

Regulatory Impact Statement

Improving the way enrolment schemes are managed

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Education. It provides analysis on proposed changes to the Education Act 1989 provisions on enrolment schemes. The changes will clarify the consequences of a school or kura failing to implement an enrolment scheme when directed to do so by the Secretary for Education.

This is one of a suite of RISs on amendments to update the Education Act. The analysis and resulting policy proposals focus on meeting the needs of schooling and early childhood education now and into the future.

The Ministry undertook a public consultation on policy proposals for updating the Act between 2 November and 14 December 2015 and received over 1800 submissions. A report on the submissions is available on the Ministry's website.

The Ministry considers this document to be a fair representation of available options.



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Status quo

1. Section 11H of the Education Act 1989 (the Act) sets out the requirements for schools and kura who are required by the Ministry of Education (the Ministry) to establish an enrolment scheme. The Act states that the purpose of an enrolment scheme is to:
 - avoid overcrowding or the likelihood of overcrowding at the school; and
 - ensure that the selection of applicants for enrolment at the school is carried out in a fair and transparent manner; and
 - enable the Secretary to make the best use of existing networks of state schools.
2. This Regulatory Impact Statement focuses on proposed changes to section 11H of the Act.
3. If, under section 11H(1) of the Act, the Secretary for Education (the Secretary) gives written notice to a school that there is, or is likely to be, overcrowding at the school, the board of trustees (board) must develop an enrolment scheme for the school.
4. An enrolment scheme sets out the school's 'home zone'. Children and young people living within the home zone have an automatic right at any time to enrol with that school. Children living outside of the home zone do not have an automatic right of enrolment to that school, but may be considered for entry if there are sufficient places. The Act sets out the order of priority schools must use in selecting applicants who live outside the school's home zone.
5. If a school or kura refuse to, or is slow to, implement an enrolment scheme, the Ministry's only recourses are to communicate with the school's board and/or to appoint a Limited Statutory Manager (LSM) with responsibility for enrolment matters. Appointing an LSM is a heavy-handed response to a specific issue.

Problem definition

6. The Act is silent on the consequences for a school that refuses to establish an enrolment scheme. In recent years, there have been two schools that have not wanted to implement an enrolment scheme.
7. The Ministry sometimes needs to work with schools to manage capacity issues or persuade them that an enrolment scheme is necessary once the Secretary has advised of an overcrowding issue. This can take time and mean the enrolment scheme may not be implemented as swiftly as it could be. The Ministry may have been able to intervene more effectively if there were options other than the appointment of an LSM.
8. Without an enrolment scheme, schools can face overcrowding and the flow-on effects can impact other schools in the area which may face declining rolls as a consequence.
9. The current lack of an appropriate intervention for the Ministry when a school refuses or is slow to implement an enrolment scheme can lead to:
 - uncertainty for students, families, schools and communities as to how enrolment schemes are managed
 - not making the best use of local area educational provision and poorer educational outcomes for students who are in an overcrowded school if the school refuses to

establish their own enrolment schemes

- poorer educational outcomes for students who are in a school with a declining roll because a neighbouring school refuses to implement an enrolment scheme.

Objective

10. The objective is to ensure there are appropriate mechanisms in place to support the Minister and Ministry in ensuring that schools establish enrolment schemes on the request of the Secretary. Any measures should support ensuring the most effective and efficient use of the area's education provision is made.
11. There are four criteria against which options to address the problem definition have been analysed. These objectives are that the options ensure:
 - appropriate enrolment schemes are in place when necessary;
 - best use of local educational provision to protect learners at schools with both over and under subscription issues;
 - clarity for schools and certainty for learners and families as to how enrolment schemes are managed;
 - the most appropriate administrative mechanism is in place.
12. These criteria have align with the existing purpose of enrolments schemes, address the problem definition of a lack of clarity on the management of enrolment scheme, and give appropriate weight to the best outcomes for learners.

Options and impact analysis

13. The Ministry considered four options to meet the policy objectives:
 - **Option A:** Amend the legislation to allow the Secretary to impose an enrolment scheme where it is required due to overcrowding and a school refuses or is slow to establish one.
 - **Option B:** Introduce penalties, such as fines, for schools that do not implement an enrolment scheme.
 - **Option C:** Refuse extra funding for facilities, teachers or school buildings once a school goes above a certain roll and is refusing to implement an enrolment scheme
 - **Option D:** Maintain the status quo.

Option A: Amend legislation

14. This option would amend the legislation to contain explicit provision for the Secretary to step in, design and implement an enrolment scheme when a school refuses to do so, or is slow to do so, itself.

Ensure appropriate enrolment schemes in place when necessary

15. This option will likely lead to the more swift and efficient implementation of enrolment schemes as the powers for the Ministry to intervene will be explicitly laid out in legislation. This will mean that schools are encouraged to move quickly to implement a scheme of their own design, rather than face Ministry intervention.

Ensure best use of local educational provision

16. If a direct consequence were clearly stipulated within legislation this may lead to schools implementing their own enrolment scheme more quickly rather than risk having one imposed upon them by the Secretary.
17. Parents and caregivers who live outside of the school's immediate area will need to consider using other schools which will lead to more efficient use of local schools within an area, ameliorate overcrowding and help to ensure a better balance of roll numbers in all schools in the area. Amending legislation may lead to the quicker implementation of enrolment schemes by schools.

Ensure best use of local educational provision to protect learners at schools with both over and under subscription issues

18. As above, amending the legislation may encourage schools to more quickly implement their own enrolment schemes and ensure that learners are directed to a school with sufficient capacity and resources to meet their needs. The flow-on effects will also mean that schools that had been facing declining roles should see a rise in learner numbers.

Provide more clarity for schools and certainty for learners and families as to how enrolment schemes are managed

19. This option brings clarity for schools and school boards on the consequences of not implementing an enrolment scheme. It will also mean that learners and their families will be more certain of any overcrowding issues being addressed efficiently.

Have the most appropriate administrative mechanism

20. There is the possibility that amending the legislation could be seen as giving excessive control to the Ministry to intervene in implementing enrolment schemes. It will require more legislation and there is the possibility it could be seen as taking control away from schools and local communities.

Option B: Penalties

21. This option would set out in legislation that penalties in the form of fines can be applied to a school that refuses or is slow to implement an enrolment scheme.

Have appropriate enrolment schemes in place when necessary

22. The threat of fines may encourage a school to be prompt in auctioning an enrolment scheme.

Ensure best use of local educational provision

23. This option does not guarantee that the best use of educational provision will be made. Depending on their size, penalties may not have the desired effect of encouraging schools to implement an enrolment scheme where they may not have previously been inclined to do so.
24. Fines will take money away from schools that could have been used for the benefit of learners, and once fined, there is still no further impetus for a school to implement an enrolment scheme. The penalties could be implemented on an annual basis (for example,

for as long as the school refuses to implement an enrolment zone) but this will continue to divert money from school resources.

Ensure best use of local educational provision to protect learners at schools with both over and under subscription issues

25. This option will not necessarily result in an enrolment zone being created by a school. A fine will take money away from schools and impact negatively in the availability of resources for learners at that school.
26. However, the threat of fines may encourage schools to implement an enrolment scheme more swiftly than it would have done, thereby resulting in better use of schools in the area.

Provide more clarity for schools and certainty for learners and families as to how enrolment schemes are managed

27. This option will make it clear what the consequences are for failure to implement an enrolment scheme. However, it will not clarify what the Ministry's response will be to a situation where, for example, an over-subscribed school continues to grow in its roll, while other schools in the area remain under-utilised. However, learners in the area may face more certainty over local education provision if schools are encouraged by the threat of fines to implement an enrolment scheme.

Have the most appropriate administrative mechanism

28. This option would increase the amount of regulation on enrolment schemes and introduce the possibility of more intervention by the Ministry. It may be viewed as heavy-handed and inappropriate to take money from schools in the form of fines.

Option C: No extra funding (non-regulatory option)

29. This non-regulatory option would involve having a clear policy that schools that continue without an enrolment scheme would receive no additional funding above a certain roll. This might involve, for example, capping operational funding or funding for additional staff or buildings to a specified roll number.

Have appropriate enrolment schemes in place when necessary

30. This option will not guarantee that schools will implement an enrolment scheme. Some schools may carry on without an enrolment scheme regardless, perhaps especially those in more affluent areas who are better able to fundraise. In effect, this option would give schools the ability to ignore the Secretary's request that it implements an enrolment scheme so long as they can manage the consequences.

Ensure best use of local educational provision to protect learners at schools with both over and under subscription issues

31. This option would fail to ensure the best use of local educational provision. While a policy to cap funding may be enough to encourage some schools to implement an enrolment scheme, this would not necessarily result in a better use of schools. However, over time some parents or caregivers might choose other schools in the area in response to poor or overcrowded facilities, resulting in a reduction in the school's roll.

Ensure best outcomes for learners

32. Capping funding will impact negatively on the outcomes for learners enrolled at an oversubscribed school.

Provide more clarity for schools and certainty for learners and families as to how enrolment schemes are managed

33. This option would make it clear to schools what the consequences are for failure to implement an enrolment scheme. However, it will not provide more certainty for students and families about the management of enrolment schemes.

Have the most appropriate administrative mechanism

34. This option does not introduce any new regulation. New operational policies would be required.

Option D: Status Quo

35. This option would mean that no change would be made to the legislation, and the Ministry would make no change to its usual non-regulatory practices. Persuasion and negotiation would be used to encourage schools to implement an enrolment scheme.

Have appropriate enrolment schemes in place when necessary

36. This option will not see any improvement in the implementation of enrolment schemes. There will be no further legislated or non-regulatory encouragement for schools to implement an enrolment scheme.

Ensure best use of local educational provision to protect learners at schools with both over and under subscription issues

37. The lack of any clear consequence being stated in the Act means that schools are sometimes slow to implement an enrolment scheme. This leads to prolonged overcrowding in some schools, with the effect that other schools in the area may be under subscribed.
38. The status quo will not address this issue and maintains the situation where roll numbers are not always optimal for the school in question.

Ensure best outcomes for learners

39. Prolonged overcrowding of some schools and under-utilisation of others can have a negative impact on the educational outcome of students. The status quo will not address this issue.

Provide more clarity for schools and certainty for learners and families as to how enrolment schemes are managed

40. Currently there is nothing in the Act to set out the consequences for schools of what will happen if they refuse or are slow to implement an enrolment scheme. Not having a particular consequence set out in legislation can also lead to a lack of assurance for communities that the Ministry will ensure the best use of area education provision.

41. Additionally, without clarity on the consequences of failing to implement an enrolment scheme, schools may see no incentive to act swiftly and efficiently to implement one. The status quo does not address these issues.

Have the most appropriate administrative mechanism

42. There are currently no explicit consequences for schools' failure to implement an enrolment scheme. The status quo will not introduce any new regulation or legislation.

Criteria analysis

43. The below table identifies how effective the options are at meeting the four objectives.

Criterion	Option A: Amend legislation	Option B: Penalties	Option C: No extra funding	Option D: Status Quo
Ensure appropriate enrolment schemes in place when necessary	Meets	Somewhat meets	Somewhat meets	Somewhat meets
Ensure best use of local educational provision to protect learners at schools with both over and under subscription issues	Meets	Somewhat meets	Somewhat meets	Somewhat meets
Provide clarity for schools and certainty for learners and families as to how enrolment schemes are managed	Meets	Somewhat meets	Does not meet	Does not meet
Have the most appropriate administrative mechanism	Somewhat meets	Does not meet	Meets	Meets

Consultation

44. Public consultation on the proposal was held from 2 November to 14 December 2015 as part of a wider consultation on the update of the Education Act 1989. The consultation received responses from: teachers; parents, family and whānau; board of trustee members; other education sector professionals or education sector groups; members of iwi groups or Māori organisations; members of community groups; businesses or business groups; other stakeholder groups and interested citizens.
45. A public discussion document asked for responses and their thoughts on proposals to:
- “Allow the Ministry of Education to develop and put in place an enrolment scheme when a school or kura refuses, or is slow to do so”*
46. More than a third of the submissions to the consultation (1856) responded to that question. More submitters expressed opposition (28 percent) than support (15 percent). However, it was not always clear from these submitters as to whether this was general opposition to the idea of enrolment schemes, rather than opposition to the specific proposal to allow the Ministry to intervene in their implementation or to override a school's decision not to enrol a learner.

47. Education sector organisations were mixed in their responses. Reasons for supporting the proposals included:
- schools currently have excessive power
 - they will improve collaboration and reduce competition between schools
 - they will aid the inclusion process
 - they will make enrolment schemes more manageable.
48. Reasons for opposing the proposals included:
- the current provisions in the Act are sufficient
 - the Ministry will have excessive control
 - the importance of parental choice
 - procedural fairness.

Conclusions and recommendations

49. In conclusion, Option A, to amend the legislation, best meets the policy objective by providing more clarity on what will happen should a school refuse to, or be slow to, implement an enrolment scheme.
50. Consultation feedback concurred with the view of the Ministry that the legislation lacks clarity and certainty on the issues of a school's failure to implement an enrolment scheme and Option A provides this certainty. While it does introduce new regulation, this is a relatively small addition to the existing enrolment scheme legislation.

Implementation plan

51. The proposal will be given effect by amending the Act to include new provisions to allow the Ministry to implement an enrolment scheme. The changes would come into effect after Royal Assent.
52. This proposal would affect operational matters for schools and the Ministry's implementation of enrolment schemes.
53. Once legislation is passed, the Ministry will provide information to schools about the change.
54. The changes are unlikely to have any fiscal impact on schools, or any impact on the operation of most schools.

Monitoring, evaluation and review

55. The Ministry will consider the impact of the legislative change over time. The desired outcome is that all schools facing overcrowding will have an enrolment scheme. The success of the policy can be considered by measurements of a decrease in schools being slow or refusing to implement an enrolment scheme, and the number of occasions in which a school has required Ministry intervention once the Secretary has advised it of an overcrowding issue.