



# Biosecurity (Process for Assignment of Responsibility for Decision on Harmful Organism or Pathway) Regulations 2016

Jerry Mateparae, Governor-General

## Order in Council

At Wellington this 4th day of April 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under section 165(5) of the Biosecurity Act 1993 on the advice and with the consent of the Executive Council.

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## **Regulations**

### **1 Title**

These regulations are the Biosecurity (Process for Assignment of Responsibility for Decision on Harmful Organism or Pathway) Regulations 2016.

### **2 Commencement**

These regulations come into force on 5 May 2016.

### **3 Interpretation**

In these regulations, unless the context otherwise requires,—

**Act** means the Biosecurity Act 1993

**affected parties** means persons who are likely to be affected by the assignment of responsibility or their representatives

**collective action** means co-ordinated harmful organism or pathway management activities performed by more than 1 party

**independent body** means, in relation to any application, a body or group of persons that the Director-General considers has knowledge of biosecurity matters and is otherwise appropriate to provide an independent assessment of the Director-General's advice on that application

**intermediate outcome** means an outcome identified as a pest management intermediate outcome by the national policy direction for pest management

**responsible party** means a party to whom the responsible Minister has assigned responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway.

#### **4 Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

#### *Application*

#### **5 Application for assignment of responsibility**

- (1) Any person may apply to the responsible Minister requesting the Minister to assign responsibility, under section 55 of the Act, for a decision on the appropriate response to an issue relating to a harmful organism or pathway.
- (2) An application must be in writing and must contain the information required by regulation 6(1).

#### **6 Information required in application**

- (1) An application must—
  - (a) contain the applicant's name and contact details; and
  - (b) identify the harmful organism or pathway to which the application relates; and
  - (c) identify the risks posed by the harmful organism or pathway and provide information about those risks; and
  - (d) briefly explain—
    - (i) the issue requiring a decision; and
    - (ii) the current state of the harmful organism or pathway; and
    - (iii) why the responsible Minister should assign responsibility for the decision; and
    - (iv) the intermediate outcome that, in the applicant's opinion, a response to the issue should seek to achieve; and
    - (v) how the applicant considers that collective action would be likely to result in a better outcome than if there were no collective action; and
  - (e) if the applicant considers that the issue needs to be addressed urgently, request that the responsible Minister do so under regulation 10 and give reasons for the need for urgency; and
  - (f) identify affected parties; and
  - (g) summarise any discussions that the applicant has had about the issue with the identified affected parties; and
  - (h) contain a list or copies of any documents that would inform the responsible Minister about the issue.
- (2) An application may suggest a party or parties to be assigned the responsibility.

- (3) If an application does not contain all of the required information, the responsible Minister may—
  - (a) request, in writing, that the applicant provide the missing information within a reasonable specified time; and
  - (b) either—
    - (i) if regulation 10 applies, consider the application under that regulation; or
    - (ii) decline to consider the application unless the applicant complies with the request.
- (4) On receipt of an application that contains all of the required information, the responsible Minister must, unless regulation 10 applies, request initial advice from the Director-General on the application under regulation 7.

*Initial consideration*

**7 Director-General's initial advice**

- (1) The Director-General must prepare draft written advice to the responsible Minister that—
  - (a) recommends that the Minister decline to consider the application because 1 or more of the criteria in subclause (2) apply; or
  - (b) states whether the Director-General recommends that the Minister consider the application and provides the information required by subclause (3).
- (2) If 1 or more of the following criteria apply, the Director-General may, at the Director-General's discretion, recommend that the responsible Minister decline to consider an application:
  - (a) a pest management plan, a pathway management plan, a small-scale management programme, or another plan or programme for managing the harmful organism or pathway already applies to the harmful organism or pathway to which the application relates;
  - (b) an enactment already provides that a person is responsible for the decision to which the application relates;
  - (c) the harmful organism to which the application relates is subject to a government/industry agreement for readiness or response made under Part 5A of the Act (including any relevant operational agreements);
  - (d) a decision on the issue to which the application relates has been made within the 10 years before the application was made and the Director-General does not consider that there is sufficient new information or change in relation to the issue to justify re-examining the issue;
  - (e) the harmful organism or pathway to which the application relates is not yet present in New Zealand;

- (f) the Director-General considers that the issue to which the application relates is not capable of causing significant adverse effects to any of the following:
  - (i) economic well-being;
  - (ii) the environment;
  - (iii) human health;
  - (iv) enjoyment of the natural environment;
  - (v) the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.
- (3) Unless subclause (1)(a) applies, the Director-General's advice must—
  - (a) define the issue to which the application relates; and
  - (b) identify, if possible, why the issue has not been resolved; and
  - (c) identify the affected parties (including, if the relationship between Māori, their culture, and their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga are affected, any relevant Māori advisory committees or other groups that represent those interests); and
  - (d) identify potential sources of funding for management action and the limitations, if any, on how the funds collected from those sources may be used; and
  - (e) identify any legislation and international agreements relevant to considering the application; and
  - (f) identify the intermediate outcome that, in the Director-General's opinion, a response to the issue should seek to achieve; and
  - (g) state whether, in the Director-General's opinion, collective action to achieve that intermediate outcome would be likely to result in a better outcome than if there were no collective action; and
  - (h) include an analysis of the matters set out in regulation 8(3)(a) to (e).
- (4) The Director-General must provide the draft written advice for comment to—
  - (a) the applicant; and
  - (b) an independent body.
- (5) After receiving comments from the applicant and the independent body, the Director-General must—
  - (a) ensure that the advice summarises the comments received and identifies any changes made to the advice in response to the comments; and
  - (b) provide the advice to the responsible Minister.

## **8 Minister's initial decision on whether to progress application**

- (1) On receipt of the Director-General's advice, the responsible Minister must decide whether to consider the application.

- (2) The responsible Minister—
  - (a) must consider the Director-General’s advice; and
  - (b) may decline to consider the application if the Minister is satisfied that 1 or more of the criteria set out in regulation 7(2) apply; and
  - (c) if paragraph (b) does not apply, must—
    - (i) identify the intermediate outcome that a response to the issue should seek to achieve; and
    - (ii) decide whether collective action to achieve that intermediate outcome would be likely to result in a better outcome than if there were no collective action; and
  - (d) must decide to consider the application if the Minister is satisfied that collective action to achieve the intermediate outcome would be likely to result in a better outcome than if there were no collective action.
- (3) The responsible Minister must, in considering the matters in subclause (2)(c), consider—
  - (a) the likely costs of taking action to achieve the intermediate outcome; and
  - (b) whether the effects of a lack of collective action are likely to be irreversible; and
  - (c) whether collective action would significantly increase the efficiency of management of the relevant harmful organism or pathway; and
  - (d) whether a lack of collective action would result in 1 or more persons bearing the costs of taking action but other persons receiving the benefits; and
  - (e) whether collective action would facilitate the use of powers under any enactment that are necessary or desirable for achieving the intermediate outcome.

**9 Minister notifies applicant whether application will be considered**

The responsible Minister must notify the applicant, in writing, of the decision made under regulation 8 and the reasons for the decision.

**10 Urgent applications can proceed to consultation without initial advice or decision**

- (1) This regulation applies if the responsible Minister determines that the issue to which an application relates needs to be addressed urgently (whether following a request for urgency in the application or on the Minister’s own initiative).
- (2) If this regulation applies,—
  - (a) regulations 7 to 9 do not apply to the application; and
  - (b) the responsible Minister may immediately assign interim responsibility for the decision to which the application relates to a department or re-

- gional council and may decide whether the interim assignment of responsibility will take effect on notification of the responsible party or at a later date; and
- (c) the responsible Minister must notify the applicant, in writing, that the application will be addressed urgently.
- (3) If the responsible Minister assigns interim responsibility for the decision, the assignment applies only until—
- (a) the assignment of final responsibility takes effect (if the Minister decides under regulation 13 to assign responsibility for the decision); or
  - (b) the Minister notifies the applicant of the decision under regulation 15 (if the Minister decides under regulation 13 not to assign responsibility for the decision).
- (4) If the responsible Minister assigns interim responsibility for the decision, the Minister must notify the applicant and the responsible party, in writing, of the assignment and the date that the assignment takes effect.

### *Consultation*

## **11 Consultation**

- (1) If the responsible Minister decides under regulation 8 to consider an application or decides under regulation 10 that the issue to which an application relates needs to be addressed urgently, the Director-General must consult the relevant affected parties about—
- (a) whether responsibility for the decision on the issue to which the application relates should be assigned; and
  - (b) if so, to whom that responsibility should be assigned.
- (2) The Director-General must—
- (a) provide the affected parties with information about the consultation process (including time frames); and
  - (b) maintain a written record of all consultation undertaken.
- (3) In this regulation, **relevant affected parties** means the affected parties identified in the Director-General's initial advice (if regulation 8 applies) or the persons that the Director-General considers to be affected parties (if regulation 10 applies).

### *Final decision*

## **12 Director-General's final advice**

- (1) As soon as practicable after completing the consultation, the Director-General must prepare draft written advice to the responsible Minister that—

- (a) recommends the intermediate outcome that, in the Director-General's opinion, a response to the issue should seek to achieve; and
  - (b) states whether, in the Director-General's opinion, collective action to achieve that intermediate outcome would be likely to result in a better outcome than if there were no collective action; and
  - (c) summarises and addresses the views expressed during consultation; and
  - (d) states whether the Director-General recommends that the responsible Minister assign responsibility for the decision to which the application relates.
- (2) If the Director-General recommends that the responsible Minister assign responsibility for the decision to which the application relates, the draft written advice must recommend the party or parties to whom the responsibility should be assigned, after taking into account in the advice—
- (a) the matters set out in regulation 14(2)(b); and
  - (b) any other matters that the Director-General considers relevant to the assignment of responsibility.
- (3) The Director-General must provide the draft written advice for comment to—
- (a) the applicant; and
  - (b) an independent body.
- (4) After receiving comments from the applicant and the independent body, the Director-General must—
- (a) ensure that the advice summarises the comments received and identifies any changes made to the advice in response to the comments; and
  - (b) provide the advice to the responsible Minister.

### **13 Minister's decision on whether to assign responsibility for decision**

- (1) On receipt of the Director-General's advice, the responsible Minister must decide whether to assign responsibility for the decision to which the application relates.
- (2) In reaching a decision, the responsible Minister must—
- (a) consider—
    - (i) the application; and
    - (ii) the Director-General's initial advice (if any); and
    - (iii) the views expressed during consultation with affected parties; and
    - (iv) the Director-General's final advice; and
    - (v) any advice received on the application from an independent body; and
    - (vi) the matters in regulation 8(3); and



- (b) decide whether collective action to achieve the intermediate outcome would be likely to result in a better outcome than if there were no collective action.

**14 Minister's decision on responsible party**

- (1) If the responsible Minister decides to assign responsibility for the decision to which the application relates, the Minister must decide to which party or parties to assign responsibility.
- (2) In reaching a decision, the responsible Minister must—
  - (a) consider—
    - (i) the application; and
    - (ii) the Director-General's initial advice (if any); and
    - (iii) the views expressed during consultation with affected parties; and
    - (iv) the Director-General's final advice; and
    - (v) any advice received on the application from an independent body; and
  - (b) take into account—
    - (i) which party or parties are most likely to be able to achieve the intermediate outcome; and
    - (ii) which party or parties are most representative of the affected parties; and
    - (iii) which party or parties would benefit from management of the relevant harmful organism or pathway; and
    - (iv) which party or parties are able to use powers under any enactment that are necessary or desirable for achieving the intermediate outcome; and
    - (v) any other matters that the Minister considers relevant to the assignment of responsibility.
- (3) The responsible Minister may assign responsibility to more than 1 party and, if so, must decide which party or parties will make the decision if the parties are unable to agree on a joint decision.
- (4) The responsible Minister must decide whether the assignment of responsibility will take effect on notification of the responsible parties or at a later date.

*Notification*

**15 Minister notifies applicant of final decisions**

The responsible Minister must notify the applicant, in writing, of the decisions made under regulations 13 and 14 and the reasons for the decisions.

**16 Minister notifies responsible party of final decisions**

- (1) The responsible Minister must notify the party or parties to whom the Minister has decided to assign responsibility, in writing, of the assignment and the date that the assignment takes effect.
- (2) If a responsible party is not a department or regional council, the notification must—
  - (a) state that the party is not legally bound to make the decision but provide a reasonable specified time period within which the party may accept or reject the assignment of responsibility; and
  - (b) outline the process by which the party may reject the assignment of responsibility and request that the responsible Minister assign the responsibility to another party; and
  - (c) suggest a time frame for the decision on the appropriate response to the issue relating to the harmful organism or pathway.
- (3) If a responsible party rejects the assignment of responsibility or fails to accept the assignment of responsibility within the specified time period, the responsible Minister may decide to assign the responsibility to another party by repeating the steps in regulations 14 and 15 and this regulation.

**17 Minister notifies public of final decisions**

The responsible Minister must notify the decisions made under regulations 13 and 14—

- (a) by notice in the *Gazette*; and
- (b) by any other means that the Minister considers appropriate.

**Schedule 1  
Transitional, savings, and related provisions**

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**Part 1  
Provisions relating to these regulations as made**

There are no transitional, savings, or related provisions relating to these regulations as made.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 5 May 2016, set out the process for the Minister responsible for the administration of the Biosecurity Act 1993 to assign responsibility for a decision on the appropriate response to an issue relating to a harmful organism or pathway.

The process involves—

- an application requesting that the Minister assign responsibility for the decision; and
- the Director-General giving the Minister initial advice on the merits of the application; and
- the Minister making an initial decision on whether to consider the application; and
- the Director-General consulting with parties potentially affected by the assignment of responsibility; and
- the Director-General giving the Minister final advice on whether to assign responsibility for the decision and, if so, to whom; and
- the Minister making final decisions on whether to assign responsibility for the decision and, if so, to whom; and
- the Minister notifying the applicant, the parties to whom the Minister assigns responsibility, and the public of the final decisions made.

If the responsible Minister is satisfied that the issue to which an application relates needs to be addressed urgently,—

- the process is shortened (by omitting the steps requiring initial advice from the Director-General and an initial decision from the Minister and proceeding immediately to consultation on the application); and
- the Minister may assign interim responsibility for the decision to a department or regional council until the final decision is made.

Under section 55(3)(c) of the Biosecurity Act 1993, if the Minister assigns responsibility to a department or regional council, the department or regional council must make the decision within the time specified by the Minister. If the Minister assigns responsibility to a party that is not a department or regional council, the party is not required to make the decision.

## Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement in August 2015 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

**Biosecurity (Process for Assignment of Responsibility  
for Decision on Harmful Organism or Pathway)  
Regulations 2016**

Explanatory note

2016/74

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- <https://www.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements/>
  - <http://www.treasury.govt.nz/publications/informationreleases/ris>

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