

## Report: Legislation to be brought into force by Order in Council (as at 1 July 2020)

Does not include Acts with a default specified commencement date in the event that the Act is not earlier brought into force by Order in Council.

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Department	Name of Act (listed alphabetically)	Provisions not in force (as at 1 July 2020)	Notes
Ministry of Foreign Affairs and Trade	Antarctica (Environmental Protection: Liability Annex) Amendment Act 2012	whole Act	<p><b>Departmental comment:</b></p> <p>The Act implements New Zealand's obligations under Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, on Liability Arising from Environmental Emergencies. The Act, like other legislation implementing obligations under a particular treaty, is designed to be brought into force by Order in Council once the Annex itself becomes effective. That will happen when all 28 Consultative Parties to the Antarctic Treaty that were entitled to attend the Antarctic Treaty Consultative Meeting in 2005 have approved the Annex. So far, 16 of the required 28 Consultative Parties (including New Zealand, in May 2013) have done so. It is not yet known when the Annex will become effective.</p>
Ministry for Primary Industries	Aquaculture Reform (Repeals and Transitional Provisions) Act 2004	section 33	<p><b>Departmental comment:</b></p> <p>Section 33 of Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (the Reform Act) was enacted to enable land-based aquaculture to transition from the current licensing regime established by the Freshwater Fish Farming Regulations 1983 (the Regulations) to the fish farming registration regime that applies under the Fisheries Act 1996.</p>

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			<p>Currently the Fisheries Act 1996 preserves the licensing regime established under the Regulations for freshwater aquaculture. Section 33 would revoke the Regulations and set up a process for licence holders under the Regulations to transition to the fish farmer registration system under the Fisheries Act 1996.</p> <p>Section 33 of the Reform Act was not brought into force on enactment of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011. This was because there remained some concern in relation to how biosecurity risks would be managed under the new regime.</p> <p>Recent aquaculture biosecurity events including the Bonamia parasite in dredge oysters have highlighted the need to improve the management of biosecurity in the aquaculture sector. There are still questions whether the transition from the Regulations to the Fisheries Act (under section 33) would enable effective management of New Zealand's aquaculture regime and appropriately manage biosecurity risk.</p> <p>Fisheries New Zealand has conducted an initial investigation into ways to improve the aquaculture system managed by the Ministry for Primary Industries. This includes whether section 33 remains relevant or should be removed. Further internal review will refine the scope of work. In 2020/21, Fisheries New Zealand will seek agreement to a work programme aimed at improving MPI's management of aquaculture and this will involve consideration of the role of section 33 (if any).</p>

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Ministry of Transport	Aviation Crimes Amendment Act 2007	sections 4(1), 9, and 10	<p><b>Departmental comment:</b></p> <p>Relates to aviation security measures.</p> <p>See departmental comment on the Civil Aviation Amendment Act 2007 (to which this Act relates).</p>
Ministry of Business, Innovation, and Employment	Building Amendment Act 2012	sections 6(1)-(3), (7), and (8), 7, 11 and 12, 15-17, 21 and 22, 28, 30-35, 36(1) and (2), 37 and 38, 52, 55, 57(3) and (4), 58, 60, 62(1) and (3), 66, 72 and 73, 76-80, 84-86, 88(1), 89, 93(1)-(4), and 95	<p><b>Departmental comment:</b></p> <p>Provision was made in the Building Amendment Act 2012 for a risk-based consenting regime, to be brought into force by Order in Council once the Government was satisfied that a number of pre-conditions had been met. MBIE is working to test the relevant aspects of the risk-based consenting regime against what is now known about the current state of the building and construction sector, and using a whole-of-system approach to explore other options for meeting the objectives. This work will inform policy decisions to be made by the Minister for Building and Construction and Cabinet regarding the provisions in the Act.</p>
Ministry of Transport	Civil Aviation Amendment Act 1992	section 35(1)-(3)	<p><b>Departmental comment:</b></p> <p>Relates to removal of exclusive right of Airways Corporation to provide certain services.</p> <p>The review of the Civil Aviation Act 1990 has resulted in a decision to repeal these provisions. This will be implemented through the Civil Aviation Bill that is currently being developed.</p>

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Ministry of Transport	Civil Aviation Amendment Act 2007	sections 4(1), 6, 12(1), 18, and 19(4), and Part 3 of the Schedule	<p data-bbox="1144 302 1398 331"><b>Departmental comment:</b></p> <p data-bbox="1144 354 1455 383">Relates to civil aviation security.</p> <p data-bbox="1144 406 1759 850">The aviation security risks facing aircraft operations to, from and within New Zealand is kept under regular review. The usefulness of deploying in-flight security officers (IFSOs) to mitigate these risks is, in part, dependent on these risk reviews and related discussions with aviation security partner countries. This in turn would feed into an assessment of whether it is necessary to bring the IFSO-related provisions of the Civil Aviation Amendment Act 2007 and the Aviation Crimes Amendment Act 2007 into force. While there are ongoing 'live' discussions about the introduction of IFSOs, the provisions will remain latent and our intention is that these are preserved through the Civil Aviation Bill that is currently being developed.</p> <p data-bbox="1144 873 1759 1078">Some contingency planning has been done, for example, to consider what operational arrangements would need to be agreed with other countries with IFSO programmes and to provide for facilities for the safe disarming of IFSOs at airports – this planning is ongoing. Any New Zealand IFSO capability will be provided by the New Zealand Police.</p>

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Ministry for the Environment	Climate Change Response Act 2002	Schedule 3 (subparts 2 and 4 of Part 5) and Schedule 4 (subpart 2 of Part 2)	<p><b>Departmental comment:</b></p> <p>These provisions relate to surrender obligations for agricultural activities and unit entitlements for storing carbon dioxide after capture under the New Zealand greenhouse gas emissions trading scheme.</p> <p>The Climate Change Response (Emissions Trading Reform) Amendment Act 2020 has updated some of these latent legislation provisions (refer amended section 2A(5B) and (5D) of the Climate Change Response Act 2002). Subpart 2 of Part 5 of Schedule 3 will apply on and after a date appointed by Order in Council. Subpart 3 of Part 5 of Schedule 3 will apply on or after the later of 1 January 2024 or a date appointed by Order in Council (subject to the operation of section 219, which can set an earlier date by Order in Council in certain circumstances). Schedule 4 remains unchanged.</p>
Ministry of Foreign Affairs and Trade	Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018	sections 4-8, 28, 38, 39, 40(3) and (4), 41-43, 44(5)-(8), 45-56, 73-76, 90(1), 91(1), and Schedule 2	<p><b>Departmental comment:</b></p> <p>The Act implements New Zealand's obligations under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The sections of the Act listed here relate to the Trans-Pacific Partnership (TPP) only (not CPTPP) and are designed to be brought into force by Order in Council only when the TPP enters into force for New Zealand. This could not happen unless a sufficient number of other TPP Parties, including the US, ratified TPP.</p>

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Department of Conservation	Conservation Amendment Act 1996	section 24	<p data-bbox="1144 302 1394 326"><b>Departmental comment:</b></p> <p data-bbox="1144 354 1759 415">Relates to new sections 26ZJA and 26ZJB of the Conservation Act 1987 (the Act).</p> <p data-bbox="1144 431 1759 703">The New Zealand Fish and Game Council presented proposals for the licensing of commercial sports fishing guides to the Minister of Conservation in 2016 and 2018. Both proposals were rejected by the Minister. The Department of Conservation has since been working with the New Zealand Fish and Game Council to develop a licensing proposal and is about to begin preliminary discussions with other Government agencies on that proposal.</p> <p data-bbox="1144 727 1759 1032">Fish and game councils are statutory bodies created under sections 26B and 26P of the Conservation Act 1987. The functions of the 12 regional fish and game councils are to manage, maintain, and enhance sports fish and game bird resources in the recreational interests of anglers and hunters (section 26Q of the Act). The overarching New Zealand Fish and Game Council has a statutory function to advise the Minister of Conservation on issues relating to sports fish and game (section 26C(1)(b) of the Act).</p> <p data-bbox="1144 1057 1759 1190">Fish and game councils are public entities but not Crown entities (see references to other Acts contained in section 26W of the Act). The councils are independent of the Government and are not subject to Ministerial direction in regard to policy.</p>

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Ministry of Business, Innovation, and Employment	Gas Amendment Act 2004	Part 4A, subpart 3 (sections 43ZZG-43ZZQ to be inserted into principal Act by section 5)	<p data-bbox="1144 302 1398 326"><b>Departmental comment:</b></p> <p data-bbox="1144 350 1759 415">Relates to the alternative mechanism of an Energy Commission as regulator of the gas sector.</p> <p data-bbox="1144 440 1759 740">The purpose of subpart 3 of Part 4A of the Gas Amendment Act 2004 is to provide the legislation necessary to establish an alternative body to the Gas Industry Company (GIC) to govern New Zealand's gas industry. Section 3 of the Gas Amendment Act 2004 prescribes a specific process that must be followed before subpart 3 of Part 4A can be commenced. That process involves extensive consultation requirements including consultation on the reasons that the responsible Minister considers the GIC should be replaced.</p> <p data-bbox="1144 764 1759 1182">Section 3 and the latent provisions in subpart 3 of Part 4A of the Gas Amendment Act 2004 are integral parts of a legislative model designed to reflect Parliament's intention to regulate the gas industry by co-regulation. Subpart 3 of Part 4A will be brought into force if (and only if) the Minister, following completion of the process prescribed in section 3 and on the advice of the Ministry of Business, Innovation, and Employment (MBIE), considers that the Gas Industry Company is not performing satisfactorily. The effect of the Minister's decision to commence subpart 3 of Part 4A is significant; it involves abandoning the current model of co-regulation in favour of a model of government regulation.</p>

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			<p>In light of Parliament's intention to regulate the gas industry by a model of co-regulation, MBIE regularly monitors and assesses the performance of the GIC by:</p> <ol style="list-style-type: none"> <li>1. undertaking annual reviews of the GIC levy-setting process and statement of Proposal; and</li> <li>2. overseeing various GIC Work Programmes; and</li> <li>3. reviewing the Quarterly Reports and Annual Report published by the GIC.</li> </ol> <p>The GIC is delivering on several large work programmes, and has recently facilitated an industry-led process for an updated Gas Transmission Access Code (GTAC). At this point in time MBIE does not consider that there are reasons for the Minister to commence the process under subpart 3 of Part 4A of the Gas Act 1992.</p>



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Ministry of Health	Human Tissue Act 2008	sections 87 and 88	<p data-bbox="1144 302 1394 331"><b>Departmental comment:</b></p> <p data-bbox="1144 354 1759 626">The Ministry of Health recommends that sections 87 and 88 of the Human Tissue Act 2008 be retained. They reflect Parliament's intention to provide for the possibility of a stand-alone organ donor register to be established in the future. The recently published organ donation strategy mandates work towards a donor register separate from the driver licence register. If that comes about, the amendments provided for in those sections would be required.</p> <p data-bbox="1144 649 1759 922">Sections 87 and 88 of the Human Tissue Act 2008 provide for organ donor information presently held on the national register of driver licences to be disclosed to the national organ donor register, should such a donor register be established by regulations under section 78 of the Human Tissue Act. They allow the Transport Agency to continue collecting and disclosing information for a period of 5 years, to allow a smooth transition to the new register.</p> <p data-bbox="1144 945 1759 1175"><i>Increasing Deceased Donation and Transplantation: A National Strategy</i>, was published in June 2017. It provides for improvements to the recording and use of information on the driver license register in the short term. In the longer term, the Strategy includes work toward establishing a separate register of people's donation wishes, attached to the proposed national electronic health record.</p> <p data-bbox="1144 1198 1759 1330">A national organ donation agency is being established within the New Zealand Blood Service, and will be in place before the end of the year. Timeframes for implementing components of the Strategy will be considered once the agency is established.</p>

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Ministry of Business, Innovation, and Employment	Immigration Act 2009	sections 100, 104, and 400(l)	<p data-bbox="1144 305 1394 329"><b>Departmental comment:</b></p> <p data-bbox="1144 354 1759 662">Section 100: Collection of biometric information from proposed arrivals - Immigration New Zealand's digital strategy and roadmap includes an ongoing programme to extend and enhance the use of biometrics, in line with global trends under which governments and the private sector are using biometrics more to verify traveller identities before travel and on arrival. MBIE seeks to retain this provision as it is planned to be used within the next few years (noting that the NZ citizen exclusion may need to be reviewed as part of the work signalled below).</p> <p data-bbox="1144 686 1759 1060">Section 104: New Zealand citizens arriving in New Zealand to be photographed – photographs are currently taken at the border by consent of people purporting to be New Zealand citizens to verify their identity (this section would make that mandatory). MBIE is proposing to commence a review of relevant legislation in 2020 to reflect global changes in technology and understandings of threats, and will consider this section as part of that work. That consideration will include whether to bring this section into effect and if so whether to enable MBIE to retain New Zealand citizen photographs for biometric matching purposes.</p> <p data-bbox="1144 1092 1759 1295">Section 400(l): Regulations to exempt categories of people - the further implementation of biometric enrolment will inform policy and regulations around categories of exemptions. It is therefore recommended that this section be retained, as any future regulations requiring biometric enrolment are likely to benefit from exemptions (such as for guests of government).</p>

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Ministry of Business, Innovation, and Employment	Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005	sections 3(2)(g), (i), and (s), and 53	<p data-bbox="1144 305 1398 329"><b>Departmental comment:</b></p> <p data-bbox="1144 354 1759 557">Work on the regulations defining types of registered health professionals and treatment providers has been completed and the provisions were brought into force on 1 October 2019. Sections 3(2)(g) and 3(2)(i) are not being brought into force as this would leave terms undefined in the Accident Compensation Act 2001 (the AC Act).</p> <p data-bbox="1144 581 1759 816">Further policy work is required to determine the approach to section 3(2)(g). Section 3(2)(i) will not be brought into force as it only allows the repeal of the definition. The definition needs to be repealed and substituted in the AC Act in order to cross-reference the definition to the aforementioned regulations. When this occurs, the definition will be added to the regulations.</p> <p data-bbox="1144 841 1759 1006">Due to the above approach to section 3(2)(i), section 53 will not be brought into force at this time so that the Minister can retain the ability to limit the definition through a <i>Gazette</i> notice. When the definition is moved to the Regulations, it can then be repealed.</p>

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Te Arawhiti	Ngāti Tūwharetoa Claims Settlement Act 2018	sections 92-94	<p><b>Departmental comment:</b></p> <p>Sections 92 to 94 of the Ngāti Tūwharetoa Claims Settlement Act require the Order in Council to be brought into effect on the decision of joint Ministers of Treaty and Conservation. As yet, they have not made a decision because settlement negotiations with Taupō Hot Springs are ongoing. While a settlement agreement is not strictly required for the Ministers to make the decision, the Crown is making best efforts to reach agreement in order for the decision to be made and the Order in Council to be brought into effect, and thus avoiding potential costly litigation.</p>
Ministry of Foreign Affairs and Trade	Nuclear-Test-Ban Act 1999	whole Act	<p><b>Departmental comment:</b></p> <p>The Nuclear-Test-Ban Act 1999 seeks to implement New Zealand's obligations under the Comprehensive Test Ban Treaty (CTBT). The Act, like other legislation to implement obligations under a specific treaty, is to be brought into force by Order in Council only once the treaty itself is in force.</p> <p>At present the CTBT is not in force. It will enter into force once all 44 Annex 2 countries under the CTBT have ratified the treaty.</p> <p>At this point it is difficult to predict when the CTBT will enter into force.</p>

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Ministry of Business, Innovation, and Employment	Personal Property Securities Amendment Act 2011	section 5 to the extent that it relates to subparagraph (iv) of section 167A(1)(b) (as inserted by the Amendment Act) of the Personal Property Securities Act 1999	<p><b>Departmental comment:</b></p> <p>Primary legislative change is required before section 167A(1)(b)(iv) can be brought into effect.</p> <p>The necessary amendment has now been made through the Senior Courts Act 2016. However, the High Court Rules will need to be amended before this subsection can be brought into effect. (The Senior Courts Act re-enacted the High Court Rules without any amendments being made.)</p> <p>The Ministry of Justice has prepared drafting instructions to be issued by the Chair of the Rules Committee. These Rules are likely to be progressed through Cabinet in 2020.</p>
Ministry of Social Development	Social Security Act 2018	sections 109(2)(h) and (j), 165 (and the cross-heading above it), 168, 268 (paragraph (c) of the definition of young person obligation), 275, 276, 431(e)(v), and clauses 69 to 76 of Schedule 1	<p><b>Departmental comment:</b></p> <p>These provisions relate to youth services to 18 and 19 year olds without dependent children who are receiving jobseeker support and are at significant risk of long-term welfare dependency. They cannot be brought into force until funding for the purpose is appropriated.</p>
Treasury	State-Owned Enterprises Amendment Act 2012	sections 8(5) and 11(4)	<p><b>Departmental comment:</b></p> <p>The sections of the State-Owned Enterprises Amendment Act 2012 that have not yet been brought into force relate to Solid Energy New Zealand Limited. Solid Energy has been liquidated and removed from the register of companies. These sections will therefore never be brought into force as Solid Energy no longer exists and will be repealed.</p>

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Treasury	State-Owned Enterprises (Meteorological Service of New Zealand Limited and Vehicle Testing New Zealand Limited) Amendment Act 1999	section 3(7)-(10)	<p><b>Departmental comment:</b></p> <p>This section relates to a situation where Meteorological Service of New Zealand Limited ceases to be a State enterprise. The status of this section will be reviewed at a future date.</p>
Ministry of Business, Innovation, and Employment	Tariff (PACER Plus) Amendment Act 2018	whole Act	<p><b>Departmental comment:</b></p> <p>This legislation will come into force once enough signatories (8) ratify the PACER Plus trade agreement and notify the Depository country (Tonga). Once New Zealand is informed of this by Tonga, the Tariff (PACER Plus) Amendment Act 2018 Commencement Order 2020 will provide for the exact date that the Act comes into force.</p>

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Inland Revenue Department	Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020	sections 235 and 239(3)	<p>The Privacy Act 1993 permits the sharing of information between government agencies by way of an information sharing agreement that has been approved by Order in Council (OIC). Prior to recommending the making of any such OIC, section 96N(2)(e) of the Privacy Act requires the relevant Minister to be satisfied that any potential conflicts between the sharing of information under the agreement and any other enactment have been identified and appropriately addressed.</p> <p>When developing a proposal to share information between the Inland Revenue Department (IRD), the Serious Fraud Office (SFO), the New Zealand Police and the New Zealand Customs Service to combat serious crime, the IRD considered there could potentially be a conflict between an existing provision (Schedule 7, part A, clause 7) of the Tax Administration Act 1994 (TAA), which permits the IRD to share information with the SFO, and the proposed information sharing agreement.</p> <p>Sections 235 and 239(3) of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 (the amendment Act), if brought into force by OIC, would address this potential conflict by repealing Schedule 7, part A, clause 7 of the TAA and a cross-reference to that clause in section 143D of the TAA.</p> <p>Following the finalisation of the proposed information sharing agreement, the IRD has now determined there will be no conflict between Schedule 7, part A, clause 7 of the TAA and the proposed information sharing agreement. Therefore, the IRD considers it unnecessary and undesirable for sections 235 and 239(3) of the amendment Act to be brought into force by OIC, and will be recommending that these provisions be repealed by a taxation omnibus bill.</p>

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Department of Conservation	Wildlife Amendment Act 1996	section 6	<p data-bbox="1144 302 1394 326"><b>Departmental comment:</b></p> <p data-bbox="1144 354 1598 378">Relates to new section 22A of the principal Act.</p> <p data-bbox="1144 406 1759 748">The New Zealand Fish and Game Council has been working with the Department of Conservation to develop proposals for the licensing of commercial sports fishing guides. However, no proposals have been suggested for the licensing of commercial game bird hunting guides – to which the new section 22A of the Wildlife Act relates. The Department plans to formally write to the New Zealand Council advising that if no adequate reason can be provided for the licensing of game bird hunting guides, the Department intends advising Parliamentary Counsel of this in 2021.</p> <p data-bbox="1144 773 1759 868">(Refer above to comment about the Conservation Amendment Act 1996 for details about the independence of fish and game councils.)</p>