



# Hazardous Substances and New Organisms (Personnel Qualifications) Amendment Regulations 2004

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 23rd day of August 2004

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to sections 76 and 140 of the Hazardous Substances and New Organisms Act 1996, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council (given on the recommendation of the Minister for the Environment made in compliance with section 141(1) of that Act), makes the following regulations.

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## **Regulations**

### **1 Title**

- (1) These regulations are the Hazardous Substances and New Organisms (Personnel Qualifications) Amendment Regulations 2004.
- (2) In these regulations, the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001<sup>1</sup> are called “the principal regulations”.

<sup>1</sup> SR 2001/122

### **2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

### **3 Test certificates for approved handlers**

Regulation 4(3) of the principal regulations is amended by omitting the words “, unless regulation 6 applies in which case it remains valid for 2 years from the date of issue”.

### **4 Qualifications for approved handlers**

Regulation 5(1) of the principal regulations is amended by revoking paragraph (g), and substituting the following paragraph:

“(g) if regulations require a person handling a hazardous substance to comply with a code of practice approved by the Authority, that code of practice:”.

### **5 New regulation 6 substituted**

The principal regulations are amended by revoking regulation 6, and substituting the following regulation:

#### **“6 Transitional qualification for approved handlers**

- “(1) This regulation applies to a person who establishes that he or she, during the whole of a qualifying period referred to in subclause (2), has been handling a hazardous substance, or any other substance with similar hazardous properties, in the relevant phase of its lifecycle under 1 or more of the following enactments:

“(a) Animal Remedies Act 1967:

“(b) Dangerous Goods Act 1974:

- “(c) Explosives Act 1957:
  - “(d) Gas Act 1992:
  - “(e) Health Act 1956:
  - “(f) Health and Safety in Employment Act 1992:
  - “(g) Land Transport Act 1998:
  - “(h) Pesticides Act 1979:
  - “(i) Toxic Substances Act 1979:
  - “(j) Parts XII to XV of the Act.
- “(2) For the purposes of subclause (1), a **qualifying period** is any consecutive 2-year period commencing on or after the date that is 2 years before the commencement of these regulations and ending on or before the date that is 5 years after the commencement of these regulations.
- “(3) A person to whom this regulation applies is regarded as an approved handler of the hazardous substance concerned, and also of any substance with similar hazardous properties, for 2 years from—
- “(a) the date specified in a transfer notice made under section 160A of the Act for the transfer of the substance; or
  - “(b) the commencement date of the Hazardous Substances (Fireworks, Safety Ammunition, and Other Explosives Transfer) Regulations 2003, if those regulations apply to the substance.”

## 6 New heading and regulations 6A to 6E inserted

The principal regulations are amended by inserting, after regulation 6, the following heading and regulations:

### *“Licences for approved handlers*

#### “6A Licence applications

An applicant for a licence under section 95B of the Act must—

- “(a) be 17 years or over; and
- “(b) be a fit and proper person to possess the substance concerned; and
- “(c) meet the relevant test certification requirements that apply to the substance under section 82 of the Act; and
- “(d) require possession of the substance to carry out his or her work.

**“6B Criteria for fit and proper person test**

- “(1) For the purposes of determining whether or not an applicant is a fit and proper person to possess the substance concerned (as required by section 95B(3)(a) of the Act), the Authority must have regard, and give such weight as the Authority considers appropriate, to the following matters:
- “(a) the applicant’s criminal history (if any), whether in New Zealand or elsewhere:
  - “(b) any pending criminal proceedings against the applicant, whether in New Zealand or elsewhere:
  - “(c) any protection order made against the applicant under the Domestic Violence Act 1995:
  - “(d) any other court order made against the applicant, whether in New Zealand or elsewhere, that is, or may be, relevant to the application:
  - “(e) the applicant’s behavioural history, including any history of violence, drug abuse, or alcohol abuse:
  - “(f) any information collected in the course of a police investigation that relates to the applicant’s conduct:
  - “(g) any matters disclosed to the Authority by the police in relation to the application, including any objection to the issue of a licence.
- “(2) In the case of proceedings referred to in subclause (1)(b), the Authority may defer consideration of the application until the proceedings have been determined.
- “(3) The Authority is not limited to the matters specified in subclause (1), and may seek, receive, and take into account any other information or evidence that the Authority considers relevant.
- “(4) If the Authority proposes to take into account any information that is, or may be, prejudicial to the applicant, the Authority must give the applicant a reasonable opportunity to refute or comment on it.
- “(5) Subclause (4) does not require the Authority to disclose any information that would be likely to endanger the safety of any person.
- “(6) If, in reliance on subclause (5), the Authority decides to withhold information from the applicant, the Authority must inform the applicant of his or her right to seek a review of that

decision by an Ombudsman under the Official Information Act 1982.

**“6C Expiry of licence**

“(1) A licence issued under section 95B of the Act expires on whichever of the following dates occurs first:

“(a) the date specified in the licence as the date of expiry:

“(b) 5 years from the date on which the licence was issued:

“(c) the date on which the applicant’s test certificate as an approved handler expires:

“(d) the date of notification referred to in subclause (2):

“(e) the date on which the licence was revoked under regulation 6E.

“(2) A person may surrender his or her licence at any time, by forwarding written notification to that effect, together with the licence, to the Authority.

**“6D Suspension of licence**

“(1) The Authority may, by written notice to the licence holder, suspend the person’s licence if satisfied that—

“(a) the licence application, or any declaration made in respect of the application, included information that may have been false or misleading; or

“(b) the licence holder has become the subject of a police investigation; or

“(c) the licence holder has been charged with an offence under any enactment, whether in New Zealand or elsewhere; or

“(d) the licence holder is the subject of, or referred to in, advice given to the Authority by the Director of the New Zealand Security Intelligence Service under section 4(1)(ba) or section 4H of the New Zealand Security Intelligence Service Act 1969; or

“(e) the licence holder’s actions indicate that the person may no longer be a fit and proper person to hold the licence.

“(2) On notice of the suspension of the licence—

“(a) the licence holder must immediately return the licence to the Authority; and

“(b) the licence ceases to have effect for the period of suspension.

- “(3) The period of suspension must be no longer than is reasonably necessary to enable the Authority to—
- “(a) investigate the accuracy of the information; and
  - “(b) consider whether, in light of that investigation, the licence holder continues to meet the requirements of regulation 6A.
- “(4) On completion of the Authority’s investigation and consideration, the Authority must either—
- “(a) return the licence to the licence holder (if satisfied that the holder continues to meet the requirements of regulation 6A; or
  - “(b) revoke the licence under regulation 6E.
- “6E **Revocation of licence**
- “(1) The Authority may, by written notice to the licence holder, revoke the person’s licence if satisfied that—
- “(a) the licence application, or any declaration made in respect of the application, included false or misleading information; or
  - “(b) the licence holder has been convicted of an offence under any enactment, whether in New Zealand or elsewhere; or
  - “(c) the licence holder’s actions indicate that the person is no longer a fit and proper person to hold the licence.
- “(2) On notice of the revocation of the licence, the licence holder must immediately return the licence to the Authority.”

Diane Morcom,  
Clerk of the Executive Council.

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**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 the 28th day after the date of their notification in the *Gazette*, amend the Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001 (“the principal regulations”) by—

- limiting the regulation 5(1)(g) requirement for knowledge of the content of the codes of practice. Knowledge of a code of practice will be required only if regulations require compliance with the code (*regulation 4*):
- removing the need for a test certificate to be issued under regulation 6(1), and extending the time in regulation 6(2) (during which the consecutive period of handling the substance may occur) to 5 years after the commencement of the principal regulations (*regulation 5*):
- inserting *new heading and regulations 6A to 6E* to provide for the licences referred to in section 95B of the Hazardous Substances and New Organisms Act 1996. In particular, the new regulations set out—
  - the basic requirements that an applicant for a licence must satisfy, and the method of application (*new regulation 6A*):
  - the criteria for a fit and proper person test (*new regulation 6B*):
  - when a licence expires (*new regulation 6C*):
  - the circumstances in which the Authority may suspend or revoke a licence (*new regulations 6D and 6E*) (*regulation 6*).

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 26 August 2004.

These regulations are administered in the Ministry for the Environment.

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