

Regulatory Planning Guidance for Departments

Annual Portfolio Regulatory Plans

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THE TREASURY
Kaitohutohu Kaupapa Rawa

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Internet

The URL for this document on the Treasury's website at January 2013 is <http://www.treasury.govt.nz/publications/guidance/regulatory/planning>

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Quick guide: what do departments need to do?

Annual Portfolio Regulatory Plans

All portfolios that are responsible for administering regulation produce Annual Portfolio Regulatory Plans. Departments prepare Annual Portfolio Regulatory Plans for the portfolios they administer. Each plan is discussed with and signed off by the responsible Minister.

Annual Portfolio Regulatory Plans list all regulatory instruments that departments anticipate will be changed (either by being introduced, amended, or repealed) in the period 1 March 2013 to 28 February 2014.

The process of preparing Annual Portfolio Regulatory Plans focuses Ministers and departments on their regulatory priorities and facilitates conversations about their scope, timeframes, and whether they are appropriately resourced. Cabinet uses information on Annual Portfolio Regulatory Plans when considering future priorities and whether cross-cutting issues are being adequately addressed.

Annual Portfolio Regulatory Plans also give early warning about what might be coming up to government actors involved in aspects of the regulatory task. The Treasury shares Annual Portfolio Regulatory Plans with these government actors, for example the Parliamentary Counsel Office.

Annual Portfolio Regulatory Plans are due to the Ministers of Finance and for Regulatory Reform and the Treasury by **28 March 2013**. If a Department has a particular planning process/deadline which means that they may not be able to submit the best information at this time they should contact the Regulatory Quality Team in the Treasury to discuss whether an extension to this date may be appropriate.

About this guidance

This guidance relates to regulatory planning. Regulatory planning is a Cabinet requirement [Cab Min (09) 27/11 refers]. The regulatory planning process requires the production of an Annual Portfolio Plan from all portfolios that administer regulation.

This guidance document sets out the 2013/14 templates, deadlines and process requirements for producing Annual Portfolio Regulatory Plans. It should be read by those responsible for preparing and approving these documents.

This guidance document has been written by the Regulatory Quality Team in the Treasury.

Changes since the last version of this guidance

This guidance replaces the 2012/13 Regulatory Planning Guidance for Departments (November 2011). The substantive requirements for Annual Portfolio Regulatory Plans remain the same as for 2012/13, the guidance has simply been refreshed for 2013. The requirement for the production of a separate Department Regulatory Review Plan has been removed from this guidance. The material covered by Department Regulatory Review Plans will be incorporated with the system report requirements due following the completion of regulatory scanning for the year (mid 2013). Guidance on the requirements of system reports will be provided later in 2013.

Questions and feedback

General enquiries about the information contained in this guidance can be directed to regulation@treasury.govt.nz.

Further information

Other useful information, including guidance relating to other aspects of the regulatory management system, can be found at the Regulation page on the Treasury's website <http://www.treasury.govt.nz/economy/regulation>.

1 Annual Portfolio Regulatory Plans

Regulatory planning aims to ensure that regulatory policy development is adequately resourced, proceeds along agreed lines and timetables, and is afforded appropriate priority. It encourages early discussions between departments and Ministers about the appropriate scope of regulatory work, what kinds of outputs are realistic, and whether work is adequately resourced. Regulatory work that is not planned tends to be rushed, under-resourced, and likely to under-deliver.

Annual Portfolio Regulatory Plans are one output of a robust regulatory planning process, they set out all regulatory instruments that departments anticipate introducing, amending, or repealing in the coming year. Plans are prepared on a portfolio basis and are agreed between departments and Ministers. Ministers sign off Annual Portfolio Regulatory Plans before they are submitted.

As well as encouraging engagement between departments and portfolio Ministers, Annual Portfolio Regulatory Plans are a valuable information source for other government actors, including Cabinet.

1.1 Deadline and process for submitting

Annual Portfolio Regulatory Plans are due to (1) the Ministers of Finance and Regulatory Reform and (2) the Treasury by **28 March 2013**. The Plan should cover the period from 1 March 2013 to 28 February 2014.

If a Department has a particular planning process/deadline which means that they may not be able to submit the best information at this time they should contact the Regulatory Quality Team in the Treasury to discuss whether an extension to this date may be appropriate.

Hard copies of Annual Portfolio Regulatory Plans are sent to the offices of the Minister of Finance and the Minister for Regulatory Reform. Each Minister's office should receive **two** copies of each Annual Portfolio Regulatory Plan.

Electronic copies of each Annual Portfolio Regulatory Plan are sent to the Treasury at regulation@treasury.govt.nz. The electronic copies must be in Microsoft Excel 97-2003 format (this is the format of the standard annual plan template, which was sent out to departments alongside this guidance).

1.2 What instruments should appear on Annual Portfolio Regulatory Plans?

An instrument that a department anticipates will change during the period covered should appear on the Annual Portfolio Regulatory Plan if:

- the instrument is or is intended to become an Act of Parliament or a regulation as defined in the Regulations Disallowance Act 1989, or
- the instrument:
 - creates, alters or removes obligations, entitlements, benefits or privileges for the whole, or a class, of the public, and
 - is made by Parliament, the Governor-General on the recommendation of a Minister, a Minister, or an authorised officer of the administering department.

This definition does not cover:

- instruments made by monitored agencies acting independently (for example, the power to make Securities Act exemption notices rests with the Financial Markets Authority. Accordingly, exemption notices under the Securities Act 1978 are not required to be listed on Annual Portfolio Regulatory Plans), and
- instruments that departments produce that do not have legal force, for example Treasury Circulars.

These kinds of instruments need not be included on Annual Portfolio Regulatory Plans. However, the administering department might find it useful to list these instruments for its internal planning purposes.

It can be difficult to decide whether to include an instrument on an Annual Portfolio Regulatory Plan when timeframes are uncertain. Departments may not know whether an anticipated change to a regulatory instrument will in fact happen within the year covered by the Annual Portfolio Regulatory Plan. Since one purpose of Annual Portfolio Regulatory Plans is to give early warning to actors in the policy development process about what is coming through the regulatory pipeline, however, it makes sense to err on the side of including instruments in the plan. A good rule of thumb is that if a department expects to progress a regulatory proposal during the period covered, for example by carrying out analysis, consultation, or seeking policy decisions, that regulatory proposal should appear on the Annual Portfolio Regulatory Plan.

It can also be difficult to determine the point at which an instrument is “changed”. Acts of Parliament, for example, are not technically changed until a Bill is enacted, but enactment might come more than a year after the related policy development process is complete. Information about regulatory instruments for which the policy development process is complete is not very useful for other actors in the regulatory management system. Accordingly, if the policy development process is essentially finished and a draft instrument has been prepared at the time of preparing the Annual Portfolio Regulatory Plan, the instrument need not be listed.

In particular, this means that if a Bill has already been introduced to Parliament at the time of preparing the Annual Portfolio Regulation Plan, the Bill does not need to be listed unless the department anticipates making material changes via a Supplementary Order Paper.

Another decision is whether to list a regulatory instrument that may change as a result of a policy process but equally well may not. An ongoing review might require regulatory changes within the year, but whether those changes required depends on the outcome of the review. In such cases, the potentially changing instrument should appear on the Annual Portfolio Regulatory Plan. Departments may wish to note in the “comment” column that regulatory change is not certain.

1.3 Required information

The Annual Portfolio Regulatory Plan template that agencies are required to complete was emailed out alongside this guidance in a separate Excel file. The information required for each instrument listed is set out in that template. Please be as precise as possible when filling out the template.

1.4 What are Annual Portfolio Regulatory Plans used for after they are submitted?

Annual Portfolio Regulatory Plans give a picture of what is going into the regulatory pipeline each year. Regulatory Ministers and Cabinet as a whole use them to get information on:

- what is driving regulation across government
- the level of regulatory cost we plan to impose, across all sectors, and
- which agencies and portfolios have the heaviest regulatory workloads.

They use this information when considering future priorities and whether cross-cutting regulatory issues are being adequately addressed.

Annual Portfolio Regulatory Plans also give early warning about what might be coming up to government actors involved in aspects of the regulatory task. Treasury intends to share Annual Portfolio Regulatory Plans with:

- the Treasury Regulatory Impact Analysis Team
- Treasury policy teams
- Parliamentary Counsel Office
- the Ministry of Business, Innovation and Employment
- the Ministry of Justice’s Bill of Rights vetting unit, and the equivalent unit in Crown Law, and
- sector lead agencies.

The Treasury will report to the Ministers of Finance and for Regulatory Reform on the outcomes of 2012-13 Annual Portfolio Regulatory Plans once they are submitted.

The Ministers of Finance and Regulatory Reform are likely to use information from Annual Portfolio Regulatory Plans in their regular report to Cabinet on progress with the regulatory management system. The timing of that report for 2013 has not been set as at the date of this guidance.

Agencies should also consider sharing Annual Portfolio Regulatory Plans with internal regulatory impact analysis panels or any other internal units that have an oversight role over regulation.

There may be other government actors that could use the information set out on Annual Portfolio Regulatory Plans, for example Cabinet Office, officials committees, and the government members of the Legislative Design Committee. As a general rule, Treasury will share Annual Portfolio Regulatory Plans with any government actor that asks for them.

If you have particularly sensitive proposals on your Annual Portfolio Regulatory Plan that should not be shared with other agencies, please point out these proposals when you submit your document.

2 Future directions

Changes to the instruments listed on Annual Portfolio Regulatory Plans

Currently, an instrument should appear on an Annual Portfolio Regulatory Plan if:

- the instrument is or is intended to become an Act of Parliament or a regulation as defined in the Regulations Disallowance Act 1989, or
- the instrument:
 - creates, alters or removes obligations, entitlements, benefits or privileges for the whole, or a class, of the public, and
 - is made by Parliament, the Governor-General on the recommendation of a Minister, a Minister, or an authorised officer of the administering department.

For the next round of regulatory planning, we are likely to change this definition to better align with the Legislation Act 2012 once it has been completely brought into force. The Legislation Act relates primarily to the operation of the Parliamentary Counsel Office and the publication of legislation, but it also contains a new definition of “disallowable instrument” (relating to Parliament’s power to disallow regulations). While the new definition of “disallowable instrument” is very close to our current definition of what must appear on Annual Portfolio Regulatory Plans, we will look to align our definition with the “disallowable instrument” definition more closely in order to avoid proliferation of definitions that aim to capture the same concept.