

What constitutes a designated centre for people with disabilities?

Guidance for provider organisations

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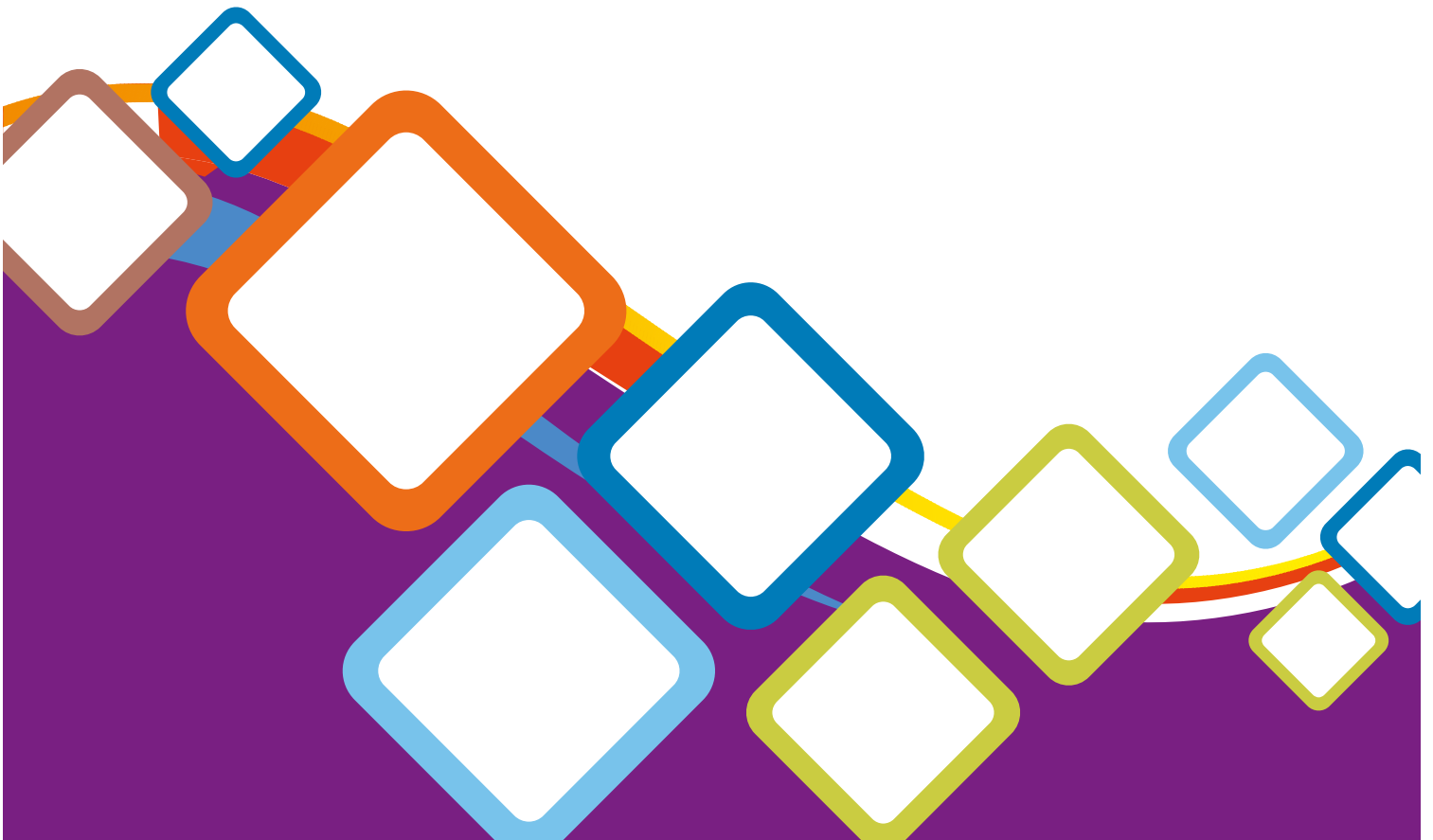


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Introduction

This is a guidance document for registered providers and intending registered providers (providers) of residential services for people with disabilities.

Following the signing of the relevant commencement order by the Minister for Health, HIQA became legally responsible, under the provisions of the Health Act, 2007, as amended (The Act) for the registration and inspection of certain residential services for children and adults with disabilities, including respite services. Services that may come under this remit include HSE-run services and services provided by organisations funded under Sections 38 or 39 of the Health Act 2004. These residential services, including Respite services for children and adults are described as “designated centres” in the Act.

HIQA is aware of the diverse range of residential services for adults and children with disabilities which are currently in operation, such as those operating on large campus settings, dispersed community housing and respite services. Accordingly, this guidance document does not attempt to define and categorise every possible type of service arrangement. Rather, we are aiming to provide guiding principles which will assist providers in assessing which of their services are required to be registered as designated centres.

HIQA fully expects 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. HIQA is committed to working with providers to ensure that each individual circumstance is assessed in a careful and sensitive way through dialogue and positive engagement between HIQA, service providers, people using services and/or their advocates and (when necessary) the HSE as the funder of the service. In such circumstances, providers should discuss the matter with the inspector manager who has responsibility for their area.

The Health Act, 2007 as amended prohibits the operation of a designated centre unless it is registered. Therefore it is essential that you as a provider carefully consider the contents of this guidance document and that you are clear about your requirement to register all services falling within the definition.

Please note: This guidance is intended to assist service providers to identify residential services that require to be registered. The guidance represents the position of HIQA at the time of publication. Nothing in this document is intended to be a definitive interpretation of the law. The document will be revised following enactment of other relevant legislation such as the Assisted Decision Making (Capacity) legislation and Residential Tenancies legislation.

IMPORTANT NOTE: Residents Moving Out of a Designated Centre

HIQA is supportive of current public policy which is aimed at facilitating residents to move from congregated settings to more appropriate living arrangements.

As part of this policy, residents may move from a designated centre to another residential arrangement. It is the responsibility of the provider to identify whether the new residential arrangement constitutes a designated centre or not.

Where residents are moving to a residential arrangement that is not a designated centre, the person in charge is required to comply with Regulation 25 (3) and (4) of the Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013 during the transition and discharge period. HIQA acknowledges that this may include a number of months where additional staffing is required in the new living arrangements to support the person during this transition period.

Importantly, if residents are transferring from one designated centre to another, they cannot transfer to the new designated centre until, in accordance with the Act, it has been registered by HIQA.

HIQA also recognises that when appropriate supports are provided, residents have the potential to develop independent living skills and as a consequence may no longer need to live in a designated centre. Where providers believe that a residential service is no longer a designated centre, they must inform the registration office in HIQA.

1. What is the statutory definition of a designated centre?

Section 2(1) of the Health Act 2007 defines a 'designated centre' as

"an institution

- (a) at which residential services are provided by the Executive, a service provider or a person that is not a service provider but who receives assistance under section 39 of the Health Act 2004 or under section 10 of the Child Care Act 1991 -
 - (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 nursing home as defined in Section 2 of the Health (Nursing Homes) Act 1990".

The Act states that an institution "means a home, centre or institution or part of a home, centre or institution". The term is used in the Act to refer to residential services that are designated centres operated by the HSE and by 'service providers' (defined as organisations funded under either section 38 or section 39 of the Health Act, 2004). However, it should be noted that not all residential services that receive section 38 or section 39 funding are necessarily designated centres.

The term institution includes a broad range of residential settings for people with disabilities which may include campus based services, community-based housing (including group homes), single occupancy residential units as well as large, single site residential settings.

The objective of this guidance document is to assist providers to identify which of their residential services fall within the definition of designated centre.

2. What are the criteria for identifying a designated centre for people with disabilities?

For a residential service to be considered a designated centre for people with disabilities under section 2(1)(a) of the definition, the following criteria must be met:

- The residential service must meet the definition of designated centre as set out in the Health Act 2007.
- It must provide residential services¹ to children and/or adults with disabilities,
- These residential services must be in relation to residents' disabilities², and
- these residential services must be provided by:
 - the HSE, **or**
 - by a provider who has entered into an arrangement under section 38 of the Health Act 2004 to provide personal social services on behalf of the Executive, **or**
 - by a provider who receives assistance under section 39 of the Health Act 2004.

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.

¹ See Section 3 below

² "Disability" as defined in the Disability Act 2005, "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."

3. What 'residential services' are excluded?

The legislation does not provide an explicit definition of the term "residential services". In the considered view of HIQA, the term "residential services" should be interpreted as involving both an accommodation component and a care/support component. In practice, this interpretation means that:

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

HIQA 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 service providers, approved housing bodies, local authorities or via renting from private landlords.

Residential services, as interpreted above, excludes arrangements where people are living in their own home; either alone or 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.

In this context, HIQA recognises that legislation relating to residential tenancies and assisted decision making is currently under consideration. In the interim of this legislation being enacted, HIQA has provided some general guidelines in relation to describing what a lawful, meaningful and written tenancy agreement is.

For a tenancy agreement to be lawful, it must include the conditions of the tenancy arrangements and the rights of the resident. As a lawful tenancy agreement cannot be signed by others on behalf of the resident, the agreement must be written so that the resident can easily understand the agreement.

One of the key issues for consideration 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 service provider concern 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.

In deciding whether a tenancy agreement is meaningful, providers should consider the following:

- Is support provided at the times suitable and agreed by the tenant?

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- Has the tenant access to all areas of the property, other than co-tenants private space (where applicable)?
- Has the tenant the freedom to allow or prohibit the landlord or service provider/staff access to their residence?
- Where there are a number of tenants has each tenant agreed to living with the other tenant(s)?
- Where there are a number of existing tenants, are they individually consulted prior to a new tenant moving in?
- When a tenant wishes to leave the residence are there suitable supports to support their move?

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 do not constitute a designated centre. Where this is not the case, the residential service is a designated centre, regardless of ownership of the property and the provider is the person or organisation providing the care/support services.

4. What services are not designated centres?

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:

- registered by the Mental Health Commission (a centre registered by the Mental Health Commission is defined in Section 62 of the Mental Health Act 2001 as 'a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder')
- that part of an institution in which the majority of people are being treated for acute illness or provided with palliative care, (for example, an acute hospital)
- an institution primarily used for the provision of education, cultural, recreational, leisure, social or physical activities, (for example, a boarding school or a house rented for short periods to provide activity holidays)
- an institution managed by or on behalf of a Minister of the Government
- a children's detention school as defined in section 3 of the Children Act 2001.

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

In order to determine whether or not a residential service is a designated centre or otherwise, you should give careful consideration to the information in this guidance and ask yourself the following questions:

- ✓ Does your residential service fall within the **statutory definition** set out in section 1 of this guidance?
- ✓ Does your residential service meet the **associated criteria** set out in section 2?
- ✓ Have you given due consideration to the **residential services** that are excluded as set out in section 3?
- ✓ Does your residential service meet any of the **criteria for exemption** set out in section 4?

5. Registration of combined residential services as a single designated centre.

HIQA recognises that in some instances, it is more efficient and effective 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.

HIQA may consider such reasonable proposals if the proposed designated centre meets the following criteria:

- the number of residential services are usually no more than five
- 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)
- the post of person in charge is full-time, and is responsible for the day-to-day operational management of the residential services
- the person in charge has the capacity and capability to ensure the proper governance and oversight of the services.
- 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)
- there is a common statement of purpose for the residential services.

In relation to single site/congregated settings, providers should consider whether such services can be described in a common statement of purpose. If a single statement of purpose proves difficult to develop due to, for example, the presence of diverse services on the site responding to a wide range of service users/residents, then it is likely the case that there are two or more designated centres on the site, each requiring separate registration. In such situations, the provider should identify the residential services that can be combined to form each of the proposed designated centres within the setting.

7. References

- Health Act 2007, as amended (The Act)
- Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013
- Health Act 2004
- Disability Act, 2005
- Health (Nursing Homes) Act 1990
- Mental Health Act, 2001

8. Further information

If you have any further questions about this guidance document or any element of the regulation of residential centres for children and adults with disabilities, please contact us:

- by email at info@hiqa.ie
- by phone at 01 814 7400
- in writing at:
Health Information and Quality Authority, Unit 1301 City Gate, Mahon, Cork.

Feedback

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