

Impact Summary: Police vetting - the application period for specified employees

Section 1: General information

Purpose

The Ministry of Education is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated. This analysis and advice has been produced for the purposes of informing stakeholders to be consulted on a government discussion document.

We are consulting on a proposal to remove the two-week period for ECE services and schools to apply for a Police vet for non-teaching and unregistered employees from the Education and Training Act 2020 (the ETA). This will better align the provisions in the ETA with the Children’s Act 2014, and reduce confusion about which framework applies.

Key Limitations or Constraints on Analysis

The ETA provides ECE services and schools with a two-week period to apply for a vet of non-teaching and unregistered employees after they begin work (the application period), as long as the employee does not have unsupervised access to children during that time.

We have heard anecdotally of confusion caused by the differing requirements in both the Children’s Act and throughout the Education and Training Act for when the various safety checking and police vetting requirements must be applied for or obtained. We are seeking evidence through the consultation process of the extent of this confusion, and the problems that confusion causes.

The application period applies only to non-teaching and unregistered employees at licenced ECE services and schools. The application period is only available to a small number of employees as most in the education sector meet the definition of “children’s worker”, and therefore require a safety check under the Children’s Act. We are using the consultation period to collect data on the types of roles the application period applies to, and the number of people affected by the proposal.

The application period is specified in legislation. Therefore, the range of options we have identified is limited to the status quo and legislative amendment. However, we are using the public consultation period to determine whether there are alternative options.

Responsible Manager (signature and date):

Dr. Andrea Schöllmann

Deputy Secretary

Education System Policy

Ministry of Education

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry of Education

Quality Assurance Assessment:

The Regulatory Impact Analysis panel at the Ministry of Education has reviewed this Regulatory Impact Summary Statement and the associated discussion document and has confirmed that it meets the assessment criteria.

Reviewer Comments and Recommendations:

The Regulatory Impact Analysis panel at the Ministry of Education has confirmed that the Impact Summary and discussion document will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Background

In general, all workers in the education sector who work with or around children require a Police vet under the ETA or a more comprehensive 'safety check' under the Children's Act.

Workers who meet the definition of children's workers (a person who works in a regulated service, such as a school, and for whom the person's work may or does involve regular or overnight contact with children,¹) must undergo a safety check before they begin working. A safety check includes a Police vet, identity confirmation, a risk assessment, work history check, an interview, a reference check and checks with the person's relevant professional body. The majority of workers in the education sector are children's workers.

The ETA requires ECE services and schools to vet specified people involved in the education sector. The requirements in the ETA apply more broadly, and can require vets for some workers who do not meet the definition of children's worker (for example, because they do not have regular contact with children).

The two-week application period applies only to non-teaching and unregistered employees, and these employees must not have unsupervised access to children until the vet is obtained.

The problem

The application period has caused confusion because it is inconsistent with the requirements of safety checks under the Children's Act and the police vetting requirements for other education workers (such as building contractors who work in schools during school hours). There is no application period for children's workers as they must be safety checked before they begin working. There is no application period for other education workers. The application period only applies to a subset of education children's workers who are "non-teaching and unregistered employees" who may have unsupervised access to children in the course of their employment.

Some providers have mistakenly thought that the application period in the ETA applies to all or some of their employees, regardless of whether they are employing non-teaching and unregistered employees who may have unsupervised access to children.

The confusion means that people are constantly seeking advice from the Ministry of Education about what level of checking is required. There are also consequences for the Police Vetting Service; because when people do not understand the requirements, they often don't provide correct or complete information.

In addition, employers may be allowing other people, to whom the application period does not apply, to work for 2 weeks before they apply for a vet.

A secondary problem is the application period can complicate the employment relationship if the Police vet is unsatisfactory after the worker has been working for a period, and may result in wasted time and resources (for example on induction and

¹ 'Work' is also defined in the Children's Act as work that is paid or part of educational or vocational training. It does not include volunteers.

training programmes). These costs, along with the costs associated with recruiting a replacement, may incentivise some ECE services and schools to retain unsuitable employees.

The two-week application period was originally intended to provide flexibility for low-risk employees who would otherwise need to await a potentially lengthy police vetting process before beginning to work. However, police vetting processing times have improved considerably in recent years, and there is an opportunity to amend the law to reflect that the two-week period is no longer needed.

We don't know the extent of the problems we have identified. We don't know how many non-teaching and unregistered employees there are in the education sector, or what roles schools/ECE consider only need to be Police vetted and not safety checked as children's workers. For example, cooks in ECE services may not be children's workers, but they might be assisted by children on occasion. It is not clear whether ECE services consider cooks to be a teaching position, and therefore require a Police vet. Teacher aides are not teaching positions, but some may meet the definition of children's workers if they have regular unsupervised access to children. We will be using the consultation period to determine the extent of the problems we have identified.

2.2 Who is affected and how?

The application period applies to non-teaching and unregistered employees at ECE services and schools who are not also children's workers, and their employers. We will be using the consultation period to determine how these employees and their employers are affected.

2.3 What are the objectives sought in relation to the identified problem?

To reduce confusion about what level of checking applies to employees in the education sector, and to ensure all employees are required to obtain a police vet before they begin employment.

Section 3: Options identification

3.1 What options have been considered?

We have identified the following decision criteria:

- confusion between the frameworks set out in the ETA and the Children's Act is reduced;
- the requirements placed on ECE services and schools are clear and workable;
- any risks presented by unvetted employees are minimised;
- does not erode the current safety protections afforded by the police vetting provisions in the ETA or the Children's Act, or increase the risk of harm; and
- compliance costs are reduced.

We have identified three options.

Options other than the status quo (option one) require legislative change as the application period is specified in the ETA.

Option One – ECE services and schools have two weeks to apply for a vet of non-teaching and unregistered employees (the status quo).

The advantage of the status quo is that the application period provides ECE services and schools with a flexible two-week period to have non-teaching and unregistered employees begin work who do not have a role that interacts with children. The status quo does not erode the current safety protections in the ETA or the Children's Act, and therefore does not increase the risk of harm.

The disadvantages of the status quo are that it will not reduce the existing confusion between the frameworks set out in the ETA and the Children's Act, and does not clarify the requirements for ECE services and schools or make them more workable. The status quo also will not reduce compliance costs. This option does not address the problems we have identified in section 2.1.

Option Two – requiring ECE services and schools to apply for a vet before non-teaching and unregistered employees begin work

Under this option, the period unvetted employees can be on site has been reduced by requiring the application for a vet to be made before employment begins. Unvetted non-teaching and unregistered employees will still be on site for the time it takes for the application to be processed by the Police Vetting Service (i.e. the time it takes for the vet to be **obtained**).

The advantages of this option are that ECE services and schools retain some of the flexibility they currently have under the status quo (because they do not need to wait for the vet to be obtained before the employment can begin), and it does not erode the current safety protections in the ETA or the Children's Act or increase the risk of harm.

The disadvantages of this option are that it will not reduce the existing confusion between the frameworks set out in the ETA and the Children's Act, and does not clarify the requirements for ECE services and schools or make them more workable. Compliance costs will also not be reduced. This option also does not address the problems we have identified in section 2.1.

Option Three – removing the application period

Under this option the ETA is amended to remove the application period. Employers will be required to both apply with and obtain the vet before non-teaching and unregistered employees begin work.

The advantage of this option is the ETA and the Children's Act become more closely aligned, which will reduce confusion between the two frameworks. The requirement to obtain the vet before non-teaching and unregistered employees begin work will provide greater clarity for ECE services and schools. Removing the requirement to supervise these employees when they have access to children will make it more workable on a day to day basis for ECE services and schools, and may decrease compliance costs if additional employees are required to provide that supervision. As no un-vetted employees are allowed to be working on site, the risks presented by un-vetted employees is minimised. This option does not erode the current safety protections or increase the risk of harm.

The disadvantage of this option is that ECE services and schools will lose the flexibility to have non-teaching and unregistered employees begin work before the vet is obtained. However, we consider that this disadvantage is mitigated because the need for flexibility has diminished since the application period was introduced. In 2009, the Police Vetting Service processed vets manually with paper-based procedures. The subsequent shift to an electronic-based system allowed for efficiency improvements, including allowing Police vets to be submitted electronically. Police are progressing work to establish a statutory framework, which will enhance the functions of the Police Vetting Service. Some of this work aims to reduce the time employers will be required to wait for a Police vet to be obtained.

It may be that this option is less workable and compliance costs are increased if ECE services and schools structure their service/school around this flexibility.

We will gather additional information on the advantages and disadvantages (including costs) of the options during the public consultation phase, as well as any other options we have not identified.

3.2 Which of these options is the proposed approach?

Our initial assessment is that option three (removing the application period) is the preferred option as it best meets the decision-making criteria and is the best response to the problems identified in section 2.1. We will finalise this assessment after the public consultation period.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Summarise the expected costs and the benefits in the form below. Add more rows if necessary.

*Give monetised values where possible. Note that only the **marginal** costs and benefits of the option should be counted, ie, costs or benefits additional to what would happen if no actions were taken. Note that “wider government” may include local government as well as other agencies and non-departmental Crown entities.*

See <http://www.treasury.govt.nz/publications/guidance/planning/costbenefitanalysis> for further guidance

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts
Additional costs of proposed approach, compared to taking no action		
Regulated parties		
Regulators		

Wider government	To come after public consultation is completed and the preferred option is finalised	
Other parties		
Total Monetised Cost		
Non-monetised costs		<i>(High, medium or low)</i>

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	To come after public consultation is completed and the preferred option is finalised	
Regulators		
Wider government		
Other parties		
Total Monetised Benefit		
Non-monetised benefits		<i>(High, medium or low)</i>

4.2 What other impacts is this approach likely to have?

The general public will be consulted on this proposal. We will also conduct targeted consultation with peak bodies.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

To come after public consultation

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

To come once the preferred option is finalised

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

To come once the preferred option is finalised

7.2 When and how will the new arrangements be reviewed?

To come once the preferred option is finalised