

Submission to the Review of Regulations for Early Learning and Care

27 May 2022



Founded in 1995, the Children's Rights Alliance unites over 140 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
Aoibhneas
AslAm
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Blossom Ireland
Bodywhys
Catholic Guides of Ireland
Child Law Project
Childhood Development Initiative
Childminding Ireland
Children in Hospital Ireland
Children's Books Ireland
Children's Grief Centre
Clarecare
COPE Galway
Cork Life Centre
Cork Migrant Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Early Learning Initiative (National College of Ireland)
Educate Together
EPIC
Equality for Children
Extern Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaelscoileanna Teo
Galway Traveller Movement
Good Shepherd Cork
Immigrant Council of Ireland
Inclusion Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals' Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation
iScoil
Jack and Jill Children's Foundation
Jigsaw
Katharine Howard Foundation
Kids' Own Publishing Partnership
Kinship Care
Leap Ireland
Let's Grow Together! Infant and Childhood Partnerships CLG.
LGBT Ireland
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
My Mind
My Project Minding You
Museum of Childhood Project
Music Generation
New Directions
National Childhood Network
National Council for the Blind of Ireland
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
SIPTU
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
TASC
Teachers' Union of Ireland
Terenure College Rugby Football Club
Transgender Equality Network Ireland
The Anne Sullivan Foundation
The Ark, A Cultural Centre for Children
The Irish Red Cross
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Women's Aid
Youngballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

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Introduction

The Children’s Rights Alliance unites over 120 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children by making sure their rights are respected and protected in our laws, policies and services. We also provide legal information and advice to children, young people and their families through our legal information line and nationwide legal advice outreach clinics.

The Alliance welcomes the opportunity to respond to the Review of the Regulations governing Early Learning and Care.

The current Irish regulatory framework for Early Childhood Care and Education (ECEC) is a reactive one, having evolved in response to scandals which have arisen in the sector in recent times.¹ While ECEC has received more attention in recent years at a policy level, there are still many drawbacks to the current system which undermine the States’ main objective in providing high quality care for young children at an affordable rate.

In May 2013, RTE broadcast a documentary entitled ‘Breach of Trust’ which exposed the mistreatment of very young children attending a childcare facility in Ireland. This documentary ‘...highlighted a culture of complicity within settings where it was evident that all staff were aware of and did nothing about the abuse of young children that they had witnessed on a daily basis’.² In particular, the documentary underlined the need for the appropriate training of staff working in the sector. In response to this, the then Minister for Children identified a number of key areas to be addressed as part of an action plan to deal with the shortfalls in the sector.³ In relation to the latter:

“It seems that the approach to quality ... lies in punitive measures to be enforced by the pre-school inspectorate. In other words, what is proposed is a top-down, heavy handed approach. Systemic reform commencing with the up-skilling of the inspectorate, and or, expansion of the inspection teams is required...The ECCE environment is highly pressured and demanding; not everybody is suited to work with young children. Training and education providers must play a role in identifying students who are simply not suited to such work”.⁴

While several measures were adopted in response to improve the system,⁵ six years later similar revelations were made in relation to a service provider operating in the sector.⁶ This case demonstrated that despite the regulatory reforms which took place after the exposé in 2013, the

1 Moloney, M., “Breach of Trust - Getting it Right for Children in Early Childhood Care and Education in Ireland”, *NZ Research in Early Childhood Education Journal*, Special Issue: Early Childhood Policy. Volume 17, 2014, pp. 71 – 88.

2 *Ibid* at p.84.

3 These included: the publication of on-line inspection reports from July 2013 and an overall strengthening of the inspection system; the introduction of a new registration system, as well as new protocols on regulatory compliance and enforcement, increasing sanctions available for non-compliance, increasing the qualification requirements for all pre-school service staff, support for the implementation of the Sólta framework and the Aistear curriculum and finally, the implementation of new national pre-school standards.

4 Moloney, M., “Breach of Trust - Getting it Right for Children in Early Childhood Care and Education in Ireland”, *NZ Research in Early Childhood Education Journal*, Special Issue: Early Childhood Policy. Volume 17, 2014, pp. 71 – 88, p.84.

5 The introduction of minimum level 5 qualification requirements, a registration system, a national inspection system, new regulations, a quality and regulatory framework, the publication of inspection reports, new powers to deregister services and attach conditions, and the Better Start quality development service.

6 RTE Documentary “Creches – Behind Closed Doors”, 2019

youngest members of Irish society were again failed due to the operation of inappropriate and failing standards in the sector. Given the current review of the regulations, it is an opportune time to reflect on whether or not the current regulatory framework is fit for purpose in Ireland in the context of ECEC. It is striking that while attempting to ensure that high quality ECEC is provided to Ireland's youngest citizens, that little consideration to date, has been given to the rights of these children under Irish and international law.

Ireland is party to the UN Convention on the Rights of the Child 1989 (UNCRC) and since 1992, has legal obligations to ensure that children's rights are protected from birth through to 18 years.⁷ The UN Committee on the Rights of the Child has made it very clear that early childhood, which embraces the preschool years, is a critical period for the realisation of children's rights.⁸ Yet the Committee has expressed concern that States parties like Ireland, have not dedicated sufficient attention to '...young children as rights holders and to the laws, policies and programmes required to realise their rights during this distinct phase of childhood'.⁹ It has stated that '... the Convention on the Rights of the Child is to be applied holistically in early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights'.¹⁰ It is well documented that very young children have particular developmental needs for physical nurturing, 'emotional care and sensitive guidance' in addition to time and space for play, learning and exploration.¹¹ In order to ensure that young children can exercise their rights as protected under the UNCRC, the Committee notes that a framework of laws, policies and programmes for early childhood which includes implementation and monitoring is critical.¹² There is no doubt that this guidance applies to the ECEC sector.

This submission will consider what early childhood education and care looks like through a children's rights lens, given Ireland's international commitments in this regard. What constitutes 'high quality' early childhood care and education will be addressed, taking into account the approaches of other jurisdictions. Finally, the submission will make some recommendations based on the foregoing analysis, taking into account recent internationally peer reviewed research.

7 Kernan M., & O'Kane, M., "Pre-school regulation in Ireland: learning from the past to improve young children's everyday lives in early childhood care and education services", *Irish Educational Studies*, Vol. 25, No. 2, June 2006, pp. 171-185.

8 The UN Committee on the Rights of the Child, the international monitoring body of experts which oversees the CRC's implementation provides constructive guidance to countries like Ireland in the form of General Comments and Days of General Discussion. In 2004, the Committee hosted a Day of General Discussion on the Rights of Children in Early Childhood which resulted in a set of recommendations for States parties. This was further built upon in 2006 when the Committee issued an authoritative General Comment on 'Implementing Child rights in Early Childhood'.

9 Ibid at para.3.

10 Ibid.

11 Ibid at para.5.

12 Ibid.

Early Childhood Care and Education (ECEC) and the UN Convention on the Rights of the Child 1989 (UNCRC)

The 11th principle of the European Pillar of Social Rights states that all children have the right to affordable early childhood education and care of good quality.¹³ Similarly, the United Nations' Sustainable Development Goal. 4.2 envisages that all children should have access to quality early childhood development and care by 2030.¹⁴ As recently as 2019, the Council of the European Union stated:

Early childhood education and care provision needs to be part of an integrated child-rights based package of policy measures to improve outcomes for children and break intergenerational cycles of disadvantage.¹⁵

It is well recognised and accepted that implementing children's rights for infants and young children is very important in the early years since these children are susceptible to rights violations and are better protected when their rights are provided for.¹⁶ Indeed, the two RTE documentaries have proved that this is the case.

The UNCRC recognises both the civil and political rights of children as well as their economic, social and cultural rights. It provides a holistic framework of principles and provisions which together serve as minimum legal standards and values against which countries such as Ireland can benchmark progress in the implementation of children's rights in all areas of children's lives. Through ratification of the UNCRC, Ireland has committed to fulfilling the rights of the child and has a duty to implement the necessary laws and policies to protect and support children and families. According to Article 4 UNCRC, States parties are obliged to '...undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention'. The UNCRC has been used in advocating for children's rights reforms of early childhood care and education services both in Ireland and in other countries such as New Zealand where historically, Strategic Plans for Early Childhood Education and the Early Childhood Education Curriculum have been underpinned by children's rights.¹⁷

The 41 provisions of the UNCRC can generally be divided according to the three p's – protection (including protection from all kinds of exploitation, cruelty and violence), participation (e.g. right to express views on matters affecting one's life, expression and association) and provision (e.g. right to survival and development – care, education and play). In addition, the general guiding principles of the UNCRC, Articles 2, 3 6 and 12 (as stipulated by the UN Committee) are of particular relevance to early childhood and early childhood care and education. These principles are rights in and of themselves, but they also underpin the implementation of all of the other rights contained within the UNCRC. Article 2 ensures rights to all children without discrimination of any kind. Given that very young children are largely dependent on adults for the realisation of their rights, they are at an

13 Doc. 13129/17.

14 United Nations, The 2030 Agenda and the Sustainable Development Goals: An opportunity for Latin America and the Caribbean (LC/G.2681-P/Rev. 3), Santiago, 2018. 4.2.

15 The Council of the European Union, Council Recommendation of 22 May 2019 on High-Quality Early Childhood Education and Care Systems (2019/C 189/02) at para.4.

16 Smith, AB., & Taylor, N.J., "Children's Rights in Early Childhood Education", *Oxford Bibliographies* (last reviewed: 21 April 2021) (available at: <https://www.oxfordbibliographies.com/view/document/obo-9780199756810/obo-9780199756810-0178.xml>)

17 Smith, Anne., "Children's Rights and Early Childhood Education: Links to Theory and Advocacy", (2007) *Australasian Journal of Early Childhood*, [32\(3\)](#), pp. 1-8.

elevated risk of discrimination. In the context of early childhood care and education, discrimination can manifest in various ways such as through access to quality services including care and education, inadequate care and attention, restricted opportunities for play, learning and education and inhibition of their right to freedom of expression.

Article 3 of the UNCRC sets out the best interests' principle which requires that children's best interests are of primary consideration in all actions concerning children, including in the reviewing of childcare regulations and laws. According to the Committee, 'By virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interests in relation to decisions and actions that affect their well-being, while taking account of their views and evolving capacities'.¹⁸ The Committee has made it clear that all law and policy development as well as service provision pertaining to very young children (which includes the early childcare regulations) must take account of the best interests principle. The Committee notes that this specifically includes care systems and schools.¹⁹

Article 6 of the UNCRC protects the child's right to life, survival and development. In the context of early childhood, according to the Committee this provision can only be implemented in a holistic way taking account of all the other CRC provisions. In particular, the Committee views early childhood education as being inextricably linked with a child's maximum development: Linking education to development is elaborated in article 29.1: "States parties agree that the education of the child shall be directed to: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential"²⁰. Article 31 which protects the right of children to play, rest and leisure, is also of critical importance here since play is central to child development²¹.

Article 12 of the UNCRC is a vitally important right of the child in this context. Article 12 protects the child's right to express his/her views on all matters affecting him/her, and once expressed, due weight should be afforded such views in accordance with the age and maturity of the child. Unfortunately, the voices of such children are often disregarded as being too young and immature to have anything valuable to contribute. Consideration should be given to what extent have the views of pre-school children been included in the current consultation for example? Any assessment of early childhood education and care should consider multiple perspectives, including those of children themselves.²² The UN Committee on children's rights has stated the following:

'Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language'²³.

Given the holistic nature of the UNCRC, Article 13 – the right to freedom of expression supports the latter as it envisages the various means through which very young children can communicate (outside of the conventional form of speech) – '...either orally, in writing or in print, in the form of art, or through any other media of the child's choice'. According to the Committee, States parties should take all appropriate measures to ensure that the right of children to be heard be implemented in

18 Ibid at para.13.

19 Ibid at para. 13(b).

20 Ibid at para.28.

21 Lester, S., & Russell, W., *Children's Right to Play: An examination of the importance of play in the lives of children worldwide* (2010: The Netherlands. The Bernard van Leer Foundation).

22 Katz, Perspetivas atuais sobre a aprendizagem na infância. Saber (e) Educar, (2006) 11, 7-21.

23 Ibid at para 14.

practice at the earliest stages. This right ‘...should be anchored within the full range of early childhood ...care and education facilities...and in the development of policies and services’²⁴. To achieve this, a child-centred attitude needs to be adopted by adults and relevant professionals who are engaging with these young children in everyday life. This does not mean continuing with the traditional paternalistic stance towards young children - one that has seen children as passive, weak, dependent ‘becomings’ who are incapable of making decisions about their lives. In fact, over the past few decades, developments in disciplines such as developmental psychology, law and sociology have culminated in a view of the young child as a social actor, a view that has challenged traditional paternalistic views concerning infants and children. A young social actor is one who shapes his or her identity and forms and communicates views about their world.²⁵ According to MacNaughton et al., this child-centred perspective embraces three research-based notions: (1) young children construct meaningful views of the world and their place in it; (2) children’s knowledge and experience of the world is different, and not inferior to, adults’ knowledge; (3) children’s views and perspectives on the world can inform adults’ understandings of children’s experiences.²⁶ The UNCRC also acknowledges the important role the State has to play in supporting parents in raising their children. According to Article 18, ‘The State shall provide appropriate assistance to parents in child raising, such as ensuring the development of institutions, facilities and services for the care of children’.

In the context of regulation, under Article 19 of the UNCRC, States have a responsibility to ensure that children are protected from abuse and neglect. Since the current system of inspection and regulation provide mere ‘...snapshots of quality in a service at a particular point in time’²⁷, it is questionable the extent to which it can protect children in accordance with this Article. It is well recognised that positive relationships and protection from negative early experiences are very important for young children – therefore there is an increased need to protect children from poor quality childcare as very poor quality childcare can have major negative consequences for children.²⁸

As mandated reporters under the Children First Act 2015, childcare workers in Ireland must report any concerns they may have in this respect to Tusla’s social work teams. However, we know from the two documentaries cited above, that this does not always happen in practice and as such, is not a reliable system to protect young children in these settings. Childcare workers are also now protected under the Protected Disclosures legislation, so should they decide to report on their employer, in theory they are protected in doing so. However, the extent to which childcare workers are aware of a) the legislation and b) how it works in practice is currently unknown. Training needs to be provided to childcare workers about their rights and responsibilities in this context for this to be effective in practice.

A key aspect to ensuring protection and positive relationships in the early childhood care and education sector in Ireland is through the provision of quality professional education and training as well as pay of childcare professionals. It is critical that any such training (including early years curriculum development) is underpinned by a strong foundation in children’s rights. This is discussed further below. It is well established that by empowering children, including very young children, to exercise their rights, their best interests are protected as part of the process. In a systematic review conducted on children’s right to participate in early education settings, the importance of

24 Ibid at para. 14(b).

25 MacNaughton G. & Smith, K., “Children’s rights in early childhood” in Kehily, M.J., *An Introduction to Childhood studies* (2nd Ed) (UK: McGraw Hill, Open University Press, 2009) pp.161-176, at 161.

26 MacNaughton, G., Hughes, P. and Smith, K. (2007) ‘Early childhood professionals and children’s rights: tensions and possibilities around the United Nations’, *General Comment No. 7 on Children’s Rights*, *International Journal of Early Years Education*, 15(2): 161–70

27 Mr Brian Lee, Director of Quality Assurance, Joint Committee on Children and Youth Affairs debate - Wednesday, 31 Jul 2019 (https://www.oireachtas.ie/en/debates/debate/joint_committee_on_children_and_youth_affairs/2019-07-31/3/)

28 NICHD Early Child Care Research Network, 1998, 1999.

embedding children's rights and child-centred approaches in the education of early childcare workers was made abundantly clear. Capacity building in the early childhood care and education sector is vital in terms of developing specific professional competences towards the promotion of the right of the child to be heard.²⁹

²⁹ Correia, N., Camilo, C., Aguiar, C., Amaro, F., 'Children's right to participate in early childhood education settings: A systematic review'. (2019) *Children and Youth Services Review* 100, 76-88.

Regulation of ECEC

In the context of early childhood services specifically, the UN Committee on the Rights of the Child has urged States parties like Ireland, to develop children's rights-based strategies to ensure that the best interests of children are at the heart of service planning and provision. In the context of law and policy development concerning early childhood, a systematic and integrated approach should be adopted which underpins a comprehensive framework for early childhood services supported by information and effective monitoring systems. All institutions responsible for early childhood care and education should adhere to quality standards not just in terms of health and safety, but also in relation to the psychosocial qualities of staff who are well trained, socially valued and properly paid.

The Committee on the Rights of the Child has recommended that States parties actively support a rights-based approach to early childhood programmes.³⁰ It highlights the key role States have to play in providing a legislative framework for the provision of quality, adequately resourced services, and for ensuring that standards are tailored to the circumstances of all children whether as part of a group or as individuals. Such services must provide for the developmental priorities of particular age groups, from infancy through to transition into school.³¹ The latter applies even in cases where the private sector acts as a service provider – States parties are reminded in such cases that they still have an obligation to monitor and regulate the quality of provision to ensure that children's rights are protected and their best interests served. Yet as Theobald acknowledges, '...there are no systematic frameworks to underpin the juxtaposition and embedding of young children's rights in early childhood education programmes.'³² It seems clear that if the current regulatory framework were to be underpinned by children's rights, this would ensure that children's rights are firmly embedded in children's development.

Qualifications and Professional Training of Staff

Compared to International standards, the training of staff in the childcare sector in Ireland is lower, with childcare workers deemed qualified to work with infant and young children with a level five qualification.³³ In order for practices within a childcare setting to be child-centred and underpinned by up-to-date theoretical knowledge and practical understanding concerning children's rights and development,³⁴ qualification to a higher degree supported with competitive (and not minimal) salaries are essential. The latter is an obligatory consideration when considering the delivery of high-quality childcare. Indeed, this has been made clear by the Council of the European Union which specifically recommends that Member states such as Ireland support the professionalisation of early childhood education and care staff, including those in leadership roles.³⁵ This includes creating high professional standards, providing competitive salaries and attractive career prospects to early childhood education and care staff. In particular, the Council has recommended that this includes: "...improving initial education and continuous professional development to take full account of children's well-being, learning and developmental needs, relevant societal developments, gender

30 Ibid at para.31.

31 Ibid at 31.

32 Theobald, M., UN Convention on the Rights of the Child: "Where are we at in recognising children's rights in early childhood, three decades on ...?", *International Journal of Early Childhood* (2019) 51:251–257, at p.254.

33 Moloney, M., 'Childcare regulations: Regulatory enforcement in Ireland. What happens when the inspector calls?' *Journal of Early Childhood Research* (2016) Vol. 14(1) 84–97, at p.88. UNICEF, The child care transition, Innocenti Report Card 8, 2008.

34 UN Committee on the Rights of the Child, General Comment No. 7 (2005) *Implementing Child Rights in Early Childhood*, CRC/C/GC/7/Rev.1, at paras. 22 & 23.

35 The Council of the European Union, European Council Recommendation of 22 May 2019 on High-Quality Early Childhood Education and Care Systems (2019/C 189/02).

equality and a full understanding of the rights of the child'.³⁶ Recently, the Council of Europe has produced useful guidance specifically designed for professionals working for and with children "Listen-Act-Change: Council of Europe Handbook on Children's Participation" which can support the implementation of children's rights in practice in early childhood settings.³⁷

Regulation for Quality and Children's Rights

The consequences of not embedding children's rights in policy development for the regulation of the early childhood and care sector has been well established by existing literature. The dissonance between protecting children's rights in theory and the actual implementation of those rights in practice have proved challenging in the early childhood sector in some jurisdictions due to the need to meet heavy regulatory requirements. Fenech, Sumsion and Goodfellow have highlighted the depiction by Australian early childhood professionals of a regulatory system that operates as a 'double-edged sword'-'On the one hand, they [regulations]are an essential 'weapon' that protects children and informs and supports professional practice'.³⁸ However, the operation of these same regulations can pose a danger to children and childhood professionals by restricting the capacity of early childhood professionals' to deliver high quality professional care to children³⁹. For example, according to research conducted by Te One in New Zealand where there is a strong understanding and ethos of children's rights in the sector, the reality of structural and management issues in a creche for under two years olds, meant that the 'ideal, flexible, responsive routine, where children were consulted about their participation' was lost due to the strict regulatory requirements imposed on the creche, which resulted in children being expected to comply and conform to structured routines.⁴⁰

The Irish Context

Penn has highlighted that what is generally considered appropriate for young children in early childhood education and care is largely shaped by political priorities and values.⁴¹ The Irish Government's policy focus on high quality when it comes to the delivery of early childhood care and education is clear. Most recently under *First Five: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019-2028*, the Government has identified a number of key objectives including: the need to make *high quality* early childhood care and education for babies and young children more affordable; to maintain and extend the supply of *high quality* publicly subsidised care to best serve the developmental needs of babies and young children; and finally, to ensure that ELC provision promotes participation, strengthens social inclusion and embraces diversity through the integration of additional supports and services for children and families with additional needs.⁴²

Government policy in respect of early childhood care and education in Ireland has tended to focus heavily on the need for quality early learning and care and making it accessible for families,⁴³ and so regulation has been a cornerstone of attempting to ensure same. As Gormley highlights 'A key purpose of such regulation is to ensure ... that those providing services meet certain minimum

36 Ibid, para 3(b) of the Council Recommendations.

37 Crowley, A., Larkins, C and Pinto, L.M., *Listen-Act-Change: Council of Europe Handbook on Children's Participation* (COE, October 2020).

38 Fenech, M., Sumsion, J., Goodfellow, J., "The Regulatory Environment in Long Day Care: A 'Double-Edged Sword' For Early Childhood Professional Practice" (2006) *Australian Journal of Early Childhood* 31(3) 49-58; p. 56. Fenech, M. & Sumsion, J., 'Promoting High Quality early childhood education and care services beyond risk management, performative constructions of regulation'. (2007) *Journal Of Early Childhood Research*, 5(3) 263-283.

39 Ibid.

40 Te One, S., "Implementing children's rights in early education", *Australasian Journal of Early Childhood*,(2011) 36 (4) pp.54-61.

41 Penn, H., Early childhood education and care: Key lessons from research and policy makers. An independent report submitted to the European Commission by the NESSE network of experts.

42 *First Five: A Whole-of-Government Strategy for Babies, Young Children and their Families 2019-2028*, Objective 8, p.95.

43 <https://www.gov.ie/en/policy/e9b63e-children-and-youth/#childcare>.

qualifications and adhere to certain rules that promote quality and reliability'.⁴⁴ What constitutes early childhood care and education quality is ambiguous as there is no standard definition in this regard⁴⁵ but overall it is accepted that it relates to structures and practices that improve outcomes for children. In the literature, a distinction has been drawn between structural quality (e.g. maximum group size, child-to-staff ratios and the educational level of childcare staff (Penn, 2013)) and process quality at the organizational/staff level (e.g. what happens in the setting: the play and learning environment, child–teacher and child–child interaction (Janta et al., 2012; OECD, 2018)).⁴⁶

In Ireland, regulation of early child care and education has tended to focus to a large extent on structural quality with attention also paid to the health, safety and welfare of the child.⁴⁷ However, in France and Germany for example, childcare quality and regulation is underpinned by a well-educated and well-trained workforce, which receives favourable salaries.⁴⁸ Sweden, on the other hand, is considered to be child-focussed since it has opted for both, strict staff educational requirements, in addition to other structural and process quality requirements (child: staff ration requirements, etc) which are focussed on promoting cognitive and social development. In countries where staff are highly trained, there appears to be less focus on inspections, with staff enjoying more autonomy in the performance of their duties. For example, while Finland does not have an inspectorate system per se, Finnish pre-school teachers who are highly qualified (Masters Level 9), develop individualised plans for all children which are regularly monitored and assessed by the professional childcare service team in tandem with the parents.⁴⁹ As a result, there is little state involvement in regulation.

Arguably, the Finnish approach is more child-centred and rights-focused in nature, with the individual needs and rights of each child being considered in the early childhood care and education plans that are created. Indeed, in countries where pre-school staff are viewed as highly qualified professionals in their own right, there is a relatively low-level regulatory approach employed by the State.⁵⁰ On the other hand, in countries like Ireland, where ECEC managers and staff are not as highly qualified⁵¹ and, as a result, lack professional autonomy, they are subject to strict, and largely structural regulatory requirements. The qualifications of the inspectorate staff have also been called into question, with concern expressed that the inspectorate has not the requisite qualifications or experienced to assess quality within pre-school settings.⁵²

In general, internationally and within the Irish context, there is greater emphasis on the contribution children can make to their own learning⁵³ and, though by no means a universally shared perspective or fully adopted practice, more is understood about how young children can construct their own learning. In the Reggio Emilia preschools of northern Italy for example, this is referred to as The Pedagogy of Listening where children's rights, community and the arts are central to pedagogic

44 Gormley, W.T., "Early childhood education and care regulation: a comparative perspective" *International Journal of Educational Research* 33 (2000) 55-74, at p. 55.

45 Janta et al., 2012; Keck et al., 2009; OECD, 2018

46 Yerkes, M.A. & Javornik, j., "Creating capabilities: Childcare policies in comparative perspective", 2019 *Journal of European Social Policy* 29(4) (2019) 529-544, at p.534.

47 S.I. No. 221/2016 - Child Care Act 1991 (Early Years Services) Regulations 2016, Parts, III, IV & V.

48 Gormley, W.T., "Early childhood education and care regulation: a comparative perspective" *International Journal of Educational Research* 33 (2000) 55-74, at p. 61.

49 Oberhuemer et al., *Professionals in Early Childhood Education and Care Systems: European Profiles*. (Munich: Barbara Budrich Publishers, 2010).

50 Moloney, M., "Childcare regulations: Regulatory enforcement in Ireland. What happens when the inspector calls?", *Journal of Early Childhood Research* 2016, Vol. 14(1) 84–97.

51 Under the *Childcare Act 1991 (Early Years Services) Regulations 2016* all staff working directly with children must hold a minimum of QQI level 5 award in Early Childhood Care and Education.

52 Moloney, M., "Childcare regulations: Regulatory enforcement in Ireland. What happens when the inspector calls?", *Journal of Early Childhood Research* 2016, Vol. 14(1) 84–97.

53 Dunphy, 2012

practice.⁵⁴ There is a challenge inherent in teaching young children about their rights and of creating early education experiences which are rights-based. However, with appropriate training of child care workers supported by research into children's participation in their own learning, this is possible. Indeed, Quennerstedt acknowledges the reality that very young children do not actually know about their rights given their stage of development nor are they aware that they are small human beings entitled to enjoy and exercise rights.⁵⁵ In practical terms,

'...young children live their lives in societies, institutions and families that are – more or less – guided by human rights norms. In these settings, children act and their actions are met with a response. They also experience the actions of others. Thus, from a very early age children, albeit to varying degrees, encounter the norms that are inherent in human rights thinking'⁵⁶.

Carroll-Lind and Angus conducted an inquiry into non-parental education and care of infants and toddlers' relating to early childcare and education provision in New Zealand in 2011 for the Office of the Children's Commissioner. They highlighted the centrality of 'the child's perspective' to their inquiry into New Zealand's early childhood education and care provisions for infants and toddlers. The child's perspective is described in practical terms as '...seeing, understanding, and empathizing with a child's needs, motives, intentions, actions, etc., i.e., the ability to interpret from a child's perspective, to seek to understand and empathize with the child's world and the way it is perceived from the child's point of view.'⁵⁷ This is separate and distinct from children's perspectives which represent children's experiences and understandings of their world. Adopting a child's perspectives is consistent with protection of their rights as enshrined under the UNCRC.

54 Rinaldi, 1999

55 Quennerstedt, A., 'Young children's enactments of human rights in early childhood education' 2016, *International Journal of Early Years Education*, 24 (1), 5–18, at p. 5.

56 Ibid.

57 Paedagogisk-psykologisk Opslagsbog, 2006, p. 25

Conclusions and Recommendations

The time is ripe now to reconsider the regulation of early childhood care and education from a children's rights perspective, ensuring that the best start is genuinely provided for these children in life. As already highlighted in the foregoing analysis, Ireland has obligations to protect the rights of all children including very young children under international law as well as in accordance with our European legal commitments (EU and COE) and inherent human rights obligations.

Recommendations:

Consideration should be given to engaging in a thorough children's rights review of the regulatory system for early childhood care and education

Currently, there is a focus on structural quality with some aspects of health, safety and welfare included in inspections. Rather than the system of regulation focussing on the structural components of delivery of ECEC, consideration should be given to moving towards a regulatory system that embeds respect for children's rights in their processes and practices.

As aptly articulated by a member of Tusla, ultimately inspections of this nature are a snapshot in time. It is simply not possible to inspect the daily interactions between children and staff, nor is it possible to assess the extent to which children's rights are protected and promoted in these environments. However, the practices of other countries such as Finland, demonstrates that it is possible to take an individualised child centred approach by devising a unique child care and education plan for, and with, each child and their parents in the early years setting. The latter is UNCRC compliant and is something that can be inspected as part of the inspection process. It is just one way of accounting for the uniqueness of each child, their best interests and their stage of development (Art.6), whilst also facilitating the embedding a rights-based approach (Arts.2, 3 and 12) at practice level.

Regulatory attention should be focussed on thresholds of quality care below which harm to children may occur. Harm should be viewed in its broadest sense, taking into account the potential for children's rights to be violated and impacts on child development, education and relationships and activities, and not just on safeguarding health, safety and welfare of the child. While the latter aspects of childcare have proven more difficult to regulate in practice, it is well established that they have a significant impact on children. They include continuity of adult relationships, child participation and positive relationships with staff. By embedding children's rights within a robust system of early childhood care and education, with highly qualified and trained staff at the core, supported by a regulatory framework which is based on protecting children's rights, this would make for a more child-focussed ECEC environment.

Provide training to staff in early childhood education and care settings about their rights under the Protected Disclosures legislation

Consideration should be given to introducing mandatory training to childcare workers about their rights under the Protected Disclosures legislation and the overriding responsibilities they have to report situations where young children are at risk of, or are being abused or mistreated in an early childhood setting.

Raise the minimum level of qualifications for ECEC workers

Akin to other professions who engage with children on a daily basis, the qualifications required to be an early childcare worker should be raised to a minimum level 8 NFQ (from the current level 5) and salary upon qualification should reflect that. Looking at this through a children's rights lens, when very young children are exposed to the norms that are inherent in *children's rights* thinking, they learn in a developmentally appropriate way what a culture of children's rights involves which they can build on as they grow. In order for this to happen in practice, the childcare workers who take care of them need to be professionally trained in understanding, and delivering children's rights in their everyday practice.