



**Health
Information
and Quality
Authority**

An tÚdarás Um Fhaisnéis
agus Cáilíocht Sláinte

Regulation and Monitoring
of Social Care Services

What is a designated centre?

A guide to understanding the
definition of designated centres

June 2022

Safer Better Care

Contents

- 1. Introduction 3
- 2. What is a designated centre? 4
- 3. What is a designated centre for older persons? 8
- 4. What is a designated centre for children or adults with disabilities? 12
- 5. What are residential services for children? 18
- 6. How to assess if you are operating a designated centre 18
- Appendix 1 22
- Appendix 2 25
- Appendix 3 26

This guidance is intended to assist registered and intended providers¹ to identify residential services that require to be registered with the Chief Inspector of Social Services (the **Chief Inspector**) in the Health Information and Quality Authority (**HIQA**). The guidance represents the position of the Chief Inspector at the time of publication. This document is not intended to be a definitive interpretation of the law, but rather it is intended to assist providers with their own decision-making.

¹ Hereafter referred as providers.

1. Introduction

Under the Health Act 2007 (as amended) (referred to in this guidance as the **Act**), the Chief Inspector of Social Services (the **Chief Inspector**) registers and inspects a range of different types of residential centres, called 'designated centres'. There are three categories of designated centres regulated by the Chief Inspector:

1. Designated centres for older people (nursing homes).
2. Designated centres for children with disabilities and for adults with disabilities.
3. Special care units for children and young people.

The Act contains a detailed legal definition of 'designated centre'. That definition describes the different categories of designated centres which are required to be registered with and regulated by the Chief Inspector. In order to assist intended new providers to consider whether the residential services which they intend to provide come within the legal definition in the Act, the Chief Inspector has prepared this guidance and the tools contained within it.

The Chief Inspector is aware of the diverse range of residential services for adults and children which are currently in operation. These include nursing homes for older people and large campus settings, dispersed community housing and respite services for children and adults with disabilities. They also include special care units for children and young people which are defined under the Child Care Act, 1991, as amended. However, this guidance document does not attempt to define and categorise every possible type of service arrangement. Rather, it aims to provide guiding principles which will assist providers in assessing which of their services are required to be registered with the Chief Inspector as designated centres.

The Chief Inspector understands that there will be some service arrangements which providers will find difficult to categorise and where the particular circumstances will need to be assessed on a case-by-case basis. The Chief Inspector intends that this guidance document will help to provide clarity in that assessment. However, if a provider remains unclear about whether or not its service is a registerable designated centre, it should raise the matter with the Chief Inspector by emailing registration@hiqa.ie.

Providers should note that the Act prohibits the operation of a designated centre unless it is registered with the Chief Inspector. If a designated centre operates without being registered, the Chief Inspector may prosecute the provider for a breach of the Act. Therefore, it is essential that providers carefully consider the legal definition in the Act along with the contents of this guidance document and are clear about the requirement to register all services falling within the definition of 'designated centre' in the Act.

Finally, providers should note that if there are changes to a service that had previously been assessed by the provider or the Chief Inspector as not being a designated centre and those changes bring the service within the definition of a designated centre, then the provider must inform the Chief Inspector of the changing circumstances and to submit an application to register the service as a designated centre under the Act.

2. What is a designated centre?

The legal definition of a designated centre in section 2 of the Act is quite a long and detailed definition. It is a broad definition and potentially includes many residential services which may not at first glance appear to be designated centres, such as certain respite services. Conversely, the definition contains several exclusions. The only way to be certain whether a residential service comes within the definition is to consider it in detail. In line with this, all providers need to become familiar with the full legal definition of designated centre.

The legal text of the definition² is set out in this section of the guidance. The following sections of the guidance will break down the definition into its relevant parts for each sector regulated by the Chief Inspector:

1. Older persons.
2. Children and adults with disabilities.
3. Children and young people in special care units.

The later sections of this guidance contain some tools to help providers in navigating the definitions and to support providers to assess their own services. Finally, some of the more technical parts of the definition, including cross-references to other pieces of legislation, such as the Health (Nursing Homes) Act 1990 and Child Care Act, 1991, are set out in the Appendices of this guidance document for reference purposes.

Each of the following parts of this guidance will examine the legal definition and provide some further information as to how the Chief Inspector approaches the definition. There are also some case studies which will help to illustrate how the Chief Inspector approaches the assessment of services in practice. For ease of reading, the parts of statutory definitions which set out what is included in the definitions are shown in blue boxes. The exclusions from the definitions are

² The text of the definition set out in this guidance is correct as at the date of publication of this guidance, but it may change after the date of publication. There is a legal duty on all providers to have regard to the up to date definition and legal requirements at all times.

shown in red boxes.

2.1 The legal definition

Section 2 of the Act defines a 'designated centre' in the following way:

Designated Centre

means an institution

(a) at which residential services are provided by the Executive, the Agency, a service provider under this Act or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004—

- (i) in accordance with the Child Care Act 1991,
- (ii) to persons with disabilities, in relation to their disabilities, or
- (iii) to other dependent persons, in relation to their dependencies,

or

(b) that is a special care unit,

(c) that is a nursing home as defined in section 2 of the Health (Nursing Homes) Act 1990,

but **does not include** any of the following:

- (i) a centre registered by the Mental Health Commission;
- (ii) an institution managed by or on behalf of a Minister of the Government;
- (iii) that part of an institution in which the majority of persons being cared for and maintained are being treated for acute illness or provided with palliative care;
- (iv) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;
- (v) a children detention school as defined in section 3 of the Children Act 2001.

The definition uses the term **'institution'** to describe the physical locations at which services are provided. It includes a broad range of residential settings, including:

1. Nursing homes for older persons.
2. Campus-based services, community-based housing (including group homes), single-occupancy residential units, as well as large, single-site residential settings for children and adults with disabilities.
3. Special care units for children operated by the Child and Family Agency (**Tusla**).

The term 'institution' is further defined in section 2(2) of the Act as follows:

Institution
means a home, unit, centre or institution or part of a home, unit, centre or institution

2.2 What is a residential service?

The legal definition of 'designated centre' in the Act also uses the term **'residential services'**. That term is not defined in the Act, but it has a generally accepted meaning within the care sector.

The Chief Inspector has for a number of years provided the care sector with a practical definition of 'residential services' which is widely accepted and used across the sector.

In the view of the Chief Inspector, the term 'residential services' should be interpreted as involving both an accommodation component and a care and or support component. The Chief Inspector understands the term 'residential services' to mean as follows:

Residential service

A 'residential service' is one that is comprised of both:

- (1) accommodation; and
- (2) care and or support services

provided to people living in residential settings, on a short- or long-term basis, whether or not it is their sole place of residence.

More details in relation to residential services and to services which are **excluded** from the definition are set out in Appendix 1.

If a district hospital, respite centre or supportive care home meets the definition of a designated centre, it must comply with the Act, regulations and national standards. The Act provides for children's residential centres to become designated centres; however, that part of the Act has not yet been commenced and is not in operation.

The remainder of this guidance will focus on providing practical examples and tools for providers to use when assessing whether their services fall within the legal definition set out above. In the event that a provider remains uncertain as to whether their service is a designated centre which requires to be registered with the Chief Inspector, it should raise the matter with the Chief Inspector as described above in section 1 of this guidance.

3. What is a designated centre for older persons?

Designated centres for older persons are regulated by the Chief Inspector. This category includes both traditional nursing homes as well as certain residential services provided to dependent persons in relation to their care, welfare and support needs.

For a residential service to be considered a designated centre for older persons under the Act, the following criteria must be met:

1. it must be a 'nursing home' as that term is defined in the Health (Nursing Homes) Act, 1990 (as amended); or
2. it must be an institution of the kind described in paragraph (a)(iii) of the definition of 'designated centre' in the Act, which is a residential service provided to dependent persons in relation to their dependencies, that is their care, welfare and support needs.

3.1 'Nursing Home'

As defined in the Health (Nursing Homes) Act, 1990 (as amended), a 'nursing home' means:

2.—(1) In this Act, except where the context otherwise requires, "nursing home", subject to subsection (2), means an institution for the care and maintenance of more than two dependent persons

For the purposes of this definition of 'nursing home', the term 'dependent person'³ means

"dependent person"

a person who requires assistance with the activities of daily living such as dressing, eating, walking, washing and bathing by reason of—

(a) physical infirmity or a physical injury, defect or disease, or

(b) mental infirmity,

³ The definition of 'dependent person' is contained in section 2 of the Health (Nursing Homes) Act, 1990.

and “dependency” shall be construed accordingly

It is important to note that the definition of ‘nursing home’ **excludes** the following:

- (a) an institution managed by or on behalf of a Minister of the Government or the Health Service Executive,
- (b) an institution in which a majority of the persons being maintained are being treated for acute illnesses,
- (c) a maternity home carried on by a person who is registered under the Registration of Maternity Homes Act, 1934,
- (d) a mental institution within the meaning of the Mental Treatment Acts, 1945 to 1966,
- (e) an institution for the care and maintenance of mentally handicapped persons operated otherwise than for profit and to which grants are paid by the Minister or the Health Service Executive,
- (f) premises in which children are maintained in pursuance of an arrangement with the Health Service Executive,
- (g) an institution operated otherwise than for profit—
 - (i) that is for the care and maintenance of physically handicapped persons a majority of whom do not receive whole-time nursing care in the institution,
 - (ii) in the management of which representatives of the Minister or the Health Service Executive and representatives of the persons being maintained in the institution participate with other persons,
 - (iii) to which grants are paid by the Minister or the Health Service Executive, and
 - (iv) to which paragraphs (a) and (b) of section 333 (1) of the Income Tax Act, 1967, apply, and
- (h) subject to subsection (3), premises in which a majority of the persons being maintained are members of a religious order or priests of any religion, but maintenance by a person of his spouse or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act

2010 or of a parent, step-parent, child, step-child, grandchild, brother, step-brother, sister, step-sister, uncle, aunt, niece or nephew of the person or of his spouse shall, for the purposes of this definition, be disregarded.

The Minister for Health is empowered under the Health (Nursing Homes) Act 1990 to extend using regulations the range of institutions to which the definition applies. It is important for providers to note that subventions cannot be paid in respect of dependent persons in a nursing home under section 7(1) of the Health (Nursing Homes) Act 1990⁴ unless the premises are registered as a designated centre with the Chief Inspector.

3.2 Institution described in paragraph (a)(iii)

The second category of designated centre for older persons is an institution at which residential services are provided to other dependent persons, in relation to their dependencies by (1) the Health Service Executive (HSE), (2) a service provider under the Health Act 2007 or (3) a person who is not a service provider but who receives assistance under section 39 of the Health Act 2004 (and in this context the term '*dependent person*' has the same meaning as set out above).

This category is broad and is capable of taking in a wide number of services which are not nursing homes in the traditional sense, but which nonetheless provide residential services to dependent persons. Where such a services comes within the definition, it much be registered with the Chief Inspector.

Below is a case study which illustrates the approach which the Chief Inspector takes towards the assessment of individual services as to whether or not they are designated centres which must be registered under the Act.

Case study

A short-term assessment facility is not a designated centre

Annabel is being discharged from an acute hospital following a long stay as an orthopaedic patient. She has had a series of operations following a serious car crash. Annabel is 75 years of age and she is very concerned that she will not be able to deal with the household chores and requirements of daily life if she returns home to her own house, where she lives alone. Her family support her and are

⁴ This refers to the Fair Deal Scheme

willing to support whatever Annabel wishes for her future.

The hospital is discharging Annabel for a period of six weeks into what it describes as its '*Short-term Assessment Unit*'. The purpose of Annabel's stay is to assess whether she would be capable, comfortable and safe living at home or whether she may need to be admitted to a nursing home where she would receive nursing care and support. The unit has a policy of accommodating patients for a six-week period only, following which a medical judgment is made by the consultant in charge and the patient must move out of the unit. The unit has indicated that a place in a nursing home will be available for Annabel if she wishes to take it.

The provider of the unit is of the view that because the unit is strictly a short-term assessment unit only, it should not be required to apply to register as a designated centre in line with section 50 of the Health Act 2007 as amended). However, the provider would like to explore the possibility of voluntarily registering the unit as a designated centre as it believes there would be a benefit to it having that status.

The Chief Inspector's view

The scenario set out above appears to describe a short-stay unit only. The primary purpose of the unit is a medical assessment, not the provision of residential services. This is a unique feature of a hospital discharge pathway, primarily for older people in terms of step down care or convalescence. While it might be argued that Annabel is receiving residential-type services while she is in the unit, it is clear that these services are ancillary to the main purpose of her placement, which is a genuine medical assessment. The fixed and limited period of assessment — six weeks — further strengthens this view.

In the view of the Chief Inspector, the unit **does not** require to be registered by the provider as a designated centre under section 50 of the Health Act 2007 (as amended). The Chief Inspector's view might be different if it appeared that the purported "Short-term Assessment Unit" was in fact being used as an alternative to a longer-term placement in a designated centre. However, that is clearly not the case in this scenario.

While the Chief Inspector notes that the provider wishes to apply for registration notwithstanding the Chief Inspector's view, the Chief Inspector would not grant such an application for registration as the unit is not a designated centre within the meaning of the Health Act 2007 (as amended) and is, therefore, not capable of being registered.

4. What is a designated centre for children or adults with disabilities?

The Chief Inspector recognises the complex and increasingly diverse landscape of residential services for children and adults with disabilities in Ireland.

Accommodation may be provided through housing owned by the provider, housing associations affiliated with providers, approved housing bodies, local authorities or via renting from private landlords.

Providers who operate a designated centre which is in receipt of section 38 or section 39 funding must meet the requirements of the Health Act 2007 (as amended) regardless of whether they are a private operator or a voluntary body.

The legal definition of a designated centre for children or adults with disabilities, which is set out in paragraph 2(ii) of the definition of 'designated centre' in the Act, is as follows:

"Designated Centre"

An institution at which residential services are provided by the Executive, the Agency, a service provider under this Act or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004 to persons with disabilities, in relation to their disabilities.

The term 'service provider' is itself defined in section 2(1) of the Act as:

"Service Provider"

means a person who

(a) enters into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Health Service Executive,

(b) is in receipt of assistance under section 39 of the Health Act 2004 in an amount that exceeds an amount prescribed for the purpose of this subparagraph, or

(c) is a service provider under the Child and Family Agency Act 2013.

The Act also defines 'disability' as meaning:

"Disability"

disability as defined in section 2 of the Disability Act 2005 and the term "substantial restriction" in that definition shall be construed as meaning a restriction as described in paragraphs (a) and (b) of section 7(2) of that Act

Further details of the definitions as set out in the Disability Act 2005 are contained in Appendix 2.

As noted above in section 2 of this guidance, the Chief Inspector has provided the care sector with a widely accepted and used interpretation of the term 'residential services', which is not itself defined in the Act. In the area of disabilities, this term provided by the Chief Inspector means:

Residential Service

A 'residential service' is one that is comprised of both (1) accommodation and (2) care/support services provided to children and adults with disabilities living in residential settings, on a short or long term basis, whether or not it is their sole place of residence.

The combined definitions from the Act and the Disability Act 2005 are quite extensive, but can be navigated in a more user-friendly way by answering the questions set out on the following page.

These questions are based on the legal definitions in the legislation. They should be read in the context of other relevant international conventions and laws such as the Assisted Decision-Making (Capacity) Act 2015 and the United Nations Convention on the Rights of Persons with Disabilities, which focus on a presumption of capacity and maximizing choice and participation.

1

Does the service provide **residential services** in other words both accommodation and care/support services to children or adults with disabilities?

2

Are the residential services provided in relation to the residents' disabilities?

3

Are the residential services provided by
(1) the Health Service Executive,
(2) a service provider who has entered into an arrangement under section 38 of the Health Act 2004 to provide personal social services on behalf of the HSE, or
(3) a service provider who receives assistance under section 39 of the Health Act 2004?

4

Do the residents have a **substantial restriction** in their capacity to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment?

5

Is the **substantial restriction** one which
(a) is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and
(b) gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ameliorate the disability?

If the answers to the above questions are **Yes**, then it is likely that the service will be a designated centre which must be registered with the Chief Inspector.

4.1 Registration of combined residential services as a single designated centre

The Chief Inspector recognises that in some instances, it may make sense to combine a small number of dispersed, community-based residential services into one designated centre. Therefore, it is feasible for registration purposes for providers to propose combinations or groupings of residential services as a single designated centre.

The Chief Inspector may consider such reasonable proposals if the proposed designated centre meets the following criteria:

- 1 Combining the services into one designated centre does not have any adverse impact on the health, rights or welfare of any resident(s) in the services
- 2 The number of residential services are usually no more than five and the services are provided within the same geographic area (this may be a defined suburb of a large town or city, a small town or a townland) and there is a common statement of purpose for the residential services
- 3 The provider is satisfied that the person in charge meets the requirements of fitness under the law (Note: a person in charge may be person in charge for more than one designated centre)
- 4 The post of person in charge is full-time, and is responsible for the day-to-day operational management of the residential services
- 5 The person in charge has the capacity and capability to ensure the proper governance and oversight of the services

4.2 Resident's own homes

Residential services (as interpreted in section 1 of the guidance above) excludes arrangements where people are living in their own owned or rented home. One of the key issues for consideration by the Chief Inspector when examining whether a person's home is in fact their own home is the degree to which the provider is responsible for, and exercises **real and substantial control** over the residential service. Responsibility and control are not primarily about who owns the premises. Rather, the key questions for the provider are service management issues such as who decides which residents will be accommodated in the centre or who decides if the service should be closed for holiday periods. This is considered further in Appendix 1.

4.3 Case Studies

Below are a number of case studies which illustrate the approach which the Chief Inspector may take towards assessing whether individual services must be registered as designated centres under the Act.

Case study No.1

Holiday home — not a designated Centre

Michael's normal place of residence is in a designated centre for children with disabilities located in a suburb of Limerick City. Michael has always expressed his wish to learn to surf in the sea. The registered provider has secured a three-week holiday letting in the summer at a well-serviced resort complex in a seaside location. Michael will live in the holiday letting for three weeks and will be supported by a care worker contracted by the provider. Michael has been able to take whatever clothes and personal belonging he wishes with him and has left the rest back in the designated centre. He has also been able to go shopping to buy some extra clothes for his holiday.

During the day, Michael will spend several hours attending a surf camp where we will learn about water safety and will take beginner swimming and surfing lessons supported by trained staff at the camp. He will have breakfast and dinner at the holiday letting and will eat lunch along with the other attendees at the surf camp. Should he chose to or need to return to his home in the designated centre, Michael is free to do so at any time. The provider has expressed its view that as the holiday letting is for a genuine holiday, it should not be required to apply to register it as a designated centre in line with section 50 of the Health Act 2007 (as amended).

The Chief Inspector's view

The scenario above describes what is clearly a genuine holiday for Michael. The timescale is short and fixed (three weeks). Michael has brought some, but not all, of his clothes and belongings on holiday. He has bought some new clothes for his holiday. During the day, he will be involved in meaningful activities which give effect to his expressed wishes. He will eat some of his meals in the holiday letting and some are provided in the surf camp. If needed, Michael can return to his own home at any time during the holiday. While none of these factors is definitely determinative of a genuine holiday on its own, the overall scenario clearly describes a short-term holiday for Michael. In the view of the Chief Inspector, the holiday letting does not require to be registered by the provider as a designated centre under section 50 of the Health Act 2007 (as amended).

Case study No.2

Holiday home — is a designated centre

Pauline had been a resident in a designated centre for adults with disabilities. Three months ago, Pauline's placement broke down and there was no available place for her when this happened. As an interim measure, the provider placed Pauline in a holiday home which the provider has rented and where Pauline can live with her ongoing support package while an alternative long-term placement is being secured.

Pauline has been living in the holiday home and is provided with the same level of care and support as she had previously been provided in the designated centre. All of her clothes and belongings are located at the holiday home and there is always a member of staff present in the holiday home. The provider has explained that it expects a long-term placement to shortly become available for Pauline at another designated centre for adults with disabilities. In the meantime, the provider is of the view that the holiday home, which is located in a seaside resort complex is a holiday home and does not require to be registered under section 50 of the Health Act 2007, as amended.

The Chief Inspector's view

In this case, the fact the building in question is a holiday home in a seaside resort complex is not determinative of its current use. For the description in the scenario, it is clear that the building is being operated by the provider as a short-to medium-term placement for Pauline. Pauline is provided with a similar level of care and support as those provided in the other designated centres operated by the provider. Pauline's clothes and belongings are all held in the current holiday home building. Pauline cannot return to her previous designated centre, should she choose to do so. There is nothing in the scenario to indicate that this is a genuine holiday for Pauline, following which she can expect to return to a placement in a designated centre. This is not a temporary holiday away from Pauline's home. Rather, Pauline's home has been temporarily moved into a former holiday home. In the view of the Chief Inspector, the holiday home should be registered by the provider as a designated centre in line with section 50 of the Health Act 2007 (as amended).

5. What are residential services for children?

The Act includes two main categories of designated centres provided to children by or on behalf of the Child and Family Agency (**Tusla**).

5.1 An institution that is a special care unit (as defined).

'Special care unit' is defined in the Act as having the meaning assigned to it by Part IVA (as amended by the Child Care (Amendment) Act 2011) of the Child Care Act, 1991.

Section 23A of the Child Care Act, 1991 (as amended) provides that the term 'special care unit' means as follows:

Premises, or a part of premises, comprising secure residential accommodation in which a child, in respect of whom a special care order or an interim special care order has been made, is detained for the purpose of the provision to that child of special care and includes accommodation and facilities required for the provision of special care.

There are a small number of special care units provided in Ireland by Tusla and these are all known to and registered with the Chief Inspector.

5.2 Other residential services for children

The definition of designated centre in the Act also includes other residential services provided for children by or on behalf of Tusla. These include children's residential centres. These are not currently registered or regulated by the Chief Inspector as that section of the Act has not yet been commenced and is not operational.

For reference purposes only, more details of other residential services for children (which are not currently regulated by the Chief Inspector) are set out in Appendix 3.

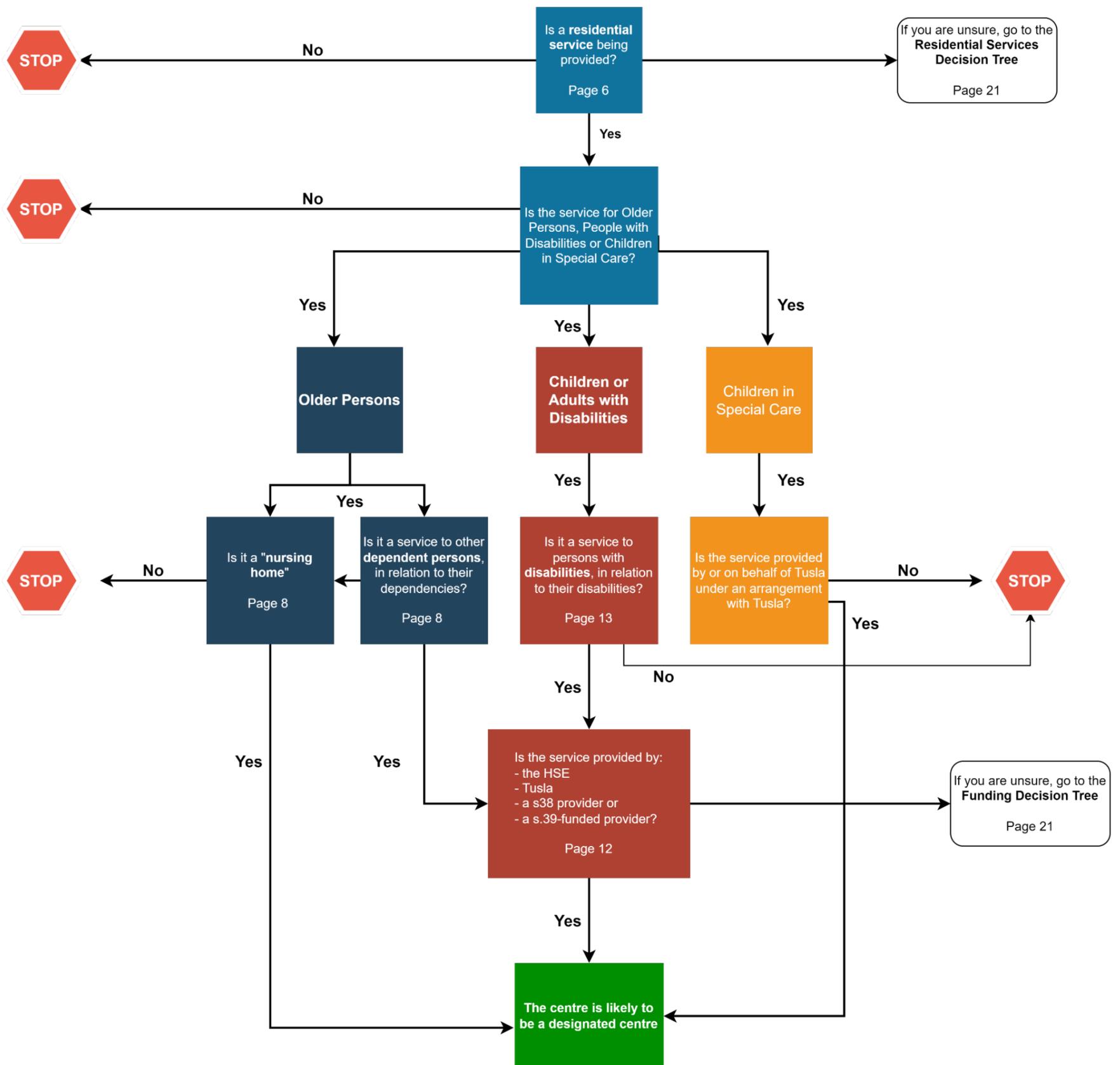
6. How to assess if you are operating a designated centre

In order to determine whether or not a service is a designated centre, each provider should give careful consideration to the legal definitions set out in the Act as well as the information set out in this guidance. To support providers in this process, the Chief Inspector has developed the following decision tools as an aid to assist

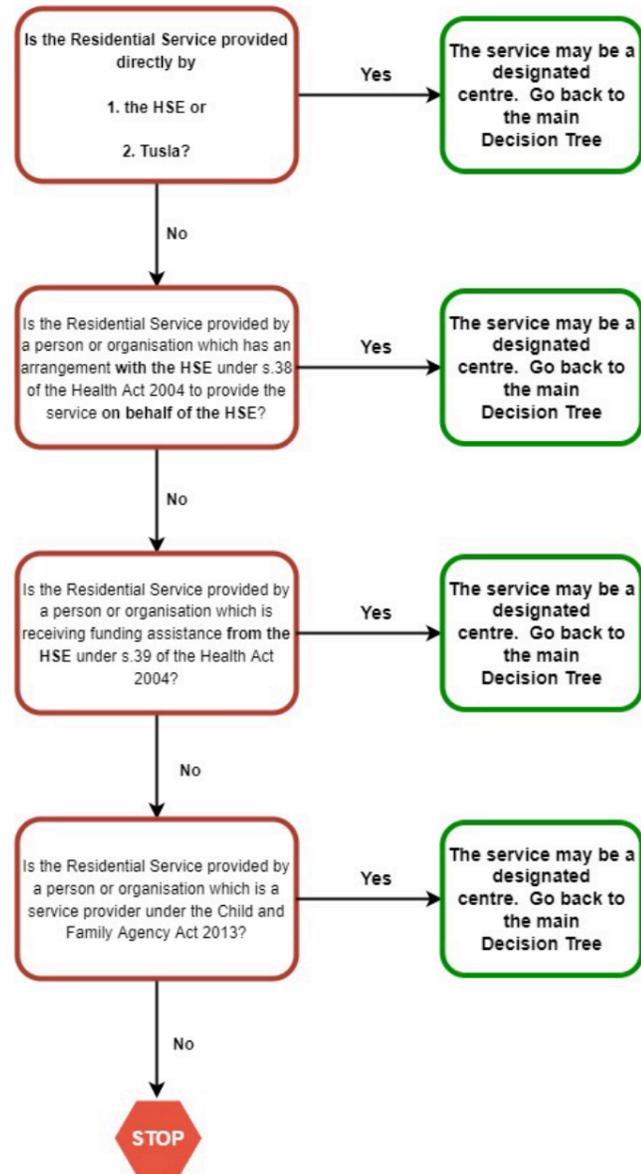
providers.

The tools below consist of three decision trees which help to guide providers through the different elements of the definitions which make up the overall definition of a 'designated centre' in section 2 of the Act. In each case, providers should start at the top box in the decision tree and follow its branches depending on whether the answers to the questions are '**yes**' or '**no**'. If a "stop" sign is reached, that indicates that the service is unlikely to be a designated centre.

Designated Centres - Main Decision Tree

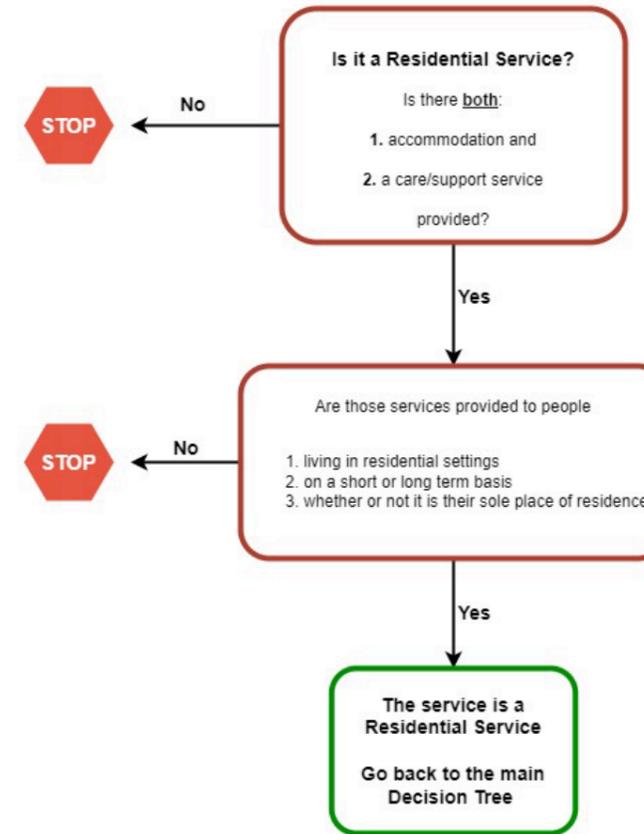


Provider Funding Decision Tree



NOTE: The powers of the Chief Inspector in relation to residential services provided by or on behalf of Tusla, other than special care units, have not yet been commenced and are not operational.

Residential Service Decision Tree



Appendix 1

What residential services are not included as designated centres?

1. Residents' Own Homes

Residential services (as interpreted in section 1 of the guidance above) excludes arrangements where people are living in their own owned or rented home. That is the case whether they live alone or are sharing with others. For example, a person who is living in their family home or in a residence which is owned outright by the person or occupied by the person on the basis of a clearly defined, lawful, meaningful and written tenancy agreement.

Where a person is renting their own home, in order for the tenancy agreement to be considered valid, it must include the conditions of the tenancy arrangements and the rights of the resident. The tenancy agreement must be in writing and the resident must be able to easily understand the agreement.

One of the key issues for consideration by the Chief Inspector when examining whether a person's home is in fact their own home is the degree to which the provider is responsible for, and exercises **real and substantial control** over the residential service. Responsibility and control are not, primarily, about who owns the premises. Rather, the key questions for the provider are service management issues such as; who decides which residents will be accommodated in the centre or who decides if the service should be closed for holiday periods?

The following is a non-exhaustive list of factors which the Chief Inspector would consider relevant when examining where a tenancy arrangement comes within the definition of a "designated centre".

- Is support given by the provider at the times determined by the tenant who is receiving the support service?
- Does the tenant have an unrestricted right of access to all areas of the property, other than their co-tenants' private space (where applicable)?
- Has the tenant the freedom to allow or prohibit the landlord or provider and or staff access to their residence?
- Where there are a number of co-tenants in the same property, has each tenant agreed to live with the other tenant or tenants?

- Where there are a number of existing tenants, are they individually consulted prior to a new tenant moving in?
- The tenant can decide who may visit the centre and when and also decide who may not visit the centre.
- When a tenant wishes to leave the residence, is there suitable assistance to support their move?
- The landlord or the provider does not determine when the centre needs to close; for example, for holidays.

In summary, where residents own their own home or where they have substantial control over their living arrangements and have a lawful tenancy agreement, the living arrangements may not constitute a designated centre.

2. Other exclusions

In addition to any residential services described above that do not meet the definition of designated centre, the Act also sets out a number of exclusions. Under the Act, a service is not a designated centre if it is:

- a centre registered by the Mental Health Commission
- an institution managed by or on behalf of a government minister
- a place where most people are being treated for:
 - acute illness or
 - receiving palliative care
- an institution primarily used for providing:
 - educational
 - cultural
 - recreational
 - leisure social or physical activities
- school arrangements or day care services for children or adults with disabilities

- a children detention school under the Children Act, 2001
- a crèche
- homecare services
- homeless services or hostels
- day care or domiciliary services.

Appendix 2

Definitions from the Disability Act 2005

The Disability Act 2005 defines a 'disability' as follows:

"Disability"

in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment

Section 7(2) of the Disability Act 2005 goes on to further define a 'substantial restriction' as meaning:

"Substantial Restriction"

means a restriction which

(a) is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and

(b) gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ameliorate the disability

Appendix 3

Other residential services for children not currently regulated by the Chief Inspector

The definition of 'designated centre' in section 2 of the Act includes certain institutions at which residential services are provided by Tusla or a service provider (as defined) under the Child Care Act, 1991. Those particular designated centres are not currently registered or regulated by the Chief Inspector as that section of the Act has not yet been commenced and is not operational.

Note: the definition of "service provider" includes a person who is a service provider under the Child and Family Agency Act 2013.

'service provider' means a person who:

- (a) enters into an arrangement under section 38 of the Health Act 2004 to provide a health or personal social service on behalf of the Executive;
- (b) is in receipt of assistance under section 39 of the Health Act 2004 in an amount that exceeds an amount prescribed for the purpose of this subparagraph, or
- (c) is a service provider under the Child and Family Agency Act 2013.

Section 2 of the Child and Family Agency Act 2013 provides that "service provider" for the purposes of that Act means a person who enters into an arrangement with the Child and Family Agency (Tusla) under section 56 (Arrangements with service providers) or 58 (Particular arrangements — special care and residential places)



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Health Information and Quality Authority
George's Court
George's Lane
Smithfield
Dublin 7
D07 E98Y

+353 (0)1 814 7400
info@hiqa.ie
www.hiqa.ie

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