



Energy (Fuels, Levies, and References) Amendment Act 2008

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Commencement see section 2

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Part 3A

Biofuel obligation

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Energy (Fuels, Levies, and References) Amendment Act 2008.

2 Commencement

This Act comes into force on 1 October 2008.

3 Principal Act amended

This Act amends the Energy (Fuels, Levies, and References) Act 1989.

4 New section 1B inserted

The following section is inserted after section 1A:

“1B Interpretation

In this Act, unless the context otherwise requires,—

“**biofuel** means any gaseous or liquid fuel produced from biomass that can be used as a fuel for engines

“**distribution** includes sale

“**energy** means work or heat that is or may be produced or derived from coal, electricity, gas, geothermal activity, petroleum, petroleum products, uranium, wind, biomass, sun, water, or any other fuel (including engine fuel) or any other source

“**engine fuel** means any gaseous or liquid fuel that can be used as a fuel for engines, and includes biofuel, diesel, petrol (which is called motor spirit in Schedule 3 of the Customs and Excise Act 1996), synthetic fuel, and blends of these

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**Secretary** means the chief executive of the Ministry.”

5 Section 12 repealed

Section 12 is repealed.

6 Control of goods or services

Section 13(2)(a) is amended by omitting “and petroleum chemicals” and substituting “petroleum chemicals, and engine fuels”.

7 New section 24 substituted

Section 24 is repealed and the following section substituted:

“24 Petroleum or engine fuel monitoring levy

“(1) A levy of 0.045 cents, or such lesser amount as may be prescribed, is payable for each complete litre of petroleum or engine fuel that is,—

“(a) if no Order in Council is in force under paragraph (b), specified in Schedule 3 of the Customs and Excise Act 1996 as a type of—

“(i) motor spirit; or

“(ii) diesel; or

“(iii) biodiesel; or

“(iv) ethyl alcohol specified under the heading **Fuels** in Part A or B of Schedule 3 of the Customs and Excise Act 1996; or

“(b) specified in Schedule 3 of the Customs and Excise Act 1996 and prescribed by an Order in Council made on the recommendation of the Minister.

“(2) The levy must be paid to the New Zealand Customs Service—

“(a) by the person who would be liable to pay excise duty or excise-equivalent duty under the Customs and Excise Act 1996 if any were payable; and

“(b) when any excise duty or excise-equivalent duty would be paid if any were payable.

“(3) The New Zealand Customs Service must collect the levy on behalf of the Secretary and must pay the amount collected to the Secretary.

“(4) In respect of the levy,—

“(a) sections 14, 26, and 29 to 34 apply:

“(b) sections 27 and 28 do not apply.”

8 Offence to make incorrect statement

Section 32 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Every person commits an offence who,—
- “(a) in any information or particulars supplied under section 31,—
 - “(i) makes a material statement knowing that it is incorrect; or
 - “(ii) knowingly makes any material omission; or
 - “(b) resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under section 31; or
 - “(c) refuses or fails without reasonable excuse to comply with any requirement made under paragraph (c) or (d) of section 31(1).”

9 New Part 3A inserted

The following Part is inserted after Part 3:

“Part 3A
“Biofuel obligation

“34A Purpose of this Part

The purpose of this Part is to ensure that sustainable biofuels are supplied in New Zealand.

“34B Outline of this Part

This Part provides—

- “(a) that each year, an obliged person’s fuel must include biofuel:
- “(b) how to calculate the amount of biofuel required:
- “(c) that exported fuels do not count:
- “(d) that the required amount of biofuel may be deferred in the first 2 years of the obligation:
- “(e) that obliged persons have choices about how to treat surpluses and shortfalls of biofuel:
- “(f) that agreements may entitle obliged persons to count others’ biofuel towards their obligation:
- “(g) that a civil penalty applies for not having the required biofuel.

“34C Status of examples

- “(1) An example used in this Part is only illustrative of the provision to which it relates and it does not limit the provision.
- “(2) If an example and a provision to which it relates are inconsistent, the provision prevails.

“34D Interpretation

In this Part, unless the context otherwise requires,—

“**actual amount of qualifying biofuel** has the meaning given by section 34M(2)

“**biofuel percentage** means, in relation to any particular year, the percentage set out in Schedule 5

“**energy content** means gross energy content calculated in petajoules on the basis of volumetric energy values

“**export** has the same meaning as **exportation** in section 2(1) of the Customs and Excise Act 1996

“**force majeure event** has the meaning given by section 34Z

“**New Zealand** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

“**obligation engine fuel** has the meaning given by section 34F

“**obliged person** has the meaning given by section 34E

“**petajoules** means petajoules expressed as a decimal and rounded to 5 decimal places, with numbers at the midpoint or greater being rounded up and other numbers being rounded down

“**qualifying biofuel** has the meaning given by section 34G

“**required amount of qualifying biofuel** has the meaning given by section 34M(1)

“**shortfall** has the meaning given by section 34R(3)

“**surplus** has the meaning given by section 34R(1)

“**Tariff** has the same meaning as in section 2(1) of the Tariff Act 1988

“**trigger point** has the meaning given by section 34I

“**year**—

“(a) means a calendar year; and

“(b) includes year 1

“**year 1** means the period beginning on the commencement of this Part and ending on 31 December in the same year

“**year 2** means the next calendar year after year 1 that starts on 1 January

“**year 3** means the next calendar year after year 2 that starts on 1 January.

“**34E Definition of obliged person**

“(1) An **obliged person** is a person who owns obligation engine fuel at the trigger point.

“(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt a person or a class of persons who owns obligation engine fuel at the trigger point from being an obliged person for the purposes of this Part if the Minister is satisfied that the person or class of persons—

“(a) does not sell or use a significant amount of obligation engine fuel in New Zealand; and

“(b) is not relevant to the purposes of this Part.

“**34F Definition of obligation engine fuel**

“(1) **Obligation engine fuel** means that part of engine fuel specified in Schedule 3 of the Customs and Excise Act 1996 that is,—

“(a) if no Order in Council is in force under subsection (2), diesel or motor spirit; or

“(b) if an Order in Council is in force under subsection (2), obligation engine fuel prescribed by that Order in Council.

“(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, prescribe engine fuel that is obligation engine fuel.

“(3) The part of engine fuel that is obligation engine fuel remains so whether or not it is blended with anything else.

“**34G Definition of qualifying biofuel**

“(1) **Qualifying biofuel** means that part of engine fuel,—

“(a) if no Order in Council is in force under subsection (2), specified under the heading **Fuels** in Part A or B of

- Schedule 3 of the Customs and Excise Act 1996 that is biodiesel or ethyl alcohol produced from biomass; or
- “(b) if an Order in Council is in force under subsection (2), that is a biofuel prescribed in that Order in Council.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, prescribe that biofuels of the following types or classes are or are not qualifying biofuels:
- “(a) biofuels of a particular type:
 - “(b) biofuels produced from a particular type or source of biomass:
 - “(c) biofuels produced from or refined through a particular process:
 - “(d) biofuels with specified qualities:
 - “(e) biofuels meeting specified environmental or sustainability standards or specifications:
 - “(f) biofuels meeting other specified standards or specifications:
 - “(g) biofuels with a particular end use or type of end use.
- “(3) In making a recommendation under this section, the Minister must take into account—
- “(a) the purpose of this Part; and
 - “(b) the principles of sustainable biofuels set out in section 34H(3).
- “(4) The part of engine fuel that is qualifying biofuel remains so whether or not it is blended with anything else.

“34H Minister must recommend Order in Council under section 34G(2) providing qualifying biofuels must be sustainable biofuels

- “(1) The Minister must recommend the making of an Order in Council under section 34G(2) as soon as practicable after this section comes into force.
- “(2) The Minister must be satisfied, before making the recommendation, that the Order in Council will—
- “(a) provide that qualifying biofuels are sustainable biofuels; and
 - “(b) be consistent with the principles of sustainable biofuels in subsection (3); and

- “(c) appropriately consider the indirect effects of biofuel production.
- “(3) The principles of sustainable biofuels are as follows:
- “*Principle 1: Less greenhouse gas*
- “ Sustainable biofuels emit significantly less greenhouse gas over their life cycle than obligation engine fuel. In relation to this principle, the Order in Council must—
- “(a) specify a methodology for life cycle assessment of greenhouse gas emissions from obligation engine fuels; and
- “(b) specify minimum levels of no less than 35% greenhouse gas emission reductions for qualifying biofuels in comparison to obligation engine fuel.
- “*Principle 2: Food production*
- “ Sustainable biofuels do not compete with food production and are not grown on land of high value for food production. Without limitation, the following biofuels do not contravene this principle:
- “(a) byproducts of food production described in the Order in Council;
- “(b) ethanol from sugarcane grown in circumstances and in areas described in the Order in Council;
- “(c) rotational oilseed crops grown not more than 12 months in any 24-month period on the same land or as otherwise specified in the Order in Council.
- “ In relation to this principle, the Order in Council must—
- “(a) specify a methodology for assessing the effects of the production of a biofuel on food production and for assessing whether those effects amount to competition; and
- “(b) specify a mechanism for recognising particular land (including land outside New Zealand) as being land of high value for food production.
- “*Principle 3: Biodiversity and land with high conservation value*
- “ The production of sustainable biofuels does not reduce indigenous biodiversity or adversely affect land with high conser-

vation value. In relation to this principle, the Order in Council must—

- “(a) specify a mechanism for recognising particular land (including land outside New Zealand) as having high conservation value; and
 - “(b) specify a methodology for assessing the effects of the production of a biofuel on indigenous biodiversity and land of high conservation value.
- “(4) If the Minister has not recommended an Order in Council referred to in subsection (1) by 30 June 2009, the Minister must report to the House of Representatives about the following:
- “(a) the reasons why the Minister has not recommended that such an Order in Council be made; and
 - “(b) any alternative methods to the method set out in this section of ensuring qualifying biofuels are sustainable biofuels; and
 - “(c) the time when the Minister intends to make such a recommendation.

“34I Definition of trigger point

- “(1) **Trigger point** means, in relation to obligation engine fuel or qualifying biofuel,—
- “(a) if no Order in Council is in force under subsection (2), the time when the engine fuel is removed for home consumption under the Customs and Excise Act 1996; or
 - “(b) if an Order in Council is in force under subsection (2), the time described by that Order in Council.
- “(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, set out for the purposes of subsection (1)(b),—
- “(a) the time of the trigger point for the engine fuel, which may be, for example, when the engine fuel was imported or when the engine fuel leaves the place where it is blended or produced; and
 - “(b) the information required in relation to that engine fuel; and
 - “(c) the verification and auditing procedures in relation to that engine fuel; and

“(d) any other provisions to ensure that engine fuel is only counted as going through the trigger point once.

“34J Governor-General may revise biofuel percentage

The Governor-General may, by Order in Council made on the recommendation of the Minister, amend Schedule 5 to revise the biofuel percentage for any year after the year in which the Order in Council is made.

“34K Consultation and confirmation requirements for Orders in Council under section 34F, 34G, 34I, or 34J

- “(1) The Minister may only make a recommendation for the making of an Order in Council under section 34F, 34G, 34I, or 34J after consulting with persons the Minister considers are likely to be substantially affected by the recommendation. But failure to comply with this subsection does not affect the validity of an Order in Council.
- “(2) An Order in Council made under section 34F, 34G (except for an Order in Council referred to in section 34H(1)), or 34I may only be made in relation to any future years.
- “(3) An Order in Council referred to in section 34H(1) must come into force on the earlier of—
- “(a) 3 months after the date it is made; or
 - “(b) 1 January in the next year.
- “(4) An Order in Council made under section 34F, 34G, or 34I must,—
- “(a) if made on or before 30 June in any year, expire on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year; and
 - “(b) if made on or after 1 July in any year, expire on the close of 31 December in the following year, except so far as it is expressly confirmed by Act of Parliament passed before the end of that following year.
- “(5) An Order in Council made under section 34J must be made on or before 30 June in any year, and expires on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year.

“(6) If the Order in Council ceases to have effect under the Regulations (Disallowance) Act 1989, neither subsection (4) nor (5) applies.

“**34L Obligated person’s required amount of qualifying biofuel**
Every year, each obliged person’s actual amount of qualifying biofuel must equal or exceed the person’s required amount of qualifying biofuel.

“**34M Calculating required amount of qualifying biofuel and actual amount of qualifying biofuel**

“(1) Each obliged person must calculate the person’s **required amount of qualifying biofuel** for a year in petajoules as follows:

“(a) by totalling the amount of obligation engine fuel owned by the obliged person at the trigger point at any time during that year; then

“(b) subtracting the amount of any exported engine fuel as required by section 34P; then

“(c) multiplying the remaining amount of obligation engine fuel by the biofuel percentage; then

“(d) adding any amounts of qualifying biofuel that must be added under section 34Q or 34R; then

“(e) subtracting any amounts of qualifying biofuel that may or must be subtracted because of section 34Q or 34R.

“(2) Each obliged person must calculate the person’s **actual amount of qualifying biofuel** for a year in petajoules as follows:

“(a) by totalling the amount of qualifying biofuel owned by the obliged person at the trigger point at any time during that year; then

“(b) subtracting the amount of any exported biofuel as required by section 34P; then

“(c) adding any amounts of qualifying biofuel that are able to be added because of section 34T or 34U; then

“(d) subtracting any amount of qualifying biofuel that the obliged person is not entitled to count because of section 34T or 34U.

Example

Black Gold Limited is an obliged person. Its amount of obligation engine fuel in 2012 is 100 petajoules of petrol. As well, it has 2.5 petajoules of qualifying biofuel that year. The biofuel percentage for 2012 is 2.5%. Black Gold's actual amount of qualifying biofuel is the same as the required amount of qualifying biofuel, because 2.5% of 100 petajoules is 2.5 petajoules.

If, in a year, Black Gold has 102.5 petajoules of an engine fuel that is a blend made up of 100 petajoules of petrol and 2.5 petajoules of qualifying biofuel, Black Gold's actual amount of qualifying biofuel would also be the same as the required amount of qualifying biofuel.

“34N Required amount of qualifying biofuels may be divided into proportions or amounts by Order in Council

- “(1) The Governor-General may require, by Order in Council made on the recommendation of the Minister, that, for any future years, an obliged person's required amount of qualifying biofuel must include minimum percentages of 1 or more of the following classes of biofuel:
- “(a) qualifying biofuel of a particular type:
 - “(b) qualifying biofuel from a particular type or source of biomass:
 - “(c) qualifying biofuel produced from or refined through a particular process.
- “(2) In a year to which an Order in Council made under subsection (1) applies, each obliged person must multiply the person's required amount of qualifying biofuel by each minimum percentage prescribed in the Order in Council to calculate the required amount of that class of qualifying biofuel. Each obliged person's actual amount of that class of qualifying biofuel must equal or exceed the person's required amount of that class.
- “(3) The Minister may only make a recommendation to make an Order in Council made under subsection (1) after consulting with persons the Minister considers are likely to be substantially affected by the recommendation. But failure to comply with this subsection does not affect the validity of an Order in Council.

- “(4) An Order in Council made under subsection (1) must be made on or before 30 June in any year, and expires on the close of 31 December of that year, except so far as it is expressly confirmed by Act of Parliament passed during that year.
- “(5) If the Order in Council ceases to have effect under the Regulations (Disallowance) Act 1989, subsection (4) does not apply.

“34O Energy content values

- “(1) Obligated persons may determine the energy content value of particular engine fuel for the purposes of the calculations in petajoules in sections 34M and 34N, but each energy content value must be verified by a statutory declaration by a person accredited for that purpose under regulations.
- “(2) If an energy content value is not calculated by an obliged person for any particular engine fuel, or is not verified as described in subsection (1), or is incorrect, the default energy content value prescribed under subsection (3) applies.
- “(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, set out default energy content values for engine fuel.
- “(4) In relation to energy content values for biofuel, different values may apply in relation to biofuel—
- “(a) of a particular type or class; or
 - “(b) from a particular type or source of biomass; or
 - “(c) produced from or refined through a particular process.
- “(5) Different energy content values may apply for engine fuel in different circumstances (for example, in different seasons).

“34P Exclusion for engine fuel exported from New Zealand

- “(1) Engine fuel owned at the trigger point that is subsequently exported from New Zealand does not count either as obligation engine fuel or as qualifying biofuel.
- “(2) The rules in subsection (3) apply depending on when an obliged person comes to know that engine fuel owned by the obliged person at the trigger point in a particular year (**the trigger point year**) was subsequently exported from New Zealand. (An obliged person comes to know about the export

of engine fuel if any person acting under the obliged person's authority comes to know about the export.)

- “(3) If an obliged person comes to know about the export—
- “(a) during the trigger point year, the obliged person must subtract the amount of the exported engine fuel in the annual return for that year:
 - “(b) in the first year after the trigger point year, the obliged person must subtract the amount of the exported engine fuel in one of the following:
 - “(i) the annual return for the trigger point year if it has not yet been filed; or
 - “(ii) the annual return for the first year after the trigger point year:
 - “(c) in the second year or third year after the trigger point year, the obliged person must subtract the amount of the exported engine fuel in one of the following:
 - “(i) the annual return for the year in which the obliged person comes to know about the export; or
 - “(ii) the annual return for the year after the year in which the obliged person comes to know about the export.
- “(4) In subsection (3), a reference to **subtracting the amount of the exported engine fuel** means one of the following:
- “(a) if the exported engine fuel is obligation engine fuel, subtracting the export from the person's obligation engine fuel as provided in section 34M(1)(b); or
 - “(b) if the exported engine fuel is qualifying biofuel, subtracting the export from the person's qualifying biofuel as provided in section 34M(2)(b).
- “(5) An obliged person who fails to comply with subsection (3) commits an offence.

“34Q Deferring required amount of qualifying biofuel

- “(1) An obliged person may apply in writing to the Minister for a deferral of the whole or any part of that person's required amount of qualifying biofuel for either or both of the following years:
- “(a) year 1 until year 2:

- “(b) year 2 (which may include the required amount of qualifying biofuel for year 1) until year 3.
- “(2) An application—
 - “(a) under subsection (1)(a) may be made at any time from the beginning of year 1 until 1 month after the end of year 1; and
 - “(b) under subsection (1)(b) may be made at any time from the beginning of year 2 until 1 month after the end of year 2.
- “(3) The Minister may grant or reject an application by notice in the *Gazette*, and must make reasonable efforts to do so within 2 months of receiving the application.
- “(4) If an applicant is granted deferral for year 1 until year 2, the applicant must—
 - “(a) add to year 2’s required amount of qualifying biofuel both of the following:
 - “(i) the amount deferred from year 1; and
 - “(ii) 5% of year 1’s required amount of qualifying biofuel; and
 - “(b) subtract from year 1’s required amount of qualifying biofuel the amount deferred.
- “(5) If an applicant is granted deferral for year 2 until year 3, the applicant must—
 - “(a) add to year 3’s required amount of qualifying biofuel both of the following:
 - “(i) the amount deferred from year 2; and
 - “(ii) 5% of year 2’s required amount of qualifying biofuel; and
 - “(b) subtract from year 2’s required amount of qualifying biofuel the amount deferred.

“34R Surplus and shortfall

- “(1) If, for a year, an obliged person has an actual amount of qualifying biofuel that is greater than the person’s required amount of qualifying biofuel (a **surplus**), the amount of that surplus may be subtracted from the required amount of qualifying biofuel in the year after the year with a surplus.

- “(2) The amount of the surplus that may be subtracted under subsection (1) is not more than 10% of the required amount of qualifying biofuel in the year with a surplus.
- “(3) If, for a year, an obliged person has an actual amount of qualifying biofuel that is less than the person’s required amount of qualifying biofuel (a **shortfall**), the amount of that shortfall—
- “(a) may be subtracted from that year’s required amount of qualifying biofuel; and, if so,—
- “(b) must be added to the required amount of qualifying biofuel in the year after the year with a shortfall.
- “(4) The amount of the shortfall that may be subtracted under subsection (3) is not more than 10% of the required amount of qualifying biofuel in the year with a shortfall.

Example

Texas Tea Limited has 1.9 petajoules of qualifying biofuel in 2011, but the required amount of qualifying biofuel is 2.0 petajoules. Texas Tea has a shortfall of 0.1 petajoules, which is 5% of the required amount of qualifying biofuel for that year. Texas Tea decides to subtract that shortfall from its required amount of qualifying biofuel for 2011. That means that—

- in 2011, Texas Tea can treat its required amount of qualifying biofuel as 1.9 petajoules; and
 - in 2012, 0.1 petajoules must be added to Texas Tea’s required amount of qualifying biofuel.
-

“34S Entitlement agreements: general rules

- “(1) An entitlement agreement must be recorded in writing.
- “(2) Both parties to an entitlement agreement must sign a notice of entitlement.
- “(3) A notice of entitlement must be in any prescribed form and contain any prescribed information that relates to the qualifying biofuel that is the subject of the entitlement agreement, which may include—
- “(a) information to demonstrate the compliance of the biofuel with any Order in Council made under section 34G(2); and
- “(b) information about the extent to which the biofuel is consistent with the principles of sustainable biofuels set out in section 34H(3); and

- “(c) the type, nature, or class of the biofuel; and
 - “(d) the country of origin of the biofuel; and
 - “(e) the particular type or source of biomass from which the biofuel was produced; and
 - “(f) the particular process the biofuel was produced from or refined through; and
 - “(g) the qualities of the biofuel; and
 - “(h) any standards or specifications (including environmental or sustainability standards or specifications) that the biofuel meets; and
 - “(i) the particular end use or type of end use of the biofuel.
- “(4) For the purposes of this Part, unless the context otherwise requires, qualifying biofuel that an obliged person is entitled to count towards that person’s actual amount of qualifying biofuel because of an entitlement agreement must be treated as being that person’s qualifying biofuel.
- “(5) All entitlement agreements entered into in relation to any year to which an Order in Council made under section 34N(1) applies must specify whether or not they relate to a class of qualifying biofuel specified by that Order in Council.
- “(6) A person who signs an entitlement agreement or notice of entitlement knowing that it is false or misleading in a material particular commits an offence.

“34T Entitlement agreements with biofuel owner who is not obliged person

- “(1) A biofuel owner (**X**) may agree with an obliged person (**Y**) that Y is entitled to count X’s ownership of an amount of particular qualifying biofuel at the trigger point in a year towards Y’s actual amount of qualifying biofuel for the same year. If so,—
- “(a) X is not entitled to reach any other entitlement agreement in relation to that qualifying biofuel; and
 - “(b) Y may add that amount of qualifying biofuel towards Y’s actual amount of qualifying biofuel.
- “(2) For the purposes of this section, **biofuel owner** means a person who owns particular qualifying biofuel and is not an obliged person.

- “(3) X must certify in the notice of entitlement that X has sold or intends to sell the particular qualifying biofuel for use in New Zealand, or has used or intends to use the particular qualifying biofuel in New Zealand.
- “(4) X must inform Y if X comes to know that the particular qualifying biofuel is exported from New Zealand. (X comes to know about the export of the qualifying biofuel if any person acting under X’s authority comes to know about the export.)
- “(5) X commits an offence if X breaches subsection (4).
- “(6) If X has informed Y of an export under subsection (4), Y may not count that amount of qualifying biofuel towards Y’s actual amount of qualifying biofuel.
- “(7) Y commits an offence if Y breaches subsection (6).

“**34U Entitlement agreements with biofuel owner who is obliged person**

- “(1) An entitled obliged person (**A**) may agree with another obliged person (**B**) that B is entitled to count A’s ownership of or entitlement to count an amount of a particular class of qualifying biofuel in a year towards B’s actual amount of qualifying biofuel for the same year. If so,—
- “(a) A must subtract that amount of qualifying biofuel from A’s actual amount of qualifying biofuel; and
- “(b) B may add that amount of qualifying biofuel towards B’s actual amount of qualifying biofuel.
- “(2) For the purposes of this section, an **entitled obliged person** means an obliged person who—
- “(a) owns qualifying biofuel at the trigger point in that year; or
- “(b) is entitled to count qualifying biofuel towards that person’s actual amount of qualifying biofuel in that year because of an entitlement agreement.
- “(3) A must certify in the notice of entitlement that A has sold or intends to sell all A’s qualifying biofuel of that class for use in New Zealand or has used or intends to use the qualifying biofuel in New Zealand.
- “(4) A must treat an export of any of A’s qualifying biofuel of that class as if it were an export of qualifying biofuel that is not

subject to an entitlement agreement. B is not affected by the export.

“(5) A commits an offence if A breaches subsection (4).

Example

Black Gold Limited and Texas Tea Limited are both obliged persons.

In 2012, Texas Tea decides to enter into an entitlement agreement entitling Black Gold to count 2 petajoules of Texas Tea’s qualifying biofuel towards Black Gold’s actual amount of qualifying biofuel for that year. Both parties write down their agreement, and also sign a notice of entitlement. Black Gold’s annual return for 2012 records the entitlement agreement and attaches the entitlement notice.

Although not intended by Texas Tea, several petajoules of Texas Tea’s qualifying biofuel is exported from New Zealand. Texas Tea must subtract the exported biofuel from its actual amount of qualifying biofuel. The export does not affect Black Gold at all.

“Annual returns

“34V Annual returns

- “(1) Within 4 months after the end of a year, an obliged person must file with the Secretary an annual return, which must contain the information described in subsection (2) and annex any notices of entitlement relating to that year.
- “(2) The information to be contained in the annual return is—
- “(a) the obliged person’s calculations under sections 34M and 34N; and
 - “(b) any information prescribed in regulations, which may include—
 - “(i) information to demonstrate the compliance of the obliged person’s qualifying biofuel with any Order in Council made under section 34G(2); and
 - “(ii) information about the extent to which the obliged person’s qualifying biofuel is consistent with the principles of sustainable biofuels set out in section 34H(3); and
 - “(iii) the type, nature, or class of the obliged person’s engine fuel; and

- “(iv) the country of origin of the obliged person’s engine fuel; and
 - “(v) the particular type or source of biomass from which the obliged person’s biofuels were produced; and
 - “(vi) the particular process the obliged person’s engine fuels were produced from or refined through; and
 - “(vii) the qualities of the obliged person’s engine fuel; and
 - “(viii) any standards or specifications (including environmental or sustainability standards or specifications) that the obliged person’s engine fuel meets; and
 - “(ix) the particular end use or type of end use of the obliged person’s engine fuel.
- “(3) If an obliged person comes to know that an annual return that has been filed is incorrect or incomplete in any material particular, the obliged person must file a corrected and complete annual return within 4 months of coming to know about the incorrectness or incompleteness. (An obliged person comes to know about the incorrectness or incompleteness when any person under the obliged person’s authority comes to know about the incorrectness or incompleteness.)
- “(4) The situation addressed in section 34P(3) is an exception to subsection (3).
- “(5) The annual return must be signed as correct by,—
- “(a) if the obliged person is an individual, that individual:
 - “(b) if the obliged person is a company, a director:
 - “(c) if the obliged person is not a company or an individual, a person who occupies a position equivalent to that of a director of a company (such as a trustee or a partner).
- “(6) An obliged person must publish (in any form and manner required by regulations), by the date on which that person’s annual return is due under subsection (1) or (3), the information required under subsection (2)(b).
- “(7) An obliged person who fails to comply with subsection (1), (3), or (5) commits an offence.

- “(8) An obliged person or any other person who files an annual return under subsection (1) or (3) or who signs an annual return under subsection (5) knowing that it is incorrect or incomplete in a material particular commits an offence.
- “(9) An offence against subsection (8) committed by any person is to be treated as if it were also committed by an obliged person.

“34W Auditing of annual returns

- “(1) An obliged person must ensure that an auditor’s statutory declaration made in accordance with regulations is filed with the obliged person’s annual return.
- “(2) The auditor must meet the requirements of section 199 of the Companies Act 1993.
- “(3) An obliged person who fails to comply with subsection (1) commits an offence.

“Civil penalty

“34X Civil penalty for breaching section 34L

- “(1) On the application of the Secretary, the High Court must order an obliged person to pay a civil penalty, as calculated under subsection (2), to the Crown if the Court is satisfied that the obliged person has breached section 34L.
- “(2) The civil penalty for breaching section 34L is calculated as follows:

$$(a - b) \times c = p$$

where—

- a is the required amount of qualifying biofuel
- b is the actual amount of qualifying biofuel
- c is one of the following rates:
 - (a) for year 1, \$20 million:
 - (b) for year 2, \$20 million:
 - (c) for year 3, \$20 million:
 - (d) for year 4, \$25 million:
 - (e) for year 5 and for each subsequent year, \$30 million
- p is the penalty

- “(3) However, the Court may reduce the civil penalty (including to zero) to the extent that the Court is satisfied that the obliged person—
- “(a) took all reasonable steps not to breach section 34L; or
 - “(b) breached section 34L because of a force majeure event as defined in section 34Z.
- “(4) If the obliged person is liable to pay a civil penalty under this section and is also liable to pay a civil penalty under section 34Y in relation to the same year, the obliged person need pay only the greater penalty.
- “(5) An application for a civil penalty under this section may be made at any time within 3 years after the later of—
- “(a) the date on which the obliged person’s annual return should have been filed under section 34V(1) or (4); or
 - “(b) the date on which the obliged person is convicted of an offence under section 34V(7) or (8).

“34Y Civil penalty for breaching section 34N(2)

- “(1) On the application of the Secretary, the High Court must order an obliged person to pay a civil penalty, as calculated under subsection (2), to the Crown if the Court is satisfied that the obliged person has breached section 34N(2).
- “(2) The civil penalty for breaching section 34N(2) (in relation to each class of qualifying biofuel required) is calculated as follows:

$$(a - b) \times c = p$$

where—

- a is the required amount of the class of qualifying biofuel
- b is the actual amount of the class of qualifying biofuel
- c is one of the following rates:
 - (a) for year 1, \$20 million:
 - (b) for year 2, \$20 million:
 - (c) for year 3, \$20 million:
 - (d) for year 4, \$25 million:
 - (e) for year 5 and for each subsequent year, \$30 million
- p is the penalty

- “(3) However, the Court may reduce the civil penalty (including to zero) to the extent that the Court is satisfied that the obliged person—
- “(a) took all reasonable steps not to breach section 34N(2); or
 - “(b) breached section 34N(2) because of a force majeure event as defined in section 34Z.
- “(4) If an obliged person has breached section 34N(2) in relation to more than 1 class of qualifying biofuel, the person must add together the civil penalties payable for each class and pay the total.
- “(5) If the obliged person is liable to pay a civil penalty or total civil penalties under this section and is also liable to pay a civil penalty under section 34X in relation to the same year, the obliged person need pay only the greater amount.
- “(6) An application for a civil penalty under this section may be made at any time within 3 years after the later of—
- “(a) the date on which the obliged person’s annual return should have been filed under section 34V(1) or (4); or
 - “(b) the date on which the obliged person is convicted of an offence under section 34V(7) or (8).

“**34Z Definition of force majeure event**

For the purposes of sections 34X and 34Y, **force majeure event** means an event beyond the reasonable control of an obliged person that is, or is nearly identical to, one of the following:

- “(a) fire, flood, storm, earthquake, landslide, volcanic eruption, epidemic, or other act of God;
- “(b) explosion or nuclear, biological, or chemical contamination;
- “(c) quarantinable disease (within the meaning given by section 2(1) of the Health Act 1956);
- “(d) sabotage, terrorism, or act of war (whether declared or not).

“**34ZA Applicable rules, procedure, and standard of proof**

The proceedings under sections 34X and 34Y are civil proceedings to which the usual rules of the High Court, rules of

evidence, and procedure for civil proceedings apply (including the standard of proof).

“Compare: 2007 No 7 s 49”.

10 Regulations

- (1) Section 35(1)(c) is amended by omitting “specifications” and substituting “standards or specifications (including environmental or sustainability standards or specifications)”.
- (2) Section 35(1) is amended by repealing paragraph (d) and substituting the following paragraphs:
 - “(d) requiring persons who sell engine fuel or refined petroleum products to consumers to display or provide information about the price, quality, sustainability, suitability, quantity, or nature of a class or classes of refined petroleum products or engine fuel:
 - “(da) requiring persons who sell engine fuel to consumers not to promote or advertise that the engine fuel contains biofuel if the engine fuel comprises, by volume, a certain percentage of biofuel that is not more than 1%.”.
- (3) Section 35(1) is amended by inserting the following paragraphs after paragraph (e):
 - “(ea) providing for accreditation, certification, and verification for the purposes of section 34O and regulations made under this Act:
 - “(eb) prescribing default energy content values for the purposes of section 34O:
 - “(ec) prescribing or making provision for—
 - “(i) the form of notices of entitlement, which may be in any form acceptable to the Secretary:
 - “(ii) the information to be contained in or provided with notices of entitlement for the purposes of section 34S:
 - “(iii) the manner in which that information is to be provided:
 - “(ed) prescribing or making provision for—
 - “(i) the form in which annual returns must be provided, which may be in any form acceptable to the Secretary:

- “(ii) the information to be contained in or provided with annual returns for the purposes of section 34V:
 - “(iii) the manner in which that information is to be provided:
 - “(ee) prescribing or making provision for the form and manner in which the information required under section 34V(6) must be published:
 - “(ef) prescribing or making provision for an auditor’s statutory declaration for the purposes of section 34W(1):
 - “(eg) prescribing the records that are required to be kept under section 35B and the length of time they must be kept:
 - “(eh) prescribing the form of search warrants issued under section 37A.”
- (4) Section 35 is amended by inserting the following subsection after subsection (1):
- “(1A) Different forms for the purposes of Part 3A may be prescribed in respect of different classes of obliged persons.”
- (5) Section 35(2) is amended by inserting “or an Order in Council made under section 34F, 34G, or 34I” after “subsection (1)”.

11 New sections 35A to 35D inserted

The following sections are inserted after section 35:

“35A Power of Minister to require selling of engine fuel to cease

- “(1) If the Minister is satisfied that engine fuel does not comply with regulations, the Minister may, by written notice, require the seller or distributor to—
- “(a) cease selling the engine fuel or making it available; or
 - “(b) cease selling the engine fuel for any particular end use or making it available for any particular end use.
- “(2) A seller or distributor who fails to comply with a Minister’s notice described in subsection (1) commits an offence.

“35B Keeping of records

- “(1) Every person described in subsection (2) must keep or cause to be kept in New Zealand prescribed records for the prescribed length of time not exceeding 7 years.
- “(2) The persons to whom subsection (1) applies are—

- “(a) an obliged person who has filed an annual return:
 - “(b) a person who is or may be an obliged person (whether or not they have filed an annual return):
 - “(c) any person who is or may be entitled to enter into an entitlement agreement as a biofuel owner under section 34T (whether or not they have entered into an agreement):
 - “(d) any persons engaged in the importation, distribution, production, refining, blending, exportation, or selling of petroleum, refined petroleum products, or engine fuel or goods capable of being used to make engine fuel.
- “(3) A person who fails to keep the records that are required to be kept under subsection (1) commits an offence.
- “Compare: 1996 No 27 s 95

“35C Power to inspect property, obtain information, and enter land to conduct compliance check

- “(1) For the purposes of this section,—
- “**compliance check** means a check that seeks to ascertain any or all of the following:
- “(a) the extent to which an obliged person is filing annual returns that comply with this Act and with any regulations:
 - “(b) the extent to which a notice of entitlement complies with this Act and with any regulations:
 - “(c) the extent to which records are being kept as required by section 35B:
 - “(d) the type, nature, or class of any engine fuel or goods capable of being used to make engine fuel:
 - “(e) compliance with regulations made under this Act:
 - “(f) the extent to which information supplied or published under section 34V or 36 is correct and complete
- “**person liable to be checked** means—
- “(a) an obliged person who has filed an annual return:
 - “(b) a person who is or may be an obliged person (whether or not they have filed an annual return):
 - “(c) any person who is or may be entitled to enter into an entitlement agreement as a biofuel owner under section

- 34T (whether or not they have entered into an agreement):
- “(d) any persons engaged in the importation, distribution, production, refining, blending, exportation, or selling of petroleum, refined petroleum products, or engine fuel or goods capable of being used to make engine fuel.
- “(2) In order to conduct a compliance check of a person liable to be checked, any person specifically or generally authorised in writing by the Secretary may, using reasonable force,—
- “(a) subject to subsection (4), at any reasonable time enter any land, building, or place other than a dwellinghouse or marae:
 - “(b) inspect and examine any property and any books, accounts, vouchers, records, or documents (including records or documents held in electronic or other form):
 - “(c) require any person to produce any books, accounts, vouchers, records, or documents (including records or documents held in electronic or other form) in that person’s possession or under that person’s control, and allow copies of or extracts from those books, accounts, vouchers, records, or documents to be made or taken:
 - “(d) require any person to supply any information or particulars that may be required by the Secretary:
 - “(e) take samples of any petroleum, engine fuel, or goods capable of being used to make engine fuel.
- “(3) The written authorisation must contain—
- “(a) a reference to this section; and
 - “(b) the full name of the authorised person; and
 - “(c) a statement of the powers conferred on the authorised person by subsection (2).
- “(4) Every person exercising a power of entry under subsection (2) must be in possession of the written authorisation and evidence of identity, and must produce them to the occupier of the land, building, or place,—
- “(a) if practicable, on first entering the land, building, or place; and
 - “(b) whenever subsequently reasonably required to do so by the occupier.

- “(5) Every person has the same privileges under this section as witnesses have in court in relation to—
- “(a) the production to an authorised person of any books, accounts, vouchers, records, or documents; and
 - “(b) the supplying to an authorised person of any information or particulars; and
 - “(c) the answering of questions put by an authorised person.

“35D Offence to make incorrect statement

Every person commits an offence who,—

- “(a) in any information or particulars supplied under section 35C,—
 - “(i) makes a material statement knowing that it is incorrect; or
 - “(ii) knowingly makes any material omission; or
- “(b) resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under section 35C; or
- “(c) refuses or fails without reasonable excuse to comply with any requirement made under paragraph (c) or (d) of section 35C(2).”

12 Power of Minister to require information

- (1) Section 36 is amended by repealing subsection (1) and substituting the following subsections:
- “(1) The Minister may, by notice in writing to a person described in subsection (1A), require that person to supply to the Minister, by a date specified in the notice, any information specified in the notice in relation to the following:
- “(a) the price, suitability, quantity, or nature of petroleum, refined petroleum products, or engine fuel, or goods capable of being used to make engine fuel either in New Zealand or elsewhere:
 - “(b) the price, quantity, and nature of any entitlement agreements:
 - “(c) the importation, distribution, production, refining, blending, exportation, or selling of petroleum, refined petroleum products, or engine fuel, or goods capable of

being used to make engine fuel either in New Zealand or elsewhere:

- “(d) demonstrating the compliance of the person’s biofuel with any Order in Council made under section 34G(2):
 - “(e) the extent to which the person’s biofuel is consistent with the principles of sustainable biofuels set out in section 34H(3):
 - “(f) the type, nature, or class of the person’s engine fuel:
 - “(g) the country of origin of the person’s engine fuel:
 - “(h) the particular type or source of biomass from which the person’s biofuels were produced:
 - “(i) the particular process the person’s engine fuels were produced from or refined through:
 - “(j) the qualities of the person’s engine fuel:
 - “(k) any standards or specifications (including environmental or sustainability standards or specifications) that the person’s engine fuel meets:
 - “(l) the particular end use or type of end use of the person’s engine fuel.
- “(1A) The Minister may, by notice in writing to a person described in subsection (1B), require that person to publish (in any particular form and manner), by a date specified in the notice, any information that may be required to be supplied to the Minister in relation to subsection (1)(d) to (l).
- “(1B) The persons who may be the recipients of a notice under subsection (1) or (1A) are—
- “(a) an obliged person who has filed an annual return:
 - “(b) a person who is or may be an obliged person (whether or not they have filed an annual return):
 - “(c) any person who is or may be entitled to enter into an entitlement agreement as a biofuel owner under section 34T (whether or not they have entered into an agreement):
 - “(d) any persons engaged in the importation, distribution, production, refining, blending, exportation, or selling of petroleum, refined petroleum products, or engine fuel or goods capable of being used to make engine fuel.”
- (2) Section 36(2) is amended by—

- (a) omitting “subsection (1) of this section” and substituting “subsection (1) or (1A)”; and
- (b) inserting “and manner” after “form”.

13 Offences

- (1) Section 37(1) is amended by omitting “section 36(1) of this Act” in each place where it appears and substituting in each case “section 36(1) or (1A)”.
- (2) Section 37(1) is amended by repealing paragraph (c) and substituting the following paragraph:
 - “(c) refuses or fails to furnish any information or particulars in the form and manner in which it is required by a notice under section 36(1) or (1A).”
- (3) Section 37 is amended by repealing subsection (2) and substituting the following subsection:
 - “(2) Every person who commits an offence against subsection (1), section 32, Part 3A, section 35A, or section 35D is liable on summary conviction,—
 - “(a) in the case of a person other than a body corporate, to a fine not exceeding \$20,000;
 - “(b) in the case of a body corporate, to a fine not exceeding \$200,000.”

14 New heading and sections 37A to 37K inserted

The following heading and sections are inserted after section 37:

“Search warrants

“37A Issue of search warrants

- “(1) Any High Court Judge, District Court Judge, Community Magistrate, Justice of the Peace, or Registrar of a District Court may issue a search warrant for any land, building, or place if satisfied, on application in writing made on oath, that there are reasonable grounds for believing that there is at that land, building, or place any thing that is evidence of 1 or more of the following:
 - “(a) the commission of an offence under this Act by any person;
 - “(b) the breach of section 34L or 34N(2) by any person.

- “(2) The Judge, Community Magistrate, Justice, or Registrar may impose any reasonable conditions on the exercise of the warrant that he or she thinks fit.
- “(3) The Judge may authorise the search warrant to be executed on more than 1 occasion if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

“37B Powers conferred by warrant

- “(1) A warrant authorises the person named in it—
- “(a) to enter and search the land, building, or place specified in the warrant on 1 occasion within 14 days of the warrant’s date of issue (or more than 1 occasion if authorised under section 37A(3)) at a time that is reasonable in the circumstances:
 - “(b) to request any person to assist in the execution of the warrant:
 - “(c) to use any force for gaining entry and for breaking open any article or thing that is reasonable in the circumstances:
 - “(d) to search for and seize any thing that the warrant authorises the person who is executing the warrant to search for and seize:
 - “(e) if necessary, to take copies of documents or extracts from documents that the warrant authorises the person who is executing the warrant to copy:
 - “(f) if necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce in usable form, information recorded or stored in a document.
- “(2) The powers in subsection (1) to enter and search the land, building, or place must not be exercised by a Ministry employee unless, when exercising the power, that employee is accompanied by a member of the police.
- “(3) The person executing the search warrant may also seize any thing that he or she, or any person assisting him or her, finds in the course of executing the warrant, if the person executing the warrant has reasonable grounds to believe that a search warrant could be obtained to search for that thing.
- “(4) A person assisting the person executing the warrant also has the powers referred to in subsection (1)(c) to (f) while in the

company and under the direction of the person executing the warrant.

- “(5) The warrant must be executed in accordance with any conditions specified under section 37A(2).

“37C Form and content of search warrant

A search warrant must—

- “(a) be in the prescribed form; and
- “(b) be directed to—
 - “(i) a member of the police by name; or
 - “(ii) any member of the police; or
 - “(iii) any Ministry employee authorised by the Secretary; and
- “(c) contain all of the following particulars:
 - “(i) the land, building, or place that may be searched in accordance with the warrant; and
 - “(ii) the breach of section 34L or 34N(2) or the offence in respect of which the warrant is issued; and
 - “(iii) the provision of this Act authorising the issue of the warrant; and
 - “(iv) a description of things that are authorised to be searched for and seized; and
 - “(v) the period during which the warrant may be executed, or, if the warrant may be executed on more than 1 occasion, the number of times or the period of time over which the warrant may be executed; and
 - “(vi) any conditions specified under section 37A(2).

“37D Warrant must be produced

A person executing a warrant must—

- “(a) have the warrant with him or her; and
- “(b) produce it on initial entry and, if requested, at any subsequent time; and
- “(c) identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and

“(d) produce evidence of his or her identity.

“Compare: 2003 No 12 s 133

“37E Other duties of person who executes warrant

A person who executes a warrant must, when the search is completed, leave in a prominent position at the place searched or give to the owner or occupier, a written notice stating—

“(a) the date and time when the land, building, or place was searched; and

“(b) the name of the person who executed the warrant; and

“(c) for any seized thing, a list in accordance with section 37G.

“Compare: 2003 No 12 s 134

“37F When alternative to list of seized things may be provided

If it is not practicable to prepare a list under section 37E in relation to seized things after completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant—

“(a) may, instead of leaving a list, leave a notice stating that things have been seized during the search and that, within 7 days of the search, a list will be delivered, left, or sent stating what things have been seized; and

“(b) must, within 7 days of the search,—

“(i) deliver a list to the owner or occupier; or

“(ii) leave a list in a prominent position at the place searched; or

“(iii) send a list by post to the owner or occupier of the place searched.

“Compare: 2003 No 12 s 135

“37G Matters that must be stated in list of seized things

A list under section 37E or 37F must state—

“(a) the things that have been seized; and

“(b) the location from where they were seized; and

“(c) the location where they are being held; and

“(d) that the things may be returned in accordance with sections 37J and 37K; and

- “(e) the extent to which a person from whom a thing was seized, or the owner of the thing, has a right to have access to any document relating to the application for a search warrant; and
- “(f) information about the right to bring a claim that any privileged or confidential information has been seized.

“Compare: 2003 No 12 s 136

“37H Duty to assist

Section 198B of the Summary Proceedings Act 1957 applies with any necessary modifications to warrants issued under section 37A.

“37I Power to inspect and take copies of documents, etc, obtained under warrant

The Secretary, or any person authorised by the Secretary for the purpose, may inspect and take copies of any documents or extracts from them obtained under a warrant.

“Compare: 2003 No 12 s 138

“37J Disposal of things seized

- “(1) In any proceedings for an offence or a civil penalty relating to any thing seized under warrant, a court may order, either at the trial or hearing or on an application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in any manner that the court thinks fit.
- “(2) Any member of the police may, at any time, unless an order has been made under subsection (1), return the thing to the person from whom it was seized, or apply to a Judge for an order for its disposal.
- “(3) An application under subsection (2) must be made on notice to any person known to have an interest in the thing.
- “(4) On an application under subsection (2), the Judge may make any order that a court may make under subsection (1).
- “(5) If proceedings for an offence relating to the thing are not brought within 3 months of seizure, any person claiming to be

entitled to the thing may, after the expiry of that period, apply to a Judge for an order that it be delivered to him or her.

- “(6) On any such application, the Judge may—
- “(a) adjourn the application, on any terms that he or she thinks fit, for proceedings to be brought; or
 - “(b) make any order that a court may make under subsection (1).

“Compare: 2003 No 12 s 139

“37K Court order to be suspended on conviction or on order of civil penalty

- “(1) If any person is convicted in any proceedings for an offence or ordered to pay a civil penalty relating to any thing for which a warrant has been issued, and any order is made under section 37J, the operation of the order is suspended,—
- “(a) in any case, until the expiration of the time for the filing of a notice of appeal or an application for leave to appeal; and
 - “(b) if a notice of appeal is filed within the time so prescribed, until the determination of the appeal; and
 - “(c) if an application for leave to appeal is filed within the time so prescribed, until the application is determined, and, if leave to appeal is granted, until the determination of the appeal.

- “(2) If the operation of an order under section 37J is suspended until the determination of the appeal, the court determining the appeal may, by order, cancel or vary the order.

“Compare: 2003 No 12 s 140”.

15 New heading above section 38

The following heading is inserted above section 38: “*Savings and transitional provisions*”.

16 New Schedule 5 added

The Schedule 5 set out in Schedule 1 of this Act is added.

*Consequential amendments to other enactments***17 Consequential amendments to other enactments**

The enactments specified in Schedule 2 are consequentially amended in the manner indicated in that schedule.

*References to petroleum fuels monitoring levy***18 References to petroleum fuels monitoring levy**

Every reference in an enactment or document to the petroleum fuels monitoring levy must, unless the context otherwise requires, be read as a reference to the petroleum and engine fuel monitoring levy.

Schedule 1 s 16
New Schedule 5 added to principal Act

Schedule 5 s 34J
Biofuel percentage

Year 1	Year 2	Year 3	Year 4	Year 5 onwards
0.5%	1.0%	1.5%	2.0%	2.5%

Schedule 2
**Consequential amendments to other
enactments**

s 17

Building Act 2004 (2004 No 72)

Paragraph (a) of the definition of **network utility operator** in section 7: insert “biofuel,” after “petroleum.”

**Injury Prevention, Rehabilitation, and Compensation Act
2001 (2001 No 49)**

Section 214: insert after subsection (4):

“(4A) In this section and in section 213, a reference to excise duty or excise-equivalent duty being payable includes a reference to excise duty or excise-equivalent duty being payable except that the rate of duty is zero.

“(4B) The levy must be paid to the New Zealand Customs Service—

“(a) by the person who would be liable to pay excise duty or excise-equivalent duty if any were payable; and

“(b) when any excise duty or excise-equivalent duty would be paid if any were payable.”

International Energy Agreement Act 1976 (1976 No 155)

Section 2: insert in its appropriate alphabetical order:

“**engine fuel** has the meaning given by section 1B of the Energy (Fuels, Levies, and References) Act 1989”.

Section 4(1): insert “or engine fuel” after “use of petroleum”.

Section 4(1)(c): insert “or engine fuel” after “consumption of, petroleum”.

Section 4(1)(d): insert “or engine fuel” after “supply of petroleum”.

Section 4(2), (3), and (4): insert “or engine fuel” after “petroleum” in each place where it appears.

Section 5(2)(a): add “or engine fuel”.

Section 6(1): insert “or engine fuel” after “or uses petroleum”.

Section 6(2): insert “or engine fuel” after “petroleum” in each place where it appears.

Section 6(3)(a): insert “or engine fuel” after “petroleum”.

Section 6(3)(b): add “or the Crown Minerals Act 1991”.

International Energy Agreement Act 1976 (1976 No 155)—*continued*

Section 7(1) and (2): insert “or engine fuel” after “petroleum” in each place where it appears.

Section 8(1): omit “petroleum” and substitute “any combination of petroleum and engine fuels”.

Land Transport Rule: Vehicle Exhaust Emissions 2007 (Rule 33001/2)

Paragraph (a) of the definition of **diesel** in Part 2: insert “or is blended with biofuel” after “additives”.

Paragraph (b) of the definition of **petrol** in Part 2: insert “or is blended with biofuel” after “additives”.

Part 2: insert in its appropriate alphabetical order:

“**biofuel** has the meaning given by section 1B of the Energy (Fuels, Levies, and References) Act 1989”.

Local Government Act 2002 (2002 No 84)

Heading to clause 70 of Schedule 3: omit “**petroleum**” and substitute “**fuel**”.

Clause 70(1)(a) of Schedule 3: omit “petroleum” and substitute “fuel”.

Petroleum Demand Restraint Act 1981 (1981 No 12)

Section 2: insert in its appropriate alphabetical order:

“**engine fuel** has the meaning given by section 1B of the Energy (Fuels, Levies, and References) Act 1989”.

Section 4(2) and (4): insert “or engine fuel” after “petroleum products” in each place where it appears.

Section 5(3): omit “Acts Interpretation Act 1924 shall have” and substitute “Interpretation Act 1999 has”.

Section 7(1), (2), and (3): insert “or engine fuel” after “petroleum products” in each place where it appears.

Section 8(2)(a): add “or engine fuel”.

Section 14(6): omit “section 25(e) of the Acts Interpretation Act 1924” and substitute “section 14 of the Interpretation Act 1999”.

Section 17(1): insert “or engine fuel” after “petroleum products”.

Reserves Act 1977 (1977 No 66)

Section 48(1)(c): insert “biofuel,” after “petroleum,”.

Resource Management Act 1991 (1991 No 69)

Paragraph (a) of the definition of **infrastructure** in section 2(1): insert “biofuel,” after “petroleum,”.

Paragraph (a) of the definition of **network utility operator** in section 166: insert “biofuel,” after “petroleum,”.

Road User Charges Act 1977 (1977 No 124)

Paragraph (a) of the definition of **petrol** in section 2(1): add “, including motor spirits that are blended with a biofuel”.

Section 2(1): insert in its appropriate alphabetical order:

“**biofuel** has the meaning given by section 1B of the Energy (Fuels, Levies, and References) Act 1989”.

Legislative history

2 September 2008	Divided from Biofuel Bill (Bill 148–2) by committee of the whole House
2 September 2008	Third reading
9 September 2008	Royal assent

This Act is administered by the Ministry of Economic Development.
