

# ORDINARY TRANSPORT RULES



**PRESENTED**  
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## Scope

- **The Constitutional position**
- What are rules?
- How rules are made
- Current trends



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# Rules in the Constitution



**Parliament is the supreme lawmaker, enacting Acts of Parliament (Primary Legislation)**



## Rules in the Constitution



**Secondary legislation is law making that has been delegated by Parliament to the Executive**

**The traditional example is Statutory Regulations, made by the Governor-General acting on the advice of the Executive Council**

**The process involves the collective responsibility of Cabinet**



## Rules in the Constitution



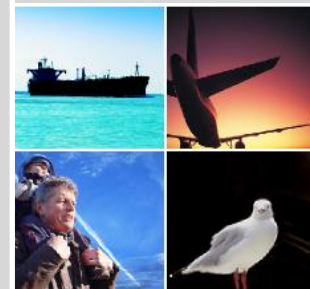
**Rules involve a delegation of Parliament's law making functions, not to Cabinet but to an individual Minister of the Crown**





## History

- Rules were first developed for Civil Aviation
- Intended to facilitate legislation of detail
- A delegation of legislative power to an individual Minister:
  - legal requirements
  - limits on scope
- Subsequently adopted by Land and Maritime
- Brought within the Cabinet process
- Are deemed regulations under the Regulations (Disallowance) Act 1989



## Ordinary Transport Rules

1. Maritime Rules and Marine Protection Rules made under the Maritime Transport Act 1994
2. Land Transport Rules made under the Land Transport Act 1998
3. Civil Aviation Rules made under the Civil Aviation Act 1990

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## Emergency Rules

- Made by Director of Maritime Transport, the Director of Land Transport and the Director of Civil Aviation
- Limited Power – risk of death / serious injury / damage to property
- Of short duration – initially 90 days with provision for extension



## Scope of Ordinary Rules

The Transport Acts were amended on 1 Dec 04 to empower the making of rules for, in general:

- implementation of conventions
- provision of aviation services
- safety and licensing
- assisting safety and security, including personal security
- assisting economic development
- improving access and mobility
- protecting and promoting public health
- ensuring environmental sustainability
- other matters related or incidental to the objectives and functions of the Minister or the functions or powers of the appropriate Director, the appropriate Authorities objective and functions, or other matters contemplated by the Act



# Functions of Rules

## Construction and maintenance

e.g. ship design, vehicle standards, aircraft certification and maintenance.

## Licensing

e.g. drivers and pilots, airlines and transport companies.

## Operation

e.g. Navigation Safety Rules, Road User Rule, General Flight Rules



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e.g. Navigation Safety Rules, Road User Rule, General Flight Rules, Discharge management (Marine Protection Rules)



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  - **creation of offences and setting penalties**
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### Example – pilot licence

**Requirement** - Civil Aviation Rule Part 61

**Fee** - Civil Aviation Charges Regulations (No 2) 1991

**Offences** - Civil Aviation (Offences) Regulations 1997



## Who Drafts Rules?

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- **Maritime New Zealand**
- **Land Transport New Zealand**
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**Some important rules are drafted by Parliamentary Counsel and also published as part of the SR series:**

- Land Transport (Driver Licensing) Rule 1999
- Land Transport (Road User) Rule 2004



# Statutory Requirements for rule-making - 1

- **Public notification and consultation**
- **Consistency with international obligations**
- **Consideration by Minister:**
  - level of risk in proposed activity or service
  - nature of activity or service
  - level of risk in that mode in general
  - need to maintain safety and security
  - “NZTS factors”
  - costs of implementation
  - international circumstances
  - such other circumstances as Minister considers appropriate in the circumstances





## Statutory Requirements for rule-making - 2

- **Each rule must:**
  - contain statements of objective of rule and extent of consultation
  - set out requirements in full unless Act permits incorporation by reference
  - be signed (and dated) by the Minister
  - be notified in the *Gazette* at least 28 days before it comes into force
  - be made available by the relevant Crown Entity for inspection and purchase
  - be consistent with other legislation including NZBORA, the Human Rights Act and the Privacy Act



## Other Requirements for rule-making

- **Each rule must be consistent with:**
  - the principles of the Treaty of Waitangi
  - any relevant international standards
  - NZTS
- **Rules must comply with Legislation Advisory Committee Guidelines**
- **Rules are deemed regulations, subject to the Regulations (Disallowance) Act 1989 and must comply with Standing Orders**



## MOT involvement in rule-making

- Ministerial and Cabinet approval of annual programme
- Managing Rules contracts with agencies
- Reviews of draft rules:
  - before public notification
  - final draft
- reference to Regulations Review Committee
- drafting EDC paper
- advice to Minister to sign rule
- consequential regulations



## Annual Programme

- **Bids received from Crown Entities**
- **Bids considered by Ministry and draft programme presented to Ministers**
- **Paper to EDC to approve programme and identity “fast track” rules**
- **Following Cabinet approval, Secretary enters into agreements with Crown Entities**



## Rule Stages - post contract

- **Crown Entity draft rule**
- **Draft considered by MOT – policy and legal**
- **Statutory public notification and consultation**
- **Crown Entity analyse submissions and redraft rule**
- **Final draft considered by MOT**
- **Reference to Regulations Review Committee**
- **Papers for Minister:**
  - **Cabinet (EDC) paper**
  - **legal memo and rule**



## Consequential Regulations

- **Minister authorises Ministry to instruct Parliamentary Counsel**
- **Ministry legal team:**
  - **draft instructions to PCO**
  - **draft Cabinet (LEG) paper for regulations**



## Trends

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- In the past, some issues have been placed in the rules programme without proper analysis
- Consultation – rule making by negotiation?
- The result has often been a slow rule making process



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- **CAA review of participation in rule-making (2002)**
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- CAA review of participation in rule-making (2002).
- In 2002 Mary Scholtens QC undertook a review into public participation in the making of Civil Aviation Rules. Among the recommendations were:
  - **that a preliminary “filtering” process be applied to “issue triggers”**
  - **that after the problem is identified and articulated, it should be subject to a standardised risk management process and appropriate feasible solutions should be identified and evaluated before a solution is selected**



## Trends

### Government Review of Regulatory Frameworks

- Quick amendments to regulations that do not deliver the intended outcomes
- Streamlining engagement with regulators when there are multiple rules and/or agencies in the same general area applying to a firm or product or service
- Achieving an appropriate level of regulation or mix between self-regulation, co-regulation and state regulation
- Getting an appropriate balance between certainty and flexibility
- Appropriate targeting of monitoring and enforcement by regulators



## Trends

### Government Review of Regulatory Frameworks (contd.)

- Strengthening regulatory process disciplines, including the Regulatory Impact Analysis (RIA) system:
  - current timing of the requirement to prepare a Regulatory Impact Statement (RIS) is at a stage where it is too late to correct poor analysis
  - proposed requirement to prepare a draft RIS for consultation purposes
  - proposed new section within the RIS framework to focus on implementation and review strategies for new regulatory proposals



## Trends

### Government Review of Regulatory Frameworks

For more information go to –

[http://www.med.govt.nz/templates/ContentTopicSummary\\_\\_\\_\\_19894.aspx](http://www.med.govt.nz/templates/ContentTopicSummary____19894.aspx)

(Ministry of Economic Development website)





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  - draft RIS



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- Identify legislative change required at outset
- Appropriate consultation and project management – avoid “scope creep”
- **Streamline processes where possible**



# ANY QUESTIONS?

