

In Confidence

Office of the Attorney-General

Chair, Cabinet Legislation Committee

Legislation Act 2019 - Regulations and Commencement Orders

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the –
 - 1.1 Legislation (Publication) Regulations 2021;
 - 1.2 Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021;
 - 1.3 Legislation Act (Amendments to Legislation) Regulations 2021; and
 - 1.4 3 Commencement Orders – the Legislation Act 2019 Commencement Order 2021, Secondary Legislation Act Commencement Order 2021, and Legislation (Repeals and Amendments) Act Commencement Order 2021.

Executive Summary

- 2 The regulations implement the policy that Cabinet approved on 20 May 2021 [LEG-21-MIN-0072; CAB-21-MIN-0178].
- 3 The Legislation (Publication) Regulations 2021 will set publication and notification requirements for secondary legislation drafted by agencies under new empowering provisions enacted after commencement of the Legislation Act 2019 (the Act). The Act will preserve the publication and notification requirements for secondary legislation made under empowering provisions that existed before the Act's commencement.
- 4 The Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021 consequentially amend secondary legislation that sub-delegates powers to make legislation, to state that the sub-delegated instruments are secondary legislation.
- 5 The Legislation Act (Amendments to Legislation) Regulations 2021 will make similar amendments to those being made by the Secondary Legislation Act 2021 to identify secondary legislation empowering provisions. They will amend legislation enacted after the 2021 Act, correct technical errors in related amendments made by the Act and add empowering provisions that have been identified in further review in preparation for the 2021 Act's commencement.
- 6 The statutory prerequisites for the making of the Legislation (Publication) Regulations 2021 and Legislation Act (Amendments to Legislation) Regulations 2021 have been met. I have consulted the Regulations Review Committee on the Legislation Act (Amendments to Legislation) Regulations 2021 as required.
- 7 The 3 commencement orders will bring the main part of the Legislation Act 2019, the Secondary Legislation Act 2021, and the Legislation (Repeals and Amendments) Act 2019 into force on 28 October 2021. The regulations will also come into force then to support the Act's operation and to provide for an orderly implementation of the Act.

Policy

- 8 The Legislation (Publication) Regulations 2021 set out the publication and notification requirements for agency-drafted secondary legislation made under new empowering provisions enacted after the commencement of the Legislation Act 2019, as Cabinet approved on 20 May 2021 [LEG-21-MIN-0072; CAB-21-MIN-0178]. The legislation will be required to be—
 - 8.1 published on an Internet site maintained by or on behalf of the person responsible for publishing the secondary legislation;
 - 8.2 as far as practicable, able to be accessed at, or downloaded from, that Internet site at all times and free of charge; and
 - 8.3 notified in the *Gazette* as soon as practicable after it is made.
- 9 These are the default requirements for secondary legislation made under these new empowering provisions. The regulations will also provide for customised publication requirements for certain specified secondary legislation, for example, requiring consolidated legislation to be published.
- 10 The Act will preserve the publication and notification requirements for secondary legislation made under existing empowering provisions that were enacted before the Act's commencement (the old saved requirements). Generally, this secondary legislation will continue to be published following these old saved requirements. However, to enable continued improvement in the standard and consistency of publication of secondary legislation, makers of secondary legislation will be able to instead adopt the centralised standard. This will be done, in the future, by amending the publication regulations to specify empowering provisions to which the new default requirements will apply.
- 11 The regulations set out the information that agencies will be required to notify in the *Gazette* for secondary legislation made under new empowering provisions –
 - 11.1 the title of the secondary legislation;
 - 11.2 the date of making;
 - 11.3 the empowering provision;
 - 11.4 the administering agency;
 - 11.5 the website where the secondary legislation is published; and
 - 11.6 that the instrument being notified is secondary legislation.
- 12 When the Parliamentary Counsel Office (PCO) notifies new secondary legislation in the *Gazette*, it will be required under the regulations to include the same information that agencies will be required to notify.
- 13 It is possible, in the future, for there to be exemptions from publication and notification requirements (for example, for national security reasons). There are none in the regulations at this stage but, if needed in future, the regulations can be amended to list empowering provisions to which the publication and notification requirements do not apply and the grounds on which they do not apply.

- 14 The Legislation Act (Amendments to Legislation) Regulations 2021 are made under a transitional regulation-making power in the Legislation Act 2019. They amend legislation enacted after the Secondary Legislation Act 2021, and also add, or make corrections to, some empowering provisions where the need to do so has been identified as a result of further review in preparation of the 2021 Act's commencement. The corrections are minor and technical in nature. For example, an "old" publication requirement may have been left in an empowering provision.
- 15 The Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021 will insert a statement in secondary legislation that authorises the making of other secondary legislation to state that the sub-delegated legislation is secondary legislation.
- 16 The commencement orders will bring the main part of the Legislation Act 2019, the Secondary Legislation Act 2021, and the Legislation (Repeals and Amendments) Act 2019 into force on 28 October 2021. Part 4 (Disclosure requirements for Government- initiated legislation) of the Legislation Act 2019, which is administered by the Treasury, will commence at a later date. This will enable the Treasury to engage with, and seek the approval of, the House on the range of information that must be included in disclosure statements before Part 4 becomes operative.
- 17 The regulations implement the policy that Cabinet approved on 20 May 2021 [LEG-21-MIN-0072; CAB-21-MIN-0178]. They do not require any new policy decisions.
- 18 The requirements for official versions of legislation in the Legislation (Official Versions) Regulations 2015 will be updated and continued under the regulations.

Timing and 28-day rule

- 19 I propose that the regulations come into force on 28 October 2021, at least 28 days after they are notified in the *New Zealand Gazette*.

Compliance

- 20 The regulations are consistent with –
 - 20.1 the principles of the Treaty of Waitangi;
 - 20.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 20.3 the principles and guidelines set out in the Privacy Act 2020;
 - 20.4 relevant international standards and obligations;
 - 20.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 21 There are statutory prerequisites for making the following regulations:
 - 21.1 The Legislation (Publication) Regulations 2021 must, under section 147 of the Legislation Act 2019, be made on my recommendation.

21.2 The Legislation Act (Amendments to Legislation) Regulations 2021 must, under clause 19 of Schedule 1 of the Legislation Act 2019, be made on my recommendation only after—

21.2.1 consulting the Regulations Review Committee; and

21.2.2 having regard to the purpose of clause 19.

22 The statutory prerequisites have been met. I have consulted the Regulations Review Committee on the Legislation Act (Amendments to Legislation) Regulations 2021 and, having regard to the purpose of clause 19 of Schedule 1 of the Act, I recommend the regulations be made. I also recommend that the Legislation (Publication) Regulations 2021 be made.

Regulations Review Committee

23 Officials believe there are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

24 The PCO has certified the draft regulations as being in order for submission to Cabinet.

Impact Analysis

25 The Treasury's Regulatory Impact Analysis team determined that this proposal was exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities at the time that Cabinet approval was sought for the policy relating to the relevant regulations [refer LEG-21-MIN-0072; CAB-21-MIN-0178].

Publicity

26 There will be a public announcement when the regulations are made.

Proactive release

27 This paper will be proactively released and published on the PCO's website, subject to any redaction as appropriate under the Official Information Act 1982.

Consultation

28 The following government agencies were consulted on the earlier policy paper relating to the regulations: Department of Conservation, Department of Corrections, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Inland Revenue Department, Land Information New Zealand, Ministry for Culture and Heritage, Ministry for Primary Industries, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Defence, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Defence Force, New Zealand Police, Office of the Clerk, Oranga Tamariki—Ministry for Children, Parliamentary Service, Public Service Commission, Public Trust, Reserve Bank of New Zealand,

Sport New Zealand, Statistics New Zealand, Te Arawhiti, Te Puni Kōkiri, and the Treasury.

- 29 The following government departments and agencies were consulted on this Cabinet paper and the draft regulations: Department of Conservation, Department of Corrections, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Inland Revenue Department, Land Information New Zealand, Ministry for Culture and Heritage, Ministry for Primary Industries, Ministry for the Environment, Ministry of Business, Innovation and Employment, Ministry of Defence, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Defence Force, New Zealand Police, Office of the Clerk, Oranga Tamariki—Ministry for Children, Parliamentary Service, Public Service Commission, Reserve Bank of New Zealand, Sport New Zealand, Statistics New Zealand, Te Arawhiti, Te Puni Kōkiri, and the Treasury.

Recommendations

- 30 I recommend that the Cabinet Legislation Committee –
- 1 note that on 20 May 2021 the Cabinet Legislation Committee agreed to the drafting of regulations and commencement orders to –
- 1.1 prescribe publication and notification requirements for secondary legislation drafted by agencies under new empowering provisions;
- 1.2 consequentially amend secondary legislation that sub-delegates powers to make legislation to state that sub-delegated instruments are secondary legislation;
- 1.3 provide for other minor matters to support the Legislation Act's operation;
- 1.4 bring the main part of the Legislation Act 2019, Secondary Legislation Act 2021, and Legislation (Repeals and Amendments) Act 2019 into force.
- [Refer LEG-21-MIN-0072; CAB-21-MIN-0178]
- 2 note that the Legislation (Publication) Regulations 2021, Legislation Act (Amendments to Legislation) Regulations 2021, Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021, Legislation Act 2019 Commencement Order 2021, Secondary Legislation Act Commencement Order 2021, and Legislation (Repeals and Amendments) Act Commencement Order 2021 will give effect to the decision referred to in paragraph 1;
- 3 note that section 147 of the Legislation Act 2019 requires that the Legislation (Publication) Regulations 2021 must be made on the Attorney-General's recommendation;
- 4 note that I recommend that the Legislation (Publication) Regulations 2021 are made by Order in Council;
- 5 note that clause 19 of Schedule 1 of the Legislation Act 2019 requires that the Legislation Act (Amendments to Legislation) Regulations 2021 must be made on the Attorney-General's recommendation only after consulting the Regulations Review

Committee and having regard to the purpose of clause 19 to enable amendments to facilitate an orderly implementation of the Legislation Act 2019;

- 6 note that these requirements have been met. I have consulted the Regulations Review Committee and, after having regard to the purpose of clause 19, I recommend that the Legislation Act (Amendments to Legislation) Regulations 2021 is made by Order in Council;
- 7 authorise the submission to the Executive Council of the Legislation (Publication) Regulations 2021, Legislation Act (Amendments to Legislation) Regulations 2021, Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021, Legislation Act 2019 Commencement Order 2021, Secondary Legislation Act Commencement Order 2021, and Legislation (Repeals and Amendments) Act Commencement Order 2021;
- 8 note that the Legislation (Publication) Regulations 2021, Legislation Act (Amendments to Legislation) Regulations 2021, and Legislation Act (Sub-delegated Secondary Legislation) Regulations 2021 will come into force on 28 October;
- 9 note that the 3 commencement orders will bring the main part of the Legislation Act 2019, Secondary Legislation Act 2021, and Legislation (Repeals and Amendments) Act 2019 into force on 28 October 2021. Part 4 (Disclosure requirements for Government- initiated legislation) of the Legislation Act 2019 will commence at a later time.

Authorised for lodgement

Hon David Parker

Attorney-General