

Version  
as at 6 August 2022



## Climate Change Response (Emissions Trading Reform) Amendment Act 2020

Public Act     2020 No 22  
Date of assent     22 June 2020  
Commencement     see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry for the Environment.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Climate Change Response (Emissions Trading Reform) Amendment Act 2020.

## 2 Commencement

This Act comes into force as follows:

- (a) subpart 1 of Part 1 and subpart 1 of Part 2 come into force on the day after Royal assent:
- (b) subpart 2 of Part 1 and subpart 2 of Part 2 come into force on 30 November 2020:
- (c) subpart 3 of Part 1 comes into force on 1 January 2021:
- (d) subpart 4 of Part 1 and subpart 3 of Part 2 come into force on 1 January 2023:
- (e) subpart 5 of Part 1 and subpart 4 of Part 2 come into force on 1 January 2024.

## 3 Principal Act

This Act amends the Climate Change Response Act 2002 (the **principal Act**).

### Part 1 Amendments to principal Act

#### Subpart 1—Amendments that commence on day after Royal assent

#### 4 Section 2A amended (Application of Schedules 3 and 4)

- (1) In section 2A(1)(a)(ii), after “Schedule 3”, insert “(for fertiliser–farmer activities or animals–farmer activities)”.
- (2) In section 2A(1)(b), replace “221” with “219”.
- (3) In section 2A(3), delete “Subpart 1 of”.
- (4) In section 2A(4), before “Part 3”, insert “Subpart 1 of”.
- (5) Replace section 2A(5) and (6) with:
  - (5A) Subpart 1 of Part 5 of Schedule 3 (for fertiliser–processor activities)—
    - (a) applies on and after 1 January 2011; but
    - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the period—
      - (i) starting on 1 January 2011; and
      - (ii) ending on a date determined by that section (which may be 31 December 2024 or another date as early as 1 July 2022).
  - (5B) Subpart 2 of Part 5 of Schedule 3 (for fertiliser–farmer activities)—
    - (a) applies on and after a date appointed by the Governor-General by Order in Council (*see* section 2B); but

- (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the first year in which that subpart 2 applies to the persons, or class of persons, carrying out that activity.
- (5C) Subpart 3 of Part 5 of Schedule 3 (for animals–processor activities)—
  - (a) applies on and after 1 January 2011; but
  - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the period—
    - (i) starting on 1 January 2011; and
    - (ii) ending on a date determined by that section (which may be 31 December 2024 or another date as early as 1 July 2022).
- (5D) Subpart 4 of Part 5 of Schedule 3 (for animals–farmer activities)—
  - (a) applies on and after 1 January 2024 or a later date appointed by the Governor-General by Order in Council (*see* section 2B); but
  - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the first year in which that subpart 4 applies to the persons, or class of persons, carrying out that activity.
- (6) Replace section 2A(8) and (9) with:
- (8) Part 1A of Schedule 4 applies on and after 1 January 2023.

## 5 Sections 2B and 2C replaced

Replace sections 2B and 2C with:

### 2B Orders in Council in relation to subparts 2 and 4 of Part 5 of Schedule 3 (Agriculture)

- (1) This section relates to an Order in Council made under section 2A(5B) or (5D), which appoints a date on and after which subpart 2 or 4 of Part 5 of Schedule 3 (the **subpart**) applies (for fertiliser–farmer activities or animals–farmer activities).
- (2) The order must—
  - (a) be made on the recommendation of the Minister; and
  - (b) appoint a date that is 1 January in a year; and
  - (c) be made at least 1 year before the date appointed by the order.
- (3) The order may provide that the subpart applies, on and after the date appointed by the order,—
  - (a) specifically to 1 or more classes of person who carry out an activity listed in the subpart; or
  - (b) generally, to all persons who carry out an activity listed in the subpart.

- (4) Before recommending the making of the order, the Minister must comply with subsections (5) and (6).
- (5) The Minister must have regard to—
- (a) the need for the EPA to be able to verify information contained in emissions returns of the persons who will become participants in an activity listed in the subpart by operation of the order; and
  - (b) the likelihood that, as a result of becoming participants by operation of the order, persons carrying out an activity listed in the subpart will reduce their emissions; and
  - (c) the desirability of minimising—
    - (i) the compliance and administration costs of persons who will become participants in an activity listed in the subpart by operation of the order; and
    - (ii) the administration costs of the Crown in administering the emissions trading scheme.
- (6) The Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the consultant likely to have an interest in the order.

**2C Effect of overlapping application of subparts of Part 5 of Schedule 3 (Agriculture)**

- (1) This section applies—
- (a) to the fertiliser–processor and fertiliser–farmer subparts (of Part 5 of Schedule 3) at any time that those subparts apply at the same time (because of an Order in Council made under section 2A(5B)); and
  - (b) to the animals–processor and animals–farmer subparts (of Part 5 of Schedule 3) on and after—
    - (i) 1 January 2024; or
    - (ii) if an Order in Council is made under section 2A(5D), the date appointed in that order.
- (2) If this section applies, then regulations made under section 163(1) may require—
- (a) a person carrying out a fertiliser–processor activity and a person carrying out a fertiliser–farmer activity to—
    - (i) collect data or other information relating to the same synthetic fertiliser; and
    - (ii) calculate emissions relating to the same synthetic fertiliser; or
  - (b) a person carrying out an animals–processor activity and a person carrying out an animals–farmer activity to—



- (i) collect data or other information relating to the same ruminant animals, pigs, horses, or poultry; and
  - (ii) calculate emissions relating to the same ruminant animals, pigs, horses, or poultry.
- (3) However,—
  - (a) on and after the first day in respect of which the person carrying out a fertiliser–farmer activity is required to surrender units for emissions relating to the fertiliser, this Act no longer applies to the person carrying out the fertiliser–processor activity in relation to that fertiliser; and
  - (b) on and after the first day in respect of which the person carrying out an animals–farmer activity is required to surrender units for emissions relating to the ruminant animals, pigs, horses, or poultry, this Act no longer applies to the person carrying out the animals–processor activity in relation to those ruminant animals, pigs, horses, or poultry.
- (4) If an Order in Council is made under section 2A(5B) that has the effect of applying the fertiliser–farmer subpart to all persons who carry out a fertiliser–farmer activity, then section 2A(5A) and the fertiliser–processor subpart are repealed on the first day in respect of which emissions from all persons carrying out a fertiliser–farmer activity may result in liability to surrender units.
- (5) On the first day on which, under section 2A(5D), the animals–farmer subpart applies to all persons who carry out an animals–farmer activity, and emissions from all persons carrying out the activity may result in liability to surrender units, section 2A(5C) and the animals–processor subpart are repealed.
- (6) If, by operation of subsection (3), (4), or (5), this Act no longer applies to a person carrying out a fertiliser–processor activity or an animals–processor activity, then—
  - (a) section 54(4) applies, with any necessary modifications, to any person who has ceased, by operation of that subsection, to be a participant in respect of that activity; and
  - (b) the person is not required to comply with section 59, but the EPA may, for the purposes of section 59(2), determine that the person has ceased to carry out the activity.
- (7) In this section and sections 2A, 2B, 216, and 219,—
  - animals–farmer subpart** means subpart 4 of Part 5 of Schedule 3, and **animals–farmer activity** means an activity listed in that subpart
  - animals–processor subpart** means subpart 3 of Part 5 of Schedule 3, and **animals–processor activity** means an activity listed in that subpart
  - fertiliser–farmer subpart** means subpart 2 of Part 5 of Schedule 3, and **fertiliser–farmer activity** means an activity listed in that subpart

**fertiliser–processor subpart** means subpart 1 of Part 5 of Schedule 3, and **fertiliser–processor activity** means an activity listed in that subpart.

## 6 Section 3 amended (Purpose)

- (1) In section 3(1)(a), replace “and the Protocol” with “, the Protocol, and the Paris Agreement”.
- (2) In section 3(1)(a)(i), after “period”, insert “starting on 1 January 2008 and ending on 31 December 2012”.
- (3) In section 3(1)(a)(ii), replace “Article 7 of the Protocol and Article 12 of the Convention” with “Article 12 of the Convention, Article 7 of the Protocol, and Article 13 of the Paris Agreement”.
- (4) In section 3(1)(b)(i), replace “and the Protocol” with “, the Protocol, and the Paris Agreement”.
- (5) Replace section 3(1)(b)(ii) with:
  - (ii) assisting New Zealand to meet its 2050 target and emissions budgets:
- (6) In section 3(1)(c)(i), replace “and the Protocol” with “, the Protocol, and the Paris Agreement”.
- (7) Replace section 3(1)(c)(ii) with:
  - (ii) assisting New Zealand to meet its 2050 target and emissions budgets.
- (8) Repeal section 3(3).

## 7 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))

- (1) Repeal section 3A(a).
- (2) Replace section 3A(b) and (c) with:
  - (b) with respect to the following provisions (which relate to powers to make regulations or Orders in Council or to give notice in the *Gazette*), before recommending the making of regulations or an order, or giving notice in the *Gazette*, under those provisions, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulations, order, or notice:
    - (i) section 2A(5B) or (5D) (Part 5 of Schedule 3):
    - (ii) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
    - (iii) section 30GA (auctions to sell New Zealand units):
    - (iv) section 30GB (limits and price controls for units):
    - (v) section 30GD (auction monitor):
    - (vi) section 30M (infringement offences):

- (vii) section 60 (exemptions in respect of activities listed in Schedule 3):
  - (viii) section 60A (exemptions for participants in activity listed in Part 1 of Schedule 4):
  - (ix) section 84A or 84B (phase-out rates for eligible industrial activities):
  - (x) section 161D(1)(a) (notice specifying description of activity in relation to industrial allocations), unless the only purpose of the notice is to require persons to provide electricity-related contracts or any information related to those contracts:
  - (xi) section 161G (eligible agricultural activities):
  - (xii) section 162 (adding further activity to Part 2 of Schedule 4):
  - (xiii) section 163 (methodologies and verifiers):
  - (xiv) section 164 (unique emissions factors):
  - (xv) section 168(1)(nb) (New Zealand's best practice forest management):
  - (xvi) section 186F (pre-1990 offsetting forest land):
  - (xvii) section 194C (input returns):
  - (xviii) section 196F (forestry classifications):
  - (xix) section 244 (exemptions from payment of synthetic greenhouse gas levy):
  - (xx) section 246(1)(a) to (e) (synthetic greenhouse gas levy):
  - (xxi) section 258 (verifiers):
- (3) Repeal section 3A(e) to (j).

**8 New section 3B inserted (Consultation about certain regulations, orders, and notices)**

After section 3A, insert:

**3B Consultation about certain regulations, orders, and notices**

- (1) The Minister must comply with this section before recommending the making of regulations or an Order in Council, or giving notice in the *Gazette*, under any of the following:
- (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
  - (b) section 30GA (auctions to sell New Zealand units):
  - (c) section 30GB (limits and price controls for units):
  - (d) section 30GD (auction monitor):
  - (e) section 30M (infringement offences):

- (f) section 60 (exemptions in respect of activities listed in Schedule 3), unless the Crown has signed a negotiated greenhouse agreement with the person exempted:
  - (g) section 60A (exemptions for participants in activity listed in Part 1 of Schedule 4):
  - (h) section 84A or 84B (phase-out rates for eligible industrial activities):
  - (i) section 161D(1)(a) (notice specifying description of activity in relation to industrial allocations), unless the only purpose of the notice is—
    - (i) to require persons to provide electricity-related contracts or any information related to those contracts; or
    - (ii) to provide the Minister with the information necessary to determine whether any matter should be considered by a review under section 160:
  - (j) section 161G(1)(a)(ii) (allocative baseline of eligible agricultural activity):
  - (k) section 162 (adding further activity to Part 2 of Schedule 4):
  - (l) section 163 (methodologies and verifiers):
  - (m) section 164 (unique emissions factors):
  - (n) section 168(1)(nb) (New Zealand's best practice forest management):
  - (o) section 186F (pre-1990 offsetting forest land):
  - (p) section 194C (input returns):
  - (q) section 196F (forestry classifications):
  - (r) section 216 (voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity):
  - (s) section 233(4)(a) (methodology for specifying price of carbon):
  - (t) section 244 (exemptions from payment of synthetic greenhouse gas levy):
  - (u) section 246(1)(a) to (e) (synthetic greenhouse gas levy):
  - (v) section 258 (verifiers).
- (2) The Minister must also comply with this section before recommending the revocation of an Order in Council under section 60, 60A, or 244 (exemptions for various matters).
- (3) The Minister must be satisfied that 1 of the following has consulted the persons (or representatives of those persons) that appear to the consulter likely to be substantially affected by any regulations made in accordance with the recommendation, by any order made or revoked in accordance with the recommendation, or by the notice:
- (a) the Minister or the chief executive; or

- (b) for regulations made under section 30GB, 84A, or 84B, the Minister, the chief executive, or the Climate Change Commission.
- (4) The process for consultation must, to the extent practicable in the circumstances, include—
  - (a) adequate and appropriate notice of the proposed terms of the recommendation or notice, and of the reasons for it; and
  - (b) a reasonable opportunity for consulted persons to consider the recommendation or notice and make submissions; and
  - (c) adequate and appropriate consideration of submissions.
- (5) This section does not apply to regulations made under the following if the Minister considers it is in the national interest that the regulations be made urgently:
  - (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
  - (b) section 30GA (auctions to sell New Zealand units):
  - (c) section 30GB (limits and price controls for units):
  - (d) section 30GD (auction monitor).
- (6) A failure to comply with this section does not affect the validity of any regulations, order, or notice to which it applies.

## 9 Section 4 amended (Interpretation)

- (1) In section 4(1), repeal the definitions of **allocation plan**, **approved overseas unit**, **assigned amount unit**, **Australian eligible industrial activity**, **carbon dioxide equivalent**, **carry-over**, **CDM registry**, **certified emission reduction unit**, **clean development mechanism project**, **commitment period reserve**, **conversion account**, **convert**, **designated operational entity**, **elect**, **eligible land**, **emission reduction unit**, **emissions budget period**, **emissions return**, **executive board**, **expire or expiry**, **first commitment period**, **fishing allocation plan**, **greenhouse gas**, **initial assigned amount**, **international transaction log**, **joint implementation project**, **Kyoto units**, **long-term certified emission reduction replacement account**, **long-term certified emission reduction unit**, **New Zealand Greenhouse Gas Inventory**, **non-compliance cancellation account**, **overseas registry**, **Paris Agreement**, **Party**, **post-1989 forest land**, **pre-1990 forest land allocation plan**, **previous commitment period**, **relevant commitment period**, **removal unit**, **retire**, **retirement account**, **sink cancellation account**, **subsequent commitment period**, **supervisory committee**, **temporary certified emission reduction replacement account**, **temporary certified emission reduction unit**, and **unit**.
- (2) In section 4(1), insert in their appropriate alphabetical order:
  - approved overseas unit** means a unit, other than a New Zealand unit, that is—
    - (a) issued (as defined by this section); and

- (b) prescribed as a unit that may be transferred to accounts in the Registry
- auction** means an auction to sell New Zealand units under section 6A
- carbon dioxide equivalent**, in relation to a greenhouse gas, means the amount of carbon dioxide (in tonnes) that would produce the same global warming as the amount of that gas, calculated in accordance with international climate change obligations
- emissions budget period** means a 5-year period, except for the first 4-year period in the years 2022 to 2025, as specified in section 5X(3)
- emissions return**—
- (a) means—
- (i) an annual emissions return submitted under section 65; or
  - (ii) a quarterly emissions return submitted under section 66; or
  - (iii) a final emissions return submitted under section 118; or
  - (iv) an emissions return submitted under a provision of Part 5 or Schedule 1AA; and
- (b) includes the following as if they had been submitted in that form:
- (i) an emissions return as amended by the EPA under section 120; and
  - (ii) the EPA's assessment under section 121 of the matters that should have been in an emissions return; and
- (c) includes an emissions return that shows nil liability
- emissions trading scheme** means (except in section 3) the greenhouse gas emissions trading scheme established under this Act
- ETS participant provisions** means Parts 4 to 5D of this Act
- forestry activity** means—
- (a) an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or pre-1990 offsetting forest land); or
  - (b) an activity listed in Part 1 of Schedule 4 (forestry on post-1989 forest land)
- forestry classification** has the meaning given in section 196
- greenhouse gas** means—
- (a) carbon dioxide (CO<sub>2</sub>):
  - (b) methane (CH<sub>4</sub>):
  - (c) nitrous oxide (N<sub>2</sub>O):
  - (d) any hydrofluorocarbon:
  - (e) any perfluorocarbon:
  - (f) sulphur hexafluoride (SF<sub>6</sub>)

**international climate change obligations** means New Zealand's international obligations under the Convention, the Protocol, or the Paris Agreement

**international transaction body** means a prescribed body that confirms the validity of transactions relating to accounting of greenhouse gas emissions

**issued**, in relation to an approved overseas unit, means—

- (a) issued by an overseas registry; or
- (b) issued in another way and approved by an international transaction body

**mandatory emissions return period** means any of the following periods:

- (a) the first commitment period starting on 1 January 2008 and ending on 31 December 2012;
- (b) the 5-year period starting on 1 January 2013 and ending on 31 December 2017;
- (c) the 5-year period starting on 1 January 2018 and ending on 31 December 2022;
- (d) the 3-year period starting on 1 January 2023 and ending on 31 December 2025;
- (e) the 5-year period starting on 1 January 2026 and ending on 31 December 2030;
- (f) each consecutive 5-year period after that

**New Zealand Greenhouse Gas Inventory** means the reports that are required under Articles 4 and 12 of the Convention, Article 7.1 of the Protocol, and Article 13.7 of the Paris Agreement and that are prepared in accordance with section 32(1)

**overseas registry** means a prescribed overseas registry from which or to which units may be transferred to or from accounts in the Registry

**Paris Agreement**—

- (a) means the Paris Agreement done at Paris on 12 December 2015, a copy of the English text of which is set out in Schedule 2A; and
- (b) includes any amendments made to the Paris Agreement that are, or will become, binding on New Zealand from time to time

**post-1989 forest land** means forest land that—

- (a) is one of the following:
  - (i) land that was not forest land on 31 December 1989;
  - (ii) land that was forest land on 31 December 1989 but was deforested in the period beginning on 1 January 1990 and ending on 31 December 2007;
  - (iii) land that was pre-1990 forest land, other than exempt land,—
    - (A) that was deforested on or after 1 January 2008; and

- (B) in respect of which any liability to surrender units arising in relation to an activity listed in Part 1 of Schedule 3 has been satisfied:
- (iv) land that was pre-1990 forest land, other than exempt land, that was deforested on or after 1 January 2013 and offset by pre-1990 offsetting forest land:
  - (v) land that was pre-1990 offsetting forest land that was deforested after 1 January 2013 and in respect of which any liability to surrender units arising in relation to an activity listed in Part 1A of Schedule 3 has been satisfied:
  - (vi) land that was exempt land—
    - (A) that has been deforested; and
    - (B) in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2):
  - (vii) land that was exempt land that has been deforested more than 8 years ago; and
- (b) is not offsetting forest land or pre-1990 offsetting forest land
- pre-1990 forest land allocation plan** means the allocation plan issued under section 70 in respect of pre-1990 forest land
- unit** means a New Zealand unit or an approved overseas unit
- (3) In section 4(1), definition of **account number**, replace “section 15(1)(a)” with “section 15(1)”.
  - (4) In section 4(1), definition of **eligible person**, replace paragraph (d) with:
    - (d) the pre-1990 forest land allocation plan
  - (5) In section 4(1), definition of **exempt land**, replace paragraph (a)(i) with:
    - (i) under section 183 or 183B; or
  - (6) In section 4(1), definition of **general cancellation account**, delete “other than sink activities being a source of emissions or a determination that New Zealand is not in compliance with Article 3.1 of the Protocol”.
  - (7) In section 4(1), definition of **holding account**, delete “that have not been retired, surrendered, converted, or cancelled”.
  - (8) In section 4(1), definition of **surrender**, replace “section 18CA(3) or (4)” with “section 18CA(2)”.
  - (9) In section 4(2), replace “or Protocol” with “, the Protocol, or the Paris Agreement” in each place.
  - (10) In section 4(6), replace “sections 62, 65, 66, 67, 118, 187, 189, 191, 192, and 193, **activity** or **activities**, in relation to a participant who submits an emissions



return that shows nil liability,” with “a provision of this Act that relates to a participant who submits an emissions return that shows nil liability, **activity or activities**”.

**10 New section 4AA inserted (Greenhouse gas definition may be amended to add gases)**

After section 4, insert:

**4AA Greenhouse gas definition may be amended to add gases**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
  - (a) amend the definition of greenhouse gas in section 4 to add 1 or more other gases; and
  - (b) if necessary, amend Schedule 1AA to set out transitional provisions for the addition.
- (2) The Minister must not recommend the making of an order unless the Minister is satisfied that New Zealand has international climate change obligations in relation to the additional gas or gases.

**11 Section 5D amended (Membership of Commission)**

Replace section 5D(1)(c) with:

- (c) no fewer than 3, and no more than 7, other members.

**12 Section 5J amended (Commission’s functions)**

- (1) After section 5J(f), insert:

- (fa) to make recommendations to the Minister about limits and price control settings for units (*see* section 5ZOA):
- (fb) to make recommendations to the Minister about decreased or increased phase-out rates (*see* section 5ZOB):

- (2) After section 5J(h), insert:

- (ha) to provide advice to the Minister (as required by section 220) on the progress that has been made towards—
  - (i) meeting the primary sector climate change commitments set out in Schedule 5; and
  - (ii) participants in the activities listed in subpart 4 of Part 5 of Schedule 3 (for animals–farmer participants) being ready to start complying with reporting and surrender obligations under this Act:

**13 Section 5N amended (Consultation)**

Replace section 5N(2)(a) with:

- (a) make publicly available, and invite submissions on, discussion papers and draft reports; and

**14 Section 5ZA amended (Commission to advise Minister)**

Replace section 5ZA(4)(a) with:

- (a) in the case of the first 3 emissions budgets, no later than—
  - (i) 1 February 2021; or
  - (ii) after a request by the Commission to extend the deadline, any date on or before 1 August 2021 that is specified by the Minister (whether once or more) by notice in the *Gazette*:

**15 Section 5ZG amended (Requirement for emissions reduction plan)**

Replace section 5ZG(2) with:

- (2) The plan must be prepared and made publicly available by the deadlines specified in section 5ZI.

**16 Section 5ZH amended (Commission to advise on emissions reduction plans)**

Replace section 5ZH(2) with:

- (2) Despite subsection (1), the first advice must be given no later than—
  - (a) 1 February 2021; or
  - (b) after a request by the Commission to extend the deadline, any date on or before 1 August 2021 that is specified by the Minister (whether once or more) by notice in the *Gazette*.

**17 Section 5ZI amended (Minister to prepare and make emissions reduction plan publicly available)**

- (1) Replace section 5ZI(2) with:

- (2) The Minister must—
  - (a) prepare the plan after the relevant emissions budget has been notified under section 5ZD; but
  - (b) do the following at least 12 months before the commencement of the budget period:
    - (i) publish the plan in the *Gazette*; and
    - (ii) make the plan publicly available; and
    - (iii) present a copy of the plan to the House of Representatives.
- (2A) However, for the plan for the first emissions budget period, the Minister—
  - (a) may prepare the plan before the relevant emissions budget has been notified under section 5ZD; and
  - (b) must do the following before the commencement of the budget period:

- (i) publish the plan in the *Gazette*; and
- (ii) make the plan publicly available; and
- (iii) present a copy of the plan to the House of Representatives.

(2) Repeal section 5ZI(4).

**18 Section 5ZL amended (Commission to report at end of emissions budget period)**

(1) In section 5ZL(1), replace “in the next emissions budget” with “for that”.

(2) Replace section 5ZL(1)(c) with:

- (c) an assessment of the amount of offshore mitigation required to meet the emissions budget for that period, taking into account the limit proposed by the Commission under section 5ZA(1)(e).

**19 New subpart 6 of Part 1B inserted**

After section 5ZO, insert:

Subpart 6—Recommendations about making regulations

**5ZOA Recommendations about limits and price control settings for units**

- (1) This section applies after the Minister has set the first emissions budget.
- (2) The Commission must recommend to the Minister limits and price control settings, including any desirable emissions price path, each time the Minister is required to recommend the making of regulations under section 30GB.
- (3) The Commission’s recommendations must—
  - (a) cover the limits and price control settings for each year that the Minister’s recommendation must cover; and
  - (b) be made in accordance with—
    - (i) the same requirements under sections 30GB and 30GC (except section 30GC(5)(e)) that apply to the making of the Minister’s recommendations; and
    - (ii) its other duties (*see* sections 5M to 5O, for example); and
  - (c) be given to the Minister a reasonable time before the Minister is required to recommend the making of the regulations.

**5ZOB Recommendations about decreased or increased phase-out rates**

- (1) The Commission must, on the Minister’s request, consider and recommend whether—
  - (a) a decreased phase-out rate should be set for 1 or more eligible industrial activities for a year or years (by the making or amendment of regulations under section 84A):

- (b) an increased phase-out rate should be set for 1 or more eligible industrial activities for an emissions budget period (by the making or amendment of regulations under section 84B).
- (2) The Commission must recommend that a decreased phase-out rate should be set for 1 or more eligible industrial activities if the Commission is satisfied that there is an ongoing and substantial risk that activities will be relocated outside of New Zealand to reduce emissions-related costs.
- (3) The Commission may recommend that an increased phase-out rate should be set for 1 or more eligible industrial activities if the Commission is satisfied that it is appropriate to do so, having regard to the matters listed in section 84C(3).

**20 Section 6 amended (Minister of Finance may direct Registrar regarding establishment of Crown holding accounts and carry out trading activities with respect to units)**

- (1) In section 6(b), after “overseas registry”, insert “or international transaction body”.
- (2) In section 6(d), delete “, with any person (including any other Party)”.

**21 Section 6A amended (Minister’s power to sell by auction)**

- (1) In section 6A, replace “section 30G(1)(p)” with “section 30GA”.
- (2) In section 6A(a), after “prescribed”, insert “individual limit and”.
- (3) After section 6A(b), insert:
  - (c) direct the Registrar to transfer units to any holding account in the Registry for the purposes of selling New Zealand units by auction.

**22 Section 7 amended (Minister of Finance may give directions to Registrar regarding accounts and units)**

- (1) Repeal section 7(1)(a)(i), (ii), (iv), (v), (vi), and (viii).
- (2) Replace section 7(1)(b) to (e) with:
  - (b) transfer units between holding accounts, subject to any prescribed restriction or prohibition.
- (3) Replace section 7(2)(b)(i) with:
  - (i) the transfer is required to comply with international climate change obligations; or
- (4) Repeal section 7(3).

**23 Section 9 amended (Minister of Finance may obtain information from inventory agency and Registrar)**

In section 9(b)(ii), replace “retired, replaced, cancelled, and carried-over” with “replaced, and cancelled”.

**24 Section 10 replaced (Purpose of Registry)**

Replace section 10 with:

**10 Purpose of Registry**

The purpose of the Registry is—

- (a) to ensure the accurate, transparent, and efficient accounting of—
  - (i) the issue, holding, transfer, surrender, and cancellation of New Zealand units and approved overseas units; and
  - (ii) the conversion of New Zealand units in accordance with regulations made under this Act; and
- (b) to ensure the accurate, transparent, and efficient exchange of information between the Registry, overseas registries, and international transaction bodies; and
- (c) to facilitate the exchange of information between the persons with functions, duties, and powers under this Act to enable all of them to perform their functions and duties and exercise their powers.

**25 Section 13 amended (Registrar may refuse access to, or suspend operation of, Registry)**

In section 13(d), replace “New Zealand’s international obligations” with “international climate change obligations”.

**26 Section 14 replaced (Registrar must give effect to directions)**

Replace section 14 with:

**14 Registrar must give effect to directions**

The Registrar must give effect to any direction (including for the transfer of units) that is given by a Minister or the EPA in accordance with this Act.

**27 Section 15 amended (Registrar to allocate unique numbers)**

(1) Replace section 15(1) with:

(1) The Registrar must, in accordance with regulations made under this Act, allocate a unique account number to each account when the account is created.

(2) Repeal section 15(2).

**28 Sections 16 and 17 repealed**

Repeal sections 16 and 17.

**29 Section 18 amended (Form and content of unit register)**

(1) Replace section 18(2)(b) with:

(b) the particulars of transactions, including, but not limited to, the issue, transfer, replacement, surrender, conversion, and cancellation of units; and

- (2) In section 18(3)(a), replace “retirement, replacement, surrender, carry-over,” with “replacement, surrender,”.
- (3) In section 18(3)(b)(ii), after “registries”, insert “or international transaction bodies”.

**30 Section 18B amended (Closing holding accounts)**

Repeal section 18B(2)(b)(ii)(A).

**31 Section 18C amended (Transfer of units)**

- (1) In section 18C(1)(b), after “registry”, insert “or international transaction body”.
- (2) Repeal section 18C(3).

**32 Section 18CA replaced (Effect of surrender, retirement, cancellation, and conversion)**

Replace section 18CA with:

**18CA Effect of surrender and cancellation**

- (1) A unit that is transferred to a cancellation account may not be further transferred, surrendered, or cancelled.
- (2) A unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the Minister of Finance given under section 6 or 7 or a direction of the EPA given under section 124.

**33 Sections 18CB, 18CC, and 18CD repealed**

Repeal sections 18CB, 18CC, and 18CD.

**34 Section 18D amended (Succession)**

- (1) Replace section 18D(2)(b) with:
- (b) the Registrar has registered the successor as the account holder.
- (2) Replace section 18D(3) with:
- (3) The Registrar may register a successor as the account holder—
- (a) on application made in the form, and payment of the fee (if any), prescribed in regulations made under this Act; and
- (b) in accordance with those regulations.
- (4) However, if the account holder is a company and any units in its holding account are vested in the Crown under section 324(1) of the Companies Act 1993,—
- (a) subsections (2) and (3) do not apply; and

- (b) the EPA must, as soon as practicable after becoming aware of the public notice about the vesting of the units that is given under section 324(3) of that Act, direct the Registrar to transfer the units to a Crown holding account and close the account holder's holding account.

**35 Section 19 repealed (Retirement of Kyoto units by the Crown)**

Repeal section 19.

**36 Section 20 amended (Transactions must be registered)**

- (1) In section 20(1), delete “retire,”.
- (2) In section 20(2)(a), replace “the international transaction log” with “an international transaction body”.

**37 Section 21 repealed (Registration procedure for Kyoto units)**

Repeal section 21.

**38 Section 21AA amended (Registration procedure for New Zealand units and approved overseas units)**

- (1) In section 21AA(1), replace “a Minister authorised to give the direction under a provision of this Act or the EPA” with “the EPA or a Minister authorised to give the direction under this Act”.
- (2) Replace section 21AA(1)(b) with:
- (b) if the proposed transaction concerns an overseas registry or international transaction body, send a record of the proposed transaction to the overseas registry or international transaction body if required by it; and
- (3) In section 21AA(1)(c), after “registry”, insert “or international transaction body”.
- (4) In section 21AA(1)(c)(ii)(A), replace “the Minister or the EPA” with “the EPA or the Minister”.
- (5) In section 21AA(2), after “an overseas registry”, insert “or international transaction body”.
- (6) In section 21AA(2), replace “the overseas registry” with “it”.
- (7) In section 21AA(2)(b), after “registry”, insert “or international transaction body”.
- (8) In section 21AA(2)(c)(i), replace “the Minister or the EPA who gave the direction” with “the EPA or the Minister who gave the direction”.
- (9) In section 21AA(3), after “from the overseas registry”, insert “or international transaction body”.
- (10) In section 21AA(3)(c), after “registry”, insert “or international transaction body”.

**39 Section 21A amended (Electronic registration)**

In section 21A, delete “a provision of”.

**40 Section 21B amended (Defective applications)**

Replace section 21B(1) with:

- (1) If an application is defective, the Registrar may direct the applicant, in writing by electronic notification, to correct the defect within a specified period of time.

**41 Section 23 repealed (Receiving Kyoto units from overseas registries)**

Repeal section 23.

**42 Section 23A amended (Receiving New Zealand units and approved overseas units from overseas registries)**

- (1) In the heading to section 23A, after “registries”, insert “or international transaction bodies”.
- (2) In section 23A(1), (2), and (3), after “overseas registry”, insert “or international transaction body” in each place.

**43 Section 24 amended (Priority of registration)**

In section 24(1), delete “a provision of”.

**44 Section 25 amended (Correction of unit register)**

- (1) In section 25(1)(a), replace “the Minister or the EPA who gave the direction” with “the EPA or the Minister who gave the direction”.
- (2) Replace section 25(3)(c)(ii) with:
  - (ii) an international transaction body (if required to do so); and

**45 Section 27 amended (Information accessible by search)**

- (1) Replace section 27(1)(c) with:
  - (c) for each account whose purpose is to hold approved overseas units, the commitment period that the Protocol provides for and that is associated with the account; and
- (2) Repeal section 27(2)(a) and (b).
- (3) Replace section 27(2)(h) and (i) with:
  - (h) the total quantity of each type of approved overseas units issued during that year; and
- (4) In section 27(2)(j), replace “to the Registry from overseas registries” with “into the Registry”.
- (5) In section 27(2)(j)(iii), replace “overseas registries” with “registry or body”.



- (6) In section 27(2)(j)(iii)(A) and (B), replace “overseas registry” with “registry or body”.
- (7) In section 27(2)(k), replace “from the Registry to overseas registries” with “out of the Registry”.
- (8) In section 27(2)(k)(iii), replace “overseas registries” with “registry or body”.
- (9) In section 27(2)(k)(iii)(A) and (B), replace “overseas registry” with “registry or body”.
- (10) Replace section 27(2)(n), (o), and (p) with:
- (o) the total quantity of approved overseas units transferred during that year to any sink cancellation account; and
  - (p) the total quantity of approved overseas units transferred during that year to any non-compliance cancellation account; and
- (11) In section 27(2)(q), replace “to the” with “to each”.
- (12) Repeal section 27(2)(r).
- (13) Replace section 27(2)(u), (v), and (w) with:
- (u) the total quantity of each type of unit into which New Zealand units are converted in accordance with regulations made under this Act.
- (14) Replace section 27(3)(a) and (b) with:
- (a) the total holdings in each holding account in the Registry (including any holding account held by the Crown) of each type of approved overseas unit issued in—
    - (i) the first commitment period starting on 1 January 2008 and ending on 31 December 2012; or
    - (ii) the second commitment period starting on 1 January 2013 and ending on 31 December 2020; and
  - (b) the total quantity of each type of approved overseas unit in the Registry.
- 46 Section 30A amended (The Crown or Registrar not liable in relation to searches in certain cases)**
- Replace section 30A(b)(i) with:
- (i) an international transaction body; or
- 47 Sections 30B to 30D and cross-heading repealed**
- Repeal sections 30B to 30D and the cross-heading above section 30B.
- 48 Section 30E repealed (Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation)**
- Repeal section 30E.

**49 Section 30G amended (Regulations relating to Part 2)**

- (1) In section 30G(1)(b)(i)(A) and (C), after “registry”, insert “or international transaction body”.
- (2) After section 30G(1)(b)(ii), insert:
  - (iii) the registration of a successor as an account holder:
- (3) Repeal section 30G(1)(d).
- (4) In section 30G(1)(e)(vi)(B), replace “the international transaction log” with “an international transaction body”.
- (5) In section 30G(1)(f) and (i), after “Part”, insert “or regulations made under this Part”.
- (6) After section 30G(1)(i), insert:
  - (ia) prescribing, for the purpose of the definition of international transaction body in section 4, bodies that confirm the validity of transactions relating to accounting of greenhouse gas emissions:
- (7) In section 30G(1)(j), replace “and to which units may be transferred to and” with “or to which units may be transferred to or”.
- (8) In section 30G(1)(k), after “overseas registry”, insert “or international transaction body”.
- (9) In section 30G(1)(n), replace “the terms of the Convention and the Protocol” with “international climate change obligations”.
- (10) In section 30G(1)(n), replace “the Convention or the Protocol” with “international climate change obligations”.
- (11) Repeal section 30G(1)(p) and (q).
- (12) In section 30G(4), replace “the Convention and the Protocol” with “international climate change obligations”.

**50 Sections 30GA to 30H replaced**

Replace sections 30GA to 30H with:

**30GA Regulations for auctions to sell New Zealand units**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations under this section that prescribe matters relating to the powers of the Minister under section 6A to sell New Zealand units by auction.
- (2) If regulations are to be made under this section, the Minister must recommend the making of regulations that—
  - (a) specify the date on which the sale of New Zealand units by auction commences:
  - (b) prescribe an indicative schedule for when auctions are planned to be held:

- (c) specify circumstances in which an auction will not be held:
  - (d) specify the format of an auction (for example, a single-round, sealed bid format):
  - (e) specify rules for the format of the auction (for example, rules on how bids are made and how tied bids are resolved):
  - (f) specify criteria, and requirements for registration, that a person must satisfy to participate in an auction:
  - (g) specify financial processes that a person must follow when participating in an auction, including requirements for financial assurance, payment, and delivery:
  - (h) provide for the results of each auction to be made publicly available.
- (3) If regulations are to be made under this section, the Minister may recommend the making of regulations for any or all of the following purposes:
- (a) providing for pilot auctions to be conducted, whether before or after the date on which auctions commence:
  - (b) prescribing offences and penalties for the breach of regulations made under this section or section 30GD:
  - (c) prescribing infringement offences for the breach of regulations made under this section or section 30GD, and prescribing for those offences—
    - (i) maximum fines not exceeding—
      - (A) \$3,000 for an individual:
      - (B) \$6,000 in any other case; and
    - (ii) infringement fees not exceeding—
      - (A) \$1,000 for an individual:
      - (B) \$2,000 in any other case:
  - (d) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence:
  - (e) providing for any other matters for the conduct of an auction that the Minister considers relevant to the effective conduct of the auction.

**30GB Regulations about limits and price control settings for units**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations under this section.
- (2) If regulations are to be made under section 30GA, the Minister must recommend the making of regulations under this section that—
  - (a) prescribe the following limits for a calendar year:
    - (i) a limit on the New Zealand units available by auction (an **individual limit**); and

- (ii) a limit on the approved overseas units used (another **individual limit**); and
    - (iii) a limit on the sum of the following (the **overall limit**):
      - (A) the New Zealand units available by auction;
      - (B) the New Zealand units available by other means;
      - (C) the approved overseas units used; and
  - (b) provide that—
    - (i) the individual limits must not be exceeded; and
    - (ii) the overall limit—
      - (A) restricts both the New Zealand units available by auction and the approved overseas units used, in that neither must cause the overall limit to be exceeded; but
      - (B) does not restrict the New Zealand units available by other means, in that they may cause the overall limit to be exceeded; and
  - (c) provide that any additional units that are allocated under section 86C(5)(b) are not counted as New Zealand units available by other means; and
  - (d) provide for how a reserve amount of New Zealand units is to be released for sale at auction if a trigger price is reached or exceeded by bidding at an auction, unless the reserve amount and minimum price are set at zero under paragraph (e); and
  - (e) prescribe the following **price control settings**:
    - (i) the reserve amount of New Zealand units for each trigger price, which may be a single reserve amount of zero;
    - (ii) the 1 or more trigger prices, unless the reserve amount is zero;
    - (iii) the minimum price at which units may be sold by auction, which may be zero.
- (3) The Minister must recommend the making of regulations under this section so that,—
- (a) when the regulations are first made, they prescribe limits and price control settings for each of the next 5 or 6 calendar years; and
  - (b) the regulations are amended to ensure that, at all times, they prescribe limits and price control settings for each of the next 5 calendar years.
- (4) Each time the Minister is to recommend that the regulations be amended to apply to a further calendar year under subsection (3)(b), the Minister—
- (a) must consider whether to recommend prescribing new limits and new price control settings for each of the 2 calendar years before that further calendar year; and

- (b) may recommend prescribing new limits and new price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made.
- (5) However, the Minister may make a recommendation under subsection (4)(b) only if,—
- (a) in the year in which the amendment is made, the price control settings have had effect by—
- (i) the release of a reserve amount of units; or
- (ii) the sale of units at the minimum price; or
- (b) the Minister is satisfied that the amendment is justified by the following special circumstances:
- (i) a change that has significantly affected any matter that the Minister was required to consider under section 30GC when recommending the limits and price control settings that are to be amended; or
- (ii) a change in the budget or contribution described by section 30GC(2)(a) or (b) that applies to the year to which the amendment applies; or
- (iii) a *force majeure* event.
- (6) Regulations made under subsection (2)(a)(ii) may be made in respect of different units, transactions, persons, classes of units, subclasses of units, classes of transactions, or classes of persons.
- (7) See section 30GC for requirements relating to this section.
- (8) In this section,—

**approved overseas units used** means the number of approved overseas units used by participants in a calendar year by, for example, being transferred to holding accounts or being surrendered

**New Zealand units available by auction** means the number of New Zealand units sold by auction in a calendar year

**New Zealand units available by other means** means the number of New Zealand units that are allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in a calendar year.

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#### Example

Regulations are first made under this section in December 2020. They must prescribe the individual limits, overall limits, and price control settings for the 5 (or 6) years from 2021 to 2025 (or 2026). In 2021, the regulations—

- must be amended to apply (or in how they apply) to 2026; and
- may be amended to prescribe new individual limits, overall limits, and price control settings for 2024 and 2025; and

- may be amended to prescribe new price control settings for 2022 or 2023.

### 30GC Requirements for regulations about limits and price control settings for units

- (1) The Minister must comply with this section in—
  - (a) recommending under section 30GB(2), (3), or (4)(b) the making of regulations that prescribe individual limits, overall limits, or price control settings; and
  - (b) considering under section 30GB(4)(a) whether to recommend prescribing new individual limits, overall limits, and price control settings for the 2 calendar years before a further calendar year.
- (2) The Minister must be satisfied that the limits and price control settings are in accordance with—
  - (a) the emissions budget, and the nationally determined contribution for New Zealand under the Paris Agreement, that applies to—
    - (i) the period for which the limits or price control settings are being prescribed; or
    - (ii) any period after that, if a budget or contribution exists for that period; and
  - (b) the 2050 target.
- (3) However, they need not strictly accord with the budgets or contributions as long as the Minister is satisfied that the discrepancy is justified, after considering the other matters under this section.
- (4) The Minister must consider—
  - (a) the main matters; and
  - (b) the additional matters, but only in relation to the price control settings.
- (5) The **main matters** are as follows:
  - (a) the projected trends for New Zealand's greenhouse gas emissions in the 5 years after the current year, including—
    - (i) the anticipated volumes of greenhouse gas emissions to which the emissions trading scheme applies (meaning emissions for which participants are required to submit returns or surrender units under this Act); and
    - (ii) the anticipated volumes of greenhouse gas emissions to which the emissions trading scheme does not apply:
  - (b) the proper functioning of the emissions trading scheme:
  - (c) international climate change obligations and instruments or contracts that New Zealand has with other jurisdictions to access emissions reductions in their carbon markets:

- (d) the forecast availability and cost of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets for the reduction of emissions:
  - (e) the recommendations made by the Climate Change Commission under section 5ZOA:
  - (f) any other matters that the Minister considers relevant.
- (6) The **additional matters** are as follows:
- (a) the impact of emissions prices on households and the economy:
  - (b) the level and trajectory of international emissions prices (including price controls in linked markets):
  - (c) inflation.
- (7) If the Minister makes a recommendation about prescribing limits or price control settings that differs from a recommendation made by the Commission under section 5ZOA, the Minister must, as soon as is reasonably practicable, prepare a report of the reasons for the difference and—
- (a) present a copy of the report to the House of Representatives; and
  - (b) make the report publicly available.

### **30GD Regulations for auction monitor**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations under this section.
- (2) If regulations are made, or are to be made, under section 30GA, the Minister may recommend the making of regulations under this section for any or all of the following purposes:
- (a) prescribing a method or process by which the Minister may appoint a person as an auction monitor, which must—
    - (i) require the person to be independent of any auction agents and any persons who are likely to be auction participants; and
    - (ii) include as functions of the auction monitor—
      - (A) validating auction results; and
      - (B) publishing reports on the results of auctions:
  - (b) specifying that the auction monitor's functions include any of the following:
    - (i) monitoring the conduct of any auction agents and auction participants:
    - (ii) providing periodic assessments of the auction system and making recommendations for improvements:

- (iii) calculating additional specified metrics in respect of the auction process and auction results (such as bid volume statistics and relevant aggregate information);
  - (iv) any other functions that the Minister considers are relevant to the effective conduct of the auction monitor's role.
- (3) In this section and section 30GE,—
- auction agent** means any agent appointed under section 6A(b) to conduct an auction
- auction monitor** means a person appointed as an auction monitor under regulations recommended under subsection (2)(a)
- auction participant** means a potential buyer who participates in an auction.

### 30GE Sharing information with auction monitor

- (1) The purpose of this section is to facilitate the provision of information—
- (a) from the EPA, the Registrar, the chief executive, or any auction agent (**provider**):
  - (b) to the auction monitor (if appointed).
- (2) A provider must provide information to the auction monitor if the information—
- (a) is requested by the auction monitor; and
  - (b) is required by the auction monitor to assist in carrying out its functions.

### 30GF Obligation of confidentiality on auction monitor

- (1) This section applies to the auction monitor (if appointed) while, and after, the auction monitor performs its functions or exercises its powers.
- (2) The auction monitor—
- (a) must keep confidential all information that comes into its knowledge when performing its functions or exercising its powers; and
  - (b) must not disclose any of that information, except—
    - (i) with the consent of the person to whom the information relates or to whom the information is confidential; or
    - (ii) to the extent that the information is already in the public domain; or
    - (iii) for the purposes of, or in connection with, the performance of its functions or the exercise of its powers; or
    - (iv) as provided under this Act or any other Act; or
    - (v) in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act; or



- (vi) for the purpose of complying with international climate change obligations.
- (3) The auction monitor commits an offence under section 30GG if the auction monitor knowingly contravenes this section.
- (4) Nothing in subsection (2) may be treated as prohibiting the auction monitor from—
  - (a) providing or publishing general information in relation to its functions; or
  - (b) with the prior approval of the Minister, preparing statistical information and supplying it to any person in a form that does not identify any individual.

### **30GG Offence for breach of auction monitor’s obligation of confidentiality**

An auction monitor who knowingly acts in contravention of section 30GF commits an offence and is liable on conviction to either or both of the following:

- (a) imprisonment for a term not exceeding 6 months;
- (b) a fine not exceeding \$15,000.

### **30H Consultation and commencement for certain regulations about units and auctions**

- (1) This section applies to regulations made under—
  - (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2);
  - (b) section 30GA (auctions to sell New Zealand units);
  - (c) section 30GB (limits and price controls for units);
  - (d) section 30GD (auction monitor).
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force—
  - (a) 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations; but
  - (b) if the Minister considers it is in the national interest that they be made urgently, on any earlier date specified in the regulations.

### **51 Section 30I amended (Incorporation by reference in regulations made under section 30G)**

- (1) In section 30I(1)(a) and (b)(i) and (ii), replace “the Convention or the Protocol” with “international climate change obligations”.
- (2) In section 30I(4), replace “sections 163 to 165, 167, and 168” with “a relevant empowering section”.

**52 New section 30IA inserted (Minister must obtain greenhouse gas reductions to match certain excess units)**

After section 30I, insert:

**30IA Minister must obtain greenhouse gas reductions to match certain excess units**

- (1) This section applies to the following New Zealand units (if any) to the extent that they cause the emissions budget for an emissions budget period to be exceeded:
  - (a) the units sold by auction, after being released in a reserve amount, in that period:
  - (b) the units allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in that period.
- (2) The Minister must ensure, or enter into agreements that require, that the emission of greenhouse gases is reduced, or the removal of greenhouse gases from the atmosphere is increased, by 1 tonne of carbon dioxide equivalent for each of the units, whether by domestic means or offshore mitigation.
- (3) The deadline for the Minister to do so is as soon as is reasonably practicable after the end of the emissions budget period.

**53 Section 30J amended (Signing false declaration with respect to regulations made under section 30G)**

- (1) In the heading to section 30J, after “section 30G”, insert “or 30GA”.
- (2) In section 30J, after “section 30G”, insert “or 30GA and that is false”.

**54 New subpart 3 of Part 2 inserted**

After section 30K, insert:

Subpart 3—Infringement offences

**30L Meaning of infringement offence and infringement fee**

In this subpart,—

**infringement fee**, for an infringement offence, means the infringement fee for the offence prescribed in regulations made under this Act

**infringement offence** means an offence prescribed as an infringement offence by regulations made under this Act.

**30M Regulations about infringement offences**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes:
  - (a) prescribing infringement offences by—

- (i) prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any of sections 30J, 30K(1), 46, 47, 48, 129, 131, 132(1)(a), (b), and (f) to (i), 259, 260, 261(1)(a), (b), (d), and (e), and 264; and
- (ii) providing that a contravention of the duty, restriction, or prohibition is an infringement offence:
- (b) prescribing for the infringement offences—
  - (i) maximum fines not exceeding—
    - (A) \$3,000 for an individual;
    - (B) \$6,000 in any other case; and
  - (ii) infringement fees not exceeding—
    - (A) \$1,000 for an individual;
    - (B) \$2,000 in any other case:
- (c) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence:
- (d) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) Before the Minister recommends the making of regulations under subsection (1)(a), the Minister must be satisfied, after consulting the Minister of Justice, that a contravention of each duty, restriction, or prohibition is sufficiently minor to be appropriate as an infringement offence.
- (3) A person may be prosecuted for, and convicted of, an offence against any provision referred to in subsection (1)(a)(i) even if their conduct is or may be an infringement offence.

### **30N Consultation and commencement for regulations about infringement offences**

- (1) This section applies to regulations made under section 30M.
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

### **30O Proceedings for infringement offences**

- (1) A person who is alleged to have committed an infringement offence may—
  - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be issued with an infringement notice under section 30Q.

- (2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

### **30P Appointment of enforcement officers**

- (1) The EPA may appoint 1 or more persons who are employees of the EPA as enforcement officers to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this subpart.
- (2) Section 93(2) to (5) applies in relation to the appointment.

### **30Q When infringement notice may be issued**

- (1) An enforcement officer may issue an infringement notice to a person if the enforcement officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- (2) The enforcement officer may require the person to provide their full name and any other information required so that the enforcement officer can issue the infringement notice.

### **30R Infringement notice may be revoked**

- (1) The enforcement officer may revoke an infringement notice before the infringement fee is paid or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.
- (3) The revocation of an infringement notice under this section is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

### **30S What infringement notice must contain**

- (1) An infringement notice must be in the form prescribed in regulations and must contain the following particulars:
  - (a) details of the alleged infringement offence that fairly inform a person of the nature of the alleged offence, including, to any applicable extent, the time and place of the alleged offence;
  - (b) the amount of the infringement fee;
  - (c) the address of the EPA;
  - (d) how the infringement fee may be paid;
  - (e) the time within which the infringement fee must be paid;

- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
  - (g) a statement that the person served with the notice has a right to request a hearing;
  - (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;
  - (i) any other matters prescribed in regulations.
- (2) The particulars contained in the notice under subsection (1)(d) must include at least 1 method of payment in person.

### **30T How infringement notice may be served**

- (1) An infringement notice may be served on the person who the enforcement officer believes is committing or has committed the infringement offence by—
- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
  - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
  - (c) leaving it for the person at the person's place of business, or place of work, with another person; or
  - (d) sending it to the person by prepaid post addressed to—
    - (i) the mailing address recorded in a register kept by the EPA under this Act for the person or any primary representative of the person, if they are an account holder; or
    - (ii) the person's last known place of residence or place of business or work; or
  - (e) sending it to,—
    - (i) if the person is an account holder, the electronic address recorded in a register kept by the EPA under this Act for the person or any primary representative of the person; or
    - (ii) if the person does not have a known place of residence or business in New Zealand, an electronic address of the person.
- (2) An infringement notice (or a copy of it) sent by prepaid post to a person under subsection (1) is to be treated as having been served on the person on the fifth working day after the date on which it was posted.

### **30U Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

**30V Reminder notices**

A reminder notice must be in the form prescribed in regulations, and must include the same particulars, or substantially the same particulars, as the infringement notice.

**55 Section 31 amended (Meaning of greenhouse gas)**

- (1) In section 31, replace “subpart” with “Part”.
- (2) In section 31, delete “, but does not include a gas that is covered by the Montreal Protocol on Substances that Deplete the Ozone Layer”.

**56 Section 32 amended (Primary functions of inventory agency)**

- (1) After section 32(1)(b)(i), insert:
  - (ia) any report of information by New Zealand under Article 13 of the Paris Agreement; and
- (2) Repeal section 32(1)(b)(iii).

**57 Section 35 amended (Publication)**

In section 35, replace “and its national communication (or periodic report) in electronic form by placing the report” with “, national inventory report, and national communication (or periodic report) in electronic form by placing the reports”.

**58 Section 36 amended (Authorisation of inspectors)**

In section 36(1)(c), replace “New Zealand Pastoral Agriculture Research Institute” with “AgResearch”.

**59 Section 48 amended (Signing false declaration in respect of regulations made under section 50)**

In section 48, after “section 50”, insert “and that is false”.

**60 Section 49 amended (Reporting)**

In section 49, replace “under the Convention and the Protocol” with “in accordance with international climate change obligations”.

**61 Section 50 amended (Regulations)**

- (1) In section 50(1)(j), replace “the terms of the Convention and the Protocol” with “international climate change obligations”.
- (2) In section 50(1)(j), replace “with the Convention or the Protocol” with “with international climate change obligations”.
- (3) In section 50(2), replace “If recommended by the Minister, the Governor-General may, by Order in Council” with “The Governor-General may, by Order in Council made on the recommendation of the Minister”.

- (4) In section 50(2)(k), replace “the Convention or the Protocol” with “international climate change obligations”.
- (5) In section 50(3), replace “If recommended by the Minister, the Governor-General may, by Order in Council” with “The Governor-General may, by Order in Council made on the recommendation of the Minister”.
- (6) Replace section 50(7)(b) and (c) with:
  - (b) international climate change obligations.
- (7) Replace section 50(8) with:
- (8) The Governor-General may, by Order in Council, amend or replace Schedule 1, 2, or 2A so that the schedule sets out an up-to-date form of the relevant document (the Convention, the Protocol, or the Paris Agreement).

**62 Section 51 amended (Incorporation by reference in regulations made under section 50)**

- (1) In section 51(1)(a) and (b)(i) and (ii), replace “the Convention or the Protocol” with “international climate change obligations”.
- (2) In section 51(4), replace “sections 163 to 165, 167, and 168” with “a relevant empowering section”.

**63 Section 52 amended (Inventory agency must report to Minister on certain matters before certain regulations are made)**

- (1) In section 52(3)(b), replace “make, as he or she thinks fit, recommendations to the Governor-General to make” with “recommend the making of”.
- (2) In section 52(4), replace “obligations under the Convention or the Protocol” with “international climate change obligations”.

**64 Section 53 repealed (Consequential amendments)**

Repeal section 53.

**65 Section 54 amended (Participants)**

- (1) In section 54(1)(a)(i) and (2), after “section 180,”, insert “186I,”.
- (2) In section 54(1)(b)(ii), replace “section 192” with “Part 5”.
- (3) In section 54(2), replace “this Part or Part 5” with “the ETS participant provisions”.

**66 Section 55 amended (Associated persons)**

In section 55(3)(b), replace “this Part and Part 5” with “the ETS participant provisions”.

**67 Section 56 amended (Registration as participant in respect of activities listed in Schedule 3)**

After section 56(4), insert:

- (5) To avoid doubt, a person does not carry out an activity listed in Schedule 3, and so does not have to notify the EPA under subsection (1)(a), merely because they—
- (a) deforest pre-1990 forest land that may not be treated as deforested under section 179A(1)(b); or
  - (b) deforest land that has ceased to be forest land (and pre-1990 forest land) because it has been offset by pre-1990 offsetting forest land.

**68 Section 57 amended (Applicant to be registered as participant in respect of activities listed in Schedule 4)**

- (1) In section 57(4)(b), replace “this Part or Part 5” with “the ETS participant provisions”.
- (2) Replace section 57(6) with:
  - (6) After registering a person under subsection (5), the EPA must notify the person that they have been registered as a participant in respect of the activity and the date from which the registration will take effect.
- (3) In section 57(8), replace “section 198(2)(b), or 209(2)(b)” with “section 198(2) or 209(2)”.

**69 Section 58 amended (Removal from register of participants in respect of activities listed in Schedule 4)**

- (1) Repeal section 58(3)(c).
- (2) In section 58(4), replace “section 188(7)(a)(ii), 198(3)(b), or 209(3)(b)” with “section 188(7), 198(3), or 209(3)”.

**70 Section 59 amended (Removal from register of participants in respect of activities listed in Schedules 3 and 4)**

In section 59(2)(b), delete “, and any other person specified in section 188(7)(a)(i), 198(3)(a), or 209(3)(a), as the case may require,”.

**71 New section 59A inserted (Removal from register if participant never carried out activity)**

After section 59, insert:

**59A Removal from register if participant never carried out activity**

- (1) The EPA must remove the name of a person from the register in respect of an activity if the EPA is satisfied that the person is not carrying out the activity and has never carried out the activity.
- (2) At least 60 days before removing the name of the person from the register, the EPA must notify the person—
  - (a) that the EPA proposes to remove the name of the person from the register; and



- (b) of the reason for the proposed removal; and
  - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity).
- (3) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

**72 Section 60 amended (Exemptions in respect of activities listed in Schedule 3)**

- (1) After section 60(1A), insert:
- (1B) To avoid doubt, an order made under subsection (1) may exempt a person from being a participant in respect of an activity or emissions that occurred before or after the commencement of the order.
- (2) In section 60(2)(a), and (3)(a) and (b), replace “greenhouse gas emissions trading scheme established under this Act” with “emissions trading scheme”.
- (3) In section 60(4), replace “this Part and Part 5” with “the ETS participant provisions”.
- (4) Replace section 60(5) with:
- (5) *See* sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.
- (5) In section 60(6), replace “make a recommendation for” with “recommend”.
- (6) Repeal section 60(7) and (8).

**73 New sections 60A and 60B inserted**

After section 60, insert:

**60A Exemption for participants in activity listed in Part 1 of Schedule 4**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons carrying out an activity listed in Part 1 of Schedule 4 from any provision or provisions of—
- (a) Part 4 or 5; or
  - (b) regulations made for the purposes of Part 4 or 5.
- (2) An order under this section may—
- (a) specify any terms and conditions of the exemption that the Governor-General thinks fit;
  - (b) exempt a person generally, or in respect of a specified act, matter, or thing, or class of acts, matters, or things;
  - (c) exempt a person in respect of something that occurred before the order was made:

- (d) require the EPA to deal with emissions returns or applications, update the register, or take other actions in respect of acts, matters, or things affected by the exemption.
- (3) The Minister must not recommend the making of an order under this section unless satisfied that—
  - (a) the order will not materially undermine the environmental integrity of the emissions trading scheme; and
  - (b) the costs of making the order do not exceed the benefits of making the order.
- (4) In determining whether to recommend the making of an order under this section, the Minister must have regard to the following:
  - (a) the need to maintain the environmental integrity of the emissions trading scheme;
  - (b) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme;
  - (c) the relative costs of giving the exemption or not giving it, and who bears the costs;
  - (d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption;
  - (e) any other matters that the Minister considers relevant.
- (5) *See* sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.

**60B Incorporation by reference in order made under section 60 or 60A**

- (1) The following written material may be incorporated by reference in an order made under section 60 or 60A:
  - (a) decisions, computer programmes, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters; and
  - (b) standards, requirements, or recommended practices of a government agency, standard-setting organisation, or professional body.
- (2) Material may be incorporated by reference in the order—
  - (a) in whole or in part; and
  - (b) with modifications, additions, or variations specified in the order.
- (3) Material incorporated by reference in the order has legal effect as part of the order.
- (4) Sections 170 to 177 apply to material incorporated by reference in the order as if—

- (a) references to regulations, or regulations made under a relevant empowering section, were references to the order, or to another order made under section 60 or 60A, as appropriate; and
  - (b) sections 173(2)(c) and (4)(b) and 174(1)(d) required a targeted notice instead of a notice in the *Gazette*, but section 174(1)(d) does not apply to material described by section 174(2)(b).
- (5) In subsection (4)(b), **targeted notice** means a notice to, or that is likely to come to the attention of, the persons that the chief executive considers are likely to be substantially affected by the making of the relevant regulations.

**74 Section 61 amended (Requirement to have holding account)**

In section 61(1)(a) and (b), replace “this Part or Part 5” with “the ETS participant provisions”.

**75 Section 63 amended (Liability to surrender units to cover emissions)**

After section 63(3), insert:

- (4) If the provision of this Act that imposes a liability to surrender or repay units does not specify the deadline for doing so, the deadline is within 60 working days after the EPA gives the person a notice requiring the surrender or repayment.

**76 Section 64 amended (Entitlement to receive New Zealand units for removal activities)**

(1) After section 64(1), insert:

- (1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under section 197 (grant-funded forests).

(2) Replace section 64(3) with:

(3) Subsection (2) does not apply—

- (a) if, within 20 working days of the EPA receiving the emissions return, the EPA or an enforcement officer serves notice on the participant under section 94 requiring the participant to provide information in respect of any matter contained in the emissions return; or
- (b) to the extent that subsection (4) requires units to be transferred elsewhere.

(4) The EPA must apply section 64A as follows:

- (a) the units the participant is entitled to receive are the **potential transfer units**;
- (b) the participant is the **recipient**;
- (c) the end of the emissions return period for the emissions return is the **relevant time**.

**77 New section 64A inserted (Transfer of units allocated, or entitled to be received or reimbursed, less any units that must be surrendered or repaid)**

After section 64, insert:

**64A Transfer of units allocated, or entitled to be received or reimbursed, less any units that must be surrendered or repaid**

- (1) If this section applies, the EPA must calculate the **specified units** (if any) by counting as follows the units that the recipient was required to, but did not, surrender, or repay to a Crown holding account, by or before the relevant time:
  - (a) starting from the units that were required to be surrendered or repaid by the earliest dates; but
  - (b) stopping once they equal the number of potential transfer units (if they do).
- (2) If there are any specified units, the EPA must notify the recipient of the following:
  - (a) the number of specified units required for surrender:
  - (b) the number of specified units required for repayment:
  - (c) that the specified units will be deducted from the potential transfer units when they are transferred to the recipient, excluding any specified units that have already been surrendered or repaid by then.
- (3) The EPA must direct the Registrar to transfer—
  - (a) the specified units required for surrender to a surrender account designated by the EPA; and
  - (b) the specified units required for repayment to a Crown holding account designated by the EPA; and
  - (c) any potential transfer units left after the specified units are deducted to the recipient's holding account.
- (4) However, the Registrar, in transferring—
  - (a) any units under subsection (3), must exclude any specified units that have already been surrendered or repaid by then:
  - (b) any specified units under subsection (3)(a) or (b), may first transfer them to the recipient's holding account and then immediately transfer them from that holding account.
- (5) The transfer of any specified units for surrender or repayment satisfies—
  - (a) the recipient's entitlement to be transferred those units; and
  - (b) the recipient's obligation to surrender or repay the related units.
- (6) To avoid doubt, the recipient remains liable to surrender or repay any units that are not counted as specified units (because they exceed the number of potential transfer units).

**78 Section 65 amended (Annual emissions returns)**

- (1) In section 65(2A)(a), replace “do” with “does”.
- (2) Replace section 65(4) and (5) with:
- (4) Following the submission of an annual emissions return under subsection (1),—
  - (a) a participant (other than a participant carrying out an activity listed in Part 5 of Schedule 3) must, by 31 May, surrender the number of units listed in the participant’s assessment under subsection (2)(c)(i) or recorded under subsection (2A)(b); and
  - (b) a participant carrying out an activity listed in Part 5 of Schedule 3 must, by 31 May, surrender the number of units listed in the participant’s assessment under subsection (2)(c)(i) less the number of units allocated to the participant for the year to which the assessment relates under section 86BA.
- (5) To avoid doubt, a person does not carry out an activity listed in Schedule 3, and so does not have to submit an annual emissions return under subsection (1)(a), merely because they—
  - (a) deforest pre-1990 forest land that may not be treated as deforested under section 179A(1)(b); or
  - (b) deforest land that has ceased to be forest land (and pre-1990 forest land) because it has been offset by pre-1990 offsetting forest land.

**79 Section 68 amended (Issuing New Zealand units)**

- (1) Replace section 68(2)(b)(i) and (ii) with:
  - (ii) international climate change obligations; and
- (2) In section 68(2)(b)(iii), replace “greenhouse gas emissions trading scheme established under this Act” with “emissions trading scheme”.
- (3) In section 68(2)(c), replace “1 January 2013, and if there is no subsequent commitment period specified or determined under the Protocol or no successor international agreement to the Protocol” with “1 January 2031, and if the Paris Agreement does not provide for a commitment period that starts on that date”.
- (4) Replace section 68(2)(c)(iii) with:
  - (iii) international climate change obligations; and

**80 Section 69 repealed (Notification of intention regarding New Zealand units)**

Repeal section 69.

**81 Cross-heading above section 70 amended**

In the cross-heading above section 70, delete “*and fishing*”.

**82 Sections 70 to 79 replaced**

Replace sections 70 to 79 with:

**70 Allocation plan issued**

- (1) The Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010 was made under this section to issue an allocation plan in respect of pre-1990 forest land.
- (2) The allocation plan may be revoked but not amended or replaced.
- (3) The allocation plan came into force on the day after the date it was presented to the House of Representatives.
- (4) The allocation plan is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

**83 Section 81 amended (Entitlement to provisional allocation for eligible industrial activities)**

- (1) In section 81, formula, replace the definition of variable LA with:

LA is the level of assistance for the eligible industrial activity for the year, being,—

- (a) for a moderately emissions-intensive eligible industrial activity,—
  - (i) 0.6 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate:
- (b) for a highly emissions-intensive eligible industrial activity,—
  - (i) 0.9 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

- (2) In section 81, insert as subsection (2):

- (2) In this section, the **applicable phase-out rate** is,—
  - (a) if regulations have not been made under section 84A or 84B that relate to the eligible industrial activity,—
    - (i) 0.01 for each year after 2020 until and including 2030; and
    - (ii) 0.02 for each year after 2030 until and including 2040; and
    - (iii) 0.03 for each year after 2040; and
  - (b) if regulations have been made under section 84A or 84B that set a different phase-out rate for the eligible industrial activity for the year, the phase-out rate set under those regulations.

**84 Section 83 amended (Annual allocation adjustment)**

- (1) In section 83(2), formula, replace the definition of variable LA with:

LA is the level of assistance for the activity for the year, being,—

- (a) for a moderately emissions-intensive eligible industrial activity,—
  - (i) 0.6 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate;
- (b) for a highly emissions-intensive eligible industrial activity,—
  - (i) 0.9 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

- (2) After section 83(2), insert:

- (2A) In subsection (2), the **applicable phase-out rate** is,—

- (a) if regulations have not been made under section 84A or 84B that relate to the eligible industrial activity,—
  - (i) 0.01 for each year after 2020 until and including 2030; and
  - (ii) 0.02 for each year after 2030 until and including 2040; and
  - (iii) 0.03 for each year after 2040; and
- (b) if regulations have been made under section 84A or 84B that set a different phase-out rate for the eligible industrial activity for the year, the phase-out rate set under those regulations.

- (3) Replace section 83(7) with:

- (7) If a person is required to repay units under this section, then the units repaid must be of a type that may be transferred to a surrender account at the time the units are repaid.

**85 New sections 84A to 84C inserted**

After section 84, insert:

**84A Regulations setting decreased phase-out rates**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make or amend regulations to set a decreased phase-out rate to be used—
- (a) in respect of 1 or more eligible industrial activities for the purposes of sections 81(1) and 83(2); and
  - (b) for a year or years beginning on or after 1 January 2031.

- (2) The Minister must not recommend the making or amendment of regulations under this section to set a decreased phase-out rate for an eligible industrial activity unless—
  - (a) the Climate Change Commission has recommended (under section 5ZOB) that a decreased phase-out rate should be set for the activity; and
  - (b) the Minister has considered the recommendation and complied with the requirements of section 84C.
- (3) In order to apply to a year, the regulations must be made or amended before the beginning of the year.
- (4) In this section, **decreased phase-out rate** means any rate that, even if it is more than a rate previously set by regulations under this section, is—
  - (a) less than the rate in sections 81(2)(a) and 83(2A)(a); and
  - (b) at least—
    - (i) 0.01 for a year in the period beginning on 1 January 2031 and ending on 31 December 2040; or
    - (ii) 0.02 for a year in the period beginning on 1 January 2041 and ending on 31 December 2050.

#### **84B Regulations setting increased phase-out rates**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make or amend regulations to set an increased phase-out rate to be used—
  - (a) in respect of 1 or more eligible industrial activities for the purposes of sections 81(1) and 83(2); and
  - (b) for an emissions budget period beginning on or after 1 January 2026.
- (2) Regulations made in respect of an emissions budget period must include a statement of what phase-out rate the Minister intends to set in respect of the subsequent emissions budget period.
- (3) The Minister must not recommend the making or amendment of regulations under this section to set an increased phase-out rate for an eligible industrial activity unless—
  - (a) the Climate Change Commission has recommended (under section 5ZOB) whether or not an increased phase-out rate should be set for the activity; and
  - (b) the Minister has considered the recommendation and complied with the requirements of section 84C.
- (4) In order to apply to an emissions budget period, the regulations must be made or amended before the beginning of the emissions budget period.
- (5) However, the regulations may apply to an emissions budget period, despite being made or amended during that period, if—



- (a) the emissions budget for the emissions budget period has been revised; or
  - (b) the Minister is satisfied that, since the regulations were made or last considered, there has been a significant change that affects the considerations listed in section 84C(3).
- (6) In this section, **increased phase-out rate** means any rate that is more than, or the same as, the rate in sections 81(2)(a) and 83(2A)(a), even if it is less than a rate previously set by regulations under this section.

#### **84C Procedure for regulations setting phase-out rates**

- (1) Before recommending the making or amendment of regulations under section 84A or 84B, the Minister must be satisfied that the regulations or amendments are consistent with meeting the emissions budget that will apply when the regulations or amendments are in force.
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making or amendment of regulations under section 84A or 84B.
- (3) Before recommending the making or amendment of regulations under section 84B in respect of an eligible industrial activity, the Minister must consider—
  - (a) any targets or budgets set for reducing emissions of greenhouse gases; and
  - (b) New Zealand's nationally determined contributions under the Paris Agreement; and
  - (c) the level of risk of emissions leakage (increased emissions overseas as a result of emissions reductions in New Zealand, for example, an activity being relocated outside of New Zealand to reduce the emissions-related costs for the activity), based on—
    - (i) the emissions-related costs and policies in competing jurisdictions; and
    - (ii) the markets for international trade in the products produced by the activity; and
    - (iii) the ability of affected eligible persons to pass on increased costs to customers; and
  - (d) the risk that the value of the allocation for the activity will exceed the cost of meeting the emissions trading scheme obligations in relation to the activity; and
  - (e) other sources of supply into the emissions trading scheme, including off-shore emissions reductions; and
  - (f) the availability of low-emission technologies related to the activity; and
  - (g) international climate change obligations; and
  - (h) the proper functioning of the emissions trading scheme; and

- (i) the cost to the taxpayer of providing allocations for the activity; and
  - (j) the recommendations made by the Climate Change Commission under section 5ZOB; and
  - (k) any other matters that the Minister considers relevant.
- (4) Subsection (5) applies if—
- (a) the Minister decides to recommend the making of regulations under section 84A or 84B but not as recommended by the Commission; or
  - (b) the Minister decides to recommend the amending of regulations under section 84A or 84B but the Commission—
    - (i) recommended that they be amended differently; or
    - (ii) did not recommend that they be amended at all; or
  - (c) the Minister decides not to recommend the making or amending of regulations under section 84A or 84B despite the recommendation of the Commission.
- (5) The Minister must, as soon as is reasonably practicable, but within 16 weeks, after receiving the Commission’s recommendation, prepare a report of the reasons for the difference between the Minister’s and the Commission’s recommendation and—
- (a) present a copy of the report to the House of Representatives; and
  - (b) make the report publicly available.

**86 Section 85 amended (Allocation of New Zealand units in relation to agriculture)**

In section 85(2), formula, definition of variable LA, paragraph (a), replace “0.9” with “0.95”.

**87 Section 85A amended (Temporary suspension of phase-out rates for assistance under sections 81, 83(2), and 85(2))**

- (1) Replace the heading to section 85A with “**Temporary suspension of phase-out rate for assistance under section 85(2)**”.
- (2) In section 85A(1), replace “rates” with “rate”.
- (3) In section 85A(1) and (2), replace “sections 81, 83(2), and 85(2)” with “section 85(2)”.
- (4) In section 85A(2)(a), replace “rates in those sections may not reduce the level of assistance for an eligible activity from its 2012 level or the level in the first year in which full surrender obligations are applicable for the activity (as the case may be)” with “rate in that section may not reduce the level of assistance for an eligible activity from the level in the first year in which full surrender obligations are applicable for the activity”.
- (5) In section 85A(2)(b), delete “relevant”.

- (6) Replace section 85A(3) with:
- (2A) Before recommending the making of an Order in Council under subsection (2)(a)(ii), the Minister must consider the advice of the Climate Change Commission about whether the phase-out rates should continue to be suspended.
- (3) The Minister must not make a recommendation under subsection (2)(a)(ii) before surrender obligations for the relevant participants start.

**88 Section 86 amended (Applications for allocation of New Zealand units for industry and agriculture)**

Replace section 86(1) with:

- (1) An eligible person who wishes to be allocated New Zealand units for an eligible industrial activity or eligible agricultural activity under this subpart must apply to the EPA in the relevant period under subsection (1A), unless this subpart otherwise provides.
- (1A) The application must be made,—
- (a) for a provisional allocation for an eligible industrial activity, in the period starting on 1 January and ending on 30 April in the year in respect of which the allocation is sought:
- (b) for an allocation for an eligible industrial activity (other than a provisional allocation), in the period starting on 1 January and ending on 30 April in the year after the year in respect of which the allocation is sought:
- (c) for an allocation for an eligible agricultural activity, in the period starting on 1 January and ending on 31 March in the year after the year in respect of which the allocation is sought.

**89 Section 86A amended (Provisional allocation to industry in and after 2013)**

In section 86A, replace “section 86(1)(a)” with “section 86(1A)(a)”.

**90 Section 86B amended (Decisions on applications for allocations of New Zealand units to industry and agriculture)**

- (1) In the heading to section 86B, delete “and agriculture”.
- (2) In section 86B(1), after “section 86”, insert “in respect of an eligible industrial activity”.
- (3) In section 86B(2)(a)(i), delete “, in the case of an eligible industrial activity,”.
- (4) Replace section 86B(2)(b) with:
- (b) comply with section 86BB, as long as the number of units allocated is greater than zero, even after any adjustment made under subsection (1).

**91 New sections 86BA to 86BC inserted**

After section 86B, insert:

**86BA Decisions on applications for allocations of New Zealand units to agriculture**

- (1) This section applies if—
  - (a) the EPA receives an application under section 86 in respect of an eligible agricultural activity; and
  - (b) the applicant has submitted any emissions returns that are due.
- (2) The EPA must decide—
  - (a) whether the applicant is eligible to receive an allocation in respect of the application;
  - (b) if in the EPA's opinion the applicant is eligible for an allocation, the number of units the applicant is entitled to be allocated.
- (3) If the EPA decides that an applicant is entitled to receive an allocation, then the EPA must—
  - (a) notify the applicant of—
    - (i) the number of units the applicant has been allocated; and
    - (ii) the person's right under section 144 to seek a review of the allocation decision; and
  - (b) comply with section 86BC.
- (4) If the EPA decides that an applicant is not eligible to receive an allocation, then the EPA must notify the applicant of—
  - (a) the EPA's decision; and
  - (b) the reasons for the decision; and
  - (c) the person's right under section 144 to seek a review of the allocation decision.
- (5) The EPA must, as soon as practicable after deciding an eligible person's allocation for an eligible agricultural activity in respect of a year,—
  - (a) publish the decision in the *Gazette*; and
  - (b) ensure that it is accessible via the Internet site of the EPA.
- (6) However, the EPA is not required to publish the allocation of an eligible person for an eligible agricultural activity in respect of a year, or ensure that it is accessible via the Internet, if the EPA considers that publishing that information would be likely to prejudice unreasonably the commercial position of the eligible person who received the allocation.

**86BB Transfer of allocated units to industry, less any units that must be surrendered or repaid**

The EPA must apply section 64A as follows:

- (a) the units allocated to an applicant under section 86B, after any adjustment made under section 86B(1), are the **potential transfer units**:

- (b) the applicant is the **recipient**;
- (c) the start of the year to which the allocation relates is the **relevant time**.

**86BC Transfer of allocated units to agriculture, less any units that must be surrendered or repaid**

- (1) This section applies to the units allocated to an applicant under section 86BA (the **potential transfer units**).
- (2) The EPA must calculate the **specified units** by counting units in the following order, but stopping once they equal the number of potential transfer units (if they do):
  - (a) first, the units required for surrender as a result of the assessment for the year to which the allocation relates;
  - (b) second, the units (if any) that the applicant was required to, but did not, surrender, or repay to a Crown holding account, as a result of an assessment for an earlier year, starting from the units that were required to be surrendered or repaid by the earliest dates.
- (3) The EPA must notify the applicant of the following:
  - (a) the number of specified units calculated under subsection (2)(a) that are required for surrender;
  - (b) the number of specified units calculated under subsection (2)(b) that are required for surrender;
  - (c) the number of specified units calculated under subsection (2)(b) that are required for repayment;
  - (d) that the specified units will be deducted from the potential transfer units when they are transferred to the applicant, excluding any specified units that have already been surrendered or repaid by then.
- (4) The EPA must direct the Registrar to transfer—
  - (a) the specified units required for surrender to a surrender account designated by the EPA; and
  - (b) the specified units required for repayment to a Crown holding account designated by the EPA; and
  - (c) any potential transfer units left after the specified units are deducted to the applicant's holding account.
- (5) However, the Registrar, in transferring—
  - (a) any units under subsection (4), must exclude any specified units that have already been surrendered or repaid by then;
  - (b) any specified units under subsection (4)(a) or (b), may first transfer them to the applicant's holding account and then immediately transfer them from that holding account.
- (6) The transfer of any specified units for surrender or repayment satisfies—

- (a) the applicant's entitlement to be transferred those units; and
  - (b) the applicant's obligation to surrender or repay the related units.
- (7) To avoid doubt, the applicant remains liable to surrender or repay any units that are not counted as specified units (because they exceed the number of potential transfer units).

**92 Section 86C amended (Reconsideration of allocation decisions)**

- (1) In section 86C(1), after "section 86B", insert "or 86BA".
- (2) Repeal section 86C(5A).

**93 Section 86E amended (Minister or EPA or chief executive may require further information for purpose of carrying out functions under subpart)**

- (1) In the heading to section 86E, replace "**Minister or EPA or chief executive**" with "**EPA**".
- (2) In section 86E(1), replace "a determination under section 77 or 78 or a decision under section 86B, the Minister or EPA or chief executive, as appropriate," with "a decision under section 86B or 86BA, the EPA".
- (3) In section 86E(1), replace "the Minister or EPA or chief executive" with "the EPA".
- (4) In section 86E(1)(c), replace "a determination or decision" with "the decision".
- (5) In section 86E(2), delete "determination or".
- (6) Replace section 86E(4) with:
  - (4) The EPA may, for the purpose of verifying whether a decision made under section 86B or 86BA was correct or whether it should be reconsidered, give a notice to a person who has been allocated New Zealand units under that section requiring the person to supply to the EPA any records, data, or other information that the person is required to keep in relation to the allocation.
- (7) Replace section 86E(6) with:
  - (6) A person who fails to comply with a notice under this section within the period specified in the notice, or any further period agreed with the EPA, and who has applied for an allocation under section 86, is not entitled to receive an allocation in respect of that application.

**94 Section 87 amended (Functions of EPA)**

- (1) In section 87(1)(b), (e), and (g), replace "this Part and Part 5" with "the ETS participant provisions".
- (2) In section 87(1)(e), replace "and the provisions of any regulations made under this Part" with "and any regulations made under those provisions".

**95 Section 88 amended (Directions to EPA)**

In section 88(1), replace “this Part, Part 5, or any regulations made under this Part or Part 5” with “the ETS participant provisions or any regulations made under those provisions”.

**96 Section 89 amended (EPA to publish certain information)**

- (1) In section 89(1), replace “in accordance with subsection (2)” with “for each reporting year”.
- (2) In section 89(1)(e), replace “subsections (3) and (4)” with “subsection (4)”.
- (3) In section 89(1)(f)(i), replace “under section 65(1), 118(2), 189(4), 191, or 193” with “required by this Act”.
- (4) In section 89(1)(f)(ii), replace “under section 65(4), 118(5), 123(3) or (6), 125, 189, 191, or 193” with “as required by this Act”.
- (5) Repeal section 89(3).

**97 New section 89A inserted (EPA to publish participant data on emissions and removals)**

After section 89, insert:

**89A EPA to publish participant data on emissions and removals**

- (1) The EPA must publish, for each participant or consolidated group for whom there is an emissions return,—
  - (a) the name of the participant, or names of the participants in the consolidated group; and
  - (b) the period to which the return or returns relate; and
  - (c) the data in paragraphs (d) to (f) in tonnes of carbon dioxide equivalent and—
    - (i) broken down by participant if a return relates to more than 1 participant; and
    - (ii) broken down by activity if a return relates to more than 1 activity, except that the emissions or removals of a participant in any forestry activity must be combined for all of their forestry activities; and
  - (d) if available, the emissions set out in the participant’s or group’s return or returns; and
  - (e) if available, the removals set out in the participant’s or group’s return or returns; and
  - (f) if the data in paragraphs (d) and (e) is not available, the net emissions or removals set out in the participant’s or group’s return or returns.
- (2) The EPA—

- (a) must publish the information at least annually, as soon as practicable after the date on which emissions returns are due; and
  - (b) may publish the information, in whole or in part, at any other time.
- (3) The EPA must publish the information in whatever manner and format that the EPA considers appropriate.
- (4) The EPA must, at least 10 working days before publishing the information, give notice on its Internet site of the date on which it will publish the information.

**98 Section 90 amended (EPA may prescribe form of certain documents)**

- (1) In section 90(1), replace “this Part and Part 5” with “the ETS participant provisions and Part 2”.
- (2) Replace section 90(1)(b) with:
  - (b) different forms or formats for different classes of participant or person or for different activities or purposes; and
- (3) In section 90(1)(c), replace “this Part or Part 5” with “the ETS participant provisions or Part 2”.

**99 New section 91A inserted (Correction of unique emissions factors)**

After section 91, insert:

**91A Correction of unique emissions factors**

- (1) If the EPA is satisfied that the unique emissions factor approved for a participant under section 91 is incorrect for any reason, the EPA may amend the approval to correct the unique emissions factor.
- (2) The EPA must—
  - (a) notify the applicant of the amended approval; and
  - (b) publish a notice in the *Gazette* that specifies—
    - (i) the name of the participant; and
    - (ii) a description of the activity; and
    - (iii) the details of the unique emissions factor that the EPA has, by amendment, approved the participant to use when calculating emissions or removals for the activity (the **corrected unique emissions factor**); and
    - (iv) the date on which the corrected unique emissions factor has effect, which must be no earlier than the date on which the unique emissions factor became incorrect.
- (3) The corrected unique emissions factor has effect on and after the date specified by the notice in the *Gazette*, even if that date has passed.



- (4) Information contained in an emissions return, for that or any later date, that is based on the incorrect unique emissions factor may be treated as being incorrect for the purposes of section 120 (so that the EPA may amend the emissions return under that section to reflect the corrected unique emissions factor).

**100 Section 93 amended (Appointment of enforcement officers)**

In section 93(1), after “Part”, insert “(which relate to verification and inquiry about compliance with the ETS participant provisions)”.

**101 Section 94 amended (Power to require information)**

- (1) In section 94(1)(a), replace “this Part and Part 5” with “the ETS participant provisions”.
- (2) Replace section 94(1)(b) with:
- (b) ascertaining whether, or how, the EPA or the chief executive, as appropriate, should exercise any powers under the ETS participant provisions.

**102 Section 95 amended (Power to inquire)**

In section 95(1), replace “this Part or Part 5” with “the ETS participant provisions”.

**103 Section 96 amended (Inquiry before District Court Judge)**

In section 96(1), replace “this Part or Part 5” with “the ETS participant provisions”.

**104 Section 99 amended (Obligation to maintain confidentiality)**

- (1) In section 99(1)(a), (2)(a), and (4)(a), replace “this Part and Part 5” with “the ETS participant provisions”.
- (2) In section 99(2)(b)(vi), replace “any obligation under the Convention or the Protocol” with “international climate change obligations”.
- (3) Replace section 99(4)(c) with:
- (c) providing information to any person about whether—
- (i) any land has a certain forestry classification or is exempt land; or
- (ii) they consider any land to be land that could be given any particular forestry classification available under section 196(a).

**105 Section 100 amended (Power of entry for investigation)**

- (1) In section 100(1), replace “this Part or Part 5” with “the ETS participant provisions”.
- (2) In section 100(2)(d), replace “this Part and Part 5” with “the ETS participant provisions”.

**106 Section 104 amended (Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5)**

- (1) In the heading to section 104, replace “**this Part and Part 5**” with “**ETS participant provisions**”.
- (2) In section 104, replace “this Part or Part 5” with “the ETS participant provisions”.

**107 Section 107 amended (Applications for emissions rulings)**

- (1) Replace section 107(1)(b) and (c) with:
  - (b) whether the person—
    - (i) is a participant in respect of an activity listed in Schedule 3 or is eligible to register as a participant in respect of an activity listed in Schedule 4; or
    - (ii) would be either of those things if certain proposals were carried out or events happened:
  - (c) the correct application of any provision contained in regulations made under section 161A, 161G, 163, 164, 167, 168, 186F, 194C, 196F, or 197A in respect of a particular matter specified in the person’s application:
  - (ca) whether any of this Act’s requirements that relate to a decision that the EPA can make about forest land on land that the person has, or will have, an interest in are satisfied, or would be satisfied if certain proposals were carried out or events happened—for example, the requirements that must be satisfied—
    - (i) for any forest land that is cleared to not be treated as deforested (for the purposes of this Act) under section 179A:
    - (ii) for pre-1990 forest land to be eligible for a decision to be made under section 184(5)(a) (exemptions for deforestation of land with tree weeds):
    - (iii) for the EPA to approve an application relating to forest land:
- (2) Repeal section 107(3).

**108 New section 107A inserted (Insufficient information provided for ruling on entire application)**

After section 107, insert:

**107A Insufficient information provided for ruling on entire application**

- (1) If the EPA is satisfied that an application under section 107 does not include all information that is relevant to a proper consideration of the application, the EPA must give notice to the applicant—

- (a) requesting any further information from the applicant that the EPA considers necessary to assist in the consideration of the application; and
  - (b) if the EPA already has information that is relevant to the application, describing the information and inviting the applicant to comment on or object to the information.
- (2) The EPA must—
- (a) provide a reasonable deadline for the applicant to reply to the notice; and
  - (b) consider as part of the application—
    - (i) any further information provided by the applicant; and
    - (ii) the information already held by the EPA that is relevant to the application, and the applicant’s comments on or objections to that information.
- (3) If, after that, the EPA is satisfied that it has sufficient information to make a ruling on only part of the matter applied for (such as part of an activity or part of a geographical area), the EPA may—
- (a) give notice of that decision to the applicant; and
  - (b) make a ruling under section 109 in respect of only that part of the matter.

**109 Section 108 amended (Matters in relation to which EPA may decline to make emissions rulings)**

- (1) In section 108(1)(b), replace “section 107(3)” with “section 107A(1)”.
- (2) In section 108(2)(g)(i), after “ruling”, insert “but subject to section 107A”.

**110 Section 109 amended (Making of emissions rulings)**

- (1) In section 109(1), replace “in respect of which a ruling is sought under section 107” with “applied for”.
- (2) In section 109(1)(b), replace “section 107(3)” with “section 107A”.
- (3) Replace section 109(3) and (4) with:
- (3) A ruling may be made subject to any conditions that the EPA considers appropriate, including any condition that a proposal is carried out or that something happens (*see* section 107(1)(b)(ii)).

**Example**

The EPA may rule that a person is eligible to register as a participant in an activity listed in Part 1 of Schedule 4 on the condition that the relevant land is planted in forest species and meets the definition of forest land.

- (4) Subsection (1) is subject to section 108 and the EPA’s discretion in section 107A(3)(b) to make a ruling on only part of a matter.

**111 Section 116 amended (Effect of emissions rulings)**

- (1) In section 116(1), replace “in respect of which a ruling is sought under section 107” with “that is ruled on”.
- (2) In section 116(2)(a), replace “in relation to which the ruling was sought” with “that is ruled on”.
- (3) After section 116(2), insert:
  - (2A) However, an emissions ruling is personal to the applicant and does not apply to, and cannot be transferred to, anyone else (including where land to which a ruling relates is transferred).

**112 Section 117 amended (EPA may publish certain aspects of emissions rulings)**

- (1) In section 117(1), replace “this Part or Part 5” with “the ETS participant provisions”.
- (2) In section 117(1), after “ruling”, insert “in whatever manner and format that the EPA considers appropriate”.

**113 Section 124 amended (Reimbursement of units by EPA)**

Replace section 124(1) and (2) with:

- (1) If the EPA is required by this Act to arrange for the reimbursement of units to a person, the EPA must direct the Registrar to transfer the applicable number of New Zealand units or approved overseas units from the appropriate surrender account or Crown holding account to the person’s holding account.
- (2) However, subsection (1) does not apply to the extent that subsection (2A) requires units to be transferred elsewhere.
- (2A) The EPA must apply section 64A as follows:
  - (a) the units the person is entitled to be reimbursed are the **potential transfer units**;
  - (b) the person is the **recipient**;
  - (c) the time when the requirement to reimburse arose is the **relevant time**.

**114 Section 125 replaced (Repayment of units by persons in case of error)**

Replace section 125 with:

**125 Repayment of units by persons in case of error**

- (1) The EPA may, if satisfied that, as a result of an error, units to which a person is not entitled under the ETS participant provisions have been transferred from a Crown holding account or other account held by the Crown to the person’s holding account, give a notice to the person requiring that person to repay that number of units.

- (2) The person must, within 30 days after the notice is given, repay that number of units by transferring units to the Crown holding account designated in the notice.
- (3) The repaid units must be of a type that may be transferred to a surrender account when they are repaid.

**115 Section 127 amended (Time bar for amendment of emissions returns)**

- (1) In section 127(1), replace “submitted under” with “required or permitted by”.
- (2) In section 127(1)(a), replace “section 189 or 193” with “those specified in paragraph (b)”.
- (3) Replace section 127(2) with:
  - (2) However,—
    - (a) the EPA may amend an emissions return or assessment at any time to give effect to the correction of a unique emissions factor under section 91A; and
    - (b) if the EPA is satisfied that an emissions return was fraudulent, was wilfully misleading, or deliberately omitted mention of emissions or removals in respect of which an emissions return was required to be submitted, the EPA may amend the emissions return at any time, under section 120, so as to—
      - (i) increase the number of units required to be surrendered by the participant:
      - (ii) decrease the number of New Zealand units to which the participant is entitled in respect of removal activities.
  - (3) Without limiting subsection (2)(b), that paragraph applies in respect of all emissions returns by a person for an activity if the EPA is satisfied that the person’s application to be registered was fraudulent or wilfully misleading.

**116 Section 129 amended (Offences in relation to failure to comply with various provisions)**

- (1) In section 129(1)(b)(ii), delete “under section 65, 118, 189, 191, or 193”.
- (2) Repeal section 129(1)(b)(iii)(B).
- (3) In section 129(1)(b)(iii)(C), replace “by a” with “by the”.

**117 Section 132 amended (Other offences)**

- (1) In section 132(1)(d), delete “under section 65, 118, 189, 191, or 193”.
- (2) Repeal section 132(1)(e)(ii).
- (3) In section 132(1)(e)(iii), replace “by a” with “by the”.
- (4) In section 132(1)(f) and (g), replace “this Part or Part 5” with “the ETS participant provisions”.

**118 Section 133 amended (Evasion or similar offences)**

- (1) In section 133(1)(b), delete “under section 65, 118, 189, 191, or 193”.
- (2) Repeal section 133(1)(c)(ii).
- (3) In section 133(1)(c)(iii), replace “by a” with “by the”.
- (4) In section 133(1)(d), replace “this Part or Part 5” with “the ETS participant provisions”.
- (5) In section 133(1)(e), replace “this Part and Part 5” with “the ETS participant provisions”.

**119 Section 143 amended (Evidence in proceedings)**

In section 143(1), replace “this Part or Part 5” with “the ETS participant provisions” in each place.

**120 Section 144 amended (Request for review of decisions)**

- (1) Replace section 144(1) with:
  - (1) A person affected by a decision of the EPA under a provision in the ETS participant provisions who is dissatisfied with the decision may request the EPA to review the decision.
  - (1A) The request must be made by notice to the EPA within the following period, or any further period that the EPA allows:
    - (a) within 20 working days after the person receives notice of the decision; or
    - (b) for a decision of the EPA about whether to give an area of land a new or changed forestry classification, within 20 working days after that decision is published in accordance with regulations made under section 196F.
- (2) Replace section 144(3) with:
- (3) For the purposes of a review, the EPA may—
  - (a) require the person requesting the review to supply information additional to that contained in the request; and
  - (b) consider any information that the EPA already holds and that is relevant to the review, as long as the EPA—
    - (i) gives a notice to the person requesting the review that describes the information and invites them to comment on or object to it; and
    - (ii) considers any comments or objections.
- (3) After section 144(4), insert:
- (4A) Before revoking or varying the forestry classification of an area of land, the EPA must, in accordance with regulations made under section 196F, consult

the persons (if any) that appear likely to be substantially affected by the revocation or variation.

**121 Section 148 amended (Giving of notices to EPA)**

- (1) Replace section 148(2) with:
- (2) If this section applies, the notice must be given in writing in 1 of the following ways to the EPA's office:
  - (a) by personal delivery during working hours:
  - (b) by an electronic means of communication in accordance with Part 4 of the Contract and Commercial Law Act 2017:
  - (c) by post to the post office box number for the office.
- (2) In section 148(3), replace "subsection (2)(b)(ii)(C)" with "subsection (2)(c)".

**122 Section 150 amended (Formation of consolidated group)**

- (1) Replace section 150(1) and (2) with:
  - (1) Any 2 or more members of a group may elect to form and be treated as a consolidated group, for the purposes of the ETS participant provisions, in respect of any activity or activities listed in Schedule 3 or 4 other than forestry activities.
  - (2) A consolidated group may consist of any of the following:
    - (a) 1 or more participants:
    - (b) 1 or more eligible persons for an eligible activity:
    - (c) 1 other member that is not a participant or an eligible person, if that entity is to act as the nominated entity.
- (2) In section 150(4)(b), replace "this Part and Part 5" with "the ETS participant provisions".
- (3) In section 150(4)(c)(i), replace "this Part or Part 5 in respect of emissions and removals resulting from" with "the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to,".
- (4) In section 150(4)(c)(ii), after "activity", insert ", or by an allocation relating to an eligible activity,".
- (5) In section 150(6), replace "If 2 or more participants have elected under subsection (1) to form a consolidated group, those participants must be treated for the purposes of this Part and Part 5" with "Two or more entities who make an election under subsection (1) must be treated, for the purposes of the ETS participant provisions,".
- (6) In section 150(6A), after "an activity", insert "to which subsection (1) applies".
- (7) After section 150(6A)(b), insert:

- (c) at the same time they all submit an application under section 86 in respect of that eligible activity.
- (8) In section 150(6B),—
- (a) after “participant”, insert “or an eligible person”; and
- (b) after “section 57 in respect of an activity,”, insert “or making an application under section 86 in respect of an eligible activity,”.
- (9) In section 150(7), after “participant”, insert “or an eligible person”.

### **123 Section 151 amended (Changes to consolidated groups)**

- (1) Replace section 151(1) with:
- (1) If a consolidated group has been formed and still has at least 1 member, any other person referred to in section 150(2)(a) to (c) may elect to join and be treated as a member of the consolidated group by giving notice to the EPA in a form that the EPA approves.
- (2) In section 151(2)(a)(ii), delete “if the entity is a participant,”.
- (3) In section 151(2)(b)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to,”.
- (4) In section 151(2)(b)(ii), delete “if the entity is a participant,”.
- (5) In section 151(2)(b)(ii), after “activities”, insert “, or by an allocation relating to an eligible activity,”.
- (6) In section 151(2)(c)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations relating to,”.
- (7) In section 151(2)(c)(ii), after “that entity”, insert “, or by an allocation relating to an eligible activity of that entity,”.
- (8) Replace section 151(4) and (5) with:
- (4) Subject to subsection (6), a participant or eligible person that elects under subsection (1) to join a consolidated group must be treated, for the purposes of the ETS participant provisions, as being a member of that consolidated group from 1 January of the year in which they gave the notice under subsection (1).
- (5) An entity other than a participant or eligible person that elects under subsection (1) to join a consolidated group must be treated for the purposes of this Part as being a member of that consolidated group from the date of receipt by the EPA of the notice under subsection (1), or from any later date that may be specified in the notice.
- (9) In section 151(6), replace “An entity may, if the entity elects to be treated as a member of a consolidated group on and after the date the entity is registered as



a participant in respect of an activity,” with “A participant in respect of an activity, or an eligible person in respect of an eligible activity, may”.

(10) After section 151(6)(b), insert:

(c) when submitting an application under section 86 in respect of that eligible activity.

(11) In section 151(7), after “participant”, insert “or an eligible person”.

(12) After section 151(7)(b), insert:

(c) submitting an application under section 86 in respect of that eligible activity.

#### **124 Section 151A amended (Addition of activities to consolidated groups)**

(1) In section 151A(2)(b)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to,”.

(2) In section 151A(2)(b)(ii), after “activities”, insert “, or by an allocation relating to an eligible activity,”.

#### **125 Section 152 amended (Nominated entities)**

In section 152(1), replace “this Part and Part 5” with “the ETS participant provisions”.

#### **126 Section 153 amended (Effect of being member of consolidated group)**

Replace section 153(1) to (5) with:

(1) The nominated entity of a consolidated group—

(a) must have a holding account in the name of the consolidated group for the purposes of meeting the members’ obligations under the ETS participant provisions; and

(b) must record in that holding account the names of all the members of the consolidated group; and

(c) must submit a single annual emissions return for the consolidated group in respect of a year, which must—

(i) meet the requirements of section 65(2) in respect of the activities listed in the notice under section 150(4)(a)(ii) or 151(2)(a)(ii) carried out by each member of the consolidated group:

(ii) be signed by the nominated entity in accordance with section 65(2)(f) on behalf of the consolidated group; and

(d) is responsible for applying for any allocation of units under section 86 for an eligible activity, in place of the eligible person who is a member of the consolidated group.

- (2) Each member of a consolidated group is jointly and severally liable to surrender or repay the amount of units assessed for the consolidated group or its members in any year.
- (3) Each member of a consolidated group is jointly entitled to be transferred, for removal activities or for allocations of New Zealand units, the amount of units assessed for the consolidated group or its members in any year.
- (4) The joint and several liability, or the joint entitlement,—
  - (a) applies to a member only as it relates to a period when they were a member of the consolidated group; and
  - (b) replaces the member’s sole liability or entitlement; and
  - (c) must be met by transferring units from, or to, the consolidated group’s holding account.
- (5) Despite this section, in calculating an allocation or provisional allocation of New Zealand units (including a related adjustment or repayment) for an eligible activity, only the member’s liabilities and entitlements must be used.
- (5A) However, subsection (5) does not apply to any calculation of offset units under section 86BB, which must be done in accordance with this section.
- (5B) Each member of a consolidated group is jointly and severally liable to pay any penalty or interest imposed on the consolidated group in relation to a period when they were a member of the consolidated group.

**127 Section 154 repealed (Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4)**

Repeal section 154.

**128 Section 155 amended (Ceasing to be member of consolidated group)**

- (1) In section 155(1)(c) and (d), after “participant”, insert “or an eligible person”.
- (2) Replace section 155(2)(c) with:
  - (c) if subsection (1)(c) applies, with effect from the date that,—
    - (i) in the case of a participant, their name is removed from the register of participants under section 58 or 59; or
    - (ii) in the case of an eligible person, they ceased to be an eligible person; and
- (3) In section 155(6)(a), after “participant”, insert “or an eligible person”.

**129 Section 156 replaced (Effect of ceasing to be member of consolidated group)**

Replace section 156 with:

**156 Effect of ceasing to be member of consolidated group**

If an entity ceases to be a member of a consolidated group, the entity—

- (a) continues to be jointly and severally liable with other members of the consolidated group for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the activities of the members of the consolidated group, and jointly entitled to any units transferred for the removal activities, or for allocations relating to the eligible activities, of the consolidated group, during the period in which the entity was a member of the consolidated group; but
- (b) is not liable for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the activities of other members of the group, or entitled to the benefit of any units transferred for the removal activities, or for allocations relating to the eligible activities, of other members of the group, for any period during which the entity is not a member of the consolidated group.

**130 Section 156A amended (Removal of activities from consolidated groups)**

- (1) In section 156A(4), replace “this Part or Part 5 in respect of emissions and removals” with “the ETS participant provisions in respect of emissions, removals, and allocations”.
- (2) In section 156A(4), after “removal activity”, insert “or an eligible activity”.

**131 Section 157 amended (Unincorporated bodies)**

In section 157(2)(c)(ii)(C), after “may be,” insert “must”.

**132 Section 159 amended (Recovery of costs)**

In section 159(2)(b), replace “any other provision of this Act” with “this Act (other than this provision)”.

**133 Section 160 amended (Review of operation of emissions trading scheme)**

- (1) In section 160(1), delete “established by this Act”.
- (2) Replace section 160(4)(b) with:

(b) make the report of the panel publicly available; and

**134 Section 161 amended (Appointment and conduct of review panel)**

- (1) Replace section 161(1)(c)(ii) with:
  - (ii) international climate change obligations and any other relevant international agreement; and
- (2) In section 161(1)(c)(iii), delete “established under this Act”.

**135 Section 161A amended (Regulations in relation to eligible industrial activities)**

- (1) Replace section 161A(1)(d) with:

- (d) prescribing an allocation factor or factors for—
  - (i) electricity;
  - (ii) natural gas feedstock:
- (2) Replace section 161A(3) with:
- (3) The Minister may recommend the making of regulations under subsection (1)(a) that prescribe an activity as an eligible industrial activity if the Minister is satisfied that the activity is—
  - (a) moderately emissions-intensive or highly emissions-intensive; and
  - (b) trade-exposed.
- (3) In section 161A(4), delete “161B or”.

**136 Section 161B repealed (Australian eligible industrial activities)**

Repeal section 161B.

**137 Section 161C amended (Other eligible industrial activities)**

- (1) In the heading to section 161C, replace “**Other eligible**” with “**Eligible**”.
- (2) In section 161C(1) and (2), replace “section 161A(3)(a)” with “section 161A(3)”.

**138 Section 161D amended (Power to require information for purposes of allocation to industry)**

In section 161D(3)(a), replace “section 161A(3)(a)” with “section 161A(3)”.

**139 Section 161E amended (Requirements in respect of notice given under section 161D)**

- (1) Repeal section 161E(1)(e).
- (2) After section 161E(3), insert:
- (4) However, subsection (3) does not apply if the purpose of the notice under section 161D is to provide the Minister with the information necessary to determine whether any matter should be considered by a review under section 160.
- (5) *See* section 3B for consultation requirements that apply to the giving of a notice specifying a description of an activity under section 161D(1)(a).

**140 Section 161F repealed (Consultation on activities that may be prescribed as eligible industrial activities)**

Repeal section 161F.

**141 Section 161G amended (Regulations in relation to eligible agricultural activities)**

Replace section 161G(3) to (6) with:

- (3) Before recommending the making of regulations under subsection (1)(a)(ii) prescribing the allocative baseline or baselines of an eligible agricultural activity, the Minister must—
  - (a) have regard to the most recent New Zealand Greenhouse Gas Inventory; and
  - (b) comply with the consultation requirements in sections 3A and 3B.
- (4) *See* section 3A for consultation requirements that apply to the making of other regulations under this section.
- (5) For each eligible agricultural activity, the Minister—
  - (a) must recommend the making of regulations under this section before surrender obligations for participants in that activity start; and
  - (b) must review those regulations at least once in every 5-year period; and
  - (c) must not recommend the making of regulations that would result in there being no regulations in force under this section for the activity while surrender obligations for the activity exist.
- (6) In conducting a review under subsection (5)(b), the Minister must comply with subsections (3) and (4).

**142 Section 162 amended (Regulations adding further activity to Part 2 of Schedule 4)**

- (1) In the heading to section 162, replace “**Regulations**” with “**Order in Council**”.
- (2) Replace section 162(2) and (3) with:
  - (2) *See* sections 3A and 3B for consultation requirements that apply to the making of an Order in Council under subsection (1).

**143 Section 163 amended (Regulations relating to methodologies and verifiers)**

- (1) In section 163(1)(ab), replace “an activity listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4” with “a forestry activity”.
- (2) In section 163(5), replace “making a recommendation in relation to a regulation” with “recommending the making of regulations”.
- (3) In section 163(5), replace “New Zealand’s international obligations” with “international climate change obligations”.

**144 Section 166 replaced (Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting)**

Replace section 166 with:

**166 Consultation and commencement for regulations about methodologies, verifiers, and unique emissions factors**

- (1) This section applies to regulations made under—

- (a) section 163 (methodologies and verifiers):
- (b) section 164 (unique emissions factors).
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

#### 145 Section 167 amended (Regulations relating to fees and charges)

- (1) In section 167(1), replace “this Part or Part 5” with “the ETS participant provisions”.
- (2) Replace section 167(2)(b) with:
  - (b) who is a participant, or who has applied to be a participant, in respect of a removal activity, to enable the recovery of all or part of the direct and indirect costs of the EPA in doing 1 or more of the following in relation to the activity:
    - (i) publicising and informing people about the operation of the ETS participant provisions:
    - (ii) administering the operation of the ETS participant provisions:
    - (iii) enforcing and monitoring compliance with the ETS participant provisions:
    - (iv) doing anything else authorised or required under the ETS participant provisions; or
  - (c) who submits an input return under section 194A, to enable the recovery of all or part of the direct and indirect costs of the EPA in doing calculations and giving notice under section 194B.
- (3) Replace section 167(3)(b)(ii) with:
  - (ii) the administration of the ETS participant provisions in relation to a removal activity; or
  - (iii) input returns:

#### 146 Section 168 amended (Other regulations)

- (1) In section 168(1)(k), (l), and (o), replace “this Part and Part 5” with “the ETS participant provisions”.
- (2) After section 168(1)(n), insert:
  - (na) prescribing rules for the rounding of amounts of units calculated under, or referred to in, this Act; and
  - (nb) prescribing the meaning (or things that are included within the meaning) of New Zealand’s best practice forest management for the purposes of section 179A; and
- (3) After section 168(2), insert:

- (3) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(nb).

**147 Section 169 amended (Incorporation by reference in regulations made under section 163, 164, 167, or 168)**

- (1) In the heading to section 169, replace “**regulations made under section 163, 164, 167, or 168**” with “**certain regulations**”.
- (2) In section 169(1), replace “section 163, 164, 167, or 168” with “a relevant empowering section”.
- (3) After section 169(3), insert:
- (4) In this section and sections 170 to 174, **relevant empowering section** means section 161A, 161G, 163, 164, 167, 168, 186F, 194C, 196F, or 197A.

**148 Section 170 replaced (Effect of amendments to, or replacement of, material incorporated by reference in regulations)**

Replace section 170 with:

**170 Effect of amendments to, or replacement of, material incorporated by reference in regulations**

- (1) Subsection (2) applies to an amendment to, or a replacement of, material if the material—
- (a) is incorporated by reference in regulations made under a relevant empowering section (the **original regulations**); and
  - (b) is adopted, agreed on, made, or approved by an international government agency, international organisation, or international professional body.
- (2) The amendment or replacement of the material has legal effect as part of the regulations only if regulations made under the relevant empowering section after the original regulations were made state that the particular amendment or replacement has that effect.
- (3) Subsection (4) applies to an amendment to, or a replacement of, material if the material—
- (a) is incorporated by reference in regulations made under a relevant empowering section (the **original regulations**); and
  - (b) is not material described by subsection (1)(b).
- (4) The amendment or replacement of the material has immediate legal effect as part of the original regulations (without the need for an amendment to the original regulations, or the making of other regulations, to state that effect).

**149 Section 172 replaced (Effect of expiry of material incorporated by reference)**

Replace section 172 with:

**172 Effect of expiry of material incorporated by reference**

- (1) This section applies to material incorporated by reference in regulations, made under a relevant empowering section, that expires, is revoked, or ceases to have effect without being amended or replaced.
- (2) The material ceases to have legal effect as part of the regulations only if regulations made under the relevant empowering section state that the material ceases to have legal effect.

**150 Section 173 amended (Requirement to consult)**

Replace section 173(1) with:

- (1) This section applies to regulations made under a relevant empowering section that—
  - (a) incorporate material by reference; or
  - (b) state, as required by section 170(2), that an amendment to, or a replacement of, material incorporated by reference in regulations has legal effect as part of the regulations.

**151 Section 174 amended (Public access to material incorporated by reference)**

- (1) Replace section 174(1)(d)(i) with:
  - (i) that the material is incorporated in the regulations and—
    - (A) the date on which the regulations were made; or
    - (B) if the material has immediate legal effect under section 170(4), the date on which it had legal effect; and
- (2) In section 174(2)(a), replace “section 163, 164, 165, 167, or 168” with “a relevant empowering section”.

**152 Section 175 amended (Application of Legislation Act 2012 to material incorporated by reference)**

In section 175(1), replace “or replacement” with “or a replacement”.

**153 Section 178A amended (Option to pay money instead of surrendering units to cover emissions)**

- (1) In the heading to section 178A, replace “units to cover emissions” with “, repaying, or reimbursing units”.
- (2) Replace section 178A(1) with:
  - (1) This section applies if—
    - (a) either—
      - (i) a person is required to surrender or repay units—
        - (A) as a result of submitting an emissions return; or
        - (B) under section 123(3) or (6) or 183A(2)(b); or



- (ii) the EPA is required by this Act to reimburse units to any person, and
- (b) the units that must be surrendered, repaid, or reimbursed are in respect of,—
  - (i) for an activity on post-1989 forest land, emissions or removals that are attributed by section 178C(3) to a calendar year that ends before the start date for auctions; or
  - (ii) for any other activity, emissions or removals that occurred in a calendar year that ends before the start date for auctions; or
  - (iii) an activity that the person ceased to participate in, and for which the person has submitted an emissions return, before the start date for auctions.
- (1A) If subsection (1)(b)(i) applies, for the purposes of this section, the units in respect of the emissions or removals attributed to a calendar year must be rounded to the nearest whole number (where 0.5 is rounded up).
- (3) In section 178A(2)(a)(i), replace “section 65(4), 118(5), 183A(2)(b), 186H, 187, 189(8), 191, or 193, as applicable” with “the relevant provision”.
- (4) In section 178A(2)(a)(ii) and (b)(ii), replace “a sum of \$25” with “the fixed price”.
- (5) After section 178A(4), insert:
- (5) In this section and sections 178B and 178C,—
  - fixed price** has the meaning given by section 178C
  - start date for auctions** means the date specified by regulations made under section 30GA(2)(a) as the date on which the sale of New Zealand units by auction commences.

**154 Section 178B amended (Issuing New Zealand units to meet surrender obligations)**

- (1) In section 178B(1), (1)(a), (2), (3), and (3)(a), replace “a sum of \$25” with “the fixed price”.
- (2) In section 178B(3), replace “to reimburse a person units under section 123(4), 186H, or 189(7)(d)” with “by this Act to reimburse units to any person”.
- (3) In section 178B(5), replace “\$25” with “the fixed price”.
- (4) In section 178B(6), replace “section 18CA(4)” with “section 18CA(2)”.

**155 Section 178C replaced (Prohibition on ability to export New Zealand units)**

Replace section 178C with:

**178C Fixed price (for option to pay money instead of surrendering, repaying, or reimbursing units)**

- (1) This section determines the **fixed price** of a unit for the purposes of sections 178A and 178B.
- (2) If the unit that must be surrendered, repaid, or reimbursed is in respect of emissions or removals that occurred in a calendar year that is—
  - (a) 2019 or earlier, the fixed price is \$25; or
  - (b) 2020 or later, but that ends before the start date for auctions, the fixed price is \$35.
- (3) For the purposes of section 178A, if an emissions return covers more than 1 calendar year of an activity on post-1989 forest land, emissions and removals are attributed to, and treated as having occurred in, each year in the proportion that the year bears to the emissions return period.

**156 Part 5 divided into Parts 5 to 5D and new Part 5 divided into subparts**

- (1) In Part 5, replace the Part 5 heading, the subpart 1 heading, and the cross-heading above section 179 with:

**Part 5**  
**Sector-specific provisions: forestry**

Subpart 1—Deforestation

- (2) Replace the cross-heading above section 180 with:

Subpart 2—Pre-1990 forest land

- (3) Replace the cross-heading above section 186A with:

Subpart 3—Pre-1990 offsetting forest land

- (4) Replace the cross-heading above section 187 with:

Subpart 4—Post-1989 forest land

- (5) Replace the cross-heading above section 195 with:

Subpart 5—General

- (6) In Part 5, replace the subpart 2 heading with:

**Part 5A**  
**Sector-specific provisions: liquid fossil fuels**

- (7) In Part 5, replace the subpart 3 heading with:

**Part 5B**

**Sector-specific provisions: stationary energy**

- (8) In Part 5, replace the subpart 4 heading with:

**Part 5C**

**Sector-specific provisions: agriculture**

- (9) In Part 5, replace the subpart 5 heading with:

**Part 5D**

**Sector-specific provisions: transitional provisions**

**157 Section 179A amended (Forest land may not be treated as deforested in certain cases)**

After section 179A(3), insert:

- (4) If regulations prescribe any meaning for **New Zealand’s best practice forest management**, then that term has or includes that meaning in this section.

**158 Section 183 amended (Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land)**

- (1) In section 183(1)(a), replace “allocation plan referred to in section 72” with “pre-1990 forest land allocation plan”.
- (2) Replace section 183(1)(b) with:
- (b) was the landowner of an area of pre-1990 forest land at the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land.
- (3) In section 183(2)(c), replace “an allocation plan under section 72” with “the pre-1990 forest land allocation plan”.
- (4) In section 183(7), after “this section”, insert “and section 183B”.

**159 Section 183A amended (Certain applications not otherwise permitted by section 183)**

- (1) In section 183A(1)(b) and (3), replace “an allocation plan under section 72” with “the pre-1990 forest land allocation plan”.
- (2) In section 183A(5)(b), replace “the allocation plan” with “the pre-1990 forest land allocation plan”.

**160 New section 183B inserted (Applications for exemption for some Maori land or land with 10 or more owners)**

After section 183A, insert:

**183B Applications for exemption for some Maori land or land with 10 or more owners**

- (1) This section applies to an area of pre-1990 forest land that—
  - (a) is less than 50 hectares; and
  - (b) on 1 September 2007,—
    - (i) was all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
    - (ii) was Maori land or was owned by more than 10 persons; and
  - (c) was an area of pre-1990 forest land on the following date (the **qualifying date**):
    - (i) the date of issue of the pre-1990 forest land allocation plan; or
    - (ii) the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land; and
  - (d) after the qualifying date,—
    - (i) became owned by the trustees of a trust; or
    - (ii) in the case of Maori freehold land, had an agent appointed for it under Te Ture Whenua Maori Act 1993 with the power to apply under this section; and
  - (e) has not been the subject of an allocation of units to a landowner under the pre-1990 forest land allocation plan.
- (2) The trustees or agent described in subsection (1)(d) may apply to the EPA for the area of pre-1990 forest land to be declared exempt land.
- (3) The application—
  - (a) may be submitted to the EPA at any time; and
  - (b) must be in the prescribed form and accompanied by the prescribed fee (if any); and
  - (c) must contain details of the area of pre-1990 forest land to which the application relates; and
  - (d) must be accompanied by evidence showing that the land is pre-1990 forest land; and
  - (e) must be accompanied by a statutory declaration from the applicant stating that the area of pre-1990 forest land was, on 1 September 2007, all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
  - (f) must be signed by the applicant; and

- (g) must be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is 1 or more trustees or an agent described in subsection (1)(d), that the land is pre-1990 forest land, and that each of the criteria specified in subsection (1)(a) to (e) is met, the EPA must—
  - (a) declare the land to be exempt land; and
  - (b) notify the applicant that the land has been declared exempt land.

**161 Section 184 amended (Exemptions for deforestation of land with tree weeds)**

- (1) Replace section 184(1) to (4) with:
  - (1) An application may be made under this section for pre-1990 forest land to be declared exempt land (in relation to deforestation) if a prescribed type of tree weed—
    - (a) is growing on the land; or
    - (b) was cleared from the land as part of the deforestation process on or after 1 January 2008.
  - (2) The application may be made by—
    - (a) the landowner of the pre-1990 forest land; or
    - (b) a third party to whom section 180 applies.
- (2) In section 184(5), replace “every application received under subsection (4) against the criteria, and priorities in, and the number of whole tonnes of emissions that are to be covered by exemptions granted in respect of, the relevant notice given under subsection (1)” with “the application against the prescribed criteria and priorities”.
- (3) Replace section 184(5)(b) with:
  - (b) must, if the EPA declares any land to be exempt land, notify the applicant of—
    - (i) the declaration; and
    - (ii) any requirements or conditions that the EPA has decided to impose on the person whose land is exempted.
- (4) Replace section 184(6)(b) with:
  - (b) completed by the end of the mandatory emissions return period in which the exemption was granted.

**162 Section 186F amended (Regulations relating to offsetting)**

In section 186F, insert as subsections (2) and (3):

- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of the regulations.

- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

**163 Section 186H amended (Treatment of allocations in respect of pre-1990 forest land that is offset)**

- (1) In section 186H(1)(b) and (5), replace “an allocation plan” with “the pre-1990 forest land allocation plan”.
- (2) Replace section 186H(6) with:
- (6) For the purposes of subsection (2), **second tranche**, in relation to an allocation, means the New Zealand units that are allocated to a person under the pre-1990 forest land allocation plan on or after 1 January 2013.

**164 Section 187 amended (Conditions on registration as participant in respect of certain activities relating to post-1989 forest land)**

- (1) In section 187(2), after “been deforested”, insert “8 or less years ago”.
- (2) Replace section 187(2)(b) with:
- (b) has surrendered, within 60 working days after the EPA gives the person a notice requiring the surrender, the number of units listed in the assessment under paragraph (a)(ii); and
- (3) In section 187(6), replace “the commencement of this section” with “1 January 2013”.

**165 Section 188 amended (Registration as participant in respect of post-1989 forest land)**

- (1) In section 188(6)(a), replace “under section 57(6)(b),—” with “the person in accordance with section 57(6); or”.
- (2) Repeal section 188(6)(a)(i) and (ii), and (b)(i).
- (3) Repeal section 188(7)(a)(i).
- (4) In section 188(7)(a)(ii)(A), replace “section 58(3)(c)” with “section 58(3)(b)”.
- (5) Repeal section 188(7)(b)(i).
- (6) In section 188(7A), replace “subsection (7)(b)(i) to (iii)” with “subsection (7)(b)(ii) and (iii)”.
- (7) After section 188(10), insert:
- (11) *See also* sections 188B and 188C (which require notice to the participant and notice to interested parties, if any).

**166 New sections 188B and 188C inserted**

After section 188A, insert:

**188B Notice to forestry participant if their registration added or removed**

The EPA must give written or electronic notice to a participant, or former participant, of the following matters as soon as practicable after the EPA carries them out under any of Parts 5 to 5D:

- (a) the participant's registration or removal from registration in respect of an activity, and the date on which this took or takes effect:
- (b) the addition or removal of any area or land for which the participant is registered, and the date on which this took or takes effect.

**188C Notice to interested party if forestry participant's registration added or removed**

- (1) A participant must notify the interested party (if any) of the following matters under this section, in writing or electronically, as soon as practicable after receiving the EPA's notice about, or becoming aware of, the matter:
  - (a) the participant's registration, or removal from registration, in respect of an activity, and the date that this took or takes effect:
  - (b) the addition or removal of any area or land for which the participant is registered, and the date that this took or takes effect.
- (2) The EPA must provide the participant with any address that it has recorded for the interested party.
- (3) In this section, **interested party** means—
  - (a) the landowner, in relation to a participant who is registered for an activity relating to—
    - (i) holding a registered forestry right or registered lease over land; or
    - (ii) being a party to a Crown conservation contract over land; or
  - (b) any person with a registered forestry right or registered lease in respect of the land, in relation to a participant who is registered for an activity relating to owning post-1989 forest land.

**167 Section 189 amended (Emissions returns for post-1989 forest land activities)**

- (1) In section 189(8)(d)(i), delete “within 20 working days of submitting the emissions return”.
- (2) In section 189(8)(d)(ii), delete “, within 60 working days of submitting the emissions return,”.
- (3) In section 189(9), repeal the definition of **mandatory emissions return period**.

**168 Section 191 amended (Ceasing to be registered as participant in respect of post-1989 forest land)**

In section 191(3)(b)(i)(A), delete “(as defined in section 189(9))”.

**169 New section 191A inserted (If participant has never carried out activity in carbon accounting area)**

After section 191, insert:

**191A If participant has never carried out activity in carbon accounting area**

- (1) This section applies if the EPA is satisfied that a person is not carrying out, and has never carried out, the activity in Part 1 of Schedule 4 in a carbon accounting area, or part of an accounting area, for which they are registered.
- (2) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area.
- (3) The person must surrender the unit balance that relates to the carbon accounting area (or part area).
- (4) At least 60 days before amending the register, the EPA must notify the person—
  - (a) that the EPA proposes to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area; and
  - (b) of the reason for the proposed removal; and
  - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity in the carbon accounting area).
- (5) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

**170 Section 192 amended (Effect of transmission of interest in post-1989 forest land)**

After section 192(5), insert:

- (5A) However, if the transmitted interest is part of a deceased participant's estate,—
  - (a) for the transfer to the executor or administrator,—
    - (i) subsections (3)(a), (4), and (5) do not apply (so that no notice or emissions return is required); but
    - (ii) subsection (3)(b) still applies and the EPA must act under subsection (6); and
  - (b) for the transfer from the executor or administrator to a successor,—
    - (i) the transferee (not the transferor) must submit the emissions return required by section 193; and
    - (ii) for the purposes of that emissions return, the affected carbon accounting areas are those that relate to the transfer to the executor or administrator; and



- (c) in every case, the executor or administrator of more than 1 deceased participant's estate is treated under this Act as if they were a separate participant for each of those estates.

**171 Section 193 amended (Emissions returns in relation to transmitted interests)**

In section 193(2)(b)(i)(A), delete “(as specified in section 189(9))”.

**172 New cross-heading above section 194 inserted**

Before section 194, insert:

*Information about status of forest land*

**173 New sections 194A to 194C and cross-headings inserted**

Before section 195, insert:

*Input returns may be submitted before actual emissions returns*

**194A Input returns may be submitted for certain emissions returns for forestry activities**

- (1) This section applies before a person submits an emissions return (for a forestry activity) of a type specified in the regulations.
- (2) The person may first submit, for the activity and 1 or more of the areas or carbon accounting areas covered by the emissions return, an input return that contains the data or information required by the regulations.
- (3) The input return must be submitted by—
  - (a) the deadline specified in the regulations; or
  - (b) any extended deadline granted by the EPA under the regulations.
- (4) In this section, **regulations** means regulations made under section 194C.

**194B EPA may do calculations based on input return**

- (1) This section applies if the EPA receives an input return in accordance with section 194A.
- (2) As soon as practicable after receipt, the EPA must—
  - (a) calculate for each area or carbon accounting area covered by the input return, as required for the relevant emissions return,—
    - (i) the participant's emissions and removals; and
    - (ii) the participant's liability to surrender units for their emissions or entitlement to receive New Zealand units for their removals; and
  - (b) give a notice to the participant that includes—
    - (i) the calculations and the calculated amounts; and

- (ii) the data, information, or other matters on which the calculations are based; and
  - (iii) a statement that the participant may choose to include the calculations and the calculated amounts in the relevant emissions return; and
  - (iv) a statement about the effect of subsection (3).
- (3) The EPA is not liable for anything that results from the calculations that it makes in good faith under this section, and the EPA's calculations and notice do not affect any obligation of the participant under this Act (such as the obligation to submit an accurate emissions return).

#### 194C Regulations for input returns

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) specifying the 1 or more types of emissions return for a forestry activity for which input returns may be submitted, which may be specified by reference to 1 or more of the following:
    - (i) the type of forestry activity;
    - (ii) any feature of the forest or land to which the activity relates;
    - (iii) any other matter:
  - (b) specifying the data or information that must be contained in any input return or the input return for each type of emissions return;
  - (c) specifying the deadline for submitting the input return for each type of emissions return, which must be a reasonable period before the deadline for submitting the emissions return;
  - (d) providing for how, and for how long, the EPA may extend a deadline for submitting the input return for any emissions return or for each type of emissions return;
  - (e) authorising the EPA to issue guidelines or standards by notice in the *Gazette* in relation to the matters specified under paragraphs (b) to (d).
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) Any guidelines or standards issued by the EPA under regulations made under subsection (1)(e) are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4) A person who has complied with guidelines or standards issued by the EPA under regulations made under subsection (1)(e) is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

*Notification of status of forest land*

**174 Sections 196 and 197 and cross-heading replaced**

Replace sections 196 and 197 and the cross-heading above section 196 with:

*Forestry classifications of land*

**196 Meaning of forestry classification**

In this Act, **forestry classification** means 1 or more classifications of an area of land that—

- (a) classifies the area by whether or how—
  - (i) a definition or matter in the Act that relates to forestry applies to the area; or
  - (ii) the area is eligible to have a definition or matter in the Act apply to it if certain requirements are satisfied; and
- (b) is given—
  - (i) by the EPA under section 196A (initial classification), 196C (change of classification to correct error), 196D (change of classification to update for changes), or 144 (review of classification); or
  - (ii) by the decision of the District Court or High Court under section 145 or 146.

**Examples**

If specified by regulations, an area of land might be classified as—

- pre-1990 forest land:
- post-1989 forest land:
- land that is eligible to become post-1989 forest land (if it becomes forest land):
- pre-1990 offsetting forest land:
- land that has been deforested, or deforested on specified dates:
- land that is eligible to be declared exempt land under section 184 (because of tree weeds):
- land that was forest land on 31 December 1989:
- exempt land:
- pre-1990 forest land to which the pre-1990 forest land allocation plan applies:
- something else.

**196A EPA may give forestry classifications to areas of land**

The EPA may give 1 or more forestry classifications to an area of land in accordance with regulations made under section 196F.

**196B Effect of forestry classifications**

- (1) The forestry classification of an area of land is conclusive evidence of how the relevant definition or matter in the Act applies to the area.
- (2) The EPA must apply this Act to the area in accordance with the forestry classification.
- (3) If a person's application, notice, emissions return, or other document under this Act specifies the forestry classification of an area of land, the document—
  - (a) need not include any information that is covered by the forestry classification; but
  - (b) for a forestry classification that an area of land is eligible for something if certain requirements are satisfied, must include information about whether the requirements are satisfied.
- (4) The EPA, or any person carrying out its powers, duties, or functions,—
  - (a) does not warrant that any forestry classification is correct and not based on, or affected by, something that is incorrect or that has materially changed; and
  - (b) is not liable for anything that results from a forestry classification being incorrect or based on, or affected by, something that is incorrect or that has materially changed, as long as the forestry classification was given in good faith.

**196C Change of forestry classification to correct error**

- (1) The EPA may change the forestry classification of an area of land to correct any error that the EPA is satisfied is contained in the classification, including where the classification was based on incorrect information.
- (2) The EPA must make the change in accordance with regulations made under section 196F.

**196D Change of forestry classification to update for changes**

- (1) The EPA may change the forestry classification of an area of land if—
  - (a) there is a material change in any of the information or facts on which the classification is based; or
  - (b) there is a material change to this Act, or to any regulations made under this Act, that affects the classification.
- (2) The EPA must make the change in accordance with regulations made under section 196F.

**196E Forestry classification with effect before date classification given**

- (1) This section applies if a forestry classification has effect before the date on which the classification is given, whether—

- (a) by the EPA under section 196A, 196C, or 196D or on review under section 144; or
  - (b) by the decision of a court on appeal under section 145 or 146.
- (2) The forestry classification must be ignored in respect of the period before the date of the decision—
- (a) to the extent that it would increase the number of units that a person is required to surrender, or decrease the number of New Zealand units that a person is entitled to receive, in respect of that period; and
  - (b) in respect of any other matter specified by regulations made under section 196F.
- (3) In all other respects, the forestry classification must be applied to that period.
- (4) To avoid doubt, where the forestry classification is ignored under subsection (2), the earlier forestry classification (if any) applies instead.

#### **196F Regulations for forestry classifications**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) specifying the forestry classifications that the EPA may give to areas of land;
  - (b) prescribing 1 or more methods or processes by which the EPA may give a new or changed forestry classification to an area, and those methods or processes—
    - (i) may or may not provide for a person to apply for a classification; and
    - (ii) may prescribe the fees or charges payable by an applicant for a classification to enable the recovery of all or part of the direct and indirect costs of the EPA in—
      - (A) receiving and processing the application; and
      - (B) considering, granting, or declining the application; and
    - (iii) must require the EPA to first consult the persons that the regulations specify are likely to be substantially affected by the classification, unless the only persons likely to be substantially affected have applied for, or agreed to, the classification:
  - (c) providing for when a forestry classification comes into effect, which may, for example,—
    - (i) subject to section 196E, be before the date of the decision if the classification is changed under section 196C or 196D, on review by the EPA under section 144, or on appeal to the court under section 145 or 146:

- (ii) differ for different forestry classifications or circumstances, such as whether a person is responsible for a material change described in section 196D(1)(a):
- (d) specifying matters for the purposes of section 196E(2)(b) (in respect of which a forestry classification is ignored for the period before the date of the decision):
- (e) providing for the publication of the following in 1 or more notices, instruments, maps, or tools, which may be electronic:
  - (i) any decision to give a forestry classification to an area of land:
  - (ii) the current forestry classifications of all areas of land, and any related matters.
- (2) Examples of the costs that may be recovered under regulations made under subsection (1)(b)(ii) include (but are not limited to)—
  - (a) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with the application:
  - (b) the costs of services provided by third parties.
- (3) Section 167(4) also applies to regulations made under subsection (1)(b)(ii).
- (4) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (5) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

### *Grant-funded forests*

#### **197 Entitlement to units for removals from grant-funded forests**

A participant in an activity of standard forestry or permanent forestry in a carbon accounting area is not entitled to receive New Zealand units for removals that—

- (a) are attributable to forest species in relation to which the participant has received a grant from the Crown under a grant scheme relating to forestry that is prescribed in regulations made under section 197A (a **grant-funded forest**); and
- (b) occur during the stand-down period for that forest prescribed in regulations made under section 197A.

#### **197A Regulations for grant-funded forests**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing Crown grant schemes relating to forestry:
  - (b) prescribing stand-down periods for grant-funded forests:

- (c) prescribing methodologies for attributing removals to grant-funded forests:
  - (d) providing for any other matters contemplated by section 197, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
- (a) for different grant schemes:
  - (b) for different periods of time:
  - (c) for different forest species:
  - (d) for different parts of New Zealand.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (4) Regulations made under subsection (1)(c) may relate to emissions or removals that—
- (a) stem directly from the activity; or
  - (b) are associated with a product or other thing that is the subject of the activity.

**175 Section 198 amended (Registration as participant by purchasers of obligation fuel)**

Replace section 198(2) and (3) with:

- (2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 3 of Schedule 4, the registration takes effect 12 months after the date of the notice issued under section 57(6).
- (3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 3 of Schedule 4, the EPA must remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the notice issued under section 58(3)(b).
- (4) The participant who is registered, or removed from registration, under this section must give notice of that matter, and the date that it took or takes effect, to every person who is registered under section 56 in respect of an activity in Part 2 of Schedule 3.
- (5) The notice must be given in writing or electronically as soon as practicable after the participant receives the EPA's notice about, or becomes aware of, the matter.
- (6) The EPA must provide the participant with any address that it has recorded for each person who must be notified.

**176 Section 202 amended (Activities added to Part 2 of Schedule 3)**

- (1) In section 202(2), replace “that an Order in Council be made” with “recommend the making of an Order in Council”.
- (2) In section 202(2)(b)(ii), replace “New Zealand’s international obligations” with “international climate change obligations”.

**177 Section 209 amended (Registration as participant by purchasers of coal or natural gas)**

Replace section 209(2) to (4) with:

- (2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 4 of Schedule 4, the registration takes effect 12 months from the date of the notice issued under section 57(6).
- (3) If the EPA has received an application under section 58 for removal of a person’s name from the register as a participant in respect of an activity listed in Part 4 of Schedule 4, the EPA must remove, under section 58(4), the applicant’s name from the register on the date that is 48 months after the date of the notice issued under section 58(3)(b).
- (4) The participant who is registered, or removed from registration, under this section in respect of an activity must give notice of that matter, and the date that it took or takes effect, to every person who—
  - (a) mines—
    - (i) coal, if the activity is purchasing coal; or
    - (ii) natural gas, if the activity is purchasing natural gas; and
  - (b) is registered under section 56.
- (5) The notice must be given in writing or electronically as soon as practicable after the participant receives the EPA’s notice about, or becomes aware of, the matter.
- (6) The EPA must provide the participant with any address that it has recorded for each person who must be notified.

**178 Section 213 amended (Participant in respect of subpart 4 of Part 5 of Schedule 3)**

In section 213(1)(b)(i) and (ii), replace “section 2A(9)” with “section 2A(5D)”.

**179 New sections 215 and 216 inserted**

After section 214, insert:

**215 Ministers to report on alternative pricing system for farm-level agriculture emissions**

- (1) The Minister and the Minister of Agriculture must prepare a report that outlines a system to put a price on emissions from agricultural activities (including, but



- not limited to, the activities listed in Part 5 of Schedule 3) as an alternative to the emissions trading scheme currently provided for in this Act.
- (2) The report must be prepared and made publicly available by 31 December 2022.
- (3) The report must discuss the following matters in relation to the emissions trading scheme and the alternative system outlined under subsection (1):
- (a) how emissions from those activities would be priced and accounted for:
  - (b) whether other activities or participants would be included in the system:
  - (c) what methodologies would be used for calculating emissions and removals:
  - (d) what assistance, if any, would be given to participants:
  - (e) how emissions of methane would be treated relative to other greenhouse gases, including whether, how, and what types of removals would be recognised:
  - (f) what information participants would need to provide and how that information would be used, shared, or made publicly available:
  - (g) how participants and relevant industry groups would be engaged with in designing, implementing, and operating the system:
  - (h) who would be responsible for administering the system:
  - (i) what amendments would need to be made to legislation to enable the system to work.
- (4) Before preparing the report, the Ministers must—
- (a) request a report from the Climate Change Commission under section 5K about what assistance, if any, should be given to participants; and
  - (b) consider that advice.
- (5) In this section, **Minister of Agriculture** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Commodity Levies Act 1990.

**216 Regulations for voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) providing for a process by which a person carrying out an activity described by the fertiliser–farmer subpart or animals–farmer subpart (of Part 5 of Schedule 3) may choose to be treated as a participant in the activity described:
  - (b) providing that the person may choose to be treated in that way in respect of 1 or both of—

- (i) obligations to report under this Act on the emissions from the activity:
- (ii) obligations to surrender units under this Act for the emissions from the activity:
- (c) providing for the following participants in **corresponding processor activities** to be notified:
  - (i) a participant in a fertiliser–processor activity that corresponds to a fertiliser–farmer activity for which a participant has become subject to obligations to surrender units under this Act:
  - (ii) a participant in an animals–processor activity that corresponds to an animals–farmer activity for which a participant has become subject to obligations to surrender units under this Act:
- (d) if regulations are made under paragraph (b)(ii), providing for a process by which a participant in a corresponding processor activity—
  - (i) ceases to be subject to obligations to surrender units under this Act in respect of that activity, or becomes subject to such obligations as varied to ensure that only 1 person is liable to surrender units in respect of the corresponding processor activities or the activities to which they correspond; and
  - (ii) ceases to be entitled to allocations of units in respect of the activities for which they are no longer liable to surrender units.
- (2) Before recommending the making of the regulations, the Minister must consult the Minister of Agriculture.
- (3) *See* section 3B for consultation requirements that apply to the making of the regulations.

**180 Section 217 amended (Transitional provision for penalties)**

- (1) Replace section 217(1) with:
  - (1) This section applies in respect of the first year in which a participant is required to surrender units for emissions in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3.
  - (1A) Subsection (2) applies—
    - (a) to the participant if they submit an annual emissions return that relates to that first year; and
    - (b) in respect of the units that the participant is required to surrender in respect of the activity.
- (2) Repeal section 217(2)(a).

**181 Section 218 repealed (Transitional provision for voluntary reporting)**

Repeal section 218.

## 182 Sections 219 to 222 replaced

Replace sections 219 to 222 with:

### 219 Transitional provision for surrender obligations of certain participants

- (1) This section applies to a person who carries out the following in the specified period (the **excluded period**):
  - (a) a fertiliser–processor activity in the period starting on 1 January 2011 and ending on—
    - (i) 31 December 2024, if by that date no earlier end date has been appointed for that activity; or
    - (ii) an earlier end date appointed for that activity by an Order in Council made under subsection (3)(a); or
  - (b) a fertiliser–farmer activity in the first year in which the fertiliser–farmer subpart applies to persons, or the class of persons, carrying out that activity (starting on a date appointed by an Order in Council made under section 2A(5B)); or
  - (c) an animals–processor activity in the period starting on 1 January 2011 and ending on—
    - (i) 31 December 2024, if by that date no earlier end date has been appointed for that activity; or
    - (ii) an earlier end date appointed for that activity by an Order in Council made under subsection (3)(b); or
  - (d) an animals–farmer activity in the first year in which the animals–farmer subpart applies to persons, or the class of persons, carrying out that activity (starting on 1 January 2024 or a later date appointed by an Order in Council made under section 2A(5D)).
- (2) Even if the person’s emissions return reports emissions for the excluded period, the person is not liable under this Act to surrender units for those emissions.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint 1 or both of the following (an **earlier end date**):
  - (a) a date for the purpose of subsection (1)(a)(ii):
  - (b) a date for the purpose of subsection (1)(c)(ii).
- (4) Before recommending the making of an order appointing an earlier end date, the Minister must—
  - (a) consult with the Minister of Agriculture (as defined in section 215); and
  - (b) consider the report provided by the Climate Change Commission under section 220; and
  - (c) be satisfied that progress of the kind referred to in section 220(b) has been insufficient.

- (5) In recommending the making of an order appointing an earlier end date, the Minister must not recommend a date that is before 1 July 2022.

**220 Commission to report on progress towards meeting farm-level obligations**

The Commission must, not later than 30 June 2022, provide written advice to the Minister on—

- (a) the progress that has been made towards meeting the primary sector climate change commitments set out in Schedule 5; and
- (b) the progress that has been made towards participants in an activity listed in subpart 4 of Part 5 of Schedule 3 being ready to start complying with reporting and surrender obligations under this Act in respect of that activity; and
- (c) any barriers to those participants being ready to start complying with those obligations; and
- (d) what further steps (if any) are required by the primary sector or the Government for those participants to be ready to start complying with those obligations.

**183 Section 222H amended (Transitional provision for unincorporated bodies)**

Repeal section 222H(3) to (5).

**184 Section 233 amended (Rate of synthetic greenhouse gas levy)**

- (1) In section 233(1), replace the definition of variable B with:

B is the price of carbon specified under subsection (4)(b) or, if section 236(2) applies, set by that provision

- (2) In section 233(3), replace “item A” with “variable A”.

- (3) In section 233(4), replace “item B” with “variable B”.

- (4) Replace section 233(5) with:

- (5) Regulations made under subsection (4)(a)—

- (a) must be made in accordance with the consultation requirements in section 3B; and
- (b) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

- (5) In section 233(6), replace “making a recommendation under subsection (4)” with “recommending the making of the regulations”.

**185 Section 234 repealed (Transitional provision for synthetic greenhouse gas levy)**

Repeal section 234.

**186 Section 236 replaced (Maximum price of carbon for purpose of levy calculation)**

Replace section 236 with:

**236 Maximum price of carbon for purpose of levy calculation**

- (1) This section applies to the calculation of variable B of the formula set out in section 233(1).
- (2) If the methodology prescribed under section 233(4)(a) would result in a price of carbon that is higher than the following price (the **maximum price**) for the levy year specified, the price of carbon is set at the maximum price for that levy year:
  - (a) \$25, for a levy year that is 2020 or earlier; or
  - (b) \$35, for a levy year that is 2021 or later, but that starts before the start date for auctions.
- (3) In this section, **start date for auctions** means the date specified by regulations made under section 30GA(2)(a) as the date on which the sale of New Zealand units by auction commences.

**187 Section 243 amended (Circumstances where levy may be refunded)**

In section 243(1)(b), replace “greenhouse gas emissions” with “emissions”.

**188 Section 244 amended (Exemptions from payment of synthetic greenhouse gas levy)**

Replace section 244(6) with:

- (6) *See* sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.

**189 Section 245 amended (Regulations specifying levy rates)**

Replace section 245(4) with:

- (4) Regulations made under subsection (1) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

**190 Section 246 amended (Regulations relating to synthetic greenhouse gas levy)**

Replace section 246(2) and (3) with:

- (2) Before recommending the making of regulations under subsection (1)(a), the Minister must have regard to international climate change obligations relating to synthetic greenhouse gases.
- (3) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(a) to (e).

- (4) Regulations made under subsection (1)(a) to (e) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

**191 Section 247 repealed (Process for making orders and regulations)**

Repeal section 247.

**192 Section 249 amended (Application of section 88 (Directions to EPA))**

In section 249, replace “Part 5” with “the ETS participant provisions”.

**193 Section 252 amended (Enforcement officers)**

In section 252, replace “under Part 4 in relation to this Part” with “under this Part (which relates to verification and inquiry about compliance with this Part)”.

**194 Section 257 amended (Power of entry for investigation, warrants, etc)**

In section 257, replace “Part 5” with “the ETS participant provisions”.

**195 Section 258 amended (Regulations relating to verifiers)**

Replace section 258(3) with:

- (3) Before recommending the making of regulations under subsection (1)(a), the Minister must have regard to international climate change obligations in respect of the collection of data and information relating to specified synthetic greenhouse gases.
- (4) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.

**196 Section 269 amended (Review of operation and effectiveness of levy)**

Replace section 269(4)(b) with:

- (b) make the report of the panel publicly available; and

**197 Section 270 amended (Appointment and conduct of independent panel)**

Replace section 270(1)(c)(ii) with:

- (ii) international climate change obligations and any other relevant international agreement; and

**198 Schedule 1AA amended**

In Schedule 1AA, after clause 3, insert:

## Part 2

### Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2020

#### 4 Interpretation

In this Part,—

**amendment Act** means the Climate Change Response (Emissions Trading Reform) Amendment Act 2020

**third mandatory emissions return period** means the 5-year period starting on 1 January 2018 and ending on 31 December 2022.

Subpart 1—Provisions that commence on day after Royal assent

#### 5 Satisfying requirements for making regulations

- (1) This clause applies to any requirement for the making of any regulations under this Act as amended by the amendment Act.
- (2) Anything done before the commencement of this clause satisfies the requirement as long as it would have satisfied the requirement if it had been done after the commencement.

#### 6 New regulations may commence on or after commencement of clause

Any regulations made under this Act before the commencement of this clause may come into force on, or at any time after, that commencement, despite anything in this Act that prevents them from coming into force within a certain period after the date of their notification in the *Gazette*.

#### 7 Making first regulations about limits and price controls for units

- (1) If regulations are to be made under section 30GB before there is an emissions budget, section 30GC(2)(a) applies as if it instead referred to any provisional budget for the emission of greenhouse gases that is set by the Crown.
- (2) When an emissions budget is first set,—
  - (a) the Minister must recommend the making of regulations under section 30GB to prescribe new limits or price control settings as required to comply with section 30GC(2); and
  - (b) the Minister may recommend prescribing a new limit or price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made, despite section 30GB(5).

#### 8 Existing accounts continue

If any account established in the Registry (under section 7(1)(a), for example) existed immediately before the commencement of this clause, it continues to exist after the commencement.

**9 Information accessible by search of unit register**

If section 27 applies to information immediately before its amendment by the amendment Act, it continues to apply in accordance with that section as if it were not amended.

**10 Information to be published by EPA**

- (1) For a reporting year beginning before 1 January 2023, the EPA is not required to publish the information required under section 89(1)(e) in respect of an activity or the information required under section 89(1)(i) if the EPA is satisfied that publishing the information would result in the disclosure of a participant's individual emissions or an eligible person's own allocation, unless—
  - (a) the participant or eligible person to whom the information relates has consented to the publication of the information; or
  - (b) the information is already in the public domain.
- (2) Section 89A does not apply in respect of an emissions return for emissions or removals before 1 January 2020, unless—
  - (a) the return also relates to a period after 1 January 2020; and
  - (b) it is possible for emissions or removals occurring before 1 January 2020 to be excluded from the published information.
- (3) Section 89A—
  - (a) applies in respect of emissions returns submitted under section 189, 191, or 193 for emissions or removals on or after 1 January 2020; but
  - (b) does not apply in respect of any other emissions returns in relation to post-1989 forest land during a mandatory emissions returns period commencing before 1 January 2023.

**11 Members of existing consolidated groups jointly and severally liable**

- (1) The joint and several liability to which each member of a consolidated group has agreed, immediately before the commencement of this clause, is treated as if it were joint and several liability for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the relevant activities.
- (2) The transfer of units to the consolidated group's holding account (on behalf of the group) to which each member of a consolidated group has agreed, immediately before the commencement of this clause, is treated as if it included the transfer of any units to which a member becomes entitled by an allocation relating to a relevant eligible activity.

**12 Consolidated group for activity relating to forestry**

- (1) In this clause, an **existing forestry consolidated group** means a consolidated group that—



- (a) was formed in respect of an activity or activities listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4; and
  - (b) exists immediately before the commencement of this clause.
- (2) Sections 150 and 151A do not apply to an existing forestry consolidated group (so that no members or activities may be added to the group).
- (3) The nominated entity of an existing forestry consolidated group—
- (a) may submit a single emissions return under section 189(3) in respect of 1 or more of the activities listed in Part 1 of Schedule 4 carried out by a member of the group in a year; and
  - (b) must submit any emissions return required under a provision of Part 5 on behalf of any member of the group when the member is required to do so; and
  - (c) must sign any emissions return submitted by the nominated entity in accordance with section 65(2)(f) on behalf of the group.
- (4) In relation to an existing forestry consolidated group, section 153(2) to (4) applies to the liability to surrender units or entitlement to be transferred units in relation to an emissions return referred to in subclause (3) as if the references in that section to a year were references to the period covered by the emissions return.
- (5) To avoid doubt, only the nominated entity for an existing forestry consolidated group may submit an emissions return for the group.
- 13 Fixed price (for option to pay money instead of surrendering or repaying)**  
Section 178A does not apply if the person’s emissions return described by section 178A(1)(a)(i)(A)—
- (a) is in respect of an activity listed in Part 1 of Schedule 4; and
  - (b) does not impose a net liability to surrender or repay units for all of the carbon accounting areas covered by the return (for example, under section 189(8)).

**199 New Schedule 2A inserted**

After Schedule 2, insert the Schedule 2A set out in Schedule 1 of this Act.

**200 Schedule 3 amended**

- (1) In Schedule 3, Part 1, replace “the 5-year period commencing on 1 January 2008, or in any subsequent 5-year period after that” with “any mandatory emissions return period”.
- (2) In Schedule 3, Part 2, delete “, *subject to sections 218 and 219,*”.
- (3) In Schedule 3, Part 3, subpart 1, replace the item “Mining coal where the volume of coal mined exceeds 2 000 tonnes in a year” with:  
Satisfying 1 or both of the following in respect of a year (**mining coal**):

- (a) mining more than 2,000 tonnes of coal in the year (**direct coal mining**):
- (b) owning at least 2,000 tonnes of coal, from the person's direct coal mining, at the start of the year, and where the year is immediately after (**coal stockpiling**)—
  - (i) a year of direct coal mining; or
  - (ii) 1 or more consecutive years of owning at least 2,000 tonnes of coal (from the person's direct coal mining) at the start of the year, after an initial year of direct coal mining.

- (4) In Schedule 3, Part 3, subpart 1, after the final item, insert:

**Example**

A person mines 2,500 tonnes of coal in 2022, which is “direct coal mining” and therefore “mining coal” in 2022. They stop direct coal mining, but still own (from their mining) 2,250 tonnes of coal at the start of 2023 and 2,000 tonnes at the start of 2024, which is “coal stockpiling” and therefore “mining coal” in 2023 and 2024 (under paragraph (b)(i) and (ii) of that term, respectively).

- (5) In Schedule 3, subpart 2 of Part 4, delete “, *subject to sections 218 and 219,*”.
- (6) In Schedule 3, subpart 1 of Part 5, replace “(*applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 2 brought into force*)” with “(*applies on and after 1 January 2011, but is subject to section 219*)”.
- (7) In Schedule 3, subpart 2 of Part 5, replace “(*applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council*)” with “(*applies on and after a date appointed by Order in Council, but is subject to section 219*)”.
- (8) In Schedule 3, subpart 3 of Part 5, replace “(*applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 4 brought into force*)” with “(*applies on and after 1 January 2011, but is subject to section 219*)”.
- (9) In Schedule 3, subpart 4 of Part 5, replace “(*applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council*)” with “(*applies on and after 1 January 2024 or a later date appointed by Order in Council, but is subject to section 219*)”.
- (10) In Schedule 3, Part 6, delete “, *subject to sections 218 and 219,*”.

**201 Schedule 4 amended**

- (1) In Schedule 4, subpart 1 of Part 2, paragraph (c)(ii), replace “New Zealand’s annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement” with “any emissions report provided by New Zealand under its international climate change obligations”.
- (2) In Schedule 4, subpart 2 of Part 2, paragraph (b), replace “New Zealand’s annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement” with “any

emissions report provided by New Zealand under its international climate change obligations”.

- (3) In Schedule 4, subpart 3 of Part 2, delete “, *subject to sections 218, 219, and 220,*”.

**202 New Schedule 5 inserted**

After Schedule 4, insert the Schedule 5 set out in Schedule 2 of this Act.

Subpart 2—Amendments that commence on 30 November 2020

**203 Section 30G amended (Regulations relating to Part 2)**

Replace section 30G(3) with:

- (3) Any regulation made under subsection (1)(b)(i) or (c) applies to only the following units:
- (a) all units that are not held in an account in the Registry at the time that the regulation comes into force; and
  - (b) approved overseas units that are issued before 1 January 2021 (the start of the third commitment period).

**204 Section 183A amended (Certain applications not otherwise permitted by section 183)**

In section 183A(2)(b), replace “New Zealand units” with “units”.

**205 Section 186H amended (Treatment of allocations in respect of pre-1990 forest land that is offset)**

- (1) In section 186H(2)(b), replace “New Zealand units equivalent to the portion of New Zealand” with “units equivalent to the portion of”.
- (2) In section 186H(3)(a), (4), and (6), delete “New Zealand”.

**206 Section 189 amended (Emissions returns for post-1989 forest land activities)**

In section 189(8)(b), delete “New Zealand”.

**207 Section 191 amended (Ceasing to be registered as participant in respect of post-1989 forest land)**

Repeal section 191(1)(c) and (1A).

**208 Schedule 1AA amended**

In Schedule 1AA, after subpart 1, insert:

## Subpart 2—Provisions that commence on 30 November 2020

**14 Cancellation of historic approved overseas units**

- (1) This clause applies to approved overseas units that were issued in the first commitment period starting on 1 January 2008 and ending on 31 December 2012, other than those that are held by the Crown in a Crown holding account or an account established under section 7.
- (2) If any person holds any of the approved overseas units, the Registrar must transfer the units to a cancellation account.
- (3) The EPA must direct the Registrar to transfer a New Zealand unit from a Crown holding account to a person's holding account for each of that person's approved overseas units—
  - (a) that is a New Zealand assigned amount unit (as defined by regulation 3 of the Climate Change (Unit Register) Regulations 2008); and
  - (b) that the Registrar transfers to a cancellation account under this clause.
- (4) No compensation is payable for any other units that the Registrar transfers to a cancellation account under this clause.

## Subpart 3—Amendments that commence on 1 January 2021

**209 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))**

After section 3A(b)(vi), insert:

(via) section 30W(1)(a) (price of carbon):

**210 Section 3B amended (Consultation about certain regulations, orders, and notices)**

- (1) After section 3B(1)(e), insert:
 

(ea) section 30W(1)(a) (price of carbon):
- (2) Repeal section 3B(1)(s).

**211 Section 4 amended (Interpretation)**

In section 4(1), replace the definition of **deforest** with:

**deforest**, in relation to forest land,—

- (a) means to convert forest land to land that is not forest land (*see* section 181, for example); and
- (b) includes deforestation after forest land is cleared, where section 179 applies

**212 New subpart 4 of Part 2 inserted**

After section 30V, insert:

#### Subpart 4—Regulations setting price of carbon

##### **30W Regulations setting price of carbon**

- (1) For the purpose of sections 134 to 134D and any other provisions that refer to regulations made under this section, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) prescribing the methodology for specifying the price of carbon; and
  - (b) specifying the price of carbon by applying the methodology.
- (2) Before recommending the making of regulations, the Minister must take into account—
  - (a) the price of the units used to calculate revenue from the emissions trading scheme in the Crown annual financial statements in the preceding 12 months; and
  - (b) the price of New Zealand units sold by auction in the preceding 12 months; and
  - (c) any changes to the operation of the emissions trading scheme that have affected the price of the units surrendered under that scheme, or that may do so before the end of the next levy year.
- (3) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(a).
- (4) Regulations made under subsection (1)(a) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

##### **213 Section 89 amended (EPA to publish certain information)**

- (1) Repeal section 89(1)(e).
- (2) After section 89(1), insert:
  - (1A) The EPA must, for each reporting year, publish information about—
    - (a) each qualifying penalty imposed in that reporting year; and
    - (b) each qualifying penalty imposed in a previous reporting year that has any amount still owing at any time in that reporting year.
  - (1B) The information required for each of those penalties is—
    - (a) the name of the person on whom the penalty was imposed; and
    - (b) the section under which the penalty was imposed; and
    - (c) the amount of the penalty; and
    - (d) the date on which the last payment for the penalty was due and, if the penalty has been paid in full, the date on which it was paid in full; and
    - (e) in the case of a penalty imposed under section 134, the provision under which the person was liable to surrender or repay units; and

- (f) in the case of a penalty imposed under sections 134A to 134D, whether the penalty was imposed for behaviour that was grossly careless or behaviour that was knowing.
- (1C) In subsection (1A), **qualifying penalty** means—
- (a) a penalty imposed under section 134; or
  - (b) a penalty imposed under sections 134A to 134D, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing.
- (3) In section 89(2)(a) and (b), replace “subsection (1)” with “subsections (1) to (1B)”.
- (4) Repeal section 89(4).

#### 214 Section 120 amended (Amendment to emissions returns by EPA)

In section 120, insert as subsections (2) and (3):

- (2) If the EPA proposes to amend a person’s emissions return, the EPA must notify the person of that proposal as soon as practicable.
- (3) If the EPA then becomes satisfied that the information contained in the emissions return was correct,—
  - (a) the EPA must notify the person of that fact and of the effects of paragraph (b); and
  - (b) section 123 applies as if the EPA had assessed the matters in the emissions return under section 121.

#### 215 New section 120A inserted (Liabilities, penalties, and interest when emissions returns amended)

After section 120, insert:

##### 120A Liabilities, penalties, and interest when emissions returns amended

- (1) This section applies if the EPA (on the **initial notice date**) notifies a person under section 120(2) that it proposes to amend their original emissions return. Terms used in this section are defined throughout, and at the end of, the section.
- (2) Until the EPA has amended the original emissions return by giving the amendment notice,—
  - (a) the person’s surrender or repayment of any units for which they are liable under the original emissions return need not be made by the applicable due date; and
  - (b) the EPA must not give a penalty notice to the person in relation to the original emissions return; and

- (c) if the EPA had already given a penalty notice to the person in relation to the original emissions return, the person's payment of the penalty or any interest need not be made by the applicable due date.
- (3) The EPA, in assessing the matters required to amend the original emissions return, must calculate all of the following that apply:
  - (a) the number of units that the person is liable to surrender or repay under the amended emissions return (the **amended total units**):
  - (b) the units that the person was liable to surrender or repay under the original emissions return (the **original total units**), and—
    - (i) the number of amended total units that do not exceed the original total units (the **base units**):
    - (ii) the number of units by which the amended total units exceed the original total units (the **additional units**):
  - (c) if any of the base units were not surrendered or repaid by a due date before the initial notice date (the **unpaid base units**), the penalty under section 134 for the unpaid base units (the **amended penalty**):
  - (d) if the EPA had already given a penalty notice specifying a penalty (the **original penalty**) in relation to the original emissions return,—
    - (i) the amount by which the original penalty exceeds the amended penalty (the **unnecessary penalty**):
    - (ii) and if any interest has become payable on the original penalty before the initial notice date (the **original interest**),—
      - (A) the interest that would have become payable before that date on the amended penalty instead of the original penalty (the **amended interest**):
      - (B) the amount by which the original interest exceeds the amended interest (the **unnecessary interest**).

*Penalty notice not already given*

- (4) If there are unpaid base units, and the EPA has not already given a penalty notice in relation to the original emissions return, the EPA must include with the amendment notice a penalty notice for those unpaid base units (specifying the amended penalty).

*Penalty notice already given*

- (5) If there are unpaid base units, and the EPA has already given a penalty notice in relation to the original emissions return, the EPA must include with the amendment notice a penalty notice for the unpaid base units that—
  - (a) complies with section 134, including by—
    - (i) specifying the amended penalty as required by section 134(3)(d); and

- (ii) specifying the new due date as required by section 134(3)(f); but
- (b) also—
  - (i) specifies the amount of the amended interest and states that it is payable on the amended penalty; and
  - (ii) states that interest is not payable on the amended penalty in the period starting on the initial notice date and ending on the new due date; and
  - (iii) specifies the amount of any unnecessary penalty or unnecessary interest that the person has paid and states that the EPA is required to reimburse it.
- (6) The penalty notice given under subsection (5) has effect in accordance with its terms, instead of the penalty notice that was already given.

*Other provisions*

- (7) To avoid doubt, this section—
  - (a) does not prevent the EPA, when requiring the surrender or repayment of units, or the payment of a penalty or interest, under this section, from taking into account any earlier surrender, repayment, or payment by the person; and
  - (b) does not prevent section 134 from separately applying to any additional units (that are not surrendered or repaid by their due date).
- (8) In this section,—
  - amended emissions return** means the original emissions return as amended by the EPA under section 120, as notified in the amendment notice
  - amendment notice** means the notice given by the EPA under section 123(1) for the amended emissions return
  - interest** means interest payable on a penalty under section 137
  - original emissions return** means the person’s emissions return that the EPA proposes to amend
  - penalty notice** means a notice given to a person under section 134(3) (because of the person’s failure to surrender or repay units by the due date).

**216 Section 123 amended (Effect of amendment or assessment)**

In section 123(2), replace “section 134(3)(b)” with “section 134A or 134C or required by section 120A”.

**217 Section 127 amended (Time bar for amendment of emissions returns)**

After section 127(2)(b), insert:

- (c) if a person submits an emissions return on receiving a notice from the EPA under section 134A(1), the period of 4 or 7 years in which the EPA



may amend an emissions return under subsection (1)(a) or (b) starts from the date of submission of the emissions return.

**218 Section 129 amended (Offences in relation to failure to comply with various provisions)**

In section 129(1)(a), replace “(requirement to collect data or other information, calculate emissions and removals, and keep records)” with “(other than by submitting an emissions return containing incorrect calculations)”.

**219 Section 132 amended (Other offences)**

In section 132(1)(c), replace “(requirement to collect data or other information, calculate emissions and removals, and keep records)” with “(other than by submitting an emissions return containing incorrect calculations)”.

**220 Sections 134 to 136 replaced**

Replace sections 134 to 136 with:

**134 Penalty for failing to surrender or repay units by due date**

- (1) This section applies if a person fails, by the due date,—
- (a) to surrender units that the person is required to surrender; or
  - (b) to repay units that the person is required to repay.
- (2) The person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:

$$3 \times a \times b$$

where—

- a is the number of units that the person failed to surrender or repay by the due date
  - b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W.
- (3) The EPA must give a notice to the person that—
- (a) refers to the person’s failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and
  - (b) refers to any relevant notice that the EPA has given the person in respect of the requirement to surrender or repay the units (for example, a notice given under section 123(1)); and
  - (c) specifies the number of units that the person must surrender or repay; and
  - (d) specifies the amount of the penalty that the person must pay under this section; and

- (e) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - (f) advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (4) In this section, **due date** means the final date by which the person was required to surrender or repay the units.

#### 134A Penalty for failing to submit emissions return by due date

- (1) This section applies if—
- (a) a person fails to submit an emissions return by the due date; and
  - (b) the EPA is satisfied that the person has not taken reasonable care; and
  - (c) the EPA gives a notice to the person stating that—
    - (i) the person has failed to submit the emissions return by the due date; and
    - (ii) if the person does not submit the return within 20 working days after the notice is given, the EPA will make an assessment under section 121 and a penalty may apply; and
  - (d) the person fails to submit the emissions return within 20 working days after the notice is given.
- (2) If the emissions return is for an activity listed in Part 1 of Schedule 4 (for post-1989 forestry), the person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions, less removals (if any), assessed for the return to the extent they match a net liability to surrender or repay units; or
  - (b) **removals** equal to the carbon dioxide equivalent tonnes of removals, less emissions (if any), assessed for the return to the extent they match a net entitlement to receive or be reimbursed units.
- (3) If the emissions return is for any other activity, the person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions assessed for the return; or
  - (b) **removals** equal to the carbon dioxide equivalent tonnes of removals assessed for the return.
- (4) If the person has—
- (a) emissions, they must pay to the EPA the penalty calculated under subsection (5):
  - (b) removals, they must pay to the EPA the penalty calculated under subsection (5), but the maximum penalty is \$1,000:
  - (c) neither emissions nor removals, no penalty is payable.

(5) The calculation is—

$$a \times b \times c$$

where—

- a is the person’s emissions or removals in tonnes (whichever applies)
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (6).

(6) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

Person’s level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
Person did not take reasonable care	Yes	0.1
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

*Notice of penalty*

(7) If the person must pay a penalty, the EPA must give a notice to the person that—

- (a) refers to the person’s failure to submit the emissions return by the due date and the provision under which the person is required to submit the return; and
- (b) refers to the notice issued under subsection (1)(c); and
- (c) specifies the amount of the penalty that the person must pay under this section; and
- (d) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
- (e) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

*Meaning of due date*

(8) In this section, **due date**—

- (a) means the final date by which the person—
  - (i) was originally required to submit the emissions return; or
  - (ii) would have been required to submit the emissions return had they complied with this Act in all respects; and
- (b) excludes any extension under subsection (1)(d).

**134B Penalty for failing to submit annual or closing allocation adjustment by due date**

- (1) This section applies if—
- (a) a person fails to submit an annual allocation adjustment under section 83 or a closing allocation adjustment under section 84 by the due date; and
  - (b) the EPA is satisfied that the person has not taken reasonable care; and
  - (c) the EPA gives a notice to the person stating that—
    - (i) the person has failed to submit the allocation adjustment by the due date; and
    - (ii) if the person does not submit the allocation adjustment within 20 working days after the notice is given, the EPA will make a decision under section 86B(4) and a penalty may apply; and
  - (d) the person fails to submit the allocation adjustment within 20 working days after the notice is given.
- (2) If the result of a decision made under section 86B(4) is that—
- (a) the person is liable to surrender or repay units, they must pay to the EPA the penalty calculated under subsection (3) (in addition to surrendering or repaying the units);
  - (b) the person is entitled to receive units, they must pay to the EPA the penalty calculated under subsection (3), but the maximum penalty is \$1,000;
  - (c) there is no change in the person's liability or entitlement, no penalty is payable.
- (3) The calculation is—

$$a \times b \times c$$

where—

- a is the number of units that the person—
    - (i) is liable to surrender or repay; or
    - (ii) is entitled to receive
  - b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
  - c is the culpability factor determined under subsection (4).
- (4) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

Person's level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
Person did not take reasonable care	Yes	0.1
	No	0.2

Person's level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

(5) If the person must pay a penalty, the EPA must give a notice to the person that—

- refers to the person's failure to submit the allocation adjustment by the due date and the provision under which the person is required to submit the allocation adjustment; and
- refers to the notice issued under subsection (1)(c); and
- specifies the amount of the penalty that the person must pay under this section; and
- advises that the person may request to enter into a deferred payment arrangement under section 135A; and
- advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

(6) In this section, **due date**—

- means the final date by which the person was originally required to submit the allocation adjustment; and
- excludes any extension under subsection (1)(d).

**134C Penalty for submitting incorrect emissions return**

(1) This section applies if—

- the EPA amends a person's emissions return under section 120; and
- the EPA is satisfied that the amendment was needed because the person failed to take reasonable care.

(2) In particular,—

- subsections (3) to (5) apply if the emissions return is for an activity listed in Part 1 of Schedule 4 (for post-1989 forestry):
- subsections (6) to (8) apply if the emissions return is for any other activity.

*Activities relating to post-1989 forestry*

(3) The person has either—

- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions, less removals (if any), assessed for the return to the extent they match a net liability to surrender or repay units; or
- (b) **removals** equal to the carbon dioxide equivalent tonnes of removals, less emissions (if any), assessed for the return to the extent they match a net entitlement to receive or be reimbursed units.
- (4) If the effect of the amendment is that—
- (a) the person's emissions are greater, removals are lesser, or removals have become emissions, they must pay to the EPA the penalty calculated under subsection (5):
- (b) the person's removals are greater, emissions are lesser, or emissions have become removals, they must pay to the EPA the penalty calculated under subsection (5), but the maximum penalty is \$1,000:
- (c) there is no change in the person's emissions or removals, no penalty is payable.
- (5) The calculation is—
- $$a \times b \times c$$
- where—
- a is the lesser of—
- (a) the person's emissions or removals under the emissions return, as amended; and
- (b) the difference between (whichever applies)—
- (i) the person's emissions under the emissions return before and after amendment; or
- (ii) the person's removals under the emissions return before and after amendment; or
- (iii) the person's emissions and removals under the emissions return before and after amendment, with the emissions converted to a negative number
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (9).
- Other activities*
- (6) The person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions assessed for the return; or
- (b) **removals** equal to the carbon dioxide equivalent tonnes of removals assessed for the return.

- (7) If the effect of the amendment is that—
- (a) the person’s emissions are greater or removals are lesser, they must pay to the EPA the penalty calculated under subsection (8):
  - (b) the person’s removals are greater or emissions are lesser, they must pay to the EPA the penalty calculated under subsection (8), but the maximum penalty is \$1,000:
  - (c) there is no change in the person’s emissions or removals, no penalty is payable.

- (8) The calculation is—

$$a \times b \times c$$

where—

- a is the lesser of—
  - (a) the person’s emissions or removals under the emissions return, as amended; and
  - (b) whichever of the following applies:
    - (i) the difference between the person’s emissions under the emissions return before and after amendment; or
    - (ii) the difference between the person’s removals under the emissions return before and after amendment
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (9).

*Culpability factor*

- (9) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

<b>Person’s level of culpability</b>	<b>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</b>	<b>Culpability factor</b>
Person did not take reasonable care	Yes	0.1
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

*Notice of penalty*

- (10) If the person must pay a penalty, the EPA must give a notice to the person that—
- (a) refers to the amendment under section 120; and

- (b) specifies the amount of the penalty that the person must pay under this section; and
- (c) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
- (d) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

*Meaning of due date*

- (11) In this section, **due date**—
- (a) means the final date by which the person—
    - (i) was originally required to submit the emissions return; or
    - (ii) would have been required to submit the emissions return had they complied with this Act in all respects; and
  - (b) excludes any extension under section 134A(1)(d).

**134D Penalty for providing incorrect information in allocation application or adjustment**

- (1) This section applies if—
- (a) the EPA reconsiders, varies, or revokes (**changes**) a decision on a person's allocation application or adjustment under section 86C; and
  - (b) the EPA is satisfied that the change was needed because the person failed to take reasonable care.
- (2) If the effect of the change is that—
- (a) the person is liable to surrender or repay additional units, or is entitled to receive fewer units, they must pay to the EPA the penalty calculated under subsection (3) (in addition to surrendering or repaying any required units):
  - (b) the person is liable to surrender or repay fewer units, or is entitled to receive additional units, they must pay to the EPA the penalty calculated under subsection (3), but the maximum penalty is \$1,000:
  - (c) there is no change in the person's liability or entitlement, no penalty is payable.
- (3) The calculation is—

$$a \times b \times c$$

where—

- a is the lesser of—
- (a) the total number of units the person is liable to surrender or repay, or is entitled to receive, under the decision, as changed; and
  - (b) the number of units that the person—



- (i) is now liable to surrender or repay as additional units, or is no longer entitled to receive, as a result of the change (if subsection (2)(a) applies); or
  - (ii) is no longer liable to surrender or repay, or is now entitled to receive as additional units, as a result of the change (if subsection (2)(b) applies)
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (4).
- (4) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

Person's level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
Person did not take reasonable care	Yes	0.1
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

- (5) If the person must pay a penalty, the EPA must give a notice to the person that—
- (a) refers to the change under section 86C; and
  - (b) specifies the amount of the penalty that the person must pay under this section; and
  - (c) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - (d) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (6) In this section, **due date**—
- (a) means the final date by which the person was originally required to submit the allocation application or adjustment; and
  - (b) excludes any extension under section 134B(1)(d).

**135 Date for payment of penalty**

- (1) A person must pay a penalty imposed under sections 134 to 134D within 20 working days after notice is given of the penalty.

- (2) However, if a deferred payment arrangement has been made under section 135A, the person must pay the penalty by the date or dates agreed under the arrangement.

### **135A Deferred payment arrangements for payments of penalties**

- (1) A person who is liable to pay a penalty imposed under sections 134 to 134D may request to enter into an arrangement with the EPA for the person to pay the penalty after the date required by section 135(1), either in a single payment or in instalments.
- (2) The EPA must consider the request, taking into account the person's financial position on the date on which the request is made.
- (3) The EPA may—
- (a) accept the request; or
  - (b) request further information from the person; or
  - (c) make a counter offer; or
  - (d) if subsection (5) applies, decline the request.
- (4) If the EPA requests further information from the person or makes a counter offer,—
- (a) the person must provide the information or respond to the offer within 20 working days after the request or offer, or within a longer period allowed by the EPA; and
  - (b) if the person provides the information or responds to the offer later than required, the provision of the information or the response must be treated as a new request to enter into an arrangement.
- (5) The EPA may decline to enter into an arrangement with the person if the EPA considers that—
- (a) the person is in a position to pay all of the penalty immediately; or
  - (b) the person is being frivolous or vexatious; or
  - (c) the person has not met their obligations under a previous arrangement.
- (6) The renegotiation of an arrangement is treated as if it were a new request to enter into an arrangement. Renegotiation may be initiated—
- (a) by the person at any time; or
  - (b) by the EPA at any time after the end of 12 months after the date on which the arrangement was entered into.
- (7) The EPA may cancel an arrangement if—
- (a) it was entered into on the basis of false or misleading information provided by the person; or
  - (b) the person is not meeting their obligations under the arrangement.

**136 Penalties are debt due to Crown**

The amount of a penalty imposed under sections 134 to 134D, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

**221 Section 137 amended (Interest for late payment)**

(1) Replace section 137(1) with:

(1) This section applies if—

- (a) a person is liable to pay a penalty imposed under sections 134 to 134D; and
- (b) the person has not paid the penalty by the date on which the penalty was due (as stated in the notice issued under the relevant section); and
- (c) in the case of a penalty imposed under section 134, the person has not surrendered or repaid the units to which the penalty relates.

(2) In section 137(2), delete “excess emissions”.

(3) Replace section 137(2)(b) with:

- (b) for the period from the date by which the penalty was due to be paid until the penalty and any interest due have been paid in full and, in the case of a penalty imposed under section 134, the person has surrendered or repaid the units to which the penalty relates.

(4) Repeal section 137(3).

(5) In section 137(4)(a), replace “or to transfer units to a Crown holding account under section 136 and pay the penalty in full” with “and pay the penalty”.

(6) Replace section 137(6) with:

(6) Despite anything in this section, the EPA may remit all or part of an amount of interest that has accrued under this section if the EPA is satisfied that it would be manifestly unfair or unjust to impose all, or that part, of the amount.

**222 Section 138 amended (Obligation to pay penalty not suspended by appeal)**

(1) Replace section 138(1) with:

(1) The obligation to pay and the right to receive and recover any penalty imposed under sections 134 to 134D or interest imposed under section 137 are not suspended by any review or appeal.

(2) In section 138(2) and (4), delete “excess emissions”.

**223 Section 138A replaced (Penalties to be paid into Crown account)**

Replace section 138A with:

**138A Penalties to be paid into Crown account**

The EPA must pay the amount of all penalties and interest on the penalties received from a person in accordance with sections 134 to 134D or 137 into a Crown Bank Account.

**224 Section 159 amended (Recovery of costs)**

- (1) In section 159(1)(a), replace “1 year of the date of a penalty notice given under section 134 or 136” with “90 days after the date of a penalty notice given under section 134”.
- (2) In section 159(3), replace the definition of variable C with:

C is the price, in dollars, of carbon per tonne on the relevant date, as set by or in accordance with regulations made under section 30W.
- (3) In section 159(4), replace “section 134, 134A, or 136” with “section 134 to 134D”.
- (4) Replace section 159(5) with:
- (5) In this section,—

**insolvency process** means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006

**relevant date** means the earlier of—

  - (a) the date that is 90 days after the date of the penalty notice; and
  - (b) the date on which the person enters into an insolvency process.

**225 Section 179 amended (Forest land to be treated as deforested in certain cases)**

- (1) Replace section 179(1)(a) with:
  - (a) 4 years after clearing, none of the following apply:
    - (i) the hectare has at least 500 stems of exotic forest species growing;
    - (ii) the hectare has been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion;
    - (iii) the hectare has predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or
- (2) In section 179(1)(b)(i) and (c), replace “at least” with “more than”.
- (3) In section 179(1A), replace “Subsection (1)(a)(iii)” with “Subsection (1)(a)(ii)”.

**226 Section 181 amended (When deforestation to be treated as occurring in respect of pre-1990 forest land)**

- (1) Replace section 181(1) with:

- (1) This section applies to any hectare of pre-1990 forest land that is being converted to land that is not forest land.
- (1A) The hectare of forest land is to be treated as being deforested on the date of the first action on it that is inconsistent with it remaining forest land.
- (2) In section 181(2), replace “Subsection (3) applies to a landowner converting a hectare of pre-1990 forest land that” with “However, subsection (3) applies if the hectare of forest land”.
- (3) Replace section 181(3) with:
  - (3) The hectare of forest land is to be treated as being deforested on the date of the first action on it that—
    - (a) is inconsistent with the hectare remaining forest land; and
    - (b) happens after the date of transfer of the land or the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land.
  - (3A) In any case, the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees when they were cleared, unless section 186(2) applies.

**227 Section 189 amended (Emissions returns for post-1989 forest land activities)**

In section 189(8)(d)(ii), replace “sections 134 and 135” with “sections 134, 134A, and 134C”.

**228 Section 192 amended (Effect of transmission of interest in post-1989 forest land)**

- (1) In section 192(1), table, Part B, in the first and second rows, in the third and fourth columns, after “forest land”, insert “(only if agreed under subsection (1A))”.
- (2) After section 192(1), insert:
  - (1A) Despite subsection (1)(b), if a transferor covered by that paragraph grants a registered forestry right or registered lease described in the second column of Part B of the table in that subsection, this section applies only if, before the date of transmission,—
    - (a) the transferor and the transferee have agreed in writing that the transferee is to become the participant in relation to the post-1989 forest land to which the transmitted interest relates; and
    - (b) the transferor has given written notice of the agreement to the EPA.
- (3) In section 192(2), replace “In subsections (1)” with “In subsections (1), (1A),”.

**229 Section 217 amended (Transitional provision for penalties)**

- (1) In section 217(2)(b)(ii), replace “an excess emissions penalty under section 134(2)(b)(ii) or 134A(2)(b)” with “a penalty under section 134, 134A, or 134C”.
- (2) In section 217(2)(c), replace “section 134, 134A, or 136” with “section 134”.
- (3) After section 217(2), insert:
  - (3) The participant—
    - (a) is not liable to pay a penalty under section 134B or 134D that relates to an allocation of units in respect of that first year; and
    - (b) is not liable for any infringement offence (as defined by section 30L) in respect of an act or omission in that first year.

**230 Section 233 amended (Rate of synthetic greenhouse gas levy)**

- (1) In section 233(1), replace the definition of variable B with:
 

B is the price of carbon specified by or under regulations made under section 30W or, if section 236(2) applies, set by that provision
- (2) Repeal section 233(4) to (6).

**231 Section 236 amended (Maximum price of carbon for purpose of levy calculation)**

In section 236(2),—

- (a) replace “section 233(4)(a)” with “section 30W(1)(a)”;
- (b) after “for that levy year”, insert “but only for the purposes of the calculation in section 233”.

**232 Schedule 1AA amended**

- (1) In Schedule 1AA, after clause 10(3), insert:
- (4) Section 89(1A) and (1B) does not apply in respect of failures or errors made by a person before 1 January 2021.
- (2) In Schedule 1AA, after subpart 2, insert:

Subpart 3—Provisions that commence on 1 January 2021

**15 Existing regulations about price of carbon**

- (1) This clause applies to any regulations made under section 233(4) that, immediately before the commencement of this clause,—
  - (a) prescribe the methodology for specifying the price of carbon; or
  - (b) specify the price of carbon by applying the methodology.
- (2) On and after the commencement of this clause, the regulations continue in force and must be treated as if they were made under section 30W.

## **16 Penalties**

- (1) This clause applies in respect of a person who, before the commencement of this clause,—
  - (a) fails to surrender or repay units by the due date; or
  - (b) fails to submit an emissions return or annual or closing allocation adjustment; or
  - (c) submits an incorrect emissions return, allocation application, or allocation adjustment.
- (2) Sections 134 to 134D, as inserted by the amendment Act, do not apply in respect of the person for the failure or error.
- (3) This Act, as in force immediately before the commencement of this clause, applies in respect of the person for the failure or error.

## **17 Penalties for forestry activities before 2023 with liability for lower amounts**

- (1) This clause applies if—
  - (a) new section 134 would otherwise apply to the person (because they have failed to surrender or repay units by a due date); and
  - (b) that liability to surrender or repay the units resulted from—
    - (i) a forestry activity carried out before 1 January 2023; and
    - (ii) 1 or more of the following things in relation to the forestry activity:
      - (A) an emissions return with an emissions return period and under which the average liability per year of that period is less than 25,000 units:
      - (B) an emissions return without an emissions return period and under which the liability is less than 25,000 units:
      - (C) any other requirement in this Act (for example, the requirement to repay units under section 125 or any requirement to surrender units equal to a unit balance) and under which the liability is less than 25,000 units.
- (2) Under this clause, instead of new section 134 (and other new provisions of this Act that refer to that section) applying, the following provisions apply to the person with the modifications specified:

*Excess emissions penalty for failing to surrender or repay units*

  - (a) former section 134(1)(a) and (c), (2)(a) and (b)(i) and (iii), (3)(a), and (4), as if—
    - (i) former section 134(1)(a) applied to the failure to surrender the units (if any); and

- (ii) former section 134(1)(c) applied to the failure to repay the units (if any):  
*Further excess emissions penalty for failing to surrender or repay units when required by notice under section 134*
- (b) former section 134A:  
*Reductions in penalty*
- (c) former section 135(1) and (1A):  
*Deferred payment arrangements for payments of penalties*
- (d) new section 135A, as if—
- (i) a penalty imposed under former section 134, 134A, or 136 were imposed under new section 134; and
- (ii) new section 135A(1) referred to the date required by that former section (instead of by new section 135(1)):  
*Additional excess emissions penalty for knowing failure to comply*
- (e) former section 136(1)(a)(ii) and (b)(ii), (2)(a)(ii) and (b), and (3) to (5):  
*Interest for late payment*
- (f) former section 137(1)(a)(i) and (iii) and (b), (2) to (5), and (7), and new section 137(6):  
*Obligation to pay penalty not suspended by appeal*
- (g) former section 138:  
*Penalties to be paid into Crown account*
- (h) former section 138A:  
*Review and appeal*
- (i) former sections 144 to 146:  
*Recovery of costs*
- (j) former section 159, as if its subsection (3) specified that variable C is the price, in dollars, of carbon per tonne 1 year after the date of the penalty notice given under former section 134 or 136 in relation to the units, as set by or in accordance with regulations made under new section 30W:  
*Transitional provision*
- (k) former section 217(2)(b)(ii) and (c):  
*Other former provisions*
- (l) any other former provision of this Act that provides for a process that applies to any former provision applied by this clause:  
*EPA to publish certain information*
- (m) new section 89, as if a penalty imposed under former section 134, 134A, or 136 were a qualifying penalty.



- (3) In this section,—
- former**, in relation to a provision, means the provision as in force immediately before the commencement of this clause
- new**, in relation to a provision, means the provision as in force on or after the commencement of this clause.

#### Subpart 4—Amendments that commence on 1 January 2023

### 233 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))

- (1) Replace section 3A(b)(viii) with:
- (viii) section 60A (exemptions for participants in standard forestry or permanent forestry):
- (2) Replace section 3A(b)(xvi) and (xvii) with:
- (xva) section 180G (exemptions for deforestation of land with tree weeds):
- (xvi) section 181W (P90 offsetting):
- (xvia) section 190F (pecuniary penalty for clear-felling):
- (xvib) section 191I (averaging):
- (xvic) section 192U (P89 offsetting):
- (xvid) section 193R (temporary adverse event suspensions):
- (xvii) section 194B (input returns):

### 234 Section 3B amended (Consultation about certain regulations, orders, and notices)

- (1) Replace section 3B(1)(g) with:
- (g) section 60A (exemptions for participants in standard forestry or permanent forestry):
- (2) Replace section 3B(1)(o) and (p) with:
- (na) section 180G (exemptions for deforestation of land with tree weeds):
- (o) section 181W (P90 offsetting):
- (oa) section 190F (pecuniary penalty for clear-felling):
- (ob) section 191I (averaging):
- (oc) section 192U (P89 offsetting):
- (od) section 193R (temporary adverse event suspensions):
- (p) section 194B (input returns):

### 235 Section 4 amended (Interpretation)

- (1) In section 4(1), repeal the definitions of **carbon accounting area**, **carbon equivalence**, **clear**, **exempt land**, **forestry activity**, **offsetting forest land**,

**pre-1990 forest land, pre-1990 offsetting forest land, removal activity, and usual rotation period.**

- (2) In section 4(1), insert in their appropriate alphabetical order:

**carbon accounting area** means an area of post-1989 forest land—

- (a) that—
- (i) is defined by a person who is registered, or has applied to register, as a participant under section 57 in relation to an activity of standard forestry or permanent forestry; and
  - (ii) meets any relevant criteria specified in regulations made under this Act; or
- (b) that is constituted as a carbon accounting area by a provision of this Act

**carbon accounting area (averaging)** has the meaning given in section 191B(2)

**clear,—**

- (a) in relation to a tree,—
- (i) includes—
    - (A) felling, harvesting, burning, removing by mechanical means, spraying with a herbicide intended to kill the tree, or undertaking any other form of human activity that kills the tree; and
    - (B) felling, burning, killing, uprooting, or destroying by a natural cause or event; but
  - (ii) does not include pruning or thinning; and
- (b) in relation to land, means to clear (as defined in paragraph (a)) the forest species that are on the land

**clear-felled**, in relation to an area of land, means an area—

- (a) of at least 1 hectare; and
- (b) on which any trees are cleared or killed by any form of human activity, including by felling, harvesting, burning, removing by mechanical means, or spraying with a herbicide intended to kill the tree; and
- (c) that, after that type of clearing or killing, has tree crown cover from forest species of 30% or less in each hectare

**constitution date**, in relation to a carbon accounting area, means,—

- (a) for a carbon accounting area that is defined in an application referred to in section 182C(1), the date the applicant's registration takes effect under section 57(8); or

- (b) for a carbon accounting area that a participant applies to add under section 182C(3), the date of the notice given under section 182C(6)(b)(ii); or
- (c) for any other carbon accounting area, the date on which a person becomes a participant in an activity in the carbon accounting area under a provision of Part 5

**exempt land**—

- (a) means pre-1990 forest land that has been declared to be exempt land—
  - (i) under section 180B or 180D; or
  - (ii) under section 180E, as long as the EPA has not declared otherwise (because a requirement or condition has been breached); but
- (b) does not include any forest land that met the definition in paragraph (a), but has been deforested, and in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 182A(2)

**first rotation forest** has the meaning given in section 191C(3) and (4)

**forest sink covenant** means a forest sink covenant that is or was registered against land under section 67ZD of the Forests Act 1949

**forestry activity** means—

- (a) an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or P90 offsetting land); or
- (b) an activity listed in Part 1 or 1A of Schedule 4 (standard forestry or permanent forestry on post-1989 forest land)

**permanent forestry** has the meaning given in section 182

**pre-1990 forest land** means forest land that—

- (a) is either of the following:
  - (i) land—
    - (A) that was forest land on 31 December 1989; and
    - (B) that remained as forest land on 31 December 2007 (taking into account subsection (5)); and
    - (C) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; or
  - (ii) land that has become pre-1990 forest land under section 181T; and
- (b) is not either of the following:

- (i) land that has been deforested and in respect of which any liability to surrender units arising in respect of an activity listed in Part 1 of Schedule 3 has been satisfied; or
- (ii) land that was declared to be exempt land and has been deforested, and in respect of which the number of units that would have been required to be surrendered in respect of an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 182A(2)(b)

**removal activity** means—

- (a) an activity of standard forestry or permanent forestry (on post-1989 forest land); or
- (b) an activity that is listed in Part 2 of Schedule 4 (other removal activities)

**standard forestry** has the meaning given in section 182

**subsequent rotation forest** has the meaning given in section 191C(6)

**temporary adverse event land** has the meaning given in section 193(1)

- (3) In the definition of **deforest**, replace “section 181” with “section 180A”.
- (4) In section 4(1), definition of **post-1989 forest land**, replace paragraph (a)(iv) with:

- (iv) land—
  - (A) that was pre-1990 forest land that was the subject of a P90 offset application; and
  - (B) that ceased to be forest land while section 179A(1)(b) applied to it (so it could not be treated as deforested); and
  - (C) in respect of which a liability to surrender units arose under section 181D (because the P90 offset application was declined) or section 181N(3) (because the land became area 1 (not offset) land),—
 but only if that liability has been satisfied:

- (5) In section 4(1), definition of **post-1989 forest land**, paragraph (a)(v), replace “pre-1990 offsetting forest land” with “P90 offsetting land”.
- (6) In section 4(1), definition of **post-1989 forest land**, paragraph (a)(vi)(B), replace “section 187” with “section 182A”.
- (7) In section 4(1), definition of **post-1989 forest land**, replace paragraph (b) with:
  - (b) is not area 1 (approved) land (as defined in section 181) or P90 offsetting land
- (8) In section 4(1), definition of **tree weed**, replace “a tree” with “a forest species”.
- (9) In section 4(7)(c), replace “section 183(7)” with “section 180B(7)”.

**236 Section 54 amended (Participants)**

In section 54(1)(a)(i) and (2), replace “186I” with “181P”.

**237 Section 56 amended (Registration as participant in respect of activities listed in Schedule 3)**

Replace section 56(5) with:

- (5) To avoid doubt, a person carrying out an activity on land to which section 179A applies (and which therefore may not be treated as deforested) is not carrying out an activity listed in Schedule 3, and so does not have to notify the EPA under subsection (1)(a).

**238 Section 57 amended (Applicant to be registered as participant in respect of activities listed in Schedule 4)**

After section 57(4)(ba), insert:

- (bb) if the activity is standard forestry or permanent forestry, has met any obligations incurred while previously registered (if ever) in respect of an activity of standard forestry; and

**239 Section 58 amended (Removal from register of participants in respect of activities listed in Schedule 4)**

In section 58(4), replace “section 188(7)” with “section 186A”.

**240 New section 59AA inserted (Removal from register for persistent non-compliance (standard forestry participants only))**

After section 59, insert:

**59AA Removal from register for persistent non-compliance (standard forestry participants only)**

- (1) The EPA may remove the name of a person from the register kept under section 57 in respect of an activity of standard forestry if—
- (a) the person has not submitted an emissions return required by section 183A by 365 days after the date on which the person was required to submit the emissions return; or
  - (b) the person has not surrendered or repaid units by 365 days after the date on which the person was required to surrender or repay the units; or
  - (c) the person has not paid a penalty imposed by sections 134 to 134D by the first day that is—
    - (i) at least 90 days after the date on which the person was required to pay the penalty; and
    - (ii) at least 365 days after the date on which the person was required to surrender or repay the units or submit the emissions return to which the penalty relates.

- (2) However, the EPA may not rely on subsection (1)(a) to remove the name of a person from the register if—
- (a) the person has submitted an emissions return under section 183 within 365 days after the date on which the emissions return required by section 183A was required to be submitted; or
  - (b) the EPA has made an assessment under section 121 of the matters that should have been in the person’s emissions return, and—
    - (i) the person has surrendered any units required to be surrendered as a result of the assessment; and
    - (ii) the person has paid any penalties resulting from the failure to submit the return and from the assessment.
- (3) At least 90 days before removing the name of the person from the register, the EPA must notify the person—
- (a) that the EPA proposes to remove the name of the person from the register; and
  - (b) of the reason for the proposed removal (for example, failure to surrender units); and
  - (c) of the actions that the person may take to prevent the removal (for example, surrender the units that the person has failed to surrender).
- (4) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

**241 Section 60A amended (Exemption for participants in activity listed in Part 1 of Schedule 4)**

- (1) In the heading to section 60A, replace “**activity listed in Part 1 of Schedule 4**” with “**standard forestry or permanent forestry**”.
- (2) In section 60A(1), replace “an activity listed in Part 1 of Schedule 4” with “standard forestry or permanent forestry”.

**242 Section 62 amended (Monitoring of emissions and removals)**

In section 62, insert as subsection (2):

- (2) Subsection (1)(b) does not apply in relation to emissions and removals that a person is not required to calculate under—
- (a) section 191G, relating to carbon accounting areas (averaging); or
  - (b) section 193F(3), relating to temporary adverse event land.

**243 Section 63 amended (Liability to surrender units to cover emissions)**

- (1) After section 63(1), insert:

- (1A) However, subsection (1) does not apply to emissions for which a participant is not liable to surrender units as a result of any of the following:
- (a) section 179A (when forest land may not be treated as deforested):
  - (b) section 182G (certain natural events or clearance for forest management):
  - (c) sections 185A and 192L(3) (limiting liability to unit balances for carbon accounting areas):
  - (d) section 191F(2) (carbon accounting areas (averaging)):
  - (e) section 193F(1) (temporary adverse event land).
- (2) Repeal section 63(3).
- (3) After section 63(4), insert:
- (5) *See also* sections 189E, 189F, and 189G in relation to liability to surrender units when transferring—
- (a) from PFSI activity to standard forestry in a carbon accounting area (averaging); or
  - (b) between permanent forestry and standard forestry in a carbon accounting area (averaging).

**244 Section 64 amended (Entitlement to receive New Zealand units for removal activities)**

Replace section 64(1A) with:

- (1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under—
- (a) section 191E, relating to carbon accounting areas (averaging); or
  - (b) section 193F(1), relating to temporary adverse event land; or
  - (c) section 197, relating to grant-funded forests.

**245 Section 65 amended (Annual emissions returns)**

- (1) Replace section 65(1) and (1A) with:
- (1) In the period beginning on 1 January and ending on 31 March in each year, a participant must submit an annual emissions return to the EPA in respect of each of the activities listed in Schedule 3 or Part 2, 3, or 4 of Schedule 4 that the participant carried out in the immediately preceding year.
- (2) In section 65(2)(b), replace “section 62(b)” with “section 62(1)(b)”.
- (3) Repeal section 65(2A).
- (4) In section 65(4)(a), delete “or recorded under subsection (2A)(b)”.
- (5) Replace section 65(5) with:

- (5) Despite the rest of this section, a participant in an activity of standard forestry or permanent forestry (on post-1989 forest land) must instead submit emissions returns as required by Part 5.
- (6) To avoid doubt, a person carrying out an activity on land to which section 179A applies (and which therefore may not be treated as deforested) is not carrying out an activity listed in Schedule 3, and so does not have to submit an annual emissions return under subsection (1).

**246 Section 67 amended (Retention of emissions records)**

- (1) In section 67(1)(b), replace “section 62(b)” with “section 62(1)(b)”.
- (2) In section 67(2)(a), replace “section 62(d)” with “section 62(1)(d)”.
- (3) In section 67(2)(b), replace “an activity listed in Part 1 of Schedule 3 or 4” with “a forestry activity”.

**247 Section 89 amended (EPA to publish certain information)**

After section 89(1C)(b), insert:

- (c) a penalty imposed under section 190E or 190H.

**248 Section 91 amended (Approval of unique emissions factors)**

In section 91(1), replace “section 62(b)” with “section 62(1)(b)”.

**249 Section 92 amended (Recognition of verifiers)**

In section 92(1), replace “section 62(a)” with “section 62(1)(a)”.

**250 Section 107 amended (Applications for emissions rulings)**

- (1) In section 107(1)(c), replace “186F, 194C,” with “180G, 181W, 190F, 191I, 192U, 193R, 194B,”.
- (2) In section 107(1)(ca)(ii), replace “section 184(5)(a)” with “section 180E(3)(a)”.

**251 Section 109 amended (Making of emissions rulings)**

In section 109(3), example, replace “listed in Part 1 of Schedule 4” with “of standard forestry”.

**252 Section 118 amended (Submission of final emissions returns)**

After section 118(3), insert:

- (3A) However, subsections (1) and (3) do not apply to a participant in an activity of standard forestry or permanent forestry (on post-1989 forest land), who must instead submit emissions returns as required by Part 5.

**253 Section 127 amended (Time bar for amendment of emissions returns)**

- (1) In section 127(1)(a), replace “under section 187 or 191” with “required by section 182A or 186B”.



- (2) In section 127(1)(b), replace “section 189 or 193” with “section 183, 183A, 187, 188, 189, 192A, 192Q, 193A, or 193K”.

**254 New section 128A and cross-heading inserted**

After section 128, insert:

*Notices required from participants*

**128A EPA may act if participant fails to give notice**

- (1) The EPA may act under this section if it is satisfied that a participant has failed to give a notice in accordance with section 181G, 192J, or 193K (the **notice provision**).
- (2) The EPA may,—
- (a) if no notice has been given, prepare the notice that ought to have been given; or
  - (b) if a notice has been given but is not complete, complete the notice.
- (3) The EPA may do the following when preparing or completing the notice:
- (a) if the notice must include an emissions return (including any new unit balance report), the EPA may apply—
    - (i) section 120 to amend an emissions return that was included; or
    - (ii) section 121 to assess the matters that should have been in an emissions return that was not included; and
  - (b) if the notice must include any other information, prepare or complete that information by making any required assumptions or estimates.
- (4) Before taking action under this section, the EPA must notify the participant of its intention to do so, and give them at least 60 working days to give or correct the required notice.
- (5) If the participant gives or corrects the required notice by that deadline, the notice must be treated as having been given to the EPA—
- (a) in accordance with the notice provision; and
  - (b) on the last day on which it could have been given under that provision.
- (6) The EPA may still take action under this section if it is unable to notify the participant of its intention to do so because it is not reasonably practicable to identify or locate them or their address.
- (7) Despite subsection (2),—
- (a) for a notice under section 181G,—
    - (i) the EPA cannot identify any land as area 2 (excess) land; and
    - (ii) if any land in area 2 that is qualifying forest land is not identified as area 2 (forested land), the EPA must identify it as area 2 (non-ETS) land; and

(b) for a notice required by section 192J, the EPA cannot identify any land as P89 offsetting (excess) land.

**255 Section 129 amended (Offences in relation to failure to comply with various provisions)**

In section 129(1)(b)(v), replace “192(3)” with “187(4)”.

**256 Section 134A amended (Penalty for failing to submit emissions return by due date)**

In section 134A(2), replace “listed in Part 1 of Schedule 4 (for post-1989 forestry)” with “of standard forestry or permanent forestry”.

**257 Section 134C amended (Penalty for submitting incorrect emissions return)**

In section 134C(2)(a), replace “listed in Part 1 of Schedule 4 (for post-1989 forestry)” with “of standard forestry or permanent forestry”.

**258 Section 135A amended (Deferred payment arrangements for payments of penalties)**

(1) In section 135A(1), after “sections 134 to 134D”, insert “, 190E, or 190H”.

(2) In section 135A(1), after “section 135(1)”, insert “or 190I(3)(a)”.

**259 Section 136 amended (Penalties are debt due to Crown)**

In section 136, after “sections 134 to 134D”, insert “, 190E, or 190H”.

**260 Section 137 amended (Interest for late payment)**

In section 137(1)(a), after “sections 134 to 134D”, insert “, 190E, or 190H”.

**261 Section 138 amended (Obligation to pay penalty not suspended by appeal)**

In section 138(1), after “sections 134 to 134D”, insert “, 190E, or 190H”.

**262 Section 138A amended (Penalties to be paid into Crown account)**

(1) In section 138A, replace “or 137” with “, 137, 190E, or 190H”.

(2) In section 138A, insert as subsection (2):

(2) However, this section is subject to a court order that a penalty imposed under section 190E or 190H must be applied first to pay the EPA’s actual costs in bringing the proceedings.

**263 Section 153 amended (Effect of being member of consolidated group)**

In section 153(6)(a)(ii), replace “section 187” with “section 182A”.

**264 Section 157A amended (Changes to unincorporated bodies that are participants)**

In section 157A(4), replace “section 192(1)(a)” with “section 187(1)(a)”.

**265 Section 159 amended (Recovery of costs)**

In section 159(4), after “section 134 to 134D”, insert “, 190E, or 190H”.

**266 Section 163 amended (Regulations relating to methodologies and verifiers)**

- (1) In section 163(1)(a) and (e)(i), replace “section 62(a)” with “section 62(1)(a)”.
- (2) In section 163(1)(b), replace “section 62(b)” with “section 62(1)(b)”.

**267 Section 167 amended (Regulations relating to fees and charges)**

- (1) In section 167(2)(c), replace “section 194A” with “section 194”.
- (2) In section 167(2)(c), replace “section 194B” with “section 194A”.

**268 Section 168 amended (Other regulations)**

- (1) In section 168(1)(ca), replace “section 183” with “section 180B”.
- (2) In section 168(1)(j), replace “section 62(d)” with “section 62(1)(d)”.
- (3) After section 168(1)(n), insert:

(naa) prescribing additional criteria for the approval of—

- (i) an application to reconfigure carbon accounting areas for standard or permanent forestry, for the purposes of section 188A(2)(c):
- (ii) an application to change activity on post-1989 forest land, for the purposes of section 189A(2)(d); and

**269 Section 169 amended (Incorporation by reference in certain regulations)**

In section 169(4), replace “186F, 194C,” with “180G, 181W, 190F, 191I, 192U, 193R, 194B,”.

**270 Section 178A amended (Option to pay money instead of surrendering, repaying, or reimbursing units)**

- (1) In section 178A(1)(a)(i)(B), replace “183A(2)(b)” with “180C(2)(b)”.
- (2) In section 178A(1)(b)(i), replace “activity on post-1989 forest land” with “activity of standard forestry”.

**271 Section 178C amended (Fixed price (for option to pay money instead of surrendering, repaying, or reimbursing units))**

In section 178C(3), replace “activity on post-1989 forest land” with “activity of standard forestry”.

**272 Part 5 replaced**

Replace Part 5 with:

**Part 5****Sector-specific provisions: forestry****Subpart 1—Deforestation****179 Forest land to be treated as deforested in certain cases**

- (1) Without limiting paragraph (a) of the definition of deforest in section 4(1), a hectare of forest land must be treated as deforested for the purposes of this Act if the forest species on that hectare have been cleared and,—
- (a) 4 years after clearing, none of the following apply:
    - (i) the hectare has at least 500 stems of exotic forest species growing;
    - (ii) the hectare has been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion;
    - (iii) the hectare has predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or
  - (b) 10 years after clearing,—
    - (i) predominantly exotic forest species are growing, but that hectare does not have tree crown cover of more than 30% from trees that have reached 5 metres in height; or
    - (ii) predominantly indigenous forest species are growing, but that hectare is not forest land; or
  - (c) 20 years after clearing, predominantly indigenous forest species are growing, but that hectare does not have tree crown cover of more than 30% from trees that have reached 5 metres in height.
- (2) Subsection (1)(a)(ii) applies only if the EPA is satisfied that the relevant local authority has determined that the soil erosion risk of the land is at least moderate.
- (3) If forest land is to be treated as deforested under subsection (1),—
- (a) the deforestation is to be treated as having been carried out 4 years, 10 years, or 20 years after the clearing of the forest species, as the case may be; but
  - (b) the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees cleared 4 years, 10 years, or 20 years earlier, as the case may be.
- (4) Nothing in this section limits the EPA's ability to exercise powers under section 121 in respect of the deforestation of a hectare of forest land whenever the EPA considers that—
- (a) the hectare has been converted to land that is not forest land; and

- (b) any obligations imposed under this Act in respect of the deforestation have not been complied with.

**179A Forest land may not be treated as deforested in certain cases**

- (1) Despite section 179 and the definition of deforest in section 4(1),—
  - (a) in the case of pre-1990 forest land, pre-1990 forest land that is cleared may not be treated as deforested for the purposes of this Act if the cleared land is exempt land or—
    - (i) is contiguous with the edge of pre-1990 forest land that existed on 31 December 2007; and
    - (ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and
    - (iii) is required to be or remain cleared to implement New Zealand’s best practice forest management; and
    - (iv) is used only for the purpose of implementing New Zealand’s best practice forest management;
  - (b) in the case of pre-1990 forest land in relation to which a P90 offset application has been submitted under section 181A, the land may not be treated as deforested during the period—
    - (i) starting on the date on which the application is submitted; and
    - (ii) ending on the P90 offset date for the land under section 181F(3):
  - (c) in the case of post-1989 forest land, the post-1989 forest land that is cleared may not be treated as deforested if the cleared land—
    - (i) is contiguous with the edge of post-1989 forest land that existed on the date of the first registration of any person as a participant in standard forestry or permanent forestry in respect of the cleared land; and
    - (ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and
    - (iii) is required to be or remain cleared to implement New Zealand’s best practice forest management; and
    - (iv) is used only for the purpose of implementing New Zealand’s best practice forest management.
- (2) However, in relation to subsection (1)(b), *see* section 181D, under which the effect of subsection (1)(b) may be reversed.
- (3) If subsection (1)(c) applies (where land is cleared for forest management), *see* sections 182G, 186A, and 186C.
- (4) This section applies to land that was cleared before, on, or after the commencement of this section.

- (5) If regulations prescribe any meaning for New Zealand's best practice forest management, then that term has (or includes) that meaning in this section.

### Subpart 2—Pre-1990 forest land

#### **180 Participant in respect of pre-1990 forest land**

- (1) If the activity listed in Part 1 of Schedule 3 is carried out, the landowner of the pre-1990 forest land is to be treated as the person carrying out the activity unless the EPA is satisfied that—
- (a) the right to decide to deforest the pre-1990 forest land was vested by the landowner in a third party, whether before or after 1 January 2008; and
  - (b) the landowner had no control over the decision.
- (2) If the EPA is satisfied that the criteria specified in subsection (1)(a) and (b) are met, the third party is to be treated as the person carrying out the activity.
- (3) To avoid doubt, for the purposes of this Act, no person, other than a landowner or, in the circumstances in subsection (2), a third party, is to be treated as carrying out an activity listed in Part 1 of Schedule 3.

#### **180A When deforestation to be treated as occurring in respect of pre-1990 forest land**

- (1) This section applies to any hectare of pre-1990 forest land that is being converted to land that is not forest land.
- (2) The hectare of forest land is to be treated as being deforested on the date of the first action on it that is inconsistent with it remaining forest land.
- (3) However, subsection (4) applies if the hectare of forest land was cleared but not deforested prior to—
- (a) the forest land being transferred to the landowner; or
  - (b) control of the forest land reverting to that landowner following the expiry or termination of a forestry right, Crown forestry licence, lease, or other agreement that relates to the land.
- (4) The hectare of forest land is to be treated as being deforested on the date of the first action on it that—
- (a) is inconsistent with the hectare remaining forest land; and
  - (b) happens after the date of transfer of the land or the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land.
- (5) In any case, the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees when they were cleared, unless section 180H(2) applies.
- (6) This section applies only if section 4(5) does not apply.

- (7) To avoid doubt, this section does not apply—
- (a) to land to which section 179A applies (and which therefore may not be treated as deforested); or
  - (b) to land to which section 181N(3) applies.

**180B Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land**

- (1) This section applies to a person who—
- (a) is a landowner of an area of pre-1990 forest land at the date of issue of the pre-1990 forest land allocation plan; or
  - (b) was the landowner of an area of pre-1990 forest land at the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land.
- (2) A person to whom this section applies may apply to the EPA for the area of pre-1990 forest land to be declared exempt land if—
- (a) the area is less than 50 hectares; and
  - (b) the area was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land; and
  - (c) no allocation of units to a landowner has been made in respect of the area under the pre-1990 forest land allocation plan.
- (3) An application under subsection (2) must—
- (a) be submitted to the EPA by—
    - (i) the date prescribed by regulations made under section 168(1)(ca); or
    - (ii) in the absence of a date prescribed by regulations made under section 168(1)(ca), the date specified by public notice given by the EPA; and
  - (b) be in the prescribed form and accompanied by the prescribed fee (if any); and
  - (c) contain details of the area of pre-1990 forest land to which the application relates; and
  - (d) be accompanied by evidence showing that the land is pre-1990 forest land; and
  - (e) be accompanied by a statutory declaration,—
    - (i) in the case of land owned by a sole professional trustee or owned by professional trustees only, from the trustee of the trust that is the subject of the exemption application stating that the total of pre-1990 forest land held in the trust on 1 September 2007—

- (A) was less than 50 hectares; and
  - (B) was owned by a sole professional trustee or owned by professional trustees only:
  - (ii) in any other case, from each person who owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) stating that the person, together with any persons associated with that person, owned less than a total of 50 hectares of pre-1990 forest land on 1 September 2007; and
  - (f) be signed by the applicant; and
  - (g) be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is a person to whom this section applies, the land is pre-1990 forest land, and each of the criteria specified in subsection (2)(a) to (c) is met, the EPA must—
- (a) declare the land to be exempt land; and
  - (b) notify the applicant that the land has been declared exempt land.
- (5) Despite subsection (3)(a), the EPA may, at its discretion, accept applications after the date specified in the public notice given under subsection (3)(a)(ii) or prescribed by regulations under section 168(1)(ca).
- (6) The following rules apply for the purposes of determining, under subsection (2)(b), whether an area of pre-1990 forest land was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land:
- (a) the EPA must consider only pre-1990 forest land in respect of which the person or associated person was a landowner on 1 September 2007; and
  - (b) if land was owned by persons as joint tenants,—
    - (i) in the case where 1 or more of the joint tenants is a professional trustee, each of the joint tenants other than the professional trustee or trustees must individually have been a landowner of less than 50 hectares of pre-1990 forest land; or
    - (ii) in the case where none of the joint tenants is a professional trustee, each of the joint tenants must individually have been a landowner of less than 50 hectares of pre-1990 forest land; and
  - (c) if land was owned by persons as tenants in common, each tenant in common's interest in the land is to be treated as a divided interest on 1 September 2007; and
  - (d) if land was owned by a sole professional trustee or owned by professional trustees only, the total pre-1990 forest land held in the trust on 1 September 2007 was less than 50 hectares.
- (7) For the purposes of this section and section 180D,—
- own**, in relation to pre-1990 forest land, means to be a landowner of the land



**professional trustee—**

- (a) means a trustee whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others; and
- (b) includes a trustee in whom property is vested under Te Ture Whenua Maori Act 1993.

**180C Certain applications not otherwise permitted by section 180B**

- (1) Despite section 180B(2)(c) and (3)(a), a person may make an application under section 180B by 31 December 2013 if—
  - (a) the area concerned was owned, as at 1 September 2007, by a sole professional trustee or by professional trustees only; and
  - (b) an allocation of units has been made before the commencement of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 in respect of the area under the pre-1990 forest land allocation plan.
- (2) If the EPA proposes to accept the application, the EPA must notify the applicant that—
  - (a) it proposes to accept the application; but
  - (b) the applicant must first, within 30 working days after receiving the notice, surrender or repay to the Crown holding account specified in the notice the number of units specified in the notice; and
  - (c) if the units are not surrendered or repaid in accordance with paragraph (b), then the application will be declined.
- (3) The units referred to in subsection (2) must be the same number of units that have been allocated and transferred under the pre-1990 forest land allocation plan in relation to the land concerned.
- (4) The EPA must—
  - (a) accept the application and declare the area concerned to be exempt land if, by the expiry of the 30 days, the units have been surrendered or repaid; or
  - (b) decline the application if, by the expiry of the 30 days, the units have not been surrendered or repaid.
- (5) To avoid doubt,—
  - (a) section 180B otherwise applies to an application permitted by this section, but subject to the modifications made by this section; and
  - (b) if an application is granted and an area is declared to be exempt land, the entitlement to units under the pre-1990 forest land allocation plan in respect of the land is cancelled.

**180D Applications for exemption for some Maori land or land with 10 or more owners**

- (1) This section applies to an area of pre-1990 forest land that—
  - (a) is less than 50 hectares; and
  - (b) on 1 September 2007,—
    - (i) was all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
    - (ii) was Maori land or was owned by more than 10 persons; and
  - (c) was an area of pre-1990 forest land on the following date (the **qualifying date**):
    - (i) the date of issue of the pre-1990 forest land allocation plan; or
    - (ii) the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land; and
  - (d) after the qualifying date,—
    - (i) became owned by the trustees of a trust; or
    - (ii) in the case of Maori freehold land, had an agent appointed for it under Te Ture Whenua Maori Act 1993 with the power to apply under this section; and
  - (e) has not been the subject of an allocation of units to a landowner under the pre-1990 forest land allocation plan.
- (2) The trustees or agent described in subsection (1)(d) may apply to the EPA for the area of pre-1990 forest land to be declared exempt land.
- (3) The application—
  - (a) may be submitted to the EPA at any time; and
  - (b) must be in the prescribed form and accompanied by the prescribed fee (if any); and
  - (c) must contain details of the area of pre-1990 forest land to which the application relates; and
  - (d) must be accompanied by evidence showing that the land is pre-1990 forest land; and
  - (e) must be accompanied by a statutory declaration from the applicant stating that the area of pre-1990 forest land was, on 1 September 2007, all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
  - (f) must be signed by the applicant; and

- (g) must be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is 1 or more trustees or an agent described in subsection (1)(d), that the land is pre-1990 forest land, and that each of the criteria specified in subsection (1)(a) to (e) is met, the EPA must—
  - (a) declare the land to be exempt land; and
  - (b) notify the applicant that the land has been declared exempt land.

**180E Exemptions for deforestation of land with tree weeds**

- (1) An application may be made under this section for pre-1990 forest land to be declared exempt land (in relation to deforestation) if a prescribed type of tree weed—
  - (a) is growing on the land; or
  - (b) was cleared from the land as part of the deforestation process on or after 1 January 2008.
- (2) The application may be made by—
  - (a) the landowner of the pre-1990 forest land; or
  - (b) a third party to whom section 180 applies.
- (3) The EPA must consider the application against the prescribed criteria and priorities and—
  - (a) may declare the land, or any part of the land, to be exempt land, if satisfied that—
    - (i) the applicant is eligible to apply for the exemption under subsection (2); and
    - (ii) the land is pre-1990 forest land; and
    - (iii) the criteria specified in subsection (1) are met; and
  - (b) must, if the EPA declares any land to be exempt land, notify the applicant of—
    - (i) the declaration; and
    - (ii) any requirements or conditions that the EPA has decided to impose on the person whose land is exempted.
- (4) The EPA—
  - (a) may declare that a person's land ceases to be exempt land (under this section) if the person breaches any requirement or condition that the EPA imposed on them for the exempt land; and
  - (b) if it does so, must notify the person of the declaration.
- (5) If a person is convicted of an offence under section 132 or 133 in relation to an application under this section,—

- (a) the person must be treated as a person who has failed to submit an annual emissions return in respect of an activity listed in Part 1 of Schedule 3 when required to do so under this Act; and
- (b) the EPA must make an assessment of the matters that should have been in the person's annual emissions return and the number of units the person would have been liable to surrender if the land had not been exempt land; and
- (c) the person is liable to surrender the number of units in the assessment under paragraph (b); and
- (d) section 123(1) to (3) and the other provisions of this Act apply as if the assessment under paragraph (b) were an assessment under section 121.

**180F Effect of exemption**

The status of pre-1990 forest land as exempt land runs with the land and is not affected by any change in the ownership of the land.

**180G Regulations about exemptions for deforestation of land with tree weeds**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes in relation to exemptions under section 180E:
  - (a) prescribing the types of tree weed for which an application may be made for pre-1990 forest land to be declared exempt land;
  - (b) defining those types of tree weed based on any matter, such as the following:
    - (i) the species of tree weed;
    - (ii) the geographical location of the tree weed;
    - (iii) whether a weed control programme applies to the tree weed;
  - (c) prescribing processes for making applications to the EPA for an exemption, including fees for applications;
  - (d) prescribing the information required in an application, including—
    - (i) information to properly describe or define the land;
    - (ii) evidence about the land and the forest species on the land;
  - (e) prescribing the criteria and priorities that the EPA must consider in deciding whether to grant an exemption;
  - (f) prescribing any requirements or conditions that the EPA may impose on a person whose land is exempted, including for weed control on the land;
  - (g) specifying that 1 or more of the following is different for different types of tree weed:
    - (i) the process for making the application:

- (ii) the information required in the application:
  - (iii) the criteria and priorities that the EPA must consider:
  - (iv) any requirements or conditions that the EPA may impose on a person whose land is exempted:
  - (h) providing for any other matters contemplated by sections 180E and 180F, necessary for their administration, or necessary for giving them full effect.
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their publication under the Legislation Act 2019, or on any later date specified in the regulations.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 180G(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 180G(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

**180H Methodology for pre-1990 forest land cleared in 8 years or less**

- (1) Subsection (2) applies where the trees cleared from pre-1990 forest land by a person carrying out the activity in Part 1 of Schedule 3 are 8 years or younger.
- (2) If this subsection applies, the participant must,—
- (a) for the purposes of sections 62(1)(b) and 65(2)(b), apply any prescribed methodology and calculate and record the emissions from the activity as if the trees cleared from the pre-1990 forest land were trees of the age and species of the oldest trees of the predominant species (as determined by regulations made under section 163) cleared from the pre-1990 forest land during the previous 9 years (excluding any period in which the pre-1990 forest land is temporarily unstocked); and
  - (b) surrender units under this Act based on emissions calculated and recorded in accordance with paragraph (a).
- (3) A methodology for calculating emissions from the activity in Part 1 of Schedule 3 prescribed in regulations under section 163 must relate to the trees that are cleared from the pre-1990 forest land as part of the deforestation activity.

## Subpart 3—P90 offsetting land

**181 Interpretation**

In this subpart,—

**area 1 (approved) land** means land that—

- (a) has become area 1 (approved) land under section 181C(2)(a); and
- (b) has not ceased to be area 1 (approved) land under section 181N(2)(a) to (d)

**area 1 (damaged) land** has the meaning given in section 181G(3)(a)(iii)

**area 1 (forested) land** has the meaning given in section 181G(3)(a)(ii)

**area 1 (not offset) land** has the meaning given in section 181G(3)(a)(iv)

**area 1 (offset) land** has the meaning given in section 181G(3)(a)(i)

**area 2 (approved) land** means land that—

- (a) has become area 2 (approved) land under section 181C(2)(c) or 181J(2)(b); and
- (b) has not ceased to be area 2 (approved) land under section 181N(2)(e) to (i)

**area 2 (damaged) land** has the meaning given in section 181G(3)(b)(iii)

**area 2 (excess) land** means land that—

- (a) has become area 2 (excess) land under section 181G(3)(b)(iv); and
- (b) has not ceased to be area 2 (excess) land under section 181N(5)

**area 2 (forested) land** has the meaning given in section 181G(3)(b)(i)

**area 2 (non-ETS) land** has the meaning given in section 181G(3)(b)(v)

**area 2 (unforested) land** has the meaning given in section 181G(3)(b)(ii)

**baseline carbon stock** has the meaning given in section 181F(2)

**baseline date** has the meaning given in section 181F(3)

**default P90 offset date** has the meaning given in section 181F(5)(a)

**expected carbon stock** has the meaning given in section 181F(4)

**P90 offset application** means an application submitted to the EPA under section 181A

**P90 offset application date** means the date on which a P90 offset application is submitted to the EPA under section 181A

**P90 offset date** has the meaning given in section 181F(5)

**P90 offset release criteria** has the meaning given in section 181F(1)

**P90 offsetting land** means land that—

- (a) has become P90 offsetting land under section 181N(2)(e); and

- (b) has not ceased to be P90 offsetting land under—
  - (i) section 181R(1)(a), for clearing before the required equivalence date; or
  - (ii) section 181S(1)(a), for deforestation before the required equivalence date; or
  - (iii) section 181T(1)(a), on the required equivalence date

**P90 release criteria notice** means a notice given under section 181G(1)  
**required equivalence date** has the meaning given in section 181F(6).

*P90 offset application*

**181A Application to offset land for pre-1990 forest land**

- (1) The owner of pre-1990 forest land may apply to the EPA to offset other land for the pre-1990 forest land.
- (2) The application must—
  - (a) specify the pre-1990 forest land to which the application relates (**area 1**); and
  - (b) specify the land proposed as offsetting land for that pre-1990 forest land (**area 2**); and
  - (c) include any information prescribed in regulations made under section 181W.
- (3) If area 1 and area 2 are owned by different persons, the application must be made jointly by all the owners of both areas.
- (4) The application must—
  - (a) be signed by all of the applicants; and
  - (b) be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).

**181B Criteria for P90 offset application**

- (1) If a person submits a P90 offset application, the EPA,—
  - (a) if satisfied that the criteria in subsection (2) were met on the P90 offset application date, must approve the application; or
  - (b) otherwise, may decline the application (*then see* section 181D).
- (2) The criteria are that—
  - Area 1 criteria*
    - (a) the land in area 1 is pre-1990 forest land that is one or other of the following:

- (i) land that was first planted before 1 January 1990; or
- (ii) land that was harvested and re-established after 1 January 1960; and

*Area 2 criteria*

- (b) the land in area 2 is 1 or more of the following:
  - (i) land that is not forest land on the P90 offset application date but, if it were to become forest land,—
    - (A) would be post-1989 forest land; and
    - (B) if it were in a carbon accounting area, would meet the criteria in section 191C for having a first rotation forest:
  - (ii) post-1989 forest land that—
    - (A) became post-1989 forest land less than 2 years before the P90 offset application date; and
    - (B) meets the criteria in section 191C for having a first rotation forest (or would do so if it were in a carbon accounting area):
  - (iii) area 2 (excess) land, unless the re-use period prescribed in regulations made under section 181W has expired:
  - (iv) P89 offsetting (excess) land (as defined in section 192), unless the re-use period prescribed in regulations made under section 181W has expired; and
- (c) if any of the land in area 2 is in a carbon accounting area, all of the land in the carbon accounting area—
  - (i) is land to which paragraph (b) applies; and
  - (ii) is part of area 2; and
- (d) the total area (whether contiguous or not) of area 2 is equal to or greater than the total area (whether contiguous or not) of area 1; and
- (e) each individual parcel that makes up area 2 has an area of at least 1 hectare with an average width of at least 30 metres; and

*Participant criteria*

- (f) each person who will be a participant in respect of land in area 2 would be eligible to be a participant under section 57 if the person were carrying out an activity listed in Part 1 of Schedule 4 on that land; and

*P90 offset release criteria*

- (g) the EPA is satisfied that, if all of the land in area 1 becomes area 1 (offset) land, on the P90 offset date the P90 offset release criteria are likely to be met; and



*Prescribed criteria*

- (h) any other criteria prescribed in regulations made under section 181W are met.

**181C Effect of approval of P90 offset application**

- (1) This section applies if the EPA approves a P90 offset application.
- (2) Starting on the P90 offset application date,—
  - (a) area 1 is **area 1 (approved) land**; and
  - (b) if any of the land in area 2 is in a carbon accounting area, the participant for that land—
    - (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and
    - (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and
  - (c) area 2 is the **area 2 (approved) land** for area 1.
- (3) If subsection (2)(b) applies, the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (4) If subsection (2)(b)(i) applies,—
  - (a) the notice requiring those units to be surrendered (referred to in section 63(4)) must also set out the effect of paragraph (b); and
  - (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.
- (5) If an approval is revoked under subsection (4), this Act applies as if the application had never been made.
- (6) However, despite subsection (5), the effect of subsection (2)(b)(ii) is not reversed (so the person is not reinstated as a participant for the carbon accounting area).

**181D Effect of P90 offset application being declined**

- (1) This section applies if—
  - (a) the EPA declines a P90 offset application; and
  - (b) an activity listed in Part 1 of Schedule 3 was carried out on any of the land in area 1 (the **affected land**) on a date (**date D**) that was on or after the P90 offset application date but before the application was declined.
- (2) The owner of the affected land on date D—
  - (a) is liable to surrender the number of units they would have been required to surrender when that activity was carried out if the application had not been made; and

- (b) must comply with sections 56 and 65 in relation to that liability.
- (3) The emissions return required under subsection (2)(b) must cover the period starting on the P90 offset application date and ending on date D, as if that period were all part of the immediately preceding year.

*Liability to surrender allocation*

**181E Allocations for pre-1990 forest land to be surrendered when application approved**

- (1) This section applies in relation to pre-1990 forest land if—
  - (a) the land becomes area 1 (approved) land; and
  - (b) an allocation was made in respect of the land as part of the second tranche (whether or not the units were actually transferred when allocated).
- (2) The owner of the land must,—
  - (a) if they do not have a holding account under section 18A, open a holding account; and
  - (b) surrender or repay the number of units equal to the number allocated as part of the second tranche by transferring them to a Crown holding account.
- (3) The owner must do so within 30 working days after the EPA gives them a notice requiring them to do so.
- (4) The notice must specify—
  - (a) the number of units to be surrendered or repaid; and
  - (b) the Crown holding account to which the units must be transferred.
- (5) In this section, **second tranche** means the allocation of units under the pre-1990 forest land allocation plan that were transferred on or after 1 January 2013.

*Offsetting on P90 offset date*

**181F P90 offset release criteria**

- (1) The **P90 offset release criteria** in respect of area 1 (approved) land and its area 2 (approved) land are that, on the P90 offset date,—
  - (a) the area of the area 2 (forested) land and any area 2 (damaged) land is equal to or greater than the area of the area 1 (offset) land; and
  - (b) the expected carbon stock of the area 2 (forested) land and any area 2 (damaged) land is equal to or greater than the baseline carbon stock for the area 1 (offset) land; and
  - (c) any other criteria prescribed in regulations made under section 181W are met.

- (2) The **baseline carbon stock** for area 1 (offset) land is the carbon stock that the land had on the baseline date, determined in accordance with regulations made under section 181W.
- (3) The **baseline date**, for area 1 (approved) land, is—
  - (a) if, on the P90 offset application date, every hectare of land in area 1 had forest species on it that had tree crown cover of more than 30%, the P90 offset application date; or
  - (b) if not, the date on which the clearing of area 1 started most recently before the P90 offset application date.
- (4) The **expected carbon stock**,—
  - (a) of area 2 (forested) land, is the carbon stock that the land is expected to have achieved on the required equivalence date determined in accordance with regulations made under section 181W; and
  - (b) of area 2 (damaged) land, is the carbon stock that the land would have been expected to have achieved on the required equivalence date had it not been affected by the adverse natural event determined in accordance with regulations made under section 181W.
- (5) The **P90 offset date**, in relation to area 1 (approved) land, is—
  - (a) the date 4 years after the baseline date (the **default P90 offset date**); or
  - (b) if a P90 release criteria notice is given before the default P90 offset date, the date on which the notice is given.
- (6) The **required equivalence date** is the last day of the period that—
  - (a) starts when the forest species on area 2 (approved) land are first established; and
  - (b) ends at the end of the usual rotation period prescribed in regulations made under section 181W for the forest species that were on the area 1 (approved) land on the baseline date.

#### **181G P90 release criteria notice**

- (1) The owners of the land in area 1 and area 2 must give notice (**P90 release criteria notice**) to the EPA under this section identifying the status of all land in area 1 and area 2 (including any additional land in relation to which an application is being made under section 181H) on the P90 offset date.
- (2) The P90 release criteria notice—
  - (a) may be given before the default P90 offset date (under section 181F(5)(a)); but
  - (b) if not given before that date, must be given within 60 working days after the default P90 offset date.
- (3) The P90 release criteria notice must—
  - (a) identify all of the land in area 1 as one of the following:

- (i) **area 1 (offset) land**, being all the land in area 1 (other than any area 1 (damaged) land) that, on the P90 offset date,—
  - (A) has ceased to be forest land; or
  - (B) has been cleared with the intention that it will cease to be forest land:
- (ii) **area 1 (forested) land**, being all the land in area 1 that is still forest land on the P90 offset date, other than any land that is area 1 (offset) land under subparagraph (i)(B):
- (iii) **area 1 (damaged) land**, being any land in area 1 that has been affected by a natural event that permanently prevents re-establishing a forest on the land:
- (iv) **area 1 (not offset) land**, being any land in area 1 that section 181L requires to be identified as area 1 (not offset) land; and
- (b) identify all of the land in area 2 as one of the following:
  - (i) **area 2 (forested) land**, being all the land in area 2 that is qualifying forest land on the P90 offset date, other than any land that is area 2 (excess) land or area 2 (non-ETS) land:
  - (ii) **area 2 (unforested) land**, being all the land in area 2 that is not qualifying forest land on the P90 offset date, other than land that is area 2 (damaged) land:
  - (iii) **area 2 (damaged) land**, being any land in area 2 that, before the P90 offset date, was affected by a natural event that permanently prevents establishing a forest on the land:
  - (iv) **area 2 (excess) land**, being any land in area 2 that—
    - (A) is qualifying forest land on the P90 offset date (but *see* subsection (4)); and
    - (B) does not need to be included in the area 2 (forested) land in order for the P90 offset release criteria to be met; and
    - (C) the owners want to be excluded from the area 2 (forested) land and to be available for re-use under section 181B(2)(b)(iii) or 192B(2)(c)(iii):
  - (v) **area 2 (non-ETS) land**, being any land in area 2 that—
    - (A) is qualifying forest land on the P90 offset date (but *see* subsection (4)); and
    - (B) does not need to be included in the area 2 (forested) land in order for the P90 offset release criteria to be met; and
    - (C) the owners want to be excluded from the area 2 (forested) land but not to be available for re-use under section 181B(2)(b)(iii) or 192B(2)(c)(iii); and

- (c) specify—
    - (i) the baseline carbon stock for the area 1 (offset) land; and
    - (ii) the expected carbon stock of the area 2 (forested) land; and
  - (d) include any information prescribed in regulations made under section 181W.
- (4) If an application is made under section 181H to add additional land, the additional land must be identified as area 2 (forested) land.
- (5) The P90 release criteria notice must—
- (a) be made jointly by all of the persons who, on the P90 offset date, own land in area 1 or area 2 (including any additional land in relation to which an application is made under section 181H); and
  - (b) be signed by all of the owners; and
  - (c) be given within 60 working days after the P90 offset date; and
  - (d) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (6) Land is **qualifying forest land** if—
- (a) each hectare of the land has forest species on it that have, or are likely to have, tree crown cover of more than 30%; and
  - (b) those forest species were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and
  - (c) each individual parcel that makes up the land has an area of at least 1 hectare and has an average width of at least 30 metres.

#### **181H Application to add area 2 (approved) land**

- (1) An application to add more land (**additional land**) to the area 2 (approved) land may be made when the P90 release criteria notice is given to the EPA.
- (2) The application must—
- (a) be made jointly by all of the persons who own land in area 1, area 2, or the additional land; and
  - (b) be signed by all of the applicants; and
  - (c) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).

**181I Criteria for adding area 2 (approved) land**

- (1) If an application is made under section 181H, the EPA,—
  - (a) if satisfied that the criteria in subsection (2) are met, must approve the application; or
  - (b) otherwise, may decline the application.
- (2) The criteria are that—
  - (a) the additional land—
    - (i) is land of a kind specified in section 181B(2)(b)(ii), (iii), or (iv); and
    - (ii) is qualifying forest land (as defined in section 181G(6)); and
  - (b) if the application is not approved, on the P90 offset date the P90 offset release criteria in section 181F(1)(a) or (b) (or both) will not be met; and
  - (c) the area of the additional land is not more than is necessary to enable the P90 offset release criteria to be met; and
  - (d) any other criteria prescribed in regulations made under section 181W are met.

**181J Effect of approval of application to add area 2 (approved) land**

- (1) This section applies if the EPA approves an application under section 181H to add land to the area 2 (approved) land.
- (2) On the P90 offset date (but before section 181N takes effect),—
  - (a) if any of the additional land is a carbon accounting area, the participant for that land—
    - (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and
    - (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and
  - (b) the additional land becomes part of the area 2 (approved) land (and is therefore part of area 2 and becomes area 2 (forested) land (*see* section 181G(3)(b)(i) and (4)).
- (3) If subsection (2)(a) applies, the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (4) If subsection (2)(a)(i) applies,—
  - (a) the notice requiring those units to be surrendered (referred to in section 63(4)) must also set out the effect of paragraph (b); and
  - (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.

- (5) If an approval is revoked under subsection (4), this Act applies as if the application had never been made, except that—
- (a) the effect of subsection (2)(a)(ii) is not reversed (so the person is not reinstated as a participant for the carbon accounting area); and
  - (b) section 181M does not apply.

**181K Effect of application to add area 2 (approved) land being declined**

- (1) This section applies if the EPA declines an application under section 181H to add land to the area 2 (approved) land.
- (2) The EPA must notify the applicants of—
- (a) the decision and the reasons for it; and
  - (b) the owners' right under section 144 to seek a review of that decision; and
  - (c) the effect of subsection (3) and section 128A.
- (3) If the EPA gives a notice under subsection (2),—
- (a) the P90 release criteria notice that was accompanied by the application is taken not to have been given; and
  - (b) the owners must give the EPA—
    - (i) a revised P90 release criteria notice for area 1 and area 2; and
    - (ii) if they wish to do so, another application under section 181H to add additional land; and
  - (c) the deadline for giving the P90 release criteria notice under section 181G(2)(b) is extended to 60 working days after the notice was given under subsection (2).
- (4) However, if the owners have previously given a revised notice under subsection (3)(b)(i) that was accompanied by an application under section 181H,—
- (a) subsection (3)(b)(ii) does not apply and the owners cannot make another application under section 181H; and
  - (b) section 181M does not apply.

**181L Land that must be identified as area 1 (not offset) land**

- (1) Land in area 1 must be identified as area 1 (not offset) land if, in the absence of this section,—
- (a) the land would be identified as area 1 (offset) land; and
  - (b) either or both of the following would apply:
    - (i) the area of the area 1 (offset) land would be greater than the area of the area 2 (forested) land and any area 2 (damaged) land:

- (ii) the baseline carbon stock for the area 1 (offset) land would be greater than the expected carbon stock of the area 2 (forested) land and any area 2 (damaged) land.
- (2) The area of any land identified as area 1 (not offset) land must be the minimum area necessary to result in the P90 offset release criteria being met.

**181M Extension of time to add area 2 (approved) land**

- (1) This section applies if—
- (a) a P90 release criteria notice is given to the EPA within the time required by section 181G(2); and
  - (b) an application under section 181H was not made when the P90 release criteria notice was given; and
  - (c) the P90 release criteria notice is not a revised notice given under section 181K(3)(b); and
  - (d) the EPA is not satisfied that the P90 release criteria notice identifies the land in a way that results in the P90 offset release criteria being met.
- (2) The EPA may, by giving a notice to the owners of area 1 and area 2, offer them an opportunity to submit a revised P90 release criteria notice with an application under section 181H.
- (3) The EPA's notice must set out—
- (a) the reasons for the EPA's decision that the P90 release criteria notice is not correct; and
  - (b) the owners' right under section 144 to seek a review of that decision; and
  - (c) the effect of subsection (4) and section 128A.
- (4) If the EPA gives a notice under subsection (2),—
- (a) the P90 release criteria notice referred to in subsection (1)(a) is taken not to have been given; and
  - (b) the owners must give the EPA—
    - (i) a revised P90 release criteria notice for area 1 and area 2; and
    - (ii) if they wish to do so, an application under section 181H to add additional land; and
  - (c) the deadline for giving the P90 release criteria notice under section 181G(2)(b) is extended to 60 working days after the notice was given under subsection (2).

**181N Effect on P90 offset date**

- (1) This section applies if a P90 release criteria notice is given to the EPA in accordance with section 181G.
- (2) With effect on the P90 offset date,—



- (a) the area 1 (offset) land—
  - (i) ceases to be area 1 (approved) land; and
  - (ii) is the land against which the area 2 (forested) land and area 2 (damaged) land are compared to determine whether the P90 offset release criteria are met; and
- (b) the area 1 (forested) land—
  - (i) ceases to be area 1 (approved) land; and
  - (ii) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (c) the area 1 (damaged) land—
  - (i) ceases to be area 1 (approved) land; and
  - (ii) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (d) the area 1 (not offset) land—
  - (i) ceases to be area 1 (approved) land; and
  - (ii) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (e) the area 2 (forested) land—
  - (i) is part of the land used to determine whether the P90 offset release criteria are met; and
  - (ii) becomes **P90 offsetting land** (*then see* sections 181P to 181T and Part 1A of Schedule 3); and
  - (iii) ceases to be area 2 (approved) land; and
- (f) the area 2 (unforested) land—
  - (i) is not part of the land used to determine whether the P90 offset release criteria are met; and
  - (ii) ceases to be area 2 (approved) land; and
- (g) the area 2 (damaged) land—
  - (i) is part of the land used to determine whether the P90 offset release criteria are met; and
  - (ii) ceases to be area 2 (approved) land; and
- (h) the area 2 (excess) land—
  - (i) is not part of the land used to determine whether the P90 offset release criteria are met; and
  - (ii) ceases to be area 2 (approved) land, but remains area 2 (excess) land subject to subsection (5); and
- (i) the area 2 (non-ETS) land—

- (i) is not part of the land used to determine whether the P90 offset release criteria are met; and
  - (ii) ceases to be area 2 (approved) land and area 2 (non-ETS) land.
- (3) Starting on the P90 offset date, the owner of the area 1 (not offset) land on the P90 offset date—
  - (a) is liable to surrender units as a result of the deforestation of the land as if that deforestation had occurred on the P90 offset date (*see also* section 180A(7)(b)); and
  - (b) must comply with sections 56 and 65 in relation to that liability.
- (4) To avoid doubt,—
  - (a) the owner of the area 1 (offset) land incurs no liability under section 63 for the deforestation (because of section 179A(1)(b)); and
  - (b) the owner of the area 1 (forested) land is not liable to surrender any units (because the land has not been deforested); and
  - (c) the owner of the area 1 (damaged) land is not liable to surrender any units (because the land is excluded from Part 1 of Schedule 3).
- (5) Land ceases to be area 2 (excess) land if the land—
  - (a) becomes area 2 (approved) land as a result of being included in a P90 offset application under section 181B(2)(b)(iii); or
  - (b) becomes P89 offsetting (approved) land as a result of being included in a P89 offset application under section 192B(2)(c)(iii); or
  - (c) becomes part of a carbon accounting area as a result of an application under section 182C(1) or (3).
- (6) The EPA must update the register kept under section 181U to record the effect of this section.

### **181O Reimbursement of surrendered allocation**

- (1) This section applies if—
  - (a) a person surrendered units in respect of area 1 (approved) land in accordance with section 181E(2); and
  - (b) on the P90 offset date, any of that land is area 1 (forested) land or area 1 (damaged) land.
- (2) Starting on the P90 offset date, the EPA is liable to reimburse to that person (whether or not they still own the land) the number of units surrendered under section 181E(2) in respect of that area 1 (forested) land or area 1 (damaged) land.

*P90 offsetting land*

**181P Participant in respect of P90 offsetting land**

If an activity listed in Part 1A of Schedule 3 is carried out on P90 offsetting land, the landowner is to be treated as the person carrying out the activity.

**181Q Clearing or deforestation before required equivalence date**

- (1) This section applies if—
  - (a) a P90 offset application was approved; and
  - (b) on the P90 offset date, the area 2 (approved) land became P90 offsetting land for the area 1 (offset) land; and
  - (c) before the required equivalence date, either or both of the following occur on some or all of the P90 offsetting land (the **affected land**):
    - (i) the land is cleared;
    - (ii) an activity listed in Part 1A of Schedule 3 (a **Part 1A activity**) is carried out on the land.
- (2) If the affected land is cleared, section 181R applies in relation to the clearing of the land.
- (3) If a Part 1A activity is carried out on the affected land, section 181S applies in relation to that activity.
- (4) If the affected land is cleared and later (but still before the required equivalence date) a Part 1A activity is carried out on the affected land,—
  - (a) if, before the Part 1A activity is carried out, the owner submits an emissions return as required by section 181R(1)(b)(ii),—
    - (i) section 181R applies in relation to the clearing of the land; and
    - (ii) section 181S does not apply in relation to the Part 1A activity; or
  - (b) if the owner does not submit an emissions return as required by section 181R(1)(b)(ii) before the Part 1A activity is carried out,—
    - (i) section 181R does not apply in relation to the clearing of the land; and
    - (ii) section 181S applies in relation to the Part 1A activity.
- (5) For the purposes of this section and section 181R, a hectare of P90 offsetting land that has been cleared is to be treated as having been cleared on the first date on which any part of that hectare was cleared.

**181R Clearing before required equivalence date**

- (1) If this section applies in relation to the clearing of affected land, starting on the date on which the clearing occurred,—
  - (a) the affected land ceases to be P90 offsetting land; and

- (b) the owner of the affected land—
- (i) is liable to surrender the units as if the affected land were deforested on the date on which it was cleared; and
  - (ii) must submit an emissions return as required by section 65 in relation to that deemed deforestation; and
  - (iii) if they do not have a holding account under section 18A, must open a holding account.
- (2) However, the number of units the owner is liable to surrender under subsection (1)(b)(i) is the number calculated under subsection (3) instead of the number of units they would otherwise be liable to surrender under section 63.
- (3) The number of units to be surrendered (*s*) is calculated as follows:
- $$s = (d \div a) \times n$$
- where—
- d* is the area of the affected land (in hectares)
- a* is the total area of all of the area 1 (approved) land referred to in section 181Q(1)(b) (in hectares)
- n* is the baseline carbon stock of the area 1 (offset) land, as recorded under section 181U(2)(d) (in tonnes).
- (4) In the emissions return required under subsection (1)(b)(ii), the relevant portion of the emissions from the area 1 (offset) land is to be recorded as if it were the emissions from deforestation of the affected land.
- (5) The liability under subsection (1)(b)(i) is to be treated as a liability to surrender units for emissions from the deemed deforestation on the P90 offsetting land.
- (6) The EPA must update the register under section 181U to record the effect of this section.
- (7) To avoid doubt, the affected land is not to be treated as having been deforested other than as required by this section.

### **181S Deforestation before required equivalence date**

- (1) If this section applies in relation to the carrying out of a Part 1A activity on affected land, starting on the date on which the activity was carried out,—
- (a) the affected land ceases to be P90 offsetting land; and
  - (b) the owner of the affected land—
    - (i) must submit an emissions return as required by section 65 as a result of the carrying out of the activity; but
    - (ii) is liable to surrender the number of units calculated under subsection (2) instead of the number of units they would otherwise be liable to surrender under section 63 for the emissions from the carrying out of the activity.

- (2) The number of units to be surrendered (*s*) is calculated as follows:

$$s = (d \div a) \times n$$

where—

- d* is the area of the affected land (in hectares)
- a* is the total area of all of the area 1 (approved) land referred to in section 181Q(1)(b) (in hectares)
- n* is the baseline carbon stock of the area 1 (offset) land, as recorded under section 181U(2)(d) (in tonnes).
- (3) In the emissions return required under subsection (1)(b)(i), the relevant portion of the emissions from the area 1 (offset) land is to be recorded as if it were the emissions from the carrying out of the activity.
- (4) The liability under subsection (1)(b)(ii) is to be treated as a liability to surrender units for emissions from the carrying out of the activity on the P90 offsetting land.
- (5) The EPA must update the register under section 181U to record the effect of this section.

#### **181T P90 offsetting land becomes pre-1990 forest land**

- (1) On the required equivalence date, the P90 offsetting land—
- (a) ceases to be P90 offsetting land; and
- (b) becomes pre-1990 forest land.
- (2) The EPA must update the register under section 181U to record the effect of this section.

#### *Administrative matters*

#### **181U P90 offsetting land register**

- (1) The EPA must keep a register of the following:
- (a) P90 offsetting land;
- (b) land that has become pre-1990 forest land under section 181T and has not been recorded in the register under section 56;
- (c) area 2 (excess) land.
- (2) The register must include the following information about the registered land:
- (a) whether it is P90 offsetting land, pre-1990 forest land, or area 2 (excess) land;
- (b) a description of the land;
- (c) the area of the land (in hectares);
- (d) for P90 offsetting land, the baseline carbon stock of the relevant area 1 (offset) land (in tonnes):

- (e) for pre-1990 forest land, the date on which it became pre-1990 forest land:
- (f) for area 2 (excess) land, the date on which it became area 2 (excess) land.

#### 181V EPA to give information on request

- (1) The EPA must, on request, give a copy of the information on the register under section 181U about P90 offsetting land to the owner of that land or the relevant area 1 (offset) land.
- (2) The EPA must, on request, give the owner of pre-1990 forest land a statement of the number of units (if any) the owner would be liable to surrender under section 181E if that section were to apply in relation to the land.
- (3) In this section,—
  - owner**, in relation to land, means a person who owns the land, or has previously owned it, or is a prospective transferee of it
  - request** means a written request from the person to whom the information is to be given.

#### 181W Regulations for P90 offsetting

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing the information to be included in, and other requirements for,—
    - (i) P90 offset applications (section 181A):
    - (ii) P90 release criteria notices (section 181G):
    - (iii) applications to add land to area 2 (approved) land (section 181I):
  - (b) prescribing re-use periods for area 2 (excess) land or P89 offsetting (excess) land (section 181B(2)(b)(iii) and (iv)):
  - (c) prescribing additional criteria for approval of—
    - (i) P90 offset applications (section 181B(2)(h)):
    - (ii) applications to add land to area 2 (approved) land (section 181I):
  - (d) prescribing additional P90 offset release criteria (section 181F(1)(c)):
  - (e) prescribing the methodology for determining—
    - (i) baseline carbon stock (section 181F(2)):
    - (ii) expected carbon stock (section 181F(4)):
  - (f) prescribing usual rotation periods for forest species (section 181F(6)):
  - (g) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their publication under the Legislation Act 2019 or on any later date specified in the regulations.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 181W(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 181W(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 4—Post-1989 forest land (standard and permanent forestry)

**182 Standard and permanent forestry on post-1989 forest land**

- (1) In this subpart,—
  - final forestry emissions return** means an emissions return that is prepared under section 183B and is not a provisional forestry emissions return
  - permanent forestry** means an activity listed in Part 1A of Schedule 4
  - provisional forestry emissions return** means an emissions return submitted under section 183
  - standard forestry** means an activity listed in Part 1 of Schedule 4.
- (2) To avoid doubt, standard forestry and permanent forestry comprise the same list of activities carried out in respect of post-1989 forest land, but the difference is that the person carrying out the activity has chosen the relevant Part of Schedule 4 to apply to the land.

**182A Conditions on registration as participant in certain activities of standard or permanent forestry in respect of post-1989 forest land**

- (1) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry that relates to—
  - (a) owning any post-1989 forest land, unless the person is the landowner of the post-1989 forest land and—
    - (i) there is no forestry right or lease registered in respect of that land;  
or

- (ii) the person has the written agreement of any holder of a registered forestry right or registered lease in respect of that land to the person registering as a participant; or
  - (b) holding a registered forestry right or being the leaseholder under a registered lease in respect of any post-1989 forest land, unless the person—
    - (i) is the holder of the registered forestry right or the leaseholder of the registered lease; and
    - (ii) has the written agreement of the landowner of the land to the forestry right holder or leaseholder, as the case may be, registering as a participant.
- (2) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry in relation to exempt land that has been deforested 8 or less years ago unless the person—
  - (a) has submitted an emissions return to the EPA that—
    - (i) records the emissions from the deforestation of the land—
      - (A) that would have been required to have been recorded in an annual emissions return under section 65, had the land not been declared to be exempt land; and
      - (B) calculated in accordance with the methodology or methodologies prescribed for the deforestation activity listed in Part 1 of Schedule 3 that were applicable when the land was deforested; and
    - (ii) contains an assessment of the liability to surrender units that would have arisen in relation to the deforestation had the land not been declared to be exempt land; and
    - (iii) is accompanied by the prescribed fee (if any) and any other prescribed information; and
    - (iv) is signed by the person submitting the application; and
  - (b) has surrendered, within 60 working days after the EPA gives the person a notice requiring the surrender, the number of units listed in the assessment under paragraph (a)(ii); and
  - (c) complies with subsection (1), if applicable.
- (3) To avoid doubt, if any person is registered as a participant carrying out an activity of standard forestry or permanent forestry in respect of any post-1989 forest land, no person (including that person) can be registered as a participant carrying out a different activity of standard forestry or permanent forestry in respect of that land.
- (4) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry in relation to post-1989 forest land unless—



- (a) any action taken by the person in respect of the post-1989 forest land since 1 January 2008 (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949 that was in force at the time the action was taken; and
  - (b) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the person has—
    - (i) complied with the requirements; or
    - (ii) verified that any other person required to comply with the requirements has done so.
- (5) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry in relation to post-1989 forest land where the forest species on the land is predominantly naturally regenerated tree weeds unless the EPA is satisfied that the risk of tree weed spread from the land that is the subject of the application for registration is low.
- (6) Subsection (5) does not apply to any person who has registered as a participant before 1 January 2013.

**182B EPA to give public notice of criteria for assessing risk of tree weed spread**

The EPA must give public notice of the criteria for assessing the risk of tree weed spread from land that is the subject of an application for registration under section 57.

**182C Registration as participant in standard or permanent forestry**

- (1) An application under section 57 to be registered as a participant in respect of an activity of standard forestry or permanent forestry—
- (a) may be submitted for all post-1989 forest land in respect of which the applicant carries out the activity, or any part of the land in respect of which the applicant carries out the activity; and
  - (b) must define the carbon accounting area or areas in respect of which the applicant wishes to be a participant; and
  - (c) must be accompanied by a declaration, in the prescribed form, that—
    - (i) any action taken by the applicant since 1 January 2008 in relation to the post-1989 forest land in respect of which the application is submitted (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act or the Forests Act 1949 that was in force at the time the action was taken; and

- (ii) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the applicant has—
      - (A) complied with the requirements; or
      - (B) verified that any other person required to comply with the requirements has done so; and
    - (d) must be accompanied by any information prescribed by regulations made under this Act.
- (2) The EPA must keep the following records for the activity of standard forestry or permanent forestry for which a person is a participant (whether by registration under section 57 or otherwise):
  - (a) the carbon accounting area or areas in respect of which the person is a participant; and
  - (b) for each carbon accounting area used for an activity of standard forestry, whether or not it is a carbon accounting area (averaging); and
  - (c) the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated under the last emissions return submitted for the area.
- (3) A person who is a participant in standard forestry or permanent forestry (whether by registration under section 57 or otherwise) may apply to the EPA to add any carbon accounting area or areas to the post-1989 forest land in respect of which the person is recorded as a participant.
- (4) An application under subsection (3) must be—
  - (a) in the prescribed form; and
  - (b) accompanied by any prescribed fee and any prescribed information.
- (5) The EPA may (under this section) add a carbon accounting area to the post-1989 forest land in respect of which a person is recorded as a participant only if—
  - (a) the EPA is satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of that land under section 182A; and
  - (b) where the forest species on that land is predominantly naturally regenerated tree weeds, the EPA is satisfied that the risk of tree weed spread from the land is low.
- (6) If the EPA—
  - (a) registers a person as a participant under section 57 in relation to an activity of standard forestry or permanent forestry, the EPA must notify the person under section 57(6):
  - (b) receives an application to add a carbon accounting area and subsection (5) is satisfied, the EPA must—

- (i) update the participant's record to reflect the addition of the carbon accounting area; and
  - (ii) notify the participant accordingly.
- (7) The addition of a carbon accounting area under subsection (6)(b)(i) has effect on and after the date of the notice given under subsection (6)(b)(ii).
- (8) *See also* sections 182D and 182E (which require notice to the participant and notice to interested parties, if any).

**182D Notice to forestry participant if their registration added or removed**

The EPA must give written or electronic notice to a participant, or former participant, of the following matters as soon as practicable after the EPA carries them out under any of Parts 5 to 5D:

- (a) the participant's registration or removal from registration in respect of an activity, and the date on which this took or takes effect;
- (b) the addition or removal of any area or land for which the participant is registered, and the date on which this took or takes effect.

**182E Notice to interested party if forestry participant's registration added or removed**

- (1) A participant must notify the interested party (if any) of the following matters under this section, in writing or electronically, as soon as practicable after receiving the EPA's notice about, or becoming aware of, the matter:
  - (a) the participant's registration, or removal from registration, in respect of an activity, and the date that this took or takes effect;
  - (b) the addition or removal of any area or land for which the participant is registered, and the date that this took or takes effect.
- (2) The EPA must provide the participant with any address that it has recorded for the interested party.
- (3) In this section, **interested party** means—
  - (a) the landowner, in relation to a participant who is registered for an activity relating to—
    - (i) holding a registered forestry right or registered lease over land; or
    - (ii) being a party to a Crown conservation contract over land; or
  - (b) any person with a registered forestry right or registered lease in respect of the land, in relation to a participant who is registered for an activity relating to owning post-1989 forest land.

**182F Removing registration as participant in standard or permanent forestry**

- (1) This section sets out some situations in which section 186 or 186B applies (which relate to ceasing participation for whole or part carbon accounting areas).

- (2) Section 186 applies if the EPA—
  - (a) receives an application under section 58 for the removal of a person's name from the register as a participant in standard forestry; or
  - (b) is satisfied under section 59(2) that the person has ceased to carry out standard forestry or permanent forestry.
- (3) Section 186 applies if the EPA decides to remove the name of a person from the register in respect of an activity of standard forestry under section 59AA (for persistent non-compliance), or in respect of an activity of standard forestry or permanent forestry under section 59A (because the person never carried out the activity).
- (4) A person who is a participant in standard forestry or permanent forestry—
  - (a) may apply to the EPA to—
    - (i) remove any carbon accounting area or areas from the post-1989 forest land in respect of which the person is recorded as a participant; or
    - (ii) remove post-1989 forest land from any carbon accounting area or areas in respect of which the person is recorded as a participant; and
  - (b) must, as soon as practicable, notify the EPA if the person ceases to carry out the activity in respect of—
    - (i) a carbon accounting area in respect of which the person is recorded as a participant; or
    - (ii) any land in a carbon accounting area in respect of which the person is recorded as a participant.
- (5) An application or a notice under subsection (4) must be—
  - (a) in the prescribed form; and
  - (b) accompanied by any prescribed fee and any prescribed information.
- (6) Section 186 applies if the EPA—
  - (a) receives and approves an application to remove a carbon accounting area for which a person is recorded as a participant; or
  - (b) receives a notice that a person has ceased to carry out standard forestry or permanent forestry on all of a carbon accounting area; or
  - (c) is satisfied that a person has ceased to carry out standard forestry or permanent forestry on all of a carbon accounting area.
- (7) Section 186B applies if the EPA—
  - (a) receives and approves an application to remove land from a carbon accounting area for which a person is recorded as a participant; or
  - (b) receives a notice that a person has ceased to carry out standard forestry or permanent forestry on part of a carbon accounting area; or

- (c) is satisfied that a person has ceased to carry out standard forestry or permanent forestry on part of a carbon accounting area.
- (8) This section is subject to section 190A (which restricts the removal of land relating to permanent forestry).

**182G Removing registration as participant in standard or permanent forestry in certain natural events or clearance for forest management**

- (1) A person who is a participant in standard forestry or permanent forestry may, as soon as practicable, notify the EPA if all or part of the post-1989 forest land on which the person carries out the activity—
  - (a) is affected by a natural event that permanently prevents re-establishing a forest on that land; or
  - (b) is cleared land to which section 179A(1)(c) applies (which is land cleared for best practice forest management that may not be treated as deforested).
- (2) The notice must—
  - (a) include the prescribed information (if any); and
  - (b) be signed by the person; and
  - (c) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (3) If the EPA is satisfied that the post-1989 forest land is land to which subsection (1)(a) or (b) applies, then whichever of section 186 or 186B is relevant applies (so that the person is not liable to surrender units equal to the unit balance of the affected land).

*Provisional and final forestry emissions returns*

**183 Provisional forestry emissions return in any year**

- (1) This section applies to a person who is a participant in an activity of standard forestry or permanent forestry.
- (2) The person may, once before 1 July in each year, submit a provisional forestry emissions return prepared under section 183B for the activity—
  - (a) that covers 1 or more of the carbon accounting areas for which the person is a participant in the activity (each a **CAA1**); and
  - (b) that uses the last day of the previous calendar year as the **relevant date**.

**183A Final forestry emissions return at end of mandatory emissions return period**

- (1) This section applies to a person who is a participant in an activity of standard forestry or permanent forestry on the last day of a mandatory emissions return period.
- (2) The person must submit a final forestry emissions return prepared under section 183B for the activity—
  - (a) that covers each carbon accounting area for which the person was a participant in the activity on the last day of the mandatory emissions return period (each a **CAA1**); and
  - (b) that uses the last day of the mandatory emissions return period as the **relevant date**.
- (3) The deadline for submitting the emissions return is 6 months after the end of the mandatory emissions return period.
- (4) However, subsection (2) does not apply in relation to a carbon accounting area in relation to which a participant is not required to submit an emissions return under—
  - (a) section 191G(b), relating to carbon accounting areas (averaging); or
  - (b) section 193F(3)(b), relating to temporary adverse event land.

**183B Preparing provisional or final forestry emissions return**

- (1) An emissions return prepared under this section must—
  - (a) specify the CAA1s that the emissions return covers; and
  - (b) specify the activity for which the person was a participant on the CAA1s; and
  - (c) for each CAA1,—
    - (i) specify the emissions return period that applies, by using subsection (4) and the relevant date from the provision that requires the return; and
    - (ii) specify the emissions and removals during the emissions return period; and
    - (iii) set out the calculation under section 184 of the person's gross liability or entitlement for emissions and removals during the emissions return period; and
    - (iv) specify the person's net liability or entitlement for emissions and removals during the emissions return period by,—
      - (A) for a provisional forestry emissions return, specifying the same value as the person's gross liability or entitlement; or
      - (B) for a final forestry emissions return, setting out the calculation of that value under section 184A (which takes into

- account the liability or entitlement under each provisional forestry emissions return for an overlapping period, if any, and other matters); and
- (v) set out the calculation under section 184B of the unit balance; and
  - (d) set out the calculation under section 184C of the person's total liability or entitlement for all the CAA1s.
- (2) The emissions return must—
- (a) include the prescribed information (if any); and
  - (b) be signed by the participant; and
  - (c) when submitted under the relevant provision, be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (3) *See* section 62(1)(b) and (c) for the requirements to calculate (and potentially verify) emissions and removals.
- (4) In this section, **emissions return period**, for a CAA1, means the period that—
- (a) starts on the latest of the following:
    - (i) the first day of the mandatory emissions return period in which the relevant date falls;
    - (ii) if the CAA1 was constituted by registration under section 182C, the date on or before registration on which any of the land in the CAA1 became post-1989 forest land;
    - (iii) if the CAA1 was constituted in another way, the constitution date of the CAA1;
    - (iv) the day after the last day of the emissions return period for the CAA1 under,—
      - (A) for a provisional forestry emissions return, the last provisional or final forestry emissions return submitted for the CAA1; and
      - (B) for a final forestry emissions return, the last final forestry emissions return submitted for the CAA1; and
  - (b) ends on the relevant date.
- (5) If subsection (4)(a)(ii) applies, the person must be treated as if they became a participant in respect of the CAA1 on the date under that subparagraph (before the CAA1 was actually constituted) for the purposes of calculating—
- (a) emissions and removals from the CAA1; and
  - (b) the unit balance of the CAA1.

*Calculations for provisional and final forestry emissions returns***184 Gross liability or entitlement for each CAA1 in emissions return**

- (1) A person's **gross liability or entitlement** for a CAA1 over an emissions return period (**g**) is calculated as follows:

$$g = r - e$$

where—

- r** is the number of units required for removals from the CAA1 during the emissions return period
- e** is the number of units required for emissions from the CAA1 during the emissions return period.

*Recalculation based on unit balance for provisional forestry emissions return (see section 185A)*

- (2) However, in preparing a provisional forestry emissions return, if—
- (a) the **g** calculated under subsection (1) is a negative number, giving a gross liability; and
- (b) that gross liability is greater than the value **p** calculated for the CAA1 under section 184B,—

then **g** is recalculated as the negative of **p**.

**184A Net liability or entitlement for each CAA1 in final forestry emissions return**

*Calculation based on overlapping provisional forestry emissions returns*

- (1) A person's **net liability or entitlement** for a CAA1 over an emissions return period (**h**) is calculated as follows:

$$h = g - g_n$$

where—

- g** is the person's gross liability or entitlement for the CAA1 (under that same final forestry emissions return)
- g<sub>n</sub>** is the sum of the person's gross liability or entitlement for the CAA1 under each overlapping provisional forestry emissions return (if any).

- (2) To avoid doubt, if there is no overlapping provisional forestry emissions return, a person's net liability or entitlement is the same as their gross liability or entitlement for a CAA1.

*Recalculation based on liability for changes involving averaging accounting*

- (3) However, if section 189F or 189G applies, **h** is recalculated as follows:

$$h = h_a - s$$

where—

- h<sub>a</sub>** is the person's net liability or entitlement calculated under subsection (1)



s is the number of units the person is liable to surrender under section 189F or 189G.

*Recalculation based on unit balance (see section 185A)*

- (4) Finally, if—
- (a) the h calculated under subsection (1), or as recalculated under subsection (3) (if it applies), is a negative number, giving a net liability; and
  - (b) that net liability is greater than the value p calculated for the CAA1 under section 184B,—

then h is recalculated as the negative of p.

*Definition*

- (5) In this section, **overlapping provisional forestry emissions return** means each provisional forestry emissions return (if any) submitted for a period that overlaps with the emissions return period of the final forestry emissions return.

#### **184B Unit balance calculation for each CAA1 in emissions return**

The **unit balance** of a CAA1 (u) is calculated for an emissions return as follows:

$$u = p + h$$

where—

- p is—
- (a) the previous unit balance of the CAA1 calculated under the last emissions return submitted for the CAA1; or
  - (b) zero, if there is no such return
- h is the person's net liability or entitlement for the CAA1 under the emissions return for which u is calculated.

#### **184C Total liability or entitlement for all CAA1s in emissions return**

A person's **total liability or entitlement** for all the CAA1s covered by an emissions return is the sum of the person's net liability or entitlement for each CAA1.

*Total liability or entitlement and unit balance has effect for all emissions returns*

#### **184D Total liability or entitlement has effect, and unit balance updated, when emissions return submitted**

- (1) This section applies when a person submits a provisional or final forestry emissions return.
- (2) If the person's total liability or entitlement for the CAA1s covered by the emissions return is—

- (a) a positive number, the person is entitled to receive (or be reimbursed) that number of New Zealand units; or
  - (b) a negative number, the person is liable to surrender (or repay) that number of units.
- (3) For a final forestry emissions return, the person—
- (a) is entitled to be reimbursed (instead of to receive) units; or
  - (b) is liable to repay (instead of to surrender) units—
- to the extent that they surrendered, or received, more units for a CAA1 under provisional forestry emissions returns than required to satisfy their net liability or entitlement for the CAA1 under the final forestry emissions return.
- (4) The unit balance of each CAA1 covered by the emissions return is updated to the unit balance calculated under the return.

*New unit balance report for certain applications or notices*

**185 New unit balance report**

- (1) A new unit balance report prepared under this section must—
- (a) specify the CAA2s that the report covers and, for each CAA2 whose boundaries are not the same as a CAA1, define the CAA2; and
  - (b) specify the CAA1s (that are replaced by the CAA2s); and
  - (c) set out the calculation under this section of the opening unit balance of each CAA2; and
  - (d) if any CAA1 forms a notional CAA2 and a remainder CAA2 (because participation ceases for part of the CAA1 under section 186B), set out the calculation under this section of the person's final liability or entitlement.
- (2) However, subsection (1) is subject to the following provisions (which limit reconfiguration):
- (a) section 191H (carbon accounting areas (averaging));
  - (b) section 192G (P89 offsetting (approved) land);
  - (c) section 193H (temporary adverse event land).

*Opening unit balance if CAA2 has same boundaries as CAA1*

- (3) If a CAA2 has the same boundaries as a CAA1, the **opening unit balance** of the CAA2 ( $v$ ) is calculated as follows:

$$v = u$$

where—

- $u$  is the unit balance of the CAA1 (under the emissions return for the CAA1 that includes the report).

*Opening unit balance if CAA2 formed from land in 1 or more CAAs*

- (4) If a CAA2 is formed from land in 1 or more CAAs, the **opening unit balance** of the CAA2 (**v**) is calculated by summing the result of the following calculation for each CAA1 that overlaps with the CAA2 (because any land in the CAA1 becomes land in the CAA2):

$$u_n \times (a_n \div b_n)$$

where—

- $u_n$  is the unit balance of the overlapping CAA1 (under the emissions return for the CAA1 that includes the report)
- $a_n$  is the area of overlap between the CAA2 and the overlapping CAA1 (in hectares)
- $b_n$  is the area of the overlapping CAA1 (in hectares).

*Final liability or entitlement if CAA1 forms notional CAA2 and remainder CAA2*

- (5) A person's **final liability or entitlement** (**f**) is calculated as follows:

$$f = t - u_n$$

where—

- $t$  is the person's total liability or entitlement for the CAAs (under the emissions return for the CAAs that includes the report)
- $u_n$  is the sum of the opening unit balance of each notional CAA2 formed from a CAA1.

*Maximum liability is unit balance of carbon accounting area*

**185A Maximum liability is unit balance of carbon accounting area**

Despite section 63, a person who is or was a participant in respect of an activity of standard forestry or permanent forestry is not liable to surrender more units in relation to any carbon accounting area or part of a carbon accounting area than the unit balance of that carbon accounting area or part of a carbon accounting area.

*Ceasing participation in standard or permanent forestry*

**186 Ceasing participation for whole carbon accounting areas**

- (1) This section applies if a person ceases, or is to cease, participation in an activity of standard forestry or permanent forestry (on the **end date**) on 1 or more whole carbon accounting areas (each a **CAA1**).
- (2) However, this section does not apply if another provision of this Act requires an emissions return to be prepared for the situation.
- (3) To avoid doubt, this section applies whether—

- (a) the person is ceasing to be a participant in the activity in a CAA1, or is removing a CAA1 for which the person is recorded as a participant; or
- (b) the person is giving notice to the EPA, the EPA has approved an application from the person, or the EPA is acting under a provision of this Act; or
- (c) the CAA1s are some or all of the carbon accounting areas on which the person participates in the activity.

#### **186A Effect of ceasing participation for whole carbon accounting areas**

- (1) If section 186 applies, then, starting on the end date,—
  - (a) the person ceases to be a participant in the activity in the CAA1s; and
  - (b) the person is liable to surrender the number of units equal to the unit balance of each CAA1 (calculated under the last emissions return submitted for the CAA1).
- (2) However, subsection (1)(b) does not apply if the person has ceased to be a participant because of section 182G (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (4) *See* sections 182D and 182E, which require notice to the participant and notice to interested parties, if any.

#### **186B Ceasing participation for part carbon accounting areas**

- (1) This section applies if a person ceases, or is to cease, participation in an activity of standard forestry or permanent forestry (on the **end date**) in only part of 1 or more carbon accounting areas (each a **CAA1**).
- (2) To avoid doubt, this section applies whether—
  - (a) the person ceases to be a participant in the activity in part of a CAA1, or is removed from being recorded as a participant in respect of part of a CAA1; or
  - (b) the person is giving notice to the EPA, the EPA has approved an application from the person, or the EPA is acting under a provision of this Act.
- (3) However, this section does not apply to a situation for which another provision of this Act already requires an emissions return to be prepared.
- (4) The person must—
  - (a) prepare a final forestry emissions return under section 183B for the activity—
    - (i) that covers each CAA1; and
    - (ii) that uses the end date as the **relevant date**; and

- (b) include in that return a new unit balance report under section 185 for the activity that covers the following carbon accounting areas (each a **CAA2**) formed from each CAA1:
  - (i) a **notional CAA2** for the part of the CAA1 where participation ceases:
  - (ii) a **remainder CAA2** for the rest of the land in the CAA1.
- (5) The person must—
  - (a) include the emissions return with the application or notice when it is made or given; or
  - (b) if there is no application or notice, provide the emissions return when required by the EPA.
- (6) The land in a notional CAA2 must be treated as forest land if the person has ceased to be a participant because of section 182G (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).

#### **186C Effect of ceasing participation for part carbon accounting areas**

- (1) This section applies if a final forestry emissions return (for the CAA1s) is provided to the EPA in accordance with section 186B, including a new unit balance report (for the CAA2s).
- (2) Starting on the end date,—
  - (a) the emissions return is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 184D); and
  - (b) the person ceases to be a participant in the activity on the notional CAA2s; and
  - (c) the person is liable to surrender the number of units equal to the opening unit balance calculated for each notional CAA2 in the new unit balance report; and
  - (d) the person is a participant in the activity in the remainder CAA2s (instead of the CAA1s); and
  - (e) the unit balance of each remainder CAA2 is the opening unit balance calculated for it in the new unit balance report; but
  - (f) any entitlement to receive units because of paragraph (a) is offset against any liability to surrender units under paragraph (c), so that the person's final liability or entitlement is as calculated in the new unit balance report.
- (3) However, subsection (2)(c) and (f) does not apply if the person has ceased to be a participant because of section 182G (for a natural event that permanently pre-

vents re-establishing a forest or land cleared for best practice forest management).

- (4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (5) *See* sections 182D and 182E, which require notice to the participant and notice to interested parties, if any.

**186D If participant has never carried out activity in carbon accounting area**

- (1) This section applies if the EPA is satisfied that a person is not carrying out, and has never carried out, the activity of standard or permanent forestry in a carbon accounting area, or part of an accounting area, for which they are registered.
- (2) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area.
- (3) The person must surrender the unit balance that relates to the carbon accounting area (or part area).
- (4) At least 60 days before amending the register, the EPA must notify the person—
  - (a) that the EPA proposes to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area; and
  - (b) of the reason for the proposed removal; and
  - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity in the carbon accounting area).
- (5) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

*Transmission of interest relating to standard or permanent forestry*

**187 Transmission of interest in post-1989 forest land**

- (1) This section applies—
  - (a) if, subject to section 157A(4), a person registered as a participant in respect of an activity of standard forestry or permanent forestry and who is described in the first column of Part A of the following table transfers, including by way of sale, assignment, or by operation of law, all or any of the interest described in the second column of Part A of the table to a person described in the third column of Part A of the table:
  - (b) if a person registered as a participant in respect of an activity of standard forestry or permanent forestry and who is described in the first column

of Part B of the following table grants an interest or enters into a contract described in the second column of Part B of the table:

- (c) if an interest described in the second column of Part C of the following table expires or is terminated, and the person described in the first column of Part C of the table is, in relation to that interest, registered as a participant in respect of an activity of standard forestry or permanent forestry:

**Part A**

<b>Existing participant</b>	<b>Interest transferred</b>	<b>New participant</b>	<b>New activity of standard or permanent forestry</b>
Landowner of post-1989 forest land	Post-1989 forest land in respect of which the person is recorded as a participant	New land owner	Owning post-1989 forest land
Holder of a registered forestry right over post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	New forestry right holder	Holding a registered forestry right over post-1989 forest land
Leaseholder under a registered lease of post-1989 forest land	Registered lease over post-1989 forest land in respect of which the person is recorded as a participant	New lessee	Being the leaseholder under a registered lease of post-1989 forest land
Party to a Crown conservation contract	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	New party to the Crown conservation contract	Being a party to a Crown conservation contract

**Part B**

<b>Existing participant</b>	<b>Interest entered into</b>	<b>New participant</b>	<b>New activity of standard or permanent forestry</b>
Landowner of post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	Holder of a registered forestry right over post-1989 forest land (only if agreed under subsection (2))	Being the holder of a registered forestry right over post-1989 forest land (only if agreed under subsection (2))
Landowner of post-1989 forest land	Registered lease of post-1989 forest land in respect of which the person is recorded as a participant	Lessee under a registered lease of post-1989 forest land (only if agreed under subsection (2))	Being a lessee under a registered lease of post-1989 forest land (only if agreed under subsection (2))

<b>Part B</b>			
<b>Existing participant</b>	<b>Interest entered into</b>	<b>New participant</b>	<b>New activity of standard or permanent forestry</b>
Landowner of Crown land that is post-1989 forest land	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	Party to the Crown conservation contract	Being a party to a Crown conservation contract
<b>Part C</b>			
<b>Existing participant</b>	<b>Interest expired or terminated</b>	<b>New participant</b>	<b>New activity of standard or permanent forestry</b>
Holder of a registered forestry right over post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land
Leaseholder under a registered lease of post-1989 forest land	Registered lease over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land
Party to a Crown conservation contract	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land.

(2) Despite subsection (1)(b), if a transferor covered by that paragraph grants a registered forestry right or registered lease described in the second column of Part B of the table in that subsection, this section applies only if, before the date of transmission,—

(a) the transferor and the transferee have agreed in writing that the transferee is to become the participant in relation to the post-1989 forest land to which the transmitted interest relates; and

(b) the transferor has given written notice of the agreement to the EPA.

(3) In this section and section 187A,—

(a) **CAA1**—

(i) means a carbon accounting area that contains post-1989 forest land to which a transmitted interest relates; and

(ii) includes, where a transmitted interest relates to post-1989 forest land in part of a carbon accounting area, that carbon accounting area:



- (b) each of the persons described in the first column of the table in subsection (1) is a **transferor**:
- (c) each of the persons described in the third column of the table in subsection (1) is a **transferee**:
- (d) **transmitted interest** means,—
  - (i) in the circumstances described in subsection (1)(a), the post-1989 forest land, registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is transferred:
  - (ii) in the circumstances described in subsection (1)(b), the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is granted or entered into:
  - (iii) in the circumstances described in subsection (1)(c), the interest in the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that has expired or been terminated:
- (e) **date of transmission** means,—
  - (i) in the circumstances described in subsection (1)(a), the date of transfer of—
    - (A) the post-1989 forest land:
    - (B) the registered forestry right over post-1989 forest land:
    - (C) the registered lease of post-1989 forest land:
    - (D) the Crown conservation contract:
  - (ii) in the circumstances described in subsection (1)(b), the date of registration of the registered forestry right over post-1989 forest land, the date of registration of the registered lease of post-1989 forest land, or the date the Crown conservation contract is entered into:
  - (iii) in the circumstances described in subsection (1)(c), the date that the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract expires or is terminated.
- (4) The transferor and transferee must give notice of the transmission to the EPA—
  - (a) within 20 working days of the date of transmission; or
  - (b) if the transmission occurred by operation of law, as soon as practicable after the date of transmission.
- (5) The notice must—

- (a) include a final forestry emissions return prepared by the transferor under section 183B for the activity—
  - (i) that covers each CAA1; and
  - (ii) that uses the date of transmission as the **relevant date**; and
- (b) include in that return a new unit balance report prepared by the transferor under section 185 for the activity that covers the following carbon accounting areas (each a **CAA2**):
  - (i) for each CAA1 where the transmitted interest applies to its entire area, a **transferee CAA2** with the same boundaries as the CAA1:
  - (ii) for each other CAA1,—
    - (A) a **transferee CAA2** for the part of the CAA1 to which the transmitted interest relates; and
    - (B) a **transferor CAA2** for the rest of the CAA1.
- (6) The notice must be—
  - (a) in the prescribed form; and
  - (b) accompanied by any prescribed fees or charges and any prescribed information; and
  - (c) signed by both the transferor and the transferee.
- (7) However, if the transmitted interest is part of a deceased participant's estate,—
  - (a) for the transfer to the executor or administrator,—
    - (i) subsections (4) to (6) do not apply (so that no notice, final forestry emissions return, or new unit balance report is required); but
    - (ii) section 187A(2)(b) and (c) and (3) still applies; and
  - (b) for the transfer from the executor or administrator to a successor,—
    - (i) the transferee (not the transferor) must prepare the final forestry emissions return and new unit balance report required by subsection (5); and
    - (ii) for the purposes of those documents, the CAA1s are the CAA1s that relate to the transfer to the executor or administrator; and
  - (c) in every case, the executor or administrator of more than 1 deceased participant's estate is treated under this Act as if they were a separate participant for each of those estates.
- (8) To avoid doubt,—
  - (a) for the purposes of section 54(4), but subject to section 187D, a transferor continues to be liable in respect of any obligations that arose in relation to the CAA1 while the transferor was a participant in respect of the post-1989 forest land to which the transmitted interest relates (for

example, in respect of the submitting of returns and surrendering of units); and

- (b) a transferor is not required to notify the EPA separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity; and
- (c) the EPA is not required to notify any person under section 182C(6)(a) of the registration of the transferee under section 57 if that registration is in accordance with this section.

### **187A Effect of transmission of interest in post-1989 forest land**

- (1) This section applies if notice of a transmission is given to the EPA in accordance with section 187, including a final forestry emissions return (for the CAA1s) and a new unit balance report (for the CAA2s).
- (2) Starting on the date of transmission,—
  - (a) the emissions return is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 184D); and
  - (b) the transferee becomes a participant on the transferee CAA2s in the relevant activity referred to in the fourth column of the table in section 187(1); and
  - (c) the transferor,—
    - (i) if there is 1 or more transferor CAA2s, is a participant in the relevant activity described in section 187(1) on the transferor CAA2s (instead of the CAA1s); or
    - (ii) otherwise, ceases to be a participant in that activity on the CAA1s; and
  - (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.

#### *Non-compliance for transmitted interests*

### **187B EPA may act if person fails to give notice of transmitted interest**

- (1) This section applies if—
  - (a) the EPA is satisfied that a notice has not been given in accordance with section 187(4) (for a transmission of interest); and
  - (b) section 187D (for 1 or more transmissions of interest after that first one) does not apply to the transmission.

- (2) In particular, this section applies to whichever of the following notices (forming part of that overall notice required by section 187(4)) has not been given in accordance with that provision (each a **failed notice**):
- (a) the part that requires information from the transferor (the **transferor notice**);
  - (b) the part that requires information from the transferee (the **transferee notice**).
- EPA may correct matters*
- (3) The EPA may act under section 187C(2) and (3) in relation to a failed notice if—
- (a) the EPA notifies the transferor or transferee of its intention to do so; and
  - (b) the EPA specifies the following deadline for them to give or correct the required notice: the end of the 90th working day after the EPA gives its notice; and
  - (c) they do not give or correct the required notice by the deadline.
- EPA may correct matters, remove relevant registration after transmission registered, or do both*
- (4) The EPA may act under 1 or both of section 187C(2) and (3) and section 187C(4) and (5) in relation to a failed notice if—
- (a) the following requirements are met:
    - (i) the EPA notifies the transferor or transferee of its intention to do so; and
    - (ii) the EPA specifies the following deadline for them to give or correct the required notice:
      - (A) 6 months after the end of the mandatory emissions return period in which the date of transmission falls; or
      - (B) if the EPA gives its notice after the deadline in subparagraph (A), the end of the 90th working day after the EPA gives its notice; and
    - (iii) they do not give or correct the required notice by the deadline; or
  - (b) the EPA is unable to notify the transferor or transferee of its intention to do so because it is not reasonably practicable to identify or locate them or their address.
- EPA may remove relevant registration where transmission not registered*
- (5) The EPA may act under section 187C(6) and (7) in relation to a failed notice if—
- (a) the following requirements are met:
    - (i) the EPA notifies the transferor or transferee of its intention to do so; and

- (ii) the EPA specifies the following deadline for them to give or correct the required notice:
    - (A) 6 months after the end of the mandatory emissions return period in which the date of transmission falls; or
    - (B) if the EPA gives its notice after the deadline in subparagraph (A), the end of the 90th working day after the EPA gives its notice; and
  - (iii) they do not give or correct the required notice by the deadline; or
  - (b) the EPA is unable to notify the transferor or transferee of its intention to do so because it is not reasonably practicable to identify or locate them or their address.
- (6) However, where this section also applies to 1 or more other transmissions of interest for different parts of the same CAA1, the EPA must not act under section 187C(6) and (7) unless it is authorised to do so (by satisfying subsection (5) of this section) in respect of both the transferor and transferee of all of the transmissions.
- Transferor or transferee gives or corrects notice*
- (7) If the transferor or transferee gives or corrects the required notice by the deadline specified in a notice given by the EPA under this section, their notice must be treated as having been given to the EPA—
- (a) in accordance with section 187(4); and
  - (b) on the last day on which it could have been given under that provision.

### **187C How EPA may act**

- (1) In acting under this section in relation to a failed notice, the EPA may—
- (a) use subsections (2) and (3) to correct matters:
  - (b) use subsections (4) and (5) to remove registration in relation to relevant CAA2s (after the transmission is registered):
  - (c) use subsections (6) and (7) to remove registration in relation to relevant CAA1s (where the transmission is not registered).

#### *Correcting matters*

- (2) The EPA may,—
- (a) if the failed notice has not been given, prepare the notice that ought to have been given; or
  - (b) if the failed notice has been given but is not complete, complete the notice.
- (3) The EPA may do the following when preparing or completing the notice:
- (a) if the notice must include an emissions return (including any new unit balance report), the EPA may apply—

- (i) section 120 to amend an emissions return that was included; or
  - (ii) section 121 to assess the matters that should have been in an emissions return that was not included; and
- (b) if the notice must include any other information, the EPA may prepare or complete that information by making any required assumptions or estimates.

*Removing registration for relevant areas after transmission registered*

- (4) If the transmission of interest has had effect in accordance with section 187A, the EPA may amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record that—
- (a) the transferee ceased to be a participant in the relevant activity on each transferee CAA2 immediately after becoming a participant for those, if the transferee notice is a failed notice;
  - (b) the transferor ceased to be a participant in the relevant activity on the transferor CAA2s immediately after becoming a participant for those, if—
    - (i) there are 1 or more transferor CAA2s; and
    - (ii) the transferor notice is a failed notice.
- (5) If the EPA acts under subsection (4),—
- (a) the person who ceases to be a participant on certain CAA2s is liable to surrender the number of New Zealand units equal to the unit balance of each of those CAA2s (calculated under the last emissions return submitted for the CAA2); and
  - (b) *see* sections 182D and 182E, which require notice to the participant and notice to interested parties, if any.

*Removing registration for relevant areas where transmission not registered*

- (6) If the transmission of interest has not had effect in accordance with section 187A, the EPA may amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record that the transferor ceased to be a participant in the relevant activity in the CAA1s on the date of transmission.
- (7) If the EPA acts under subsection (6),—
- (a) the transferor is liable to surrender the number of New Zealand units equal to the unit balance of each of those CAA1s (calculated under the last emissions return submitted for the CAA1); and
  - (b) *see* sections 182D and 182E, which require notice to the participant and notice to interested parties, if any.

**187D EPA may attribute liability and entitlement to final transferee after earlier non-compliant transmission**

- (1) This section applies if a person would have been a transferee of a transmitted interest (the **final transmission**) under section 187 had it not been for—
  - (a) the failure of any person to give notice in accordance with section 187(4) for an earlier transmission of interest (the **first transmission**); and
  - (b) if there were 1 or more other transmissions of interest between the first and final transmissions, those other transmissions not becoming subject to (and compliant with) the requirements of section 187 after that failure.
- (2) The EPA must treat the transferee of the final transmission as if they were liable to surrender units for all emissions, and entitled to receive units for all removals, from the land in their transferee CAA2s in the period that—
  - (a) starts immediately after the emissions return period of the last emissions return submitted for the CAA1s of the first transmission; and
  - (b) ends on the date of transmission of the final transmission.
- (3) The EPA must do so by acting under section 187C(2) to (5), which applies with any required modifications, to the extent required to—
  - (a) calculate that liability and entitlement; and
  - (b) amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record that the transferee is a participant in the relevant activity on the transferee CAA2s.
- (4) The EPA must also act under section 187C(2) to (5), which applies with any required modifications, to the extent required to do 1 or both of the following for any transferor CAA2s that derive, during the first or any other transmission, from the land in the CAA1s of the first transmission:
  - (a) calculate the liability and entitlement of the transferor of the transferor CAA2;
  - (b) amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record that the transferor is a participant in the relevant activity in the transferor CAA2.

*Application to reconfigure carbon accounting areas for standard or permanent forestry*

**188 Application to reconfigure carbon accounting areas for standard or permanent forestry**

- (1) A participant in an activity of standard forestry or permanent forestry may apply to reconfigure any of the carbon accounting areas for the activity.
- (2) The application must—
  - (a) specify the activity; and

- (b) specify the land to which the application relates, which must be 1 or more whole carbon accounting areas for the activity (each a **CAA1**); and
  - (c) include a final forestry emissions return prepared under section 183B for the activity—
    - (i) that covers the **CAA1s**; and
    - (ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and
  - (d) include in that return a new unit balance report prepared under section 185 for the activity that covers 1 or more carbon accounting areas (**CAA2s**) consisting of all the same land in the **CAA1s**.
- (3) The application must also—
- (a) be signed by the applicant; and
  - (b) be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (4) However, subsection (1) is subject to the following provisions (which limit reconfiguration):
- (a) section 191H (carbon accounting areas (averaging));
  - (b) section 192G (P89 offsetting (approved) land);
  - (c) section 193H (temporary adverse event land).

#### **188A Criteria to reconfigure carbon accounting areas for standard or permanent forestry**

- (1) If a person submits an application under section 188 (for a participant in an activity of standard forestry or permanent forestry to reconfigure carbon accounting areas for the activity), the EPA,—
- (a) if satisfied that the criteria in subsection (2) are met, must approve the application; or
  - (b) otherwise, may decline the application.
- (2) The criteria are—
- (a) that the application complies with section 188; and
  - (b) that the applicant has paid any prescribed fees or charges; and
  - (c) that any other criteria prescribed in regulations made under section 168(1)(naa) are met.
- (3) In considering the application, the EPA must treat the land to which it relates as post-1989 forest land.



**188B Approval of application to reconfigure carbon accounting areas for standard or permanent forestry**

- (1) This section applies if the EPA approves a person's application under section 188 (for a participant in an activity of standard forestry or permanent forestry to reconfigure carbon accounting areas for the activity).
- (2) Starting on the day on which the application was submitted to the EPA,—
  - (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 184D); and
  - (b) the person is a participant in the activity on the CAA2s (instead of the CAA1s); and
  - (c) the person is not liable to surrender the unit balance of each CAA1; and
  - (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.

**188C Restriction start date of reconfigured carbon accounting area for permanent forestry**

- (1) This section applies if a person reconfigures carbon accounting areas for permanent forestry by approval of an application under section 188.
- (2) For the purposes of section 190, the restriction start date of a CAA2 is the latest restriction start date of the CAA1s that overlap with the CAA2 (because any land in the CAA1 became land in the CAA2).

*Application to change activity on post-1989 forest land*

**189 Application to change activity on post-1989 forest land**

- (1) A participant in an initial activity on any post-1989 forest land may apply to become a participant in—
  - (a) a final activity on the land, if the initial activity is standard forestry or permanent forestry; or
  - (b) 1 or more final activities on the land, if the initial activity is PFSI activity.
- (2) To avoid doubt, a change in activity carries over the unit balance of each carbon accounting area (or the net number of units transferred for PFSI land) from the initial activity to the final activity.

*Change from standard or permanent forestry*

- (3) If the initial activity is standard forestry or permanent forestry, the application must—

- (a) specify the initial activity and the final activity; and
- (b) specify the land to which the application relates, which must be 1 or more whole carbon accounting areas for the initial activity (each a **CAA1**); and
- (c) include a final forestry emissions return prepared under section 183B for the initial activity—
  - (i) that covers the CAA1s; and
  - (ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and
  - (iii) that includes any liability required to be included by section 189F(4) or 189G(4); and
- (d) include in that return a new unit balance report prepared under section 185 for the final activity that covers the following 1 or more carbon accounting areas (each a **CAA2**):
  - (i) CAA2s that have the same boundaries as the CAA1s, to the extent that subparagraph (ii) does not apply:
  - (ii) if the clear-fell exception applies and any land that is now in 1 or more CAA1s was clear-felled after the forest sink covenant was terminated,—
    - (A) a CAA2 for all of the land that was clear-felled; and
    - (B) a CAA2 for each CAA1 to the extent it was not clear-felled.

*Change from PFSI activity*

- (4) If the initial activity is PFSI activity, the application must—
  - (a) specify the initial activity and the 1 or more final activities; and
  - (b) specify the land to which the application relates (the **PFSI land**), which must be all of the forest land that a forest sink covenant is registered against; and
  - (c) include an emissions return prepared under section 189C for the initial activity that covers the PFSI land, and specifying the liability (if any) calculated under section 189E; and
  - (d) include in that return a new unit balance report prepared under section 189D for each final activity that covers the following carbon accounting areas (each a **CAA2**):
    - (i) if the final activity for any of the land is standard forestry, one CAA2 for all of that land;
    - (ii) if the final activity for any of the land is permanent forestry, one CAA2 for all of that land, unless subparagraph (iii) applies:

(iii) if the final activity for any of the land is permanent forestry (the **PF land**) and any of the PF land was clear-felled after the forest sink covenant was terminated,—

- (A) one CAA2 for all of the PF land that was clear-felled; and
- (B) one CAA2 for the rest of the PF land.

*General provisions*

(5) The application must also—

- (a) be signed by the applicant; and
- (b) be submitted—
  - (i) in the prescribed manner and format; and
  - (ii) together with the prescribed fee (if any); and
  - (iii) together with the prescribed information (if any).

(6) The following table specifies the matters referred to in this section (under the relevant headings):

Previous activity	Initial activity	Final activity	Clear-fell exception
	PFSI activity	Standard forestry	
	PFSI activity	Permanent forestry	Exception applies
	Standard forestry	Permanent forestry	
PFSI activity	Standard forestry	Permanent forestry	Exception applies
	Permanent forestry	Standard forestry	

(7) As indicated in the table, **the clear-fell exception applies** to—

- (a) a change from PFSI activity (initial activity) to permanent forestry (final activity):
- (b) a change from standard forestry (initial activity) to permanent forestry (final activity), if the activity on the land was previously changed from PFSI activity (previous activity) to standard forestry under this section.

**189A Criteria to change activity on post-1989 forest land**

(1) If a person submits an application under section 189 (for a participant in an initial activity on post-1989 forest land to become a participant in a final activity on the land), the EPA,—

- (a) if satisfied that the criteria in subsection (2) are met, must approve the application; or
- (b) otherwise, may decline the application.

(2) The criteria are—

- (a) that the application complies with section 189; and
- (b) that the applicant has paid any prescribed fees or charges; and

- (c) if the initial activity is PFSI activity, that the EPA is satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of the land under section 182A; and
  - (d) that any other criteria prescribed in regulations made under section 168(1)(naa) are met.
- (3) In considering the application,—
- (a) if the initial activity is standard forestry or permanent forestry, the EPA must treat the land to which the application relates as post-1989 forest land; or
  - (b) if the initial activity is PFSI activity, the EPA must treat the forest land to which the application relates as post-1989 forest land.

### **189B Approval of application to change activity on post-1989 forest land**

- (1) This section applies if the EPA approves a person's application under section 189 (for a participant in an initial activity on post-1989 forest land to become a participant in a final activity on the land).
- (2) If the initial activity is standard forestry or permanent forestry, then, starting on the day on which the application was submitted to the EPA,—
- (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 184D); and
  - (b) the person ceases to be a participant in the initial activity on the CAA1s; and
  - (c) the person becomes a participant in the final activity on the CAA2s; and
  - (d) the person is not liable to surrender the unit balance of each CAA1; and
  - (e) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (3) If the initial activity is PFSI activity, then, starting on the day on which the application was submitted to the EPA,—
- (a) the forest sink covenant registered against the PFSI land is terminated; and
  - (b) if section 189E applies to a CAA2, the person is liable to surrender the number of units (if any) calculated under that section and specified in the emissions return; and
  - (c) for each CAA2, the person becomes a participant in the final activity specified for that CAA2 in the application; and
  - (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.

- (4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.

**189C Emissions return for application to change from PFSI activity**

- (1) An emissions return prepared under this section must—
- (a) specify the PFSI land that the return covers; and
  - (b) specify that the person carried out PFSI activity on the PFSI land; and
  - (c) set out the calculation under subsection (2) of the PFSI unit balance from transfers of units while the forest sink covenant was registered against the PFSI land; and
  - (d) if applicable, set out the calculation under section 189E of the person's liability (s) for the PFSI land.
- (2) The **PFSI unit balance** of the PFSI land (g) is calculated as follows:

$$g = r - e$$

where—

r is the number of units that were transferred by the Crown in respect of the PFSI land while the forest sink covenant was registered against it

e is the number of units that were transferred to the Crown in respect of the PFSI land while the forest sink covenant was registered against it.

- (3) The emissions return must—
- (a) include the prescribed information (if any); and
  - (b) be signed by the participant; and
  - (c) when submitted under the relevant provision, be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).

**189D New unit balance reports for application to change from PFSI activity**

- (1) A new unit balance report prepared under this section for a final activity must—
- (a) specify the CAA2 that the report covers or, if the final activity is permanent forestry to which section 189(4)(d)(iii) applies, specify and define each CAA2 that the report covers; and
  - (b) specify the PFSI land (all or part of which will form the CAA2 or CAA2s); and
  - (c) set out the calculation under this section of the opening unit balance and, if applicable, the provisional unit balance of the CAA2 or each CAA2.

*One final activity and 1 CAA2*

- (2) If there is only 1 final activity for the PFSI land and 1 CAA2 (formed from all the PFSI land), and section 189E does not apply, the **opening unit balance** of the CAA2 (**v**) is the PFSI unit balance (**g**) (under the emissions return for the PFSI land that includes the report).
- (3) If there is only 1 final activity for the PFSI land and 1 CAA2 (formed from all the PFSI land), and section 189E applies,—
- (a) the **provisional unit balance** of the CAA2 (**h**) is the PFSI unit balance (**g**) (under the emissions return for the PFSI land that includes the report); and
- (b) the **opening unit balance** of the CAA2 (**v**) is calculated as follows:

$$v = h - s$$

where—

**h** is the provisional unit balance of the CAA2

**s** is the number of units (if any) that the person is liable to surrender under section 189E.

*Two final activities or 2 CAA2s*

- (4) Subsections (5) and (6) apply if there are 2 final activities for the PFSI land or 2 CAA2s for a final activity.
- (5) If section 189E does not apply to a particular CAA2, the **opening unit balance** of that CAA2 (**v**) is calculated as follows:

$$v = g \times (a \div b)$$

where—

**g** is the PFSI unit balance (under the emissions return for the PFSI land that includes the report)

**a** is the area of the CAA2 (in hectares)

**b** is the area of the PFSI land (in hectares).

- (6) If section 189E applies to a particular CAA2,—
- (a) the **provisional unit balance** of that CAA2 (**h**) is calculated as follows:

$$h = g \times (a \div b)$$

where—

**g** is the PFSI unit balance (under the emissions return for the PFSI land that includes the report)

**a** is the area of the CAA2 (in hectares)

**b** is the area of the PFSI land (in hectares); and

- (b) the **opening unit balance** of that CAA2 (**v**) is calculated as follows:

$$v = h - s$$

where—

h is the provisional unit balance of the CAA2

s is the number of units (if any) that the person is liable to surrender under section 189E.

**189E Liability to surrender units on transfer from PFSI activity to standard forestry in carbon accounting area (averaging)**

- (1) This section applies to a CAA2 if—
  - (a) a person submits an application under section 189; and
  - (b) the initial activity is PFSI activity and the final activity for the CAA2 is standard forestry; and
  - (c) on the constitution date for the CAA2, any land in it (**area A**) will have a determined carbon stock greater than its nominal average carbon stock.

- (2) If the EPA approves the application, the person is liable to surrender the number of units (**s**) calculated as follows:

$$s = (d - n) \times a$$

where—

d is the determined carbon stock of area A, determined as if it were in a carbon accounting area (averaging) (in tonnes per hectare)

n is what the nominal average carbon stock for area A will be when the CAA2 is constituted (in tonnes per hectare)

a is the area (in hectares) of area A.

- (3) If the CAA2 will have 2 or more areas of land that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), subsection (2) applies separately in respect of each area.
- (4) However, if the s calculated under subsection (2), or the sum of each s where subsection (3) applies, is greater than the provisional unit balance of the CAA2 under section 189D(3)(a) or (6)(a), then s is recalculated as that provisional unit balance.
- (5) The liability to surrender units under this section—
  - (a) is to be treated as a liability for emissions from the PFSI land; and
  - (b) must be included in the emissions return under section 189(4)(c) as the person's liability for the land.
- (6) In this section, terms defined in section 191 have the meanings given in that section.

**189F Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging)**

- (1) This section applies if—

- (a) a person submits an application under section 189; and
  - (b) the initial activity is permanent forestry and the final activity is standard forestry; and
  - (c) on the constitution date for any CAA2, any land in it (**area A**) will have a determined carbon stock greater than its nominal average carbon stock.
- (2) If the EPA approves the application, the person is liable to surrender the number of units (**s**) calculated as follows:

$$s = (d - n) \times a$$

where—

- d is the determined carbon stock of area A, determined as if it were in a carbon accounting area (averaging) (in tonnes per hectare)
  - n is what the nominal average carbon stock for area A will be when the CAA2 is constituted (in tonnes per hectare)
  - a is the area (in hectares) of area A.
- (3) If the CAA2 will have 2 or more areas of land that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), subsection (2) applies separately in respect of each area.
- (4) The liability to surrender units equal to the **s** calculated under subsection (2), or the sum of each **s** where subsection (3) applies,—
- (a) is to be treated as a liability for emissions from the CAA1 that includes area A during the emissions return period for the emissions return under section 189(3)(c); and
  - (b) must be included in that emissions return as part of the calculation under section 184A of the person's net liability or entitlement required by section 183B(1)(c)(iv).
- (5) In this section, terms defined in section 191 have the meanings given in that section.

**189G Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry**

- (1) This section applies if—
- (a) a person submits an application under section 189; and
  - (b) the initial activity is standard forestry and the final activity is permanent forestry; and
  - (c) any land (**area A**) in a CAA1 that is a carbon accounting area (averaging)—
    - (i) has a subsequent rotation forest; and



- (ii) has a determined carbon stock that is less than the nominal average carbon stock for area A.
- (2) If the EPA approves the application, the person is liable to surrender the number of units (**s**) calculated as follows:
- $$s = (n - d) \times a$$
- where—
- n is the nominal average carbon stock for area A (in tonnes per hectare)
- d is the determined carbon stock of area A (in tonnes per hectare)
- a is the area (in hectares) of area A.
- (3) If the CAA1 has 2 or more areas of subsequent rotation forest that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), subsection (2) applies separately in respect of each area.
- (4) The liability to surrender units equal to the **s** calculated under subsection (2), or the sum of each **s** where subsection (3) applies,—
- (a) is to be treated as a liability for emissions from the CAA1 during the emissions return period for the emissions return under section 189(3)(c); and
- (b) must be included in that emissions return as part of the calculation under section 184A of the person's net liability or entitlement required by section 183B(1)(c)(iv).
- (5) In this section, terms defined in section 191 have the meanings given in that section.

*Restrictions for permanent forestry land*

**190 Permanent forestry period for land**

- (1) If a person becomes registered as a participant carrying out permanent forestry in respect of any land, the **permanent forestry period** for the land is—
- (a) an initial period of 50 years starting on the restriction start date; and
- (b) any 1 or more consecutive periods of a further 25 years for which a participant chooses the option under section 190J(1)(a).
- (2) The **restriction start date** for the land is specified in column 4 of the table, which applies to a situation as follows:
- (a) if no initial activity is specified (in column 2), it means the person became registered for the permanent forestry without reference to any initial activity on the land:
- (b) if an initial activity is specified (in column 2) and no previous activity is specified (in column 1), it means—

- (i) the person became registered for the permanent forestry by acceptance of an application under section 189 to change from the initial activity; and
    - (ii) the person previously became registered for the initial activity without reference to any previous activity:
  - (c) if an initial activity is specified (in column 2) and a previous activity is specified (in column 1), it means—
    - (i) the person became registered for the permanent forestry by acceptance of an application under section 189 to change from the initial activity; and
    - (ii) the person previously became registered for the initial activity by acceptance of an application under section 189 to change from the previous activity.
- (3) However, as indicated in column 5 of the table, the **restriction start date** is the registration date for the CAA2 formed from clear-felled land if—
  - (a) the clear-fell exception applied in the application under section 189 to change from the initial activity; and
  - (b) any of the land in the application was clear-felled after the forest sink covenant was terminated.
- (4) After any land's permanent forestry period has started, its permanent forestry period—
  - (a) may change under section 188C (if carbon accounting areas are reconfigured); but
  - (b) does not change if the land becomes part of a new carbon accounting area when—
    - (i) a person ceases to be a participant on other land because of section 182G (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
    - (ii) an interest is transmitted under section 187; or
    - (iii) other land is removed in accordance with section 190B (an exception requiring the Minister's approval); or
    - (iv) any of the land in the carbon accounting area becomes temporary adverse event land under section 193C.
- (5) In this section,—
  - covenant date** means the date of registration of the forest sink covenant on land
  - registration date** means the date on which the person became registered as a participant in permanent forestry on the land.

(6) The following table contains the columns referred to in this section:

Column 1	Column 2	Column 3	Column 4	Column 5
Previous activity	Initial activity	Final activity	Restriction start date	Later restriction start date (for clear-felled land)
		Permanent forestry	Registration date	
	PFSI activity	Permanent forestry	Covenant date	Registration date
	Standard forestry	Permanent forestry	Registration date	
PFSI activity	Standard forestry	Permanent forestry	Covenant date	Registration date

### 190A Restriction on ceasing to be registered for permanent forestry

(1) The only ways in which a person may cease to be registered as a participant carrying out permanent forestry in respect of any land are as follows:

- (a) the person is exempted from this section by an Order in Council under section 60A:
- (b) the person ceases to be a participant because of—
  - (i) section 182G (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
  - (ii) section 193L(2)(e) (for temporary adverse event land that becomes permanently affected land):
- (c) the land becomes land for which a transferee under section 187 is instead registered as carrying out permanent forestry (if there is a transmitted interest):
- (d) the registration is removed in accordance with section 190B (an exception requiring the Minister's approval):
- (e) the registration for the whole carbon accounting area that includes the land is removed because of section 190G (after land is deforested):
- (f) after the permanent forestry period ends,—
  - (i) the EPA removes the registration under section 190K (because the person chooses that option, for example):
  - (ii) the person changes from permanent forestry to standard forestry on the land by application under section 189.

(2) This section overrides any other provision of this Act.

### 190B Minister may approve removal of land from permanent forestry

(1) This section sets out an exception by which a person can cease to be registered as a participant carrying out permanent forestry in respect of any land (the **removal of land**), whether all or part of a carbon accounting area.

- (2) The person must—
  - (a) first obtain the Minister’s approval in writing to the removal of land; and
  - (b) then apply for the removal of land under section 182F(4)(a)(i) or (ii) and comply with sections 186 and 186A or sections 186B and 186C (whichever apply).
- (3) The provisions referred to in subsection (2)(b), and the provisions applied by them, apply as if the land subject to the removal of land were forest land.
- (4) The Minister may approve the removal of land only to the extent that the Minister is satisfied that—
  - (a) it would be unreasonable in the circumstances to require the person to remain registered in respect of the land; and
  - (b) the removal will not materially undermine the environmental integrity of 1 or both of the following:
    - (i) the activity of permanent forestry as a whole (not just by that person);
    - (ii) the emissions trading scheme.
- (5) In considering those matters, the Minister must have regard to—
  - (a) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme; and
  - (b) the relative costs of approving or not approving the removal of land, and who bears the costs; and
  - (c) any other matters the Minister considers relevant.

#### **190C Exception from prohibition on clear-felling and deforestation**

- (1) Sections 190D to 190H do not apply to—
  - (a) land for which a person ceases to be a participant because of—
    - (i) section 182G (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
    - (ii) section 193L(2)(e) (for temporary adverse event land that becomes permanently affected land); or
  - (b) temporary adverse event land.
- (2) However, if land ceases to be temporary adverse event land and section 193Q applies, sections 190D to 190H do apply to the land.
- (3) For that purpose,—
  - (a) any clear-felling or deforestation that occurred while the land was temporary adverse event land is to be treated as having occurred on the date the land ceased to be temporary adverse event land; but

- (b) any penalty must be calculated by reference to the pre-event carbon stock rate for the land under section 193A(3)(d)(i).

**190D Permanent forestry land must not be clear-felled**

- (1) A person who is registered as a participant carrying out permanent forestry on any land must ensure that the land is not clear-felled.
- (2) If any of the land is clear-felled (the **clear-felled land**),—
  - (a) the person must, as soon as practicable, notify the EPA of the clear-felling; and
  - (b) the EPA must apply section 190E (pecuniary penalty for clear-felling) when required by that section.

**190E Pecuniary penalty for clear-felling of permanent forestry land**

- (1) This section applies after—
  - (a) a person has notified the EPA of clear-felling under section 190D(2); and
  - (b) a final forestry emissions return has been submitted that covers the 1 or more carbon accounting areas that include the clear-felled land.
- (2) The EPA must apply to the court for a pecuniary penalty order against the person for contravening section 190D(1) unless the EPA is satisfied that the defence applies.
- (3) The court—
  - (a) must determine whether the person has contravened section 190D(1); and
  - (b) must determine whether the person has established, on the balance of probabilities, that the defence applies; and
  - (c) if it is satisfied that the person has contravened the provision without a defence,—
    - (i) must make a declaration of contravention; and
    - (ii) must order the person to pay a pecuniary penalty to the Crown.
- (4) The amount of the pecuniary penalty—
  - (a) must be the deemed value of the part of the forest on the clear-felled land that was cleared or killed below the requirement for tree crown cover from forest species of 30% in each hectare, as determined in accordance with regulations; but
  - (b) may be reduced, at the court's discretion, if the court is satisfied that the person has a reasonable excuse for the contravention.
- (5) In this section, **defence** means that—
  - (a) the clear-felling was beyond the person's control; and
  - (b) the person could not reasonably have foreseen the clear-felling; and

- (c) the person could not reasonably have taken steps to prevent the clear-felling.

### 190F Regulations for pecuniary penalty for clear-felling

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes in relation to a pecuniary penalty under section 190E:
  - (a) setting out how to calculate the deemed value of the part of the forest on clear-felled land that was cleared or killed below the requirement for tree crown cover from forest species of 30% in each hectare:
  - (b) specifying different factors that affect the calculation of the deemed value, for example,—
    - (i) the area of the clear-felled land, in hectares:
    - (ii) the geographic region of the clear-felled land:
    - (iii) the forest species, or the type of forest, that was on the clear-felled land:
    - (iv) the age or size of the forest that was on the clear-felled land:
  - (c) providing for any other matters contemplated by section 190E, necessary for its administration, or necessary for giving it full effect.
- (2) Before recommending the making of regulations under this section, the Minister must—
  - (a) consider—
    - (i) the differences in value between forests of different types or ages or with trees of different forest species or sizes; and
    - (ii) the market value of the wood and other products removed from forests, and the historic variation in the market value; and
    - (iii) the need to assign an appropriate value for forests with no market, or for which no market price is available, so as to deter clear-felling on all land in permanent forestry; and
    - (iv) any need to deem the volume of the harvest from a forest; and
  - (b) comply with the consultation requirements in sections 3A and 3B.
- (3) Regulations made under this section come into force 3 months after the date of their publication under the Legislation Act 2019, or on any later date specified in the regulations.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

#### Legislation Act 2019 requirements for secondary legislation made under this section

**Publication** PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 190F(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 190F(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **190G Permanent forestry land must not be deforested**

- (1) A person who is registered as a participant carrying out permanent forestry on any land must ensure that the land is not deforested.
- (2) If any of the land is deforested (the **deforested land**),—
  - (a) the person ceases to be a participant in permanent forestry in respect of each carbon accounting area that includes any deforested land (each a **CAA1**); and
  - (b) accordingly,—
    - (i) the person must notify the EPA under section 182F(4)(b) that they have ceased to carry out the activity on the CAA1s; and
    - (ii) sections 186 and 186A apply in respect of the CAA1s; and
  - (c) the EPA must apply section 190H (pecuniary penalty for deforestation).

### **190H Pecuniary penalty for deforestation of permanent forestry land**

- (1) If this section applies, the EPA must apply to the court for a pecuniary penalty order against the person for contravening section 190G(1) unless the EPA is satisfied that the defence applies.
- (2) The court—
  - (a) must determine whether the person has contravened section 190G(1); and
  - (b) must determine whether the person has established, on the balance of probabilities, that the defence applies; and
  - (c) if it is satisfied that the person has contravened the provision without a defence,—
    - (i) must make a declaration of contravention; and
    - (ii) must order the person to pay a pecuniary penalty to the Crown.
- (3) The amount of the pecuniary penalty, in dollars (**a**), must be calculated as follows:

$$a = b \times c$$

where—

- b is the number of units equal to the sum of the unit balance of each CAA1 that was calculated under the last emissions return submitted for the CAA1 before the clearing that caused the deforestation
  - c is the price, in dollars, of carbon per tonne on the final date on which deforestation occurred, as set by or in accordance with regulations made under section 30W.
- (4) However, the amount may be reduced, at the court's discretion, if the court is satisfied that the person has a reasonable excuse for the contravention.
- (5) In this section, **defence** means that—
- (a) the deforestation was beyond the person's control; and
  - (b) the person could not reasonably have foreseen the deforestation; and
  - (c) the person could not reasonably have taken steps to prevent the deforestation.

#### **190I Due dates for payment of penalties and recovery of EPA's costs**

- (1) This section applies if the court orders that a person pay a pecuniary penalty under section 190E or 190H.
- (2) The court must also order that the penalty be applied first to pay the EPA's actual costs in bringing the proceedings.
- (3) The person must pay the penalty—
- (a) within 20 working days after the date on which the order is made, or by any later date specified by the order; or
  - (b) by the date or dates agreed under a deferred payment arrangement under section 135A.

#### **190J Option must be chosen at end of permanent forestry period**

- (1) After the permanent forestry period ends, the participant carrying out permanent forestry on post-1989 forest land must **choose an option** for each carbon accounting area (each a **CAA1**) by doing 1 of the following:
- (a) giving notice to the EPA that they will carry out permanent forestry on the CAA1 for a further 25 years; or
  - (b) removing the CAA1 from permanent forestry by any means available under this Act.
- (2) The participant must choose an option before or when the first of the following documents is submitted for the CAA1:
- (a) a provisional forestry emissions return:
  - (b) a final forestry emissions return under section 183A for the mandatory emissions return period in which the permanent forestry period ended.
- (3) If the participant does not choose an option before or when submitting an emissions return described by subsection (2), or does not submit the final forestry



emissions return described by subsection (2), the EPA must give notice to the participant.

- (4) The EPA's notice must state—
- (a) that the participant must choose an option for each CAA1 within 30 working days after the EPA gave its notice; and
  - (b) that a CAA1 will be removed from permanent forestry if the participant does not choose an option for it by then.

#### **190K Removal of carbon accounting area from permanent forestry**

- (1) This section applies to a CAA1 if the participant does not choose an option for the CAA1 by the deadline in the EPA's notice given under section 190J(3).
- (2) As a result,—
- (a) the participant ceases to be a participant in permanent forestry on the CAA1; and
  - (b) the participant is liable to surrender the number of units equal to the unit balance of the CAA1 (calculated under the last emissions return submitted for the CAA1).
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.

#### Subpart 5—Averaging accounting methodology

#### **191 Interpretation**

In this subpart,—

**carbon accounting area (averaging)** has the meaning given in section 191B(2)

**DCS** (being the determined carbon stock for land) has the meaning given in section 191D(2)

**first rotation forest** has the meaning given in section 191C(3) and (4)

**NACS** (being the nominal average carbon stock for land) has the meaning given in section 191D(3)

**subsequent rotation forest** has the meaning given in section 191C(6)

**TACS** (being the typical average carbon stock for land) has the meaning given in section 191D(4).

#### **191A Overview of averaging accounting methodology**

- (1) The object of averaging accounting methodology is to account for emissions and removals from an activity of standard forestry—

- (a) by reference to the expected long-term average level of carbon stock of the land over multiple forest rotations, rather than by reference to short-term changes in the actual carbon stock of the land (as required by sections 63 and 64); and
  - (b) in a way that achieves approximately the same result in the long term as would have been achieved using carbon stock change accounting but without the repeated receipt and surrender of units for each forest rotation.
- (2) The number of units that a participant for a carbon accounting area (averaging) is entitled to receive, or is liable to surrender,—
- (a) is determined by reference to the expected long-term average carbon stock of the land over multiple forest rotations and changes in that average (*see* sections 191E and 191F); and
  - (b) will vary depending on whether the land has a first rotation forest or a subsequent rotation forest (*see* section 191C).

#### **191B Averaging accounting applies to carbon accounting areas (averaging)**

- (1) Averaging accounting methodology applies in respect of emissions and removals from an activity of standard forestry in a carbon accounting area (averaging).
- (2) A carbon accounting area in respect of which a participant is registered in respect of an activity of standard forestry is a **carbon accounting area (averaging)** if—
- (a) its constitution date is after 31 December 2022; and
  - (b) it was constituted—
    - (i) under section 182C from land that was not part of a previous carbon accounting area; or
    - (ii) under section 189B from land on which the initial activity was permanent forestry or PFSI activity; or
    - (iii) from a reconfiguration of 1 or more carbon accounting areas (averaging) (and no other land).
- (3) *See also* clause 33 of Schedule 1AA, which allows some other carbon accounting areas to be converted into carbon accounting areas (averaging).

#### **191C First rotation forest and subsequent rotation forest**

- (1) Land in a carbon accounting area (averaging) has either a first rotation forest or a subsequent rotation forest.
- (2) Different parts of a carbon accounting area (averaging) may have different rotation forests.
- (3) Land has a **first rotation forest** if—

- (a) the land has not been cleared since it became forest land; or
  - (b) the land,—
    - (i) having been forest land, was deforested; and
    - (ii) remained deforested for at least the stand-down period prescribed in regulations made under section 191I (but *see* subsection (5)); and
    - (iii) was re-established as forest land; and
    - (iv) has not been cleared since that re-establishment; or
  - (c) the land—
    - (i) is post-1989 forest land because of paragraph (a)(iii) to (vii) of the definition of post-1989 forest land in section 4; and
    - (ii) has not been cleared since it became post-1989 forest land; or
  - (d) the land is declared by regulations made under section 191I to have a first rotation forest.
- (4) However, land that would otherwise have a first rotation forest under subsection (3) does not have a first rotation forest if it is declared by regulations made under section 191I to have a subsequent rotation forest.
- (5) Subsection (3)(b)(ii) does not apply if the deforestation referred to in subsection (3)(b)(i) occurred before 1 January 2021.
- (6) Land has a **subsequent rotation forest** if it does not have a first rotation forest.

#### 191D Carbon stock measures for land

- (1) There are 3 measures of carbon stock for land in a carbon accounting area (averaging)—
- (a) the determined carbon stock:
  - (b) the nominal average carbon stock:
  - (c) the typical average carbon stock.
- (2) The determined carbon stock (**DCS**) of land is the current level of carbon stock of the land determined in accordance with the prescribed methodology.
- (3) The nominal average carbon stock (**NACS**) for land is the average carbon stock of the land if the length of each forest rotation is assumed to be equal to,—
- (a) if the land has a first rotation forest, the current age of the forest species on the land:
  - (b) if the land has a subsequent rotation forest, the prior clearing age, determined in accordance with the prescribed methodology.
- (4) The typical average carbon stock (**TACS**) for land is the average carbon stock of the land if the average length of each forest rotation is assumed to be equal to,—

- (a) if the land has a first rotation forest, the average expected rotation length for land of that kind:
  - (b) if the land has a subsequent rotation forest, the prior clearing age, determined in accordance with the prescribed methodology.
- (5) In this section,—
- average carbon stock**, of land, means the expected long-term average level of carbon stock of the land over multiple forest rotations
- prescribed methodology** means the methodology prescribed in regulations made under section 191I
- prior clearing age**, for land that has a subsequent rotation forest, means the age of the forest species that were cleared from the land at the end of the previous rotation at the time they were cleared, determined in accordance with the prescribed methodology.

#### 191E Entitlement to receive units

- (1) The participant in respect of a carbon accounting area (averaging) is entitled to receive New Zealand units for removals from the carbon accounting area in accordance with regulations made under section 191I.
- (2) In general terms, the participant will be entitled to receive units as follows:
  - (a) in the case of land that has a first rotation forest,—
    - (i) for removals that occur while the land's DCS is less than its TACS; and
    - (ii) if—
      - (A) the land's DCS is equal to or greater than its TACS; and
      - (B) the land's NACS increases to an amount that is greater than its TACS:
  - (b) in the case of land that has a second rotation forest, if its NACS increases to an amount that is greater than its TACS.
- (3) If the regulations prescribe different NACS or TACS (or both) for different classes of land, the participant may also be entitled to receive units if the land changes from one class to another with a different NACS or TACS (or both).

#### 191F Liability to surrender units

- (1) The participant in respect of a carbon accounting area (averaging) is liable to surrender units for emissions from the carbon accounting area in accordance with regulations made under section 191I.
- (2) In general terms, the participant is liable to surrender units as follows:
  - (a) in the case of land that has a first rotation forest, for emissions that occur when—
    - (i) the land's DCS is greater than its NACS; and

- (ii) the land's NACS is less than its TACS:
  - (b) in the case of land that has a subsequent rotation forest, if the land's NACS decreases to an amount that is less than its TACS.
- (3) If the regulations prescribe different NACS or TACS (or both) for different classes of land, the participant may also be liable to surrender units if the land changes from one class to another with a different NACS or TACS (or both).
- (4) The participant is also liable to surrender units if the land is deforested.

#### **191G Calculating and reporting emissions and removals**

If provided in the regulations, the participant in respect of a carbon accounting area (averaging) is not required to—

- (a) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units; or
- (b) submit emissions returns covering a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units.

#### **191H Restriction on reconfiguration**

Carbon accounting areas cannot be reconfigured (whether by application under section 188 or by any other process that requires the submission of a new unit balance report) so as to combine in a CAA2 land from a CAA1 that is a carbon accounting area (averaging) and land from a CAA1 that is not.

#### **191I Regulations for averaging**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing—
    - (i) how emissions and removals from an activity of standard forestry in a carbon accounting area (averaging) must be calculated and reported:
    - (ii) the circumstances in which a participant is or is not liable to surrender units, or entitled to receive New Zealand units, for those emissions and removals:
    - (iii) the methodology for determining the number of units the participant is entitled to receive or liable to surrender in those circumstances:
  - (b) providing that a participant for a carbon accounting area (averaging) is not required to—
    - (i) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units:

- (ii) submit emissions returns for a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units:
  - (c) for the purposes of the definition of first rotation forest (*see* section 191C),—
    - (i) prescribing the stand-down period:
    - (ii) declaring land to have a first rotation forest or a subsequent rotation forest:
  - (d) prescribing methodologies for determining DCS, NACS, TACS, and prior clearing age (*see* section 191D):
  - (e) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
- (a) for different forest species:
  - (b) for forest species of different ages:
  - (c) for different rotation periods:
  - (d) for different parts of New Zealand.
- (3) Regulations made under this section may have retrospective effect as follows:
- (a) regulations may apply on and from the commencement of the mandatory emissions return period in which they are made or a later date in that period:
  - (b) regulations made under subsection (1)(c)(i) may prescribe a stand-down period that begins before the regulations are made.
- (4) However, regulations cannot be made under subsection (1)(c)(i) that would increase the length of the stand-down period for a carbon accounting area whose constitution date is before those regulations come into force.
- (5) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (6) Regulations made under subsection (1)(b) may relate to emissions or removals that—
- (a) stem directly from an activity; or
  - (b) are associated with a product or other thing that is the subject of an activity.
- (7) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (8) *See also* sections 169 to 175 (incorporation by reference).

- (9) Regulations made under this section come into force 3 months after the date of their publication under the Legislation Act 2019, or on any later date specified in the regulations.
- (10) Regulations under this section—
- (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
  - (b) have effect in accordance with subsection (3) even if they are not yet published.

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 191I(9): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 191I(10): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Subpart 6—P89 offsetting

### 192 Interpretation

In this subpart,—

**expected carbon stock**, for P89 offsetting (forested) land, has the meaning given in section 192I

**P89 offset application** means an application to the EPA submitted under section 192A

**P89 offset application date** means the date on which a P89 offset application is submitted to the EPA under section 192A

**P89 offset date**, for P89 offsetting (approved) land, has the meaning given in section 192C(2)(g)

**P89 offset release criteria** has the meaning given in section 192I

**P89 offsetting (approved) land** means land that—

- (a) has become P89 offsetting (approved) land under section 192C(2)(f) or 192S(2)(c); and
- (b) has not ceased to be P89 offsetting (approved) land under a provision referred to in section 192D

**P89 offsetting (excess) land** means land that—

- (a) has become P89 offsetting (excess) land under section 192J(2)(a)(iii); and

(b) has not ceased to be P89 offsetting (excess) land under section 192N(3)  
**P89 offsetting (forested) land** has the meaning given in section 192J  
**P89 offsetting (unforested) land** has the meaning given in section 192J  
**P89 release criteria notice** means a notice given under section 192J(1)  
**qualifying forest land** has the meaning given in section 192J(3)  
**reference carbon stock**, for a CAA1, has the meaning given in section 192A(2)(e).

*P89 offset applications*

**192A Application to offset land for land in carbon accounting area (averaging)**

- (1) A participant in an activity of standard forestry on 1 or more carbon accounting areas (averaging) may apply to the EPA to offset other land for those areas (to transfer the unit balance from the carbon accounting areas (averaging) to the new land).
- (2) The application must—
  - (a) specify the carbon accounting areas (averaging) to which the application relates (each a **CAA1**); and
  - (b) specify the land proposed to be used to offset each CAA1; and
  - (c) include a final forestry emissions return prepared under section 183B for the activity—
    - (i) that covers the CAA1s; and
    - (ii) that uses the P89 offset application date as the **relevant date**; and
  - (d) include in that return a new unit balance report prepared under section 185 that covers 1 or more carbon accounting areas (each a **CAA2**) for each CAA1 consisting of the land specified under paragraph (b); and
  - (e) include—
    - (i) the carbon stock of each CAA1 on the P89 offset application date determined in accordance with regulations made under section 192U (the **reference carbon stock** for the CAA1); and
    - (ii) if the person proposed as the participant in respect of any of the CAA2s is not already registered as a participant, the information necessary for that person to become registered; and
    - (iii) any other information prescribed in regulations made under section 192U.
- (3) If the person proposed as the participant in respect of any of the CAA2s is not the participant in respect of the CAA1s, the application must be made jointly with that other person.
- (4) The application must—



- (a) be signed by all of the applicants; and
- (b) be submitted—
  - (i) in the prescribed manner and format; and
  - (ii) together with the prescribed fee (if any); and
  - (iii) together with the prescribed information (if any).

**192B Criteria for P89 offset application**

- (1) If a person submits a P89 offset application, the EPA,—
  - (a) if satisfied that the criteria in subsection (2) were met on the P89 offset application date, must approve the application; or
  - (b) otherwise, may decline the application.
- (2) The criteria are that—
  - CAA1 criteria*
    - (a) the land in each CAA1 is 1 or both of the following:
      - (i) land that has a first rotation forest and whose NACS is equal to or greater than its TACS (as those terms are defined in section 191D):
      - (ii) land that has a subsequent rotation forest; and
    - (b) the predominant forest species on each CAA1 were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and
  - CAA2 criteria*
    - (c) the land in each CAA2 is 1 or more of the following:
      - (i) land that is not forest land on the P89 offset application date, but if it were to become forest land—
        - (A) would be post-1989 forest land; and
        - (B) if it were in a carbon accounting area, would meet the criteria in section 191C for having a first rotation forest:
      - (ii) post-1989 forest land that—
        - (A) became post-1989 forest land less than 2 years before the P89 offset application date; and
        - (B) meets the criteria in section 191C for having a first rotation forest (or would do so if it were in a carbon accounting area):
      - (iii) area 2 (excess) land (as defined in section 181), unless the re-use period prescribed in regulations made under section 192U has expired:

- (iv) P89 offsetting (excess) land, unless the re-use period prescribed in regulations made under section 192U has expired; and
- (d) the total area (whether or not contiguous) of the CAA2s for a CAA1 is equal to or greater than the area of that CAA1; and
- (e) each individual parcel that makes up the CAA2 has an area of at least 1 hectare and has an average width of at least 30 metres; and

*Participant criteria*

- (f) the participant in respect of each CAA2 would, if the land in the CAA2 were forest land,—
  - (i) if they are not already registered as a participant in the activity, qualify to be registered under section 57; and
  - (ii) qualify under section 182A to be registered as a participant in respect of the CAA2; and

*P89 offset release criteria*

- (g) the EPA is satisfied that, on the P89 offset date, the P89 offset release criteria are likely to be met in respect of each CAA1 and the CAA2s proposed in respect of it; and

*Prescribed criteria*

- (h) any other criteria prescribed in regulations made under section 192U are met.

### **192C Effect of approval of P89 offset application**

- (1) This section applies if the EPA approves a P89 offset application.
- (2) Starting on the P89 offset application date,—
  - (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 184D); and
  - (b) if any of the land proposed to be included in a CAA2 is already in a carbon accounting area, the participant for that land—
    - (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and
    - (ii) ceases to be a participant in the relevant activity in that carbon accounting area; and
  - (c) the persons proposed as participants for CAA2s are participants in the activity in the CAA2s; and
  - (d) the participant in respect of the CAA1s—
    - (i) ceases to be a participant in the activity in the CAA1s; and
    - (ii) is not liable to surrender the unit balances of the CAA1s; and

- (e) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report; and
- (f) the land in the CAA2s for a CAA1 is the **P89 offsetting (approved) land** for that CAA1; and
- (g) the **P89 offset date** for the P89 offsetting (approved) land for a CAA1 is,—
  - (i) if, on the P89 offset application date, every hectare of land in the CAA1 had forest species on it that had tree crown cover of more than 30%, 4 years after the P89 offset application date; or
  - (ii) if not, 4 years after the clearing of the CAA1 started most recently before the P89 offset application date.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (4) If subsection (2)(b)(i) applies,—
  - (a) the notice requiring those units to be surrendered (referred to in section 63(4)) must also set out the effect of paragraph (b); and
  - (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.
- (5) If an approval is revoked under subsection (4), this Act applies as if the application had never been made.
- (6) However, despite subsection (5), the effect of subsection (2)(b)(ii) is not reversed (so the person is not reinstated as a participant for the carbon accounting area).

*P89 offsetting (approved) land*

**192D Duration of P89 offsetting (approved) land status**

- (1) Land that becomes P89 offsetting (approved) land for a CAA1 under section 192C(2)(f) remains P89 offsetting (approved) land until one of the following occurs:
  - (a) the land meets the P89 offset release criteria and is released from being P89 offsetting (approved) land on the P89 offset date under section 192N(2)(c):
  - (b) the person ceases to be a participant because of section 182G (for a natural event that permanently prevents re-establishing a forest):
  - (c) the land becomes temporary adverse event land under section 193C:
  - (d) the land is P89 offsetting (unforested) land and ceases to be P89 offsetting (approved) land under section 192N(2)(d):

- (e) the land is P89 offsetting (excess) land and ceases to be P89 offsetting (approved) land under section 192N(2)(e):
  - (f) the land is declared to not be P89 offsetting (approved) land under section 192O(3) and ceases to be so under section 192P(2)(a):
  - (g) the land is removed land and ceases to be P89 offsetting (approved) land under section 192S(2)(d).
- (2) To avoid doubt, the land continues to be P89 offsetting (approved) land even if the carbon accounting areas containing the land are reconfigured (whether under section 188B or by any other process that requires the submission of a new unit balance report).

#### **192E Effect of being P89 offsetting (approved) land**

All of the provisions of this Act that apply to post-1989 forest land that is in a carbon accounting area (averaging) apply to P89 offsetting (approved) land as if it were post-1989 forest land, subject to sections 192F and 192G.

#### **192F Subsequent rotation forest**

- (1) P89 offsetting (approved) land is to be treated as having a subsequent rotation forest (despite section 191C(3)).
- (2) Subsection (1) continues to apply to P89 offsetting (forested) land (identified under section 192J) until—
- (a) it is first cleared after the P89 offset date (even though it ceases to be P89 offsetting (approved) land on the P89 offset date); or
  - (b) the participant becomes registered for an activity of permanent forestry on the land.
- (3) To avoid doubt, when subsection (1) ceases to apply to any land, section 191C applies.

#### **192G Reconfiguration restrictions**

- (1) A carbon accounting area containing P89 offsetting (approved) land cannot be reconfigured (whether by application under section 188 or by any other process that requires the submission of a new unit balance report) except as permitted by subsection (2).
- (2) Reconfiguration is permitted—
- (a) to reconfigure the carbon accounting areas that contain the P89 offsetting (approved) land for the same CAA1 without including any other land:
  - (b) to remove land that is affected by a natural event that permanently prevents re-establishing a forest in accordance with sections 182G and 186B:

- (c) to remove land that becomes temporary adverse event land under section 193C:
- (d) on the P89 offset date as required under section 192J:
- (e) to substitute land under sections 192Q to 192S.

#### **192H No transfers to permanent forestry**

A participant for a carbon accounting area containing P89 offsetting (approved) land cannot apply under section 189 to become a participant in an activity of permanent forestry on that land.

#### *Offsetting on P89 offset date*

#### **192I P89 offset release criteria**

- (1) The **P89 offset release criteria** in respect of a CAA1 and its P89 offsetting (approved) land that is P89 offsetting (forested) land are that, on the P89 offset date,—
  - (a) the area of the P89 offsetting (forested) land is equal to or greater than the area of CAA1; and
  - (b) the expected carbon stock of the P89 offsetting (forested) land is equal to or greater than the reference carbon stock of the CAA1; and
  - (c) any other criteria prescribed in regulations made under section 192U are met.
- (2) The **expected carbon stock** of land is the carbon stock (determined in accordance with regulations made under section 192U) that the land is expected to have achieved at the end of the period prescribed in regulations made under that section.

#### *Adjustment if adverse event*

- (3) If any of the P89 offsetting (approved) land ceases to be P89 offsetting (approved) land under section 192D(1)(b) or (c) (because of adverse events) on or before the P89 offset date,—
  - (a) for subsection (1)(a), the area of the CAA1 on the P89 offset application date is to be treated as reduced in accordance with subsection (4); and
  - (b) for subsection (1)(b), the reference carbon stock for the CAA1 is to be treated as reduced in accordance with subsection (5).
- (4) The reduced area of the CAA1 (in hectares) (**y**) is calculated as follows:

$$y = a \times (j \div k)$$

where—

- a is the area of the CAA1 on the P89 offset application date (in hectares)
- j is the area of the land that ceased to be P89 offsetting (approved) land under section 192D(1)(b) or (c) (in hectares)

k is the area of the P89 offsetting (approved) land on the P89 offset application date (being all of the CAA2s under section 192A) (in hectares).

- (5) The reduced reference carbon stock for the CAA1 (in tonnes) (**w**) is calculated as follows:

$$w = c \times (j \div k)$$

where—

c is the reference carbon stock for the CAA1 (in tonnes)

j is the area of the land that ceased to be P89 offsetting (approved) land under section 192D(1)(b) or (c) (in hectares)

k is the area of the P89 offsetting (approved) land on the P89 offset application date (being all of the CAA2s under section 192A) (in hectares).

#### 192J P89 release criteria notice

- (1) The participants in an activity of standard forestry on the P89 offsetting (approved) land for a CAA1 on the P89 offset date must give notice (**P89 release criteria notice**) to the EPA of the extent of compliance with the P89 offset release criteria on the P89 offset date.
- (2) The P89 release criteria notice must—
- (a) identify all of the P89 offsetting (approved) land that is each of the following:
    - (i) **P89 offsetting (forested) land**, being all the P89 offsetting (approved) land that is qualifying forest land on the P89 offset date, other than P89 offsetting (excess) land:
    - (ii) **P89 offsetting (unforested) land**, being all the P89 offsetting (approved) land that is not qualifying forest land on the P89 offset date:
    - (iii) **P89 offsetting (excess) land**, being any P89 offsetting (approved) land that—
      - (A) is qualifying forest land on the P89 offset date; and
      - (B) does not need to be part of the P89 offsetting (forested) land in order for the P89 offset release criteria to be met; and
      - (C) the participants want to be excluded from the P89 offsetting (forested) land and to be available for re-use under section 181B(2)(b)(iv) or 192B(2)(c)(iv); and
  - (b) include final forestry emissions returns under section 183B for each participant and activity—
    - (i) that covers each carbon accounting area that contains the P89 offsetting (approved) land (each a **CAA3**); and
    - (ii) that uses the P89 offset date as the **relevant date**; and

- (c) include in each return a P89 offset date unit balance report under section 192M that covers the following carbon accounting areas (each a **CAA4**) formed from each CAA3:
    - (i) 1 or more **forested CAA4s** for the P89 offsetting (forested) land in the CAA3;
    - (ii) an **unforested CAA4** for any P89 offsetting (unforested) land in the CAA3;
    - (iii) 1 or more **excess CAA4s** for any P89 offsetting (excess) land in the CAA3; and
  - (d) include any information prescribed in regulations made under section 192U.
- (3) Land is **qualifying forest land** if—
- (a) each hectare of land has forest species on it that have, or are likely to have, tree crown cover of more than 30%; and
  - (b) those forest species were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and
  - (c) each individual parcel that makes up the land has an area of at least 1 hectare and has an average width of at least 30 metres; and
  - (d) the land has not been declared not to be qualifying forest land under section 192O(2).
- (4) The P89 release criteria notice must—
- (a) be made jointly by the participants in respect of all of the P89 offsetting (approved) land for the CAA1; and
  - (b) be signed by all of the participants; and
  - (c) be given within 60 working days after the P89 offset date; and
  - (d) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (5) In relation to a final forestry emissions return required by subsection (2)(b), sections 183B to 184D apply as if the references in those sections to CAA1 were references to CAA3.
- (6) Sections 183B to 185, and the provisions applied by them, apply as if the land in an unforested CAA4 were forest land.

**192K Liability to surrender units if P89 offset release criteria not met**

- (1) This section applies in relation to the CAA3s for a CAA1 if the P89 offset release criteria under either or both of paragraphs (a) and (b) of section 192I(1) are not met.

(2) The participants for the CAA3 are liable to surrender the number of units determined under subsections (4) to (6).

(3) That liability is apportioned between the CAA3s under section 192L.

*Liability for area insufficiency*

(4) If the criterion in section 192I(1)(a) is not met, the number of units to be surrendered ( $s_a$ ) is calculated as follows:

$$s_a = [(c - d) \div c] \times u$$

where—

c is the area of the CAA1 on the P89 offset application date (reduced under section 192I(3) if applicable) (in hectares)

d is the total area of all of the P89 offsetting (forested) land for the CAA1 (in hectares)

u is the unit balance of the CAA1 in the emissions return that accompanied the application under section 192A.

*Liability for carbon insufficiency*

(5) If the criterion in section 192I(1)(b) is not met, the number of units to be surrendered ( $s_c$ ) is calculated as follows:

$$s_c = (e - f)$$

where—

e is the reference carbon stock for the CAA1 (reduced under section 192I(3) if applicable) (in tonnes)

f is the total expected carbon stock of all of the P89 offsetting (forested) land for the CAA1 (in tonnes).

*Total liability*

(6) The total liability under this section ( $t$ ) is calculated as follows:

$$t = s_a + s_c$$

**192L Maximum liability and apportionment**

(1) This section applies if the participants for the CAA3s for a CAA1 have a liability under section 192K.

*One CAA3*

(2) If there is only one CAA3,—

(a) section 185A applies; and

(b) the liability for that CAA3 is equal to  $t$  under section 192K(6).

*Two or more CAA3s: maximum liability*

(3) If there are 2 or more CAA3s,—

(a) section 185A does not apply; but



- (b) if the total liability calculated under section 192K(6) (t) is greater than the total of the unit balances of all of the CAA3s, t is reduced to be equal to that total unit balance.

*Two or more CAA3s: apportionment*

- (4) If there are 2 or more CAA3s, the liability for each CAA3 (k) is calculated as follows:

$$k = t \times (a_3 \div b_3)$$

where—

- t is the total liability under section 192K(6), reduced under subsection (3) if applicable
- a<sub>3</sub> is the area of the CAA3 (in hectares)
- b<sub>3</sub> is the total area of all of the CAA3s (in hectares).

#### **192M P89 offset date unit balance report**

- (1) A P89 offset date unit balance report required by section 192J(2)(c) must—
- (a) specify the CAA4s that the report covers and, for each CAA4 whose boundaries are not the same as a CAA3, define the CAA4; and
- (b) specify the CAA3s (whose land will form the CAA4s); and
- (c) specify the opening unit balance of each unforested CAA4 and each excess CAA4 (if any) as zero; and
- (d) set out the calculation under subsection (2) of the opening unit balance of each forested CAA4.

- (2) The opening unit balance of a forested CAA4 (v) is calculated as follows:

$$v = (u - k) \times (a_4 \div b_4)$$

where—

- u is the unit balance of the CAA3 in the emissions return under section 192J(2)(b)
- k is,—
- (a) if there is only one CAA4, zero; or
- (b) if there are 2 or more CAA4s, the liability of the CAA3 under section 192L
- a<sub>4</sub> is the area of the forested CAA4 (in hectares)
- b<sub>4</sub> is the total area of all of the P89 offsetting (forested) land for the CAA1 (in hectares).

#### **192N Effect on P89 offset date**

- (1) This section applies if a P89 release criteria notice is given to the EPA in accordance with section 192J, including a final forestry emissions return (for the CAA3s) and a P89 offset date unit balance report (for the CAA4s).

- (2) Starting on the P89 offset date,—
- (a) the emissions return for the CAA3s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA3s under section 184D); and
  - (b) the participants are not liable to surrender the unit balances of each CAA3 (although they may be liable to surrender units under section 192K); and
  - (c) for each forested CAA4,—
    - (i) the person who was the participant in respect of the CAA3 from which it was formed is the participant in respect of the forested CAA4 (instead of the CAA3); and
    - (ii) the land in the forested CAA4 is released from being P89 offsetting (approved) land; and
    - (iii) the unit balance of each forested CAA4 is the opening unit balance calculated for it in the P89 offset date unit balance report; and
  - (d) for each unforested CAA4,—
    - (i) the person who was the participant in respect of the CAA3 from which it was formed ceases to be a participant in respect of the unforested CAA4; and
    - (ii) the land in the unforested CAA4 ceases to be P89 offsetting (approved) land; and
    - (iii) the unit balance of each unforested CAA4 is zero; and
  - (e) for each excess CAA4,—
    - (i) the person who was the participant in respect of the CAA3 from which it was formed is the participant in respect of the excess CAA4; and
    - (ii) the land in the excess CAA4 ceases to be P89 offsetting (approved) land but remains P89 offsetting (excess) land subject to subsection (3)); and
    - (iii) the unit balance of each excess CAA4 is zero.
- (3) Land ceases to be P89 offsetting (excess) land if—
- (a) the land becomes area 2 (approved) land as a result of being included in a P90 offset application under section 181B(2)(b)(iii); or
  - (b) the land becomes P89 offsetting (approved) land as a result of being included in a P89 offset application under section 192B(2)(c)(iii); or
  - (c) all re-use periods prescribed in regulations made under section 181W or 192U expire.

- (4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (5) After the P89 offset date, section 179 (except subsection (1)(a)) applies to the P89 offsetting (forested) land as if it had been cleared on the P89 offset application date.
- (6) Subsection (5) ceases to apply when that land is next cleared (after which section 179 will apply).

*Action if criteria for initial P89 offset application not met*

**192O EPA may take action if original criteria not met**

- (1) This section applies if the EPA—
  - (a) approved a P89 offset application; but
  - (b) is now satisfied that the application should not have been approved because some or all of the P89 offsetting (approved) land did not meet the criteria in section 192B(2)(c) or (e) or any applicable criteria prescribed for section 192B(2)(h).

*Action on or before P89 offset date*

- (2) If this section applies to land on or before the P89 offset date, the EPA may declare that the land that did not meet those criteria is not qualifying forest land for the purposes of section 192J.

*Action after P89 offset date*

- (3) If this section applies to land after the P89 offset date, the EPA may declare that section 192P applies to the carbon accounting area that now contains the land that did not meet those criteria.

*Procedure*

- (4) The EPA cannot make a declaration under this section more than 7 years after the P89 offset application date.
- (5) Before making a declaration, the EPA must—
  - (a) notify the participant of its intention to do so and the grounds for doing so; and
  - (b) give the participant at least 60 working days to—
    - (i) show cause as to why the EPA should not do so; or
    - (ii) take other remedial action specified in the notice (*see* section 192Q).
- (6) If the EPA makes a declaration under this section, it must give the participant notice of—
  - (a) the declaration and the date on which it was made; and

- (b) the participant's liability under section 192P (if applicable); and
- (c) the participant's right under section 144 to seek a review of the decision to make the declaration.

#### **192P Effect of declaration after P89 offset date**

- (1) This section applies if the EPA makes a declaration under section 192O(3) that this section applies to a carbon accounting area (the **CAA**).
- (2) Starting on the date on which the declaration is made, the participant in respect of the CAA—
  - (a) is liable to surrender the number of units equal to the unit balance of the CAA; and
  - (b) ceases to be a participant in respect of the CAA.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.

#### **192Q Remedial action: land substitution**

- (1) In a notice under section 192O(5), the EPA may give the participant the option to take remedial action by substituting other land for land that did not meet the criteria (the **non-compliant land**).
- (2) A participant given that option may apply to the EPA to do so.
- (3) The application must—
  - (a) specify the carbon accounting areas (each a **CAA5**) that include the non-compliant land for which other land is to be substituted; and
  - (b) identify all the land in each CAA5 as either—
    - (i) **removed land**, being the non-compliant land for which other land is to be substituted; or
    - (ii) **remaining land**, being all the land in the CAA5 that is not removed land; and
  - (c) identify the land that is proposed to be substituted for the removed land (**substitute land**); and
  - (d) include a final forestry emissions return prepared under section 183B for the relevant activity—
    - (i) that covers the CAA5s; and
    - (ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and
  - (e) include in that return a new unit balance report that—
    - (i) relates to the following carbon accounting areas (each a **CAA6**):
      - (A) a **removed CAA6** for the removed land:

- (B) a **remaining CAA6** for the remaining land;
  - (C) a **substitute CAA6** for the substitute land; and
  - (ii) specifies the opening unit balance of the removed CAA6 as zero; and
  - (iii) calculates the opening unit balance for the remaining CAA6s and substitute CAA6s in accordance with section 185(4), which applies even though a CAA6 is formed from land in 1 or more CAA5s and from other land; and
  - (iv) is otherwise prepared under section 185; and
  - (f) include any information prescribed in regulations made under section 192U.
- (4) The application must—
- (a) be signed by the participant; and
  - (b) be given within the period specified in the notice under section 192O(5); and
  - (c) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (5) In relation to the final forestry emissions return and new unit balance report required by subsection (3)(d) and (e), sections 183B to 185 apply as if—
- (a) the references in those sections to CAA1 were references to CAA5; and
  - (b) the references in those sections to CAA2 were references to CAA6.
- (6) Sections 183B to 185, and the provisions applied by them, apply as if the land in a removed CAA6 were forest land.

#### **192R Criteria for land substitution**

- (1) If a person submits an application under section 192Q to substitute land, the EPA,—
- (a) if satisfied that the criteria in subsection (2) are met, must approve the application; or
  - (b) otherwise, may decline the application.
- (2) The criteria are that—
- (a) the substitute land is land of a kind specified in 1 or more of subparagraphs (i) to (iv) of section 192B(2)(c); and
  - (b) the area of the substitute land is equal to or greater than the area of the removed land; and
  - (c) the EPA is satisfied that,—

- (i) if the substitution date is before the P89 offset date, the P89 offset release criteria are likely to be met in respect of the CAA1 and the new P89 offsetting (approved) land; or
  - (ii) if the substitution date is on or after the P89 offset date, the expected carbon stock of the new P89 offsetting (approved) land as at the substitution date was equal to or greater than the reference carbon stock of the CAA1; and
  - (d) any other criteria prescribed in regulations made under section 192U are met.
- (3) In this section,—
- new P89 offsetting (approved) land** means all of the land that will be P89 offsetting (approved) land for the CAA1 if the application is approved
- substitution date** means the date on which the application under section 192Q was submitted.

### 192S Effect of approval of land substitution

- (1) This section applies if the EPA approves an application under section 192R.
- (2) Starting on the date on which the application was submitted,—
  - (a) the emissions return for the CAA5s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA5s under section 184D); and
  - (b) if any of the land in a substitute CAA6 is already in a carbon accounting area, the participant for that land—
    - (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and
    - (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and
  - (c) in respect of the remainder CAA6s and substitute CAA6s,—
    - (i) the person becomes a participant in the activity in those CAA6s (instead of the CAA5s); and
    - (ii) the unit balance of each of those CAA6s is the opening unit balance calculated for it in the new unit balance report; and
    - (iii) the land in those CAA6s is P89 offsetting (approved) land for the original CAA1 (together with any P89 offsetting (approved) land for the CAA1 that was not included in this application); and
  - (d) in respect of each removed CAA6,—
    - (i) the person ceases to be a participant in the activity of the removed CAA6; and
    - (ii) the land ceases to be P89 offsetting (approved) land; and

- (iii) the person is not liable to surrender units (because the unit balance is zero).
- (3) If subsection (2)(b)(i) applies,—
  - (a) the notice requiring those units to be surrendered (referred to in section 63(4)) must also set out the effect of paragraph (b); and
  - (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.
- (4) If an approval is revoked under subsection (3), this Act applies as if the application had never been made.
- (5) However, despite subsection (4), the effect of subsection (2)(b)(ii) is not reversed (so the person is not reinstated as a participant for the carbon accounting area).
- (6) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.
- (7) To avoid doubt, the substitution of land under this section does not affect the P89 offset date for the CAA1.

#### **192T Effect of application to substitute land being declined**

- (1) This section applies if the EPA declines an application under section 192R.
- (2) The participant cannot make another application under section 192Q.
- (3) The EPA—
  - (a) may make the declaration under section 192O; and
  - (b) if it does so, the notice under section 192O(6) must also notify the participants of—
    - (i) the decision to decline the application under section 192R, and the reasons for it; and
    - (ii) the participants' right under section 144 to seek a review of that decision.

#### *Regulations*

#### **192U Regulations for P89 offsetting**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing the methodology for determining—
    - (i) reference carbon stock (section 192A):
    - (ii) expected carbon stock (section 192I(2)):
  - (b) prescribing the information to be included in, and other requirements for,—

- (i) P89 offset applications (section 192A):
  - (ii) P89 release criteria notices (section 192J):
  - (iii) applications to substitute land (section 192Q):
  - (c) prescribing re-use periods for area 2 (excess) land or P89 offsetting (excess) land (section 192B(2)(c)(iii) and (iv)):
  - (d) prescribing additional criteria for the approval of—
    - (i) P89 offset applications (section 192B(2)(h)):
    - (ii) land substitution applications (section 192R(2)(d)):
  - (e) prescribing additional P89 offset release criteria (section 192I(1)(c)):
  - (f) prescribing the period for the purposes of the definition of expected carbon stock (section 192I(2)):
  - (g) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
- (a) for different forest species:
  - (b) for forest species of different ages:
  - (c) for different rotation periods:
  - (d) for different parts of New Zealand.
- (3) Regulations made under this section may have retrospective effect to the extent that they may apply on and from the commencement of the mandatory emissions return period in which they are made or a later date in that period.
- (4) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (5) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (6) *See also* sections 169 to 175 (incorporation by reference).
- (7) Regulations under this section—
- (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
  - (b) have effect in accordance with subsection (3) even if they are not yet published.

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116



*This note is not part of the Act.*

Section 192U(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Subpart 7—Temporary adverse events

### 193 Interpretation for this subpart

(1) In this subpart,—

**adverse event**, in relation to temporary adverse event land, means the event referred to in section 193A(1)(b) as a result of which the land became temporary adverse event land

**affected land** has the meaning given in section 193A(1)

**carbon recovery** has the meaning given in section 193M

**event date**, in relation to an adverse event, means the later of,—

- (a) if the event occurs—
  - (i) on only 1 day, that day; or
  - (ii) over 2 or more days, the first of those days (even if land in a particular carbon accounting area is not affected until the second or a later day of the event); and
- (b) if the event occurs in circumstances specified in regulations made under section 193R, the date provided for in the regulations

**non-established land** has the meaning given in section 193K

**permanently affected land** has the meaning given in section 193K

**pre-event carbon stock rate**, for temporary adverse event land from a CAA1, means the average carbon stock per hectare of the affected land in the CAA1 on the day before the event date, determined in accordance with regulations made under section 193R, unless subsection (2) applies

**re-established land** has the meaning given in section 193K

**re-establishment** has the meaning given in section 193J

**re-establishment date** has the meaning given in section 193J

**temporary adverse event land** means land that has become temporary adverse event land under section 193C(2)(e) and has not ceased to be so under a provision referred to in section 193D.

(2) For the purposes of the definition of **pre-event carbon stock rate**,—

- (a) if land that is temporary adverse event land in relation to an adverse event (**event 1**) becomes temporary adverse event land in relation to a later adverse event (**event 2**), the pre-event carbon stock rate for the land in relation to event 2 is the same as the pre-event carbon stock rate it had in relation to event 1; and

- (b) if P89 offsetting (approved) land becomes temporary adverse event land, the pre-event carbon stock rate for the land is the reference carbon stock (under section 192A) per hectare of the CAA1 for which the land is P89 offsetting (approved) land.

### *Application*

#### **193A Application for temporary adverse event suspension**

- (1) Post-1989 forest land is **affected land** if—
  - (a) the land is in a carbon accounting area (a **CAA1**); and
  - (b) the land is affected by an event of a kind prescribed in regulations made under section 193R (the **adverse event**); and
  - (c) the event results in each hectare of land ceasing to have forest species on it that have, or are likely to have, tree crown cover of more than 30%; and
  - (d) the area of land in each CAA1 that is affected by the event is equal to or greater than any minimum prescribed in regulations made under section 193R; and
  - (e) the extent of carbon stock lost from the land affected by the event is equal to or greater than any minimum prescribed in regulations made under section 193R.
- (2) A participant in an activity of standard forestry or permanent forestry in a CAA1 may apply for a temporary adverse event suspension for the affected land in that CAA1.
- (3) The application must—
  - (a) specify the CAA1s to which the application relates; and
  - (b) include a final forestry emissions return prepared under section 183B for the activity—
    - (i) that covers the CAA1s; and
    - (ii) that uses the day before the event date as the **relevant date**; and
  - (c) include in that return a new unit balance report prepared under section 185 for the activity that covers the following carbon accounting areas (**CAA2s**) formed from each CAA1:
    - (i) an **affected CAA2** for the affected land in the CAA1;
    - (ii) a **remainder CAA2** for the rest of the land in the CAA1; and
  - (d) include—
    - (i) the pre-event carbon stock rate for the affected land; and
    - (ii) any other information prescribed in regulations made under section 193R.

- (4) The application must—
- (a) be signed by the participant; and
  - (b) be submitted by the deadline prescribed in regulations made under section 193R; and
  - (c) be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).

**193B Criteria of temporary adverse event suspension**

- (1) If a person submits an application under section 193A for a temporary adverse event suspension, the EPA,—
- (a) if satisfied that the criteria in subsection (2) are met, must approve the application; or
  - (b) otherwise, may decline the application.
- (2) The criteria are that—
- (a) the land in the affected CAA2s is affected land; and
  - (b) the participant notified the EPA of the occurrence of the adverse event in accordance with regulations made under section 193R; and
  - (c) the EPA is satisfied that the land in the affected CAA2s—
    - (i) is likely to achieve re-establishment under section 193J; and
    - (ii) is likely to achieve carbon recovery under section 193M; and
  - (d) any other criteria prescribed in regulations made under section 193R are met.

**193C Approval of temporary adverse event suspension**

- (1) This section applies if the EPA approves an application for a temporary adverse event suspension under section 193B.
- (2) Starting on the day before the event date,—
- (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 184D); and
  - (b) the person is a participant in the activity on the CAA2s (instead of the CAA1s); and
  - (c) the person is not liable to surrender the unit balance of each CAA1; and
  - (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report; and

- (e) the land in the affected CAA2s formed from a CAA1 is the **temporary adverse event land** from that CAA1 in relation to the adverse event.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.

*Temporary adverse event land*

**193D Duration of temporary adverse event land status**

- (1) Land that becomes temporary adverse event land under section 193C(2)(e) remains temporary adverse event land until one of the following occurs:
  - (a) the land is released from being temporary adverse event land under section 193N (having achieved carbon recovery and passed the re-establishment date):
  - (b) the person ceases to be a participant because of section 182G (for a natural event that permanently prevents re-establishing a forest), whether as a result of the adverse event or a different event:
  - (c) the land is affected by another event and becomes temporary adverse event land under section 193C(2)(e) in relation to that later event:
  - (d) the land is non-established land and ceases to be temporary adverse event land under section 193L(2)(d):
  - (e) the land is permanently affected land and ceases to be temporary adverse event land under section 193L(2)(e):
  - (f) the land ceases to be temporary adverse event land under section 193O because of a breach of condition:
  - (g) the land ceases to be temporary adverse event land under section 193P because it is intentionally converted, cleared before it achieves carbon recovery, or is to be treated as deforested.
- (2) To avoid doubt, the land continues to be temporary adverse event land even if the carbon accounting areas containing the land—
  - (a) are reconfigured (whether under section 188B or by any other process that requires the submission of a new unit balance report); or
  - (b) change activity from standard forestry to permanent forestry or vice versa.

**193E Effect of being temporary adverse event land**

- (1) All of the provisions of this Act that apply to post-1989 forest land continue to apply to temporary adverse event land as if it remained forest land, subject to sections 193F to 193I.
- (2) The temporary adverse event land is also subject to any conditions prescribed in regulations made under section 193R.

### **193F No liability or entitlement**

- (1) A participant in respect of temporary adverse event land is not liable to surrender units, or entitled to receive New Zealand units, for emissions and removals for the land (including emissions resulting from the adverse event).
- (2) However, subsection (1) is subject to sections 189F and 189G, and the participant is liable to surrender units under those sections if they apply.
- (3) If provided in regulations made under section 193R, the participant is not required to—
  - (a) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units; or
  - (b) submit emissions returns covering a carbon accounting area in relation to which they are not liable to surrender, or entitled to receive, units.

### **193G First rotation forest**

- (1) If temporary adverse event land is in a carbon accounting area (averaging), and on the day before the event date the land had a first rotation forest, then the land is to be treated as continuing to have a first rotation forest.
- (2) Subsection (1) continues to apply in relation to re-established land until it is first cleared after the re-establishment date (even though it ceases to be temporary adverse event land on the re-establishment date).
- (3) To avoid doubt, when subsection (1) ceases to apply to land, section 191C applies.

### **193H Reconfiguration restrictions**

- (1) A carbon accounting area containing temporary adverse event land cannot be reconfigured (whether by application under section 188 or by any other process that requires the submission of a new unit balance report) except as permitted by subsection (2).
- (2) Reconfiguration is permitted—
  - (a) to reconfigure the carbon accounting areas that contain the temporary adverse event land from the same CAA1 without including any other land:
  - (b) to remove land that is affected by a natural event that permanently prevents re-establishing a forest in accordance with sections 182G and 186B (whether that is the adverse event or a different event):
  - (c) to remove land that becomes temporary adverse event land in relation to a different event:
  - (d) on the re-establishment date as required under section 193K:
  - (e) to remove land that has ceased to be temporary adverse event land when section 193Q(5) applies.

**193I Damage to land turns out to be permanent**

- (1) If the adverse event was a natural event and it becomes apparent that it permanently prevents the re-establishing of a forest on the land,—
  - (a) if that becomes apparent before the re-establishment date, the participant may notify the EPA under section 182G (*then see* section 193D(1)(b)); or
  - (b) if that is apparent at the re-establishment date and the participant has not notified the EPA under section 182G, the participant must identify the land as permanently affected land under section 193K (*then see* section 193L(2)(e)); or
  - (c) if that becomes apparent after the re-establishment date, the participant may notify the EPA under section 182G (*then see* section 193D(1)(b)).
- (2) To avoid doubt, if P89 offsetting (approved) land is affected by another event that permanently prevents re-establishing a forest on that land, the participant may comply with section 182G in relation to that event.

*Re-establishment***193J Re-establishment criteria**

- (1) A hectare of temporary adverse event land achieves **re-establishment** if, on the re-establishment date, the hectare has forest species on it that have, or are likely to have, tree crown cover of more than 30%.
- (2) The **re-establishment date**, in relation to an adverse event, means the later of—
  - (a) the date 4 years after the event date; and
  - (b) in circumstances specified in regulations made under section 193R, the date provided for in the regulations.

**193K Notice of achievement of re-establishment**

- (1) A participant in an activity of standard forestry or permanent forestry in 1 or more carbon accounting areas that contain temporary adverse event land from a CAA1 (each a **CAA3**) must give notice to the EPA of the extent to which the temporary adverse event land has achieved re-establishment.
- (2) The notice must,—
  - (a) for each CAA3, identify all of the land in the CAA3 that is each of the following:
    - (i) **re-established land**, being all of the land in the CAA3 that, on the re-establishment date, has achieved re-establishment:
    - (ii) **non-established land**, being all of the land in the CAA3 that, on the re-establishment date, has not achieved re-establishment and is not permanently affected land:

- (iii) if the adverse event was a natural event, **permanently affected land**, being all of the land in the CAA3—
      - (A) that, on the re-establishment date, has not achieved re-establishment; and
      - (B) on which the adverse event has permanently prevented re-establishing a forest; and
  - (b) include a final forestry emissions return under section 183B for the activity—
    - (i) that covers each CAA3; and
    - (ii) that uses the re-establishment date as the **relevant date**; and
  - (c) include in that return a new unit balance report under section 185 that covers the following carbon accounting areas (each a **CAA4**) formed from each CAA3:
    - (i) 1 or more **re-established CAA4s** for any re-established land in the CAA3;
    - (ii) a **non-established CAA4** for any non-established land in the CAA3;
    - (iii) a **permanently affected CAA4** for any permanently affected land in the CAA3; and
  - (d) include any information prescribed in regulations made under section 193R.
- (3) The notice must—
  - (a) be signed by the participant; and
  - (b) be given within 60 working days after the re-establishment date; and
  - (c) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (4) In relation to the final forestry emissions return and the new unit balance report required by subsection (2)(b) and (c), sections 183B to 185 apply as if—
  - (a) the references in those sections to CAA1 were references to CAA3; and
  - (b) the references in those sections to CAA2 were references to CAA4.
- (5) Sections 183B to 185, and the provisions applied by them, apply as if the land in a non-established CAA4 or a permanently affected CAA4 were forest land.

**193L Effect on re-establishment date**

- (1) This section applies if a person gives the EPA a notice in accordance with section 193K, including a final forestry emissions return (for the CAA3s) and new unit balance report (for the CAA4s).
- (2) Starting on the re-establishment date,—
  - (a) the emissions return for the CAA3s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA3s under section 184D); and
  - (b) the person is not liable to surrender the unit balance of each CAA3; and
  - (c) for each re-established CAA4,—
    - (i) the person is the participant in respect of the re-established CAA4 (instead of the CAA3); and
    - (ii) the land in the re-established CAA4 remains temporary adverse event land; and
    - (iii) the unit balance of the re-established CAA4 is the opening unit balance calculated for it in the new unit balance report; and
  - (d) for each non-established CAA4,—
    - (i) the person is a participant in respect of the non-established CAA4; and
    - (ii) the land in the non-established CAA4 ceases to be temporary adverse event land; and
    - (iii) the unit balance of the non-established CAA4 is the opening unit balance calculated for it in the new unit balance report; and
    - (iv) section 193Q applies to the land; and
  - (e) for each permanently affected CAA4,—
    - (i) the person ceases to be a participant in respect of the permanently affected CAA4; and
    - (ii) the land in the permanently affected CAA4 ceases to be temporary adverse event land; and
    - (iii) the person is not liable to surrender the unit balance of each permanently affected CAA4.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 182C(2), to record the effects of this section.



*Carbon recovery*

**193M Carbon recovery criteria**

A hectare of temporary adverse event land achieves **carbon recovery** when the carbon stock of the hectare (determined in accordance with regulations made under section 193R) is equal to the pre-event carbon stock rate.

**193N Notice when land achieves carbon recovery**

- (1) When temporary adverse event land achieves carbon recovery, the participant in respect of the land must give notice to the EPA that the land has achieved carbon recovery.
- (2) The notice must—
  - (a) be signed by the participant; and
  - (b) be given when the next emissions return that covers the land is submitted; and
  - (c) be given—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (3) If the participant gives notice in relation to land under this section before giving the notice required for the land under section 193K, the land is released from being temporary adverse event land with effect from the date on which the notice under section 193K takes effect under section 193L.
- (4) If the participant has given notice in relation to land under section 193K before giving notice under this section, the land is released from being temporary adverse event land with effect from when carbon recovery was achieved.

*Ceasing to be temporary adverse event land before recovery*

**193O Cancellation for breach of conditions**

- (1) If the EPA is satisfied that a condition applying under section 193E(2) has not been met in respect of temporary adverse event land in a carbon accounting area, the EPA may cancel the approval in respect of all of the land in the carbon accounting area.
- (2) If the approval is cancelled,—
  - (a) the land ceases to be temporary adverse event land; and
  - (b) section 193Q applies to the land.

*Procedure*

- (3) Before cancelling an approval, the EPA must—

- (a) notify the participant of its intention to do so and the grounds for doing so; and
- (b) give the participant at least 60 working days to—
  - (i) rectify the non-compliance; or
  - (ii) show cause as to why the EPA should not cancel the approval.
- (4) If the EPA cancels an approval, it must give the participant notice of—
  - (a) its decision and the reasons for it; and
  - (b) the date on which the cancellation occurred; and
  - (c) the person's right to seek a review of the decision under section 144.

### **193P Other circumstances causing land to cease to be temporary adverse event land**

#### *Intentional conversion to non-forest land*

- (1) Temporary adverse event land is **intentionally converted** if the participant—
  - (a) takes any action that is inconsistent with the land achieving re-establishment; or
  - (b) otherwise takes any action for the purpose of converting the land to land that is not forest land.
- (2) If temporary adverse event land is intentionally converted,—
  - (a) the land ceases to be temporary adverse event land; and
  - (b) the land is to be treated as deforested (despite section 179A); and
  - (c) the reversion date for section 193Q is the date on which the first action referred to in subsection (1)(a) or (b) occurred.

#### *Re-established land cleared before carbon recovery*

- (3) If re-established land is cleared after its re-establishment date but before it achieves carbon recovery,—
  - (a) the land ceases to be temporary adverse event land; and
  - (b) the land is to be treated as deforested; and
  - (c) the reversion date for section 193Q is the date on which the clearing commenced.

#### *Re-established land treated as deforested*

- (4) If re-established land becomes land that is to be treated as deforested under section 179(1)(b) or (c) before it achieves carbon recovery,—
  - (a) the land ceases to be temporary adverse event land; and
  - (b) the reversion date for section 193Q is the 10-year or 20-year date under section 179.

### **193Q Consequences if land ceases to be temporary adverse event land**

- (1) This section applies to the following land:
  - (a) non-established land that ceases to be temporary adverse event land under section 193L(2)(d), for which the **reversion date** is the re-establishment date:
  - (b) land in a carbon accounting area in respect of which the approval is cancelled under section 193O, for which the **reversion date** is the date of the cancellation:
  - (c) land that ceases to be temporary adverse event land under section 193P, for which the **reversion date** is the date specified in that section.

#### *Act reapplies*

- (2) Starting on the reversion date, the provisions of this Act apply to the land as if the land had never become temporary adverse event land.

#### *Liability or entitlement*

- (3) As a result, the participant must include all the emissions and removals for the land on and after the event date (including as a result of the adverse event) in the next emissions return the participant is required to submit.
- (4) For that purpose,—
  - (a) all of those emissions and removals are to be treated as having occurred on the reversion date; but
  - (b) the emissions resulting from the adverse event are to be determined by reference to the pre-event carbon stock rate for the land.

#### *Reconfiguration*

- (5) Section 193H(2)(e) applies to a reconfiguration if—
  - (a) the land to which this section applies is only part of a carbon accounting area; and
  - (b) as a result of subsection (2), the participant is required to reconfigure that carbon accounting area to remove that land.

#### *Permanent forestry*

- (6) If the activity on the land is permanent forestry, *see also* section 190C(2).

#### *Regulations*

### **193R Regulations for temporary adverse events**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing circumstances and dates for the definitions of event date and re-establishment date in sections 193 and 193J:
  - (b) prescribing the methodology for determining—

- (i) the pre-event carbon stock rate (section 193):
  - (ii) carbon stock loss (section 193A):
  - (iii) carbon stock for the purpose of determining carbon recovery (section 193M):
  - (c) prescribing the kinds of events that are adverse events (section 193A):
  - (d) prescribing—
    - (i) the minimum affected area (section 193A(1)(d)):
    - (ii) the minimum carbon stock loss (section 193A(1)(e)):
  - (e) prescribing other information to be included in, and the submission date and other requirements for, applications made under section 193A:
  - (f) prescribing notification requirements and other criteria for approval under section 193B:
  - (g) prescribing conditions for the purposes of section 193E(2):
  - (h) providing that a participant for temporary adverse event land is not required to—
    - (i) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units:
    - (ii) submit emissions returns covering a carbon accounting area in relation to which they are not liable to surrender, or entitled to receive, units (section 193F(3)):
  - (i) prescribing other information to be included in, and other requirements for, notices under section 193K:
  - (j) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under this section may make different provision for different cases on any differential basis.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (4) Regulations made under subsection (1)(g) may relate to emissions or removals that—
- (a) stem directly from an activity; or
  - (b) are associated with a product or other thing that is the subject of an activity.
- (5) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (6) Regulations made under this section come into force 3 months after the date of their publication under the Legislation Act 2019, or on any later date specified in the regulations.

- (7) *See also* sections 169 to 175 (incorporation by reference).
- (8) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 193R(6): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 193R(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## Subpart 8—General

*Input returns may be submitted before actual emissions returns*

### 194 Input returns may be submitted for certain emissions returns for forestry activities

- (1) This section applies before a person submits an emissions return (for a forestry activity) of a type specified in the regulations.
- (2) The person may first submit, for the activity and 1 or more of the areas or carbon accounting areas covered by the emissions return, an input return that contains the data or information required by the regulations.
- (3) The input return must be submitted by—
- the deadline specified in the regulations; or
  - any extended deadline granted by the EPA under the regulations.
- (4) In this section, **regulations** means regulations made under section 194B.

### 194A EPA may do calculations based on input return

- (1) This section applies if the EPA receives an input return in accordance with section 194.
- (2) As soon as practicable after receipt, the EPA must—
- calculate for each area or carbon accounting area covered by the input return, as required for the relevant emissions return,—
    - the participant's emissions and removals; and
    - the participant's liability to surrender units for their emissions or entitlement to receive New Zealand units for their removals; and
  - give a notice to the participant that includes—
    - the calculations and the calculated amounts; and

- (ii) the data, information, or other matters on which the calculations are based; and
  - (iii) a statement that the participant may choose to include the calculations and the calculated amounts in the relevant emissions return; and
  - (iv) a statement about the effect of subsection (3).
- (3) The EPA is not liable for anything that results from the calculations that it makes in good faith under this section, and the EPA's calculations and notice do not affect any obligation of the participant under this Act (such as the obligation to submit an accurate emissions return).

#### **194B Regulations for input returns**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) specifying the 1 or more types of emissions return for a forestry activity for which input returns may be submitted, which may be specified by reference to 1 or more of the following:
    - (i) the type of forestry activity;
    - (ii) any feature of the forest or land to which the activity relates;
    - (iii) any other matter:
  - (b) specifying the data or information that must be contained in any input return or the input return for each type of emissions return;
  - (c) specifying the deadline for submitting the input return for each type of emissions return, which must be a reasonable period before the deadline for submitting the emissions return;
  - (d) providing for how, and for how long, the EPA may extend a deadline for submitting the input return for any emissions return or for each type of emissions return;
  - (e) authorising the EPA to issue guidelines or standards in relation to the matters specified under paragraphs (b) to (d).
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (3A) If regulations authorise the EPA to issue guidelines or standards under subsection (1)(e),—
- (a) those guidelines or standards are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
  - (b) the regulations must contain a statement to that effect.

- (4) A person who has complied with guidelines or standards issued by the EPA under regulations made under subsection (1)(e) is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

**Legislation Act 2019 requirements for secondary legislation referred to in subsection (3)**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

**Legislation Act 2019 requirements for secondary legislation referred to in subsection (3A)(a)**

<b>Publication</b>	See the relevant publication, presentation, and disallowance table in the secondary legislation referred to in subsection (3)	LA19 ss 73, 74, Sch 1 cl 14
<b>Presentation</b>	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 194B(1)(e): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 194B(3): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 194B(3A): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

*Notification of status of forest land*

**195 Notification of status of forest land**

- (1) The EPA must, if required by regulations made under section 168, notify the following persons of the details of the land that the EPA is satisfied is a type of land described in subsection (2):
- (a) the Registrar of the Maori Land Court in whose jurisdiction the land is situated in relation to Maori land; and
  - (b) the Registrar-General of Land in relation to land that is registered under the Land Transfer Act 2017; and
  - (c) the Registrar of Deeds in relation to land that is registered under the Deeds Registration Act 1908.
- (2) The types of land are—
- (a) the following types of land in respect of which a person is registered as a participant:
    - (i) pre-1990 forest land:

- (ii) P90 offsetting land:
    - (iii) post-1989 forest land:
  - (b) the following types of post-1989 forest land:
    - (i) P89 offsetting (approved) land (as defined in section 192):
    - (ii) temporary adverse event land:
    - (iii) land for which a person is registered as a participant in permanent forestry:
  - (c) land that the EPA has declared to be exempt land.
- (3) On receipt of a notice under subsection (1), the Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must record the notice on the appropriate register under the Land Transfer Act 2017, record of the Maori Land Court, or deeds index under the Deeds Registration Act 1908.
- (4) The Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must cancel any notices recorded under subsection (3) if required under regulations made under section 168.

*Information about status of forest land*

**195A Information about status of forest land**

- (1) Despite anything in this Act, the EPA must, on receipt of a written request for information about the carbon accounting area or areas to which it relates, provide a statement containing the information in subsection (2) to—
  - (a) the landowner of any post-1989 forest land in respect of which the holder of a registered forestry right or registered lease or party to a Crown conservation contract is a participant; or
  - (b) a prospective transferee, holder of a registered forestry right or registered lease, or party to a Crown conservation contract who has the written consent of the participant in respect of any post-1989 forest land.
- (2) A statement under subsection (1) must set out—
  - (a) the emissions returns (if any) that have been submitted in respect of the carbon accounting area or areas covered by the information request since the carbon accounting area or areas were constituted, and the period covered by those returns; and
  - (b) the unit balance of the carbon accounting area or areas covered by the information request.



*Forestry classifications of land*

**196 Meaning of forestry classification**

In this Act, **forestry classification** means 1 or more classifications of an area of land that—

- (a) classifies the area by whether or how—
  - (i) a definition or matter in this Act that relates to forestry applies to the area; or
  - (ii) the area is eligible to have a definition or matter in this Act apply to it if certain requirements are satisfied; and
- (b) is given—
  - (i) by the EPA under section 196A (initial classification), 196C (change of classification to correct error), 196D (change of classification to update for changes), or 144 (review of classification); or
  - (ii) by the decision of the District Court or High Court under section 145 or 146.

**Examples**

If specified by regulations, an area of land might be classified as—

- pre-1990 forest land:
- post-1989 forest land:
- land that is eligible to become post-1989 forest land (if it becomes forest land):
- P90 offsetting land:
- land that has been deforested, or deforested on specified dates:
- land that is eligible to be declared exempt land under section 180E (because of tree weeds):
- post-1989 forest land for which a participant is registered for standard forestry that is or is not a carbon accounting area (averaging):
- post-1989 forest land for which a participant is registered for permanent forestry:
- land that was forest land on 31 December 1989:
- exempt land:
- pre-1990 forest land to which the pre-1990 forest land allocation plan applies:
- something else.

**196A EPA may give forestry classifications to areas of land**

The EPA may give 1 or more forestry classifications to an area of land in accordance with regulations made under section 196F.

**196B Effect of forestry classifications**

- (1) The forestry classification of an area of land is conclusive evidence of how the relevant definition or matter in this Act applies to the area.
- (2) The EPA must apply this Act to the area in accordance with the forestry classification.
- (3) If a person's application, notice, emissions return, or other document under this Act specifies the forestry classification of an area of land, the document—
  - (a) need not include any information that is covered by the forestry classification; but
  - (b) for a forestry classification that an area of land is eligible for something if certain requirements are satisfied, must include information about whether the requirements are satisfied.
- (4) The EPA, or any person carrying out its powers, duties, or functions,—
  - (a) does not warrant that any forestry classification is correct and not based on, or affected by, something that is incorrect or that has materially changed; and
  - (b) is not liable for anything that results from a forestry classification being incorrect or based on, or affected by, something that is incorrect or that has materially changed, as long as the forestry classification was given in good faith.

**196C Change of forestry classification to correct error**

- (1) The EPA may change the forestry classification of an area of land to correct any error that the EPA is satisfied is contained in the classification, including where the classification was based on incorrect information.
- (2) The EPA must make the change in accordance with regulations made under section 196F.

**196D Change of forestry classification to update for changes**

- (1) The EPA may change the forestry classification of an area of land if—
  - (a) there is a material change in any of the information or facts on which the classification is based; or
  - (b) there is a material change to this Act, or to any regulations made under this Act, that affects the classification.
- (2) The EPA must make the change in accordance with regulations made under section 196F.

**196E Forestry classification with effect before date classification given**

- (1) This section applies if a forestry classification has effect before the date on which the classification is given, whether—

- (a) by the EPA under section 196A, 196C, or 196D or on review under section 144; or
  - (b) by the decision of a court on appeal under section 145 or 146.
- (2) The forestry classification must be ignored in respect of the period before the date on which the classification is given—
- (a) to the extent that it would increase the number of units that a person is required to surrender, or decrease the number of New Zealand units that a person is entitled to receive, in respect of that period; and
  - (b) in respect of any other matter specified by regulations made under section 196F.
- (3) In all other respects, the forestry classification must be applied to that period.
- (4) To avoid doubt, where the forestry classification is ignored under subsection (2), the earlier forestry classification (if any) applies instead.

#### **196F Regulations for forestry classifications**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) specifying the forestry classifications that the EPA may give to areas of land;
  - (b) prescribing 1 or more methods or processes by which the EPA may give a new or changed forestry classification to an area, and those methods or processes—
    - (i) may or may not provide for a person to apply for a classification; and
    - (ii) may prescribe the fees or charges payable by an applicant for a classification to enable the recovery of all or part of the direct and indirect costs of the EPA in—
      - (A) receiving and processing the application; and
      - (B) considering, granting, or declining the application; and
    - (iii) must require the EPA to first consult the persons that the regulations specify are likely to be substantially affected by the classification, unless the only persons likely to be substantially affected have applied for, or agreed to, the classification:
  - (c) providing for when a forestry classification comes into effect, which may, for example,—
    - (i) subject to section 196E, be before the date on which the classification is given if the classification is changed under section 196C or 196D, on review by the EPA under section 144, or on appeal to the court under section 145 or 146:

- (ii) differ for different forestry classifications or circumstances, such as whether a person is responsible for a material change described in section 196D(1)(a):
- (d) specifying matters for the purposes of section 196E(2)(b) (in respect of which a forestry classification is ignored for the period before the date on which it is given):
- (e) providing for the publication of the following in 1 or more notices, instruments, maps, or tools, which may be electronic:
  - (i) any decision to give a forestry classification to an area of land:
  - (ii) the current forestry classifications of all areas of land, and any related matters.
- (2) Examples of the costs that may be recovered under regulations made under subsection (1)(b)(ii) include (but are not limited to)—
  - (a) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with the application:
  - (b) the costs of services provided by third parties.
- (3) Section 167(4) also applies to regulations made under subsection (1)(b)(ii).
- (4) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (5) Regulations made under this section come into force 3 months after the date of their publication under the Legislation Act 2019, or on any later date specified in the regulations.
- (6) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 196F(5): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 196F(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### *Grant-funded forests*

#### **197 Entitlement to units for removals from grant-funded forests**

A participant in an activity of standard forestry or permanent forestry in a carbon accounting area is not entitled to receive New Zealand units for removals that—

- (a) are attributable to forest species in relation to which the participant has received a grant from the Crown under a grant scheme relating to forestry that is prescribed in regulations made under section 197A (a **grant-funded forest**); and
- (b) occur during the stand-down period for that forest prescribed in regulations made under section 197A.

#### 197A Regulations for grant-funded forests

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing Crown grant schemes relating to forestry:
  - (b) prescribing stand-down periods for grant-funded forests:
  - (c) prescribing methodologies for attributing removals to grant-funded forests:
  - (d) providing for any other matters contemplated by section 197, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
  - (a) for different grant schemes:
  - (b) for different periods of time:
  - (c) for different forest species:
  - (d) for different parts of New Zealand.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (4) Regulations made under subsection (1)(c) may relate to emissions or removals that—
  - (a) stem directly from the relevant activity; or
  - (b) are associated with a product or other thing that is the subject of the relevant activity.
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

#### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

Section 197A(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

**273 Part 6 heading repealed**

Repeal the Part 6 heading.

**274 Schedule 1AA amended**

- (1) In Schedule 1AA, after clause 5(2), insert:
- (3) If the thing was done in relation to regulations under section 193R relating to land in a carbon accounting area that is used for permanent forestry, it also satisfies (to the same extent) the requirement to do that thing in relation to regulations under that section relating to land in a carbon accounting area that is used for standard forestry and that is not a carbon accounting area (averaging).
- (2) In Schedule 1AA, replace clause 10(3) with:
- (3) Section 89A—
  - (a) applies in respect of emissions returns for an activity of standard forestry or permanent forestry for emissions or removals on or after 1 January 2023; but
  - (b) does not apply in respect of any other emissions returns in relation to post-1989 forest land during a mandatory emissions returns period commencing before 1 January 2023.
- (3) In Schedule 1AA, replace clause 12(3)(a) with:
  - (a) may submit a single emissions return under section 183 in respect of 1 or more of the activities of standard forestry carried out by a member of the group in a year; and
- (4) In Schedule 1AA, replace clause 13(a) and (b) with:
  - (a) both—
    - (i) is in respect of an activity listed in Part 1 of Schedule 4; and
    - (ii) does not impose a net liability to surrender or repay units for all of the carbon accounting areas covered by the return (for example, under section 189(8)); or
  - (b) is prepared under clause 34 (for opting in to averaging).
- (5) In Schedule 1AA, after clause 17(2)(m), insert:

*Removal from register for persistent non-compliance (by standard forestry participant)*

  - (n) new section 59AA(1)(c), (3), and (4), as if a penalty imposed under former section 134, 134A, or 136 were imposed under new section 134, but only if the deadline to pay the penalty under new section 59AA(1)(c) is on or after 1 January 2023.
- (6) In Schedule 1AA, after subpart 3, insert:

## Subpart 4—Provisions that commence on 1 January 2023

### *Persistent non-compliance*

#### **18 Deregistering participants for persistent non-compliance**

The EPA must not remove the name of a person from the register in respect of an activity under section 59AA if the failure on which the EPA relies occurred before the commencement of this clause.

### *Time bar for amendment of emissions returns*

#### **19 Time bar for amendment of emissions returns**

If an emissions return was required or permitted by a section to which section 127(1) applied immediately before the commencement of this clause, section 127 continues to apply, as it was immediately before the commencement of this clause, in relation to that emissions return.

### *Tree weeds*

#### **20 Existing exemptions for deforestation of land with tree weeds**

- (1) This clause applies to land for which, immediately before the commencement of this clause, there is an exemption under section 184.
- (2) The exemption applies as if it had been granted under this Act as amended by the amendment Act, so that the conditions in former section 184(6) no longer apply.

#### **21 Carbon accounting areas with tree weeds already added to post-1989 forest land**

Section 182C(5)(b) does not affect a carbon accounting area added to any post-1989 forest land before the commencement of that provision.

### *Existing emissions returns*

#### **22 Emissions returns already submitted or assessed**

If an emissions return was submitted by a person, or assessed by the EPA under section 121, before the commencement of this clause, the emissions return must be dealt with in accordance with this Act as it was immediately before the commencement of this clause.

### *P90 offsetting land*

#### **23 Interpretation**

In clauses 23 to 27,—

**commencement date** means the date on which this clause comes into force

**former**, in relation to a provision, means the provision as in force immediately before the commencement date

**new offsetting provisions** means subpart 3 of Part 5 and section 179A(1)(b), as inserted by the amendment Act.

#### 24 New offsetting provisions apply to existing offsets

- (1) Anything done or omitted to be done to, or in relation to, land under former sections 186A to 186J and that is of ongoing effect is to be treated, on and after the commencement date, as having been done or omitted to be done under the new offsetting provisions.
- (2) For the purposes of subclause (1), the new offsetting provisions apply with any necessary modifications.

#### 25 Existing approved applications may be amended to include new land

- (1) The owners of pre-1990 forest land that is the subject of an existing approved application may apply to the EPA to substitute land of the kind referred to in section 181B(2)(b)(ii), (iii), or (iv) for some or all of the area 2 (approved) land under the application.
- (2) The application must—
  - (a) identify the existing approved offset land that is to be replaced (**area A**); and
  - (b) identify the land that is to be substituted for area A (**area B**); and
  - (c) include—
    - (i) any information in relation to area B that would be required in an application under section 181A; and
    - (ii) any other information prescribed in regulations made under section 181W.
- (3) The application must be made jointly by all of the persons who, on the date of the application, own any of the area 1 (approved) land, area 2 (approved) land, or land in area B.
- (4) The application must—
  - (a) be signed by all of the applicants; and
  - (b) be submitted before the P90 offset date for the existing approved application; and
  - (c) be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (5) In this clause, **existing approved application** means an application under former section 186A—



- (a) that was approved before the commencement date; but
  - (b) in relation to which a declaration under former section 186D had not been given to the EPA before the commencement date.
- (6) To avoid doubt, nothing in this clause prevents a person who submitted an application under former section 186A that has not yet been approved from withdrawing or amending the application.

## **26 Approval of application**

- (1) If a person submits an application under clause 25, the EPA,—
- (a) if satisfied that the criteria in subclause (2) are met, must approve the application; or
  - (b) otherwise, may decline the application.
- (2) The criteria are that—
- (a) the land in area B is land that meets the criteria in section 181B(2)(b) (other than subparagraph (i)) and (c):
  - (b) the area 2 (approved) land under the existing application less area A plus area B (**revised offsetting land**) meets the criteria in section 181B(2)(d) and (e):
  - (c) the EPA is satisfied that if all of the revised offsetting land were to become area 1 (offset) land, the P90 offset release criteria are likely to be met on the P90 offset date:
  - (d) any other criteria prescribed in regulations made under section 181W are met.
- (3) If the EPA approves the application,—
- (a) area A ceases to be part of the area 2 (approved) land; and
  - (b) area B becomes part of the approved offset land; and
  - (c) this Act applies as if the existing application had been approved (on its original approval date) in relation to the revised offsetting land.

## **27 Change of terminology: pre-1990 offsetting forest land to P90 offsetting land**

A reference (in an enactment or other document) to pre-1990 offsetting forest land includes, in relation to a time before the commencement date, a reference to P90 offsetting land, unless the context otherwise requires.

### *Non-compliance for transmitted interests*

## **28 Non-compliance for transmitted interests**

- (1) Section 187B(1) to (3), but no other subsections of that section, applies to a transmission of interest whose date of transmission was before the commencement of this clause.

- (2) Section 187D—
- (a) does not apply to a final transmission whose date of transmission was before the commencement of this clause; but
  - (b) applies to a final transmission whose date of transmission is on or after the commencement of this clause, even if the first transmission, and any other transmission of interest between the first and final transmissions, was before that commencement.

*Changing of activity on post-1989 forest land*

**29 Previous changing of activity on post-1989 forest land**

- (1) If a person satisfied former section 188(9) before the commencement of this clause, they must be treated as having had an application under section 189 approved to become registered as a participant in standard forestry (the final activity) by changing from PFSI activity (the initial activity).
- (2) *See* sections 189(7)(b) and 190(2)(c)(ii), which are provisions to which this clause relates.

**30 Application to change from standard to permanent forestry**

- (1) This clause applies to a person who, in the period starting on 1 January 2018 and ending on 31 December 2023,—
  - (a) becomes registered as a participant carrying out standard forestry in respect of any post-1989 forest land, whether or not registered in respect of that land before; and
  - (b) has an application under section 189 approved to change from standard forestry to permanent forestry on that land.
- (2) For each CAA1 covered by the emissions return that accompanied the application, the person may surrender any units that are equal in number to the unit balance of the CAA1.
- (3) The deadline for surrendering the units is 60 working days after the person submits the application.
- (4) For each unit surrendered, the person becomes entitled to a unit for removals from permanent forestry.

**31 All PFSI activity is changed to permanent forestry in 2024**

- (1) This clause applies to a person's forest land that a forest sink covenant is registered against immediately before 1 January 2024 (the **PFSI land**).
- (2) On 1 January 2024,—
  - (a) the EPA must apply sections 189 to 189B as if the person had that day submitted an application in accordance with section 189 to become a participant in a final activity of permanent forestry on the PFSI land; but

- (b) the EPA may apply section 121 for the purposes of the application.

*Carbon accounting areas (averaging)*

**32 Emissions returns for carbon accounting area (averaging) in third mandatory emissions return period**

- (1) This clause applies in relation to a carbon accounting area (CAA1) that becomes a carbon accounting area (averaging) under section 191B(2) during the third mandatory emissions return period.
- (2) In any emissions return in respect of a period in the third mandatory emissions return period, the calculations and assessments in relation to the CAA1 must be made as if—
- (a) the CAA1 had been a carbon accounting area (averaging) since the beginning of the period covered by the emissions return; and
- (b) the amendment Act had come into force before that date.

**33 Carbon accounting areas constituted in 2019–2022: opting in to averaging**

- (1) A participant in an activity of standard forestry on post-1989 forest land in 1 or more carbon accounting areas (each a CAA1) may give notice to the EPA to change the CAA1s into carbon accounting areas (averaging) if all of the following apply to each CAA1:
- (a) it was constituted—
- (i) by a person being registered as a participant in respect of the land (as referred to in former section 188(1) or section 182C); or
- (ii) by the land being added as a carbon accounting area under former section 188(3) or section 182C(3):
- (b) the application to register the participant, or add the carbon accounting area, was made after 31 December 2018 but before 1 January 2023:
- (c) its constitution date is before 1 January 2023:
- (d) it meets the requirements of section 191B(2)(b):
- (e) before the notice is given under this clause, no final forestry emissions return required by section 183A has been submitted covering the CAA1 in relation to the mandatory emissions return period ending on 31 December 2022:
- (f) before the notice is given under this clause, no other emissions return has been (or should have been) submitted covering the CAA1 in relation to a period after 1 January 2023.
- (2) The notice given under this clause must—
- (a) specify the CAA1s to which it relates; and
- (b) include an emissions return prepared under clause 34 for the activity that covers the CAA1s.

- (3) The notice must—
- (a) be signed by the participant; and
  - (b) be submitted on or before 30 June 2023; and
  - (c) be submitted—
    - (i) in the prescribed manner and format; and
    - (ii) together with the prescribed fee (if any); and
    - (iii) together with the prescribed information (if any).
- (4) An emissions return prepared under clause 34 for the activity that covers the CAA1s, when submitted with the notice, satisfies the obligation to submit the final forestry emissions return required by section 183A covering the CAA1s in relation to the mandatory emissions return period ending on 31 December 2022.
- (5) In this clause, **former**, in relation to a provision, means that provision as in force before this clause came into force.

### **34 Preparing emissions return for carbon accounting areas changing to averaging**

- (1) An emissions return prepared under this clause must—
- (a) specify—
    - (i) the CAA1s that the return covers; and
    - (ii) if the land in a CAA1 has not all been in the CAA1 for the whole of the emissions return period, all of the carbon accounting areas that any of the land has been part of during the emissions return period (the **predecessor CAAs**); and
  - (b) for each CAA1,—
    - (i) specify the activity for which the person is a participant on the CAA1s; and
    - (ii) specify the emissions return period that applies under subclause (2); and
    - (iii) specify the emissions and removals during the emissions return period from all of the land now in the CAA1 (whether they occurred when the land was part of the CAA1 or part of a predecessor CAA); and
    - (iv) set out the calculation under clause 35(1) of the person's averaging liability or entitlement for emissions and removals during the emissions return period; and
    - (v) set out the averaging unit balance determined under clause 35(3); and

- (vi) set out the calculation under clause 35(4) of the person's actual liability or entitlement; and
  - (c) set out the calculation under clause 35(5) of the person's total liability or entitlement for all the CAA1s.
- (2) The **emissions return period** for a CAA1 is the period that—
- (a) starts on the later of—
    - (i) 1 January 2018; and
    - (ii) the date on which any of the land in the CAA1 became post-1989 forest land; and
  - (b) ends on 31 December 2022.

### 35 Calculations for CAA1s changing to averaging

- (1) A person's **averaging liability or entitlement** for a CAA1 (**a**) is calculated as follows:

$$a = r - e$$

where—

- r is the number of units required for the removals from the CAA1 during the emissions return period, determined in accordance with subclause (2)
  - e is the number of units required for the emissions from the CAA1 during the emissions return period, determined in accordance with subclause (2).
- (2) The values of variables r and e in subclause (1) are to be determined as if—
- (a) all of the land now in the CAA1 had been a single carbon accounting area since the beginning of the emissions return period; and
  - (b) that carbon accounting area had been a carbon accounting area (averaging) since the beginning of the emissions return period; and
  - (c) the amendment Act had come into force before the beginning of the emissions return period.
- (3) The **averaging unit balance** of a CAA1 is,—
- (a) if the person's averaging liability or entitlement for the CAA1 is positive, that amount; or
  - (b) if the person's averaging liability or entitlement for the CAA1 is negative, zero.
- (4) A person's **actual liability or entitlement** for a CAA1 (**h**) is calculated as follows:

$$h = u - c$$

where—

- u is the averaging unit balance of the CAA1 under subclause (3)

c is—

- (a) the previous unit balance of the CAA1 calculated under the last emissions return submitted for the CAA1; or
- (b) if there is no such return, zero.

- (5) A person's **total liability or entitlement** for all the CAA1s (**t**) is calculated as follows:

$$t = h_n$$

where—

$h_n$  is the sum of the person's actual liability or entitlement for each CAA1.

### 36 Effect of changing to carbon accounting areas (averaging)

- (1) This clause applies if the EPA decides that a notice under clause 33 and the accompanying emissions return are correct.
- (2) If the person's total liability or entitlement for the CAA1s covered by the emissions return is—
  - (a) a positive number, the person is entitled to receive that number of New Zealand units; or
  - (b) a negative number, the person is liable to surrender that number of units.
- (3) The unit balance of each CAA1 covered by the emissions return is updated to the averaging unit balance calculated under the return.
- (4) Each CAA1 covered by the notice becomes a carbon accounting area (averaging) and is to be treated as having become so on 1 January 2023.

### 275 Schedule 3 amended

- (1) In Schedule 3, in the Part 1A heading, replace “**Pre-1990 offsetting forest land**” with “**P90 offsetting land**”.
- (2) In Schedule 3, Part 1A, replace “pre-1990 offsetting forest land” with “P90 offsetting land” in each place.

### 276 Schedule 4 amended

In Schedule 4, replace Part 1 with:

## Part 1 Standard forestry removal activities

*(applies on and after 1 January 2008)*

Any of the following activities in respect of post-1989 forest land, where the person carrying out the activity has chosen this Part (instead of Part 1A) to apply to the land:

- (a) owning the land, other than post-1989 forest land that is subject to a forest sink covenant:

- (b) holding a registered forestry right for the land or being the leaseholder under a registered lease of the land, other than post-1989 forest land that is subject to a forest sink covenant:
- (c) being a party to a Crown conservation contract in respect of the land.

## **Part 1A**

### **Permanent forestry removal activities**

*(applies on and after 1 January 2023)*

Any of the activities specified in Part 1 in respect of post-1989 forest land, where the person carrying out the activity has chosen this Part (instead of Part 1) to apply to the land.

Subpart 5—Amendments that commence on 1 January 2024

#### **277 Schedule 4 amended**

In Schedule 4, Part 1, paragraphs (a) and (b), delete “, other than post-1989 forest land that is subject to a forest sink covenant”.

## **Part 2**

### **Consequential amendments to other enactments**

Subpart 1—Consequential amendments that commence on day after  
Royal assent

#### **278 Climate Change (Fishing Allocation Plan) Order 2010 revoked**

The Climate Change (Fishing Allocation Plan) Order 2010 (SR 2010/134) is revoked.

#### **279 Consequential amendments**

The enactments specified in Schedule 3 are amended as set out in that schedule.

Subpart 2—Consequential amendments that commence on  
30 November 2020

#### **280 Consequential amendments**

The enactments specified in Schedule 4 are amended as set out in that schedule.

Subpart 3—Consequential amendments that commence on 1 January  
2023

**281 Consequential amendments**

The enactments specified in Schedule 5 are amended as set out in that schedule.

Subpart 4—Revocation and consequential amendments that commence  
on 1 January 2024

**282 Forests (Permanent Forest Sink) Regulations 2007 revoked**

The Forests (Permanent Forest Sink) Regulations 2007 (SR 2007/354) are revoked.

**283 Consequential amendments**

The enactment specified in Schedule 6 is amended as set out in that schedule.



## Schedule 1 New Schedule 2A inserted

s 199

### Schedule 2A Paris Agreement

s 4

*The Parties to this Agreement,*

*Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,*

*Pursuant to the Durban Platform for Enhanced Action established by decision 1/CP.17 of the Conference of the Parties to the Convention at its seventeenth session,*

*In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,*

*Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,*

*Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention,*

*Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology,*

*Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,*

*Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,*

*Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change,*

*Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,*

*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,*

*Recognizing* the importance of the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention,

*Noting* the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change,

*Affirming* the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement,

*Recognizing* the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change,

*Also recognizing* that sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change,

Have agreed as follows:

### **Article 1**

For the purpose of this Agreement, the definitions contained in Article 1 of the Convention shall apply. In addition:

- (a) “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992;
- (b) “Conference of the Parties” means the Conference of the Parties to the Convention;
- (c) “Party” means a Party to this Agreement.

### **Article 2**

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- (a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
- (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

### **Article 3**

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

### **Article 4**

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.
4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.
5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.
6. The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.

7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.
8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.
9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.
10. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall consider common time frames for nationally determined contributions at its first session.
11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat.
13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article.
15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.
16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat

shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.

17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.
18. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Agreement, each member State of that regional economic integration organization individually, and together with the regional economic integration organization, shall be responsible for its emission level as set out in the agreement communicated under paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.
19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

#### **Article 5**

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.
2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

#### **Article 6**

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.
2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double

- counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.
  4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim:
    - (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
    - (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;
    - (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and
    - (d) To deliver an overall mitigation in global emissions.
  5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.
  6. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.
  7. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.
  8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:
    - (a) Promote mitigation and adaptation ambition;

- (b) Enhance public and private sector participation in the implementation of nationally determined contributions; and
  - (c) Enable opportunities for coordination across instruments and relevant institutional arrangements.
9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.

### Article 7

1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.
2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.
3. The adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session.
4. Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.
5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.
6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.
7. Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:

- (a) Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;
  - (b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;
  - (c) Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making;
  - (d) Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices; and
  - (e) Improving the effectiveness and durability of adaptation actions.
8. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article.
9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:
  - (a) The implementation of adaptation actions, undertakings and/or efforts;
  - (b) The process to formulate and implement national adaptation plans;
  - (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;
  - (d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and
  - (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.
10. Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.
11. The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication.



12. The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat.
13. Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11.
14. The global stocktake referred to in Article 14 shall, inter alia:
  - (a) Recognize adaptation efforts of developing country Parties;
  - (b) Enhance the implementation of adaptation action taking into account the adaptation communication referred to in paragraph 10 of this Article;
  - (c) Review the adequacy and effectiveness of adaptation and support provided for adaptation; and
  - (d) Review the overall progress made in achieving the global goal on adaptation referred to in paragraph 1 of this Article.

### **Article 8**

1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.
2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.
4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:
  - (a) Early warning systems;
  - (b) Emergency preparedness;
  - (c) Slow onset events;
  - (d) Events that may involve irreversible and permanent loss and damage;
  - (e) Comprehensive risk assessment and management;
  - (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
  - (g) Non-economic losses; and
  - (h) Resilience of communities, livelihoods and ecosystems.

5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.

### **Article 9**

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.
2. Other Parties are encouraged to provide or continue to provide such support voluntarily.
3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.
4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.
5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.
6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.
7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.
8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.
9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to

financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

### **Article 10**

1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.
2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.
3. The Technology Mechanism established under the Convention shall serve this Agreement.
4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article.
5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.
6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.

### **Article 11**

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology develop-

- ment, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.
2. Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.
  3. All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.
  4. All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.
  5. Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement, including the appropriate institutional arrangements established under the Convention that serve this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, consider and adopt a decision on the initial institutional arrangements for capacity-building.

### **Article 12**

Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

### **Article 13**

1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.
2. The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.

3. The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.
4. The transparency arrangements under the Convention, including national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis, shall form part of the experience drawn upon for the development of the modalities, procedures and guidelines under paragraph 13 of this Article.
5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.
6. The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14.
7. Each Party shall regularly provide the following information:
  - (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and
  - (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.
8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.
9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.
10. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.
11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building

needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.

12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.
13. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.
14. Support shall be provided to developing countries for the implementation of this Article.
15. Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis.

#### **Article 14**

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.

### Article 15

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.

### Article 16

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement.
2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.
4. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall keep under regular review the implementation of this Agreement and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall:
  - (a) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement; and
  - (b) Exercise such other functions as may be required for the implementation of this Agreement.
5. The rules of procedure of the Conference of the Parties and the financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Agreement or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
8. The United Nations and its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Agreement as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 5 of this Article.

### Article 17

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention, on the arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

### Article 18

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bod-



ies shall apply *mutatis mutandis* to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary 14 bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

### Article 19

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, other than those referred to in this Agreement, shall serve this Agreement upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall specify the functions to be exercised by such subsidiary bodies or arrangements.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement may provide further guidance to such subsidiary bodies and institutional arrangements.

### Article 20

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York from 22 April 2016 to 21 April 2017. Thereafter, this Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their

respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

### Article 21

1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.
2. Solely for the limited purpose of paragraph 1 of this Article, “total global greenhouse gas emissions” means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

### Article 22

The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply *mutatis mutandis* to this Agreement.

### Article 23

1. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply *mutatis mutandis* to this Agreement.
2. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

#### **Article 24**

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Agreement.

#### **Article 25**

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

#### **Article 26**

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

#### **Article 27**

No reservations may be made to this Agreement.

#### **Article 28**

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

#### **Article 29**

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Paris this twelfth day of December two thousand and fifteen.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

## Schedule 2

### New Schedule 5 inserted

s 202

### Schedule 5

#### Primary sector climate change commitments

ss 5J, 220

##### Farm emissions reporting

- (1) For 25% of farms in New Zealand, a person responsible for farm management holds a documented annual total of on-farm greenhouse gas emissions, by methods and definitions accepted by the He Waka Eke Noa Steering group, by 31 December 2021.
- (2) For all farms in New Zealand, a person responsible for farm management holds a documented annual total of on-farm greenhouse gas emissions, by methods and definitions accepted by the He Waka Eke Noa Steering group, by 31 December 2022.
- (3) A pilot of a farm-level accounting and reporting system has been completed by 1 January 2024 across a range of farm types.
- (4) A system for farm-level accounting and reporting of 2024 agricultural greenhouse gas emissions at farm level is in use by all farms by 1 January 2025.

##### Farm plans

- (5) Guidance is provided to farmers on how to measure and manage greenhouse gas emissions through farm planning by 1 January 2021.
- (6) A quarter of farms have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2022.
- (7) All farms have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2025.

## Schedule 3

### Consequential amendments that commence on day after Royal assent

s 279

#### Part 1

#### Amendments to Acts

##### Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85)

Repeal section 51.

##### Income Tax Act 2007 (2007 No 97)

Replace section CB 36(6)(b) with:

(b) by a transfer to the Crown required by a permanent forestry scheme.

In section CB 36(8), replace “into a Kyoto unit as defined in section 4(1) of” with “into something else under”.

After section CB 36(8), insert:

*Cancellation of historic approved overseas unit and replacement with New Zealand emissions unit*

(8B) If a person transfers an approved overseas unit as defined in section 4(1) of the Climate Change Response Act 2002 for cancellation under schedule 1AA, clause 14(2) of that Act and is transferred a New Zealand emissions unit under schedule 1AA, clause 14(3) of that Act, the person is treated as having sold the approved overseas unit for an amount equal to—

- (a) the unit’s value under section ED 1(7B), if that subsection applies; or
- (b) the unit’s cost, otherwise.

*Surrender of forest sink emissions unit for entitlement to New Zealand emissions unit*

(8C) If a person surrenders a forest sink emissions unit under schedule 1AA, clause 30(2) of the Climate Change Response Act 2002 and receives an entitlement to a New Zealand emissions unit under schedule 1AA, clause 30(4) of that Act, the person is treated as having sold the forest sink emissions unit for an amount equal to—

- (a) the unit’s value under section ED 1(7B), if that subsection applies; or
- (b) the unit’s cost, otherwise.

In section CB 36, list of defined terms, insert in its appropriate alphabetical order “permanent forestry scheme”.

Replace section DB 60(1)(b) with:

**Income Tax Act 2007 (2007 No 97)**—*continued*

- (b) under a permanent forestry scheme.

In section DB 60, list of defined terms, insert in its appropriate alphabetical order “permanent forestry scheme”.

Replace section DB 60B(1)(b) with:

- (b) to transfer emissions units to the Crown under a permanent forestry scheme.

In section DB 60B, list of defined terms, insert in its appropriate alphabetical order “permanent forestry scheme”.

Replace section EH 34(1)(b) with:

- (b) includes permanent forestry income.

In section EH 34, list of defined terms,—

- (a) delete “PFSI forestry income”;  
 (b) insert in its appropriate alphabetical order “permanent forestry income”.

In section GC 3B(2)(b), replace “forest sink covenant under section 67Y of the Forests Act 1949” with “permanent forestry scheme”.

In section YA 1, definition of **convert**, replace “section 4(1) of” with “regulations made under section 30G of”.

In section YA 1, insert in their appropriate alphabetical order:

**permanent forestry business** means the forestry activities, as defined in the Climate Change Response Act 2002, carried on in relation to land by a person having entitlements and obligations relating to the land under a permanent forestry scheme

**permanent forestry income**, for a person, means the income for a permanent forestry business—

- (a) relating to a permanent forestry scheme; and  
 (b) derived by the person from—  
 (i) receiving an emissions unit under the permanent forestry scheme;  
 or  
 (ii) entering into a transaction in relation to an emissions unit received under the permanent forestry scheme

**permanent forestry scheme** means—

- (a) the permanent forest sink initiative under which an owner of post-1989 forest land who entered into a forest sink covenant that was registered under section 67ZD of the Forests Act 1949 in relation to the land was entitled under the covenant to receive emissions units, other than under section 64 of the Climate Change Response Act 2002, for the land and

**Income Tax Act 2007 (2007 No 97)—continued**

was liable under the covenant to surrender emissions units to the Crown when required:

- (b) the scheme under which a person who is registered under the Climate Change Response Act 2002 as a participant in permanent forestry relating to post-1989 forest land is entitled to receive emissions units for the land and is liable to surrender emissions units to the Crown when required by that Act

In section YA 1, repeal the definitions of **PFSI forestry business** and **PFSI forestry income**.

**Summary Proceedings Act 1957 (1957 No 87)**

In section 2(1), definition of **infringement notice**, after paragraph (je), insert:

- (jf) section 30Q of the Climate Change Response Act 2002; or

**Part 2**

**Amendments to legislative instruments**

**Climate Change (Forestry Sector) Regulations 2008 (SR 2008/355)**

In regulation 4(1), definition of **mandatory emissions return period**, replace “section 189(9)” with “section 4(1)”.

**Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010 (SR 2010/190)**

In clause 3(1), definition of **body corporate**, paragraph (a), delete “(as specified in section 72(6)(b)(ii) of the Act)”.

**Climate Change (Stationary Energy and Industrial Processes) Regulations 2009 (SR 2009/285)**

In regulation 9(1), delete “where the volume of coal mined exceeds 2 000 tonnes in a year”.

**Climate Change (Unit Register) Regulations 2008 (SR 2008/357)**

In regulation 3, insert in their appropriate alphabetical order:

**CDM registry** means the registry established and maintained as the clean development mechanism registry under Article 12 of the Protocol

**certified emission reduction unit** means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a certified emission reduction unit by the CDM registry

**clean development mechanism project** means a project undertaken under Article 12 of the Protocol for the benefit of a Party not listed in Annex I of the Convention

**Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued**

**conversion account** means an account in the Registry used for the purpose of converting New Zealand units into New Zealand assigned amount units

**convert**, in relation to a New Zealand unit, means the transfer of the unit to a conversion account in the Registry with the effect specified in regulation 11E

**emission reduction unit** means a unit that—

- (a) is derived from a joint implementation project, meaning a project aimed at reducing the human-induced emissions of greenhouse gases by sources or enhancing the human-induced removals by sink activities of a Party listed in Annex I of the Convention that is undertaken under Article 6 of the Protocol; and
- (b) is issued by converting a New Zealand assigned amount unit, an imported assigned amount unit, or a removal unit, and is designated as an emission reduction unit by—
  - (i) the Registry; or
  - (ii) a registry of a Party listed in Annex B of the Protocol (other than New Zealand)

**imported assigned amount unit** means an assigned amount unit that is issued out of the initial assigned amount of a Party other than New Zealand

**New Zealand assigned amount unit** means a unit that is—

- (a) issued out of New Zealand's allowance of emissions of greenhouse gas, measured in tonnes of carbon dioxide equivalent and calculated under Articles 3.7 and 3.8 of the Protocol; and
- (b) designated as an assigned amount unit by the Registry

**Party** means a Party to the Protocol

**removal unit** means a unit that is—

- (a) derived from a Party's sink activities that result in a net removal of greenhouse gases; and
- (b) designated as a removal unit by—
  - (i) the Registry; or
  - (ii) a registry of a Party listed in Annex B of the Protocol (other than New Zealand)

After regulation 3, insert:



**Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued**

*Approved overseas units, overseas registries, and international transaction body*

**3A Approved overseas units prescribed**

Each of the following units that is issued as defined by section 4 of the Act may be transferred to accounts in the Registry (and is therefore an approved overseas unit under section 4 of the Act):

- (a) a New Zealand assigned amount unit:
- (b) an imported assigned amount unit:
- (c) a certified emission reduction unit:
- (d) an emission reduction unit:
- (e) a removal unit.

**3B Overseas registry prescribed**

The overseas registry, for the purposes of section 4 of the Act, is the CDM registry.

**3C International transaction body prescribed**

The international transaction body, for the purposes of section 4 of the Act, is the international log established and maintained by the Secretariat to confirm the validity of transactions, including the issue of units and the transfer of units between registries and between accounts in the Registry.

Before regulation 8, insert:

**8AA Prohibition on ability to export New Zealand units**

- (1) An account holder may not apply to the Registrar to convert a New Zealand unit held by that person into a unit for the purposes of transferring that unit to an account in an overseas registry or international transaction body.
- (2) The Registrar must not transfer to an account in an overseas registry or international transaction body under section 18C of the Act—
  - (a) New Zealand units; or
  - (b) units that have been converted from New Zealand units before the commencement of this regulation.

Replace regulation 11 with:

**11 Effect of retirement**

A unit that is transferred to a retirement account may not be further transferred, retired, surrendered, or cancelled.

**Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued****11AA New Zealand units may not be retired**

New Zealand units may not be retired.

**11AB Retirement of approved overseas units**

- (1) This regulation applies if the Registrar receives an application to transfer approved overseas units held in an account holder's holding account to a retirement account.
- (2) The Registrar must—
  - (a) seek a direction from the Minister of Finance as to whether the units may be transferred to the retirement account; and
  - (b) transfer the units only if directed to do so.

**11AC Imported assigned amount units not to be surrendered**

No participant may surrender, or permit to be surrendered, an imported assigned amount unit to meet the participant's obligations under section 63 of the Act.

After regulation 11C, insert:

*Conversion of New Zealand units into certain units***11D Conversion of New Zealand units into New Zealand assigned amount units for cancellation**

- (1) An account holder may apply to the Registrar to convert a New Zealand unit held by that person into a New Zealand assigned amount unit held for the purposes of transferring that assigned amount unit to the general cancellation account.
- (2) The account holder must—
  - (a) submit the prescribed form to the Registrar specifying the New Zealand units that the account holder wishes to convert; and
  - (b) submit an application under section 18C of the Act for the transfer of an equivalent number of New Zealand assigned amount units (into which the account holder is converting the New Zealand units) to the general cancellation account.
- (3) On receipt of the application, the Registrar must, as soon as practicable,—
  - (a) transfer the New Zealand units specified in the application from the account holder's account to the conversion account; and
  - (b) transfer to the account holder's account an equivalent number of New Zealand assigned amount units; and
  - (c) subject to section 21AA(3) of the Act, register the transaction applied for under subclause (2)(b).

**Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued**

- (4) The Registrar's obligations under subclause (3) apply only if, and to the extent that, there are sufficient New Zealand assigned amount units to meet a request under subclause (2) to convert New Zealand units.
- (5) If the Registrar receives notification from an overseas registry or international transaction body under section 21AA(3) of the Act that there is a discrepancy in the transaction relating to the application submitted under subclause (2)(b), the Registrar must—
  - (a) comply with section 21AA(3) of the Act; and
  - (b) reverse the transfers in subclause (3)(a) and (b).

*Effect of conversion or surrender of certain units*

**11E Effect of conversion of unit**

A unit that is transferred to a conversion account may not be surrendered, cancelled, or otherwise further transferred except as required by regulation 11D(5)(b).

**11F Effect of surrendering imported assigned amount units despite prohibition**

- (1) This regulation applies if at any time the Registrar discovers that an imported assigned amount unit has been transferred to a surrender account.
- (2) The Registrar must—
  - (a) reverse the transfer; and
  - (b) notify the participant and the EPA that the transfer has been reversed.
- (3) If the transfer is reversed,—
  - (a) the EPA must treat the transfer as if it never took place for the purpose of assessing whether a participant has surrendered the required number of units by the due date as required under any section of the Act; and
  - (b) if the EPA considers that the person has not surrendered the required number of units by the due date, give a notice to the participant under section 134(3) of the Act.

**Forests (Permanent Forest Sink) Regulations 2007 (SR 2007/354)**

In regulation 3, replace the definition of **assigned amount unit** with:

**assigned amount unit** has the meaning given to New Zealand assigned amount unit in regulation 3 of the Climate Change (Unit Register) Regulations

## Schedule 4

### Consequential amendments that commence on 30 November 2020

s 280

#### Part 1

#### Amendments to Act

##### Income Tax Act 2007 (2007 No 97)

Replace section EB 2(3)(j) with:

- (j) a greenhouse gas unit that is not an emissions unit.

In section EB 2, list of defined terms,—

- (a) delete “non-Kyoto greenhouse gas unit”:  
(b) insert in its appropriate alphabetical order “greenhouse gas unit”.

Replace section EW 5(3C) and the heading above that subsection with:

*Greenhouse gas unit*

- (3C) A greenhouse gas unit that is not an emissions unit is an excepted financial arrangement.

In section EW 5, list of defined terms,—

- (a) delete “non-Kyoto greenhouse gas unit”:  
(b) insert in its appropriate alphabetical order “greenhouse gas unit”.

In section YA 1, insert in its appropriate alphabetical order:

**greenhouse gas unit** means a unit that is—

- (a) issued by reference to the sequestration, reduction, or avoidance of emission, of human-induced greenhouse gases; and  
(b) verified to an internationally recognised standard

In section YA 1, repeal the definition of **non-Kyoto greenhouse gas unit**.

In section YA 1, definition of **revenue account property**, replace paragraph (d) with:

- (d) is a greenhouse gas unit that is not an emissions unit

#### Part 2

#### Amendments to legislative instrument

##### Climate Change (Unit Register) Regulations 2008 (SR 2008/357)

Replace regulations 8 to 10 with:

**Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—*continued***

**8 Approved overseas units cannot be held or transferred except by the Crown**

- (1) No account holder, other than an account holder of a Crown holding account, may hold any approved overseas unit.
- (2) No person, other than the Registrar as administrator of a Crown holding account, may transfer any approved overseas unit into or within the unit register.
- (3) *See* clause 14 of Schedule 1AA of the Act (cancellation of historic approved overseas units).

Revoke regulations 11AB and 11AC, 11B, and 11C and the Schedule.

## Schedule 5

### Consequential amendments that commence on 1 January 2023

s 281

#### Forests Act 1949 (1949 No 19)

After section 67C(1)(g)(iii), insert:

- (iv) harvested from a forest on land in respect of which a person is registered as a participant in permanent forestry under the Climate Change Response Act 2002.

After section 67D(1)(b)(i)(D), insert:

- (E) a forest on land in respect of which a person is registered as a participant in permanent forestry under the Climate Change Response Act 2002; or

## Schedule 6

### Consequential amendments that commence on 1 January 2024

s 283

#### Forests Act 1949 (1949 No 19)

In section 2(1), replace the definition of **landholding** with:

**landholding**—

- (a) means an estate, right, title, or interest of any kind in or over an area of land by or under which indigenous timber may be harvested; but
- (b) does not include an interest by way of charge or security

Repeal section 67C(1)(g)(iii).

Repeal section 67D(1)(b)(i)(D).

Repeal Part 3B.

In Schedule 1AA, after clause 3, insert the Part 2 set out in Schedule 7 of this Act.

Schedule 6: amended, on 6 August 2022, by section 11(2) of the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 (2020 No 43).

Schedule 6: amended, on 6 August 2022, by section 11(3) of the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 (2020 No 43).

## Schedule 7

### New Part inserted into Schedule 1AA of Forests Act 1949

s 283

Schedule 7 heading: amended, on 6 August 2022, by section 11(4) of the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 (2020 No 43).

#### Part 2

### Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2020

#### 4 Removal of forest sink covenants from register and records

- (1) The EPA (as defined by section 4 of the Climate Change Response Act 2002) must, as soon as is reasonably practicable after the commencement of this clause, give notice that the clause has commenced to—
  - (a) the Registrar-General of Land; and
  - (b) the Registrar of the Maori Land Court.
- (2) As soon as is reasonably practicable after receiving the notice,—
  - (a) the Registrar-General of Land must record, on each record of title on which a forest sink covenant is registered, that the covenant is terminated; and
  - (b) the Registrar of the Maori Land Court must remove any notification of a forest sink covenant from the court's records of Maori land.

#### 5 Crown charges continue against land subject to forest sink covenants

For the purposes of any charge registered against land in accordance with section 67ZE immediately before the commencement of this clause, the charge and that section continue to apply as if the section had not been repealed.

Schedule 7: amended, on 6 August 2022, by section 11(5) of the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 (2020 No 43).

Schedule 7: amended, on 6 August 2022, by section 11(6) of the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 (2020 No 43).



## Notes

### **1** *General*

This is a consolidation of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 (2020 No 43): section 11