



## Next Steps: Legislation and Administration

**Background:** The Kigali Amendment was agreed by all Montreal Protocol Parties at the 27<sup>th</sup> Meeting of the Parties in October 2016. Each Party now needs to take steps to ratify and implement the Kigali Amendment. This Fact Sheet provides a summary of what each Party needs to do in relation to introducing new national legislation and setting up appropriate administrative procedures.

The Kigali Amendment is simply an extension to the Montreal Protocol. All Parties to the Protocol already have legislation and administrative procedures in place to support ratification, implementation and compliance with the current Montreal Protocol. The requirements for the Kigali Amendment can be considered as extensions to existing legislation and administrative procedures.

**Required Legislation:** The legislation that must be put into place falls into 2 parts:

- a) **Ratification of the Kigali Amendment:** a ratification instrument must be prepared by each Party and lodged with the United Nations Depository.
- b) **National enabling legislation:** in each country, laws must be enacted to enable implementation of the Kigali Amendment.

**Required Administration Systems:** The following systems are required:

- a) **Monitoring and reporting of HFCs<sup>1</sup>:** a system to monitor the production, import and export of HFCs is required. Annual data will need to be reported to the Montreal Protocol Secretariat.
- b) **Licensing of and quotas for production and import of HFCs:** a system to licence the production and import of HFCs is required to ensure that the phase-down targets are met. This also requires a quota allocation method to define which companies are allowed to produce or import HFCs.
- c) **Verification of imports:** customs officials need an administrative system to check that imports are being made only by companies holding a suitable quota allocation.

**Who is responsible for legislation and administration?** Each Party has the freedom to select the most appropriate ministry or government agency to carry out the required tasks. For most Parties, it is likely that the bodies that are currently responsible for the legal and administrative aspects of the ODS phase-out process will also be responsible for HFC phase-down under the Kigali Amendment.

**Ratification:** The Kigali Amendment is intended to be a binding international treaty, which creates rights and obligations in international law. Once the Amendment enters into force for a Party, that Party assumes legal obligations under the Amendment.

The Kigali Amendment itself will enter into force on January 1<sup>st</sup> 2019, if at least 20 Parties have ratified the amendment. If 20 Parties have not ratified the Kigali Amendment by that date (this is highly unlikely) it enters into force on the 90<sup>th</sup> day following the 20<sup>th</sup> ratification. The trade controls referred to in Article VI(2) enter into force on January 1<sup>st</sup> 2033, provided that at least 70 Protocol Parties have ratified the Amendment by that date.

The Amendment is not legally binding on a party until it enters into force for that Party. For an individual Party, the Kigali Amendment enters into force on January 1<sup>st</sup> 2019 if ratification is completed before that date, or 90 days after the Party has ratified.

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<sup>1</sup> See [Kigali Fact Sheet 14](#) for a glossary of all acronyms used

Ratification of the Kigali Amendment by a Montreal Protocol Party is carried out by depositing an “Instrument of Ratification” with the depositary of the Montreal Protocol, which is the Secretary General of the United Nations in New York. The Instrument of Ratification is likely to be a very simple document that should follow the design of the original ratification of the Montreal Protocol and its subsequent amendments.

The process of preparing the Instrument of ratification will vary between different parties. A “treaty unit”, normally within a Ministry of Foreign Affairs, will be responsible for ratification of international treaties. The officials who lead on Kigali Amendment policy should contact the treaty unit to commence the process for ratification.

The treaty unit can advise on the national processes to be followed before formal ratification. They can explain what

documentation needs to be prepared and what decision-making processes should be followed. Political authority is required to ratify. It will depend on national processes who can give that authority.

### Example Instrument of Ratification

WHEREAS at the Twenty-Eighth Meeting of the Parties to Montreal Protocol on Substances that Deplete the Ozone Layer, held in Kigali from 10 to 15 October 2016, the Parties adopted, in accordance with the procedure laid down in paragraph 4 of article 9 of the 1985 Vienna Convention for the Protection of the Ozone Layer, a further amendment to the Montreal Protocol.

NOW THEREFORE I, [*name and title of the Head of State, Head of Government or Minister of Foreign Affairs*] declare that the Government of [*name of State*], having considered the above mentioned amendment, ratifies the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of ratification at [place] on [date].

[Signature]

More details about ratification can be found at in the Ozone Secretariat Briefing Note available at: [http://conf.montreal-protocol.org/meeting/oewg/oewg-39/presession/briefingnotes/ratification\\_kigali.pdf](http://conf.montreal-protocol.org/meeting/oewg/oewg-39/presession/briefingnotes/ratification_kigali.pdf)

## National Enabling Legislation:

The enabling legislation that is required must allow the appropriate control of the production and consumption of HFCs to ensure compliance with the Kigali Amendment. The relevant legislation can be an extension of the existing legislation that is used to control the production and consumption of ozone depleting substances (ODS). Key features of the Kigali Amendment that will require changes to current national enabling legislation include:

- 1) Powers to control the Party’s production and consumption of HFCs, as specified in Article 2J and Article 5, paragraph 8*qua* of the amended Montreal Protocol. The HFCs to be controlled are listed in Annex F of the amended Protocol.
- 2) Recognition that the HFC phase-down process is based on tonnes CO<sub>2</sub>e (see [Kigali Fact Sheet 3](#) for an explanation of GWP and tonnes CO<sub>2</sub>e). The control of ODS was measured in ODP tonnes – legislation will need to be modified to define tonnes CO<sub>2</sub>e.
- 3) Specification of the Party’s baseline level from which the HFC phase-down is measured (see [Kigali Fact Sheet 5](#) for details of the calculation of the HFC baseline for Article 5 and non-Article 5 parties).

The baseline is measured in tonnes CO<sub>2</sub>e and requires the use of GWP values for each relevant gas. The GWPs of HFCs are listed in Annex F of the Protocol. The baseline calculation for Article 5 countries includes an HCFC component – the GWP values for commonly used HCFCs have been added to Annex C of the Protocol. For non-Article 5 countries the baseline also includes a CFC component – the GWP values for CFCs have been added to Annex A of the Protocol.

- 4) Specification of the Party’s phase-down steps for production and consumption of HFCs. They need to be specified in tonnes CO<sub>2</sub>e values, based on percentage cuts from the baseline during relevant years (see [Kigali Fact Sheet 5](#) for details of the phase-down steps).
- 5) Powers to set up a licencing system for production and consumption of HFCs, as specified in Article 4B, paragraph 2bis of the amended Protocol.

- 6) Powers to set up a quota allocation system for production and consumption of HFCs.
- 7) For any Party that produces HCFCs or HFCs, powers to ensure by-product emissions of HFC-23 does not exceed 0.1% of the mass of HCFCs and HFCs manufactured, from 1<sup>st</sup> January 2020.
- 8) Powers to collect data on HFC production, import and export, based on Article 7, paragraphs 2 and 3 of the amended Protocol. For any Party that produces HCFCs or HFCs, powers to collect data on HFC-23 emissions, based on Article 7, paragraph 3<sup>ter</sup> of the amended Protocol
- 9) Powers to enable customs officials to prevent illegal import of HFCs.
- 10) Powers to ban trade (import and export of HFCs) with states that have not ratified the Kigali Amendment, from 1<sup>st</sup> January 2033 (as specified in Article 4, Paragraph 1 *sept* and 2 *sept* of the amended Protocol).

**Monitoring and Reporting:** Under the existing Montreal Protocol, each Party collects data on production, import and export of bulk ODS and reports summary data on an annual basis to the Ozone Secretariat. The administrative systems to collect this data must be extended to include data about all the HFCs listed in Annex F of the amended Protocol.

Reporting must start no later than for the beginning of the baseline period and must be carried out annually thereafter. See [Kigali Fact Sheet 5](#) for details of the baseline periods for each group of countries under the Kigali Amendment. For most Article 5 countries (A5 Group 1) the baseline period is 2020 to 2022. For A5 Group 2 countries the baseline period is 2024 to 2026.

There are significant benefits to setting up a reporting system as soon as possible, without waiting for the start of the baseline period. Without good data on current HFC consumption it will be very difficult to start making plans for the HFC phase-down. See [Kigali Fact Sheet 6](#) for guidance on the data required to develop an HFC phase-down strategy.

**Licensing and allocation of quotas:** An administrative system to monitor and control the levels of HFC production and consumption is required in order to meet the Kigali Amendment phase-down obligations. The required system will be an extension to the existing system used to control the phase-out of ODS.

The Montreal Protocol specifies the need for a licencing system. Article 4B, paragraph 2bis states:

*“Each Party shall, by 1 January 2019 or within three months of the date of entry into force of this paragraph for it, whichever is later, establish and implement a system for licensing the import and export of new, used, recycled and reclaimed controlled substances in Annex F. Any Party operating under paragraph 1 of Article 5 that decides it is not in a position to establish and implement such a system by 1 January 2019 may delay taking those actions until 1 January 2021”.*

The requirements to licence the import and export of new, used, recycled and reclaimed HFCs are precisely the same as the current requirements for licencing of HCFCs.

The licencing system needs to be linked to a methodology for allocating the rights to produce or import HFCs to individual companies. The method of doing this is not prescribed in the Montreal Protocol – each Party is free to implement a suitable system – often referred to as a quota allocation method. It is likely that the quota allocation method currently used for HCFCs can be extended for the control of HFCs. The most commonly used allocation method is “grandfathering”, which creates an allocation based on the activities of individual producers or importers during the baseline period. However, other methods such as auctions can also be considered.

**Verification of imports:** It is important that all HFCs being imported have received a quota allocation via the licencing system. An administrative system needs to be put in place to enable customs officials to check that importers hold the required licence. This can be developed as an extension to existing customs procedures for checking HCFC imports. New customs codes are required to help officials identify HFCs and the officials will need access to a licencing database that specifies which companies have the legal right to import HFCs.

## Import Quota Allocation by “Grandfathering”

Imports of bulk HFCs and HCFCs during the baseline period into Country X were carried out by 4 different companies, A, B, C, and D. In this simple example, it is assumed that there was no production of HFCs and HCFCs in Country X and there was no re-export of these gases. The imports by each company are shown in the Table. Company D is the largest importer during the baseline period, with 33% of total imports measured in tonnes CO<sub>2</sub>e. There are a variety of methodologies by which the quotas can be allocated. Under a ‘grandfathering methodology’, Company D would receive a quota allocation equal to 33% of the amount of imports allowed. Assuming that the baseline is 40,000 tonnes CO<sub>2</sub>e for Country X, Company D would receive 33% of the 40,000 baseline in 2024 (a “freeze year”) and 33% of 28,000 tonnes CO<sub>2</sub>e in 2035 (a year with a 30% cut in the phase-down schedule).

A variant of grandfathering is to create an allocation for “new entrants”. This would allow new companies to enter the market. A proportion of the total quota (e.g. 10%) would be reserved for new entrants. In this situation Companies A to D would each “give up” 10% of their allocation for the new entrants.

Fluid	Annual average imports by company (metric tonnes)				GWP	tonnes CO <sub>2</sub> e (000s)			
	2020 to 2022					A	B	C	D
	A	B	C	D		A	B	C	D
HFC-134a	1,000	2,000	2,500	3,000	1430	1,430	2,860	3,575	4,290
R-404A	500	750	1,000	1,000	3922	1,961	2,942	3,922	3,922
R-410A	750	1,000	1,000	1,250	2088	1,566	2,088	2,088	2,610
HCFC--22	2,500	2,000	1,500	3,000	1810	4,525	3,620	2,715	5,430
<b>Total tonnes CO<sub>2</sub></b>						<b>9,482</b>	<b>11,510</b>	<b>12,300</b>	<b>16,252</b>
<b>% of total tonnes CO<sub>2</sub></b>						<b>19%</b>	<b>23%</b>	<b>25%</b>	<b>33%</b>
Allocation, 2024 = 40,000 tonnes CO <sub>2</sub> e				2024 quotas		<b>7,655</b>	<b>9,292</b>	<b>9,931</b>	<b>13,121</b>
Allocation, 2035 = 28,000 tonnes CO <sub>2</sub> e				2035 quotas		<b>5,359</b>	<b>6,505</b>	<b>6,951</b>	<b>9,185</b>

Comprehensive details about setting up an import quota system for HCFCs were published by OzonAction in 2012. The approach described for HCFCs is also likely to be appropriate for HFC quotas. This reference can be found at: [http://www.unep.fr/ozonaction/information/mmcfiles/7531-e-HCFC\\_Quota\\_system.pdf](http://www.unep.fr/ozonaction/information/mmcfiles/7531-e-HCFC_Quota_system.pdf)

### Engagement with stakeholders:

During the process of setting up the required legislation and administrative systems it will be important to engage with relevant stakeholders for different parts of these processes. In particular:

- Government officials in the “treaty unit”, normally within a Ministry of Foreign Affairs
- Customs officials
- Private sector companies that produce or import HFCs

See **Kigali Fact Sheet 8** for further information on stakeholder engagement.