

The Treasury

Temporary Suspension of Regulatory Impact Analysis Requirements for Direct Covid-19 Responses Information Release

May 2020

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<https://treasury.govt.nz/publications/information-release/covid-19-temporary-suspension-regulatory-impact-assessment-requirements>

Context: This Treasury Report and the attached draft Cabinet paper were provided to the Office of the Minister of Finance on Friday 20 March.

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Where this is the case, the relevant sections of the Act that would apply have been identified.

Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to sections of the Act under which information has been withheld:

[39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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TE TAI ŌHANGA
THE TREASURY

Treasury Report: Oral item for Cabinet 23 March 2020: Temporary suspension of Regulatory Impact Analysis requirements for direct Covid-19 responses

Date:	20 March 2020	Report No:	T2020/719
		File Number:	SH-11-2-7-1

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to table the attached draft Cabinet paper in support of an oral item at Cabinet on 23 March 2020. Refer a copy of this TR and the Cabinet paper to the Associate Minister of Finance, Hon James Shaw	20 March 2020

Contact for telephone discussion (if required)

Name	Position		Telephone	1st Contact
Elizabeth Thomas	Senior Analyst, Regulatory Quality, Economic Strategy and Productivity	[39]	N/A (mob)	✓
Denny Zdenek Kudrna	Team Leader, Regulatory Quality, Economic Strategy and Productivity	[39]	N/A (mob)	

Minister's Office actions (if required)

Refer a copy of the TR and the Cabinet paper to the Associate Minister of Finance, Hon James Shaw
Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

Draft Cabinet paper

Treasury Report: Oral item for Cabinet 23 March 2020: Temporary suspension of Regulatory Impact Analysis requirements for direct Covid-19 responses

Executive summary

The attached draft Cabinet paper “Temporary suspension of Regulatory Impact Analysis requirements for direct Covid-19 responses”, proposes the Regulatory Impact Analysis (RIA) requirements be suspended for regulatory proposals responding directly to the Covid-19 pandemic submitted to Cabinet up until or on 31 August 2020.

We propose that you table this paper at Cabinet on Monday 23 March 2020 in support of your oral item seeking agreement to this proposal. Talking points are attached.

We have developed this proposal to address the costs and uncertainties created by Covid-19 proposals being developed at pace with no time for regulatory impact analysis, and no exemption in the RIA requirements for proposals to respond to emergencies.

The suspension proposal is a significant and strategic change to the RIA requirements, and as such does not fall within the day-to-day responsibility for the regulatory management system, which you delegated to Associate Minister of Finance, Hon James Shaw in August 2019. We recommend, however, that you share this Treasury Report and the Cabinet paper with Minister Shaw as soon as feasible.

The draft Cabinet paper proposes that you proactively release the Cabinet paper as soon as feasible in the interests of transparency around the RIA process for these emergency proposals.

Recommended Action

We recommend that you:

- a **Agree** to table the attached draft Cabinet paper “Temporary suspension of Regulatory Impact Analysis requirements for direct Covid-19 responses” in support of your oral item at Cabinet on Monday 23 March 2020.
- b **Agree** to forward this report and the attached Cabinet paper to Associate Minister of Finance, Hon James Shaw in recognition of his delegation covering day-to-day responsibilities in the regulatory management system.

Denny Zdenek Kudrna
Team Leader | Regulatory Quality

Hon Grant Robertson
Minister of Finance

Treasury Report: Oral item for Cabinet 23 March 2020: Temporary suspension of Regulatory Impact Analysis requirements for direct Covid-19 responses

The current situation

The Regulatory Quality Team (RQT) has so far dealt with four Covid-19 responses that under normal circumstances should be accompanied by regulatory impact analysis. There may also have been others we were not made aware of, and we expect more to come.

Regulatory proposals proceeding without RIA would normally be subject to procedures for inadequate RIA as set out in Cabinet Office Circular (17)3, including considering whether a Supplementary Analysis Report (SAR) is required.

We have been considering these proposals on a case-by-case basis, and have generally not recommended SARs, as these are unlikely to serve any useful purpose when the Cabinet decisions and implementation are proceeding at such pace. We have, however, generally advised that the interventions should be monitored, so that they can be adjusted as necessary and inform future emergencies.

Safeguards on the proposed RIA suspension and implementation arrangements

The proposal we have developed to suspend RIA requirements for direct Covid-19 responses includes measures to mitigate the risks of suspending RIA:

- it is time-limited and tightly focussed on direct Covid-19 responses
- RQT and the Treasury Covid-19 team will work with departments to get available relevant analysis included in Cabinet papers, and
- we will monitor use of the suspension to identify and address issues that arise.

We have had a preliminary conversation with the Cabinet Office on how we would implement this proposal, which may be through updating the CabGuide. We will work with the Cabinet Office on this, and advise departments of the new process.

Developing standing provisions for RIA in emergency circumstances

While the suspension is appropriate in the short-term, we recognise there is a gap in the RIA requirements regarding emergencies. We will develop advice on standing RIA provisions to apply in times of emergency.

Such provisions are best developed when there is opportunity for calmer and more robust analysis, and when we can consider circumstances beyond the current emergency. We will seek wider expertise from within the public sector, including consulting with departments that provide RIA and agencies with experience in developing standing provisions to apply in emergencies.

The Epidemic Preparedness Act 2006 may provide a framework to help us formulate a more permanent RIA exemption, including how it is triggered and how to protect against the risk of scope creep. How quickly we can progress this will depend on the uncertainties of Covid-19, but we will provide a progress report in June 2020.

Talking points for Cabinet

1. This paper proposes that we suspend Regulatory Impact Analysis (RIA) for proposals responding directly to Covid-19 submitted to Cabinet until or on 31 August 2020.
2. The proposal responds to the costs and uncertainties of Covid-19 responses developed at pace with no time for regulatory impact analysis, combined with no RIA exemption designed for emergency situations.
3. Four such Covid-19 responses have been processed so far, and there are likely to be more. The situation risks bringing the RIA process into disrepute.
4. My proposal mitigates the risks of suspending RIA by being time-limited and tightly focussed on direct Covid-19 responses, as determined by the Treasury Covid-19 Team.
5. RQT and the Treasury Covid-19 team will work with departments to get available relevant analysis included in Cabinet papers, and monitor use of the suspension to identify and address issues that arise.
6. The Treasury will work with the Cabinet Office to implement our decisions (possibly updating the CabGuide), and advise departments of the new process.
7. I will proactively release the Cabinet paper as soon as feasible in the interests of transparency around the RIA process for these emergency decisions.
8. I propose that Cabinet agree the recommendations in the paper I have tabled, ie:
 - a. **Agree** to suspend the RIA requirements for emergency regulatory proposals relating directly to Covid-19, so that these proposals may proceed to Cabinet decisions without accompanying RIA at any time up until or on 31 August 2020.
 - b. **Agree** that this suspension apply only to direct Covid-19 responses, as determined by the Treasury, and the Treasury will work with departments to ensure that available relevant analysis is included in the Cabinet papers to inform ministers' decisions.
 - c. **Note** that this suspension proposal does not alter the RIA requirements for any other government regulatory proposals.
 - d. **Note** that my officials will develop advice on standing provisions for RIA in times of emergency.

Office of the Minister of Finance

Cabinet

TEMPORARY SUSPENSION OF REGULATORY IMPACT ANALYSIS REQUIREMENTS FOR DIRECT COVID-19 RESPONSES

Proposal

1. To assist timely government responses to the evolving context of the Covid-19 pandemic, I propose that the Regulatory Impact Analysis (RIA) requirements be suspended for regulatory proposals responding directly to the Covid-19 pandemic that are submitted to Cabinet up until or on 31 August 2020.

Background

Regulatory Impact Analysis

2. The RIA requirements support and inform the government's decisions on proposals for regulatory change. They are a process and an analytical framework that encourages a systematic and evidence-informed approach to policy development. Routine publication of Regulatory Impact Assessments contributes to the transparency and accountability of government.
3. Cabinet Office Circular (17)3 sets out the RIA requirements which, save for specific exemptions, apply to all policy proposals taken to Cabinet for approval that include a government regulatory proposal.
4. None of the specified exemptions applies to proposals to respond to emergencies. Nor does the circular give any guidance on how such proposals should be handled.

The current problem

5. We have already approved regulatory changes in response to Covid-19, and more are being developed. These proposals have been developed and introduced at great speed, and this is likely to continue. In these circumstances there is little to no time for the robust analysis expected by the RIA requirements.
6. Under normal circumstances, the absence of RIA would be followed by advice from the Treasury on the need for a Supplementary Analysis Report (SAR) to address the missing analysis or to ensure subsequent monitoring and report back.
7. The Treasury has considered Covid-19 proposals to date on a case-by-case basis, with their advice recognising that a SAR is unlikely to serve any useful purpose once a Cabinet decision has been made and implementation is proceeding at pace. They have, however, generally advised that the interventions should be

monitored, so that they can be adjusted as necessary and lessons learnt for future emergencies.

8. This case-by-case approach creates high costs in time and uncertainty for departments and the Treasury, while adding little or no value at a time when departmental resources are already stretched. There is also a risk that the approach undermines the integrity of the RIA process.

Proposed temporary solution

9. To facilitate government responses to these extraordinary circumstances, I propose that we temporarily suspend the RIA requirements with respect to emergency proposals relating directly to Covid-19. These regulatory proposals may proceed to Cabinet decisions without accompanying RIA.
10. There are risks in removing the RIA requirements in these circumstances. When we are asked to make Cabinet decisions, including decisions that may be significant, we will not have the benefit of departments' analysis to help us determine whether the proposal is the best and most feasible in the circumstances. However, the risks of not making decisions are considerable.
11. To help mitigate the risks of a temporary Covid-19 RIA suspension, I propose that the suspension be accompanied by the following conditions:
 - a. The suspension will apply only up until or on 31 August 2020.
 - b. The suspension will apply only to direct Covid-19 responses.
 - c. The Treasury Covid-19 team will decide what a "direct Covid-19 response" is.
 - d. The Treasury Covid-19 team will work with departments to ensure that available relevant analysis is included in the Cabinet papers.
 - e. The Treasury will monitor the operation of the suspension, including whether adjustments are necessary.
12. There is no change to the RIA requirements for all other government regulatory proposals; that is: the normal requirements will continue to apply to all proposals other than direct Covid-19 responses submitted up until or on 31 August 2020.
13. Making this change will enhance the transparency of our Cabinet decision-making processes during this time of emergency, by making clear that RIA is not required in these particular circumstances.

Developing standing provisions for RIA in emergency circumstances

14. The Covid-19 pandemic has exposed a gap in the RIA requirements as they do not contemplate emergency situations. The temporary proposal above will address this in the immediate circumstances.
15. For the longer term, however, we need to improve the resilience and durability of the RIA arrangements so that we are not again confronted with the need for temporary responses of this nature.
16. I have instructed my officials to develop advice on how the RIA requirements should provide for future emergency situations. I expect that they will consult with

the Cabinet Office and with departments as they develop this advice. Experience with the temporary Covid-19 suspension will inform this further advice.

17. I have asked my officials to provide me with an update in June 2020, after which I will consider next steps, including whether I will bring further proposals to Cabinet in due course.

Implementation

18. Treasury officials will work with the Cabinet Office to determine the best ways to give effect to this proposal. I expect that the Secretary to the Treasury will assist as appropriate to communicate this change to other Chief Executives.

Financial Implications

19. This proposal has no financial implications.

Legislative Implications

20. The RIA process is Cabinet-mandated so this proposal has no legislative implications.

Impact Analysis

Regulatory Impact Statement

21. The RIA requirements do not apply to this proposal as it is not regulatory.

Climate Implications of Policy Assessment

22. There are no climate implications from this paper.

Population Implications

23. There are no population implications from this paper.

Human Rights

24. There are no Human Rights implications from this paper.

Consultation

25. Given the time frame for this proposal, there has been no consultation with departments, beyond a conversation with the Cabinet Office.

Communications

26. As noted above, my officials will work with the Cabinet Office to give effect to this decision, and will take steps to communicate the decision as quickly and effectively as possible.

Proactive Release

27. I intend to release this paper in accordance with the proactive release policy. In the interests of transparency around the RIA process, I will release the paper as soon as feasible.

Recommendations

The Minister of Finance recommends that the Cabinet;

- 1 **Note** that the Regulatory Impact Analysis (RIA) requirements do not provide for proposals developed at pace to respond to emergencies such as the Covid-19 pandemic
- 2 **Note** that the current approach of considering whether these proposals may proceed without RIA, and invoking no consequences when they do, consumes scarce departmental and Treasury resources and time without adding value, and risks bringing the RIA process into disrepute
- 3 **Agree** to suspend the RIA requirements for emergency regulatory proposals relating directly to Covid-19, so that these proposals may proceed to Cabinet decisions without accompanying RIA at any time up until or on 31 August 2020
- 4 **Agree** to mitigate the risks of the proposal in recommendation three above by providing that:
 - 4.1 the proposal in recommendation three apply only to direct Covid-19 responses, as determined by the Treasury, and
 - 4.2 the Treasury will work with departments to ensure that available relevant analysis is included in Cabinet papers to inform ministers' decisions
- 5 **Note** that the proposal in recommendations three and four above does not alter the RIA requirements for any other government regulatory proposals
- 6 **Note** that my officials will develop advice on standing provisions for RIA in times of emergency.

Authorised for lodgement

Hon Grant Robertson
Minister of Finance