

REPUBLIC OF VANUATU

BILL FOR THE
OZONE LAYER PROTECTION
ACT NO. OF 2018

Explanatory Note

Ozone depleting substances (ODS) are man-made chemicals that exist as gases. These chemicals are used in refrigerators and air conditioners, fire extinguishers and as cleaning agents or solvents. However, the increase use of ODS have been scientifically proven to destroy the ozone layer – a naturally occurring layer of the earth’s atmosphere.

This has led to the development of international agreements to protect the ozone layer and phase-out the use of ODS across the world.

Vanuatu is a party to both the Vienna Convention and the Montreal Protocol and has implemented these agreements through the *Ozone Layer Protection Act No. 27 of 2010* (the OLP Act) and the *Ozone Layer Protection (Fees and Penalty Notice) Regulations*. The OLP Act is administered by the Department of Environmental Protection and Conservation (the Department).

The Bill has 4 main policy objectives:

1 Implementation of the Kigali Amendment

The Kigali Amendment amends the Montreal Protocol to phase-down the production and consumption of the ODS alternatives (HFCs) which are greenhouse gases that contribute to global warming therefore climate change.

Under the Kigali Amendment, parties are required to gradually reduce their HFC consumption.

As Vanuatu became a party to the Kigali Amendment in April 2018, we have an obligation to phase-down our HFC consumption. To do so, the OLP Act must be amended to include HFCs in the existing licensing and permitting system.

2 Ban on the import of manufactured products (equipment) that contain or use HCFCs

Under the Montreal Protocol, HCFCs are being phased out and from 2030 will no longer be able to be used. To prevent Vanuatu from becoming a dumping ground for such manufactured products, the Bill introduces a prohibition on the import of manufactured products that contain or use HCFCs.

3 Applying consistent terminology both within the OLP Act and between the OLP Act and the Montreal Protocol and remove ambiguity, repetition and incorrect cross references

The use of these different terms and different definitions in the OLP Act are slightly different to those used in the Montreal protocol and has proved confusing for stakeholders. The Bill removes these differences and other inconsistencies and provides clear definitions.

The Bill also fixes some current issues with the OLP Act such as the inconsistent use of terms and discrepancies between the OLP Act and other legislation administered by the Department.

4 Simplifying the existing registration, licensing and permitting regime

One of the key challenges with the OLP Act is the complexity of the existing regulatory regime.

The Bill simplifies the existing registration, licences and permitting regime: for example:

- (a) It reduces the number/types of licences and permits required to import controlled substances.
- (b) It replaces these current permits and licences with a single import permit. This reflects the Department's current practice of using a single application form and will improve and simplify how the Department's processes are captured in the customs system (currently ASYCUDA WORLD).
- (c) It changes import and export permit requirements to a per-shipment basis.
- (d) Permits are currently granted on an annual basis. One of the key changes introduced by the Bill is to change the granting of import and export permits to a per shipment basis. For example, a person importing a controlled substance must apply for an import permit each time they import the controlled substance. This will simplify the relationship between the Customs Act and the OLP Act, make processing shipments at the border more straightforward and make it easier to keep track of the amount of controlled substances that are coming into Vanuatu. This in turn, will enable the Department to provide more accurate annual reports as required under the Montreal Protocol.
- (e) It introduces a sales permit. This new permit is being introduced to address the concerns raised by the refrigeration and air conditioning (RAC) sector regarding the unregulated sale and purchase of controlled substances.
- (f) It clarifies the qualifications and experiences needed to be licenced to handle controlled substances.

The Bill repeals the Ozone Layer Protection Act No. 27 of 2010.

Minister of Climate Change Adaptation, Geo-Hazard, Environment and Energy



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REPUBLIC OF VANUATU

BILL FOR THE OZONE LAYER PROTECTION ACT NO. OF 2018

An Act to give effect to Vanuatu's obligations under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol, and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY MATTERS

1 Interpretation

(1) In this Act, unless the contrary intention appears:

arrival has the same meaning as in the Customs Act No. 7 of 2013;

authorised officer means the authorised officer appointed by the Director under section 7;

controlled substance means any controlled substances specified in the Schedule:

- (a) whether existing alone or in a mixture; or
- (b) including:
 - (i) any controlled substances that have been or are in the process of being recovered, recycled or reclaimed; or
 - (ii) the isomers of any such controlled substances, except as specified in the relevant Annex of the Schedule; or
 - (iii) any controlled substances in a container used for the transportation or storage of that controlled substance;

Convention means the Vienna Convention for the Protection of the Ozone Layer (Ratification) Act No. 3 of 1994;

craft has the same meaning as in the Customs Act No. 7 of 2013;

destruction means the process which, when applied to controlled substances, results in the permanent transformation, or decomposition of all or a significant portion of such controlled substances;

Department means the Department of Environmental Protection and Conservation;

Director means the Director of the Department of Environmental Protection and Conservation;

export and **exportation** means to take or cause to be taken out of Vanuatu;

handle means:

- (a) recovering, recycling or reclaiming a controlled substance; or
- (b) doing anything with a manufactured product that involves a risk of a controlled substance being emitted into the atmosphere, including installing servicing, recharging repairing or decommissioning a manufactured product;

HCFC means a hydrochlorofluorocarbon specified in Annex C, Group I of the Schedule;

HFC means a hydrofluorocarbon specified in Annex F of the Schedule;

import and **importation** means to bring or cause to be brought into Vanuatu;

manufactured product means any of the following manufactured products that contain a controlled substance or that are designed to use a controlled substance:

- (a) dry-cleaning machines; or
- (b) fire extinguishers; or

- (c) automobile and truck air conditioning units (whether incorporated in vehicles or not); or
- (d) marine and transportation refrigeration; or
- (e) domestic, commercial and industrial refrigerators, freezers, chillers, dehumidifiers, water coolers, ice machines, display cabinets, cold storage systems, air conditioning and heat pump units and any other refrigeration and air conditioning or heat pump equipment; or
- (f) any other product prescribed by the Regulations;

Minister means the Minister responsible for Environmental Protection and Conservation;

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer (Ratification) Act No. 4 of 1994, and includes all of the following amendments to the Protocol as ratified by Parliament :

- (a) the 1997 Montreal Amendment to the Montreal Protocol on substances that deplete the Ozone Layer (Ratification) Act No. 21 of 2010; and
- (b) the 1999 Beijing Amendment to the Montreal Protocol on substances that deplete the Ozone Layer (Ratification) Act No. 20 of 2010; and
- (c) Kigali amendment to the Montreal Protocol on Substances that Deplete the Ozone layer Act No. 38 of 2017; and
- (d) any other amendments to the Montreal Protocol that will be ratified by the Parliament;

reclamation means the re-processing and upgrading of a recovered controlled substance through such mechanisms as filtering, drying, distillation and chemical treatment in order to restore the controlled substance to a specified standard of performance which often involves processing ‘off-site’ at a central facility;

recovery means the collection and storage of controlled substances from manufactured products, machinery, equipment and containment vessels, during servicing or prior to disposal;

recycling means the re-use of a recovered controlled substance following a basic cleaning process such as filtering and drying;

sale means a method of disposition for valuable consideration (including barter), and includes:

- (a) the disposition to an agent for sale on consignment; or
- (b) offering for sale or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting any of these things to be done; or
- (c) the disposal by way of lottery, raffle or game of chance,

and **sell** and **sold** have corresponding meanings;

- (2) Words used in this Act have the same meaning as is given in the Montreal Protocol or in a decision of the meetings of the parties to the Montreal Protocol, unless a contrary intention appears.

2 Objectives of the Act

The objectives of this Act are to:

- (a) protect human health and the environment from adverse effects resulting or likely to result from human activities, which modify or are likely to modify the ozone layer; and
- (b) phase out controlled substances and manufactured products as soon as possible except for essential uses; and
- (c) give effect to Vanuatu's obligations under the Convention and the Montreal Protocol.

3 Precautionary principle

- (1) Without limiting any provisions in any other Act, any person or agency must apply the precautionary principle when performing the functions or exercising the powers of this Act.
- (2) For the purposes of this Act, the precautionary principle is applied if:
 - (a) in the event of a threat of damage to the environment; or

(b) there is a risk to human health,

there is no scientific certainty regarding the extent of adverse effects which resulted in preventing or avoiding a decision to be made to minimise the potential adverse effects or risks from the import, export, manufacture, sale, use, transportation and storage, recovery, recycling, reclamation or destruction of controlled substances or manufactured products.

PART 2 ADMINISTRATION

4 Functions of the Director

The Director has the following functions:

- (a) to implement the objectives of this Act; and
- (b) to survey, assess and analyse the import, export, manufacture, sale, use, transportation and storage, recovery, recycling, reclamation or destruction of controlled substances or manufactured products; and
- (c) to analyse possible future demands for any controlled substance; and
- (d) to establish a regular monitoring and audit process for data collection concerning the import, export, manufacture, sale, use, transportation and storage, recovery, recycling, reclamation or destruction of controlled substances or manufactured products; and
- (e) to submit reports as required under the Montreal Protocol; and
- (f) to administer the permits and licences provided under Part 4; and
- (g) to promote the research, development and exchange of information on the:
 - (i) best technologies for improving the containment, recovery, recycling, or destruction of controlled substances or otherwise reducing their emissions; and
 - (ii) possible alternatives for controlled substances, manufactured products, and for products manufactured with controlled substances; and
 - (iii) costs and benefits of relevant control strategies; and
- (h) to promote public awareness of the environmental effects of the emissions of:
 - (i) controlled substances; and
 - (ii) other substances that deplete the ozone layer; and
 - (iii) greenhouse gases; and

- (iv) to promote training programs about controlled substances for the refrigeration and air conditioning industry.

5 Powers of the Director

- (1) The Director has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act or any other Act.
- (2) Without limiting subsection (1), the Director has the power to establish codes of practice, standards, guidelines or operational procedures on matters related to controlled substances or manufactured products.

6 Delegation of functions and powers

- (1) The Director may, in writing, delegate to an officer of the Department or a person appointed under section 7, any of the Directors powers or functions under the Act, other than the power of delegation.
- (2) A delegation may be in relation to a particular matter or a class of matters.
- (3) The Director may at any time revoke or vary a delegation.
- (4) The Director may perform or exercise a function or power despite delegating the function or power under this section.

7 Appointment of authorised officers

- (1) The Director may appoint:
 - (a) an officer of the Department; and
 - (b) a suitably qualified and trained person who is not an officer of the Department; and
 - (c) a customs officer; and
 - (d) a police officer; and
 - (e) an officer of another department; and
 - (f) an officer of a Municipal Council; and
 - (g) an officer of a Provincial Government Council,

to be an authorised officer to perform or exercise any functions or powers that may be performed or exercised for the purposes of this Act, for a period of time as determined by the Director.

- (2) The authorised officer must ensure that the permit or licence holders are complying with the terms and conditions of their permits or licence as required under this Act.
- (3) The appointment of an authorised officer is to be published by notice in the Gazette.
- (4) The Director is to provide to each authorised officer under paragraphs (1)(a), (b), (e), (f) and (g), an identity card that will provide evidence of the identity of that person and of the appointment of that person as an authorised officer under this Act.
- (5) An authorised officer who holds an identity card issued under this section must, on the termination of his or her appointment, surrender the identity card to the Director.

PART 3 PROHIBITIONS AND RESTRICTIONS

8 Prohibition on imports

- (1) Subject to section 18, the importation of any controlled substances or manufactured products is prohibited.
- (2) Despite subsection (1), the Director of Customs may grant an exemption in respect of the import or subsequent export of any controlled substance or manufactured product only for the purpose of being transhipped into another craft for carriage to a destination that is outside the territorial limits of Vanuatu.
- (3) The Director of Customs is to consult with the Director prior to granting an exemption under subsection (2).
- (4) The Director of Customs must within 7 days of granting an exemption under subsection (2), notify the Director of the exemption.
- (5) If the Director is of the opinion that an exemption granted under subsection (2), should not have been made, he or she may request the Director of Customs to remove the exemption.
- (6) The Director of Customs has the discretion to retain or remove the exemption.

9 Prohibition of releasing controlled substances and manufactured products

The Director of Customs must obtain the prior written approval of the Director before releasing any controlled substances or manufactured products.

10 Prohibition on exports

- (1) Subject to sections 22, 28 and 29, the export of any controlled substances or manufactured products is prohibited.
- (2) Subsection (1), does not apply to a person who exports any manufactured products of a personal private nature or that is not exported for commercial purposes.

11 Prohibition on manufacture

The manufacture of any controlled substances or manufactured products is prohibited.

12 Prohibition on sale

- (1) Subject to subsection (2), the sale of any controlled substances or manufactured products is prohibited.
- (2) The sale of any controlled substances or manufactured products is prohibited unless:
 - (a) the controlled substance is authorised to be sold by a sales permit;
or
 - (b) the controlled substance or manufactured product is authorised to be imported by an import permit; or
 - (c) the manufactured product is a second hand product; or
 - (d) the controlled substance or manufactured product is sold by the Department after being seized or forfeited under this Act.

PART 4 PERMITS AND LICENCES

Division 1 General

13 Application

This division applies to all permits and licences granted under this Part.

14 Applications

- (1) A person who intends to apply for a permit or licence under this Part, must apply to the Director.
- (2) The application must:
 - (a) be in the form approved by the Director; and
 - (b) be accompanied by the prescribed application fee.
- (3) An application made by any department or agency of the Government, is exempt from paying the prescribed fee.
- (4) Upon receiving the application, the Director may require the applicant to provide additional information within a reasonable time.
- (5) To avoid doubt, once additional information requested under subsection (3), is provided to the Director, the information forms part of the application and the application is considered to be a complete application.
- (6) If the applicant fails to comply with a request made under subsection (3), within a reasonable time, the application will be taken to be withdrawn.

15 Granting permits and licences

- (1) Upon receiving the application under section 14, the Director may:
 - (a) grant the permit or licence with or without conditions; or
 - (b) refuse to grant the permit or licence.
- (2) The Director, in making a decision under this Part, must consider:
 - (a) the obligations required under the Convention and the Montreal Protocol; and

- (b) whether any alternative products are available to be used instead of the controlled substance or manufactured product; and
 - (c) whether the applicant has been convicted of any offence against this Act or any other offence involving controlled substances or manufactured products; and
 - (d) whether the applicant has the necessary skills, trained staff and equipment to minimise emissions of controlled substances; and
 - (e) any other matter prescribed by the Regulations.
- (3) The Director must not make a decision that is inconsistent with the obligations required under the Convention and Montreal Protocol.
- (4) The Director must notify the applicant, in writing, of his or her decision under subsection (1).
- (5) If the Director refuses to grant a permit or licence, the notification given under subsection (4), must include the reasons for the decision.

16 General provisions for permits and licences

- (1) A permit or licence granted under this Part is subject to such conditions imposed by the Director, including any condition requiring:
- (a) the submission of an annual report; and
 - (b) compliance with any approval, permission, licence or accreditation available in another country relating to:
 - (i) any controlled substances; or
 - (ii) any manufactured products; or
 - (iii) the manner in which a controlled substance may be used.
- (2) The Director is to:
- (a) maintain a register of persons who have been issued with a permit and licence under this part; and
 - (b) make the register available for public inspection.
- (3) A permit or licence must not be transferred.

- (4) The Director may revoke a permit or licence if he or she is satisfied that:
- (a) the permit or licence holder has been convicted of an offence against this Act or any other offence involving controlled substances or manufactured products; or
 - (b) the permit or licence holder has provided false or misleading information in relation to the application for the permit or licence; or
 - (c) the permit or licence holder has breached any of the conditions of the permit or licence; or
 - (d) the import of controlled substances or manufactured products contravenes any obligations under the Convention or the Montreal Protocol.
- (5) The Director, prior to revoking a permit or licence under subsection (4) must, inform the permit or licence holder in writing of his or her decision to revoke the permit or licence and give the permit or licence holder the opportunity to be heard.

Division 2 Permits

17 Application for an import permit

- (1) A person who intends to import:
- (a) Methyl bromide for a quarantine application or a pre-shipment application; or
 - (b) HCFCs; or
 - (c) HFCs; or
 - (d) manufactured products where the controlled substance is a HFC (the controlled substance contained in the manufactured product or the controlled substance that the manufactured product was designed to use, is a HFC); or
 - (e) manufactured products necessary for the protection of human life or human health; or
 - (f) any other controlled substances or manufactured products prescribed by the Regulations,

must apply to the Director for an import permit.

- (2) The application must:
- (a) be made in accordance with section 14; and
 - (b) be made for the arrival of each craft only; and
 - (c) be made in advance of the arrival of the craft transporting the controlled substance or manufactured product; and
 - (d) specify the controlled substance and manufactured product intended to be imported:
 - (i) for controlled substances - specify the amount of the controlled substance to be imported; and
 - (ii) for manufactured products - specify the:
 - (A) type and quantity of manufactured products to be imported; and
 - (B) weight and name of controlled substances in the manufactured products; and
 - (e) specify the country of origin of the controlled substance or manufactured product; and
 - (f) include the following information regarding:
 - (i) the craft transporting the controlled substance or manufactured product; and
 - (ii) the appointed port or airport at which the craft transporting the controlled substance or manufactured product will arrive; and
 - (iii) the intended date of arrival of the craft; and
 - (iv) any other matter prescribed by the Regulations.

- (3) For the purposes of this Part:

pre-shipment application means any treatment applied directly preceding and in relation to export, to meet the phytosanitary or sanitary requirements of the importing country, or the existing phytosanitary or sanitary requirements of the exporting country;

quarantine application means any treatment to prevent or control the introduction, establishment or spread of quarantine pests (including diseases).

18 Granting an import permit

- (1) An import permit granted under section 15 must state:
- (a) the craft to which it relates; and
 - (b) the anticipated time of arrival of the craft; and
 - (c) if the import permit is for a controlled substance:
 - (i) the controlled substance authorised to be imported under the import permit; and
 - (ii) the amount of the controlled substance authorised to be imported under the import permit; and
 - (d) if the import permit is for a manufactured product, the type and quantity of the manufactured product to be imported; and
 - (e) any other matter prescribed by the Regulations.
- (2) Where the controlled substance is subject to a consumption reduction as prescribed by the Regulations:
- (a) an import permit must not be granted for an amount that exceeds 50% of the quota prescribed for that calendar year; and
 - (b) the sum of the amounts of all import permits granted in a calendar year must not exceed the quota prescribed for that year; and
 - (c) if granting an import permit may result in the quota for that year being exceeded, the Director may:
 - (i) refuse the application; or

- (ii) grant the import permit only to the extent that the quota is not exceeded.

19 Application for a sales permit

- (1) A person who intends to sell:
 - (a) Methyl bromide for a quarantine application or a pre-shipment application; or
 - (b) HCFCs; or
 - (c) HFCs; or
 - (d) any other controlled substances prescribed by the Regulations, must apply to the Director for a sales permit.
- (2) The application must:
 - (a) be made in accordance with section 14; and
 - (b) specify the controlled substance intended to be sold.
- (3) A person who intends to renew a sales permit must apply:
 - (a) in accordance with section 14; and
 - (b) before the import permit expires.

20 Granting a sales permit

- (1) A sales permit granted under section 15 must state the controlled substance to which it relates.
- (2) A sales permit is valid for 1 year only.

21 Application for an export permit

- (1) A person who intends to export a controlled substance for destruction must apply to the Director for an export permit.
- (2) The application must:
 - (a) be made in accordance with section 14; and

- (b) be made for the departure of each craft only; and
- (c) be made in advance of the departure of the craft intended to export the controlled substance; and
- (d) specify:
 - (i) the controlled substance intended to be exported; and
 - (ii) the amount of the controlled substance to be exported; and
 - (iii) the destination city and country, and the receiving body of the controlled substance; and
 - (iv) how the receiving body will destroy the controlled substance; and
- (e) include:
 - (i) details of the appointed port or airport at which the craft exporting the controlled substance will depart; and
 - (ii) the intended date of departure of the craft; and
 - (iii) any other matter prescribed by the Regulations.

22 Granting an export permit

- (1) In addition to section 15, when making a decision to grant or refuse to grant an export permit, the Director must have regard to the decisions of the parties to the Montreal Protocol regarding technologies approved for the destruction of controlled substances.
- (2) An export permit for a controlled substance granted under section 15, must state:
 - (a) the craft to which it relates; and
 - (b) the anticipated time of departure of the craft; and
 - (c) the controlled substance authorised to be exported under the permit; and
 - (d) the amount of the controlled substance authorised to be exported under the permit; and

- (e) the destination city and country, and the receiving body of the controlled substance; and
- (f) the storage, movement and destruction of the controlled substance to be undertaken in accordance with accepted international best practices; and
- (g) any other matter prescribed by the Regulations.

23 Relationship with other legislation

Any import or export made under a permit issued under this Division, is subject to the Customs Act No. 7 of 2013 and the Plant Protection Act [CAP 239].

Division 3 Licences

24 Application for a licence to handle controlled substances

- (1) A person who intends to handle controlled substances must apply to the Director for:
 - (a) a licence to handle controlled substances; or
 - (b) a trainee licence to handle controlled substances.
- (2) The application must:
 - (a) be made in accordance with section 14; and
 - (b) if the application is for a licence to handle controlled substances, include proof that the applicant has:
 - (i) been awarded with any of the following qualifications:
 - (A) at least a certificate IV in refrigeration and air conditioning from a registered provider approved to deliver the accredited course to which the certificate relates; or
 - (B) at least a certification III in refrigeration and air conditioning from an overseas registered provider or accredited institution recognised under the Vanuatu Qualifications Authority Act No. 1 of 2014; or
 - (C) a qualification prescribed by the Regulations; or

- (ii) at least 5 years' experience in the industry and has completed the Good Practices in Refrigeration (GPR) course or an equivalent qualification recognised by the Director; or
- (c) if the application is for a trainee licence to handle controlled substances, include proof that the applicant:
 - (i) is enrolled in an accredited course that, upon completion, entitles the applicant to be awarded at least a certificate IV in refrigeration and air conditioning from a registered provider approved to deliver the accredited course in which the applicant is enrolled; or
 - (ii) is enrolled in a course that, upon completion, entitles the applicant to be awarded at least a certificate III in refrigeration and air conditioning from an overseas registered provider or accredited institution recognised under the Vanuatu Qualifications Authority Act No. 1 of 2014; or
 - (iii) is enrolled in a course prescribed by the Regulations; or
 - (iv) has at least 1 year experience in the industry and has completed the Good Practices in Refrigeration (GPR) course or an equivalent qualification recognised by the Director.
- (3) A person who intends to renew a licence to handle controlled substances or a trainee licence to handle controlled substances must apply:
 - (a) in accordance with section 14; and
 - (b) before the licence expires.
- (4) To avoid doubt, a person or employee of a company or an organisation that holds a permit granted under Division 2 must also be licensed under this section if that person or employee is the person undertaking the activities described under subsection (1).
- (5) For the purposes of this section:
accredited course has the same meaning as in the Vanuatu Qualifications Authority Act No. 1 of 2014;

qualifications has the same meaning as in the Vanuatu Qualifications Authority Act No. 1 of 2014;

registered provider has the same meaning as in the Vanuatu Qualifications Authority Act No. 1 of 2014.

25 Granting a licence

- (1) A licence to handle controlled substances or a trainee licence to handle controlled substances granted under section 15 is valid for not more than 2 years.

- (2) A trainee licence holder must be supervised by a person who holds a licence to handle controlled substances.

PART 5 ENFORCEMENT AND OFFENCES

26 Enforcement

- (1) Subject to subsections (2) and (3), an authorised officer may enter:
- (a) any land or building, other than a dwelling house, at any time; or
 - (b) a dwelling house at a reasonable time during daylight hours; or
 - (c) a vessel, ship, aircraft, vehicle or other form of conveyance at any time,
- for the purposes of investigating the commission of any offence or the breach or enforcing of any provisions under this Act or its Regulations.
- (2) The authorised officer must not exercise the powers conferred to him or her under subsection (1), except for the purposes of investigating an alleged offence where the authorised officer has reasonable grounds to believe that such entry may produce evidence in relation to that offence.
- (3) The authorised officer acting under this section may, if so required, produce an authenticated document showing his or her authority.
- (4) The owner or person in charge of any premises entered into by an authorised officer under subsection (1) and every person found in the premises are to give the authorised officer all reasonable assistance and provide him or her with information and samples as the authorised officer requires.
- (6) In exercising the powers under this section and section 27, the authorised officer may:
- (a) conduct such investigations and examinations as are necessary to monitor the effects of any activity, matter or thing relevant to controlled substances, or to determine whether any offence has been committed; and
 - (b) take samples for the purpose of analysis and testing; and
 - (c) take photographs or measurements or make sketches or recordings in any form; and

- (d) take possession of any controlled substances, manufactured products, machinery, equipment, plant or other thing for further examination or testing or for use as evidence; and
 - (e) require any person apparently associated with an activity under investigation to state his or her full name, occupation and usual place of residence; and
 - (f) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by this Act or its Regulations, and to make and take copies of such documents; and
 - (g) require from any person any assistance that is relevant to the investigation or monitoring activity; and
 - (h) seize any item used in the commission of an offence against this Act or its Regulations.
- (7) Any document or information collected under paragraph (6)(f) must not be disclosed unless the document or information is necessary to be disclosed:
- (a) for official purposes; or
 - (b) with the consent of the person who provided the document or information or to whom the information or document relates; or
 - (c) in a Court or Tribunal; or
 - (d) in the public interest.

27 Search warrants

- (1) A judicial officer may, issue a search warrant if the judicial officer is satisfied by information made on an application prepared by an authorised officer under oath, that;
- (a) there is reasonable grounds to suspect that there may be evidence of the commission of an offence against this Act or any Regulations made under this Act; or
 - (b) there are circumstances that provide reasonable grounds to suspect that a premises, vehicle or craft is intended to be used for the purpose of committing an offence against this Act or any Regulations made under this Act; or

- (c) anything that is liable to be seized under this Act.
- (2) In applying for a search warrant, an authorised officer must, after making the necessary enquiries, disclose in the application, details of the:
 - (a) place or thing specified; and
 - (b) offence or offences alleged; and
 - (c) result of such application or applications.
- (3) A search warrant must be:
 - (a) directed to and executed by a designated authorised officer; or
 - (b) directed to an authorised officers generally and be executed by 1 or more authorised officers.
- (4) A warrant may be issued subject to such reasonable conditions specified in the warrant.

28 Seizure

- (1) An authorised officer, in exercising a power under this Act or its Regulations, the Environmental Protection and Conservation Act [CAP 283] or its Regulations, or the Customs Act No. 7 of 2013 or its Regulations may, seize any:
 - (a) controlled substances; or
 - (b) manufactured products; or
 - (c) equipment used in connection with any controlled substances,that the authorised officer reasonably suspects is subject to a breach of any prohibition under this Act or its Regulations.
- (2) Any controlled substances, manufactured products or equipment seized under this section:
 - (a) is to be stored at a place and in a manner as directed by the Director; and

- (b) may be retained until such time as the Director is satisfied by its owner, or the person from whom it has been seized, that it is not or has not been subject to a breach of a prohibition under this Act or its Regulations.
- (3) If:
- (a) it is agreed by the owner of the controlled substance, manufactured product or equipment or the person from whom it has been seized that they are in breach of a prohibition under this Act or its Regulations; or
 - (b) the owner or the person from whom it has been seized has not satisfied the Director under paragraph (2)(b) within 6 months from the date of seizure,
- the controlled substance, manufactured product or equipment may be disposed as directed by the Director.
- (4) Without limiting subsection (3), the Director may:
- (a) sell the controlled substance, manufactured product or equipment; or
 - (b) issue a notice in writing requiring the owner of the controlled substance, manufactured product or equipment or the person from whom it has been seized to re-export the controlled substance, manufactured product or equipment.
- (5) A notice issued under paragraph (4)(b) must state:
- (a) when the re-export must occur; and
 - (b) where the controlled substance, manufactured product or equipment must go.
- (6) The cost of disposing of any controlled substances, manufactured products or equipment under this section is the responsibility of the owner or the person from whom it has been seized and may be recovered as a debt.

29 Forfeiture and duties to dispose

- (1) If a person is convicted of an offence against the provision of this Act or its Regulations, the Court may order that any controlled substances,

manufactured products or equipment in relation to which the offence was committed, be forfeited to the State.

- (2) Any controlled substances, manufactured products or equipment forfeited under subsection (1), is to be disposed of as determined by the Director.
- (3) Without limiting subsection (2), the Director may:
 - (a) sell the controlled substance, manufactured product or equipment;
or
 - (b) issue a notice in writing requiring the owner of the controlled substance, manufactured product or equipment or the person from whom it has been forfeited to re-export the controlled substance, manufactured product or equipment.
- (4) A notice issued under paragraph (4)(b) must state:
 - (a) when the re-export must occur; and
 - (b) where the controlled substance, manufactured product or equipment must go.
- (5) The cost of disposing of any controlled substances, manufactured products or equipment under this section is the responsibility of the owner or the person from whom it has been forfeited and may be recovered as a debt.

30 Call-up of controlled substances, manufactured products or equipment

The Director may issue a public notice requiring that any controlled substances, manufactured products or equipment used in connection with any controlled substances:

- (a) be stored or handled as directed by the Director; or
- (b) be delivered at a designated time to a designated place for storage or for transport and disposal; or
- (c) be disposed of or destroyed as directed by the Director.

31 Offences

- (1) A person who:

- (a) acts in contravention of any requirement or prohibition under this Act or its Regulations; or
- (b) aids or abets any person in contravening any requirement or prohibition under this Act or its Regulations; or
- (c) conspires with any person to do any act in contravention of any requirement or prohibition under this Act or its Regulations,

is guilty of an offence punishable on conviction:

- (A) in the case of an individual - by imprisonment for a term not exceeding 3 months, or a fine not exceeding VT2,500,000, or both; or
- (B) in the case of a body corporate - by a fine not exceeding VT5,000,000.

(2) A person who fails to comply with:

- (a) a permit or licence granted under Part 3; or
- (b) a notice given by the Director under this Part,

is guilty of an offence punishable on conviction:

- (A) in the case of an individual - by imprisonment for a term not exceeding 3 months, or a fine not exceeding VT2,500,000, or both; or
- (B) in the case of a body corporate - by a fine not exceeding VT5,000,000.

(3) A person who, in the course of handling controlled substances, wilfully or negligently permits any controlled substance to be emitted into the atmosphere is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 6 months, or a fine not exceeding VT1,000,000, or both.

(4) A person who:

- (a) hinders or obstructs an authorised officer in performing his or her duties or in exercising a power under this Act or its Regulations; or

- (b) induces or incites any other person to hinder or obstruct an authorised officer in performing his or her duties or in exercising a power under this Act or its Regulations; or
- (c) falsely represents that he or she is an authorised officer, or who otherwise impersonates an authorised officer; or
- (d) provides false or misleading information:
 - (i) to an authorised officer who is exercising a duty or power under this Act or its Regulations; or
 - (ii) in any application made under this Act or its Regulations; or
 - (iii) in any return or report required to be provided under this Act or its Regulations; or
 - (iv) in response to a request made by the Director under this Act or its Regulations,

is guilty of an offence punishable on conviction:

- (A) in the case of an individual person - by imprisonment for a term not exceeding 3 months or a fine not exceeding VT2,500,000, or both; or
 - (B) in the case of a body corporate - by a fine not exceeding VT5,000,000.
- (5) If a corporation, commits an offence under this Act, any officer, director or agent of the corporation who authorised, assented to or participated in, or by his or her neglect or omission contributed to the commission of the offence, is a party to and may be found guilty of the offence, and is to be liable to the penalty provided for the offence.

32 Penalty notice

- (1) An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed an offence under any provision of this Act or its Regulations.
- (2) A penalty notice is a notice to the effect that if the person served does not wish to have the matter determined by a Court, the person may pay within a time and to a person specified in the notice the amount of penalty

prescribed by the Regulations for the offence if dealt with under this section.

- (3) Payments made under this section are to be made at the Ministry of Finance and Economic Management which is then to be transferred into the Environmental Trust Fund established under the Environmental Protection and Conservation Act [CAP 283].
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.
- (7) The Regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section; and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (8) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a Court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

PART 6 MISCELLANEOUS PROVISIONS

33 Access to Customs information

The Director may require the Director of Customs to provide any bill of lading or airway bill or other relevant information relating to controlled substances or manufactured products containing controlled substance suspected of being imported or exported to or from Vanuatu.

34 Provision of information relevant to controlled substances

(1) The Director may make a written request to any person:

- (a) holding a licence or permit under this Act; or
- (b) who possesses or controls any controlled substances or manufactured products,

to submit reports or records relating to a controlled substance or manufactured product, or to provide relevant information or data for the purpose of reporting under the 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, is guilty of an offence punishable on conviction:

- (i) in the case of an individual - by imprisonment for a term not exceeding 3 months, or a fine not exceeding VT250,000, or both; or
- (ii) in the case of a body corporate - by a fine not exceeding VT500,000.

(3) For the purposes of reporting under the Convention and the Montreal Protocol, the Director has the power to access any information held by any Ministry or government agency relating to controlled substances in Vanuatu.

35 Protection from liability

A civil or criminal liability action is not to be taken against the authorised officer in respect of anything done or omitted to be done by the authorised officer in good faith in the execution or purported execution of his or her powers, functions or duties under this Act.

36 Proving controlled substances using refrigerant identifier

- (1) An allegation made on behalf of the State in any penalty notice, statement of claim, plea or information relating to the presence of a controlled substance is presumed to be true unless the contrary is proved.
- (2) The presumption in subsection (1) is not to be excluded by the fact that evidence is produced on behalf of the State in support of any such allegation.
- (3) Evidence produced on behalf of the State in support of any such allegation may include:
 - (a) evidence that:
 - (i) an authorised officer used a refrigerant identifier; and
 - (ii) the refrigerant identifier determined that a controlled substance was present; and
 - (b) information disclosed on the packaging of the controlled substance or manufactured product.
- (4) For the purposes of this section, **refrigerant identifier** means any device, instrument or system that is capable of identifying the presence of a controlled substance.

37 Regulations

- (1) The Minister may by Order make Regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may make Regulations for any or all of the following purposes:
 - (a) to amend the Schedule to make it consistent with any changes made to the Montreal Protocol;
 - (b) to impose requirements for the training and qualification of persons handling controlled substances and the permitting of importers, exporters and sellers;
 - (c) to impose duties and obligations on users of equipment used in connection with any controlled substances to avoid emitting the controlled substances to the atmosphere;

- (d) to adequately maintain the equipment and apply best practices in relation to the use, transportation and storage, recovery, recycling, reclamation or destruction of controlled substances;
 - (e) to impose consumption reduction, including annual quotas;
 - (f) to regulate the use of refrigerant identifiers, including approving the types of refrigerant identifiers that may be used to identify controlled substances;
 - (g) to apply incentives to encourage the change-over of manufactured products so as to minimise the use of controlled substances;
 - (h) to prescribe fees or charges in respect of any application made or service provided under this Act;
 - (i) to make any other arrangement that is required to implement and enforce the Convention or the Montreal Protocol;
 - (j) to prescribe fees and charges for the purpose of recovering any operational costs arising from requests for copies or access to material required to be kept by the Department under this Act or its Regulations;
 - (k) to establish codes of practice or standards for the transport, storage and labelling of controlled substances, manufactured products or equipment used in connection with any controlled substances.
- (3) Regulations made under this section may prescribe offences for breaches of the Regulations and impose penalties for such breaches to a fine not exceeding VT5,000,000.

38 Repeal

The Ozone Layer Protection Act No. 27 of 2010 is repealed.

39 Transitional provisions

- (1) This section applies to a person who, before or on the commencement of this Act:
- (a) has in stock to sell:
 - (ii) methyl bromide; or

- (ii) HCFCs; or
 - (iii) HFCs; or
- (b) is handling controlled substances.
- (2) The person must apply to the Director for the relevant permit or licence required under this Act.
- (3) The application made under subsection (2) must be made within 3 months from the commencement of this Act.
- (4) A person who has ordered a manufactured product where the controlled substance is a HCFC before the commencement of this Act, must import that manufactured product within 3 months of the commencement of this Act.
- (5) Any act under the Ozone Layer Protection Act No. 27 of 2010 before the commencement of this Act is to continue to have effect under this Act, on and after the commencement of this Act, until such time it is amended or revoke under by this Act.

40 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE
**ANNEX A
CONTROLLED SUBSTANCES**

Group	Substance	Ozone-Depleting Potential*	100-Year Global Warming Potential
<i>Group I</i>			
CFCI ₃	(CFC-11)	1.0	4 750
CF ₂ CI ₂	(CFC-12)	1.0	10 900
C ₂ F ₃ CI ₃	(CFC-113)	0.8	6 130
C ₂ F ₄ CI ₂	(CFC-114)	1.0	10 000
C ₂ F ₅ CI	(CFC-115)	0.6	7 370
<i>Group II</i>			
CF ₂ BrCl	(halon-1211)	3.0	
CF ₃ Br	(halon-1301)	10.0	
C ₂ F ₄ Br ₂	(halon-2402)	6.0	

**ANNEX B
CONTROLLED SUBSTANCES**

Group	Substance	Ozone-Depleting Potential
<i>Group I</i>		
CF ₃ Cl	(CFC-13)	1.0
C ₂ FCl ₅	(CFC-111)	1.0
C ₂ F ₂ Cl ₄	(CFC-112)	1.0
C ₃ FCl ₇	(CFC-211)	1.0
C ₃ F ₂ Cl ₆	(CFC-212)	1.0
C ₃ F ₃ Cl ₅	(CFC-213)	1.0
C ₃ F ₄ Cl ₄	(CFC-214)	1.0
C ₃ F ₅ Cl ₃	(CFC-215)	1.0
C ₃ F ₆ Cl ₂	(CFC-216)	1.0
C ₃ F ₇ Cl	(CFC-217)	1.0

SCHEDULE

<i>Group II</i>		
CCl ₄	carbon tetrachloride	1.1
<i>Group III</i>		
C ₂ H ₃ Cl ₃ *	1,1,1-trichloroethane* (methyl chloroform)	0.1

* This formula does not refer to 1,1,2-trichloroethane.

**ANNEX C
CONTROLLED SUBSTANCES**

Group	Substance	Number of isomers	Ozone-Depleting Potential*	100-Year Global Warming Potential***
<i>Group I</i>				
CHFCl ₂	(HCFC-21)**	1	0.04	151
CHF ₂ Cl	(HCFC-22)**	1	0.055	1810
CH ₂ FCl	(HCFC-31)	1	0.02	
C ₂ HFCl ₄	(HCFC-121)	2	0.01–0.04	
C ₂ HF ₂ Cl ₃	(HCFC-122)	3	0.02–0.08	
C ₂ HF ₃ Cl ₂	(HCFC-123)	3	0.02–0.06	77
CHCl ₂ CF ₃	(HCFC-123)**	–	0.02	
C ₂ HF ₄ Cl	(HCFC-124)	2	0.02–0.04	609
CHFClCF ₃	(HCFC-124)**	–	0.022	
C ₂ H ₂ FCl ₃	(HCFC-131)	3	0.007–0.05	
C ₂ H ₂ F ₂ Cl ₂	(HCFC-132)	4	0.008–0.05	
C ₂ H ₂ F ₃ Cl	(HCFC-133)	3	0.02–0.06	
C ₂ H ₃ FCl ₂	(HCFC-141)	3	0.005–0.07	
CH ₃ CFCl ₂	(HCFC-141b)**	–	0.11	725
C ₂ H ₃ F ₂ Cl	(HCFC-142)	3	0.008–0.07	
CH ₃ CF ₂ Cl	(HCFC-142b)**	–	0.065	2310
C ₂ H ₄ FCl	(HCFC-151)	2	0.003–0.005	

SCHEDULE

C3HFC16	(HCFC-221)	5	0.015–0.07	
C3HF2C15	(HCFC-222)	9	0.01–0.09	
C3HF3C14	(HCFC-223)	12	0.01–0.08	
C3HF4C13	(HCFC-224)	12	0.01–0.09	
C3HF5C12	(HCFC-225)	9	0.02–0.07	
CF3CF2CHCl2	(HCFC-225ca)**	–	0.025	122
CF2ClCF2CHClF	(HCFC-225cb)**	–	0.033	595
C3HF6C1	(HCFC-226)	5	0.02–0.10	
C3H2FC15	(HCFC-231)	9	0.05–0.09	
C3H2F2C14	(HCFC-232)	16	0.008–0.10	
C3H2F3C13	(HCFC-233)	18	0.007–0.23	
C3H2F4C12	(HCFC-234)	16	0.01–0.28	
C3H2F5C1	(HCFC-235)	9	0.03–0.52	
C3H3FC14	(HCFC-241)	12	0.004–0.09	
C3H3F2C13	(HCFC-242)	18	0.005–0.13	
C3H3F3C12	(HCFC-243)	18	0.007–0.12	
C3H3F4C1	(HCFC-244)	12	0.009–0.14	
C3H4FC13	(HCFC-251)	12	0.001–0.01	
C3H4F2C12	(HCFC-252)	16	0.005–0.04	
C3H4F3C1	(HCFC-253)	12	0.003–0.03	
C3H5FC12	(HCFC-261)	9	0.002–0.02	
C3H5F2C1	(HCFC-262)	9	0.002–0.02	
C3H6FC1	(HCFC-271)	5	0.001–0.03	
<i>Group II</i>				
CHBr ₂		1	1.00	
CHF ₂ Br	(HBFC-22B1)	1	0.74	
CH ₂ FBr		1	0.73	
C ₂ HFBr ₄		2	0.3-0.8	
C ₂ HF ₂ Br ₃		3	0.5-1.8	
C ₂ HF ₃ Br ₂		3	0.4-1.6	
C ₂ HF ₄ Br		2	0.7-1.2	
C ₂ H ₂ FBr ₃		3	0.1-1.1	
C ₂ H ₂ F ₂ Br ₂		4	0.2-1.5	

SCHEDULE

C ₂ H ₂ F ₃ Br		3	0.7-1.6	
C ₂ H ₃ FBr ₂		3	0.1-1.7	
C ₂ H ₃ F ₂ Br		3	0.2-1.1	
C ₂ H ₄ FBr		2	0.07-0.1	
C ₃ HFBr ₆		5	0.3-1.5	
C ₃ HF ₂ Br ₅		9	0.2-1.9	
C ₃ HF ₃ Br ₄		12	0.3-1.8	
C ₃ HF ₄ Br ₃		12	0.5-2.2	
C ₃ HF ₅ Br ₂		9	0.9-2.0	
C ₃ HF ₆ Br		5	0.7-3.3	
C ₃ H ₂ FBr ₅		9	0.1-1.9	
C ₃ H ₂ F ₂ Br ₄		16	0.2-2.1	
C ₃ H ₂ F ₃ Br ₃		18	0.2-5.6	
C ₃ H ₂ F ₄ Br ₂		16	0.3-7.5	
C ₃ H ₂ F ₅ Br		8	0.9-1.4	
C ₃ H ₃ FBr ₄		12	0.08-1.9	
C ₃ H ₃ F ₂ Br ₃		18	0.1-3.1	
C ₃ H ₃ F ₃ Br ₂		18	0.1-2.5	
C ₃ H ₃ F ₄ Br		12	0.3-4.4	
C ₃ H ₄ FBr ₃		12	0.03-0.3	
C ₃ H ₄ F ₂ Br ₂		16	0.1-1.0	
C ₃ H ₄ F ₃ Br		12	0.07-0.8	
C ₃ H ₅ FBr ₂		9	0.04-0.4	
C ₃ H ₅ F ₂ Br		9	0.07-0.8	
C ₃ H ₆ FBr		5	0.02-0.7	
<i>Group III</i>				
CH ₂ BrCl	bromochloromethane	1	0.12	

* Where a range of ODPs is indicated, the highest value in that range shall be used for the purposes of the Protocol. The ODPs listed as a single value have been determined from calculations based on laboratory measurements. Those listed as a range are based on estimates and are less certain. The range pertains to an isomeric group. The upper value is the estimate of the ODP of the isomer with the highest ODP, and the lower value is the estimate of the ODP of the isomer with the lowest ODP.

SCHEDULE

** Identifies the most commercially viable substances with ODP values listed against them to be used for the purposes of the Protocol.

*** For substances for which no GWP is indicated, the default value 0 applies until a GWP value is included by means of the procedure foreseen in paragraph 9 (a) (ii) of Article 2.

ANNEX D
A LIST OF PRODUCTS CONTAINING CONTROLLED SUBSTANCES
SPECIFIED IN PART 1

	Products	Customs code number
1.	Automobile and truck air conditioning units (whether incorporated in vehicles or not)	.....
2.	Domestic and commercial refrigeration and air conditioning/heat pump equipment***	.....
	e.g. Refrigerators	.....
	Freezers	.....
	Dehumidifiers	.....
	Water coolers	.....
	Ice machines	.....
	Air conditioning and heat pump units	.....
3.	Aerosol products, except medical aerosols	.....
4.	Portable fire extinguisher	.....
5.	Insulation boards, panels and pipe covers	.....
6.	Pre-polymers	.....

* This Annex was adopted by the Third Meeting of the Parties in Nairobi, 21 June 1991 as required by paragraph 3 of Article 4 of the Protocol.

** Though not when transported in consignments of personal or household effects or in similar non-commercial situations normally exempted from customs attention.

*** When containing controlled substances in Annex A as a refrigerant and/or in insulating material of the product.

**ANNEX E
CONTROLLED SUBSTANCES**

Group	Substance	Ozone-Depleting Potential
<i>Group I</i>		
CH ₃ Br	methyl bromide	0.6

**ANNEX F
CONTROLLED SUBSTANCES**

Group	Substance	100-Year Global Warming Potential
<i>Group I</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 CHF ₂ CHF 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
<i>Group II</i>		
CHF ₃	HFC-23	14 800