

Cabinet Office Circular

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Regulatory Impact Analysis Requirements: Update of Guidance

Introduction

- 1 This circular updates and replaces previous guidance on the Cabinet requirements for regulatory impact statements (RIS) and business compliance cost statements. It reflects Cabinet's decisions in 2006 and 2007 to strengthen the regulatory impact analysis requirements.¹
- 2 The new regulatory impact analysis requirements apply from 1 April 2007. The main changes are:
 - 2.1 government agencies with the power to create or enforce regulatory frameworks are required to confirm that the principles of the Code of Good Regulatory Practice have been complied with and that regulatory impact analysis has been undertaken in accordance with the new requirements;²

¹ This guidance takes account of changes agreed by Cabinet in 2006 and 2007 [CAB Min 40/4C, POL Min (06) 9/13 and CBC Min (07) 3/7]. It replaces Cabinet Office Circular CO (04) 4 and relevant sections in [chapter 3 of the Cabinet Office Step by Step Guide: Cabinet and Cabinet Committee Processes](#).

² The Code of Good Regulatory Practice is available in the Regulatory Impact Analysis Guidelines, which are available on the MED website: <http://www.med.govt.nz>

- 2.2 changes to the format and requirements for RISs, including new sections on the adequacy of the RIS and on implementation and review;
 - 2.3 a new Regulatory Impact Analysis section is to be included in Cabinet papers (replacing the Regulatory Impact and Business Compliance Cost Statement section);
 - 2.4 discussion documents for proposals that require a RIS must include questions and/or discussion of each of the substantive RIS sections, or a draft RIS;
 - 2.5 all RISs are to be published;
 - 2.6 the Ministry of Economic Development's (MED) Regulatory Impact Analysis Unit (RIAU) is to focus on proposals likely to have a significant impact on economic growth.
- 3 Ministers' offices and chief executives should ensure that:
- 3.1 all staff involved in the preparation of submissions for Cabinet and Cabinet committees are familiar with the advice in this circular;
 - 3.2 the material in this circular is conveyed to all Crown entities or other State agencies for which their Minister is responsible, which have an involvement in the preparation of proposals that require a RIS.

Summary of regulatory impact analysis requirements

- 4 The regulatory impact analysis requirements are designed to improve the quality of regulation making and to ensure that regulatory proposals are cost-effective and justified.
- 5 In summary, the requirements for regulatory impact analysis are:
- 5.1 all policy proposals submitted to Cabinet that result in government bills (or Members' bills that the government is planning to support or adopt) or statutory regulations must be accompanied by a RIS (unless an exemption applies);
 - 5.2 discussion documents relating to proposals that require a RIS must include questions and/or discussion of each of the substantive RIS sections, or a draft RIS;
 - 5.3 RISs should be included with Cabinet papers circulated for departmental consultation;
 - 5.4 Cabinet papers should include a Regulatory Impact Analysis section;
 - 5.5 departments must confirm that the principles of the Code of Good Regulatory Practice and the RIA requirements have been complied with when submitting Cabinet papers with a RIS;
 - 5.6 all RISs should be published.
- 6 Departments and other government agencies preparing Cabinet papers are responsible for meeting the regulatory impact analysis requirements.

Regulatory impact statement (RIS) requirements

- 7 All policy proposals submitted to Cabinet that result in government bills, statutory regulations, or that propose that the government support or adopt a Members' bill must be accompanied by a RIS, unless an exemption applies. Exemptions are set out in paragraph 14.
- 8 'Statutory regulations' has the same meaning as 'regulations' in the Regulations (Disallowance) Act 1989. This means that a RIS is required for any proposals for deemed regulations submitted to Cabinet for consideration. This includes when statutory regulations are to be made by individual Ministers under an enabling power in an Act and the Minister's decision is referred to Cabinet for noting.
- 9 A RIS is required at the time 'in principle' or final decisions are sought from Cabinet and before the preparation of drafting instructions on the bill or regulations. It does not need to be resubmitted with the actual bill or regulations. A RIS is not required for Cabinet submissions seeking intermediate decisions, but it may be prudent to provide a draft RIS at this stage.
- 10 Departments are required to include the RIS when circulating Cabinet papers for departmental consultation. When circulating the RIS with the Cabinet paper, departments should ask other departments to comment on the RIS as well as on the Cabinet paper.
- 11 The RIS must contain the following information³:
- **Executive summary**

One paragraph of no more than 150 words summarising the problem, the preferred option, and the main impacts.
 - **Adequacy statement**

A statement about who has reviewed the RIS (RIAU or name of department that has reviewed the RIS) and whether the RIS is adequate according to the criteria agreed by Cabinet (see paragraph 29).
 - **Status quo and Problem**
 - A brief, high-level summary of relevant key features of the current situation – not just features of the current regulation.
 - A summary of why government action is needed, including why the current arrangements are insufficient to address the problem. This should contain an appropriate level of detail on the costs and benefits of the status quo (including compliance costs, risks and opportunities).
 - **Objectives**

The objectives that options are measured against.

³ A Word template setting out these headings is attached to the RIA Guidelines, which are available on the MED website: <http://www.med.govt.nz>

- **Alternative options**

For each option that is neither the status quo nor the preferred option:

- a brief, high-level summary of key features of the option;
- why it is not the preferred option, including an appropriate level of detail on the benefits and costs (including compliance costs, risks and opportunities).

- **Preferred option**

- A brief, high-level summary of key features of the preferred option.
- Why it is preferred and a statement of all of the proposal's impacts, including an appropriate level of detail on the benefits and costs (including compliance costs).
- A risk assessment with a description of how risks will be/are being mitigated.
- Steps that have been taken to minimise compliance costs, if any.
- A paragraph that briefly describes how the preferred option would impact on the stock of regulation, including whether the proposal overlaps and interacts with existing rules, whether the proposal makes any existing rules redundant, and whether these rules are being removed or altered as part of the proposal.

- **Implementation and review** (note: this section does not need to be completed for tax policy proposals)

- How the proposal will be given effect, including timetables where available.
- Plans for notifying affected parties of what they need to do to comply with any new requirements, if any.
- The enforcement strategy that is to be implemented to ensure that the preferred option achieves the public policy objective, if any.
- Plans for monitoring and evaluating the preferred option, including key dates, if any.

- **Consultation**

Who was consulted? What was the form of consultation? Key feedback from stakeholders and government departments on each of the options considered, with particular emphasis on any significant concerns that were raised about the preferred option, how the department authoring the RIS altered the proposal to address these concerns, and, if they did not alter the proposal, why not.

- 12 The RIS should provide a summary of the required information and should focus on the analysis of the options, including why the preferred option is best. Background elaboration should be kept to a minimum. The RIS needs to be able to stand alone. Departments should clearly specify the assumptions they have made about the drivers of the problem or issue and how the proposed solutions will influence these drivers. The length of the RIS will depend largely on the complexity of the problem under consideration, the number of options considered, and the extent of the analysis conducted

on the proposal and the alternatives, which should be appropriate given the magnitude of the proposal.

- 13 When providing a discussion of impacts of options, the RIS should not be limited to economic concerns, and should examine the full range of outcomes including social, cultural, health, and environmental outcomes.

Exemptions from RIS requirements

- 14 The RIS requirements do **not** apply where the proposal:
- 14.1 is of a minor or machinery nature and does not substantially alter existing arrangements;
 - 14.2 deals with administrative procedures within or between departments, and does not impact on business, consumers, or the public;
 - 14.3 is necessary to implement an international treaty for which an extended National Interest Analysis (NIA) has been prepared and submitted to Cabinet. This means that each time a RIS is required, an extended NIA could be prepared in substitute for the RIS;
 - 14.4 is to give effect under urgency, in terms first announced in the Budget, to a specific Budget decision, where the decision is to:
 - 14.4.1 repeal, impose, or adjust a tax, fee or charge; or
 - 14.4.2 confer, revoke, or alter an entitlement; or
 - 14.4.3 impose, revoke, or alter an obligation;
 - 14.5 is an Order in Council that provides solely for the commencement of enabling legislation or any provision of enabling legislation.
- 15 In the case of a Cabinet paper proposing that New Zealand take treaty action, a NIA can be prepared instead of a RIS, provided it complies with all RIS requirements (an 'extended NIA'). In these circumstances all of the procedures that are set out in this circular apply to the extended NIA. The department leading the policy work should liaise with both the Treaty Officer in the Legal Division of the Ministry of Foreign Affairs and Trade and the RIAU about the respective requirements.
- 16 For proposals involving supplementary order papers (SOPs), the submission to Cabinet on the proposal should identify whether the SOP alters the content of the RIS that was the basis of Cabinet's decision on the original policy/legislation, and if so, in what way. A new RIS is not required and other requirements for regulatory analysis do not apply.

Regulatory Impact Analysis section in Cabinet papers

- 17 Cabinet has agreed to change the Regulatory Impact and Business Compliance Cost section in Cabinet papers. Cabinet and committee papers that contain policy proposals that will result in government bills or statutory regulations are required to contain a section entitled **Regulatory Impact Analysis**. The requirement for a section in the Cabinet paper is additional to the RIS itself. The Cabinet paper is to indicate:
- 17.1 whether the department confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation RIS requirements, have been complied with;
 - 17.2 whether a RIS has been prepared and whether the RIAU considers the RIS is adequate (or, if the RIS is not reviewed by the RIAU, whether the department considers it is adequate) or, if a RIS has not been prepared, why not;;
 - 17.3 whether the final RIS was circulated with the Cabinet paper for departmental consultation.
- 18 For proposals that are likely to have a significant impact on economic growth, the RIAU will provide a comment on whether the analysis and the RIS are adequate. Consultation with the RIAU should be noted on the CAB 100 consultation form, in addition to any other consultation that has taken place with MED on the paper.

Requirements for discussion documents

- 19 Cabinet has also agreed to strengthen the requirements by requiring regulatory analysis in discussion documents. Departments must include questions and/or discussion of the substantive elements required for a RIS (problem, objectives, options, impacts of those options, and, where relevant, implementation and review strategies) or a draft RIS for all discussion documents that include proposals that would require a RIS. Further guidance on these requirements is set out in the MED's Regulatory Impact Analysis Guidelines.
- 20 The regulatory impact analysis section in Cabinet papers seeking agreement to release discussion documents should state whether the substantive RIS elements (or a draft RIS) have been included in the discussion document at a level that is reasonable given the stage of the policy development process and whether the approach in the discussion document complies with the Code of Good Regulatory Practice.
- 21 Where there are discussion documents that are expected to result in proposals likely to have a significant impact on economic growth, the discussion document should be submitted to the RIAU to comment on whether the design of the discussion document is likely to result in an adequate final RIS.

Publication of RISs

- 22 Since 2001 there has been a requirement for RISs with business compliance cost statements to be published so that the regulatory analysis process is open and transparent. Cabinet has now agreed that all RISs should be published.

- 23 All RISs are required to be:
- 23.1 attached to the press statement announcing any new policy for which a RIS is required;
 - 23.2 lodged on the responsible department's website, and the dedicated pages of the Ministry of Economic Development's website: <http://www.med.govt.nz>⁴;
 - 23.3 included in the explanatory note to bills that are introduced into the House.
- 24 There may, however, be some instances where it is not appropriate to publish the RIS or sections of the RIS. The provisions of the Official Information Act 1982 should guide decisions about whether a RIS, or part of a RIS, should be published.
- 25 The decision on the precise timing of publication of RISs is left to the responsible Minister and/or Cabinet. Ministers may wish to review and amend the RIS to ensure that it fully reflects the government's position and is of a high standard.

Format Requirements

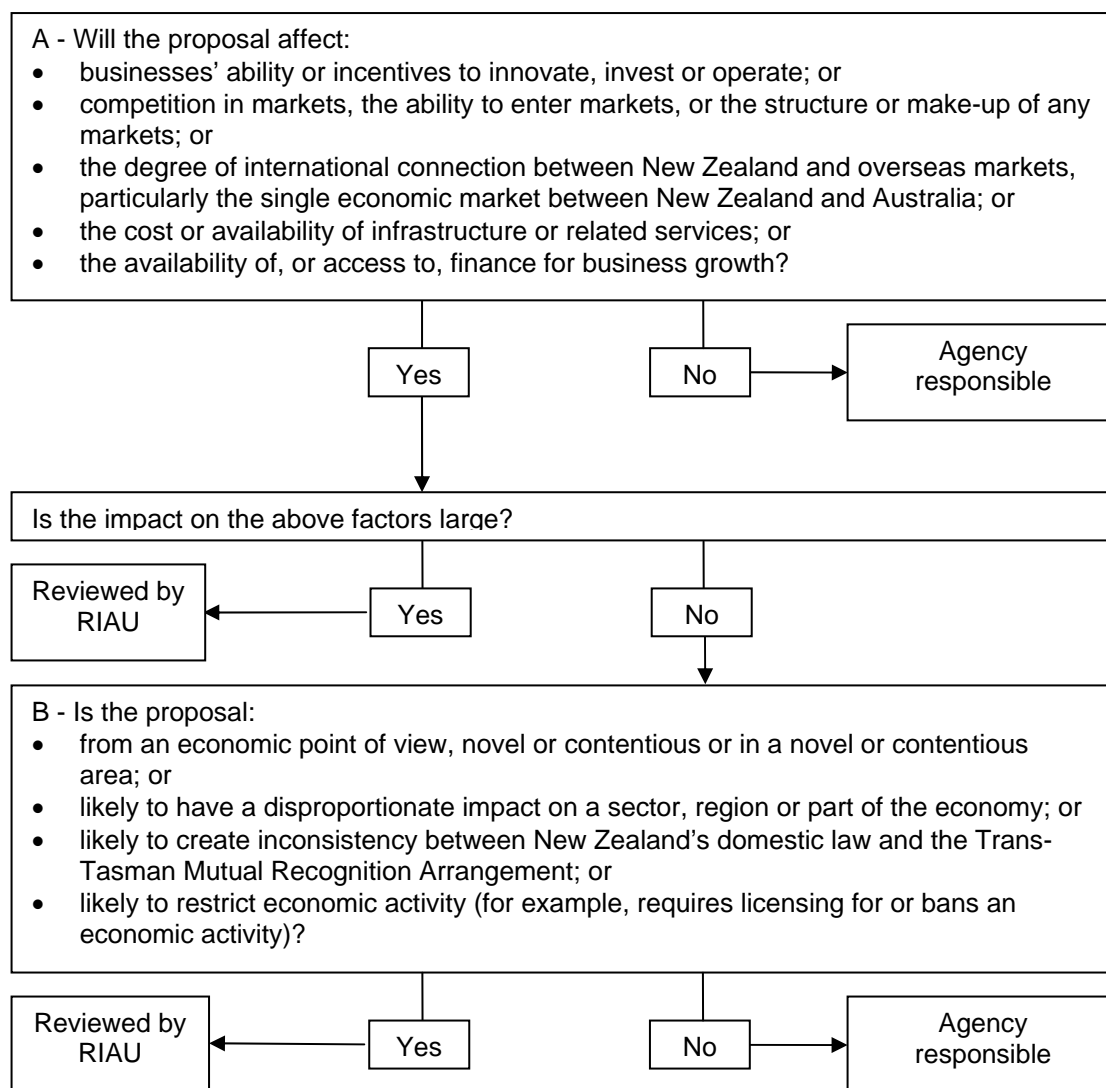
- 26 Departments should ensure that a suitable electronic version of the RIS (in ASCII or Microsoft Word format) is supplied to the Parliamentary Counsel Office (PCO) in sufficient time to enable it to be included in the copies of the draft Bill that are printed for submission to the Cabinet Legislation Committee (LEG).
- 27 RISs for incorporation in explanatory notes must, so far as possible, follow the standard format specified by the PCO, as the typesetting process for the printing of Bills imposes limitations on the format for explanatory notes to Bills. Departures from this format, or requests for the inclusion of non-text material such as tables or graphs, may not be able to be accommodated, or may result in delays in the production of LEG copies of the Bill.
- 28 Enquiries about the PCO's requirements for including a RIS in the explanatory note to bills should be directed to the PCO team leader responsible for the department's legislation.

Role of the Regulatory Impact Analysis Unit

- 29 Cabinet has agreed that the MED RIAU should focus on those proposals with "significant potential impact on economic growth", and to allow the RIAU to deem a RIS inadequate if it:
- 29.1 fails to explain why the existing framework would not suffice to deal with the problem being addressed;
 - 29.2 fails to include an appropriate cost-benefit analysis, risk assessment and statement of compliance costs; or
 - 29.3 has been subject to manifestly inadequate consultation.

⁴ When the responsible Minister and/or Cabinet determines the RIS is ready for publication, departments must send the departmental website link for each RIS to MED at ria@med.govt.nz. The RIS on departmental websites must comply with the e-government web guidelines.

- 30 The RIAU will not review proposals that are not likely to have a significant impact on economic growth. Departments will need to take responsibility for their own RIA and ensure they meet the above criteria.
- 31 To determine whether proposals should be reviewed by the RIAU, departments, in consultation with the RIAU, must apply the following tests:



- 32 When a proposal meets the test of having a significant impact on economic growth, the RIAU has advised that it requires, if possible:
- 32.1 5-10 working days to comment on discussion documents;
- 32.2 departments to begin discussing the regulatory impact analysis with the RIAU at least 20 working days before finalising the paper;
- 32.3 10 working days to review an RIS.
- 33 The RIAU has advised that the regulatory impact analysis and RIS can be reviewed simultaneously and that the analysis should be submitted to the RIAU as soon as it is completed.

Further information

- 34 MED has developed detailed guidance on undertaking regulatory impact analysis and preparing RISs in its Regulatory Impact Analysis Guidelines, which are available from its website: <http://www.med.govt.nz>.
- 35 Enquiries about PCO's requirements for including a RIS in the explanatory note to bills should be directed to the PCO team leader responsible for the department's legislation.
- 36 This circular is also available on the Cabinet Office website at www.cabinetoffice.govt.nz. The contents will also be included in the [Step by Step Guide: Cabinet and Cabinet Committee Processes](#) (also available on the Cabinet Office website) when it is next updated.

Secretary of the Cabinet