

**References to Health Service Executive in enactments made before establishment day**

90. References (however expressed) to the Health Service Executive in any enactment or instrument under an enactment shall after the establishment day, insofar as they relate to a function transferred to the Agency by *section 82* unless the context otherwise requires, be construed as references to the Agency.

**Transitional provisions consequent upon transfer of certain functions of Health Service Executive**

91. Anything commenced by or under the authority of the Health Service Executive and not completed before the establishment day may, insofar as it relates to a function transferred to the Agency under *section 82*, be carried on or completed on or after the establishment day by the Agency.

## PART 12

## AMENDMENT OF CHILD CARE ACT 1991

**Amendment of Child Care Act 1991**

92. The Child Care Act 1991 is amended by the insertion of the following after Part VII:

## “PART VIIA

## SUPERVISION OF EARLY YEARS SERVICES

**Definitions for this Part**

58A. In this Part—

‘Agency’ has the same meaning as it has in the *Child and Family Agency Act 2013*;

‘arts’ has the same meaning as it has in the Arts Act 2003;

‘authorised person’ means a person appointed under section 58I to be an authorised person for the purposes of this Part;

‘competitive sport’ has the same meaning as it has in the Irish Sports Council Act 1999;

‘early years service’ means a service providing—

(a) a pre-school service, or

(b) a school age service;

‘pre-school child’ means a child who has not attained the age of six years, and who is not attending a recognised school;

‘pre-school service’ means any pre-school, play group, day nursery, crèche, day-care or other similar service which caters for pre-school

children;

‘recognised school’ has the same meaning as it has in the Education Act 1998;

‘recreational sport’ has the same meaning as it has in the Irish Sports Council Act 1999;

‘register’ means the register established and maintained in accordance with section 58C;

‘school age child’ means a child who is attending a school age service;

‘school age service’ means any early years service, play group, day nursery, crèche, day-care or other similar service which—

- (a) caters for children enrolled in a recognised school providing primary education,
- (b) provides a range of activities that are developmental, educational and recreational in manner and which take place outside of school hours, and
- (c) the basis for access to which is made publicly known to the parents and guardians of the children referred to in paragraph (a) of this definition,

but excludes those services—

- (i) solely providing activities relating to—

- (I) the Arts,

- (II) youth work,

- (III) competitive or recreational sport, or

- (IV) tuition,

or

- (ii) for whom statutory provision for inspection exists, prior to the commencement of this section;

‘youth work’ has the same meaning as it has in the Youth Work Act 2001.

### **Regulations**

58B. (1) The Minister shall, after consultation with the Minister for Education and Skills and the Minister for the Environment, Community and Local Government, make regulations for the purpose of securing the health, safety and welfare and promoting the development of children attending early years services.

(2) Without prejudice to the generality of subsection (1), regulations may—

- (a) prescribe any matter or thing referred to in this Part as prescribed

or to be prescribed,

- (b) prescribe requirements as to the heating, lighting, ventilation, cleanliness, repair and maintenance of premises in which early years services are carried on and as to the equipment and facilities to be provided,
  - (c) provide for the enforcement and execution of the regulations by the Agency,
  - (d) prescribe the fees to be paid to the Agency by persons carrying on prescribed early years services towards the cost of inspections under this Part,
  - (e) prescribe the minimum level of qualifications for any class or classes of persons working in an early years service, and
  - (f) prescribe any additional particulars and details required in relation to the register.
- (3) Regulations under this section may—
- (a) make different provision for different classes of early years services,
  - (b) prescribe different requirements for different classes of early years services,
  - (c) provide for exemptions from any provision or provisions of the regulations for a specified class or classes of early years services.

### **Register**

- 58C. (1) The Agency shall establish and maintain a register to be known as the register of prescribed early years services (the 'register').
- (2) The register shall contain the names of persons who provide prescribed early years services ('registered providers'), the addresses of the premises on which those services are provided, the number of children each service can accommodate, the date of registration and any other details required by regulations made under section 58B.
  - (3) The register may be established and maintained in paper or electronic form.
  - (4) The register shall be available for inspection by members of the public, free of charge, at such times and in such manner as may be prescribed.

### **Registration**

- 58D. (1) 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.
- (2) The provider of a prescribed early years service or a person who proposes to provide a prescribed early years service shall make an



application to the Agency to be registered in the register.

- (3) An application under subsection (2) shall be in such form as may be prescribed and accompanied by such fee as may be prescribed.
- (4) The period of a registration shall be 3 years from the date of registration.
- (5) The Agency may, on application to it in that behalf by a person who is providing or proposes to provide a prescribed early years service—
  - (a) register the provider concerned,
  - (b) register that provider with a condition or conditions attached to that registration,
  - (c) refuse to register that provider or proposed provider.
- (6) The Agency may remove a registered provider from the register.
- (7) Where the Agency becomes aware that any particular entered in the register is incorrect it may amend the register to correct the matter.
- (8) The Agency shall attach a condition to a registration, refuse a registration, or remove a registered provider from the register where it is satisfied that—
  - (a) the premises in which the prescribed early years service is, or is proposed to be, provided do not comply with regulations made under this Part, or
  - (b) the carrying on of the prescribed early years service concerned is not, or will not be, in compliance with such regulations.
- (9) The Agency shall refuse to register an applicant and shall remove from the register a registered provider—
  - (a) who has been convicted of—
    - (i) an offence under this Part, or
    - (ii) any offence that in the Agency's opinion renders such person unfit to carry on or be in charge of such service,
  - (b) who has failed to furnish, within 21 days or such further period as the Agency considers reasonable in the circumstances, the Agency with information the Agency has reasonably required for the performance of its functions under this Part, or has knowingly furnished the Agency with information that is false or misleading in a material particular, or
  - (c) who has, within the 12 months preceding the date on which registration or removal from the register would take effect, contravened a condition attached to the registration concerned.
- (10) The registered provider, not less than 2 months before the expiry of the

period of registration concerned, shall apply to the Agency in accordance with subsection (2) to be registered and, where the Agency does not propose to refuse to register or to attach a condition to the registration of the prescribed early years service concerned, it shall renew the registration and the date of registration shall be the day following the day of expiry of the previous registration.

- (11) Where the Agency proposes to refuse to register an applicant, to remove a registered provider from the register, to attach a condition to, or amend or revoke a condition attached to, a registration, it shall notify in writing the applicant or the registered provider, as the case may be, of its proposal and of the reasons for it.
- (12) A notification under subsection (11) shall include a statement that the person concerned may, within 21 days of the receipt by him of the notification—
  - (a) make representations to the Agency, or
  - (b) appeal to the District Court under section 58F against the decision.
- (13) A person who has been notified of a proposal under subsection (11) may, within 21 days of the receipt of the notification, make representations in writing to the Agency and the Agency shall—
  - (a) before deciding the matter, take into consideration any representations duly made to it by that person, and
  - (b) notify the person in writing of its decision within 21 days of the receipt of any representations made to it and of the reasons for it.
- (14) Where a registered provider ceases to provide a prescribed early years service that provider shall inform the Agency in writing as soon as reasonably practicable of that cessation.

#### **Notice to Health Service Executive**

58E. A person who, before the amendment of this Part by the *Child and Family Agency Act 2013*, gave notice to the Health Service Executive in the manner prescribed under section 51 of the Child Care Act 1991 shall be deemed for the purposes of this Part to be a registered provider for a period of 3 years from the date of commencement of this section.

#### **Appeals to District Court**

- 58F. (1) A registered provider or an applicant, may, within 21 days of the receipt of the notification of a decision under section 58D, appeal to the District Court against a decision of the Agency to—
- (a) refuse to register the applicant under section 58D,
  - (b) remove the registered provider from the register, or
  - (c) attach a condition, or amend or revoke a condition attached, to that registration.



- (2) The court may, if it so thinks proper, confirm the decision of the Agency under section 58D or direct the Agency, as may be appropriate, to register an applicant, to restore the registration of a registered provider, to attach or withdraw a condition or amend or revoke a condition, of the registration concerned.
- (3) The jurisdiction conferred on the District Court by this section shall be exercised by the judge of the District Court for the time being assigned to the district court district in which the premises in which the registered provider provides the prescribed early years service, or the premises in which it is proposed that an applicant shall provide a prescribed early years service, is situated.
- (4) A decision of the District Court under this section on a question of fact shall be final.

#### **Duty of person providing early years service**

58G. 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 and to comply with regulations made by the Minister under this Part.

#### **Supervision of early years services**

58H. The Agency shall cause to be visited from time to time each prescribed early years service in order to ensure that the person carrying on the service is complying with this Part.

#### **Authorised persons**

- 58I. (1) The Agency shall appoint such and so many persons as it thinks fit to be authorised persons for the purposes of this Part.
- (2) Every authorised person shall be furnished with a warrant of his or her appointment as an authorised person, and, when exercising any power conferred on an authorised person under this Part, shall, if requested by any person affected, produce the warrant to that person.

#### **Inspection by authorised persons**

- 58J. (1) An authorised person may, at all reasonable times, enter any premises in which a registered provider is providing a prescribed early years service for the purpose of ensuring compliance with this Part.
- (2) A judge of the District Court may, if satisfied on information on oath that there are reasonable grounds for believing that a prescribed early years service is being provided in any premises (including a private dwelling) by a person who is not a registered provider, issue a warrant authorising an authorised person to enter and inspect the premises.
- (3) An authorised person who enters any premises in accordance with subsection (1) or (2) may make such examination into the condition of the premises and the care and attention which the children are receiving in those premises as may be necessary for the purposes of

this Part.

- (4) A warrant under subsection (2) may be issued by a judge of the District Court for the time being assigned to the district court district where the premises, in which the prescribed early years service is being provided, are situated.

#### **Offences under Part VIIA**

58K. (1) A person who—

- (a) refuses to allow an authorised person to enter any premises in accordance with subsection (1) or (2) of section 58J or who obstructs or impedes an authorised person in the exercise of any of his powers under subsection (3) of that section,
- (b) contravenes a condition of registration under section 58D, or
- (c) contravenes the requirements of this Part or of any regulations made thereunder,

shall be guilty of an offence and shall be liable on summary conviction to a Class A fine.

- (2) Where a person is convicted of an offence under this Part the court may, either in addition to or in substitution for the imposition of a fine, by order declare that the person shall be prohibited for such period as may be specified in the order from carrying on an early years service.
- (3) A person who contravenes an order made under subsection (2) shall be guilty of an offence and shall be liable on summary conviction to a Class A fine or to imprisonment for a term not exceeding 12 months or both.

#### **Exemptions from provisions of this Part**

58L. For the avoidance of doubt it is hereby declared that the provisions of this Part shall not apply to—

- (a) the care of one or more children undertaken by a relative of the child or children or the spouse of such relative,
- (b) a person taking care of one or more children of the same family and no other such children (other than that person's own such children) in that person's home,
- (c) a person taking care of not more than 3 children of different families (other than that person's own such children) in that person's home."