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Tonga

OZONE LAYER PROTECTION (AMENDMENT) ACT 2014

Act 2 of 2014



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OZONE LAYER PROTECTION (AMENDMENT) ACT 2014

Act 2 of 2014

AN ACT TO AMEND THE OZONE LAYER PROTECTION ACT 2010

I assent,
TUPOU VI,
19th June 2014.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short Title

- (1) This Act may be cited as the Ozone Layer Protection (Amendment) Act 2014.
- (2) The Ozone Layer Protection Act 2010, as amended, is in this Act referred to as the Principal Act.

2 Section 2 amended

Section 2 of the Principal Act is amended –

- (a) in the definition of “aerosol spray”, by deleting the word “packed” and replacing it with “packaged”;
- (b) by deleting the term and definition of “non-complying country” and replacing it with the following –
“**non-party**” means any country that is not a party to the Montreal Protocol;
- (c) inserting the following new words and their definitions where appropriate -

“**Customs laws**” means the Customs Act 2007, Excise Tax Act 2007 and Customs and Excise Management Act 2007;

“**Customs officer**” means any person employed as a customs officer to discharge any duty connected with the administration of customs laws;

“**employee**” means all persons employed by the Ministry, including salaried, contract, daily paid and casual employees;

“**good practice training**” means training programs —

- (a) approved by the Minister; and
- (b) incorporating modules on —
 - (i) good practices in refrigeration;
 - (ii) the storage and handling of controlled substances;
 - (iii) the environmental effects of controlled substances.

“**handle**” in relation to any controlled substance means doing anything with a controlled substance, or goods containing a controlled substance, that involves a risk of a controlled substance being emitted, including -

- (a) decanting, recycling and capturing a controlled substance;
- (b) installing, commissioning, servicing and maintaining goods containing a controlled substance; and
- (c) decommissioning goods containing a controlled substance.”

3 General amendment

The Principal Act is amended throughout by deleting the words “non-complying country” wherever it appears and replacing it with “non-party”.

4 Section 4(2) amended

Section 4(2) of the Principal Act is amended by deleting paragraph (k) and replacing it with the following –

“(k) representative of persons or organisations importing or using, or representing those who import or use, controlled substances.”.

5 Section 6 amended

(1) Section 6(1) of the Principal Act is amended by inserting a new paragraph (f) immediately after paragraph (e) as follows –

“(f) any other goods containing controlled substances (other than HCFCs).”.

(2) Section 6 of the Principal Act is amended by inserting immediately after subsection (1) the following new subsection (1A) –

- “(1A) Subject to section 7, the import of the following goods, whether new or second-hand shall be prohibited from 1 January 2016 —
- (a) dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any HCFCs;
 - (b) air-conditioning or refrigeration units whether fitted to a vehicle or as mechanical components intended for use in or on a vehicle and which contain HCFCs at the time they are imported into the Kingdom; and
 - (c) any other goods containing HCFCs.”.
- (3) Section 6(2) is amended by inserting a new paragraph (j) immediately after paragraph (i) as follows —
- “(j) any other goods containing controlled substances (other than HCFCs or methyl bromide).”.
- (4) Section 6 of the Principal Act is amended by inserting immediately after subsection (2) the following new subsection (2A) —
- “(2A) The import from a non-party of any of the following goods containing any HCFCs shall be prohibited from 1 January 2016 —
- (a) refrigerators and freezers;
 - (b) dehumidifiers and domestic and commercial refrigeration, air conditioning and heat pump equipment;
 - (c) air conditioning and heat pump units;
 - (d) automobile and truck air conditioning units (whether incorporated in vehicles or not);
 - (e) ice machines and water coolers;
 - (f) aerosol products (other than medical aerosols);
 - (g) portable fire extinguishers;
 - (h) insulation boards, panels and pipe covers;
 - (i) pre-polymers (a reactive mixture of isocyanate and polyoll to which chlorofluorocarbons are added to make rigid plastic foams); and
 - (j) any other goods containing HCFCs.”.

6 Section 10 amended

Section 10 of the Principal Act is amended by deleting subsection (2) and replacing it with the following —

- “(2) No person shall sell any bulk controlled substance to any person or organisation that does not hold a permit issued under Part III of this Act.”.

7 Section 11 repealed and replaced

Section 11 of the Principal Act is repealed and replaced with the following –

“11 Exemption in relation to sale

Nothing in section 10 shall make it unlawful for any person to sell –

- (a) any second hand goods that contain or are designed to use any controlled substance; or
- (b) any goods in respect of which a permit granted under Part III of this Act applies.

8 New sections 11A and 11B inserted

The Principal Act is amended by inserting the following new sections 11A and 11B immediately after section 11 -

“11A Prohibition on handling

Subject to section 11B, no person shall handle any controlled substance.

11B Exemption in relation to handling

- (1) Nothing in section 11A shall make it unlawful for any person to handle controlled substances in accordance with a handling permit issued under Part III of this Act.
- (2) Nothing in section 11A shall make it unlawful for an environment officer or customs officer to handle controlled substances in exercise of their duties under this Act, provided that the officer has attended and completed good practice training.”.

9 New section 12A

The Principal Act is amended by inserting the following new section 12A immediately after section 12 –

“12A General provisions in relation to permits

- (1) An application for a permit under this Act shall be –
 - (a) made to the Minister on the form prescribed by regulations;
 - (b) provide any information required by the Minister; and
 - (c) accompanied by any fees prescribed by regulations.

Provided that no fee shall be imposed where an application is made by a Government ministry or department.

- (2) Upon receipt of an application for a permit under this Act, the Minister may request —

- (a) an inspection to be carried out by an environment officer of the primary premises from which the activity the subject of the application is proposed to be conducted;
 - (b) the provision of written advice by the environment officer regarding the inspection; and
 - (c) the applicant to provide additional information about the application.
- (3) Before granting a permit the Minister shall be satisfied that the person or organisation has —
 - (a) not been convicted of any offence against this Act or any other offence involving controlled substances;
 - (b) not provided any false or misleading information in relation to the application;
 - (c) adequate knowledge of the environmental implications of controlled substances on the ozone layer;
 - (d) adequate knowledge of the Act, Regulations and any relevant codes of practice; and
 - (e) the necessary skills and equipment to minimise emissions of the controlled substance.
- (4) In order to be satisfied that a person meets the requirements of subsection (3)(c) to (e) the Minister may require the person to undertake and complete good practice training.
- (5) No permit issued under this Act shall be transferable.
- (6) The permit holder shall submit a report to the Minister by the 30th January of each year specifying the amount of any controlled substance imported or consumed in the previous year, the uses to which the controlled substance was put, and any other matter that the Minister may require to be included in the report.
- (7) Any permit shall be subject to such conditions as may be imposed by the Minister, including any condition requiring compliance with any approval, permission, licence or accreditation available in another country relating to any controlled substance, any equipment used in relation to a controlled substance, or the manner in which a controlled substance may be used.
- (8) The Minister may revoke any permit if he is satisfied that the permit holder —
 - (a) has contravened a condition of the permit;
 - (b) has been convicted of any offence against this Act or any other offence involving ozone depleting substances; or
 - (c) provided any false or misleading information in relation to the application for the permit.

- (9) Subject to section 16(1), a permit issued under this Act shall be valid for one calendar year and may be renewed for periods not exceeding 12 months.
- (10) The Minister shall keep a register of permit holders, and make it available at the premises of the Ministry or through any other way he considers appropriate.”.

10 Section 16 amended

Section 16 of the Principal Act is amended –

- (a) in subsection (1) by deleting paragraph (b) and replacing it with –
“(b) not be renewed;”;
- (b) by inserting a new subsection (3) as follows –
 - “(3) A permit granted under this section for the import of HCFCs is subject to the following conditions —
 - (a) the permit holder shall not import HCFCs unless the permit holder has been allocated a quota for the calendar year of the permit; and
 - (b) the permit holder shall ensure that the total quantity of HCFCs imported in the calendar year of the permit is not more than the allocated quota.”.

11 Section 18 repealed and new Part IIIA inserted

Section 18 of the Principal Act is repealed and replaced with the following –

“PART IIIA – HCFC QUOTAS

18 Interpretation for Part IIIA

In this Part, unless the context otherwise requires —

“**cut-off date**” in relation to a quota application is the thirty-first day of October in the year preceding the quota period to which the application relates;

“**first quota period**” means the quota period starting on the first day of January 2015;

“**importer**” means the holder of a permit;

“**ODP tonnes**” of a HCFC means —

- (a) for a substance containing one HCFC— the quantity that results from multiplying the HCFCs mass in tonnes by its ozone depleting potential; and

- (b) for a substance that is or contains a mixture of 2 or more HCFCs— the quantity that results from adding together the quantities of each HCFC, expressed in ODP tonnes;

“**ozone depleting potential**” means the steady-state ozone reduction for each unit mass of gas emitted into the atmosphere relative to that for a unit mass emission of HCFC as specified in the Schedule;

“**permit**” means a base-year permit allowing the import of HCFCs;

“**quota**” allocated to an importer is the maximum amount of HCFCs, expressed in ODP tonnes, that the importer is allowed to import during the quota period. A quota does not include a reserve quota;

“**quota period**” means the period from and including the first day of January to and including the thirty-first day of December next following;

“**second quota period**” means the quota period starting on the first day of January 2016; and

“**subsequent quota period**” means any quota period other than the first or second quota period.

18A Quota limits

- (1) The quota limit for a quota period specified in column 1 is the quantity of HCFCs specified in the corresponding column 2.

Column 1 Quota period	Column 2 Quota limit (ODP tonnes)	Column 3 Quota limit (metric tonnes)
2015	0.081	1.473
2016	0.077	1.391
2017	0.072	1.309
2018	0.068	1.227
2019	0.063	1.145
2020	0.059	1.064
2021	0.054	0.982
2022	0.045	0.818
2023	0.036	0.655
2024	0.027	0.491
2025	0.018	0.327

- (2) The sum of quotas allocated in a quota period shall not exceed the corresponding quota limit.

18B Allocation of quota — first quota period

- (1) Within 10 working days of the commencement of this section the Minister shall allocate quotas for the first quota period.
- (2) A quota shall only be allocated to a person who has -
 - (a) imported HCFCs during the period 2009 to 2013; and
 - (b) prior to the commencement of this section, reported details of the type and amount of HCFCs imported in 2009, 2010, 2011, 2012 and 2013 to the Ministry.
- (3) The size of a quota allocated to a person shall be the average of the persons HCFC imports in 2009, 2010, 2011, 2012 and 2013.
- (4) A quota shall be allocated by written notice given to the person that satisfies the requirements of subsection (2).

18C Allocation of quota — second and subsequent quota periods

- (1) An application for a quota may only be made by an importer.
- (2) Nothing in subsection (1) shall preclude a prospective importer from applying for a permit and a quota at the same time.
- (3) An application for a quota shall —
 - (a) be made in the form prescribed by regulations;
 - (b) be accompanied by any fees prescribed by regulations;
 - (c) provide any information required by the Minister; and
 - (d) be made to the Minister by the cut-off date.

Provided that no fee shall be imposed where an application is made by a Government ministry or department.

- (4) The Minister shall not consider an application for a quota received after the cut-off date.
- (5) The Minister shall determine —
 - (a) the size of the quota in accordance with sections 18D and 18E;
 - (b) all quota applications by the thirtieth day of November in the year preceding the quota period to which the application relates.
- (6) A quota shall be allocated by written notice given to the applicant.
- (7) If the Minister refuses to allocate a quota the Minister shall notify the applicant, in writing, of the refusal and the reasons for it.

18D Quota size — second quota period

The size of a quota allocated to an importer for the second quota period is —

- (a) if the importer was allocated a quota in the first quota period in accordance with section 18B and has not transferred their allocated quota, or part of their allocated quota to another importer—the quota allocated in section 18B;
- (b) if the importer was allocated a quota in the first quota period in accordance with section 18B and has transferred their allocated quota,

or part of their allocated quota to another importer in accordance with section 18F—the un-transferred part of the quota allocated in section 18B; and

- (c) if the importer was allocated a quota in the first quota period by virtue of a transfer in accordance with section 18F—the transferred quota, or part of a quota, allocated to the transferee in accordance with section 18F.

18E Quota size — subsequent quota period

- (1) The size of a quota allocated to an importer for a subsequent quota period is to be calculated using the formula —

$$\frac{\text{Importer amount}}{\text{Industry amount}} \times \text{quota limit}$$

- (2) For the purposes of subsection (1) —

“**importer amount**” means the sum of the quantities of HCFCs, expressed in ODP tonnes, imported under the permit during the base year by the importer;

“**industry amount**” means the sum of the quantities of HCFCs, expressed in ODP tonnes, imported by all importers during the base year; and

“**base year**” in relation to an allocation for a quota period means the penultimate quota period before the start of that quota period.

18F Transfer of quota

- (1) An importer may, without transferring their permit, transfer their allocated quota, or part of their allocated quota, to another importer.
- (2) A transfer has no effect until the transferor notifies the Minister of the transfer.
- (3) A notice shall —
- (a) state the transferee’s name, address and permit number; and
 - (b) specify the amount of quota transferred.
- (4) After a transfer takes effect—
- (a) the transferred quota, or part of a quota, is taken to have been allocated to the transferee; and
 - (b) if part of a quota is transferred—the transferor is taken to have been allocated the un-transferred part of the quota.
- (5) A transfer only has effect to the extent to which it relates to a quota that has not been used, or to an unused part of a quota.

18G Reserve quota limit

- (1) The reserve quota for a quota period specified in column 1 is the quantity of HCFCs specified in the corresponding column 2.

Column 1 Quota period	Column 2 Reserve quota limit (ODP tonnes)	Column 3 Quota limit (metric tonnes)
2015	0.009	0.164
2016	0.009	0.155
2017	0.008	0.145
2018	0.008	0.136
2019	0.007	0.127
2020	0.007	0.118
2021	0.006	0.109
2022	0.005	0.091
2023	0.004	0.073
2024	0.003	0.055
2025	0.002	0.036

- (2) The sum of reserve quotas allocated in a quota period shall not exceed the corresponding reserve quota limit.

18H Allocation of reserve quota

- (1) An application for a reserve quota may only be made by an importer.
- (2) Nothing in subsection (1) shall preclude a prospective importer from applying for a permit and a reserve quota at the same time.
- (3) An application for a reserve quota shall—
- be made in the form prescribed by regulations;
 - be accompanied by any fees prescribed by regulations; and
 - provide any information required by the Minister.

Provided that no fee shall be imposed where an application is made by a Government ministry or department.

- (4) The Minister shall not allocate a reserve quota unless satisfied that exceptional circumstances exist.
- (5) For the purposes of subsection (3), exceptional circumstances exist if, and only if—
- the use of the relevant HCFC is essential for medical, veterinary, defence or public safety purposes;
 - there is no practicable alternative to that use; and
 - without the allocation, the HCFC will not be available, in the quantities required for that use, within a reasonable period.
- (6) A reserve quota is allocated by written notice given to the applicant.

- (7) If the Minister refuses to allocate a reserve quota the Minister shall notify the applicant in writing of the refusal and of the reasons for it.
- (8) No reserve quota issued under this Act shall be transferable.”.

12 New section 19A inserted

The Principal Act is amended by inserting the following new section 19A immediately after section 19 –

“19A Power of customs officers

For the purpose of enforcing this Act, customs officers shall have the same powers specified for environment officers in the Environment Management Act.”.

13 Section 20 amended

Section 20 of the Principal Act is amended –

- (a) in subsection (1) by inserting the words “or customs officer” after the phrase “environment officer”; and
- (b) in subsections (2)(a) and (b), by deleting the words “Commissioner of Revenue” and replacing it with “Government chief executive officer responsible for revenue and customs”.

14 Section 22 amended

Section 22(4) of the Principal Act is amended by inserting the words “or customs officer” after the words “environment officer” wherever it appears.

15 Section 23 amended

Section 23 of the Principal Act is amended by deleting the words “Commissioner of Revenue” and replacing it with “Government chief executive officer responsible for revenue and customs”.

16 Section 24 repealed and new Parts V and VI inserted

Section 24 of the Principal Act is repealed and replaced with the following –

“PART V — MISCELLANEOUS

24 Regulations

The Minister may, with the consent of Cabinet, make Regulations for the purposes of implementing the provisions of this Act including regulations —

- (a) prescribing forms;
- (b) prescribing fees;
- (c) prescribing the requirements for the permitting and training of persons required to hold a permit under this Act; and
- (d) specifying the requirements for the labelling of containers and equipment containing controlled substances.

25 Delegation

The Minister may, in writing, delegate all or any of this powers and functions under this Act or Regulations to —

- (a) the Chief Executive Officer; or
- (b) any other appropriately qualified employee.

PART VI – TRANSITIONAL

26 Import permits for HCFCs

- (1) A person who is allocated a quota for the first quota period is taken to hold an import permit for the HCFC to which the quota relates.
- (2) Import permits granted under this section expire on 31 December 2015 and shall not be renewed.”

Passed by the Legislative Assembly on this 24th day of March 2014.