

OZONE LAYER PROTECTION AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

THIS BILL amends the Ozone Layer Protection Act 1990 to enable effect to be given to decisions made in Copenhagen in November 1992 to adjust the Montreal Protocol on Substances that Deplete the Ozone Layer. Effect has already been given to some of those decisions by way of Orders in Council made under the principal Act. Most of the Bill is to come into force on assent.

The principal effects of the Bill are as follows:

- (a) The establishment of a new procedure to enable the importation of “used or recycled” bulk controlled substances without an import permit:
- (b) A requirement that imports and exports of “used or recycled” bulk controlled substances be notified to the Minister of Commerce:
- (c) New rules to control the importation of bulk halons, to be effective from *1 January 1994*.

In addition, the opportunity has been taken to make some technical changes to the Act for ease of administration.

These changes are—

- (a) The merger of sections 19 and 20 of the principal Act, which both empower the Governor-General, by Order in Council, to prohibit the importation of goods containing or designed to use or manufactured using any controlled substance. This results in consequential amendments to sections 24 and 26 of the principal Act:
 - (b) A change to the exemption from the import prohibition on goods in respect of passengers’ baggage and effects. At present the goods exempted are those to which a concession in the Customs Tariff applies, and one condition is that the person importing the goods must have resided or been domiciled outside New Zealand for 21 months preceding his or her arrival. That condition is now removed.
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Hon. W. Rob Storey

OZONE LAYER PROTECTION AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Ozone Layer Protection Act 1990

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Ozone Layer Protection Amendment Act (No. 2) 1993, and shall be read together with and deemed part of the Ozone Layer Protection Act 1990* (hereinafter referred to as the principal Act).

10 (2) Except as provided in subsection (3) of this section, this Act shall come into force on the day on which it receives the Royal assent.

(3) Section 10 of this Act shall come into force on the 1st day of January 1994.

15 **2. Interpretation**—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “bulk

*1990, No. 50

Amendment: 1993, No. 3

controlled substance”, and substituting the following definitions:

“ ‘Bulk controlled substance’—

“(a) Means any controlled substance that is acquired in a non-processed form whether alone or in a mixture: 5

“(b) Includes any bulk recycled substance:

“(c) Excludes any controlled substance that is in a manufactured product other than a container used for the transportation or storage of the substance: 10

“ ‘Bulk recycled substance’—

“(a) Means any controlled substance that is acquired in a non-processed form, whether alone or in a mixture, and that has been recovered, cleaned, or reclaimed; but 15

“(b) Excludes any controlled substance that is in a manufactured product other than a container used for the transportation or storage of the substance:

“ ‘Cleaned’, in relation to any bulk recycled substance, means a recovered substance that has been cleaned by filtering or drying:” 20

(2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “industry group”, the following definition:

“ ‘Manufacture’, in relation to any controlled substance, means the process of creating a controlled substance but excludes any process which cleans or reclaims a bulk controlled substance:” 25

(3) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “prescribed”, the following definitions: 30

“ ‘Reclaimed’, in relation to any bulk recycled substance, means a recovered substance that has been reprocessed and upgraded by filtering, drying, distillation, or chemical treatment: 35

“ ‘Recovered’, in relation to any bulk recycled substance, means a substance that has been collected from machinery, equipment, or containment vessels during servicing or before disposal:”

3. Restrictions on other imports of bulk controlled substances—The principal Act is hereby amended by repealing section 6, and substituting the following section: 40

“6. (1) No person shall, after the operative date, import any bulk controlled substance, unless—

“(a) The importation is in accordance with an import permit issued under this Part of this Act; or

5 “(b) The importation is of any bulk recycled substance and is in accordance with **section 17AA** of this Act.

“(2) Nothing in this section shall permit the importation of any substance which is prohibited by section 5 of this Act.”

10 **4. New heading and section inserted**—The principal Act is hereby amended by inserting, after section 17, the following heading and section:

“Alternative Procedure for Importation of Bulk Recycled Substances

15 **17AA. Procedure for importation of bulk recycled substances**—(1) Any person may import any bulk recycled substance without an import permit if—

“(a) On importation, the person provides such of the following documents as may be required by an officer:

20 “(i) A document from the person or company that recovered, cleaned, or reclaimed the substance stating that the substance is a bulk recycled substance; and

25 “(ii) A statutory declaration signed by the person importing the substance declaring that the substance is a bulk recycled substance; and

“(iii) A copy of the notification to be sent to the Minister in accordance with **subsection (2)** of this section; and

30 “(iv) Such other documentation as an officer may reasonably require in order to ascertain that the substance is a bulk recycled substance; and

“(b) The officer is satisfied that the substance is a bulk recycled substance.

35 “(2) Every person who imports any bulk recycled substance shall, within 10 working days, notify the Minister, in writing, of the substance imported and the date and amount of the import.”

40 **5. Notification of export of bulk recycled substances**—The principal Act is hereby amended by inserting, after section 17B (as inserted by section 4 of the Ozone Layer Protection Amendment Act 1993), the following section:

“17c. Every person who exports any bulk recycled substance shall, within 10 working days, notify the Minister, in writing, of the substance exported and the date and amount of the export.”

6. Prohibition of other imports by Order in Council— 5

The principal Act is hereby amended by repealing sections 19 and 20 (as amended by sections 5 and 6 of the Ozone Layer Protection Amendment Act 1993), and substituting the following section:

“20. (1) The Governor-General may, from time to time, by Order in Council, make regulations prohibiting the importation— 10

“(a) Of any specified goods, or any class of goods, containing or designed to use or manufactured using any controlled substance; or 15

“(b) Of any such goods that originate in or are imported from any country that is neither—

“(i) A party to the Montreal Protocol; nor

“(ii) A country that has been determined, in accordance with the Montreal Protocol, to be a country that is in full compliance with Article 2, Articles 2A to 2E, and Article 4 of that Protocol. 20

“(2) No order shall be made under this section otherwise than on the advice of the Minister for the Environment given after consultation by that Minister with such representatives of the importers of goods to be prohibited by the order and other persons as that Minister considers appropriate. 25

“(3) Any certificate given by the Minister of Foreign Affairs to the effect that any country is not one to which subsection (1) (b) of this section applies shall be conclusive evidence of that fact.” 30

7. This Part of Act not to apply to certain personal effects—The principal Act is hereby amended by repealing section 22, and substituting the following section:

“22. Nothing in this Part of this Act shall make it unlawful for any person to import any goods that are personal or household effects in respect of which an officer is satisfied that they are not intended for any other person or for gift, sale, or exchange.” 35

8. Prohibition of manufacture of other goods by Order in Council—(1) Section 24 (1) of the principal Act is hereby amended by omitting the word “goods”, and substituting the words “specified goods, or class of goods,”. 40

(2) Section 24 (3) of the principal Act is hereby amended by omitting the words “section 19 or”.

9. Prohibition of other sales by Order in Council—
Section 26 (1) of the principal Act is hereby amended by
5 omitting the word “goods”, and substituting the words
“specified goods, or class of goods,”.

10. Matters in respect of which exemptions may not be granted—
Section 28 (1) of the principal Act is hereby
10 amended by repealing paragraph (a) (as amended by section 8
of the Ozone Layer Protection Amendment Act 1993), and
substituting the following paragraph:

“(a) The importation of any bulk controlled substances other
than—
15 “(i) Those that are to be used only in the
manufacture or servicing of aerosols that are
necessary for human health or safety; or
“(ii) Any bulk controlled substances specified in
Group II of Annex A of the Montreal Protocol that
20 are to be used only for a use determined by the
Parties to the Montreal Protocol to be an essential
use; or
“(iii) Any bulk recycled substances, or any bulk
controlled substances that are not specified in Group
25 II of Annex A of the Montreal Protocol, that are to
be used only in the manufacture of fire
extinguishers that are necessary for human health
or safety; or
“(iv) Any bulk recycled substances, or any bulk
30 controlled substances that are not specified in Group
II of Annex A of the Montreal Protocol, that are to
be used only in the servicing of fire extinguishers in
circumstances where the substance cannot be
obtained from supplies in New Zealand and where
35 the servicing is required either because the fire
extinguisher was used in a fire or as a result of a loss
of halon that was outside the control of the
applicant; or
“(v) Any bulk recycled Halon 1301 that is to be
40 used only for refrigeration purposes and only in
circumstances where the use of Halon 1301 for
refrigeration purposes is necessary for human health
or safety and Halon 1301 cannot be obtained from
supplies in New Zealand.”.

11. Offences—(1) Section 34 (1) (d) of the principal Act (as amended by section 13 (3) of the Ozone Layer Protection Amendment Act 1993) is hereby amended by adding the following subparagraph:

“(iii) Importing any bulk recycled substance in 5
contravention of this Act; or”.

(2) Section 34 (1) of the principal Act is hereby further amended by inserting, after paragraph (d), the following paragraph:

“(dd) Knowingly or without lawful justification or excuse fails 10
to notify the Minister of the importation or
exportation of any bulk recycled substance; or”.

12. Penalties—Section 35 (3) of the principal Act (as amended by section 14 (2) of the Ozone Layer Protection Amendment Act 1993) is hereby amended by inserting, after 15
the word “against”, the words “**paragraph (dd)** or”.