



Tonga

OZONE LAYER PROTECTION (AMENDMENT) ACT 2021

Act 4 of 2021



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Arrangement of Sections

Section

1	Short title and interpretation	5
2	Section 2 amended	5
3	New Section 3A inserted	6
4	Section 4 amended	6
5	Section 5 amended	7
6	Section 6 amended	7
7	Section 7 amended	8
8	Section 8 repealed and replaced.....	8
9	Section 9 repealed and replaced.....	8
10	Section 10 amended	9
11	Section 12 amended	9
12	Section 13 amended	9
13	Section 16 amended	9
14	Section 18 amended	10
15	Section 18A amended	11
16	Section 18B repealed and replaced.....	11
17	Section 18C amended	12
18	Section 18D amended	12
19	Section 18E amended.....	12
20	Section 18F amended.....	12
21	Section 18G amended	12
22	Section 18H amended	13
23	Section 22 amended	13
24	Section 24 amended	13
25	New Sections 24A and 24B	14
26	New Section 25A	14
27	Part VII of the Schedule repealed and replaced.....	15

28	New Part IX of the Schedule.....	17
29	General amendment.....	18



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AN ACT TO AMEND THE OZONE LAYER PROTECTION ACT (CAP 21.07)

I assent,
TUPOU VI,
28th October 2021.

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

1 Short title and interpretation

- (1) This Act may be cited as the Ozone Layer Protection (Amendment) Act 2021.
- (2) In this Act, the Ozone Layer Protection Act (Cap 21.07), shall be referred to as the “Principal Act”.

2 Section 2 amended

- (1) Section 2 of the Principal Act is amended by deleting -
 - (a) the definition of the word “**Chief Executive Officer**” and replacing it with the following new definition –
““**Chief Executive Officer**” means the Chief Executive Officer responsible for climate change;”;

- (b) the definition of the word “**Minister**” and replacing it with the following new definition –
““**Minister**” means the Minister responsible for climate change;”;
 - (c) the definition of the word “**Ministry**” and replacing it with the following new definition-
““**Ministry**” means the Ministry responsible for climate change;”;
 - (d) the definition of the words “**environment officer**”.
- (2) Section 2 of the Principal Act is amended by inserting the following new definitions in the appropriate place –
- ““**HFC**” means any hydrofluorocarbons specified in Part IX of the Schedule;”;
- “**ozone officer**” means an environment officer appointed under the Environment Management Act;”.

3 New Section 3A inserted

The Principal Act is amended by inserting the following new section 3A immediately after section 3 –

“3A Codes of practice, standards and operating procedures and testing

- (1) The codes of practice, standards, guidelines and operating procedures and testing shall be prescribed by regulations under this Act.
- (2) The codes of practice, standards, guidelines and operating procedures prescribed in subsection (1) shall be published by the Ministry on its website.”.

4 Section 4 amended

- (1) Section 4 of the Principal Act is amended by deleting subsection (2) and replacing it with the following new subsection (2) –
- “(2) The National Ozone Advisory Committee shall consist of the –
- (a) Chief Executive Officer (Chair);
 - (b) Chief Secretary and Secretary to Cabinet;
 - (c) representative of the Ministry responsible for health;
 - (d) representative of the Ministry responsible for customs;
 - (e) representative of the Ministry responsible for trade and economic development;
 - (f) representative of the Ministry responsible for agriculture;
 - (g) representative of the Ministry responsible for transport;
 - (h) representative of the Ministry responsible for education;

- (i) representative of the Energy Advisory Committee; and
 - (j) representative of persons or organisations importing or using, or representing those who import or use, controlled substances.”.
- (2) Section 4 of the Principal Act is amended by inserting the following new subsection (3) immediately after subsection (2) –
 - “(3) The Ministry shall provide secretariat services to the National Ozone Advisory Committee.”.

5 Section 5 amended

Section 5 of the Principal Act is amended –

- (a) in subsection (1) by inserting the words “or any HFC” after the word “HBFC”;
- (b) in subsection (2) by -
 - (i) deleting the word “and” after the word “mixture” in sub-paragraph (b);
 - (ii) removing the full stop in sub-paragraph (c) and replacing it with the word “; and”; and
 - (iii) inserting the following new sub-paragraph (d) immediately after sub-paragraph (c)-
 - “(d) HFC, whether alone or in a mixture.”; and
- (c) by inserting a new subsection 2A, immediately after subsection (2) –
 - “(2A) The import from a non-party of any bulk HFC specified in Part IX of the Schedule is prohibited from 1 January 2024.”.

6 Section 6 amended

Section 6 of the Principal Act is amended by inserting the following new subsection (3) immediately after subsection (2A) –

- “(3) Subject to section 7, the import from a non-party of any of the following goods containing HFC shall be prohibited from 1 January 2024 —
 - (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 polyol to which chlorofluorocarbons are added to make rigid plastic foams); and
- (j) any other goods containing controlled substances.”.

7 Section 7 amended

Section 7(1) of the Principal Act is amended by –

- (a) inserting the words “and 6(1)” immediately after the words “section 5(1)”;
- (b) deleting the word “or” in paragraph (c);
- (c) delete the full stop at the end of paragraph (d) and replacing it with “;or”; and
- (d) inserting the following new paragraph (e) immediately after paragraph (d) –
 - “(e) essential use granted to the Kingdom by the Meeting of the Parties to the Montreal Protocol.”.

8 Section 8 repealed and replaced

Section 8 of the Principal Act is repealed and replaced with the following –

“8 Prohibition on export

The export of any bulk controlled substances specified in Part I, II, III, IV, V, VI, VII, VIII and IX of the Schedule respectively shall be prohibited.”.

9 Section 9 repealed and replaced

Section 9 of the Principal Act is repealed and replaced with the following -

“9 Prohibition of manufacture

The manufacture within the Kingdom of the following substance or goods that contains controlled substances shall be prohibited –

- (a) aerosol sprays;
- (b) dry-cleaning machines;
- (c) dehumidifiers, refrigerators, freezers, air-conditioners, supermarket display cases, heat pumps and water coolers;
- (d) fire extinguishers;

- (e) air-conditioning or refrigeration units whether fitted to a vehicle or as mechanical components intended for use in or on a vehicle; and
- (f) any other goods that contains or is designed to use any controlled substances.”.

10 Section 10 amended

Section 10(1) of the Principal Act is amended -

- (a) in paragraph (a) by inserting the words “and HFC” after the word “HCFCs”; and
- (b) in paragraph (b) by deleting the numbers “9(b) to (d)” and replacing it with the number “9”.

11 Section 12 amended

Section 12 of the Principal Act is amended by repealing paragraph (b) and replacing it with the following –

- “(b) the need to phase out ozone depleting substances and the need to phase down HFC, except for essential uses;”.

12 Section 13 amended

Section 13 of the Principal Act is amended by inserting a new subsection (2A) and (2B) immediately after subsection (2) -

- “(2A) Subject to subsection (2), the handling and storage of Methyl Bromide shall only be conducted by a qualified fumigation technician and a fumigation report shall be provided to the Minister and National Ozone Advisory Committee every quarter or when requested by the Minister.
- (2B) A permit issued in relation to imports under this section shall be issued on per shipment basis with a valid period of 3 months.”.

13 Section 16 amended

Section 16 of the Principal Act is amended –

- (a) in subsection (1) by –
 - (i) deleting the word “not” in paragraph (b);
 - (ii) inserting the word “HFC,” after the word “CFC,” in paragraph (c);
 - (iii) inserting the word “, HFC” after the word “CFC” in paragraph (d); and

- (iv) deleting the word “reduction” and replacing it with the words “phase-down or phase out” in paragraph (e);
- (b) in subsection (3) by –
 - (i) inserting the words “or HFC” after the word “HCFCs”;
 - (ii) in sub-paragraph (a) by inserting the words “and HFC” after the word “HCFCs”; and
 - (iii) in sub-paragraph (b) by inserting the words “and HFC” after the words “HCFCs”.

14 Section 18 amended

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

“18 Interpretation for Part IIIA

In this Part, unless the context otherwise requires -

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

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

“**first quota period of HFC**” means the quota period starting on the first day of January 2024;

“**global warming potential (GWP)**” indicates the amount of heat trapped by 1 ton of a gas relative to the amount of heat trapped by 1 ton of CO₂ over a specific period. The GWPs of controlled substances according to the Montreal Protocol are based on the 100-year GWPs, which are specified in the Schedule;

“**importer**” means the holder of an import permit;

“**importer amount**” means the sum of the quantities of HCFC, expressed in ODP tonnes, or of HFC, expressed in tonnes CO₂ equivalent, imported under the permit during the base year by the importer;

“**industry amount**” means the sum of the quantities of HCFC, expressed in ODP tonnes, or of HFC, expressed in tonnes CO₂ equivalent, imported by all importers during the base year;

“**ODP**” means **ozone depleting potential** the steady-state ozone reduction for each unit mass of gas emitted into the atmosphere relative to that for a unit mass emission of CFC-11 as specified in the Schedule;

“**permit**” means a per shipment permit allowing the import of HCFC or HFC;

“**quota**” allocated to an importer is the maximum amount of HCFC, expressed in ODP tonnes, or of HFC, expressed in tonnes

CO₂ equivalent, 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 the thirty-first day of December of that year;

“subsequent quota period” means any quota period other than the first quota period; and

“tonnes CO₂ equivalent” means –

- (a) for HFC specified in Part IX of the Schedule and as a single substance— the quantity that results from multiplying the HFC mass in tonnes by its global warming potential; and
- (b) for a substance that is or contains mixture of one or more HFC specified in Part IX of the Schedule — the quantity that results from adding together the quantities of each HFC, expressed in ODP tonnes;”.

15 Section 18A amended

Section 18A of the Principal Act is amended by inserting the following new sub-sections (3), (4) and (5) immediately after sub-section (2) -

- “(3) Quota limit of HCFC and HFC shall be annually allocated in accordance with the obligations for the Kingdom as stipulated under the Montreal Protocol or the Agreement between the Kingdom and Executive Committee as part of the HCFC Phase-out Management Plan or any other projects, whichever lower, taking into account deduction of 10% from the obligations as a reserve quota.
- (4) Depending on prevailing contexts and achievements of phase-out or phase-down measured by industry amount, the Minister has the right to decide to accelerate the phase-out of HCFC or phase-down of HFC by assigning quota limit lower than the obligations for the Kingdom as stipulated under the Montreal Protocol or the Agreement between the Kingdom and Executive Committee.
- (5) The sum of quotas allocated to all importers (excluding a reserve quota) in a quota period shall not exceed the corresponding quota limit.”.

16 Section 18B repealed and replaced

Section 18B of the Principal Act is hereby repealed and replaced with the following -

“18B Allocation of quota for HCFC and HFC – first quota period

- (1) A quota shall only be allocated to a person who has -

- (a) imported HCFC during the period 2009, 2010, 2011, 2012 and 2013; and
 - (b) prior to the commencement of this section, reported details of the type and amount of HCFC imported in 2009, 2010, 2011, 2012 and 2013 to the Ministry.
- (2) 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.
- (3) A quota shall only be allocated to a person who has –
 - (a) imported HFC during the period 2020, 2021, and 2022.
- (4) The size of a quota allocated to a person shall be the average of the person's HFC import in 2020, 2021 and 2022.
- (5) A quota shall be allocated by written notice given to the person that satisfies the requirements of subsection (1) and (3).”.

17 Section 18C amended

Section 18C of the Principal Act is amended by deleting the current section title and replacing it with the words “**18C Allocation of quota for HCFC and HFC**”;

18 Section 18D amended

Section 18D of the Principal Act is amended by deleting the current section title and replacing it with “**18D Quota size for HCFC and HFC – second quota period**”.

19 Section 18E amended

Section 18E of the Principal Act is amended by-

- (a) deleting the current section title and replacing it with “**18E Quota size for HCFC and HFC –subsequent quota period**”; and
- (b) deleting subsection (2).

20 Section 18F amended

Section 18F of the Principal Act is amended by deleting the current section title and replacing it with “**18F Transfer of quota – HCFC and HFC**”.

21 Section 18G amended

Section 18G of the Principal Act is amended by –

- (a) deleting the current section title and replacing it with “**18G Reserve quota limit – HCFC and HFC**”; and
- (b) inserting a new subsection (3) immediately after subsection (2) –

- “(3) Reserve quota limit of HCFC and HFC shall be calculated as 10% of the obligations for the Kingdom as stipulated under the Montreal Protocol or the Agreement between the Kingdom and the Executive Committee as part of the HCFC Phase-out Management Plan or any other projects.”.

22 Section 18H amended

Section 18H of the Principal Act is amended –

- (a) by deleting the current section heading and replacing it with **“18H Allocation of reserve quota – HCFC and HFC”**; and
- (b) in subsection (5), by inserting the words “and HFC” immediately after every appearance of the word “HCFC”.

23 Section 22 amended

Section 22 of the Principal Act is amended –

- (a) in sub-section (1)(b) by deleting the word “prohibition” and replacing it with the words “prohibition, requirements and directions”;
- (b) in sub-section (2) by –
 - (i) deleting the word “; or” in paragraph (a);
 - (ii) deleting the “,” and replacing it with the words “;or” in paragraph (b); and
- (c) by inserting a new paragraph (c) immediately after paragraph (b) –

“(c) any code of practice, standard or operating procedures approved under section 3A.”.

24 Section 24 amended

Section 24 of the Principal Act is amended –

- (a) in paragraph (c) by deleting the word “and” after the words “this Act”;
- (b) in paragraph (d) by deleting the “.” and replacing it with “;”; and
- (c) inserting the following new paragraphs immediately after paragraph (d) -
 - “(e) deem any substance a controlled substance for the purposes of this Act, and to amend the schedules accordingly;
 - (f) impose requirements relating to the storage, disposal, recycling, venting or use of controlled substances, and the equipment containing controlled substances;
 - (g) request additional powers for Ozone Officers and Customs Officers; and

- (h) make any other arrangement that is required to implement and enforce the Convention and the Montreal Protocol.”.

25 New Sections 24A and 24B

The Principal Act is amended by inserting the following new sections 24A and 24B immediately after section 24 –

“24A Access to customs information

The Chief Executive Officer may request the Chief Executive Officer responsible for Customs to provide any bill of lading or airway bill or other relevant information relating to the trade of controlled substances or manufactured products suspected of being imported to the Kingdom.

24B Provision of information relevant to controlled substances

- (1) The Chief Executive Officer may make a written request to any person -
 - (a) holding a licence or permit under this Act; or
 - (b) who possesses or controls controlled substances or manufactured products,to submit reports or records relating to controlled substances or manufactured products, or to provide relevant information or data for the purpose of reporting under the Vienna Convention or the Montreal Protocol.
- (2) A person, to whom a written request has been made under subsection (1), who refuses or fails to comply with the request, commits an offence and is liable upon conviction -
 - (a) in the case of an individual - by imprisonment for a term not exceeding 3 years, or a fine not \$50,000 or both; or
 - (b) in the case of a body corporate - by a fine not exceeding \$100,000.
- (3) For the purposes of reporting under the Vienna Convention and the Montreal Protocol, the CEO has the power to access any information held by any Ministry or government agency relating to controlled substances and manufactured products in Tonga.”.

26 New Section 25A

The Principal Act is amended by inserting the following new sections 25A immediately after section 25 –

“25A Appeals

- (1) A person who is dissatisfied with a decision of the Chief Executive Officer relating to the issuance, renewal or cancellation of a licence or permit, or the conditions attached to a licence or permit, may, within 21 days of being notified of the decision, appeal in writing to the Minister.
- (2) The Minister, when deciding on an appeal, shall give the appellant and the Chief Executive Officer an opportunity to –
 - (a) be heard, in writing or in person;
 - (b) produce evidence; and
 - (c) call witnesses.
- (3) If an appeal involves a technical issue, the Minister may obtain appropriate technical advice from a person or body, other than the Chief Executive Officer or the Unit.
- (4) Pursuant to subsection (2), the Minister shall be required to give reasons for any decision made.
- (5) Any decision of the Minister with regards to an appeal shall be final.”.

27 Part VII of the Schedule repealed and replaced

Part VII of the Schedule of the Principal Act is hereby repealed and replaced with the following –

“PART VII HCFC (HYDROCHLOROFLUOROCARBONS)

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>Number of isomers</i>	<i>Ozone-Depleting Potential*</i>	<i>100- Year Global Warming Potential</i>
CHFC ₂	Dichlorofluoromethane	(HCFC-21)	1	0.04	151
CHF ₂ Cl	Chlorodifluoromethane	(HCFC-22)	1	0.055	1,810
CH ₂ FCl	Chlorofluoromethane	(HCFC-31)	1	0.02	
C ₂ HFCl ₄	Tetrachlorofluoroethane	(HCFC-121)	2	0.01-0.04	
C ₂ HF ₂ Cl ₃	Trichlorodifluoroethane	(HCFC-122)	3	0.02-0.08	
C ₂ HF ₃ Cl ₂	Dichlorotrifluoroethane	(HCFC-123)	3	0.02-0.06	77
CHCl ₂ CF ₃	Dichlorotrifluoroethane	(HCFC-123)	-	0.02	
C ₂ HF ₄ Cl	Chlorotetrafluoroethane	(HCFC-124)	2	0.02-0.04	609
CHFC ₂ CF ₃	Trichlorofluoroethane	(HCFC-124)	-	0.022	
C ₂ H ₂ FC ₃	Trichlorofluoroethane	(HCFC-131)	3	0.007-0.05	

$C_2H_2F_2Cl_2$	Dichlorodifluoroethane	(HCFC-132)	4	0.008-0.05	
$C_2H_2F_3Cl$	Chlorotrifluoroethane	(HCFC-133)	3	0.02-0.06	
$C_2H_3FCl_2$	Dichlorofluoroethane	(HCFC-141)	3	0.005-0.07	
CH_3CFCl_2	Dichlorofluoroethane	(HCFC-141b)	-	0.11	725
$C_2H_3F_2Cl$	Chlorodifluoroethane	(HCFC-142)	3	0.008-0.07	
CH_3CF_2Cl	Chlorodifluoroethane	(HCFC-142b)	-	0.065	2,310
C_2H_4FCl	Chlorofluoroethane	(HCFC-151)	2	0.003-0.005	
C_3HFCl_6	Hexachlorofluoropropane	(HCFC-221)	5	0.015-0.07	
$C_3HF_2Cl_5$	Pentachlorodifluoropropane	(HCFC-222)	9	0.01-0.09	
$C_3HF_3Cl_4$	Tetrachlorotrifluoropropane	(HCFC-223)	12	0.01-0.08	
$C_3HF_4Cl_3$	Trichlorotetrafluoropropane	(HCFC-224)	12	0.01-0.09	
$C_3HF_5Cl_2$	Dichloropentafluoropropane	(HCFC-225)	9	0.02-0.07	
$CF_3CF_2CHCl_2$	Dichloropentafluoropropane	(HCFC-225ca)	-	0.025	122
$CF_2ClCF_2CHCl_2$	Dichloropentafluoropropane	(HCFC-225cb)	-	0.033	595
C_3HF_6Cl	Chlorohexafluoropropane	(HCFC-226)	5	0.02-0.10	
$C_3H_2FCl_5$	Pentachlorofluoropropane	(HCFC-231)	9	0.05-0.09	
$C_3H_2F_2Cl_4$	Tetrachlorodifluoropropane	(HCFC-232)	16	0.008-0.10	
$C_3H_2F_3Cl_3$	Trichlorotrifluoropropane	(HCFC-233)	18	0.007-0.23	
$C_3H_2F_4Cl_2$	Dichlorotetrafluoropropane	(HCFC-234)	16	0.01-0.28	
$C_3H_2F_5Cl$	Chloropentafluoropropane	(HCFC-235)	9	0.03-0.52	
$C_3H_3FCl_4$	Tetrachlorofluoropropane	(HCFC-241)	12	0.004-0.09	
$C_3H_3F_2Cl_3$	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 ₃ H ₅ F ₂ Cl	Chlorodifluoropropane	(HCFC-262)	9	0.002-0.02	
C ₃ H ₆ FCl	Chlorofluoropropane	(HCFC-271)	5	0.001-0.03	

28 New Part IX of the Schedule

The Schedule of the Principal Act is amended by inserting a new “PART IX” immediately after “PART VIII”–

“PART IX – HFC (HYDROFLUOROCARBON)

<i>Chemical Formula</i>	<i>Chemical Name</i>	<i>Substance</i>	<i>100- Year Global Warming Potential</i>
Group I			
CHF ₂ CHF ₂		HFC-134	1,100
CH ₂ FCF ₃		HFC-134a	1,430
CH ₂ FCHF ₂		HFC-143	353
CHF ₂ CH ₂ CF ₃		HFC-245fa	1,030
CF ₃ CH ₂ CF ₂ CH ₃		HFC-365mfc	794
CF ₃ CHF ₂ CF ₃		HFC-227ea	3,220
CH ₂ FCF ₂ CF ₃		HFC-236cb	1,340
CHF ₂ CHF ₂ CF ₃		HFC-236ea	1,370
CF ₃ CH ₂ CF ₃		HFC-236fa	9,810
CH ₂ FCF ₂ CHF ₂		HFC-245ca	693
CF ₃ CHFCH ₂ FCF ₂ CF ₃		HFC-43-10mee	1,640
CH ₂ F ₂		HFC-32	675
CHF ₂ CF ₃		HFC-125	3,500
CH ₃ CF ₃		HFC-143a	4,470
CH ₃ F		HFC-41	92
CH ₂ FCH ₂ F		HFC-152	53

CH ₃ CHF ₂		HFC-152a	124
Group II			
CHF ₃		HFC-23	14,800

29 General amendment

The Principal Act is amended deleting the words “environment officer” wherever it appears and replacing it with the words “ozone officer”.

Passed by the Legislative Assembly on this **10th** day of **August** 2021.