



Education Report: Amendments to Education (Early Childhood Services) Regulations to accommodate Crown acquisition of land and network approval

To:	Hon Chris Hipkins, Minister of Education		
Date:	15 December 2022	Priority:	High
Security Level:	In Confidence	METIS No:	1300975
Drafter:	Kahu Rapira-Davies	DDI:	04 463 8105
Key Contact:	Paul Scholey	DDI:	9(2)(a)
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper seeks your agreement to publicly consult on proposed changes to the Education (Early Childhood Services) Regulations 2008 ('the regulations'). These proposals address the following issues:

- i. enabling the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquired by the Crown; and
- ii. clarifying that the new network approval provisions can be taken into account when considering an application to amend an existing licence.

The proposals for regulatory changes are set out in the attached draft consultation document.

Summary

- 1 On 16 September 2022 [METIS 1293352 refers] you agreed to amend the regulations to enable an existing licensed early childhood service situated on land acquired by the Crown under the Public Works Act 1981 to permanently relocate without requiring an application for network approval. You also agreed to consult on this proposal, with the regulatory changes coming into effect after commencement of the network approval provisions on 1 February 2023.
- 2 9(2)(h)
- 3 In response to these issues, we propose a four-week public consultation on the following amendments to regulation 33 of the regulations:

- i. creating a narrow exception to enable the licence for an existing early childhood education and care centre ('ECE centre') to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquired under Part 2 of the Public Works Act 1981 or Part 5 of the Urban Development Act 2020.
 - ii. enabling the Secretary to consider, to the extent relevant, any matter referred to in regulation 11(1) (granting of a probationary licence) and regulation 13 (granting of a full licence) when considering applications to amend a licence, and not only in cases where a change in the identity of the service provider is sought.
 - iii. confirming that the Secretary can take the network approval provisions into account when considering applications to amend an early childhood service licence.
- 4 Following consultation, we will provide you with a draft Cabinet paper outlining feedback and seeking Cabinet approval for the final policy settings and to issue drafting instructions to the Parliamentary Counsel Office for the regulatory amendments.
- 5 Note that timing is tight, given the decisions around RiverLink and the network approval commencement date of 1 February 2023 (as outlined in earlier advice, the regulatory changes will be implemented after the commencement of network management). ECE centres on land acquired under the Public Works Act or Urban Development Act that relocate between 1 February 2023 and the implementation of these proposed regulatory changes would still need to seek network approval.

Recommended Actions

We recommend that you:

- a **note** that in September 2022, you agreed to consult on and seek policy and legislative decisions around amending the Education (Early Childhood Services) Regulations 2008 to enable an existing service situated on land acquired by the Crown under the Public Works Act to permanently relocate without requiring an application for network approval.

Noted
- b **note** that while the Secretary can take the network approval provisions in the Education and Training Act 2020 into account when making a decision on whether to amend a licence under regulation 33(1) of the Education (Early Childhood Services) Regulations 2008, there is merit in clarifying and strengthening this in the Regulations.

Noted
- c **agree** to undertake a four-week public consultation on proposed amendments to section 33 of the Education (Early Childhood Services) 2008, starting in early 2023.

Agree / Disagree

- d **agree** to consult on a proposal to amend regulations to create a narrow exception to enable the licence for an existing licensed early childhood education and care centre ('ECE centre') to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquired under either Part 2 of the Public Works Act 1981 or Part 5 of the Urban Development Act 2020.

Agree / Disagree

- e **agree** to consult on a proposal to amend regulations to enable the Secretary to consider, to the extent relevant, any matter referred to in regulations 11(1) and 13 when considering all applications to amend a licence (including moving to a new premises) and not only in cases where a change in the identity of the service provider is sought.

Agree / Disagree

- f **agree** to consult on a proposal to amend regulations to reflect the following proposed policy settings for enabling the licence for an existing ECE centre to be amended, without requiring an application for network management, where the ECE centre has to permanently relocate because its land has been acquired by the Crown:

- i. The amended regulation will apply only to licensed early childhood education and care centres.

Agree / Disagree

- ii. The relocated ECE centre must be located in the same proximate geographical area as the existing centre and serve the same or similar enrolled families or community. Proximity will be determined by the Secretary for Education on a case-by-case basis.

Agree / Disagree

- iii. The size of the relocated ECE centre and the number of child places accommodated should not be materially different to the existing centre.

Agree / Disagree

- iv. The application for an amendment must be made no less than 30 working days of the intended operational date of the new premises.

Agree / Disagree

- v. The application for permanent relocation must be made prior to any relocation and continuation of the ECE centre (which regulation 33(1) anticipates), or if the licensed ECE centre will be unable to continuously operate, the application must be made no later than three months from the date it is unable to continue operating at its current location.

Agree / Disagree

- g **agree** to consult on a proposal to amend the regulations to clarify that the Secretary for Education can take into account network approval provisions when assessing applications to amend an early childhood service licence.

Agree / Disagree

- h **agree** to release the discussion document attached in Appendix 1 for public for public consultation subject to any minor editorial, formatting and layout changes required.

Agree / Disagree

- i **agree** that this education report is proactively released after the consultation document is released, with any information that may need to be withheld done so in accordance with the Official Information Act 1989.

Release / Not release

P. Scholey

Paul Scholey
Senior Policy Manager
Te Puna Kaupapahere

15/12/2022

Hon Chris Hipkins
Minister of Education


____/____/____

Background

1 On 16 September [METIS 1293352 refers] we provided you with initial advice on options when the Crown acquires land (under the Public Works Act 1981) occupied by licensed early childhood services. In response to this advice, you agreed to amend the Education (Early Childhood Services) Regulations 2008 ('the regulations') to enable the licence for an existing early childhood service to be amended, without requiring an application for network approval, where the services has to permanently relocate because its land has been acquired under the Public Works Act 1981.

2 You also agreed to consult on and seek policy and legislative decisions separately before the end of the year, but with the change coming into effect after 1 February 2023.

3 9(2)(h)



4 This paper covers each of these issues and sets out proposals to amend the regulations to address them. We also seek approval to publicly consult on these proposals.

Crown acquisition of land occupied by a licensed early childhood education and care centre

5 Under current regulations, from 1 February 2023 any licensed early childhood service that has a premises compulsorily acquired by the Crown will be required to seek network approval when moving to the new premises. We provided you with options to respond to this matter [METIS 1293352 refers] and you agreed to regulatory changes to provide clarity to any services that face compulsory acquisition in the future.

Background

6 When the Committee of the whole House was considering the Education and Training Amendment Bill (No 2), a Supplementary Order Paper (SOP) was lodged by the National Party seeking to exclude from the network approval provisions any licensed early childhood service whose premises were acquired for public works under the Public Works Act.

7 The SOP was specifically introduced to support Little Footprints, an ECE centre in Lower Hutt whose land was acquired by the Crown under the Public Works Act as part of the RiverLink project. Three other affected licenced early childhood centres were also identified. The proposed SOP would have meant these service providers would not need to apply for network approval when relocating the early childhood service.

8 The SOP was not supported by the Committee of the whole House.

9 You have indicated your preference to amend the regulations to allow a permanent change to location for any licenced early childhood service impacted by the Public Works Act. You also agreed to consult on and seek policy and legislative decisions separately, with the regulatory changes coming into effect after the commencement of the network approval provisions on 1 February 2023.

Options for amending the regulations

- 10 We are seeking to minimise changes to the regulations and to ensure any changes improve clarity and accessibility of the regulations. We anticipate the proposals will involve changes mainly to regulation 33, however this would be subject to drafting by the Parliamentary Counsel Office.
- 11 The option that minimises change to the regulations also provides the most clarity to providers. This option would alter regulation 33(5) of the Education (Early Childhood Services) Regulations. Currently, this regulation states that a licence may not be amended to authorise a service provider to move to new premises.
- 12 We also considered an option to use a provisional licence to enable an early childhood to relocate. However, putting a service on a provisional licence may result in concern from the sector due to accruing a negative licensing history (despite our ability to disregard), particularly if applying for network approval in the future. This option would also require changes to regulation 16 as well as regulation 33 which does not meet an aim to minimise change to the regulations.
- 13 We recommend amending regulation 33(5) to create a narrow exception enabling the licence for an existing licenced early childhood education and care centre (ECE centre) to be amended, without requiring an application for network approval, where the service has been acquired for public works or urban development. We have reviewed the relevant legislation and determined that this should apply to all Crown acquisition under either Part 2 of the Public Works Act 1981 or Part 5 of the Urban Development Act 2020¹.
- 14 It is important to focus on all “land acquisition” performed under the Public Works Act and Urban Development Act and not only compulsory acquisition, as the latter would not encompass agreed acquisitions. For instance, if this was not included, it could be in an ECE centre’s best interest not to negotiate a settlement and to wait to be compulsory acquired so that the service can permanently relocate without acquiring an application for network approval.
- 15 Clarifying that assessments for a licence amendment, including where an ECE centre is required to move to a new premises, may be to the same level as for a probationary or full licence assessment will give assurance to parents that the new premises meets the regulated requirements. As such, we also recommend amending regulation 33 to enable the Secretary for Education to consider, to the extent relevant, the matters referred to in regulation 11(1) (granting of a probationary licence) and regulation 13 (granting of a full licence) when considering any application to amend a licence (including moving to new premises). Currently, these matters can only be considered when the application relates to a change of service provider identity.
- 16 Reference to regulations 11(1) and 13 for all applications to amend a licence will allow the following licensing requirements to be taken into account:
 - i. Qualifications
 - ii. Ratios
 - iii. Service size
 - iv. Premises and facilities standards
 - v. Curriculum delivery standards
 - vi. Health and safety practices standards
 - vii. Governance, management and administration standards

¹ While the previous paper [METIS 1293352 refers] only mentioned the Public Works Act, we have determined that Crown acquisition under the Urban Development Act may also impact an ECE centre and as such is in-scope for this regulatory amendment.

viii. Fit and proper status.

17 We also propose several restrictions are built into the amended regulation:

- i. The amended regulation will apply only to licensed early childhood education and care centres. This is because:
 - hospital-based centres are only licensed to be within a hospital, so it is unlikely they will be acquired for public works under the Public Works Act or Urban Development Act; and
 - while a home used in a home-based service may be acquired, it is not material to the licence because addresses are not listed on the licence. As such, any acquisition of a home under the Public Works Act or Urban Development Act would not require a new licence application, and therefore would not trigger the requirement to seek network approval.
- ii. The relocated ECE centre must be located in the same proximate geographical area as the existing ECE centre and serve the same or similar enrolled families or community. Proximity will be determined by the Secretary for Education on a case-by-case basis. This requirement aims to ensure the legislative intent of network approval is not undermined and the impact on whānau is minimised so a service cannot move to another area too far away from their current enrolled families.
- iii. The size of the relocated ECE centre and the number of child places accommodated should not be materially different to the existing licensed early childhood education and care centre. The regulation change needs to provide some flexibility in the number of child places (as the new premises may not be the exact same size as the existing premises), without being too open that it increases the number of child places locally in the network in a way that undermines network approval.
- iv. The application for permanent relocation must be made prior to any relocation and continuation of the ECE centre (which regulation 33(1) anticipates), or if the ECE centre will be unable to continuously operate, the application must be made no later than three months from the date it is unable to continue operating at its current location. This is intended to avoid an amendment being used to revive an empty licence as well as to help ensure business continuity and minimal disruption for whānau.
- v. The application for an amendment must be made no less than 30 working days of the intended operational date of the new premises². This is to allow the Ministry time to consider the request.

We have identified a need to clarify that network approval provisions can be taken into account when assessing applications to amend a licence

18 As part of our work to implement network management we have identified a potential risk with regulation 33 of the Education (Early Childhood Services) Regulations 2008. We believe that current regulations, which pre-date the introduction of network approval, are not sufficiently clear that the Secretary can take network approval provisions into account when assessing applications to amend a licence.

² This timeframe is consistent with voluntary temporary closures.

Options analysis also supports changing the regulations

- 22 We have considered the impact of no regulatory change. However, the status quo presents a risk as there is still scope for disagreement (even of an unmeritorious nature) due to the broad nature of the Secretary's discretion. The table below contains the results of the options analysis using three assessment criteria. .

Assessment criteria	Option one – status quo (don't clarify)	Option two – clarify regulations
Maintains accessible provision	0	0
Provides clarity to providers	0	++
Enables more effective managing of the ECE network	0	0
Overall assessment	0	2

We propose amending the regulations to clarify the Secretary can take network approval provisions into account

- 23 Taking into account the legal advice and our options analysis, we recommend amending the regulations to explicitly authorise the Secretary to take the network approval provisions into account when deciding whether to amend a licence.
- 24 We envisage this change may be through an amendment to regulation 33, but this would be subject to Government decisions and Parliamentary Counsel Office drafting.

Next steps

- 25 Subject to your approval, the Ministry will undertake a four-week public consultation on the proposed changes to the licensing regulations, starting in early 2023. We believe a four-week consultation period is most appropriate to allow prompt regulatory changes that will provide clarity to the sector. We also note that these changes are technical and likely to only bear relevance to a limited number of stakeholders.
- 26 The public and sector will have the opportunity to share their views on the proposed changes through an online survey, email and/or participation in online hui. A draft consultation document covering the proposed regulatory changes is attached to this paper (see Appendix 1).
- 27 We will also use the Ministry's standard communication channels to inform the public and sector of the consultation, including He Pānui Kōhungahunga | Early Learning Bulletin and Education Conversation | Kōrero Mātauranga.
- 28 Following consultation, we will provide you with a draft Cabinet paper in late February 2023 outlining the public and sector feedback and seeking Cabinet approval for the final policy settings and drafting instructions for the regulatory amendments. We propose the final version of this paper will be taken to the Social Wellbeing Committee.
- 29 Working with your office we have developed a detailed indicative timeline for these proposed regulatory changes and the key actions and dates are set out below. This timeline is based on the earliest possible dates for public consultation in 2023; we will provide your office with confirmed timings subject to any decision you make, and confirmation of the Cabinet Committee sitting schedule for 2023.

Action	Timing
Public consultation	Monday 16 January to Friday 10 February 2023
Draft Cabinet paper to Minister	Friday 24 February
Lodging for Social Wellbeing Committee	Thursday 23 March
Social Wellbeing Committee	Wednesday 29 March
Lodging for Cabinet Legislation Committee	Thursday 1 June
Regulations considered by Cabinet Legislation Committee	Thursday 8 June
Cabinet	Monday 12 June
Executive committee	Monday 12 June
Regulation amendments gazetted	Tuesday 13 June
Regulations come into force	Wednesday 12 July

Appendices

- Appendix 1: Consultation: Amendments to Education (Early Childhood Services) Regulations 2008 to accommodate Crown acquisition of land and network approval

Proactively Released