

# Imports and Exports (Living Modified Organisms) Prohibition Order 2005

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 7th day of February 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 3A(1) of the Imports and Exports (Restrictions) Act 1988, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

## Contents

- 1 Title
- 2 Commencement
- 3 Interpretation
- 4 Exports of living modified organisms
- 5 When living modified organism that is pharmaceutical for humans may be exported
- 6 When living modified organism intended for contained use may be exported
- 7 When living modified organism intended for direct use as food or feed, or for processing, may be exported
- 8 When living modified organism intended for intentional introduction into environment may be exported
- 9 Separate consents required for exportation of living modified organism that falls into more than 1 category of exportation

## Order

- 1 Title

This order is the Imports and Exports (Living Modified Organisms) Prohibition Order 2005.

## 2 Commencement

This order comes into force on 25 May 2005.

## 3 Interpretation

In this order, unless the context otherwise requires,---

**Conference decision** means a decision of the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol

**contained use** means any operation, undertaken within a facility, installation, or other physical structure, that involves living modified organisms that are controlled by specific measures that effectively limit their contact with, and their impact on, the external environment

**Convention** means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992; and includes the Annexes to the Convention, and any amendments to, or substitutions of, those documents that are or will become binding on New Zealand

**craft** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

**exportation** means any shipment in any craft for transportation to a point outside New Zealand; and export and exported have corresponding meanings

**exporter** means a person for whom, or by whom, living modified organisms are exported, and includes a person who is or becomes the owner of or entitled to possession of or is beneficially interested in living modified organisms on or at any time after entry for export and before they are exported

**importing country** means the country that receives the living modified organism exported from New Zealand, but does not include countries of transit

**living modified organism** means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology

**living organism** means any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses, and viroids

**Minister** has the same meaning as in section 2(1) of the Hazardous Substances and New Organisms Act 1996

**modern biotechnology** means the application of---

(a) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles; or

(b) fusion of cells beyond the taxonomic family,---

that overcome natural physiological reproductive or recombination barriers and

that are not techniques used in traditional breeding and selection

Protocol means the Cartagena Protocol on Biosafety to the Convention, done at Montreal on 29 January 2000, and amendments to, or substitution of, those documents that are or will become binding on New Zealand

shipment has the same meaning as in section 2(1) of the Customs and Excise Act 1996.

#### 4 Exports of living modified organisms

The exportation of living modified organisms is prohibited, except as provided in clauses 5 to 8.

5 When living modified organism that is pharmaceutical for humans may be exported

(1) A living modified organism that is a pharmaceutical for humans and that is addressed by relevant international agreements or organisations other than the Protocol may be exported.

(2) Otherwise, a living modified organism that is a pharmaceutical for humans may be exported only if it falls within a category of exportation to which clauses 6 to 8 apply, and the requirements of the relevant clause or clauses have been met.

6 When living modified organism intended for contained use may be exported

(1) A living modified organism that is intended for contained use may be exported if the Minister has consented to its exportation.

(2) The Minister may consent to the exportation if the Minister is satisfied that the living modified organism is---

(a) handled, packaged, and transported under conditions of safety and according to relevant international rules and standards; and

(b) accompanied by documentation in conformity with New Zealand's obligations under the Protocol; and

(c) otherwise exported in conformity with New Zealand's obligations under the Protocol.

7 When living modified organism intended for direct use as food or feed, or

for processing, may be exported

(1) A living modified organism intended for direct use as food or feed, or for processing, may be exported if the Minister has consented to the exportation.

(2) Subject to subclause (3), the Minister may consent to the exportation if the Minister is satisfied that the living modified organism is---

(a) handled, packaged, and transported under conditions of safety and according to relevant international rules and standards; and

(b) accompanied by documentation in conformity with New Zealand's obligations under the Protocol; and

(c) otherwise exported in conformity with New Zealand's obligations under the Protocol.

(3) If the living modified organism is being exported for the first time into the importing country, the Minister may only consent if the following additional requirements are also satisfied:

(a) if the importing country is a Party to the Protocol, the requirements of Article 11 of the Protocol have been complied with; and

(b) the exporter complies with any conditions or requirements imposed by the importing country that are consistent with the Protocol or other relevant international instruments.

8 When living modified organism intended for intentional introduction into environment may be exported

(1) A living modified organism intended for intentional introduction into the environment of the importing country may be exported if the Minister has consented to the exportation.

(2) Subject to subclause (3), the Minister may consent to the exportation if the Minister is satisfied that the living modified organism is---

(a) handled, packaged, and transported under conditions of safety and according to relevant international rules and standards; and

(b) accompanied by documentation in conformity with New Zealand's obligations under the Protocol; and

(c) otherwise exported in conformity with New Zealand's obligations under the Protocol.

(3) If the living modified organism is being exported for the first time into the importing country, the Minister may only consent if the following additional requirements are also satisfied:

(a) if the importing country is a Party to the Protocol, the advance informed agreement procedure in Articles 8, 9, 10, and 12 of the Protocol have been complied with; and

(b) the exporter has complied with any conditions or requirements imposed by the importing country that are consistent with the Protocol or other relevant international instruments.

(4) Subclause (3)(a) does not apply if the living modified organism has been identified in a Conference decision as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

9 Separate consents required for exportation of living modified organism that falls into more than 1 category of exportation

If the exportation of a living modified organism falls into more than 1 of the categories of exportation to which clauses 6 to 8 apply, the separate consent of the Minister must be obtained for each category of exportation.

Diane Morcom,  
Clerk of the Executive Council.

#### Explanatory Note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 25 May 2005, controls the export from New Zealand of living modified organisms. Those controls are necessary to fulfil New Zealand's imminent obligations under the Cartagena Protocol on Biosafety 2000 (the Protocol) which is a Protocol to the Convention on Biological Diversity 1992 (the Convention) to which New Zealand is a Party.

The scheme of the order is to prohibit the export of living modified organisms from New Zealand unless Ministerial consent is obtained. In that case, a living modified organism may be exported, subject to certain conditions which depend on the purpose of the export, as required by the Protocol.

It is intended that New Zealand ratify the Protocol in February 2005 so that the Protocol will enter into force for New Zealand on 25 May 2005. Copies of the Convention and the Protocol are available for inspection free of charge at the head offices, and on or through the websites, of the following departments:

- o Ministry of Economic Development ([www.med.govt.nz](http://www.med.govt.nz)):
- o Ministry for the Environment ([www.mfe.govt.nz](http://www.mfe.govt.nz)).

Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in Gazette: 10 February 2005.  
This order is administered in the Ministry of Economic Development.