



COVERSHEET

Minister	Hon Poto Williams	Portfolio	Building and Construction
Title of Cabinet paper	<i>Building Regulations: Proposed Amendments to Minimise Unnecessary Regulatory Impacts on the Building and Construction Sector</i>	Date to be published	30 November 2021

List of documents that have been proactively released

Date	Title	Author
7 July 2021	<i>Building Regulations: Proposed Amendments to Minimise Unnecessary Regulatory Impacts on the Building and Construction Sector</i>	Office of the Minister of Building and Construction
7 July 2021	Cabinet Minute: DEV-21-MIN-0152	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld to maintain the constitutional convention protecting the confidentiality of advice tendered by Ministers and officials.

In Confidence

Office of the Minister for Building and Construction
Cabinet Economic Development Committee

Proposed amendments to two Building Act 2004 regulations to minimise unnecessary regulatory impacts on the building and construction sector

Proposal

- 1 This paper seeks approval to:
 - 1.1 amend the commencement date for a general competency regulation in the Building (Product Certification) Amendment Regulations 2019 that requires test reports used to certify building products to come from laboratories accredited for those tests; and
 - 1.2 remove prescriptive references to the method for payment of infringement fees to enforcement authorities in the Building (Infringement Offences, Fees, and Forms) Regulations 2007.

Executive Summary

- 2 This paper proposes amending two regulations under the Building Act 2004 to minimise unnecessary regulatory impacts on:
 - 2.1 CodeMark certificate holders and prospective CodeMark applicants; and
 - 2.2 enforcement authorities administering offences under the Building Act 2004.
- 3 First, I propose to amend the commencement date for a general competency regulation in the voluntary building product certification scheme (known as CodeMark) which restricts the types of tests that a product certification body can accept. I propose to amend the commencement date by 12 months from 1 November 2021 to 1 November 2022.
- 4 An extension to the commencement date will support a transition to new CodeMark regulations that are expected to be made by Confidential advice to Government
- 5 The CodeMark scheme is often used for innovative building products where a manufacturer or supplier might find it difficult to show building consent authorities that their product complies with the Building Code.
- 6 The restrictive nature of a general competency requirement that test reports come only from laboratories accredited for those tests may discourage participation in the CodeMark scheme if the regulation is allowed to commence on 1 November 2021.

- 7 As part of a review of the effectiveness of the CodeMark scheme, the Ministry of Business, Innovation and Employment (MBIE) has consulted on a proposal to provide the intended benefits of strengthening the requirements for test reports while minimising unnecessary regulatory impacts on CodeMark certificate holders and product testing laboratories. The new regulations resulting from this work must be made by 7 September 2022.
- 8 Extending the commencement date of the general competency regulation by a further 12 months effectively means that the current regulatory settings will continue until new regulations to that aim to strengthen and improve oversight of the CodeMark scheme are made in mid-2022.
- 9 Sector feedback suggests that the current situation is manageable as current settings are sufficient to provide assurance that the test reports will remain credible until new and amended CodeMark regulations are made.
- 10 Second, I propose to remove prescriptive references to the method for payment of infringement fees to give enforcement authorities flexibility to set their own payment methods. Enforcement authorities include territorial authorities, regional authorities and MBIE. In practice, most infringements are issued by territorial authorities.
- 11 More flexibility is required because the Building (Infringement Offences, Fees, and Forms) Regulations 2007 currently require enforcement authorities to accept payment by cheque or money order as payment for a building infringement fee. By mid-2021, major banks will no longer accept cheques for deposit into bank accounts.
- 12 Amending these regulations to remove prescriptive references to methods for payment by cheque or money order reflects modern payment practices and other infringement notice requirements.

The product certification scheme (CodeMark)

- 13 The building product certification scheme (known as CodeMark) is a voluntary scheme that provides an easily understood and robust way to show a building product, design or method meets the requirements of the New Zealand Building Code. Under the CodeMark scheme, accredited product certification bodies will evaluate a building product and issue a CodeMark certificate.

Some changes were made to strengthen the CodeMark scheme in 2019

- 14 In 2019, Cabinet agreed to a number of changes to improve the performance of product certification bodies and quality of certificates issued under the CodeMark scheme [CAB-19-MIN-0465 refers]. The overarching objective of these changes was to improve trust and confidence in the CodeMark scheme – in particular, trust and confidence of building consent authorities that certificates could be relied on when considering them at the building consent stage.

- 15 These changes were made through the Building (Product Certification) Amendment Regulations 2019 (the 2019 regulations), which amend Building (Product Certification) Regulations 2008. These regulations set out criteria and standards for the:
- 15.1 accreditation of product certification bodies; and
 - 15.2 certification of building products and methods.

The sector has confirmed significant unnecessary regulatory impacts associated with a general competency regulation related to test reports

- 16 As part of the 2019 regulations, a general competency requirement was introduced requiring that a product certification body must not accept test reports from a testing laboratory, and not test building methods or products at a testing laboratory, unless:
- 16.1 the testing laboratory complies with relevant provisions of ISO/IEC 17025:2017 (General requirements for the competence of testing and calibration laboratories); and
 - 16.2 the testing laboratory is accredited in relation to those tests; and
 - 16.3 the testing of the building method or product is within the scope of the testing laboratory's accreditation.
- 17 This 2019 change was intended to strengthen the requirements for test reports that are used as evidence for certification under the CodeMark scheme. This general competency regulation is scheduled to come into force on 1 November 2021.
- 18 Since the 2019 regulations were introduced, MBIE has identified unnecessary regulatory impacts caused by the general competency regulation. In summary, these unnecessary regulatory impacts would impose significant or even onerous costs onto current certificate holders and new product certification applicants. Many of the tests that would be required to show that CodeMark products comply with the building code would either be noncompliant or subject to prohibitive costs.
- 19 In March 2021, MBIE undertook targeted consultation on a preliminary proposal to revoke the general competency regulation before it comes into force.¹
- 20 There was strong agreement from responding stakeholders with MBIE's preliminary proposal to revoke the general competency regulation. Submitters agreed that while they supported its intent, the general competency regulation was too inflexible to provide for a cost effective and efficient certification process.

¹ This included one product certification accreditation body, four product certification bodies, and 82 CodeMark certificate holders.

IN CONFIDENCE

- 21 Stakeholder feedback confirmed several challenges with the general competency regulation that would result in necessary test reports being noncompliant, or subject to prohibitive costs and delays. This is because:
- 21.1 some currently-compliant product test reports would no longer be able to be accepted by a product certification body.
 - 21.2 some competent laboratories are unlikely to seek accreditation under the general competency regulation because the costs doing so would be too high.
 - 21.3 other laboratories are unlikely to expand the scope of their accreditation for different types of tests because the costs of doing so are too high.
- 22 As a result of these challenges:
- 22.1 some existing certificate holders may need to withdraw from the scheme if appropriate tests cannot be found.
 - 22.2 some new certificate applicant would face significant barriers or administrative costs to enter the scheme.
 - 22.3 some innovative products would effectively be precluded from certification under the scheme.

The Ministry of Business, Innovation and Employment is working to strengthen the product certification scheme

- 23 MBIE is reviewing the effectiveness of the product certification scheme as part of my Building System Legislative Reform Programme. Changes to the CodeMark scheme were part of a package of changes passed in the recent Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act.
- 24 Proposals for new and amended product certification regulations are needed to support the Building Act changes, and are intended to strengthen the CodeMark scheme and provide more confidence in the quality of certificates issued by product certification bodies. The proposed regulations were consulted on from 28 April to 18 June 2021. I intend to seek agreement to policy proposals for new CodeMark regulations in October 2021, and bring the final regulations back to Cabinet in Confidential advice to Government
- 25 In light of this and following further consideration and discussions with my colleagues, I propose to amend the commencement date of the general competency regulation for testing laboratories by 12 months to 1 November 2022.
- 26 Noting the sector's concerns, my preferred approach is to extend the commencement date because:

- 26.1 certainty and regulatory continuity for affected stakeholders is maintained; and
- 26.2 it allows sufficient time for the proposals for strengthened CodeMark regulations to be considered by Cabinet, drafted and made.
- 27 Extending the commencement date by a further 12 months effectively means that the current regulatory settings will continue until new regulations that aim to strengthen and improve oversight of the CodeMark scheme are made in mid-2022. The continuation of current settings is appropriate because the current regulatory settings are sufficient to provide assurance that the test reports are credible for the short period before new CodeMark regulations are made.
- 28 It is important that the commencement date is amended now to give CodeMark certificate holders certainty, and to ensure that they are not subject to unreasonable requirements or are precluded from participating in the product certification scheme.

Removing references to method for payment of infringement fees

- 29 The Building (Infringement Offences, Fees, and Forms) Regulations 2007 currently prescribes methods of payment of infringement fees for enforcement authorities.
- 30 This regulation requires enforcement authorities, to accept payment by cheque or money order, even if they will be unable to deposit them with banks. Enforcement authorities include territorial authorities, regional authorities and MBIE. In practice, most infringements are issued by territorial authorities.
- 31 By mid-2021, major banks will no longer accept cheques for deposit into bank accounts. In line with this decision, some territorial authorities have announced that they will no longer accept cheques as a payment option because these cheques will not be processed. However, the infringement regulations require enforcement agencies must accept cheques as a method of payment.
- 32 To address this issue, I propose removing the reference to method for payment. Requiring enforcement authorities to accept cheques or money orders is increasingly inconsistent with modern payment practices and how the payment methods in other infringement notices are prescribed.

Financial Implications

- 33 There are no direct financial implications to the Crown under this package.

Legislative Implications

- 34 The proposals in this paper will require amendments to regulations made under the Building Act 2004.

Impact Analysis

Regulatory Impact Statement

- 35 The Regulatory Strategy Team at the Treasury has determined that the regulatory proposal to amend the commencement date of the general competency regulation is exempt from the requirement to provide a Regulatory Impact Statement on the basis that it has no or minor impacts on businesses, individuals or not for profit entities.
- 36 The Regulatory Impact Analysis Team at the Treasury has determined that the proposal relating to amending the Building (Infringement Offences, Fees, and Forms) Regulations 2007 to remove references to methods for payment of infringement fees is exempt from the requirement to provide a Regulatory Impact Statement on the ground that it removes redundant legislative provisions.

Climate Implications of Policy Assessment

- 37 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to either of these proposals as there is no direct emissions impact.

Population Implications

- 38 The proposals in this paper are not expected to have significant implications for population groups.

Human Rights

- 39 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 40 The Ministry of Housing and Urban Development, Kāinga Ora – Homes and Communities, the Treasury, and the Department of Internal Affairs have been consulted. The Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet have been informed.

Communications

- 41 MBIE will contact affected stakeholders directly once Cabinet decisions have been made.

Proactive Release

- 42 I intend to release this paper proactively, subject to any redactions consistent with the Official Information Act 1982, within 30 days. MBIE will publish a copy of this paper on its website.

Recommendations

The Minister for Building and Construction recommends that the Committee:

Amending the commencement date of the general competency regulation

- 1 **note** that the Building (Product Certification) Amendment Regulations 2019 were intended to improve the competency and quality of product certification bodies in the product certification scheme;
- 2 **note** that unnecessary regulatory impacts have been identified in complying with the general competency regulation where product certification bodies may only accept product test reports from laboratories that are accredited for those tests;
- 3 **agree** to amend the Building (Product Certification) Amendment Regulations 2019 by extending the commencement 12 months from 1 November 2021 to 1 November 2022;
- 4 **note** that extending the commencement date provides certainty and regulatory continuity while new CodeMark regulations are made;
- 5 **note** that my officials are undertaking work, as part of my Building System Legislative Reform Programme, to strengthen the product certification scheme and provide more confidence in the quality of certificates issues by product certification bodies;
- 6 **note** that I intend to seek agreement to policy proposals for new CodeMark regulations in October 2021, and bring the final regulations back to Cabinet in
Confidential advice to Government

Removing references to method for payment of infringement fees

- 7 **note** that the Building (Infringement Offences, Fees, and Forms) Regulations 2007 require enforcement authorities to accept payment by cheque or money order for payment of infringement fees;
- 8 **note** that by mid-2021, most major banks will no longer accept cheques as a form of payment;
- 9 **agree** to amend the Building (Infringement Offences, Fees, and Forms) Regulations 2007 to remove references to method for payment of infringement fees;

Drafting instructions

- 10 **authorise** the Minister for Building and Construction to issue drafting instructions to Parliamentary Counsel Office to give effect to the decisions above;

- 11 **authorise** the Minister for Building and Construction to make minor or technical amendments, consistent with the policy decisions in this paper.

Authorised for lodgement

Hon Poto Williams

Minister for Building and Construction