



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Making it Easier to Build: New Minor Variations, Minor Customisations and Building Forms Regulations	Date to be published	4 September 2024

List of documents that have been proactively released

Date	Title	Author
25 July 2024	Making it Easier to Build: New Minor Variations, Minor Customisations and Building Forms Regulations	Office of Building and Construction Minister
25 July 2024	Cabinet minute, LEG-24-MIN-0137	Cabinet Office

Information redacted

YES/ NO (please select)

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.

In Confidence

Office of the Minister for Building and Construction
Chair, Cabinet Legislation Committee

Making it easier to build: new minor variations, minor customisations and building forms regulations

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the:
- *Building (Minor Variations) Amendment Regulations 2024*;
 - *Building (Forms) Amendment Regulations 2024*; and
 - *Building (Minor Customisations) Regulations 2024*.

Policy

- 2 The regulations attached to this paper support the Government's commitment to increase housing supply by improving efficiency and competition in the building system, reducing barriers, and driving down costs.
- 3 The *Building (Minor Variations) Regulations 2009* under the Building Act 2004 ('the Act') set out the definition of a minor variation that can be made to consented plans and specifications without requiring an application for an amendment to a building consent.
- 4 The *Building (Forms) Regulations 2004* prescribe the information that an applicant is required to provide when making applications under the Act, including for a building consent.
- 5 A National Multiple-use Approval (MultiProof) is a statement by the Ministry of Business, Innovation and Employment (MBIE) that a set of plans and specifications for a building complies with the Building Code. The *Building (National Multi-use Approval) Regulations 2011* set out eligibility requirements and fees for MultiProof. Under the Act, the MultiProof scheme provides a 'deemed to comply' fast-track building consent process.
- 6 In 2023, MBIE consulted on options to improve the efficiency and effectiveness of the building consent system and completed a follow-up targeted consultation with key stakeholders in February 2024. There was strong support to:
- clarify the definition of a minor variation to a building consent;
 - create a definition of 'minor customisation' for MultiProof in regulations to increase the flexibility of the scheme; and

IN CONFIDENCE

- make a minor change to the building consent application forms to allow applicants to specify suitable alternative products, should they choose to do so.
- 7 The current definition of ‘minor variation’ to consented plans and specifications under the *Building (Minor Variations) Regulations 2009* is not clear enough, which can lead to applications to amend a building consent for small changes that could easily be approved on site as a minor variation.
- 8 Under section 45B of the Act, changes may be made to the plans and specifications that rely on a MultiProof approval, if they are permitted variations or if the changes are minor customisations permitted by regulations made under section 402(1)(kc). However, the regulations making powers (under section 402(1)(kc) of the Act) have never been used to define ‘minor customisation’.
- 9 The current building consent application forms, under the *Building (Forms) Regulations 2004*, do not allow applicants to specify comparable building products if they choose to do so.
- 10 On 19 March 2024, the Cabinet Expenditure and Regulatory Review Committee agreed to policy proposals to amend the Building (Minor Variations) Regulations and Building (Forms) Regulations, and introduce regulations relating to minor customisations for MultiProof [EXP-24-MIN-0008 and CAB-24-MIN-0101 refer]. The policy decisions provided for the following changes:
- 10.1 amend the *Building (Minor Variations) Regulations 2009* to clarify the definition of ‘minor variation’ by incorporating key considerations such as equivalence of building product performance or flow-on impacts on the building system designed;
- 10.2 amend the building consent forms under the *Building (Forms) Regulations 2004* to enable building consent applicants to specify suitable comparable building product options, should they choose to do so; and
- 10.3 use the regulations making power under section 402(1)(kc) of the Act to make regulations to define ‘minor customisation’. This will improve the flexibility of the MultiProof scheme and ensure applicants can still rely on a MultiProof approval when they make a minor change to the pre-approved building designs, without risking the approval becoming inapplicable for that consent application.
- 11 The changes will improve the flexibility and efficiency of the building consent process and encourage competition for building products. The changes also address some of the recommendations of the Commerce Commission’s market study into residential building supplies related to impediments to product substitution and variations.

Timing and 28-day rule

- 12 I propose that these *Building (Minor Variations) Amendment Regulations 2024*, *Building (Forms) Amendment Regulations 2024* and *Building (Minor Customisations) Regulations 2024* will be made on 29 July 2024 and notified in the New Zealand

IN CONFIDENCE

Gazette on 1st August 2024, subject to Cabinet and Executive Council agreement. A waiver of the 28-day rule is not sought. The new regulations will come into effect on 30 September 2024 to allow building consent authorities and applicants time to familiarise themselves with the changes ahead of time.

Compliance

- 13 The regulations comply with:
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 13.3 the principles and guidelines set out in the Privacy Act 2020;
 - 13.4 relevant international standards and obligations;
 - 13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 14 I do not consider there are any grounds for the Regulations Review Committee to draw regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 15 The regulations were prepared and certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 16 A Regulatory Impact Statement was submitted at the time that Cabinet approval was sought for the policy relating to the regulations [EXP-24-MIN-0008 and CAB-24-MIN-0101 refer]. MBIE's Regulatory Impact Assessment Review Panel considered that it partially meets the quality assurance criteria.

Publicity

- 17 MBIE will advise stakeholders once the regulations are made.

Proactive release

- 18 I intend to release this paper proactively in full. MBIE will publish a copy of this paper on its website.

Consultation

- 19 The following agencies have been consulted on this paper: Parliamentary Counsel Office, Ministry for Regulation, Ministry of Foreign Affairs and Trade, Ministry for the Environment, Ministry of Housing and Urban Development, Department of

IN CONFIDENCE

IN CONFIDENCE

Internal Affairs, Te Puni Kōkiri, the Treasury, Ministry of Transport, Ministry of Education, Ministry of Social Development, Department of Conservation, Department of the Prime Minister and Cabinet, Ministry for Primary Industries, Ministry for Culture and Heritage, and Standards New Zealand.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that, on 19 March 2024, the Cabinet Expenditure and Regulatory Review Committee agreed to amend the *Building (Minor Variations) Regulations 2009* and the *Building (Forms) Regulations 2004*, and introduce regulations for National Multiple-use Approvals (MultiProof) under the Building Act 2004 to:
 - 1.1 clarify the definition of ‘minor variation’ to a building consent;
 - 1.2 clarify that building consent applicants may specify suitable comparable building product options in building consent applications, should they choose to do so;
 - 1.3 use the regulations making power under section 402(1)(kc) of the Building Act 2004 to make regulations that define ‘minor customisation’ in relation to MultiProof [EXP-24-MIN-0008 and CAB-24-MIN-0101 refer].
- 2 **note** that the *Building (Minor Variations) Amendment Regulations 2024*, *Building (Forms) Amendment Regulations 2024* and *Building (Minor Customisations) Regulations 2024* will give effect to the decision referred to in recommendation 1 above;
- 3 **authorise** the submission to the Executive Council of the *Building (Minor Variations) Amendment Regulations 2024*, *Building (Forms) Amendment Regulations 2024* and *Building (Minor Customisations) Regulations 2024*;
- 4 **note** that the *Building (Minor Variations) Amendment Regulations 2024*, *Building (Forms) Amendment Regulations 2024* and *Building (Minor Customisations) Regulations 2024* will come into force on 30 September 2024.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction

IN CONFIDENCE

IN CONFIDENCE

Building (Minor Variations) Amendment Regulations 2024

Governor-General

Order in Council

At Wellington this day of 2024

Present:
in Council

These regulations are made under section 402(1)(kd) of the Building Act 2004 on the advice and with the consent of the Executive Council and in accordance with a recommendation of the Minister for Building and Construction.

Contents

	Page
1 Title	1
2 Commencement	1
3 Principal regulations	2
4 Regulation 3 amended (Minor variation defined)	2

Regulations

- 1 Title**
These regulations are the Building (Minor Variations) Amendment Regulations 2024.
- 2 Commencement**
These regulations come into force on 30 September 2024.

3 Principal regulations

These regulations amend the Building (Minor Variations) Regulations 2009.

4 Regulation 3 amended (Minor variation defined)

(1) After regulation 3(1) insert:

(1A) The substitution of a comparable product is a minor variation if—

- (a) the products achieve an equivalent level of performance, having regard to their design, installation, intended use, and maintenance; and
- (b) it is not likely to affect the compliance of other parts of the building work with the building code; and
- (c) the consequences of a building failure due to the product substitution would not be significantly worse than a building failure caused by the failure of the original product.

(2) Replace regulation 3(3) with:

(3) The examples in subclause (2) are only illustrative of subclauses (1) and (1A), and do not limit them. If an example conflicts with subclause (1) or (1A), they prevail over the example.

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 30 September 2024, amend the Building (Minor Variations) Regulations 2009 (the **principal regulations**) by expanding on the definition of a minor variation for the purposes of section 45A of the Building Act 2004. That section provides, amongst other things, that an application for a minor variation to a building consent does not have to be made in the prescribed form and a building consent authority granting a minor variation does not have to issue an amended building consent.

These regulations amend the definition of a minor variation by clarifying when the substitution of a comparable product will be a minor variation.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 14 March 2024 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—

- <https://www.mbie.govt.nz/dmsdocument/28312-removing-barriers-to-overseas-building-products>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation, and Employment.

IN CONFIDENCE

Building (Forms) Amendment Regulations 2024

Governor-General

Order in Council

At Wellington this day of 2024

Present:
in Council

These regulations are made under section 402 of the Building Act 2004 on the advice and with the consent of the Executive Council and in accordance with a recommendation of the Minister for Building and Construction.

Contents

	Page
1 Title	1
2 Commencement	1
3 Principal regulations	2
4 Schedule 1 amended	2
5 Schedule 2 amended	2
	3
Schedule	
New Part 2 inserted into Schedule 1	

Regulations

- Title**
These regulations are the Building (Forms) Amendment Regulations 2024.
- Commencement**
These regulations come into force on 30 September 2024.

3 Principal regulations

These regulations amend the Building (Forms) Regulations 2004.

4 Schedule 1 amended

In **Schedule 1**,—

- (a) insert the Part set out in the **Schedule** of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

5 Schedule 2 amended

- (1) In Schedule 2, form 2, under the heading †**Attachments**, after “†Plans and specifications [*list*]”, insert:
†Alternative plans and specifications (if the applicant wants to obtain pre-approval for possible product substitutions) [*list*]
- (2) In Schedule 2, form 2, under the heading †**Attachments**, after “†Current product certificate(s)”, insert:
†Alternative product certificate(s) (if the applicant wants to obtain pre-approval for possible product substitutions)

Schedule

New Part 2 inserted into Schedule 1

r 4

Part 2

Provisions relating to Building (Forms) Amendment Regulations 2024

1 Amendments to form 2 do not apply to applications for building consent made before 30 September 2024

An application for a building consent made before 30 September 2024 must be dealt with as if the Building (Forms) Amendment Regulations 2024 had not been made.

2 Building consent authority may accept un-amended form 2 in certain cases

A building consent authority may accept an application for a building consent made on form 2 as it was immediately before the Building (Forms) Amendment Regulations 2024 came into force if the applicant has not attached any alternative plans, specifications, or product certificates.

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 30 September 2024, amend the form for an application for a project information memorandum and/or building consent. The application form is prescribed in form 2 of Schedule 2 of the Building (Forms) Regulations 2004 (the **principal regulations**). The form is amended by making specific provision for alternative plans and specifications, and alternative product certificates to be attached to an application.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 14 March 2024 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—

- <https://www.mbie.govt.nz/dmsdocument/28312-removing-barriers-to-overseas-building-products>

- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation, and Employment.

IN CONFIDENCE

Building (Minor Customisations) Regulations 2024

Governor-General

Order in Council

At Wellington this day of 2024

Present:
in Council

These regulations are made under section 402(1)(kc) of the Building Act 2004 on the advice and with the consent of the Executive Council and in accordance with a recommendation of the Minister for Building and Construction.

Contents

	Page
1 Title	1
2 Commencement	1
3 Transitional, savings, and related provisions	2
4 Minor customisation defined	2
Schedule 1	3
Transitional, savings, and related provisions	

Regulations

- 1 Title**
These regulations are the Building (Minor Customisations) Regulations 2024.
- 2 Commencement**
These regulations come into force on 30 September 2024.

3 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

4 Minor customisation defined

- (1) A **minor customisation** is a minor modification, addition, or variation to plans or specifications for which a national multiple-use approval has been issued that does not deviate significantly from the plans and specifications—
 - (a) on its own; or
 - (b) in combination with—
 - (i) any other proposed minor customisations; and
 - (ii) in the case of an application for an amendment to a building consent, any existing minor customisations.
- (2) The substitution of a comparable product is a minor customisation if—
 - (a) the products achieve an equivalent level of performance, having regard to their design, installation, intended use, and maintenance; and
 - (b) it is not likely to affect the compliance of other parts of the building work with the building code—
 - (i) on its own; or
 - (ii) in combination with any other proposed or (in the case of an application for an amendment to a building consent) existing minor customisations; and
 - (c) the consequences of a building failure due to the product substitution would not be significantly worse than a building failure caused by the failure of the original product.
- (3) The following are examples of minor customisations and do not constitute an exhaustive list:
 - (a) substituting comparable products (for example, substituting one internal lining for a similar internal lining):
 - (b) minor wall bracing changes:
 - (c) changing a room's layout (for example, changing a door to a window):
 - (d) changing a building's layout (for example, mirror imaging).
- (4) The examples in subclause (3) are only illustrative of subclauses (1) and (2), and do not limit them. If an example conflicts with subclause (1) or (2), they prevail over the example.
- (5) To avoid doubt, a minor customisation does not include any building work in respect of which compliance with the building code is not required by the Act.

Schedule 1

Transitional, savings, and related provisions

r 3

Part 1

Provisions relating to these regulations as made

There are no transitional, savings, or related provisions in these regulations as made.

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 30 September 2024, define the minor customisations that may be made to the plans and specifications for which a national multiple-use approval has been issued, for the purposes of section 45B of the Building Act 2004. That section provides, amongst other things, that when applying for a building consent or an amendment to a building consent in reliance on plans and specifications for which a national multiple-use approval has been issued, changes may be made to the plans and specifications if they are minor customisations.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 14 March 2024 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—

- <https://www.mbie.govt.nz/dmsdocument/28312-removing-barriers-to-overseas-building-products>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation, and Employment.