



## Overseas Investment (Fresh or Seawater Areas and Time Frames) Amendment Regulations 2021

Cindy Kiro, Governor-General

### Order in Council

At Wellington this 26th day of October 2021

Present:

The Right Hon Jacinda Ardern 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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## Regulations

### 1 Title

These regulations are the Overseas Investment (Fresh or Seawater Areas and Time Frames) Amendment Regulations 2021.

### 2 Commencement

- (1) These regulations come into force on 24 November 2021, except as provided in subclause (2).

- (2) Regulation 10 (which relates to fees and charges) comes into force on the day after the date on which these regulations are notified in the *Gazette*.

**3 Principal regulations**

These regulations amend the Overseas Investment Regulations 2005.

**4 Regulation 3 amended (Interpretation)**

In regulation 3(1), revoke the definition of **special land**.

**5 Regulations 12 to 26 and cross-heading above regulation 12 replaced**

Replace regulations 12 to 26 and the cross-heading above regulation 12 with:

*Fresh or seawater areas (including regulations for purposes of  
Schedule 5 of Act)*

**12 Interpretation: clauses referred to are clauses of Schedule 5 of Act**

In regulations 13 to 25, a reference to a numbered clause is a reference to the clause with that number in Schedule 5 of the Act.

**13 Information that must be contained in application for consent related to Schedule 5 of Act**

*Application that must contain information*

- (1) This regulation applies to an application for an overseas person or their associate to obtain consent for an overseas investment in sensitive land (*see* section 12(1)(a)(i) and Schedule 1 of the Act) only if the consent, if obtained by the overseas person or their associate, will result in the application of Schedule 5 of the Act (in accordance with section 25D of the Act), because—
- (a) the section 12 interest (as defined in section 12(1) of the Act) to be acquired is or includes a fresh or seawater interest (as defined in clause 2); and
  - (b) the criteria that are to be satisfied as part of the application for consent include the benefit to New Zealand test (as defined in section 6(1), and set out in section 16A, of the Act).

*Information that application must contain*

- (2) The application must, under section 23(1)(c) of the Act, contain all of the following information that is available to, or can with reasonable efforts be obtained by, the overseas person or their associate:
- (a) the legal description, record(s) of title, size, location, and transaction history of the parcel of the relevant land any part of which is a fresh or seawater area (as defined in clause 2):
  - (b) the type of, a description of, and any available plans or aerial photographs of—

- (i) each fresh or seawater area contained in that parcel of land; and
- (ii) that parcel of land:
- (c) details of any existing structures on that parcel of land and any third party interests in those structures or in that parcel of land:
- (d) any known pests that exist on that parcel of land and that are specified in a relevant regional pest management plan in force under the Biosecurity Act 1993:
- (e) details of any Treaty of Waitangi claim, whether a historical Treaty claim (as defined in section 2 of the Treaty of Waitangi Act 1975) or other claim, made about all or any of that parcel of land:
- (f) whether that parcel of land contains an area or areas that are all or any of the following:
  - (i) land held for conservation purposes under the Conservation Act 1987:
  - (ii) land subject to a heritage order, or a requirement for a heritage order, as defined in the Heritage New Zealand Pouhere Taonga Act 2014:
  - (iii) a historic place, or a wāhi tapu area, under the Heritage New Zealand Pouhere Taonga Act 2014:
  - (iv) coastal and marine area subject to customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011:
  - (v) a historic reserve, or a scenic reserve, nature reserve, or scientific reserve, under any of sections 18 to 21 of the Reserves Act 1977:
- (g) whether that parcel of land contains an area or areas that is or are contaminated land (as defined in section 2(1) of the Resource Management Act 1991):
- (h) whether that parcel of land contains an area or areas that is or are, or is or are likely to be, subject to 1 or more natural hazards (as defined in section 71(3) of the Building Act 2004).

#### **14 Registration of water areas acquisition notice**

##### *Who must lodge notice for registration and when*

- (1) Lodging a water areas acquisition notice for registration with the Registrar must be done, for the purposes of clause 12(1),—
  - (a) by the overseas person or their associate who is acquiring the estate or interest in land (also known as the section 12 interest) under the consent; and
  - (b) immediately on the owner receiving title to an estate or interest in the land part of which is a fresh or seawater area; and

- (c) so that the water areas acquisition notice is lodged before, and has priority under section 35 of the Land Transfer Act 2017 over, any other instrument that relates to an estate or interest—
  - (i) in all or any of that land (for example, a mortgage or charge against all or any of that land); and
  - (ii) that is granted by the owner to any other person (for example, a mortgagee).

*Information that lodged notice must contain*

- (2) A water areas acquisition notice lodged for registration with the Registrar must contain the following information:
  - (a) that the type of instrument is a water areas acquisition notice; and
  - (b) that it is lodged under clause 12(1); and
  - (c) the land registration district for the land; and
  - (d) the record of title for the land affected by the instrument (which, in the circumstances set out in clause 18, will be the adjacent title); and
  - (e) the full name of the owner; and
  - (f) a reference to the Crown's right to acquire the fresh or seawater interest under Schedule 5 of the Act (*see* clause 1(1)); and
  - (g) that the acquisition notice is, under clause 1(2), binding on any owner of the land; and
  - (h) a reference to Part 1 (prescribed terms: vesting of fresh or seawater area) or, as applicable, Part 2 (prescribed terms: granting of water areas covenant) of Schedule 1 of these regulations.

*Notifying regulator in writing of registration and providing specified information*

- (3) As soon as practicable after the lodging of the notice for registration, and the registration of the notice, the owner must—
  - (a) notify the regulator in writing of the registration of the notice; and
  - (b) provide the regulator with any information specified in regulation 13(2) not earlier provided under regulation 13(2).

**15 Provision to the Crown of water areas acquisition notice that cannot be registered**

*When notice must be provided, by whom, and how*

- (1) If clause 19(1) applies, the owner of the fresh or seawater interest must provide to the Crown a water areas acquisition notice for the purposes of clause 19(2) by notifying the regulator in writing of the notice.

*Information that provided notice must contain*

- (2) A water areas acquisition notice provided to the Crown must contain the following information:
- (a) the full name of the owner; and
  - (b) a reference to the Crown's right to acquire the fresh or seawater interest under Schedule 5 of the Act (*see* clause 1(1)); and
  - (c) that the acquisition notice is, under clause 1(2)(d), binding on any owner (as defined in section 5(1) of the Land Transfer Act 2017) of the fresh or seawater interest that has notice of the Crown's right to acquire the fresh or seawater interest; and
  - (d) a reference to Part 2 (prescribed terms: granting of water areas covenant) of Schedule 1 of these regulations.

**16 Term prescribed for expiry of water areas acquisition notice**

- (1) A water areas acquisition notice expires, for the purposes of clause 14(1), at the end of 10 years starting on the date of registration of the notice.
- (2) However, in the circumstances described in clause 19(1), a water areas acquisition notice expires, for the purposes of clause 14(1), at the end of 10 years starting on the date of provision, under clause 19(2), of the water areas acquisition notice.

**17 Variation of water areas acquisition notice***Who must lodge variation instrument for registration and when*

- (1) Lodging an instrument varying the water areas acquisition notice for registration with the Registrar must be done, for the purposes of clause 13(1),—
- (a) by the owner who acquired the estate or interest in land (also known as the section 12 interest) under the consent; and
  - (b) as soon as is reasonably practicable after the agreement or extension in clause 13(1)(a), (b), or (c).

*Information that lodged variation instrument must contain*

- (2) A variation instrument lodged for registration with the Registrar must contain the following information:
- (a) that the type of instrument is an instrument varying the water areas acquisition notice; and
  - (b) that it is lodged under clause 13; and
  - (c) the land registration district for the land; and
  - (d) the record of title for the land affected by the instrument (which, in the circumstances set out in clause 18, will be the adjacent title); and
  - (e) the unique identifier of the water areas acquisition notice affected by the instrument; and

- (f) the full name of the owner; and
- (g) any agreed amendments, additions, and deletions to the terms of the acquisition under clause 6(2); and
- (h) any agreed different amount or procedure for determining an amount of compensation under clause 9(3); and
- (i) any agreed extension of the term of a water areas acquisition notice under clause 14(2).

*Certifications required with lodged variation instrument*

- (3) A variation instrument may be lodged for registration with the Registrar only if a certifier with authority to act for the owner certifies as to the following matters:
  - (a) that the certifier has authority to act for the party and the party has the legal capacity to give the authority; and
  - (b) that the certifier has taken reasonable steps to confirm the identity of the party; and
  - (c) if statutory requirements have been specified by the Registrar for instruments of a particular type, that the instrument complies with those requirements; and
  - (d) the certification about evidence in relation to the certified matters in paragraphs (a) to (c); and
  - (e) that, if clause 13(3) applies, the registered mortgagee has consented to registration of the instrument, and the certifier holds the consent.
- (4) In this regulation, **certification about evidence** means that the certifier has evidence relating to the certified matters—
  - (a) that shows the truth of those certifications; and
  - (b) that is relied on in support of those certified matters; and
  - (c) that the certifier will retain for the retention period under section 30(1) of the Land Transfer Act 2017 (*see also* regulation 7(6) of the Land Transfer Regulations 2018).

*Notifying regulator in writing of registration*

- (5) As soon as practicable after the lodging of the variation instrument for registration, and the registration of the variation instrument, the owner must notify the regulator in writing of the registration of the variation instrument.

## **18 Cancellation of 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.

*Who must lodge instrument cancelling notice, when, and how*

- (2) Lodging an instrument cancelling a water areas acquisition notice with the Registrar must be done, for the purposes of clause 15(2),—
  - (a) by an owner who receives a notice mentioned in subclause (1)(a), (b), or (c) of this regulation; and
  - (b) as soon as is reasonably practicable after the owner receives the notice mentioned in subclause (1)(a), (b), or (c) of this regulation.
- (3) However, lodging an instrument cancelling a water areas acquisition notice with the Registrar must be done, for the purposes of clause 15(2), by the Crown, if the Crown is satisfied that—
  - (a) an owner has received a notice mentioned in subclause (1)(a), (b), or (c) of this regulation, but has not complied, and is unlikely to comply, with subclause (2) of this regulation; and
  - (b) it is in the public interest for the Crown to lodge an instrument cancelling the notice.
- (4) 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 acquisition*

- (5) This regulation does not affect clause 7(5)(b).

## **19 Prescribed terms of acquisition**

*Vesting of fresh or seawater area*

- (1) The prescribed terms, for the purposes of clauses 6 and 22(1)(c), of an acquisition under clause 7 are set out in Part 1 of Schedule 1.

*Granting of water areas covenant*

- (2) The prescribed terms, for the purposes of clauses 6 and 22(1)(c), of an acquisition under clause 20 are set out in Part 2 of Schedule 1.

**20 Water areas covenant***Prescribed terms and form*

- (1) The prescribed terms and form of a water areas covenant (*see* clause 22(1)(h)) are set out in Part 3 of Schedule 1.

*Registration*

- (2) Registration of a water areas covenant against the adjacent title, under clause 20(4), is done by the covenant being lodged, by the owner or the Crown, with the Registrar for registration.

*Cancellation of registration*

- (3) An instrument cancelling a water areas covenant granted to the Crown may be lodged, by the owner who granted the water areas covenant, with the Registrar for registration if—
- (a) that owner and the Crown have agreed in writing that the covenant is to be cancelled; and
  - (b) the cancellation of the covenant is not inconsistent with that written agreement.

- (4) 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.

*Notifying regulator in writing of registration*

- (5) As soon as practicable after the lodging of the covenant, or the instrument cancelling a water areas covenant, for registration, and the registration of the covenant or instrument, the owner must notify the regulator in writing of the registration of the covenant or instrument.

**21 Last date for giving notice of decision not to acquire under clause 4**

- (1) This regulation prescribes, for clause 4(3), the date that the notice must be given no later than.
- (2) The date prescribed is the last day of the 12 months starting on the date of registration of the water areas acquisition notice.
- (3) However, in the circumstances described in clause 19(1), the date prescribed is instead the last day of the 12 months starting on the date of provision, under clause 19(2), of the water areas acquisition notice.

**22 Manner of acquisition: survey requirements**

For the purposes of clause 7(2)(a),—

- (a) a survey of the fresh or seawater area must be done, by or on behalf of the Crown, and in accordance with Part 5 (conduct of cadastral surveys) of the Cadastral Survey Act 2002; and

- (b) the Crown must meet the costs of, and any other incidental costs or expenses relating to, the survey of that area.

## 23 Process for claiming and determining compensation

### *Notice of entitlement*

- (1) If a water areas acquisition notice is registered, or provided, under clause 12 or 19(2), for a fresh or seawater interest, the Crown must take all reasonably practicable steps to give notice in writing to the following potential claimants of their entitlement to claim compensation under clause 9 or 10:
  - (a) the owner of the fresh or seawater interest;
  - (b) any other registered owner of an estate or interest in land that is extinguished because of the operation of clause 8 in respect of the fresh or seawater interest.
- (2) A notice given under subclause (1) to a potential claimant must refer to—
  - (a) any record of title for the relevant land any part of which is a fresh or seawater area; and
  - (b) their estate or interest that is, or may be, affected by the acquisition of the fresh or seawater interest (*see* the exceptions, specified in clause 8, to vesting in the Crown); and
  - (c) their entitlement to claim compensation under clause 9 or 10.

### *Period within which potential claimant may claim compensation*

- (3) To claim compensation under clause 9(2) or 10(2), a potential claimant must give notice in writing to the Crown, within 2 years starting on the day after the date on which the potential claimant was given notice under subclause (1) of their entitlement to claim.
- (4) After the 2-year period in subclause (3), the potential claimant can no longer claim compensation under clause 9(2) or 10(2).

### *Determining compensation*

- (5) Compensation claimed under this regulation must be determined—
  - (a) by or on behalf of the Minister for Land Information; and
  - (b) for the fresh or seawater interest, at 5% of the average rateable value of land in the vicinity of the fresh or seawater area; and
  - (c) for an estate or interest in land to which subclause (1)(b) applies, based on the value of the loss caused by its extinguishment (in whole or in part).
- (6) In this regulation,—

**land in the vicinity**, of a fresh or seawater area (the **area**), means at least 5 rating units that are—

  - (a) in the local authority district that contains the area; and

- (b) adjoining, or in close proximity to (because they are within 15 kilometres from), the area; and
- (c) if the area is the bed of a lake, or the bed of a river,—
  - (i) land with the category P (for pastoral) in Appendix F of the Rating Valuations Rules 2008; or
  - (ii) to the extent that, in a particular case, there is not enough land that complies with paragraph (b) and that is land with the category specified in subparagraph (i) of this paragraph, land with the category O (for other) in Appendix F of the Rating Valuations Rules 2008; and
- (d) if the area is marine and coastal area, land with the category O (for other) in Appendix F of the Rating Valuations Rules 2008

**rating unit** has the same meaning as in the Rating Valuations Rules 2008 (*see* rules 1 and 2.4)

**Rating Valuations Rules 2008** means the Rating Valuations Rules 2008 (version date 1 October 2010) as—

- (a) made under the Rating Valuations Act 1998; and
- (b) in force at the start of 24 November 2021; and
- (c) at that time, available via the following URL: <http://www.linz.govt.nz/valuation/rules-and-regulations>

**rateable value**, of land, means the rateable value of the land under the Local Government (Rating) Act 2002.

*Notice of determination*

- (7) The Crown must give prompt notice in writing to a potential claimant of compensation claimed by the potential claimant, and determined—
  - (a) under this regulation; or
  - (b) by agreement under clause 9(3) or 10(3).

**24 Last date for giving notice of decision not to acquire under clause 5**

- (1) This regulation prescribes, for clause 5(3), the date that the notice must be given no later than.
- (2) If clause 5(1)(a) or (b) applies, the date prescribed is the 30th working day after the date on which the amount of compensation to be paid under clause 9 to the owner of a fresh or seawater interest was notified to that owner by a compensation notice given under regulation 23(7).

**25 Mediation of dispute about compensation for acquisition***Dispute*

- (1) This regulation applies to an unresolved dispute, between the Crown and all or any of the following other parties, about the amount of compensation to be paid by the Crown under clause 9 or 10 (or both):
- (a) an owner of a fresh or seawater interest:
  - (b) any other registered owner of an estate or interest in land that is, or is to be but has not yet been, extinguished because of the operation of clause 8.

*Owner-initiated mediation*

- (2) The owner or owners may, by notice in writing given to the Crown within 20 working days after the date prescribed by regulation 24(2), initiate, and require the Crown to participate in, mediation of the dispute with the owner, or with each owner (separately, or with all or any other owners), giving notice under this subclause.

*Crown-initiated mediation*

- (3) The Crown may, by notice in writing given to the owner or owners within 20 working days after the date prescribed by regulation 24(2), initiate, and enable (but not require) the owner or owners to participate in, mediation of the dispute with the owner or owners given the notice under this subclause.

*Initiation even if compensation determined and paid*

- (4) Initiation of mediation under subclause (2) or (3)—
- (a) can occur even if all or any of the following apply:
    - (i) compensation has already been determined, or determined and paid:
    - (ii) the owner or owners concerned has or have already agreed under clause 9(3) or 10(3) another procedure for determining the amount of compensation; but
  - (b) cannot occur if the owner or owners concerned has or have already agreed under clause 9(3) or 10(3) the amount of compensation.

*Process after initiation*

- (5) If mediation is initiated, the Crown must arrange at least 2 potential mediators, and give notice in writing of them to all other parties, who must decide whether to proceed, and with what mediator, and give notice in writing of those decisions to the Crown.

*Costs of mediation*

- (6) Actual and reasonable costs of mediation initiated, and carried out, under this regulation must be shared equally between all the parties participating in that mediation.

**6 Regulation 29 amended (Special test may be applied and requirements to be met)**

Revoke regulation 29(9) to (11) and the heading above regulation 29(9).

**7 New subpart 5 of Part 3 inserted**

After subpart 4 of Part 3, insert:

Subpart 5—Other time frames and information requirements

**69E Time frames relating to applications**

*See* Schedule 5 for certain time frames relating to applications.

**69F Information required in applications for consent**

- (1) For the purpose of section 23(1)(c) of the Act, an application for consent 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 or transactions for which consent is sought:
    - (ii) advice commissioned by the applicant and prepared by third parties relating to the proposed application:
    - (iii) vendor information, including the current operations and state of the investment:
  - (c) details of the land (if relevant) as follows:
    - (i) information relating to any fresh or seawater areas present on or adjacent to the relevant land:
    - (ii) a description of the relevant sensitivities of the land:
    - (iii) a legal description of the relevant land:
  - (d) submissions addressing all of the relevant criteria of consent:
  - (e) the tax information prescribed in regulation 69D.
- (2) *See also* regulation 13 (which relates to fresh or seawater areas) and regulation 69D (which relates to tax).
- (3) *See also* regulation 34(2) if an application is made but rejected.

**8 Schedule 1AA amended**

In Schedule 1AA,—

- (a) insert the Part set out in Schedule 1 of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

**9 New Schedule 1 inserted**

After Schedule 1AA, insert the Schedule 1 set out in Schedule 2 of these regulations.

**10 Schedule 2 amended**

In Schedule 2, Part 1, item 6, delete “34,100”.

**11 New Schedule 5 inserted**

After Schedule 4, insert the Schedule 5 set out in Schedule 3 of these regulations.

**Schedule 1**  
**New Part 8 of Schedule 1AA inserted**

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**Part 8**  
**Provisions relating to Overseas Investment (Fresh or Seawater Areas  
and Time Frames) Amendment Regulations 2021**

**15 Definitions for this Part**

In this Part,—

**amendments** means the amendments made to these regulations by regulation 5 of the Overseas Investment (Fresh or Seawater Areas and Time Frames) Amendment Regulations 2021

**owner** has the meaning given in clause 1(2) of Schedule 5 of the Act

**transitional provision in the Act** means clause 38 of Schedule 1AA of the Act.

**16 Regulation 13 applies only to applications related to Schedule 5 of Act**

Regulation 13 (information that must be contained in application for consent related to Schedule 5 of Act) as inserted by the amendments applies only to applications for consent that, if that consent is obtained by the overseas person or their associate, will result in the application of Schedule 5 of the Act (in accordance with section 25D of the Act).

**17 Other amendments apply only to owners to whom Schedule 5 of Act applies**

The rest of the amendments apply only to owners to whom Schedule 5 of the Act applies under the transitional provision in the Act.

**18 Application of time frames**

The time frames set out in Schedule 5 apply to applications received by the regulator on or after 24 November 2021 (regardless of when the transaction is or was entered into or whether it has been given effect to).

## Schedule 2

### New Schedule 1 inserted

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### Schedule 1

#### Prescribed terms of acquisition of fresh or seawater area, and prescribed terms and form of water areas covenant

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#### Part 1

##### Prescribed terms: vesting of fresh or seawater area

- (1) The owner must not wilfully or negligently damage the fresh or seawater area.
- (2) The owner and its successors in title may not require the Crown or its successors in title to contribute towards the cost of work on a fence between the fresh or seawater area and adjoining land, and the owner must on request grant the Crown and its successors in title a registrable fencing agreement (under section 5 of the Fencing Act 1978) recording that covenant, in a form acceptable to the Crown.
- (3) The owner will allow the Crown to have access across the owner's land to and from the fresh or seawater area, at all reasonable times on reasonable notice, for the purpose of inspecting or maintaining the fresh or seawater area, or meeting the requirements of clause 7(2) of Schedule 5 of the Overseas Investment Act 2005.
- (4) The owner may apply to the Crown for continued access over, or use of, the fresh or seawater area or structures on that area following acquisition by the Crown. The Crown may grant that access or use, where practicable, in a form and on terms acceptable to the Crown, if the access or use is reasonably necessary for the owner's continued use of the adjacent land.
- (5) The owner will remain responsible for all rates, charges, levies, assessments, duties, impositions, and fees payable to any local or other authority from time to time in respect of the fresh or seawater area, incurred before the fresh or seawater area is acquired by the Crown.
- (6) The Crown and the owner will each meet their own costs in relation to the acquisition of the fresh or seawater interest by the Crown, except as otherwise provided in the Overseas Investment Act 2005 or Overseas Investment Regulations 2005.
- (7) The owner will indemnify the Crown against any liability in relation to any act or omission by the owner on, or in relation to, the fresh or sea water area.
- (8) The owner must promptly notify the Crown in writing if the owner becomes aware of anything on the fresh or seawater area that may be dangerous to

people or property, or if the owner receives a notice issued by a regulator under the Health and Safety at Work Act 2015.

- (9) The owner will co-operate with the Crown to enable the Crown to remove, so far as it is reasonably practicable for the Crown to do so, any hazard to the health and safety of people that the Crown is aware of and that emanates from the fresh or seawater area.

## **Part 2**

### **Prescribed terms: granting of water areas covenant**

- (1) The owner must not wilfully or negligently damage the fresh or seawater area.
- (2) The owner will allow the Crown to have access across the owner's land to and from the fresh or seawater area, at all reasonable times on reasonable notice, for the purpose of inspecting or maintaining the fresh or seawater area, or meeting the requirements of clause 20(3) of Schedule 5 of the Overseas Investment Act 2005.
- (3) The owner may apply to the Crown for continued access over, or use of, the fresh or seawater area or structures on that area following acquisition by the Crown. The Crown may grant that access or use, where practicable, in a form and on terms acceptable to the Crown, if the access or use is reasonably necessary for the owner's continued use of the adjacent land.
- (4) The owner will remain responsible for all rates, charges, levies, assessments, duties, impositions, and fees payable to any local or other authority from time to time in respect of the fresh or seawater area, incurred before the fresh or seawater area is acquired by the Crown.
- (5) The Crown and the owner will each meet their own costs in relation to the acquisition of the fresh or seawater interest by the Crown, except as otherwise provided in the Overseas Investment Act 2005 or Overseas Investment Regulations 2005.
- (6) The owner will indemnify the Crown against any liability in relation to any act or omission by the owner on, or in relation to, the fresh or sea water area.
- (7) The owner must promptly notify the Crown in writing if the owner becomes aware of anything on the fresh or seawater area that may be dangerous to people or property, or if the owner receives a notice issued by a regulator under the Health and Safety at Work Act 2015.
- (8) The owner will co-operate with the Crown to enable the Crown to remove, so far as it is reasonably practicable for the Crown to do so, any hazard to the health and safety of people that the Crown is aware of and that emanates from the fresh or seawater area.
- (9) Before selling any part of the section 12 interest (as defined in section 12(1) of the Overseas Investment Act 2005) that is or includes the fresh or seawater

interest, the owner must give the purchaser notice in writing of the Crown's right to acquire the fresh or seawater interest.

### **Part 3**

#### **Terms and form of water areas covenant**

##### *Terms*

- (1) The common law presumption of usque ad medium filum aquae to the fresh or seawater area has been rebutted and the owner agrees not to exercise its right under that presumption (if any) in respect of the fresh and seawater area.
- (2) This water areas covenant does not otherwise affect any rights that the owner may have in respect of the water on or flowing through the fresh or seawater area.
- (3) The owner will indemnify the Crown against any liability in relation to any act or omission by the owner on, or in relation to, the fresh or sea water area.
- (4) The owner may not require the Crown or its successors in title to contribute towards the cost of work on a fence between the fresh or seawater area and adjoining land.
- (5) Unless this water areas covenant is registered against the adjacent land, before selling the relevant land, the owner must first arrange for the purchaser to grant a water areas covenant to the Crown, on materially the same terms as this covenant (including the requirement in this clause).

##### *Form*

- (6) The information that a water areas covenant lodged for registration (under clause 20(4) of Schedule 5 of the Overseas Investment Act 2005 and regulation 20(2) of the Overseas Investment Regulations 2005) must contain is as follows:
  - (a) that the type of instrument is a water areas covenant; and
  - (b) that it is lodged under regulation 20(2) of the Overseas Investment Regulations 2005; and
  - (c) the land registration district for the land; and
  - (d) the record of title for the land affected by the instrument (which will be the adjacent title); and
  - (e) that the covenant is binding on the owner's successors in title.
- (7) The information and terms that all water areas covenants (both registered and unregistered) must contain are as follows:
  - (a) the full name of the owner; and
  - (b) a description of the relevant fresh or seawater area; and

- (c) the terms specified in clauses (1) to (5), subject to, and with, any additions, deletions, or amendments to them agreed between the Crown and the owner, before the covenant is granted.
- (8) The covenant must be executed by the owner as a deed.

## Schedule 3

### New Schedule 5 inserted

r 11

## Schedule 5

### Time frames relating to applications

r 69E

#### 1 Purpose of time frames in this schedule

- (1) This schedule sets time frames relating to applications for the purpose of section 37B of the Act.
- (2) These are the total time frames for applications to be granted or refused.
- (3) The regulator must include information in its annual report about the extent to which those time frames are met.
- (4) *See* section 37B(2) and (3) of the Act for the effect of the time frames (for example, that the time frames do not create any legal right).

#### 2 Total time frames

- (1) The total time frames for the purpose of section 37B of the Act are as set out in the following table.

Total time frame	Type of application
200 working days	Application for consent relating to an overseas investment in fishing quota (section 57D of the Fisheries Act 1996)
100 working days	Application for consent where the modified benefit test for farm land applies (section 16A(1C) of the Act)
70 working days	Application for a standing consent (section 23A of the Act) Application for consent where the benefit to New Zealand test applies (other than where section 16A(1C), (3), or (4) of the Act applies) 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)
55 working days	Application for a variation of consent or a condition of consent, other than a variation for which the total time frame is 30 working days ( <i>see below</i> ) Application for consent where a test in section 16(1)(b)(i)(B) to (D) of the Act applies (the increased housing test, the non-residential use test, and the incidental residential use test) Application for consent relating to a transaction of national interest (section 20A or 20B of the Act) Application for consent where the special test relating to forestry activities in section 16A(4) of the Act applies Application for exemption, exemption certificate, or waiver, other than under section 20 of the Act Application for consent where section 16(1)(c)(i) of the Act applies

Total time frame	Type of application
35 working days	Application for consent relating to an overseas investment in significant business assets (section 13 of the Act)
30 working days	<p>Application for consent where section 16(1)(d)(i) of the Act applies (the commitment to reside in New Zealand test)</p> <p>Application for exemption under section 20 of the Act (exemptions from farm land offer criterion)</p> <p>Application for a variation of consent or a condition of consent, where the only variation is to extend the specified period within which a matter must occur or to extend the use-by date of the consent</p> <p>Application for an assessment of whether a person meets the investor test (section 29A(1) of the Act)</p>
10 working days	Application for consent where section 16(1)(b)(i)(A) of the Act applies (the commitment to reside in New Zealand test)
(2)	However, if an application is of 2 or more types, the applicable total time frame is the longer of the time frames that apply (for example, if an application for consent relating to an overseas investment in fishing quota relates to a transaction of national interest, the total time frame will be 200 working days, that is, the longer of 55 working days and 200 working days).
<b>3</b>	<b>When total time frame commences</b>
	Each total time frame commences on the working day after the day on which the regulator has received both the application and the fees and charges that are payable on making the application ( <i>see</i> Schedule 2).
<b>4</b>	<b>How time frames work</b>
(1)	<p>Each total time frame consists of—</p> <p>(a) an initial assessment period of 15 working days at the start of the time frame; and</p> <p>(b) a period that consists of the balance of the total time frame (that is, the total time frame minus 15 working days).</p>
(2)	If a total time frame is 15 working days or less, the whole period is treated as part of the initial assessment period.
(3)	<p>The time frames in this schedule apply to an application except to the extent that—</p> <p>(a) a longer time frame is agreed between the regulator and the applicant; or</p> <p>(b) the regulator is investigating conduct by the applicant, or conduct by another person that is relevant to the application, that constitutes or may constitute—</p> <p>(i) a contravention, or an involvement in a contravention, of the Act or the regulations; or</p> <p>(ii) an offence under the Act; or</p>

(c) the regulator is enforcing this Act or the regulations (or both) in relation to conduct referred to in paragraph (b).

(4) *See also*—

(a) clauses 5 and 6 for pauses in time frames. These processes may happen more than once (for example, the time frame can pause and will resume only once all outstanding requests and requirements are met); and

(b) clause 7 for extensions of time frames.

## **5 Pauses related to initial process**

(1) Subclause (2) applies if,—

(a) during the initial assessment period, the regulator requests or requires (for example, under section 23 of the Act or regulation 64) further information from the applicant, or that the requirements of an application be met, in relation to the application; or

(b) there is an interval between the regulator accepting the application and the applicant paying any fee that is payable on that acceptance.

(2) In this case, the total time frame will pause on the making of the request or requirement or the issue of the invoice (as the case may be) and will resume only on the working day after the regulator receives the information or fee or the applicant meets the requirements (as the case may be).

## **6 Position with other requests made by regulator**

(1) This clause applies if—

(a) the regulator requests or requires further information from the applicant, or that the applicant comply with any of the requirements of the Act or these regulations that have not been met, in relation to the application; and

(b) clause 5 does not apply to the request or requirement (for example, if, after the initial assessment period, the regulator requests a statutory declaration under section 23(1)(d) of the Act or requests comments on proposed conditions of consent or a proposal to decline an application).

(2) In this case, the regulator will include a reasonable period for the applicant to respond to the request or requirement, and the time frame will not pause for that period.

(3) However, at the point when the applicant exceeds that period in responding to the request or requirement, the time frame will pause and will resume only on the working day after the regulator receives the information or the applicant meets the requirements (as the case may be).

## **7 Extension circumstances**

The total time frame is extended by 30 working days if the regulator needs to take any of the following actions:

- (a) consider significant new information obtained after the 15-working-day initial assessment period (whether provided by the applicant or otherwise):
- (b) carry out third party consultation or consider third party submissions:
- (c) consider an application of significant complexity:
- (d) enable the relevant Minister to obtain and consider information about an application that is being assessed under a delegated decision-making power:
- (e) enable the relevant Minister to decide an application that would ordinarily be subject to a delegated decision-making power that is called in for decision by the relevant Minister:
- (f) enable the relevant Minister to consider an application that is called in for a national interest assessment under section 20B of the Act.

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, most of which come into force on 24 November 2021, amend the Overseas Investment Regulations 2005 (the **principal regulations**). Most of the amendments arise from amendments made to the Overseas Investment Act 2005 (the **Act**) by the Overseas Investment Amendment Act 2021 that also come into force on 24 November 2021. In general terms, the amendments cover 2 main areas as follows.

The first topic relates to acquisition of fresh or seawater areas. The position before 24 November 2021 is that an overseas person is required to offer special land to the Crown, and the provisions of that offer are dealt with in the principal regulations. The position on and after 24 November 2021 is that special land (renamed fresh or seawater areas) must be acquired by the Crown unless the Crown declines to acquire the areas in accordance with the provisions set out in new Schedule 5 of the Act. There are exceptions to the Crown's right to acquire. These regulations set out the details of the acquisition, including standard terms of acquisition that will apply unless the Crown and overseas person agree otherwise.

Second, these regulations set time frames related to the exercise of powers, performance of functions and duties, and provision of services under the Act (*see* section 37B of the Act and *new Schedule 5* of the principal regulations). The time frames have no legal effect.

These regulations also delete, on the day after the date of notification in the *Gazette*, a redundant number in Schedule 2 (fees and charges) of the principal regulations.

### **Regulatory impact statement**

The Treasury produced a regulatory impact statement on 6 March 2020 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—

- <https://www.treasury.govt.nz/publications/risa/regulatory-impact-assessment-reform-overseas-investment-act-2005-phase-2>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 27 October 2021.

These regulations are administered by the Treasury.