

A Guide to Fire and Planning Requirements for Early Years Services Re-Registration and Change of Circumstances Process - August 2019

The suitability and safety of premises for use as a care and learning settings is a key concern in the assessment of quality provision for early years' children. Part 12, Section 58 G places onus on providers to ensure they take all reasonable measures to safeguard the health, safety and welfare of children. The majority of Early Years settings fall in to the category of purpose group under the Building Control legislation that requires providers to ensure that comply with specific provisions under fire building design and compliance regulations. Requirements of detection, containment and safe evacuation of children and staff in the event of fire must be considered. The statutory authority for the interpretation and determination of the certification requirements for any service new or existing is the local authority fire services who work under the auspices of the Department of Housing, Planning and Local Government. (DHPLG)

As most Early Years Services are commercial entities they are also subject to planning restrictions and permissions, these provisions exist to ensure that early years' services are operating in safe and suitable locations in fit for purpose premises and surrounding environs.

As with fire compliance requirements the only agency which can determine the planning requirements of any early years' services is the local authority planning departments.

Registrations are granted where Tusla are satisfied that the premises, its operation and location of an Early Years' Service poses no unmanaged risk to children.

Re-Registration Process for Early Years Settings

Since 2016 upon the introduction of registration for early years' settings, Part 12, Article 58(D)(4) permits services are permitted to be registered for a period of 3 years and upon its expiry providers are required to reapply for registration. For providers who were operational at the introduction of this legislation in 2016 they under transitional clauses were deemed registered until the end of 2019 whereupon they will be required to reregister. All new registration applications are subject to satisfaction of fire and planning requirements and in order to assist existing providers to meet the requirements of fire and planning for re-registration we have in consultation with the Chief Fire Officers Association of Ireland have put together the following guidance to fire and planning requirements for registration purposes.

It is imperative that providers who already have fire certification ensure that that certification is supported by certificates of completion where applicable or letters of confirmation from a competent person that 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 Provision and to ensure that the required building control documentation have been updated accordingly.

For ease we have categorised requirements on the table overleaf. It should be noted from the outset that providers are reminded that where planning and fire certification was in existence at initial registration in 2016 they may still be valid for re-registration purposes, however in the event that there were any material changes made to the premises since 2016 updated planning and fire certification will be required.

Definitions

Fire Risk Assessment: Sets out a specific methodology used for conducting a fire risk assessment such as PAS 79 as used in the UK, it focuses on making sure that all the required information and content that pertains to both a fire risk assessment and the findings as they pertain to fire Safety legislation are recorded. A risk assessment should assess compliance with the 1999 Fire Safety in Preschools code.

Competent Person: A competent person is defined by the HSA legislation: *“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 and/or complexity of the building or works, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken”*.

With regards to building control regulations, any works to a preschool or early years' facility in respect of Fire Safety Assessment competent persons are

(a) **Architects** that are on the register maintained by the RIAI under Part 3 of the Building Control Act 2007; or

(b) **Building Surveyors** that are on the register maintained by the SCSi under Part 5 of the Building Control Act 2007; or

(c) **Chartered Engineers** on the register maintained by Engineers Ireland under section 7 of the Institution of Civil Engineers of Ireland (Charter Amendment) Act 1969.

Material Alteration: Is an **alteration** to a premises which occurs after the granting of fire certificate. In such an instance a new fire cert or an alteration to an existing fire cert may need to be made.

Change of Use: Means a **change** in the purpose for which, or the circumstances in which a premises is used following its first granted permission of use. These changes usually require further planning permission and fire certification.

Fire Safety in Pre-Schools 1999: This document sets out the requirements for Early Years settings to meet in respect of the fire safety. It sets out specifically the responsibilities of providers as purveyed by the Fire Services Act 1981. This guidance document is currently being updated and will be republished. It remains relevant.

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

Category	Requirement 1	Requirement 2	If not available	Note
Service opened since March 1 st , 2014	Fire Safety Certificate	Compliance on Completion Certificate which includes a statement that all works were carried out in accordance with the planning application and any conditions imposed by the council were met, and the premises is built in accordance with the building regulations.	If these documents are not available at time of application a Risk Assessment* to be carried out by a competent person** and any immediate risks addressed, Consultation with relevant authority to seek regularisation.	These should be obtained at time of commencement of operation. However, the provider will have no more than 6 months following the completion of Fire Risk Assessment (FRA) The FRA report must be submitted with application for registration. Confirmation of agreed course of action with local authority.
Service Opened between July 1 st 1992 –1 st March 2014	Fire Safety Certificate	Confirmation from competent person that all works were carried out in accordance with the planning application and the terms of the fire safety authority have been complied with.	If these documents are not available at time of application a Risk Assessment to be carried out by a competent person* and any immediate risks addressed. Then two options are available Option 1; Consult with the local authority 20 Option 2: Report from competent person that the premises complies with the	The Risk Assessment Report must be submitted with application for registration. Any immediate risks identified by the report must be addressed. On application provider must advise with the Registration Office which option they will be availing of. Providers will have no more than 6 months from the date of submission to have any non-urgent outstanding works or matters of

			requirements of "Fire Safety in Pre-School Settings 1999	compliance with the code of practice for Fire Safety in Pre School Settings completed.
Service Opened Pre July 1 st , 1992	Fire Risk Assessment	Report from competent person that the premises complies with the requirements of "Fire Safety in Pre-School Settings 1999 and a fire risk assessment.	N/A	<p>The Risk Assessment Report must be submitted with application for registration. Any immediate risks identified by the report must be addressed.</p> <p>Providers will have no more than 6 months from the date of submission to have any non-urgent outstanding matters of compliance with the code of practice for Fire Safety in Pre School Settings completed.</p>
Services open post 1992- to March 1 st , 2014 with Pre-Existing Historic Fire Safety Certification where a change of use or material alteration*** of the premises has occurred including addition of extensions of >25m2	Fire Safety Certificate and report from competent person that all works were carried out in accordance with the planning application and any conditions imposed by the council were met.	Updated fire Certificate and report from competent person that all works were carried out in accordance with the Fire Safety Certificate application and any conditions imposed by the council were met. Commencement notice	In respect of the material alteration or change of use a Risk Assessment must be carried out and any works of immediate concern must be carried out. Compliance with Fire Safety in Preschool 1991 report.	Providers will have no more than 6 months from the date of submission to have any non-urgent outstanding works completed.
Services open since March 1 st 2014 with Pre-Existing Historic Fire Safety Certification where a change	Fire Safety Certificate and report from competent person that all works were carried out in accordance	Updated fire Certificate and Certificate of Compliance on completion. Commencement notice.	In respect of the material alteration or change of use a Risk Assessment must be carried out and any works of	Providers will have no more than 6 months following the completion of Fire Risk Assessment to implement

of use or material alteration*** of the premises has occurred including addition of an extension of >25m2	with the planning application and any conditions imposed by the council were met.		immediate concern must be carried out. Consult with the relevant Local authority to agree regularisation options. Compliance with Fire Safety in Pre-Schools 1999 report.	the agreement reached with the local authority for regularisation.
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Planning Permissions

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 pose no discernible risk as a result of its operation. Planning permission is also required for changes of use or material alterations to existing premises within certain parameters.

In Ireland certain developments and or certain alteration works are deemed exempted from permissions. There are many misnomers and misunderstandings that circulate concerning what in the Early Years Sector requires planning permission. This is not a guide to planning and as such we advise that all matters concerning planning concerning an early years setting of any kind are referred to the local area county council.

In Ireland the sole authority on the matter of planning permissions is the local authority. From the perspective of registration our only concern is the safety of children, and as with fire safety the location and safety of premises is of concern to us.

Many providers have quoted the existence of the “Seven Year Rule” when making application for registration for premises which are currently used as an Early Years’ Service. This rule applies to what the legislation considers unauthorised developments i.e. services historically operating either without planning, contrary to granted planning, or operating a service which has undergone a change of use or a material alteration without the correct authority to do so. The “Seven Year Rule” refers to the concept that the planning authorities are barred by statute from taking enforcement against unauthorised developments. 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. This would in essence prevent the sale of the service as a going concern or the transfer of ownership to another party.

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 will recognise the operation of services who have been in existence for seven or more years. However, in the event that there are any emergent concerns regarding the safety of the children arising out of any matter concerning the use, location or structure of any early years Tusla will engage the assistance of the relevant local authority in order to seek assurance that children are safe. Tusla take no responsibility or liability for planning matters in services who rely on the “Seven Year Rule” to remain operational.

As mentioned earlier the majority of Early Years Services are considered to be commercial entities and therefore subject to appropriate planning permissions.

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

Table 2: Planning Permission Requirements

Category	Requirement 1	Requirement 2	If Not Available	Note
Service operational not more than seven years (Since 2012)	Planning Permission	Confirmation from competent person that any conditions have been complied with.	Application made for planning retention with relevant local authority	Provider must produce evidence from local authority that application for retention planning has been made. Once permission approved provider must submit copy of planning to the Early Years Inspectorate Office. Where conditions were applied the provider must supply confirmation from competent person that they complied with.
Childminder in own home	No planning permission required			
Childminder in own home with demountable building in garden operational not more than seven years	Planning Permission Required or confirmation of exemption from local authority	Confirmation from competent person that any conditions if applied have been complied with.	Application made for planning retention with relevant local authority	Provider must produce evidence from local authority that application for retention planning has been made. Once permission approved provider must submit copy of planning to the Early Years Inspectorate Office. Where conditions were applied the provider must supply confirmation from competent person that they complied with.

Service operational seven years or more (Pre-2012)	Planning Permission	Confirmation from competent person that any conditions if applied have been complied with.	Sworn affidavit that the service has been operational for seven or more years continuously in the location 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 (Pre-2012) with periods of intermittent closure (Holiday Periods Excluded) during the previous seven years.	Planning Permission	Confirmation from competent person that any conditions if applied have been complied with.	Application for Planning Retention with relevant local authority	Provider must produce evidence from local authority that application for retention planning has been made. Once permission approved provider must submit copy of planning to the Early Years Inspectorate Office. Where conditions were applied the provider must supply confirmation from competent person that they complied with.