

Force Majeure and DCEDIY Funding agreements

Dear Service providers,

We are writing to you to clarify the meaning of the Force Majeure clauses in the Department's various funding agreements – ECCE, NCS, CCSP and Core Funding.

Force Majeure is a facility which allows a party to suspend or terminate the performance of its obligations under a contract or agreement when circumstances beyond their control arise, for example extreme weather. The Department may continue to provide funding to service who close for Force Majeure reasons.

The Force Majeure clauses in the funding agreements set out examples of reasons why services may need to seek Force Majeure, including, **but not limited** to acts of God, inclement weather, flood, lightning, fire, acts or omissions of third parties for whom the Affected Party is not responsible.

The funding agreements for the 2022/23 programme year have recently been published, and we are aware that some providers are concerned with an amendment made to the Force Majeure clause. The change is the removal of a number of examples of circumstances under which a Force Majeure application could be made including trade disputes, strikes, lockouts, acts of terrorism, war, military operations, epidemic, pandemics epidemic, pandemic.

The examples above were removed as Force Majeure may not be the best way to support services who were forced to close in such circumstances. As with the Covid-19 pandemic, the Department would tailor our response to any future circumstances such war, epidemic or pandemic in line with the broader Government response, putting the Department in the best position to support and advise service providers in challenging times.

When services were required to close in March 2020 due to Covid-19, the Department did not require each service to apply for Force Majeure but introduced a dedicated funding scheme, the Temporary Wage Subsidy for Childcare Scheme (TWSCS), which provided support for payroll and overhead costs. Over €1billion has been distributed to providers over the course of the last 2 years in Covid-19 supports for the early learning and childcare sector. This would not have been possible if Force Majeure was the basis for continuing funding following the closure of services in March 2020.

As the Force Majeure clause lists **examples** of reasons for providers to close their services, providers would be able to apply for Force Majeure if they are forced to close for **any reason outside of their control**, including industrial action, war, epidemic and pandemic in addition to the usual reasons of power outages or extreme weather.

Providers can continue to apply for Force Majeure funding if they have to close for pandemic reasons, eg if directed by the HSE.

We apologise for any concerns which were caused by the change to the Force Majeure clause in the 2022/23 funding agreements, and we would remind all providers and representative bodies that we are available to answer any queries on the funding agreements or other issues by email to eyqueries@equality.gov.ie.

Early Years Division