



Resource Management Amendment Bill – commencement, transitional and savings provisions, s9(2)(g)(i)

Date Submitted:	31 January 2019	Tracking #: 2018-B-05125	
Security Level	In-Confidence/Legally Privileged	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	5 February 2019
s9(2)(g)(i)	For your informatio	
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Actions for Minister's Office Staff	Return the signed report to MfE.
Number of appendices and attachments #2	Titles of appendices and attachments 1. Resource Management Amendment Bill – Transitional arrangements and savings provisions s 9
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Responsible Manager	Robert McClean	022 067 6655	✓
Director	Jo Gascoigne	027 531 7202	

Resource Management Amendment Bill – commencement, transitional and savings provisions ^{s9(2)(g)(i)}

Key Messages

1. This advice seeks your direction on developing commencement, transitional and savings provisions for the proposed Resource Management Amendment Bill (hereinafter referred to as the Bill), ^{s9(2)(g)(i)}

Develop commencement, transitional and savings provisions

2. Changes to the RMA will result in different transition costs for central government, local government and users of the RMA. Commencement, transitional and savings provisions can be drafted into the Bill to help minimise transition costs and facilitate the smooth and efficient implementation of the changes.
3. Cabinet has authorised you to develop commencement, transitional and savings provisions for the proposed legislative changes through the drafting process with the Parliamentary Counsel Office (PCO) (CAB-18-MIN-0485.01, paragraph 63 refers).
4. We have assessed the proposed legislative changes (detailed in Appendix 1) and recommend specific commencement, transitional and savings provisions to:
 - allow adequate time for procedures to be updated to implement the changes
 - provide certainty and continuity for processes that will already be underway at the time the Bill is enacted.
5. We recommend the majority of the proposed changes to commence immediately following Royal assent of the Bill, as this will minimise transition costs to stakeholders and avoid unintended consequences.
6. However, certain legislative changes which may require councils to change their electronic system and officials to update relevant regulations will have some transition costs. Therefore, we recommend that some legislative changes have a three months delayed commencement to enable an effective implementation of the Bill.

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Recommendations

1. We recommend that you:

Develop commencement, transitional and savings provisions for the Bill

- a. **Note** that Cabinet authorised you to develop commencement, transitional and any savings provisions for the Resource Management Amendment Bill with the Parliamentary Counsel Office, through the drafting process (CAB-18-MIN-0485.01, paragraph 63 refers)
- b. **Note** that drafted commencement and transitional provisions will be subject to approval by Cabinet when it considers the Bill for introduction (CAB-18-MIN-0485.01, paragraph 64 refers)
- c. **Note** that we have attached our analysis of the proposed legislative changes, and proposed transitional measures, commencement and savings provisions, in Appendix 1

Commencing immediately

- d. **Agree** that the following legislative changes commence the day after the date of Royal assent:
 - i. repeal regulation making powers that enable the Minister to prohibit or overturn local plan rules, preclude notification on certain activities or

- prescribe who may be considered affected, or prescribe additional fast-track activities
- Yes/No
- ii. reverse the subdivision presumption to restricted (from permitted)
- Yes/No
- iii. reinstate the use of financial contributions under the RMA
- Yes/No
- iv. enable the review of conditions of multiple resource consents
- Yes/No
- v. increase the maximum infringement fee able to be prescribed through regulations
- Yes/No
- vi. remove the restriction on the scope of an appeal on a resource consent to matters raised in a person's submission
- Yes/No
- e. **Agree** that the legislative change to clarify the legal status of deemed permitted activities:
- i. commence the day after the date of Royal assent
- Yes/No
- ii. validate any deemed permitted activities already authorised by the application of section 87BA or 87BB (to the extent that they were lawfully established prior to commencement)
- Yes/No
- f. **Agree** that the legislative change to clarify who can be appointed as alternate Environment Judges:
- i. commence the day after the date of Royal assent
- Yes/No
- ii. validate any Acting Judges that were been appointed as alternate Environment Judges prior to commencement
- Yes/No
- Commencing immediately with savings or transitional provisions*
- g. **Agree** that the legislative change to enable councils to suspend processing of resource consent applications until fixed administrative charges are paid
- i. commence the day after the date of Royal assent
- Yes/No

- ii. only apply to new resource consent applications lodged after commencement
Yes/No
- h. **Agree** that the legislative change to extend the time period, after the date of notification to the consent authority under section 330B(2) of the RMA, for lodging retrospective resource consents for emergency works from 20 to 60 working days
- i. commence the day after the date of Royal assent
Yes/No
- ii. only apply to an activity that has been notified to consent authority after commencement
Yes/No
- i. **Agree** that the legislative change to extend the statutory limitation period for filing charges for prosecutions from 6 months (after the date on which the contravention giving rise to the charge first became known, or should have become known, to the local authority or consent authority) to 12 months after that date
- i. commence the day after the date of Royal assent
Yes/No
- ii. apply to contraventions that occurred after commencement
Yes/No
- j. **Agree** that the legislative change to enable the EPA to take enforcement action under the RMA
- i. commence the day after the date of Royal assent
Yes/No
- ii. enable the EPA to apply its new functions in respect of matters (such as potential offences) that occurred prior to commencement, which include but not limited to:
- taking a prosecution and other enforcement actions and related actions where the alleged offence occurred before commencement
 - assisting with, or taking over a local authority's investigation or enforcement action (including a prosecution) which was initiated before commencement
 - the ability to require information from councils in respect of enforcement actions (including prosecutions) that were initiated before commencement
- Yes/No
- k. **Agree** that the legislative change to protect special advisors to the Environment Court:
- i. commence the day after the date of Royal assent
Yes/No

- ii. apply to special advisors that have been appointed to assist with the Environment Court in a proceeding from the day after the date of Royal assent

Yes/No

Commencing three months after the date of Royal assent with savings or transitional provisions

- l. **Agree** that the legislative changes to remove preclusions on public notification for subdivision and residential activity resource consent applications

- i. commence three months after the date of Royal assent

Yes/No

- ii. only apply to new consent applications lodged after commencement

Yes/No

- m. **Agree** that the legislative changes to remove preclusions on appeals for subdivision and residential activity resource consents

- i. commence three months after the date of Royal assent

Yes/No

- ii. only apply to new consent applications lodged after commencement

Yes/No

- n. **Agree** that the legislative changes to enable applicants for non-notified resource consent applications to have processing suspended

- i. commence three months after the date of Royal assent

Yes/No

- ii. only apply to new consent applications lodged after commencement

Yes/No

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Signature



Robert McClean
Manager, RMA Practice

31/1/2019
Date

Hon David Parker
Minister for the Environment

Date

Proactively released

Resource Management Amendment Bill – commencement, transitional and savings provisions^{s9(2)(g)(i)}

Supporting Material

Purpose

1. The briefing note seeks your agreement for commencement, transitional and savings provisions to be drafted for specific proposals in the Resource Management Amendment Bill (the Bill). Your decision on these matters will enable us to instruct Parliamentary Counsel Office (PCO) to draft these provisions into the Bill.

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Context

Develop commencement, savings and transitional provisions

3. Cabinet has authorised you to develop commencement, transitional and savings provisions for the Bill through the drafting process with the PCO (CAB-18-MIN-0485.01, paragraph 63 refers). These drafted commencement and transitional provisions will be subject to approval by Cabinet when it considers the Bill for introduction (CAB-18-MIN-0485.01, paragraph 64 refers).
4. Specific changes to the RMA have different transition costs for central government, local government and users of the RMA. Many of the proposed changes in the Bill are 'enabling', or are intended to clarify current practice. These changes can therefore commence immediately as there is minimal transition cost. However, others will have some transition costs, and immediate commencement would not be manageable for those tasked with implementing the changes.
5. Commencement, transitional and savings provisions can be drafted into the Bill to help minimise transition costs and facilitate the smooth and efficient implementation of the changes.

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Analysis and advice

Develop commencement, savings and transitional provisions

14. We have bundled the proposals into three categories of transitional measure and commencement provisions. These are:
- legislative changes commencing immediately (coloured green in Appendix 1 and Table 2)
 - legislative changes commencing immediately with savings or transitional provisions (coloured blue in Appendix 1 and Table 2)
 - legislative changes commencing three months after the date of Royal assent with savings or transitional provisions (coloured orange in Appendix 1 and Table 2)
15. We have used immediate commencement as a 'starting point', and unpacked where the costs of this approach outweigh the benefits and justify delayed commencement. We recommend that the proposed changes which relate to the removal of preclusions of public notification for resource consents, removal of preclusions on appeals for residential activities and subdivisions of land and suspension of processing of non-notified consents to have a delayed commencement of three months (after the date of Royal assent).
16. The grace period will enable councils to make the required changes (ie, IT system, internal policies and build capacity), and it will also allow officials to make required consequential updates to the guidance and Resource Management (Forms, Fees and Procedure) Regulations 2003.
17. The delayed commencement by three months may lead to a rush of resource consent applications within a three month period, especially for residential and subdivision activities that are currently precluded from public notification and appeals. However, we consider that the three month period is only a narrow window of opportunity. Any risk of unfairness and resource consent lodgement rush is balanced by the benefit associated with the grace period which allows councils and officials to make the required changes.
18. Our recommended distribution of the proposed changes across these categories are summarised in Table 2 (below).

Table 2: Recommended commencement, transitional and savings provision bundles

Commences the day after the date of Royal assent		Legislative changes commencing three months after Royal assent with savings/transitional provisions
Legislative changes without savings/transitional provisions	Legislative changes with savings/transitional provisions	
Removal of Regulation Making Powers (s360D, s360G and s360H)	Enable councils to suspend processing of resource consent applications if a fixed charge has not been paid (new section)	Remove preclusions on public notification for residential activities and subdivision of land
Reverse the subdivision presumption (s 11)	Enable longer time periods to lodge retrospective resource consents for emergency works (section 330B)	Remove preclusions on appeals for residential activities and subdivision of land (s120)
Reinstate the use of financial contributions	12 month statutory limitation period for offences	Enable applicants to have the processing of their non-notified applications suspended (sections 91A-C)
Enable review of conditions of multiple resource consents (section 128)	Enable the Environmental Protection Authority (EPA) to take enforcement action under the RMA	

Increase maximum infringement fees in RMA, split for natural /non-natural persons ⁶	Protect special advisors to the Environment Court
Removal of restriction on the scope of an appeal on a resource consent to matters raised in a person's submission	
Clarify the legal status of deemed permitted activities (Part 3)	
Clarify who can be appointed as alternate Environment Judges (sections 249 and 250) ⁷	

19. We also recommend that validation clauses be drafted for the proposed changes to facilitate the appointment of alternate Environment Judges and the exercise of deemed permitted activities, as these changes are intended to codify current practice. By including a validation clause, this will ensure that processes that have been undertaken prior to commencement are not subject to any legal challenge.

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⁶ This legislative change will have no effect until such time as the infringement fees set in regulations are updated.

⁷ This may require consequential amendments to the District Court Act 2016 and Te Ture Whenua Maori Act 1993 to the certification requirements for appointment of Acting Judges.

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⁸ Due to be considered by Cabinet Legislation Committee (LEG) in April 2019.

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Consultation and Collaboration

- 39. We have shared our recommendations for the transitional measures and commencement provisions with the Special Interest Group - Regional Consents Managers Group who are generally supportive of these recommendations.
- 40. We have consulted with the Environment Protection Agency (EPA) on the enforcement powers commencement, savings and transitional provisions, and their feedback has been incorporated as part of this briefing note.

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Risks and mitigations

- 44. In regard to the commencement, transitional and savings provisions, there are a number of risks associated with commencing reform proposals quicker than the timeframes we are recommending and/or without the savings provisions. Shortening these timeframes would risk poor implementation of the reform package, and place an increased transition cost burden on stakeholders.

45. A communication and implementation package will also help to deliver on the intention of the amendments and support stakeholder understanding and uptake of the reforms.

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Legal issues

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Financial, regulatory and legislative implications

48. The transitional measures and commencement provisions agreed to here will directly inform PCO drafting of the Bill, and are intended to minimise financial implications.

49. The transitional, commencement and savings provisions will be subject to Cabinet approval, prior to introduction of the Bill (CAB-18-MIN-0485.01, paragraph 64 refers).

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Next Steps

51. If you agree to the commencement, transitional and savings provisions for the legislative changes that have obtained Cabinet approval in this briefing note, we will instruct PCO to include these provisions in drafting the Bill.

52. We will provide relevant information in a draft Cabinet paper for you to take to the Cabinet Legislation Committee when the Bill is drafted.

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54. The table below provides a timeline for the Bill before introduction to the House. This timeline is contingent on timely ministerial decisions, consultation, and adequate resourcing from PCO.

Table 3. Cabinet Process for the proposed bill

Milestone	Date
Draft LEG paper to your office	Week of 18 February
Agency consultation	Week of 25 February
Final LEG paper, RIS and Bill to your office	Week of 11 March
Ministerial consultation and BORA vetting	Week of 18 March
Cabinet paper, bill and RIS lodged for consideration by LEG Committee	4 April

LEG Committee	9 April
CAB Committee	15 April
Introduction to the House	29 April

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Appendix 1 – Resource Management Amendment Bill – Transitional arrangements and savings provisions

CAB-18-MIN-0485.01	Policy	RMA Amendment	Who will be impacted	What will they be required to do	Benefits of commencement immediately following Royal assent	Costs of commencement immediately following Royal assent	Savings provisions (saving old law)	Transitional arrangements	Commencement of provisions
Paragraph No.									
8, 9	Reduce the power of the Minister for the Environment to prohibit or overturn local plan rules	Repeal Section 360D (and consequently section 360E)	No impacts – Removal of regulation making power. Currently there are no regulations in place under this section				N/A		Day after date Royal assent
11, 12, 13, 14, 15	Remove preclusions on public notification and appeals for subdivision and residential activity resource consents, and restrictions on the scope of an appeal on a resource consent to matters raised in a person's submission	Repeal section 95A(5)(b)(ii) to allow public notification for subdivision and residential activity resource consents	All users of the RMA, councils and MfE	Councils will need to amend their notification report template MfE will need to alter technical guidance on notification and Quality Planning website guidance	No benefit – the guidance and processes will not be in place to realise benefits	Templates not amended and guidance not altered	Any pending resource consents ie, those lodged prior to commencement, and on the date of commencement that have (a) not been returned as incomplete under section 88(3)) and (b) not been finally determined (ie, not proceeded to the stage at which no further appeal is possible to be dealt with as if the RMA has not been amended	Only apply to new resource consents lodged after commencement	3 months after Royal assent
Amend section 120 to allow appeals on resource consents for residential activities and subdivision (and appeals on objections to these decisions)		All users of the RMA	Councils will need to amend their notification report template MfE will need to alter technical guidance on notification and Quality Planning website guidance	Needs to commence at same time as repealing section 95A(5)(b)(ii) (above) in order to avoid situation where applicants could appeal decisions on resource consents where potential submitters have been precluded	There would be a delay in appeals for submitters in relation to subdivision or residential activities, as the repeal of preclusions on public notification will not have commenced (ie submitters will not have been involved in process). Risk of unfairness and could lead to a rush of resource consent applications within a three month period in the knowledge that it would have appeal rights and no submissions	Any pending resource consents ie, those lodged prior to commencement, and on the date of commencement that has (a) not been returned as incomplete under section 88(3)) and (b) not been finally determined (ie, not proceeded to the stage at which no further appeal is possible) to be dealt with as if the RMA has not been amended	Only apply to new resource consents lodged after commencement	3 months after Royal assent	
Repeal section 120(1B) to allow appeals on matters outside scope of original submission		All users of the RMA & MfE	MfE will need to update existing guidance and Quality Planning website guidance (QP)	Allows submitters to appeal against information raised in hearings (that did not form part of their original submission)	No costs	N/A	N/A	Day after date Royal assent	

CAB-18-MIN-0485.01	Policy	RMA Amendment	Who will be impacted	What will they be required to do	Benefits of commencement immediately following Royal assent	Costs of commencement immediately following Royal assent	Savings provisions (saving old law)	Transitional arrangements	Commencement of provisions
Paragraph No.		Repeal section 360H so Minister for the Environment can no longer make regulations to preclude notification for certain activities or prescribe who may be considered as affected persons	No impacts – Removal of regulation making power. Currently there are no regulations in place under this section				N/A	N/A	Day after date of Royal assent
16	Remove the regulation-making power for additional fast-track activities	Repeal Section 360G	No impacts – Removal of regulation making power. Currently there are no regulations in place under this section				N/A	N/A	Day after date of Royal assent
17	Reverse the subdivision presumption	Reinstate original subdivision presumption that subdivision is a restricted activity (requiring resource consent unless expressly permitted in a district plan)	Territorial and unitary authorities	If councils have already reviewed their subdivision provisions in light of the changes to the RMA in 2017, they will need to reverse any proposed changes (note we do not know of any councils that have done this at this stage).	Provides continuity in how rules in existing plans are currently drafted (before they are changed to reflect changes to the RMA in 2017) Councils avoid cost of changing their RMA Plans or reviewing their subdivision provisions in light of the changes in RLAA	Only costs will be for those councils that have already reviewed (or changed) their subdivision provisions	N/A	N/A	Day after date of Royal assent
18	Reinstate the use of financial contributions	Repeal all provisions of RLAA that are intended to remove the ability to impose financial contributions as from 18 April 2022	No impact – reversing changes from RLAA not yet in force Still within transitional period of the Resource Legislation Amendment Act 2017 (a delayed commencement of five years)				N/A	N/A	Day after date of Royal assent

CAB-18-MIN-0485.01	Policy	RMA Amendment	Who will be impacted	What will they be required to do	Benefits of commencement immediately following Royal assent	Costs of commencement immediately following Royal assent	Savings provisions (saving old law)	Transitional arrangements	Commencement of provisions
Paragraph No. 19, 20	Enable applicants to have the processing of non-notified resource consent applications suspended	Allow applicants to suspend processing of their non-notified application for up to 20 working days	Councils, and MfE	MfE will need to update existing guidance and QP. Councils will need to change their IT systems if they would like to use this tool	No benefit – councils need time to adjust IT systems in order to realise benefit	Councils will not have adjusted their IT systems	Any pending resource consents ie, those lodged prior to commencement, and on the date of commencement that have (a) not been returned as incomplete under section 88(3)) and (b) not been finally determined (ie, not proceeded to the stage at which no further appeal is possible) to be dealt with as if the RMA has not been amended	Only apply to new resource consents lodged after commencement	3 months after Royal assent
21	Enable councils to suspend the processing of resource consent applications until fixed administrative charges are paid	Provide for discretionary ability for councils to stop the processing clock on resource consents until administrative charge has been paid.	Users of RMA & MfE	MfE will need to update existing guidance and QP. This is discretionary, however councils will need to change their IT systems if they would like to use this tool	This is an enabling mechanism, not a requirement. Gives council incentive to change system quickly to realise benefit (as it is not a requirement)	Councils will not have adjusted their IT systems (including interplay with financial system)	Any pending resource consents ie, those lodged prior to commencement, and on the date of commencement that have (c) not been ie, as incomplete under section 88(3)) and (d) not been finally determined (ie, not proceeded to the stage at which no further appeal is possible) to be dealt with as if the RMA has not been amended	Only apply to new resource consents lodged after commencement	Day after date of Royal assent
22	Enable longer time periods to lodge retrospective resource consents for emergency works	Extend timeframe in section 330B(3) from 20 working days (after notification under section 330B(2)) to 60 working days	No impacts – just gives persons that have had to undertake works in an emergency a longer period to apply for retrospective consent for these works				If on the date of commencement, an activity has not been notified to the consent authority under section 330B(2), then dealt with as if the RMA has not been amended	Applies to activities that were notified to consent authority (under section 330B(2) of the RMA) after commencement	Day after date of Royal assent
23	Enable review of conditions of multiple resource consents	Amend section 128(1)(b)	Regional councils and consent holders	No requirements. Enabling provision	Enables regional councils to review regional resource consents following a plan change if the council considers it necessary.	No costs	N/A	N/A	Day after date of Royal assent

CAB-18-MIN-0485.01	Policy	RMA Amendment	Who will be impacted	What will they be required to do	Benefits of commencement immediately following Royal assent	Costs of commencement immediately following Royal assent	Savings provisions (saving old law)	Transitional arrangements	Commencement of provisions
Paragraph No. 24, 25	Clarify the legal status of deemed permitted activities	Amendment to Part 3	No impacts – should not change any existing processes				N/A	N/A	Day after date of Royal assent
			Need to include a validation clause: Validate any deemed permitted activities already authorised by application of section 87A or 87BB of the RMA to the extent that they were lawfully established prior to commencement						
28, 29, 30, 31	Strengthen enforcement tools for improving environmental compliance	Regulation making powers to increase infringement fees up to a max of \$2000 for natural persons and up to \$4,000 for non-natural persons (up from \$1,000)	No impact as the change will only enable regulations to be made. This will be in a separate work programme.				N/A	N/A	Day after date of Royal assent
		Extend statutory limitation period for filing charges for prosecutions from 6 months to 12 months	Resource users, councils, Environment Protection Agency (EPA)	Councils/EPA will need to ensure that charges filed within correct timeframe.	Immediate application of new timeframe (to new offending)	None	Any offences committed before the commencement of the provisions will be operating in the old regime (6 month period)	Only apply for offences committed after commencement	Day after date of Royal assent
32, 33, 34	Enable the Environmental Protection Authority (EPA) to take enforcement action under the RMA	Provide EPA with the same enforcement functions as local authorities. Will set factors for EPA carrying out this function, power to require information from councils, the ability to recover for costs and an additional reporting requirement.	EPA, councils and resource users	The change is an enabling provision for the EPA. The EPA will be able to begin to collect information at commencement, following an interim period where they will be working with councils. The reporting requirement will only be based on action taken so should not be onerous.	The EPA can use their new powers as soon as possible.	N/A	N/A	The EPA may carry out its own investigations or enforcement functions, and intervene in councils' actions in relation to possible breaches of the RMA committed prior to commencement	Day after date of Royal assent
51	Clarify who can be appointed as alternate Environment Judges	Make it explicit that Acting District Court and Maori Land Court Judges can be appointed as Alternative Environment Court Judges	No impact – clarification of existing practice				N/A	N/A	Day after date of Royal assent
			Need to include a validation clause: Validate any Acting Judges that have been appointed as alternate Environment Judges.						

CAB-18-MIN-0485.01	Policy	RMA Amendment	Who will be impacted	What will they be required to do	Benefits of commencement immediately following Royal assent	Costs of commencement immediately following Royal assent	Savings provisions (saving old law)	Transitional arrangements	Commencement of provisions
Paragraph No. 54, 55	Protect special advisors to the Environment Court	Provide immunity from legal proceedings for special advisors in the Environment Court	Special advisors to the Environment Court	No specific action required.	Help to ensure that there are no barriers to special advisors being able to assist the Court. A lack of immunity may mean special advisors are unwilling to be appointed to assist the Court.	Commencement after Royal assent will not assist special advisors who contributed to Environment Court decisions prior to commencement	New protection applies to new appointments made after commencement (not pre-existing appointments)	N/A	Day after date of Royal assent

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