

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

Children's Services Regulation

**Summary Report of the
Early Years Regulatory
Enforcement Process:
Outcomes**

This report has been prepared by Research Matters Ltd (www.researchmatters.eu) on behalf of Tusla – Child and Family Agency.

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Foreword

We are delighted to present this report which provides, for the first time, a detailed analysis of outcomes arising from key elements of the regulatory enforcement process.

Tusla – Child and Family Agency, through the Early Years Inspectorate, is the independent statutory regulator of early years services in Ireland and has responsibility for registering and inspecting preschools, play groups, nurseries, crèches, day-care and similar services that cater for children aged 0–6 years. The role of the inspectorate is to promote and monitor the safety, quality of care and support of the child in early years provision in accordance with the regulations.

Regulation aims to drive improvement; the findings of the analysis presented in this report clearly demonstrate the positive impact made to the quality of early years services as a result of the inspection process. An analysis of 500 non-compliant regulations found that almost 86% of services found to be non-compliant on inspection were compliant at the end of the process.

Tusla’s regulatory enforcement process is informed by legislation and regulation. Non-compliance with regulations identified on inspection are in the main addressed by the providers’ corrective and preventative action plans. This demonstrates that the greatest level of intervention is at an early stage.

Only a small number of services were escalated to the National Registration and Enforcement Panel over a two-year period, 2018 and 2019. This panel is responsible for overseeing enforcements where services are at risk of losing their registration. Some services had conditions attached to effect improvement, one service was prosecuted, and six services were removed from the register. The findings demonstrate that Tusla acts in a proportionate manner where significant risk is identified and has not been addressed by the provider.

This report underpins the importance of having a robust inspection service in place that focuses not only on identifying problems where they arise, but also working with service providers in a way that effects positive change to improve the quality of early years services.

We would like to acknowledge the work of over 4,300 early years service providers in ensuring that they provide safe and quality services to children and families around the country. We thank them for their engagement with our inspectors and their commitment to meeting regulatory requirements. We would also like to acknowledge the many stakeholders in the sector who support the early years services and work closely with us to promote the quality agenda. Finally, our sincere thanks to Dr Sinéad Hanafin, managing director of Research Matters Ltd, for producing this report.

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Introduction

The policy for enforcement of early years services legislation is based on a compliance and enforcement continuum that includes promoting compliance through promoting improvement; monitoring and assessing compliance; and responding to non-compliance. The process is underpinned by several key principles. A summary of these is set out in Figure 1. They serve to guide the implementation of Tulsa's early years enforcement policy.

Promoting regulatory compliance through appropriate engagement with the early years sector and the production of supportive explanatory information to support attainment of compliance

Taking effective, timely and proportionate enforcement action where an early years service has not met the requirements of the regulations

Ensuring that all regulatory enforcement action is reasonable and necessary in order to protect and safeguard the health, safety and wellbeing of young children, and to promote quality early-years service provision in Tulsa-registered early years services

Applying enforcement actions in a fair and transparent way that takes account of the rules of natural justice and right of reply

Figure 1: Principles underpinning the regulatory enforcement process

Responding to areas where regulatory requirements not met

Where the requirements of the 2016 regulations¹ have not been met, action will be taken to clearly communicate the nature of the non-compliance to the early years service provider. 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. Tulsa's aims in engaging with services where regulatory compliance has not been met are to:

- Protect children in a timely manner
- Respond in a manner proportionate to the nature of the issues identified on inspection

¹ (Child Care Act 1991 (Early Years Services) Regulations 2016).

- Provide early years services with opportunities to improve practices and processes.

Tusla’s response takes 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.

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/>

Regulatory enforcement pyramid

Key elements in the continuum are represented in Figure 2 in the regulatory enforcement pyramid, which illustrates the steps in the 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.

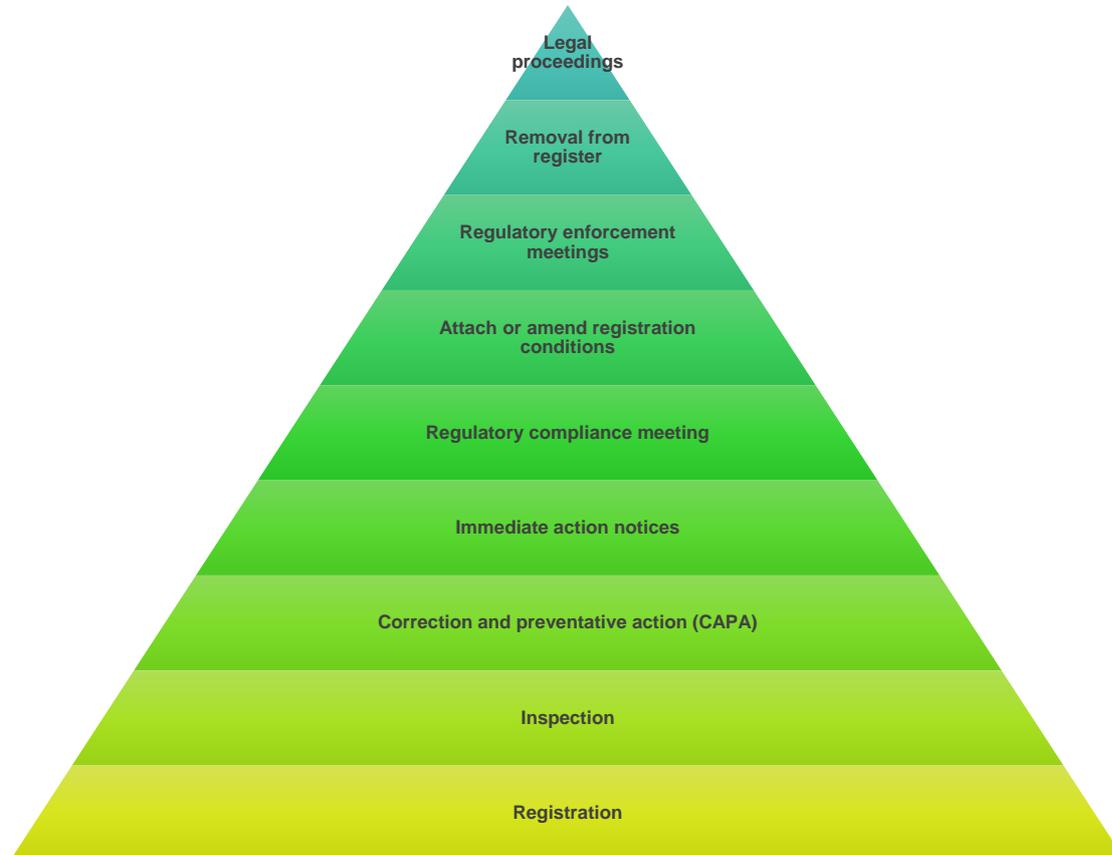


Figure 2: Regulatory enforcement pyramid

Overview of approach adopted

This section presents information on the aim and objectives of the analysis; reports included in the analysis; analysis of reports; and ethical issues that arose.

Aim and objectives

The aim of the study was to conduct an analysis of the regulatory enforcement process in respect of early years inspections carried out over a two-year period, from January 2018 to December 2019.

The specific objectives were to conduct a quantitative and qualitative analysis of:

1. Corrective and preventive actions (CAPA) that take place following the identification of a non-compliance
2. Immediate action notices
3. Condition(s) attached to a service registration in response to a non-compliance identified during the course of an inspection
4. Data in respect of services removed from the early years services register.

Inspection reports

The basis for the quantitative and qualitative analyses that took place are reports of inspections, collated by Tusla Early Years Inspectorate, carried out in 2018 (1557 reports) and 2019 (1389 reports). The reports provided were in the format of a standardised inspection report used by the inspectorate, and include information about the service, compliance, and non-compliance in respect of each regulation inspected and CAPA to resolve the non-compliance where identified.

All 2018 and 2019 reports were included in the identification of immediate action notices and conditions attached to services. A random sample of 500 non-compliant regulations from 2018 and 2019 inspection reports was generated and formed the basis of the analysis of CAPA included in this report.

Data linkage with early years services register

In addition to the information available for analysis from the reports, data linkage between the reports received for analysis and the early years services register for 2019 was carried out. This data linkage took place using deterministic linkage procedures and allowed for an analysis of a number of additional variables in respect of early years services. Additional variables include the profit status of the service, the number of staff employed in the service, the provision of school-age services by individual services, and whether the service is one of multiple services or a single service.²

² A multiple service is one where the same registered provider has two or more services on the early years services register.

Analysis of reports

A quantitative analysis was conducted on key variables available in both the Inspection Report (IR)³ and Fit For Purpose (FFP)⁴ reports in addition to those variables available through the data linkage process. Descriptive statistics were generated using R statistical software.

A qualitative analysis using both content and thematic approaches carried out on textual information presented in the random sample of 500 non-compliant regulations. This analysis was supported by the use of NVivo qualitative research software. The analysis focused on understanding non-compliances identified in the reports, including CAPA, immediate action notices and conditions attached to registration.

Ethical issues

All ethical considerations relating to anonymity and good practice in data protection were addressed. Care was taken to ensure that the identity of individual services are not identifiable in this report. It is noted, however, that all reports included in this analysis are freely available through the Tusla website (see: <https://www.tusla.ie/services/preschool-services/creche-inspection-reports/>).

³ Inspection report (IR) of registered services detailing the regulations assessed for compliance.

⁴ Fit-for-purpose (FFP) inspection report detailing the regulations assessed for compliance prior to being approved for registration.

Corrective and preventive actions

Overview

Where non-compliances are identified on inspection, they are brought to the attention of the registered provider who is then given an opportunity to set out how these non-compliances will be addressed. It entails two components:

- Corrective action(s): the action(s) taken to rectify or eliminate the non-compliance identified.
- Preventive action(s): the ongoing action(s), if any, required to ensure that the non-compliance does not reoccur.

These actions are then submitted to the Early Years Inspectorate for review. Where actions are found to address the non-compliances satisfactorily, the actions are incorporated into the Draft Inspection Report and submitted to the Early Years Registration Panel for consideration; this panel then issues the Final Inspection Report. Throughout the process, the early years inspector is available for clarification and guidance, including directing the registered provider to appropriate sources of information.

In situations where the inspectorate has deemed that the actions outlined in the CAPA will not satisfactorily address the non-compliances, the inspectorate notifies the registered provider and provides further assistance where it is sought. In the event that CAPA information is still not sufficient, the inspectorate escalates the non-compliance(s) to the National Registration and Enforcement Panel in line with the regulatory enforcement policy.

Key findings

The CAPA set out in response to the non-compliances identified were analysed in the random selection of 500 non-compliant regulations drawn from 2018 and 2019 (see Figure 3).

Outcomes from the CAPA process showed that 85.8% of non-compliant regulations had resulted in verified improvements in the service and a further 3.6% of improvements would be verified at the next inspection.

Eleven per cent of regulations remained non-compliant at the end of the CAPA process, as insufficient improvements had been made.

Improvements to the service as a result of this process were identified in respect of the governance of the service; the health, welfare and development of the child; safety; and premises and facilities.

Figure 3: Outcomes of the CAPA process

Immediate action notices

Overview

When there are incidences of non-compliance with the regulations, identified as part of an inspection process, which are deemed by the early years inspector as a significant risk to the health, safety and wellbeing of the children in the service, an immediate action notice is issued. The immediate action notice directs the registered provider to take immediate action with regard to the specific issue. Immediate action notices when they are initiated are recorded in the early years inspection report.

Key findings

The key findings of the immediate action notices are presented in Figure 4.

Some 197 immediate action notices in respect of regulations assessed in 2018 reports are included in this analysis. About one-third fewer immediate action notices were included in the regulations assessed in 2019 reports, amounting to 110 in total.

Immediate action notices were most likely to be identified in inspection reports in:

- The Dublin Mid-Leinster (DML) region (31% of all notices issued in 2018; 32.7% in 2019)
- Full day-care services (73.6% of notices issued in 2018; 56.4% in 2019)
- Services with 0–5 employees, which accounted for about one-half of all immediate action notices issued
- For-profit services (78.6% in 2018; 82.5% in 2019).

Services where immediate action notices are issued are more likely to be non-compliant.

- The mean average number of non-compliant regulations in these reports was 5.14 compared with about 1.8 found in the overall analysis of reports (1.73 in 2018; 1.91 in 2019).

The focus of the notices are on Regulation 9 (Management and Recruitment) and Regulation 23 (Safeguarding Health, Safety and Welfare of Child).

- Regulation 9 (Management and Recruitment) accounted for about 55.4% of all notices, with the main issue relating to non-compliance in respect of personnel not being Garda/police vetted.
- This was followed by Regulation 23 (Safeguarding Health, Safety and Welfare of Child), which accounted for about one-quarter of all notices issued (24%). Within this regulation, slightly more than one-third of notices were issued in respect of unsafe sleep, although a wide variety of issues arose.

Figure 4: Analysis of immediate action notices

Conditions attached to registration

Overview

Article 58D of Part 12 of the Child and Family Agency Act 2013⁵ makes provision for a provider to be registered with a condition or conditions attached to that registration. The regulatory enforcement process is therefore 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.

As part of this process, the Early Years Inspectorate may propose to attach a condition or conditions to the registration of the early years service provider. The purpose is to provide a pathway for the provider to address the outstanding non-compliance. Adherence to a complied condition by a provider is mandatory. Conditions may apply limitations to how the service can operate which correlate directly to the identified in the service. For example, a condition may stipulate that the service cannot 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 will be 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.

Key findings

The key findings of conditions attached to registration are presented in Figure 5.

⁵ See <http://www.irishstatutebook.ie/eli/2013/act/40/section/92/enacted/en/html#part12>

Conditions were attached to 206 services (13.2%) of the 1557 reports of services in the 2018 analysis and to 140 services (10%) of the 1389 reports of services in the 2019 analysis.

- In 2018, services in the West region accounted for only 15.5% (n=32) of the reports with conditions attached to services; this was considerably lower than those in the Dublin North East (DNE) (30.6%) and Dublin Mid-Leinster (DML) (29.6%) regions.
- In the 2019 analysis, about one-third of reports of services with conditions attached were in the DML region (32.1%; n=45) compared with less than 20% (n=25; 17.9%) from the DNE region.

Services identified in reports as most likely to have conditions attached.

- Full day-care services (60.2% in 2018; 52.9% in 2019)
- For-profit services (77.5% in 2018; 78.9% in 2019)
- Services that also provide school-age services (52.7% in 2018; 52.2% in 2019)
- Single services (81.1% in 2018; 86.1% in 2019)
- Services with 0–5 employees

Reports of services with conditions attached have on average a higher number of non-compliant regulations (4.29 in 2018 and 2019) compared with reports of services where a condition is not attached.

The regulations most likely to be identified are:

- Regulation 9 (87 in 2018; 49 in 2019)
- Regulation 23 (64 in 2018; 34 in 2019)
- 58G Child and Family Agency Act 2013 (49 in 2018; 48 in 2019)
- Regulation 29 (31 in 2018; 11 in 2019)

Figure 5: Analysis of conditions attached to registration

Removal of early years services from the register

Overview

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

Where removal is deemed necessary, a notice of removal of the service from the register is issued to the registered provider. The registered provider retains a right of appeal through the District Court. Where the registered provider does not make an appeal or where an appeal is unsuccessful, the service is removed from the register.

Key findings

The key findings of removal of early years services from the register are presented in Figure 6.

Four services were issued with a notice of intention to remove from the register in 2019.

Two services were removed from the register in 2018 and four were removed in 2019.

Figure 6: Analysis of removal of early years services from the register

Prosecution

Overview

Section 58K of the Child and Family Agency Act 2013 makes provision for the agency to initiate legal proceedings in specified circumstances. It is most serious for a provider or a person in charge to be convicted of an offence under the early years legislation. Since the introduction of the Child Care Act 1991 (Early Years Services) Regulations 2016, the inspectorate is prohibited from registering any person or persons as a provider of an early years service who has been convicted under this legislation. It is Tusla registration policy to pursue prosecutions under the following circumstances:

- A person or agency has operated an unregistered early years service
- Failure to comply with a condition of registration.
- A person or persons has failed to cooperate with or has impeded an inspection officer in the course of their duties
- A person has failed to allow an authorised officer access to an early years service
- A person or agency has failed to cease operating once removed from the register of services
- A person or agency who has given notice of voluntary closure but has continued to operate an early years service

- A person or agency who impedes the inspectorate by way of deliberate deception or the provision of false information.

Key findings

The key findings of prosecution in respect of a service are presented in Figure 7.

There was one prosecution in respect of a service in 2019, which was due to operating without registration. The outcome of these proceedings was that the Probation Act was applied.

Figure 7: Analysis of prosecution in respect of a service



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