



Gas Governance (Compliance) Amendment Regulations 2008

Anand Satyanand, Governor-General

Order in Council

At Wellington this 4th day of November 2008

Present:

His Excellency the Governor-General in Council

Pursuant to sections 43G, 43S, and 43T 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 2008.

2 Commencement

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

3 Principal regulations amended

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

4 Purpose

Regulation 3 is amended by adding “; and” and also by adding the following paragraph:

“(d) the Gas Governance (Critical Contingency Management) Regulations 2008.”

5 Interpretation

(1) Regulation 4(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**critical contingency operator** means the service provider appointed by the industry body under regulation 6 of the Gas Governance (Critical Contingency Management) Regulations 2008”.

(2) Regulation 4(1) is amended by revoking the definition of **participant** and substituting the following definition:

“participant—

- “(a) means an industry participant, as defined in section 43D of the Act; and
- “(b) includes any of the following, as those terms are defined in the rules:
 - “(i) a registry participant and the registry operator; or
 - “(ii) a facility owner; or
 - “(iii) an allocation participant and the allocation agent; and
- “(c) for the purposes of the monitoring and enforcement of the Gas Governance (Critical Contingency Management) Regulations 2008, also includes a transmission system owner, retailer, shipper, interconnected party, consumer, industry expert, expert adviser, and the critical contingency operator, as defined in those regulations”.

- (3) The definition of **rules** in regulation 4(1) is amended by adding “; and” and also by adding the following paragraph:
 - “(d) the Gas Governance (Critical Contingency Management) Regulations 2008”.

6 Registry operator or allocation agent must notify market administrator of alleged breach

- (1) Regulation 11(1) is amended by inserting “or the critical contingency operator” after “allocation agent” in each place where it appears.
- (2) Regulation 11(3) is amended by inserting “or critical contingency operator” after “allocation agent” in each place where it appears.
- (3) Regulation 11(4) is amended by inserting “or an audit carried out under regulations 42 and 83 of the Gas Governance (Critical Contingency Management) Regulations 2008” after “an audit carried out under Part 4 of the Gas (Downstream Reconciliation) Rules 2008”.

7 Market administrator may request further information

- Regulation 14(1)(c) is amended by adding “or the critical contingency operator”.

8 Factors to be taken into account when determining materiality

Regulation 19(1) is amended by inserting the following paragraph after paragraph (h):

“(ha) the extent to which the breach was caused by an event or circumstance beyond the reasonable control of the participant allegedly in breach.”.

9 New regulation 39A inserted

The following regulation is inserted after regulation 39:

“39A Interim injunctions in respect of actions in breach of Gas Governance (Critical Contingency Management) Regulations 2008

“(1) The industry body may apply to the High Court for the grant of an interim injunction—

“(a) restraining a participant from doing, or omitting to do, anything that is in breach of the Gas Governance (Critical Contingency Management) Regulations 2008; or

“(b) requiring a participant to do, or omit to do, something in accordance with the Gas Governance (Critical Contingency Management) Regulations 2008.

“(2) The court may grant the injunction if, in the opinion of the court, it is desirable to do so.

“(3) Subclause (2) applies, in the case of an injunction under subclause (1)(a),—

“(a) whether or not the participant has done, or omitted to do, that thing; and

“(b) whether or not there is an imminent danger of substantial damage to any person if the participant does, or omits to do, that thing.

“(4) The court may rescind or vary the injunction on application by the industry body or any participant affected by the injunction.”

10 New regulation 58A inserted

The following regulation is inserted after regulation 58:

“58A Liability of critical contingency operator

- “(1) The critical contingency operator is liable for any breach that it commits of regulations 9, 28, 32, 34 to 38, 41, 42, 48 to 53, and 59 to 65 of the Gas Governance (Critical Contingency Management) Regulations 2008.
- “(2) The critical contingency operator is not liable under these regulations for a sum in excess of the annual fee stipulated in the critical contingency operator service provider agreement in respect of all events occurring in any financial year.”

Rebecca Kitteridge,
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 to take account of the making of the Gas Governance (Critical Contingency Management) Regulations 2008, which provide for the management and co-ordination of out-ages for security of gas supply purposes.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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These regulations are administered by the Ministry of Economic Development.
