

## Exempt building work: What the law says

---

New Zealand's building legislation recognises that a number of things we do which are considered 'building work' are low risk, so do not require a building consent.

### The law and low risk building work

---

The Building Act provides for this through:

- [Section 41](https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/exempt-building-work-law/#jumpto-when-building-consent-is-not-required-0028section-41_0029) (https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/exempt-building-work-law/#jumpto-when-building-consent-is-not-required-0028section-41\_0029) – exempts certain types of work from requiring a building consent (including the types of building work listed in Schedule 1)
- [Section 42A](https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/exempt-building-work-law/#jumpto-conditions-and-limits-on-exempt-work-under-schedule-1-0028section-42a_0029) (https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/exempt-building-work-law/#jumpto-conditions-and-limits-on-exempt-work-under-schedule-1-0028section-42a\_0029) – imposes some general conditions and limits on the Schedule 1 exemptions, including who can carry out the work, and
- [Schedule 1](https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/schedule-1-exempt-building-work/) (https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/check-if-you-need-consents/building-consent-exemptions-for-low-risk-work/schedule-1-guidance/schedule-1-exempt-building-work/) – lists a range of possible exemptions and describes when these could apply.

All building work, whether or not it requires a building consent, must still comply with the Building Code (under section 17 of the Building Act).

[Building Code compliance](https://www.building.govt.nz/building-code-compliance/) (https://www.building.govt.nz/building-code-compliance/) has more information.

Building work must also comply with any other relevant legislation, including:

- Plumbers, Gasfitters, and Drainlayers Act 2006
- Gas (Safety and Measurement) Regulations 2010
- Electricity Act 1992
- Electricity (Safety) Regulations 2010
- Resource Management Act 1991
- Fire Service Act 1975
- Health and Safety in Employment Act 1992

You can view this legislation on the New Zealand [Legislation website](http://www.legislation.govt.nz/act/public/2004/0072/latest/versions.aspx?search=ts_act%40bill%40regulation%40deemedreg_Building+Act_resel_25_a&p=1&av=True) (http://www.legislation.govt.nz/act/public/2004/0072/latest/versions.aspx?search=ts\_act%40bill%40regulation%40deemedreg\_Building+Act\_resel\_25\_a&p=1&av=True)

**Note:** Carrying out building work that is not exempt without a building consent is an offence under section 40 of the Building Act. Such an offence can incur a fine of up to \$200,000 and, if work continues, a further fine of up to \$10,000 for every day or part day during which the offence continues.

A territorial authority can also issue an infringement notice for those carrying out building work without consent (under the Building (Infringement Offences, Fees, and Forms) Regulations 2007). This incurs an infringement fee of \$1,000.

### When building consent is not required (section 41)

---

Section 41 of the Building Act describes the circumstances in which a building consent is not required, including any of the building work described in Schedule 1.

#### 41 Building consent not required in certain cases

1. Despite section 40, a building consent is not required in relation to:

- (a) a Crown building or Crown building work to which, under section 6, this Act does not apply; or
- (b) any building work described in Schedule 1 for which a building consent is not required (see section 42A); or
- (c) any building work in respect of which a building consent cannot practicably be obtained in advance because the building work has to be carried out urgently:
  - (i) for the purpose of saving or protecting life or health or preventing serious damage to property; or
  - (ii) in order to ensure that a specified system in a building that is covered by a compliance schedule, or would be covered if a compliance schedule were issued in respect of the building, is maintained in a safe condition or is made safe; or
- (d) any energy work that, under section 43, does not require a building consent; or
- (e) any building work that a territorial authority is authorised to carry out under this Act.

2. The Governor-General may, by Order in Council, amend Schedule 1 by:

- (a) adding any building work or class of building work to Schedule 1 as being building work for which a building consent is not required;
- (b) extending or clarifying the scope of any building work or class of building work listed in Schedule 1 as building work for which a building consent is not required;
- (c) restating, for the purpose of clarity, any building work or class of building work listed in Schedule 1.

**Note:** If you are a building owner and do not obtain a consent because building work has to be carried out urgently, you must still apply to the territorial authority for a certificate of acceptance as soon as practicable after you have completed this work (under section 96 of the Building Act).

You should also note that exemptions are not retrospective. Therefore, if you carry out unconsented building work which was not exempt when it was undertaken (ie it was not covered by an exemption in the legislation in force at the time), you need to apply to the territorial authority for a certificate of acceptance.

## Conditions and limits on exempt work under Schedule 1 (section 42A)

Section 42A of the Building Act imposes some general conditions and limits on exemptions contained in Schedule 1 of the Building Act.

### 42A Building work for which building consent is not required under Schedule 1

1. Despite section 40, subject to the conditions set out in subsection (2) and whether or not a building consent would otherwise have been required, a building consent is not required for building work in the following categories:

- (a) building work described in Part 1 of Schedule 1; or
- (b) building work described in Part 2 of Schedule 1 that is carried out by an authorised person (see subsection (3)); or
- (c) building work described in Part 3 of Schedule 1 if the design of the building work has been carried out or reviewed by a chartered professional engineer and the building work has been carried out in accordance with that design.

2. Subsection (1) is subject to the following conditions:

- (a) the building work complies with the building code to the extent required by this Act;
- (b) after the building work is completed, the building:
  - (i) if it complied with the building code immediately before the building work began, continues to comply with the building code; or
  - (ii) if it did not comply with the building code immediately before the building work began, continues to comply at least to the same extent as it did then comply;
- (c) the building work does not breach any other enactment;
- (d) the building to which the building work relates is not a building that is required to be licensed under the Hazardous Substances and New Organisms Act 1996.

3. In subsection (1)(b), authorised person means a person who is authorised under the Plumbers, Gasfitters, and Drainlayers Act 2006 to do the work, except for a person who is authorised under section 15, 16, 19, or 25 of that Act.

## Who can carry out exempt work?

Section 42A(1) describes who can carry out the building work described in Schedule 1 without a building consent.

The Schedule 1 exemptions are grouped into three parts.

Part 1, which lists exempt building work that anyone can carry out

Part 2, which lists some plumbing and drainlaying work that can only be done by an authorised person; otherwise it will require a building consent. The term 'authorised person' is referred to in section 42A(3) as a person who is authorised under the Plumbers, Gasfitters and Drainlayers Act 2006 and effectively covers:

- registered certifying plumbers and drainlayers
- registered plumbers and drainlayers working under supervision
- plumbers and drainlayers with a provisional licence working under supervision, and
- trainee plumbers and drainlayers working under supervision.

Part 3, which lists building work that is only exempt if it is designed or the design is reviewed by a chartered professional engineer, who is a professional engineer registered under the Chartered Professional Engineers of New Zealand Act 2002.

## General conditions on exempt work

Section 42A(2) imposes general conditions on building work done without a building consent under Schedule 1.

Exempt work must still comply with the Building Code

Section 42A(2)(a) requires that all building work that is exempt under Schedule 1 must still comply with the Building Code.

This is not an additional requirement. It simply repeats, for clarity, the requirement of section 17 of the Building Act which applies to all building work, including that done without a building consent under Schedule 1.

Building performance cannot be made worse

Section 42A(2)(b) is a requirement relating to all building work done without a building consent under Schedule 1. It requires that the exempted building work must not make the altered building perform worse than the building did before the work was carried out.

This applies unless the building's performance initially exceeded the Building Code's requirements. In this case, it must continue to comply with the Building Code once the work is completed.

**Note:** Section 42A(2)(b) is a requirement for ALL alterations done to existing buildings under Schedule 1. It makes sure that alterations do not lessen a building's performance in terms of the Building Code.

This is a similar requirement to the one in section 112(1)(b) of the Building Act for alterations to existing buildings. However, section 112 relates to alterations carried out with a building consent. Section 42A(2)(b) was introduced to make sure that alterations do not reduce the performance of any buildings altered without a building consent under Schedule 1.

Exempt work must comply with other relevant legislation

Section 42A(2)(c) states that all building work done without a building consent under Schedule 1 must not breach any other enactment. This simply restates the requirements for all building work, whether exempt or not. [Examples of relevant legislation are listed near the top of this page.]

Work on buildings licensed under the HSNO Act will need a building consent

Section 42A(2)(d) specifically excludes from Schedule 1 any work on buildings required to be licensed under the Hazardous Substances and New Organisms Act 1996 (the HSNO Act).

**Note:** To avoid possible issues when on-selling your property, it is recommended, if you have completed exempt building work on your property, that you formally notify your council and provide it with any relevant documentation (such as drawings, specifications and photographs).

By providing this information, it will enable council to update your property file. By taking this simple action, it may avert difficulties when potential purchasers check council's records and discover that the records do not align with what is seen on site. (Note that councils may charge for providing this service).

## Checking whether earlier work was covered by an exemption

To check whether or not earlier building work on a property was covered by an exemption, you need to refer to the legislation in force at the time.

Schedule 1 of the Building Act 2004 has been issued and amended on the following dates:

- 1 July 2019 (the current version)
- 28 November 2013
- 23 December 2010
- 16 October 2008, and
- 24 August 2004.

You can download these versions on the [New Zealand Legislation website](http://www.legislation.govt.nz/act/public/2004/0072/latest/versions.aspx?search=ts_act%40bill%40regulation%40deemedreg_Building+Act_resele_25_a&p=1&av=True) ([http://www.legislation.govt.nz/act/public/2004/0072/latest/versions.aspx?search=ts\\_act%40bill%40regulation%40deemedreg\\_Building+Act\\_resele\\_25\\_a&p=1&av=True](http://www.legislation.govt.nz/act/public/2004/0072/latest/versions.aspx?search=ts_act%40bill%40regulation%40deemedreg_Building+Act_resele_25_a&p=1&av=True))

Before the Building Act 2004 was enacted, the Building Act 1991 was the relevant legislation: its Third Schedule (Exempt buildings and building work) was similar to the current Act's Schedule 1.

You can download this on the [New Zealand Legal Information Institute website](http://www.nzlii.org/nz/legis/hist_act/ba19911991n150118) ([http://www.nzlii.org/nz/legis/hist\\_act/ba19911991n150118](http://www.nzlii.org/nz/legis/hist_act/ba19911991n150118))

**Note:** We have included these links after feedback from building officials, who report that they get regular visits from home buyers and real estate agents wanting to view earlier versions of the legislation and asking council advice whether or not building work undertaken at a given time was exempt. We hope that providing this information will be helpful for both parties.



New Zealand Government

This information is published by the Ministry of Business, Innovation and Employment's Chief Executive. It is a general guide only and, if used, does not relieve any person of the obligation to consider any matter to which the information relates according to the circumstances of the particular case. Expert advice may be required in specific circumstances. Where this information relates to assisting people:

- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.