



## COVERSHEET

<b>Minister</b>	Hon Jenny Salesa	<b>Portfolio</b>	Building and Construction
<b>Title of Cabinet paper</b>	Building (Exempt Building Work) Order 2019	<b>Date to be published</b>	29/07/2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
11/06/2019	Cabinet paper – Building (Exempt Building Work) Order 2019	Office of the Minister for Building and Construction
11/06/2019	LEG-19-MIN-0074 Minute	Committee Secretary of LEG

### 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 (Exempt Building Work) Order 2019**

### **Proposal**

1. This paper seeks authorisation for submission to the Executive Council of the Building (Exempt Building Work) Order 2019, to exempt ground moisture barriers from the building consent process.

### **Policy**

2. On 13 May 2019, the Residential Tenancies (Healthy Homes Standards) Regulations 2019 were made, and will come into force on 1 July 2019.
3. These Healthy Homes Standards set minimum requirements for heating, insulation, ventilation, moisture and drainage, and draught stopping in rental properties. One of these standards will be a requirement to have ground moisture barriers installed in enclosed subfloors, if it is feasible to do so.
4. Ground moisture barriers protect against rising damp and mould, making homes drier, warmer and easier to heat. The barrier is generally a non-permeable thin polythene layer that is placed under a timber subfloor and around the piles and edges of the foundations.
5. The installation of ground moisture barriers falls within the definition of building work in the Building Act 2004 (the Act). This means that ground moisture barriers currently require a building consent before they can be installed.
6. The Act recognises that some types of building work are considered low risk, so do not require a building consent.
7. Within the Act, Schedule 1 sets out three types of exemptions:
  - 7.1. Some specified building work that anyone can carry out.
  - 7.2. Some plumbing and drainlaying work that can only be done by an authorised person under the Plumbers, Gasfitters and Drainlayers Act 2006.
  - 7.3. Some building work if it is designed or the design is reviewed by a chartered professional engineer.
8. On 1 May 2019, the Cabinet Economic Development Committee agreed to add ground moisture barriers as an exemption from the building consent process under

Schedule 1 of the Act [CAB-19-MIN-0193 refers]. The attached Order in Council gives effect to this Cabinet decision.

9. Exempting moisture barriers will allow building owners to install them without having to approach their territorial or regional authority for a discretionary exemption, saving building owners' time, and reducing barriers to compliance and associated costs. This exemption would support all homeowners to improve the healthiness of their homes, including rental properties.
10. Having an exemption specifically for moisture barriers would make it clear that a consent is not needed to undertake this work in the future.

### **Timing and 28-day rule**

11. I am seeking a waiver to the 28-day rule in order for this Order in Council to come into force on 1 July 2019. This is to coincide with the date that the Residential Tenancies (Healthy Homes Standards) Regulations 2019 come into force.
12. The Order in Council is a minor change and will have no or only minor impacts on businesses, individuals or not-for-profit entities. Therefore, little time is needed to prepare for the change.
13. The Ministry of Business, Innovation and Employment (MBIE) has informed building consent authorities (BCAs) of the proposed amendment to Schedule 1 of the Act, so they can make any necessary preparations for the change.

### **Compliance**

14. The Order in Council complies with each of the following:
  - 14.1. the principles of the Treaty of Waitangi;
  - 14.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 14.3. the principles and guidelines set out in the Privacy Act 1993;
  - 14.4. relevant international standards and obligations;
  - 14.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
15. Section 41 of the Act allows the Governor-General, under the recommendation of the Minister for Building and Construction, by Order in Council, to amend Schedule 1 of the Act by adding any building work or class of building work to Schedule 1 as being building work for which a building consent is not required.

### **Regulations Review Committee**

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

## Certification by Parliamentary Counsel

17. The draft Order in Council was certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

## Impact Analysis

18. The Treasury Regulatory Quality Team has determined that the decisions sought in the Cabinet paper [DEV-19-SUB-0093 refers] are exempt from the Regulatory Impact Analysis requirements on the grounds that they will have no or only minor impacts on businesses, individuals or not-for-profit entities.

## Publicity

19. I will issue a press statement announcing the decision to add ground moisture barriers to Schedule 1 of the Act.
20. MBIE will inform relevant sector stakeholders.

## Proactive release

21. This paper, along with the Cabinet minute, is proposed to be proactively released on the MBIE website 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

22. MBIE has undertaken targeted consultation with a representative sample of BCAs. The BCAs are supportive of the proposed change.
23. The following agencies have been consulted on this paper: Treasury, Department of Prime Minister and Cabinet (Policy Advisory Group), Ministry of Justice, Ministry of Housing and Urban Development, Ministry of Health, Ministry of Education, Ministry for the Environment, Housing New Zealand and the Department of Internal Affairs.

## Recommendations

I recommend that the Cabinet Legislative Committee:

1. **note** that on 1 May 2019, the Cabinet Economic Development Committee agreed to add ground moisture barriers as an exemption under Schedule 1 of the Building Act 2004 [CAB-19-MIN-0193 refers];
2. **note** that the Building (Exempt Building Work) Order 2019 will give effect to the decision referred to in paragraph 1 above;
3. **authorise** the submission to the Executive Council of the Building (Exempt Building Work) Order 2019;
4. **note** that a waiver of the 28-day rule is sought:

- 4.1. so that the Order in Council can come into force on 1 July 2019;
- 4.2. in order for the Order in Council to align with the date the Residential Tenancies (Healthy Homes Standards) Regulations 2019 come into force;
5. **agree** to waive the 28-day rule so that the regulations can come into force on 1 July 2019.

Authorised for lodgement

Hon Jenny Salesa

**Minister for Building and Construction**

PROACTIVELY RELEASED