



## Overseas Investment Amendment Regulations 2023

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 26th day of June 2023

Present:

The Hon Carmel Sepuloni presiding in Council

These regulations are made under sections 37B and 61 and clause 22 of Schedule 5 of the Overseas Investment Act 2005—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Finance.

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**Schedule**  
**New Part 10 of Schedule 1AA inserted**

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**Regulations**

**1 Title**

These regulations are the Overseas Investment Amendment Regulations 2023.

**2 Commencement**

These regulations come into force on 27 July 2023.

**3 Principal regulations**

These regulations amend the Overseas Investment Regulations 2005.

**4 Regulation 18 replaced (Cancellation of water areas acquisition notice)**

Replace regulation 18 with:

**18 Manner of cancelling water areas acquisition notice**

*When regulation applies*

(1) This regulation applies if a water areas acquisition notice for a fresh or seawater area—

- (a) may be cancelled under clause 15(1)(a), because the owner of the fresh or seawater interest receives from the Crown a notice, given under clause 4 or 5, that the Crown has decided not to acquire the fresh or seawater area; or
- (b) may be cancelled under clause 15(1)(b), and the owner of the fresh or seawater interest receives from the Crown a notice that the water areas acquisition notice has expired under clause 14; or
- (c) may be cancelled under clause 15(1)(c), and the owner of the land against which the water areas acquisition notice is registered receives from the Crown a notice that a record of title for that land does not contain any fresh or seawater areas; or
- (d) may be cancelled under regulation 20(2A), because a water areas covenant has been registered on the fresh or seawater interest owner's title.

*Who must lodge instrument cancelling notice and how instrument must be lodged*

(2) Lodging an instrument cancelling a water areas acquisition notice with the Registrar must be done, for the purposes of clause 15(2), by—

- (a) the owner mentioned in subclause (1)(a), (b), (c), or (d) of this regulation; or

- (b) the Crown.
- (3) The instrument must meet all requirements (for example, all applicable certification requirements) in the Land Transfer Act 2017 or Land Transfer Regulations 2018 for, and for lodging or registering, a discharge instrument.  
*Regulation does not affect Registrar’s duty to cancel notice on vesting*
- (4) This regulation does not affect clause 7(5)(b).

## 5 Regulation 20 amended (Water areas covenant)

After regulation 20(2), insert:

*Cancellation of water areas acquisition notice*

- (2A) Once a water areas covenant has been registered on the title, a water areas acquisition notice on that title may be cancelled (*see* regulation 18 for the manner of cancellation).

## 6 Regulation 23 amended (Process for claiming and determining compensation)

- (1) Replace regulation 23(5)(b) with:

- (b) for the fresh or seawater interest, by taking an amount equal to 5% of the average rateable value (per hectare) of land in the vicinity of the fresh or seawater area and multiplying that amount by the size of the fresh or seawater interest in hectares; and

### Example

A fresh or seawater interest comprises 5 hectares of a fresh or seawater area. The average rateable value of land in the vicinity of the fresh or seawater area is \$2,000 per hectare. Compensation for the fresh or seawater interest is 5% of that value (\$100) multiplied by the size of the interest in hectares (5 hectares). Therefore, compensation for the interest is \$500.

- (2) In regulation 23(6), definition of **rateable value**, after “under”, insert “section 13(3)(a)(iii) of”.

## 7 Regulation 28 and cross-heading revoked

Revoke regulation 28 and the cross-heading above regulation 28.

## 8 Regulation 64 amended (Requirements for application for exemption)

- (1) Before regulation 64(1), insert:

*General requirements*

- (2) Replace regulation 64(1)(c) with:

- (c) contain the information set out in subclause (1A); and

- (3) After regulation 64(1), insert:

*Information application must contain*

- (1A) An application must contain the following information (unless the information is not relevant to the relevant application or it is not practicable for the applicant to provide the information):
- (a) details of the investor as follows:
    - (i) full ownership details, including information relating to all direct and indirect beneficial owners:
    - (ii) full control details, including decision-making delegations and formal or informal management arrangements:
  - (b) details of the investment as follows:
    - (i) full details of the transaction, person, interest, right, or assets for which an exemption is sought:
    - (ii) advice commissioned by the applicant and prepared by third parties relating to the proposed exemption:
    - (iii) vendor information, including the current operations and state of the investment:
  - (c) details of the land (if relevant) as follows:
    - (i) a description of the relevant sensitivities of the land:
    - (ii) a legal description of the relevant land:
  - (d) submissions addressing all of the relevant criteria for exemption (*see* section 61E of the Act).

- (4) Before regulation 64(2), insert:

*Statutory declaration*

- (5) Before regulation 64(3), insert:

*Regulator may, by notice in writing, require further information*

## **9 Schedule 1AA amended**

In Schedule 1AA,—

- (a) insert the Part set out in the Schedule of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

## **10 Schedule 2 amended**

- (1) In Schedule 2, Part 2, revoke paragraph (a).
- (2) In Schedule 2, Part 2, item 8, revoke paragraph (b).
- (3) In Schedule 2, Part 3, item 12, delete “(other than where section 16A(3) of the Act applies)”.

- (4) In Schedule 2, Part 3, item 13, delete “(other than where section 16A(3) of the Act applies)”.

**11 Schedule 5 amended**

- (1) In Schedule 5, clause 2(1), item relating to 70 working days, replace “section 16A(1C), (3), or (4)” with “section 16A(1C) or (4)”.
- (2) In Schedule 5, clause 2(1), item relating to 70 working days, delete “Application for consent where the modified benefit to New Zealand test in section 16A(3) of the Act applies, for things described in section 16A(2) (forestry activities)”.

**Schedule**  
**New Part 10 of Schedule 1AA inserted**

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**Part 10**  
**Provisions relating to**  
**Overseas Investment Amendment Regulations 2023**

**21 Definitions for this Part**

In this Part,—

**amendment regulations** means the Overseas Investment Amendment Regulations 2023

**commencement** means the commencement of the amendment regulations.

**22 Regulation 18 applies after commencement to existing and future water areas acquisition notices**

Regulation 18 (as inserted by the amendment regulations) applies, after commencement, to a water areas acquisition notice whether or not—

- (a) the notice is registered under clause 12 of Schedule 5 of the Act before, on, or after commencement; and
- (b) a water areas covenant is registered under clause 20(4) of Schedule 5 of the Act before, on, or after commencement.

**23 Regulation 23 only applies to interests acquired as a result of transactions entered into on or after commencement**

- (1) Regulation 23 (as amended by the amendment regulations) applies to compensation under clause 9 or 10 of Schedule 5 of the Act for a fresh or seawater interest acquired as a result of an overseas investment transaction only if that transaction is entered into on or after commencement.
- (2) Subclause (1) applies even if the transaction is covered by a consent (including a standing consent) applied for or granted, or both, before commencement.

**24 Regulation 64 only applies to exemption applications made on or after commencement**

Regulation 64 (as amended by the amendment regulations) applies to an application for an exemption under section 61D of the Act (Minister may grant individual exemptions) only if that application is made on or after commencement.

Diana Hawker,  
Acting 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 27 July 2023, amend the Overseas Investment Regulations 2005. The amendments arise from amendments made to the Overseas Investment Act 2005 (the **Act**) by the Overseas Investment (Urgent Measures) Amendment Act 2020, Overseas Investment Amendment Act 2021, and Overseas Investment (Forestry) Amendment Act 2022. The amendments—

- adjust the manner in which a water areas acquisition notice may be cancelled so that neither the owner nor the Crown has a duty to lodge an instrument cancelling the notice:
- provide for the cancellation of a water areas acquisition notice registered on an adjacent title under clause 18(2) of Schedule 5 of the Act if a water areas covenant has been registered on that title:
- clarify the method for determining compensation payable by the Crown for a fresh or seawater interest:
- remove references to the additional factors for assessing benefit to New Zealand because those factors are no longer used under the Act:
- update the information requirements for applications for exemption under section 61D of the Act:
- remove references to the modified benefit test for forestry activities because this test is no longer used in the Act.

## Regulatory impact statement

The Treasury produced regulatory impact statements on 6 March 2020 and 9 February 2022 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact statements can be found at—

- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-reform-overseas-investment-act-2005-phase-2>
- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-overseas-investment-screening-settings-forestry-conversions>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 29 June 2023.

These regulations are administered by the Treasury.