

In-Confidence

Office of the Minister for the Environment
Cabinet Legislation Committee

Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2022 (the Regulations).

Policy

- 2 The Regulations give effect to policy approved by the Cabinet Environment, Energy and Climate Committee [Cabinet Environment, Energy and Climate Committee Minute ENV-22-MIN-0032 refers].
- 3 An organism is a “new organism” under the Hazardous Substances and New Organisms Act 1996 (HSNO Act) if, amongst other criteria, it belongs to a species not present in New Zealand before 29 July 1998. An organism that has arrived naturally or been inadvertently introduced in New Zealand since that date, and has become established in the country, is still classed as a new organism.
- 4 Reclassifying an organism as “not new” under the HSNO Act means that those wishing to work with these organisms will no longer have to apply to the Environmental Protection Authority (EPA) for approval before importing, developing, field testing or releasing the organism.
- 5 The Regulations reclassify the following two organisms as “not new” under the HSNO Act by amending the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Regulations 2009:
 - 5.1 the beetle *Paropsisterna cloelia*;
 - 5.2 the bacterium *Paenibacillus alvei*.

Timing and 28-day rule

- 6 A waiver of the 28-day rule is sought so that these regulations can come into force as soon as possible. This waiver is sought on the grounds that:
 - 6.1 in the case of both organisms, the Regulations would have little or no effect on the public;
 - 6.2 in the case of *Paropsisterna cloelia*, any delay in commencement is likely to defeat the purpose of the Regulations.

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- 7 One of the objectives of this reclassification is to allow research on pest organisms already present in New Zealand to gain a better understanding of their impacts on the environment and to enable research into potential biocontrol agents.
- 8 Research by the University of Canterbury was planned to be undertaken on the beetle *Paropsisterna cloelia* in this year's spring and summer seasons. However, recent observations in the field have found beetle activity commencing 4 to 6 weeks earlier than last year, likely due to warmer weather.
- 9 As such, fieldwork will be required to be brought forward to enable collection of beetle eggs. Any delay in these regulations coming into force would adversely affect the commencement of this research.

Compliance

- 10 The regulations comply with each of the following:
 - 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 10.3 the principles and guidelines set out in the Privacy Act 2020;
 - 10.4 relevant international standards and obligations;
 - 10.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 11 The following statutory prerequisites in the HSNO Act exist for the making of the Regulations:
 - 11.1 the Minister for the Environment must have considered whether the organisms in question have formed a self-sustaining population in New Zealand and whether any person is attempting to manage, control or eradicate the organisms under any Act (section 140(2) of the HSNO Act);
 - 11.2 the Minister must have requested the EPA to consult with affected persons, and to provide the Minister with advice on submissions received and on the best international practices for the safe management of new organisms. The Minister must have regard to the EPA's advice (section 141(1) of the HSNO Act);
 - 11.3 the Regulations must also be consistent with sections 4 to 8 inclusive of the HSNO Act (the purpose section, the principles section, and matters to be taken into account).
- 12 I confirm that all of these statutory requirements have been met.

Regulations Review Committee

- 13 I do not consider that there are any grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 14 The draft regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 15 The Regulatory Impact Analysis team at the Treasury determined that the regulatory decisions sought were exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they would have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 16 The reclassification of these two organisms as “not new” under the HSNO Act will be published on the website of the EPA once the Regulations come into effect. The EPA may also publicise the reclassification by way of media release once the regulations come into effect.

Proactive release

- 17 This paper will be proactively released within 30 business days. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Consultation

- 18 The following consultation has taken place in the course of developing the policy and draft regulations:

18.1 the EPA undertook a public consultation and reported the results to me;

18.2 the Ministry for the Environment consulted with the EPA, the Ministry for Primary Industries, the Department of Conservation, and Te Puni Kōkiri.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 11 August 2022 the Cabinet Environment, Energy and Climate Committee, agreed that the following two organisms be reclassified as “not new” under the HSNO Act, by amending the Hazardous Substances and New Organisms (Organisms Prescribed as Not New) Regulations 2009:

1.1 the beetle *Paropsisterna cloelia*;

1.2 the bacterium *Paenibacillus alvei*;

[Cabinet Environment, Energy and Climate Committee Minute ENV-22-MIN-0032 refers];

- 2 note that the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2022 will give effect to the decision referred to in recommendation 1 above;

- 3 note that a waiver of the 28-day rule is sought:

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- 3.1 so that the regulations can come into force as soon as possible;
- 3.2 on the grounds that the Regulations would have little or no effect on the public and, in the case of the beetle *Paropsisterna cloelia*, any delay in commencement is likely to defeat the purpose of the Regulations;
- 4 agree to waive the 28-day rule so that the regulations can come into force on 23 September 2022;
- 5 authorise the submission to the Executive Council of the Hazardous Substances and New Organisms (Organisms Prescribed as Not New Organisms) Amendment Regulations 2022;
- 6 note that there are statutory prerequisites in the HSNO Act before the Regulations can be made:
 - 6.1 the Minister for the Environment must have considered whether the organisms in question have formed a self-sustaining population in New Zealand and whether any person is attempting to manage, control or eradicate the organisms under any Act (section 140(2) of the HSNO Act);
 - 6.2 the Minister for the Environment must have requested the EPA to consult with affected persons, and to provide the Minister with advice on submissions received and on the best international practices for the safe management of new organisms. The Minister must have regard to the EPA's advice (section 141(1) of the HSNO Act); and
 - 6.3 the Regulations must also be consistent with sections 4 to 8 inclusive of the HSNO Act (the purpose section, the principles section, and matters to be taken into account);
- 7 note the advice of the Minister for the Environment that these requirements have been met.

Authorised for lodgement

Hon David Parker
Minister for the Environment