



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	Regulations under the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021	<b>Date to be published</b>	25 July 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
26 May 2022	Regulations under the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021	Office of the Minister of Building and Construction
2 June 2022	Cabinet minute: LEG-22-MIN-0092	Cabinet Office

### Information redacted

YES / 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  
Cabinet Legislation Committee

## **Regulations under the Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021**

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the:
  - 1.1 Building (Building Product Information Requirements) Regulations 2022
  - 1.2 Building (Modular Component Manufacturer Scheme) Regulations 2022
  - 1.3 Building (Product Certification) Regulations 2022
  - 1.4 Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2022
  - 1.5 Building (Residential Consumer Rights and Remedies) Amendment Regulations 2022
  - 1.6 Building (Forms) Amendment Regulations 2022.

### **Executive Summary**

- 2 The *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021* (the Building Amendment Act) is a key deliverable in the Government's Building System Legislative Reform Programme, which aims to lift the quality and efficiency of building work and provide fairer outcomes if things go wrong.
- 3 A high-performing building and construction sector is crucial to New Zealand's economy and vital for delivering safe, healthy and durable buildings for all.
- 4 The Building Amendment Act focuses on building products, building methods and putting in place systems and processes to speed up consenting for new and innovative ways of building. The proposed package of regulations will support the implementation of the Building Amendment Act, specifically:
  - 4.1 new mandatory building product information requirements to support better informed decision-making by building consent authorities, building owners, builders and designers

- 4.2 a new voluntary modular component manufacturer scheme to enable faster, more consistent building consent approaches
- 4.3 a strengthened product certification scheme (known as CodeMark) to improve confidence that new and innovative building products and methods will comply with the Building Code and will be accepted by building consent authorities.
- 5 Following stakeholder feedback received during targeted consultation on exposure drafts of the regulations, I seek Cabinet agreement to not include building product information requirements for class 3 building products (gas and electrical appliances and fittings) at this time, as the benefits are not sufficient to justify the additional costs.
- 6 Class 3 products are sufficiently regulated under the *Gas Act 1992* and *Electricity Act 1992* and their associated regulations, and will still be required to meet Building Code requirements as part of a building consent application, where relevant.

**Policy**

- 7 The Building Amendment Act received Royal assent on 7 June 2021.
- 8 On 1 November 2021, Cabinet agreed to policy proposals for regulations to implement key changes in the Building Amendment Act (CAB-MIN-21-0442 and DEV-21-MIN-0212 refer).
- 9 The content of the draft regulations is summarised in the table below.

Key area	Content of draft regulations
Building product information requirements	<ul style="list-style-type: none"> <li>• What building products the regulations apply, or do not apply, to<sup>1</sup></li> <li>• Classes of building products to which the regulations apply</li> <li>• What information must be disclosed in relation to a building product, by class</li> <li>• When information must be disclosed, and by whom.</li> </ul>
Modular component manufacturer scheme	<ul style="list-style-type: none"> <li>• What kinds of building products are ‘modular components’</li> <li>• Criteria for the accreditation and registration of modular component manufacturer certification bodies</li> <li>• Criteria for the certification and registration of modular component manufacturers</li> <li>• Audit processes for the modular component manufacturer accreditation body and certification bodies</li> </ul>

---

<sup>1</sup> The information requirements will not apply to products that do not form part of the decision as to whether building work will be Building Code compliant, such as hobby-related products (e.g. craft glue), amenity-related products (e.g. carpets, curtains and curtain rails), or ‘do it yourself’ products (e.g. cupboard handles and picture hooks). The information requirements will only apply to products that are critical to the performance of a building.

**I N C O N F I D E N C E**

	<ul style="list-style-type: none"><li>• Fees related to the registration, accreditation and auditing of modular component manufacturer certification bodies</li><li>• Fees related to the registration of modular component manufacturers</li><li>• Requirements for modular component manufacturer's certificates.</li></ul>
Product certification scheme	<ul style="list-style-type: none"><li>• Criteria for the accreditation and registration of product certification bodies, and the certification of building products and methods</li><li>• Audit processes for product certification bodies auditing a certified building product or method</li><li>• Fees related to the registration, accreditation and auditing of certification bodies under the product certification scheme</li><li>• Fees related to the registration of product certificates</li><li>• Registration requirements for certificates.</li></ul>

- 10 Cabinet also agreed to consequential amendments to the Building (Residential Consumer Rights and Remedies) Regulations 2014 and Building (Forms) Regulations 2004. Cabinet previously agreed to new infringement offences for the building product information requirements (CAB-19-MIN-0508 refers), which necessitates amendments to the Building (Infringement Offences, Fees, and Forms) Regulations 2007.
- 11 Cabinet authorised the Minister for Building and Construction to make decisions consistent with the policy decisions on any issues which arise during the drafting process, including any minor or technical changes required. Several minor or technical changes were made, consistent with this authorisation. These are discussed further below.
- 12 Cabinet also agreed for exposure drafts of the regulations to be consulted on with key stakeholders. Targeted consultation took place from 9 March to 28 March 2022. Submitters raised suggestions to improve the clarity and workability of the regulations that have been taken into account in the final regulations.

**Fees for the building product certification scheme**

- 13 The strengthened product certification scheme includes an update to the fees for accreditation and audits for certification bodies, as well as new fees for registration. The changes to the accreditation and audit fees reflect that these fees have not been adjusted for 14 years.
- 14 The new fees reflect the need for full cost recovery for the accreditation body: JAS-ANZ (Joint Accreditation System of Australia and New Zealand) so that this body can effectively administer the product certification scheme and the new modular component manufacturer scheme. The review of fees has taken into account both the fee structure (i.e. the activities that JAS-ANZ need to charge in order to cost recover their services) and the fee level (i.e. the dollar amount).

**I N C O N F I D E N C E**

- 15 The accreditation application fee under the product certification scheme is increasing from \$2,706 (GST inclusive) to \$9,890 (GST inclusive). This fee will also apply to the new modular component manufacturer certification scheme. This new one-off fee now includes the need to recover the cost of two days of application review comprising \$4,600 (GST inclusive). After accounting for the included two days of application review, this is an increase of 95 per cent from the fees set in 2008.
- 16 The day rate for additional accreditation reviews and audits is also increasing from \$1,352 per day (GST inclusive) to \$2,300 (GST inclusive). This is an increase of 70 per cent from the fees set in 2008.
- 17 Stakeholders have indicated that these fee increases are reasonable.

### **Changes approved during the drafting process**

- 18 During the drafting process I approved the following changes to the regulations, consistent with my delegated authority.

#### *Building (Building Product Information Requirements) Regulations 2022*

- 19 A minor change has been made to the Building (Building Product Information Requirements) Regulations 2022 about how building product suppliers can make claims about how a building product is expected to contribute to compliance with the Building Code. Applicants may now include reference to *any other standard or technical drawing that describes the performance of the building product*, as well as standards or technical drawings that describe the specifications to which the product was manufactured.
- 20 A minor change has also been made following stakeholder consultation on the exposure draft to clarify that the Building (Building Product Information Requirements) Regulations 2022 do not apply to temporary building products that do not form part of the building when construction is completed (for example barriers or fences used during demolition or construction).

#### *Building (Modular Component Manufacturer Scheme) Regulations 2022*

- 21 A technical change was made to the Building (Modular Component Manufacturer Scheme) Regulations 2022 to require an application to MBIE for registration as a modular component manufacturer certification body to contain certain information to enable informed decision-making.
- 22 This change is consistent with decisions made by Cabinet on applications for registration in the product certification regulations. This change was required in order to implement Cabinet approvals that require modular component manufacturers to satisfy a fit and proper person test in order to be registered, and an adequate means test.
- 23 A change was also made to the audit requirements, to ensure that the scheme accreditation body and modular component manufacturer certification

bodies may carry out an audit more frequently than once in every 12 months where:

- 23.1 the auditing body has reason to believe that there may be grounds to suspend or revoke the modular component manufacturer certification or certification body's accreditation; or
  - 23.2 the modular component manufacturer or certification body has been suspended.
- 24 A number of minor and technical changes were also made, including:
- 24.1 amending the wording in the definition of what constitutes a modular component to better encompass a wide range of modular components that contribute to a building's structural performance, such as concrete lift shifts or bathroom pods
  - 24.2 amending the requirement for an applicant for registration as a modular component manufacturer certification body or modular component manufacturer to disclose whether the person has been convicted of an offence, so that the requirement applies to any conviction that is relevant to the chief executive's assessment as to whether the applicant meets the requirement to be a fit and proper person.

*Building (Product Certification) Regulations 2022*

- 25 A change was made to remove the requirement for a quality plan to be consistent with ISO 10005:2018 (Quality management – Guidelines for quality plans) from the Building (Product Certification) Regulations 2008.
- 26 Instead, it is now intended that the product certification scheme rules will set specific requirements for preparing and maintaining quality plans and therefore specific reference to this standard is no longer required.<sup>2</sup>
- 27 A number of minor changes were also made, including:
  - 27.1 removing the requirement for a product certificate to include the outcome of tests or evaluations, as this is not necessary to be on a certificate and will in some cases be commercially sensitive
  - 27.2 amending the wording of the regulations to ensure the information requirements for product certificates and applications for registration as a product certification body capture only relevant information
  - 27.3 amending the requirements for a product certification body's policies, procedures and systems for conformity assessment, so that reference to including processes for 'testing a product or method' is replaced with

---

<sup>2</sup> The Building Amendment Act enables the making of rules for the operation of the product certification scheme. These can include how the scheme parties are to perform their functions under this Act, and procedural and administrative matters, amongst other matters. Scheme rules may also supplement accreditation regulations for product certification bodies.

'identifying the evaluation requirements for the product or method' to better reflect the policy intent

27.4 amending the wording of the regulations to ensure an applicant for a product certificate provides:

27.4.1 assurance that the product or method to be certified is in accordance with the quality plan; and

27.4.2 a sample of the product only where requested by the product certification body.

### **Further change to the Building (Building Product Information Requirements) Regulations 2022**

28 Cabinet initially agreed to the establishment of the following three classes of building products, with the information requirements to vary by class:

28.1 Class 1: batch or mass-produced products that are typically available for retail or wholesale purchase, such as fixings, nail plates, structural timber, roofing, flashings and cladding

28.2 Class 2: custom-made lines of products, such as external windows and doors, that are made to order to client specifications and vary in dimensions to meet design, installation and/or location requirements (e.g. to accommodate wind or climate zone requirements)

28.3 Class 3: gas and electrical products regulated under the *Gas Act 1992* and *Electricity Act 1992* and associated regulations, such as water heaters and products required to be registered on the Gas Appliance Supplier Declaration database.

29 Following stakeholder feedback on the consultation draft of the regulations, I propose to not include class 3 products (gas and electrical appliances and fittings) in the Building (Building Product Information Requirements) Regulations 2022 at this time.

30 Stakeholder feedback indicated that the additional benefits of including gas and electrical appliances and fittings were not sufficient to justify the additional costs, given that they are well regulated under the *Gas Act 1992* and *Electricity Act 1992* and their associated regulations, and they will still be required to meet Building Code requirements, where relevant.

31 Not including class 3 products in the regulations will also reduce administrative complexity.

32 I now propose to monitor the effectiveness of the Building (Building Product Information Requirements) Regulations 2022 before considering the need for further information requirements on some products.

## Timing and 28-day rule

- 33 A waiver of the 28-day rule is not sought because Cabinet has previously agreed that the Building (Modular Component Manufacturer Scheme) Regulations 2022 and Building (Product Certification) Regulations 2022 would come into force three months after they are made.
- 34 Cabinet also agreed that the Building (Building Product Information Requirements) Regulations 2022 would come into force 18 months after they are made in order to allow sufficient time for suppliers to adjust to the new information requirements.
- 35 The Building (Modular Component Manufacturer Scheme) Regulations 2022, Building (Product Certification) Regulations 2022, Building (Residential Consumer Rights and Remedies) Amendment Regulations 2022 and Building (Forms) Amendment Regulations 2022 will therefore commence on 7 September 2022.
- 36 The Building (Building Product Information Requirements) Regulations 2022 and Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2022 will commence on 11 December 2023.

## Compliance

- 37 The regulations comply with:
- 37.1 the principles of the Treaty of Waitangi;
  - 37.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*;
  - 37.3 the principles and guidelines set out in the *Privacy Act 2020*;
  - 37.4 relevant international standards and obligations;
  - 37.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 38 Before recommending the making of an Order in Council prescribing information requirements for building products via the Building (Building Product Information Requirements) Regulations 2022, section 403 of the *Building Act 2004* (as amended by section 96 of the Building Amendment Act) requires that the responsible Minister be satisfied that the chief executive of MBIE has:
- 38.1 done everything practicable to consult with persons substantially affected by the regulations and advised the Minister of the results of that consultation; and
  - 38.2 followed appropriate consultation processes including giving adequate notice and a reasonable opportunity for interested persons to make submissions and adequate consideration of submissions.



39 I am satisfied these requirements have been met.

## Regulations Review Committee

40 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

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

## Impact Analysis

42 Three Regulatory Impact Assessments and two Cost Recovery Impact Assessments were prepared in accordance with the necessary requirements, and were submitted at the time that Cabinet approval was sought for the policy relating to the regulations (DEV-21-MIN-0212 refers). The three Regulatory Impact Statements showed that the benefits of the proposals outweighed the costs.

43 The Treasury's Regulatory Impact Analysis team has been consulted on the proposed 'Class 3' change to the Building (Building Product Information Requirements) Regulations 2022.

44 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that substantive issues had been addressed by existing impact analysis when initial Cabinet decisions were made<sup>3</sup> [DEV-21-MIN-0212 refers].

45 The proposed change to remove class 3 products from the regulations to reduce administrative complexity have no or only minor impacts on businesses, individuals and not-for-profit entities.

46 The Climate Implications of Policy Assessment (CIPA) team has been consulted on the proposed change to the Building (Building Product Information Requirements) Regulations 2022 and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

## Publicity

47 The Minister for Building and Construction intends to make a press statement and MBIE will advise stakeholders once the regulations are made.

---

<sup>3</sup> <https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-building-product-information-requirements>

## Proactive release

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

## Consultation

- 49 The following agencies were consulted on the policy proposals for regulations: Ministry of Justice, Ministry of Housing and Urban Development, Department of Internal Affairs, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Health, Treasury, Ministry of Education, Department of Corrections, Te Puni Kōkiri, Ministry for Pacific Peoples, Kāinga Ora, Ministry of Social Development, Office for Disability Issues, Office for Seniors, WorkSafe New Zealand, and the Department of the Prime Minister and Cabinet.
- 50 These Government agencies, plus the Commerce Commission, were consulted on the draft regulations.

## Public consultation on policy in 2021

- 51 MBIE carried out public consultation on a discussion document on proposals for regulations between April and June 2021. Stakeholders were largely supportive of the proposals made in the public discussion document. However, the policy proposals were revised to address some comments made by submitters.
- 52 New Zealand also notified World Trade Organisation members of the proposals for regulations, in line with its obligations under the Technical Barriers to Trade Agreement. This gave other members the opportunity to comment before the proposals were finalised. New Zealand did not receive any submissions or feedback from members on the proposals.

## Targeted consultation on exposure drafts of the regulations in 2022

- 53 Exposure drafts of the Building (Building Product Information Requirements) Regulations 2022, Building (Modular Component Manufacturer Scheme) Regulations 2022, and Building (Product Certification) Regulations 2022 were released to key stakeholders in confidence from 9 March to 28 March 2022.
- 54 Submitters raised suggestions to improve the clarity and workability of the regulations that have been taken into account in the final regulations.
- 55 Submitters included building consent authorities, modular component manufacturers, industry organisations, building product retailers, the Joint Accreditation System of Australia and New Zealand, and the Insurance Council of New Zealand.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 1 November 2021 Cabinet agreed to policy proposals for regulations to help implement the detail of new mandatory building product information requirements, a new voluntary modular component manufacturer scheme, and a strengthened product certification scheme [CAB 21-MIN-0442 and DEV-21-MIN-0212 refer];
- 2 **note** that Cabinet authorised the Minister for Building and Construction to make decisions consistent with the policy decisions on any issues which arise during the drafting process, including any minor or technical changes required;
- 3 **note** that Cabinet previously agreed to new infringement offences for the building product information requirements (CAB-19-MIN-0508 refers);
- 4 **note** that the following regulations will give effect to the decisions referred to in paragraphs 1 and 3 above:
  - 4.1 Building (Building Product Information Requirements) Regulations 2022;
  - 4.2 Building (Modular Component Manufacturer Scheme) Regulations 2022;
  - 4.3 Building (Product Certification) Regulations 2022;
  - 4.4 Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2022;
  - 4.5 Building (Residential Consumer Rights and Remedies) Amendment Regulations 2022
  - 4.6 Building (Forms) Amendment Regulations 2022;
- 5 **note** that exposure drafts of the regulations on the building product information requirements, modular component manufacturer scheme, and product certification were released to targeted stakeholders from 9 March to 28 March 2022;
- 6 **note** that during drafting, the Minister for Building and Construction approved several changes to the regulations, consistent with the delegated authority authorised by Cabinet;
- 7 **note** that stakeholder feedback on the exposure draft of the Building (Building Product Information Requirements) Regulations 2022 indicated that the additional benefits of requiring building product information for class 3 products (gas and electrical products) were not sufficient to justify the additional costs;

I N C O N F I D E N C E

- 8 **note** that class 3 products are sufficiently regulated under the *Gas Act 1992* and *Electricity Act 1992* and their associated regulations, and will still be required to meet Building Code requirements, where relevant;
- 9 **agree** to not include class 3 building products in the Building (Building Product Information Requirements) Regulations 2022 at this time;
- 10 **note** that the Building (Modular Component Manufacturer Scheme) Regulations 2022, Building (Product Certification) Regulations 2022, Building (Residential Consumer Rights and Remedies) Amendment Regulations 2022 and Building (Forms) Amendment Regulations 2022 will come into force three months after they are made, being 7 September 2022;
- 11 **note** that the Building (Building Product Information Requirements) Regulations 2022 and Building (Infringement Offences, Fees, and Forms) Amendment Regulations 2022 will come into force 18 months after they are made, being 11 December 2023;
- 12 **note** that before recommending the making of an Order in Council prescribing information requirements for building products, section 403 of the *Building Act 2004* (as amended by section 96 of the *Building (Building Products and Methods, Modular Components, and Other Matters) Amendment Act 2021*) requires that the responsible Minister be satisfied that the chief executive of MBIE has:
- 12.1 done everything practicable to consult with persons substantially affected by the regulations and advised the Minister of the results of that consultation; and
  - 12.2 followed appropriate consultation processes including giving adequate notice and a reasonable opportunity for interested persons to make submissions and adequate consideration of submissions;
- 13 **note** the advice of the Minister for Building and Construction that this requirement has been met;
- 14 **authorise** the submission to the Executive Council of the regulations referred to in paragraph 4 above.

Authorised for lodgement

Hon Poto Williams  
Minister for Building and Construction

I N C O N F I D E N C E