Amendment) Regulations (S.I. No. 9 of 2014) relating to the commencement and certification of construction works came into effect.

It legislated for Commencement Notices and mandated that a Certificate of Compliance on Completion Certificate be created by those responsible for the building, and for these documents to be submitted electronically on the BCMS (Building Control Management System). This documentation is produced and submitted by the designers and should be available and handed over to the owner of a building on completion.

Once in operation the Fire Services Act 1981 & 2003 provides for obligations and responsibilities for persons who operate and manage early years settings.

The responsibilities of the person in control of a premises are clearly stated in section 18.2 of the Fire Services Act.

It states that:

“It shall be the duty of every person having control over premises to which this section applies to—
(a) take all reasonable measures to guard against the outbreak of fire on such premises,
(b) provide reasonable fire safety measures for such premises and prepare and provide appropriate fire safety procedures for ensuring the safety of persons on such premises,
(c) ensure that the fire safety measures and procedures referred to in paragraph (b) are applied at all times, and
(d) ensure, as far as is reasonably practicable, the safety of persons on the premises in the event of an outbreak of fire whether such outbreak has occurred or not.”

Guidance on the management of fire safety and operation of early years settings can be found in “Fire Safety in Preschools” issued by The Department of the Environment and Local Government in 1999.

Compliance with requirements of fire detection and alarms systems, containment and safe evacuation of children and staff in the event of a fire is mandatory. The statutory authority for the interpretation and determination of fire certification requirements for early year's services is the local authority fire service department (Fire Authority) which work under the auspices of the Department of Housing, Local Government and Heritage (DHLGH).

In addition to fire safety requirements, Early Years Services are also subject to planning permissions which are granted in accordance with the Planning & Development Acts and the associated Guidelines for Planning Authorities (Childcare Facilities) 2001, these provisions exist to ensure that early year's services are operating in premises that are safe, fit for purpose and suitably located.

As with fire compliance requirements the only agency which can make such determinations are the local Planning Authority.

Registration is granted where Tusla is satisfied that the premises, its operation, and location pose no unmanaged risk to children.

2.0 Document Submission for Registration Process for Early Years Settings

Since 2016, following the introduction of registration for early years settings, (See Child & Family Agency Act, 2013, Part 12, Article 58(D)(4) early years services are required to be registered for a period of 3 years and upon expiry providers are required to renew their registration. For providers who were in operation at the introduction of this legislation in 2016, under transitional clauses, they were deemed registered until the end of 2019 whereupon they were required to reregister.

Early Years settings are defined as either a preschool setting catering for children aged 0-6 years who are not yet attending school, or children under 15 years who are enrolled in school and attend for purposes of care when not at school.

Currently registration requirements do not require those who intend to provide a standalone school age service to provide evidence of building suitability when making application for registration however evidence of building suitability could be required during later subsequent inspection or any examination of care or wellbeing of children in the service.

The requirements of building suitability apply to all registered early years settings and should be adhered to.

All registrations and certain categories of change of circumstances applications are subject to satisfaction of fire safety and planning requirements.

It is imperative that providers who already have a fire safety certificate for their building ensure that they also supply certificates of compliance on completion in cases post March 2014 or letters of confirmation from a competent person that all fire safety building design works have been completed in accordance with the application submitted.

It is incumbent on providers to be aware of their responsibilities where material alterations have been

made to a premises, or where a change of use has occurred since commencement as an early years service to ensure that a fire safety certificate application is undertaken in compliance with Building Control Regulations and a certificate of compliance on Completion is obtained and retained.

In addition to above, any conditions imposed on a granted Fire Safety Certificate or grant of planning permission must be complied with.

3.0 Definitions

1. Fire Safety Assessment (FSA)

Any fire safety assessment should be carried out in accordance with an appropriate and recognised standard or code of practice, such as the “Code of Practice for Fire Safety Assessment of Premises and Buildings”.

A copy of this code of practice is available here:

<https://www.gov.ie/en/publication/354c8-code-of-practice-for-fire-safety-assessment-of-premises-and-buildings/>

The assessment must review compliance with the Fire Safety in Preschools document (published by the Department of the Environment and Local Government, 1999) and should be carried out by persons deemed competent as defined by the relevant state guidance to do so. Please see below for further information.

2. Competent Person

A competent person is defined by the Safety, Health and Welfare at Work Act (2005) (Section 2-(2)(a) as: “a person is deemed to be a competent person where having regard to the task he or she is required to perform and taking account of the size or hazards (or both of them) of the undertaking or establishment in which he or she undertakes work, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken.”

With regard to building control regulations, any works to a preschool or early years facility in respect of fire safety assessment or certification competent persons are

- (a) Architects that are entered on the register maintained by the RIAI under Part 3 of the Building Control Act 2007;
- (b) Building Surveyors that are entered on the register maintained by the SCSI under Part 5 of the Building Control Act 2007;
- (c) Chartered Engineers that are entered on the register maintained by Engineers Ireland under section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969.
- (d) Members of the Institution of Fire Engineers who hold the title Chartered Engineer

The assessor or assessment team should hold suitable professional indemnity insurance.

A Fire Safety Assessment may be requested by an Authorised Officer of the Fire Authority in accordance with section 18(6) of the Fire Services Act 1981 & 2003.

3. Fire Safety Certificates

A Fire Safety Certificate is issued by the Local Authority in response to an application to demonstrate compliance with Part B of the Second Schedule of the Building Regulations.

An application for a fire safety certificate is required when changes are made to a building, such changes include: -

- Material alterations
- Material change of use
- Extension
- Construction of a new building.

A Fire Safety Certificate is granted based on the building design and information submitted at time of application to establish compliance with Building Regulations.

A fire safety certificate, when issued, states that the works or building to which the application relates will, if constructed in accordance with the plans and specifications submitted, comply with the requirements of Part B (Fire Safety) of the Second Schedule to the Building Regulations 1997 to 2006.

Where a Fire Safety Certificate is required in respect of works or a building then a person should not carry out the works until a Fire Safety Certificate has been issued for the works.

Deviations at construction stage from the submitted design may call into question the validity of the Fire Safety Certificate as it applies to the development. A Regularisation Certificate may be necessary to regularise the unauthorised works.

4. Regularisation Certificates

Where works have been commenced or completed in respect of the construction of a building or an extension of or a material alteration to a building without a fire safety certificate, an application shall be submitted to a building control authority for a regularisation certificate.

5. Material Alteration

Means an alteration (other than a repair or renewal), where the work, or any part of the work, carried out by itself would be subject to a requirement of Part A (Structure) or Part B (Fire Safety) of the Second Schedule to the Building Regulations.

6. Change of Use

Means a change in the purpose for which a premises are used following its first granted permission of use. These changes usually require further planning permission and the application and granting of a Fire Safety Certificate application.

7. Conditions

Can be applied to either a grant of a fire safety certificate application or a grant of planning permission. All conditions attached must be complied with. The registration team will look for confirmation that any condition relevant to the care and safety of children are or will be complied with.

8. Categories of Early Years registrations

All new preschools and school age settings in Ireland must be registered by the Child & Family Agency. Services are registered for a period of three years, and if they wish to continue the operation of the service thereafter must apply to renew the registration no less than two calendar months before its expiration. Any registered provider may make changes to the registration of their service but must apply to do so no less than 60 days before the proposed changes comes into effect. This change must be approved by the agency prior to its commencement.

9. Fire Safety in Pre-Schools 1999 (Department of the Environment and Local Government 1999)

This document sets out the requirements for Early Years settings to meet in respect of fire safety. It sets out specifically the responsibilities of providers as prescribed by the Fire Services Act 1981.

10. Unauthorised Development

A development is unauthorised when, planning permission is required, but has not been obtained, nor is it exempt, or where conditions have been applied that have not been complied with.

11. Non compliances with the Fire Services Acts 1981 and 2003 and Building Control Acts 1990 and 2007

This may result in enforcement action being taken against the owner/occupier of the building which may result in the service of an enforcement notice, a fire safety notice, or a closure notice.

Penalties under the Fire Services Acts include on summary conviction a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months, or both, or, on conviction on indictment, a fine not exceeding €130,000 or imprisonment for a term not exceeding 2 years, or both.

Table 1: Early Years Registration Fire Safety Certification Requirements by Category

Category	Requirement 1	Requirement 2	If not available	Note
<p>Service opened after the 1st March 2014</p>	<p>Fire Safety Certificate In accordance with the Building Control Regulations 1997-2021</p>	<p>Compliance on Completion Certificate which includes a statement that the works are in accordance with the requirements of the Second Schedule of the Building Regulations.</p>	<p>If not available and;</p> <ol style="list-style-type: none"> 1. The premises is less than 5 years old - case will be referred to the Fire Authority / Building Control Authority by Tusla. 2. The premises is more than 5 years old – operator should obtain a Regularisation Fire Safety Certificate. Alternatively, where agreed in writing with the Fire Authority, a Fire Safety Assessment may be carried out (see Section 3.0). 	

Category	Requirement 1	Requirement 2	If not available	Note
<p>Service Opened between July 1st, 1992 – March 1st, 2014</p>	<p>Fire Safety Certificate In accordance with the Building Control Regulations 1997-2021</p>	<p>Confirmation in writing from a Competent Person that the premises is in accordance with the granted Fire Safety Certificate (including conditions) and the Fire Safety in Preschools document.</p>	<p>If these documents are not available at the time of application a Fire Safety Assessment shall be carried out by a competent person and any immediate risks addressed.</p> <p>The Fire Safety Assessment of the premises shall be carried out to a recognised standard / guidance document such as the “Code of Practice for Fire Safety Assessment of Premises and Buildings” and include an assessment of compliance with the Fire Safety in Preschools document.</p>	<p>The Fire Safety Assessment Report must be submitted with an application for registration. Any immediate risks identified by the report must be addressed.</p> <p>Providers must address any matter that poses an immediate risk to children, prior to the commencement of operation.</p> <p>Once the Fire Safety Assessment is completed and all remedial actions are addressed the competent person shall provide confirmation in writing that the premises is in accordance with the Fire Safety in Preschools document.</p>

Category	Requirement 1	Requirement 2	If not available	Note
Service Opened Pre-July 1st, 1992,	<p>Fire Safety Assessment</p> <p>The Fire Safety Assessment of the premises shall be carried out to a recognised standard / guidance document such as the “Code of Practice for Fire Safety Assessment of Premises and Buildings” and include an assessment of compliance with the Fire Safety in Preschools document.</p>	N/A	N/A	<p>The Fire Safety Assessment Report must be submitted with an application for registration. Any immediate risks identified by the report must be completed at the time of application.</p> <p>Providers of new services in this category including Change of circumstances applicants must ensure that all outstanding works are completed prior to commencement.</p> <p>Once the Fire Safety Assessment is completed and all remedial actions are addressed – the competent person shall provide confirmation in writing that the premises is in accordance with the Fire Safety in Preschools document.</p>
Service opened after 1st July 1992 where material alterations or a material change of use or an extension >25m² has occurred	<p>Provide all Fire Safety Certificates In accordance with the Building Control Regulations 1997-2021 – including granted Fire Safety Certificates for any changes to the premises:</p> <ul style="list-style-type: none"> • Material alterations 	Confirmation from competent person that the premises is in accordance with all granted Fire Safety Certificates (including conditions) granted for the premises and the Fire Safety in Preschools document.	A Fire Safety Assessment of the premises shall be carried out to a recognised standard / guidance document such as the “Code of Practice for Fire Safety Assessment of Premises and Buildings” and include an assessment	The Fire Safety Assessment Report must be submitted with an application for registration. Any immediate risks identified by the report must be completed at the time of application. Confirmation of the completion of works must be provided by the competent person.

Category	Requirement 1	Requirement 2	If not available	Note
	<ul style="list-style-type: none"> • Material change of use • Extensions > 25m² 		of compliance with the Fire Safety in Preschools document.	<p>Providers of new services in this category including Change of circumstances applicants must ensure that all outstanding works are completed prior to commencement.</p> <p>Once the Fire Safety Assessment is completed and all remedial actions are addressed – the competent person shall provide confirmation in writing that the premises is in accordance with the Fire Safety in Preschools document.</p>
Child Minding Service	<p>A mains operated fire alarm system based on self-contained units must be provided.</p> <p>Compliance with “Fire Safety in Pre-Schools” 1999.</p>			See Page 16 of “Fire Safety in Pre-Schools” 1999

4.0 Planning Permission

The purpose of planning permission is to ensure that the proposed location, fabrication and use of any existing or proposed premises is safe for its users, fit for purpose and would not cause any significant negative impact on the local community. Planning permission is also required for changes of use or material alterations to existing premises within certain parameters. Planning permission is not required for childminding of a number less than six (as per the definition under Article 10(5) of the Planning and Development Regulations 2001 (as amended) within a person's own home.

In Ireland, certain developments and or certain alteration works are deemed exempted from requiring planning permission. This document is not a comprehensive guide to the planning application process and as such we advise that all matters concerning planning relating to an early year setting of any kind are referred to the local authority ('the planning authority').

Section 28 planning guidelines pertaining to childcare facilities sets out general advice such as space requirements, the different types of facilities and the appropriate locations for them. It is essential to consult with the local planning authority as criteria may differ depending on location and type of building.

In Ireland, determination on any matter of planning permission is the sole responsibility of the local authorities. From the perspective of registration Tusla's only concern is the safety of children, and as with fire safety, the location and fabrication or construction of a building may make it unsuitable for use as an early years service. Tusla does not accept the views or opinions of any party other than the local authority concerning applicable planning requirements.

Many providers rely upon the existence of the "Seven Year Rule" when making an application for registration for premises which are currently used as an early years service. This rule applies to what the legislation defines as an unauthorised development i.e., services operating without any secured planning permission or exemption for the need for planning permission. The rule refers to the concept that the planning authorities are barred by statute from taking enforcement against unauthorised developments. It is derived from Section 157(4) of the Planning and Development Act 2000, which prevents enforcement action being taken after 7 years of unauthorised use. This is not however to imply that the development will by default accrue planning permission. The development will be considered an unauthorised development until such time as it is regularised.

Please note however that this provision does not always apply to premises which initially achieved planning but subsequently did not operate within the terms of that planning, including failure to comply with an attached condition. Caution should be exercised in such instances as these matters are not necessarily statute barred and local authority planning enforcement is subject to considerable discretion. The Child & Family Agency encourages providers to engage with their local authority to reach agreement on an appropriate regularisation pathway. Alternatively, the provider can choose to revert to operation as set out by the conditions attached to a grant of planning permission.

Local authorities do not routinely provide evidence or confirmation of unauthorised

developments, nor do they provide letters of comfort regarding planning enforcement. Tusla do not give sanction for any service to operate at any given location but do recognise the provisions contained within the Planning and Development Acts.

However, if there are any emergent concerns regarding the safety of the children arising out of any matter regarding the use, location or structure of any early years service, Tusla will engage the assistance of the relevant local authority in order to seek assurance that any premises used for the care of children is safe to do so in so far as is possible. Tusla take no responsibility or liability for planning matters in early years services but reserve the right under Part II. Article 6(6) of the Child Care Act 1991 (Early Years Services) Regulations 2016 to assess and verify all information provided in support of any application for registration received.

Adherence by providers to the childcare regulations does not supersede planning and development requirements for their premises. A provider's adherence to the childcare regulations does not negate their responsibilities to other state legislation. Tusla will defer to the position of the local authority on matters of building use and suitability and regularly engage planning departments for assistance to them in the determination of registration decisions.

Please see table 2 for assistance in respect of planning requirements for the registration of an Early Years Service.

Table 2: Planning Permission Requirements

Category	Requirement 1	Requirement 2	If Not Available	Note
<p>Service operational not more than seven years</p>	<p>Planning Permission</p>	<p>Confirmation that any attached conditions have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	<p>Application made for planning retention or regularisation with relevant local authority.</p> <p>Where conditions were applied the provider must supply confirmation from competent person that they were complied with, including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	<p>Provider must produce evidence from local authority that application for retention planning or another regularisation has been made.</p> <p>Once permission is approved, provider must submit copy of planning to the registration office.</p> <p>Where conditions were applied the provider must supply confirmation from competent person that they were complied with.</p>
<p>Childminder in own home</p> <p><i>*Child minder as defined by Child Care Act 1991 (Early Years Regulations) 2016 Part 1, and Part III (12)</i></p>	<p>No planning permission required</p>			<p>Development consisting of the use of a house for child minding shall be deemed exempted development for the purposes of the Planning and Development Act 2000 (as amended), once the number of children does not exceed six.</p>

Category	Requirement 1	Requirement 2	If Not Available	Note
				<p>The provider must be living in the premises as their primary residence. It is not permissible to simply have use of the premises for the purpose of child minding.</p> <p>If confirmation of exemption from local authority is required, this confirmation may be sought by seeking a declaration of exempted development under Section 5 of the Planning and Development Act 2000.</p>
<p>Childminder in own home with demountable building in garden operational not more than seven years</p>	<p>Planning Permission Required or confirmation of exemption from local authority. This confirmation may be sought by seeking a declaration of exempted development under Section 5 of the Planning and Development Act 2000.</p>	<p>Confirmation that any conditions if applied have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	<p>Application made for planning retention with relevant local authority.</p> <p>Where conditions were applied the provider must supply confirmation from a competent person that they complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	<p>The provider must produce evidence from the local authority of a declaration of exempted development, or that an application for retention or regularisation planning has been made.</p> <p>If the premises is catering for not more than 6 children, and in an outbuilding less than 25sqm which complies with Class 3 of schedule 2, Part 1, in the childminders home is likely exempt as per</p>

Category	Requirement 1	Requirement 2	If Not Available	Note
				<p>above.</p> <p>Once permission is approved provider must submit a copy of the planning to the Registration Office.</p>
<p>Childminder in own home with additional sessional service / ECCE</p>	<p>Planning Permission is required for the sessional service but not the childminding service.</p>		<p>Application made for planning retention with relevant local authority. Provider supplies evidence of application for retention/continued use and receipt by local authority of same, with evidence of subsequent grant of permission by local authority provided to confirm that situation has been regularised.</p> <p>Confirmation that any conditions if applied have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	

Category	Requirement 1	Requirement 2	If Not Available	Note
<p>Service premises has time-limited planning permission which has now expired</p>	<p>The provider must apply to renew planning permission or apply for retention of planning.</p>	<p>Confirmation from local authority that planning has been renewed</p> <p>Or</p> <p>Provider supplies evidence of application for retention/continued use and receipt by local authority of same, with evidence of subsequent grant of permission by local authority provided to confirm that situation has been regularised.</p> <p>Confirmation that any conditions if applied have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	<p>N/A</p>	

Category	Requirement 1	Requirement 2	If Not Available	Note
<p>Services with planning permission with associated conditions but have not complied with those conditions</p>	<p>Provider to engage with the local authority planning department to agree regularisation pathway</p> <p>Or</p> <p>Provider applies for planning retention to local authority</p>	<p>Documentary evidence supplied, including written confirmation from local authority that application for retention is not required.</p> <p>The provider supplies evidence of retention application and receipt by the local authority of same, with evidence of subsequent grant of permission by local authority provided to confirm that situation has been regularised.</p> <p>Confirmation that any conditions if applied have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.</p>	<p>N/A</p>	<p>Only confirmation from the local authority will be accepted.</p> <p>Please note a statute of limitations on the operation of services contrary to certain planning conditions does not automatically apply as enforcement proceedings may be commenced at any time in respect of any condition specifically concerning the use of land to which the permission is subject.</p> <p>Where a provider seeks registration or change of circumstances in a context where there is a limitation or prohibition set down by the local authority on the use of the premises, the application must not seek to exceed the conditions set down by the local authorities. In such instances, the agency will</p>

Category	Requirement 1	Requirement 2	If Not Available	Note
				decline the change and defer to the position of the local authority. The applicant is advised to regularise their service in planning terms in advance of making an application for registration.
Service operational seven years or more.	Planning Permission	Confirmation from competent person that any conditions if applied have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.	Sworn affidavit that the service has been operational for seven or more years continuously in the location by the same provider* to which the application applies.	The period must be continuous for seven or more years without interruption of service. (Holiday periods excluded)
Service operational seven years or more with periods of intermittent closure (Holiday Periods Excluded) during the previous seven years.	Planning Permission		Application for Planning Retention with relevant local authority. The provider supplies evidence of application and receipt by the local authority of same, with evidence of subsequent grant of permission by local authority provided to confirm that situation has been regularised.	

Category	Requirement 1	Requirement 2	If Not Available	Note
			Confirmation that any conditions if applied have been complied with including written confirmation from the planning authority where any condition required details to be submitted and agreed for the written agreement of that planning authority.	
Provider wishing to open outdoor preschool service	Planning permission	Confirmation from competent person that any conditions if applied have been complied with.		This is a material change of use of the land requiring planning permission if the exemption for 6 children and under in the regulations doesn't apply