

One Family wish to make the following comments and recommendations regarding the proposed legislation underpinning the Affordable Childcare Scheme. Our recommendations are highlighted in bold throughout for clarity.

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;*

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”:

- **One Family welcome the broad definition of ‘parent’ as it acknowledges the diverse situations which many children live in.**

“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.

- **Recognition of shared access and custody arrangements is welcomed and necessary.**

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.

- **It is imperative that when defining the term “cohabiting”, care should be taken to ensure that those parents who are sharing parenting after separation are not deemed to be “cohabiting”. These parents would most likely not be living together but due to both parents supporting and spending time with their children they may be deemed to be meeting other criteria listed above. The current cohabitation rules set down by the Department of Social Protection do not recognise the nature of shared parenting relationships and parents can sometimes lose entitlement to social welfare supports as a result. Efforts should be made to clarify this term to ensure that these parents are not prevented from accessing the ACS.**

Head 3. Establishment of a scheme

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.

- **This aspect of the legislation is a cause for concern. Does this mean that parents will effectively be entering a competition for childcare places? If a parent commences employment later in the year is there a risk that they will not be able to avail of a place, despite being eligible? Sufficient resources should be made available to prevent this from happening. Any impact of a lack of funding for the scheme should be absorbed by the department and not passed on to parents.**

Head 4. Eligibility to apply for a subsidy

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.

- **The broad nature of the scheme is welcomed, particularly the inclusion of asylum seekers**

Head 5. Sponsors

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).

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.

- **This is an essential and necessary aspect of the scheme which One Family supports**

Head 6. Approved providers

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). 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.

- **We are happy to see that our recommendation for the scheme to include school age providers and childminders, who are not currently required or permitted to register with Tusla, has been acknowledged and these providers will now be included in the scheme. This is essential to ensure that lone parents who are subject to activation measures can access school age childcare.**

Head 8 Assessment of Income

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.

- **While we can appreciate and understand the rationale offered for the inclusion of certain income, One Family continue to hold the view that child maintenance should be seen as income for the child and not parental income. Child maintenance payments do not vary for recipients when they leave or enter employment so the exclusion of this income source would not serve as a disincentive to enter or increase employment.**

Head 9. Deductions from income

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.

Explanatory note:

Deductions are allowed for... 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.

- **The option for parents to provide a sworn affidavit as proof of maintenance paid is welcomed and we appreciate the Department taking this suggestion on board.**

Head 14. Registration

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.

The scheme administrator shall provide reasonable support to childcare providers to assist them with the registration process. (page 44 of pdf)

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.

- **While State cannot bear responsibility for the availability and accessibility of childcare places, once a subsidy has been awarded, continued engagement with the Department of Social Protection is needed to ensure that no parent will be subject to activation measures in the absence of accessible childcare places.**

Head 15. Registration where more than one subsidy relates to a single 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).(page 47 of pdf)*

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) 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”.

- **The sharing of the subsidy, where parents are separated and sharing custody of their children is welcomed. However, it needs to be clear in what manner the scheme administrator would determine how many hours to apply to each parent in the event of non-agreement between separated parents. Would an existing court order showing the**

level of access awarded to each parent be deemed to be sufficient evidence? A sworn affidavit could also potentially be used in this instance.

Head 30. Transitional provisions

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 nonstatutory 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.*

- **Transitional arrangements to minimise any negative financial impact on families availing of current subsidised schemes listed above is both welcomed and necessary.**