



# Gas Governance (Compliance) Amendment Regulations 2015

Jerry Mateparae, Governor-General

## Order in Council

At Wellington this 13th day of April 2015

Present:

The Right Hon John Key presiding in Council

Pursuant to sections 43G(2)(k) and 43S of the Gas Act 1992, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Energy made in accordance with sections 43J to 43O of that Act, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Gas Governance (Compliance) Amendment Regulations 2015.

### 2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

### 3 Principal regulations

These regulations amend the Gas Governance (Compliance) Regulations 2008 (the **principal regulations**).

### 4 Regulation 12 amended (Market administrator must notify participant allegedly in breach)

(1) In regulation 12(1)(b)(iv), after “occurred”, insert “; and”.

(2) After regulation 12(1)(b)(iv), insert:

(v) the information specified in subclause (1A), if the rule allegedly breached is regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 and if the participant allegedly in breach is a consumer.

(3) After regulation 12(1), insert:

(1A) If this subclause applies, the market administrator must also notify the participant that, if the Rulings Panel is to determine the alleged breach, the Rulings Panel may decide to take no action if it is satisfied that—

- (a) the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
- (b) the threat could not reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.

### 5 Regulation 19 amended (Factors to be taken into account when determining materiality)

After regulation 19(1), insert:

(1A) However, the market administrator must not take into account any claim by the participant allegedly in breach that the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person.

### 6 Regulation 38 amended (Process if Rulings Panel to determine alleged breach)

(1) After regulation 38(3)(d), insert:

- (da) the information specified in subclause (3A), if the rule allegedly breached is regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 and if the participant allegedly in breach is a consumer; and
- (2) After regulation 38(3), insert:
- (3A) If this subclause applies, the report must also include the following information:
- (a) the details of any claim by the participant that the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
  - (b) if the participant makes a claim described in paragraph (a), the investigator's assessment of—
    - (i) whether the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
    - (ii) whether the threat could reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.

**7 Regulation 50 amended (Rulings Panel may make certain orders)**

In regulation 50, insert as subclauses (2) and (3):

- (2) If the Rulings Panel is determining an alleged breach of regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 by a participant that is a consumer, the Rulings Panel may decide to take no action if the Rulings Panel is satisfied that—
- (a) the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
  - (b) the threat could not reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.
- (3) Subclause (2) does not limit the general discretion of the Rulings Panel under section 43X(1) of the Act to decide whether to take action, or what action to take, in respect of any alleged breach.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, amend the Gas Governance (Compliance) Regulations 2008 (the **principal regulations**).

The amendments apply—

- in respect of industry participants that are also consumers; and
- in the event of a breach of regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 (the **CCM regulations**), which require consumers to follow directions during a critical contingency.

The amendments enable a participant to claim that a breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person. If the Rulings Panel is required to determine the alleged breach, the Rulings Panel may decide to take no action if it is satisfied that—

- the breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and
- the threat could not reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.

The changes are intended to align the application of the principal regulations to consumers that are industry participants with the application of the CCM regulations to consumers other than industry participants (*see* regulation 82B(2) of those regulations), by ensuring that both industry participant consumers and non-industry participant consumers are able to claim that a failure to comply with the CCM regulations was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person.

## Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 8 August 2013 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/about-us/publications/ris>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

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These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Wellington, New Zealand:

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