

# PCO REPORT

Chief Parliamentary Counsel to the Attorney-General

Legislation to be brought into force  
by Order in Council as at 1 July 2021



## Legislation waiting to be brought into force by Order in Council (as at 1 July 2021)

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

The Acts are listed alphabetically and departmental comments apply as at **1 July 2021**.

Act	Provisions not in force	Ministry of Foreign Affairs and Trade
<b>Antarctica (Environmental Protection: Liability Annex) Amendment Act 2012</b>	Whole Act	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, 18 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.
Act	Provisions not in force	Ministry for Primary Industries
<b>Aquaculture Reform (Repeals and Transitional Provisions) Act 2004</b>	Section 33	<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> <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>

		In April 2021 officials provided Ministers with advice about an overall approach to achieve a comprehensive biosecurity system for aquaculture. A component of that work programme includes bringing section 33 of the Reform Act into force. Further policy work is underway on this matter, with decisions expected to be made in 2022.
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry of Transport</b>
<b>Aviation Crimes Amendment Act 2007</b>	Sections 4(1), 9, and 10	Relates to aviation security measures.  See departmental comment on the Civil Aviation Amendment Act 2007 (to which this Act relates).
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry of Business, Innovation and Employment</b>
<b>Building Amendment Act 2012</b>	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	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.
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry of Transport</b>
<b>Civil Aviation Amendment Act 1992</b>	Section 35(1)–(3)	Relates to removal of exclusive right of Airways Corporation to provide certain services.  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.
<b>Civil Aviation Amendment Act 2007</b>	Sections 4(1), 6, 12(1), 18, and 19(4), and Part 3 of the Schedule	Relates to civil aviation security.  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.

		<p>While there are ongoing 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>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>
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry for the Environment</b>
<b>Climate Change Response Act 2002</b>	Schedule 3 (subparts 2 and 4 of Part 5) and Schedule 4 (subpart 2 of Part 2)	<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 4 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>
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry of Foreign Affairs and Trade</b>
<b>Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018</b>	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>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>
<b>Act</b>	<b>Provisions not in force</b>	<b>Department of Conservation</b>
<b>Conservation Amendment Act 1996</b>	Section 24	<p>Relates to new sections 26ZJA and 26ZJB of the Conservation Act 1987 (the Act).</p> <p>The Department of Conservation has been working with the New Zealand Fish and Game Council to develop a proposal for the licensing of commercial sports fishing guides. We are about to begin preliminary discussions with other</p>

		<p>Government agencies on that proposal. This consultation with other agencies has been delayed by Covid-19 and urgent work on other sports fishing matters.</p> <p>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>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>
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry for Business, Innovation and Employment</b>
<b>Gas Amendment Act 2004</b>	Part 4A, subpart 3 (sections 43ZZG–43ZZQ to be inserted into principal Act by section 5)	<p>Relates to the alternative mechanism of an Energy Commission as regulator of the gas sector.</p> <p>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>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 GIC 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> <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;</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, including work to determine if gas industry settings are fit-for-purpose as we decarbonise the New Zealand economy. 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>
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry of Health</b>
<b>Human Tissue Act 2008</b>	Sections 87 and 88	<p>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. <i>Increasing Deceased Donation and Transplantation: A National Strategy</i> (the Strategy) published in June 2017 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>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>The Strategy recommends 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>A national organ donation agency was established within the New Zealand Blood Service in 2020. Timeframes and approach for implementation of the remaining components of the Strategy are under consideration by the Ministry of Health.</p>

Act	Provisions not in force	Ministry for Business, Innovation and Employment
<b>Immigration Act 2009</b>	Sections 100, 104, and 400(l)	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).
<b>Injury Prevention, Rehabilitation, and Compensation Amendment Act (No 2) 2005</b>	Sections 3(2)(g), (i), and (s), and 53	<p>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>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>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>
Act	Provisions not in force	Ministry of Foreign Affairs and Trade
<b>International Crimes and International Criminal Court Amendment Act 2020</b>	Sections 4, 5, and 7	<p>This Amendment Act amends the International Crimes and International Criminal Court Act 2000 in order to incorporate war crimes amendments made to the Rome Statute of the International Criminal Court in 2010, 2017, and 2019.</p> <p>These Rome Statute amendments will enter into force for New Zealand on 14 October 2021, so an Order in Council will be prepared to bring these sections into force on the same day.</p>
<b>Nuclear-Test-Ban Act 1999</b>	Whole Act	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>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>
<b>Act</b>	<b>Provisions not in force</b>	<b>Ministry of Social Development</b>
<b>Social Security Act 2018</b>	Sections 109(2)(h) and (j), 165 (and the cross-heading above it), 168, 268 (paragraph (c) of the definition of <b>young person obligation</b> ), 275, 276, 431(e)(v), and clauses 69–76 of Schedule 1	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.
<b>Act</b>	<b>Provisions not in force</b>	<b>Treasury</b>
<b>State-Owned Enterprises Amendment Act 2012</b>	Sections 8(5) and 11(4)	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.
<b>State-Owned Enterprises (Meteorological Service of New Zealand Limited and Vehicle Testing New Zealand Limited) Amendment Act 1999</b>	Section 3(7)–(10)	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.
<b>Act</b>	<b>Provisions not in force</b>	<b>Inland Revenue Department</b>
<b>Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020</b>	Sections 235 and 239(3)	These provisions, if brought into force by Order in Council, would repeal an existing provision (schedule 7, part A, clause 7) of the Tax Administration Act 1994 (TAA), which permits the Inland Revenue Department (IRD) to share information with the Serious Fraud Office (SFO), as well as a cross-reference to that clause in section 143D of the TAA. This was intended to prevent a potential conflict with a new Approved Information Sharing Agreement between the IRD, the SFO, the New Zealand Police and the New Zealand Customs Service to combat serious crime (the Serious Crime AISA), which came into force on 1 October 2020.

		<p>However, it became apparent after the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 was enacted in March 2020 that schedule 7, part A, clause 7 of the TAA would not conflict with the Serious Crime AISA as they each allow for the sharing of different information. As both mechanisms serve a useful purpose, the repeal of schedule 7, part A, clause 7 of the TAA is no longer considered necessary or desirable.</p> <p>Consequently, the repeal of sections 235 and 239(3) of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 has been approved for inclusion in the next taxation omnibus bill, which is scheduled to be introduced later this year.</p>
<b>Act</b>	<b>Provisions not in force</b>	<b>Department of Conservation</b>
<b>Wildlife Amendment Act 1996</b>	Section 6	<p>Relates to new section 22A of the principal Act.</p> <p>The New Zealand Fish and Game Council recently advised the Department of Conservation that it has directed Council staff to work with regional fish and game councils to develop proposals for the licensing of commercial game bird hunting guides. The Department of Conservation will monitor progress on this work.</p> <p>(Refer above to comment about the Conservation Amendment Act 1996 for details about the independence of fish and game councils.)</p>