



## **Education (Early Childhood Services) Amendment Regulations 2021**

Patsy Reddy, Governor-General

### **Order in Council**

At Wellington this 28th day of June 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 636 of the Education and Training Act 2020 on the advice and with the consent of the Executive Council.

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## Regulations

### 1 Title

These regulations are the Education (Early Childhood Services) Amendment Regulations 2021.

### 2 Commencement

- (1) Regulations 7, 12, and 13 come into force on 1 February 2022.
- (2) The rest of these regulations come into force on 30 July 2021.

### 3 Principal regulations

These regulations amend the Education (Early Childhood Services) Regulations 2008.

### 4 Regulation 5 amended (Applications for licences)

- (1) In the heading to regulation 5, after “licences”, insert “and application fees”.
- (2) In regulation 5, insert as subclauses (2) and (3):
- (2) The application must be accompanied by an application fee of \$2,817.50.
- (3) The fee is inclusive of goods and services tax and is non-refundable.

### 5 Regulation 7 amended (Applicant must make statutory declaration)

In regulation 7(f)(i), replace “section 319N of the Act” with “section 319N of the Education Act 1989 (as it read immediately before its repeal)”.

### 6 Regulation 8 amended (Fit and proper persons)

In regulation 8(f)(i), replace “section 319N of the Act” with “section 319N of the Education Act 1989 (as it read immediately before its repeal)”.

### 7 Regulation 11 amended (Grant of probationary licence)

In regulation 11(1)(b), after “applicant”, insert “and any other information the Secretary considers relevant”.

### 8 Regulation 15 amended (Secretary may reclassify licence as provisional licence)

- (1) After regulation 15(1)(c), insert:

- (ca) an incident involving a child has occurred at the early childhood service for which the licence was issued, and the Secretary considers that the incident warrants investigation; or
- (2) Replace regulation 15(1)(d) with:
  - (d) the service provider for a licensed early childhood service has not complied with a written direction from the Secretary under these regulations (other than a written direction issued under regulation 54A) within a reasonable time; or
  - (e) the service provider for a licensed early childhood service has not complied with a written direction from the Secretary under regulation 54A within the time specified in that direction.
- (3) Replace regulation 15(2) with:
- (2) If the Secretary reclassifies a licence under subclause (1), the Secretary must immediately forward to the service provider a provisional licence.

#### **9 Regulation 25 revoked (Licensing fee)**

Revoke regulation 25.

#### **10 Regulation 30 amended (Suspension of licences)**

Revoke regulation 30(3).

#### **11 Regulation 31 amended (Effects and consequences of suspension)**

- (1) In regulation 31(1), replace “regulation 30(1)” with “regulation 30”.
- (2) Revoke regulation 31(2).

#### **12 Regulation 32 amended (Cancellation of licences)**

After regulation 32(1)(d), insert:

- (e) the service provider for a licensed early childhood service—
  - (i) has previously had a probationary or full licence reclassified as a provisional licence (unless the licence was reclassified on a ground listed in clause 15(1)(c) or (ca) and the Secretary was not in that case satisfied that non-compliance with these regulations had occurred); and
  - (ii) is currently not compliant with 1 or more of the following:
    - (A) the curriculum standard: general set out in regulation 43;
    - (B) the qualifications, ratios, and service-size standard: general set out in regulation 44;
    - (C) the premises and facilities standard: general set out in regulation 45;
    - (D) the health and safety practices standard: general set out in regulation 46;

- (E) the governance, management, and administration standard: general set out in regulation 47; and
- (iii) is not likely to comply with those standards in the future.

### 13 Regulation 33 amended (Amendment of licences)

- (1) Replace regulation 33(1)(c) with:
  - (c) the service provider wants to make any change in the identity of the service provider operating the licensed early childhood service.
- (2) In regulation 33(2), replace “or amend any of the particulars specified in it” with “amend any of the particulars specified in it, or decline to amend the licence”.
- (3) In regulation 33(4), replace “or amend any of the particulars specified in it” with “amend any of the particulars specified in it, or decline to amend the licence”.
- (4) After regulation 33(4), insert:
  - (4A) In reviewing a licence under subclause (4), the Secretary may consider, to the extent relevant, any matter referred to in regulations 11(1) and 13.

### 14 New regulation 54A inserted (Secretary may direct service provider to remedy immediate health and safety risk)

After regulation 54, insert:

#### 54A Secretary may direct service provider to remedy immediate health and safety risk

- (1) The Secretary may, in writing, direct the service provider of a licensed service to remedy any thing or activity that is an immediate risk to the health and safety of any person (an **immediate health and safety risk**) and that, in the opinion of the Secretary,—
  - (a) is, or is likely to be, a breach of these regulations; and
  - (b) is capable of being remedied safely while the relevant early childhood service continues to operate.
- (2) In directing the service provider of a licensed service to remedy an immediate health and safety risk, the Secretary may impose any conditions that the Secretary thinks fit relating to the risk and the continued operation of the service.
- (3) The direction must include the date by which the service provider is to have remedied the immediate health and safety risk, which must be a date no later than 10 working days after the date of the direction.
- (4) For the avoidance of doubt, a failure to comply with a written direction under this regulation may result in the reclassification of the service’s licence as a provisional licence under regulation 15 or the suspension of the service’s licence under regulation 30.

(5) This regulation does not limit the powers of the Secretary to reclassify a licence as a provisional licence under regulation 15 or suspend a licence under regulation 30.

**15 Schedule 1 replaced**

Replace Schedule 1 with the Schedule 1 set out in the Schedule of these regulations.

**Schedule  
Schedule 1 replaced**

r 15

<b>Schedule 1 Qualification requirements</b>	
<b>Service</b>	<b>Requirement</b>
Licensed education and care centres affiliated with Te Whānau Tupu Ngātahi o Aotearoa — Playcentre Aotearoa	Person responsible must hold recognised qualification
Licensed education and care centres affiliated with Te Kōhanga Reo National Trust	
Licensed home-based education and care services	Person responsible must hold recognised qualification and practising certificate
Licensed hospital-based education and care services	
Licensed education and care centres not affiliated with either of the following:	
<ul style="list-style-type: none"> <li>• Te Whānau Tupu Ngātahi o Aotearoa — Playcentre Aotearoa:</li> <li>• Te Kōhanga Reo National Trust</li> </ul>	
All services recognised as a teacher led service (as defined in regulation 44(4))	Fifty percent of required staff must hold recognised qualification

r 44(1)(a)

Michael Webster,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which amend the Education (Early Childhood Services) Regulations 2008, come into force as follows:

- regulations 7, 12, and 13 come into force on 1 February 2022; and

- the rest of these regulations come into force on 30 July 2021.

*Regulation 4* amends regulation 5, which relates to applications for licences, to clarify that an application fee must be paid when an application for a licence is made and that the fee is non-refundable.

*Regulation 5* amends regulation 7, which requires an application for a licence to be accompanied by a statutory declaration made by the applicant in respect of certain matters. The amendment requires the declaration to set out whether the applicant has previous involvement in the provision of education and care services for which the application for a licence under certain revoked regulations referred to in section 319N of the Education Act 1989 has been refused.

*Regulation 6* amends regulation 8, which specifies criteria for determining whether an applicant is a fit and proper person to be involved in the management of a service provider. The amendment allows the Secretary for Education (the **Secretary**) to continue to consider past refusals to grant applications under certain revoked regulations referred to in section 319N of the Education Act 1989 when determining whether the applicant is a fit and proper person.

*Regulation 7* amends regulation 11, which relates to the grant of a probationary licence, to allow the Secretary to have regard to any other information the Secretary considers relevant when deciding whether to grant the licence.

*Regulation 8* amends regulation 15, which allows the Secretary to reclassify a licence as a provisional licence, to enable the Secretary to make a reclassification following an incident at a licensed service, whether or not there has been a complaint. In addition, *regulation 8* replaces regulation 15(2) to reflect current operational practice relating to the physical form of licences.

*Regulation 9* consequentially revokes regulation 25, which relates to licensing fees, as the provision has been incorporated into regulation 5.

*Regulation 10* consequentially revokes regulation 30(3) as a result of the changes to regulation 15(2).

*Regulation 11* amends regulation 31, which relates to the effects and consequences of suspending a licence, to provide that all suspensions of licences under regulation 30 may take effect on a day specified in the notice effecting it, and may be immediate.

*Regulation 12* inserts *new regulation 32(1)(e)*, which allows a licence to be cancelled where a service provider has previously held a provisional licence in respect of the licensed service and is currently not compliant with the requirements of their licence, and the Secretary is satisfied that the service or service provider is not likely to comply in the future.

*Regulation 13* amends regulation 33, which relates to the amendment of licences. The amendments require a service provider to apply for an amendment to a licence in advance of any change in the identity of the service provider, and allow the Secretary to consider any matters referred to in regulations 11(1) and 13 in reviewing the application for a licence amendment. The amendments also clarify that the Secretary may decline to amend a licence.

*Regulation 14* inserts *new regulation 54A*, which allows the Secretary to direct a service provider to remedy an immediate health and safety risk. If the service provider fails to comply with that direction, the Secretary may reclassify the licence as a provisional licence under regulation 15 or suspend the licence under regulation 30.

*Regulation 15* replaces Schedule 1 with the *new Schedule 1* set out in the *Schedule* of these regulations to clarify the qualification and certification requirements for certain persons responsible for, or operating within, a licensed service.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 1 July 2021.

These regulations are administered by the Ministry of Education.