



Report: Joint decisions needed for the exposure draft of ECE Regulatory amendments

To:	Hon Erica Stanford, Minister of Education		
	Hon David Seymour, Associate Minister of Education		
Date:	27/08/2025	Deadline:	3/09/2025
Security Level:	In-Confidence	Priority:	Medium
From:	9(2)(a) Senior Policy Manager	Phone:	9(2)(a)
Drafter:	9(2)(a)	METIS No:	1352043

Why are we sending this to you?

- This report updates you on work to amend the Education (Early Childhood Services) Regulations 2008 following earlier Cabinet decisions [CAB-25-MIN-0123 refers] and seeks your joint agreement to further proposed amendments.

What action do we need, by when?

- The exposure draft of the Education (Early Childhood Services) Amendment Regulations 2025, provided in Annex 1, reflects the ECE Reform proposals recently approved by Cabinet [CAB-25-MIN-0123 refers].
- We have identified further changes for inclusion in the exposure draft and we are seeking your joint decision on these.
- Please return the signed report by 3 September.

Key facts, issues and questions

- Cabinet has approved Ministers to make joint decisions on policy and drafting issues without the need to go to Cabinet [CAB-25-MIN-0123 refers].
- Changes to provisional licencing will remove a provision that enables parents to be informed of investigations. We are proposing an alternative that retains a way to inform parents. We are also seeking your joint approval of two technical fixes to simplify and clarify provisional licensing requirements for services.
- This report provides further information, and the proposed additional amendments have been drafted and included in the exposure draft in Annex 1.

Alignment with Government priorities

1. This report aligns with the Coalition Government's commitment to carry out a regulatory sector review of early childhood education (ECE) and to improve the quality of ECE regulation.

Background

2. On 14 April, as part of the response to the ECE Regulatory Sector Review, Cabinet agreed to amend the Education (Early Childhood Services) Regulations 2008 to:
 - introduce new provisions that establish a set of graduated enforcement tools that the Director of Regulation can use to enforce compliance with the regulations and licencing criteria;
 - enable the Director of Regulation to issue a public notice of non-compliance; and
 - increase the threshold for reclassifying a probationary or full licence as provisional licence, and for licence suspension [CAB-25-MIN-0123 refers].
3. To support the development process of these amendment regulations, Cabinet authorised:
 - the Associate Minister and Minister of Education to make additional joint decisions on policy and drafting issues arising from these proposals, as necessary; and
 - the Associate Minister of Education to undertake public consultation on exposure draft regulations to give effect to these proposals, subject to the passing of the Bill.
4. Work to draft and consult on these amendment regulations is being progressed at the same time as the Education and Training (Early Childhood Education Reform) Amendment Bill (the Bill), which will establish the new statutory role of Director of Regulation (the Director). The amendment regulations are intended to come into force shortly after the Bill's commencement.
5. This report:
 - a. seeks your joint decision on further amendments that we are proposing be included in the Education (Early Childhood Services) Amendment Regulations 2025;
 - b. provides you with an exposure draft of the amendment regulations, in Annex 1.

Retaining the ability to inform parents about investigations of complaints or incidents

6. As approved by Cabinet, new graduated enforcement tools will be introduced for use by a new statutory role, the Director. To give effect to this, we have been working with the Parliamentary Council Office to draft Education (Early Childhood Services) Amendment Regulations 2025 (the amendment regulations).
7. Included within the scope of the amendment regulations is Regulation 15(1) which will be removed and replaced to set out the criteria that must be met for the Director to be able to reclassify a licence as a provisional licence. However, replacing Regulation 15(1) will mean there is no longer provision allowing for the Secretary for Education (the Secretary) to reclassify a probationary or full licence as provisional, if satisfied that –
 - (c) a complaint has been lodged against the service provider alleging noncompliance with these regulations, and the Secretary considers that the complaint warrants investigation; or

- (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.
8. Under these current settings, a complaint or incident that warrants an investigation can give grounds for reclassification of a licence as provisional. As service providers must publicly display a provisional licence, this has been used as a way to inform parents of a serious complaint or incident.
 9. Due to the changes to provisional licensing, replacing Regulation 15(1)(c) and (ca) will create an information gap for parents when a serious and high-risk complaint or incident is being investigated by the Director. To address this, we are proposing a further regulation that will preserve a way to inform parents and caregivers of investigations and will decouple informing parents of investigations from the serious enforcement action of licence reclassification.
 10. This further regulation will allow for the Director to:
 - give public notice that an investigation into a complaint or an incident involving a licensed service provider is underway; and/or
 - require that a service provider inform parents and caregivers of children enrolled at their service that an investigation into a complaint against, or an incident involving, the service provider is underway.
 11. We consider that this proposed regulation provides a more proportionate action, compared to the status quo regulatory action of licence reclassification. This is also better aligned with the new graduated enforcement tools and will preserve keeping parents informed, noting the key finding in the Ministry for Regulation's review about the information asymmetry for parents, caregivers and families in the ECE sector.
 12. Not every complaint or incident that is investigated by the Director or service provider should warrant the use of this proposed regulation. A high threshold is currently applied by the Ministry of Education (the Ministry) when applying the existing regulations. Since 2020, the Ministry has applied Regulation 15(1)(c) and (ca) a total of 26 times. We expect a similarly high threshold would be applied by the Director when making a judgement as to whether to apply this regulation.
 13. This regulation could be viewed as adding to the compliance burden of services (by requiring additional actions of them) and services may feel that informing parents and caregivers of an investigation could negatively impact the reputation of their service, when non-compliance has yet to be established. However, we intend to mitigate this operationally, as a high threshold will need to be met for the Director to require a service provider to inform parents and caregivers of the service. We also consider that the proposed regulation retains a workable way to inform parents without reliance on reclassification of a licence.
 14. The upcoming consultation on the exposure draft of amendment regulations provides an opportunity to test with service providers and parents how this regulation has been drafted and identify any implementation issues and mitigations. We have included this proposed addition as Regulation 59A in the exposure draft for your consideration and joint decision.

Fixing two issues with the provisional licensing requirements

15. On 31 May 2023, Cabinet agreed to amend the Education (Early Childhood Services) Regulations 2008 to strengthen existing licensing and enforcement provisions through expressly allowing the Secretary to add new conditions to provisional licences when further compliance issues are identified [CAB-23-MIN-0207.02]. These requirements came into effect on 26 February 2024.

16. These amendments were made to provide greater certainty and clarity regarding the Secretary's ability to add conditions to a provisional licence and to ensure the Ministry can be an effective and responsive regulator. These amendments also support greater transparency for parents about a service provider's current state of regulatory compliance. However, in operationalising these changes the Ministry has discovered two technical issues that mean the amendments are not workable.
17. One issue is that the regulations do not expressly state that any new conditions can be added to the provisional licence, as was the policy intent. Instead, any new conditions are specified by written notice. This requires two separate documents of the provider's conditions. While this can be done, there are disadvantages that undermine the intended clarity and transparency for service providers and parents.
18. This requires amendment to Regulations 16(1A), (2) and (2A) to clarify the requirements for when additional conditions need to be added to a service provider's provisional licence. These amendments will set out that the provider will be sent a revised provisional licence that will specify any additional conditions and the dates by which these conditions must be complied with.
19. The second issue relates to Regulation 17 where any additional conditions included in a revised provisional licence by the Secretary are not able to be enforced. This is a result of a drafting error that omitted reference to Regulation 16(1A)(a), which provides for issuing a revised provisional licence with additional conditions.
20. This requires amendment to Regulation 17(2)(a) and (4)(a) to make it clear that any additional conditions must be complied with before a service provider can have their full or probationary licence returned. It will also make clear that in the case of the provider failing to comply with the additional conditions, the service provider's licence may be cancelled.
21. We are proposing these technical amendments to clarify the provisional licensing regulations for service providers and the Ministry. We have included these amendments in the exposure draft for your consideration and joint decision.

The exposure draft of amendment regulations

22. The exposure draft of amendment regulations reflects Cabinet's decisions on graduated enforcement tools, public notification of non-compliance and a higher threshold for provisional licence and licence suspension [CAB-25-MIN-0123 refers]. The table below summarises the content of the exposure draft.

Policy intent	Corresponding amendment regulations
Graduated enforcement tools As agreed by Cabinet, the amendment regulations provide new graduated enforcement tools for use by the Director of Regulation. These tools enable the Director of Regulation to carry out one or more of the following actions if satisfied that the service provider does not comply with the regulations or the conditions subject to which its licence was issued:	• issue a record of non-compliance (<i>Regulation 29A</i>);
	• issue a formal warning (<i>Regulation 29B</i>);
	• issue a written direction to remedy risk to health and safety (<i>Regulation 29C</i>);
	• impose a requirement to employ or engage specialist help (<i>Regulation 29D</i>); and
	• impose a requirement to prepare, implement, and complete an improvement plan (<i>Regulation 29E</i>).

Policy intent	Corresponding amendment regulations
Public notification of non-compliance To complement the above suite of graduated enforcement tools and to ensure parents have access to the right information about their service provider's regulatory compliance, Cabinet also approved amendments to introduce new provisions that:	- require the Director of Regulation to issue a public notice of non-compliance when action has been taken to reclassify a license as provisional, suspend or cancel a license (<i>Regulation 29F(1)</i>); and - enable the Director of Regulation to issue a public notice of non-compliance, if satisfied that this is in the public interest, and specified enforcement actions have been taken (<i>Regulation 29F(2)</i>).
Higher threshold for provisional licence and licence suspension To ensure a more proportional approach is taken to enforcement, and in addition to new enforcement tools, Cabinet approved amendments to:	- increase the threshold for reclassification of a full or probationary license as provisional (<i>Regulation 15(1)</i>). - increase the threshold for suspension of a license (<i>Regulation 30(1)</i>).
Director of Regulation may inform parents and caregivers of investigation of complaint or incident Subject to your approval, this proposed regulation would allow the Director of Regulation to:	- give public notice of an investigation into a complaint or incident; and/or - require that a service provider inform parents and caregivers of children enrolled at their service of an investigation into a complaint or incident (<i>Regulation 59A</i>).
Provisional licensing requirements Subject to your approval, these amendments address technical issues regarding:	- the requirements for when additional conditions need to be added to a service provider's provisional licence (<i>Regulations 16(1A), 16(2), (162A)</i>) - clarification that any additional conditions must be complied with before a service provider can have their full or probationary licence returned (<i>Regulations 17(2) and 17(4)</i>)

23. In drafting the amendment regulations, we have considered how to give practical effect to Cabinet's decisions. These considerations have resulted in some minor changes from the wording of the decisions in the Cabinet minute to ensure that:
- the Director has the requisite flexibility to act in their role and use the new enforcement tools as intended;
 - there is sufficient clarity and specificity for parents, caregivers' and service providers around how the new enforcement tools work and how the tools will affect them; and
 - the new enforcement tools are workable from an implementation perspective, and do not produce unexpected or undesirable outcomes.
24. Further detail regarding the approach we have taken to developing the draft amendment regulations is provided in Annex 2.

Next steps

25. Subject to your decisions in this report, we will provide Minister Seymour with a follow-up report that will include:
- the finalised exposure draft;
 - a letter to seek approval from the Attorney-General to release the exposure draft for consultation;

- more detail on the proposed consultation.

26. The amendment regulations are intended to come into force shortly after commencement of the Bill. The table below provides a high-level timeline to enable this.

Key milestone	Timing
Report to Minister Seymour with finalised exposure draft and letter for the Attorney General	4 September
<i>Public consultation</i> (timing subject to approval from the Attorney General)	22 September – 17 October
Report to Minister Seymour with consultation feedback and final policy decisions	Week commencing 10 November
LEG paper to Minister Seymour for Ministerial and departmental consultation	Week commencing 1 December
<i>Ministerial and Departmental consultation on LEG paper</i>	Early – mid-December
Final LEG paper to Minister Seymour for lodging	January 2026
LEG Committee meeting, Cabinet meeting and Executive Council	February 2026
Regulatory amendments gazetted	February 2026
Regulations come into effect	March 2026

Annexes

The following is annexed to this paper:

- Annex 1: Exposure draft of Education (Early Childhood Services) Amendment Regulations 2025
- Annex 2: Approach to developing the Education (Early Childhood Services) Amendment Regulations 2025

Recommended actions

The Ministry of Education recommends you:

- a. **note** that Cabinet has jointly authorised you to make decisions on policy and drafting issues arising from work to implement ECE Reform Regulatory changes [CAB-25-MIN-0123 refers] and that your joint agreement is required for this additional regulation to be included in the exposure draft for public consultation;

Noted

Minister of Education

Noted

Associate Minister of Education

- b. **note** that this report proposes Regulation 59A as a new regulation that can allow for the Director of Regulation to:
- i. give public notice that an investigation into a complaint against, or an incident involving, a licensed service provider is underway by the Director of Regulation; and/or
 - ii. require that a service provider inform parents and caregivers of children enrolled at their service that an investigation into a complaint against, or an incident involving, the service provider is underway by the Director of Regulation, or by the service provider;

Noted

Minister of Education

Noted

Associate Minister of Education

- c. **agree** that Regulation 59A *Director may give public notice, or inform parents and caregivers of, investigation of complaint or incident* be included in the exposure draft of Education (Early Childhood Services) Amendment Regulations 2025;

Agree / Disagree

Minister of Education

Agree / Disagree

Associate Minister of Education

- d. **agree** that the amendments to the conditions of provisional license requirements at Regulation 16 be included in the exposure draft of Education (Early Childhood Services) Amendment Regulations 2025;

Agree / Disagree

Minister of Education

Agree / Disagree

Associate Minister of Education

- e. **agree** that the amendments to the duration of provisional license requirements at Regulation 17 be included in the exposure draft of Education (Early Childhood Services) Amendment Regulations 2025;

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

- f. **note** that we will provide Minister Seymour with a finalised exposure draft of Education (Early Childhood Services) Amendment Regulations 2025 that reflects your joint decisions on recommendations (c) to (e), along with a letter to seek the approval of the Attorney General to release the exposure draft for consultation;

Noted
Associate Minister of Education

Proactive Release:

- g. **agree** that the Ministry of Education release this paper after final decisions have been made by Cabinet with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982.

Agree / Disagree
Minister of Education

Agree / Disagree
Associate Minister of Education

9(2)(a)

Senior Policy Manager
Te Pou Kaupapahere

27/08/2025

Hon Erica Stanford
Minister of Education

Hon David Seymour

Associate Minister of Education

9/2/25

Annex 2: Approach to developing the Education (Early Childhood Services) Amendment Regulations 2025

Cabinet decisions on Regulatory amendments	Considerations made in developing the amendment regulations
Record of non-compliance Cabinet agreed to establish a set of graduated enforcement tools, including a record of non-compliance, where a formal record is kept of an incident of non-compliance that was identified by the Director of Regulation and immediately addressed by the licence holder.	<i>This Cabinet decision is provided as Regulation 29A</i> ○ Regulation 29A(1)(b): A change has been made from the Cabinet minute wording to replace “immediately addressed” with “subsequently rectified”. This change recognises that immediacy can be a hard threshold to measure. Additionally, we found that “rectify” and “address” can have different meanings relating to the stage of completion. This change is intended to clarify the requirements of this tool. ○ Regulation 29A(1)(c): This has been drafted to provide the Director of Regulation (the Director) with discretion as to whether to use the record of non-compliance and requires that it must be “...warranted in the circumstances.” This provides flexibility for the Director, as there may be instances where even if a non-compliance has been subsequently rectified, keeping a record may not be warranted in the circumstances. ○ Regulation 29A(4): This has been drafted to require that the Director ensures the service provider is notified as soon as is reasonably practicable after a record is made. This ensures that service providers are aware of any enforcement actions used in relation to their service.
Formal warning Cabinet agreed to establish a set of graduated enforcement tools, including a written warning, specifying the non-compliance that has been identified and the remedial action that must be taken by a specified date to avoid further compliance action.	<i>This Cabinet decision is provided as Regulation 29B.</i> No substantive changes were made during drafting.
Written direction Cabinet agreed to establish a set of graduated enforcement tools, including a written direction to comply either immediately or within a period of no more than 10 days, where non-compliance is identified that poses a health and safety risk but can be remedied safely while the service continues to operate.	<i>This Cabinet decision is provided as Regulation 29C.</i> ○ Regulation 29C(4): This has been drafted to specify that the notice can impose any conditions the Director thinks fit, relating to managing the risk to health and safety of any person, or the continued operation of the service. We consider that it is important that the Director be able to direct services to take a specified action, but also that the Director can impose conditions on the services operation – given this enforcement tool involves risks to health and safety.

Cabinet decisions on Regulatory amendments	Considerations made in developing the amendment regulations
Specialist help Cabinet agreed to establish a set of graduated enforcement tools, including a requirement to engage specialist help, where the service provider must employ or engage a specialist or expert in a specified area to support them to address non-compliance.	<i>This Cabinet decision is provided as Regulation 29D.</i> ○ Regulation 29D(2) and (3): This provides more specificity around what the written notice could and/or should entail. We consider it is important to ensure that all practical matters are addressed in the notice (i.e., the non-compliance that needs addressing and the date by which this must be done, the person/type of persons to be engaged, requirement to give a report). ○ Regulation 29D(4)(a): This has been drafted to require that service providers must employ/engage the specialist help as soon as is reasonably practicable. This ensures that the enforcement tool enables timely addressing of non-compliances. ○ Regulation 29D(4)(b): This clarifies that the service provider must pay the fees and reasonable expenses of the specialist help. ○ Regulation 29D(5): This has been drafted to allow the Director to amend or revoke the requirements of the notice. This is a practical consideration, given that timeframes may need to be altered to accommodate different circumstances.
Improvement plan Cabinet agreed to establish a set of graduated enforcement tools, including a requirement to develop, implement, and complete an improvement plan, where the service provider must, within 15 working days, set out the specific actions that will be taken to address non-compliance, including timeframes where they will implement and complete the plan, to the satisfaction of the Director of Regulation.	<i>This Cabinet decision is provided as Regulation 29E.</i> ○ Regulation 29E(4): This clarifies the requirements that if, after a reasonable period, an improvement plan has not been agreed upon, the Director can give notice to the service provider that they will approve a particular plan and require it to be implemented. This is to ensure the workability of this provision, as while the Director has the ability to negotiate the improvement plan with the service provider, the Director must have final authority to require a certain plan to be implemented. ○ Regulation 29E(6): This allows the Director to amend or revoke the requirements of the notice. This is a practical consideration, given that timeframes may need to be altered to accommodate different circumstances.
Public notification of non-compliance Cabinet agreed to introduce new provisions of discretionary and mandatory notification requirements for the Director of Regulation.	<i>These Cabinet decisions are provided as Regulation 29F.</i> No substantive changes were made during drafting.
Higher threshold for provisional licence and licence suspension Cabinet agreed to increase the threshold for the Director of Regulation to reclassify a probationary or full licence, and to suspend a licence.	<i>These Cabinet decisions are provided as Regulation 15(1) and Regulation 30(1).</i> No substantive changes were made during drafting.