



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
Title of Cabinet paper	Building (Forms) Amendment Regulations 2019	Date to be published	24 January 2020

List of documents that have been proactively released

Date	Title	Author
3 December 2019	Building (Forms) Amendment Regulations 2019	<i>Office of Hon Jenny Salesa</i>
3 December 2019	LEG-19-MIN-0194	<i>Cabinet Office</i>

Information redacted

NO

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

Building (Forms) Amendment Regulations 2019

1. This paper seeks authorisation for submission to the Executive Council of the Building (Forms) Amendment Regulations 2019 (the Amendment Regulations), which adds a new form (Form 14A) to support determination applications under the Building Amendment Act 2019, and updates the current form (Form 14) to align better with the intent of primary legislation and reflect modern methods of communication.
2. The Cabinet Legislation Committee (LEG) is being asked to make decisions on minor and technical matters of policy. These proposed decisions are largely administrative, and fall within the scope of minor policy issues relating to matters on the legislation programme that LEG can consider.

Policy

3. This paper seeks authorisation to give effect to policy decisions made in the Building Amendment Act 2019 regarding applications for determinations, and also make minor and technical updates to the Building (Forms) Regulations 2004.
4. On 7 November 2016, Cabinet agreed to amend the Building Act 2004 to implement the new system to improve the management of buildings that are damaged or at risk of damage after an emergency event [CAB-16-MIN-0580 refers]. A bill to give effect to these decisions was introduced into Parliament on 15 August 2018 and received Royal Assent on 17 June 2019. The Building Amendment Act comes into force on 18 December 2019.
5. In an emergency situation the building emergency management powers would be exercised expeditiously to minimise risks to life safety as quickly as possible. This introduces the risk that powers could be misapplied in some instances. To address this, the Building Amendment Act includes clear protections and considerations for property owners and occupiers to ensure the building emergency management powers are proportionate. This includes a provision to allow building owners to contest the use of specific emergency powers in certain circumstances through a fast-tracked determination process which allows them to appeal against decisions more quickly than through the standard determinations process.
6. Determinations are legally binding resolutions made by the Ministry of Business, Innovation and Employment (MBIE) about matters of dispute related to interpretations of the Building Code and certain decisions under the Building Act 2004. Under the building emergency management provisions of the Act, owners can apply to MBIE for a determination that is made in 15 working days rather than the standard 60 working days, to contest decisions made under these sections:

- 133BS Measures to keep people at a safe distance and protect buildings
- 133BT Notices and signs on building prohibiting or restricting building use
- 133BW Works to reduce or remove other risks that are non-urgent but disruptive to recovery
- 133BX Works for long-term use or occupation that are non-urgent.

Proposed Regulatory changes

7. The proposed new form (Form 14A) (attached) will support building owners in making good applications, and also support MBIE in meeting statutory obligations regarding timeframes for processing applications under the new building emergency management provisions of the Act.
8. The proposed Amendment Regulations also update the current form for applications for determinations outside an emergency situation (Form 14). These updates to the regulations will modernise the form to reflect modern methods of communication, and better align the form with the intent of primary legislation, in regards to the format of the applications from building owners.
9. Presently Form 14 includes a section for applicants to request a hearing. The chief executive has no statutory obligation under the Building Act 2004 to agree to a hearing, which can create confusion for applicants who misunderstand its inclusion in the regulated Forms as meaning they have a right to a hearing. The changes will remove this section to clarify the process for applicants, and will not change the legal rights of applicants or the way the determinations process works in practice. The chief executive will still be able to agree to a hearing at their discretion.
10. In addition, the regulations correct outdated references to residential property developers in a since-repealed section of the Building Act 2004 to commercial on-seller, and correct cross-references to sections of the Building Act, in Form 1.

Commencement

11. The Amendment Regulations will come into force 28 days after Gazettal, in compliance with the 28 day rule.

Compliance

12. The Order in Council complies with each of the following:
 - the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - the principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations;
 - the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

13. Section 402(1)(k) of the Building Act 2004 allows the Governor-General to, by Order in Council made on the recommendation of the Minister for Building and Construction, make regulations prescribing the form or content of applications, or any other documentation or information required under this Act.

Regulations Review Committee

14. I do not consider there to be any grounds for the Regulations Review Committee to draw these Regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

15. The Regulations were certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

16. A Regulatory Impact Summary was prepared in accordance with the necessary requirements, and was submitted 12 December 2016 when Cabinet approval was sought of the policy relating to the Building Amendment Act 2019 [CAB-16-MIN-0580 refers]. The Ministry of Business, Innovation and Employment's Regulatory Impact Analysis Review Panel determined that it met the criteria necessary for Ministers to make informed decisions on the proposals.

Publicity

17. The Ministry of Business, Innovation and Employment will publicise the changes on the building.govt.nz website.
18. Both the new application form (Form 14A) and the updated application form (Form 14) will be available on MBIE's website from the day that the Regulations enter into force with the Act, 18 December 2019.

Proactive release

19. I propose that this paper and minute are proactively released within 30 working days of the final decision being made by Cabinet. The release of the information is subject to redactions consistent with the Official Information Act 1982.

Consultation

20. The following agencies have been consulted on this paper: Department of the Prime Minister and Cabinet, Treasury, Ministry for Culture and Heritage, Ministry of Civil Defence and Emergency Management, Department of Internal Affairs and Te Puni Kōkiri.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** this paper includes minor and technical policy proposals for LEG which have not previously been discussed at DEV;
2. **note** that the Building Amendment Act 2019 includes new provisions for determinations for buildings affected by the building emergency management powers,
3. **note** the Building Amendment Act comes into force on 18 December 2019;
4. **note** the proposed Building (Forms) Amendment Regulations 2019 will:
 - 4.1. create a new form (Form 14A) for applying for a determination for decisions made under specific building emergency management powers;
 - 4.2. make minor amendments to the existing form for applying for a determination outside an emergency (Form 14);
 - 4.3. make minor technical changes to Form 1 to fix incorrect provisions;
5. **approve** the attached forms:
 - 5.1. *Form 14 Application for determination*
 - 5.2. *Form 14A Application for determination: decision relating building affected by emergency*
 - 5.3. *Form 1 Agreement between residential property developer and purchaser*
6. **authorise** the submission to the Executive Council of the Building (Forms) Amendment Regulations 2019;
7. **note** that the Building (Forms) Amendment Regulations 2019 will come into force at a later date than the Building Amendment Act 2019.

Authorised for lodgement

Hon Jenny Salesa

Minister for Building and Construction