

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

New Zealand's implementation of new chemical listings under the Rotterdam Convention

Proposal

1. This paper seeks authorisation for the submission to the Executive Council of the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2019.
2. This Order in Council will add two new chemicals to Schedule 2 of the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 (Imports and Exports Order): phorate and hexabromocyclododecane (HBCD).

Policy

3. The proposed amendments to the Imports and Exports Order will give effect to the policy approved by the Environment, Energy and Climate Committee on 22 August 2019 and by Cabinet on 26 August 2019 [ENV-19-MIN-0042 and CAB-19-MIN-0424 refer].
4. While the Minister of Commerce and Consumer Affairs has Parliamentary responsibility for the Imports and Exports Order, I as the Minister for the Environment have the authority to recommend policy changes on his behalf. The Minister of Commerce and Consumer Affairs has been consulted on this Cabinet paper.
5. The proposed amendments are necessary to meet international obligations. The amendments implement the May 2019 decision by the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) to list phorate and HBCD. This decision means that export of phorate and HBCD will require prior informed consent from the importing Party.
6. There is no expected impact on New Zealand industry as neither chemical is approved for use in New Zealand under the Hazardous Substances and New Organisms Act 1996. The proposed amendments are nevertheless necessary to meet international obligations under the Rotterdam Convention.

Timing and 28-day rule

7. If agreed to by Cabinet, the changes would be notified in the New Zealand Gazette on 24 October 2019 and would come into force 28 days afterwards on 21 November 2019.

Compliance

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

Certification by Parliamentary Counsel

10. The draft Order in Council has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact analysis

11. The Regulatory Quality Team at the Treasury has determined that the regulatory proposal in this paper is exempt from the requirement to provide a Regulatory Impact Assessment, on the basis that it has no or minor impacts on businesses, individuals or not for profit entities.

Publicity

12. No publicity is planned as the proposal has a low public interest and it is unlikely to be controversial.

Proactive Release

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

Consultation

14. The Ministry for the Environment has consulted with the Ministry for Business, Innovation and Employment, the New Zealand Customs Service, the Ministry for Foreign Affairs and Trade and the Environmental Protection Authority. The Department of the Prime Minister and Cabinet was informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. note that on 22 August 2019 the Environment, Energy and Climate Committee agreed, and on 26 August 2019 Cabinet approved, that phorate and hexabromocyclododecane (HBCD) be listed in Schedule 2 of the Imports and Exports (Restrictions) Prohibition Order (No 2) to fulfil New Zealand's international obligations under the Rotterdam Convention [ENV-19-MIN-0042 and CAB-19-MIN-0424 refer];
2. note that the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2019 will give effect to the Cabinet approval (referred to in paragraph 1 above);
3. authorise the submission to the Executive Council of the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2019;
4. note that the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2019 will come into force on 21 November 2019.

Authorised for lodgement.

Hon David Parker

Minister for the Environment