

# Affordable Childcare Scheme

## Heads of Bill and General Scheme

<b>PART 1</b>	<b>PRELIMINARY AND GENERAL.....</b>	<b>5</b>
Head 1.	Short Title and Commencement .....	5
Head 2.	Interpretation.....	6
<b>PART 2</b>	<b>ESTABLISHMENT OF SCHEME AND ELIGIBILITY.....</b>	<b>13</b>
Head 3.	Establishment of a scheme.....	13
Head 4.	Eligibility to apply for a subsidy.....	14
Head 5.	Sponsors.....	17
Head 6.	Approved providers .....	20
<b>PART 3</b>	<b>APPLICATIONS, REGISTRATION AND PAYMENT.....</b>	<b>23</b>
Head 7.	Making an application for a subsidy.....	23
Head 8.	Assessment of income.....	27
Head 9.	Deductions from income.....	31
Head 10.	Universal subsidy.....	34
Head 11.	Subsidy rate for income-related subsidy.....	36
Head 12.	Duration of income-related subsidy.....	38
Head 13.	Determination of subsidies .....	41
Head 14.	Registration .....	44
Head 15.	Registration where more than one subsidy relates to a single child .....	46
Head 16.	Approval and payment of subsidies.....	49
Head 17.	Variation in hours of childcare used .....	52
Head 18.	Copayment .....	54
<b>PART 4</b>	<b>RENEWALS, REVIEWS AND APPEALS.....</b>	<b>56</b>
Head 19.	Renewal of subsidy.....	56
Head 20.	Change in assessable income or personal circumstances .....	58
Head 21.	Reviews.....	60
Head 22.	Appeals .....	63
Head 23.	Reporting requirements.....	66
Head 24.	Power to recoup monies.....	67
Head 25.	Sanctions and penalties .....	68
<b>PART 5</b>	<b>SCHEME ADMINISTRATOR.....</b>	<b>69</b>
Head 26.	Appointment of scheme administrator.....	69
Head 27.	Role and obligations of scheme administrator.....	71
<b>PART 6</b>	<b>DATA.....</b>	<b>72</b>
Head 28.	Use of Personal Public Service Numbers .....	72
Head 29.	Use of information .....	74
<b>PART 7</b>	<b>TRANSITION TO THE SCHEME .....</b>	<b>77</b>

Head 30. Transitional provisions.....	77
<b>SCHEDULE 1 LIST OF SPONSORS .....</b>	<b>79</b>
<b>SCHEDULE 2 SOURCES OF INCOME INCLUDED WITHIN ASSESSABLE INCOME .....</b>	<b>80</b>
<b>SCHEDULE 3 SOURCES OF INCOME EXCLUDED FROM ASSESSABLE INCOME .....</b>	<b>81</b>
<b>SCHEDULE 4 MAXIMUM, MINIMUM AND UNIVERSAL SUBSIDY RATES .....</b>	<b>82</b>
<b>SCHEDULE 5 LIMITS ON TERM-TIME DURATION OF INCOME-RELATED SUBSIDY .....</b>	<b>83</b>
<b>SCHEDULE 6 ORGANISATIONS PRESCRIBED FOR THE PURPOSE OF SHARING DATA, AS PROVIDED FOR UNDER HEAD 29.....</b>	<b>84</b>

## Summary

Head 1 provides for the short title, the citation and the commencement of the Bill.

Head 2 provides definitions of key terms used in the Bill.

Head 3 establishes the scheme and stipulates that a budget cap applies.

Head 4 specifies the eligibility criteria for applying for a subsidy under the Scheme.

Head 5, in conjunction with schedule 1, provides for the designation of public bodies as “sponsors” under the Scheme, enabling them to make the co-payment on behalf of a parent and provide other supports, in cases of exceptionally high need (eg. Tusla may act as a sponsor in cases of child welfare/ protection).

Head 6 specifies which childcare providers may be approved providers for the purposes of the Scheme, including registered providers and non-registered providers who meet relevant eligibility criteria.

Head 7 specifies the process by which parents – and sponsors acting on behalf of parents – may make applications for subsidies, including the information that must be provided as part of an application.

Heads 8 and 9, in conjunction with schedules 2 and 3, set out the process by which an applicant’s assessable income is determined, including making provision for the possibility of automated income-assessments through electronic transfer of PPS numbers and income-data between the scheme administrator and the Revenue Commissioners and the Minister for Social Protection.

Head 10, in conjunction with schedule 4, provides the rules in relation to qualification for a universal subsidy, and the hourly subsidy rate and maximum weekly hours of subsidy that apply.

Heads 11 and 12, in conjunction with schedules 4 and 5, provide the rules in relation to qualification for an income-related subsidy, and the hourly subsidy rates and maximum weekly hours of subsidy that apply, including provision for a greater number of hours of subsidy for parents who are engaged in work or study relative to parents who are not engaged in work or study. In this regard, Head 12 includes definitions of “work” and “study”.

Head 13 sets out the procedure by which the scheme administrator shall determine the subsidy (hourly rate, and number of hours) in relation to any application, and the length of time for which that determination is valid.

Heads 14 and 15 provide for a registration process through which the childcare provider selected by the parent informs the scheme administrator of the amount of childcare services to be provided for the relevant child. Head 15 specifies the particular registration process to be followed in cases where separated parents each apply for subsidised childcare in relation to a child.

Head 16 sets out the procedures for approval and payment of subsidies, which in the first instance is based on the hours of childcare indicated in the registration process up to the maximum limit approved for any particular application.

Head 17 provides for a subsequent reduction in subsidy payments if the number of hours of childcare used diverges from the number of hours registered.

Head 18 requires childcare providers to publish their fees, and requires that parents should be charged (the “co-payment”) no more than the difference between the subsidy under the Scheme and the provider’s published fee.

Head 19 requires subsidies to be renewed – including re-assessment of income – within 12 months of a subsidy payment beginning.

Head 20 specifies the process to be followed when there is a change in a parent’s assessable income or personal circumstances.

Head 21 provides for reviews of eligibility and subsidy decisions to be carried out by the scheme administrator, either at the request of a parent or childcare provider, or at the initiative of the scheme administrator.

Head 22 establishes an appeals process.

Head 23 enables the Minister to stipulate reporting requirements for the scheme administrator.

Heads 24 and 25 establish powers for the scheme administrator to recoup monies, and provide for sanctions and penalties.

Heads 26 and 27 provide for the appointment – and subsequent review and change – of the scheme administrator, and set out the roles and obligations of the scheme administrator.

Heads 28 and 29, in conjunction with schedule 6, provide for – and set limits on – the use, retention and sharing of data, including PPS numbers.

Head 30 allows for transitional arrangements for a specified period during which previous beneficiaries of existing schemes can transfer over to the new scheme and may also continue to receive subsidies at the previous level, if more favourable to them.

## **Part 1      PRELIMINARY AND GENERAL**

### **Head 1.      Short Title and Commencement**

- 1) This Act may be cited as the Affordable Childcare Scheme Act 2017
- 2) This [Act] shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions.

#### **Explanatory Note:**

This head sets out the short title of the legislation. It also provides for the Minister for Children and Youth Affairs to commence the legislation on a date to be set out by Ministerial Order and enables different sections of the legislation to be commenced on different dates.

In particular, the Minister may choose a commencement date for Heads relating to the appointment of the scheme administrator (Part 5) in advance of the commencement dates for the Head establishing approval of childcare providers (Head 6) and Heads establishing the application process (Part 3). This is in order to allow timely preparation for the introduction of the scheme: (a) for the scheme administrator to recruit staff, carry out full IT development and prepare guidelines for providers and parents in advance of commencement of the scheme; and (b) for the process of contracting with childcare providers to take place in advance of commencement of the scheme.

## **Head 2. Interpretation**

1) In this Act, unless the context otherwise requires-

“applicant” means a parent who makes an application for a subsidy under the Affordable Childcare Scheme Act;

“application” means an application under the Affordable Childcare Scheme Act;

“approved provider” has the meaning assigned to it in Head 6;

“assessable income” has the meaning assigned to it in Head 8;

“child” refers to a person under the age of 18 years in relation to whom the applicant or the applicant’s partner is a parent, a guardian or is acting in *loco parentis*;

“childcare services” means the care of children by either–

(a) a pre-school service as defined by section 58A of the Child Care Act 1991 (as amended by the Child And Family Agency Act 2013), or

(b) a school-age service as defined by section 58A of the Child Care Act 1991 (as amended by the Child And Family Agency Act 2013);

“Childcare Subsidy Reference Number” means the unique reference number that the scheme administrator shall provide in respect of each application that qualifies for a subsidy;

“copayment” means the sum of money that remains to be paid to an approved provider for the provision of childcare services for a child after deduction of the subsidy from the published fee for that service;

“couple” means–

(a) two persons who are married to each other and who habitually live together,

(b) two persons who are civil partners and who habitually live together, or

(c) two persons (whether of the same or the opposite sex) who are cohabiting, as defined by Section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

“designated officer” has the meaning assigned to it in Head 5.

“Early Childhood Care and Education Programme” means the Early Childhood Care and Education Programme funded by the Department of Children and Youth Affairs;

“fee” means the sum of money that an approved provider charges for a childcare service;

“income-related subsidy” means a subsidy provided on the basis of an applicant’s assessable income;

“Minister” means the Minister for Children and Youth Affairs;

“parent” means a person who is a parent of, a guardian of, or a person acting in *loco parentis* to, a child in relation to whom an application is made;

“partner”, in relation to a person who is a member of a couple, means the person who is the other member of the couple;

“Personal Public Service Number” has the meaning assigned to it by section 262 of the Social Welfare Consolidation Act 2005;

“registered provider” means a provider of a childcare service that is on the register of providers as defined by section 58C of the Child Care Act 1991 (as amended by the Child and Family Agency Act 2013);

“Scheme” means the Affordable Childcare Scheme established in accordance with this Act;

“scheme administrator” means the person or body appointed under Head 26 to administer the Affordable Childcare Scheme;

“school” has the meaning assigned to it in the Education Act 1998;

“sponsor” has the meaning assigned to it in Head 5;

“study” has the meaning assigned to it in Head 12;

“subsidy”–

means the sum of money paid by the scheme administrator to an approved provider on behalf of a successful applicant as financial support for childcare services for a child; and

refers to either a universal subsidy or an income-related subsidy.

“subsidy rate” means the subsidy that the scheme administrator shall approve per hour of subsidised childcare;

“successful applicant” means a parent who makes an application that qualifies for a subsidy under the Scheme;

“universal subsidy” means a subsidy provided on the basis of the age of a child, regardless of an applicant’s assessable income;

“work” has the meaning assigned to it in Head 12.

## **Explanatory Note:**

This head defines the key terms used in the legislation.

In relation to the definitions of “applicant”, “child”, “couple”, “parent”, “partner” and “successful applicant”:

- The term “parent” is intended to be understood broadly to include not only legal guardians but also, for example, foster carers who have temporary care of a child, as well as the situation of a relative who is acting in *loco parentis* but who has not been awarded legal custody of the child. The definition of “parent” for the purpose of this Act is intended to reflect the definitions of “parent” and “guardian”, and the provision for relatives and certain persons to have custody of the child, as introduced in the Children and Family Relationships Act 2015, including:
  - the parent or parents of a donor-conceived child as determined by *Section 5* of that Act;
  - a guardian of a donor-conceived child as determined by *Section 6B* of the Guardianship of Infants Act 1964;
  - a parent appointed by the court as a guardian of a child, under *Section 6A* or *Section 6C* of the Guardianship of Infants Act 1964;
  - a guardian of a child in virtue of rights and responsibilities arising in another State, under *Section 6D* of the Guardianship of Infants Act 1964;
  - a temporary guardian as appointed by the court under *Section 6E* of the Guardianship of Infants Act 1964;
  - a testamentary guardian under *Section 7* of the Guardianship of Infants Act 1964; and
  - a relative or other person given custody of a child under *Section 11E* of the Guardianship of Infants Act 1964.

It is acknowledged that these provisions of the Children and Family Relationships Act 2015 significantly extend the scope of guardianship, and allow for foster carers and relatives to become guardians under certain circumstances. Nevertheless, the definition of “parent” for the purpose of this Act goes further in also including those who are in *loco parentis* but who may not have been made guardians, for example a person who is a foster carer or relative who has been providing for a child’s day-to-day care for a continuous period of *less than 12* months and who therefore is not yet eligible to apply for guardianship. This broad definition of “parent” is used on the grounds that some of the families most in need of support including through subsidised childcare may be families in such situations.

However, it is important to note that the definition of “parent” should be read in conjunction with Head 4(2)(a) which specifies that an applicant is only eligible to apply for a subsidy if “the applicant is a parent of the child, and the applicant has custody of the child or is acting in *loco parentis* to the child for the hours each week for which the application is made”. As a consequence, while the definition of “parent” is very broad, only those “parents” who have custody or the day-to-day care of a child are eligible to apply for a subsidy. Being a “parent” is not in itself a sufficient condition for eligibility,



- “Parent” is defined relative to the child, to allow for situations where the parents of a child have joint custody of the child and are separated. In such cases, each parent may be approved a subsidy for hours of childcare that fall within the time the child is living with that parent, provided the two applications for subsidised hours do not overlap and provided the combined hours of subsidy do not exceed the limits specified under the Scheme (addressed in Head 15). Head 4 *subsection 2*), when defining eligibility to apply for a subsidy, states that a parent is only eligible to apply for a subsidy in relation to hours each week during which the child habitually lives with that parent.
- In contrast, “child”, “couple” and “partner” are defined relative to the applicant, for three reasons. Firstly, while an applicant for a subsidy must be a parent (as defined by this Act) of the child in relation to whom the application is made, the applicant may have a partner (whether married, a civil partner or cohabiting) who is not a parent of the child. It is intended that the combined income of the couple (both the applicant and her or his partner) will count as the assessable income. Secondly, the applicant (or the applicant’s partner) may have other children in relation to whom the applicant (or the applicant’s partner) is a parent, a guardian or in *loco parentis*, and the number of these children affects the amount of subsidy for which an applicant qualifies (as specified in Head 9). Thirdly, a parent may be under the age of 18 years, and so the definition of a “child” for the purposes of this Act refers not just to the age of the person, but to their relationship to the person making the application. In such cases, for the purposes of this Act the term “child” does not include the parent.
- A “successful applicant” is defined as an applicant whom the scheme administrator has determined qualifies for a subsidy in respect of a particular application, but who may or may not yet have approached a provider with a view to registering a child for the Scheme.

In relation to the definition of a “couple”, and the question of when somebody counts as a “partner” for the purpose of the Scheme’s income-assessment:

- The intention in requiring that a couple “habitually live together” is to ensure that a spouse or civil partner who is separated from the applicant does not have their income counted in the applicant’s assessable income (except insofar as he or she makes maintenance payments to the applicant). (The definition of “cohabitant” in Section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 also specifies “who live together” as part of the definition of “cohabitant”.)
- In using the word “habitually”, the intention is to ensure that the Act includes within the definition of a couple the situation where a spouse or civil partner or cohabitant is temporarily living apart, e.g. by virtue of current employment, but who normally lives with the applicant. The phrase “habitually living together” is a phrase that is also used in the Nursing Homes Support Scheme Act 2009, Section 4(1). However, the Nursing Homes Support Scheme Act 2009 goes on in Section 4(2) to specify that a couple will only be considered as “habitually living together” if they have been living together for at least 3 years. There is no intention that the Affordable Childcare Scheme should also require that couples have been living together for at least 3 years. If using the phrase carries that implication, because of the Nursing Homes Support Scheme Act, then an alternative phrase may be preferable.

- Nevertheless, in relation to cohabiting couples the question arises as to the length of time required before two adults count as “cohabiting” and therefore as “partners” for the purpose of the Scheme’s income assessment. Section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act specifies a series of criteria that the courts will take into account in determining cohabitation, which include “the duration of the relationship”, as well as: the basis on which the couple live together; the degree of financial dependence; the degree and nature of any financial arrangements between the couple; whether the couple has dependent children; whether one of the adults care for and support the children of the other; and the degree to which the adults present themselves to others as a couple.

In relation to the definitions of “approved provider”, “childcare service” and “registered provider”:

- “Childcare services” are defined to be the childcare activities provided by childcare “providers”, which are the institutions providing those services.
- An approved provider of childcare services will be one that has been approved for the purpose of the scheme, in accordance with Head 6. This will include all registered providers (i.e. early years services that have been registered by Tusla, the Child and Family Agency). In addition, the Act also provides for the possibility of other categories of childcare service providers being approved, subject to clear eligibility procedures being established and schedules of such providers being maintained and published. This possibility is required given the current restriction of the register of providers to those that provide a pre-school service (excluding school-age services), and the exemption from registration for a person taking care of three or fewer children (or children who are all from one family) in that person’s home.
- The definition of “childcare services” is intended to encompass childcare activities provided by all relevant childcare providers, but not to include other services that may be provided by childcare providers but which do not constitute childcare. For example, a childcare provider may also provide family support services that are separate from the childcare services that it provides, and those family support services would not be subsidised by this Scheme. However, the terms “care” and “childcare” are not clearly defined. For example, there is no clear distinction between “care” and “early education”. A wide range of activities may therefore fall within any definition of “care” or “childcare”, including educational activities, as well as activities that are required for the provision of care to young children such as the provision of play opportunities, snacks and meals, and opportunities for rest and/or sleep, in addition to all related administrative activities.
  - a) In relation to pre-school children (i.e. children up to the age of 6 years who have not yet started school) the definition of a “pre-school service” in the Child Care Act 1991 (as amended) refers to the relevant childcare providers, but does not specify the type of activities they provide. For this reason, the definition here adds reference to “the care of children” by those providers. However, it is acknowledged that the phrase “care” may not be sufficiently defined and may need to be clarified. In this regard, it should be noted that Section 2 of the Regulations (the Child Care Act 1991 (Early Years Services)

Regulations 2016) defines the different types of childcare service with reference to the provision of “care” but does not define “care”.

- For example, the Regulations define a “full day care service” as “a pre-school service offering a structured day care service for pre-school children for more than 5 hours per day and which may include a sessional pre-school service for pre-school children not attending the full day care service”,
  - and define a “childminding service” as “a pre-school service, which may include an overnight pre-school service, offered by a person who single-handedly takes care of pre-school children, which may include the person’s own children, in the person’s home for a total of more than 2 hours per day, except where the exemptions provided in section 58L of the Act apply”.
- b) In relation to school-age children, the definition of a “school-age service” in the Child Care Act 1991 (as amended) includes specification of the type of activities which are included within the definition, as well as those excluded (if they are the only activities provided by those institutions): “‘school age service’ means any early years service, play group, day nursery, crèche, day-care or other similar service which—
- caters for children enrolled in a recognised school providing primary education,
  - provides a range of activities that are developmental, educational and recreational in manner and which take place outside of school hours, and
  - the basis for access to which is made publicly known to the parents and guardians of the children referred to in paragraph (a) of this definition,
- but excludes those services—
- solely providing activities relating to—
    - the Arts,
    - youth work,
    - competitive or recreational sport, or
    - tuition, or
  - for whom statutory provision for inspection exists, prior to the commencement of this section;”
- The wording here assumes that section 58A of the Child Care Act 1991 defines “pre-school service” and “school-age service” in such a way that all childminders are potentially included, including those caring for three or fewer children, and that childminders caring for three or fewer children are exempt from regulation in virtue of section 58L of that Act, not in virtue of the definitions in section 58A. For example, section 58A defines a “pre-school service” as “any pre-school, play group, day nursery, crèche, day-care or other similar service which caters for pre-school children”.

On the definitions of “subsidy”, “income-related subsidy” and “universal subsidy”:

- The scheme provides for two type of subsidy: universal (Head 10) and income-related (Head 11 and Head 12). Only one of these two types of subsidy will be payable in relation to any one child. In cases where an application qualifies for both types of

subsidy, Head 16 provides for a process by which it will be determined which of the two types of subsidy is to be paid.

In relation to the terms “school” and “Early Childhood Care and Education Programme”:

- the term school, as defined in the Education Act 1998, encompasses both establishments that provide primary education and establishments that provide post-primary education. In relation to the former, it includes establishments which in addition to primary education also provide early childhood education, e.g. through the Early Start Programme run by the Department of Education and Skills. References to participation or attendance at school are therefore intended to be understood to include participation in the Early Start Programme, and that programme is specified within Schedule 5.
- the Early Childhood Care and Education Programme is a non-statutory scheme. A precedent for a reference within legislation to a non-statutory funding scheme can be seen in the Child Care Act 1991 (Early Years Services) (Amendment) Regulations 2016. This Statutory Instrument inserts a new paragraph 6A into Regulation 9 of the Childcare Care Act 1991 (Early Years Services) Regulations, in which reference is made to funding provided by the non-statutory Access and Inclusion Model.

## **Part 2 ESTABLISHMENT OF SCHEME AND ELIGIBILITY**

### **Head 3. Establishment of a scheme**

- 1) On the coming into operation of this section there is established a scheme to be known as the Affordable Childcare Scheme to be operated under and in accordance with this Act.
- 2) The Scheme is established for the purpose of providing subsidies under this Act in respect of childcare services in accordance with this Act out of the resources allocated to the Scheme in each year in accordance with subsection (4) and shall consist of the provision of subsidies in respect of childcare services for the purposes of and in accordance with the provisions of this Act and any guidelines issued under Head 27.
- 3) It shall be a function of the scheme administrator appointed under Head 26 to operate and administer the Scheme.
- 4) In the financial year 2017 and in each subsequent financial year the Minister shall, out of such monies as are available to her for that financial year from monies provided by the Oireachtas, allocate such amount as she determines, with the consent of the Minister for Public Expenditure and Reform, to the scheme administrator for the provision of subsidies under this Scheme in that financial year.

#### **Explanatory Note:**

This Head establishes the Scheme in statute, sets out the purpose of the Scheme, refers to the scheme administrator, and specifies that the scheme will operate within the annual budget provided for it.

The intention within the legislation is to provide for the total amount of subsidies available each year to be capped. When the budget cap has been reached within a given financial year, no further applications will be accepted unless and until additional monies are made available by the Minister, with the consent of the Minister for Public Expenditure and Reform. For the year 2017 the cost of the Scheme is difficult to define in advance, because of the mid-year nature of the transition to the scheme. In subsequent years, however, it is anticipated that there will be a greater degree of certainty about the expected annual cost of the Scheme and a clear budget can be set in advance.

#### **Head 4. Eligibility to apply for a subsidy**

1) For the purpose of this Act–

- (a) the “minimum age” will be, subject to Head 13(3), whichever is later of:
  - i. 26 weeks old, and
  - ii. the age of a child at the end of the period of maternity leave as specified in *Section 8* of the Maternity Protection Act 1994, as amended, and
- (b) the “maximum age” will be the age of a child on the child’s 15<sup>th</sup> birthday, subject to Head 13(3).

2) An applicant shall only be eligible to apply for a subsidy for childcare services for a child if–

- (a) the applicant is a parent of the child, and the applicant has custody of the child or is acting in *loco parentis* to the child for the hours each week for which the application is made,
- (b) both the applicant and the child are currently resident in the State both at the time the application is made and throughout the time-period during which a subsidy is payable,
- (c) throughout the time-period during which a subsidy is payable, the child will be older than the minimum age and younger than the maximum age, unless a sponsor as defined in Head 5 recommends an age younger than the minimum age, or an age older than the maximum age, in relation to a subsidy supported by the sponsor in accordance with Head 5,
- (d) the applicant, the applicant’s children and, where applicable, the applicant’s partner have personal public service numbers issued in accordance with the Social Welfare Consolidation Act 2005 *section 262*, and the applicant provides those numbers as part of the application process set out in Part 3,
- (e) the applicant or the applicant’s partner does not already either benefit from or qualify for a subsidy in relation to the child; and
- (f) the applicant makes an application for a subsidy in accordance with the procedures set out in Part 3.

### **Explanatory Note:**

This Head specifies the eligibility requirements for a parent who makes an application for a subsidy. Separately, Head 5 specifies the basis for an application when a specified sponsor organisation makes the application, instead of a parent.

In relation to *subsection 2)(a)*:

- In cases where parenting is shared between two families who live apart (e.g. where parents are separated and have shared custody), the Scheme allows for more than one application to be made per child. Each parent may make a separate application for childcare, but only in relation to times of the week during which the child is in the day-to-day care of that parent, in order that only one subsidy may be payable for any given hour.
- Head 2 defines “parent” broadly to include guardians and those acting in *loco parentis*, including foster carers.

In relation to residence requirements:

- Given the scheme’s universality (as implied by Head 10), its support for both long and short durations of childcare, and its broad range of objectives (including not only labour market activation but also child poverty reduction and child development), all those who are currently resident in the State are eligible to apply for a subsidy, without further restriction in terms of residency status or in terms of past or intended duration of residency. It is intended that the Scheme should be open to asylum seekers (who have a temporary residence certificate that grants them entitlement to remain in the State) as well as to those who have been refused refugee status or subsidiary protection but who have permission to remain in the State.

In relation to PPS numbers:

- If the applicant has a partner, i.e. someone with whom the applicant habitually lives (even if they are temporarily living apart, e.g. as a result of employment), the PPS number of the applicant’s partner must be supplied as part of the income assessment, as the partner’s income is included within the income assessment.
- It is assumed here that PPS numbers will be available to all those who meet the residency requirement, including asylum seekers. Even if they do not already have PPS numbers, as Head 28 places the scheme administrator on the list of bodies named in Schedule 5 of the Social Welfare Consolidation Act 2005 a parent who is in other respects eligible to apply for a subsidy will be able to apply for a PPS number for the purpose of an application for the Affordable Childcare Scheme.

In relation to age-limits:

- The minimum age reflects the intention that the scheme should provide for subsidised childcare from the time at which entitlement to maternity benefit ends, which is the point at which “maternity leave” (as defined by Section 8 of the Maternity Protection Act) ends. If at a later date the duration of maternity benefit is extended, the “minimum age” for this Scheme will thereby rise to the same degree. If at a later date

an alternative form of paid parental leave benefit is introduced, it is anticipated that the legislation providing for the alternative benefit would also amend this Act. (While 2 weeks' paternity benefit, as provided by the Paternity Leave and Benefit Act 2016, may commence up to 26 weeks after the birth of a child, in most cases it is expected that it will be taken at the same time as maternity leave, and so does not require any adjustment in the "minimum age" for the Scheme.)

- The maximum age reflects continuity with the rules of the administrative schemes which the Affordable Childcare Scheme is to replace.
- It is intended that it should be possible for a parent to apply for a subsidy in advance of the date on which they want the subsidised childcare to begin. As a result it should be possible for a parent to apply for a subsidy before a child turns 26 weeks old, provided the child is at least 26 weeks old at the time the subsidy begins.
- If a child is expected to turn 15 during the year for which a parent is making an application, a parent should be eligible to apply for a subsidy for the part of the year when the child is 14 years old. The fact that the child will be 15 years old for part of the year should not lead to the entire application being rejected.



## Head 5. Sponsors

1) For the purpose of this Act–

“sponsor” is a public body that for a specified purpose supports one or more subsidies for childcare services under the Scheme, where such support may include, but is not limited to, meeting the cost of the copayment (as determined in Head 18) on behalf of a parent;

“designated officer” is a person designated by a sponsor who will, acting on behalf of the sponsor, have the powers to make decisions in relation to the issues listed in *subsection (4)*.

2) Schedule 1 of this Act contains a list of sponsors and the purposes for which they may support an application, to which the Minister may add further sponsors by regulation where the specified purpose is in the best interests of the children thus supported and where the children’s parents need exceptionally high levels of support in relation to childcare services, including financial support.

3) A sponsor named in Schedule 1 must–

(a) within 30 days of enactment of this Act or within 30 days of the coming into force of regulations that add the sponsor to the list of sponsors in Schedule 1, designate officers, or designate a grade of officer, who will have the powers to make decisions in relation to the issues listed in *subsection (4)*, and inform the scheme administrator of the designated officers or designated grade of officers, and

(b) inform the scheme administrator of any subsequent changes to designated officers, including designated grades of officers if applicable.

4) When a designated officer of a sponsor determines that the sponsor should support a subsidy for childcare services in accordance with the purpose set out in Schedule 1, the designated officer shall have the power to do any of the following–

(a) make an application for a subsidy on behalf of a parent, or support an application for a subsidy made by a parent,

(b) arrange for the payment by the sponsor of the copayment on behalf of a parent, in accordance with Head 178,

(c) recommend that the minimum age or maximum age for the Scheme, as specified in Head 4, be overridden in relation to a child the sponsor is supporting, if the designated officer determines that this is in the best interests of the child and is justified given the sponsor’s purpose,

(d) recommend a number of hours per week of subsidised childcare for a child the sponsor is supporting, which may exceed the maximum hours of subsidy per week as determined under Head 10 or Head 12 if the designated officer

determines that this is in the best interests of the child and is justified given the sponsor's purpose,

- (e) find an approved provider that is able and willing to provide childcare services to the child the sponsor is supporting, or make provision for other persons to do this on behalf of the sponsor, or assist a parent of the child to find such a provider, and
- (f) set a time-limit to the duration of the decisions specified in *paragraphs (b), (c) and (d)*.

**Explanatory Note:**

The targeted schemes being merged into the Affordable Childcare Scheme contain a number of provisions by which free childcare is available to specific groups of families with high levels of need. This Head provides for the continuation of these provisions, as well as the possibility of other groups of families with high levels of need being specified in future. Specific sponsors and purposes that are currently listed in Schedule 1 provide for continuity with current arrangements:

- Tusla will be able to support subsidies for children on child welfare or child protection grounds. Under the current CCS scheme, which is one of the schemes being replaced by the Affordable Childcare Scheme, Tusla can refer children to the CCS scheme on these grounds, and their full fees are then covered.
- The Department of Justice and Equality will be able to support subsidised childcare for programme refugees to enable those refugees to avail of opportunities to promote their integration and their language skills. Such an arrangement is already in place through CCSR, which is an element of the CCS scheme.
- The Department of Children and Youth Affairs will be able to support subsidised childcare for children of homeless families (and families that are transitioning out of homelessness), who otherwise face considerable barriers in accessing subsidised childcare. Such an arrangement is being put in place through CCST, which is an element of the CCS scheme.

As the primary nature of the provisions in this Head is financial, with the State meeting the full cost of childcare services, reducing the parental copayment to zero, it is proposed to use the term “sponsor” to describe this role. The choice of term also reflects the positive nature of supports provided, which may go beyond financial support to include, for example, assistance in finding a suitable childcare provider. *Subsection (4)* identifies the range of supports that may be provided with regard to childcare.

This Head is specifically intended to provide for additional support for families with high levels of need. It is not intended to provide a mechanism by which organisations such as employers might provide financial support for employees for childcare costs. It is open to an employer to offer such support to an employee, but any such support is outside the scope of this Act, and in such cases it will remain the full responsibility of the applicant to ensure that the parental copayment is met, whether it is met by the applicant or by the applicant's employer.

Head 13 specifies that when a sponsor supports a subsidy, the scheme administrator will pay the maximum subsidy rate. In such cases, therefore, the copayment, which the sponsor will be required to meet, will be relatively small.

As the purpose of this Head is to provide additional support for particular groups of vulnerable children and families with unusually high levels of need, the Head provides scope for the sponsor to recommend overriding some of the limits placed on the minimum and maximum age of children subsidised by the Affordable Childcare Scheme, as well as the maximum hours per week of subsidised childcare. *Subsection (4)* specifies the range of issues on which the sponsor organisations can recommend overriding the standard limits that apply to the Scheme.

*Subsection (3)* is intended to provide clarity as to who can make decisions on behalf of the sponsor organisation that relate to this Head. [Clarification is being sought from Tusla in relation to how the designation of officers might work best in practice. For example, it may be that a grade of staff is designated, rather than specific named individuals, and the draft Heads of Bill seek to provide that flexibility.]

Head 7 *subsection 3)* allows for the scheme administrator to specify a mechanism, whether electronic or manual, through which sponsor organisations will be required to interface with the Affordable Childcare Scheme, in order to provide the scheme administrator with all relevant decisions made.

## **Head 6. Approved providers**

1) For the purpose of this Act–

“approved provider” means a provider of childcare services in respect of which there is in force an agreement in writing, between the proprietor of the provider and the Minister, which shall–

- (a) require the provider to use subsidies under the Scheme to reduce the amount that the provider charges parents for the provision of childcare services to those parents,
- (b) entitle the provider to be named on lists of approved providers under the Scheme, and
- (c) specify requirements that must be met by the provider in order to participate in the Scheme, which shall include requirements in relation to the quality of the childcare services which are subject to a subsidy under the Scheme.

2) A provider of childcare services may only be an approved provider if the provider is–

- (a) a registered provider, or
- (b) on a list of eligible providers established by the Minister in accordance with *subsection (3)*.

3) The Minister may by regulations establish one or more lists of eligible providers of childcare services, specifying–

- (a) a public body or public bodies that will maintain each list of eligible providers,
- (b) the criteria that will determine eligibility and the procedures by which providers can apply to be included on each list, which shall include requirements in relation to the quality of the childcare services which are subject to a subsidy under the Scheme,
- (c) procedures by which the public body or public bodies that maintain the lists can remove providers who no longer meet the relevant criteria for inclusion on each list, including requirements in relation to the quality of the childcare services which are subject to a subsidy under the Scheme,
- (d) the time-period for which a provider may remain on each list prior to renewing an application to remain on the list and any procedures in relation to such renewals, and
- (e) procedures by which a provider deemed ineligible for inclusion on a list may appeal against the decision not to include the provider on the list.

4) The Child and Family Agency shall provide the scheme administrator with the names and contact information of all registered providers.

- 5) Any public body designated by the Minister in accordance with *subsection (3)(a)* shall provide the scheme administrator with the names and contact information of all eligible providers.
- 6) The scheme administrator shall provide all registered and eligible providers with the opportunity to be approved providers, but neither registered nor eligible providers shall be required to be approved providers.

### **Explanatory Note:**

This Head establishes the basis on which providers are approved for the purpose of the Scheme.

On the definition of “approved provider”–

- The definition given here assumes continuation of the practice under the existing schemes that it is the Minister who enters into contract with service providers. However, a policy decision could be taken to assign this function to the scheme administrator.
- The approach assumes that subsidies are awarded to parents but are paid on their behalf to childcare providers. As such, the contract with service providers is intended to support this overall arrangement by stipulating that, in return for committing to using subsidies to reduce the published fees charged to parents, a provider will have the benefit of being entitled to be on the list of approved providers which will be made available to parents who qualify for a subsidy under the Scheme. This approach is consistent with the arrangements which apply under the Nursing Homes Support Scheme Act 2009. However, they represent a change from the contract arrangements for the CCS and TEC schemes (which the Affordable Childcare Scheme will replace), which we understand to be grant agreements with service providers.
- In setting out our proposed approach to the provision of subsidies and the system for establishing a list of approved, participating providers, it is important to clarify our intention that providers should **not** be understood to be providing services on behalf of the State (i.e. they are not acting as agents of the State and the provision of services remains a private matter between the individual and the childcare provider). Similarly, there is **no** intention that copayments should be understood as State charges. Copayments are, and should be understood as, private fees.
- Finally, the definition also provides for additional requirements to be included within the contract, including requirements in relation to the quality of childcare services.

“Registered providers”, to which *subsection 2)(a)* refers, are providers that are on the register of prescribed early years services maintained by the Child and Family Agency in accordance with Section 58C of the Child Care Act 1991 (as amended by the Child and Family Agency Act 2013).

In relation to the establishment of lists of “eligible providers”, it is intended that the Affordable Childcare Scheme should have the potential to extend beyond the scope of the register of early years services maintained by the Child and Family Agency, as:

- the register currently only includes pre-school services whereas the Scheme will also subsidise school-age services, and
- the register currently excludes childminders who care for three or fewer children whereas it is intended that the Scheme may in future also subsidise childcare services provided by childminders who care for three or fewer children.

For this reason, this Head enables the Minister to establish – and have maintained – lists of childcare providers who are eligible to participate in the Scheme but who are not registered providers. It is intended that only a public body (including Government Departments) should be allowed to maintain such a list.

This Head distinguishes lists of *registered / eligible* providers from the list of *approved* providers as–

- “approved” means in contract to participate in the Scheme, whereas “registered” and “eligible” refer to the providers who meet the pre-contractual requirements to enter into a contract under the Scheme; and
- the lists of registered and eligible providers may have purposes beyond this Scheme, and not all such providers may choose to take part in this Scheme. It is already the case that the list of registered providers has other purposes (being the list of providers who are allowed to provide prescribed early years services), but the same may in future be true of the new lists of eligible providers that may be established under this Scheme. For example, the Minister may at a later date use lists of eligible childminders or school-age childcare providers as the lists of providers eligible to benefit from quality-raising initiatives or capital grants, or as the basis for future progression towards the regulation of such providers.

### Part 3 APPLICATIONS, REGISTRATION AND PAYMENT

#### Head 7. Making an application for a subsidy

- 1) An application for a subsidy for childcare services for a child may be made to the scheme administrator by either–
  - (a) a parent, as defined in Head 2, or
  - (b) a sponsor, as defined in Head 5.
- 2) The scheme administrator may specify procedures which shall be followed by a parent when making an application, including requirements that the applicant should provide the scheme administrator with:
  - (a) the names and Personal Public Service Numbers of the applicant, the applicant's partner where applicable, the child for whose childcare the application is made, and any other children of the applicant or the applicant's partner who are younger than the maximum age and who live with the applicant,
  - (b) the current address and contact information for the applicant,
  - (c) confirmation that the applicant shall–
    - i. only seek subsidised childcare for hours in any week during which the applicant has custody of the child or is acting in *loco parentis*, and
    - ii. not seek a subsidy for any hour of childcare for which another subsidy under this Scheme is payable for the child in relation to whom the application is being made,
  - (d) the dates of birth of all the children to whom *subsection (a)* refers,
  - (e) a declaration either–
    - i. as to whether the applicant is applying for–
      1. a universal subsidy,
      2. an income-related subsidy, or
      3. both a universal subsidy and an income-related subsidy; or
    - ii. that the application is supported by a sponsor,
  - (f) information on whether any child to whom *subsection (a)* refers is–

- i. taking part in the Early Childhood Care and Education Programme,
    - ii. at school, and, if so, what class the child is in, or
    - iii. expected to commence school during the next 12 months and, if so, the date on which the child is expected to do so,
  - (g) if the application is for an income-related subsidy, or for both a universal subsidy and an income-related subsidy, as declared under *paragraph (e)*:
    - i. financial information as requested by the scheme administrator to enable the scheme administrator to assess the income of the applicant and the applicant's partner, where applicable, in accordance with Head 8 and Head 9, and
    - ii. a declaration by the applicant as to whether the applicant and the applicant's partner, where applicable, are engaged in work or study,
  - (h) any other information required by the scheme administrator to assess the applicant's eligibility to apply for a subsidy and the amount of subsidy to which the applicant is entitled, and
  - (i) any other information required by the scheme administrator to monitor equality of access to subsidies under the Scheme.
- 3) The scheme administrator may specify procedures which a sponsor shall follow when making an application, or when supporting an application made by a parent, including mechanisms by which the designated officer of a sponsor shall inform the scheme administrator of any decisions and recommendations the designated officer has made in relation to Head 5 *section (4)*, and the scheme administrator may specify different procedures and mechanisms for different sponsors.
  - 4) If an applicant wishes to apply for childcare subsidies for more than one child, she or he must make a separate application for each child, but the same income-assessment may be used for all applications, provided the applications are made within the time-period specified in Head 8 *subsection 6*).
  - 5) If the information provided by the applicant is insufficient to enable the scheme administrator to assess the applicant's eligibility or the amount of subsidy to which the applicant is entitled, the scheme administrator may request additional information from the applicant which the applicant shall then provide.
  - 6) The scheme administrator shall establish mechanisms by which applications can be made, shall publish guidelines in relation to the application procedure, and shall provide reasonable support to applicants to assist them in making applications.
  - 7) Notwithstanding the support that the scheme administrator shall provide to applicants, the scheme administrator may reject an application if the applicant does not follow procedures specified in *subsection (2)* or does not provide relevant additional information as specified in *subsection (5)*.



### **Explanatory Note:**

An application can only be made by either a sponsor (acting on behalf of a parent) or a parent. As stated in Head 2, a “parent” is defined in this Act to mean a person who is a parent of, a guardian of, or a person acting in *loco parentis* to, a child in relation to whom an application is made.

In relation to situations in which parents are separated:

- Under Head 4, the Scheme permits more than one application to be made in relation to one child, in situations where parents are separated. That Head specifies that each such parent is only eligible to apply for a subsidy for hours during which that parent has custody of the child or is acting in *loco parentis* to the child.
- *Subsection 2)(c)* of this Head (Head 7) requires a declaration by the applicant that she will abide by this requirement of the Scheme.
- Head 15 specifies how the registration process will accommodate such situations and what will happen in cases of conflict over subsidies between two parents who each make an application in relation to the same child.

The application process should allow the provision of all information relevant to establishing the eligibility of an applicant and child to apply for a subsidy, and to determining the amount of subsidy to which they are entitled (comprising both subsidy-rate per hour and hours of subsidy per week).

The application process is to be carried out in advance of the registering of a child by the applicant’s chosen childcare provider on the scheme administrator’s IT system. (Head 14 *subsection (5)* provides for this registration process within the Scheme, which may be different from the childcare provider’s own internal process of registering children for whom it provides childcare services.) For this reason, there is no reference to the childcare provider in the application process.

Personal Public Service (PPS) numbers are required in order for the income assessment to be automated through direct IT links between the IT system established for the Scheme and the IT systems maintained by the Office of the Revenue Commissioners and the Department of Social Protection, as set out in Head 28.

Information on the applicant’s partner (name, PPS number, financial information, and information on whether the partner is engaged in work or study) is required as it is taken into account in assessing the amount of subsidy and the number of hours of subsidy to which the applicant is entitled.

Information on other children in the family (names, PPS numbers, and dates of birth) is required as it is taken into account in determining whether and how large a “multiple child deduction” – as defined in Head 9 – should be applied to the applicant’s assessable income.

In relation to the child for whose childcare the application is being made, information is needed not only on the child’s date of birth but also on the child’s stage in the education system (*subsection (f)*), as the subsidy rate and the number of subsidised hours reflect both the child’s age and the child’s education stage (e.g. which primary school class the child is in).

Information on what type of subsidy a parent is applying for is needed as:

- a parent may only want to apply for a universal subsidy, knowing that she will not qualify for an income-related subsidy, and may not want to undergo an income-assessment (which will only be required if the application is specified as being for an income-related subsidy);
- a parent may want to apply for an income-related subsidy, in which case an income-assessment will be required, as well as a declaration as to whether the applicant and the applicant's partner are engaged in work or study;
- a parent may want to apply for both a universal and an income-related subsidy, in the expectation that she will be approved for whichever is most favourable to her; and
- a parent's application may be supported by a sponsor (under Head 5), in which case no income-assessment will be required, but procedures will need to be followed (under *subsection 3*) to enable the sponsor's decisions to be communicated to the scheme administrator.

Information on whether the applicant and the applicant's partner are engaged in work / study is required to enable the scheme administrator to assess the maximum hours to which the application is entitled (which may be either a "standard" or "enhanced" hours subsidy in the terminology of the policy paper), in accordance with Head 12. During the initial application process it is intended that this information will be provided by means of self-declaration by the applicant, in order to facilitate automated assessments. However, it is intended that the scheme administrator will have the power to seek documentary evidence from the applicant during a process of review or appeal, as specified in Head 21 and Head 22, to back up a self-declaration.

*Subsection 2)(i)* is intended to allow for the scheme administrator to ask the applicant questions in relation to, for example, disabilities or ethnicity, whether of the applicant, the applicant's partner or the child in relation to whom the application is being made, for the purpose of monitoring the scheme's effectiveness in reaching minority groups and achieving equality of access.

*Subsection 3*) enables the scheme administrator to establish procedures by which the support of a sponsor, and a sponsor's decisions, can be recorded. These procedures will include both:

- procedures in relation to applications made by a sponsor; and
- procedures in relation to applications made by a parent with the support of a sponsor.

*Subsection 4*) is required as the payment of a subsidy is based on an individual child ("money follows the child"). Both the subsidy-rate and the duration of subsidised hours depend on the age of the child, not solely the applicant's income. However, this requirement does not prevent the scheme administrator from enabling such an applicant to make multiple applications from within a single user account, with only a single income-assessment being carried out for the multiple applications, as provided for in Head 8.

## Head 8. Assessment of income

1) For the purpose of this Act–

“assessable income” means the combined income of a person and the person’s partner, where applicable, over a relevant 12-month period as defined in *subsection (2)* from the sources listed in Schedule 2, excluding income from the sources listed in Schedule 3 less deductions made in accordance with Head 9;

“relevant information” means information that can reasonably be deemed relevant to establishing assessable income in relation to:

any of the income sources listed in Schedule 2 or Schedule 3,

any of the allowable deductions listed in Head 9, or

the multiple child deduction as defined in Head 9.

2) The income of a person over a relevant 12-month period, as referred to in *subsection (1)*, is either–

(a) that person’s income over the most recent 12-month period for which information can be reasonably gathered by the scheme administrator through the methods listed in *subsection (5)*, or

(b) that person’s current weekly or monthly income – as demonstrated through information provided by the applicant to the scheme administrator – multiplied so as to indicate what that person’s current income would be over a 12-month period, if:

i. no information on income is available that covers a person’s income over a 12-month period, or

ii. the applicant states that the person’s current income is materially different from the person’s income over the most recent 12-month period and is likely to remain at the current level for the foreseeable future.

3) The Minister may by regulations add to the sources of income listed in:

(a) Schedule 2, with the aim of ensuring a comprehensive list of income sources, and

(b) Schedule 3, insofar as those additional income sources either facilitate participation in education or training, or are short-term financial supports intended to facilitate transitions into employment or self-employment.

4) When an application is made for an income-related subsidy, and at intervals thereafter to be determined by the scheme administrator, if the scheme administrator determines that

the applicant is eligible to apply for a subsidy in accordance with Head 4, the scheme administrator shall make an assessment of the applicant's assessable income.

- 5) The scheme administrator may make an income-assessment on the basis of–
- (a) relevant information provided by the Revenue Commissioners or the Minister for Social Protection by reference to the Personal Public Service numbers supplied by the applicant as part of the application process, as specified in Head 7,
  - (b) relevant information provided by the applicant in response to requests for information from the scheme administrator; or
  - (c) the types of information identified in both *subsections (a) and (b)*.
- 6) If the applicant made a prior application for subsidised childcare within the 12 months preceding the current application, the scheme administrator may use the previous income assessment carried out in relation to the applicant as the income assessment for the current application.
- 7) If an applicant's current assessable income is materially different from her or his assessable income as that may be stated in sources of information relating to the most recent 12-month period gathered, or which may be gathered, by the scheme administrator under *subsection 2)(a)*, the applicant may, as part of an income assessment under *subsection 4)*–
- (a) request that the applicant's assessable income be assessed under *subsection 2)(b)*, or
  - (b) request that the scheme administrator take into account additional financial information, and, if the applicant makes such a request, the applicant shall submit any relevant information to the scheme administrator by such means as the scheme administrator may specify,

and, if the applicant makes a request under *paragraph (a) or (b) or both (a) and (b)*, the scheme administrator shall comply with that request.

- 8) If the scheme administrator judges that additional information is required, or that information requires verification, in order to make an assessment of the applicant's assessable income, then the scheme administrator shall inform the applicant of any additional information required and the applicant shall supply the relevant information.

### **Explanatory Note:**

This Head provides for an assessment of income and specifies how that income-assessment is to be carried out.

The list of relevant income sources is set out in Schedule 2, having regard to the exclusions listed in Schedule 3:

- The list of income sources in Schedule 2 is intended to be a comprehensive list of all sources of current income. As noted in the policy paper, this comprehensive approach gives effect to the policy objective of equitable treatment of people based on ability to pay. In other words, we are seeking to measure a person’s income, regardless of the source of that income so as to ensure equity of income measurement across social welfare recipients, working parents and non-working parents to the greatest extent possible. This approach is also important from the perspective of labour market activation policy objectives. For example, if we discount particular types of social welfare payments, then two applicants on the same income could be treated very differently. Moreover, the applicant in receipt of the social welfare income will have a strong incentive not to move into employment or increase their earnings if the result of such a move is that the new income is taken into account and reduces their entitlement to subsidy.
- Income arising from capital investments is included within the definition of assessable income, but not the capital which may give rise to future income. Income from interest, dividends and rental income are therefore included within assessable income, but not the savings or investment that give rise to those income sources.
- Certain sources of income, listed in Schedule 3, are excluded from assessable income on the grounds that:
  - these types of income-related benefit reflect additional expenses which the beneficiary experiences and which are not experienced by those who do not qualify for the particular benefit, i.e. by the generality of the population, or
  - these types of income reflect grants and income supports designed explicitly to support participation in education and training, or
  - these types of payment are short-term, explicitly time-bound payments which are designed to facilitate the transition into employment or self-employment.

The combined income of the applicant and the applicant’s partner, if she or he has a partner (whether married, a civil partner or cohabiting), counts as the assessable income, regardless of whether or not the applicant’s partner is a parent or guardian of the child.

If the applicant lives in a household with other adults who are not the applicant’s partner – such as the applicant’s parents – the income of those other adults is not included within the applicant’s assessable income.

*Subsections 2)(a) and 5)* are intended to facilitate automated assessments of an applicant’s assessable income by means of electronic sharing of PPS numbers (of the applicant and the applicant’s partner, where applicable) with the Revenue Commissioners and the Department of Social Protection. The intention is that the large majority of income-related subsidies will be assessed solely by automated assessments, without need for submission of documentation by the applicant to the scheme administrator.

*Subsection 2)(a)* refers to “the most recent 12-month period for which information can be reasonably gathered”. In the case of PAYE workers, this period will typically be the last tax year. In the case of self-employed workers, this period will often be the preceding tax year. The question arises as to whether, in a situation where the applicant is a PAYE worker and the applicant’s partner is self-employed (or *vice versa*) and their income tax is assessed separately, it is a requirement for the two income-assessments to relate to the same tax year, on the grounds that though separately assessed their tax affairs are nevertheless linked, or

whether it is permissible for each income-assessment to relate to the most recent year for which income information is available. Further clarification on this technical issue will be sought.

*Subsection 2)(b)* provides for situations such as where—

- the applicant’s assessable income has recently changed, e.g. as a result of losing a job, reducing hours of employment, or the applicant separating from her or his partner;
- the applicant or the applicant’s partner has not previously been in employment or self-employment and has recently taken up a job or become self-employed; or
- the applicant has recently moved to the State.

In such situations, the applicant will have the right to request a manual assessment of their income and will then have to submit relevant information, e.g. supporting documentary evidence, as requested by the scheme administrator.

In interpreting “reasonably gathered” under *subsection 2)(b)* it is intended that automated assessments of income may be sought going back up to 2 tax years, and that if automated income information is not available in relation to either of the 2 preceding tax years, a manual income assessment will be carried out.

*Subsection 4)* notes that an income-assessment may take place not only at the time an application is made, but also periodically thereafter, at times to be determined by the scheme administrator – and *Head 13 subsection 5)* provides a mechanism by which this may occur. For example, the scheme administrator may establish a process of automatic reassessments of income (either before or after a child is registered with a childcare provider) at times in the year when new income information becomes available from the Revenue Commissioners.

*Subsection 6)* provides for cases where an applicant has already been subject to a manual assessment of her or his assessable income in relation to subsidised childcare for a different child, within the specified time-period. Rather than having two or more manual income assessments each year, the intention of this subsection is to allow for a single manual assessment of that person’s assessable income to apply for all applications that person makes for subsidised childcare within the time-period.

The situation described in *subsection 7)* will typically arise when there has been a change in the applicant’s assessable income since the end of the most recent tax year for which Revenue Commissioners hold information, as a result of which the applicant requests a manual income assessment on the basis of more recent income data.

## Head 9. Deductions from income

1) For the purpose of this Act–

“allowable deductions” means deductions specified in *subsection (2)* which shall be subtracted from a person’s income as part of an income-assessment under the Scheme.

2) The following allowable deductions shall be deducted from a person’s income:

- (a) income tax required by law to be deducted or paid from income and in respect of which a person is not entitled to claim an exemption, relief or allowance or the repayment of tax already paid;
- (b) social insurance contributions;
- (c) the universal social charge, as defined in the Finance Act 2011;
- (d) contributions made by the person out of that person’s income towards an occupational or personal pension scheme, subject to a limit of the amount of such pension contributions that can be deducted from gross income before that income becomes liable to income tax; and
- (e) payments made in respect of the maintenance of a child, spouse or a former spouse, whether–
  - i. under a separation agreement,
  - ii. pursuant to an order of court of competent jurisdiction, or
  - iii. as evidenced by a sworn affidavit, signed by both the person making the payment and the person receiving the payment, confirming the amount of maintenance payments paid,

less the amount of any relief from income tax which may be claimed in respect of such payments.

3) A multiple child deduction of €3,800 shall be subtracted from assessable income, as part of an income-assessment under the Scheme, for each of the second and third children of the applicant or the applicant’s partner, where applicable, who are younger than the maximum age and who live with the applicant.

4) The Minister may by regulations–

- (a) specify other allowable deductions for the purpose of this Act, and
- (b) amend the amount of the multiple child deduction in *subsection 3*), having regard to additional childcare costs that arise for families with more than one child, including through any reduction in childcare subsidies under the

Scheme that is the result of a greater entitlement to social welfare benefits for families with more than one child.

**Explanatory Note:**

This Head specifies payments and expenses which can be deducted from income as part of the income-assessment described in Head 8.

*Subsection (2)* provides for deductions to be made from the gross income of each of the applicant and the applicant's partner, to arrive at a measure of net income for each. *Subsection (3)*, in contrast, is a deduction to be made from "assessable income", i.e. from the combined net income of the applicant and the applicant's partner (where applicable).

The deductions in *subsection (2)* not only allows for the deduction from gross income of tax that is applied to income (income tax, PRSI and USC), but also:

- deducts pension contributions, offering a definition that attempts to set the same limit to such deductions as are allowed by the Revenue Commissioners. The Revenue Commissioners apply a set of rules on the maximum pension contributions each year that can be deducted from gross income before income tax is applied to gross income. The Revenue Commissioners' rules relate to both occupational pensions and personal pensions.
- deducts maintenance payments, on the grounds that these are in effect a transfer from the applicant's family to another family, and should therefore count towards the assessable income of the second family, rather than the applicant's family. It is proposed that the basis of assessing deductibility should be either a separation agreement or a court order, or alternatively a sworn affidavit signed by both parties. The latter option is included on the grounds that it is desirable to avoid requiring separated parents who have successfully reached a maintenance agreement outside the courts to now go through the courts to provide sufficient evidence for the Scheme. The inclusion of this latter option takes account of observations made by representatives of one-parent families in response to the national public consultation on the policy paper.

*Subsection 3)* and the related definition in *subsection 1)* are intended to support families with more than one child through reducing their assessable income. The intention is that:

- Families with two children aged less than 15 will have their assessable income reduced by €3,800.
- Families with three or more children aged less than 15 will have their assessable income reduced by 2 x €3,800, i.e. a total deduction of €7,600.

In this subsection, all children are included who live with the applicant and who are aged less than 15 (i.e. the "maximum age" defined in Head 4), including both the applicant's children and the children of the applicant's partner.



Clarification will be sought as to whether the multiple child deduction can be amended through secondary legislation in the way proposed. The stated purpose that should underpin any amendment to the multiple child deduction is based on the arguments set out in the policy paper (p.44 and Appendix D), including:

- The disincentive to work that results from childcare costs is related to the *total* childcare costs that a family faces. The multiple child deduction is intended to reduce the higher financial disincentive to work that may face families that have more than one child of an age such that the child requires childcare.
- The amount of Family Income Supplement, Qualified Child Increase and Child Benefit paid to a family depends on family size. The more children there are in a family that receives these benefits, the greater the amount of the benefits payable, and therefore the greater the family's income. The multiple child deduction is intended to limit the degree to which any such increase in income for larger families is negated through a reduction in childcare subsidies as a result of the increased family income.

## **Head 10. Universal subsidy**

- 1) An applicant will qualify for a universal subsidy if–
  - (a) the applicant confirms as part of the application process specified in Head 7 that the applicant is applying for a universal subsidy,
  - (b) the child in relation to whom a parent makes an application is less than 3 years old or is 3 years old but does not yet qualify for the Early Childhood Care and Education Programme, and
  - (c) the applicant meets all the eligibility conditions specified in Head 4.
- 2) If the application qualifies for a universal subsidy, then, in relation to the universal subsidy, the application qualifies for the universal subsidy rate specified in Schedule 4 for a maximum of 40 hours of childcare services per week, subject to Head 13(3).
- 3) The Minister may by regulations amend Schedule 4 through changing the universal subsidy rate.

### **Explanatory note:**

The Scheme has two elements:

- Universal subsidies, to which this Head refers.
- Income-related subsidies, to which Head 11 and Head 12 refer.

Head 7 specifies that an applicant may choose to apply just for a universal subsidy, just for an income-related subsidy, or for both subsidies.

An applicant may qualify for both a universal subsidy and an income-related subsidy (which is why *subsection 2*) specifies that the matters listed there are only “in relation to the universal subsidy”), but only one subsidy may be approved per child at any one time. Head 16 *subsection 2*) specifies that in such cases the scheme administrator will approve whichever of the universal and income-related subsidy is most favourable to the applicant.

The universal subsidy depends on the child’s age, and not on the applicant’s income. Any child who is older than the Scheme’s minimum age (26 weeks) and has not yet reached their 3<sup>rd</sup> birthday will qualify for a universal subsidy.

In addition, as the rationale for providing universal subsidies to under-3s is that this is the age-group which benefits from no other universal free care or education provision, a universal subsidy will also be approved for children who are already 3 years old but are not yet eligible for the Early Childhood Care and Education (ECCE) Programme. Eligibility for the ECCE Programme in principle is from a child’s 3<sup>rd</sup> birthday, but there are only 3 entry points per year: January, April and September. For this reason children in practice cannot begin the ECCE Programme until they are between 3 years and 3 years 5 months old.

It is proposed that the work/study test that is applied to the income-related subsidy (under Head 12) to determine the maximum number of subsidised hours available will not be applied to the universal subsidy. All applicants who qualify for the universal subsidy will therefore be able to receive that subsidy for each hour of childcare used up to the maximum hours per week (40), subject to Head 13(3).

This 40-hour limit reflects a balance between parents' needs for childcare to meet work and study requirements and the research evidence on the risk of harm to children's welfare and development from long hours in centre-based childcare, summarised on p.36 of the Policy Paper.

It should be noted that the limits on hours specified in this Head and Head 12 are limits to the extent of subsidies under the Scheme, not limits to the amount of childcare a parent can seek. There is no maximum amount of childcare a parent can seek from a provider, provided the parent pays the full cost of any hours of childcare that are not subsidised (as Head 18 explicitly states), nor is there any minimum amount of childcare a parent can seek, subject to agreement between the parent and the provider.

## Head 11. Subsidy rate for income-related subsidy

1) For the purpose of this Act–

“base income threshold” means the assessable income below which an applicant who qualifies for an income-related subsidy will qualify for the maximum subsidy rate;

“maximum income threshold” means the assessable income above which an applicant shall not qualify for an income-related subsidy;

“maximum subsidy rate” is the highest income-related subsidy rate that shall be approved, as specified in Schedule 4, having regard to the age of the child who is the subject of the application and the stage of their education;

“minimum subsidy rate” is the lowest income-related subsidy rate that shall be approved, as specified in Schedule 4, having regard to the age of the child who is the subject of the application and the stage of their education.

2) The base income threshold shall be €22,700 and the maximum income threshold shall be €47,500, and the Minister may change both these thresholds by regulations.

3) The Minister may by regulations amend Schedule 4 through changing the maximum and minimum subsidy rates.

4) An applicant will qualify for an income-related subsidy if–

(a) the applicant confirms as part of the application process specified in Head 7 that the applicant is applying for an income-related subsidy,

(b) the applicant’s assessable income is at or below the maximum income threshold, and

(c) the applicant meets all the eligibility conditions specified in Head 4.

5) If an application qualifies for an income-related subsidy, the scheme administrator shall determine the subsidy rate for the income-related subsidy as follows:

a) if the applicant’s assessable income is at or below the base income threshold, the subsidy rate shall be the maximum subsidy rate;

b) if the applicant’s assessable income is at the maximum income threshold, the subsidy rate shall be the minimum subsidy rate; and

c) if the applicant’s assessable income is between the base income threshold and the maximum income threshold, the subsidy rate shall be determined by the following formula:

$$SR = NS + \left( \frac{(XS - NS)(MT - AI)}{(MT - BT)} \right)$$

where—

SR is the subsidy rate,

NS is the minimum subsidy rate,

XS is the maximum subsidy rate,

MT is the maximum income threshold,

BT is the base income threshold, and

AI is the assessable income.

**Explanatory Note:**

This Head specifies how the hourly subsidy rate is to be calculated in relation to applications that qualify for an income-related subsidy. Qualification for an income-related subsidy depends on the applicant's assessable income (which must be below the maximum income threshold to qualify), not on the age of the child (except that the child must be between the Scheme's minimum age and maximum age).

An applicant may qualify for both a universal subsidy and an income-related subsidy. Head 16 *subsection 2*) explains that in such cases the scheme administrator shall approve whichever subsidy is more favourable to the applicant. Determining which of the subsidies is more favourable to the applicant depends on (a) the subsidy-rate for each subsidy, as determined in this Head, and (b) the number of hours of subsidy per week to which the subsidy corresponds, as determined in Head 12.

Where an applicant's assessable income is below the base income threshold, the applicant will qualify for a maximum subsidy rate, where the particular maximum that applies is the one that relates to the age of the child / the child's stage in the education system.

For applicants with assessable income between the base and maximum income thresholds, *subsection 7* provides a formula that ensures a smooth taper as income rises, with the subsidy rate declining evenly from the maximum subsidy rate to the minimum subsidy rate.

For children who are at the age for the universal subsidy, the minimum subsidy rate is the same as the universal subsidy rate. For children who are older than this, the minimum subsidy rate is zero.

## **Head 12. Duration of income-related subsidy**

1) For the purpose of this Act–

“work” means any form of employment, self-employment, apprenticeship, or participation in a statutory or State-sponsored labour market activation programme, that requires attendance or availability either every week or on a frequent and regular basis, including short-term periods of leave from any such work (including, but not limited to, sick leave, annual leave, maternity leave, paternity leave, parental leave, adoptive leave and carer’s leave), but excluding career breaks;

“study” means any form of education or training that requires study every week or on a frequent and regular basis, including short-term periods of leave from any such study (including, but not limited to, holiday periods that fall within a course of study).

“term-time week” means a week when a child–

(a) qualifies for the Early Childhood Care and Education Programme (“the Programme”) and either is scheduled to attend the Programme or would be scheduled to attend the Programme if participating in the Programme, or

(b) is enrolled in and scheduled to attend a school.

2) If the application qualifies for an income-related subsidy, and if both the applicant and the applicant’s partner, where applicable, are engaged in work or study, then, in relation to the income-related subsidy, the maximum number of hours per week of subsidised childcare for which the application qualifies, subject to Head 13(3), is:

(a) determined, having regard to whether the child qualifies for the Early Childhood Care and Education Programme and having regard to attendance at school, in accordance with the table in Schedule 5 in a term-time week, and

(b) 40 hours in any other week.

3) If the application qualifies for an income-related subsidy, and if the applicant or the applicant’s partner, where applicable, is not engaged in work or study, then, in relation to the income-related subsidy, the application, subject to Head 13(3):

(a) does not qualify for any hours of subsidised childcare in a term-time week,  
and

(b) qualifies for 15 hours of subsidised childcare in any other week.

### **Explanatory Note:**

This Head specifies the maximum number of hours of subsidised childcare for which an income-related subsidy may be approved. The number of hours of childcare which may be subsidised in a given week depends on:

- whether the applicant and the applicant's partner, if she or he has a partner, are engaged in work or study.
- the age of the child and what stage of the school/pre-school system the child is in.
- whether it is a term-time week or a holiday week, if the child is attending school/the ECCE Programme.

The weekly limit for any child of 40 hours applies to the combined total hours of subsidised childcare and school/ECCE/Early Start Programme. The 40-hour weekly limit per child applies even if a child is attending two or more childcare providers and/or is the subject of separate applications by the child's separated parents. Head 15 addresses how the limit is applied in such situations.

Only in cases where both parents (or the parent, in the case of a one-parent family) are engaged in work/study will the limits specified in *subsection 2*) be approved. If one or both parents are not engaged in work/study, the limits specified in *subsection 3*) will be approved.

In relation to these limits, it should be noted that:

- The number of hours worked or studied per week is not taken into consideration. As soon as any number hours of work or study is done on a regular basis each week, the applicant (or the applicant's partner) is deemed to be engaged in work/study for the purpose of the Scheme.
- These are maximum hours of subsidised childcare per week. It is open to any applicant to use fewer hours than the maximum, or to use more than the maximum provided that additional hours above the maximum are fully paid for by the applicant.

In relation to the definitions of work and study:

- The definitions of work and study are broad, intended to encompass a wide range of types of work and a wide range of types of study, in recognition of the diversity of progression routes towards labour market participation, particularly for those whose skill levels are distant from the labour market.
- The definitions of work and study refer to participation in work/study either every week or on a frequent and regular basis (e.g. on a week-on / week-off basis) as the Scheme is intended to support regular childcare needs, not occasional needs.
- The definition of work refers not just to actual attendance at work, but also to availability, in order to include those who have employment contracts without specific working hours ("zero-hour contracts") who are required to be available for work each week and therefore need regular childcare arrangements in place.
- There is no requirement that hours of subsidised childcare should exactly match hours of work/study in recognition of: variation in travel times to and from work; requirements to be available for work (e.g. as in zero-hour contracts); and time required for preparation for work/study.
- Given the diversity of potential work and study options that may need to be included within the Scheme, including the emergence of new work or study options, it is

proposed that the Minister should have the power to change the definitions of “work” and “study” by regulations.

In relation to *subsection 3)(a)*, it should be noted that the maximum number of subsidised hours in a given week may be zero, even if the applicant’s assessable income is below the maximum income-threshold. The situation in which this happens is when the application relates to term-time (for a child who is at school or in the Early Childhood Care and Education Programme or Early Start) and when either the applicant or the applicant’s partner is not engaged in work or study.



### **Head 13. Determination of subsidies**

- 1) After the scheme administrator receives an application, the scheme administrator shall acknowledge receipt of the application within 10 working days.
- 2) After receiving an application, the scheme administrator shall, having regard to Head 4, Head 7, Head 8, Head 9, Head 10, Head 11, Head 12, and *subsection 3)* of this Head, determine—
  - (a) whether or not the applicant is eligible to apply for a subsidy in relation to the child for whom the application is made,
  - (b) whether the application qualifies for a universal subsidy, an income-related subsidy, or both a universal subsidy and an income-related subsidy,
  - (c) the subsidy rate, if any, for which the application qualifies, and
  - (d) the number of hours per week of subsidised childcare for which the application qualifies, distinguishing term-time weeks from other weeks where applicable.
- 3) After receiving an application made by a sponsor or supported by a sponsor, under Head 5, in determining the matters listed in *subsection 2)* the scheme administrator shall—
  - (a) deem the applicant as qualifying for the maximum subsidy rate applicable, having regard to the child’s age and stage in the education system as described and set out in Schedule 4, and
  - (b) having regard to the recommendations made by the sponsor under Head 5 *subsection 4)*, have the power to—
    - i. determine that an applicant is eligible to apply for a subsidy, and that an application qualifies for a subsidy, in relation to a child who is younger than the minimum age or older than the maximum age, and
    - ii. determine that the number of hours per week of subsidised childcare for which the application qualifies should be greater than the maximum hours of subsidy per week as determined under Head 10 or Head 12.
- 4) Within 30 working days of receipt of all relevant information for an application, including the provision of any additional information referred to in Head 7 *subsection (5)*, the scheme administrator shall inform the person who made the application of—
  - (a) either—
    - i. the matters listed in *subsection 2)*, if the application was made by a parent, or
    - ii. the matters listed in *subsection 3)*, if the application was made or supported by a sponsor,

- (b) a Childcare Subsidy Reference Number that is unique to that application, if the application qualifies for a subsidy in respect of that child,
  - (c) where to find lists of approved providers.
- 5) After determining the matters listed in *subsection 2*), the scheme administrator, at intervals to be determined by the scheme administrator–
  - (a) may determine the matters listed in *subsection 2*) again, having regard to the Heads listed in that *subsection*, to ascertain any changes with regard to the matters listed in *subsection 2*) since the previous occasion on which those matters were determined, and
  - (b) shall, if any changes have occurred as determined by *paragraph (a)*, inform the person who made the application of those changes within 10 working days of the scheme administrator determining those changes.
- 6) If the scheme administrator determines under *subsection 2*) that an application qualifies for a subsidy (the “qualification decision”), the qualification decision shall be valid for a period of 12 months from the date on which the qualification decision is notified to the applicant, except insofar as the scheme administrator during that period of time determines changes under *subsection 5*) to any of the matters listed in *subsection 2*), and, if a registration process under Head 14 is not completed within that 12 month-period, at the end of that 12-month period–
  - (a) the scheme administrator will inform the successful applicant that the qualification decision is no longer valid, and
  - (b) if the applicant still wishes to avail of a subsidy under the Scheme, the applicant shall be required to submit a new application.

**Explanatory Note:**

This Head sets out the processes by which the scheme administrator will determine the amount of childcare subsidy, and inform the applicant of the subsidy for which the application qualifies. The Head also provides for periodic reassessment of the amount of subsidy for which the application qualifies.

Once approved, the applicant may give the Childcare Subsidy Reference Number to the applicant’s chosen childcare provider and commence the registration process specified in Head 14.

Applications that are supported by a sponsor will automatically receive the maximum subsidy rate. The scheme administrator will pay the maximum subsidy, and the sponsor will pay the copayment on behalf of the parent, leaving no payment for the parent.

*Subsection 3*) notes that a sponsor may support an application in two ways: either by making an application itself, or by supporting an application made by a parent. In both cases, a

maximum subsidy rate will be approved, and any recommendations made by the sponsor (in relation to age of the child, or hours of subsidy) will be followed.

*Subsection 5*) provides for periodic reassessment by the scheme administrator of the subsidy rate (and/or hours per week of subsidised childcare) for which the application qualifies, where that reassessment occurs between the date of the initial application and the date on which the registration process is carried out under Head 14. (Head 19 and Head 21 provide for comparable reassessment after the registration process has been completed and a subsidy approved.)

As up to 12 months (under *subsection 6*)) may pass between the “qualification decision” and the registration date, since the initial application a range of changes may have occurred that require reassessment of the amount of subsidy for which a successful application qualifies, e.g.:

- the applicant’s assessable income may have changed,
- more recent information may have become available on the applicant’s assessable income,
- one of the applicant’s children may have had a birthday that resulted in a change in the subsidy rate or hours of subsidy for which the application qualifies, or
- the child in relation to whom the application was made may have changed stage in the education system (e.g. started the ECCE Programme, started school, or changed class at school), as a result of which there may be a change in the subsidy rate or hours of subsidy for which the applicant qualifies.

## Head 14. Registration

- 1) To avail of a subsidy for which the scheme administrator has determined that an application qualifies under Head 13, the successful applicant or the sponsor may seek childcare services from any approved provider.
- 2) Notwithstanding information that the scheme administrator may provide to successful applicants about approved providers, neither the Minister nor the scheme administrator shall be required to—
  - (a) find or select a childcare provider on behalf of a successful applicant, or
  - (b) mediate between the successful applicant and a childcare provider.
- 3) Neither the Minister nor the scheme administrator will be held liable if a successful applicant is unable to find a childcare provider that meets her or his needs or that can provide the hours per week or weeks per year of childcare services for which the scheme administrator has determined that an application qualifies.
- 4) When a successful applicant or a sponsor has reached agreement with a childcare provider in relation to the childcare services to be provided by the childcare provider for a child, the successful applicant or the sponsor shall inform the childcare provider of the Childcare Subsidy Reference Number, and the childcare provider will use that Childcare Subsidy Reference Number within the registration process to which *subsection 5*) refers.
- 5) The scheme administrator shall—
  - (a) establish a registration process by which a childcare provider shall register a child for the purpose of receiving a subsidy, and through which the childcare provider shall inform the scheme administrator of—
    - i. the hours per week (distinguishing term-time weeks from other weeks where applicable) and the weeks of childcare services that the successful applicant or sponsor and the childcare provider have agreed will be provided to the child by that childcare provider, subject to Head 15, and
    - ii. any subsequent changes to the information provided under *paragraph i.*, subject to Head 15,
  - (b) publish guidelines in relation to the registration process, and
  - (c) provide reasonable support to childcare providers to assist them with the registration process.
- 6) The amount of childcare services agreed by the childcare provider and a successful applicant (in hours per week – distinguishing term-time weeks from other weeks where applicable) may be the same as, greater than, or less than, the maximum amount of subsidised childcare which the scheme administrator has informed the childcare provider and the successful applicant that the application qualifies for in accordance with Head 13.

### **Explanatory note:**

This Head:

- specifies the process by which the childcare provider chosen by the applicant will register the child – and the relevant number of hours and weeks of childcare to be used – with the scheme administrator, as well as the process by which the provider will register any subsequent changes to the number of hours and weeks of childcare to be used.
- clarifies that the processes of finding a childcare provider and securing a childcare place with that provider are entirely the responsibility of the parent, and that the Scheme creates no liability for the State or the scheme administrator in relation to any failures of the childcare market to deliver sufficient childcare places.

The registration process established here, which is specifically for the purpose of administering the Scheme, is separate from any registration process that a childcare provider may establish for its own purposes of record-keeping.

The provision in *subsection 4* that the parent provides the unique Childcare Subsidy Reference Number to the parent's chosen childcare provider is intended to remove any requirement that the parent should provide PPS numbers to childcare providers, as the Childcare Subsidy Reference Number is unique to each application and should link directly to information held by the Scheme Administrator in regard to the application, including relevant PPS numbers.

*Subsection 5:*

- establishes a registration process;
- requires that a provider should (using the registration process) register a child–
  - (a) on the basis of the childcare services agreed between the provider and the applicant (or sponsor), and
  - (b) subject to Head 15, which specifies how the registration process will accommodate situations where more than two parents make an application for the same child.

*Subsection 6* clarifies that the hours determined by the scheme administrator under Head 13 set maximum hours for subsidies, and:

- (a) The actual hours used may be less than this maximum.
- (b) The actual hours used may be greater than the maximum, provided that the parent pays in full for hours of childcare used above the maximum.

## **Head 15. Registration where more than one subsidy relates to a single child**

1) For the purpose of this Head,

“combined hours” means, if more than one subsidy is registered under Head 14 *subsection 5)(a)* at any one time in relation to a single child, the sum across all the subsidies that relate to that child of–

(a) in relation to any subsidy that has been approved under Head 16 and is not currently being amended through the registration process under Head 14 *subsection 5)(a)ii.*, the hours of subsidised childcare per week approved for that child, and

(b) in relation to any subsidy that has been or is being registered under Head 14, or that has been or is going through the registration renewal process under Head 19, but that has not yet been approved, and in relation to any subsidy that has been approved under Head 16 and is currently being amended through the registration process under Head 14 *subsection 5)(a)ii.*, the hours of subsidised childcare per week registered for that child;

“maximum combined hours of subsidy” is, subject to Head 13(3):

(a) determined, having regard to whether the child qualifies for the Early Childhood Care and Education Programme and having regard to attendance at school, in accordance with the table in Schedule 5 in a term-time week, and

(b) 40 hours in any other week.

2) If, during a registration process to which Head 14 *subsection 5)(a)* refers or during a registration renewal process to which Head 19 refers (the “new registration”), the child who is the subject of the new registration is already the subject of one or more other subsidies that have been approved under Head 16 (the “previous registrations”), the scheme administrator shall calculate the combined hours and, if the scheme administrator is not informed as part of the new registration that the successful applicant has chosen to limit the number of hours of subsidy per week so as to ensure that the combined hours of subsidy does not exceed the maximum combined hours of subsidy for any given week, then, if the combined hours exceeds the maximum combined hours of subsidy for any given week, the scheme administrator shall–

(a) inform both the parent whose application resulted in the new registration, and each of the parents whose applications resulted in the previous registrations, of–

i. the maximum combined hours of subsidy, and

ii. the process by which a childcare provider can, following a request from one of the parents to which this paragraph refers, amend the number of hours of subsidised childcare per week that is registered on behalf of that parent to ensure that the combined hours no longer exceed the maximum combined hours of subsidy,

- (b) not proceed further with the new registration until either the new registration or one of the previous registrations is amended with the effect of lowering the combined hours to at most the maximum combined hours of subsidy, and
  - (c) if within a reasonable time-period, as determined by the scheme administrator, amendments are not made to either the new registration or one of the previous registrations with the effect of lowering the combined hours to at most the maximum combined hours of subsidy, the scheme administrator shall–
    - i. determine the allocation of the maximum combined hours of subsidy between the first registration and each of the previous registrations in accordance with *subsection 3*),
    - ii. inform all the parents to whom *paragraph 2)(a)* refers, and all the childcare providers who made the registrations to which *paragraph 2)(a)* refers, of the allocation of hours determined in *paragraph i.*, and
    - iii. amend the registrations to which *paragraph 2)(a)* refers in accordance with the allocation of hours determined in *paragraph i.*
- 3) In determining how to allocate the maximum combined hours of subsidy between registrations that relate to a single child, as part of the process described in *subsection 2*), the scheme administrator may, in accordance with any procedures established by the scheme administrator for this purpose –
- (a) determine the hours each week during which each of the parents to whom *paragraph 2)(a)* refers has custody of, or is in *loco parentis* to, the child, and
  - (b) allocate the maximum combined hours of subsidy between the parents in proportion to the hours each week for which each of the parents has custody of, or is in *loco parentis* to, the child.

**Explanatory note:**

This Head addresses situations where there is more than one application per child, for example if separated parents share custody and each applies for a childcare subsidy. The Scheme allows for multiple subsidies per child, provided that–

- (a) the total subsidised hours per week do not exceed the maximum for the Scheme (which is the subject of this Head), and
- (b) a parent may only apply for a subsidy for hours of childcare during which the parent has custody of the child or is in *loco parentis* to the child and provided that no one single hour of childcare is subsidised more than once (which are the subject of a self-declaration under Head 7 *subsection 2)(c)* and may also be addressed through a review process under Head 21, if the scheme administrator is concerned that one of these principles may not be being followed).

In relation to the total subsidised hours per week where there is more than one application per child (“combined hours”), resolution by the scheme administrator is only required if the maximum combined hours of subsidy for a child under the Scheme is exceeded for any week. This maximum is 40 hours per week, except during term-time in the case of children in the ECCE Programme, Early Start or at school, in which case the relevant number is as specified in the table in Schedule 5.

Resolution may be required either when a new subsidy is registered for the child, or when an existing subsidy is amended through the registration process (e.g. if a parent who is already benefiting from a subsidy wants to increase the number of hours of subsidised childcare per week). In any such case—

- If the maximum combined hours of subsidy is not exceeded, the registration process may proceed without requirement for any adjustment.
- If, however, the maximum is exceeded, it is intended that, in the first instance, the relevant parents will themselves determine how to amend their respective hours of subsidised childcare so as to ensure that the maximum is no longer exceeded. In the first instance, therefore, *subsection 2)(a)* requires the scheme administrator only to inform the relevant parents of the situation and of the process available to them.

If the parents resolve the issue themselves, through one or more parents reducing their registered hours of subsidised childcare, then the scheme administrator may proceed with the registration process accordingly.

If, however, the parents cannot reach agreement, then *subsections 2)(c)* and *3)* provide a mechanism by which the scheme administrator can make a determination of how to adjust the subsidised hours for one or more of the parents, in order that the combined hours fall within the maximum.

Given the difficulties that parents may experience in resolving such issues, *subsection 3)* does not specify a fixed time-period that the scheme administrator must give the parents to resolve the issue themselves, but states that the time-period should be “reasonable”.

If any of the parents is not satisfied with the decision made by the scheme administrator under *subsection 3)*, it is open to the parent to make an appeal under Head 22.



## **Head 16. Approval and payment of subsidies**

- 1) After completion, in accordance with any guidelines issued by the scheme administrator, of a registration process to which Head 14 refers or of a registration renewal process to which Head 19 refers, the scheme administrator shall—
  - (a) approve the subsidy in relation to which the registration process or the registration renewal process has been completed, for the hours per week (distinguishing term-time weeks from other weeks where applicable) and the weeks of childcare services thus registered, subject to Head 15, and for the subsidy rate determined by Head 13, subject to—
    - i. the availability of sufficient monies from the monies allocated for the Scheme for the current financial year under Head 3, and
    - ii. *subsections 2) and 3)*,
  - (b) inform both the successful applicant and the approved provider of—
    - i. the approval decision specified in *paragraph (a)*, and
    - ii. the renewal date for the subsidy, to which Head 19 refers, if the subsidy is approved.
- 2) If the application qualifies for both a universal subsidy and an income-related subsidy, then the scheme administrator shall approve whichever of the universal subsidy and the income-related subsidy is most favourable to the successful applicant, having regard to—
  - (a) the subsidy rate, and
  - (b) the number of hours of subsidised childcare per week, as determined by *subsection 3)*,when determined in relation to each of the universal subsidy and the income-related subsidy.
- 3) The number of hours of subsidy per week which the scheme administrator shall approve, determined separately in relation to term-time weeks and other weeks where applicable, shall be whichever is less of—
  - (a) the number of hours of subsidised childcare per week for which the application qualifies, determined separately in relation to term-time weeks and other weeks where applicable, in relation to the child for whom the application was made, and
  - (b) the number of hours of childcare to be provided per week by the childcare provider, determined separately in relation to term-time weeks and other weeks where applicable, in relation to the child for whom the application was made and submitted to the scheme administrator as part of the registration process to which Head 14 refers or as part of the registration renewal process to which Head 19 refers, subject to Head 15.

- 4) The subsidy rate, the hours of subsidy per week and the weeks of subsidy payable by the scheme administrator to the provider that completed the registration process or the registration renewal process, as a subsidy to the successful applicant in relation to the child for whom the application was made, shall be in accordance with the approval decision specified in *paragraph 1)(a)*, subject to Head 17.
- 5) No subsidy shall be paid in relation to any childcare services provided before the date on which the scheme administrator approves a childcare subsidy under *subsection 1)*, subject to Head 30.
- 6) The subsidy to which *subsection 4)* refers shall continue to be payable, for such weeks as were registered either as part of a registration process under Head 14 or as part of a registration renewal process under Head 19, until whichever date comes first of–
  - (a) the next renewal date, to which Head 19 refers, or
  - (b) a date notified to the scheme administrator by either the successful applicant or the approved provider, as part of or subsequent to either a registration process under Head 14 or a registration renewal process under Head 19, as the date on which the childcare services that are the subject of the subsidy are to end.
- 7) The scheme administrator shall determine procedures by which payment will be made to childcare providers for childcare subsidies approved under this Head, including specifying the frequency of payment.

**Explanatory note:**

*Subsection 1* includes a mechanism by which the Scheme’s annual budget cap (which Head 3 provides for) can be implemented within the Scheme. Under this *subsection*, regardless of what subsidy an application qualifies for, and regardless of what hours of subsidised childcare the provider has submitted during the registration process (or the registration renewal process), the actual approval of the subsidy (including approval of any changes to the number of subsidised hours of childcare per week) only takes place on completion of registration (or on completion of registration renewal) and is subject to there still being sufficient funds available for the Scheme for the current financial year. In situations where there are not sufficient funds available, the approval (and therefore payment) of the subsidy (or of any changes to the number of subsidised hours of childcare per week) will be delayed until sufficient funds become available (either through another parent’s subsidy coming to an end, or through additional funding being made available to the Scheme, or through a new financial year beginning).

*Subsection 2* is required because the maximum number of subsidised hours is less in the case of standard hours subsidy than it is in the case of universal hours subsidy. As a result, an applicant who is not engaged in work or study but who uses more than 15 hours’ childcare per week may qualify for a universal subsidy that is larger than the (standard hours) income-related subsidy for which she or he qualifies (which is most likely to happen if the assessable income is only just below the maximum income threshold). This issue does not arise in the case of an applicant who qualifies for an enhanced hours subsidy, as the universal hours

subsidy has the same duration as the enhanced hours subsidy. The comparison of universal and income-related subsidies that this *subsection* provides for takes place only at the approval phase because the determination of which of the subsidies is most favourable to the applicant depends on the actual number of hours of childcare per week submitted during the registration process.

*Subsection 3* clarifies that:

1. There will be no payment of subsidy for hours of childcare used beyond the maximum hours for which the application qualifies, subject to Head 13(3).
2. If fewer hours (or weeks) of childcare are registered than the number for which the application qualifies, approval (and therefore payment) will only be given for hours (or weeks) of childcare registered.

*Subsection 4* reflects the intention within the Scheme – as far as is reasonable – to provide subsidies in the first instance on the basis of the hours per week that have been approved for subsidy, subject to subsequent verification that there is no significant variation between registered hours and actual hours of attendance. The reason for this is to minimise the administrative burden on childcare providers, and in order not to penalise either parents or childcare providers for variation in attendance as a result of sickness, or for routine minor variation in weekly hours of attendance (e.g. as a result of late arrival or early departure from childcare services on any given day). Head 17 provides for certain situations (e.g. prolonged non-attendance without good reason) in which the Scheme will adjust the amount of subsidy paid to reflect actual usage, rather than hours approved.

*Subsection 6* is intended to ensure that:

- payments are only made for weeks that have been registered (which may be 52 weeks in the case of year-round childcare); and
- payments are only made until either the renewal date (unless the subsidy is then renewed) or an end-date notified to the scheme administrator, whichever comes first.

## **Head 17. Variation in hours of childcare used**

- 1) If, without reasonable cause, there is prolonged non-attendance at a childcare provider of a child for whom a subsidy has been approved and is payable–
  - (a) the childcare provider shall inform the scheme administrator of the non-attendance, in accordance with guidelines issued under *subsection 3*), and
  - (b) the scheme administrator–
    - i. may carry out a review under Head 21, and
    - ii. may stop payment of the subsidy either temporarily or permanently.
- 2) If, without reasonable cause, the weekly hours of attendance at a childcare provider of a child for whom a subsidy has been approved and is payable are on a regular basis materially less than the number of hours of subsidy per week which has been approved–
  - (a) the childcare provider shall inform the scheme administrator of the variation, in accordance with guidelines issued under *subsection 3*), and
  - (b) the scheme administrator–
    - i. may carry out a review under Head 21, and
    - ii. may reduce the number of hours of subsidy per week which is approved and payable to reflect the regular weekly hours of attendance.
- 3) The scheme administrator shall issue guidelines in respect of the procedures to be followed with respect to this Head.

### **Explanatory note:**

This Head provides for two types of situation in which the subsidy paid will be adjusted to reflect actual attendance rather than hours approved:

1. where non-attendance is prolonged without good reason. This provision is not intended to apply to regular holidays or to cases of sickness – even prolonged sickness – if a parent intends the child to return to the childcare provider after the sickness or holiday ends, as the continued subsidy may be necessary for the parent to retain the child’s place at that childcare provider. Rather, this provision is intended to apply to cases where a child has in practice ceased attending (either permanently or for a prolonged period) but where the scheme administrator has not been informed (under Head 16 *subsection 6)(b)*) of an intention to stop using the childcare services.
2. where a child’s regular hours of attendance are – without good reason – routinely and materially less than the hours of subsidy approved and paid. This provision is not intended to apply to minor variation from week to week in the actual hours of

attendance. There is therefore no requirement that providers should routinely supply the scheme administrator with detailed records of hours of attendance. This provision is also not intended to apply to situations where actual attendance is routinely less than the hours approved but the variation is small, e.g. if a parent pays a childcare provider for a full-time childcare place (less the relevant subsidy) but the parent regularly collects the child 30 minutes before the end of the day. Rather, this provision is intended to apply to cases such as when a parent's childcare needs change and, for example, they no longer need full-time childcare services and adjust their pattern of usage to part-time attendance.

In relation to both of these types of situation, guidelines issued under the Scheme will provide detailed specifications of how these provisions of the Act are to be implemented by the scheme administrator.

## **Head 18. Copayment**

- 1) An approved provider shall publish a schedule of its fees, which shall include the hourly fee rates that underpin each of its fees.
- 2) Notwithstanding the requirement for an approved provider to publish a schedule of its fees, a childcare provider shall have full discretion to set its schedule of fees.
- 3) Notwithstanding the requirement to specify the hourly fee rates that underpin each of the fees in its schedule of fees, an approved provider shall not be required to offer childcare services on an hourly basis.
- 4) The copayment that the provider charges a successful applicant or sponsor shall, at a maximum, be the provider's published fee *less* the subsidy for the subsidised childcare hours.
- 5) The provider may at its discretion charge the successful applicant or sponsor a copayment that is less than the maximum amount specified in *subsection 4*).
- 6) The copayment – whether made by the successful applicant or by a sponsor on behalf of a successful applicant in accordance with Head 5 – shall be made direct to the childcare provider, and the method by which and timeframe within which the copayment is to be made shall be determined by the childcare provider in agreement with the person making the copayment.
- 7) A successful applicant may pay for additional childcare over and above any hours of childcare per week that are subsidised by the Scheme.

### **Explanatory Note:**

This Head sets out how the level of copayment is determined, and the means by which it is to be paid.

The requirement to publish fees, including hourly fee rates, is intended to allow parents to compare fees charged by different childcare providers. The requirement to publish hourly fee rates is necessary as different providers may structure or bundle their fees in different ways. In cases where the hourly fee rate charged by a provider varies according to the numbers of childcare used per week (e.g. with full-time childcare discounted relative to part-time childcare), multiple hourly rates should be published, corresponding to the different numbers of childcare hours offered by the provider.

However, as *subsection 3*) states, the legislation is not intended to require childcare providers to offer childcare on an hourly basis, as this could significantly reduce the quality of childcare provided, through limiting the ability of providers to plan their curriculum and ensure consistent staffing arrangements. It should remain possible, for example, for a childcare provider only to offer a choice of full-time, part-time and sessional childcare, or not to offer childcare for less than e.g. three days per week.

The Head is intended to make clear that childcare fees are set by providers. The only limit that the Scheme sets on this freedom is to ensure that the subsidy serves to reduce the copayment, rather than increasing the total sum received by the childcare provider, through the requirement in *subsection 4*) that the copayment shall not be greater than the difference between the published fee and the subsidy.

While the Heads of Bill do not explicitly require a childcare provider to abide by a minimum notice period before making any change to its published fees, it is intended that such a requirement may be included within the contracts that approved providers sign in relation to participation in the Scheme. In general the Scheme's approach is to avoid intrusion in the market, leaving the setting of childcare fees to the discretion of childcare providers, and there is no requirement preventing a childcare provider from increasing its fees during the period for which a subsidy is approved or during the period for which a contract is in force between the provider and the Minister in relation to the Scheme. However, a requirement that a notice period should be given before fees are changed – in order to protect a parent who has just started a subsidised childcare arrangement from an unexpected and rapid increase in the copayment – is considered reasonable and proportionate given the Scheme's aim of making childcare more affordable to parents.

While the Heads of Bill do not make any provision for the imposition of controls on providers' fees ("price caps"), it should be noted that the policy paper (pp.29-30) states that the introduction of price caps is an option for the future development of the Scheme. The policy paper recommends that, before proceeding with such an option, the full legal, policy and economic implications of introducing price caps should be analysed. If, following such analysis, a policy decision is made to introduce price caps within the Scheme, it is our understanding that amendment of the Scheme's primary legislation will be required.

## Part 4 RENEWALS, REVIEWS AND APPEALS

### Head 19. Renewal of subsidy

- 1) The renewal date for the subsidy shall be no longer than 365 days after the date on which the subsidised childcare begins.
- 2) At least 40 working days before the renewal date, the scheme administrator shall inform the successful applicant of the renewal date and of the process by which an application may be renewed, as specified in *subsection 4*).
- 3) Within 20 working days of being informed by the scheme administrator of the renewal process, the successful applicant shall inform the scheme administrator if she or he wishes to renew the subsidy and, if she or he does so, the scheme administrator will then commence the application renewal process specified in *subsection 4*).
- 4) The scheme administrator shall specify the procedures involved in the application renewal process, as part of which the scheme administrator shall—
  - (a) require a successful applicant to inform the scheme administrator of any changes to the information the successful applicant provided in her or his most recent application and to confirm that the remainder of such information remains correct,
  - (b) use the same criteria as in the initial application process for determining eligibility to apply for subsidy, subsidy rate, and number of hours of subsidised childcare per week for which the successful applicant qualifies, except insofar as amendments have been made to those criteria since the initial application,
  - (c) inform the successful applicant of any changes to the decisions referred to in *subsection (b)*,
  - (d) if a sponsor made or supported the application, provide the sponsor with the opportunity to make changes to any of the decisions specified in *Head 5 section (4)*, and
  - (e) if the child continues to qualify for a subsidy, inform the successful applicant or sponsor of the next renewal date for the subsidy.
- 5) If a successful applicant does not inform the scheme administrator that she or he wishes to renew the subsidy within the timeframe specified in *subsection 3*) or does not complete the application renewal process specified in *subsection 4*), or if as part of the application renewal process the scheme administrator determines that the successful applicant no longer qualifies for a subsidy for the child for whom the previous application was made, then the scheme administrator shall pay no further subsidy in relation to that child after the renewal date, unless a new application is made.
- 6) If a sponsor made the application for subsidised childcare for a child, the scheme administrator will continue to pay the subsidy until such time as the sponsor informs the



scheme administrator that the sponsor will no longer support subsidised childcare for that child, at which point the scheme administrator shall inform the child's parent of the sponsor's decision and shall inform the child's parent of how to make a new application.

- 7) After completion of the application renewal process if a successful applicant qualifies for a subsidy renewal, or in advance of the renewal date if a sponsor made the application and the sponsor has not informed the scheme administrator of a decision to cease supporting subsidised childcare for the child in relation to whom the sponsor made the application, the scheme administrator shall commence the registration renewal process specified in *subsection 8*).
- 8) The scheme administrator shall specify the procedures involved in the registration renewal process, as part of which the childcare provider shall inform the scheme administrator of any changes to the hours per week and weeks of childcare services that the childcare provider has agreed with the successful applicant or the sponsor will be provided to the child by that childcare provider after the renewal date, and on completion of which the scheme administrator may approve the continuation of the subsidy beyond the renewal date in accordance with Head 16.

**Explanatory Note:**

This Head establishes a mechanism by which the subsidy application and the registration of childcare by childcare providers are renewed each year.

The intention of the Head is to make the process as automatic as possible, with minimal requirements for information from parents who are keeping their childcare arrangements unchanged.

Nevertheless, as the income assessment is based on the previous year's income, it is necessary to reassess income each year. In the first instance, this will be done automatically through re-sending relevant PPS numbers to the Revenue Commissioners and the Department of Social Protection to establish (a) continued eligibility, and (b) the subsidy rate.

Rather than asking for all relevant information again each year, it is proposed that parents will be asked simply to confirm if there have been any relevant changes to their application, e.g. birth of a new child in the family.

As with the initial registration process, approval is not given until completion of the registration renewal process, and is then dependent on the continued availability of funds within the Scheme, as set out in Head 16.

If a renewal process is not completed, it will be open to a parent to make a new application at any time.

## **Head 20. Change in assessable income or personal circumstances**

- 1) When, based on information provided by a successful applicant as part of an application, the scheme administrator knows in advance that a successful applicant's assessable income or personal circumstances is going to change, either before or after the registration process in Head 14, the scheme administrator shall—
  - (a) not be required to carry out a review, and
  - (b) if the change in assessable income or personal circumstances will result in a material change to the amount of subsidy to be paid for childcare services for the successful applicant:
    - i. inform the successful applicant and, if the change happens after completion of the registration process in Head 14, the childcare provider, of the change in the amount of subsidy, at least 20 working days before the date on which the change in the successful applicant's assessable income or personal circumstances is expected to occur, and
    - ii. change the amount of subsidy payable by the scheme administrator to the childcare provider in relation to childcare services for the successful applicant, either from the date on which the change in the successful applicant's assessable income or personal circumstances occurs, or from the date on which the subsidy is approved under Head 16, whichever is later.
- 2) If, after completion of the application process set out in Head 7, and either before or after the registration process in Head 14, there is a change in the successful applicant's assessable income or personal circumstances that might be expected to result in a material change in the amount of subsidy to which she or he is entitled, the successful applicant may request a review under Head 21.

### **Explanatory note:**

This Head provides for three different situations that involve a change in an applicant's assessable income or personal circumstances:

- The situation described in *subsection 1)* may arise where there is—
  - a foreseen change in “assessable income”, e.g. a child turning 15, which results in a change in the “multiple child deduction” (to which Head 9 refers) that is deducted from assessable income, or
  - a foreseen change in “personal circumstances”, e.g. a child's birthday or transition within the education system (e.g. qualifying for the ECCE Programme or changing class at school) that results in a change in the subsidy rate or number of subsidised hours per week (as a result of the rules specified in Schedule 4 and/or Schedule 5).
- The situation described in *subsection 2)* arises when, after completion of the application process there is a change in the applicant's assessable income (e.g. loss of

a job, or reduction in working hours) or personal circumstances (e.g. birth of a child leading to a change in the applicant's relevant income thresholds, or separation of the applicant from the applicant's partner).

In order to minimise the number of manual income assessments, an approval is deemed valid for a 12-month period, even if the successful applicant's assessable income or personal circumstances change during that 12-month period. There is therefore no requirement on a successful applicant to inform the scheme administrator of a change to assessable income or personal circumstances. Any such change that occurs during the 12-month period (apart from foreseen changes captured under *subsection 1*) will be identified at the time of renewal of the subsidy, and the subsidy rate (or maximum subsidised hours) will change accordingly from the renewal date.

However, if the successful applicant chooses to seek a review during the course of the 12-month period, if their assessable income has fallen, they may do so, as set out in Head 21.

## Head 21.     Reviews

- 1) The scheme administrator may at any time, whether before, during or after a period during which a subsidy is payable, carry out a review in relation to one or more of the matters specified in *subsection 2*), whether–
  - (a) of its own initiative,
  - (b) at the request of a successful applicant under Head 20 *subsection 2*), or
  - (c) at the request of an approved provider in relation to the amount of subsidy paid under Head 15.
- 2) A review carried out under *subsection 1*) may examine any or all of the following:
  - (a) the eligibility of a successful applicant to continue to receive a subsidy;
  - (b) the subsidy rate for which the successful application qualifies;
  - (c) the number of hours per week of subsidised childcare for which the successful application qualifies;
  - (d) information provided during the registration process;
  - (e) the number of hours of childcare services provided in any week by the childcare provider for a child in relation to whom a subsidy is paid;
  - (f) the amount of subsidy paid each week.
- 3) In carrying out a review referred to in *subsection 1*), the scheme administrator may require the successful applicant or childcare provider to provide documentary evidence in relation to any matter that may impact on decisions by the scheme administrator in relation to the matter under review.
- 4) Where the scheme administrator, having regard to the outcome of a review carried out under *subsection 1*), is satisfied that a decision previously made by the scheme administrator in relation to the matter under review should be altered, it may determine that the decision be altered accordingly.
- 5) An alteration referred to in *subsection 4*) shall, subject to *subsection 6*) and unless the scheme administrator otherwise determines (in particular in any case where there has been a contravention of any requirement of this Act relevant to the matter the subject of the review), have effect from the date the determination is made under *subsection 4*).
- 6) Where a determination under *subsection 4*) results in the amount of subsidy being reduced, the scheme administrator shall not implement that determination before the expiration of 20 working days after the date on which it has given notice of the determination under *subsection 7*).

- 7) Where the scheme administrator makes a determination under *subsection 4*), it shall, not later than 10 working days after the date of the determination, give notice in writing to the applicant, successful applicant or childcare provider of that determination, stating the reasons for the determination.

**Explanatory note:**

This Head provides for reviews to be carried out.

The review process is separate from the appeal process, which provides for a re-examination of any decision that has been reached (whether that decision has been reached through an automated process or through a manual process such as a review). Head 22 provides for an appeal process.

*Subsection 1*) provides for a review to be initiated by:

- the scheme administrator, which could result from either—
  - a) concern that information was provided either during an application process (by an applicant) or during a registration process (by an approved provider) that is now out-of-date,
  - b) concern that such information was false or misleading, or
  - c) concern that actual hours of childcare used may be regularly and materially less than the hours of childcare registered, without reasonable cause;
- a successful applicant, if – subsequent to a determination by the scheme administrator of the subsidy rate or hours of subsidy per week for which the successful application qualifies – there has been a material change in the successful applicant’s assessable income or personal circumstances which might result in different decisions being made in relation to the subsidy rate or hours of subsidy per week;
- an approved provider, if the provider believes that the amount of subsidy paid to the provider does not reflect the information provided to the scheme administrator by the provider during the registration process.

Reviews may provide for manual checks on decisions and actions that were automated, and therefore *subsection 3*) allows the scheme administrator to request documentary evidence in relation to any decision that is subject to review.

In relation to *subsection 2)(e)*, *subsection 3*) allows for the scheme administrator to require that a childcare provider show the scheme administrator attendance records, if the scheme administrator has a concern either that a child may be attending for significantly fewer hours per week than were approved for subsidy, or that there is a prolonged period of non-attendance at the childcare provider by the child. Head 17 also provides for review of such issues, in cases where the childcare provider itself first informs the scheme administrator of the reduced level of attendance.

*Subsection 5* provides a degree of protection for successful applicants that if the review results in the level of subsidy being reduced, the reduction will not be backdated and they will have a notice period to ensure they have sufficient funds to meet the increased copayment or to adjust the hours of childcare they use, if necessary.

## Head 22. Appeals

- 1) The scheme administrator shall designate such and so many members of its staff as it considers appropriate to be appeals officers under this Head and a person so designated shall be an appeals officer for such period as the scheme administrator may determine.
- 2) Where a person (“the appellant”) is aggrieved by a determination of the scheme administrator under Head 13 *subsection 2*), Head 15 *subsection 3*), Head 16 *subsections 2*) and 3), Head 17, Head 19 *subsection 4)(b)*, Head 20 *subsection 1)(b)* or Head 21 *subsection 4*), then the appellant, not later than 20 working days after receipt of the notice of the determination, may appeal in writing to the appeals officers against that determination, stating the reasons for the appeal.
- 3) The period referred to in *subsection 2*) may be extended by an appeals officer (at the request in writing of the appellant) for a further period not exceeding 20 working days if the appeals officer is satisfied that the appellant has given reasonable cause to so extend.
- 4) The appeals officer appointed to consider an appeal made under *subsection 2*) shall do so within 20 working days from the receipt of the appeal and shall—
  - (a) be independent in the performance of the officer’s functions under this Act as an officer so appointed,
  - (b) not be confined to the grounds on which the decision of the scheme administrator was based, but may decide the matter which is the subject of the appeal as if it were being decided for the first time,
  - (c) subject to paragraph (a), comply with guidelines issued by the scheme administrator in respect of the procedure to be followed with respect to the consideration of any appeal,
  - (d) consider any written objections made by the appellant in support of the appeal, and may require the appellant to provide documentary evidence in relation to any matter that may impact on a decision by the appeals officer in relation to the matter under appeal,
  - (e) make a decision (“relevant decision”) in writing determining the appeal, which may be a decision to—
    - i. confirm the decision which was the subject of the appeal,
    - ii. revoke that decision and replace it with such other decision as the appeals officer thinks appropriate, or
    - iii. refer the matter concerned back to the scheme administrator for reconsideration in accordance with such directions as the appeals officer thinks appropriate,

- (f) send a copy of the relevant decision to the appellant and the scheme administrator together with the appeals officer's reasons for the relevant decision, and
  - (g) give the scheme administrator such directions as the appeals officer thinks appropriate.
- 5) The scheme administrator shall comply with a direction given to it under *subsection 4)* and shall, on complying with any such direction, give notice in writing to the appellant concerned of the scheme administrator's compliance with the direction.
  - 6) A person (including the scheme administrator) aggrieved by the relevant decision may appeal to the High Court against the decision on a point of law.
  - 7) An appeal under *subsection 6)* shall, where the appellant so requests, be heard otherwise than in public.

**Explanatory note:**

This Head provides for an appeals process. The appeals officers who consider the appeal will be a separate team within the scheme administrator who will act independently, subject to the Act and any guidelines issued in relation to the appeals process.

Appeals may be made by applicants (including applicants who are deemed not to qualify for a subsidy), successful applicants and approved providers.

The categories of decisions against which somebody may appeal are specified in *subsection 2)* and are as follows:

- Appeals against decisions under Head 13 *subsection 2)* are appeals against decisions made during an application process on: whether an applicant is eligible to apply for a subsidy; what type of subsidy an application qualifies for (universal, income-related, or both); what subsidy rate is approved; and/or the number of hours of subsidy approved per week.
- Appeals against decisions under Head 15 *subsection 3)* are appeals against determinations made during a registration process on the allocation of subsidised hours between two or more parents (e.g. separated parents) who are seeking subsidies in relation to a single child.
- Appeals against decisions under Head 16 *subsections 2) and 3)* are appeals against decisions made during the approval process on: the subsidy rate which is approved, or the number of hours or weeks of subsidy which are approved. It is not intended that appeals should be permitted against decisions not to approve a subsidy as a result of the Scheme's annual budget being exhausted (Head 16 *subsection 1)*).
- Appeals against decisions under Head 17 are appeals against decisions made in response to significant variation in hours of childcare used relative to hours of subsidy approved, whether the response to the variation is to stop payment of a subsidy (either temporarily or permanently) or to reduce the amount of subsidy paid.



- Appeals against decisions under Head 19 *subsection 4)(b)* are appeals against decisions made during a renewal process on: whether an applicant continues to qualify for a subsidy; what subsidy rate is approved; and/or the number of hours of subsidy approved per week.
- Appeals against decisions under Head 20 *subsection 1)(b)* are appeals against adjustments made to the amount of subsidy payable as a result of a foreseen change in the applicant's assessable income or personal circumstances (e.g. the birthday of a child which results in a change in the subsidy payable).
- Appeals against decisions under Head 21 *subsection 4)* are appeals against decisions made during a review process, which may be–
  - in relation to an applicant or successful applicant: whether the applicant / successful application qualifies (or continues to qualify) for a subsidy; what subsidy rate is approved; and/or the number of hours of subsidy approved per week.
  - in relation to an approved provider: the amount of subsidy payable per week.

The appeals process does not include appeals against decisions on which providers may participate in the Scheme, as Head 6 provides for separate appeals processes in relation to the inclusion of providers on lists of eligible providers.

*Subsection 4)(d)* allows the appeals officer to seek documentary evidence in relation to any matter being examined. This provision is required as an appeal may be made against an automated decision, as a result of which documentary evidence in relation to the decision may not previously have been provided.

### **Head 23. Reporting requirements**

The Minister may from time to time specify reporting requirements for the scheme administrator in relation to the Scheme, and the scheme administrator shall establish and maintain records relevant to those reporting requirements, and shall comply with any such reporting requirements.

#### **Explanatory notes:**

Examples of reporting requirements that may be required include:

- (a) the number and type of applications received,
- (b) the number and type of applications approved,
- (c) the number of approved applications supported by each sponsor,
- (d) the number of children whose childcare is subsidised by the Scheme, broken down by age, location, subsidy rate, type of childcare provider used, parents' work or study status, hours per week of subsidised childcare, and weeks per year of subsidised childcare,
- (e) the number of children benefiting from transitional arrangements under Head 30,
- (f) the number and type of approved childcare provider,
- (g) the amounts of subsidy committed and disbursed each month,
- (h) the number of appeals, broken down by the outcomes of the appeals as defined in Head 22 *subsection 4)(e)*, and
- (i) the number of children according to their disability and ethnicity status.

## **Head 24. Power to recoup monies**

- 1) If the scheme administrator determines through a review process under Head 21 that either a successful applicant or a childcare provider knowingly, or recklessly, provided false or misleading information that led to greater amount of subsidy being paid than would otherwise have been paid, the person that knowingly provided the false or misleading information that resulted in the payment of the excess amount of subsidy is liable to pay to the scheme administrator on demand a sum not exceeding the excess amount of subsidy paid.
- 2) All sums due to the scheme administrator under this Act shall be recoverable as debts due to the State and may, without prejudice to any other remedy, be recovered by the scheme administrator as a debt under statute or simple contract debt in any court of competent jurisdiction.

### **Explanatory note:**

This Head provides the scheme administrator with power to recoup monies from parents and / or childcare providers.

While the subsidies are paid to the providers, they are intended to be subsidies to parents that are paid directly to the providers on the parents' behalf, and an overpayment of a subsidy may result from either information given by a parent or information given by a provider, or both. This Head provides the scheme administrator with power to recoup monies from either parent or provider, or both, depending on who it was who knowingly, or recklessly, provided the false or misleading information.

## **Head 25. Sanctions and penalties**

- 1) A person that knowingly, or recklessly, gives the scheme administrator information which is false or misleading in a material particular in, with, or in connection with, an application, registration, renewal, review or appeal process under this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 3 months or both.
- 2) Notwithstanding anything else contained in this Act or in regulations or an order made under it, during the period of 10 years following a person being convicted of an offence under this Act a person so convicted is not eligible to apply for a subsidy or receive a subsidy payment.

### **Explanatory note:**

“Person” in subsection 1 may refer either to a parent, or to the proprietor of a childcare provider, or to the childcare provider.

As there is no requirement that a successful applicant should inform the scheme administrator of any changes in assessable income or personal circumstances during the period for which a subsidy is approved (which may be up to 12 months), so there is no offence that relates to not informing the scheme administrator of such changes, and this issue is therefore not referred to here.

## Part 5 SCHEME ADMINISTRATOR

### Head 26. Appointment of scheme administrator

- 1) The Minister may by regulation appoint a body to perform any or all of the functions of a scheme administrator as specified in this Act, including the roles and obligations specified in Head 27, for a time-period specified under *subsection 3*).
- 2) An appointed scheme administrator may be one of the following:
  - (a) a board, authority or other body established by or under an enactment (other than Companies Acts) whose functions include the administration of schemes of payments,
  - (b) a company under the Companies Acts, in which all the shares are held by or on behalf of or jointly with–
    - i. a Minister of the Government,
    - ii. directors appointed by a Minister of the Government, or
    - iii. a board, authority or other body referred to in *paragraph (a)*, or
  - (c) a company under the Companies Acts that is limited by guarantee without share capital, and in which the directors are appointed by–
    - i. a Minister of the Government, or
    - ii. a board, authority or other body referred to in *paragraph (a)*.
- 3) The Minister may by regulation set a time-limit to the appointment of a scheme administrator under *subsection 1*).
- 4) The Minister may:
  - (a) at least 12 months prior to the time-limit referred to in *subsection 3*), carry out and complete a review of the efficiency, effectiveness and capacity of the scheme administrator appointed under *subsection 1*); and
  - (b) following a review carried out under *paragraph (a)* and at least 6 months prior to the time-limit referred to in *subsection 3*), having regard to the findings of the review carried out under *paragraph (a)*, either–
    - i. re-appoint the scheme administrator for a further time-period specified in accordance with *subsection 3*), or
    - ii. appoint a new scheme administrator for a time-period specified in accordance with *subsection 3*).

**Explanatory note:**

This Head provides for the appointment of a scheme administrator. Following analysis of options, it was considered that the most beneficial option would be for Pobal to undertake the scheme administrator role in the initial phase of the Scheme, and it is envisaged that the Minister will appoint Pobal as the scheme administrator. However, this Head also provides for review and subsequent appointment of a new scheme administrator – or continuation of Pobal as the scheme administrator – at a later date, to be determined.

It is therefore necessary for this Head to provide for a range of options for type of scheme administrator, including Pobal. It is intended that the scheme administrator should be a public body. Pobal is a not-for-profit company limited by guarantee without a share capital, with its Directors appointed by the Government, operating on the basis of a framework agreement with the Department of Housing, Planning, Community and Local Government.

## **Head 27. Role and obligations of scheme administrator**

- 1) In addition to performing any other functions conferred on it by or under this Act, the scheme administrator shall—
  - (a) assess, review and inform the Minister of resources required by it for the purposes of performing its functions under this Act,
  - (b) keep all proper and usual accounts of moneys received by it and expenditure of such moneys incurred by it in relation to the Scheme, and
  - (c) furnish to the Minister any specified information in relation to the institution of proceedings for recovery of debt under Head 24 or Head 25.
- 2) The scheme administrator has all such powers as are necessary for or incidental to the performance of its functions under this Act.
- 3) The Minister may from time to time formulate policies and issue directions to the scheme administrator as respects the Scheme, and, in performing any functions conferred on it by or under this Act, the scheme administrator shall implement those policies and directions.
- 4) The Minister shall from time to time appoint persons to carry out periodic inspections, reviews and audits in relation to the performance by the scheme administrator of its functions under this Act and to furnish a report in relation to such inspections, reviews and audits to the Minister and the persons so appointed shall carry out such inspections and reviews and furnish such reports accordingly.
- 5) The scheme administrator may, with the consent of the Minister, issue guidelines consistent with this Act, whether relating to the performance of a function of the scheme administrator or otherwise, for the purpose of providing practical guidance in respect of any provision of this Act or regulations made under it.
- 6) The scheme administrator shall arrange for guidelines issued under this section to be published in such manner as the scheme administrator considers appropriate.

### **Explanatory note:**

This Head sets out:

- the roles, obligations and powers of the scheme administrator;
- the Minister's power to issue directions to the scheme administrator, and to carry out reviews and audits of the scheme administrator in relation to the Scheme; and
- the scheme administrator's power to issue guidelines on the Scheme, with the consent of the Minister.

## Part 6 DATA

### Head 28. Use of Personal Public Service Numbers

- 1) Schedule 5 to the Social Welfare Consolidation Act 2005 is amended in paragraph 1(4) by inserting “the scheme administrator appointed under *Head 26* of the Affordable Childcare Scheme Act 2017;” after “the Private Residential Tenancies Board”, whereby the scheme administrator may require the applicant to provide the scheme administrator with the Personal Public Services Numbers of:
  - a) the applicant and the applicant’s partner, where applicable, in order that the scheme administrator may make an assessment of the applicant’s assessable income under Head 8(5)(a), Head 19(4)(b), Head 21, Head 22, Head 24 or Head 25;
  - b) the child in relation to whom the application is made, in order to:
    - i. confirm the age of the child, and to evaluate the application under Head 15 in relation to any prior applications made in relation to the child, and
    - ii. verify information on the child’s participation in the Early Childhood Care and Education Programme in order to assess the subsidy rate for which the application qualifies under Head 11 and the maximum number of hours per week of income-related subsidy for which the application qualifies under Head 12; and
  - c) any child of the applicant or the applicant’s partner, where applicable, in order to verify information provided by the applicant that is relevant to assessing the amount, if any, of the multiple child deduction for which the application qualifies under Head 9(3).
- 2) Section 265 of the Social Welfare Consolidation Act 2005 is amended in subsection (1) by inserting as part of the definition of “relevant purpose” the following after subsection (a) (iv) “(iv-a) a subsidy under the Affordable Childcare Scheme Act 2017,” in order that the scheme administrator may share the Personal Public Service Numbers obtained under *subsection 1)* with:
  - a) the Minister for Social Protection, in order to verify the Personal Public Service Numbers provided by the applicant;
  - b) the Revenue Commissioners and the Minister for Social Protection, in order to make an assessment of the applicant’s assessable income, as specified in *paragraph 1)a)*, and in order to verify whether the applicant and the applicant’s partner, where applicable, are engaged in work or study; and



- c) the Minister for Children and Youth Affairs, in order to verify information provided by the applicant on a child's participation in the Early Childhood Care and Education Programme, as specified in *paragraph 1)b)ii*.

**Explanatory note:**

This Head provides for the use of PPS numbers within the Scheme (and the possible future use of the Public Service Card), which is necessary for the purpose of automating the application process, as PPS numbers will be:

- in the case of the PPS numbers of the applicant and the applicant's partner, where applicable, provided to the Revenue Commissioners and the Department of Social Protection in order to establish the assessable income of an applicant, as part of an income-assessment under Head 8(5)(a), a renewal process under Head 19(4)(b), a review process under Head 21, an appeal process under Head 22, or the prosecution of an offence under Head 24 or Head 25, as well as in order to verify whether the applicant and the applicant's partner are engaged in work or study; and
- in the case of the child in relation to whom the application is made, as well as the other children of the applicant and the applicant's partner, used to verify:
  - the age of the child;
  - that no child is the subject of overlapping applications or of applications that together provide for more than the maximum combined hours of subsidy per week (as defined under Head 15);
  - that an applicant's declaration of the dates on which a child ends participation in the ECCE Programme match ECCE Programme records; and
  - the size of the multiple child deduction from assessable income.

*Subsection 1* adds the scheme administrator to the list of specified bodies (as defined in Section 262 of the Social Welfare Consolidation Act 2005) which may gather PPS numbers for the purpose of transactions for public functions, including applications.

*Subsection 2* includes applications for subsidies under the Scheme (as well as renewals, reviews and appeals) under the list of purposes for which a specified body may share PPS numbers with other specified bodies (which include the Officer of the Revenue Commissioners and the Department of Social Protection).

## **Head 29. Use of information**

1) For the purpose of this Head—

“data controller” has the meaning given to it by the Data Protection Acts 1988 and 2003;

“personal data” has the meaning given to it by the Data Protection Acts 1988 and 2003;

“processing” has the meaning given to it by the Data Protection Acts 1988 and 2003;

“relevant purpose” means the purpose of—

- (a) determining whether an applicant is eligible to apply for a subsidy and whether the application qualifies for a subsidy and, if so, the amount of subsidy to which the successful applicant is entitled in relation to the application,
  - (b) registering a child for a subsidy under Head 14 or renewing a registration under Head 19,
  - (c) a review process under Head 21, an appeal process under Head 22 or the prosecution of an offence under Head 24 or Head 25,
  - (d) verifying data supplied as part of an application, registration, renewal, review or appeal process, or
  - (e) assisting in the processing of an application for a subsidy and assisting in the payment of a subsidy.
- 2) The data controller of the scheme administrator may, for a relevant purpose, process personal data that relates to an applicant, the applicant’s partner, where applicable, children of the applicant or the applicant’s partner, the child in relation to whom an application is made or a subsidy is payable, and the approved provider of childcare services for that child, including:
- (a) information provided by an applicant or by a sponsor as part of an application process under Head 7,
  - (b) information held by the Revenue Commissioners and the Minister for Social Protection and relevant to an assessment of an applicant’s assessable income under Head 8(5)(a), Head 19(4)(b), Head 21, Head 22, Head 24 or Head 25,
  - (c) information gathered by an approved provider as part of a registration process under Head 14 or a registration renewal process under Head 19, and
  - (d) information on days of attendance and hours per week of attendance at a childcare provider of a child for whom a subsidy has been approved and is payable.

- 3) The data controller of an approved provider may, for a relevant purpose, process personal data that relates to a successful applicant or to a child in relation to whom a subsidy is payable, including:
  - (a) the Childcare Subsidy Reference Number that relates to the payable subsidy;
  - (b) the hours per week (distinguishing term-time weeks and other weeks where applicable) and the weeks of childcare services that the successful applicant or sponsor and the childcare provider have agreed will be provided to the child by that childcare provider, and which is submitted to the scheme administrator as part of a registration process or a registration renewal process;
  - (c) the amount of subsidy payable under the Scheme in relation to the child, the number of hours of subsidised childcare per week, and the renewal date for the subsidy;
  - (d) the sponsor of the application, if a sponsor has agreed to pay the copayment for the childcare services for the child under Head 5(4)(b);
  - (e) the copayments made by the successful applicant or the sponsor, where applicable;
  - (f) the days of attendance and weekly hours of attendance at the provider of the child; and
  - (g) other information that may be required in determining compliance of the provider with its obligations in the written agreement signed between the provider and the Minister in relation to the Scheme.
- 4) Notwithstanding anything contained in the Data Protection Acts 1988 and 2003 or any other enactment, the data controller of a person listed in Schedule 6 or of a person prescribed for the time being under *subsection 5*) (in this subsection called “the first named person”) shall on being requested to do so by the data controller of a person so listed or prescribed, process personal data kept by the first named person, or information extracted from such data, to the data controller of the other person so listed or prescribed for the time being, if the data controller of the first named person is satisfied that it will be used for a relevant purpose only.
- 5) If a person (not being a person listed in Schedule 6, or prescribed for the time being under this subsection) keeps personal data that is relevant to any of the functions of the scheme administrator or an appeals officer, and the Minister considers that such supply by the person not so listed or prescribed to a person so listed or prescribed will further the attainment of a relevant purpose, then the Minister, following consultation with the Data Protection Commissioner, may prescribe that person for the purposes of *subsections 2) and 3)*.
- 6) Any processing of personal data for the purposes of *subsections 2) and 3)* shall go no further than is reasonably necessary for the attainment of the relevant purpose.

- 7) A data controller may refuse a request under *subsection 3*) if he or she is satisfied that it would be unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.
- 8) The Minister shall by regulations specify the maximum periods for retention of personal data, having regard to review and appeal processes, reporting requirements under the Scheme, maintenance of privacy of applicants and children, and any requirements that may arise under Regulation (EU) 2016/679 of the European Parliament and of the Council.
- 9) In meeting reporting requirements under Head 23, the scheme administrator shall provide the Minister with summary information derived from personal data under *subsection 2*), provided such summary information does not involve disclosure of personal data that is identifiable to an individual applicant, child or provider.

**Explanatory note:**

This Head specifies the purposes for which information may be gathered, used and stored by the scheme administrator and by providers, and shared between the providers, the scheme administrator and other relevant public bodies for the purpose of the Scheme, and the limits on such sharing of information.

Under the Data Protection Acts 1988 and 2003, the “processing” of data includes: obtaining, recording, keeping, organising, adapting, retrieving, consulting, using, disclosing, combining and erasing of data.

In order to keep information storage and sharing to the minimum required for the purposes of the Scheme, only listed organisations will be permitted to store and share information as part of the Scheme.

The fact that approved providers are included in Schedule 6 is not intended to imply that PPS numbers may be shared with approved providers. Approved providers are not a “specified body” for the purpose of Section 262 of the Social Welfare Consolidation Act 2005, and it is not intended that they will be made so by this Act. The Childcare Subsidy Reference Number that will be issued to a successful applicant by the scheme administrator, and which the successful applicant will share with their chosen provider, will not contain the PPSN. The Childcare Subsidy Reference Number will be unique to the individual application and will – through the scheme administrator’s IT system – be indirectly linked to the PPS numbers supplied to the scheme administrator by the applicant, but there will be no need for the provider itself to be informed of the PPS numbers.

## Part 7 TRANSITION TO THE SCHEME

### Head 30. Transitional provisions

1) For the purpose of this Head—

“commencement date” means the date on which the Scheme is first open to applications under Head 7.

2) As a transitional arrangement to ensure continuity of State support for persons who benefit from or avail of non-statutory childcare schemes, for a period of at most six months after the commencement date the Minister may continue to operate the following non-statutory schemes funded by the Minister which are to be replaced by the Affordable Childcare Scheme:

(a) the Childcare Education and Training Support programme;

(b) the After-School Child Care programme;

(c) the Community Employment Childcare programme; and

(d) the Community Childcare Subvention programme.

3) As a transitional arrangement to support persons whose childcare costs may rise as a result of the replacement of existing non-statutory childcare schemes by the Scheme, if immediately prior to the commencement date an applicant benefitted from a childcare grant under one of the non-statutory schemes listed in *subsection 2*), and if that applicant would have been required to make a smaller copayment per week under that non-statutory scheme than would result from the weekly subsidy for which the application qualifies under the Scheme, the scheme administrator may determine the matters listed in Head 13(2) in accordance with the rules that would have applied in relation to that non-statutory scheme, and the consequent amount of subsidy may be payable until at the latest:

(a) the date on which the applicant completes the education or training course as a result of which a grant was payable under the Childcare Education and Training Support programme immediately prior to the commencement date; or

(b) one year from the commencement date, in the case of an applicant who immediately prior to the commencement date benefitted from a childcare grant under the any of the schemes listed in *subsection 2*) other than the Childcare Education and Training Support programme.

#### **Explanatory note:**

The Scheme replaces a number of existing schemes (which may potentially be supplemented over the coming months by new subsidiary schemes), which will cease to exist either before or after establishment of the Scheme. While most of those who benefit from the existing

schemes will also benefit from the new Scheme, and will see their level of subsidy rise, there will be some individuals who will not qualify for a subsidy under the new Scheme and some who will qualify but who will see their level of payment fall. For both these types of case, this Head provides for a transitional period during which those individuals can continue for a limited period of time to receive the level of financial support they would otherwise have received (instead of transitioning to the new Scheme), even though the alternative schemes may have ceased to operate or may only be operating temporarily on a limited basis.

The Head addresses both situations where:

- the alternative schemes (CCS and related schemes, and the various TEC programmes) have ceased to exist, but it is possible nevertheless for the scheme administrator to calculate how much financial support an individual would have received under those schemes if they did still exist (*subsection 3*); and where
- the alternative schemes still do exist, albeit on a limited and temporary basis, specifically for the purpose of providing financial support on a transitional basis as envisaged in this Head (*subsection 2*)).

## Schedule 1 LIST OF SPONSORS

<b>Sponsor</b>	<b>Purpose for which the sponsor supports applications</b>
Child and Family Agency	For the purpose of family support or where a designated officer of the Agency determines that is in the interest of a child’s welfare or protection to take part in a childcare service.
Department of Justice and Equality	To support programme refugees who have children to avail of opportunities to promote their integration and their language skills.
Department of Children and Youth Affairs	To support homeless families with children – and families with children that are transitioning out of homelessness – to access childcare services.

**Explanatory note:**

Clarification is currently being sought in relation to each of the sponsors in this schedule and the precise purposes which will be specified here.

It is intended that a sponsor may designate as “designated officers” for making decisions under Head 5 staff who are part of a different agency. For example, while a Government Department may be the sponsor, the Department may designate officers of an agency of the Department to be the “designated officers” for the purpose of the Scheme.

## **Schedule 2 SOURCES OF INCOME INCLUDED WITHIN ASSESSABLE INCOME**

The sources of income to be included within the definition of assessable income include but are not limited to the following sources of income, whether arising within the State or otherwise:

Income from employment (including benefit-in-kind and directorships)

Income from self-employment or farming

Social welfare payments

Payments from other government departments or state agencies

Rental and other income from land and property

Income from pensions other than the social welfare state pension

Income from savings, deposit accounts and investments

Income from maintenance arrangements

Lump sum payments from retirement and redundancy

Income from the disposal of assets or rights

Gifts and inheritances

Any other source of income which may be prescribed by regulation under Head 8

### **Explanatory note:**

The definition of assessable income is intended to be comprehensive, covering all income sources (with the exception of those excluded in Schedule 3), which is why the introductory sentence states that the income sources “include but are not limited to” those in the list in the Schedule.

However, it is intended that the assessment of income carried out under the Scheme will, in the large majority of cases, be automated, with income provided by the Revenue Commissioners and the Department of Social Protection, on the basis of PPS numbers supplied by the scheme administrator. In order to allow for automated income assessment, the assessment will necessarily be limited to those income sources that the Revenue Commissioners and the Department of Social Protection are able to provide on an automated basis, which, while very wide ranging, cannot be fully comprehensive. In addition, the income assessment will operate on the assumption that applicants have provided all their relevant income information for tax purposes to the Revenue Commissioners.



### **Schedule 3 SOURCES OF INCOME EXCLUDED FROM ASSESSABLE INCOME**

The sources of income to be excluded from the definition of excluded income are as follows:

Overtime payments earned in the reference period that are not recurring payments

Aftercare Allowance

Back to Work Enterprise Allowance

Back to Work Family Dividend

Caranua services support

Carer's Support Grant

Department of Social Protection Temporary Provisions Payment (commonly referred to as the Christmas Bonus payment)

Domiciliary Care Allowance

Exceptional Needs Payments

Foster Care Allowance

Guardian's Payment

Household Benefits Package

Independent Living Allowance for Young People in Residential Care

Back to Education Allowance

Department of Education and Skills Third Level Bursary Scheme

Further education and training allowances provided by Education and Training Boards

Student Assistance Fund

Student Grant

Vocational Training Opportunities Scheme

Any other source of income which may be prescribed by regulation under Head 8

**Schedule 4    MAXIMUM, MINIMUM AND UNIVERSAL SUBSIDY RATES**

<b>Age of the child for whom an application is being made and/or stage in the education system</b>	<b>Maximum subsidy rate (€ per hour)</b>	<b>Minimum subsidy rate (€ per hour)</b>	<b>Universal subsidy rate (€ per hour)</b>
Less than 12 months old	€ 5.11	€ 0.50	€ 0.50
Between 12 and 23 months old	€ 4.37	€ 0.50	€ 0.50
Between 24 and 35 months old	€ 4.18	€ 0.50	€ 0.50
Older than 35 months old, and not yet qualifying for the Early Childhood Care and Education Programme	€ 3.95	€ 0.50	€ 0.50
Participating in the Early Childhood Care and Education Programme	€ 3.95	€ 0	Not applicable
Enrolled at school	€ 3.76	€ 0	Not applicable

**Schedule 5 LIMITS ON TERM-TIME DURATION OF INCOME-RELATED SUBSIDY**

<b>Stage of the education system</b>	<b>Maximum hours per week of subsidised childcare during term time for income-related subsidy</b>	<b>Number of term-time weeks per year</b>
Prior to entry into the Early Childhood Care and Education Programme	N/A	N/A
Early Childhood Care and Education Programme	25	38
Early Start Programme within Primary Schools	27.5	36
Junior and Senior Infant Classes within Primary Schools	17	36
1 <sup>st</sup> to 6 <sup>th</sup> Classes within Primary Schools	12	36
Post-Primary Schools	10	33

**Explanatory note:**

The policy paper specifies that the number of term-time weeks per year for children at school is 36.5, 36.5 and 33.5 weeks respectively. For ease of administration of the Scheme, and to facilitate parents who are required by childcare providers to pay for childcare services on a whole-week basis, the number of term-time weeks is specified here as 36, 36 and 33 respectively.

**Schedule 6 ORGANISATIONS PRESCRIBED FOR THE PURPOSE OF SHARING DATA, AS PROVIDED FOR UNDER HEAD 29**

1. The Minister.
2. The Minister for Social Protection.
3. The Revenue Commissioners.
4. The scheme administrator.
5. Approved providers.