

Significant Plan Amendment and Replacement Plan draft criteria for consultation

Gazette Notice

Criteria for Significant Plan amendment and Replacement Plan

Pursuant to clause 20(3) and 20(6)(a) of Schedule 18 of the Education and Training Act 2020, the Tertiary Education Commission (TEC) gives the following notice.

Title

This notice may be cited as the Education (Criteria for Significant Amendment to a Plan and Replacement of a Plan) Notice 2024.

Commencement

This notice applies from 1 January 2025.

Introduction

A tertiary education organisation (TEO) must use the criteria set out in this notice to determine if it must seek TEC approval for a significant amendment to a plan or a replacement of a plan.

Part 1 of this notice sets out:

- the criteria for significant amendment to a plan pursuant to clause 20(3)(a) of Schedule 18 of the Act; and
- the criteria for replacement of a plan pursuant to clause 20(3)(b) of Schedule 18 of the Act.

Part 2 of this notice sets out the criteria for assessing a significant amendment or replacement of a plan pursuant to clause 20(6)(b) of Schedule 18 of the Act.

If a TEO's proposed significant amendment to, or replacement of, a plan meets the criteria in Part 1, then the TEO must ask TEC to approve the significant amendment to or replacement of its plan. The TEC will assess the significant amendment to, or replacement of, a plan in accordance with the criteria set out in Part 2.

If a TEO's proposed significant amendment of a plan does not meet the criteria in Part 1, the TEO does not need to seek TEC approval to the significant amendment of the plan.

Definitions

In this notice:

- (a) "Act" means the Education and Training Act 2020;
- (b) "fund" means any fund established by the Minister of Tertiary Education and Skills pursuant to section 419 of the Act;
- (c) "insolvency event", in relation to a TEO, means the occurrence of any of the following events:
 - i) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of its creditors;

- ii) the appointment of a liquidator, provisional liquidator, receiver, receiver and manager, voluntary administrator, statutory manager or similar official in respect of the TEO or the whole or part of its assets;
 - iii) the suspension or threatened suspension of the payment of its debts;
 - iv) it ceases or threatens to cease to carry on all or any material part of its business or operations;
 - v) a distress, attachment or other execution is levied or enforced upon, or commenced against, any of its assets and is not discharged or stayed within 10 business days, except, in each case, when the TEC is satisfied that the TEO is contesting the same in good faith by appropriate proceedings;
 - vi) cessation of its business in New Zealand; or
 - vii) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction;
- (d) "programmes and activities" means tertiary education programmes or activities in relation to which funding has been given under section 425 of the Act;
 - (e) "plan", in relation to a TEO, means the plan submitted to the TEC by the TEO under clause 8 of Schedule 18 of the Act and for which the TEC has granted funding approval for the tertiary education programmes and activities described in the plan under section 425 of the Act ;
 - (f) "PTE" means "private training establishment" as defined in section 10(1) of the Education and Training Act 2020
 - (g) "significant amendment" has the meaning set out in clause 20(1) of the Act
 - (h) "TEI" means "institution" as defined in section 10(1) of the Education and Training Act 2020.
 - (i) "TEC priority" means programmes or activities in priority areas as set out in the Tertiary Education Commission Plan Guidance which is available on the TEC's website. These include the TES priorities, the broader priorities and the targeted priorities;
 - (j) "tertiary education organisation (TEO)" has the same meaning as set out in section 10(1) of the Act.

Part 1

Criteria for significant amendment to a plan

Pursuant to clause 20(3)(a) of Schedule 18 of the Act, the TEC sets the criteria for significant amendment to a plan for which TEOs must ask the TEC to approve as follows:

- 1) For all TEOs, a significant amendment to a plan to:
 - a) change any of the performance indicators that it is required (by its plan) to use to measure whether proposed outcomes for programmes or activities are being or have been achieved. For the avoidance of doubt, this includes changes to the milestones detailed in the TEO's Learner Success Plan; or
 - b) make any change from any mode of learning to a work-based mode of learning.

- 2) For TEIs, in addition to paragraph 1 above, a significant amendment to a plan to:
 - a) introduce programmes or activities in a new faculty and/or field of study;
 - b) stop the provision of programmes or activities that are a TEC priority¹;
 - c) stop the provision of programmes or activities where the TEI is the only TEO in New Zealand providing those programmes or activities; or
 - d) introduce new programmes or activities in a region of New Zealand not currently provided for in its plan.

- 3) For PTES, in addition to paragraph 1 above:
 - a) where a PTE has between 1 and 100 EFTS in a fund, a significant amendment to a plan to change the qualification, region or delivery site, or the mode of delivery of its approved EFTS by more than 10 percentage points or more than 5 EFTS (if there are 10 or less EFTS in a fund). For example, a PTE that has funding approval for 100 EFTS in a fund may change the region of the programmes or activities detailed in its plan by 10 or less EFTS without that change requiring the TEC's approval;
 - b) where a PTE has 101 or more EFTS in a fund, a significant amendment to change the qualification, region or delivery site, or the mode of delivery of its approved EFTS by more than 20 EFTS. For example, a PTE that has funding approval for 200 EFTS in a fund may change the qualification of the programmes or activities detailed in its plan by 20 or less EFTS without that change requiring the TEC's approval;
 - c) a significant amendment to a plan to change the region or delivery site, or the mode of delivery of its approved hours by more than 5,000 hours;
- 4) For PTES, in addition to paragraph 1 above, a significant amendment to a plan to:
 - a) decrease or stop the provision of programmes or activities that are a TEC priority;
 - b) decrease or stop the provision where the PTE is the only TEO in New Zealand delivering those programmes or activities;
 - c) increase provision of programmes or activities that are not a TEC priority;
 - d) introduce new programmes and activities that are not provided for in its plan.

- 5) In determining whether an amendment to a plan is a significant amendment for the purposes of the above criteria in paragraph 3 (a) and 3(b), the amendment must be considered in combination with any one or more changes made in a fund, that are additional to changes already made, that cumulatively over the current year, would be above the threshold.

Proposed replacement plan criteria

Pursuant to clause 20(3)(b) of Schedule 18 of the Act, the TEC sets the criteria for replacement of a plan for which TEOs must ask the TEC to approve as follows:

- 6) For all TEOs, a replacement of its plan is required:

¹ See definition (i)

- a) to change the TEO's role and mission detailed in its plan that is not consistent with the role and mission in its approved plan;
- b) to make a change of any kind (including changes to the qualification, region or delivery site, or mode of delivery) to 50% or more of the TEO's programmes or activities;
- c) if there has been a significant change to the TEO's governance, management, or academic leadership;
- d) if the TEO is a PTE:
 - (i) if it has established a new legal entity;
 - (ii) if there have been any changes to its ownership;
 - (iii) if it had an insolvency event; or
- e) if the TEO is a TEI, if it has:
 - i) merged all or part of its functions with another TEO that provides tertiary education; or
 - ii) been part of the establishment of a new Crown entity.

Part 2

Pursuant to clause 20(6)(b) of Schedule 18 of the Act, the TEC sets the criteria for assessing a significant amendment to, or replacement of a plan, that meets the criteria set out in Part 1 to determine whether they will receive the TEC's approval as follows:

- 7) Subject to paragraph 8, the criteria for assessing a significant amendment to or replacement of a plan are the same as the criteria prescribed by the TEC under section 424 of the Act for assessing proposed plans, set out in the Education (Proposed Investment Plans: Content and Submission; Assessment Criteria; and Plan Summaries) Notice 2024.
- 8) When determining whether to approve a significant amendment to or replacement of a plan, the TEC will consider whether the proposed significant amendment or replacement plan:
 - a) will reduce or remove the provision of existing programme or activities:
 - i) in regions or locations where the TEC considers those programmes or activities should be available; or
 - ii) where the TEO is the only TEO in New Zealand providing those programmes or activities;
 - b) will increase the provision of existing programmes or activities:
 - i) that are not TEC priorities (unless the TEO provides, and the TEC agrees, that there is a good reason); or
 - ii) that are poor performing relative to the fund's average performance;
 - c) will change the region or delivery site of existing programmes or activities to a region or delivery site where the TEC considers there is already adequate provision of similar programmes or activities; or
 - d) will result in a change to the mode of delivery of programmes or activities that the TEC considers is not likely to improve learner outcomes.