



COVERSHEET

Minister	Hon Jenny Salesa	Portfolio	Building and Construction
Title of Cabinet paper	Building (Product Certification) Amendment Regulations 2019	Date to be published	28/10/2019

List of documents that have been proactively released

Date	Title	Author
10/9/2019	Building (Product Certification) Amendment Regulations 2019	Office of the Minister for Building and Construction
10/9/2019	LEG-19-MIN-0129	Cabinet Office
12/12/2018	Updating the regulations for the CodeMark product assurance scheme	Office of the Minister for Building and Construction
12/12/2018	DEV-18-MIN-0308	Cabinet Office

Information redacted

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 of Building and Construction

Chair, Cabinet Legislation Committee

Building (Product Certification) Amendment Regulations 2019

Proposal

1. It is proposed that the Cabinet Legislation Committee authorise the submission to the Executive Council of the Building (Product Certification) Amendment Regulations 2019 (“the Amendment Regulations”).

Background

2. CodeMark New Zealand (CodeMark) is a voluntary building product certification scheme established in 2008. A building product manufacturer or supplier can apply to a Product Certification Body (PCB) to have their product (or building method) evaluated to determine how its use may result in compliant building work (compliant to the New Zealand Building Code). If the product is evaluated as compliant it is issued with a CodeMark product certificate. Building products with a CodeMark product certificate must be accepted by Building Consent Authorities as Building Code compliant, if the product is specified for use in building work consistently with the scope of its certification.

Policy

3. The existing Building (Product Certification) Regulations 2008 (the Regulations) do not ensure that PCBs are conducting quality product evaluations and issuing robust product certificates. On 17 December 2018 Cabinet agreed [CAB-18-MIN-0634] to update and clarify the Regulations to require that:
 - 3.1 all product testing laboratories are independently certified, to ensure the product tests used for the scheme meet a minimum standard
 - 3.2 every PCB has a certified quality management system in place, to ensure there is a minimum standard for all quality systems
 - 3.3 products are evaluated against all relevant Building Code clauses including Code clause B2 Durability and Code clauses F1-F9 Safety of users
 - 3.4 product certificates include more information about a product, including its intended use and specifications, and additional information is carried over to a schedule on the certificate.
4. Cabinet also agreed to amend out-of-date references to International Standardization Organisation standards in the Regulations to the most up-to-date versions of the standards.
5. The Amendment Regulations will give effect to those Cabinet decisions and will come into force on 1 November 2019.

Technical Amendments

6. Cabinet authorised the Minister for Building and Construction to make decisions about minor and technical matters that arose during the drafting process [CAB-18-MIN-0634]. I have taken decisions to resolve three minor and technical matters during the drafting process.
7. Cabinet agreed to update the regulations to require PCBs to comply with *ISO/IEC 17065:2013 Conformity Assessment – Requirements for bodies certifying product processes and services* (ISO 17065). There are three clauses within ISO 17065 that will be redundant as the Amendment Regulations will specify the standards that PCBs must comply with. I have agreed that the Amendment Regulations exclude clause 3 and sub-clauses 6.2.1 and 6.2.2.1 of ISO 17065 to avoid any potential confusion.
8. An exposure draft of the Amendment Regulations was shared with targeted stakeholders. Feedback on the exposure draft noted that some conformance assessment bodies are precluded from obtaining *ISO 9001 Quality Management Systems* (ISO 9001) by other standards they are accredited against. This is intended to prevent conflicts of interest. I have agreed to retain the status quo for PCBs that are also conformance bodies accredited to *ISO 17021-1:2015 Conformity Assessment – Requirements for bodies providing audit and certification of management systems*. This means that they will continue to be subject to clause 8 of ISO 17065.
9. I have also agreed to the correction of a minor error in the earlier Cabinet decision that limited the scope of the clauses within the Building Code (related to safety of users) that should be listed on product certificates [DEV-18-SUB-0308].

Timing and 28 day rule

10. A waiver of the 28 day rule is not sought for the Amendment Regulations to come into force on Friday 1 November 2019.

Compliance

11. The proposed Amendment Regulations comply with each of the following:
 - 11.1 the principles of the Treaty of Waitangi
 - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 11.3 the principles and guidelines set out in the Privacy Act 1993
 - 11.4 relevant international standards and obligations
 - 11.5 the Legislation Design and Advisory Committee's Legislation Guidelines (2018 Edition).

Regulations Review Committee

12. There are no anticipated grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House under Standing Order 315.

Certification by Parliamentary Counsel

13. The Amendment Regulations were prepared and certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Regulatory impact analysis

14. The Regulatory Quality Team at The Treasury agreed that no formal Regulatory Impact Statement was required in support of these amendments since the impacts are expected to be minor in practice.

Publicity

15. MBIE will publicise changes to the Regulations on their website. MBIE will also directly notify the Product Certification Accreditation Body and PCBs.

Consultation

16. The Treasury, Ministry of Foreign Affairs and Trade, Department of Internal Affairs and the Department of Prime Minister and Cabinet were informed of this paper.
17. The consultation required under section 403 and section 409 the Building Act 2004 was carried out.

Proactive release

18. I propose that this paper, along with the Cabinet minute and supporting documentation, are proactively released on the Ministry of Business, Innovation and Employment's 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.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 17 December 2018, Cabinet [CAB-18-MIN-0634] agreed to amend the Building (Product Certification) Regulations 2008 (the Regulations) to require that:
 - 1.1 references to International Organization for Standardization (ISO) standards in the Regulations are up to date
 - 1.2 all product testing laboratories are independently certified, to ensure the product tests used for CodeMark meet a minimum standard
 - 1.3 every PCB has an ISO certified quality management system in place, to ensure there is a minimum standard for all quality systems
 - 1.4 products are evaluated against all relevant Building Code clauses within *Code clause B2 Durability* and *Code clause F Safety of users*
 - 1.5 product certificates include more information about a product, including its intended use and specifications, and additional information is carried over to a schedule on the certificate

2. **note** that the Building (Product Certification) Amendment Regulations 2019 will give effect to the decisions referred to in Recommendation 1
3. **note** that I have made minor and technical changes to the Regulations consistent with the policy decisions to amend the Regulations
4. **note** that the consultation requirements under section 403 and section 409 of the Building Act 2004 have been met
5. **authorise** the submission of the Building (Product Certification) Amendment Regulations 2019 to the Executive Council
6. **note** that a waiver of the 28-day rule is not sought
7. **note** that the *Building (Product Certification) Amendment Regulations 2019* will come into force on Friday 1 November 2019.

Authorised for lodgement

Hon Jenny Salesa
Minister of Building and Construction