

**In Confidence**

**Office of the Minister for the Environment**

**Chair, Cabinet Legislation Committee**

**New Zealand's implementation of new obligations under the Rotterdam Convention following the 2022 COP**

**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 2023.
- 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):
  - 2.1 Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds as described in Annex III to the Rotterdam Convention
  - 2.2 Decabromodiphenyl ether (decaBDE).

**Relation to government priorities**

- 3 This is a routine operational adjustment that requires Cabinet approval.

**Executive Summary**

- 4 The Rotterdam Convention (the Convention) promotes shared responsibility and cooperation among parties (i.e., countries that are party to the Rotterdam Convention) in the international trade of certain hazardous chemicals. Chemicals listed in Annex III of the Convention can still be moved between borders, provided the importing country gives prior informed consent.
- 5 At the Conference of the Parties (COP) in June 2022, parties agreed to list two new chemicals in Annex III of the Convention: PFOA, its salts and PFOA-related compounds, and decaBDE. These listings entered into force globally on 22 October 2022. To give domestic effect to these listings, Cabinet approval is required to amend Schedule 2 of the Imports and Exports Order to add PFOA, its salts and PFOA-related compounds, and decaBDE.

**Background**

- 6 PFOA, its salts and PFOA-related compounds, and decaBDE are industrial chemicals.
- 7 There is no expected impact on New Zealand industry. Both chemicals are listed for elimination as persistent organic pollutants (POPs) under the Stockholm Convention on Persistent Organic Pollutants. They are not approved

for import into New Zealand under the Hazardous Substances and New Organisms Act 1996 besides certain, very specific exemptions, and they cannot be exported as a POP under Schedule 1 of the Imports and Exports Order unless a permit is issued by the Environmental Protection Authority (EPA).

- 8 The proposed amendments to the Imports and Exports Order will give effect to the policy agreed to by the Cabinet Environment, Energy and Climate Committee on 1 June 2023 and by Cabinet on 6 June 2023 [ENV-23-MIN-0016 Minute refers].
- 9 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.
- 10 The proposed amendments are necessary to meet New Zealand's international obligations. The amendments would implement the June 2022 decision by the parties to the Rotterdam Convention to list PFOA, its salts and PFOA-related compounds, and decaBDE in Annex III of the Convention. This decision means that export of PFOA, its salts and PFOA-related compounds, and decaBDE require prior informed consent from an importing party.

### **Implementation and timeline**

- 11 If agreed to by Cabinet, the changes would be notified in the New Zealand Gazette on 7 September 2023 and will come into force 28 days afterwards on 5 October 2023.

### **Regulations Review Committee**

- 12 Pursuant to Standing Order 323 of the House of Representatives 2020, the Minister for the Environment may refer draft regulations to the committee for consideration and the committee may report on the draft regulations to the Minister. Given the amendments are small, simple, and non-contentious, officials consider that there is no need to refer the draft amendments to the regulations review committee.

### **Financial Implications**

- 13 There are no direct fiscal implications to the Crown from the proposals in this paper.

### **Cost-of-living Implications**

- 14 I consider that the proposals in the Cabinet paper will not significantly impact New Zealander's ability to maintain their standard of living. This is because there are no direct impacts on New Zealand industry, as both chemicals are not approved for use in New Zealand, except for very specific purposes.

### Legislative Implications

15 The changes to the Imports and Exports Order can be made by Order in Council.

16 Section 9(2)(h)  
[Redacted]

### Certification by Parliamentary Counsel

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

### Impact Analysis

#### *Regulatory Impact Statement*

18 The Treasury's Regulatory Impact Analysis team has determined that the proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

#### *Climate Implications of Policy Assessment*

19 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

### Population Implications

20 There are no gender implications in this proposal.

21 There are no specific implications from a disability perspective in this proposal.

22 There are no implications for hapū, iwi and Māori in this proposal.

### Human Rights

23 There are no inconsistencies between the proposal and the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

### Legal Risks

24 Section 9(2)(h)  
[Redacted]

## Reputational Risks

- 25 These listings entered into force globally on 22 October 2022. The New Zealand government could face international criticism if the amendments were not implemented into New Zealand law, and New Zealand would not be compliant with the Rotterdam Convention. To avoid these risks, these amendments should be implemented into domestic New Zealand law as soon as possible.

## Use of External Resources

- 26 No external resources have been used to develop this policy advice and Cabinet paper.

## Consultation

- 27 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 Minister and Cabinet was informed.

## Communications

- 28 No publicity and/or communication is planned as the proposal has a low public interest and it is unlikely to be controversial.

## Proactive Release

- 29 This paper will be proactively released within 30 business days following Cabinet approval. Proactive release will be subject to redaction as appropriate under the Official Information Act.

## Recommendations

The Minister for the Environment recommends that the Committee:

- 1 **note** that on 1 June 2023 the Cabinet Environment, Energy and Climate Committee agreed, and on 6 June 2023 Cabinet approved, that PFOA, its salts and PFOA-related compounds (as described in Annex III to the Rotterdam Convention), and decaBDE be listed in Schedule 2 of the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 to fulfil New Zealand's international obligations under the Rotterdam Convention [ENV-23-MIN-0016 Minute refers];
- 2 **note** that the Imports and Exports (Restrictions) Prohibition Order (No 2) 2004 Amendment Order 2023 will give effect to the Cabinet approval;
- 3 **authorise** the submission to the Executive Council of the Imports and Exports (Restrictions) Prohibitions Order (No 2) 2004 Amendment Order 2023;
- 4 **note** that the Imports and Exports (Restrictions) Prohibitions Order (No 2) 2004 Amendment Order 2023 will be gazetted on 7 September 2023 and will come into force on 5 October 2023.

Authorised for lodgement

Hon David Parker

Minister for the Environment