

In Confidence

Office of the Associate Minister of Housing (Public Housing)

Chair, Cabinet Legislation Committee

HEALTHY HOMES STANDARDS: PROPOSAL TO DELAY THE 2020 COMPLIANCE DATE

Proposal

1. This paper proposes a minor amendment to the Residential Tenancies (Healthy Homes Standards) Regulations 2019 due to the impact of COVID-19.
2. The amendment would change the 2020 compliance date from 1 July 2020 to 1 December 2020. This compliance date relates to when landlords must include a statement of their current level of compliance with the Healthy Homes Standards in any new, varied or renewed tenancy agreements.
3. This proposal will not affect any of the dates by which rental properties have to comply with the Healthy Homes Standards (relating to heating, insulation, ventilation, moisture ingress, draught stopping and drainage).
4. I have authorised drafting without reference to Cabinet as the amendment is routine and does not require policy decisions.

Background

5. In December 2018, Cabinet agreed to the Healthy Homes Standards (the Standards) [SWC-18-MIN-0196 refers]. The Standards were drafted into the Residential Tenancies (Healthy Homes Standards) Regulations 2019 under section 138B(1) and became law on 1 July 2019. The Standards impose requirements on landlords in relation to heating, insulation, ventilation, moisture ingress, draught stopping and drainage. The standards do not place any obligations on tenants.
6. The Standards include a timeframe that staggers the compliance deadlines from 1 July 2019 to 1 July 2024 to allow landlords sufficient time to comply:

Compliance date	Requirement
1 July 2019	Ceiling and underfloor insulation is compulsory in all rental homes where it is reasonably practicable to install. Landlords must sign a statement of intent to comply with the healthy homes standards in any new, varied or renewed tenancy agreement. This statement is in addition to the existing requirement to include a signed insulation statement with all tenancy agreements that covers what insulation the property has, where it is, and what type. Landlords must keep records that demonstrate compliance with any healthy homes standards that apply or will apply during the tenancy.
1 July 2020	Landlords must include a statement of their current level of compliance with the healthy homes standards in any new, varied or renewed tenancy agreement.
1 July 2021	Private landlords must ensure their rental properties comply with the healthy homes standards within 90 days of any new, or renewed,

Compliance date	Requirement
	tenancy. All boarding houses (except Kāinga Ora and Community Housing Provider boarding house tenancies) must comply with the healthy homes standards.
1 July 2023	All Kāinga Ora (formerly Housing New Zealand) houses and registered Community Housing Provider houses must comply with the healthy homes standards.
1 July 2024	All rental homes must comply with the healthy homes standards.

COVID-19 has impacted on landlords' ability to meet the 1 July 2020 compliance date

7. From 1 July 2020, landlords are required to include a statement of the current level of the compliance of their rental properties with the Standards in any new, varied or renewed tenancy agreement.
8. In order to complete a statement, landlords need access to their rental properties and allow tradespeople to complete inspections to determine the level of compliance. However, restrictions to property access during COVID-19 Alert Levels 3 and 4 have limited landlords' ability to undertake this activity.
9. Tenant advocacy groups have also noted tenants' concerns about allowing tradespeople into their homes to carry out the work due to concerns about Covid-19.
10. It is likely that further delays will occur during Level 2 due to backlogs experienced by industry professionals with sufficient, relevant experience, and the sector has identified it is now impeded in its ability to complete these inspections and complete the compliance statement by 30 June 2020.
11. The decision to pause all planned public information campaign activity in response to the COVID-19 state of emergency meant that promotional activity that was scheduled for April to June 2020 will also impact the sector's ability to comply with the compliance statement. Proposed activity included utilising social, digital and radio media channels, supported by proactive sector engagement, which was designed to encourage understanding, action and compliance with all remaining requirements of the Standards.
12. In addition, a template being developed for landlords to use for their statement of compliance has faced some delays due to the need to reprioritise because of COVID-19-related work and other priorities. This template is a key tool to assist landlords with compliance.
13. Officials will assess whether the sector is on track to meeting the 1 December 2020 deadline in case COVID-19 related delays are more significant than anticipated.

The current exception provisions in the Standards do not adequately address this issue

14. Clause 12 of Schedule 1 of the Standards allows landlords to exclude certain information in the statement of compliance if "it does not exist or otherwise cannot be provided by the landlord". While this could assist landlords who are facing delays in meeting the standards due to COVID-19-related restrictions, this does not relieve a landlord of the requirement to complete a healthy homes statement in tenancy agreements.

Extending the compliance deadline to 1 December 2020 addresses the COVID-19 impacts while ensuring the objectives of the Healthy Homes Standards are met

15. Extending the date for the compliance statement will assist landlords to meet their obligations while at the same time does not impact on the compliance timeline for meeting the Standards themselves (and therefore on the wellbeing of tenants). In addition, a 1 December 2020 date will capture new tenancies commencing over the busy summer period (December and February).
16. Some changes have already been made to improve the quality of rental properties. For example, ceiling and underfloor insulation has been compulsory in all rental homes since 1 July 2019.

Matters which may be contentious

17. The proposed amendment is not likely to raise concerns. The Real Estate Institute of New Zealand in a media release have called for a two-month delay to the compliance date so are likely to be supportive of a five-month extension. The amendment will not impact on tenants' experiencing the benefits of improved healthy homes as no other compliance dates will be changed.
18. The amendment is routine and does not require new policy decisions [Cabinet Manual 7.91(d)]. I therefore authorised drafting without reference to Cabinet.

Timing and 28-day rule

19. It is a requirement of Cabinet that regulations must not come into force until at least 28 days after they have been notified in the New Zealand Gazette. I am seeking a waiver of the 28-day rule on the grounds that the regulation amendment is a response to COVID-19 and needs to come in to force before the current compliance date of 1 July 2020. In accordance with paragraph 7.97 of the Cabinet Manual it is appropriate to seek a waiver because:
 - the regulation has little or no effect on the public or confers only benefits on the public
 - the regulations are made in response to an emergency, and
 - early commencement is necessary to avoid the purposes of the regulations being defeated.

Compliance

20. The amendment to the regulation complies with:
 - a. the principles of the Treaty of Waitangi;
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - c. the principles and guidelines set out in the Privacy Act 1993;
 - d. relevant international standards and obligations;
 - e. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

21. There are no grounds for the Regulations Review Committee to draw the regulation amendment to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

22. The draft amendment was certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

23. The Treasury has determined that this proposal is a direct COVID-19 response and has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138). Treasury has worked with the Ministry of Housing and Urban Development to ensure available relevant analysis is included in this paper.

Proactive release

24. I intend to proactively release this paper, subject to any required due diligence around the need for certain material to be redacted. I expect that proactive release will occur within the 30 business days provided for in Cabinet Office Circular [CO (18) 4].
25. The Office of the Associate Minister for Housing (Public Housing), in consultation with the Prime Minister's Office and the Office of the Minister of Housing, will manage any publicity.

Consultation

26. The following agencies were consulted on the development of this Cabinet paper: the Ministries of Justice, Business, Innovation and Employment; the Department of the Prime Minister and Cabinet, Energy Efficiency and Conservation Authority, The Treasury, and Kāinga Ora-Homes and Communities.
27. I have consulted with the Minister of Housing on this Cabinet paper and she has agreed that this Cabinet paper be lodged.

Recommendations

The Associate Minister of Housing (Public Housing) recommends that the Committee:

1. **Note** that the Healthy Homes Standards require landlords to provide a statement of their current level of compliance with the Healthy Homes standards in any new, varied or renewed tenancy agreement from 1 July 2020.
2. **Note** that as a result of COVID-19, landlords have been unable to access their properties to allow tradespeople to carry out inspections required to complete the compliance statement.
3. **Agree** that the compliance date for landlords to provide a statement of their current level of compliance with the Healthy Homes standards in any new, varied or renewed tenancy agreement be changed from 1 July 2020 until 1 December 2020.
4. **Note** that a waiver of the 28-day rule is sought:
 - a so that the regulations can come in to force by 1 July 2020 on 30 June;

b on the grounds that the regulation amendment is a response to COVID-19 and needs to come in to force before the current compliance date of 1 July 2020;

5. **Agree** to waive the 28-day rule so that the regulations can come into force on 30 June 2020;
6. **Note** that the change to this compliance date will not affect any other compliance dates for meeting the Healthy Homes Standards (relating to heating, insulation, ventilation, moisture ingress, draught stopping and drainage) and therefore on the wellbeing of tenants).
7. **Approve** the attached amendment to the Residential Tenancies (Healthy Homes Standards) Regulations 2019 to change the date of compliance when landlords must include a statement of their current level of compliance with the Standards in any new, varied or renewed tenancy agreements from 1 July 2020 to 1 December 2020.

Authorised for lodgement

Hon Kris Faafoi, Associate Minister of Housing (Public Housing)

Proactively Released



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Residential Tenancies (Healthy Homes Standards) Amendment Regulations 2020

Portfolio Associate Housing (Public Housing)

On 26 May 2020, the Cabinet Legislation Committee:

- 1 **noted** that the Healthy Homes Standards require landlords to provide a statement of their current level of compliance with the Healthy Homes standards in any new, varied or renewed tenancy agreement from 1 July 2020.
- 2 **noted** that as a result of COVID-19, landlords have been unable to access their properties to allow tradespeople to carry out inspections required to complete the compliance statement.
- 3 **agreed** that the compliance date for landlords to provide a statement of their current level of compliance with the Healthy Homes standards in any new, varied or renewed tenancy agreement be changed from 1 July 2020 until 1 December 2020;
- 4 **authorised** the submission to the Executive Council of the Residential Tenancies (Healthy Homes Standards) Amendment Regulations 2020 [PCO 22955/2.0] which give effect to the proposal in decision in 3;
- 5 **noted** that a waiver of the 28-day rule is sought:
 - 5.1 so that the Amendment Regulations can come in to force by 1 July 2020 on 30 June;
 - 5.2 on the grounds that the regulation amendment is a response to COVID-19 and needs to come in to force before the current compliance date of 1 July 2020;
- 6 **declined** a waiver of the 28-day rule;
- 7 **invited** the Associate Minister of Housing (Public Housing) to arrange a special edition the Gazette to notify the Amendment Regulations immediately after they are made at the meeting of the Executive Council on 2 June 2020, so that the Amendment Regulations can come into force on 30 June 2020;
- 8 **noted** that the change to this compliance date will not affect any other compliance dates for meeting the Healthy Homes Standards (relating to heating, insulation, ventilation, moisture ingress, draught stopping and drainage) and therefore on the wellbeing of tenants;

- 9 **noted** that officials will assess and report back to the Associate Minister of Housing (Public Housing) on whether the sector is on track to meeting the 1 December 2020 deadline, in case COVID-19 related delays are more significant than anticipated.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Dr David Clark
Hon David Parker
Hon Stuart Nash
Hon Damien O'Connor
Hon Kris Faafoi
Hon Tracey Martin
Hon Aupito William Sio
Hon James Shaw
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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