

MOTOR SPIRITS DISTRIBUTION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Motor Spirits Distribution Act 1953.

The main amendment relates to the supply of compressed natural gas and liquefied petroleum gas and their associated storage and dispensing equipment to a retail service station. Under section 18 (2) of the principal Act, the supply of such products and equipment by the holder of a wholesaler's licence (for example, an oil company) to a retailer is deemed to give the wholesaler an estate or interest (a term defined in section 2 of the principal Act) in the business of the retailer, thereby committing an offence. *Clause 5* of the Bill in effect authorises the supply of the gas products and equipment by a motor spirits wholesaler by making such supply no longer subject to the provisions of the said section 18.

The other amendments are mainly provisions at present contained in regulations, leading to the revocation of the regulations specified in the Schedule to the Bill.

Clause 1 relates to the Short Title.

Clause 2 defines the term "premises".

Clause 3 relates to applications for licences. The form of application is to be prescribed by the Motor Spirits Licensing Authority.

Clause 4 requires a retailer's licence to be displayed on the premises to which it relates.

Clause 5: Subclause (1) makes it a condition of a wholesaler's licence that the holder is not to supply motor spirits for resale other than to a licensed retailer.

Subclauses (3) and (4) relate to the supply of compressed natural gas and liquefied petroleum gas by a wholesaler to a retailer.

Clause 6 relates to registers of licences kept by the Licensing Authority.

Clause 7 provides that, if an application is made to have a condition authorising the sale of motor spirits otherwise than through pumps deleted from a retailer's licence, the Licensing Authority is not required to give notice of the application under section 22 of the Act and no fee is payable in respect of such an application.

Clause 8 requires the holder of a licence, upon request, to send the licence to the Licensing Authority after it has been amended, transferred, suspended, or revoked, or has expired.

Clause 9 relates to the issuing of a replacement licence to the transferee of an existing licence.

Clause 10 re-enacts section 24A of the principal Act (which deals with the transfer of shares in a company which holds a retailers' licence) with the following changes:

- (a) No increase in the share capital of such a company shall be made without the approval of the Licensing Authority if the shares representing the increase are to be issued to new shareholders:
- (b) The practice of the Licensing Authority to give 14 days' clear notice of its intention to consider any application under the section has been made mandatory.

Clause 11 introduces the temporary retailer's licence. Where the estate of a licensee is under the control of a manager, personal representative, assignee, or liquidator or receiver, that manager or other person may apply to the Licensing Authority for authority to carry on or to appoint some other person to carry on the licensee's business for a specified period.

Clause 12 requires the Licensing Authority to give notice of its determinations to certain specified people.

Clause 13 relates to the imposition of fees (at present dealt with by regulation).

Clause 14 substitutes a simpler regulation-making provision.

Clause 15 relates to revocations.

Rt. Hon. Mr Adams-Schneider

MOTOR SPIRITS DISTRIBUTION AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Motor Spirits Distribution Act 1953

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Motor Spirits Distribution Amendment 1981, and shall be read together with and deemed part of the Motor Spirits Distribution Act 1953* (hereinafter referred to as the principal Act).

10 **2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “person”, the following definition:

“‘Premises’ means the selling point from which motor spirits may be sold.”

*Reprinted 1972, Vol. 3, p. 2631
Amendments: 1975, No. 92; 1979, No. 54

3. Application for licence—The principal Act is hereby amended by repealing section 13, and substituting the following section:

“13. (1) Every application for or in respect of a new licence or for a transfer or amendment of a licence shall be forwarded to the Licensing Authority in such form as may be prescribed by the Authority from time to time for the purpose. 5

“(2) Every such application shall be signed by or on behalf of— 10

“(a) The intended licensee, in the case of an application for a new licence; or

“(b) The licensee, in the case of an application relating to the amendment of an existing licence; or

“(c) The licensee or the intended licensee, in the case of an application for the transfer of a licence; or 15

“(d) The person wishing to be authorised, in the case of an application relating to a temporary retailer’s licence.

“(3) An application for or in respect of a licence may be made on behalf of a company about to be incorporated, but no licence shall be granted or transferred in respect of that application until the company has been incorporated.” 20

4. Matters to be prescribed in retailer’s licence—Section 17 of the principal Act is hereby amended by inserting, after paragraph (e), the following paragraph: 25

“(ea) That the holder of any retailer’s licence shall display the licence in a prominent position on the premises to which it relates:”.

5. Conditions implied in wholesaler’s licence—(1) Section 18 of the principal Act (as substituted by section 3 of the Motor Spirits Distribution Amendment Act 1958) is hereby amended by inserting in subsection (2), after paragraph (b), the following paragraph: 30

“(ba) That the licensee shall not supply motor spirits to any person for the purpose of resale unless that person is the holder of a retailer’s licence:”.

(2) Section 18 (4) of the principal Act is hereby amended by omitting from paragraph (d) the word “section.”, and substituting the words “section; or”. 40

(3) The said section 18 (4) is hereby further amended by adding the following paragraph:

“(e) Any estate or interest—

5 “(i) In any compressor, storage equipment, dispensing equipment, metering equipment, or any equipment associated therewith, used for storing or dispensing compressed natural gas or liquefied petroleum gas; or

10 “(ii) In any improvements to or development of any land or buildings required by any other enactment for the establishment or operation of facilities for the retail sale of compressed natural gas or liquefied petroleum gas.”

(4) The said section 18 is hereby further amended by adding the following subsection:

15 “(7) In subsection (4) (e) of this section—

 “‘Liquefied petroleum gas’ means butane, butylene, isobutane, propane, or propylene, or a mixture consisting wholly or principally of any 2 or more such substances, whether or not the mixture contains any other hydrocarbon:

20 “‘Natural gas’ means any naturally occurring hydrocarbon in a gaseous state or any mixture of any such hydrocarbons, together with any naturally associated non-hydrocarbons, whether or not any such substance has been subjected to any treatment or process for purification, separation of the constituents, liquefaction, or other purpose.”

6. Registers of licences—Section 20 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

30 “(1) The Secretary of the Licensing Authority shall keep a register of each kind of licence issued under this Act; and each such register shall contain a copy of every current licence and shall also contain any other matter required by this Act to be in the register.”

35 **7. Revocation of authority to sell motor spirits otherwise than through pumps**—Section 22 of the principal Act is hereby amended by adding the following subsection:

40 “(5) Nothing in subsections (1) and (2) of this section shall apply to the amendment of a retailer’s licence whereby a condition authorising the sale of motor spirits otherwise than through pumps is revoked, nor shall any fee be payable in respect of an application to make such an amendment.”

8. Return of licences—The principal Act is hereby amended by inserting, after section 23, the following section:

“23A. Where any licence is amended, transferred, suspended, or revoked, or has expired, the holder shall, when requested by the Licensing Authority, forthwith send the licence to the Licensing Authority.” 5

9. Transfer of licences—Section 24 of the principal Act is hereby amended by adding the following subsection:

“(5) Where an application under this section is granted, the transferee shall be issued with a replacement licence, which shall be subject to all the conditions applying in respect of the licence the subject of the application immediately before its transfer except to the extent that any such condition is amended or revoked by the Licensing Authority.” 10

10. Transfer of shares—(1) The principal Act is hereby amended by repealing section 24A (as inserted by section 8 of the Motor Spirits Distribution Amendment Act 1963), and substituting the following section: 15

“24A. (1) Where any company is the holder of a retailer’s licence— 20

“(a) No shares in that company shall be transferred:

“(b) No change in the beneficial ownership of any such shares shall take place:

“(c) No increase in the share capital of that company shall be made if the shares representing that increase are to be issued to new shareholders— 25

except with the approval of the Licensing Authority pursuant to an application by the company.

“(2) The Licensing Authority shall, for the purposes of section 39A of this Act, give 14 days’ clear notice of its intention to consider any application made under subsection (1) of this section. 30

“(3) Nothing in subsection (1) of this section shall apply—

“(a) To shares in any company which, at the 30th day of September 1963, was a public company: 35

“(b) To any shares of such a class as may from time to time be prescribed by regulations made under this Act:

“(c) To any shares transferred by survivorship or pursuant to the will or intestacy of any deceased person.”

(2) Section 8 of the Motor Spirits Distribution Amendment Act 1963 is hereby consequentially repealed. 40

11. Temporary retailer's licence—The principal Act is hereby amended by inserting, after section 24c (as inserted by section 10 of the Motor Spirits Distribution Amendment Act 1963), the following section:

5 “24d. (1) Any person who—

“(a) In the case of a licensee who is a protected patient within the meaning of the Mental Health Act 1969, is the manager of his estate; or

10 “(b) In the case of a licensee in respect of whom a protection order is in force under the Aged and Infirm Persons Protection Act 1912, is the manager of his estate; or

“(c) In the case of a licensee who is deceased, is his personal representative; or

15 “(d) In the case of a licensee who has been adjudicated bankrupt, is his assignee in bankruptcy; or

“(e) In the case of a licensee company that is in liquidation or receivership, is the liquidator or receiver of that company, as the case may be,—

20 may, upon application made not later than one month after so becoming the manager, personal representative, assignee in bankruptcy, or liquidator or receiver, be authorised by the Licensing Authority to carry on or to appoint some other person to carry on the licensee's business as a retailer of motor
25 spirits for such period as the Authority determines.

“ (2) While any person is so authorised he shall, for the purposes of this Act, be deemed to be the holder of the licence, and the licence and the appropriate register shall be endorsed accordingly in such manner as the Authority thinks
30 fit.”

12. Determinations of Licensing Authority—Section 25 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

35 “(2) Notice of any determination of the Licensing Authority shall be given to the applicant or licensee and to any other person who, in the opinion of the Licensing Authority, is directly affected by its decision.”

13. Fees—(1) The principal Act is hereby amended by inserting, after section 25, the following section:

40 “25A.(1) Subject to this Act, a fee shall be payable to the Licensing Authority in respect of each of the following situations:

“(a) Where an application is made for a wholesaler’s or a retailer’s licence:

“(b) Where an application is made for an amendment to or for the transfer of a wholesaler’s or retailer’s licence:

“(c) On the 1st day of April in each year in respect of every wholesaler’s or retailer’s licence:

“(d) Where a duplicate licence is supplied to the holder of a licence:

“(e) Where an appeal is lodged under Part III of this Act.

“(2) The amount of any fee payable pursuant to subsection (1) of this section shall be such amount as may from time to time be prescribed by the Governor-General by Order in Council, and different fees may be prescribed in relation to the different conditions applying to licences and fees may also be prescribed as being payable at different rates according to the quantity of motor spirits sold.

“(3) Any fee not paid by or on its due date for payment may be recovered as a debt due to the Crown.”

(2) Notwithstanding the revocations effected by section 15 of this Act, the fees prescribed in the Motor Spirits Distribution Regulations 1955, Amendment No. 7 shall be deemed to be the fees payable under subsection (1) of this section as if they had been prescribed by order under subsection (2) of this section, and may be amended accordingly.

14. Regulations—The principal Act is hereby amended by repealing section 42, and substituting the following section:

“42. The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

“(a) Prescribing such forms and notices as may be necessary for any purpose under this Act:

“(b) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.”

15. Revocations—The regulations specified in the Schedule to this Act are hereby revoked.

SCHEDULE

REGULATIONS REVOKED

Section 15

Title	Serial Number
The Motor Spirits Distribution Regulations 1955	S.R. 1955/51
The Motor Spirits Distribution Regulations 1955, Amendment No. 2	S.R. 1967/288
The Motor Spirits Distribution Regulations 1955, Amendment No. 4	S.R. 1976/84
The Motor Spirits Distribution Regulations 1955, Amendment No. 5	S.R. 1977/141
The Motor Spirits Distribution Regulations 1955, Amendment No. 6	S.R. 1979/23
The Motor Spirits Distribution Regulations 1955, Amendment No. 7	S.R. 1981/35