



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Commencement order to support licensing of financial advice providers	Date to be published	30 January 2020

List of documents that have been proactively released

Date	Title	Author
November 2019	Commencement order to support licensing of financial advice providers	Office of the Minister of Commerce and Consumer Affairs
21 November 2019	GOV-19-MIN-0059: Additional Item: Commencement Order to Support Licensing of Financial Advice Providers	Cabinet Office

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 of Commerce and Consumer Affairs
Chair, Cabinet Government Administration and Expenditure Review Committee

Commencement order to support licensing of financial advice providers

Proposal

1. This paper seeks authorisation to submit to the Executive Council a commencement order necessary to support the licensing process for a new financial advice regime, which begins on Monday 25 November.

Policy

2. The Financial Services Legislation Amendment Act 2019 (Amendment Act) introduces a new regime for the regulation of financial advice in the new regulatory regime, anyone who gives financial advice to retail clients (such as everyday consumers) will need to operate under a licence that is granted by the Financial Markets Authority (FMA). All financial advice providers will also need to be registered on the Financial Service Providers Register (the Register).
3. The new regime, including the requirement to be licensed and registered, comes into force on 29 June 2020. Industry participants will be able to apply for licences from 25 November 2019 ahead of the new regime coming into force.
4. Cabinet recently approved various regulations and a commencement order to support the licensing process [LEG-19-MIN-0157 refers] giving effect to earlier Cabinet policy decisions [DEV-19-MIN-0155 refers].
5. However, due to an oversight, one clause which should have been brought into force was not. Clause 3 of the transitional schedule in schedule 3 of the Amendment Act allows for industry to apply to be registered as financial advice providers ahead of 29 June 2020. It is necessary for this clause to be in force as soon as possible so that industry participants are able to apply for a licence and validly apply for registration on the Register (including pay registration fees) as part of one process.
6. To remedy this oversight, I am seeking approval to submit a commencement order bringing clause 3 of the transitional schedule in schedule 3 of the Amendment Act into force in relation to financial advice providers.

Timing and 28-day rule

7. The commencement order will come into force as soon as possible. A waiver of the 28-day rule is sought on the basis that the order corrects an oversight and will enable the transition to the new regime to work in accordance with the public's expectations. The order does not impose any obligations or costs. In fact, it allows industry participants to apply to register at the time that they expected to be able to.

Compliance

8. The commencement order will comply with:
 - 8.1. the principles of the Treaty of Waitangi;
 - 8.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 8.3. the principles and guidelines set out in the Privacy Act 1993;
 - 8.4. relevant international standards and obligations;
 - 8.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

9. The Regulations Review Committee may consider that an order amending a commencement order may be an unusual use of a delegated power. Officials consider that in this situation the amendment order is appropriate in order to ensure the regime operates in the transitional period as intended. It is not expected to create any disadvantage to any party, and officials will take advice from Parliamentary Counsel as to the best way to address any concerns.

Certification by Parliamentary Counsel

10. The order will be certified by Parliamentary Counsel Office as being in order for submission to Cabinet, subject to a waiver of the 28 day rule being granted.

Impact Analysis

11. A Regulatory Impact Assessment has not been completed given the technical nature of the change.

Publicity

12. As this is a technical oversight, no publicity is planned.

Proactive release

13. I intend to release the paper proactively in whole within 30 days. MBIE will publish a copy on its website

Consultation

14. Given urgency, the FMA has been informed of the issue. No other consultation has been undertaken.

Recommendations

I recommend that the Cabinet Government Administration and Expenditure Review Committee:

1. **note** that on 12 June 2019, the Cabinet Economic Development Committee agreed to regulations necessary to implement the new financial advice regime [DEV-19-MIN-0155];
2. **note** that clause 3 of the transitional schedule in schedule 3 of the Financial Services Legislation Amendment Act 2019 needs to be brought into force as soon as possible to enable financial advice providers to apply for registration in preparation for the new regime;
3. **note** that a commencement order will bring into force clause 3 of the transitional schedule in schedule 3 of the Financial Services Legislation Amendment Act to enable financial advice providers to apply for registration;
4. **note** that the commencement order will come into force as soon as possible;
5. **note** that a waiver of the 28-day rule is sought:
 - 5.1. so that the commencement order can come into force as soon as possible;
 - 5.2. on the grounds it corrects an oversight and will enable the transition to the new regime to work in accordance with the public's expectations;
6. **agree** to waive the 28-day rule so that the order can come into force as soon as possible;
7. **authorise** the submission to the Executive Council of the commencement order referred to in paragraph 3.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs