



Guidance Note

Regulatory Impact Analysis: Exemptions for Emergencies and Post-Implementation Assessment/Review for inadequate or missing Impact Analysis

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<https://treasury.govt.nz/publications/guide/guidance-note-ria-exemptions>

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Introduction

This guidance note explains the new “technical” and “discretionary” exemptions from the Regulatory Impact Analysis (RIA) requirements that can be activated in situations of a declared emergency, and the process to apply for these exemptions.

It also describes the new option of Post-Implementation Assessment/Review in response to inadequate or missing RIA.

Further information

The formal requirements for all government regulatory proposals are set out in the Cabinet Office circular: **CO (20) 2: Impact Analysis Requirements** available at <https://dpmc.govt.nz/publications/co-20-2-impact-analysis-requirements>

The **Guide to Cabinet’s Impact Analysis Requirements** sets out guidance on how to meet the formal requirements for regulatory proposals. It is available on the Treasury’s webpage at <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>

For further information, contact the Regulatory Quality Team: RIA.Team@treasury.govt.nz

Background information

On 22 June 2020, Cabinet confirmed new technical and discretionary exemptions for regulatory proposals linked to declared emergency events [GOV-20-MIN-0017 refers].

Cabinet also confirmed that the temporary RIA suspension for regulatory measures directly responding to COVID-19 would cease from 30 June 2020. This suspension was introduced in March 2020 [CAB-20-MIN-0138 refers].

The process for applying for these exemptions is the same as the standard process to seek an exemption from the Regulatory Impact Analysis (RIA) requirements.

Cabinet also confirmed new post-implementation options as an alternative to the mandatory Supplementary Analysis Report in cases of inadequate or missing RIA where no exemption applies.

A. Technical exemptions available for an emergency

A Regulatory Impact Statement (RIS) is not required where a government regulatory proposal is:

1. to make, amend, or to modify or suspend the effect of, primary or secondary legislation, under powers only able to be exercised by the government during a declared emergency or emergency transition period
2. to do one or more of the following:
 - 2.1 temporarily defer or extend legislative deadlines, or
 - 2.2 provide limited temporary exemptions or modifications to existing legislative requirements, or
 - 2.3 temporarily enable alternative methods of legislative compliancein situations where a declared emergency has made compliance with the existing legislative requirements impossible, impractical or unreasonably burdensome
3. to temporarily defer the start date of legislative requirements not yet in force, in order to reduce burdens, or where the Government or affected entities will no longer be ready by the planned start date, as a result of an emergency.

These emergency technical exemptions are specifically designed for urgent regulatory changes in an emergency. They draw on the experience of COVID-19 and other emergencies such as the Christchurch earthquakes.

Proposals covered by exemption 1 would include new instruments required to manage or contain an emergency. For example, Orders made by the Director-General of Health exercising the functions of a Medical Officer of Health to prevent the outbreak or spread of an infectious disease under section 70 of the Health Act. They would also include proposed modifications to existing legislation, such as allowed by Immediate Modification Orders provided for in the Epidemic Preparedness Act.

Proposals covered by exemptions 2 and 3 are some of the most common temporary legislative changes sought in recent declared emergencies. While the changes must be temporary, measures covered by these two categories of exemption need not necessarily come to an end when the emergency itself formally ends.

Note that the actual statutory declaration of an emergency is not included in the proposed technical exemption. These declarations already fall outside the scope of the regulatory impact analysis requirements, as they are not treated as secondary legislation and do not normally come to Cabinet for approval.

B. Discretionary exemption available for an emergency

A RIS **may** not be required where the Regulatory Quality Team (RQT) is satisfied that a government regulatory proposal, not covered by other Impact Analysis exemptions, is:

1. intended to manage, mitigate or alleviate the short-term impacts of a declared emergency event or of the direct actions taken to protect the public in response to a declared emergency event, **and**
2. required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

This discretionary exemption recognises that some regulatory changes sought in emergency or emergency transition situations may fall outside the grounds of the technical exemptions but may still warrant an exemption or conditional exemption due to obvious urgency.

Such changes will usually be temporary, narrowly focussed, and seek to support, protect, or reduce the burden of compliance on newly vulnerable or heavily impacted groups or areas. For example, this could cover the sorts of changes made in response to COVID-19 to support the mortgage repayment deferral scheme or the business debt hibernation regime. It could also cover proposals to waive or reduce statutory fees or charges imposed by the government.

Because these kinds of regulatory changes can still involve significant choices about the nature and scope of the appropriate intervention, which Impact Analysis would normally help to tease out, RQT may grant this discretionary exemption subject to conditions (as is the case for existing discretionary RIA exemptions).

The conditions will be a matter of discussion with the proposing agency and will be decided on a case-by-case basis depending on what is most feasible or appropriate. Conditions could include:

1. **the provision and/or publication of some alternative information, or limited impact analysis in alternative form** (which could be provided to Cabinet, to Ministers with delegated power to act, or others as appropriate), and/or
2. **a commitment to include a suitable sunset provision and/or undertake a post-implementation assessment or review on agreed terms and timing.** (Conditions of this type could be more appropriate or useful where urgency may preclude providing alternative forms of information or analysis prior to final decision-making).

C. The process to apply for an emergency RIA exemption

The new emergency RIA exemptions are available only in situations of declared emergency, such as the COVID-19 pandemic. The process to apply for these exemptions is the same as the standard process to apply for any of the RIA exemptions. Refer <https://treasury.govt.nz/publications/guide/guide-cabinets-impact-analysis-requirements>.

- 1. Contact the Regulatory Quality Team (RIA.Team@treasury.govt.nz) as soon as possible** when you start work on the regulatory proposal. Please also copy in your Treasury policy team into any correspondence.
 - Fill in the **IA Exemption Application Form** (available at <https://treasury.govt.nz/impact-analysis-requirements-regulatory-proposals>) identifying the exemption or exemptions you believe apply to your proposal and the reasons.
 - Do not forget to also fill in the **CIPA early engagement form** in the same document.
- 2. The Regulatory Quality Team decides whether the proposal, or parts of it, qualifies for an exemption and advises you of the outcome**
 - RQT makes the exemption decisions, in consultation with other parts of Treasury as appropriate. It is possible that you will be asked for further information about your proposal to inform this decision.
 - If the proposal meets the threshold for one or more of the technical exemptions, no RIS is required.
 - If the proposal meets the threshold for the discretionary exemption, RQT may grant the exemption subject to conditions. RQT will discuss any likely conditions with you, and these will be determined case-by-case.
 - Relevant factors include the timeframe for development and implementation of the proposal, the extent and nature of likely impacts, the degree of uncertainty, risks or novelty of the proposal.
 - Conditions may include provision or publication of additional information or a reduced form of impact analysis, or where such conditions may be precluded by urgency, including a sunset clause, and/or an undertaking to do a post-implementation assessment or review may be appropriate.
- 3. RQT provides you with a statement for the Impact Analysis section of your Cabinet paper**
 - If your proposal is granted an exemption, RQT will provide you with a statement setting out that decision and outlining any conditions of that exemption.
 - If an exemption is not granted, the normal process will apply to determine the appropriate RIS template for your proposal (time permitting) or, if there is no time available, to agree on a Supplementary Analysis Report or Post-Implementation Assessment/Review (see D. below).

4. **If the proposal is exempt subject to conditions, you will need to fulfil the conditions of the exemption and advise RQT when you have done so**
 - Depending on the nature of the conditions, you may be required to do this before or after the relevant Cabinet paper is submitted.
 - If the condition relates to post-implementation assessment or review further discussions will be needed with RQT concerning plans and timing, and scheduled follow-ups.

D. Post Implementation Assessment/Review to respond to inadequate or missing RIA

Cabinet agreed to add post-implementation assessment or review as possible alternatives to the mandatory Supplementary Analysis Report (SAR) currently required for regulatory proposals with missing or inadequate RIA, but not exempt.

This new option for inadequate or missing RIA applies at any time and is not linked to emergency declarations. The option of post-implementation assessment or review could be particularly useful in cases where regulatory proposals are being implemented quickly, and the normal pre-implementation SAR has limited value.

The nature, scope and timing of a SAR or a post-implementation commitment will continue to be determined by officials or Ministers on a case-by-case basis, beginning with discussions between RQT and the proposing agency.