

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

Coversheet

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

Executive Summary

The early learning regulatory review

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

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

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

Why change is needed to the ECE regulations

Regulations around provisional licensing

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

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

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

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

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

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

Problems with the current regulations

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

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

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

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

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

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

Options considered to address issues with provisional licensing requirements

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

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

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

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

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

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

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

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

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

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

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

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

Providing for services to be able to temporarily close

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

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

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

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

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

What stakeholders thought about the preferred options

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

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

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

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

The preferred options were revised based on consultation feedback

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

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

The potential impacts of the preferred options

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

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

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

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

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

Limitations and Constraints on Analysis

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

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

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

Responsible Manager(s) (completed by relevant manager)

Paul Scholey
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5 May 2023

Quality Assurance (completed by QA panel)

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

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

Proactively Released

Section 1: Diagnosing the policy problem

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

The early learning regulatory framework

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

The early learning regulatory review

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

Requirements relating to provisional licensing

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

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

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

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

Requirements relating to the cancellation of service licenses

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

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

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

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

Current Ministry practice around services who temporarily close their services

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

What is the policy problem or opportunity?

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

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

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

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

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

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

There is no clear regulatory process for services to temporarily close

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

What objectives are sought in relation to the policy problem?

23. The proposal to address policy issues around adding new conditions to existing provisional licenses seeks to achieve the following objectives:
 - 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.
24. The proposals to address policy issues around defining 'permanently ceased to operate' and providing for temporary service closures seek to achieve the following objectives:
 - 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?

25. The options have been assessed against the following criteria, which align with the policy objectives outlined in section 1:
- 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.
 - 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.
 - 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.
 - Reduces compliance costs** – regulations need to be fair and equitable for all parties, so services can address compliance issues in a timely way.
 - Compatible with existing regulations** – any regulatory changes need to be aligned with existing requirements to ensure regulations are robust.
26. These criteria align with Government Expectations for good regulatory practice.⁶

What scope will options be considered within?

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

What options are being considered?

Adding new conditions to existing provisional licences

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

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

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

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

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

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

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

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

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

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

Options not included in public consultation

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

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

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

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

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

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

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

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

Providing for services to be able to temporarily close

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

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

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

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

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

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

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

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

Options not being considered as part of public consultation

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

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

Adding new conditions to existing provisional licences

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

Definition for 'permanently 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: <ol style="list-style-type: none"> when the service provider has notified the Ministry that it has permanently ceased to operate; or 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: <ol style="list-style-type: none"> there being no children enrolled and/or attending the service; or there being no staff employed or engaged and working in the service; or the service provider has not claimed ECE funding. 	
Supports the Ministry to be a timely and effective regulator	0	++ The Ministry can be a more effective regulator because the regulations provide a definition of permanently ceased to operate which allows the Ministry to take more decisive action to cancel licences from defunct services. The Ministry will also be able to undertake more timely and active management of the network than it currently is able to by removing non-operating services from the network more swiftly. This will free up space in the network for new service providers wanting to enter the network	+ The Ministry can be a more effective regulator because the regulations provide a definition of permanently ceased to operate which allows the Ministry to take more decisive action to cancel licences from defunct services. In comparison to option 2, the Ministry's ability to undertake more timely and active management of the network is reduced

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

Providing for temporary service closures

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

Example key for qualitative judgements:

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

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

Adding new conditions to existing provisional licences

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

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

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

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

Definition for ‘permanently ceased to operate’ for service licence cancellations

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

Providing for temporary service closures

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

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

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

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

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

What are the marginal costs and benefits of the option?

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

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

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

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

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

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

Section 3: Delivering an option

How will the new arrangements be implemented?

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

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

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