

Guidelines on Code exemptions

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Guidelines on Code exemptions

1. Purpose

- 1.1. The Electricity Industry Participation Code 2010 (Code) sets out the duties and responsibilities of all electricity industry participants (participants).
- 1.2. The Electricity Authority Te Mana Hiko (Authority) has the power, under the Electricity Industry Act 2010 (Act), to exempt a participant from the obligation to comply with the Code, or specific provisions of the Code, if certain requirements are met.
- 1.3. These guidelines set out:
 - (a) an overview of Code exemptions
 - (b) the process for applying for a Code exemption
 - (c) how the Authority will process applications
 - (d) the process for amending or revoking a Code exemption
 - (e) additional guidance on applying for Code exemptions to facilitate industry trials.
- 1.4. These guidelines relate to individual Code exemptions.¹ The Authority also has powers to exempt any business, involvement or person from Part 3 of the Act, and to grant a dispensation to a specified person in respect of obligations in Part 6A of the Code.² Regulations made under the Act can also exempt a class of participants from obligations under the Code.³ Information about these types of exemptions and dispensations can be found on the Authority's website: [Exemptions and dispensations | Electricity Authority](#).
- 1.5. These guidelines are provided for general information only and are not a substitute for legal advice.

2. About exemptions from the Code

- 2.1. The Authority may grant an exemption to a participant, exempting them from the obligation to comply with the Code or specific provisions of the Code, if satisfied that the statutory test is met, which is that:
 - (a) it is not necessary, for the purpose of achieving the Authority's objectives under section 15 of the Act, for the participant to comply with the Code or the specific provisions of the Code; or
 - (b) exempting the participant from the requirement to comply with the Code or the specific provisions of the Code would better achieve the Authority's objectives than requiring compliance.
- 2.2. Only participants can apply for an exemption from the Code.⁵

¹ These guidelines do not address exemptions from the obligation to register as an industry participant under section 10 of the Act. Information about these types of exemptions can be found on the Authority's website: <https://www.ea.govt.nz/industry/new-participants/>

² Part 3 of the Act relates to the separation of distribution from certain generation, and Part 6A of the Code relates to the separation of distribution from certain generation and retailing.

³ Under section 110 of the Act.

⁴ Under section 11 of the Act.

⁵ [Section 7 of the Act](#) defines who is an industry participant for the purposes of the Act.

- 2.3. The Authority may grant an exemption on any terms or conditions that it reasonably considers are necessary.
- 2.4. The Authority exempts a participant by issuing an exemption notice which must be published in the *Gazette*. The exemption notice will include the date from which the exemption applies and when it expires.
- 2.5. Exemptions cannot be backdated (applied for in retrospect), nor can they excuse a past breach of the Code. A participant who applies for an exemption needs to ensure they comply with their Code obligations while their application is being considered and must continue to do so if their application is declined. Participants must also ensure they comply with their Code obligations once the exemption expires.
- 2.6. All applications are assessed on a case-by-case basis. Previous exemptions we have granted in similar circumstances may provide a guide to how an application could be considered. However, it is important to note that if an application is approved, it does not mean that we will reach the same decision on a similar application in future. The Authority must consider each application applying the statutory test above and in the circumstances that exist at the time.

Code exemptions and amendments

- 2.7. An individual exemption can relieve a participant from a Code obligation, but other participants must still comply with their obligations. In some cases, a Code amendment might be more appropriate than an exemption, so that the Code obligation is amended or removed altogether for all participants. In those cases, an exemption might only be appropriate if it will take some time to amend the Code and there is an urgent need to address the position of a single participant. If multiple participants are affected an urgent Code change may be considered.
- 2.8. The process for requesting an amendment to the Code, including urgent Code amendments, is explained on the Authority's website: [Amendments to the Code | Electricity Authority \(ea.govt.nz\)](#)
- 2.9. Contact compliance@ea.govt.nz if you are unsure whether you should apply for a Code exemption or a Code amendment.

3. How to apply

- 3.1. To apply for a Code exemption, complete and return the exemption application form available on our website: www.ea.govt.nz/code-and-compliance/exemptions/. Provide as much information as possible in your application. Processing delays will occur if your application contains insufficient information.

Information requirements

- 3.2. This information is relevant to the Authority's assessment of whether the statutory test for granting an exemption is met.
- 3.3. An application should contain the following information, as set out in the application form:
 - (a) **Who is the exemption for?** Give the full legal company (or otherwise) name and address of the participant seeking the exemption and the relevant details of the contact person for the exemption. The application must be made by the participant that the

exemption will apply to, though other parties (participants or otherwise) may be involved in the process.

- (b) **When is the exemption is required?** Specify the date by which a decision is needed and, if the application is considered urgent, the reasons for seeking urgent consideration. Please refer to the guidance on timeframes below.
- (c) **What do you want an exemption from?** Give the specific Code clauses you are seeking an exemption from.
- (d) **Why are you seeking this exemption?** Specify the problem that the exemption would resolve, the reasons for the problem arising, and how the exemption would address this problem.
- (e) **What alternatives to the exemption have been explored?** List the alternative solutions that have been explored and give details of why they are not suitable to address the problem.
- (f) **What effects will granting the exemption have on achieving the Authority's statutory objectives?** You will need to provide information to enable the Authority to consider whether the statutory test for granting an exemption (set out at paragraph 2.1 above) is met.
- (g) **Should there be terms and conditions on the exemption?** In your opinion, should the exemption be granted with terms and conditions? If so, what terms or conditions would reasonably be considered necessary?
- (h) **Are there any previous similar exemptions?** Identify any previous exemptions you have been granted or are aware of that are similar to the exemption you seek. Explain how the other exemptions are similar to, and different from, the exemption you are seeking.
- (i) **What impact will granting the exemption have on the overall scheme of the Code?** Explain what impact, in your opinion, the granting of the exemption will have on your, and other participants', ability to comply with other provisions of the Code.
- (j) **What effects will there be on other participants?** Describe who may be affected by the granting of the exemption and how.
- (k) **How long do you need the exemption for?** Give reasons for the period you specify, and details of events that may mean the exemption could end sooner.

Confidentiality

- 3.4. The contents of all applications are subject to the Official Information Act 1982 and the Privacy Act 2020. If a request is received under those Acts for information contained in an application, we are required to consider release of the application, in whole or in part, in terms of the criteria set out in these Acts.
- 3.5. We may also choose to discuss your application with market operation service providers, as appropriate, to help with our assessment.
- 3.6. When providing an application, please advise compliance@ea.govt.nz if you have any objection to the release of:
 - (a) any information contained in your application and, if you do object, the parts of your application you would wish withheld, and the grounds for withholding

- (b) any information contained in your application to market operation service providers and the reasons for those objections.

When to apply

- 3.7. Contact compliance@ea.govt.nz before submitting your application to discuss possible timeframes.
- 3.8. Please apply as early as possible. If you don't submit your application within a suitable timeframe, this may impact when your application is considered by the Compliance Committee or Board at its next meeting.
- 3.9. The process for reviewing, considering and making a decision on an application can take time. For example, the time it takes to review and process applications depends on whether:
 - (a) the information provided is complete
 - (b) the requested exemption impacts other industry participants
 - (c) complex Code or Act provisions need to be assessed
 - (d) any cost estimates to resolve have supporting information
 - (e) when the Compliance Committee or Board will next meet.

Timeframe for decision

- 3.10. It takes the Authority, on average, two to four months to consider an application. Complex applications, such as applications for exemptions to support industry trials (see Section 6) may take longer.
- 3.11. If the Authority needs additional information to assess an application, we will notify the applicant of the information required. Requesting additional information will stop the clock for the purposes of determining the expected timeframe within which you can expect a decision. You should therefore provide as much information as possible with your application.
- 3.12. Once you have made an application, contact us to discuss anticipated timeframes.

Urgent applications

- 3.13. If your exemption is required urgently, email compliance@ea.govt.nz with your reasons (including why the application could not be made earlier) and a timeframe within which:
 - (a) a decision is requested
 - (b) any exemption granted needs to be Gazetted.
- 3.14. We will endeavour to prioritise your application, but there is no guarantee.

Is a lawyer required?

- 3.15. Your application may involve issues about the interpretation and application of the law. Where these kinds of complexities arise, we recommend that you seek legal advice.
- 3.16. If the reasons underlying your application are practical, then legal advice may not be necessary.

4. Authority process following receipt of an application

4.1. We have the following process for exemption applications:

1. Application considered

4.2. Applications are assessed by the Authority's compliance team. They may seek additional clarification from you if the information requirements have not been met or if they have further questions. They will assess your application against the statutory test and prepare a recommendation for our Compliance Committee or the Board to consider.

Consulting on applications

4.3. In some cases, the Authority may decide to publish the application and/or consult before deciding the application. This might be the case if the application has the potential to materially affect other participants or is otherwise considered a significant application. We will notify you in advance before doing so.

Drafting of terms and conditions

4.4. Authority staff will consider any terms and conditions proposed in an application and may recommend amendments or additional terms and conditions for consideration by the Compliance Committee or Board. Any amended or new terms or conditions will be notified to the applicant prior to the recommendation to the Compliance Committee or the Board.

2. Compliance Committee or Board decision

4.5. All exemptions are decided by our Compliance Committee or, if the application is considered significant, the Board. They will decide whether to grant the exemption, the reasons for that decision and, if the exemption is granted, the terms and conditions that apply to that exemption.

4.6. We will contact you as soon as we can whether your application has been granted.

3. Exemption notice drafted

4.7. If the Compliance Committee or Board decides to grant an exemption, the Authority's compliance team will prepare the exemption notice that will be published in the *New Zealand Gazette*.

4.8. The exemption notice will identify the participant that is exempt, the nature of the exemption and any terms or conditions, and the reasons for granting the exemption.

4. Exemption notice published

4.9. The approved exemption notice is published in the *New Zealand Gazette*.

4.10. The exemption takes effect from the date specified in the exemption notice, which must not be before the date of publication in the *New Zealand Gazette*.

4.11. The Authority publishes a list of all current exemptions on its website: [Exemptions and dispensations | Electricity Authority \(ea.govt.nz\)](#).

What if my application is declined?

4.12. An application may be declined if the Authority is not satisfied on all the available information that the statutory test is met.

- 4.13. If you disagree with the Authority's decision (including a decision to decline an application or a decision as to the terms and conditions of an exemption), you have a right of appeal on a question of law to the High Court.⁶

5. After an exemption is granted

Complying with the conditions of an exemption

- 5.1. If your exemption is granted with conditions, the conditions will form part of the exemption. Non-compliance with any condition is a breach of the requirements of the exemption and may result in the Authority amending or revoking the exemption.

Amending or revoking an exemption

- 5.2. The Authority may amend or revoke an exemption by notice in the *Gazette*.⁷
- 5.3. An exemption may be amended only if the Authority is satisfied that the amendment is necessary or desirable for the purpose of achieving the Authority's objectives in section 15 of the Act.
- 5.4. An exemption may be revoked only if the Authority is no longer satisfied that the statutory test for granting an exemption (set out at paragraph 2.1 above) is met.
- 5.5. The Authority can amend or revoke an exemption of its own accord, or on request from the exempt participant. The Authority must give notice of the proposed amendment or revocation to the exempt participant and give them a reasonable opportunity to comment.⁸
- 5.6. If an exempt participant requires an amendment to their exemption or no longer requires the exemption, they should notify the Authority as soon as possible.
- 5.7. Amendments and revocations will be considered by the Compliance Committee or Board in the same way as exemption applications (see section 4 of these guidelines), with necessary modifications.
- 5.8. The *Gazette* notice must give reasons for the amendment or revocation.⁹

Extending an exemption

- 5.9. Exemptions expire on the date specified in the exemption notice. They do not automatically renew. If you want to continue an exemption, you must apply to amend the term of the exemption or apply for a new exemption. Applications should be made at least four months before the exemption is due to expire and will be assessed on their own merits. This may include consideration of the effect of the existing exemption.

6. Code exemptions to facilitate industry trials

- 6.1. This section provides additional, specific guidance on applying for Code exemptions to facilitate industry trials (trial exemptions). It should be read alongside the Authority's general guidance on Code exemptions set out in the sections above.

⁶ Section 64 of the Act.

⁷ Section 11(3) of the Act.

⁸ Section 11(4)(a).

⁹ Section 11(4).

About trial exemptions

- 6.2. Trial exemptions support innovation in the electricity industry by facilitating industry trials of new products, services or business models that may be for the long-term benefit of consumers but cannot be trialled under the existing regulatory framework.
- 6.3. Industry trials can provide valuable evidence that improves industry and regulatory knowledge and supports policy development so that consumers can benefit from innovation.
- 6.4. A trial exemption can temporarily exempt a participant from having to comply with rules in the Code that are acting as a barrier to an industry trial proceeding.
- 6.5. The Authority supports innovation and industry success by:
 - (a) enabling innovative industry trials which meet the statutory test to proceed via a trial exemption; and
 - (b) ensuring knowledge and insights gained from industry trials are shared with the industry and regulators, to improve market outcomes and regulatory settings.

Multiple participants may need to apply for a trial exemption

- 6.6. If the industry trial involves multiple participants who require Code exemptions, each participant must apply for an exemption. Applicants must work together to ensure applications are cohesive and consistent.
- 6.7. The Authority will endeavour to process multiple applications relating to the same trial at the same time, however it is up to the participants to ensure that the applications contain adequate information and are submitted in a cohesive manner (the Authority will not project manage the preparation of applications on behalf of participants).
- 6.8. Failure to submit all relevant applications or submitting insufficient information with applications will result in delays to processing.

Additional information requirements for industry trials

- 6.9. In addition to the standard information requirements for all Code exemption applications (see section 3 of these guidelines), trial exemption applicants must also provide information about the proposed industry trial. This information is relevant to the Authority's assessment of whether the statutory test for granting an exemption is met.
- 6.10. You should provide the following information (in addition to the information required in section 3) about the proposed industry trial:
 - (a) details of all the organisations that will carry out the proposed trial
 - (b) a description of the proposed trial, including:
 - (i) its aims, objectives and success criteria (against which the performance and outcomes of the trial will be assessed)
 - (ii) the number and type of consumers that are proposed to be involved in the trial and how they will be recruited
 - (iii) the proposed duration of the trial
 - (c) a description of the impacts and risks associated with the proposed trial and how these will be avoided or mitigated (including, but not limited to, risks to consumers participating in the trial as well as risks to the operation of the wider electricity system and other industry participants)

- (d) a description of the risk management plan for the proposed trial, including processes in place to monitor and respond to potential risk events
- (e) evidence of the organisation's operational and financial ability to carry out the proposed trial
- (f) a description of the industry trial closure process and how participating consumers and industry participants operating the trial will revert to their pre-existing arrangements at the end of the trial
- (g) how consumers participating in the trial will provide their consent, can raise a dispute about the trial (and the processes and procedures in place to resolve these), and can opt out of the trial (or the reasons why a participating consumer will be unable to do so)
- (h) how the industry trial will be monitored, reported on and evaluated, including how learnings will be shared with the industry
- (i) how the trial will contribute to the development of regulatory and industry expertise.

Publishing industry trial information and confidentiality

- 6.11. Sharing knowledge and insights gained from trials with the wider industry and regulators improves market outcomes and promotes the Authority's statutory objectives. For these reasons, knowledge sharing will be an important consideration in the Authority's assessment of any application for a trial exemption.
- 6.12. The Authority will work with applicants to identify what information may be published for the purpose of knowledge sharing. The extent and nature of confidential information in an application may, however, undermine whether the Authority can be satisfied that the application meets the statutory test. This might be the case if the extent and nature of confidential information impairs the Authority's ability to provide appropriate public transparency in relation to the conduct and outcomes of the trial, or the appropriate development of regulatory and industry expertise arising from the trial.
- 6.13. Additional information on confidentiality is set out in section 3 of these guidelines.

Authority's assessment of trial exemption applications

- 6.14. As with all exemption applications, the Authority may grant a trial exemption if satisfied that the statutory test is met, which is that:¹⁰
 - (a) it is not necessary, for the purpose of achieving the Authority's objectives under section 15 of the Act, for the participant to comply with the Code or the specific provisions of the Code; or
 - (b) exempting the participant from the requirement to comply with the Code or the specific provisions of the Code would better achieve the Authority's objectives than requiring compliance.
- 6.15. An evaluation of the proposed trial, relying on the information provided with the application, will assist the Authority to determine whether the statutory test is met.
- 6.16. The Authority may consult on a trial exemption application if the proposed trial is significant in size or scope or has the potential to materially affect other industry participants. We will notify you in advance before doing so.

¹⁰ Under section 11 of the Act.

6.17. The Authority expects to decide trial exemption applications within four months, but complex applications or those that require consultation may take up to six months. When we receive an application, we will advise you when we expect our Compliance Committee or Board to consider your application.

Conditions on trial exemptions

6.18. The Authority may grant a trial exemption on any terms or conditions that it reasonably considers are necessary. Conditions will be defined on a case-by-case basis and will depend on the nature and scope of the trial.

6.19. Examples of the matters that conditions may address include, but are not limited to:

- (a) in relation to trials involving consumer participants, requirements to:
 - (i) obtain consumers' informed consent to participate in the trial;
 - (ii) provide a dispute resolution process for affected consumers; and
 - (iii) enable consumers to opt-out of the trial at any stage;
- (b) market and system protection, which may include conditions that limit the effect of the trial exemption on the wider operation of the electricity industry and other participants
- (c) regular progress reporting, including the frequency, content and publication of progress reports
- (d) event-driven reporting, which might require reporting to the Authority in the event of:
 - (i) any material change in circumstances under which the trial exemption was granted; or
 - (ii) any breach of the terms or conditions of the trial exemption, and actions taken to rectify the breach
- (e) providing any additional information about the trial that is reasonably requested by the Authority to monitor the trial
- (f) producing a report for publication on the outcomes of the trial (outcomes report), the content of which might include:
 - (i) an evaluation of the trial against its success criteria
 - (ii) a survey of the experiences of trial participants (including participants who opted-out of the trial) and, if relevant, other industry participants affected by the trial
- (g) arrangements for sharing insights and learnings from the trial with the industry.

Monitoring trials carried out under trial exemptions

6.20. The Authority will monitor the conduct and outcomes of industry trials carried out under a trial exemption. Monitoring arrangements will be determined on a case-by-case basis depending on the nature of the trial, and accounting for the risks to consumers, other participants, and to the reliable supply by, or efficient operation of, the electricity industry.

6.21. In most cases, monitoring will be via reporting obligations imposed as conditions on the trial exemption. If the industry trial poses a relatively high risk, additional measures such as regular audits may also be imposed as conditions on the trial.

6.22. More extensive monitoring may be implemented during the trial by amending the conditions of the trial exemption. The Authority might take this step if it is satisfied this is necessary or

desirable for the purpose of achieving the Authority's objectives. Examples of where more extensive monitoring might be introduced include in the event of:

- (a) failure to comply with any conditions of the trial exemption, or
- (b) emerging concerns about the risks posed by the industry trial, such as concerns highlighted in monitoring reports or reported by other participants or consumers participating in the trial.

Analysis of the trial results and policy development process

- 6.23. Industry trials can provide evidence which supports policy development, including amendments to the Code. The Authority will use information collected through its monitoring of the trial, including information provided in progress reports and the outcomes report, to support its policy development.
- 6.24. If trial participants request a permanent Code amendment to enable the continuation of the trial without an exemption, the Authority will endeavour to align its policy development timeline with the term of the trial exemption to avoid unnecessary disruption to the trial. Where that is not possible, the trial exemption might be extended for a further limited period (see below). Any proposed Code amendments must follow the process under the Act and will usually require consultation. The process to amend the Code is explained in the Authority's [Consultation Charter](#).

Extension and early termination of trial exemptions

Extending a trial exemption

- 6.25. Trial exemptions will only be granted for a limited time. An exemption cannot be extended after it has expired. Therefore if you wish to extend the duration of a trial exemption, you must notify the Authority no later than four months before the planned trial end-date so that the Authority has sufficient time to consider the application.
- 6.26. It is also important you provide sufficient information to enable the Authority to be satisfied that extending the trial exemption is necessary or desirable for achieving the Authority's objectives.¹¹ This test might be met if the Authority is satisfied that an extension would generate valuable knowledge and insights and that would benefit the wider industry for the long-term benefit of consumers, or if the trial participants have requested a permanent Code amendment to allow the project to continue without a trial exemption, but that process will not be completed before the trial exemption expires.
- 6.27. You should include the following information in your extension application:
 - (a) reasons why you consider the trial exemption should be extended
 - (b) any changes in circumstances in relation to the trial that may affect our assessment of the trial against our statutory objectives
 - (c) any changes to the trial closure processes.
- 6.28. If the Authority grants an extension it may impose further conditions, or modify or retain the existing conditions of the trial exemption, if it reasonably considers this to be necessary. A notice extending the exemption will be published in the *Gazette* with a statement of reasons for the extension.

¹¹ Under section 11(4)(b) of the Act.

Early termination

- 6.29. The Authority may revoke a trial exemption if it is no longer satisfied that the statutory test for granting the exemption is met.¹² The Authority might reach this view for a range of reasons, including:
- (a) non-compliance with any conditions of the trial exemption
 - (b) emerging or ongoing concerns about the risks to consumers participating in the trial
 - (c) emerging or ongoing concerns about the effect of the trial exemption on the reliable supply by, or efficient operation of, the electricity industry
 - (d) the Code is amended so that the exemption is no longer necessary
 - (e) the application was granted on the basis of false or misleading information; or
 - (f) the participants wish to end the industry trial early.
- 6.30. The process the Authority must follow to revoke a trial exemption is set out in Section 5 and provides an opportunity for the exempt participants to comment on the proposed revocation.
- 6.31. Early termination of a trial exemption, where that would force the termination of an industry trial, is a measure of last resort. The Authority will adopt a proportionate response to any concerns or non-compliance issues and will, where possible, work with the trial participants to address any issues in other ways, such as by agreeing to new or varied conditions.

¹² Under section 11(4)(c) of the Act.