

Regulatory Impact Statement: Amendments to the Education (Early Childhood Services) Regulations to accommodate Crown acquisition

Coversheet

Purpose of Document	
Decision sought:	This RIS supports final Cabinet decisions on proposals to amend the Education (Early Childhood Services) Regulations 2008 to enable the licence for an existing early childhood education and care centre (ECE centre) to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquired by the Crown.
Advising agencies:	Ministry of Education
Proposing Minister:	Hon Jan Tinetti, Minister of Education
Date finalised:	30 March 2023
Problem Definition	
<p>There is currently no provision in the Education (Early Childhood Services) Regulations 2008 (the licensing regulations) for an ECE centre to permanently relocate to an alternative site under any circumstance, including where land is acquired for public works or urban development, while retaining its licence.</p> <p>The proposals outlined in this Regulatory Impact Statement (RIS) seek to enable the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquired by the Crown.</p> <p>The proposed amendments provide clarity for both service providers and whānau that early childhood provision can continue undisrupted in circumstances where land has been acquired by the Crown.</p>	
Executive Summary	
<p>Under the current legislative regime, services that have had their land acquired by the Crown under the Public Works Act 1981 (PWA) or Urban Development Act 2020 (UDA) must apply for network approval before applying for a probationary license when moving to new premises.</p> <p>The rationale for making an exception in this circumstance is that:</p> <ul style="list-style-type: none">a. the service is not new, therefore there is minimal impact on the licensed early childhood network in the area; andb. the service should not be unduly disadvantaged by the Crown’s unilateral action.	

The Minister of Education (the Minister) considered three options for public consultation where a service has to relocate due to Crown action under the PWA or UDA:

1. Status quo – no change
 - Providers will need to apply for network approval and then apply for a probationary licence before moving to new premises.
2. Create a new exclusion under the Education and Training Act 2020 (the Act)
 - Create an exclusion from the requirement to seek network approval. This option would still require the service to apply for a new probationary licence.
3. Changes to the licensing regulations
 - Amend the licensing regulations to allow a permanent change of location for services impacted by the PWA or UDA.

We consulted on Option 3: changes to the licencing regulations.

Potential positive impacts of Option 3

Amending the licensing regulations is the option that best meets the policy objectives. This option will help to ensure that there is continuity of a like service for children and their whānau who attend services that have had their property compulsorily acquired by the Crown. It will also give providers assurance that their service can continue in the event of Crown acquisition.

Potential negative impacts of Option 3

The primary drawback of this option is that it does not enable effective management of the ECE network to the same extent as the status quo, as providers will be able to relocate to new premises without first applying for network approval.

However, it is proposed to require the relocating centre to be located in the same proximate geographical area and accommodate a similar number of child places different from the existing centre. This will ensure that the legislative intent of network approval is not undermined by the service relocating.

This option was supported by the sector, with 82 percent of survey respondents agreeing or strongly agreeing with the proposal.

Limitations and Constraints on Analysis

Ministerial decision to amend the licensing regulations

Our initial advice provided to the Minister of Education (the Minister) on 16 September 2022 was made following early analysis and recommended maintaining the status quo. This was because:

- We anticipated that the Minister would want any legislative or regulatory changes in effect before the network approval regime commencement date of 1 February 2023. Given the timelines for these potential changes, we did not believe any amendments by this date were feasible; and
- We believed that providers who are required to move to new premises due to Crown acquisition would not be significantly impacted by the requirement to seek network approval, as they would likely be able to demonstrate strong

community/whānau need if they were transferring their current enrolments to a new location nearby.

- We also did not think we could make regulatory change while preserving the integrity of the licensing regime. Specifically, it is important not to undermine the licensing requirements that a centre must meet with regards to service size and standards for premises and facilities.

However, the Minister determined that implementing change prior to 1 February 2023 was not a requirement, and therefore our initial preferred option was not as relevant. The Minister also expressed a commitment to provide assurance to providers that their service could continue operating in the event that their land is acquired by the Crown.

Further advice also proposed regulatory changes that would enable a service to amend its licence to enable a move to a new location while still allowing the Secretary for Education to consider any matter referred to in the granting of a probationary licence or full licence. This will give assurance to whānau that the new premises meet the regulated requirements.

As such, our analysis in this paper determines that regulatory change is the recommended option to achieve the desired outcomes.

Limited public and sector response to consultation

A minor limitation on our analysis is the small number of responses we received to our public consultation on the proposed regulatory changes. From 30 January to 27 February 2023, we received eleven survey responses and three written submissions on the proposals.

However, we believe this low level of engagement was most likely due to the narrow nature of the proposals that are not likely to affect most services. The submissions we received were also strongly supportive of the proposal to amend the regulations and set conditions for services needing to move to new premises due to Crown acquisition.

Effect of limitations and constraints on analysis

As these limitations relate to previous Ministerial direction and the narrow nature of the proposed amendments, they do not impact on the confidence of the Minister when using this analysis to inform their decision.

Responsible Manager(s) (completed by relevant manager)

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Acting Senior Policy Manager

Early Childhood Education Policy

Te Pou Kaupapahere

Ministry of Education



30/3/2023

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 the Regulatory Impact Statement “Amendments to the Education (Early Childhood Services) Regulations to accommodate Crown acquisition” produced by the Ministry of Education and dated 30 March 2023.</p> <p>The panel considers that the RIS meets the Quality Assurance criteria. The RIS provides a convincing case for proposed regulatory changes to allow services to permanently relocate to an alternative site where land is acquired for public works or urban development. The number of services likely to be impacted is small and the proposed changes reflect feedback from stakeholders.</p>

Section 1: Diagnosing the policy problem

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

Current legislative requirements

1. There is no provision in the current licensing regulations for a licensed service to permanently relocate to an alternative site. This includes instances where a service is acquired by the Crown for public works or urban development under the Public Works Act 1981 (the PWA) or Urban Development Act 2020 (the UDA)¹. If a licensed service moves location permanently it needs to apply for a new probationary licence and pay the required fee.
2. This is a historical policy setting to reinforce that a significant proportion of the licensing requirements are based on a specific site and premises. Therefore, a licensing assessment is desirable to ensure the new facility can meet the minimum health and safety requirements set out in the regulations.
3. There is a provision in the regulations to temporarily relocate from one building to another for up to ten months (regulation 18 of Education (Early Childhood Services) Regulations 2008).

Network management for licensed early childhood services

4. In *He taonga te tamaiti: Every child a taonga - The Early Learning Action Plan 2019-2029*, the Government set an objective for early learning services to be part of a planned, diverse and coherent education ecosystem that is sustainable and meets the needs of communities across New Zealand. Network management is one action to

¹ The PWA and UDA give the Crown power to acquire land from private landowners for public works or urban development, which may include works such as roads and schools. If the Crown is considering acquiring land, the first option to be explored is whether the land can be acquired voluntarily upon reaching a commercial agreement for purchase. If no agreement can be reached, the Crown may compulsorily acquire it, build around it, or cease the project.

support this objective, as it establishes a process to manage the supply of new licensed early childhood services.

5. Since 1 February 2023, any organisation or individual wanting to operate a new licensed early childhood service needs to seek network approval from the Minister before applying for a license. Providers who obtain network approval may have conditions attached to the licence of their service to ensure service delivery is consistent with their network approval.
6. During finalisation of the network approval regulations, we were made aware of four services that were in the process of having their land compulsorily acquired. At that stage, these services would be required to seek network approval before applying for a probationary licence when moving to their replacement premises.

Status quo (in relation to PWA or UDA acquisition)

7. Under current legislative settings, a licensed service² that permanently relocates as a result of being compulsorily acquired will no longer be a licensed service. A provider in this circumstance would need to either:
 - a. apply for network approval (and pay the required fee), then apply for a probationary licence (and pay the required fee); or
 - b. cease operating.
8. These settings mean that any service that is changing its premises requires the Minister to assess the necessity of the service within the network and the suitability of the provider (network management) and then assess the proposed service and new building against education, health and safety requirements (licensing requirements).

Relevant previous documents

9. The [Regulatory Impact Statement: Network Management in Early Learning](#) (5 November 2021) sets out the network approval process and its impact on licence applications.

What is the policy problem or opportunity?

10. Under the status quo, services that have had their land acquired by the Crown must apply for network approval before applying for a probationary license when moving to new premises.
11. The intention of network management is for early learning services to be part of a planned, diverse and coherent education ecosystem that is sustainable and meets the needs of communities across New Zealand. Therefore, the rationale for providing an exception to the requirement for network approval is to ensure continuity of service where:

² Some Māori immersion early learning services are excluded from the network approval provisions and therefore are not required to seek network approval.

- a. the service is not new; therefore, there is minimal impact on the licensed early childhood network; and
 - b. the Crown is acquiring the land under the PWA or UDA and should not disadvantage the service by requiring two regulatory steps (network approval and licensing).
12. Under the existing regulations, children and whānau lack assurance that their participation in early childhood education can continue without disruption in the event that their ECE provider has their land acquired by the Crown.
13. Although providers in this situation will likely be able to demonstrate strong community/whānau need if they are transferring their current enrolments to their new location, they may still see a risk that their network approval application could be declined.
14. There is a need for a tool to help proactively manage the network by allowing continuity of service provision in the event that a centre's land becomes subject to Crown acquisition.

What objectives are sought in relation to the policy problem?

15. Our objectives are to:
- a. ensure that there is continuity of a like service for children and their whānau who attend services that have had their land compulsorily acquired by the Crown; and
 - b. give providers assurance that their service can continue in the event of Crown acquisition.

What options are being considered?

16. We identified three options for the Minister's consideration and to determine what options we would consult the public on:
 - a. status quo; or
 - b. create a new exclusion under the Act; or
 - c. changes to the licensing regulations.
17. There is no ability to relax the requirements under the status quo, ie, not require network approval, although the Ministry of Education (the Ministry) can offer advice and support in line with its regulatory responsibility.
18. The options were assessed against the five following objectives:
 - **maintains accessible provision** – regulatory change should not impede or disrupt the accessibility of early learning provision to whānau
 - **provides clarity to providers** – regulations should provide clarity to ECE providers.
 - **enables effective management of the ECE network** – regulatory change should not undermine the legislative intent of network approval
 - **changes can be implemented promptly** – there should be no unnecessary delay of the commencement of the new provisions, to provide clarity for providers and whānau
 - **minimal impact on legislation** – we are seeking to minimise legislative changes to avoid operational and system consequences.

Option One – Status quo

19. Under this option, a provider³ in this circumstance would need to:
 - a. apply for network approval (and pay the required fee); and
 - b. apply for a probationary licence (and pay the required fee).
20. This option enables the Minister to assess if the service is still needed within the network and the suitability of the provider (network management), and then assess the proposed service and new building against education, health and safety requirements (licensing requirements).
21. This option is simpler to implement because it retains the current provisions. Network management has also been well signalled in the Act since 2020.

³ That is not an excluded Māori immersion service.

22. However, the status quo does not give clarity to providers that their service can continue in the event of Crown acquisition, as they may see a risk that their network approval application could be declined. However, in our view it is likely that providers in this situation will be able to demonstrate strong community/parent need if they are transferring their current enrolments to their new location.
23. This option would also cost time and money for affected services, as they would be required to apply for network approval and then for a probationary license.

Option Two – Create a new exclusion under the Act

24. Under this option we would create an exclusion in the Act from the requirement to seek network approval. The provider would be able to apply for a new probationary licence directly. This option would be similar to the current exclusion for Māori immersion services.
25. This option would still require the service to apply for a new probationary licence (and pay the required fee). If a provider meets the licensing requirements it must be granted a licence and funded.
26. Implementing this option would take longer as it would require an Education and Training Amendment Bill.

Option Three – Changes to the licensing regulations

27. Under this option we would amend the regulations to allow a permanent change in location for services impacted by the PWA or UDA. It would still be important that checks of the new premises were undertaken to ensure that they met aspects of the licensing regulations related to premises, but other requirements, such as curriculum could be assumed to continue.
28. Under the amended regulations, a relocating service will still be required to move to new premises in a similar geographical area with a similar number of child places as their existing premises to ensure the intent of network approval is not undermined by the relocating service.
29. We would need to discuss with the Parliamentary Counsel Office how best to articulate the policy intent in the regulatory changes.

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

Key for qualitative judgements:

++ much better than the status quo + better than the status quo 0 about the same as the status quo - worse than the status quo -- much worse than the status quo

	Option One – Status quo	Option Two – Create an exclusion under the Act	Option Three – Changes to the licensing regulations
Maintains accessible provision	0	++ Under this option, a service will be able to move to new premises without first applying for network approval. This would provide assurance to providers and whānau that ECE provision can continue in the event of Crown acquisition of land.	++ Under this option, a service will be able to move to new premises without first applying for network approval. This would provide assurance to providers and whānau that ECE provision can continue in the event of Crown acquisition of land.
Provides clarity to providers	0	+ This option will exclude services from the requirement to apply for network approval. However, this option would still require the service to apply for a new probationary licence (and pay the required fee).	++ This option will exclude services from the requirement to apply for network approval and would allow services to move to a new premises without applying for a new probationary license.
Enables effective management of the ECE network	0	+ This option helps proactively manage the network by allowing continuity of service provision in the event of Crown acquisition of land, and enabling the Ministry to avoid activating the network approval process for instances where the impact on the network is minor due to Crown acquisition.	+ This option helps proactively manage the network by allowing continuity of service provision in the event of Crown acquisition of land, and enabling the Ministry to avoid activating the full network approval process for instances where the impact on the network is minor due to Crown acquisition.
Changes can be implemented promptly	0	-- Amendments to the Act can only be made once per year, so changes cannot be made promptly.	- Amending the regulations may take several months but can be made more promptly than amendments to the Act.
Minimal impact on legislation	0	-- This option requires change to primary legislation.	- This option requires change to secondary legislation.
Overall assessment	0	0	+3

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

30. As outlined in the analysis table above, amending the licensing regulations is the option that best meets the policy objectives. This option will help to ensure that there is continuity of a like service for children and their whānau who attend services that have had their land compulsorily acquired by the Crown. It will also give providers assurance that their service can continue in the event of Crown acquisition.
31. Another advantage of this option is that it helps proactively manage the network by enabling the Ministry to avoid activating the full network process for instances where the impact on the network is minor due to Crown acquisition of land. We also propose amending the regulations to require the relocated centre to be located in the same proximate geographical area and accommodate a number of child places that is not materially different to the existing centre. This will ensure that the legislative intent of network approval is not undermined by the relocating service.
32. This option and the proposed restrictions were also supported by the sector during consultation.
 - 82 percent of survey respondents agreed, or strongly agreed, with the proposal to amend the licensing regulations to enable the license for an existing ECE centre to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquired by the Crown.
 - 91percent of survey respondents agreed to amending the licensing regulations to require the new premises to be located in the same proximate geographical area as the existing premises (9 percent were neutral on this).
 - 100 percent of survey respondents agreed to amending the licensing regulations to ensure the number of child places must not be materially different to the existing premises.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	One-off. Services will only be faced with this as a one-off if they are required to relocate when their property has been compulsorily acquired. If they do, then this proposal will have a very low impact and will be significantly less than the status quo.	Low	Low
Regulators	Ongoing. We do not anticipate that there will be many cases. However, this will be an ongoing issue for the Ministry, as the regulator.	Low	Low
Other parties	Nil. The intent of the change is to ensure any impact on families and whānau is minimal and to ensure ongoing provision of service.	Low	Low
Total monetised costs		N/A	N/A
Non-monetised costs		Low	Low
Additional benefits of the preferred option compared to taking no action			
Regulated groups	One-off. For the small number of services that we anticipate will be affected by compulsory acquisition, it provides clarity and minimal administrative cost to services and helps to ensure they can continue to run their business. Providers will not be required to pay the \$575 fee to apply for network approval or the \$2,817.50 fee for a new licence application.	Medium	Low
Regulators	Ongoing. This strengthens the Ministry's ability to ensure there is limited impact on services and whānau in situations where there is no impact on the network due to Crown acquisition of land.	Low	Low
Other parties	One-off. It helps to ensure that there is continuity of early learning services to families and whānau.	Medium	Low
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Low

Section 3: Delivering an option

How will the new arrangements be implemented?

33. The new arrangements will come into force through a decision by Cabinet to approve changes to the licensing regulations. We envision these changes will be enacted by amending regulation 33 of the licensing regulations to:
- enable the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquired under either Part 2 of the Public Works Act 1981 or Part 5 of the Urban Development Act 2020;
 - enable the Secretary for Education to consider, to the extent relevant, any matter referred to in regulations 11(1) and 13 when considering all applications to amend a licence;
 - reflect the following policy settings for enabling the licence for an existing ECE centre to be amended:
 - The relocated ECE centre must be located in the same proximate geographical area as the existing centre and serve the same or similar enrolled families or community. Proximity will be determined by the Secretary for Education on a case-by-case basis.
 - The size of the relocated ECE centre and the number of child places accommodated should not be materially different to the existing centre. This will be considered by the Secretary for Education on a case-by-case basis.
 - The application for an amendment to an existing licence must be made:
 - no fewer than 30 working days before the intended operational date of the new premises; and
 - no later than three months from the date it is unable to continue operating at its current location if the licensed ECE centre will be unable to continuously operate.
34. This will require developing operational policy to support the policy proposals to support the issuing of guidance to the sector and to ensure that our regional staff are aware of the amendment so that they can advise services if/when the situation arises.

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

35. This change will require minimal monitoring, particularly as we are not anticipating there will be many cases. Services that have had their licence amended to enable them to move to new premises following Crown acquisition will have no further additional obligations or reporting requirements.
36. We will assess the impact on services and the feedback from providers on how well it achieves the goals of ensuring that there is continuity of a like service for children and their whānau and giving providers assurance that their service can continue in the event of Crown acquisition. We will monitor other scenarios in which other centres may be required to move.
37. We will review the amendment and process that it is providing the clarity, continuity and minimal disruption that we intend.