

FAQs – Recent amendments to the Education (Early Childhood Services) Regulations 2008 to support the implementation of network approval

Clarifying that relevant network approval provisions will be taken into account when considering an application to amend a licence.

Why have these changes been made?

The Early Learning Action Plan (ELAP) set the goal of creating a managed network approach to ensure high quality, diverse and sustainable early learning provision. To ensure the intent of network approval is not undermined, the ELAP also outlined that the Ministry of Education may “require existing providers wishing to expand to apply for authorisation to do so”.

The Education (Early Childhood Services) Regulations 2008 pre-dated the introduction of network approval. These changes have updated the regulations to provide clarity to providers around the Secretary’s assessment powers when considering a licence amendment, and ensure the network approval function is not undermined through the licence amendment process.

I have an existing service and want to amend my licence. Am I now required to apply for network approval?

No. It has always been the intent that existing services are not required to apply for network approval, including when applying for an amendment to a licence. However, the Secretary for Education will consider the needs of the network when assessing an application to amend a licence.

Why might an application to amend a licence be declined on the grounds of network approval provisions?

There are several circumstances in which an application to amend a licence may be declined by the Secretary following consideration of the network approval provisions.

For example, some providers who previously obtained network approval may have conditions attached to the licence for their service to ensure the service delivery is consistent with their network approval. A licensed service in this circumstance may have their application to amend their licence declined if they are attempting to change or remove these conditions if they were material to the network approval decision.

The Secretary may also decline an application to increase the size of a licence of an existing service if network approval has already been granted to a new service provider and there is no clear evidence of additional unmet demand for child places. Similarly, this type of application may also be declined if a prospective provider was recently declined an application to set up a service in an area due to sufficient existing supply, and there is no clear evidence that the demand for child places has changed.

What does this mean if I am on a Probationary Licence and am building the numbers of children in a staged approach towards reaching fully anticipated licence maximum numbers?

Amendments to increase maximum numbers of children as services work towards meeting planned licence maximum numbers in their first year of operation are already factored into network considerations. Therefore, any application that seeks to amend the licence maximum during the Probationary Licence period will not be declined on the basis of capacity if the increase to numbers falls within the maximum numbers specified on the Probationary Licence application.

Do these changes mean there is a greater risk that my licence could be cancelled if I apply for an amendment?

Nothing has changed in terms of the ability of the Secretary to assess compliance with the wider conditions attached to a licence. The Secretary has always had the ability to assess these conditions (and take appropriate action if necessary) when considering an application to amend a licence.

Do these changes enable the Ministry of Education to cancel existing licences based on the network approval provisions?

No. While it is possible that an application to amend a licence may be declined, the Secretary for Education cannot cancel an existing license on network approval grounds.

Were these changes consulted on?

The Ministry of Education ran a four-week public consultation on the proposed regulatory amendments from 30 January to 27 February 2023. Information about the proposed changes and guidance on how to have your say was shared in the [Early Learning Bulletin](#).

Feedback was generally supportive, with 82% of survey respondents agreeing with the proposal to clarify that the Secretary for Education can take the network approval provisions into account when assessing an application to amend a licence.

Further information about the consultation, including a summary of the feedback from can be found online at:

<https://conversation.education.govt.nz/conversations/early-learning-regulatory-review/>

Were any changes made following consultation?

Following feedback received during consultation, the proposed amendment changed from: *“clarify that the new network approval provisions can be taken into account when considering an application to amend an existing licence”* to *“clarify that the new network*

*approval provisions **will** be taken into account when considering an application to amend an existing licence”.*

This change was made to ensure fairness in the assessment process (i.e. that the assessment would be applied to all applications to amend a licence, as opposed to on a discretionary basis).

Where can I find more information about these changes?

More information on these regulatory changes can be found in the [full consultation document](#) available on the Kōrero Mātauranga | Education Conversation website.