

# DRAFT FOR CONSULTATION

## Education (Early Childhood Services) Amendment Regulations 2025

Governor-General

### Order in Council

At Wellington this                      day of                      2025

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 15 amended (Director of Regulation may reclassify licence as provisional licence)	2
5	Regulation 16 amended (Conditions of provisional licence)	3
6	Regulation 17 amended (Duration of provisional licence)	3
7	New regulations 29A to 29F and cross-heading inserted	4
	<i>Actions by Director of Regulation</i>	
	29A Record of non-compliance	4
	29B Formal warning	4
	29C Written direction to remedy risk to health and safety	5
	29D Specialist help	5
	29E Improvement plan	6
	29F Public notice of non-compliance	7
8	Regulation 30 amended (Suspension of licences)	8

Education (Early Childhood Services) Amendment Regulations 2025		
r 1		
9	Regulation 32 amended (Cancellation of licences)	8
10	Regulation 39A amended (Powers of Director of Regulation in exceptional circumstances)	8
11	Regulation 54A revoked (Secretary may direct service provider to remedy immediate health and safety risk)	8
12	New regulation 59A inserted (Director may give public notice, or inform parents and caregivers of, investigation of complaint or incident)	8
	59A Director may give public notice, or inform parents and caregivers of, investigation of complaint or incident	8

## Regulations

### 1 Title

These regulations are the Education (Early Childhood Services) Amendment Regulations 2025.

### 2 Commencement

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

### 3 Principal regulations

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

### 4 Regulation 15 amended (Director of Regulation may reclassify licence as provisional licence)

(1) Replace regulation 15(1) with:

(1) The Director of Regulation may, by written notice to a licensed service provider, reclassify the service provider's probationary licence or full licence as a provisional licence, if satisfied that the licensed service provider—

(a) has failed to comply with 1 or more of the following:

- (i) a written direction to remedy a risk to health and safety given under regulation 29C:
- (ii) a requirement to employ or engage specialist help imposed under regulation 29D:
- (iii) a requirement to prepare, implement, and complete an improvement plan imposed under regulation 29E; or

(b) has—

- (i) failed to comply with a requirement of these regulations or a condition of their licence; and

- (ii) been subject to 2 or more of the following within the previous 12 months:
  - (A) a record of non-compliance kept under regulation 29A:
  - (B) a formal warning issued under regulation 29B:
  - (C) a written direction to remedy a risk to health and safety given under regulation 29C:
  - (D) a requirement to employ or engage specialist help imposed under regulation 29D:
  - (E) a requirement to prepare, implement, and complete an improvement plan imposed under regulation 29E.
- (2) Replace regulation 15(3) with:
- (3) A written notice of reclassification may be given under subclause (1) at any time until the licence being reclassified has expired.

#### **5 Regulation 16 amended (Conditions of provisional licence)**

- (1) Replace regulation 16(1A) with:
  - (1A) If the Director of Regulation is satisfied that there has been an additional instance of a type described in regulation 29B(1)(a) or (b), regulation 29D(1)(a) or (b), or regulation 29E(1)(a) or (b) after reclassifying a probationary licence or a full licence as a provisional licence, the Director may forward to the licensed service provider a revised provisional licence that—
    - (a) specifies additional conditions that must be complied with for the revocation of the provisional licence and the return of the probationary or full licence, as the case may be; and
    - (b) specifies for each condition the date by which the condition must be complied with.
  - (1B) A revised provisional licence forwarded to the licensed service provider under subclause (1A) replaces the previous provisional licence held by the service provider.
- (2) In regulation 16(2), replace “was” with “is”.
- (3) Replace regulation 16(2A) with:
  - (2A) A date specified under subclause (1A)(b) will usually be a date not more than 3 months after the day on which the revised provisional licence under subclause (1A) is forwarded to the licensed service provider.

#### **6 Regulation 17 amended (Duration of provisional licence)**

- (1) In regulation 17(2)(a), after “regulation 16(1)(a)”, insert “or (1A)(a)”.
- (2) In regulation 17(4)(a), after “regulation 16(1)(a)” insert “or (1A)(a)”.

**7 New regulations 29A to 29F and cross-heading inserted**

After regulation 29, insert:

*Actions by Director of Regulation***29A Record of non-compliance**

- (1) The Director of Regulation may carry out action under this regulation in relation to a licence held by a licensed service provider if satisfied that—
  - (a) the service provider has not complied with a requirement of these regulations or a condition of their licence; and
  - (b) the non-compliance has been subsequently rectified by the service provider; and
  - (c) keeping a record of the non-compliance is warranted in the circumstances.
- (2) The Director may keep a written record of the non-compliance.
- (3) The record must contain a brief description of—
  - (a) the non-compliance; and
  - (b) the action taken by the licensed service provider to rectify it; and
  - (c) the Director's reasons for believing the non-compliance warrants recording.
- (4) The Director of Regulation must ensure that the licensed service provider is notified as soon as is reasonably practicable after a record of non-compliance is made by the Director.

**29B Formal warning**

- (1) The Director of Regulation may carry out action under this regulation in relation to a licence held by a licensed service provider if satisfied that the service provider has not complied with, or is not complying with,—
  - (a) a requirement of these regulations; or
  - (b) a condition of their licence.
- (2) The Director of Regulation may, by written notice, issue a formal warning to the licensed service provider.
- (3) The notice must state—
  - (a) the reasons for the formal warning; and
  - (b) the steps that must be taken by the licensed service provider by a specified date to avoid further action.
- (4) The notice may contain any other information that the Director of Regulation thinks appropriate.

**29C Written direction to remedy risk to health and safety**

- (1) The Director of Regulation may carry out action under this regulation in relation to a licence held by a licensed service provider if satisfied that—
  - (a) the service provider has breached or is likely to have breached—
    - (i) a requirement of these regulations; or
    - (ii) a condition of their licence; and
  - (b) the non-compliance poses a risk to the health and safety of any person.
- (2) The Director of Regulation may, by written notice, direct a licensed service provider to carry out a specified action to remedy the risk to the health and safety of any person within—
  - (a) 24 hours; or
  - (b) any longer period up to a maximum of 10 working days.
- (3) A direction under subclause (2)(b) may be given only if the Director is satisfied that the licensed service provider can continue to operate the service without risk to the health and safety of any person.
- (4) The direction must specify the date (in accordance with subclause (2)) by which the licensed service provider must carry out the specified action.
- (5) The Director of Regulation may, in the written notice, impose any conditions that the Director thinks fit relating to—
  - (a) remedying the risk to health and safety; or
  - (b) the continued operation of the service.

**29D Specialist help**

- (1) The Director of Regulation may carry out action under this regulation in relation to a licence held by a licensed service provider if satisfied that the service provider has not complied with, or is not complying with,—
  - (a) a requirement of these regulations; or
  - (b) a condition of their licence.
- (2) The Director of Regulation may, by written notice, require the licensed service provider to employ or engage specified specialist help for the purpose of facilitating compliance with these regulations or applicable licence conditions, or both.
- (3) The notice must specify—
  - (a) the non-compliance that the specialist help must address; and
  - (b) the date by which the non-compliance must be addressed.
- (4) The notice may do 1 or both of the following:
  - (a) identify particular persons or types of persons whom the licensed service provider must employ or engage:

- (b) require the licensed service provider to give the Director of Regulation a report or reports (for example, a progress report and a final report) on the specialist help—
    - (i) by the specified time; or
    - (ii) at the specified intervals; or
    - (iii) both.
- (5) A licensed service provider who receives a notice under subclause (2) must—
  - (a) employ or engage the specialist help as soon as is reasonably practicable; and
  - (b) pay the fees and reasonable expenses of the person employed or engaged to provide specialist help; and
  - (c) if applicable, provide a report to the Director at the time or intervals specified in the notice.
- (6) The Director of Regulation may amend or revoke 1 or more requirements specified in the notice, including the time frame for implementing 1 or more requirements.
- (7) If the Director of Regulation amends or revokes any requirements specified in the notice, the Director must notify the licensed service provider in writing of—
  - (a) the amendment or revocation; and
  - (b) the reasons for the amendment or revocation.

## **29E Improvement plan**

- (1) The Director of Regulation may carry out action under this regulation in relation to a licence held by a licensed service provider if satisfied that the service provider has not complied with, or is not complying with,—
  - (a) a requirement of these regulations; or
  - (b) a condition of their licence.
- (2) The Director of Regulation may, by written notice, require the licensed service provider to prepare, implement, and complete an improvement plan.
- (3) The notice must specify—
  - (a) the non-compliance that the improvement plan must address; and
  - (b) the date by which the non-compliance must be addressed.
- (4) A licensed service provider who receives a notice under subclause (2) must prepare a draft improvement plan within 15 working days after receiving the notice and submit it to the Director of Regulation for approval.
- (5) The Director of Regulation may negotiate with the licensed service provider to agree an improvement plan, but if, after a reasonable period, the licensed service provider and the Director have not agreed a plan, the Director may give

notice to the licensed service provider that the Director will approve a particular plan and require it to be implemented.

- (6) When the Director of Regulation has approved a particular improvement plan, the licensed service provider must implement it in accordance with its terms, unless the Director directs otherwise.
- (7) The Director of Regulation may amend or revoke 1 or more terms of the improvement plan, including the time frame for implementing or completing all or part of the plan.
- (8) If the Director of Regulation amends or revokes a term of the improvement plan, the Director must notify the licensed service provider in writing of—
  - (a) the amendment or revocation; and
  - (b) the reasons for the amendment or revocation.

## **29F Public notice of non-compliance**

### *Mandatory public notification*

- (1) The Director of Regulation must give public notice of non-compliance by a licensed service provider with a requirement of these regulations or a condition of their licence if the Director has taken 1 of the following actions in relation to the licence:
  - (a) the licence has been reclassified as a provisional licence under regulation 15;
  - (b) the licence has been suspended under regulation 30;
  - (c) the licence has been cancelled under regulation 32.

### *Discretionary public notification*

- (2) The Director of Regulation may give public notice of non-compliance by a licensed service provider with a requirement of these regulations or a condition of their licence if satisfied that—
  - (a) it is in the public interest to do so; and
  - (b) the circumstances in subclause (3) apply.
- (3) The circumstances are that the Director has taken 1 or more of the following actions against the licensed service provider in relation to their licence:
  - (a) the service provider has been given a written direction to remedy a risk to health and safety under regulation 29C;
  - (b) the service provider has been required under regulation 29D to employ or engage specialist help;
  - (c) the service provider has been required under regulation 29E to prepare, implement, and complete an improvement plan.

### *Requirements of public notice*

- (4) Public notice given under subclause (1) or (2) must contain—

- (a) a summary of the action taken by the Director; and
- (b) if applicable, a statement that action has been taken by the Director under—
  - (i) regulation 17(1)(a) or (b); or
  - (ii) regulation 31(5)(a) or (b).
- (5) However, the public notice must not contain personal information (within the meaning of section 7(1) of the Privacy Act 2020).

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

Replace regulation 30(1)(a) with:

- (a) both of the following apply:
  - (i) an immediate risk to the health, safety, or well-being of children attending or participating in the service exists; and
  - (ii) it is not in the interests of the children attending or participating in the service for the service to continue to operate; or

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

Replace regulation 32(1)(e)(i) with:

- (i) has previously had a probationary or full licence reclassified as a provisional licence; and

#### **10 Regulation 39A amended (Powers of Director of Regulation in exceptional circumstances)**

After regulation 39A(3)(f), insert:

- (fa) extend, by not more than 3 months, the date for compliance with any requirement imposed under regulation 29B, 29C, 29D, or 29E:

#### **11 Regulation 54A revoked (Secretary may direct service provider to remedy immediate health and safety risk)**

Revoke regulation 54A.

#### **12 New regulation 59A inserted (Director may give public notice, or inform parents and caregivers of, investigation of complaint or incident)**

After regulation 59, insert:

##### **59A Director may give public notice, or inform parents and caregivers of, investigation of complaint or incident**

- (1) The Director of Regulation may give public notice of an investigation into a complaint against, or an incident involving, a licensed service provider if—
  - (a) a complaint has been made against the licensed service provider alleging non-compliance with a requirement of these regulations or a condition of



- their licence, and the Director considers that the complaint warrants investigation; or
- (b) an incident involving a child has occurred at the premises of the licensed service provider, and the Director considers that the incident warrants investigation.
- (2) The Director of Regulation may, instead of, or in addition to, taking action under subclause (1), require the licensed service provider to inform parents or caregivers of children attending the service that an investigation into a complaint or an incident (as the case may be) is being carried out by the Director or the licensed service provider, or both.
- Requirements of public notice*
- (3) Public notice given under subclause (1) must contain a summary of the incident or complaint being investigated.
- (4) However, the public notice must not contain personal information (within the meaning of section 7(1) of the Privacy Act 2020).

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

The amendments enable the Director of Regulation (the **Director**), who is appointed under the Education and Training Act 2020, to carry out 1 or more of the following actions against a licensed service provider (a **service provider**) of an early childhood service who has not complied with, or is not complying with, a requirement of the principal regulations or a condition of their licence:

- keep a record of the non-compliance (*new regulation 29A*);
- issue a formal warning to the service provider (*new regulation 29B*);
- give a written direction to the service provider to remedy a risk to the health and safety of any person (*new regulation 29C*);
- require the service provider to employ or engage specialist help (*new regulation 29D*);
- require the service provider to prepare, implement, and complete an improvement plan (*new regulation 29E*);
- give public notice of non-compliance by the service provider with a requirement of these regulations or any condition of their licence that has resulted in

the reclassification, suspension, or cancellation of the licence (*new regulation 29F(1)*):

- at the discretion of the Director, give public notice of non-compliance by the service provider with a requirement of these regulations or any condition of their licence that has resulted in a written direction to remedy a risk to health and safety being given to the service provider or a requirement being imposed on the service provider to obtain specialist help or to prepare, implement, and complete an improvement plan (*new regulation 29F(2) and (3)*).

The amendments also enable the Director to—

- reclassify a licensed service provider's licence as a provisional licence if certain actions have been taken or certain requirements have not been complied with (*new regulation 15(1)*):
- impose additional conditions that need to be complied with for the revocation of a licensed service provider's provisional licence and the return their probationary or full licence (*new regulation 16(1A) and (1B)*):
- increase the threshold for 1 of the grounds for suspension of a licensed service provider's licence (*new regulation 30(1)(a)*):
- extend, by up to 3 months, the time frame for complying with a requirement imposed under *new regulation 29B, 29C, 29D, or 29E* if an epidemic notice is issued under the Epidemic Preparedness Act 2006 or a state of emergency is declared under the Civil Defence Emergency Management Act 2002 (*new regulation 39A(3)(fa)*):
- give public notice of non-compliance by a service provider if there has been a complaint or incident involving a service provider (*new regulation 59A*).

### **Regulatory impact statement**

The Ministry of Education produced a regulatory impact statement on 11 April 2025 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- [Insert URL link(s) to the RIS on the agency's/agencies' Internet site(s)]
- <https://www.regulation.govt.nz/our-work/regulatory-impact-statements/>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Education.