

Interim Regulatory Impact Statement: Additional Tranche 2 issues – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures

Coversheet

Purpose of Document	
Decision sought:	This interim analysis supports consultation on regulatory changes for adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures.
Advising agencies:	Ministry of Education
Proposing Ministers:	Hon Chris Hipkins, Minister of Education
Date finalised:	17 November 2022
Problem Definition	
<p>The current 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. 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 expectations for when compliance issues must be addressed.</p> <p>Additionally, although the current regulations require the Secretary for Education (‘the Secretary’) to cancel the licence of any service that has permanently ceased to operate, there is no definition of this in the regulations. This 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 current regulations also do not set out the process for services to temporarily close. Not addressing this issue may lead to the inadvertent cancellation of licences of service providers who want to temporarily close but have genuine need and intention to reopen.</p> <p>We are proposing to consult stakeholders on a limited number of proposals to address these issues. This analysis supports that consultation and complements the discussion document that will be released subject to Cabinet approval.</p>	
Executive Summary	
<p>The early learning regulatory review</p> <p>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.</p>	

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.

This interim paper provides analysis for proposals which we intend to undertake public consultation on.

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 notify 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 fraudulently claiming the ECE funding subsidy.

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.

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 has determined that these options should not be considered as part of public consultation. Option 2 will be 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, the options differ in relation to how we define the minimum 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.

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 for approval

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 has decided to only include this option in public consultation, with the possibility of alternative options arising as part of feedback on this process.

Preferred options will be finalised after public consultation. This will include final assessment of the potential impact of the preferred options, including the costs, benefits, risks, and risk mitigations of the proposals, and the nature of potential impacts on different population groups.

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 for the other proposals.

Responsible Manager(s) (completed by relevant manager)

Paul Scholey
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17 November 2022

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 Interim Regulatory Impact Statement “Additional Tranche 2 issues – adding conditions to provisional licences, defining ‘permanently ceased to operate’, and providing for temporary service closures”.</p> <p>This Statement was required as the associated discussion document did not meet the effective consultation requirements because it is seeking feedback on preferred options. The panel considers that this interim statement meets the Quality Assurance criteria. It provides analysis of options not included in the discussion document and will, therefore, support effective consultation and subsequent impact analysis.</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

2. 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.
3. 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 meet; and
 - c. the licensing criteria, which are used by the Ministry to assess compliance with the minimum standards set out in the regulations.
4. ECE services are required to be licensed under the Act. Licensing criteria, which is set out in 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 early learning regulatory review

5. 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; 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

6. The reclassification of a ECE service provider's licence to a provisional licence is one of the key tools available to the Ministry of Education (the Ministry) to enforce compliance with the Regulations and licence conditions.
7. 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.²
8. 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.³ Issues that are likely to take longer to address, such as improvements to the delivery of the curriculum, may be set at six months.

¹ Other regulations include the Education (Playgroups) Regulations 2008 and the Education (Registration of Early Childhood Services Teachers) Regulations 2004, as well as the recent introduction of network management regulations.

² Other reasons that a service may have their probationary or full licence reclassified as a provisional licence includes when a complaint is lodged alleging non-compliance with the regulations; an incident involving a child has occurred at the service warranting investigation; or the service has not complied with a written direction from the Secretary under these regulations within a reasonable time.

³ Regulation 16(2) outlines that compliance dates will not usually be set longer than three months after the day on which the provisional licence was issued.

9. 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.
10. 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.
11. The Secretary must cancel a provisional licence if satisfied that any condition has not been complied with by the date specified for compliance.
12. 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

13. 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.
14. 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.
15. 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.

Current Ministry practice around services who temporarily close their services

16. 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).
17. In these cases, 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 further three-month extension in extenuating circumstances.⁴ 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

18. 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.
19. 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.
20. 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

21. 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.
22. 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

23. 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

⁴ In exceptional circumstances relating to COVID-19 services can request to stay closed for a further three months.

following the introduction of network management, where service providers that have their licence cancelled will need to apply for and receive network management approval before they can apply for a new licence if they want to reopen.

What objectives are sought in relation to the policy problem?

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

26. 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.

27. These criteria align with Government Expectations for good regulatory practice.⁵

What scope will options be considered within?

28. 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 around compliance dates needing 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

29. 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

30. 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 reasonable, 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.

31. This option includes amending Regulations to give discretionary powers to the Secretary, where it is fair and reasonable, 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.

32. 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.

33. 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.

⁵ The Treasury. 2017. Government Expectations for Good Regulatory Practice. URL: <http://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>

34. 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) rather than adding conditions to the existing provisional licence. If the non-compliance is urgent 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

35. 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.
36. 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.
37. 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.
38. 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

39. 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.
40. 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.
41. 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 being considered as part of public consultation

42. 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). Given this, the Ministry has determined that these options should not be considered as part of public consultation. Option 2 will be 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

43. 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.
44. 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.
45. 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.
46. 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

47. 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

48. 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.

⁶ Sections 17-18 of the Act set out new network management requirements that service providers must meet before being granted a licence. These provisions come into force in 2023.

49. 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.
50. The Ministry will publicly consult on both of these options, with the possibility of alternative options arising as part of feedback on this process.

Providing for services to be able to temporarily close

51. In addition to the status quo, one option as considered to provide for services to be able to temporarily close who 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, with the possibility of an extension on request

52. 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.
53. 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 for approval

54. This option would allow service providers the ability to temporarily close their services with the provider needing to notify the Ministry.
55. 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

56. 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.

57. 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.
58. 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

59. 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, the Ministry has determined that these options should not be considered as part of public consultation. Option 2 will be subject to public consultation, with the possibility of alternative options arising as part of feedback on this process.

How do the options compare to the status quo?

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 can 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 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	+ Services will have more clarity around their licence conditions as new requirements are added following subsequent assessment, but less so about when compliance issues must be addressed by
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau will have more transparency of what compliance issues services must address	++ 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, but depends on when these new conditions are added (if close to 12-month licence window)	-- 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 licence first being issued
Overall assessment	0	+8	+4	0

Definition for 'permanently ceased 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 will provide 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	+ The Ministry will provide less timely and active management of the network by removing non-operating services from the network more swiftly (but more so than status quo). This will eventually free up space in the network for new service providers wanting to enter the network
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 have their service licenced cancelled)	++ Parents/whānau will have greater transparency of when services are deemed to have permanently ceased to operate (and have their service licenced 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

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

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 for approval [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 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 visibility for Ministry to determine whether services are seeking to reopen, which may lead to service licences being inadvertently cancelled
Improves clarity and consistency of regulations	0	++ The sector will have greater clarity around temporary closures, as requirements laid out in regulations	++ The sector will have clarity around temporary service closures, as requirement to notify the Secretary laid out in regulations	-- The sector will have no clarity around whether the Ministry will seek to cancel a service following a service closing (even if temporarily)
Improves transparency of regulations for parents/whānau	0	++ Parents/whānau greater transparency of when services are closing temporarily, or when they have permanently ceased to operate	- Parents/whānau will have some transparency about whether a service is legitimately intending to reopen, or is permanently closed, as the Secretary has granted temporary closure	-- Parents/whānau will have less transparency about whether a service is legitimately intending to reopen, or is permanently closed (as services won't have applied)
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

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 is that option 2 (adding new conditions with new compliance deadlines, but within 12-months from when licence was classified as provisional) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1. As outlined in section 2, we will not be consulting on options three and four as they did not meet the policy objectives and criteria. We will finalise this assessment after the public consultation period.

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

61. Our initial assessment is that option 2 (setting the time period at three months or more that services are evidenced to not be operating) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1. We will finalise this assessment after the public consultation period.

Providing for temporary service closures

62. Our initial assessment is 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) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 1. As outlined in section 2, we will not be consulting on options three and four as they did not meet the policy objectives and criteria. We will finalise this assessment after the public consultation period.

What are the marginal costs and benefits of the option?

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>
Additional costs of the preferred option compared to taking no action			
Regulated groups	To come after public consultation is completed and the preferred options are finalised.		
Regulators			
Others (eg, wider govt, consumers, etc.)			
Total monetised costs			
Non-monetised costs			
Additional benefits of the preferred option compared to taking no action			
Regulated groups	To come after public consultation is completed and the preferred options are finalised.		
Regulators			
Others (eg, wider govt, consumers, etc.)			
Total monetised benefits			
Non-monetised benefits			

Section 3: Delivering an option

How will the new arrangements be implemented?

To come once preferred options are finalised.

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

To come once preferred options are finalised.

Proactively Released