



Hazardous Substances and New Organisms Amendment Act 2010

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Commencement see section 2

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**Hazardous Substances and New Organisms
Amendment Act 2010**

2010 No 18

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7 Delegation by Authority

- (1) Section 19(1) is amended by inserting “whether or not that person is a member of the Authority,” after “delegate to any person,”.
- (2) Section 19(1) is amended by repealing paragraph (b) and substituting the following paragraph:
“(b) any power that may be delegated under subsection (2); and”.
- (3) Section 19(2) is amended by inserting “in writing” after “The Authority may delegate”.
- (4) Section 19(2)(a) is amended by omitting “sections 35, 42, 42A, or 42B” and substituting “sections 35, 38BA, 42, 42A, 42B, or 42C”.
- (5) Section 19(2) is amended by inserting the following paragraph after paragraph (ca):
“(cb) the power to decide any application under section 28, if it is not publicly notified under section 53(2), to its chief executive:”.
- (6) Section 19(2)(ha) is amended by omitting “for an approved filler or an approved handler”.
- (7) Section 19(3) is amended by omitting “subsection (2) of”.

8 Application under section 34 may be treated as application under section 38A

Section 38B is amended by adding “, and sections 38A, 38BA, 38C, and 53(1)(ab) apply accordingly”.

9 New section 38BA inserted

The following section is inserted after section 38B:

“38BA Rapid assessment of risk for importation or release of new organisms with controls

- “(1) If the Authority receives an application under section 38A in respect of a new organism (other than a genetically modified organism), the Authority may make a rapid assessment of the adverse effects of importing the organism for release or releasing the organism from containment.

- “(2) The Authority may approve the application and grant a conditional release approval with controls if the Authority is satisfied that—
- “(a) the organism is not an unwanted organism as defined in the Biosecurity Act 1993; and
 - “(b) after the controls are imposed, the organism will comply with section 35(2)(b).”

10 Determination of applications to import or release new organisms with controls

Section 38C(1) is amended by omitting “The Authority may approve an application made under section 38A and grant a conditional release approval with controls, but only if the Authority determines that,—” and substituting “If an application made under section 38A is not approved under section 38BA, the Authority may approve the application and grant a conditional release approval with controls if the Authority determines that,—”.

11 Application for containment approval for new organisms

Section 40 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Every person intending to import any new organism into containment, or develop or field test any new organism in containment, must apply to the Authority for approval to do so before importing, developing, or field testing the organism.”

12 New section 42C inserted

The following section is inserted after section 42B:

“42C Rapid assessment of adverse effects for development in containment, etc, of certain new organisms

- “(1) If the Authority receives an application under section 40 in respect of a new organism (other than a genetically modified organism), the Authority may make a rapid assessment of the adverse effects of importing the organism into containment, or of developing or field testing the organism in containment.
- “(2) If the Authority is satisfied that the importation, development, or field testing is low-risk, in accordance with regulations

made under subsection (3), the Authority may approve the application and impose controls providing for each of the matters specified in Part 2 of Schedule 3 as the Authority thinks fit.

- “(3) The Governor-General may, by Order in Council, make regulations specifying the circumstances in which there is a low risk of adverse effects from—
- “(a) importing a new organism (other than a genetically modified organism) into containment; or
 - “(b) developing or field testing a new organism (other than a genetically modified organism) in containment.”

13 Determination of application

Section 45(1) is amended by omitting “section 42 or section 42A or section 42B” and substituting “section 42, 42A, 42B, or 42C”.

14 Applications required to be publicly notified

- (1) Section 53(1) is amended by repealing paragraph (a).
- (2) Section 53(1)(ab) is amended by adding “, if the application has not been approved under section 38BA”.
- (3) Section 53 is amended by repealing subsection (2) and substituting the following subsection:

“(2) The Authority may, if it considers that there is likely to be significant public interest, publicly notify—

 - “(a) an application under section 40 in respect of a new organism (other than a genetically modified organism), if the application has not been approved under section 42C; or
 - “(b) an application under section 40 to import into containment or develop in containment a genetically modified organism, if the application has not been approved under section 42, 42A, or 42B; or
 - “(c) an application under section 28, if the application has not been approved under section 28A.”

15 Time limits and waivers

Section 59(1)(b) is amended by omitting “38I, 42, 42A, or 42B” and substituting “38BA, 38I, 42, 42A, 42B, and 42C”.

16 Grounds for reassessment of a substance or organism

Section 62(4) is amended by—

- (a) inserting “38BA,” after “32,”; and
- (b) inserting “42C,” after “42B,”.

17 Reassessment

Section 63(2)(c) is amended by omitting “section 45” and substituting “section 42, 42A, 42B, 42C, or 45”.

18 New section 63B inserted

The following section is inserted after section 63A:

“63B Proposal for group standard may be consulted on in same way as reassessment

- “(1) This section applies if the Authority—
 - “(a) decides to reassess a hazardous substance under section 63A without publicly notifying the reassessment in accordance with section 53; and
 - “(b) proposes to issue, amend, or revoke (under section 96B) a group standard that applies to the hazardous substance, on similar grounds to the grounds for deciding to reassess the substance.
- “(2) The Authority may consult on the following matters, in accordance with section 63A(5), as if they were part of the reassessment:
 - “(a) the proposal to issue, amend, or revoke the group standard; and
 - “(b) its assessment of the matters referred to in section 96C(1)(h)(ii).
- “(3) If the Authority consults in accordance with subsection (2), then the public notice requirements of sections 96C(1)(h) and (2) and 96D do not apply.”

19 Issue of test certificates by test certifiers

- (1) Section 82(4) is amended by inserting “, unless a conditional test certificate is issued under subsection (4A),” after “he or she shall”.
- (2) Section 82 is amended by inserting the following subsections after subsection (4):
 - “(4A) A test certifier may issue a conditional test certificate for a hazardous substance location if he or she considers, on reasonable grounds, that the failure to meet the relevant requirements for the hazardous substance location is minor and technical in nature.
 - “(4B) A conditional test certificate must—
 - “(a) specify the requirements that have not been met; and
 - “(b) specify the date by which the requirements must be met; and
 - “(c) state that the certificate expires on the close of the day specified under paragraph (b) if the requirements have not been met by then.
 - “(4C) A conditional test certificate expires on the close of the day specified under subsection (4B)(b) if the requirements specified under subsection (4B)(a) have not been met by then.
 - “(4D) In all other respects, a conditional test certificate is a test certificate for the purposes of this Act.
 - “(4E) In subsection (4A), **hazardous substance location** has the same meaning as in regulation 3 of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001.”

20 Register of test certificates

- (1) Section 82A(3) is amended by adding “; and” and also by adding the following paragraph:
 - “(g) in the case of a conditional test certificate issued for a hazardous substance location,—
 - “(i) details of the hazardous substance location; and
 - “(ii) the relevant requirements for the hazardous substance location that have not been met; and
 - “(iii) the date by which the requirements must be met.”
- (2) Section 82A(4)(c) is amended by adding “; or” and also by adding the following subparagraph:

“(v) is necessary to plan for responses to any emergency (as defined in section 46).”

- (3) Section 82A(5) is amended by inserting the following paragraph after paragraph (b):

“(ba) the chief executive of the New Zealand Fire Service.”.

21 Delegation by approved person

Section 82B(1) is amended by omitting “section 82A(5)(a) and (b)” and substituting “section 82A(5)(a), (b), or (ba)”.

22 Revocation of test certificates for approved fillers and approved handlers

- (1) The heading to section 82C is amended by omitting “**for approved fillers and approved handlers**”.

- (2) Section 82C(1) is amended by omitting “issued to an approved filler or an approved handler (as the case may be)”.

- (3) Section 82C(1) is amended by adding “; or” and also by adding the following paragraph:

“(d) has not met, or continued to meet, any requirement for which the test certificate was issued.”

- (4) Section 82C(9) is repealed.

23 When group standards may be issued or amended

Section 96C is amended by adding the following subsection:

- “(3) However, the Authority may, on its own initiative, amend a group standard under section 96B without complying with subsections (1) and (2) of this section, if it considers that the amendment is minor in effect or corrects a minor or technical error.”

24 Enforcement of Act

Section 97(1)(e) is amended by omitting “in, on, or at any aircraft or aerodrome” and substituting “in or on any aircraft”.

25 Enforcement of Act in respect of new organisms

Section 97A is amended by inserting the following subsection after subsection (4):

- “(4A) The enforcement agency’s costs of enforcing this Act in respect of new organisms are to be treated as if they were costs of administering the Biosecurity Act 1993, and—
- “(a) may be recovered in accordance with section 135 of that Act; and
 - “(b) may be funded by a levy imposed under section 137 of that Act; and
 - “(c) may be prescribed, in regulations made under section 165(1)(s) of that Act, as costs that are recoverable.”

26 Enforcement of Act in respect of hazardous substances in place of work

Section 97B(3) is amended by repealing the definition of **enforcement agency** and substituting the following definition:

“**enforcement agency**—

- “(a) means the chief executive of the department responsible for the administration of the Health and Safety in Employment Act 1992; and
- “(b) includes, in relation to a particular industry, sector, or type of work, the chief executive of an agency designated under section 28B(1) of that Act to administer that Act for the particular industry, sector, or type of work”.

27 Offences

Section 109(2) is repealed.

28 New sections 109A and 109B inserted

The following sections are inserted after section 109:

“**109A Time for laying information**

- “(1) An information in respect of an offence against this Act that relates to a hazardous substance may be laid by any person at any time within 6 months after the earlier of—
 - “(a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to the person; or
 - “(b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to the person.

“(2) An information in respect of an offence against this Act that relates to a new organism may be laid by any person at any time within 2 years after the time when the matter of the information arose.

“(3) Subsection (1) is subject to section 109B.

“109B Extension of time for laying information

“(1) The District Court may, on application by any person, extend the time for the person to lay an information under section 109A(1).

“(2) The application must be made within the 6-month period that applies to the person under section 109A(1).

“(3) The court must not grant an extension unless it is satisfied that—

“(a) the person reasonably requires longer than the 6-month period to decide whether to lay an information; and

“(b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time-consuming; and

“(c) it is in the public interest in the circumstances that an information is able to be laid after the 6-month period expires; and

“(d) laying the information after the 6-month period expires will not unfairly prejudice the proposed defendant in defending the charge.

“(4) The court must give the following persons an opportunity to be heard:

“(a) the person seeking the extension:

“(b) the proposed defendant.”

29 Strict liability and defences

Section 117 is amended by adding the following subsection:

“(4) It is a defence to prosecution for any offence specified in section 109(1)(e)(ii) or (iii) that, at the time of the alleged offence, the defendant was the holder of a conditional test certificate issued under section 82(4A) that—

- “(a) specified, as requirements that had not been met, the controls that it is alleged that the defendant failed to comply with; and
- “(b) had not expired under section 82(4C).”

30 Incorporation of material by reference

- (1) Section 141A(1) is amended by repealing paragraph (a) and substituting the following paragraphs:
 - “(a) standards, requirements, or recommended practices of national or international organisations:
 - “(ab) standards, requirements, or recommended practices prescribed in any country or jurisdiction or by any group of countries.”
- (2) Section 141A is amended by repealing subsection (3) and substituting the following subsection:
 - “(3) Material has legal effect as part of the regulations, group standard, notice of transfer, or code of practice in which the material is incorporated by reference.”
- (3) Section 141A(4) is repealed.

31 New sections 141B to 141I inserted

The following sections are inserted after section 141A:

“141B Amendment to, or replacement of, material incorporated by reference

- “(1) An amendment to, or replacement of, material has legal effect as part of the regulations, group standard, or code of practice in which the material is incorporated by reference only if a notice is published in the *Gazette*—
 - “(a) stating that the amendment or replacement has that effect; and
 - “(b) specifying the date of the notice, or a later date, as the date on which the amendment or replacement has that effect.
- “(2) The following person may publish the notice:
 - “(a) the Minister, in the case of material incorporated in regulations; or
 - “(b) the Authority, in the case of material incorporated in a group standard or code of practice.

- “(3) The notice must not be published unless the amendment or replacement material is of the same general character as the material amended or replaced.
- “(4) An amendment to, or replacement of, material does not have legal effect as part of a notice of transfer in which the material is incorporated by reference.

“141C Proof of material incorporated by reference

- “(1) A copy of material that is incorporated by reference in regulations, including any amendment to, or replacement of, that material, must be—
 - “(a) certified as a correct copy of the material by the chief executive of the Ministry for the Environment; and
 - “(b) retained by that chief executive or the chief executive of the Authority.
- “(2) A copy of material that is incorporated by reference in a group standard, notice of transfer, or code of practice, including any amendment to, or replacement of, that material, must be—
 - “(a) certified as a correct copy of the material by the chief executive of the Authority; and
 - “(b) retained by that chief executive.
- “(3) 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 of that material in the regulations, group standard, notice of transfer, or code of practice.

“141D Material incorporated by reference that ceases to have effect

- “(1) If material ceases to have effect, it ceases to have legal effect as part of the regulations, group standard, or code of practice in which the material is incorporated by reference only if a notice is published in the *Gazette*—
 - “(a) stating that the material ceases to have that effect; and
 - “(b) specifying the date of the notice, or a later date, as the date on which the material ceases to have that effect.
- “(2) The following person may publish the notice:
 - “(a) the Minister, in the case of material incorporated in regulations; or

- “(b) the Authority, in the case of material incorporated in a group standard or code of practice.
- “(3) Material that ceases to have effect does not cease to have legal effect as part of a notice of transfer in which the material is incorporated by reference.

“141E Notice must be provided to committee responsible for examining regulations

If a notice is published in the *Gazette* under section 141B or 141D in relation to material incorporated in regulations or a group standard, the following person must promptly provide a copy of the notice to the chairperson of the committee of the House of Representatives responsible for examining regulations:

- “(a) the chief executive of the Ministry for the Environment, in the case of material incorporated in regulations; or
- “(b) the chief executive of the Authority, in the case of material incorporated in a group standard.

“141F Requirement to consult on proposal to amend or replace material incorporated by reference

- “(1) The Minister must comply with subsection (2) before publishing a notice in the *Gazette* under section 141B stating that an amendment to, or replacement of, material has legal effect as part of the regulations in which the material is incorporated by reference.
- “(2) The Minister must notify and consult on the proposed amendment to, or replacement of, material in accordance with section 141 (with all necessary modifications) as if the proposed amendment or replacement were a proposed Order in Council.
- “(3) The chief executive of the Authority must comply with subsection (4) before publishing a notice in the *Gazette* under section 141B stating that an amendment to, or replacement of, material has legal effect as part of the group standard or code of practice in which the material is incorporated by reference.
- “(4) The chief executive must notify and consult on the proposed amendment to, or replacement of, material,—

- “(a) in the case of a group standard, in accordance with sections 53 to 61 (with all necessary modifications) as if the proposed amendment or replacement were an application under section 96B to amend a group standard; or
 - “(b) in the case of a code of practice, in accordance with section 79(2) and (3) (with all necessary modifications) as if the proposed amendment or replacement were a code proposed for approval.
- “(5) A failure to comply with this section does not invalidate regulations that incorporate material by reference or a group standard or code of practice that incorporates material by reference.

“**141G Access to material incorporated by reference in regulations**

- “(1) This section applies if material is incorporated by reference in regulations.
- “(2) The chief executive of the Ministry for the Environment must—
- “(a) make the material referred to in subsection (5) (the **incorporated material**) available for inspection during working hours, free of charge, at—
 - “(i) the head office of the Ministry; and
 - “(ii) any other places that the chief executive may, at his or her discretion, determine are appropriate; and
 - “(b) ensure that copies of the incorporated material are available for purchase by members of the public at a reasonable price; and
 - “(c) make copies of the incorporated material available, free of charge, on an Internet site maintained by or on behalf of the Ministry, unless doing so would infringe copyright in that material or be inconsistent with any other enactment or rule of law; and
 - “(d) give notice in the *Gazette*—
 - “(i) stating that the incorporated material is available for inspection during working hours, free of charge, and specifying the places at which it can be inspected; and

- “(ii) stating that copies of the incorporated material can be purchased and specifying the places at which they can be purchased; and
 - “(iii) if applicable, stating that the incorporated material is available on the Internet, free of charge, and specifying the Internet site address.
- “(3) The chief executive—
- “(a) may make copies of the incorporated material available in any other way that he or she considers appropriate in the circumstances; and
 - “(b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the incorporated material is available in other ways and specifying details of where or how it can be accessed or obtained.
- “(4) The chief executive may comply with subsection (2)(c) by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry to a copy of the incorporated material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else.
- “(5) The material is—
- “(a) material incorporated by reference in regulations:
 - “(b) any amendment to, or replacement of, that material that is incorporated in the regulations, or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
 - “(c) if the material referred to in paragraph (a) or (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- “(6) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

“141H Access to material incorporated by reference in group standard, notice of transfer, or code of practice

- “(1) This section applies if material is incorporated by reference in a group standard, notice of transfer, or code of practice.
- “(2) The chief executive of the Authority must—

- “(a) make the material referred to in subsection (3) (the **incorporated material**) available for inspection by members of the public free of charge; and
 - “(b) ensure that copies of the incorporated material are available for purchase by members of the public at a reasonable price; and
 - “(c) give notice in the *Gazette*—
 - “(i) stating that the incorporated material is available for inspection free of charge and specifying the places at which it can be inspected; and
 - “(ii) stating that copies of the incorporated material can be purchased and specifying the places at which they can be purchased.
- “(3) The material is—
- “(a) material incorporated by reference in a group standard, notice of transfer, or code of practice:
 - “(b) any amendment to, or replacement of, that material that is incorporated in the group standard or code of practice, or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
 - “(c) if the material referred to in paragraph (a) or (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.
- “(4) A failure to comply with this section does not invalidate a group standard, notice of transfer, or code of practice that incorporates material by reference.

“141I Application of Acts and Regulations Publication Act 1989 and Regulations (Disallowance) Act 1989

- “(1) The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in regulations, group standards, notices of transfer, or codes of practice, or to an amendment to, or replacement of, that material.
- “(2) The Regulations (Disallowance) Act 1989 applies to regulations, group standards, and notices of transfer that incorporate material by reference, but does not apply to codes of practice that incorporate material by reference.

“(3) However, nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material (including an amendment to, or replacement of, that material) that is incorporated by reference in regulations, group standards, or notices of transfer to be presented to the House of Representatives.”

32 Additional matters to be included in statement of intent

Section 147(3) is repealed.

33 Additional reporting requirements

Section 148(b) is repealed.

34 Transitional provision for applications

- (1) This section applies to an application under section 28, 34, 38A, or 40 of the principal Act received by the Authority before the commencement of this Act.
- (2) The application must be dealt with as if this Act had not been enacted.

35 Transitional provision for reassessment of hazardous substance

- (1) This section applies if, before the commencement of this Act,—
 - (a) the Authority decided to reassess a hazardous substance under section 63A of the principal Act; and
 - (b) the Authority proposed to issue, amend, or revoke, under section 96B of the principal Act, a group standard that applied to the hazardous substance, on similar grounds to the grounds for deciding to reassess the substance.
- (2) The decision and proposal must be dealt with as if this Act had not been enacted.

36 Transitional provision for aerodromes

Anything done, before the commencement of this Act, in enforcing the principal Act in relation to an aerodrome may be completed as if this Act had not been enacted.

37 Transitional provision for cost recovery

- (1) This section applies to any costs of enforcing the principal Act in respect of a new organism incurred by the enforcement agency (as defined by section 97A of the principal Act).
- (2) The costs—
 - (a) must be dealt with as if this Act had not been enacted, if they were incurred before the commencement of this Act; or
 - (b) may be recovered in accordance with the principal Act as amended by this Act, if they were incurred on or after the commencement of this Act, regardless of when the enforcement to which the costs relate occurred.

38 Transitional provision for laying information

- (1) Subsection (2) applies to an information in respect of an offence against the principal Act that relates to a hazardous substance.
 - (2) The information must be laid—
 - (a) as if this Act had not been enacted, if the incident, situation, or set of circumstances to which the offence relates occurred before the commencement of this Act; or
 - (b) in accordance with the principal Act as amended by this Act in all other cases.
 - (3) Subsection (4) applies to an information in respect of an offence against the principal Act that relates to a new organism.
 - (4) The information must be laid—
 - (a) as if this Act had not been enacted, if the matter of the information arose before the commencement of this Act; or
 - (b) in accordance with the principal Act as amended by this Act in all other cases.
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Legislative history

30 March 2010	Divided from Regulatory Improvement Bill (Bill 298–2) by committee of the whole House, third reading
19 April 2010	Royal assent

This Act is administered by the Ministry for the Environment.
