

Cabinet Paper material

Proactive release

Minister & portfolio Hon Chris Hipkins, Minister of Education
Name of package Cabinet Review
Date considered 6 June 2022
Date of release

On 7 December 2022, Cabinet agreed on proposals to regulate for 80% qualified and certificated teachers in teacher-led ECE, and strengthen the person responsible role in teacher-led ECE, and licensed hospital-based and home-based services. In this paper Cabinet also agreed for the Ministry of Education to publicly consult on proposals to strengthen the existing licensing and enforcement provisions, as well as on a new definition for 'locally based' for persons responsible in licensed home-based education and care services.

However, in April 2023, the Minister of Education agreed to slow down progress on the proposal to regulate for 80% qualified and certificated teachers in teacher-led ECE, so that this initiative can be implemented in a way that is more manageable for the sector given the other changes underway and the evolving challenges the sector is facing. On 31 May 2023, (in the following paper Cabinet paper: Proposed amendments for Tranche 2 of the Early Learning Regulatory Review) Cabinet agreed to rescind previous Cabinet decisions to regulate for 80% qualified and certificated teachers in teacher-led ECE, due to the reasons outlined above. Therefore, final proposals for regulating 80% qualified and certificated teachers in teacher-led ECE have been withheld under s9(2)(f)(iv) of the Official Information Act 1982 in this suite of papers, as they are still under active consideration.

Also on 31 May 2023, Cabinet agreed on proposals to strengthen the existing licensing and enforcement provisions, however they did not agree to final proposals to define 'locally based', which is needed to implement the requirement that persons responsible in licensed home-based education and care services be locally based. On 17 August 2023, (in the following paper Education (Early Childhood Services) Amendment Regulations (No 2) 2023) Cabinet noted that this requirement is not being progressed and will be revisited at a time when this requirement is more manageable for the sector. Therefore, as this is still under active consideration, final proposals for defining 'locally based' for persons responsible in licensed home-based education and care services have been withheld under s9(2)(f)(iv) of the Official Information Act 1982 in this suite of papers.

These documents have been proactively released:

Cabinet Paper: Proposed amendments for Tranche 2 of the Early Learning Regulatory Review

Date considered: 6 June 2022

Author: Office of the Minister of Education

Briefing Note: Cabinet paper for lodging and talking points –Proposed amendments for tranche two of the Early Learning Regulatory Review

Date considered: 24 May 2022

Author: Ministry of Education

Final Regulatory Impact Statement: Tranche 2 of Early Learning Regulatory Review additional proposals – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closure

Date considered: 6 June 2022

Author: Ministry of Education

Final Regulatory Impact Statement: Definition of locally based for persons responsible in licensed home-based services

Date considered: 6 June 2022

Author: Ministry of Education

Social Wellbeing Committee Minute: SWC-23-MIN-0058

Date considered: 31 May 2023

Author: Committee Secretary

Cabinet Minute: CAB-23-MIN-0207.02

Date considered: 6 June 2022

Author: Secretary of the Cabinet

Material redacted

Some deletions have been made from the documents in line with withholding grounds under the Official Information Act 1982. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

The applicable withholding grounds under the Act are as follows:

Section 9(2)(a) to protect the privacy of natural persons

Section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials

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

Chair, Social Wellbeing Committee

Proposed amendments for Tranche 2 of the Early Learning Regulatory Review

Proposal

1. I seek Cabinet agreement to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to strengthen existing licensing and enforcement provisions, including to:
 - 1.1. allow the Secretary for Education (the Secretary) to add conditions to a service provider's provisional licence when further compliance issues are identified;
 - 1.2. provide a definition of 'permanently ceased to operate' for the purposes of cancelling a service provider's licence;
 - 1.3. allow the Secretary to grant temporary service closures; and
 - 1.4. provide a definition of 'locally based' for persons responsible in licensed home-based education and care services.
2. I also recommend Cabinet rescind decisions made in December 2022 regarding the implementation timeframes to implement 80 percent qualified teachers in teacher-led early childhood education and care (ECE) centres [CAB-22-MIN-0581, paragraphs 4 – 10].

Relation to government priorities

3. The proposals in this paper contribute to *He taonga te tamaiti – Every child a taonga: Early Learning Action Plan 2019-2029*. Action 5.5 of the Plan seeks to introduce a consistent and rigorous programme of monitoring and licensing for early learning services. These proposals will provide more clarity and certainty for both service providers and the Ministry of Education (the Ministry) around licensing requirements. They will allow the Ministry to be a more responsive regulator and help to ensure service providers address compliance issues in a timely manner.


Executive Summary

4. The Ministry is undertaking a comprehensive review of the early learning regulatory system (the Review) to ensure it is clear and fit for purpose to support high quality education and care outcomes for all children and their parents and whānau [SWC-20-MIN-0116]. The proposals in this paper are part of Tranche 2 of the Review.

5. In December 2022, Cabinet authorised the Ministry to undertake public consultation on further policy proposals to amend the Regulations to strengthen existing licensing and enforcement provisions, including to:
 - 5.1. expressly allow the Secretary to add conditions to provisional licences;
 - 5.2. provide a definition of permanently ceased to operate and a process for temporary service closures; and
 - 5.3. define 'locally based' for persons responsible in licensed home-based education and care services [SWC-22-MIN-0232].
6. Public consultation on the policy proposals was undertaken between January and February 2023. There was strong support for the proposals to allow conditions to be added to provisional licences, define 'permanently ceased to operate', and allow for temporary service closures. Feedback on the proposed definition of locally based for licensed home-based persons responsible was more mixed, but still received majority support. Key concerns related to the lack of clarity and flexibility of the proposed definition, and that it may not be financially viable for some licensed home-based service providers to comply.
7. After carefully considering the feedback from consultation, I am now seeking approval to amend the Regulations to:
 - 7.1. allow the Secretary, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered to be fair and reasonable, and to be met by a date that is not later than 12 months from when the licence was reclassified as provisional;
 - 7.2. define 'permanently ceased to operate' as when:
 - 7.2.1. the service provider has notified the Secretary that it has permanently ceased to operate; or
 - 7.2.2. the Secretary is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
 - 7.2.2.1. there being no children enrolled and/or attending the service; or
 - 7.2.2.2. there being no staff employed or engaged and working in the service; or
 - 7.2.2.3. the service provider has not claimed early childhood education funding;
 - 7.3. allow the Secretary, at their discretion, to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension for a further period of up to three months. In exceptional circumstances, allow for the Secretary, at their discretion,

to grant a service provider approval to temporarily close for more than six months, but no longer than 12 months from when the temporary closure was first issued, if satisfied they intend to reopen the service and they cannot be issued with a temporary relocation licence. Approval to temporarily close may not be granted to a service provider whose licence has been, or is likely to be, suspended; and

s9(2)(f)(iv)



9. The proposed regulatory amendments outlined in this paper will lift the quality of supervision and oversight provided to educators and children in home-based services, protect the integrity of the early learning network of services, provide greater clarity and certainty for service providers, improve the Ministry's licensing and enforcement practices and help ensure the Ministry can be an effective and responsive regulator. I will report back to LEG by August 2023 with draft amendments to the Regulations for approval.

10. In December 2022, Cabinet also agreed to amend the Regulations to require 80 percent qualified teachers in teacher-led ECE centres and strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital-based services, and licensed home-based services [SWC-22-MIN-0232].
11. In March 2023, the Prime Minister asked me to consider my education portfolio priorities for the remainder of 2023 to ensure they are focused on issues of most concern to New Zealanders. I have heard concerns from the sector that we are making too many changes and that these are happening too quickly. This is occurring in an environment that is already challenging, with many services still dealing with the impact of COVID 19 and recent weather events. There is also a shortage of qualified teachers in some areas, particularly those with Māori and Pacific language skills, which is likely to affect the ability of services to implement some of these changes.
12. As a result, I also recommend that Cabinet agree to slow down the implementation of 80 percent qualified teachers in teacher-led ECE centres, rescinding previous cabinet decisions [CAB-22-MIN-0581, paragraphs 4 - 10]. I intend to slow down the implementation of these changes so that they can be done in a way that is more manageable for the sector. I will report to Cabinet by March 2024 with proposals for achieving this.

Background

13. The Ministry is undertaking a comprehensive review of the early learning regulatory system (the Review) to ensure it is clear and fit for purpose to support high quality education and care outcomes for all children and their parents and whānau [SWC-20-MIN-0116]. The proposals in this paper are part of Tranche 2 of the Review.
14. In December 2022, Cabinet agreed to amend the Regulations to require 80 percent qualified teachers in teacher-led ECE centres and strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital-based ECE services, and licensed home-based ECE services. Cabinet also authorised the Ministry to undertake public consultation on the draft regulations [SWC-22-MIN-0232].
15. In addition, Cabinet authorised the Ministry to undertake public consultation on:
 - 15.1. proposals to amend the Regulations to strengthen existing licensing and enforcement provisions, including to:
 - 15.1.1. expressly allow the Secretary to add conditions to provisional licences;
 - 15.1.2. provide a definition of 'permanently ceased to operate'; and
 - 15.1.3. provide a process for temporary service closures.
 - 15.2. a proposed definition of 'locally based' for persons responsible in licensed home-based education and care services.

16. These proposals were drafted with the intention to provide greater clarity and certainty for service providers, improve the Ministry's licensing and enforcement practices and help ensure the Ministry can be an effective and responsive regulator. They also aimed to lift the quality of supervision and oversight provided by persons responsible to educators and children and be applicable to services located in all types of different areas (e.g., urban, rural and isolated).

Consultation indicated clear support for the proposals, but more mixed support for the proposal to define 'locally based'

17. Public consultation on the proposals was undertaken between 16 January 2023 and 17 February 2023. A total of 43 survey responses and 11 written submissions were received. Focused consultation was undertaken with the Sector Advisory Group, a sub-group of the Early Childhood Advisory Committee.
18. There was support for all the proposals in the consultation feedback. There was strong support for the licensing and enforcement-related proposals (i.e., allowing conditions to be added to provisional licences, defining 'permanently ceased to operate', and allowing for temporary service closures). Feedback on the proposed definition of locally based for licensed home-based person responsible was more mixed, but it still received support from the majority of submitters (i.e., 70 percent).
19. For those that supported the proposals, many agreed with the need to address regulatory gaps and ensure children's safety. For those that did not support the proposals, feedback mainly focused on implementation issues, including a lack of faith in the Ministry's capability to implement the proposed regulations.
20. The main concerns raised by those that did not support the proposed definition of 'locally based' included that it did not provide sufficient clarity to ensure services could comply, it was not flexible enough to respond to services in rural and isolated areas, and the cost of compliance could make some services financially unviable.

Proposed amendments to the Regulations

21. After carefully considering the consultation feedback, I am now seeking Cabinet approval to amend the Regulations and issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to the changes outlined below. These changes will strengthen existing licensing and enforcement provisions, improve the Ministry's practices, and help to ensure the Ministry can be an effective and responsive regulator. The changes will also provide greater clarity and certainty for service providers and lift the quality of supervision and oversight provided to educators and children.

Adding conditions to a service provider's provisional licence

22. Currently the Regulations provide for the Secretary to reclassify a service provider's full or probationary licence as provisional if the service does not comply with the regulations or the conditions on their licence. Issuing a provisional licence is one of the main tools available to the Secretary to enforce

compliance¹ and allows a service to continue operating and children to continue attending while matters of non-compliance are addressed.

23. Services that have their licence reclassified as provisional must comply with any conditions specified on the provisional licence by a specified date(s). A provisional licence remains in force until the Secretary either revokes the provisional licence and returns a full or probationary licence or cancels the service provider's provisional licence.
24. The Regulations do not expressly allow the Secretary to add conditions to a provisional licence in situations where new matters of non-compliance are identified after the provisional licence has been issued. This may mean that the Secretary must wait until a service has returned to a full or probationary licence to formally respond to the new matters of non-compliance through issuing a new provisional licence with new conditions attached. Being able to add new conditions to a service provider's provisional licence would reduce the administrative burden on the Ministry, as well as enable both the Ministry and service provider to be more responsive when subsequent compliance issues arise.
25. I seek Cabinet approval to amend the Regulations to allow the Secretary, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered to be fair and reasonable.
26. As part of this proposal, I seek Cabinet approval to amend the Regulations to allow a date to be set by when a new condition that is added to a provisional licence must be complied with, which must be fair and reasonable. This date may differ to the dates that have been set for any existing conditions, but it must not be set any later than 12 months from the date when the licence was reclassified as provisional.
27. I am proposing that the use of this power be at the Secretary's discretion as there may be situations where the nature of non-compliance is such that adding conditions to the provisional licence is not the most appropriate enforcement response (e.g., where there is an undue or disproportionate impact on the children attending the service, parents and whānau, and/or service providers) or a suspension of the licence is required.
28. This proposal will allow the Secretary to add conditions to a provisional licence in situations where new matters of non-compliance are identified after the provisional licence has been issued. It will provide greater certainty regarding the Secretary's ability to add conditions to a provisional licence and help to ensure the Ministry can be an effective and responsive regulator. It will also support greater transparency for parents and whānau about a service provider's current state of regulatory compliance.

¹ Licences may also be suspended or cancelled subject to the Education and Training Act 2020 and the Regulations.

Defining 'permanently ceased to operate' for the purposes of cancelling a service provider's licence

29. The regulations currently require the Secretary to cancel the licence of any service that has permanently ceased to operate where the Secretary is satisfied that this is the case. This allows defunct services to be removed from the early learning network, creating space for new services to enter the network.
30. However, the regulations do not currently provide a definition of what it means to 'permanently cease to operate'. The lack of clarity makes it difficult for both the Secretary and service providers to know when a service is considered to have stopped operating. This causes confusion and is both resource and time consuming for licence holders and the Ministry to resolve.
31. I seek Cabinet approval to amend the Regulations to define 'permanently ceased to operate' as when:
 - 31.1. the service provider has notified the Secretary that it has permanently ceased to operate; or
 - 31.2. the Secretary is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
 - 31.2.1. there being no children enrolled and/or attending the service; or
 - 31.2.2. there being no staff employed or engaged and working in the service; or
 - 31.2.3. the service provider has not claimed early childhood education funding.
32. This proposal will improve certainty and clarity for the Secretary to exercise their power to cancel the licence of services that are not operating. This will better support network management by ensuring defunct licences are cancelled and removed from the network. It will also ensure that service providers have clarity about when they will be considered to have 'permanently ceased to operate' under the Regulations.

Allowing the Secretary to grant temporary service closures

33. Situations may arise where a service wants to close for a short period of time with the intention of reopening without facing the risk of their licence being cancelled. Reasons for temporary service closures include the need to undertake renovations, low child or staff attendance rates such as during COVID, and temporarily not meeting person responsible requirements.
34. I seek Cabinet approval to amend the Regulations to allow the Secretary, at their discretion, to grant a service provider approval to temporarily close their service, on application, for a period of three months. I also seek Cabinet approval to amend the Regulations to provide for the Secretary, at their discretion, to extend a temporary service closure for a further period of up to three months. It is

important that voluntary temporary closures are only permitted for a short and managed period of time, as extended closures may significantly impact the ability of service providers to continue to meet all of their ongoing regulatory and licensing responsibilities.

35. However, there may be situations where, due to exceptional circumstances, a service provider is unable to reopen as intended after six months for reasons that are beyond their control. For example, a service provider in an isolated area undertaking building work that is delayed and is unable to relocate to another suitable premises. To mitigate the risk that the service provider's licence will be cancelled even though they intend to reopen, I recommend that the Secretary, at their discretion, be able to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:

35.1. the service provider intends to reopen the service; and

35.2. it is not possible for the service provider to find a premises for which they will be granted a temporary relocation licence.

36. As part of this proposal, I seek Cabinet approval to amend the Regulations so that the Secretary:

36.1. may, at their discretion, grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, if considered fair and reasonable; and

36.2. must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended.

37. This proposal will provide more certainty and transparency to the sector on the process and requirements for services requesting temporary closure. It will also strengthen the existing requirement in the Education and Training Act 2020 for early childhood education and care centres to notify the Ministry when they intend to stop operating.

38. This proposal also clarifies that services cannot apply for temporary closure when they are, or likely to be, on a suspended licence. This ensures that a service provider that is found to be non-compliant with the regulations cannot apply for a temporary closure to avoid enforcement action.

Impacts of the proposals on the sector

39. The proposed amendments seek to provide more certainty and transparency for the sector when it comes to the Ministry's licensing and enforcement practices. It also seeks to improve the Ministry's capability as an effective and responsive regulator when compliance issues arise or when managing the network to remove inoperable services.


40. We anticipate the impact of these changes on the sector to be low. Most of these changes seek to provide more clarity to the regulations and/or current practice. The Ministry will issue guidance on these regulatory changes and how they will

be implemented. This responds to concerns raised in feedback around the Ministry's ability to implement the proposals.


Proposal to amend the Regulations to define 'locally based' for persons responsible in licensed home-based ECE services

41. The person responsible in licensed home-based services is responsible for overseeing the education and care, comfort, and health and safety of children. They also hold specific responsibilities to contact and visit each educator in the service, fortnightly and monthly, and take all reasonable steps to observe each child each month. Currently, it is possible for a person responsible to be based in another part of the country and to travel extensively to visit educators and children.
42. On 12 December 2022, Cabinet agreed to amend the Regulations to require the person responsible for licensed home-based education and care services to be locally based. Cabinet also agreed that the Ministry would undertake further consultation on a new definition of 'locally based' [SWC-22-MIN-0232]. The results of earlier consultation indicated that more work was required to develop a definition that would both lift the quality of supervision and oversight provided by persons responsible to educators and children and be applicable to services located in all types of different areas (e.g., urban, rural and isolated).

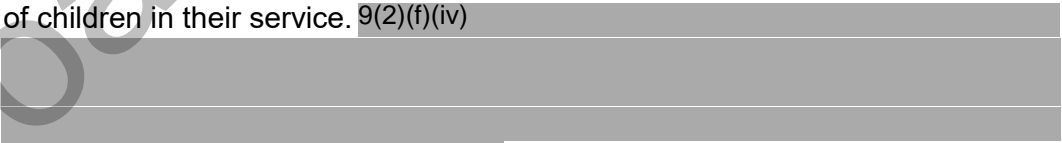
s9(2)(f)(iv)



s9(2)(f)(iv)



Impacts of the proposal on the sector

46. Consultation feedback raised concern that the proposal may have a significant impact for some home-based services that struggle to comply with these new requirements, as it could make services financially unsustainable, risking service closures. Respondents to the consultation cited that introducing these requirements will increase operational costs through the need to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance.
 47. Ensuring that the person responsible is locally based will impose additional costs on some services providers, particularly those whose persons responsible are not locally based (e.g., live in other towns or parts of the country). However, I consider this requirement to be necessary to ensure the person responsible can effectively fulfil the duties of their role, including overseeing the education and care, comfort, and health and safety of children.
 48. I note that Cabinet has recently agreed to amend the Regulations to increase the maximum licence size of home-based services from 80 to 100 children [SWC-22-MIN-0232]. This change will provide some scope for service providers to manage any additional costs associated with complying with the requirement for persons responsible to be locally based by allowing them to increase the number of children in their service. s9(2)(f)(iv)
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Slowing down the implementation of 80 percent qualified teachers so it is more manageable for the sector

49. In March 2023, the Prime Minister asked me to consider my education portfolio priorities for the remainder of 2023 to ensure they are focused on issues of most concern to New Zealanders. I have heard concerns from the sector that we are making too many changes and that these are happening too quickly. This is

occurring in an environment that is already challenging, with many services still dealing with the impact of COVID 19 and recent weather events. There is also a shortage of qualified teachers in some areas, particularly those with Māori and Pacific language skills, which is likely to impact the ability of services to implement some of these changes.

50. As a result, I recommend that Cabinet agreement be sought to rescind decisions to amend the Regulations to implement 80 percent qualified teachers in teacher-led ECE centres [CAB-22-MIN-0581, paragraphs 4 - 10]. Increasing the proportion of qualified teachers in these centres remains an important goal for the Government. However, I intend to slow down the implementation of these changes so that they can be done in a way that is more manageable for the sector given the other changes underway and the evolving challenges the sector is facing. I will ask the Ministry to work with the sector to determine the best way to achieve this, and report back to Cabinet by March 2024 on how I will implement 80 percent qualified teachers in teacher-led ECE centres while ensuring an adequate supply of qualified teachers, including those with Māori and Pacific language skills.
51. I still intend to progress the amendments to the Regulations to strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital ECE services and licensed home-based ECE services that were agreed by Cabinet in December 2022 [CAB-22-MIN-0581, paragraphs 11 - 21] and will report to LEG by August 2023 with final recommendations. These amendments were strongly supported in the feedback provided in the public consultation from September – October 2021 and will provide greater clarity and certainty of the supervisory and oversight functions required of the person responsible role. The impact of these changes on service providers is also expected to be low.
52. I note that Cabinet authorised the Ministry to consult on draft regulations to give effect to the Cabinet decisions of December 2022 [CAB-22-MIN-0581, paragraph 26]. As the person responsible changes are relatively straightforward, I do not intend to undertake public consultation on draft regulations.

Financial Implications

53. There are no financial implications for the Crown associated with the proposals set out in this paper.

Legislative Implications

54. Amendments to the Education (Early Childhood Services) Regulations 2008 are required to implement the proposed changes covered in this Cabinet paper.

Impact Analysis

Regulatory Impact Statement

55. The Ministry's Quality Assurance Panel has reviewed the Regulatory Impact Statement: Final proposals for additional Tranche 2 issues – adding conditions to provisional licences, defining 'permanently ceased to operate', and providing

for temporary service closures (Appendix 1). The panel considers that it meets the Quality Assurance criteria.

56. The panel also reviewed the Regulatory Impact Statement: Final proposal for defining locally based for persons responsible in licensed home-based education and care services (Appendix 2). The panel considers that it meets the Quality Assurance criteria.

Climate Implications of Policy Assessment

57. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

58. The proposed regulatory changes in this Cabinet paper have potential populations implications which are summarised below.

Population group	How the proposal may affect this group
Māori	<p>The Crown has an obligation under Te Tiriti o Waitangi to protect and promote te reo Māori and tikanga Māori. This obligation is also expressed through Ka Hikitia – Ka Hāpaitia (the Māori education strategy) and Tau Mai Te Reo (the Māori language education strategy). The proposals set out in this paper will apply to the Ministry's licensing and enforcement practices for all licensed early childhood services, including those held by Māori and iwi service providers and those used for the provision of Māori medium and Kaupapa Māori early learning services (of which there are around 46 services in New Zealand).</p> <p>The proposal to add conditions to provisional licences is intended to ensure that services address all compliance issues and provide high quality early learning, benefitting all the children that attend these services and their whānau. The other proposals will improve clarity and certainty for both services and the Ministry around their regulatory requirements, including the process for licence cancellation if a service has permanently ceased operating. This will better enable the Ministry to remove defunct services from the network and support more active management of the early learning network including helping to grow the provision of Māori immersion services, hāpu/iwi-owned services and services with a distinct Māori identity and culture.</p> <p>The proposal to strengthen the person responsible role in home-based settings will have a low to medium impact on Māori teaching staff and coordinators in home-based education and care services (this equates to around six percent of teaching staff in home-based settings). This is</p>

	<p>because the proposal will create a new requirement that persons responsible be locally based, which may require some of those employed in these roles to change the way they work – through either needing to reside locally or establish a place of business in which to undertake their duties. 9(2)(f)(iv)</p> <p>9(2)(f)(iv)</p>
Pacific	<p>The proposals set out in this paper are seeking to improve the safety and wellbeing of children in early learning through raising the quality of education and care services. This is done through strengthening how both the Ministry and services respond to compliance issues when they arise, and which has an impact on a child's learning environment.</p> <p>9(2)(f)(iv)</p>
Children	<p>The proposals set out in this paper are ultimately intended to improve the quality of education and care in education and care settings, including licensed home-based services. The proposals will strengthen service requirements around addressing regulatory compliance issues when they arise, to ensure that they continue to provide learning environments that support children's learning outcomes.</p> <p>The proposal to strengthen the person responsible role in home-based education and care services is intended to better support the supervision of teaching staff and oversight of children. This supports children's educational and care outcomes, as well as child health, safety, and wellbeing.</p> <p>These proposals align with the Child and Youth Wellbeing Strategy outcomes that children and young people are happy and healthy, and learning and developing.</p>
Women	<p>Currently, 96.8 percent of teaching staff in education and care services are women, with a higher proportion of female teaching staff in home-based services at 99.7 percent. The Ministry does not have data on the gender breakdown of service owners or managers. The proposals set out in this paper seek to improve both the Ministry's and services' licensing and enforcement practices, including adding new conditions on services and providing more clarity around the</p>

	<p>temporary or permanent closure of services. We anticipate these proposals to have a low impact on teaching staff and service owners. The proposals seek to strengthen existing requirements for services to support them to address compliance issues, to close temporarily in situations where the service cannot meet its requirements in providing childcare, and to remove defunct services from the early learning network to free up space for new services.</p> <p>The home-based education and care service proposal will support increased professionalisation for persons responsible and educators, many of whom are women. However, some of these proposals, such as the requirement for the person responsible to be locally based, could add more responsibilities to women who also have commitments outside of work. 9(2)(f)(iv)</p>
Disabled people	<p>System-level information about disabled children in early learning and their experiences is currently limited to funding information. Thus, the effects that the proposals will have on this group of children are difficult to determine.</p> <p>The proposals set out in this paper to delay implementing 80 percent qualified teachers in teacher-led ECE centres will have a low to negative impact on vulnerable children as it continues the status quo. The remaining proposals will have a low, but potentially positive impact on those with disabilities, including children. The intent of the proposals is to improve how services respond to compliance issues that arise in their service, in order to ensure the safety and wellbeing of children in their care and create an environment that is conducive to children's learning.</p> <p>The proposal to define locally based will strengthen the person responsible role to lift the quality of supervision and oversight to educators and children.</p>

Human Rights

59. There are no human rights implications arising from the proposals that are outlined in this Cabinet paper.

Consultation

60. The Treasury, Department of Prime Minister and Cabinet, Public Service Commission, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Ministry for Business, Innovation and Employment, Ministry for Social

Development, Ministry of Health, Ministry of Justice, Office for Disability Issues, part of Whaikaha - Ministry of Disabled Peoples, Oranga Tamariki – Ministry of Children, New Zealand Qualifications Authority, and Education Review Office have been consulted.

Communications

61. I intend to publicly announce decisions on this work once final Cabinet decisions have been made.

Proactive Release

62. I intend to proactively release this paper once final Cabinet decisions have been made, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Education recommends that the Committee:

- 1 **note** that the proposals in this paper are part of the Ministry of Education's review of the Early Learning Regulatory System [SWC-20-MIN-0166];
- 2 **note** that on 12 December 2022, Cabinet agreed to amend the Education (Early Childhood Services) Regulations 2008 to regulate for 80 percent qualified teachers in teacher-led ECE centres, and strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital-based ECE services, and licensed home-based ECE services, and authorised the Ministry of Education to undertake public consultation on the draft regulations [SWC-22-MIN-0232];
- 3 **note** that on 12 December 2022, Cabinet also authorised the Ministry of Education to undertake public consultation on:
 - 3.1 proposals to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
 - 3.1.1 expressly allow the Secretary for Education to add conditions to provisional licences; and
 - 3.1.2 provide a definition of permanently ceased to operate and a process for temporary service closures; and
 - 3.2 a definition of 'locally based' for person responsible in licensed home-based education and care services [SWC-22-MIN-0232];
- 4 **note** that feedback from consultation referred to in recommendation 3 indicated clear support for the proposals to amend the Regulations; however, some service providers from the home-based sector raised concerns about their ability to comply with the proposed definition of 'locally based' for persons responsible, including that it may make some services financially unviable;

Adding new conditions to a provisional licence

- 5 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to allow the Secretary for Education, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered to be fair and reasonable;
- 6 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to allow a date to be set by when a new condition that is added to a provisional licence must be complied with, that is fair and reasonable, and that differs to dates that have been set for any existing conditions, but is no later than 12 months from when the licence was reclassified as provisional;

Defining 'permanently ceased to operate' for the purpose of cancelling a service provider's licence

- 7 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to define 'permanently ceased to operate' as when:
 - 7.1 the service provider has notified the Secretary for Education that it has permanently ceased to operate; or
 - 7.2 the Secretary for Education is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
 - 7.2.1 there being no children enrolled and/or attending the service; or
 - 7.2.2 there being no staff employed or engaged and working in the service; or
 - 7.2.3 the service provider has not claimed early childhood education funding;

Allowing for temporary service closures

- 8 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to allow the Secretary for Education, at their discretion, to grant a service provider approval to temporarily close their service, on application, for a period of up to three months;
- 9 **agree** to amend the Education (Early Childhood Services) Regulations 2008 to provide for the Secretary for Education, at their discretion, to extend a temporary service closure for a further period of up to three months;
- 10 **agree** to amend the Education (Early Childhood Service) Regulations 2008 to provide for the Secretary for Education, at their discretion, to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:
 - 10.1 the service provider intends to reopen the service; and

10.2 it is not possible for the service provider to find a premises for which they will be granted a temporary relocation licence.

11 **agree** to amend the Education (Early Childhood Service) Regulations 2008 so that the Secretary for Education:

11.1 may, at their discretion, grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, if considered fair and reasonable; and

11.2 must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended;

Defining 'locally based' for persons responsible in licensed home-based education and care services

12 **note** that on 12 December 2022, Cabinet agreed to amend the Education (Early Childhood Services) Regulations 2008 to require that the person responsible for licensed home-based education and care services be locally based [SWC-22-MIN-0232 refers];

13 9(2)(f)(iv)

14

9(2)(f)(iv)

15

Slowing down the implementation of 80 percent qualified teachers in teacher-led ECE centres

- 16 **agree** that Cabinet rescind the decisions to amend the Education (Early Childhood Services) Regulations 2008 to regulate for 80 percent qualified teachers referred to in recommendation 2 above [CAB-22-MIN-0581, paragraphs 4 - 10];
- 17 **invite** the Minister of Education to report back to Cabinet in March 2024 with proposals for implementing the requirement for 80 percent qualified teachers in teacher-led ECE centres;
- 18 **note** that the Minister of Education will continue to progress amendments to the Education (Early Childhood Services) Regulations 2008 to strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital-based ECE services and licensed home-based ECE services referred to recommendation 2 above [CAB-22-MIN-0581, paragraphs 11 - 21];

Approval to draft regulations

- 19 **invite** the Minister of Education to issue drafting instructions for amendments to the Education (Early Childhood Services) Regulations 2008 to give effect to the above proposals;
- 20 **agree** that the Parliamentary Counsel Office be invited to identify opportunities for simplifying and improving the clarity and accessibility of the relevant parts of the Education (Early Childhood Services) Regulations 2008 when drafting the amendments agreed above;
- 21 **authorise** the Minister of Education to make any minor and technical decisions that may arise during the drafting process without further reference to Cabinet, provided the decisions are consistent with the decisions in this paper;
- 22 **note** that the recommendations with drafting implications are subject to Parliamentary Counsel's discretion as to how best to express these in legislation;
- 23 **invite** the Minister of Education to report to the Cabinet Legislation Committee by August 2023 with draft amendments to the Regulations for approval.

Authorised for lodgement

Hon Jan Tinetti

Minister of Education

Authorised for lodgement

Hon Jo Luxton

Associate Minister of Education

Proactively Released

Appendix 1: [Final Regulatory Impact Statement: Additional Tranche 2 issues – adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary closures]

Proactively Released

Appendix 2: [Final Regulatory Impact Statement: Defining locally based for persons responsible in licensed in home-based education and care services]

Proactively Released

Briefing Note: Cabinet paper for lodging and talking points – Proposed amendments for tranche two of the Early Learning Regulatory Review

To:	Hon Jo Luxton, Associate Minister of Education		
Cc:	Hon Jan Tinetti, Minister of Education		
Date:	24 May 2023	Priority:	High
Security Level:	In Confidence	METIS No:	1311207
Drafter:	Veronica Adams	DDI:	9(2)(a)
Key Contact:	Paul Scholey	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper provides you with a Cabinet paper, including appendices, that sets out proposals for tranche two of the Early Learning Regulatory Review updated to reflected agency feedback. The Cabinet paper must be lodged on 25 May 2023 for consideration by the Social Wellbeing Committee (SWC) on 31 May 2023.

This paper also provides talking points and supporting background material for SWC on 31 May 2023.

Summary

1. On 18 April 2023, we provided you with a draft Cabinet paper seeking agreement to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
 - a. allow the Secretary for Education (the Secretary) to add conditions to a service provider's provisional licence when further compliance issues are identified;
 - b. provide a definition of 'permanently ceased to operate' for the purposes of cancelling a service provider's licence;
 - c. allow the Secretary to grant temporary service closures; and
 - d. provide a definition of 'locally based' for persons responsible in licensed home-based ECE services.
2. The draft Cabinet paper also seeks agreement to rescind decisions to amend the Regulations to implement 80 percent qualified teachers in teacher-led ECE centres [CAB-22-MIN-0581, paragraphs 4 – 10 refers], but continue progressing amendments to the Regulations to strengthen the person responsible requirements in teacher-led

ECE centres, licensed hospital ECE services and licensed home-based ECE services [CAB-22-MIN-0581, paragraphs 11 – 21 refers].

3. We consulted with other government agencies from 20 April 2023 to 27 April 2023. Overall, agencies were supportive of the proposals, however, some agencies sought greater clarification of the current proposals which resulted in minor amendments to the draft Cabinet paper.
4. To address agency feedback that the paper does not provide enough detail on what supports the Ministry will provide services to improve teacher supply, particularly for Pacific ECE services, we amended the paper's recommendation to report back by March 2024 on the implementation of the 80 percent qualified teacher requirements, by adding that this report back will also speak to how the Ministry will ensure an adequate supply of qualified teachers, including those with Māori and Pacific language skills.
5. This Cabinet paper must be lodged on 25 May 2023 for consideration by SWC on 31 May 2023. If we do not meet this timeframe, there is a risk that final Cabinet approval of the regulations will not be made before the House of Representatives is adjourned, meaning that these decisions, and the date from which they can come into effect, will be delayed until the next term of Government.

Proactive Release

- a. **agree** that this briefing is released after Cabinet decisions on the proposals, with any information that may need to be withheld done so in line with provisions of the Official Information Act 1982.

Agree / Disagree

Please note points
26-28 in terms of
ledachens.

P. Scholey
Paul Scholey
Senior Policy Manager, ECE Policy
Te Pou Kaupapahere

24/05/2023

Jo Luxton
Hon Jo Luxton
Associate Minister of Education

6.6.23.

Consultation with other agencies

1. On 18 April 2023, we provided you with a draft Cabinet paper seeking agreement to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
 - b. allow the Secretary to add conditions to a service provider's provisional licence when further compliance issues are identified;
 - c. provide a definition of 'permanently ceased to operate' for the purposes of cancelling a service provider's licence;
 - d. allow the Secretary to grant temporary service closures; and
 - e. provide a definition of 'locally based' for persons responsible in licensed home-based ECE services.
2. The draft Cabinet paper also sought agreement to rescind decisions made by Cabinet on 12 December 2022 to amend the Regulations to implement 80 percent qualified teachers in teacher-led ECE centres [CAB-22-MIN-0581, paragraphs 4 – 10 refers]. This follows from your agreement to slow down this work so these changes can be done in a way that is manageable for the sector given the continued and evolving challenges it is facing [METIS 1307705 refers].
3. The Cabinet paper also notes that work to progress amendments to the Regulations to strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital ECE services and licensed home-based ECE services will continue [CAB-22-MIN-0581, paragraphs 11 – 21 refers].
4. We consulted with other government agencies from 20 April 2023 to 27 April 2023. Most agencies were supportive of the proposed regulatory changes in that they seek to improve the quality of care for children in ECE services, as well as improve regulatory compliance of these services. Some agencies sought greater clarity on aspects of the proposals, resulting in minor amendments to the draft Cabinet paper.

Summary of the key agency feedback and how we responded to it

Ensuring support for increasing qualified teacher supply

5. The Public Service Commission queried what support the Ministry will provide to services to ensure an adequate supply of qualified teachers so services can meet a future 80 percent qualified teacher target. Similar to this, the Ministry for Pacific Peoples asked what work the Ministry is doing to support Pacific ECE services to build their Pacific teacher capacity and capability, given the 80 percent qualified teacher work has been slowed down.
6. We addressed this feedback by amending the recommendation to report back by March 2024 on the implementation of the 80 percent qualified teacher requirements to include advice on how the Ministry will ensure an adequate supply of qualified teachers, including those with Māori and Pacific language skills.

Further clarifying implications of the proposal for different populations

7. Both the Ministry for Women and Office for Disability Issues (part of Whaikaha – Ministry of Disabled People) asked that more clarity be provided on the implications of the proposals for women and disabled people. Specifically, the Ministry for Women

noted that although one of the proposals seeks to increase professionalisation of the person responsible role, many of whom are women, this will also lead to more responsibilities being placed on women who have commitments outside of work. The Office of Disability Issues noted that the recommendation in the paper to slow down the work on 80 percent qualified teachers does not appear to be considered in the impact analysis for disabled populations.

8. We addressed these concerns by providing further impact analysis of the proposals on women and disabled populations.

Next steps

9. The timeline for seeking Cabinet approval is outlined below.

Date	Activity
25 May 2023	Final Cabinet paper provided to Minister's Office for lodging
25 May 2023	Paper lodged
31 May 2023	SWC
6 June 2023	Cabinet
PCO drafting	7 June – 12 July
LEG	17 August
Cabinet	21 August

10. If we do not meet the above timeframes, there is a risk that final Cabinet approval of the regulations will not be made before the House of Representatives is adjourned on the week of 4 September 2023, meaning that these decisions, and the date from which they can come into effect, will be delayed until the next term of Government.

Annexes

The following are annexed to this paper:

Annex 1: s9(2)(g)(i)

Annex 2: Supporting background material for SWC meeting on 31 May

Annex 3: Final Cabinet paper: Proposed amendments for tranche two of the Early Learning Regulatory Review

Appendices in Cabinet paper on proposed amendments for tranche two of the Early Learning Regulatory Review

Appendix 1: Final Regulatory Impact Statement: Tranche two of the Early Learning Regulatory Review additional proposals – adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary service closures

Appendix 2: Final Regulatory Impact Statement: Definition of locally based for persons responsible in licensed home-based services

Annex 2: Supporting background material for SWC meeting on 31 May

How the ECE licensing system works

Issuing a provisional licence

1. Licensing criteria are used by the Secretary to assess how services comply with regulated standards of education and care. ECE services must meet the licensing criteria as well as the other regulatory requirements contained in the Regulations to gain and maintain a licence to operate.
2. There are four types of licences a service provider may be issued – probationary licence, full licence, temporary relocation licence, or provisional licence. The reclassification of an ECE service provider's licence to a provisional licence is one of the key tools available to the Ministry to enforce compliance with the Regulations and licence conditions.
3. A provisional licence allows a service to continue operating and children to continue attending while the service provider works towards achieving full compliance. Regulation 15 provides for the Secretary to reclassify a probationary licence or a full licence as a provisional licence for several reasons, including if the service does not comply with the regulations or conditions on their licence.
4. Services that have their licence reclassified to a provisional licence must comply with conditions specified on the provisional licence by the specified date(s). Typical practice is that deadlines for complying with specific conditions are set up to three months. Issues that are likely to take longer to address, such as improvements to the delivery of the curriculum, may be set at six months.
5. The Secretary can extend the deadline for a condition under Regulation 16(3). However, no compliance dates can be set later than 12 months after the provisional licence was first issued. This helps to ensure that services address non-compliance in a timely manner. This is important as it provides reassurance for parents and whānau of children in services that these services are addressing any compliance issues as promptly as possible.
6. A provisional licence remains in force until the Secretary either:
 - a. revokes the provisional licence and returns a full or probationary licence; or
 - b. cancels the service provider's provisional licence.
7. The Secretary must cancel a provisional licence if satisfied that any condition has not been complied with by the date specified for compliance. Where a cancellation pathway is followed, the Secretary implements a process of giving notice of proposed provisional licence cancellations to ensure natural justice requirements are met.

Cancelling a service provider's licence

8. Regulation 32(2) sets out the Secretary's powers to cancel a service provider's licence. It states that the Secretary is required to cancel the licence of an early childhood service if satisfied that the service:
 - a. has permanently ceased to operate; or
 - b. has ceased to be an early childhood service; or
 - c. if applicable, has ceased to operate in the premises specified in the licence and has not been issued with a temporary relocation licence.

9. The Secretary is required to take all reasonable steps to give the licensed service provider notice of the Secretary's intention to cancel the licence before cancelling, and to take account of any representations received from the service provider.
10. Section 28(1) of the Act requires that licensed service providers who operate an early childhood education and care centre are committing an offence if they cease to operate a centre, in circumstances other than an emergency, without first notifying the Secretary. A person who commits the above offence is liable for conviction to a fine not exceeding \$200. This requirement does not cover hospital-based or home-based service providers, and only concerns providers who operate a centre-based service.

How the person responsible role works in home-based services

11. Licenced home-based ECE is delivered in private homes by educators working with one to four children. In licenced home-based services a qualified, registered and certificated ECE teacher, called the co-ordinator or 'person responsible,' also visits homes to support these educators and oversee the education and care of the children.
12. The person responsible in licensed home-based services is responsible for overseeing the education and care, comfort, and health and safety of children. They also hold specific responsibilities to contact and visit each educator in the service, fortnightly and monthly, and take all reasonable steps to observe each child each month. Currently, it is possible for a person responsible to be based in another part of the country and to travel extensively to visit educators and children.
13. The requirement that persons responsible in home-based services be locally based is one of a range of proposals to strengthen the person responsible role. These proposals were agreed by Cabinet in December 2022 and include:
 - a. requiring persons responsible in teacher-led early childhood education and care centres, licensed hospital-based education and care services, and licensed home-based education and care services to hold a Full (Category One or Two) practising certificate;
 - b. clarifying the person responsible role in teacher-led early childhood education and care centres, as well as in licensed hospital-based education and care services;
 - c. requiring persons responsible in teacher-led early childhood education and care centres to hold an accredited first aid qualification and that they be included in the current 1:25 ratio for first aid qualification requirements;
 - d. requiring that the person responsible in licensed home-based education and care services only work across up to two licences within each calendar month, and only one licence at any one time;
 - e. increasing the maximum licence size for licensed home-based education and care services from 80 to 100 children;
 - f. requiring the person responsible in licensed home-based education and care services to take all reasonable steps to observe, support and provide guidance on the curriculum delivery in the home during their visits and to keep records of these activities; and
 - g. requiring the person responsible in licensed home-based education and care services to provide professional development to educators on a regular basis and to keep records of any such discussion.

Final Regulatory Impact Statement: Tranche 2 of Early Learning Regulatory Review additional proposals – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures

Coversheet

Purpose of Document	
Decision sought:	This RIS supports final Cabinet decisions on proposals for regulating to add new conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures.
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon Jan Tinetti, Minister for Education
Date finalised:	5 May 2023
Problem Definition	
<p>The early learning regulatory review has identified three additional issues related to the licensing and enforcement of ECE services. The current regulations do not:</p> <ul style="list-style-type: none">• expressly allow for new conditions to be added to a provisional licence during the term of the provisional licence or set boundaries around when and how this can be done.• define permanently ceased to operate in cases where the Secretary for Education (‘the Secretary’) needs to cancel the licence of any service.• set out the process for services to temporarily close. <p>These omissions create the following problems:</p> <ul style="list-style-type: none">• The inability to add additional conditions to provisional licences impedes the Ministry of Education’s (‘the Ministry’) ability to respond directly and in a timely manner when further non-compliance is identified. They also do not provide the services enough certainty around the Government’s expectations when compliance issues must be addressed.• The lack of definition for ‘permanently ceased to operate’ can lead to disagreement between the Ministry and the service provider about whether they have permanently ceased to operate or not. This can cause unnecessary confusion and distress and be both resource and time consuming for the service provider and the Ministry.• The lack of a process for services that are required to close temporarily may lead to the inadvertent cancellation of licences of service providers who want to temporarily close but have genuine need and intention to reopen.	

Executive Summary

The early learning regulatory review

The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the review'). The review is being undertaken in three tranches. The proposals outlined in this paper are part of Tranche Two of the review.

These proposals seek to amend the Education (Early Childhood Services) Regulations 2008 ('the Regulations') to:

- a. expressly allow the Secretary to add conditions to a service's provisional licence in cases where subsequent compliance issues are identified
- b. provide a definition of 'permanently ceased to operate' for the purpose of cancelling a service's licence
- c. allow for the Secretary, at their discretion, to grant a service provider the ability to temporarily close their service for a period of up to three months on application.

Why change is needed to the ECE regulations

Regulations around provisional licensing

The reclassification of a ECE service provider's licence to a provisional licence is one of the key tools currently available to the Ministry to enforce compliance with the Regulations and licence conditions. A provisional licence allows a service to continue operating and children to continue attending while the service provider works towards achieving full compliance. Services that have their licence reclassified to a provisional licence must comply with conditions specified on the provisional licence by the specified date(s). Each condition on a provisional licence can have a different date specified for compliance. The Secretary can extend the deadline for a condition under Regulation 16(3). However, no compliance dates can be set later than 12 months after the provisional licence was issued. This helps to ensure that services address non-compliance in a timely manner.

Regulations around cancellation of licences, including ability for services to temporarily close

Current regulations state that the Secretary is required to cancel the licence of an early childhood service if satisfied that the service:

- a. has permanently ceased to operate; or
- b. has ceased to be an early childhood service; or
- c. if applicable, has ceased to operate in the premises specified in the licence and has not been issued with a temporary relocation licence.

Section 28(1) of the Act requires that licensed service providers who operate an early childhood education and care centre are committing an offence if they cease to operate a centre, in circumstances other than an emergency, without first notifying the Secretary. A person who commits the above offence is liable for conviction to a fine not exceeding \$200.

In addition, where a service provider wants to cease operating for a short period of time, with a genuine intent to reopen, current operational practice is for the service provider to seek agreement from the Secretary to a 'Voluntary Temporary Closure'. If approved, voluntary temporary closures are usually agreed for a period of up to three months, after which a service can request a three-month extension in extenuating circumstances.

Problems with the current regulations

The regulations do not expressly allow for new conditions to be added to a provisional licence during the term of the provisional licence or set boundaries around when and how this can be done. Additional non-compliance can be identified during Ministry on-site visits to assess compliance with existing conditions or when responding to an incident or complaint.

Currently, although the Secretary can issue a written direction or suspend a service provider's licence, in many cases they can only make the service provider aware of the new non-compliance and then wait until the current provisional licence process has been completed before issuing a subsequent provisional licence to address this new non-compliance. The inability to add additional conditions to provisional licences impedes the Ministry's ability to respond directly and in a timely manner when further non-compliance is identified. They also do not provide the services enough certainty around the expectations for when compliance issues must be addressed.

The current regulations also require the Secretary to cancel the licence of any service that has permanently ceased to operate. However, there is no definition of 'permanently ceased to operate' in the regulations, which means there can sometimes be disagreement between the Ministry and the service provider about whether they have permanently ceased to operate or not. This can cause unnecessary confusion and distress and be both resource and time consuming for the service provider and the Ministry.

Centre-based service providers are required to notify the Secretary when their service has ceased to operate. However, it is not uncommon for the Ministry to become aware that a service has ceased to operate without any notification being given. To carry out its network management function, the Ministry needs to know when a service is no longer operating so it can be removed from the network. This information is also important to prevent services from claiming the ECE funding subsidy when they are not entitled to it.

Related to this, the current regulations do not set out the process for services to temporarily close. Care is required to ensure that any changes to the requirements for the cancellation of licences do not inadvertently affect the ability of service providers to request a temporary closure where there is genuine need and intention to reopen.

It is important that the Ministry address these issues around its licensing and enforcement provisions in order to improve its role as a regulator of ECE services, particularly in managing the ECE network, as well as improve the clarity and consistency of these requirements so services understand their expectations and help support the quality of these services.

Options considered to address issues with provisional licensing requirements

In addition to the status quo (option 1), three other options were considered for adding new conditions to existing provisional licences of services.

Option 2 – Amending Regulations so that additional conditions can be added to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from when the licence was classified as provisional.

Option 3 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines the same as for existing licence conditions.

Option 4 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines that can extend beyond 12-months from when the licence was classified as provisional.

Following analysis against the policy objectives and criteria, the Ministry determined that these options should not be considered as part of public consultation. Option 2 was subject to public consultation, with the possibility of alternative options arising as part of feedback on this process.

Defining 'permanently ceased to operate' for the purposes of cancelling service licences

In addition to the status quo (option 1), two other options were considered for defining 'permanently ceased to operate' to improve clarity and certainty regarding the cancellation of licences for services that are no longer operating.

Both of these options propose to amend the Regulations to insert a definition of 'permanently ceased to operate' as:

- a. when the service provider has notified the Ministry that it has permanently ceased to operate; or
- b. when the Ministry is made aware that the service has not been operating for [a defined minimum period] as evidenced by two or more of the following criteria:
 - i. there being no children enrolled and/or attending the service; or
 - ii. there being no staff employed or engaged and working in the service; or
 - iii. the service provider has not claimed ECE funding.

However, we considered two options based on the amount of time that would need to pass with the criteria being met before a service would be deemed to have permanently ceased to operate. This recognises that there is a balance to be achieved to ensure licence holders are given enough time to confirm they have permanently ceased operating, and the Ministry's ability to effectively manage the network by freeing up space for new service providers to enter the network in a timely manner.

Option 2 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at three months or more.

Option 3 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at six months or more.

Providing for services to be able to temporarily close

In addition to the status quo (option 1), three other options were considered to provide for services to be able to temporarily close if they intend to re-open their service.

Option 2 – Amend Regulations to explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months upon application, with the possibility of an extension on request.

Option 3 – Allow service providers to be able to temporarily close their service for a period of up to three months, with the requirement to notify the Secretary

Option 4 – Remove the ability for service providers to seek approval to temporarily close their service, as is current operational practice.

Ministry analysis found that only Option 2 sufficiently met the policy objectives and assessment criteria. Based on this, the Ministry decided to only include this option in public consultation, with the possibility of alternative options arising as part of feedback on this process.

What stakeholders thought about the preferred options

Public consultation on the proposals was undertaken between 16 January 2023 and 17 February 2023. A total of 43 survey responses and 10 written submissions were received. Focused consultation was undertaken with the Sector Advisory Group, a sub-group of the Early Childhood Advisory Committee.

There was support for all the proposals in the consultation feedback. There was vast support, hovering around 80%, for the licensing and enforcement-related proposals (adding conditions

to provisional licences, defining 'permanently ceased to operate', and allowing for temporary service closures).

For those who supported the proposals, many appreciated the Ministry's work to address regulatory gaps and ensure children's safety. For those who did not support the proposals, feedback mainly focused on implementation issues or expressed a lack of faith in the Ministry's ability to implement the proposed regulations. There were also concerns raised by some submitters about whether there was a need for these proposals.

The preferred options were revised based on consultation feedback

The Ministry has considered the consultation feedback and has made changes to the final proposed amendments (outlined in Section 2). The final proposals are:

1. Amend the Regulations so that additional conditions can be added to a provisional licence, at the discretion of the Secretary where this is considered to be fair and reasonable, to be met by a new deadline, but no later than 12 months from when the licence was reclassified as provisional.
2. Amend the Regulations to provide a definition for 'permanently ceased to operate' as:
 - a. when the service provider has notified the Ministry that it has permanently ceased to operate; or
 - b. when the Ministry is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following criteria:
 - i. there being no children enrolled and/or attending the service; or
 - ii. there being no staff employed or engaged and working in the service; or
 - iii. the service provider has not claimed early childhood education funding.
3. Amend the Regulations to explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request. In exceptional circumstances, allow for the Secretary, at their discretion, to grant a service provider approval to temporarily close for more than six months, but no longer than 12 months from when the temporary closure was first issued, if satisfied they intend to reopen the service and they cannot be issued with a temporary relocation licence. As part of this amendment, the Secretary:
 - a. may grant approval to temporarily close to a service provider whose licence has been, or is likely to be, reclassified as provisional, at the Secretary's discretion, if considered fair and reasonable; and
 - b. must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended.

The potential impacts of the preferred options

The Ministry has assessed that overall these options will have a low impact on early learning services and parents and whānau. There will be marginal administrative costs for the Ministry as more resourcing may be needed in cases where a service's current provisional licence needs to be amended.

However, the Ministry's operational practice for assessing services will not change, as those services on provisional licences will continue to be monitored according to the compliance dates specified for each licence condition.

There may also be marginal administrative costs for services in cases where they may be required to provide the Ministry with evidence that their services are still operating (e.g., data on teacher employment, student numbers and funding).

The Ministry notes there may be significant costs for three casual education and care services who cannot meet the new requirements around temporary closure, as they cannot seek a temporary closure for longer than six months (the proposal would allow for services to be granted temporary closure for up to three months, and a further three months upon request). These services are based at ski fields and typically close for longer than six months during the off-season. This means that when this regulation comes into effect these services cannot obtain approval to temporarily close, so would either have to remain open for a longer period, operate under specific conditions set out in the Education and Training Act 2020 and not receive government funding, or need to permanently close and have a new licence issued when they intend to reopen. If they wish to cancel their licence, they will need to seek network approval before applying for a new licence issued.

Although this option will have a significant impact on these three casual education and care services, this is a small proportion of overall services (0.1% of total services).

Limitations and Constraints on Analysis

The key constraint for analysing options for addressing issues around adding conditions to provisional licences was to ensure any regulatory change was compatible with the existing regulations around compliance dates needing to be set within 12 months after the provisional licence was issued. This is important to ensure compliance requirements on service providers are fair and reasonable and help ensure that services can address non-compliance in a timely manner.

This constraint led to one of the proposed options for adding conditions to provisional licences being considered unfeasible, with the Ministry deciding against publicly consulting on this option.

There were no limitations or constraints on the analysis of the other proposals.

Responsible Manager(s) (completed by relevant manager)

Paul Scholey
Senior Policy Manager
ECE Policy
Ministry of Education



5 May 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Education
Panel Assessment & Comment:	The Ministry of Education's Quality Assurance Panel has reviewed this Regulatory Impact Statement "Tranche two of the Early Learning Regulatory Review additional proposals – adding conditions to provisional licences, defining 'permanently ceased to operate', and providing for temporary service closures" produced by the Ministry of Education. The panel considers that it

meets the Quality Assurance criteria. For each of the presenting issues, the Statement explores and assesses the range of available options to address the three identified problems. The final proposals reflect stakeholder feedback and a convincing case for each regulatory change is made.

Proactively Released

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The early learning regulatory framework

1. The Government sets minimum standards for licensed early childhood services and certified playgroups and ensures these standards are met. These standards are set out in the early learning regulatory framework. Strong regulatory standards are important to protect children's health, safety and wellbeing in education and care services, and because research shows that high quality early learning experiences provide a platform for children to succeed as lifelong learners.
2. There are three tiers to the regulatory framework for licensed education and care services, including:
 - a. the Education and Training Act 2020 ('the Act'), which defines service types and provides for regulations and licensing criteria to be developed;
 - b. the regulations¹, including the Education (Early Childhood Services) Regulations 2008 ('the Regulations'), which establish the licensing process and set minimum standards that all services must meet²; and
 - c. the licensing criteria, which are used by Ministry of Education (the Ministry) to assess compliance with the minimum standards set out in the regulations.
3. The conditions for ECE services to be licensed are outlined in the Act. Licensing criteria, which is enabled through the Regulations, are used by the Secretary for Education ('the Secretary') to assess how services comply with regulated standards of education and care. ECE services must meet the licensing criteria as well as the other regulatory requirements contained in the regulations in order to gain and maintain a licence to operate. The proposals outlined in this RIS apply to changes to licensing regulations only.

The early learning regulatory review

4. The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the review'). The review is being undertaken in three tranches. The proposals outlined in this RIS are part of Tranche Two of the review. These proposals seek to amend the Regulations to:
 - a. expressly allow the Secretary to add conditions to a service's provisional licence in cases where subsequent compliance issues are identified;
 - b. provide a definition of 'permanently ceased to operate' for the purpose of cancelling a service's licence; and
 - c. allow for the Secretary, at their discretion, to grant a service provider the ability to temporarily close their service for a period of up to three months on application.

Requirements relating to provisional licensing

5. The reclassification of an ECE service provider's licence to a provisional licence is one of the key tools available to the Ministry to enforce compliance with the Regulations and licence conditions.

¹ Education (Early Childhood Services) Regulations 2008. URL: <https://legislation.govt.nz/regulation/public/2008/0204/latest/DLM1412501.html?src=gs>

² There are also regulations around network management that apply (refer to Education (Early Childhood Services Network Approval) Regulations 2022).

6. A provisional licence allows a service to continue operating and children to continue attending while the service provider works towards achieving full compliance. Regulation 15 provides for the Secretary to reclassify a probationary licence or a full licence as a provisional licence for several reasons, including if the service does not comply with the regulations or conditions on their licence.³
7. Services that have their licence reclassified to a provisional licence must comply with conditions specified on the provisional licence by the specified date(s). Each condition on a provisional licence can have a different date specified for compliance. Typical practice is that deadlines for complying with specific conditions are set up to three months.⁴ Issues that are likely to take longer to address, such as improvements to the delivery of the curriculum, may be set at six months.
8. The Secretary can extend the deadline for a condition under Regulation 16(3). However, no compliance dates can be set later than 12 months after the provisional licence was first issued. This helps to ensure that services address non-compliance in a timely manner. This is important as it provides reassurance for parents and whānau of children in services that these services are addressing any compliance issues as promptly as possible.
9. A provisional licence remains in force until the Secretary either:
 - a. revokes the provisional licence and returns a full or probationary licence; or
 - b. cancels the service provider's provisional licence.
10. The Secretary must cancel a provisional licence if satisfied that any condition has not been complied with by the date specified for compliance.
11. The effect of the above regulations is that a provisional licence must be cancelled (i.e., the service provider will no longer be able to operate) if compliance is not demonstrated by the compliance date set for any one condition, regardless of whether there are later compliance dates set for other conditions, unless an extension is provided. Where a cancellation pathway is followed, the Secretary implements a process of giving notice of proposed provisional licence cancellations to ensure natural justice requirements are met.

Requirements relating to the cancellation of service licenses

12. Regulation 32(2) sets out the Secretary's powers to cancel a service provider's licence. It states that the Secretary is required to cancel the licence of an early childhood service if satisfied that the service:
 - a. has permanently ceased to operate; or
 - b. has ceased to be an early childhood service; or
 - c. if applicable, has ceased to operate in the premises specified in the licence and has not been issued with a temporary relocation licence.
13. The Secretary is required to take all reasonable steps to give the licensed service provider notice of the Secretary's intention to cancel the licence before cancelling, and to take account of any representations received from the service provider.
14. Section 28(1) of the Act requires that licensed service providers who operate an early childhood education and care centre are committing an offence if they cease to operate

³ Education (Early Childhood Services) Regulations 2008. URL: <https://legislation.govt.nz/regulation/public/2008/0204/latest/DLM1412572.html>

⁴ *ibid*, Regulation 16. URL: <https://legislation.govt.nz/regulation/public/2008/0204/latest/DLM1412574.html>

a centre, in circumstances other than an emergency, without first notifying the Secretary. A person who commits the above offence is liable for conviction to a fine not exceeding \$200. This requirement does not cover hospital-based or home-based service providers, and only concerns providers who operate a centre-based service.

Current Ministry practice around services who temporarily close their services

15. There are situations where a service provider may want to cease operating for a short period of time only and therefore not want their licence to be cancelled. For example, a service provider may temporarily close its premises to undertake renovations or as a result of temporarily low attendance numbers (e.g., due to the impact of COVID-19).
16. In these cases, current operational practice is for the service provider to seek agreement from regional Education Managers to a 'Voluntary Temporary Closure'. If approved, voluntary temporary closures are usually agreed for a period of up to three months, after which a service can request a further three-month extension in extenuating circumstances.⁵ However, it is important that voluntary temporary closures are only permitted for a short and managed period of time, as extended closures can significantly impact the ability of service providers to continue to meet all of their ongoing regulatory requirements.

What is the policy problem or opportunity?

The current regulations don't allow for the Ministry to add new conditions to existing provisional licences

17. The regulations do not expressly allow for new conditions to be added to a provisional licence during the term of the provisional licence or set boundaries around when and how this can be done. Additional non-compliance can be identified during Ministry on-site visits to assess compliance with existing conditions or when responding to an incident or complaint.
18. While the Secretary can issue a written direction or suspend a service provider's licence, in many cases the Secretary has to wait until the current provisional licence process has been completed before issuing a subsequent provisional licence to address this new non-compliance. This may not be appropriate depending on the nature of the compliance issue.
19. The inability to add additional conditions to provisional licences impedes the Ministry's ability to respond directly and in a timely manner when further non-compliance is identified. They also do not provide the services enough certainty around the expectations for when compliance issues must be addressed.

There is no definition for 'permanently ceased to operate' when it comes to cancelling service licences

20. The current regulations require the Secretary to cancel the licence of any service that has permanently ceased to operate. However, there is no definition of 'permanently ceased to operate' in the regulations, which means there can sometimes be disagreement between the Ministry and the service provider about whether they have permanently ceased to operate or not. This can cause unnecessary confusion and distress and be both resource and time consuming for the service provider and the Ministry.

⁵ Ministry of Education, 2023. URL: <https://www.education.govt.nz/early-childhood/running-a-service/closing-a-service-temporarily/>

21. Centre-based service providers are required to notify the Secretary when their service has ceased to operate. However, it is not uncommon for the Ministry to become aware that a service has ceased to operate without any notification being given. This is particularly an issue for home-based services, who are not covered by the notification requirements in 28(1), where our data suggests that notification often tends to follow a change in management. To carry out its network management function, the Ministry needs to know when a service is no longer operating so it can be removed from the network. This information is also important to prevent services from fraudulently claiming the ECE funding subsidy.

There is no clear regulatory process for services to temporarily close

22. The current regulations do not set out the process for services to temporarily close. Care is required to ensure that any changes to the requirements for the cancellation of licences do not inadvertently affect the ability of service providers to request a temporary closure where there is genuine need and intention to reopen. This will be particularly important following the introduction of network management, where service providers that have their licence cancelled will need to apply for and receive network approval before they can apply for a new licence if they want to reopen.

What objectives are sought in relation to the policy problem?

23. The proposal to address policy issues around adding new conditions to existing provisional licenses seeks to achieve the following objectives:
- ensuring the Ministry can be a competent and responsive regulator, including undertaking enforcement action in a considered, proportionate, and timely manner;
 - ensuring there is clarity and certainty for service providers, parents and whānau, and the Ministry regarding the use of provisional licences to enforce compliance with the regulations and licence conditions; and
 - facilitating a prompt and timely response to compliance issues by service providers.
24. The proposals to address policy issues around defining 'permanently ceased to operate' and providing for temporary service closures seek to achieve the following objectives:
- ensuring the Ministry can be a competent and responsive regulator, including establishing robust systems and practices to perform its network management function;
 - ensuring there is certainty for service providers, parents and whānau, and the Ministry regarding temporary closures and the cancellation of licences; and
 - ensuring clarity in regulations around when services permanently cease to operate and when licences are required to be cancelled.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

25. The options have been assessed against the following criteria, which align with the policy objectives outlined in section 1:
- a. **Ensuring the Ministry is a timely and effective regulator** – the Ministry needs to be able to provide accessible, timely information to support services to comply with their regulatory requirements.
 - b. **Improves the clarity and consistency of regulations** – regulatory requirements need to be clear and consistent so both services and the Ministry understand their roles and expectations, including ensuring that regulations avoid gaps, overlaps and duplicate requirements.
 - c. **Improves the transparency of regulations for parents and whānau of children in service** – regulations need to be transparent so that those who use the services can easily understand the requirements that services must abide by, which is to ensure the health, safety and wellbeing of children who attend services.
 - d. **Reduces compliance costs** – regulations need to be fair and equitable for all parties, so services can address compliance issues in a timely way.
 - e. **Compatible with existing regulations** – any regulatory changes need to be aligned with existing requirements to ensure regulations are robust.
26. These criteria align with Government Expectations for good regulatory practice.⁶

What scope will options be considered within?

27. As noted above, the scope within which the options have been developed was constrained by needing to ensure any regulatory change was compatible with the existing regulations that means compliance dates need to be set within 12 months after the provisional licence was first issued.

What options are being considered?

Adding new conditions to existing provisional licences

28. In addition to the status quo (option 1), three options were considered for adding new conditions to existing provisional licences of services.

Option 2 – Amending Regulations so that additional conditions can be added to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from when the licence was classified as provisional

29. This option would amend Regulations to allow for new conditions to be added to services' provisional licences, at the discretion of the Secretary where it is fair and appropriate, with new compliance deadlines. Under this option services can still seek extensions to the timeframe for the new conditions in accordance with the current provisions for allowing extensions. The existing 12-month maximum period for all conditions to be complied with (inclusive of any permitted extensions) would still apply from when the licence was reclassified as provisional.

⁶ The Treasury, 2017. URL: <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

30. This option includes amending Regulations to give discretionary powers to the Secretary, where it is fair and appropriate, to add new conditions to provisional licences. This is because there may be situations where, depending on when additional non-compliance is identified and the nature of this non-compliance, adding additional conditions to a provisional licence would not be an appropriate enforcement response. This is because it may have an undue impact on the service provider, the children attending the service, and/or parents and whānau. For example, it may be preferable to allow the current provisional licence process to be completed and a new provisional licence issued, or the Secretary may have already confirmed their intention to cancel the licence.
31. In some cases, such as where the additional non-compliance found is relatively minor, the immediate issuing of another provisional licence can unnecessarily create a provisional licence history and/or require cancellation of the licence. Providing the Secretary with discretion to determine whether to add conditions to an existing provisional licence will help to ensure that the overall impact of any enforcement action is considered and proportionate to the situation and risks associated with the non-compliance issues being addressed.
32. This option would allow the Ministry to better undertake its regulatory function by providing more timely and responsive enforcement action to address newly identified compliance issues. It also provides services more certainty around our requirements to address compliance issues, as well as provide greater transparency for parents and whānau of a service's compliance with regulations.
33. Under this option there may still be situations where service providers would not have enough time to address any substantive compliance issues that arise close to the 12-month end date for a service to comply with conditions on their provisional licence. However, in such cases, the Secretary can wait to formally address the additional non-compliance as part of a service provider's new provisional licence (issued once the previous provisional licence date has ended and the conditions have been met) rather than adding conditions to the existing provisional licence. If the non-compliance is serious the Secretary can issue a written direction or suspension of a service's licence.

Option 3 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines the same as for existing licence conditions

34. This option, similar the Option 2, would amend regulations to give the Secretary the discretion to add additional conditions to an existing provisional licence, with timeframes for compliance to be no later than the last deadline for existing licence conditions.
35. This option would provide some reassurance to parents and whānau that service providers would address any new matters of non-compliance within the same timeframes that were set to address the initial compliance concerns.
36. However, depending on the timing and nature of the new compliance concern identified, it may not allow service providers a reasonable amount of time to remedy these issues. This may also compromise the ability of the service provider to meet existing conditions on time. A further risk is that this option would likely cause service providers to more frequently request extensions to the timeframes that have been set which would increase the administrative burden for both the Ministry and service providers.

37. Additionally, the option to set additional conditions to the last deadline for existing licence conditions could be accommodated, if appropriate, within the scope of the Secretary's discretion as per Option 2.

Option 4 – Amending Regulations so that additional conditions can be added to a provisional licence, with compliance deadlines that can extend beyond 12-months from when the licence was classified as provisional, in exceptional circumstances

38. This option would amend the regulations so that additional conditions can be added to a provisional licence as per the above proposal, with timeframes for conditions allowed to extend beyond 12-months from when the licence was reclassified as provisional, under exceptional circumstances. What was deemed to be exceptional circumstances would be at the discretion of the Secretary. At present, the Secretary cannot set compliance dates beyond 12-months to avoid services being in an extended period of non-compliance.
39. This option would provide service providers with enough time to address any substantive compliance issues that arise while on a provisional licence, without the restriction of having to comply within the 12-month window from when their licence was first classified as provisional.
40. However, as expressed in the *Limitations and constraints* section above, allowing service providers to potentially be non-compliant with the regulations for longer than 12 months would present a significant change to the regulatory framework. This would reduce incentive for service providers to address compliance issues, which may place more risk on children who attend non-compliant services. Additionally, parents and whānau would reasonably expect compliance issues to be addressed by services within the 12-month licence period.

Options not included in public consultation

41. Options 3 and 4 do not meet the policy objectives and criteria as the timeframes are too impractical for service providers in terms of stress and cost (Option 3) and are incompatible with the existing regulatory framework (Option 4). As such, these options were not included in public consultation. Option 2 was subject to public consultation, with the possibility of alternative options also arising as part of feedback on this process.

Defining 'permanently ceased to operate' for the purposes of cancelling service licences

42. In addition to the status quo, two options were considered for defining 'permanently ceased to operate' to improve clarity and certainty regarding the cancellation of licences for services that are no longer operating.
43. Both of these options propose to amend the Regulations to insert a definition of 'permanently ceased to operate' as:
- a. when the service provider has notified the Ministry that it has permanently ceased to operate; or
 - b. when the Ministry is made aware that the service has not been operating for a defined minimum period as evidenced by two or more of the following criteria:
 - i. there being no children enrolled and/or attending the service; or
 - ii. there being no staff employed or engaged and working in the service; or
 - iii. the service provider has not claimed ECE funding.
44. However, the options differ in relation to how we define the period of time that would need to pass with the criteria being met before a service would be deemed to have permanently ceased to operate.

45. These options would provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32, including greater clarity about when the Secretary is required to cancel licences that are not operating. This would also ease the removal of defunct licences from the network of licensed early childhood services to facilitate entry of new services as set out in the Act.⁶

Option 2 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at *three* months or more

46. This option enables more timely and active management of the network by removing non-operating services from the network more swiftly. This will free up space in the network for new service providers wanting to enter the network. However, there is a risk that three months is not enough time for service providers to determine whether they will permanently cease to operate or intend to resume operation.

Option 3 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at *six* months or more

47. This option may strike a more reasonable balance for a service provider to close its' service for a short period of time when there are good reasons to do so before risking cancellation of the licence.
48. However, this option would not support the network management function as well as Option 1, because it would take longer for the Secretary to be able to cancel the licence of a service providers that has permanently ceased to operate but not notified the Ministry. This could have a negative impact on any new services assessment on whether there is an opportunity to seek network management approval.
49. The Ministry publicly consulted on both of these options, with the possibility of alternative options also arising as part of feedback on this process.

Providing for services to be able to temporarily close

50. In addition to the status quo, three options were considered relating to service's ability to temporarily close, and who intend to reopen.

Option 2 – Amend Regulations to explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request

51. This option is similar to current practice, where service providers can seek approval from the Secretary to temporarily close their service for up to three months, such as in cases where a service needs to close its premises to undertake renovations or as a result of low attendance numbers due to the impact of COVID-19. However, this option makes the Secretary's powers more explicit in the Regulations.
52. This option would also provide more certainty and transparency to the sector on temporary closures, as well as strengthen the Ministry's ability to enforce the existing requirements for early childhood education and care centres to notify the Ministry when they intend to close. However, we note that the exercise of discretion by the Secretary will be required to prevent service providers who have no intention of re-opening from being able to 'temporarily' close for extended periods of time while they seek to sell their service.

Option 3 – Allow service providers to be able to temporarily close their service for a period of up to three months, with the requirement to notify the Secretary

53. This option would allow service providers the ability to temporarily close their services with the provider needing to notify the Ministry.

54. The benefit of this option is that the administrative cost to services would be reduced as they would not need to undergo an application process to be granted approval to temporarily close. However, this option would reduce the Ministry's role as a good regulator through having less ability to make an assessment as to whether a service is intending to reopen, or instead is seeking to temporarily close for extended periods of time while they seek to sell their service. This would negatively impact on the Ministry's network management function, as the Ministry needs to know when a service is no longer operating so it can be removed from the network.

Option 4 – Remove the ability for service providers to seek approval to temporarily close their service, as is current operational practice

55. This option would change current operational practice by removing the ability for service providers to apply to the Secretary for approval to temporarily close their service for a period of up to three months, or longer upon request.
56. The benefits of this option are that it would reduce administrative burden for the Ministry through removing the process for services to undertake a temporary closure, as well as prevent service providers who have no intention of re-opening from being able to 'temporarily' close for extended periods of time while they seek to sell their service.
57. However, this option would prevent the Ministry from being an effective and responsive regulator, as although there will be cases where service providers have legitimate reasons for closing their services temporarily, such as to undertake renovations of their premises, this option also creates perverse incentives for services to stay open, which may put children who attend the service at risk. This option also creates a lack of flexibility to respond to matters related to managing service provision and could impose significant costs on service providers (e.g., where services may need to relocate rather than temporarily close).

Options not being considered as part of public consultation

58. Options 3 and 4 do not meet the policy objectives and criteria as it prevents the Ministry from being an effective and responsive regulator and creates a lack of flexibility to respond to matters related to managing service provision and potentially creates significant costs. Given this, these options were not included in public consultation. Option 2 was subject to public consultation, with the possibility of alternative options also arising as part of feedback on this process.

How do the options compare to the status quo/counterfactual?

Adding new conditions to existing provisional licences

	Option 1 – Status Quo	Option 2 – Add additional conditions to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from licence classification [Reg change]	Option 3 – Add additional conditions to a provisional licence, with compliance deadlines the same as for existing licence conditions [Reg change]	Option 4 – Add additional conditions to a provisional licence, with compliance deadlines that can extend beyond 12-months from when the licence was classified as provisional, in exceptional circumstances [Reg change]
Supports the Ministry to be a timely and effective regulator	0	++ The Ministry would be able to add new conditions to a current licence following subsequent assessment of a service site	+ The Ministry can add new conditions to a current licence following subsequent assessment of a service site, however there would be less time for services to address them than under option 1	- - The Ministry can add new conditions to a current licence following subsequent assessment of a service site, however there would theoretically be no established end date for services to address compliance issues. This means a service can be on a provisional licence for a longer period of time (operating with compliance issues which may negatively impact children at service)
Improves clarity and consistency of regulations	0	++ Services and the Ministry will have more clarity that new conditions can be added to a provisional licence, where this is not currently explicit in the regulations. This will help to ensure the Ministry's practices in this area are consistent across different service providers and regions	++ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment	+ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment, but less so (than options 2 and 3) about when compliance issues must be addressed by
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau will have more transparency about new matters of non-compliance as these can be added to a provisional licence at the time they are identified. Under the status quo, the Ministry must wait until the service provider has been returned to a full licence, and then have their licence reclassified as provisional again to address new matters of non-compliance	++ Parents/whānau will have more transparency of what compliance issues services must address	+ Although parents/whānau will have more transparency of what compliance issues services must address, there's less clarity about when these issues need to be addressed by
Minimises compliance costs	0	+ Services will have new deadlines (i.e., more time) for addressing new compliance issues, unless conditions are added towards the end of a service's licence window (i.e., 10 or 11 months into a 12-month licence period)	- - Services would be required to address new compliance issues within an existing deadline for a different condition. This may mean the timeframe set for services to meet the new condition is insufficient and services will immediately seek an extension	++ Services will have new deadlines (i.e., more time) for addressing new compliance issues, and these deadlines can extend beyond 12-months. This means less pressure for services if new conditions are added close to the end of 12-months
Compatible with existing regulations	0	+ Current regulations require services to address conditions on a provisional licence by the date specified and within 12-months of the licence first being issued	+ Current regulations require services to address conditions on a provisional licence by the date specified and within 12-months of the licence first being issued	- - This would be incompatible with existing regulations which requires services to meet conditions on provisional licence by a specified date and within 12 months of the provisional licence first being issued
Overall assessment	0	+8	+4	0

Definition for 'permanently creased to operate' for service licence cancellations

	Option 1 – Status Quo	Option 2 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at <u>three</u> months or more [Reg change]	Option 3 – Set the period of time for which a service has not been in operation before it is deemed to have permanently ceased to operate at <u>six</u> months or more [Reg change]
		NB: These options also propose inserting a definition of 'permanently ceased to operate' as: a. when the service provider has notified the Ministry that it has permanently ceased to operate; or b. when the Ministry is made aware that the service has not been operating for a minimum period of three months or more as evidenced by two or more of the following criteria: i. there being no children enrolled and/or attending the service; or ii. there being no staff employed or engaged and working in the service; or iii. the service provider has not claimed ECE funding.	
Supports the Ministry to be a timely and effective regulator	0	++ The Ministry can be a more effective regulator because the regulations provide a definition of permanently ceased to operate which allows the Ministry to take more decisive action to cancel licences from defunct services. The Ministry will also be able to undertake more timely and active management of the network than it currently is able to by removing non-operating services from the network more swiftly. This will free up space in the network for new service providers wanting to enter the network	+ The Ministry can be a more effective regulator because the regulations provide a definition of permanently ceased to operate which allows the Ministry to take more decisive action to cancel licences from defunct services. In comparison to option 2, the Ministry's ability to undertake more timely and active management of the network is reduced

Improves clarity and consistency of regulations	0	++ This will provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32	++ This will provide greater certainty and clarity around the exercise of the power to cancel licences in Regulation 32
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau will have greater transparency of when services are deemed to have permanently ceased to operate (and in turn have their service licence cancelled)	++ Parents/whānau will have greater transparency of when services are deemed to have permanently ceased to operate (and in turn have their service licence cancelled)
Minimises compliance costs	0	- Services may be required to provide the Ministry with evidence that their services are still operating (data on teacher employment, student numbers and funding)	- Services may be required to provide the Ministry with evidence that their services are still operating (data on teacher employment, student numbers and funding)
Compatible with existing regulations	0	NA	NA
Overall assessment	0	+5	+4

Providing for temporary service closures

	Option 1 – Status Quo	Option 2 – Explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request [Reg change]	Option 3 – Allow service providers to be able to temporarily close their service for a period of up to three months, with the requirement to notify the Secretary [Reg change]	Option 4 – Remove the ability for service providers to seek approval to temporarily close their service, as is current operational practice [Non-reg change]
Supports the Ministry to be a timely and effective regulator	0	++ The Ministry will manage the temporary closure process, including determining service approvals (removes ability for services to apply when they intend to close permanently)	-- The Ministry will manage temporary closure process, however less ability to determine whether service is legitimately seeking temporary closure, or intending to close permanently	-- There would be less clarity for services around the options available to them around closing temporarily and the process for doing this. There is also less visibility for the Ministry around whether are temporarily closing without advising the Ministry
Improves clarity and consistency of regulations	0	++ The sector will have greater clarity around temporary closures, as the requirements will not explicitly be set out in regulations	++ The sector will have clarity around temporary service closures, as requirement to notify the Secretary laid out in regulations	0 As there are no provisions in the regulations around temporary service closures this option is neutral in comparison to the status quo
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau will have greater transparency of the ability for services to seek temporary closures and how long a service may be closed for	- Parents/whānau will have less transparency about when a service may decide to temporarily close, particularly if they don't give them advanced warning	-- Parents/whānau will have less transparency as services could close at any time for an unspecified amount of time
Minimises compliance costs	0	0 Same as current practice	+ Services will still have ability to temporarily close but will not need to undergo application process as is current practice	-- Services will not have ability to temporarily close, putting them at risk of service licence cancellation
Compatible with existing regulations	0	NA	NA	NA
Overall assessment	0	+6	0	-8

Example key for qualitative judgements:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Adding new conditions to existing provisional licences

60. Our initial assessment was that option 2 (adding new conditions with new compliance deadlines, but within 12-months from when the licence was classified as provisional) was the preferred option as it best met the decision-making criteria and provided the best response to the problems identified in section 1. As outlined in section 2, we did not consult on options 3 and 4 as they did not meet the policy objectives and criteria.
61. Consultation feedback on this proposal was strongly supportive (81% support). Feedback from those who supported the proposal appreciated the Ministry taking steps to ensure service quality and child safety. Those who were less supportive of the proposal attributed it to a lack of faith in the Ministry to be fair and impartial when making decisions around adding new licence conditions, as well as concern about whether this proposal was needed. There was also concern that the 12-month timeframe for services to comply with all conditions (including any new conditions imposed) was too short, having only 67% approval. There could be a scenario where a new condition is added close to the 12-month window, meaning a service would have insufficient time to address the issues. One respondent raised issues about the time frame being too long and risks from low-quality services remaining in the network. There was general agreement with services being able to request extensions to their provisional licenses (77%).
62. The Ministry determined that concerns raised in consultation feedback could be reasonably addressed through considered implementation of the proposal, such as the Secretary choosing to issue a service a new provisional licence rather than adding a new condition to an existing licence. However, further analysis of the proposal raised the question whether the proposal's wording should be more consistent with the Regulations with Secretary discretion needing to be "fair and reasonable" rather than "fair and appropriate". This wording change would not alter the intent of the policy proposal.
63. Based on consultation feedback, we considered revising the wording of option 2 to reflect the change in wording above. Our assessment of this revised option is set out below.

	Option 2 – Add additional conditions to a provisional licence, at the discretion of the Secretary where it is considered fair and appropriate, to be met by a new deadline, but no longer than 12-months from licence classification [Reg change]	Revised Option 2 – Add additional conditions to a provisional licence, at the discretion of the Secretary where it is considered fair and reasonable, to be met by a new deadline, but no longer than 12-months from licence classification [Reg change]
Supports the Ministry to be a timely and effective regulator	++ The Ministry can add new conditions to a current licence following subsequent assessment	Same as Option 2
Improves clarity and consistency of regulations	++ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment	+++ The revised wording improves consistency in regulations as it uses the same language as expressed in regulations
Improves transparency of regulations for parents/whānau	++ Parents/whānau will have more transparency of what compliance issues services must address	Same as Option 2
Minimises compliance costs	+ Services will have new deadlines (i.e., more time) for addressing new compliance issues, but depends on when these new conditions are added (if close to 12-month licence window)	Same as Option 2

Compatible with existing regulations	Current regulations require services to address conditions on a provisional licence by the date specified and within 12-months of the licence first being issued	Same as option 2
Overall assessment	+8	+9

64. Our final assessment is that the revised Option 2 is the preferred option as it better meets the objectives and decision-making criteria, particularly around improving clarity and consistency of the regulations as the language of the proposal better aligns with the current wording in the regulations.

Definition for 'permanently ceased to operate' for service licence cancellations

65. Our initial assessment was that option 2 (setting the time period at three months or more that services are evidenced to not be operating) was the preferred option as it best met the decision-making criteria and provided the best response to the problems identified in section 1.
66. Consultation feedback on this proposal was hugely supportive (84%). Additionally, there was majority support for the defined minimum period being three months or more as the length of time the criteria must be met for a service to be considered as permanently closed. There was also majority agreement (86%) with the criteria proposed to define permanently ceased to operate. For those who were less supportive of the proposal, there was concern that services may need to close for longer than three or six months, such as for renovations or flood damage repair, meaning services may be erroneously categorised as 'permanently ceased operation' under the proposed definition, leading to the potential risk that service licences are accidentally cancelled. A small number of submitters also raised concern about the Ministry's operational practice around this, noting that the Ministry needs to make legitimate attempts to contact the service before assessing them as permanently closed.
67. Following consultation feedback, option 2 remains the preferred option as it best meets the objectives and decision-making criteria. Additionally, the Ministry determined that although there was some concern raised around services potentially needing flexibility to close for longer than three or six months in special circumstances, this matter can be addressed through the below proposal on temporary closure.

Providing for temporary service closures

68. Our initial assessment was that option 2 (explicitly provide for service providers to apply for temporarily closure for a period of up to three months, with the possibility of an extension on request) was the preferred option as it best met the decision-making criteria and provided the best response to the problems identified in section 1. As outlined in section 2, we did not consult on options three and four as they did not meet the policy objectives and criteria.
69. Consultation feedback strongly supported the proposal (84%). For those who were less supportive of the proposal, there was a lack of trust in the Ministry's ability to make informed decisions around approving temporary service closures. This was reflected in the slightly lower level of agreement for the Secretary having discretion over whether to grant temporary service closures (77%). Consultation feedback noted cases where services have applied for, and been granted, temporary closure to avoid compliance breaches or being placed on a suspended licence; an issue also raised by the Sector Advisory Group. There was also similar concern to that raised in proposal 2 around services needing to close for longer periods, such as for major renovations following a major weather event.

70. Additionally, the Ministry's Early Learning Regulatory Review Advisory Group raised concerns in April 2023 that allowing for temporary service closures of up to six months may not be sufficient in exceptional circumstances, such as significant weather events, or when major renovation works are delayed. However, it was also noted that there must be some assurance that service providers that need to close for longer than six months are still intending to reopen their service, and that they have also pursued alternative premises as part of obtaining a temporary relocation licence.
71. The Ministry determined that further clarification was needed in the Regulations to make it clear that services cannot apply for temporary closure when they are, or likely to be, on a suspended licence. There also needs to be the ability for Secretary discretion when approving temporary closures for services that may not be on a suspended licence but have ongoing compliance issues (represented by these services having their licence reclassified as provisional).
72. Based on consultation feedback, we considered revising option 2 to include a proposal to provide for the Secretary, at their discretion, to allow a service provider to temporarily close for more than 6 months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:
- the service provider intends to reopen the service; and
 - it is not possible for the service provider to find a premises for which they will be granted a temporary relocation licence.
73. The revised option also includes the addition of parameters around which services can apply for temporary closure. Our assessment of this revised option is set out below.

	<p>Option 2 – Explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request [Reg change]</p>	<p>Revised option 2 – Explicitly provide for the Secretary to grant a service provider approval to temporarily close their service for a period of up to three months, with the possibility of an extension on request. <i>The option also proposes that the Secretary, at their discretion, be able to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:</i></p> <ol style="list-style-type: none"> <i>the service provider intends to reopen the service; and</i> <i>it is not possible for the service provider to find a premises for which they will be granted a temporary relocation licence.</i> <p>As part of this amendment, the Secretary:</p> <ol style="list-style-type: none"> <i>may grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, at their discretion, if considered fair and reasonable; and</i> <i>must not grant approval to temporarily close to a service provider whose licence has been, or likely to be, suspended.</i> <p>[Reg change]</p>
<p>Supports the Ministry to be a timely and effective regulator</p>	<p>++</p> <p>The Ministry will manage temporary closure process, including determining service approvals (removes ability for services to apply</p>	<p>+++</p> <p>The revised wording improves the Ministry's role as a regulator as the proposal prevents services from avoiding compliance breaches or being issued a suspended licence. It also</p>

	when they intend to close permanently)	provides a pathway for services who may need to close for longer than six months
Improves clarity and consistency of regulations	++ The sector will have greater clarity around temporary closures, as requirements laid out in regulations	+++ The revised wording improves clarity for services around who can apply for temporary closures as it more clearly sets out expectations around the temporary closure process.
Improves transparency of regulations for parents/whānau	++ Parents/whānau greater transparency of when services are closing temporarily, or when they have permanently ceased to operate	Same as option 2
Minimises compliance costs	0 Same as current practice	0 Same as current practice
Compatible with existing regulations	NA	NA
Overall assessment	+6	+8

74. Our final assessment is that the revised Option 2 is the preferred option as it better meets the objectives and decision-making criteria, particularly around supporting the Ministry to be a timelier and more responsive regulator and improving clarity and consistency of the regulations.

What are the marginal costs and benefits of the option?

75. The table below outlines the costs and benefits of the preferred options against the status quo.

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Allowing Secretary discretion to add conditions to existing provisional licences			
Early learning service providers (owners/managers) [Regulated group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>The introduction of regulations to add new conditions to provisional licences will provide services more clarity around their regulatory requirements, particularly as to what conditions need to be met, and by when, in order to be returned to a probationary or full licence.</p> <p><i>Costs</i></p> <p>There is the possibility that new compliance issues may arise for a service that is in the final months of its provisional licence, meaning services will have a limited time to address these new compliance issues.</p> <p>In these situations, the Ministry can mitigate this through current operational practice, such as providing a formal written communication to the service or waiting for the service to meet the conditions of their current provisional licence before issuing a new provisional licence with the new conditions attached. If the new compliance issue is serious the Ministry can issue a written direction (if the service is eligible) or suspend a service's licence.</p>	<p>Low.</p> <p>This option will not have any impact on the majority of services as only around 2.3 percent are issued with a provisional licence each year.</p>	<p>Medium.</p> <p>Between 2013 and 2022, the Ministry has issued approximately 122 provisional licences per annum. In 2022 this figure was 161. These figures include both full and probationary licences being reclassified as provisional. Of these services, approximately 53 of them (43%) returned to their original licence (either full or probationary). In 2022, 90 services returned to a full or probationary licence after having met the conditions on their provisional licence.</p> <p>Of services that has their full or probationary licence reclassified as provisional, approximately 63 of them (52%) would then be issued a subsequent provisional licence per annum (this would be after they've returned to a full or probationary licence). Additionally, over the last ten years (2013-2022) approximately 30 of these services have had their licence suspended or cancelled.</p> <p>There is a fair number of services who are issued subsequent provisional licences. It is likely that changes to the regulations to allow for the Secretary to add new conditions to existing provisional licences will lead to some services not needing to be issued subsequent provisional licences. This means services can address compliance issues in a timelier way, with less services overall on provisional licences in the network.</p>
Ministry of Education [Regulator]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>The introduction of regulations to add new conditions to provisional licences will provide the Ministry with an additional enforcement tool when new compliance issues arise in a service already on a provisional licence (as opposed to issuing a formal written communication or waiting for a service to meet the current conditions on their licence before being issued a subsequent provisional licence).</p> <p><i>Costs</i></p> <p>There may be marginal administrative costs associated with this option.</p>	<p>Low.</p> <p>This option may create marginal administrative costs for the Ministry as more resourcing may be needed in cases where a service's current provisional licence needs to be amended.</p> <p>However, the Ministry's operational practice for assessing services will not change, as those services on provisional licences will continue to be monitored according to the compliance dates specified for each licence condition.</p>	<p>Medium.</p> <p>The Ministry will conduct an on-site visit of a service to assess compliance with the requirements following an incident or complaint (the Ministry assesses compliance through an EC3 form).</p> <p>Depending on the level of non-compliance identified by the Ministry the service's licence may be reclassified as provisional with any areas for improvement clearly identified. If, whilst on a provisional licence, further non-compliances are identified, these will be noted in a formal written communication to the service provider. If the additional/further non-compliance is serious the Ministry may issue a written direction or suspend the licence whichever is the most appropriate step.</p> <p>This option will not change the Ministry's operational practice when assessing service compliance, but there may be more administrative burden on the Ministry when amending provisional licences and</p>

			ensuring there is appropriate resourcing to monitor and assess that services are complying with the new conditions by the specified deadlines.
Parents and whānau of children in care [Interest group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>The introduction of regulations to add new conditions to provisional licences will provide parents and whānau with more clarity and transparency on the compliance status of their child's service. This allows for parents and whānau to know whether their child's service is complying with regulations concerning health and safety and wellbeing.</p> <p><i>Costs</i></p> <p>The Ministry anticipates no costs for parents and whānau as a result of this option.</p>	<p>Low.</p> <p>The Ministry anticipates no costs for parents and whānau as a result of this option.</p>	<p>Low.</p> <p>This option seeks to strengthen the Ministry's enforcement function, as well as provide services more clarity around their licence requirements. This option does not intend to create any additional costs for services which may be passed on to parents and whānau.</p>
Total monetised costs	Not applicable		
Non-monetised costs	Low		
Defining 'permanently ceased to operate' for the purposes of cancelling service licences			
Early learning service providers (owners/managers) [Regulated group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>Providing a definition in the regulations for 'permanently ceased to operate' will provide services more certainty and clarity around Regulation 32 (Cancellation of licences), so there is less confusion around when services are closed temporarily or permanently. This means it is less likely for a service's licence to be accidentally cancelled. This has the added benefit that services will not be at risk of needing to seek network management approval if their licence was mistakenly cancelled.</p> <p><i>Costs</i></p> <p>In situations where services that meet the criteria for their service to be deemed as permanently closed, but they intend to reopen, they may be required to provide evidence to the Ministry that they are temporarily closed (e.g., data on staffing, student numbers).</p>	<p>Low.</p> <p>There may be increased administrative costs for services. They may be required to provide the Ministry with evidence that their services are still operating (e.g., data on teacher employment, student numbers and funding).</p>	<p>Low.</p> <p>The Ministry does not capture data on whether services notify the Ministry they intend to permanently close, of if permanent closure is discovered by the Ministry.</p> <p>On average, approximately 68 services are permanently closed per annum. In 2022, 159 services closed. There are a range of reasons cited that leads to services permanently closing, including mergers with other services, declining student roll, and financial reasons.</p> <p>This option will provide services with a mechanism to appeal to the Ministry, in the case that the Ministry has determined that the service has permanently ceased operating.</p>
Ministry of Education [Regulator]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>This option will strengthen the Ministry's ability to provide more timely and active management of the early learning network by removing non-operating services from the network more swiftly. This will free up space in the network for any new service providers wanting to enter the network.</p> <p>This option will also provide more clarity when differentiating services that have closed temporarily or permanently, reducing the risk of service licences being mistakenly cancelled.</p>	<p>Low.</p> <p>There are no additional costs anticipated for the Ministry as a result of this option.</p>	<p>Medium.</p> <p>Currently, operational practice is that if the conditions of a service's provisional licence are not met then the Secretary <i>may</i> cancel the service's licence; Services on provisional licences that do not meet the conditions of their licence within 12 months of the licence first being issued will have their licence cancelled. If an assessment is made and the service is still non-compliant then consideration is given as to either licence cancellation or extension. These decisions are determined by a number of factors including the seriousness of the breach/breaches, the service provider's commitment and ability to addressing the breach, and any other mitigating circumstances. Also prior to cancelling a service's licence the Ministry will issue a</p>

	<p><i>Costs</i></p> <p>There are no additional costs anticipated for the Ministry as a result of this option.</p>		<p>notice of its intention to cancel, which provides the service provider with an opportunity to respond and express a reason as to why the licence should not be cancelled.</p> <p>This option will not change the Ministry's operational practice around licence cancellation but will be considered as part of the Ministry's assessment of a service's status of closure.</p>
Parents and whānau of children in care [Interest group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>Parents and whānau will have greater transparency of when services are deemed to have permanently ceased to operate or closed temporarily and support them in making decisions about childcare.</p> <p><i>Costs</i></p> <p>The Ministry anticipates no costs for parents and whānau as a result of this option.</p>	<p>Low.</p> <p>The Ministry anticipates no costs for parents and whānau as a result of this option.</p>	<p>Low.</p> <p>This option seeks to provide clarity and certainty for services and the Ministry around the cancellation of service licences. This option does not intend to create any additional costs for services which may be passed on to parents and whānau.</p>
Total monetised costs	Not applicable		
Non-monetised costs	Low		
Allowing for the Secretary to grant temporary service closures			
Early learning service providers (owners/managers) [Regulated group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>This option will create a regulatory ability for services to seek temporary closures. This will provide services more clarity around the process for obtaining temporary closures.</p> <p>This option also provides a pathway for services who need to close for longer than six months in exceptional circumstances.</p> <p><i>Costs</i></p> <p>This option sets out that services cannot undertake temporary closures for longer than six months duration (including any extension). The Ministry has identified that three services will be impacted by this requirement as they are casual education and care services based on ski fields which close for longer than six months of a calendar year. This means that when this regulation comes into effect these services cannot obtain approval to temporarily close, so would either have to remain open for a longer period, operate unlicensed and not receive government funding, or need to permanently close and have a new licence issued when they intend to reopen. If they wish to cancel their licence, they will need to seek network approval before applying for a new licence.</p>	<p>Low.</p> <p>Although this option will have a significant impact on three casual education and care services, this is a small proportion of overall services.</p> <p>For the three casual and care services that would be impacted by this option, may need to open for longer periods of the calendar year, increasing operational costs but also risking loss of government funding as these services may have low enrolment numbers (as they would need to be open outside of ski season).</p> <p>These services may also wish to cancel their licence and go through the process of having their licence reissued when they wish to reopen. However, following the introduction of network management these services will need to seek network approval. There are administrative costs associated with applying for network approval.</p>	<p>Medium - High.</p> <p>A small number of services seek temporary closures. Between 2013 and 2022, approximately 1.3 percent of all early learning services were granted temporary closures per annum. Most recently in 2022, 2.5 percent of services sought a temporary closure. Of these, around 5-10 services sought a subsequent temporary closure per annum.</p> <p>In total, there are five casual education and care services. These are services that tend to be located in gyms and malls and are generally only open for short periods of the day.⁷ They provide childcare for the length of time the parent or whānau are at the venue. Of these, three casual education and care services are located at ski fields, and temporarily close during the offseason, which is longer than six months of the year. These services seek temporary closure during these times and reopen once ski season commences. Given they are inoperable for large portions of the year, they would not be able to seek temporary closure for the entire duration of the offseason. These services would only have the following options: remain open during the offseason, become unlicensed but lose Ministry funding, or cancel their licence and go through the processes of first seeking network approval before applying for a new licence when they want to reopen. These options will create significant costs for these services.</p>

⁷ Casual education and care services can be open for longer than two hours per day, but they would need to have outdoor space in order to continue receiving government funding (outlined in Regulation 54(4)).

Ministry of Education [Regulator]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>This option will strengthen the Ministry's ability to enforce the existing regulatory requirements for early childhood education and care centres to notify the Ministry when they intend to close.</p> <p>This option also removes the ability for services to obtain a temporary closure as a means of avoiding being issued a provisional or suspended licence.</p> <p>This option also provides a regulatory pathway for the Ministry in cases where services need to close for longer than six months in exceptional circumstances.</p> <p><i>Costs</i></p> <p>There are no additional costs anticipated for the Ministry as a result of this option.</p>	<p>Low.</p> <p>There are no additional costs anticipated for the Ministry as a result of this option.</p> <p>Rather, this option will lead to less administrative cost than currently, as once this proposal is enacted in the regulations information about voluntary service closures can be stored in the FIRST database, which can generate voluntary service closure letters for services. This differs from the current process where Ministry advisors must write these manually. This will also align operational practice across Ministry regions, improving consistency.</p>	<p>Medium.</p> <p>Currently, if a casual education and care service wishes to close temporarily, they must notify the Ministry. Failure to notify the Ministry about temporary closure is a breach of the Education and Training Act 2020 and ECE Funding Handbook. In notifying the Ministry the service must specify when they intend to close, for how long, and the reason for closure (such as undertaking renovations to service premises or facilities, low enrolment or staff numbers, or not having a person responsible).</p> <p>Services can closure for up to three months, and if they want to close for a longer period they must seek an extension.</p> <p>This option will not change the Ministry's operational practice around temporary service closures.</p>
Parents and whānau of children in care [Interest group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing.</p> <p>Parents and whānau will have greater transparency of the ability for services to seek temporary closures and how long a service may be closed for.</p> <p><i>Costs</i></p> <p>The Ministry anticipates no costs for parents and whānau as a result of this option.</p>	<p>Low.</p> <p>The Ministry anticipates no costs for parents and whānau as a result of this option.</p>	<p>Low.</p> <p>This option seeks to provide clarity and certainty for services and the Ministry around the process for temporary service closure. This option does not intend to create any additional costs for services which may be passed on to parents and whānau.</p>
Total monetised costs	Not applicable		
Non-monetised costs	Low		

Section 3: Delivering an option

How will the new arrangements be implemented?

76. Cabinet agreement to the proposals outlined in this paper will be sought in May 2023. Drafting of the regulations by the parliamentary Counsel Office is expected to take place in June 2023. The new regulations are expected to be gazetted during August 2023.
77. The usual channels will be used by the Ministry to communicate the changes to the Regulations, including print and social media, and through professional learning and development material. The Ministry will also communicate these changes through the early learning bulletin. The Ministry already has well established networks and communication channels with the sector to support the implementation of the proposed regulatory changes, including the Early Childhood Advisory Committee.
78. There is the possibility that the sector may raise concerns about the licence cancellation process, given that from 1 February 2023 new services (unless excluded) need to go through network management approval before being issued a licence. The Ministry intends to work with the sector to provide support around the new requirements.

How will the new arrangements be monitored, evaluated, and reviewed?

79. The Ministry will assess compliance with the new regulations as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review. The Ministry works closely with ERO to understand issues or concerns regarding regulatory compliance across the sector.
80. The Ministry is also planning to make changes to our databases (e.g., FIRST database) to support more accurately identify when services have permanently ceased to operate, as well as capture data around the number of services on voluntary temporary closures.

Final Regulatory Impact Statement: Definition of locally based for persons responsible in licensed home-based services

Coversheet

Purpose of Document

Decision sought:	This RIS supports final Cabinet decisions on proposals amend the Education (Early Childhood Education) Regulations 2008 to provide a definition of 'locally based' for persons responsible in licensed home-based early childhood education and care services.
Advising agencies:	Ministry of Education
Proposing Ministers:	Minister Jan Tinetti, Minister for Education
Date finalised:	5 May 2023

Problem Definition

The 'person responsible' is expected to play a key role in licensed home-based early childhood education and care (ECE) services. This includes, having primary responsibility for overseeing the education and care, comfort, and health and safety of children and providing professional leadership and support to educators.

However, there is a lack of clarity around the supervisory and support aspects of this role in relation to home-based services. This is because the Education (Early Childhood Education) Regulations 2008 (the Regulations) are not explicit as to how the person responsible must provide supervision or support to educators and children when the person responsible is not ordinarily present in the home where care is provided. At present, there is no requirement for persons responsible in licensed home-based ECE services to reside locally to the place they oversee. This lack of clarity about what is expected so that they can perform their role satisfactorily means that, in practice, persons responsible may be only actually providing very limited supervision or oversight to the children and educators in the service.

Currently, the Government intends to amend the Regulations to require persons responsible to be locally based for home-based services, to better support their existing supervision and oversight functions [CAB-22-MIN-0581 refers]. This will create a requirement for persons responsible in home-based services to be locally based in relation to the homes of the educators that they supervise and support, and the children whose education, care and comfort they oversee. However, although there will be the requirement for persons responsible to be locally based, there is no proposed definition for this in the Regulations. This is because previous consultation on a definition resulted in no consensus. If what it means to be 'locally based' remains undefined in the Regulations, the definition would need to be determined by the Ministry through the development of operational policies and practices. To address this issue, Cabinet agreed that the Ministry would undertake further consultation on a new definition of 'locally based'.

There is a risk that not having a definition of 'locally based' in the Regulations could lead to a lack of certainty and transparency for service providers, persons responsible, educators and parents and whānau about what it means in practice to be 'locally based'. It could also result in some inconsistency in the interpretation of 'locally based', and challenges regarding the Ministry's interpretation and enforcement practices. Ultimately, this could undermine what the Government wants to achieve through strengthening the person responsible requirements, which is to ensure we lift the quality of supervision and care for educators and children.

Executive Summary

The early learning regulatory review

The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the Review'). The Review is being undertaken in three tranches. The proposals outlined in this paper are part of Tranche Two of the review and focus on amending the Regulations to strengthen the person responsible (also known as 'co-ordinator' or 'visiting teacher') requirements for licensed home-based ECE services. The Government agreed to strengthen these requirements as part of the 2018 Review of Home-based Early Childhood Education.

Issue with current requirements around persons responsible in home-based settings

Under the Regulations, the home-based person responsible is responsible for overseeing the education and care, comfort, and health and safety of children, and provides that oversight or supervision at the same ratio as for teacher-led centres. However, despite this, their supervisory role can be unclear, because it does not specify whether they should be providing supervision in relation to a particular area or location. This is likely because they are not ordinarily present in the homes in the service, unlike the educators that have a greater day-to-day role in the education and care of the children. In the Regulations, there is also currently no requirement for persons responsible in licensed home-based education and care services to reside locally to the place they oversee.

Under regulation 28(2), the home-based person responsible also holds specific responsibilities to contact and visit each educator in the service, fortnightly and monthly, and take all reasonable steps to observe each child each month. Because these responsibilities are more specific than the general ones relating to supervision or oversight, home-based services and the person responsible can adopt narrow understandings of what is required based solely on regulation 28(2). For example, where services have a person responsible that travels extensively just to fulfil the regulation 28(2) requirements. These approaches, in turn, reduce the time the person responsible has to support and work with educators.

To prevent this practice and ensure that children and educators receive appropriate levels of supervision and oversight, we consulted on a proposal to require home-based persons responsible to be locally based.

Initial consultation on home-based locally based proposal

Between September and October 2021, the Ministry of Education (the Ministry) consulted on proposals to strengthen the person responsible requirement for teacher-led centre-based services (centres), hospital-based services and home-based services. There was strong support for the proposals consulted on as part of this package, including the proposal to require persons responsible for licensed home-based education and care services to be locally based in relation to the homes of the educators they supervise and support, and the

children whose education, care, comfort and health and safety they oversee. However, there was less agreement on how 'locally based' should be defined for this service type.

We consulted on whether the definition for locally based should be based on reasonable travel time (i.e., being under four hours) or geographic boundary. During post-consultation analysis, we concluded that a definition of 'locally based' that relies solely on a reasonable travel time (or a geographic boundary) will not achieve the outcomes we want from this proposal.

Rather, we considered that a definition of locally based that focuses on clarifying the types of outcomes we want to achieve from the person responsible role in the home-based sector would be more useful. Ultimately, we want to ensure that educators and children in home-based services receive appropriate oversight and supervision from a suitably qualified person in a timely manner, which includes the person responsible being able to be there in person if and when they are needed.

Cabinet agreement to undertake further consultation

On 12 December 2022, Cabinet agreed to amend the Regulations to require the person responsible for licensed home-based ECE services be locally based. Cabinet also agreed that the Ministry would undertake further consultation on a new definition of 'locally based', due to the results from earlier consultation which indicated that more work was required to develop a definition for locally based [SWC-22-MIN-0232 refers].

Further consultation on home-based locally based definition

Between January and February 2023, we undertook a further round of public consultation on the proposal to define locally based for home-based persons responsible. We consulted on a proposal to define 'locally based' for licensed home-based education and care services as when the person responsible must:

- a. either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible.
- b. be in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children.
- c. be contactable by the educator(s), for whom they are responsible, at all times those educators are providing education and care during the operating hours of the licensed early childhood service.
- d. be able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency.

Feedback on the proposed definition of locally based for licensed home-based person responsible showed varying degrees of agreement and disagreement, but it still received majority support. Key concerns related to the clarity and flexibility of the proposed definition, and that the cost for some licensed home-based service providers to comply would not be financially viable.

Preferred option

This option will provide greater certainty for service providers on what it means for the person responsible to be locally based. It will also help to ensure there is some degree of consistency in the approach the Ministry takes to defining 'locally based' as it applies to different service providers and in different parts of the country. 9(2)(f)(iv)

Impact of proposed option

Providing a definition of 'locally based' in the Regulations will improve certainty and clarity for service providers, persons responsible, educators, and parents and whānau about what it means in practice to be 'locally based'. It will also help to ensure there is some degree of consistency in the approach the Ministry takes to defining 'locally based' as it applies to different service providers and in different parts of the country.

Consultation feedback raised concern that the preferred option may have a significant impact for some home-based services who would have to change their practice to ensure that they have persons responsible located close to the educators and children in their care. These services may struggle to comply with these new requirements, as it would make services financially unsustainable, risking service closures. Respondents to the consultation cited that introducing these requirements will increase operational costs through needing to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance.

The 2018 Review of Home-based Early Childhood Education highlighted the need to strengthen the person responsible role in home-based services in order to improve quality

and ensure consistency in these services. Requiring persons responsible for home-based services to be locally based will contribute to these improvements. However, to undertake this change and improve the current standard around oversight and supervision of home-based educators and the children in their care, we anticipate that there will be some additional costs to services. In particular, there will be costs for service providers who employ persons responsible that are not already locally based (e.g., live in other towns or parts of the country). However, this requirement is necessary to ensure the person responsible can effectively fulfil the duties of their role, including overseeing the education and care, comfort, and health and safety of the children.

Implementation and monitoring

Cabinet agreement to the proposals outlined in this paper will be sought in May 2023. Drafting of the regulations by the Parliamentary Counsel Office is expected to take place in June 2023. The new regulations are expected to be gazetted around August 2023.

9(2)(f)(iv)

The Ministry will assess compliance with the new regulations as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review. The Ministry works closely with ERO to understand issues or concerns regarding regulatory compliance across the sector.

Limitations and Constraints on Analysis

This RIS supports the cabinet paper on proposed amendments for Tranche 2 of the Early Learning Regulatory Review, which includes the proposal to seek Cabinet agreement to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to provide a definition of 'locally based' for persons responsible in licensed home-based education and care services.

Impacts and limitations of prior consultation on the problem definition

The options considered in this RIS were influenced by prior consultation on a proposal to require home-based persons responsible to be locally based. Feedback from the earlier consultation and the subsequent analysis of this feedback highlighted that the definition consulted on (that 'locally based' be based solely on either travel time or geographic boundary) would not achieve the outcomes desired by the Ministry.

In amending this proposal, we sought to avoid being overly prescriptive (i.e., using geographic boundaries and/or travel distance or time) to ensure it is applicable in a range of settings, including both rural and urban areas, and in different types of urban settings (e.g., those that are more or less populated and congested). We have tried to balance this by being clearer about what locally based means (e.g., they reside or have a permanent place of business in the same local area and can attend in person in an emergency) in order to do their job adequately. This aims to address concerns raised during previous consultation and to ensure the definition supports persons responsible to perform their duties and responsibilities.

Overall impact of these constraints

The overall impact of the above constraints is not expected to substantially impact on the integrity of the analysis outlined in this Regulatory Impact Statement.

Responsible Manager(s) (completed by relevant manager)

Paul Scholey
Senior Policy Manager
ECE Policy
Ministry of Education



5 May 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Education
Panel Assessment & Comment:	<p>The Ministry of Education's Quality Assurance Panel has reviewed this Regulatory Impact Statement "Definition of locally based for persons responsible in licensed home-based services" produced by the Ministry of Education. The panel considers that it meets the quality assurance criteria.</p> <p>The Statement provides a clear and considered case for how greater certainty about the definition of 'locally based' while allowing flexibility for local circumstances to be recognised in the operationalisation of this definition. The revised approach reflects stakeholder feedback on the original proposal.</p>

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The early learning regulatory framework

1. The Government sets minimum standards for licensed early childhood services and certified playgroups and ensures these standards are met. These standards are set out in the early learning regulatory framework. Strong regulatory standards are important to protect children's health, safety and wellbeing in education and care services, and because research shows that high quality early learning experiences provide a platform for children to succeed as lifelong learners.
2. There are three tiers to the regulatory framework for licensed education and care services, including:
 - a. the Education and Training Act 2020 ('the Act'), which defines service types and provides for regulations and licensing criteria to be developed;
 - b. the regulations, including the Education (Early Childhood Services) Regulations 2008 ('the Regulations'), which establish the licensing process and set minimum standards that all services must meet; and
 - c. the licensing criteria, which are used by the Ministry to assess compliance with the minimum standards set out in the regulations.

The early learning regulatory review

3. The Ministry is undertaking a review of the early learning regulatory system to ensure it is clear and fit for purpose to support high quality education and care ('the Review'). The Review is being undertaken in three tranches. The proposal outlined in this paper is part of Tranche Two of the review, and seeks to amend the Education (Early Childhood Services) Regulations 2008 ('the Regulations') to insert a definition of locally based for persons responsible in licensed home-based education and care services.

2018 Review of home-based education

4. Home-based education and care services fulfil a unique role in the early learning sector. Licenced home-based early childhood education (ECE) is delivered in private homes by educators working with one to four children. In licenced home-based services a qualified, registered and certificated ECE teacher, called the co-ordinator or 'person responsible,' also visits homes to support these educators and oversee the education and care of the children.
5. Due to the changes in the sector and home-based education and care over the last decade, the Ministry undertook a Review of Home-based early childhood education (the Review) in 2018.¹ As part of the Review, we consulted on a package of proposals to strengthen the role of the home-based person responsible or 'co-ordinator' in home-based services. The Ministry decided to proceed with the following initiatives following

¹ Review of Home-based Early childhood Education. 2018. URL: <https://conversation.education.govt.nz/conversations/review-of-home-based-early-childhood-education/>

this Review, which were then developed and further tested by the Home-based Sector Reform Advisory Group. These initiatives included:

- a. home-based persons responsible to hold a Category One or Two practising certificate;
 - b. home-based persons responsible to be “locally based”;
 - c. home-based persons responsible to be limited to a single service’s licence at a time, with an increased maximum licence size;
 - d. home-based persons responsible to support educators’ professional development when contacting and visiting them; and
 - e. home-based persons responsible to guide and observe the curriculum delivery during home visits.
6. For the purposes of this RIS, we are concerned with the proposal to define ‘locally based’ for persons responsible in licensed home-based education and care services.

Regulations around the person responsible role

7. The home-based person responsible is responsible for overseeing the education and care, comfort, and health and safety of children, and provides that oversight or supervision at the same ratio as for teacher-led centres. The home-based person responsible also holds specific responsibilities to contact and visit each educator in the service, fortnightly and monthly, and take all reasonable steps to observe each child each month.² Currently, it is possible for a person responsible to be based in another part of the country and to travel extensively to visit educators and children.

First round of consultation on home-based person responsible role

8. In September 2021, Cabinet agreed to publicly consult on proposals to amend the Regulations to regulate for 80 percent qualified teachers and to strengthen person responsible requirements [CBC-21-MIN-0087 refers]. One of these proposals was requiring the person responsible to be ‘locally-based’. This would ensure the person responsible resides near the homes that education and care is taking place in.
9. Between September and October 2021, we consulted on proposals to strengthen the role of persons responsible in home-based services.
10. Consultation feedback supported amending the Regulations to require persons responsible for home-based education and care services to be locally based in relation to the homes of the educators they supervise and support, and the children whose education, care, comfort, and health and safety they oversee (77 percent agreement). Only 12 percent disagreed that persons responsible should be locally based in home-based education and care services.

² Education (Early Childhood Services) Regulations 2008, reg 28(2) Additional requirements for licensed home-based education and care service

11. However, consultation feedback was mixed on what the definition of 'locally based' should be. We consulted on two options to define locally based as:
 - a. require that persons responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002; or
 - b. require that persons responsible live within 'reasonable travel time' of the homes, which could be defined as within up to four hours or a shorter time period.
12. Overall, 63 percent of respondents preferred locally based being defined as living within a reasonable travel time, as opposed to a definition based on the geographical boundaries of territorial authorities (25 percent). Only 12 percent didn't have a view how locally based should be defined. However, many submitters raised concerns that reasonable travel time is different for urban and rural areas and can vary significantly depending on the condition of the road, traffic and speed and mode of travel. A number of those providing feedback on this proposal considered that four hours is too long for a person responsible to respond in person to the types of situations that require them to exercise their supervision and oversight responsibilities.
13. Feedback suggested that neither a definition of locally based determined solely by travel time or geography will achieve the types of outcomes the Government wants to achieve from this proposal, which is to lift the quality of supervision and oversight provided by persons responsible to educators and children in home-based education and care services.

Cabinet approval to consult on a new proposal to define locally based

14. Following this first round of consultation feedback, we developed a new proposal to define locally based for persons responsible in licensed home-based education and care services.
15. In December 2022, Cabinet authorised the Ministry to undertake public consultation on a definition of 'locally based' for persons responsible in licensed home-based education and care services, which is that they must:
 - a. either reside, or have a permanent place of business from which they conduct their daily responsibilities, in the same local area as the educator(s) for which they are responsible.
 - b. be in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the education and care, comfort, and health and safety of the children.
 - c. be able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service.
 - d. be able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency [SWC-22-MIN-0232].

16. This proposal was consulted on from 16 January – 17 February 2023. Consultation feedback, and how this informs the preferred option (defining 'locally based' for home-based persons responsible) is outlined in section 2 of this RIS.

What is the policy problem or opportunity?

Nature, scope and scale of the problem

Unique role of home-based persons responsible

17. Licensed home-based early childhood education (ECE) is delivered in private homes by educators working with one to four children. In licensed home-based services a qualified, registered and certificated ECE teacher, called the co-ordinator or 'person responsible,' also visits homes to support these educators and oversee the education and care of the children in these services. This makes it unlike other parts of the early learning sector as the educators, rather than the teachers, have a greater day-to-day role in children's education and care.
18. Home-based services contribute to the diversity of providers in the early learning sector and provide benefits including greater flexibility for parents and whānau, low adult to child ratios, and smaller group sizes. This caters better to children and families where English is a second language, since it allows parents greater scope to choose an educator who shares their first language and culture.

There is currently no requirement for home-based persons responsible to be locally based

19. In the Regulations, there is currently no requirement for persons responsible in licensed home-based education and care services to reside locally to the place they oversee. This weakens the person responsible duty to oversee children's education and care as there is less ability to respond in-person if necessary.
20. This lack of clarity is partially due to the nature of the role, as home-based persons responsible are not ordinarily required to be present in the home or in a given area. This limits the level of supervision that they can provide. Additionally, the Regulations are not clear or explicit on how home-based persons responsible are expected to provide supervision, oversight, and support. Only Regulation 28(2) provides some clarity on the role of person responsible in the home-based context, through its contact and visiting requirements. Consequently, the expectations for the role are often open to interpretation, which in turn leads to inconsistent practice.
21. To improve this lack of clarity around the home-based persons responsible role and ensure that they are sufficiently fulfilling their supervisory functions, we consulted on a proposal to amend the Regulations to require persons responsible to be locally based for home-based services.

Previous consultation on the locally based proposal showed support for the policy intent, but there was less clarity from consultation on how 'locally based' should be defined

22. As previously covered, consultation on a range of proposals to strengthen the person responsible requirement in licensed home-based education and care services was held by the Ministry between September and October 2021, which included a proposal to require persons responsible to be locally.

23. Most respondents (77 percent) supported amending the Regulations to require persons responsible for home-based ECE services to be locally based and 12 percent disagreed.
24. We also consulted on whether the definition of 'locally based' should be based on reasonable travel time (i.e., being under four hours) or on a geographic boundary. Consultation feedback on this aspect of the proposal received varied support. Overall, 63 percent of respondents preferred locally based being defined as living within a reasonable travel time, as opposed to a definition based on the geographical boundaries of territorial authorities (25 percent). Only 12 percent didn't have a view on how locally based should be defined.
25. Despite this preference for a definition based on travel time, many submitters raised concerns that what is considered a reasonable travel time differs for urban and rural areas and can vary significantly depending on the condition of the road, traffic and speed, and mode of travel. Some respondents also noted that a travel time of four hours is too long for persons responsible to be able to adequately respond to situations that require their supervision and oversight responsibilities.
26. This feedback suggested that having a definition of 'locally based' that is determined solely by either travel time or geographic boundary could become unduly restrictive for home-based providers and their persons responsible, as these definitions would not account for nuances across service locations. For example, what is considered a reasonable travel time in urban areas would differ from what is considered reasonable in rural locations.
27. This feedback not only established agreement to create a requirement for persons responsible in home-based services to be locally based, but also the need for further work to develop a definition for locally based.

There is no requirement to define 'locally based' for home-based persons responsible

28. In December 2022, Cabinet agreed to amend the regulations to require persons responsible to be locally based for home-based services, to better support their existing supervision or oversight functions [SWC-22-MIN-0232 refers].
29. This will create a requirement for persons responsible in home-based services to be locally based. As previously noted, feedback from and analysis following the 2021 consultation called for further work to establish a definition of 'locally based' that works for home-based services and persons responsible located in both urban and rural areas.
30. Therefore, to provide more clarity and to strengthen the initial proposal, we have now developed updated options for a new proposal to define locally based for persons responsible in licensed home-based education and care services.
31. In December 2022, Cabinet authorised the Ministry undertake further consultation on policy proposals to define 'locally based' for home-based early childhood education and care services [SWC-22-MIN-0232 refers]. Consultation on this definition was undertaken between January and February 2023.

Distribution of impacts

32. It is anticipated that this proposal will prevent the practice of persons responsible travelling extensively around the country to visit educators in order to meet the minimum in-person requirements currently set in the regulations. However, as this was an issue identified in previous reviews, it is acknowledged that the proposed definition will likely require some service providers to change their current practice so that they will be able to provide the required support to educators and children, and in some cases these changes may be significant (e.g., employing additional persons responsible, employing persons responsible in different locations, or establishing an office where persons responsible can be based during working hours).
33. For some service providers, this proposal may have little or no impact on current practice. For example, the Regulations already require service providers to have a contact person that resides locally, and in some services, the contact person is also the person responsible.
34. The alternative to providing a definition of locally based in the Regulations is for the Ministry to develop a working definition through operational policy and practice. While this may be perceived as providing more flexibility, there is a risk that it would reduce certainty and transparency for service providers and parents and whānau about what locally based means and actual level of the supervision and oversight provided by the persons responsible.

Key stakeholders and the nature of their interest

Key stakeholders	Nature of their interests
Children, parents and whānau	Setting clearer expectations for home-based persons responsible to be locally based is intended to improve the quality of service provision, particularly in relation to the supervision of children and other teaching staff. Parents and whānau will likely have greater confidence in the supervision and oversight of their children when they are attending ECE services if requirements are clear and robust.
Service providers	Clear parameters about what it means for home-based persons responsible to be locally based vis-à-vis the service provider.
Person responsible	May affect their day-to-day duties and responsibilities, the overall status of their role, with the size of the impact depending on how they are currently performing their duties.
Teaching staff	Teaching staff are affected by any changes as they are supervised by the person responsible.
Ministry of Education	Needs to be able to assess compliance with the standards set in the Regulations effectively and efficiently, including having the ability to identify and respond to non-compliance in a timely and appropriate manner.

What objectives are sought in relation to the policy problem?

35. The proposal outlined in this RIS seeks to achieve the following objectives:
- Quality provision** – changes to the Regulations are expected to result in improvements to the quality of ECE services provided to children, parents and whānau, and ensure that all children receive quality education and care.
 - Affordability** – in order to maintain service affordability and participation in early learning, any additional costs to service providers, which may be passed on to parents and whānau in the form of increased fees, must be justified and proportionate to the outcomes that will be achieved.
 - Strong and capable workforce** – changes to the Regulations should help to support the development of a strong, sustainable, and capable teaching workforce, including through providing greater job security, improved role clarity, better working conditions, and strengthening the status of being a qualified ECE teacher.
 - Diverse provision** - any changes to the Regulations should ensure that parents and whānau can continue to have access to a choice of quality licensed ECE services that meet their needs and aspirations for their children. This is particularly important for services that cater to diverse communities and communities traditionally not well served by the education system, including Māori and Pacific bilingual and immersion services, services in lower-socioeconomic communities, and isolated services.

- e. **Effective monitoring and enforcement** – changes to the Regulations must be able to be monitored and enforced effectively, efficiently and in a timely manner including being clear and giving certainty to service providers, teachers, and parents and whānau

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

- 36. The proposal has been assessed against the status quo in terms of its ability to achieve the policy following objectives:
 - a. **Quality provision** – To what extent is the proposal expected to result in improvements to the quality of ECE services provided, and education and care outcomes for children?
 - b. **Affordable services** – To what extent is the cost of the proposal expected to impact the affordability of service provision, including access and participation for parents and whānau?
 - c. **Strong and capable workforce** – To what extent does the proposal support the development of a strong, sustainable, and capable teaching workforce?
 - d. **Diverse provision** – To what extent does the proposal impact the ability of parents and whānau to continue to have access to a choice of quality licensed ECE services that meet their diverse needs and aspirations for their children?
 - e. **Effective monitoring and enforcement** – To what extent can the proposals be monitored and enforced effectively, efficiently and in a timely manner by the Ministry, including being clear and giving certainty to service providers, teachers, and parents and whānau?

What scope will options be considered within?

- 37. The proposal to require home-based persons responsible to be locally based and to define what this means falls within tranche two of the Early Learning Regulatory Review. The initial proposal was developed following the 2018 Review of Home-based early childhood education, which identified a lack of clarity in the Regulations around the supervisory and support functions of the home-based persons responsible role.
- 38. As previously noted, the options that are analysed in this RIS are further developments following the previous 2021 consultation on five proposals to strengthen the person responsible role in licensed home-based early childhood education and care services. This consultation included a proposal to require home-based persons responsible to be locally based. While this proposal was well supported, there was mixed feedback on how 'locally based' should be defined in the Regulations. We consulted on options for this definition in January - February 2023.

What options are being considered?

39. In addition to the status quo (Option 1), the following options were identified for ensuring that persons responsible are within sufficiently close proximity to educators to support their existing oversight and supervisory functions.

Option Two – Require that persons responsible be in the same territorial authority as homes in the service

40. This option would require that the person responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002.

Option Three – Require that persons responsible live within a ‘reasonable travel time’ of homes in the service

41. This option would require that the person responsible live within ‘reasonable travel time’ of the homes, which could be defined as within up to four hours or a shorter time period.
42. Options 2 and 3 were consulted on in September 2021. This feedback is outlined in the preferred options section below.

Option Four – Require that persons responsible reside in the same local area, in close proximity to the educator(s) they are responsible for, including being contactable and able to attend in person in emergencies

43. This option would require persons responsible to:
- a. Either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible;
 - b. are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children;
 - c. are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service; and
 - d. are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency.
44. Option 4 was developed following consultation feedback on options 2 and 3. Consultation feedback on option 4, undertaken in January - February 2023, is outlined in the preferred options section below.

How do the options compare to the status quo/counterfactual?

	<p>Option One – Status Quo (Person responsible may be based anywhere and travel extensively to fulfil their minimum regulated duties)</p>	<p>Option Two – Require that the person responsible reside in the same territorial authority/territorial authorities as the homes in the service, as listed in Part 2 of Schedule 2 of the Local Government Act 2002 [Reg change]</p>	<p>Option Three – Require that the person responsible live within ‘reasonable travel time’ of the homes, which could be defined as up to four hours [Reg change]</p>	<p>Option Four – (Developed following public consultation) The person responsible must:</p> <p>a. either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible</p> <p>b. are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children</p> <p>c. are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service, and</p> <p>d. are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency [Reg change]</p>
<p>Quality provision</p>	<p>0</p>	<p>+</p> <p>This option will help to ensure that persons responsible are within relatively close proximity to educators (i.e., so they don’t travel by air), although it is noted that some territorial authority boundaries are large so the actual impact on practice and quality provision is unclear. But it is unlikely that the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.</p>	<p>+</p> <p>This option will help to ensure that persons responsible are within relatively close proximity to educators (i.e., so they don’t travel by air), although it is noted that it may be quicker for a person responsible to travel by air to an educator’s home than to travel four hours, so the actual impact on practice and quality provision is unclear. But it is unlikely that the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.</p>	<p>++</p> <p>This option could have a significant impact on quality of provision by ensuring the person responsible is always within sufficiently close proximity to the educators and children for which they are responsible, to ensure quality service provision. It will also ensure the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.</p>
<p>Affordable services</p>	<p>0</p>	<p>-</p> <p>This option may increase costs for service providers if the person(s) responsible are not already located within these areas although the incidence of this is not expected to be high.</p>	<p>-</p> <p>This option may increase costs for service providers if the person(s) responsible are not already located within these areas although the incidence of this is not expected to be high.</p>	<p>--</p> <p>Depending on current practice, this option could impose additional costs on service providers by requiring them to change how they employ and use the person responsible. Services in isolated areas may find this particularly challenging if there is limited availability of teachers to fill the role of person responsible.</p>
<p>Strong and capable workforce</p>	<p>0</p>	<p>0</p> <p>This option is not expected to impact the workforce.</p>	<p>-</p> <p>This option may unintentionally negatively impact the role of person responsible if service providers consider it to mean that persons responsible can travel much further to undertake their functions and duties than they currently do (i.e., if four hours were considered acceptable).</p>	<p>+</p> <p>This option would give significantly more clarity to the role of person responsible in licensed home-based services and what it means to be locally based. There may be a negative impact on current persons responsible who do not meet the requirements and must therefore relocate or risk losing their role.</p>
<p>Diverse provision</p>	<p>0</p>	<p>0</p> <p>This option is not expected to impact diversity of provision.</p>	<p>0</p> <p>This option is not expected to impact diversity of provision.</p>	<p>-</p> <p>This proposal could impact the provision of services in isolated areas if they are unable to employ a person responsible who can be located sufficiently close to the educators and children for which they are responsible.</p>

Effective monitoring and enforcement	0	+	-	++
		This option makes it clear that persons responsible must be locally based. Compliance with the definition of locally based should be relatively easy to monitor and enforce as it is based on established geographical boundaries.	While this option makes it clear that persons responsible must be locally based, there may be a lack of clarity for service providers as to what is considered acceptable in practice because 4 hours is very broad. Compliance with the definition of locally based may also be difficult to monitor as what is considered reasonable will need to be determined on a case-by-case basis.	While there are aspects of this proposal that would need to be assessed by the Ministry on a case-by-case basis, this option provides much greater clarity and certainty about what it means for the person responsible to be locally based to enable effective monitoring and enforcement.
Overall assessment	0	+1	-2	+2

Example key for qualitative judgements:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

45. Our initial assessment was that neither option 2 nor 3 were preferred, following the 2021 consultation feedback. 77% of respondents to public consultation agreed that licensed home-based person responsible should be locally based in relation to the homes in the service to better support their existing supervision and oversight functions (12 percent disagreed). However, only 25 percent thought the definition should be based on a geographic requirement (option 2) and 63 percent thought it should be based on travel time (option 3). However, many comments discussed the need to have different requirements to account for differences in rural and urban travel and that more flexibility for different situations. There were also comments that travelling four hours is too long to be considered locally based. The Home-based Sector Reform Advisory Group generally supported the proposal, that persons responsible be locally based although it is noted that they already tend to rely on a locally based person responsible.
46. Upon further analysis following the 2021 consultation, we did not consider that a definition of 'locally based' that relies solely on a 'reasonable travel time' or geographic boundary would achieve the policy objectives of this proposal. Additionally, it was highlighted that four hours is overly long for a person responsible to respond in person to the types of situations that require them to exercise their supervision and oversight responsibilities and is therefore too long to be considered locally based. Option 4 aimed to provide a definition of locally based that focused more on clarifying the types of outcomes required of the person responsible role (i.e., residing locally, be contactable, and being able to attend in person in cases of emergency or in the interests of child health and safety). The Ministry undertook further public consultation on option 4 in January - February 2023.
47. Consultation feedback on option 4 was supportive of the proposal (70% support), but there were strong levels of disagreement, particularly around the proposal that persons responsible reside in the same local area and be in close proximity to the educator(s) they are responsible for. The main concerns raised by those that did not support the proposed definition of locally based included that it did not provide sufficient clarity to ensure services could comply, it was not flexible enough to respond to services in rural and isolated areas, and the cost of compliance could make some services financially unviable.
48. 9(2)(f)(iv)
49. Given the above, we undertook further analysis of a revised option 4. Our assessment of this revised option, compared to the original option 4, is set out below.

	Option Four – (Developed following public consultation) The person responsible must: <ol style="list-style-type: none"> either reside, or have a permanent place of business from which they carry out their daily responsibilities, in the same local area as the educator(s) for which they are responsible are in sufficiently close proximity to the educator(s) and children for which they are responsible to be able to fulfil the obligations of their role, including but not limited to overseeing the day-to-day education and care, comfort, and health and safety of the children are able to be contacted by the educator(s) for whom they are responsible at all times those educators are providing education and care during the operating hours of the licensed early childhood service, and are able to attend in person, within a reasonable travel time for the location, if requested to do so by the educator to ensure the health and safety of children or if otherwise required in the event of an emergency. 	Revised option Four - (Developed following second round of public consultation) 9(2)(f)(iv)
Quality provision	++ This option could have a significant impact on quality of provision by ensuring the person responsible is always within sufficiently close proximity to the educators and children for which they are responsible, to ensure quality service provision. It will also ensure the person responsible can physically attend in the event of an emergency if requested by the educator, to ensure the health and safety of children.	Same as option 4
Affordable services	-- Depending on current practice, this option could impose additional costs on service providers by requiring them to change how they employ and use the person responsible. Services in isolated areas may find this particularly challenging if there is limited availability of teachers to fill the role of person responsible.	Same as option 4
Strong and capable workforce	+ This option would give significantly more clarity to the role of person responsible in licensed home-based services and what it means to be locally based. There may be a negative impact on current persons responsible who do not meet the requirements and must therefore relocate or risk losing their role.	Same as option 4
Diverse provision	- This proposal could impact the provision of services in isolated areas if they are unable to employ a person responsible that can be located sufficiently close to the educators and children for which they are responsible.	Same as option 4
Effective monitoring and enforcement	++ While there are aspects of this proposal that would need to be assessed by the Ministry on a case-by-case basis, this option provides much greater clarity and certainty about what it means for the person responsible to be locally based to enable effective monitoring and enforcement.	+++ This option provides much greater clarity and certainty for both services and the Ministry about service requirements that persons responsible be locally based (when compared to the status quo). Compared to option 4, this revised option will provide more certainty and clarity for services and the Ministry by defining what it means to reside, or have a place of business, in the same local areas as the educator(s) they are responsible for. This revised option also provides more consistency with the current regulations concerning the person responsible role.
Overall assessment	+2	+3

What are the marginal costs and benefits of the option?

51. The table below outlines the costs and benefits of the preferred option against the status quo.

Affected groups (identify)	Comment nature of cost or benefit (e.g., ongoing, one-off), evidence and assumption (e.g., compliance rates), risks.	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Defining locally based for persons responsible in home-based services			
Home-based early learning service providers (owners/managers) [Regulated groups]	<p>Benefits</p> <p>While this option will impact how service providers run their business, we anticipate that the benefits of this option for children will be ongoing.</p> <p>Providing for a definition of locally based in the regulations will improve the clarity and certainty for services around the person responsible duties. The Ministry considers requiring the person responsible to be based near the homes that education and care is taking place in to be an important part of fulfilling their duties and responding in-person if necessary.</p> <p>Costs</p> <p>It is likely that there will be additional costs for services to comply with the new person responsible requirements. Consultation feedback from some submitters noted that these requirements will increase costs through needing to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance. Thus, these submitters reasoned that complying with the requirements would be financially unsustainable, risking service closures.</p>	<p>Medium (<i>High for some home-based services</i>).</p> <p>So that the person responsible is located sufficiently close to provide the expected support, this option will likely create additional operational costs for some home-based services in complying with the new requirements. Operational costs include employing more staff, as well as increase in costs relating to travel – petrol and vehicle maintenance.</p> <p>9(2)(f)(iv)</p> <p>The Ministry will support the home-based sector through guidance on this proposal, to address the risk around non-compliance with the new requirements. However, it is also important to highlight that the intent of this policy proposal is to improve the quality of supervision and oversight of children in home-based settings. This will have positive outcomes for children's health, safety and wellbeing.</p>	<p>Low.</p> <p>Feedback from consultation is clear that some home-based services will face additional compliance costs as a result of these new requirements. However, it is difficult to estimate these costs and the magnitude of impact given the lack of data around the number of persons responsible in home-based settings, where they are in the regions, or how many services they are responsible for. The Ministry knows that home-based services account for approximately 6.7 percent of all ECE services.</p> <p>The 2018 Review of Home-based Early Childhood Education highlighted the need to strengthen the person responsible role in home-based services in order to improve quality and ensure consistency in the Regulations and across services. Requiring persons responsible for home-based services to be locally based will contribute to these improvements. However, to undertake this change and improve the current standard for oversight and supervision of home-based educators and the children in their care, we anticipate that there will be some additional costs to services. In particular, there will be costs for service providers who employ persons responsible that are not already locally based (e.g., live in other towns or parts of the country). However, this requirement is necessary to ensure the person responsible can effectively fulfil the duties of their role, including overseeing the education and care, comfort, and health and safety of the children.</p>
Ministry of Education [Regulator]	<p>Benefits</p> <p>We anticipate benefits of this option to be ongoing. Providing for a definition of locally based for persons responsible in home-based services will ensure there is some degree of consistency in the approach the Ministry takes to defining 'locally based' as it applies to different service providers and in different parts of the country. It will also ensure a degree of flexibility to allow for different contexts.</p>	<p>Low.</p> <p>This option will create administrative costs for the Ministry in developing operational guidance for the home-based sector. There may also be increased calls of inconsistency as there will be different rules for different contexts.</p>	<p>Low.</p> <p>As above, there is a lack of data around persons responsible in home-based settings, meaning it is difficult to determine the level of impact or estimate costs on the Ministry of sector.</p> <p>There will be administrative costs associated with implementing these new requirements.</p>

	<p><i>Costs</i></p> <p>There will be administrative costs associated with this option. The Ministry will need to develop operational guidance as part of implementing the proposed amendment. However, it should be noted that there are already significant administrative costs due to the current regulations not being clear enough around persons responsible needing to be residing locally in order to undertake their duties.</p>		9(2)(f)(iv)
Parents/whānau of children in care [Interested group]	<p><i>Benefits</i></p> <p>We anticipate benefits of this option to be ongoing. Providing for a definition of locally based in the regulations will improve the clarity and certainty for parents and whānau around the person responsible duties. This proposal also seeks to improve the quality of supervision and oversight that is provided by persons responsible for educators and children in their care. This will have positive outcomes for children's health, safety and wellbeing.</p> <p><i>Costs</i></p> <p>There is the risk that there may be some additional costs for parents and whānau if increased operational costs for services are passed onto consumers.</p>	<p>Low.</p> <p>There is the possibility that there may be some additional costs for parents and whānau if increased operational costs for services are passed onto consumers.</p>	<p>Low.</p> <p>As noted above, there is the likelihood of increased operational costs for some home-based services in complying with the new requirements. However, it is less known whether these costs would then be passed onto parents and whānau, and if so, to what extent.</p>
Total monetised net benefit	Not applicable		
Non-monetised net benefit	Medium (<i>High for some home-based services</i>); Low (<i>for the Ministry</i>)		

Section 3: Delivering an option

How will the new arrangements be implemented?

Implementation timeframes

52. Subject to Cabinet agreement, the new regulations are expected to be gazetted during August 2023.
53. Consultation feedback raised a concern that the preferred option that ensures that the person responsible is located close to the home-based educator may have a significant impact for some home-based services who may struggle to comply with these new requirements, as it would make services financially unsustainable, risking service closures. Respondents to the consultation cited that introducing these requirements will increase operational costs through needing to employ more staff, as well as increase other costs such as petrol, travel and vehicle maintenance.

54. 9(2)(f)(iv)
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Communicating these changes with the sector

55. The usual channels will be used by the Ministry to communicate the changes to the Regulations, including print and social media, and through professional learning and development material. The Ministry already has well established networks and communication channels with the sector to support the implementation of the proposed regulatory changes.

How will the new arrangements be monitored, evaluated, and reviewed?

56. The Ministry will assess compliance with the new regulations as it does now, that is when granting a probationary or full licence, investigating a complaint, or responding to a poor Education Review Office (ERO) review. The Ministry works closely with ERO and sector stakeholders to understand issues or concerns regarding regulatory compliance across the sector. Operational guidance will be developed to support implementation of these changes.



Cabinet

Minute of Decision

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.

Proposed Amendments for Tranche 2 of the Early Learning Regulatory Review

Portfolios **Education / Associate Education (Hon Jo Luxton)**

On 6 June 2023, following reference from the Cabinet Social Wellbeing Committee (SWC), Cabinet:

Background

- 1 **noted** that the proposals in the paper under SWC-23-SUB-0058 are part of the Ministry of Education's review of the Early Learning Regulatory System [SWC-20-MIN-0166];
- 2 **noted** that in December 2022, SWC agreed to amend the Education (Early Childhood Services) Regulations 2008 to:
 - 2.1 regulate for 80 percent qualified teachers in teacher-led Early Childhood Education (ECE) centres;
 - 2.2 strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital-based ECE services, and licensed home-based ECE services;and authorised the Ministry of Education to undertake public consultation on the draft regulations;
[SWC-22-MIN-0232]
- 3 **noted** that SWC also authorised the Ministry of Education to undertake public consultation on:
 - 3.1 proposals to amend the Education (Early Childhood Services) Regulations 2008 (the Regulations) to:
 - 3.1.1 expressly allow the Secretary for Education to add conditions to provisional licences;
 - 3.1.2 provide a definition of permanently ceased to operate and a process for temporary service closures;
 - 3.2 a definition of 'locally based' for person responsible in licensed home-based education and care services;[SWC-22-MIN-0232]

- 4 **noted** that consultation feedback indicated clear support for the proposals to amend the Regulations, however some service providers from the home-based sector raised concerns about their ability to comply with the proposed definition of 'locally based' for persons responsible, including that it may make some services financially unviable;

Adding new conditions to a provisional licence

- 5 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to allow the Secretary for Education, at their discretion, to add conditions to a service provider's provisional licence if new matters of non-compliance are identified, where this is considered to be fair and reasonable;
- 6 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to allow a date to be set by when a new condition that is added to a provisional licence must be complied with, that is fair and reasonable, and that differs to dates that have been set for any existing conditions, but is no later than 12 months from when the licence was reclassified as provisional;

Defining 'permanently ceased to operate' for the purpose of cancelling a service provider's licence

- 7 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to define 'permanently ceased to operate' as when:
- 7.1 the service provider has notified the Secretary for Education that it has permanently ceased to operate; or
 - 7.2 the Secretary for Education is made aware that the service has not been operating for a period of three months or more as evidenced by two or more of the following:
 - 7.2.1 there being no children enrolled and/or attending the service; or
 - 7.2.2 there being no staff employed or engaged and working in the service; or
 - 7.2.3 the service provider has not claimed early childhood education funding;

Allowing for temporary service closures

- 8 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to allow the Secretary for Education, at their discretion, to grant a service provider approval to temporarily close their service, on application, for a period of up to three months;
- 9 **agreed** to amend the Education (Early Childhood Services) Regulations 2008 to provide for the Secretary for Education, at their discretion, to extend a temporary service closure for a further period of up to three months;
- 10 **agreed** to amend the Education (Early Childhood Service) Regulations 2008 to provide for the Secretary for Education, at their discretion, to allow a service provider to temporarily close for more than six months, but for no longer than 12 months from when the temporary closure was first issued, if satisfied that:
- 10.1 the service provider intends to reopen the service; and
 - 10.2 it is not possible for the service provider to find a premises for which they will be granted a temporary relocation licence;

- 11 **agreed** to amend the Education (Early Childhood Service) Regulations 2008 so that the Secretary for Education:
- 11.1 may, at their discretion, grant approval to temporarily close to a service provider whose licence has been reclassified as provisional, if considered fair and reasonable; and
- 11.2 must not grant approval to temporarily close to a service provider whose licence has been, or is likely to be, suspended;
- 12 **agreed** that the above amendments will come into effect at the same time as the amendments to the Education (Early Childhood Services) Regulations 2008 agreed by SWC in December 2022 [SWC-22-MIN-0232];

Slowing down the implementation of 80 percent qualified teachers in teacher- led ECE centres

- 13 **rescinded** the decision referred to in paragraph 2.1 above to amend the Education (Early Childhood Services) Regulations 2008 to regulate for 80 percent qualified teachers;
- 14 **invited** the Minister of Education to report back to SWC in March 2024 with proposals for implementing the requirement for 80 percent qualified teachers in teacher-led ECE centres;
- 15 **noted** that the Minister of Education will continue to progress amendments to the Education (Early Childhood Services) Regulations 2008 to strengthen the person responsible requirements in teacher-led ECE centres, licensed hospital- based ECE services and licensed home-based ECE services referred to paragraph 2.2 above;

Approval to draft regulations

- 16 **invited** the Minister of Education to issue drafting instructions to the Parliamentary Counsel Office for amendments to the Education (Early Childhood Services) Regulations 2008 to give effect to the above decisions;
- 17 **agreed** that the Parliamentary Counsel Office be invited to identify opportunities for simplifying and improving the clarity and accessibility of the relevant parts of the Education (Early Childhood Services) Regulations 2008 when drafting the amendments agreed above;
- 18 **authorised** the Minister of Education to make any minor and technical decisions that may arise during the drafting process without further reference to Cabinet, provided the decisions are consistent with the above decisions;
- 19 **noted** that the drafting is subject to Parliamentary Counsel Office's discretion as to how best to express these in legislation;
- 20 **invited** the Minister of Education to report to the Cabinet Legislation Committee by August 2023 seeking approval for the Regulation amendments.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces SWC-23-MIN-0058. Cabinet agreed to the rescinding recommendation in paragraph 13.

Proactively Released