

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Business Committee

Stockholm Convention on Persistent Organic Pollutants – Final legislative amendments to implement new chemical listings

Proposal

- 1 This paper seeks Cabinet approval for the submission to the Executive Council of:
 - 1.1 the Hazardous Substances and New Organisms (Schedules 1AA and 2A) Order 2020;
 - 1.2 the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2020; and
 - 1.3 the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Amendment Regulations 2020.
- 2 These Orders in Council will:
 - 2.1 add two new chemicals, dicofol and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, to:
 - 2.1.1 Schedule 2A of the Hazardous Substances and New Organisms Act 1996 (HSNO Act); and
 - 2.1.2 Schedule 1 of the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (Imports and Exports Order)
 - 2.2 update Schedule 1AA of the HSNO Act to update the text of the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention); and
 - 2.3 add dicofol to Schedule 1 of the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011 (ACVM Regulations).
- 3 These amendments are required to meet new obligations under the Stockholm Convention which come into force on 3 December 2020.

Relation to government priorities

- 4 To ensure that New Zealand complies with our international obligations, these amendments must be made by 3 December 2020, on which date the new chemical listings come into force. On 6 July 2020, Cabinet agreed that these amendments will not be subject to the Parliamentary Treaty Examination process as the amendments are considered minor and technical. This is therefore a routine operational adjustment that requires Cabinet approval.

Executive Summary

- 5 New Zealand is a Party to the Stockholm Convention. This means we are committed to eliminating and restricting persistent organic pollutants (POPs). POPs are toxic chemicals that are persistent in the environment, undergo long-range environmental transport, build up in human and animal tissue, and pass from species to species through the food chain.
- 6 New Zealand fulfils its obligations under the Stockholm Convention to eliminate or restrict the import, export, production, use, and disposal of chemicals listed in the Stockholm Convention through the HSNO Act and the Imports and Exports Order.
- 7 Cabinet agreed on 6 July 2020 [CAB-20-MIN-0329 refers] that New Zealand implement a 2019 decision by the Conference of the Parties to the Stockholm Convention, including New Zealand, to make two new chemicals subject to the Convention's restrictions:
 - 7.1 dicofol (without specific exemptions), an organochlorine pesticide that was used to control mites on a range of crops and plants, which is not currently used in New Zealand
 - 7.2 perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds (with specific exemptions) that are used in a wide variety of applications and consumer products, some of which may still be used in New Zealand such as fire-fighting foams and coated textiles.
- 8 There are expected to be no direct impacts on New Zealand. Dicofol is not used in New Zealand. Two current uses for PFOA, its salts and PFOA-related compounds can continue until 2025 under the relevant specific exemptions. These five-year exemptions will assist with the replacement of PFOA-related fire-fighting foams as these products reach their 'use by' date and will need replacing anyway.
- 9 I, therefore, propose to implement the new obligations by amending Schedules 1AA and 2A of the HSNO Act and Schedule 1 of the Imports and Exports Order.
- 10 I also propose to make a consequential amendment to Schedule 1 of the ACVM Regulations, which lists substances prohibited from use as agricultural compounds or as ingredients in agricultural compounds including certain chemicals that fall under the Stockholm Convention.

Background

- 11 The Stockholm Convention commits governments to take measures to protect human health and the environment from the negative effects of POPs. The goal is to reduce and, where feasible, eliminate the production and environmental release of the chemicals listed under the Convention.
- 12 Cabinet approved amendments to Schedules 1AA and 2A of the HSNO Act, to Schedule 1 of the Imports and Exports Order, and to Schedule 1 of the ACVM Regulations on 6 July 2020 [CAB-20-MIN-0329 refers].
- 13 Dicofol, an organochlorine pesticide that was used to control mites on a wide range of plants and crops, was introduced commercially in 1955. There is no impact on New Zealand as dicofol is no longer in use in New Zealand and the production has ceased worldwide.
- 14 PFOA, its salts and PFOA-related compounds have been used in a wide variety of applications and consumer products, across many sectors, including fire-fighting foams and textiles. In New Zealand its use has largely ceased. However, it is still used in some specialised photographic coatings applied to films, and in some firefighting foams. Cabinet agreed that New Zealand will register for specific use exemptions for these two purposes [CAB-20-MIN-0329 refers] to enable phase-out for these uses.
- 15 While the Minister of Commerce and Consumer Affairs has responsibility for the Imports and Exports Order, as Minister for the Environment, I have the authority to recommend policy changes on his behalf.
- 16 Schedule 1 of the ACVM Regulations lists substances prohibited from use as agricultural compounds or as ingredients in agricultural compounds, including pesticides that fall under the Stockholm Convention. Updating Schedule 1 by adding dicofol is not strictly required to meet our international obligations, however it will ensure regulatory clarity and consistency for stakeholders. This amendment can also be made by Order in Council. In the course of preparing these regulations, I sought the agreement of Minister O'Connor (then Minister for Food Safety) to make this recommendation on his behalf.

Policy

- 17 The Parliamentary Counsel Office has drafted the necessary legislative instruments to:
 - 17.1 implement the new obligations by amending Schedules 1AA and 2A of the HSNO Act and Schedule 1 of the Imports and Exports Order; and
 - 17.2 make a consequential amendment to Schedule 1 of the ACVM Regulations which lists substances prohibited from use as agricultural compounds or as ingredients in agricultural compounds including certain chemicals that fall under the Stockholm Convention.
- 18 Cabinet's agreement is now required to confirm these amendments.

- 19 The new listings will come into force through a mechanism known as 'tacit acceptance'. Through this process New Zealand will become bound automatically, unless we 'opt out'. As Cabinet has given approval for New Zealand to not opt out [CAB-20-MIN-0329 refers], we will be bound by the new obligations from 3 December 2020. Therefore, the domestic implementation process will need to be completed by that date.
- 20 New Zealand will meet its international obligations by registering for two specific use exemptions relating to the PFOA listing and notifying articles in use with the Stockholm Convention Secretariat by 3 December 2020.

Timing and 28-day rule

- 21 I am seeking a waiver to the 28-day rule to enable the changes to come into force on 3 December 2020 to meet the relevant international obligations.
- 22 Due to COVID-19 and the change of the date for the General Election, it has not been possible to have these amendments agreed to by the Legislation Committee until now. There is therefore a risk that New Zealand will not be able to implement the required amendments domestically by this date.

Compliance

- 23 The amendments comply with each of the following:
- 23.1 the principles of the Treaty of Waitangi;
 - 23.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 23.3 the principles and guidelines set out in the Privacy Act 1993;
 - 23.4 relevant international standards and obligations;
 - 23.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
- 24 There are no other statutory prerequisites that exist for the making of this Order in Council.

Regulations Review Committee

- 25 Not applicable.

Certification by Parliamentary Counsel

- 26 The draft Orders in Council have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 27 The Regulatory Quality Team at the Treasury has previously determined that the regulatory proposals are exempt from the requirement to provide a Regulatory Impact Assessment on the basis that it is essential (the minimum necessary) to comply with international obligations that are binding on New Zealand.

Publicity

- 28 No publicity is planned as the proposal has a low public interest. The Environmental Protection Authority (EPA) will communicate the new requirements by putting them on their website, and using its regular communication channels with industry to inform relevant stakeholders.

Proactive Release

- 29 This paper will be proactively released within 30 business days of this decision. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Consultation

- 30 The Ministry for the Environment has consulted with the Ministry of Business, Innovation and Employment, the New Zealand Customs Service, the Ministry of Foreign Affairs and Trade, the Ministry for Primary Industries and the EPA. The Department of the Prime Minister and Cabinet was informed.

Recommendations

I recommend that the Cabinet Business Committee:

- 1 note that Cabinet [CAB-20-MIN-0329 refers] agreed:
- 1.1 to prohibit the use of two new chemicals, dicofol and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, by amending:
 - 1.1.1 Schedules 2A of the Hazardous Substances and New Organisms Act 1996; and
 - 1.1.2 Schedule 1 of the Imports and Exports (Restrictions) Prohibition Order (No 1) 2004;
 - 1.2 to add dicofol to Schedule 1 of the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011; and
 - 1.3 to update Schedule 1AA of the Hazardous Substances and New Organisms Act 1996 to include the updated text of the Stockholm Convention on Persistent Organic Pollutants;
- 2 note that these amendments are required to meet new international obligations under the Stockholm Convention on Persistent Organic Pollutants which come into force on 3 December 2020;
- 3 authorise the submission to the Executive Council of:
- 3.1 the Hazardous Substances and New Organisms (Schedules 1AA and 2A) Order 2020;
 - 3.2 the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2020; and

- 3.3 the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Amendment Regulations 2020;
- 4 note that a waiver of the 28-day rule is sought:
 - 4.1 so that the regulations can come into force on 3 December 2020 when the listings come into force internationally;
 - 4.2 on the grounds that due to COVID-19 restrictions and the delay of the 2020 General Election, the regulatory amendments are not able to be made more than 28 days before the listings come into force internationally;
 - 4.3 to ensure that New Zealand meets its international obligations; and
 - 4.4 to provide certainty to industry;
- 5 agree to waive the 28-day rule so that the regulations can come into force on 3 December 2020.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Proactively released under the Official Information Act 1982

Appendix 1: Amendments as drafted by Parliamentary Counsel Office

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