



Utilities Access Act 2010

Public Act 2010 No 98
Date of assent 5 August 2010
Commencement see section 2

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**Provisions applying where material is incorporated by
reference in regulations made under section 18****The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Utilities Access Act 2010.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose of Act

The purpose of this Act is to—

- (a) require utility operators and corridor managers to comply with a national code of practice that regulates access to transport corridors; and
- (b) provide for the making and administration of that code.

4 Interpretation

In this Act, unless the context otherwise requires,—

Code means—

- (a) the national code of practice that is approved under section 12 and has taken effect, along with all amendments to it that have taken effect; or
- (b) if there is no Code approved under section 12, but regulations have been made under section 18, the code set out in those regulations

corridor manager means,—

- (a) in relation to a road (as defined in section 315(1) of the Local Government Act 1974, and which includes State highways and Government roads), the local authority or other person that has jurisdiction over the road;
- (b) in relation to a motorway (as defined in section 2(1) of the Government Roading Powers Act 1989), the New Zealand Transport Agency;

- (c) in relation to railway land, the licensed access provider who controls access to the land

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

railway land means any land upon which a railway line (as defined in section 4 of the Railways Act 2005) is constructed, along with any adjacent land that is held or used in connection with operating a railway on that railway line

related Ministers means the Ministers of the Crown who are responsible for the administration of the Local Government Act 1974, the Electricity Act 1992, the Gas Act 1992, the Government Roding Powers Act 1989, the Telecommunications Act 2001, and the Railways Act 2005

transport corridor means any road (as defined in section 315(1) of the Local Government Act 1974), motorway (as defined in section 2(1) of the Government Roding Powers Act 1989), or railway land

utility operator means,—

- (a) in relation to electricity infrastructure, an electricity operator as defined in section 2(1) of the Electricity Act 1992;
- (b) in relation to gas infrastructure, a gas operator as defined in section 2(1) of the Gas Act 1992;
- (c) in relation to telecommunications infrastructure, a network operator as defined in section 5 of the Telecommunications Act 2001;
- (d) in relation to water and wastewater infrastructure, a local authority as defined in section 5 of the Local Government Act 2002 or any person acting on behalf of a local authority in relation to that infrastructure;
- (e) in relation to public letterboxes, a postal operator as defined in section 2(1) of the Postal Services Act 1998.

5 Act binds the Crown

This Act binds the Crown.

*Obligation to comply with Code***6 Obligation to comply with Code**

- (1) Utility operators and corridor managers must—
 - (a) co-ordinate work done in transport corridors by complying with the processes and rules set out in the Code; and
 - (b) before applying to the court for an order under section 7, use any appropriate dispute resolution procedures set out in the Code.
- (2) In setting reasonable conditions relating to access to the transport corridor, corridor managers must comply with the Code (but only to the extent that the Code is not inconsistent with any applicable criteria for reasonable conditions that are published under an enactment).
- (3) When carrying out work in a transport corridor, utility operators must comply with the Code—
 - (a) except to the extent that any particular provision of the Code is inconsistent with an enactment, or any standard or other instrument that the utility operator is obliged to comply with; or
 - (b) unless, in a particular situation, the manager of the transport corridor and all affected utility operators agree that the Code need not be complied with.
- (4) To avoid doubt, an agreement not to comply with the Code does not affect a corridor manager's or utility operator's obligations under an enactment, or under any standard or other instrument with which it is obliged to comply.
- (5) This section does not apply if there is no Code.

7 Court may order compliance with Code

- (1) On the application of any utility operator or corridor manager, a District Court may require another utility operator or corridor manager to comply with any of its obligations under section 6.
- (2) The order may require the person against whom it is made to comply with it within a specified time.

- (3) In considering an application for an order, the court may take into account the practicality and cost of complying with the Code as compared with the practicality and cost of taking other steps that will, in the particular situation under consideration, achieve substantially the same outcome as compliance with the Code.

8 Offence to fail to comply with order

A person who, knowing that the person is subject to an order made under section 7, fails to comply with the order, or fails to comply with the order within the time specified in the order, commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.

Nature of Code

9 Purpose of Code

The purpose of the Code is to enable access by utility operators to transport corridors to be managed in a way that—

- (a) maximises the benefit to the public while ensuring that all utility operators are treated fairly; and
- (b) ensures that disruptions to roads, motorways, and railways caused by work by utility operators are kept to a minimum, while maintaining safety; and
- (c) provides a nationally consistent approach to managing access to transport corridors.

10 Content of Code

- (1) In order to achieve its purpose, the Code must set out the following:
- (a) who it applies to;
 - (b) the principles governing how corridor managers deal with utility operators, and how utility operators deal with corridor managers and other utility operators, on issues relating to access to transport corridors;
 - (c) the processes and rules for co-ordinating work done in transport corridors by utility operators, or that affects utility operators' assets:

- (d) processes for dealing with conflicts of interest arising from the same person being both a corridor manager and a utility operator, or being the operator of different utilities:
 - (e) how the statutory criteria for setting reasonable conditions, when utility operators have a right of access, are to be applied:
 - (f) whether, what, and how any other conditions relating to access may be imposed by corridor managers when utility operators have a right of access:
 - (g) how the criteria (published in accordance with a statutory requirement) for granting access are to be applied when utility operators request access:
 - (h) processes and rules for utility operators and corridor managers to share information:
 - (i) how compliance with the provisions of the Code is to be encouraged and provided for, including 1 or more dispute resolution procedures:
 - (j) operational processes and rules about work done by utility operators within transport corridors:
 - (k) if the Code refers to standards, guidelines, or other documents that are not set out in the Code,—
 - (i) how those standards, guidelines, or other documents (including any amendments and replacements) may be viewed and how copies may be obtained; and
 - (ii) which edition or version of the standard, guidelines, or other document is referred to and whether the reference includes subsequent amendments or replacements.
- (2) The Code may also—
- (a) provide for its provisions to be applied differently in different geographic locations, provided the variations comply with subsection (3); and
 - (b) include any other matter that is consistent with the purpose of the Code and not inconsistent with any enactment.
- (3) Variations referred to in subsection (2)(a) may be allowed by the Code only if the variations—

- (a) are generally consistent with paragraphs (a) and (b) of the purpose of the Code set out in section 9; and
- (b) are in response to particular geographic factors that would result in inefficient or uneconomic outcomes if the standard requirements of the Code were adopted; and
- (c) have been sought and agreed to by the corridor managers and utility operators in that region; and
- (d) fairly balance the interests of corridor managers and utility operators.

How Code made and administered

11 Preparation of Code

- (1) A draft Code may be prepared by the Ministry, or by any person or body of persons, using whatever processes the Ministry, person, or body considers appropriate.
- (2) The process for developing a draft Code must include, at a minimum, the following steps:
 - (a) consultation with utility operators and corridor managers likely to be affected by the Code;
 - (b) publication of a draft Code and release to the public;
 - (c) consideration of comment received on the draft Code;
 - (d) preparation of a revised draft Code in response to comments received.
- (3) A draft Code may be submitted to the Minister for approval at any time after the steps referred to in subsection (2) have been taken.
- (4) Any consultation done before this Act comes into force does not count as consultation for the purposes of subsection (2).

12 Approval of Code

- (1) Within 3 months after receiving a draft Code, the Minister must either approve or reject it.
- (2) The Minister may approve a draft Code only if—
 - (a) he or she has consulted with the related Ministers; and
 - (b) he or she is satisfied that the draft Code—
 - (i) is capable of achieving the purpose set out in section 9; and

- (ii) adequately sets out the matters referred to in section 10(1); and
 - (iii) has been developed by a process that includes the steps set out in section 11(2); and
 - (iv) is broadly agreed to by the corridor managers and utility operators likely to be affected by the draft Code; and
 - (v) reflects a balance between the interests of corridor managers and those of utility operators.
- (3) The Minister's decision under this section must be given in writing to whoever submitted the draft Code to the Minister for approval.
- (4) If the Minister approves a Code, he or she must give notice in the *Gazette* of that fact, and the notice must state—
- (a) the date on which the Code takes effect in accordance with section 13(1); and
 - (b) the Internet site on which the Code is available and where it is or will be available for purchase, at no more than a reasonable cost, in hard copy.

13 When Code takes effect

- (1) The Code takes effect on the date specified in the *Gazette* notice referred to in section 12(4)(a), which must be a date after the date of the *Gazette* notice and on or after the date on which the Code is first published under section 14(1)(a).
- (2) The Code ceases to have effect on the date specified by the Minister in a notice of cancellation made under section 17.
- (3) It is not intended that any processes, notices, conditions, or other matters that were previously settled should be affected by the Code taking effect or by any subsequent cancellation or amendment of the Code.

14 Publication of Code

- (1) The Minister must ensure that the Code and every amendment to it—
- (a) is published on an Internet site that is publicly available at all reasonable times; and

- (b) is available for purchase in hard copy, at no more than a reasonable cost, from the head office of the Ministry.
- (2) The Minister may, instead of or as well as publishing amendments separately from the Code, publish the Code with amendments incorporated; but in that case the Code published on the Internet site must indicate what changes have been made and when.

15 Status of Code

- (1) A Code approved under section 12 is a regulation for the purpose of the Regulations (Disallowance) Act 1989, but is not a regulation for the purpose of the Acts and Regulations Publication Act 1989.
- (2) The Code must be presented to the House of Representatives no later than 16 days after the date on which it is made.

16 Amendment of Code

- (1) The Minister may at any time approve an amendment to the Code.
- (2) Sections 11 to 15, with all necessary modifications, apply to an amendment as if it were a draft Code.
- (3) Proposals for amendments to the Code must include the following:
 - (a) a statement of the proposed amendment and how it will affect the Code:
 - (b) the reasons for the proposed amendment:
 - (c) a description of the process used to arrive at the proposal, including a description of the parties involved and the level of agreement achieved among them:
 - (d) a description of how the amendments will affect corridor managers and utility operators.
- (4) However, in the case of a minor amendment that does not materially affect the Code,—
 - (a) section 12(2) does not apply; and
 - (b) the proposed amendment need not—
 - (i) include the matters referred to in subsection (3)(c) and (d); or
 - (ii) comply with section 11(2)(b) to (d).

17 Cancellation of Code

- (1) The Minister may cancel the Code if he or she is satisfied that—
 - (a) the Code no longer adequately reflects a balance between the interests of corridor managers and those of utility operators; or
 - (b) the Code is not achieving its purpose; or
 - (c) utility operators and corridor managers have significant concerns with, or differences over, the Code, and resolution of the issues appears unlikely.
- (2) If the Minister cancels the Code, he or she must publish a notice of that fact in the *Gazette*, and the notice must state the date on which the cancellation will take effect.

*Regulations in place of Code***18 Power to make regulations if no Code**

- (1) The Governor-General may, on the recommendation of the Minister given in accordance with subsection (2), make regulations regulating how access by utility operators to transport corridors is managed.
- (2) The Minister may not recommend making regulations under this section unless he or she is satisfied that—
 - (a) either—
 - (i) no Code has taken effect and no Code is likely to take effect; or
 - (ii) an existing Code is or is likely to be cancelled; and
 - (b) the regulations set out a code that has the purpose set out in section 9 and includes the matters set out in section 10(1); and
 - (c) the regulations are likely to improve the efficiency of utility operators' access to transport corridors, without compromising road or rail safety; and
 - (d) the regulations reflect, as far as possible, any agreements reached by utility operators and corridor managers; and

- (e) the related Ministers have been consulted and concur in the desirability of making the regulations and the content of the regulations.
 - (3) Regulations made under this section may incorporate by reference any written material that prescribes, defines, or makes other provision for goods, services, processes, or practices that are relevant to the regulations.
 - (4) If material is incorporated by reference in regulations made under this section, the Schedule applies to that material, unless the material is a New Zealand Standard (as defined in section 2 of the Standards Act 1988), in which case that Act applies.
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Schedule

s 18(4)

Provisions applying where material is incorporated by reference in regulations made under section 18**1 Incorporation of material by reference in regulations**

- (1) Material incorporated by reference in regulations made under section 18 may be incorporated—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the regulations.
- (2) The material incorporated by reference has legal effect as part of the regulations.

2 Effect of amendments to, replacement of, and expiry of, material incorporated by reference

- (1) An amendment to, or replacement of, existing material incorporated by reference into regulations made under section 18 has legal effect as part of the regulations only if—
 - (a) the regulations provide that a reference to that particular existing material includes a reference to the material as subsequently amended or replaced; or
 - (b) the regulations are amended to refer to the material as amended or replaced.
- (2) If material that is incorporated by reference expires or ceases to have effect, and is not replaced, the material continues to have effect for the purpose of the regulations unless or until the regulations are amended in a way that means the material is no longer incorporated by reference.

3 Proof of material incorporated by reference

- (1) A copy of material incorporated by reference in regulations made under section 18, including any amendment to, or replacement of, the material, must be—
 - (a) certified as a correct copy of the material by the chief executive of the Ministry; and
 - (b) retained by the chief executive of the Ministry.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient

evidence of the incorporation in the regulations of the material.

4 Requirement to consult

- (1) Subclause (2) does not apply if, in relation to particular material (including amendment or replacement material) proposed to be incorporated by reference into regulations made under section 18,—
 - (a) the material would amend or replace existing material incorporated by reference, and the regulations provide that references to that existing material include references to any amendment to, or replacement of, the material; or
 - (b) the Minister is satisfied that corridor managers and network operators already use, or have been adequately consulted on, the material proposed to be incorporated by reference.
- (2) Before regulations are made that incorporate material by reference (including amendment or replacement material), the chief executive of the Ministry must—
 - (a) make copies of the material available for inspection during working hours for a reasonable period, free of charge, at the head office of the Ministry; and
 - (b) ensure that copies of the material are available for purchase; and
 - (c) give notice in the *Gazette* of where and when the material may be inspected free of charge, and how it may be purchased; and
 - (d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the material by reference; and
 - (e) consider any comments made.
- (3) A failure to comply with subclause (2) does not invalidate regulations that incorporate material by reference.

5 Access to material incorporated by reference

- (1) The chief executive of the Ministry—
 - (a) must make any material that is incorporated by reference into regulations made under section 18 available

- for inspection at the head office of the Ministry during working hours, free of charge; and
- (b) must ensure that copies of the material are available for purchase; and
 - (c) may make copies of the material available in any other way that the chief executive considers appropriate (for example, on an Internet site); and
 - (d) must give notice in the *Gazette*—
 - (i) stating that the material is incorporated in the regulations and giving the date on which the regulations were made; and
 - (ii) setting out where and when the material may be inspected free of charge, and how it may be purchased.
- (2) A failure to comply with subclause (1) does not invalidate the regulations that incorporate the material by reference.

6 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in the regulations.

7 Application of Regulations (Disallowance) Act 1989

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations made under section 18 to be laid before the House of Representatives.
 - (2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of the Act made by subclause (1), applies to the regulations.
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Legislative history

29 July 2010	Divided from Infrastructure Bill (Bill 63–2) by committee of the whole House as Bill 63–3A
3 August 2010	Third reading
5 August 2010	Royal assent

This Act is administered by the Treasury.
