



**Te Tāhuhu o  
te Mātauranga**  
Ministry of Education

# **Consultation: Amendments to Education (Early Childhood Services) Regulations to accommodate Crown acquisition of land and network approval**

January 2023

# Contents

## How to have your say ..... 3

Process.....	3
--------------	---

## Introduction ..... 4

The new network approval provisions.....	4
--	---

Crown acquisition of land occupied by a licensed early childhood education and care centre .....	4
--	---

Public Works Act and Urban Development Act.....	4
---	---

Current requirements.....	4
---------------------------	---

Our proposal.....	4
-------------------	---

Network approval provisions being taken into account for applications to amend a licence.....	5
---	---

Our proposal.....	5
-------------------	---

What are we consulting on?.....	5
---------------------------------	---

Key guiding principles .....	5
------------------------------	---

When will the proposed regulatory changes come into effect? .....	5
---	---

## Our regulatory change proposals ..... 6

Enabling the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquisitioned by the Crown.....	6
--	---

Why? .....	6
------------	---

Questions for you.....	6
------------------------	---

Setting restrictions on the amendment of a licence when a service relocates due to Crown acquisition.....	7
---	---

Why? .....	7
------------	---

Questions for you.....	8
------------------------	---

Clarifying that the Secretary for Education can take into account network approval provisions when considering an application to amend a licence .....	9
--	---

Why? .....	9
------------	---

Questions for you.....	9
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# How to have your say

If you would like to provide feedback on the proposals in this document, you can complete a survey in English [here](#), or in te reo Māori [here](#). You can also send a more detailed written submission to:

[earlylearning.regulatoryreview@education.govt.nz](mailto:earlylearning.regulatoryreview@education.govt.nz)

or

Early Learning Regulatory Review  
Ministry of Education  
PO Box 1666  
Wellington 6140

Feedback is required by 11:59pm on Friday 24 February 2023.

If you have any questions about making a submission or would like more information, please email: [earlylearning.regulatoryreview@education.govt.nz](mailto:earlylearning.regulatoryreview@education.govt.nz)

## Process

The information provided in submissions will be incorporated into the Ministry of Education's (the Ministry's) policy development process and will inform advice to the Minister of Education.

Your submissions will become public information. This means that a member of the public may ask for a copy of your submission under the Official Information Act 1982. Any submission summary we create as a result of this consultation may also mention your submission. Please tell us if you do not want your name included.

Please also tell us clearly in the cover letter or email accompanying your written submission if you have any objection to the release of any information in your submission. It would be helpful if you outlined the information that you consider should be withheld, together with the reasons why you would like the information withheld. The Ministry will take this into account and will consult with submitters when responding to requests under the Official Information Act and if a summary of submissions is published.

# Introduction

## The new network approval provisions

From 1 February 2023, if you want to operate a new licensed early childhood service you will need network approval from the Minister of Education before you apply for licensing. Providers who obtain network approval may have conditions attached to the licence of their service to ensure the service delivery is consistent with their network approval.

## Crown acquisition of land occupied by a licensed early childhood education and care centre

### Public Works Act and Urban Development Act

The Public Works Act 1981 and Urban Development Act 2020 give the Crown power to acquire land from private landowners for public works or urban development, which may include works such as roads and schools.

If the Crown is considering acquiring land, the first option to be explored is whether the land can be acquired voluntarily upon reaching a commercial agreement for purchase. If no agreement can be reached, the Crown may compulsorily acquire it, build around it, or cease the project.

### Current requirements

There is no provision in the Education (Early Childhood Services) Regulations 2008 for a licensed early childhood education and care centre (ECE centre) to permanently relocate to an alternative site, under any circumstance (including where a premises is acquired for public works or urban development). If a licensed ECE centre moves location permanently it needs to apply for a new probationary licence and pay the required fee.

Under the current regulations, from 1 February 2023 (the commencement date of network approval) any ECE centre that has a premise acquired by the Crown for public works or urban development will be required to first seek network approval before applying for a new licence when moving to the new premises.

### Our proposal

We propose amending the Education (Early Childhood Services) Regulations 2008 to create a narrow exception enabling the licence for an existing early childhood education and care centre to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquisitioned for public works or urban development under the Public Works Act 1981 or the Urban Development Act 2020.

We propose these amendments as they provide clarity for both service providers and whānau that early childhood provision can continue uninterrupted in circumstances where land has been acquired by the Crown.

As part of this proposal, we also recommend enabling the Secretary for Education to consider, to the extent relevant, any matter referred to in the granting of a probationary licence (regulation 11(1)) and the granting of a full licence (regulation 13) when considering applications to amend any licence (including moving to a new premises). Currently, these matters can only be considered when the application relates to a change of service provider identity. Reference to regulations 11(1) and 13 for all applications to amend a licence allow the following licensing requirements to be taken into account:

- i. Qualifications
- ii. Ratios
- iii. Service size
- iv. Premises and facilities standards
- v. Curriculum delivery standards
- vi. Health and safety practices standards
- vii. Governance, management and administration standards
- viii. Fit and proper status.

We propose several restrictions be built into the amended regulations in relation to enabling the licence for an existing service to be amended, without requiring an application for network approval, where the service has to permanently relocate because of Crown acquisition of land, in order to:

- clarify the scope of the new regulations
- ensure that the legislative intent of network approval is not undermined by the relocating service
- ensure that an amendment is not used to revive an empty licence
- encourage business continuity and minimal disruption for whānau, and
- clarify the timeframes for when an application for an amendment must be made

## Network approval provisions being taken into account for applications to amend a licence

As part of our work to implement network management we have identified an opportunity to clarify that the Secretary can take network approval provisions into account when assessing applications to amend a licence (regulation 33 of the Education (Early Childhood Services) Regulations 2008) This is because the current regulations pre-date the introduction of network approval so do not reference this.

### Our proposal

We propose the Secretary's position should be clarified and strengthened by amending the regulations to explicitly authorise the Secretary to take the network approval provisions into account when deciding

## What are we consulting on?

We are consulting on proposals to amend the Education (Early Childhood Services) Regulations 2008 to:

- Enable the licence for an existing service to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquisitioned by the Crown
- Clarify that the Secretary for Education can take into account network approval provisions when assessing an application to amend a licence

## Key guiding principles

To guide the development of these proposals we have considered the following principles:

- **Maintains accessible provision** – regulatory change should not impede or disrupt the accessibility of early learning provision to whānau
- **Provides clarity to providers** – regulations should provide clarity to ECE providers
- **Enables effective management of the ECE network** – regulatory change should not undermine the legislative intent of network approval
- **Changes can be implemented promptly** – there should be no unnecessary delay of the commencement of the new provisions, in order to provide clarity for providers and whānau
- **Minimal impact on legislation** – we are seeking to minimise legislative changes to avoid operational and system consequences

## When will the proposed regulatory changes come into effect?

These amendments to the licensing regulations are expected to come into force around mid-to-late 2023.

# Our regulatory change proposals

## **Enabling the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the ECE centre has to permanently relocate because its land has been acquisitioned by the Crown**

This change allows a licensed ECE centre situated on land acquired by the Crown under the Public Works Act 1981 or Urban Development Act 2020 to permanently relocate, without requiring an application for network approval.

As part of this proposal, we also recommend enabling the Secretary for Education to consider, to the extent relevant, any matter referred to in the granting of a probationary licence (regulation 11(1)) and the granting of a full licence (regulation 13) when considering applications to amend a licence, and not only in cases where a change in the identity of the service provider is sought. Reference to regulations 11(1) and 13 for all applications to amend a licence allows the following licensing requirements to be taken into account:

- i. Qualifications
- ii. Ratios
- iii. Service size
- iv. Premises and facilities standards
- v. Curriculum delivery standards
- vi. Health and safety practices standards
- vii. Governance, management and administration standards
- viii. Fit and proper status.

### Why?

This change will provide clarity for both service providers and whānau that early childhood provision can continue uninterrupted in circumstances where land is acquired by the Crown.

Clarifying that assessments for a licence amendment, including where an ECE centre is required to move to a new premises, may be to the same level as for a probationary or full licence assessment will give assurance to parents that the new premises meets the regulated requirements. For this reason, it is important to enable the Secretary for Education to consider the matters referred to in regulations 11(1) and 13 when considering an application to amend any licence.

### Questions for you

1. Do you agree with the proposal to enable the licence for an existing ECE centre to be amended, without requiring an application for network approval, where the service has to permanently relocate because its land has been acquisitioned by the Crown?
2. Do you have any comments?

## Setting restrictions on the amendment of a licence when a service relocates due to Crown acquisition

We are seeking feedback on several restrictions to be built into the amended regulations in relation to enabling the licence for an existing service to be amended, without first applying for network approval, where the service has to permanently relocate because its land has been acquired by the Crown.

These proposed restrictions are:

- i. The amended regulation will apply only to licensed early childhood education and care centres.
- ii. The relocated centre must be located in the same proximate geographical area as the existing centre and serve the same or similar enrolled families or community.
- iii. The size of the relocated centre and the number of child places accommodated should not be materially different to the existing centre.
- iv. The application for an amendment to permanently relocate must be made no less than 30 working days of the intended operational date of the new premises; and
- v. no later than 3 months from the date it is unable to continue operating at its current location.

This change will provide greater certainty and clarity for both service providers and whānau that early childhood provision can continue in circumstances where land has been acquired by the Crown.

### Why?

Overall, these proposed restrictions are intended to:

- clarify the scope of the new regulations
- ensure that the legislative intent of network approval is not undermined by the relocating service
- ensure that an amendment is not used to revive an empty licence
- encourage business continuity and minimal disruption for whānau; and
- clarify the time period wherein an application for an amendment must be made

### **The amended regulation will only apply to licensed early childhood education and care centres:**

- Hospital-based centres are only licensed to be within a hospital, so it is unlikely they will be acquired for public works under the Public Works Act or Urban Development Act; and
- while a home used in a home-based service may be acquired, it is not material to the licence because addresses are not listed on the licence. As such, any acquisition of a home under the Public Works Act or Urban Development Act would not require a new licence application, and therefore would not trigger the requirement to seek network approval.

### **The relocated centre must be located in the same proximate geographical area as the existing centre and serve the same or similar enrolled families or community:**

- Proximity will be determined by the Secretary for Education on a case-by-case basis.
- This requirement aims to ensure the intent of network approval is not undermined and the impact on whānau is minimised (so a service cannot go to another area and leave their current enrolled families behind).

### **The size of the relocated centre and the number of child places accommodated should not be materially different to the existing licensed early childhood education and care centre:**

- The regulation change needs to provide some flexibility in the number of child places (as the new premises may not be the exact same size as the existing premises), without being too open (so that the centre cannot materially better their position, which could undermine network approval).

**The application for permanent relocation must be made no later than 3 months from the date it is unable to continue operating at its current location:**

- A provider could also apply for permanent relocation prior to the closure of operations on its current site.
- This is intended to avoid an amendment being used to revive an empty licence and to ensure business continuity and minimal disruption for whānau.

**The application for an amendment must be made no less than 30 working days of the intended operational date of the new premises:**

- This is to allow the Ministry time to consider the request.

### Questions for you

3. Do you agree with the proposed restrictions to be built into the amended regulations in relation to an application to amend a licence to allow an ECE centre to permanently relocate because its land has been acquisitioned by the Crown?
4. Are there any restrictions you would add, change or remove? Why?



## **Clarifying that the Secretary for Education can take into account network approval provisions when considering an application to amend a licence**

From 1 February 2023, if you want to operate any new licensed early childhood service you will need network approval from the Minister of Education before you apply for licensing. Providers who obtain network approval may have conditions attached to the licence of their service to ensure the service delivery is consistent with their network approval.

Currently, the Education (Early Childhood Services) Regulations 2008 are not clear that the Secretary can take these network approval provisions into account when considering applications to amend a licence.

### **Why?**

The current regulations pre-date the introduction of network approval. These changes will update the regulations to provide clarity to providers around the Secretary's assessment powers when considering a licence amendment

### **Questions for you**

5. Do you agree with the proposal to clarify that the Secretary for Education can take into account network approval provisions when considering an application to amend a licence?
6. Do you have any comments?



**Te Tāhuhu o  
te Mātauranga**  
Ministry of Education

We **shape** an **education** system that delivers  
**equitable** and **excellent outcomes**

He mea **tārai** e mātou te **mātauranga**  
kia **rangatira** ai, kia **mana taurite** ai ōna **huanga**