

## Cabinet Paper material

### Proactive release

Minister & portfolio	Hon Jan Tinetti, Minister of Education Hon Jo Luxton, Associate Minister of Education
Name of package	Amendments to regulation 33 of the Education (Early Childhood Services) Regulations 2008
Date considered	24 July 2023
Date of release	21 August 2023

#### **These documents have been proactively released:**

##### **Cabinet Paper: Amendments to regulation 33 of the Education (Early Childhood Services) Regulations 2008**

Date considered: 24 July 2023

Author: Ministry of Education

##### **Appendix: Education (Early Childhood Services) Amendment Regulations 2023**

Date considered: 24 July 2023

Author: Ministry of Education

##### **Cabinet Legislation Committee Summary LEG-23-SUB-0121**

Date considered: 24 July 2023

Author: Committee Secretary

##### **Cabinet Legislation Committee Minute LEG-23-MIN-0121**

Date considered: 24 July 2023

Author: Committee Secretary

##### **Cabinet Minute CAB-23-MIN-0316**

Date considered: 24 July 2023

Author: Secretary of the Cabinet

#### **Material redacted**

Some deletions have been made from the documents as the information withheld does not fall within scope of the Minister's portfolio responsibilities, and is not relevant to the proactive release of this material.

You can read the Official Information Act 1982 here:

<http://legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

**In Confidence**

Offices of the Minister of Education and Associate Minister of Education

Cabinet Legislation Committee

**Amendments to regulation 33 of the Education (Early Childhood Services) Regulations 2008**

**Proposal**

- 1 This paper seeks authorisation to submit the Education (Early Childhood Services) Amendment Regulations 2023 to the Executive Council.

**Policy**

- 2 Regulation 33 of the Education (Early Childhood Services) Regulations 2008 covers all requirements related to the amendment of an early childhood service licence.
- 3 Cabinet has recently agreed to amend regulation 33 to better align with the new network approval function in the Education and Training Act 2020 for licensed early childhood services [CAB-23-MIN-0164 refers].
- 4 The draft Education (Early Childhood Services) Amendment Regulations 2023 (see Annex 1) give effect to Cabinet's decisions to:
  - 4.1 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 ECE centre has to permanently relocate because its land has been acquired by the Crown and where it relocates to premises in the same proximate area and of a similar size; and
  - 4.2 clarify that the new network approval provisions will be taken into account when considering an application to amend an existing licence; and
  - 4.3 enable the Secretary for Education to consider, to the extent relevant, any matter referred to in regulations 11(1) and 13 (grounds for grant of probationary or full licence) when considering all applications to amend a licence.
- 5 Cabinet authorised me to make any minor or technical decisions on any matters that may arise during the drafting process without further reference to Cabinet, subject to the decisions being consistent with Cabinet's decisions.
- 6 As such, additional amendments have been made to the draft regulations to reinforce the intent of the policy that services should move to new premises promptly to minimise the disruption to families and the community. The additional amendments clarify that the application to amend the licence must be a complete application and that the application must be made no more than 90 days and no less than 30 working days before the intended operational date of the new premises. This works alongside

the requirement that an application must be made no later than three months after the centre ceases to operate at the existing premises.

### **Timing and 28-day rule**

- 7 I propose that the amendments come into force by 28 August 2023. This is in line with the 28-day rule. Subject to Cabinet's approval, I recommend that the proposed amendments be submitted to the Executive Council following Cabinet approval.

### **Compliance**

- 8 There are no inconsistencies between the Education (Early Childhood Services) Amendment Regulations 2023 and:
- 8.1 the principles of the Treaty of Waitangi;
  - 8.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 8.3 the principles and guidelines set out in the Privacy Act 2020;
  - 8.4 relevant international standards and obligations, for example, the United Nations Convention on the Rights of Persons with Disabilities; and
  - 8.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation and Advisory Committee.
- 9 No consultation requirements relate to these proposals, but these proposals were consulted on from January to February 2023.

### **Regulations Review Committee**

- 10 There are no grounds identified under Standing Order 327 where the Regulations Review Committee could draw these regulations to the special attention of the House.

### **Certification by Parliamentary Counsel**

- 11 The Education (Early Childhood Services) Amendment Regulations 2023 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

### **Impact Analysis**

- 12 A Regulatory Impact Statement was submitted at the time that Cabinet approval was sought of the policy relating to the amendments. This is available at:  
<https://www.education.govt.nz/early-childhood/running-a-service/starting-a-service/network-management/#ris>

### **Publicity**

- 13 Once the regulations are notified in the Gazette, the Ministry of Education will inform all early learning providers through the Early Learning Bulletin – an online

publication sent to all licensed services and available on the Ministry of Education website.

### Proactive release

- 14 I propose to release this paper proactively following submission to the Executive Council. Proactive release will be subject to redaction as appropriate under the Official Information Act 1982.

### Consultation

- 15 The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Ministry of Business, Innovation and Employment, Ministry of Social Development, Office for Disability Issues, Ministry of Health, Ministry of Justice, Te Arawhiti, Oranga Tamariki, Education Review Office, Teaching Council and the New Zealand Qualifications Authority have been informed and/or consulted.

### Recommendations

I recommend that Cabinet Legislation Committee:

- 1 **note** that on 3 May 2023 the Cabinet Social Wellbeing Committee agreed to amend regulation 33 of the Education (Early Childhood Services) Regulations 2008 [CAB-23-MIN-0164 refers] to:
  - 1.1 enable the licence for an existing licensed early childhood education and care 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; and
  - 1.2 clarify that the new network approval provisions will be taken into account when considering an application to amend an existing licence; and
  - 1.3 enable the Secretary for Education to consider, to the extent relevant, any matter referred to in regulations 11(1) and 13 (grounds for grant of probationary or full licence) when considering all applications to amend a licence.
- 2 **note** that the Education (Early Childhood Services) Amendment Regulations 2023 give effect to the decisions referred to in recommendation 1 above;
- 3 **note** that an additional amendment was made to clarify that services must submit a complete application and that it must be submitted so that their new premises are operational within a reasonable timeframe so as to minimise the impact on parents
- 4 **authorise** the submission to the Executive Council of the Education (Early Childhood Services) Amendment Regulations 2023; and
- 5 **note** that the Education (Early Childhood Services) Amendment Regulations 2023 will come into force by 28 August 2023.

Authorised for lodgement

Hon Jan Tinetti

Minister of Education

Authorised for lodgement

Hon Jo Luxton

Associate Minister of Education

**Education (Early Childhood Services) Amendment  
Regulations 2023**

**Order in Council**

At Wellington this                      day of                      2023

Present:  
in Council

These regulations are made under section 636 of the Education and Training Act 2020 on the advice and with the consent of the Executive Council.

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**Regulations**

- 1

**Title**  
These regulations are the Education (Early Childhood Services) Amendment Regulations 2023.
- 2

**Commencement**  
These regulations come into force on 28 August 2023.

**3 Principal regulations**

These regulations amend the Education (Early Childhood Services) Regulations 2008.

**4 Regulation 33 amended (Amendment of licences)**

(1) After regulation 33(1)(c), insert:

- (d) the service provider—
  - (i) wants to move permanently to new premises; and
  - (ii) meets the requirements of subclause (7).

(2) In regulation 33(4A), replace “subclause (4)” with “subclause (2) or (4)”.

(3) Replace regulation 33(5) with:

(5) When assessing an application to amend a licence under subclause (2) or (4), the Secretary must consider the matters that the Secretary considers relevant in—

- (a) sections 17(2) and 17A of the Act; and
- (b) regulation 9 of the Education (Early Childhood Services Network Approval) Regulations 2022.

(6) Subclause (5) does not apply to—

- (a) an application to amend a licence for an excluded early childhood education service; or
- (b) the part of an application that seeks to amend a licence to authorise the service provider to move permanently to new premises.

(7) The Secretary may amend a licence to authorise the service provider to move permanently to new premises if, and only if,—

- (a) the service provider’s existing premises are situated on land acquired under—
  - (i) Part 2 of the Public Works Act 1981; or
  - (ii) Part 5 of the Urban Development Act 2020; and
- (b) the relevant application is complete and submitted—
  - (i) no later than 90 days after the date on which the service ceases to operate at the existing premises; and
  - (ii) no more than 90 days before, and no less than 30 working days before, the intended operating date of the service at the new premises; and
- (c) the Secretary considers that—
  - (i) the new premises are located in the same proximate geographical area as the existing premises and serve the same or similar enrolled families or community; and

- (ii) the physical size of the new premises and the number of children that can be accommodated within the premises are not materially different to the size and capacity of the existing premises.

Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 28 August 2023, amend the Education (Early Childhood Services) Regulations 2008 to—

- clarify the matters that the Secretary for Education must consider when assessing an application to amend the licence of a service provider;
- specify the circumstances in which a licence may be amended to authorise a service provider to move permanently to new premises.

### Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 30 March 2023 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://www.education.govt.nz/early-childhood/running-a-service/starting-a-service/network-management/#ris>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Education.





# Cabinet Legislation Committee

## Summary

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Amendments to regulation 33 of the Education (Early Childhood Services) Regulations 2008

Portfolio

Education

In May 2023, the Cabinet Social Wellbeing Committee agreed to amend regulation 33 of the Education (Early Childhood Services) Regulations 2008 to better align with the new network approval function in the Education and Training Act 2020 for licensed early childhood services [SWC-23-MIN-0038].

This paper seeks authorisation for submission to the Executive Council of the Education (Early Childhood Services) Amendment Regulations 2023, which give effect to the decisions above. Additional amendments have been made to clarify that the application to amend the licence for an existing early childhood education and care centre must be a complete application and that the application must be made no more than 90 days and no less than 30 working days before the intended operational date of a new premises.

#### The Minister of Education and Associate Minister of Education recommends that the Committee:

- 1 note that in May 2023, the Cabinet Social Wellbeing Committee agreed to amend regulation 33 of the Education (Early Childhood Services) Regulations 2008 to:
  - 1.1 enable the licence for an existing licensed early childhood education and care 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;
  - 1.2 clarify that the new network approval provisions will be taken into account when considering an application to amend an existing licence;
  - 1.3 enable the Secretary for Education to consider, to the extent relevant, any matter referred to in regulations 11(1) and 13 (grounds for grant of probationary or full licence) when considering all applications to amend a licence;

[SWC-23-MIN-0038]
- 2 note that the Education (Early Childhood Services) Amendment Regulations 2023 give effect to the decisions referred to in paragraph 1 above;

- 3 note that an additional amendment was made to clarify that services must submit a complete application and that it must be submitted so that their new premises are operational within a reasonable timeframe so as to minimise the impact on parents;
- 4 authorise the submission to the Executive Council of the Education (Early Childhood Services) Amendment Regulations 2023 [PCO 25622/9.0];
- 5 note that the Education (Early Childhood Services) Amendment Regulations 2023 will come into force by 28 August 2023.

Rebecca Davies  
Committee Secretary

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**Hard-copy distribution:**  
Cabinet Legislation Committee  
Minister of Education  
Associate Minister of Education



# Cabinet Legislation Committee

## Minute of Decision

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### Amendments to regulation 33 of the Education (Early Childhood Services) Regulations 2008

Portfolio                      Education

On 20 July 2023, the Cabinet Legislation Committee:

- 1        **noted** that in May 2023, the Cabinet Social Wellbeing Committee agreed to amend regulation 33 of the Education (Early Childhood Services) Regulations 2008 to:
  - 1.1      enable the licence for an existing licensed early childhood education and care 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;
  - 1.2      clarify that the new network approval provisions will be taken into account when considering an application to amend an existing licence;
  - 1.3      enable the Secretary for Education to consider, to the extent relevant, any matter referred to in regulations 11(1) and 13 (grounds for grant of probationary or full licence) when considering all applications to amend a licence;

[SWC-23-MIN-0038]
- 2        **noted** that the Education (Early Childhood Services) Amendment Regulations 2023 give effect to the decisions referred to in paragraph 1 above;
- 3        **noted** that an additional amendment was made to clarify that services must submit a complete application and that it must be submitted so that their new premises are operational within a reasonable timeframe so as to minimise the impact on parents;
- 4        **authorised** the submission to the Executive Council of the Education (Early Childhood Services) Amendment Regulations 2023 [PCO 25622/9.0];
- 5        **noted** that the Education (Early Childhood Services) Amendment Regulations 2023 will come into force by 28 August 2023.

Rebecca Davies  
Committee Secretary

Attendance: see over

**Present:**

Hon Grant Robertson (Chair)  
Hon Andrew Little  
Hon Kiri Allan  
Hon David Parker  
Hon Kieran McAnulty  
Hon Barbara Edmonds  
Hon Willow-Jean Prime  
Hon Dr Duncan Webb  
Hon Dr Deborah Russell  
Tangi Utikere, MP (Chief Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

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# Cabinet

## Minute of Decision

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### Report of the Cabinet Legislation Committee: Period Ended 21 July 2023

On 24 July 2023, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 21 July 2023:

Out of Scope

**(Early Childhood Services) Regulations 2008**  
Portfolio: Education

Rachel Hayward  
Secretary of the Cabinet

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