



**AGREEMENT BETWEEN THE
 MINISTER FOR CHILDREN &
 YOUTH AFFAIRS AND SERVICE PROVIDERS
 (THE CONTRACT)
 EXPLANATORY GUIDE**

TABLE OF CONTENTS

Table of Contents 1

Introduction 3

 The Agreement 3

 This Guide 4

SECTION 1 – STANDARD CONTRACTUAL REQUIREMENTS 5

 Clause 1 – Interpretation 5

 Clause 2 – Pre-Payment Conditions 5

 Clause 3 – The Subsidy 5

 Clause 4 – Legal Framework and Statutory Guidance 6

 Clause 5 – Operation of the Scheme 6

 Clause 6 – Payment terms 6

 Clause 7 – Access, Reporting Requirements and Retention of Records 7

 Clause 8 – Right of Verification 8

 Clause 9 – Term and Termination 8

 Term of Agreement 8

 Termination of agreement 9

 Clause 10 – Insurance and Indemnity 9

Clause 11 – Force Majeure	9
Clause 12 – Non-assignment / Sub-contracting	9
Clause 13 – Data Protection	10
Clause 14 – Freedom of Information	10
Clause 15 – General	10
SECTION 2 – OPERATIONAL REQUIREMENTS IN RELATION TO THE ADMINISTRATION OF THE SCHEME	11
(A) Registration of eligible children	11
(B) Attendance Recording and Monitoring	13
I. Daily attendance	14
II. Weekly Reporting Return	14
III. Issues with attendance	14
IV. Special Circumstances	15
V. Failure to make reporting returns	16
SECTION 3 – MISCELLANEOUS TERMS AND CONDITIONS RELATING TO THE OPERATION OF THE SCHEME	17
Tusla registration	17
Use of subsidy	17
Service calendar and Schedule of Fees	17
Retaining records	17
Early Years Platform	18
Fee increases	18
Parent ceasing to pay fees	18
Child leaving a service	18
Rounding up of part-hours	19
Reviews and Appeals	19
Renewals	19
Payments	20
Síolta and Aistear	20
Section 4 – Obligations under the Data Protection Laws	20
1. Definitions	20
2. Purpose and legal basis	21
3. Categories of personal data	21
4. Responsibilities of controllers	22
5. Security	23
6. Data Retention	24
7. Communication with the data protection commission	24

INTRODUCTION

The *National Childcare Scheme Agreement* is a contractual agreement between the Minister for Children and Youth Affairs and a childcare service provider who chooses to participate in the Scheme. As such, it includes legal language and a number of standard contractual conditions. The purpose of this Explanatory Guide is to set out in plain language what service providers will be required to do under the terms and conditions of the Agreement.

The National Childcare Scheme was established under the *Childcare Support Act 2018*. The Act empowers the Minister to make regulations to set out some of the detailed provisions and requirements of the Scheme. These Regulations are referred to throughout the Agreement and this Guide will explain what these Regulations will mean for the provider in the context of the Agreement. The regulations relevant to this Agreement will be published – in draft form – a few days after the Agreement and this Explanatory Guide.

Reference is also made throughout the Agreement to “Policy Guidelines”. These are technical Guidelines that will be made available by Pobal (the Scheme Administrator) and will detail the procedures that will apply to all aspects of the administration of the National Childcare Scheme. The Policy Guidelines will be published early in the summer.

On 8th April 2019 Pobal was appointed as the administrator for the National Childcare Scheme by the Minister for Children and Youth Affairs. All references in this document to the Scheme Administrator relate to Pobal in its role as the administrator of the National Childcare Scheme.

This Explanatory Guide is intended as an aid to service providers and does not purport to be a legal interpretation of the Agreement. The Guide should be read in association with the Agreement, the Regulations and the Policy Guidelines.

THE AGREEMENT

The Agreement between the service provider and the Minister comprises:

- The Agreement – setting out the legal contractual arrangements. The sections of the Agreement are known as “**Clauses**”
- Appendix 1 – setting out more detailed requirements for participation in the Scheme. The sections of Appendix 1 are known as “**Paragraphs**”
- Appendix 2 – the Data Protection Agreement

- Appendix 3 – the template showing the format in which providers must record the attendance of children subsidised under the Scheme

THIS GUIDE

This Guide is divided into 4 sections, as follows:

- The standard contractual requirements contained in the Agreement
- The operational and administrative requirements set out in the Agreement in relation to participation in the National Childcare Scheme
- Miscellaneous terms and conditions relating to a service provider’s participation in the National Childcare Scheme
- Obligations under the Data Protection Laws

Note: From this point on, the National Childcare Scheme will be referred to as “the Scheme”.

SECTION 1 – STANDARD CONTRACTUAL REQUIREMENTS

CLAUSE 1 – INTERPRETATION

This clause sets out the meaning of certain terms as they are used in the Agreement. Where a term is given capital letters in this Guide, this means that the term is defined in the Agreement’s Interpretation clause.

CLAUSE 2 – PRE-PAYMENT CONDITIONS

This clause sets out the conditions that must be fulfilled **before** any payment can be made to providers under the Scheme. The conditions are:

- The provider must have provided details of a bank account to which the Subsidy payments can be transferred.
- The provider must demonstrate that they are tax-compliant by providing their tax reference number and tax clearance access number to the Scheme Administrator.

CLAUSE 3 – THE SUBSIDY

Service Providers must comply with the terms and conditions set out in the Agreement.

The Service Provider must use the Subsidy to reduce the fees charged to parents.

A Subsidy will be paid in respect of the childcare hours registered on the Early Years Platform and confirmed by the parent. The provider may provide additional hours over and above the number registered, but these will not be subsidised under the Scheme, i.e. the parent will be liable to pay for these in full.

The provider must notify the Scheme Administrator of any change to their contact details.

CLAUSE 4 – LEGAL FRAMEWORK AND STATUTORY GUIDANCE

Service providers are responsible for ensuring that they are compliant with all the laws that relate to their businesses as childcare providers in respect of their premises, their business, their staff and the children for whom they care.

The service provider must understand that entering into this Agreement does not mean that the Minister has given a guarantee in relation to the suitability of the premises, the competence of the staff, or the adequacy of the childcare service provided. The service provider him or herself is responsible for these matters.

The existence of this Agreement does not make the service provider – or any of his or her staff – servants, agents or employees of the Minister, and the service provider may not enter into any contract on behalf of the Minister.

CLAUSE 5 – OPERATION OF THE SCHEME

The contents of Clause 5 are explained in Section 2 (Operational and Administrative Requirements in relation to participation in the Scheme).

CLAUSE 6 – PAYMENT TERMS

Subsidies will be paid by the Scheme Administrator for each Eligible Child registered on the Early Years Platform and attending the childcare service in accordance with the attendance rules. Payments will also be subject to the recoupment of any overpayments arising in relation to the Scheme or any other childcare programme administered by the Department.

The timing and method of payments under the Scheme will be determined by the Scheme Administrator.

A child who is subsidised under the Scheme cannot receive a Subsidy for the same time of day under the ECCE programme or any of the other childcare programmes administered by the Department. For example, a child may be subsidised under ECCE *and* under the Scheme. However, the Scheme Subsidy is payable only for childcare hours outside the ECCE provision. This requirement refers only to subsidies and does not apply to the Programme Support Payment or the Transition Support Payment. For clarity, providers can receive Programme Support Payments / the Transition Support Payment for each Scheme or programme for which they are in contract, in line with the terms of those administrative payments.

If an overpayment arises in relation to the Scheme, the Scheme Administrator can deduct the amount of the overpayment from funding due to the provider in respect of the Scheme, ECCE or any of the other childcare programmes. Similarly, if an overpayment arises in relation to ECCE or another childcare programme, the Scheme Administrator can deduct the amount of the overpayment from funding due to the provider under the Scheme.

CLAUSE 7 – ACCESS, REPORTING REQUIREMENTS AND RETENTION OF RECORDS

Providers must maintain local attendance records and complete a weekly reporting return.

All financial records, including attendance records, must be kept for a period of 6 years after the end of the year to which they relate.

Service providers must prepare annual financial accounts in accordance with the timescales set out by the Companies Registration Office or the Revenue Commissioners, as appropriate.

The financial accounts must record the funding received under the Scheme separately from all other income.

The financial accounts must be submitted to the Scheme Administrator on request.

Service providers must submit an annual financial declaration to the Scheme Administrator confirming that:

- They have submitted their annual accounts to the Companies Registration Office or the Revenue Commissioners (whichever is appropriate) within the statutory deadlines
- That the Subsidies received under the Scheme have been clearly disclosed in the accounts, separately from all other income
- That the Subsidies received have been offset in full against the childcare fees charged to parents

CLAUSE 8 – RIGHT OF VERIFICATION

Service providers must allow Authorised Officers of the Scheme Administrator to enter their premises in order to confirm compliance with the terms and conditions of the Scheme, and must facilitate and co-operate with these inspections. Providers must allow the officers access to the records relevant to the provision of the childcare service to Eligible Children and allow the officers to take the records off-site if necessary.

Relevant records must be available on the premises at all times.

As a general rule, service providers will not be given any notice of an inspection by an Authorised Officer.

The report of the inspection will be made available privately to the provider through the Early Years Platform. If a provider is unhappy with the report, he or she can appeal the decision in writing.

Service providers are also required to facilitate inspections by Tusla, the Department of Education and Skills, and any other lawful inspection.

CLAUSE 9 – TERM AND TERMINATION

TERM OF AGREEMENT

This Clause sets out the dates that the Agreement will start and finish. The first Scheme Agreement will be effective from 28th October 2019, and will finish on 31st August 2020.

However, a service provider may apply to participate in the Scheme at any time after 28th October 2019, and in such cases the Agreement will be effective from the date the service provider signs the contract until 31st August 2020.

Future Agreements will be effective from September to August each year.

All contracting arrangements will be carried out electronically, on PIP for the first programme year, and on the Early Years Platform in subsequent years.

The Minister has no obligation under the Agreement to provide any funding to a service provider, other than the Subsidy payments under the Scheme.

TERMINATION OF AGREEMENT

The Agreement can be terminated immediately by the Minister if any of the events set out in Clause 10.3 of the Agreement occur. These events include – but are not limited to – the removal of the service provider from Tusla’s register of early years service providers, or the making of an order for the winding up of the childcare service. If the Agreement is terminated as a result of one of the events set out in Clause 10.3, the service provider must repay any amounts due in relation to Subsidies paid, or overpaid, as determined by the Scheme Administrator.

The Agreement can also be terminated, by either the Minister or the service provider, by giving three months written notice to the other party.

CLAUSE 10 – INSURANCE AND INDEMNITY

It is the responsibility of the service provider to have appropriate insurance cover for the childcare service provided. The Minister has no liability in respect of any actions taken against the provider in connection with the childcare service provided.

CLAUSE 11 – FORCE MAJEURE

The service provider must notify the Minister immediately where it is prevented from carrying out its obligations under the Agreement by reason of force majeure. It must also notify the Minister when the force majeure circumstances cease.

If the force majeure circumstances last for more than 45 days, the service provider has the right to terminate the Agreement by giving written notice to the Minister, or vice versa.

CLAUSE 12 – NON-ASSIGNMENT / SUB-CONTRACTING

By entering into the Agreement, the service provider understands that he or she is personally responsible for carrying out its obligations under the Agreement. Any services additional to the responsibilities under the Agreement may be sub-contracted by the service provider.

CLAUSE 13 – DATA PROTECTION

Both the Minister and the service provider are data controllers of the personal data. Each party has the responsibilities of a controller under the Data Protection Laws. Each party shares data in line with Appendix 2 of the Agreement. An explanatory note on Appendix 2 is at section 4 of this document.

CLAUSE 14 – FREEDOM OF INFORMATION

The Minister is subject to the provisions of the Freedom of Information Act 2014. If the Minister receives a request for information relating to a particular service provider's Agreement, the Minister will consult with that provider. The provider can identify any information relating to the Agreement that he or she considers should not be disclosed, and the Minister will consider this before making a decision.

The Minister has no liability in respect of any damage caused resulting from the release of any information.

CLAUSE 15 – GENERAL

The Agreement does not create any partnership or similar arrangement between the Minister and the service provider, or make the service provider an agent of the Minister.

Any changes to the Agreement must be agreed in writing – or electronically confirmed – by the Minister and the service provider.

The Agreement remains in force even where the Minister does not exercise her rights or is delayed in exercising her rights. The rights and remedies provided for in the Agreement are not mutually exclusive and are in addition to any others provided by law.

Where any element of the Agreement becomes void or unenforceable, this does not affect the validity of all other elements of the Agreement.

The inclusion of the reference to Decision 2012/21/EU is a requirement under EU State Aid rules, and does not impact on service providers.

The Agreement is governed by the laws of Ireland and subject to the jurisdiction of the Irish Courts.

SECTION 2 – OPERATIONAL REQUIREMENTS IN RELATION TO THE ADMINISTRATION OF THE SCHEME

(A) REGISTRATION OF ELIGIBLE CHILDREN

- i. The service provider must use the Subsidy in full to reduce the fees charged to qualifying parents for the provision of childcare.
- ii. A Subsidy will be paid in respect of the hours and weeks of childcare registered on the Early Years Platform, up to the maximum hours and weeks that have been awarded by the Scheme Administrator. The service provider can provide additional hours of childcare if required by the parent, but the parent is liable in full for any fees in relation to these additional hours. For example, a child may be awarded a Subsidy for 40 hours per week, but the parent chooses to avail of 50 hours of childcare. In this case, a Subsidy will be payable for 40 hours, and the parent must pay the balance of the cost, including any cost arising in respect of the additional 10 hours.
- iii. A parent may also choose to avail of fewer hours of childcare than the number of hours awarded. In such cases, these are the hours that must be registered, and a Subsidy will only be payable in respect of these agreed fewer hours. For example, a child might be eligible for 40 hours of childcare, but the parent only chooses to avail of 25 hours. A Subsidy will be payable for 25 hours, and the parent must pay the balance of the cost in respect of 25 hours (if any).
- iv. The records maintained by the service provider in relation to the Scheme, and the information entered by the service provider on the Early Years Platform, must be accurate.
- v. The service provider must retain a copy of the agreement with the parent that sets includes the following information:
 - The number of childcare weeks and the number of childcare hours each week that the provider has agreed to provide to the child
 - The fee for the childcare service that will be provided to the child, having regard to the provider's published schedule of fees
 - A commitment to deduct the Subsidy in full from the agreed fee

This agreement must be signed by the parent.

This information can be included in the standard agreements with parents that are used by service providers; there is no need for a separate agreement. A template setting out the information required under the National Childcare Scheme Agreement will be made available before the Scheme commences.

vi. The service provider must operate the Scheme as follows:

- ✓ Agree with the parent the number of childcare hours per week, and the number of weeks of childcare, that will be provided to the child.
- ✓ Use the code (CHICK), that will be provided by the parent, to register the child for the number of hours and weeks that will be subsidised (as agreed with the parent). When the child has been registered, the Scheme Administrator will require the parent to confirm that these are the hours and weeks that have been agreed. Payment will not be approved by the Scheme Administrator until this confirmation has been received.
- ✓ The subsidy in respect of a child will be paid with effect from the Monday of the week in which the childcare service provided to the child commences, or the Monday of the week in which the child is registered by the provider, whichever is the later date. Subsidies will not be back-dated, so the provider should ensure either to register the child in advance (entering the date on which the child will start in the service) or to register the child during his or her first week in the service.
- ✓ Charge the parent the balance between the full childcare fee and the amount of the Subsidy (the provider can charge the parent a lesser amount, but may not charge more). The method of payment, and the timeframe for payment, is a matter between the parent and the service provider.
- ✓ Keep local attendance records in the format set out in the template shown at Appendix 3 of the Agreement. The record must show the child's name, the child's date of birth, the date of attendance, the time(s) the child arrives at and the time(s) the child departs from the service, and the person responsible for recording each arrival and departure.

Where a child is availing of the ECCE Programme as well as receiving a Subsidy under the National Childcare Scheme, it is important to ensure that there is no mix-up between the ECCE hours and the National Childcare Scheme hours. This is because the Subsidy is based on a child's attendance. For this reason, where a child who is availing of both the ECCE Programme and the National Childcare Scheme does not move to a different room for the ECCE session, the ECCE hours must be recorded separately.

In order to meet Tusla and ECCE reporting obligations, if a child moves from one room to another in the course of the day, the times of arrival at and departure from the room must be recorded.

(B) ATTENDANCE RECORDING AND MONITORING

Attendance rules are set out in Regulations made under section 15 of the Act, and in Chapter 8 of the Policy Guidelines. The following is an overview of the Rules.

I. DAILY ATTENDANCE

A child benefiting from a Subsidy under the Scheme is expected to regularly attend the service for the number of hours for which their Subsidy is payable. For example, if a child is receiving a Subsidy for 40 hours per week the child is expected to attend for 40 hours per week.

However, the attendance rules are designed to allow for flexibility and recognise the realities of family life. Therefore, a child is only considered to be "persistently underattending" if he or she attends for fewer than the subsidised hours every week for **8 consecutive weeks**. Similarly, a child's absence from the service need only be reported on the Early Years Platform if the child is absent for a period of **4 consecutive weeks**.

The time of a child's arrival at or departure from the service must be recorded immediately or, if this is not feasible, within an hour of the child's arrival or departure (unless there are exceptional circumstances where this is not possible).

The times during which the child is in the care of service, e.g. the time spent delivering a child to, and collecting a child from, school is regarded as attendance in the service. For example, if a child is collected from school at 3pm but does not arrive back at the service until 3.15pm, the child is considered to be in attendance in the service from 3pm.

II. WEEKLY REPORTING RETURN

The provider must, on a weekly basis, submit a return to the Scheme Administrator via the Early Years Platform. The weekly payment of Subsidies to service providers will be based on the return, and the return must be submitted by a set day each week in order for payments to issue on time.

When making the return, the provider will be asked to:

- Ensure that they have ended the registration on the Early Years Platform where a child has left the service
- Notify of any case where the child has been absent for **4 consecutive weeks**
- Notify of any case where the child has been “persistently under-attending” for **8 consecutive weeks** (and, as a follow on requirement, notify any case where the child continues to “persistently under-attend” for **12 consecutive weeks**)

The weekly return will be based on the local daily attendance records for children availing of the Scheme. Attendance records must be kept in the format set out in the template at Appendix 3 of the Agreement. A spreadsheet (with inbuilt formulae for user-friendliness) will be made available to service providers in advance of the commencement of the Scheme to assist them in recording and monitoring children’s attendance. By using this spreadsheet, the provider will be able to produce a weekly summary report that will identify the children whose attendance needs to be reported.

III. ISSUES WITH ATTENDANCE

Once a case of absence or under-attendance has been notified, the Scheme Administrator will take the necessary action, that is:

- Where the child has been absent for 4 consecutive weeks, the payment in respect of the child will be suspended until such time as the child returns, unless a claim for special circumstances is approved (see below).

- Where the child has been under-attending for 8 consecutive weeks, the Scheme Administrator will notify both the parent and the provider that the Subsidy in respect of the child will be adjusted downwards **IF** the under-attendance continues for a further 4 weeks (that is, 12 consecutive weeks of under-attendance). The notice will also ask the provider and parent to determine whether the child’s under-attendance is likely to continue and, if so, whether the child’s registration should be adjusted. On receipt of the notice, the provider may submit a claim for special circumstances on behalf of the parent (see below).

At the end of the 12 weeks, if the under-attendance has continued and special circumstances have not been approved, the Scheme Administrator will adjust the Subsidy payment to reflect the child’s actual attendance. If this happens, the child’s hours cannot be adjusted upwards for a period of 8 weeks.

IV. SPECIAL CIRCUMSTANCES

In the case of absence or under-attendance, the parent may apply to the Scheme Administrator, through the service provider or by writing directly to the Scheme Administrator, to have special circumstances considered.

In cases of under-attendance, the special circumstances are as follows:

Qualifying circumstance	Maximum period for which financial support is payable
Attendance at medical or therapeutic appointments by the child, parent or sibling	Maximum of 16 weeks

In cases of continuous absence, the special circumstances are as follows:

Qualifying Circumstance	Maximum Absence for which financial support is payable
Immediate family bereavement	6 weeks
Extended travel once a year to the birthplace of the child or either of the child’s parents	6 weeks

Family moving into or out of emergency accommodation where the financial support payable is not the subject of a Sponsored referral	6 weeks
Child moving into or out of care placement	6 weeks
Prolonged illness (more than four weeks), of either the child or a parent	12 weeks

Where a claim for special circumstances is approved, the child’s Subsidy payment will continue (i.e. it will not be suspended or adjusted) for the period as set out in the approval. If the absence or under-attendance persists following the special circumstances period, the Scheme Administrator will take action to suspend the payment or adjust the Subsidy, whichever is appropriate.

V. FAILURE TO MAKE REPORTING RETURNS

The service provider must make the return each week, in respect of the previous week.

If a service provider fails to make the return, the Subsidy payments will be suspended until such time as the return is made. If the service provider fails to make the return by the set deadline, the Subsidy payments will be delayed.

If the service provider has missed the deadline for making the weekly return, they may contact the Scheme Administrator to request a “grace period” payment. This request may only be made twice within the same contract period, and the requests may not be made consecutively. In other words, if the service provider has received a grace period payment in respect of a week, they may not request another such payment for the following week.

The service calendar submitted by the service provider to the Scheme Administrator will set out the planned closures for the year. Where these are ‘paid closures’, i.e. the two weeks during the contract period on which the service provider is permitted to close the service and still be paid, the service provider will not be required to submit a weekly return in respect of those weeks in order to receive payment. However, the provider must submit the relevant returns when the service re-opens.

SECTION 3 – MISCELLANEOUS TERMS AND CONDITIONS RELATING TO THE OPERATION OF THE SCHEME

TUSLA REGISTRATION

Providers wishing to participate in the Scheme must be registered with Tusla as an early years service (pre-school, school age or childminder).

USE OF SUBSIDY

Providers must use the Subsidy for the purpose for which it is intended, namely, to reduce the cost of the childcare fee charged to a parent. Providers must comply with the rules set out in the Agreement in relation to using the Subsidy.

SERVICE CALENDAR AND SCHEDULE OF FEES

Providers must submit an annual service calendar to the Scheme Administrator, indicating the days and weeks during which the service will be open, and the hours during which the service operates.

Providers must submit a schedule of fees to the Scheme Administrator, using the standard template that will be provided. The provider must give 20 working days notice to the scheme administrator (by submitting the revised schedule of fees) and to parents of any increase in fees.

Both the service calendar and the schedule of fees must be displayed in the service at all times in an area accessible to parents, and also on any online platform used by the provider to advertise their service.

The service provider must agree to allow the Scheme Administrator to publish the fees online or in any other format, and to publish the data and use the data as part of overall reporting of fees.

RETAINING RECORDS

Records that are relevant to the application of the Subsidy must be retained for a period of 6 years following the end of the relevant contract period. Records that must be retained include:

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- ✓ Financial records, receipt books, bank statements
 - ✓ Signed agreements with parents
 - ✓ Attendance records, weekly summary reports
 - ✓ Annual financial accounts

EARLY YEARS PLATFORM

Providers must use the Early Years Platform to administer the Scheme.

FEE INCREASES

The provider can set his or her own fees but must notify the Scheme Administrator and the parents of Eligible Children of any increase in fees at least 20 working days before the increase comes into effect.

PARENT CEASING TO PAY FEES

If the parent stops paying the agreed Co-payment, the provider may stop providing a childcare service to the child.

If the parent has agreed with the provider that he or she will pay for hours over and above the subsidised hours, and then stops paying for those hours, the provider can stop providing a childcare service to the child.

If either of those two events arise, or if the provider wishes to cease to provide a service to a child in other exceptional circumstances, any Subsidy payable beyond the date the child stops attending the service will be recouped by the Scheme Administrator.

CHILD LEAVING A SERVICE

Where a parent chooses to remove a child from the service, any Subsidy paid on behalf of the child in respect of a period beyond the date of the child's departure will be recouped by the Scheme Administrator. Any recoupment will be subject to the fact that a parent should give the provider four weeks notice of his or her intention to remove the child from the service. If sufficient notice is not given, the provider may claim up to four weeks payment in lieu of notice. The granting of this payment will be at the discretion of the Scheme Administrator.

ROUNDING UP OF PART-HOURS

- The total weekly claim may not exceed the hours during which the service is open, rounded up to the nearest hour. For example, where a service is only open for 37.5 hours every week, the total weekly claim for any subsidised child may not exceed 38 hours.
- When registering the hours of childcare, any part of an hour can be rounded up within an overall day. For example, if a parent needs 7.5 hours of childcare per day this can be rounded up to 8 hours for the purposes of registration.
- Similarly, when reporting on variations in attendance, the number of hours of attendance can be rounded up to the nearest hour on a daily basis. For example, if a child attends the service for 6.5 hours every day, this can be rounded up to 7 hours daily, giving a weekly total attendance of 35 hours.

Service providers should note that the child's arrival and departure times in the attendance records must reflect the actual time of arrival and departure – "part-hours" do not apply to attendance records.

REVIEWS AND APPEALS

The Regulations will set out the circumstances under which a service provider can ask the Scheme Administrator to review a decision, and the timescale within which such a request must be made. If the provider is not satisfied with the result of the review, they can appeal the decision to an independent Appeals Officer.

RENEWALS

Every award made under the Scheme will have an expiry date. This will generally be a year from the date of the award, but may be for a shorter term. In all cases, the Scheme Administrator will, prior to the expiry date, send a notification to both the provider and the parent reminding them of the upcoming expiry date and advising them of the process for seeking a renewal of the Subsidy. It will be a matter for the parent to renew the Subsidy. If the Subsidy is not renewed, the payment for the child will be stopped on the day the award expires.

In the case of all sponsored referrals, the Scheme Administrator will, in advance of the expiry date, notify the designated contact as recorded on the referral form (this will be either the parent or the sponsor body) of the expiry date and advise of the process for seeking a renewal of the Subsidy. The service provider will also be notified at this time.

PAYMENTS

Subsidy payments will be made by the Scheme Administrator every Friday, subject to the submission by the service provider of the weekly reporting return by the set deadline. (Payments will also be subject to other checks, such as confirmation of tax clearance.)

SÍOLTA AND AISTEAR

The service provider must use the principles of Síolta and Aistear when providing care services to Eligible Children aged 0 to 6 years.

SECTION 4 – OBLIGATIONS UNDER THE DATA PROTECTION LAWS

Under the data protection laws, including Regulation EU 2016/679 (the General Data Protection Regulation, or GDPR), data protection obligations apply to childcare service providers regardless of whether or not they are participating in one of the DCYA Childcare Programmes or Schemes. The Department has made basic online training available for all childcare providers to support them in meeting their data protection obligations. This training has been available since October 2018 and will be available until 23rd October 2019.

Further guidance in relation to any aspect of data protection and the service provider's obligations as data controller is available on the Data Protection Commission's website at www.dataprotection.ie. It is the service provider's responsibility to ensure they are fully informed of their responsibilities in relation to GDPR.

1. DEFINITIONS

The following terms have the meaning given to them under the GDPR:

- Controller;
- Processor;
- Data Subject;
- Personal Data;
- Special Categories of Personal Data.

The key definitions are available on the Data Protection Commission's website at www.dataprotection.ie. (Search for the phrase 'Definition of Key Terms').

- a. Shared Personal Data is the data shared between the Minister and the service provider under the Childcare Support Act and the Regulations made under the Act.

The data to be shared is listed in Appendix 2 of the Agreement.

2. PURPOSE AND LEGAL BASIS

- a. Appendix 2 outlines how data will be shared between the service provider and the Minister.
- b. The purpose of sharing data between the service provider and the Minister is to implement the National Childcare Scheme.
- c. The legal sharing and processing of personal data must have a legal basis under the GDPR.
- d. For the Minister, the legal basis is in Article 6 (c) of the GDPR:
processing is necessary for compliance with a legal obligation to which the controller is subject;
- e. For the service provider, the legal basis is in Article 6 (b) of the GDPR:
processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- f. The shared data will only be processed in order to implement the National Childcare Scheme.
- g. The shared data will not be processed for any reason that is not in line with the National Childcare Scheme.
- h. Pobal, as Scheme Administrator, is a processor of the shared data. Thus the shared data will also be shared with Pobal for the implementation of the National Childcare Scheme.

3. CATEGORIES OF PERSONAL DATA

- a. The data that will be shared is listed in this section.
As well as the personal data of children and their parents, some of the service provider's data is also considered personal data. The organisation's name and address is not always personal data, but it may be if it can be used to uniquely

identify a person. Similarly, a tax reference number is not always personal data, but it may be if the number is also the service provider's PPSN.

- b. Some of the data to be shared may fall under the heading of 'Special Categories of Personal Data' or 'Sensitive Data'. Such data could, for example, be included in a request for an exemption under the attendance rules, if a letter is provided to the service provider by the parent. Special Categories of personal data must be processed only with the explicit consent of the parent. Information on special categories of personal data is available on the Data Protection Commission's website (search for the phrase 'Definition of key terms').

4. RESPONSIBILITIES OF CONTROLLERS

- a. Both the Minister and the service provider are responsible for fulfilling their obligations as data controllers, in respect of any data received from the other party. The obligations of data controllers are described on the Data Protection Commission's website (in the section 'For Organisations' – Know your Obligations).
- b. It is up to each party to ensure that the processing is carried out by them in line with the data protection principles as set out in Article 5 of the GDPR. Further guidance on the principles of data protection is available on the Data Protection Commission's website at www.dataprotection.ie ('For Organisations' – Principles of Data Protection).
- c. The Minister and the service provider must each provide information to the data subject as required by Articles 13 and 14 of the GDPR. This information must include:
 - Identifying the data controller
 - Explaining why the data is being shared
 - Who the data is being shared with
 - The rights of the data subject and if any restriction applies

This information is normally provided in a privacy statement. Guidance on the information that must be provided to data subjects is available on the Data Protection Commission's website ('For Individuals' – Rights of Individuals under the GDPR). A reference to the National Childcare Scheme's Privacy Statement should also be included.

- d. Unless the data subject requires otherwise, if a data subject makes a request or objection to the processing of shared data, the request will be forwarded to the

party who provided that information. The data subject will be informed of this, and the party who provided that information will deal with the request.

e.

- i. If either the service provider or the Minister becomes aware of a personal data breach in relation to information held on the Early Years Platform they must notify the other party immediately.
- ii. Both the Minister and the service provider will comply with their obligations as data controllers under the Data Protection Laws in the event of a breach.
- iii. If a personal data breach occurs, both parties will carry out a risk assessment and decide on what actions need to be taken.

5. SECURITY

a.

- i. The Minister is responsible for maintaining the security of the Early Years Platform.
- ii. The service provider is responsible for ensuring that they and their staff use the Early Years Platform in a way that protects the security of the data. They must take any technical or organisational measures required to ensure that they and their staff protect the security of data. These measures include, but are not limited to, controlling who has access to personal data, automatic screensavers, and storing the data securely. Guidance in relation to data security is available on the Data Protection Commission's website at www.dataprotection.ie. ('For Organisations' – know your obligations - data security).

b. Neither the Minister nor the service provider will use the shared data for any purpose other than the implementation of the National Childcare Scheme.

6. DATA RETENTION

The service provider will only keep the shared data for as long as it is needed to comply with the conditions of the contract. The Minister must retain data in accordance with her obligations under the National Archives Act.

7. COMMUNICATION WITH THE DATA PROTECTION COMMISSION

If the service provider has reason to communicate with the Data Protection Commission in relation to shared personal data (other than in the context of seeking information), the service provider must advise the Minister of this communication.