

The Treasury

LEG-22-SUB-0071: Order in Council and Regulations Relating to the Reserve Bank of New Zealand Act 2021

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Office of the Minister of Finance
Chair, Cabinet Legislation Committee

ORDER IN COUNCIL AND REGULATIONS RELATING TO THE RESERVE BANK OF NEW ZEALAND ACT 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Reserve Bank of New Zealand Act 2021 Commencement Order 2022, and the Reserve Bank of New Zealand (Infringement Notice and Reminder Notice) Regulations 2022.

Policy

- 2 The Reserve Bank of New Zealand Act 2021 (the Act) modernises the institutional arrangements of the Reserve Bank of New Zealand (the Reserve Bank), protecting its operational independence while strengthening governance and accountability. Key changes include replacing the single-decision maker model with a decision-making governance board, and strengthening reporting and accountability requirements.
- 3 The Act also reframes the Reserve Bank's financial policy objective to protecting and promoting the stability of New Zealand's financial system. It retains the current economic objectives of supporting price stability and maximum sustainable employment, which were updated in 2018. Related to this, the Act introduces a Financial Policy Remit, a transparent mechanism for the Minister to specify matters (i.e. Government priorities) which the Reserve Bank must have regard to when achieving its financial stability objective, acting in a way that furthers the purposes of prudential legislation, and acting as a prudential regulator and supervisor.
- 4 The Act received Royal Assent on 16 August 2021. Transitional provisions and provisions relating to regulations came into force on the day after Royal Assent. The remainder of the Act will come into force on a date or dates to be appointed by the Governor-General by Order in Council – 'the main commencement date'.¹ Previously I have advised this Committee that under delegated authority [DEV-19-MIN-0345] I have determined that the main commencement date should be 1 July 2022. This will align with the new financial year which is important as the Act introduces a new reporting and accountability framework. The new Board will commence its duties on this date.
- 5 The Act also creates two new infringement offences relating to:
 - 5.1 **Banknote handling machines:** the Act introduces a new power that allows the Reserve Bank to set standards for devices that check the authenticity or quality of a bank note in preparation for its distribution to the public. The Reserve Bank may, by written notice, require the operator to test the machine against those standards and report on the testing outcomes.

¹ Any provision that has not earlier been brought into force will come into force on 1 October 2022 (see section 2(3)).

The Reserve Bank may, by written notice, require the operator of a machine to cease to operate until the Bank is satisfied the machine meets any standards. Section 166 makes it an infringement offence to fail to comply with a notice.

5.2 **Information gathering power:** the Act allows the Reserve Bank to require a relevant person to supply information for central banking and financial system oversight functions (section 262). It is an infringement offence to fail to supply information (section 265). A 'relevant person' generally includes those who provide a financial service, or those 'associated' with such a provider (such as provider's holding company or subsidiary).

6 When a person is alleged to have committed an infringement offence they may be issued with an infringement notice.² The form and content of the infringement notice must be prescribed in regulations (section 278). In addition to infringement notices, reminder notices must also be in the form prescribed in regulations (section 281). The fees for both the infringement offences outlined above are set in the Act itself.³

Timing and 28-day rule

7 Subject to Cabinet's approval I propose that the Order in Council and the Regulations be submitted to the Executive Council on 23 May 2022 and published in the Gazette on 26 May 2022.

8 I propose that both the Order in Council and the Regulations come into force on 1 July 2022.

Compliance

9 The Order in Council and Regulations comply with:

9.1 the principles of the Treaty of Waitangi;

9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;

9.3 the principles and guidelines set out in the Privacy Act 2020

9.4 relevant international standards and obligations;

9.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

10 Regarding the Regulations I have met the requirement set out in section 291(2) to consult the Reserve Bank on any regulations prescribing information to be included in infringement notices and reminder notices and the form of notices. The Reserve Bank confirmed by letter dated 20 April 2022 that the draft Regulations are satisfactory subject to one minor change (being the removal of the ability to pay infringement fees by instalments). As defendants will typically be financial institutions the Bank considered this option was not required. The Treasury agreed.

² Alternatively proceedings may be filed under section 14 of the Criminal Procedure Act 2011.

³ See section 166 and section 265. For both infringement offences the fees are \$1,000 in the case of an individual, and \$3,000 in any other case. More significant fines can be imposed by the court.

Regulations Review Committee

- 11 Officials consider that there are no grounds for the Regulations Review Committee to draw the Order in Council or Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 12 Parliamentary Counsel have certified both the Order in Council and the Regulations for submission to Cabinet.

Impact Analysis

- 13 The Treasury's Regulatory Impact Analysis team has determined that the proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement. The Reserve Bank of New Zealand Act 2021 Commencement Order 2022 provides solely for the commencement of existing legislation. Substantive issues around the Reserve Bank of New Zealand (Infringement Notices and Reminder Notice) Regulations have been addressed by previous Regulatory Impact Statements submitted at the time Cabinet approval was sought [DEV-20-SUB-0041 and DEV-20-SUB-0091 refer].

Publicity

- 14 The Order in Council and the Regulations will be published on Parliamentary Counsel's 'New Zealand Legislation' website.

Proactive release

- 15 I propose to publish this Cabinet paper on the Treasury's website, subject to redactions as appropriate under the Official Information Act 1982, within 30 days of Cabinet's decision.

Consultation

- 16 The Reserve Bank of New Zealand was consulted on this paper.
- 17 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Recommendations

I recommend that the Cabinet Legislation Committee:

Order in Council

- 1 note that on 11 December 2019 the Cabinet Economic Development Committee made substantive policy decisions on what is now the Reserve Bank of New Zealand Act 2021 and authorised the Minister of Finance to further clarify and develop policy matters [DEV-19-MIN-0345].
- 2 note the Minister of Finance, under the delegated authority referred to in paragraph 1, has decided that the Reserve Bank of New Zealand Act 2021 shall have a main commencement date of 1 July 2022.

- 3 note that the Reserve Bank of New Zealand Act 2021 Commencement Order 2022 will give effect to the decision referred to in paragraph 2.
- 4 authorise the submission to the Executive Council of the Reserve Bank of New Zealand Act 2021 Commencement Order 2022.
- 5 note that the Reserve Bank of New Zealand Act 2021 Commencement Order 2022 will bring the remainder of the Act into force on 1 July 2022.

Regulations

- 6 note that on 18 March 2020 the Cabinet Economic Development Committee agreed that a person who fails to supply required information to the Reserve Bank be subject to an infringement offence [DEV-20-MIN-0041].
- 7 note that on 18 March 2020 the Cabinet Economic Development Committee agreed an operator of devices that test the quality and authenticity of banknotes who does not comply with a notice from the Reserve Bank, or who operates a machine that does not comply with the standard set by the Reserve Bank, be liable for an infringement fee [DEV-20-MIN-0041].
- 8 note that the Reserve Bank of New Zealand Act 2021 (once in force) will give effect to the decisions referred to in paragraphs 6 and 7.
- 9 note that, under section 278 of the Reserve Bank of New Zealand Act 2021, an infringement notice relating to the infringement offences described in paragraphs 6 and 7 above must be in the form set out in regulations.
- 10 note that the Reserve Bank of New Zealand (Infringement Notice and Reminder Notice) Regulations 2022 provides the form of those notices.
- 11 authorise the submission to the Executive Council of the Reserve Bank of New Zealand (Infringement Notice and Reminder Notice) Regulations 2022.
- 12 note that the Reserve Bank of New Zealand (Infringement Notice and Reminder Notice) Regulations 2022 come into force on 1 July 2022.
- 13 note that section 291(2) of the Reserve Bank of New Zealand Act 2021 requires the Minister to consult with the Reserve Bank on any regulations prescribing information to be included in infringement notices and reminder notices and the form of notices.
- 14 note the advice of the Minister for section 291(2) is that this requirement has been met.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance