

# **Energy Efficiency and Conservation Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

#### *Overview*

The overall purpose of this Bill is to continue to promote energy efficiency, energy conservation, and renewable energy in New Zealand by improving the effectiveness of the Energy Efficiency and Conservation Act 2000 (**the Act**). The Bill addresses the planned increase in product labelling and subsequent compliance needs, addresses the energy efficiency of buildings, including homes, and makes minor or technical improvements to the Act that have been identified over time.

#### *Summary of key changes*

##### **Enabling regulations to rate homes and buildings for their energy efficiency and energy conservation**

The New Zealand Energy Efficiency and Conservation Strategy sets out the objective of establishing a home energy rating scheme. A voluntary home energy rating scheme trial is being held in early 2008 along with the release of a public discussion document. The results of this trial and consultation will inform recommendations for a future home energy rating scheme. The Bill will create a power in the Act

to implement a scheme through regulation in the future by extending the range of areas that section 36 of the Act can regulate.

The Bill will establish regulation-making powers to—

- enable the rating of homes and buildings for their energy efficiency, including the energy efficiency of their construction, or their component systems, and their energy conservation:
- prescribe the methods for the assessment and rating of buildings, accreditation of assessors, fees payable for assessments, and the publication of a building's rating.

Disclosure of ratings through a home energy rating scheme is intended to improve owner and occupant knowledge of building energy efficiency, encouraging and motivating them to improve the energy efficiency of New Zealand's house stock. It will also enable those seeking to buy or lease property to make informed decisions by providing them with reliable and consistent information.

### **Incorporating New Zealand and joint Australian/New Zealand Standards by reference**

The term incorporation by reference is used to describe a technique that gives legal effect to provisions contained in a separate document without repeating those provisions in the text of the incorporating legislation.

The use of material incorporated by reference can be an efficient way of utilising already existing standards or guidelines and avoids the repetition of large volumes of technical material in legislation. When the Act was passed, it was intended that standards promulgated by Standards New Zealand could be incorporated by reference into regulations under section 37(1)(a) of the Act. This would mean that when a standard was updated, the update could take effect by notice in the *New Zealand Gazette* pursuant to section 37(3) and (4) of the Act.

The current provision does not make it clear that New Zealand Standards, including joint Australian/New Zealand Standards, may be incorporated into regulations by reference.

The Bill will also introduce more modern drafting of provisions. The current wording of section 37 of the Act is different to the more modern drafting of provisions authorising incorporation of material by reference. In particular, the more modern drafting clarifies that both

national organisations as well as international organisations are included.

There are also a number of other technical matters that must be included with all modern provisions for material incorporated by reference to ensure the Legislative Advisory Committee guidelines and recommendations of the Regulations Review Committee are complied with. These matters relate to proof of material, expiry of material, and public access to material.

**Access to New Zealand Customs Service information for products subject to, or proposed for, minimum energy performance standards or labelling**

The Bill will enable the Energy Efficiency and Conservation Authority (EECA) to access and assess information collected by the New Zealand Customs Service (Customs) on products that are subject to, or proposed for, regulation under the Act. These include products that are subject to either minimum energy performance standards or labelling requirements or are the subject of investigation to determine if they should be subject to minimum energy performance standards or labelling.

The purpose of the amendment is to allow EECA to determine the quantity of a specified product type being imported into New Zealand to allow EECA to—

- cross-reference sales data obtained by EECA and importation figures to improve monitoring and compliance of minimum energy performance standards (regulation 9 of the Energy Efficiency (Energy Using Products) Regulations 2002 allows for the collection of sales data by EECA);
- gather information on the number of particular products entering the country so that EECA can accurately determine possible energy savings from a proposed minimum energy performance standards intervention and include this in any cost-benefit analysis.

Provision of Customs information needs to be specifically stated in the Act so that Customs can legally provide the information to EECA.

**Establishment of infringement regime to strengthen enforcement provisions of Act**

The Bill establishes an infringement regime and strengthens the enforcement provisions of the Act. This will provide another option for enforcement where the severity of alleged breaches of the regulations pursuant to the Act do not warrant prosecution. This ought to ensure greater compliance.

The amendments are intended to enable minor offences to be dealt with in a more cost-effective and timely manner. The Bill provides for infringement notices, often called instant fines, and contains the framework for an enforcement officer to serve an infringement notice on a person who is believed to have committed an infringement offence.

The Bill creates an infringement regime (in line with Legislation Advisory Committee guidelines), to include—

- powers of entry for enforcement officers, including for inspection and to copy documents;
- empowering provisions to make regulations specifying infringement offences;
- empowering provisions to make regulations specifying infringement fees up to a maximum of \$1,000.

The Energy Efficiency (Energy Using Products) Regulations 2002 currently provide for offences and fines not exceeding \$10,000 for every person who contravenes the regulations. Under these existing provisions of the regulations, enforcement options are limited to letters of warning and prosecution by way of summary proceedings in the District Court. Prosecution is a very time-consuming and expensive process, and does not fit well with the operational nature of the regulations.

Like Australian regulators, EECA anticipates considerable growth in products subject to regulation. Currently 12 product classes are subject to minimum energy performance standards and 5 product classes are subject to mandatory energy performance labelling. It is planned that minimum energy performance standards or labelling interventions for an additional 17 product classes will be concluded by 2012. The types of offences that will be dealt with by infringement offence notices are currently stated in the Energy Efficiency (Energy Using Products) Regulations 2002. These offences relate to minimum en-

ergy performance standards and labelling requirements and duties on manufacturers, importers, and persons dealing directly with consumers.

The implementation of the infringement offence regime will be supported by powers to enter, inspect business premises, and copy documents. The exercise of these powers will be limited to working hours and reasonable circumstances. EECA will be able to appoint enforcement officers to exercise these powers. Offences for obstructing officers exercising their duties will be included.

In order to ensure that the entry and inspection powers in the Bill are consistent with section 21 (protection against unreasonable search and seizure) of the New Zealand Bill of Rights Act 1990, the Bill will also provide for adequate safeguards against the unreasonable use of these powers.

### Clause by clause analysis

*Clause 1* states the Bill's title.

*Clause 2* specifies the Bill's commencement date.

*Clause 3* says that the Bill amends the Energy Efficiency and Conservation Act 2000.

*Clause 4* inserts new definitions into section 3.

*Clause 5* inserts *new sections 35A to 35K*. *New sections 35A to 35D* set up an infringement offence regime, where infringement notices may be issued for infringement offences, and an infringement fee is payable for the offence. *New sections 35E to 35K* allow enforcement officers to be appointed. An enforcement officer may require information from certain persons, or enter and inspect a place of business in certain situations. Offences are created for intentionally obstructing, hindering, or deceiving an enforcement officer, or for impersonating or falsely pretending to be an enforcement officer.

*Clause 6* amends the regulation-making powers in section 36(1) to allow regulations to be made that—

- require specified buildings (or parts of buildings) to be assessed and given energy efficiency and conservation ratings (*new paragraphs (ea) and (eb)*);
- prescribe offences as infringement offences, the infringement fees payable for them, and related matters (*new paragraphs (i) to (l)*).

*Clause 7* replaces section 37 with *new sections 37 to 37I*. The new sections allow regulations to incorporate certain material by reference to the material. The sections also deal with amendment or replacement of the incorporated material, access to the material, and related matters.

*Clause 8* amends section 39 so that the offence of publishing or disclosing information extends to information provided under *new section 39A*.

*Clause 9* inserts *new section 39A*. The new section allows the Energy Efficiency and Conservation Authority to obtain information from Customs about the importation of energy-using or energy-conserving products. Information may be obtained to help EECA—

- consider whether to make regulations that apply to the products; or
- administer or enforce regulations that already apply to the products.

## Regulatory impact statement

### *Executive summary*

In September 2007, Cabinet agreed to amend the Energy Efficiency and Conservation Act 2000 (**the Act**). A regulatory impact statement (**RIS**) was prepared for 2 policy proposals in the paper. The content of that RIS is contained below.

It is proposed that provisions within the Act be extended to include the power to make regulations to rate the energy efficiency of buildings. This would provide the Energy Efficiency and Conservation Authority (**EECA**) with the ability to implement a regulatory regime for the rating of houses' energy efficiency, to be provided to home buyers, owners, and occupants. Such a measure would reduce information barriers to investment in home energy efficiency and conservation and lead to the greater energy efficiency of New Zealand houses in general. It would also allow for the rating of other buildings if warranted at a later date.

Enforcement options for breaches of regulations under the Act are currently limited to prosecution through the District Court, with penalties of conviction and a fine up to \$10,000. Due to the high costs of litigation and the relatively minor nature of identified breaches, enforcement agencies have declined to impose this sanc-

tion, despite numerous detected breaches. With increasing numbers of products subject to minimum energy performance standards and labelling requirements, breaches are expected to rise over time.

It is proposed that a less costly and administratively burdensome penalty for non-compliance that is more appropriate for the level of offence be introduced to complement the existing penalty. It is proposed that this be in the form of an infringement offence regime. This would help to encourage greater compliance with the regulations and to secure energy efficiency benefits from current minimum energy performance standards and labelling regulations.

### *Adequacy statement*

The Ministry for the Environment (**MfE**) administered the Act before 1 July 2008, when the Ministry of Economic Development took over administration of the Act. MfE confirmed that the principles of the government approved Code of Good Regulatory Practice and the regulatory impact analysis (**RIA**) requirements, including the consultation RIA requirements, were complied with. An RIS was prepared and MfE considered it to be adequate. A draft RIS was circulated with the Cabinet paper for departmental consultation.

### *Energy efficiency rating of buildings*

#### *Status quo and problem*

The residential sector in New Zealand consumes approximately 12% of the country's energy usage or 34% of its electricity. Space heating and water heating consume 36% and 38% of household energy, respectively.

Despite this high proportion of energy usage, many houses in New Zealand are relatively energy inefficient in terms of water and space heating. The majority of the 1.5 million occupied houses in New Zealand do not have adequate insulation and are of low energy efficiency compared to what is achievable. The 2005 House Condition Survey found that less than 20% of the sample had underfloor insulation, and only 69% had the whole ceiling insulated<sup>1</sup>. Only 63% of owner-occupied houses were reported to have adequate insulation

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<sup>1</sup> New Zealand 2005 House Condition Survey; Building Research Association of New Zealand 2005

in the ceiling, the most commonly insulated part of New Zealand houses, with an estimated 160 000 houses completely uninsulated. This has economic and health consequences, through households incurring additional costs to heat their houses and through houses being inadequately heated leading to occupant health problems.

Considerable economic benefits could accrue from better home energy efficiency. For example, owners of pre-1977 uninsulated houses will be able to identify cost-effective improvements such as draft stopping, hot water cylinder wraps, pipe lagging, water efficient shower heads, and energy-saving light bulbs. The estimated benefit of installing a full suite of such measures is \$2.20 for every dollar spent on such improvements, including health and energy savings<sup>2</sup>. A recent Wellington School of Medicine study has found that insulation positively affects people's health. This research has found that families in insulated houses had fewer medical and hospital visits for respiratory conditions, and fewer days off work and school<sup>3</sup>.

Currently, there is little information available to people without some specialist knowledge, either at time of purchase or during occupation, that could help them to improve houses' energy efficiency. If energy efficiency information is available, potential home owners may be willing to pay a premium for more energy-efficient houses to reflect the expected future energy savings and other benefits this provides. That would provide an incentive to home builders and vendors to make houses more energy efficient. Existing home owners would also be able to use the information to assess the profitability of investing in energy efficiency measures, the effectiveness of which would otherwise be uncertain.

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<sup>2</sup> Estimates are based on net benefit modelling developed by the Building Research Association of New Zealand for EECA in 2007.

<sup>3</sup> The results show significant improvements (10–11%) in the health and quality of life of the occupants. Importantly, it was reported that adults and children have reduced wheezing, colds, and respiratory problems (40–50% reduction). People living in insulated houses are also less likely to take days off work and school (40–50% reduction) than people in houses without insulation. There were also fewer visits to GPs and fewer hospital admissions for respiratory conditions.



The problem is that some of these potential benefits of information on houses' energy efficiency cannot be realised because there is no consistent and reliable energy rating framework in place.

### ***Objectives***

The policy objective is to enable the provision of consistent, reliable, and comparable information on houses' relative energy efficiency. This would better allow people to make informed decisions relating to their house's energy efficiency, and the energy efficiency of prospective houses.

### ***Alternative options***

An alternative is to establish a public education or marketing campaign that could inform householders and prospective buyers or tenants of home energy efficiency issues. While this may be effective in enabling a rise in public awareness of home energy efficiency in general, it would not enable the provision of details of the energy efficiency of particular houses or advice on potential improvements for particular houses. It also would not ensure that the information received is consistent, reliable, and comparable. This would prevent those who may wish to invest in improvements, or in a house purchase, from making informed decisions about the house's energy efficiency.

Another alternative is to regulate through alternative legislative vehicles. Empowering legislation for a home energy rating scheme could come in the form of stand-alone legislation. This is not a preferred option because it causes a separation from, and possible inconsistency with, the existing regulatory framework for energy efficiency contained within the Act. Having multiple sources of energy efficiency regulations would likely lead to confusion. Including these provisions within another existing legislative instrument, such as the Building Act 2004, is not preferred for the same reasons.

### ***Preferred option***

The preferred option is for amendments to the Act to allow for regulations to be made to rate buildings for their energy efficiency and conservation. It should be noted that this option would only create a regulation-making power. The detail of any regulations proposed

under such a provision would be subject to a cost-benefit and regulatory impact analysis, and will be accompanied by a separate regulatory impact statement when considered by Cabinet.

While the intention behind this option is currently only to develop policy about an energy rating scheme for houses, the definition of buildings is preferred, as this is a more certain legal term, and it provides the opportunity for a future energy rating scheme for commercial buildings should that become policy.<sup>4</sup>

The potential energy savings under a home energy rating scheme are large. Provision of information on houses' energy efficiency at the point of sale would encourage investment in energy efficiency by home builders and vendors. Prospective buyers would be able to discriminate between houses based on their energy efficiency, and could incorporate expected future energy savings from more energy-efficient houses into their bid price, resulting in a premium being paid for more energy-efficient houses. House builders and vendors will then have an incentive to construct and sell houses that are more energy efficient.

With information on houses' energy efficiency, existing home owners will be able to assess the economic case for investing in home energy efficiency measures. It will allow them to assess what improvements could be made and the likely energy savings from doing so, and empower them to implement those that are justified. Householders designing new houses will be able to use the rating scheme to optimise the energy efficiency of the building at the design stage, incorporating cost-effective features such as passive solar design and optimal levels of insulation.

### *Infringement offence regime*

#### *Status quo and problem*

Currently, regulations pursuant to section 36 of the Act prescribe minimum energy performance standards and labelling of the energy efficiency of products and vehicles. People who breach these regu-

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<sup>4</sup> As with any home energy rating scheme that may be developed under this regulation in the future, an energy rating scheme for commercial buildings would be subject to a full cost-benefit and regulatory impact analysis, and will be accompanied by a separate regulatory impact statement when considered by Cabinet.

latory requirements commit an offence and are liable on summary conviction to a fine of up to \$10,000.

The number of products subject to minimum energy performance standards and labelling requirements is set to increase dramatically. Currently, 12 product classes are subject to minimum energy performance standards and 5 product classes are subject to mandatory energy performance labelling. It is planned that minimum energy performance standards or labelling interventions for an additional 17 product classes will be in place by 2012. This rise in volume includes a Vehicle Fuel Economy Labelling Scheme. This scheme will require registered motor vehicle traders to display a fuel economy label on all motor vehicles at the point of sale. This will apply to around 3 200 traders, and more than 200 000 vehicle sales per year.

Compared to the 5 complaints that EECA investigated when the regulations were first launched in 2002, last year EECA investigated 78 suspected breaches, of which 64 breaches were identified. Given the rise in the number of standards, labelling requirements, and products to be covered, it is anticipated by EECA officials that there could be a parallel growth in the level of breaches.

These identified breaches were over a range of at least 5 730 product models that are subject to labelling requirements, and they probably represent only a small portion of total breaches. The large majority of the breaches identified are minor, inadvertent, or technical in nature (such as failing to register a product, or minor and technical departures from labelling specifications) and as such do not warrant the pursuit of a conviction through the courts. Instead, some other mechanism that signals an appropriate level of sanction for minor counts of non-compliance is seen as necessary to add credibility to the regulatory regime, with continuing availability of prosecution for serious or repeat offences.

EECA monitors compliance with the regulations on behalf of the Minister of Energy. Enforcement in instances of non-compliance is currently ineffective. Despite numerous clear breaches since the introduction of the regulations in 2002, EECA has mounted only 1 prosecution to date. This is because EECA has determined that the expense of court action, often expected to run into some thousands of dollars, is not justified given the low level of offending identified. This process is also very time-consuming and can be subject to considerable delay. Instead, EECA informally sends warning letters

to those suspected of being in breach. These letters do not provide any formal sanction and are often ignored. This is problematic as the very low level of offences does not justify conviction, but the offences ought to be met with some level of appropriate sanction.

The problem is that there is currently no effective sanction being imposed for non-compliance with the regulations. The high cost and time delays of the only available sanction for breach (prosecution) impede enforcement agencies from taking action. Without sanctions being imposed the regulations can lack credibility, may not be complied with, and are likely to be less effective. This will put the energy efficiency benefits of the regulations at risk, with the possibility of a reversal of the gains achieved so far, at a considerable cost to New Zealand. EECA has estimated that the Minimum Energy Performance Standards programmes have saved 1.65 petajoules of energy at a value of \$60 million as at March 2006<sup>5</sup>. Energy savings from refrigeration appliances alone are estimated to have given benefits of \$12 million.

### *Objectives*

The policy objective is to ensure compliance with minimum energy performance standards and labelling requirements. Sanctions need to be in place to deter non-compliance that can credibly be expected to be enforced and that are appropriate to the level of offending.

### *Alternative options*

An alternative is to educate those for whom the regulations apply to encourage them to comply voluntarily. While this may have some limited effects on non-compliance, awareness of the regulations is already high, and it is considered unlikely that much current non-compliance would be deterred without compulsion. Another alternative to the status quo is to prosecute all instances of alleged breach. This would be likely to deter breaches. However, with expected litigation costs to both the enforcement agency and the alleged offender of approximately \$10,000 each, the cost to all parties for the 64 alleged breaches of 2006 (which is likely to represent only a fraction of total

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<sup>5</sup> Figures calculated by EECA are derived from annual sales data received from suppliers and cover all energy savings under these programmes up until March 2006.

breaches) would run to well over \$1 million per annum. This is expected to rise significantly following introduction of new products into the specification and labelling framework.

### *Preferred option*

It is proposed that a new sanction for non-compliance with the regulations be imposed in the form of an infringement offence regime incorporating infringement notices that come with an instant fine. These notices will be issued by enforcement officers appointed by EECA, and fines are expected to be set at between \$500 and \$1,000 per offence. Enforcement officers will have specifically prescribed powers of entry, search, and seizure to enable them to detect instances of non-compliance and gather evidence. There will also be penalties for obstructing enforcement officers from performing their duties. In all instances those issued with infringement notices will have the ability to appeal to the District Court.

Under this proposal there is unlikely to be any change in the time and expense taken to inspect products for compliance over and above what already takes place, and the proposed powers of entry, search, and seizure will enable more efficient investigation of suspected breaches. Although enforcement will be considerably more cost-effective than previously, a slight increase in enforcement costs will occur, as some administrative costs in issuing infringement notices will be necessary. This is still considerably cheaper, however, than the alternative of prosecuting the offenders who would be issued infringement notices under this proposal.

This proposal will promote compliance with the regulations by presenting a more credible threat of sanction for non-compliance than currently, with enhanced means of detection. Increased compliance will result in greater effectiveness of the regulations made under the Act. Therefore, the major benefit of this proposal will be energy efficiency savings associated with the energy efficiency regulations being followed.

These benefits will outweigh the relatively low costs of administering an infringement offence regime. There is large potential in New Zealand for improved energy efficiency to benefit society, and the energy efficiency regulations are one way to help realise this potential. Ensuring compliance is, therefore, likely to be of considerable

benefit. Compliance with these already well-established regulations is already required and it will remain an offence to be in breach of them. Establishing an infringement offence regime will act to improve compliance as part of a suite of enforcement measures.

### *Two policy proposals for which RIS not prepared*

The reasons for not providing an RIS for the remaining 2 policy proposals are as follows:

- Provisions for updating New Zealand Standards that are incorporated by reference are intended to rectify an error in section 37 of the Act and, though more detailed than the original section 37, are essentially of a minor mechanical nature. This fits within an exemption to the requirements for an RIS.
- Access to New Zealand Customs Service data is an arrangement between two arms of government and ought not to impact on the public. This fits within an exemption to the requirements for an RIS.

### *Implementation and review*

The proposed changes will be implemented through the Energy Efficiency and Conservation Amendment Bill **2008**. If implemented, proposed legislative amendments for the future creation of regulations under the Act are expected to be reviewed periodically as appropriate, but it is not considered necessary to have a review of the regulation-making powers proposed (except as part of a full review of the Act at some future date). There will be widespread notification of the infringement offence regime. Changes will be gazetted and advertised in newspapers and in EECA publications, and importers will be contacted directly to inform them of the changes.

It is anticipated that in the first year after implementation, EECA will review its monitoring and compliance activities relating to energy efficiency standards and labelling, and will consider what changes, if any, are needed as a result of this amendment.

### *Consultation*

The following government departments and agencies have been consulted on, or informed of, the various policies contained in the En-

ergy Efficiency and Conservation Amendment Bill **2008**: the Department of the Prime Minister and Cabinet, Ministry of Economic Development, Ministry of Justice, Ministry of Consumer Affairs, New Zealand Customs Service, Department of Building and Housing, Energy Efficiency and Conservation Authority, Commerce Commission, and Office of the Privacy Commissioner.

Public consultation on any regulations that result from proposed regulation-making powers will be required. However, no public consultation is required on the enabling legislative amendment itself before it is introduced to Parliament.

There was widespread industry consultation for the development of the energy efficiency standards and energy efficiency labelling requirements that are currently in place. While no consultation has been undertaken for the proposed change in penalty for non-compliance, affected industry participants will be contacted directly to ensure full understanding of the change if the amendment is passed.

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*Hon David Parker*

## **Energy Efficiency and Conservation Amendment Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Energy Efficiency and Conservation Amendment Act **2008**.
- 2 Commencement** 5  
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**  
This Act amends the Energy Efficiency and Conservation Act 2000. 10
- 4 Interpretation**  
Section 3 is amended by inserting the following definitions in their appropriate alphabetical order:  
  - “**building** has the meaning given by **section 36(3)**
  - “**enforcement officer** means a person appointed as an enforcement officer under **section 35E** 15

“**infringement fee** means the amount prescribed as the infringement fee for an infringement offence

“**infringement offence** means an offence prescribed as an infringement offence

“**legally incorporated material** has the meaning given by **section 37C** 5

“**prescribed** means prescribed by regulations made under section 36”.

**5 New headings and sections 35A to 35K inserted**

The following headings and sections are inserted after section 35: 10

*“Infringement offences*

“**35A Proceedings for infringement offences**

“(1) A person who is alleged to have committed an infringement offence may either— 15

“(a) be proceeded against summarily under the Summary Proceedings Act 1957; or

“(b) be served with an infringement notice under **section 35B**.

“(2) Summary proceedings for an infringement offence may be commenced by laying an information under the Summary Proceedings Act 1957 without the leave of a District Court Judge or Registrar, despite section 21(1)(a) of that Act. 20

“(3) If an infringement notice has been issued for an infringement offence, summary proceedings for the offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957. 25

“**35B Issue and service of infringement notices**

“(1) An enforcement officer may issue an infringement notice to a person if the officer has reasonable grounds to believe that the person is committing or has committed an infringement offence. 30

“(2) The infringement notice may be served on the person—

“(a) by an enforcement officer personally delivering it to the person; or 35

- “(b) by posting it to the person at the person’s business address or postal address; or
- “(c) by leaving it, addressed to the person, at the person’s place of business.
- “(3) An infringement notice must be treated as having been served 5  
when—
- “(a) it would have been delivered in the ordinary course of post, if posted under **subsection (2)(b)**;
- “(b) it is left at a person’s place of business, if left under **subsection (2)(c)**. 10

**“35C Form of infringement notices**

An infringement notice must be in the prescribed form and contain the following details:

- “(a) details that are sufficient to inform a person of the time, place, and nature of the alleged offence: 15
- “(b) the amount of the infringement fee for the offence:
- “(c) the time by which the fee must be paid:
- “(d) the address of the place at which the fee must be paid:
- “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 20
- “(f) a statement that the person served with the notice has a right to request a hearing:
- “(g) a statement of what will happen if the fee is not paid and a hearing is not requested:
- “(h) any other prescribed details. 25

**“35D Payment of infringement fees**

- “(1) Infringement fees must be paid to the Authority.
- “(2) The Authority must pay all infringement fees received into a Crown Bank Account.

*“Enforcement officers” 30*

**“35E Appointment of enforcement officers**

- “(1) The Authority may appoint persons as enforcement officers.
- “(2) Each enforcement officer must have the experience, technical competence, and qualifications appropriate for the officer’s function. 35

- “(3) The Authority must give each enforcement officer a warrant that states—
- “(a) the officer’s full name; and
  - “(b) the officer’s powers under this Act.
- “(4) An enforcement officer must return the warrant to the Authority when he or she ceases to be an enforcement officer. 5

**“35F Power to require information**

An enforcement officer may require a person to give his or her full name and address, if the officer has reasonable grounds to believe that the person is committing or has committed an offence against this Act or regulations made under section 36. 10

**“35G Powers of entry and inspection**

- “(1) An enforcement officer may enter and inspect any place of business to determine whether a person is complying or has complied with this Act or regulations made under section 36. 15
- “(2) During an inspection, an enforcement officer may do any of the following things for the purpose of **subsection (1)**, but only if it is reasonable to do so:
- “(a) inspect the place of business, or any document or product (including a vehicle) that is there: 20
  - “(b) require any person to produce any document the person possesses or controls:
  - “(c) copy any document:
  - “(d) take photographs or video recordings of the place of business, or any thing that is there, if the officer has reasonable grounds to believe that the photographs or recordings may be relevant in any proceedings related to the inspection. 25
- “(3) An enforcement officer must not enter a place of business unless— 30
- “(a) the place is open for business; or
  - “(b) the place is otherwise open to the public; or
  - “(c) the occupier of the place consents to the entry.

**“35H Enforcement officer must produce warrant**

- “(1) An enforcement officer exercising a power under this Act must carry, and produce (if required), his or her warrant and evidence of identity.
- “(2) An enforcement officer exercising the power of entry under **section 35G** must produce his or her warrant and evidence of identity to the occupier of the place of business—
- “(a) when first entering the place, if the occupier is there; and
- “(b) whenever reasonably requested by the occupier. 10

**“35I Notice to occupier after inspection**

- “(1) When an enforcement officer finishes inspecting a place of business, the officer must—
- “(a) give a written notice to the occupier of the place, if the occupier is there; or 15
- “(b) leave a written notice in a prominent position at the place, if the occupier is not there.
- “(2) The written notice must state the following:
- “(a) when the enforcement officer entered and left the place;
- “(b) the full name of the officer: 20
- “(c) the address of the office to which inquiries can be made about the entry and inspection.

**“35J Offence to obstruct enforcement officer**

- “(1) A person commits an offence if the person intentionally obstructs, hinders, or deceives an enforcement officer in performing the officer’s function. 25
- “(2) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$5,000.

**“35K Offence to impersonate enforcement officer**

- “(1) A person commits an offence if the person impersonates or falsely pretends to be an enforcement officer. 30
- “(2) A person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$5,000.”

**6 Regulations**

- (1) Section 36(1) is amended by inserting the following paragraphs after paragraph (c):
- “(ea) requiring specified buildings to be given energy efficiency and conservation ratings, by assessment of a building’s energy efficiency (including the energy efficiency of its construction or its component systems) or proficiency in conserving energy: 5
  - “(eb) for the purpose of **paragraph (ea)**, prescribing—
    - “(i) methods for assessing and rating buildings, and requirements imposed on any person in relation to the assessment: 10
    - “(ii) requirements for the accreditation of assessors:
    - “(iii) fees payable for the assessment and rating of a building: 15
    - “(iv) requirements for the publication of a building’s rating:”.
- (2) Section 36(1) is amended by adding the following paragraphs:
- “(i) prescribing offences as infringement offences:
  - “(j) prescribing the infringement fee payable for each infringement offence, which may not exceed \$1,000: 20
  - “(k) prescribing the form of an infringement notice for an infringement offence:
  - “(l) prescribing any other details that must be included in an infringement notice under **section 35C(h)**.” 25
- (3) Section 36 is amended by adding the following subsection:
- “(3) In **subsection (1)(ea) and (eb)**, **building** includes part of a building.”

**7 New sections 37 to 37I substituted**

Section 37 is repealed and the following sections are substituted: 30

**“37 Incorporation of material by reference**

- “(1) The following written material may be incorporated by reference in regulations made under section 36:
- “(a) standards, requirements, or recommended practices of national or international organisations: 35
  - “(b) standards, requirements, or recommended practices prescribed in any country or jurisdiction:

- “(c) any other written material that deals with technical matters and is too large or is impractical to include in, or print as part of, the regulations.
- “(2) Material may be incorporated by reference in the regulations— 5
- “(a) in whole or in part; and
- “(b) with any additions or variations specified in the regulations.
- “(3) The material incorporated by reference has legal effect as part of the regulations. 10
- “37A Effect of amendments to, or replacement of, material incorporated by reference**
- “(1) An amendment to, or replacement of, material incorporated by reference in regulations made under section 36 has legal effect as part of the regulations only if the Minister publishes a notice in the *Gazette*— 15
- “(a) stating that the amendment or replacement has legal effect as part of the regulations; and
- “(b) specifying the date of the notice, or a later date, as the date on which the amendment or replacement has legal effect. 20
- “(2) The *Gazette* notice must comply with **section 37F(2)**.
- “37B Effect of expiry of material incorporated by reference**
- “(1) This section applies to material that— 25
- “(a) is incorporated by reference in regulations made under section 36; and
- “(b) ceases to have effect.
- “(2) The material ceases to have legal effect as part of the regulations only if the Minister publishes a notice in the *Gazette*— 30
- “(a) stating that the material ceases to have legal effect as part of the regulations; and
- “(b) specifying the date of the notice, or a later date, as the date on which the material ceases to have legal effect.

**“37C Legally incorporated material**

“(1) In **sections 37D to 37H**, **legally incorporated material** means material that, under **sections 37, 37A, and 37B**, has legal effect as part of regulations made under section 36.

“(2) For the purposes of **sections 37D and 37E**, amendment or replacement material may be set out separately from, or included in, the material it amends or replaces. 5

**“37D Proof of legally incorporated material**

“(1) The Authority must at all times hold a certified copy of the legally incorporated material. 10

“(2) The production in proceedings of a certified copy of the legally incorporated material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the regulations.

“(3) In this section, **certified copy** means a copy that the chief executive of the Authority has certified as a correct copy of the legally incorporated material. 15

**“37E Access to legally incorporated material**

“(1) This section applies to the following material:

“(a) legally incorporated material; and 20

“(b) if the legally incorporated material is not in an official language of New Zealand, an accurate translation of the legally incorporated material in an official language of New Zealand.

“(2) The Authority— 25

“(a) must make the material available for inspection (free of charge) at the Authority’s office during working hours; and

“(b) may make copies of the material available for purchase (for a reasonable price) at the Authority’s office during working hours; and 30

“(c) may make copies of the material available in any other way that the Authority thinks appropriate (for example, on an Internet site).



- “37F Notice of access to legally incorporated material** 5
- “(1) As soon as practicable after regulations are made under section 36 that incorporate material by reference, the Minister must publish a notice in the *Gazette* specifying the matters referred to in **subsection (3)**. 5
- “(2) The Minister must include the matters referred to in **subsection (3)** in a *Gazette* notice published under **section 37A(1)** (about amendment to, or replacement of, material incorporated by reference in regulations).
- “(3) The matters to be included in the *Gazette* notice are— 10
- “(a) the title of the regulations and the date on which they were made; and
- “(b) a description that identifies the legally incorporated material; and
- “(c) a statement that the material is available for inspection at the Authority’s office during working hours, and the address of the Authority’s office; and 15
- “(d) details of how and where copies of the material are available for purchase; and
- “(e) if copies of the material are available under **section 37E(2)(c)**, details of how and where the copies are available. 20
- “37G Failure to comply with requirements for access to material**
- A failure to comply with **section 37E or 37F** does not— 25
- “(a) invalidate any regulations made under section 36; or
- “(b) prevent any material incorporated by reference in the regulations from having legal effect as part of the regulations.
- “37H Application of other Acts** 30
- The following enactments do not apply to legally incorporated material:
- “(a) the Acts and Regulations Publication Act 1989;
- “(b) section 4 of the Regulations (Disallowance) Act 1989.

- “37I Information on Internet site to be included in labels**  
To avoid doubt, if regulations made under section 36(1)(b) provide for information set out on an Internet site (at any specified time) to be included in a label, the information is not—  
“(a) to be treated as material incorporated by reference in the regulations; or  
“(b) subject to **sections 37 to 37H.**” 5
- 8 Offence**  
Section 39 is amended by inserting “or **39A**” after “section 38”. 10
- 9 New section 39A inserted**  
The following section is inserted after section 39:
- “39A Customs to provide information about certain products**  
“(1) The Authority may make a written request to the New Zealand Customs Service to provide any information it holds about the importation of energy-using or energy-conserving products (including vehicles) to help the Authority— 15  
“(a) consider whether to make regulations under section 36 that apply to the products; or  
“(b) administer or enforce regulations made under section 36 that apply to the products. 20  
“(2) The New Zealand Customs Service may, but need not, provide the information to the Authority.  
“(3) The Authority may use the information only for the purposes specified in **subsection (1).** 25  
“(4) Section 38(3) to (6) apply to information provided to the Authority under this section.”