



## COVERSHEET

<b>Minister</b>	Hon Dr Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Gas (Levy of Industry Participants) Regulations 2020	<b>Date to be published</b>	8 June 2020

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
8 June 2020	<i>Cabinet Paper: Gas (Levy of Industry Participants) Regulations 2020</i>	Office of the Minister of Energy and Resources
8 June 2020	<i>Cabinet minute: LEG-20-MIN-0049</i>	Cabinet Legislation Committee

### Information redacted

**YES / NO**

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In Confidence

Office of the Minister of Energy and Resources  
Chair, Cabinet Legislation Committee

## **Gas (Levy of Industry Participants) Regulations 2020**

### **Proposal**

1. I propose that the Gas (Levy of Industry Participants) Regulations 2020 are approved for submission to the Executive Council to enable the Gas Industry Company, as co-regulator of the gas industry, to recover its costs for the 2020/21 financial year. A Regulatory Impact Statement (RIS) is attached at Annex One.

### **Executive Summary**

2. The Gas Industry Company (GIC) is the approved industry owned co-regulator of the gas industry under the Gas Act 1992 (the Act). Its principal objective is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner.
3. The Act provides that each year the GIC must make a recommendation to me, as the Minister of Energy and Resources, on Gas (Levy of Industry Participants) Regulations 2020 (the levy regulations) to recover the majority of the costs of delivering its work-programme for the next financial year.
4. I have received the GIC's recommendation for the 2020/21 financial year. For the 2020/21 financial year, the GIC has recommended levy regulations be made to recover \$3.45 million of its total work programme costs for that year (total work programme costs are estimated to be \$4.89 million). These costs are to be recovered through an annual retail levy (on gas retailers) of \$5.16<sup>1</sup> per customer, and a wholesale levy (on participants that purchase gas from producers) of 1.1164 cents per gigajoule (GJ) purchased<sup>2</sup>.
5. The GIC's work-programme for 2020/21 aligns with the Government's objectives and outcomes for the gas sector, and the GIC's recommendation meets the requirements set out in the Act.
6. I intend to accept the GIC's recommendation and I propose that the attached levy regulations are submitted to the Executive Council.
7. As the levy regulations are routine and do not require new policy decisions, on 1 April I authorised the drafting of regulations to go directly to Cabinet Legislation Committee without reference to Cabinet Economic Development Committee (DEV) and Cabinet. This decision is in line with paragraph 7.91(d) of the Cabinet Manual.

<sup>1</sup> As measured by the number of Installation Control Points (a customer's physical point of connection).

<sup>2</sup> Note that both the retail and wholesale levy rates are GST exclusive.

## Policy

*Each financial year the GIC makes a recommendation on levy regulations to recover its costs*

8. The GIC was established in 2004 as the approved industry body for the co-regulation of the gas industry, under the Gas Act 1992 (the Act). Its principle objective under the Act is to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner. The Government Policy Statement on Gas Governance 2008 (the GPS) further articulates government objectives and outcomes for the GIC, including fairness and environmental sustainability.
9. The GIC co-regulates the gas industry to ensure effective oversight of wholesale and retail gas markets, processing facilities, and gas distribution for an estimated 290,000 customers, including major industrial users. The co-regulatory model has led to the introduction of regulated and non-regulated mechanisms that align with the objectives and outcomes set out in the GPS, while meeting the principal objective of the Act to ensure that gas is delivered to existing and new customers in a safe, efficient, and reliable manner. More recently, the GIC has played an active role as the Sector Coordinating Entity for the New Zealand gas industry, supporting the Government's COVID-19 response.
10. As an industry owned co-regulator the GIC's role and structure differs from Crown Entity regulations and other levy-funded organisations. The GIC is governed by a seven-member Board with a requirement for four independent (i.e. non-industry) directors, including the chair, Rt Hon Jim Bolger.
11. The GIC's costs are primarily recovered through a levy on gas industry participants (approximately 71 per cent). The rest is recovered through market fees<sup>3</sup> and equity reserves.<sup>4</sup> The Act provides for the GIC to make a recommendation to the Minister of Energy and Resources that regulations are made to set up the levy rates and require gas industry participants to pay the levy. The levy regulations can only apply to the financial year in which they are made, therefore new levy regulations must be made every year.<sup>5</sup>

*The recommended 2020/21 levy regulations are routine and do not require new policy decisions*

12. Upon receiving the GIC's recommendation for the 2020/21 levy regulations, I have assessed that these are routine and do not bring any significant changes requiring new policy decisions. In line with paragraph 7.91(d) of the Cabinet Manual, I authorised the drafting of the levy regulations to go directly to the Cabinet Legislation Committee without reference to DEV and Cabinet.

*The recommended 2020/21 levy regulations enable the delivery of a work programme aligned with the Government's objectives and outcomes for the gas sector*

<sup>3</sup> Market fees are payable in accordance with certain gas governance rules and regulations to recover actual expenses directly required to administer service provider arrangements and any other expected direct costs related to the monitoring of those arrangements.

<sup>4</sup> Equity reserve is money set aside made up of industry advance reserves (i.e. Shareholder fees), and retained earnings.

<sup>5</sup> Section 43ZZE(3) of the Act.

13. For the 2020/21 financial year, the GIC has recommended levy regulations to recover \$3.45 million of its total work programme costs (\$4.89 million) for 2020/21, slightly less than the \$3.77 million levy funding requirement for 2019/20.
14. The costs are to be recovered through an annual retail levy (on gas retailers) of \$5.16 per customer, and a wholesale levy (on participants that purchase gas from producers) of 1.1164 cents per gigajoule (GJ) purchased.
15. The current retail and wholesale levy rates have applied from 1 July 2019 and will expire on 30 June 2020. Table One provides a comparison of retail and wholesale levy rates between the 2019/20 and 2020/21 financial years. Further detail on the GIC's year-on-year total work programme costs are provided in the attached RIS.

*Table One: Comparison of retail and wholesale levy rates 2019/20 and 2020/21. These figures exclude GST*

	<b>2019/20 rate</b>	<b>2020/21 rate</b>	<b>Change</b>
<b>Retail Levy</b>	\$6.12 per ICP	\$5.16per ICP	15.69 per cent decrease
<b>Wholesale Levy</b>	1.1279 cents per gigajoule	1.1164 cents per gigajoule	1.02 per cent decrease

16. GIC has an annual review process for its levy rates and work programme ahead of making a recommendation for levy rates for the next financial year. A decrease in levy rates from previous years reflects the GIC's ability to deliver their proposed work programme at a reduced cost based on their annual review process, including consultation with industry.
17. The GIC's work programme for 2020/21 largely continues existing multi-year work streams, including activities to meet statutory requirements (such as the administration of existing gas governance regulations) and the delivery of key projects in alignment with government and industry priorities. Key examples include:
  - 17.1. considering the recommendations from the Electricity Price Review and how these will impact on governance and regulation of the gas industry;
  - 17.2. the rolling out of advanced gas metering for residential gas consumers and engaging with industry to ensure that industry standards and systems are suitable to support this;
  - 17.3. the GIC's priority work stream to determine if current settings around information disclosure in the gas industry are adequate; and
  - 17.4. monitoring the development of the potential use of hydrogen in both transmission and distribution pipelines, and review international jurisdictions and accordingly work on updating rules and regulations in our energy system.

18. The work programme is balanced between work-streams funded by the retail levy and wholesale levy. The GIC has a process for managing any over collection of any levies at the end of each financial year, with any overpayments are returned to gas industry participants as part of a 'wash-up' process.
19. Further details on how the GIC intends to allocate levies across its work-programme is provided in the RIS attached at Annex One.

*Impact of COVID-19 on the GIC's proposed levy*

20. The GIC expects that the outbreak of COVID-19 will have no material impact on levy revenue. At alert levels 3 and 4 the GIC expect revenue will be largely unaffected. However, this could be affected if we moved back to alert level 4 during FY2021 and how long the alert level 4 applied.
21. While there could be some impact on consumer demand as the result of COVID-19 which may impact on the GIC's levy receipts, the GIC advises that (if necessary), they can manage the financial consequences within their cost structures, and expect to deliver on their work programme.
22. It is expected that there will be little impact on market fees. These are set at the beginning of the financial year (and do not change during the year), with a wash-up performed at the end of the year if the costs covered by market fees are more or less than amounts collected. COVID-19 will not impact on amounts collected, but it could impact on the costs covered by market fees (with a flow on effect to amounts washed up). However at this stage the GIC consider this unlikely.

*The recommended 2020/21 levy regulations meet the assessment criteria set out in the Act*

23. Section 43ZZD(2) of the Act requires that I must accept the GIC's recommendation if:
  - 23.1. the levy rate is reasonable, having regard to the GIC's Statement of Intent, Annual Report, and the objectives and outcomes in the GPS; and
  - 23.2. the GIC has consulted with industry participants on the levy rate or amount; and
  - 23.3. the requirements of sections 43ZZB to 43ZZE of the Act (which prescribe the costs that may be funded from the levy and various legal aspects of making the regulations) are met.
24. An assessment against each requirement is set out below.

*The levy rates are reasonable, having regard to the GIC's SOI, annual report, and the objectives and outcomes in the GPS*

25. I am satisfied that the GIC's proposed levy rates are reasonable. The GIC has developed a work programme that aligns with the Government's objectives and outcomes for the gas sector, and this is evident in the GIC's SOI. The levy rates have been set based on the estimated costs of delivering that work programme.
26. The recommended levy rates for 2020/21 (assuming full cost pass through of both the retail and wholesale levy) are estimated to cost<sup>6</sup>:
- 26.1. residential consumers around \$5.45<sup>7</sup> per year (0.55 per cent of an average residential gas bill)<sup>8</sup>, a 14.8 per cent decrease from last year;
  - 26.2. commercial customers around \$16.80 per year (0.14 per cent of an average commercial bill) and a 3.4 per cent decrease from last year; and
  - 26.3. industrial customers around \$587.16 per year (0.17 per cent of an average industrial gas bill) and an 3.0 per cent increase from last year.
27. Further detail on the impact of the levy on consumers is provided in the RIS attached as Annex One.

*The GIC has consulted with industry participants on the recommended levy rates*

28. The GIC has consulted with industry participants in late 2019 and early in 2020 through a forum and a consultation document: *Consultation on Gas Industry Co FY2021 Work programme and Levy*<sup>9</sup>.
29. There was broad support from the industry for the GIC's role, work programme, estimated costs, and associated levy rates. An analysis of submissions has been published on the GIC's website.<sup>10</sup>
30. I am satisfied that the GIC has undertaken sufficient consultation on the levy proposal, and that industry is supportive of it.

*The legal requirements of sections 43ZZB to 43ZZE of the Act are met*

31. These sections of the Act prescribe the costs that may be met from the levy and various legal requirements that the levy regulations must meet. I am satisfied that the levy regulations the GIC has proposed meet the legal requirements of sections 43ZZB to 43ZZE of the Act. This is further outlined in the RIS.

## Financial Implications

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<sup>6</sup> There is no "typical" commercial or industrial customer and so these numbers are intended to be indicative only. To provide some indication of the impact on users, the paper assumes a typical annual gas usage of 25 GJ for residential consumers, 1,000 GJ for commercial consumers and 50,000 GJ for industrial consumers. It also assumes an average price of gas of \$40.15 per GJ for residential consumers, \$11.97 per GJ for commercial consumers and \$6.70 per GJ for industrial consumers.

<sup>7</sup> Made up of 1) retail levy of \$5.16, and 2) \$0.28 of wholesale levy passed down to the residential consumer

<sup>8</sup> Note that the gas levy will have a greater impact on lower income households because, on average, fuel expenses take up a greater proportion of their household income.

<sup>9</sup> <https://gasindustry.co.nz/dmsdocument/6665>

<sup>10</sup> <https://gasindustry.co.nz/dmsdocument/6904>

32. There are no financial implications for government. The GIC's operations are fully funded through the levy on gas industry participants, shareholder and market fees, and equity reserves.

### **Legislative Implications**

33. Regulations are required to give effect to the GIC's recommendations. These have been drafted and are attached. The draft regulations revoke the Gas (Levy of Industry Participants) Regulations 2018, as they are no longer necessary.<sup>11</sup>

### **Timing and 28-day rule**

34. The Gas (Levy of Industry Participants) Regulations 2020 are proposed to come into force on 1 July 2020. No waiver of the 28-day rule is sought.

### **Compliance**

35. The draft regulations comply with:
- 35.1. principles of the Treaty of Waitangi;
  - 35.2. rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 35.3. principles and guidelines set out in the Privacy Act 1993;
  - 35.4. relevant international standards and obligations; and
  - 35.5. the LAC Guidelines on the Process and Content of Legislation (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
36. I am satisfied that the statutory requirements in section 43ZZD(2) of the Gas Act 1992 have been met.

### **Regulations Review Committee**

37. There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House under Standing Order 319.

### **Certification by Parliamentary Counsel**

38. Parliamentary Counsel Office has certified the regulations as being in order for submission to Cabinet.

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<sup>11</sup> The 2019 levy regulations are still necessary as they contain a requirement to keep records until 30 June 2021.

## Impact Analysis

39. A RIS has been prepared and is attached to this paper as Annex One.
40. The Regulatory Impact Analysis Review Panel has reviewed the RIS prepared by the Ministry of Business, Innovation and Employment. It considers that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in the paper.

## *Climate Implications of Policy Assessment*

41. The Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

## Publicity

42. The levy regulations will be notified in the New Zealand Gazette (the Gazette) no later than 2 June 2020, and published on the GIC's website. The RIS will be published on the Ministry of Business, Innovation and Employment's website.

## Proactive release

43. I intend to proactively release this paper within 30 business days from the date that Cabinet considers this paper, or when the Regulations are notified in the Gazette.

## Consultation

44. As stated, I am satisfied that the GIC has undertaken sufficient consultation on the levy proposal, and that the gas industry is supportive of it.
45. The GIC and the Treasury have been consulted on this paper. The Department of Prime Minister and Cabinet has been informed.

## Recommendations

I recommend that the Cabinet Legislation Committee

1. **Note** that the Gas Industry Company is the approved gas industry 'co-regulator' under the Gas Act 1992, and it is mostly funded by a levy on industry participants;
2. **Note** that the Gas Act 1992 provides for the Gas Industry Company to make a recommendation to the Minister of Energy and Resources regarding levy regulations, including on levy rates, and that they can only apply to the financial year they are made in;
3. **Note** that I consider this policy decision meets the requirements of paragraph 7.91(d) of the Cabinet Manual that the regulations are routine and can go directly to the Cabinet Legislation Committee;



4. **Note** that I have received the Gas Industry Company's recommendation for levy regulations for the 2020/21 financial year;
5. **Note** the Gas Industry Company's levy recommendation for the 2020/21 financial year will enable it to recover up to \$3.45 million for the financial year beginning 1 July 2020 through:
- 2.1. an annual retail levy on gas retailers of \$5.16 (excluding GST) per customer; and
  - 2.2. a wholesale levy on participants that purchase gas from producers of 1.1164 cents (excluding GST) per gigajoule (GJ) purchased;
6. **Note** that section 43ZZD of the Gas Act 1992 requires the Minister of Energy and Resources to accept the Gas Industry Company's recommendation to make levy regulations if the Minister is satisfied that:
- 6.1. the levy rate or amount is reasonable, having regard to the industry body statement of intent, the latest industry body annual report, and any Government Policy Statement objectives and outcomes;
  - 6.2. the industry body has consulted with industry participants on the levy rate or amount; and
  - 6.3. the requirements of sections 43ZZB to 43ZZE have been met;
7. **Note** that I intend to accept the Gas Industry Company's recommendation as I consider it satisfactorily meets these requirements;
8. **Note** that the Gas (Levy of Industry Participants) Regulations 2020 will give effect to recover up to \$3.45 million through a retail levy and a wholesale levy for the financial year from 1 July 2020;
9. **Note** these regulations will also revoke the Gas (Levy of Industry Participants) Regulations 2018 as they are now spent;
10. **Authorise** the submission to the Executive Council of the Gas (Levy of Industry Participants) Regulations 2020;
11. **Note** that these regulations will be published in the Gazette no later than 2 June 2020 to comply with the 28-day rule; and
12. **Note** that the Gas (Levy of Industry Participants) Regulations 2020 will come into force on 1 July 2020.

Authorised for lodgement

Hon Dr Megan Woods

Minister of Energy and Resources