DRAFT FOR CONSULTATION

Education (Early Childhood Services) Amendment Regulations 2020

Governor-General

Order in Council

At Wellington this day of 2020

Present:
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.

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal regulations	2
4	Regulation 3 amended (Interpretation)	2
5	Regulation 5 amended (Applications for licences)	2
6	Regulation 7 amended (Applicant must make statutory declaration)	2
7	Regulation 8 amended (Fit and proper persons)	2
8	Regulation 11 amended (Grant of probationary licence)	3
9	Regulation 15 amended (Secretary may reclassify licence as provisional licence)	3
10	Regulation 25 revoked (Licensing fee)	3
11	Regulation 31 amended (Effects and consequences of suspension)	3
12	Regulation 32 amended (Cancellation of licences)	3
13	Regulation 33 amended (Amendment of licences)	4
14	New regulation 54A inserted (Secretary may direct service provider to remedy immediate health and safety risk)	4

54A Secretary may direct service provider to remedy immediate health and safety risk 4
15 Schedule 1 replaced 4
Schedule 5
Schedule 1 replaced

Regulations

1 Title

These regulations are the Education (Early Childhood Services) Amendment Regulations 2020.

2 Commencement

These regulations come into force on [date to come].

3 Principal regulations

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

4 Regulation 3 amended (Interpretation)

In regulation 3, insert in its appropriate alphabetical order:

immediate health and safety risk means a thing or an activity that, in the opinion of the Secretary,—

(a) is, or is likely to be, a breach of these regulations; and

(b) is a risk to the health and safety of any person; and

(c) is capable of being remedied safely while the relevant early childhood service continues to operate

5 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 $2,756.25.

(3) The fee is inclusive of goods and services tax and is non-refundable.

6 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)".

7 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)".

8 Regulation 11 amended (Grant of probationary licence)

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

9 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.

10 Regulation 25 revoked (Licensing fee)

Revoke regulation 25.

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)

(1) In regulation 32(1)(d)(iii), replace "." with "; or".

(2) 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; 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 an immediate health and safety risk.

(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 not later than 5 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.

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

Schedule 1
Qualification requirements

r 44(1)(a)

Service	Requirement
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 Board	
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: • Te Whānau Tupu Ngātahi o Aotearoa — Playcentre Aotearoa: • Te Kōhanga Reo National Trust Board	
All services recognised as a teacher led service (as defined in regulation 44(4))	50% of required staff must hold recognised qualification

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 come into force on [date to come], amend the Education (Early Childhood Services) Regulations 2008 (the **principal regulations**).

Clauses 1 to 3 are preliminary provisions.

Clause 4 amends regulation 3 to insert a new definition of immediate health and safety risk.

Clause 5 amends regulation 5 to clarify that an application fee must be paid when an application is made for a licence, and that the fee is non-refundable.

Clauses 6 and 7 amend regulations 7 and 8. This will allow the Secretary of 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 a person is fit and proper for the purposes of these regulations.

Clause 8 amends regulation 11 to allow the Secretary, when assessing whether to grant a probationary licence, to have regard to any other information the Secretary considers relevant.

Clause 9 amends regulation 15 to allow the Secretary to reclassify a licence as a provisional licence following an incident at a licensed service, whether or not there has been a complaint.

Clause 10 revokes regulation 25. This is consequential to the amendments to regulation 5.

Clause 11 amends regulation 31 to provide that all suspension of licences under regulation 30 may take effect on a day specified in the notice effecting it, and may be immediate.

Clause 12 inserts *new regulation 32(1)(e)*. This allows for the cancellation of a licence where the 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 sustain compliance in the future.

Clause 13 amends regulation 33. 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.

Clause 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.

Clause 15 replaces Schedule 1 with the *new Schedule 1* set out in the Schedule of these regulations. *New Schedule 1* sets out 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*:
These regulations are administered by the Ministry of Education.