



Tonga

# **OZONE LAYER PROTECTION ACT**

**Chapter 47.10**

**2016 Revised Edition**





# OZONE LAYER PROTECTION ACT

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Tonga

## OZONE LAYER PROTECTION ACT

AN ACT TO REGULATE THE USE OF OZONE DEPLETING SUBSTANCES AND TO IMPLEMENT THE PROVISIONS OF THE CONVENTION FOR THE PROTECTION OF THE OZONE LAYER AND THE PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER AND FOR RELATED PURPOSES<sup>1</sup>

Commencement [<sup>2</sup>]

### PART I - PRELIMINARY

#### 1 Short title

- (1) This Act may be cited as the Ozone Layer Protection Act.
- (2) This Act shall come into force on a day to be declared by His Majesty's Cabinet and notified in the Gazette.

#### 2 Interpretation

- (1) In this Act, unless the context otherwise requires —  
“**aerosol spray**” means any substance packaged under pressure in a container with a device for releasing it directly into the atmosphere as a foam or fine spray, or a liquid or solid stream;<sup>3</sup>  
“**bulk**” in relation to any controlled substance —
  - (a) means any controlled substance that is acquired in a non-processed form, whether alone or in a mixture;

(b) includes any controlled substance that is acquired in a non-processed form, whether alone or in a mixture, that has been recovered, cleaned (by filtering or drying) or reclaimed (by filtering, drying, distillation or chemical treatment); and

(c) excludes any controlled substance that is in a manufactured product;

“**carbon tetrachloride**” means the substance specified in Part IV of the Schedule;

“**CFC**” means chlorofluorocarbons specified in Part I or Part III of the Schedule;

“**Chief Executive Officer**” means the Government chief executive officer responsible for the environment;<sup>4</sup>

“**controlled substance**” means any substance specified in the Schedule;

“**Customs laws**” means the Customs Act<sup>5</sup>, Excise Tax Act<sup>6</sup> and Customs and Excise Management Act<sup>7, 8</sup>;

“**Customs officer**” means any person employed as a customs officer to discharge any duty connected with the administration of customs laws;<sup>9</sup>

“**Vienna Convention**” means the Convention for the Protection of the Ozone Layer adopted at Vienna in 1985 and includes any subsequent amendments;

“**employee**” means all persons employed by the Ministry, including salaried, contract, daily paid and casual employees;<sup>10</sup>

“**environment officer**” means an environment officer appointed under the Environment Management Act;<sup>11</sup>

“**essential use**” means an essential use identified in relation to the substance by a decision adopted and in force under the Montreal Protocol;

“**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.<sup>12</sup>

“**halon**” means any substance specified in Part II of the Schedule;

“**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.<sup>13</sup>

“**HBFC**” means any hydrobromofluorocarbons specified in Part VI of the Schedule;

“**HCFC**” means any hydrochlorofluorocarbons specified in Part VII of the Schedule;

“**methyl bromide**” means the substance specified in Part VIII of the Schedule;

“**methyl chloroform**” means the substance specified in Part V of the Schedule;

“**Minister**” means the Minister responsible for environment;<sup>14</sup>

“**Ministry**” means the Ministry responsible for the environment;<sup>15</sup>

“**Montreal Protocol**” means the Protocol on Substances that Deplete the Ozone Layer adopted at Montreal in 1987 and includes any subsequent amendments;

“**non-party**” means any country that is not a party to the Montreal Protocol;<sup>16</sup>

“**other CFC**” means any fully halogenated CFC specified in Part III of the Schedule; and

“**solvent**” means any aqueous or organic product designed to clean a component or assembly by dissolving the contaminants present on its surface.

- (2) Unless a contrary intention appears, terms used in this Act shall have the same meaning as is given to them in the Vienna Convention or the Montreal Protocol.

### 3 Object and application of the precautionary approach

- (1) The objects of this Act are to —
- (a) help protect human health and the environment from adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer;
  - (b) phase out ozone depleting substances except for essential uses; and
  - (c) give effect to the Kingdom’s obligations under the Vienna Convention and the Montreal Protocol.
- (2) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the use, manufacture, sale, handling, storage or movement of ozone depleting substances within the Kingdom, shall apply a precautionary approach when discharging their responsibilities and functions, or exercising their powers.
- (3) For the purposes of this section, a precautionary approach is applied if, in the event of a threat of damage to the environment or a risk to human health in the Kingdom, a lack of scientific certainty regarding the extent of adverse effects is not used to prevent or avoid a decision being made to minimise the

potential adverse effects or risks from the importation, use, storage, handling or movement of ozone depleting substances within the Kingdom.

#### **4 National Ozone Advisory Committee**

- (1) The Minister shall establish a National Ozone Advisory Committee to carry out functions under this Act.
- (2) The National Ozone Advisory Committee shall consist of the —
  - (a) Chief Executive Officer who shall be the chairman;
  - (b) representative of the Ministry of Health;
  - (c) representative of the Ministry responsible for revenue;<sup>17</sup>
  - (d) representative of the Ministry responsible for commerce;<sup>18</sup>
  - (e) representative of the Ministry responsible for agriculture;<sup>19</sup>
  - (f) representative of the Ministry responsible for transport;<sup>20</sup>
  - (g) representative of Approved Workshops;
  - (h) representative of Approved Importers;
  - (i) representative of the Ministry responsible for education;<sup>21</sup>
  - (j) representative of the National Energy Committee; and
  - (k) representative of persons or organisations importing or using, or representing those who import or use, controlled substances.<sup>22</sup>

## **PART II - PROHIBITIONS RELATING TO CONTROLLED SUBSTANCES**

#### **5 Prohibitions on import**

- (1) Subject to section 7, the import of any other CFC specified in Part III of the Schedule or any HBFC is prohibited.
- (2) Subject to section 7, the import of any bulk of the following is prohibited —
  - (a) CFC, halons, carbon tetrachloride and methyl chloroform whether alone or in a mixture;
  - (b) methyl bromide whether alone or in a mixture; and
  - (c) HCFCs, whether alone or in a mixture.

#### **6 Prohibition on import of certain goods**

- (1) Subject to section 7, the import of the following goods, whether new or second-hand shall be prohibited —

- (a) aerosol spray that contains any controlled substance;
  - (b) dry-cleaning machine that contains or is designed to use any controlled substance as a solvent;
  - (c) fire extinguisher that contains any controlled substance;
  - (d) dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any CFCs; and
  - (e) 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 CFCs at the time they are imported into the Kingdom;
  - (f) any other goods containing controlled substances (other than HCFCs).<sup>23</sup>
- (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.<sup>24</sup>
- (2) The import from a non-party of any of the following goods containing any controlled substance (other than any HCFCs or methyl bromide) shall be prohibited —
- (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; and
  - (i) pre-polymers (a reactive mixture of isocyanate and polyoll to which chlorofluorocarbons are added to make rigid plastic foams);
  - (j) any other goods containing controlled substances (other than HCFCs or methyl bromide).<sup>25</sup>
- (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.<sup>26</sup>

## **7 Exemption in relation to import**

- (1) The following exemptions may be given in relation to imports referred to in section 5(1), in accordance with a permit issued under Part III —
  - (a) quarantine and pre-shipment permit in relation to methyl bromide;
  - (b) medical permit in relation to medical products using a controlled substance;
  - (c) human health or safety permit; or
  - (d) base year permit.
- (2) Nothing in section 6 shall make it unlawful for any person to import any controlled substance, or any goods containing any controlled substance, that is used only as packaging, or part of the packaging, of any other imported goods.
- (3) Nothing in this Part shall prevent an exemption being granted in respect of the import or export of any substances or goods only for the purpose of being transhipped into another ship or aircraft for carriage to a destination that is outside the territorial limits of the Kingdom.

## **8 Prohibition on export**

- (1) The export from the Kingdom of any bulk CFC, halons, carbon tetrachloride, methyl chloroform, HCFCs or HBFCs to a non-party shall be prohibited.
- (2) Any person who exports any bulk CFC, halons, carbon tetrachloride, methyl chloroform, HCFCs or HBFCs to a complying country shall notify the Minister in writing 14 days before exportation and give particulars of —
  - (a) the substance exported;
  - (b) the date and amount of the export; and
  - (c) its destination.

## 9 Prohibition of manufacture

The manufacture within the Kingdom of the following substances or goods shall be prohibited —

- (a) controlled substances;
- (b) aerosol sprays that contain any controlled substance other than methyl bromide;
- (c) dry-cleaning machines that contain or is designed to use any controlled substance as a solvent;
- (d) dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers that contain any CFCs or halons; and
- (e) fire extinguishers that contains any controlled substance.

## 10 Prohibition on sale

- (1) Subject to section 11, six months after the date of entry into force of this Act, the sale in the Kingdom of the following goods shall be prohibited —
  - (a) any controlled substance, excluding HCFCs;
  - (b) any goods specified in section 9(b) to (d); and
  - (c) any fire extinguisher that contains any CFC, halons, carbon tetrachloride, methyl chloroform, HCFCs or HBFCs.
- (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.<sup>27</sup>

## 11 Exemption in relation to sale<sup>28</sup>

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.

## 11A Prohibition on handling<sup>29</sup>

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

## 11B Exemption in relation to handling<sup>30</sup>

- (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.

## **PART III - PERMITS**

### **12 General principle to be applied in relation to permit**

When considering the grant of a permit under this Part, the Minister shall have regard to the following —

- (a) the obligations of the Kingdom under the Vienna Convention and the Montreal Protocol;
- (b) the need to phase out ozone depleting substances, except for essential uses;
- (c) whether any alternative products are available to be used instead of the ozone depleting substance;
- (d) any requirement that may be imposed in relation to the use of any ozone depleting substance so as to minimise its effect on the ozone layer; and
- (e) any written advice provided pursuant to section 17(2) of this Act.

### **12A General provisions in relation to permits<sup>31</sup>**

- (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.

### 13 Quarantine and pre-shipment permits

- (1) For the purposes of this section —
  - (a) “**quarantine applications**” mean any treatments to prevent the introduction, establishment or spread of quarantine pests (including diseases), or to ensure their official control; and
  - (b) “**pre-shipment applications**” mean any treatments applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country, or the existing phytosanitary or sanitary requirements of the exporting country.
- (2) The Minister may grant a permit under this section in relation to the import of methyl bromide if he is satisfied, after consulting the Minister responsible for agriculture, that it is to be used for legitimate quarantine or pre-shipment applications.<sup>32</sup>

### 14 Medical permits

The Minister may grant a permit under this section in relation to the import of any product containing a controlled substance, if he is satisfied, after consulting the Minister for Health, that it has a medical application relating to the protection of life or health.

### 15 Human health or safety permits

The Minister may grant a permit under this section for any product containing any CFC, halon, methyl chloroform, or carbon tetrachloride if he is satisfied, after consulting with the National Ozone Advisory Committee, that the product is necessary for human health or safety.

### 16 Base-year permits

- (1) Any permit granted under this section may —
  - (a) be issued only for importation in a specified calendar year;
  - (b) not be renewed;<sup>33</sup>
  - (c) where the permit is to relate to CFC, halons, carbon tetrachloride or methyl chloroform, be issued only to a person who, used in the Kingdom, the relevant controlled substance in its respective base year;
  - (d) where the permit is to relate to any HCFC or methyl bromide, be issued to any person whose activities will not contravene the Montreal Protocol or any provision of this Act; or
  - (e) require the reduction of the consumption of the relevant controlled substance in accordance with the timetable applying to that controlled

substance under the Montreal Protocol, taking into account the application of Article 5 relating to developing countries.

- (2) Subject to subsection (1), the Minister may grant a permit under this Act permitting the import and use of a controlled substance, if he is satisfied after consulting the Chief Executive Officer that the Kingdom will not be thereby in breach of its obligations under the Vienna Convention or the Montreal Protocol.<sup>34</sup>
- (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.<sup>35</sup>

## 17 General provisions in relation to permits

- (1) An application for a permit under this Act shall be —
  - (a) made to the Minister on a form to be 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; and
  - (b) the provision of written advice by the environment officer regarding the inspection.
- (3) No permit issued under this Act shall be transferable.
- (4) The permit holder shall submit a report to the Minister by the 30<sup>th</sup> 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.
- (5) 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.

- (6) The Minister may revoke any permit if he is satisfied that the permit holder —
- (a) has been convicted of any offence against this Act or any other offence involving ozone depleting substances; or
  - (b) provided any false or misleading information in relation to the application for the permit.
- (7) 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.

## PART IIIA – HCFC QUOTAS<sup>36</sup>

### 18 Interpretation for Part IIIA<sup>37</sup>

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<sup>38</sup>

- (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<sup>39</sup>

- (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 —
- imported HCFCs during the period 2009 to 2013; and
  - 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<sup>40</sup>**

- (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<sup>41</sup>**

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<sup>42</sup>

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

Importer amount

————— x quota limit

Industry amount

- (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<sup>43</sup>

- (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 —
- state the transferee’s name, address and permit number; and
  - specify the amount of quota transferred.
- (4) After a transfer takes effect —
- the transferred quota, or part of a quota, is taken to have been allocated to the transferee; and
  - 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<sup>44</sup>**

- (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<sup>45</sup>**

- (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 —
  - (a) the use of the relevant HCFC is essential for medical, veterinary, defence or public safety purposes;
  - (b) there is no practicable alternative to that use; and
  - (c) 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.

## PART IV - ENFORCEMENT AND OFFENCES

### 19 Power of environment officers

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

### 19A Power of customs officers<sup>46</sup>

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

### 20 Seizure of substances and goods

- (1) Any environment officer or customs officer, in the course of exercising a power under this Act may seize any —
  - (a) controlled substance;
  - (b) goods containing any controlled substance; or
  - (c) equipment using or use in connection with any controlled substance, which he reasonably suspects is the subject of a breach of any prohibition under this Act.<sup>47</sup>
- (2) Any controlled substance, goods or equipment seized under this Act —
  - (a) shall be stored at a place, and in a manner, in accordance with a direction given by the Chief Executive Officer made in consultation with the Government chief executive officer responsible for revenue and customs;<sup>48</sup> and

- (b) may be retained until such time as the Chief Executive Officer, in consultation with the Government chief executive officer responsible for revenue and customs, has been satisfied by its owner, or the person from whom it has been seized, that it is not or has not been the subject of any breach of a prohibition under this Act.<sup>49</sup>

## **21 Call up of substances and goods**

The Minister may, after consultation with the National Ozone Advisory Committee, issue a public notice requiring that, at the expense of the owner, any controlled substance, any goods containing any controlled substance or any equipment using or used in connection with any controlled substance be —

- (a) stored or handled in accordance with any direction that he gives;
- (b) delivered at a designated time to a designated place for storage or disposal; or
- (c) otherwise disposed of or destroyed in accordance with any direction that he gives.

## **22 Offences and penalties**

- (1) Any person who —
  - (a) does any act in contravention of any prohibition under this Act;
  - (b) aids or abets any person in contravening any prohibition under this Act; or
  - (c) conspires with any person to do any act in contravention of any prohibition under this Act,commits an offence, and shall be liable upon conviction to a fine not exceeding \$100,000, or to imprisonment for a term not exceeding 10 years, or both.
- (2) Any person who fails to comply with —
  - (a) any condition of a permit issued under Part III; or
  - (b) a notice given by the Minister under section 21,commits an offence, and shall be liable upon conviction to a fine not exceeding \$100,000, or to imprisonment for a term not exceeding 10 years, or both.
- (3) Any person who, in the course of installing, operating, servicing dismantling or otherwise handling any equipment used in relation to any controlled substance, wilfully or negligently permits any controlled substance to be discharged into the atmosphere, commits an offence and shall be liable upon conviction to a fine not exceeding \$100,000, or to imprisonment for a term not exceeding 10 years, or both.

- (4) Any person who —
- (a) hinders or obstructs an environment officer or customs officer in the performance of his duties under this Act, or the exercise of a power under this Act;
  - (b) induces or incites any other person to hinder or obstruct an environment officer or customs officer acting in accordance with this Act;
  - (c) by words or conduct falsely represents that he or she is an environment officer or customs officer, or who otherwise impersonates an environment officer;
  - (d) fails to comply with a requirement made by an environment officer or customs officer; or
  - (e) provides false or misleading information to an environment officer or customs officer,
- commits an offence, and shall be liable upon conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 3 years, or both. <sup>50</sup>
- (5) In addition to any other penalty imposed under this section, a Court may order that any person convicted of an offence —
- (a) do any act to reinstate the environment as far as practicable including the re-export or destruction at a facility approved by the Minister of any controlled substance or any product containing any controlled substance;
  - (b) pay to the Government any sum representing the cost of re-export or destruction at a facility approved by the Minister of any controlled substance or any product containing any controlled substance; or
  - (c) pay any compensation to the Government, or to any other person affected by the offence, in respect of the damage caused to the environment.
- (6) Where a company, Approved Workshop or Approved Importer is guilty of an offence under this Act or regulations made under this Act, any officer, director or agent of the company who authorised, assented to or participated in, or by his neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and is liable to the penalty provided for the offence.

## 23 Forfeiture of seized substances and goods

Where any person is convicted of an offence against this Act, the Court may order that any controlled substance, goods or equipment in relation to which the offence was committed, shall be forfeited to the Crown, to be disposed of in a manner determined by the Chief Executive Officer, in consultation with the Government

chief executive officer responsible for revenue and customs and at the expense of the person convicted.<sup>51</sup>

## **PART V — MISCELLANEOUS<sup>52</sup>**

### **24 Regulations<sup>53</sup>**

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<sup>54</sup>**

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<sup>55</sup>**

### **26 Import permits for HCFCs<sup>56</sup>**

- (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.

## SCHEDULE

### CONTROLLED SUBSTANCES

#### PART I - CFCs (CHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CFCl <sub>3</sub>	Trichlorofluoromethane	CFC-11	1.0
CF <sub>2</sub> Cl <sub>2</sub>	Dichlorofluoromethane	CFC-12	1.0
C <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	Trichlorotrifluoroethane	CFC-113	0.8
C <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	Dichlorotetrafluoroethane	CFC-114	1.0
C <sub>2</sub> F <sub>5</sub> Cl	Chloropentafluoroethane	CFC-115	0.6

#### PART II - HALONS

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF <sub>2</sub> BrCl	Bromochlorodifluoromethane	Halon 1211	3.0
CF <sub>3</sub> Br	Bromotrifluoromethane	Halon 1301	10.0
C <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	Dibromotetrafluoroethane	Halon 2402	6.0

#### PART III - OTHER CFCs (CHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CF <sub>3</sub> Cl	Chlorotrifluoromethane	CFC-13	1.0
C <sub>2</sub> FCl <sub>5</sub>	Pentachlorofluoroethane	CFC-111	1.0
C <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	Tetrachlorodifluoroethane	CFC-112	1.0
C <sub>3</sub> FCl <sub>7</sub>	Heptachlorofluoropropane	CFC-211	1.0
C <sub>3</sub> F <sub>2</sub> Cl <sub>6</sub>	Hexachlorodifluoropropane	CFC-212	1.0
C <sub>3</sub> F <sub>3</sub> Cl <sub>5</sub>	Pentachlorotrifluoropropane	CFC-213	1.0
C <sub>3</sub> F <sub>4</sub> Cl <sub>4</sub>	Tetrachlorotetrafluoropropane	CFC-214	1.0
C <sub>3</sub> F <sub>5</sub> Cl <sub>3</sub>	Trichloropentafluoropropane	CFC-215	1.0
C <sub>3</sub> F <sub>6</sub> Cl <sub>2</sub>	Dichlorohexafluoropropane	CFC-216	1.0
C <sub>3</sub> F <sub>7</sub> Cl	Chloroheptafluoropropane	CFC-217	1.0

#### PART IV - CARBON TETRACHLORIDE

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
CCl <sub>4</sub>	Tetrachloromethane	Carbon tetrachloride	1.1

**PART V - METHYL CHLOROFORM**

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Ozone Depleting Potential*</i>
C <sub>2</sub> H <sub>3</sub> Cl <sub>3</sub>	1,1,1-Trichloroethane (methylchloroform)	1,1,1-trichloroethane	0.1

This formula does not refer to 1, 1, 2-trichloroethane.

**PART VI - HBFCs (HYDROBROMOFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHBr <sub>2</sub>	Dibromofluoromethane	-	1	1.00
CHF <sub>2</sub> Br	Bromodifluoromethane	(HBFC-22B1)	1	0.74
CH <sub>2</sub> FBr	Bromofluoromethane	-	1	0.73
C <sub>2</sub> HFBr <sub>4</sub>	Tetrabromofluoroethane	-	2	0.3-0.8
C <sub>2</sub> HF <sub>2</sub> Br <sub>3</sub>	Tribromofluoroethane	-	3	0.5-1.8
C <sub>2</sub> HF <sub>3</sub> Br <sub>2</sub>	Dibromotrifluoroethane	-	3	0.4-1.6
C <sub>2</sub> HF <sub>4</sub> Br	Bromotetrafluoroethane	-	2	0.7-1.2
C <sub>2</sub> H <sub>2</sub> FBr <sub>3</sub>	Tribromofluoroethane	-	3	0.1-1.1
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>2</sub>	Dibromodifluoroethane	-	4	0.2-1.5
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Br	Bromotrifluoroethane	-	3	0.7-1.6
C <sub>2</sub> H <sub>3</sub> FBr <sub>2</sub>	Dibromofluoroethane	-	3	0.1-1.7
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Br	Bromodifluoroethane	-	3	0.2-1.1
C <sub>2</sub> H <sub>4</sub> FBr	Bromofluoroethane	-	2	0.07-0.1
C <sub>3</sub> HFBr <sub>6</sub>	Hexabromofluoropropane	-	5	0.3-1.5
C <sub>3</sub> HF <sub>2</sub> Br <sub>5</sub>	Pentabromodifluoropropane	-	9	0.2-1.9
C <sub>3</sub> HF <sub>3</sub> Br <sub>4</sub>	Tetrabromotrifluoropropane	-	12	0.3-1.8
C <sub>3</sub> HF <sub>4</sub> Br <sub>3</sub>	Tribromotetrafluoropropane	-	12	0.5-2.2
C <sub>3</sub> HF <sub>5</sub> Br <sub>2</sub>	Dibromopentafluoropropane	-	9	0.9-2.0
C <sub>3</sub> HF <sub>6</sub> Br	Bromohexafluoropropane	-	5	0.7-3.3
C <sub>3</sub> H <sub>2</sub> FBr <sub>5</sub>	Pentabromofluoropropane	-	9	0.1-1.9
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Br <sub>4</sub>	Tetrabromodifluoropropane	-	16	0.2-2.1
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Br <sub>3</sub>	Tribromotrifluoropropane	-	18	0.2-5.6
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Br <sub>2</sub>	Dibromotetrafluoropropane	-	16	0.3-7.5
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Br	Bromopentafluoropropane	-	8	0.9-1.4
C <sub>3</sub> H <sub>3</sub> FBr <sub>4</sub>	Tetrabromofluoropropane	-	12	0.08-1.9
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Br <sub>3</sub>	Tribromodifluoropropane	-	18	0.1-3.1
C <sub>3</sub> H <sub>3</sub> F <sub>3</sub> Br <sub>2</sub>	Dibromotrifluoropropane	-	18	0.1-2.5
C <sub>3</sub> H <sub>3</sub> F <sub>4</sub> Br	Bromotetrafluoropropane	-	12	0.3-4.4
C <sub>3</sub> H <sub>4</sub> FBr <sub>3</sub>	Tribromofluoropropane	-	12	0.03-0.3
C <sub>3</sub> H <sub>4</sub> F <sub>2</sub> Br <sub>2</sub>	Dibromodifluoropropane	-	16	0.1-1.0
C <sub>3</sub> H <sub>4</sub> F <sub>3</sub> Br	Bromotrifluoropropane	-	12	0.07-0.8

C <sub>3</sub> H <sub>5</sub> FBr <sub>2</sub>	Dibromofluoropropane	-	9	0.04-0.4
C <sub>3</sub> H <sub>5</sub> F <sub>2</sub> Br	Bromodifluoropropane	-	9	0.07-0.8
C <sub>3</sub> H <sub>6</sub> FBr	Bromofluoropropane	-	5	0.02-0.7

**PART VII - HCFCs (HYDROCHLOROFLUOROCARBONS)**

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>
CHFC <sub>2</sub>	Dichlorofluoromethane	(HCFC-21)	1	0.04
CHF <sub>2</sub> Cl	Chlorodifluoromethane	(HCFC-22)	1	0.055
CH <sub>2</sub> FC <sub>2</sub>	Chlorofluoromethane	(HCFC-31)	1	0.02
C <sub>2</sub> HFCl <sub>4</sub>	Tetrachlorofluoroethane	(HCFC-121)	2	0.01-0.04
C <sub>2</sub> HF <sub>2</sub> Cl <sub>3</sub>	Trichlorodifluoroethane	(HCFC-122)	3	0.02-0.08
C <sub>2</sub> HF <sub>3</sub> Cl <sub>2</sub>	Dichlorotrifluoroethane	(HCFC-123)	3	0.02-0.06
CHCl <sub>2</sub> CF <sub>3</sub>	Dichlorotrifluoroethane	(HCFC-123)	-	0.02
C <sub>2</sub> HF <sub>4</sub> Cl	Chlorotetrafluoroethane	(HCFC-124)	2	0.02-0.04
CHFC <sub>2</sub> CF <sub>3</sub>	Trichlorofluoroethane	(HCFC-124)	-	0.022
C <sub>2</sub> H <sub>2</sub> FC <sub>3</sub>	Trichlorofluoroethane	(HCFC-131)	3	0.007-0.05
C <sub>2</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>2</sub>	Dichlorodifluoroethane	(HCFC-132)	4	0.008-0.05
C <sub>2</sub> H <sub>2</sub> F <sub>3</sub> Cl	Chlorotrifluoroethane	(HCFC-133)	3	0.02-0.06
C <sub>2</sub> H <sub>3</sub> FC <sub>2</sub>	Dichlorofluoroethane	(HCFC-141)	3	0.005-0.07
CH <sub>3</sub> CFCl <sub>2</sub>	Dichlorofluoroethane	(HCFC-141b)	-	0.11
C <sub>2</sub> H <sub>3</sub> F <sub>2</sub> Cl	Chlorodifluoroethane	(HCFC-142)	3	0.008-0.07
CH <sub>3</sub> CF <sub>2</sub> Cl	Chlorodifluoroethane	(HCFC-142b)	-	0.065
C <sub>2</sub> H <sub>4</sub> FC <sub>2</sub>	Chlorofluoroethane	(HCFC-151)	2	0.003-0.005
C <sub>3</sub> HFCl <sub>6</sub>	Hexachlorofluoropropane	(HCFC-221)	5	0.015-0.07
C <sub>3</sub> HF <sub>2</sub> Cl <sub>5</sub>	Pentachlorodifluoropropane	(HCFC-222)	9	0.01-0.09
C <sub>3</sub> HF <sub>3</sub> Cl <sub>4</sub>	Tetrachlorotrifluoropropane	(HCFC-223)	12	0.01-0.08
C <sub>3</sub> HF <sub>4</sub> Cl <sub>3</sub>	Trichlorotetrafluoropropane	(HCFC-224)	12	0.01-0.09
C <sub>3</sub> HF <sub>5</sub> Cl <sub>2</sub>	Dichloropentafluoropropane	(HCFC-225)	9	0.02-0.07
CF <sub>3</sub> CF <sub>2</sub> CHCl <sub>2</sub>	Dichloropentafluoropropane	(HCFC-225ca)	-	0.025
CF <sub>2</sub> ClCF <sub>2</sub> CHCl <sub>2</sub>	Dichloropentafluoropropane	(HCFC-225cb)	-	0.033
C <sub>3</sub> HF <sub>6</sub> Cl	Chlorohexafluoropropane	(HCFC-226)	5	0.02-0.10
C <sub>3</sub> H <sub>2</sub> FC <sub>5</sub>	Pentachlorofluoropropane	(HCFC-231)	9	0.05-0.09
C <sub>3</sub> H <sub>2</sub> F <sub>2</sub> Cl <sub>4</sub>	Tetrachlorodifluoropropane	(HCFC-232)	16	0.008-0.10
C <sub>3</sub> H <sub>2</sub> F <sub>3</sub> Cl <sub>3</sub>	Trichlorotrifluoropropane	(HCFC-233)	18	0.007-0.23
C <sub>3</sub> H <sub>2</sub> F <sub>4</sub> Cl <sub>2</sub>	Dichlorotetrafluoropropane	(HCFC-234)	16	0.01-0.28
C <sub>3</sub> H <sub>2</sub> F <sub>5</sub> Cl	Chloropentafluoropropane	(HCFC-235)	9	0.03-0.52
C <sub>3</sub> H <sub>3</sub> FC <sub>4</sub>	Tetrachlorofluoropropane	(HCFC-241)	12	0.004-0.09
C <sub>3</sub> H <sub>3</sub> F <sub>2</sub> Cl <sub>3</sub>	Trichlorodifluoropropane	(HCFC-242)	18	0.005-0.13

$C_3H_3F_3Cl_2$	Dichlorotrifluoropropane	(HCFC-243)	18	0.007-0.12
$C_3H_3F_4Cl$	Chlorotetrafluoropropane	(HCFC-244)	12	0.009-0.14
$C_3H_4FCl_3$	Trichlorofluoropropane	(HCFC-251)	12	0.001-0.01
$C_3H_4F_2Cl_2$	Dichlorodifluoropropane	(HCFC-252)	16	0.005-0.04
$C_3H_4F_3Cl$	Chlorotrifluoropropane	(HCFC-253)	12	0.003-0.03
$C_3H_5FCl_2$	Dichlorofluoropropane	(HCFC-261)	9	0.002-0.02
$C_3H_5F_2Cl$	Chlorodifluoropropane	(HCFC-262)	9	0.002-0.02
$C_3H_6FCl$	Chlorofluoropropane	(HCFC-271)	5	0.001-0.03

**PART VIII - METHYL BROMIDE**

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Ozone-Depleting Potential</i>
$CH_3Br$	Methyl bromide	(Mono) bromomethane	0.6

**ENDNOTE**

## ENDNOTES

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### <sup>1</sup> Act 23 of 2010

Amending Acts	Commencement Dates
Act 5 of 2012	30 July 2012
Act 2 of 2014	30 June 2014

<sup>2</sup> No Commencement date found as at the date of preparation of this revised edition

<sup>3</sup> Amended by Act 2 of 2014

<sup>4</sup> Inserted by Act 5 of 2012

<sup>5</sup> Cap.26.03

<sup>6</sup> Cap.26.07

<sup>7</sup> Cap.26.04

<sup>8</sup> Inserted by Act 2 of 2014

<sup>9</sup> Inserted by Act 2 of 2014

<sup>10</sup> Inserted by Act 2 of 2014

<sup>11</sup> Cap. 47.02

<sup>12</sup> Inserted by Act 2 of 2014

<sup>13</sup> Inserted by Act 2 of 2014

<sup>14</sup> Amended by Act 5 of 2012

<sup>15</sup> Amended by Act 5 of 2012

<sup>16</sup> Replaced by Act 2 of 2014

<sup>17</sup> Amended by Act 5 of 2012

<sup>18</sup> Amended by Act 5 of 2012

<sup>19</sup> Amended by Act 5 of 2012

<sup>20</sup> Amended by Act 5 of 2012

<sup>21</sup> Amended by Act 5 of 2012

<sup>22</sup> Replaced by Act 2 of 2014

<sup>23</sup> Inserted by Act 2 of 2014

<sup>24</sup> Inserted by Act 2 of 2014

<sup>25</sup> Inserted by Act 2 of 2014

<sup>26</sup> Inserted by Act 2 of 2014

<sup>27</sup> Replaced by Act 2 of 2014

<sup>28</sup> Replaced by Act 2 of 2014

- [29](#) Inserted by Act 2 of 2014
- [30](#) Inserted by Act 2 of 2014
- [31](#) Inserted by Act 2 of 2014
- [32](#) Amended by Act 5 of 2012
- [33](#) Replaced by Act 2 of 2014
- [34](#) Amended by Act 5 of 2012
- [35](#) Inserted by Act 2 of 2014
- [36](#) Inserted by Act 2 of 2014
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- [48](#) Amended by Act 2 of 2014
- [49](#) Amended by Act 2 of 2014
- [50](#) Amended by Act 2 of 2014
- [51](#) Amended by Act 2 of 2014
- [52](#) Inserted by Act 2 of 2014
- [53](#) Inserted by Act 2 of 2014
- [54](#) Inserted by Act 2 of 2014
- [55](#) Inserted by Act 2 of 2014
- [56](#) Inserted by Act 2 of 2014