



Severe Weather Emergency Recovery (Climate Change— Forestry) Order 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 6th day of June 2023

Present:

Her Excellency the Governor-General in Council

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Climate Change made in accordance with section 8(1) and (2) of that Act.

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Order

1 Title

This order is the Severe Weather Emergency Recovery (Climate Change—Forestry) Order 2023.

2 Commencement

This order is treated as having come into force on 12 February 2023.

3 Revocation of this order

This order is revoked on the close of 31 December 2024.

4 Interpretation

(1) In this order, unless the context otherwise requires,—

Act means the Climate Change Response Act 2002

affected person means—

- (a) an individual whose usual residence is in a directly affected area; or
- (b) a body corporate or an unincorporated body whose address for service or for notices is in a directly affected area; or
- (c) any person whose relevant forest land is in a directly affected area

directly affected area means any area in 1 or more districts of the territorial authorities specified in the definition of local authority in section 4(1) of the Severe Weather Emergency Recovery Legislation Act 2023

district has the meaning given in section 5(1) of the Local Government Act 2002

territorial authority has the meaning given in section 5(1) of the Local Government Act 2002.

(2) A term used in this order that is defined in the Act, but not in this order, has the meaning given in the Act.

Deadlines extended for providing documents

5 Providing documents

(1) This clause applies to an affected person who—

- (a) must or may give a notice or submit an emissions return under the Act, in relation to forest land, by a deadline specified in subclause (3) or (4) during the period starting on 12 February 2023 and ending on 20 November 2023; and
 - (b) has not already given the notice or submitted the emissions return; and
 - (c) is, or will be, a participant in a forestry activity in respect of the forest land.
- (2) A deadline specified in subclause (3) is extended for the affected person to the earlier of the following:
- (a) 100 working days after the deadline under the Act:
 - (b) 20 November 2023.
- (3) The relevant deadlines are as follows:
- (a) the deadline in section 56(2)(a) to give notice under section 56(1)(a) that a person is a participant in respect of an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or P90 offsetting land):
 - (b) the deadline in section 65(1), of 31 March 2023, to submit an annual emissions return in respect of an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or P90 offsetting land):
 - (c) the deadline in section 115(1) to appeal against an emissions ruling or a decision to decline to make an emissions ruling:
 - (d) the deadline in section 144(1A)(a) or (b) to give notice requesting the EPA to review a decision:
 - (e) the deadline in section 157A(2)(a)(i) or (ii) to give notice about a person joining or leaving an unincorporated body or a change of details for the person to whom notices are to be given:
 - (f) the deadline in section 181G(2)(b) to give a P90 release criteria notice:
 - (g) the deadline in section 183A(3) to submit a final forestry emissions return in respect of an activity of standard forestry or permanent forestry:
 - (h) the deadline in section 187(4)(a) to give notice of a transmission of interest (including a final forestry emissions return and new unit balance report):
 - (i) the deadline in clause 33(3)(b) of Schedule 1AA to give notice to change carbon accounting areas for an activity of standard forestry into carbon accounting areas (averaging).
- (4) The deadline in section 187(2)(b) to give notice of an agreement (that the transferee is to become the participant) is extended for the affected person to the deadline in section 187(4)(a), as extended by subclause (3)(h), to give notice of the transmission of interest.

- (5) In this clause, all references to sections and schedules are to sections and schedules of the Act.

Deadlines extended for surrendering or repaying units

6 Surrendering units for deforesting pre-1990 forest land or P90 offsetting land

- (1) This clause applies to an affected person—
- (a) for whom clause 5(3)(b) extends the deadline to submit an emissions return in respect of an activity listed in Part 1 or 1A of Schedule 3 of the Act; or
 - (b) who,—
 - (i) on or before 16 February 2023, submitted an emissions return under section 65 or 118(2) or (3) of the Act in respect of an activity listed in Part 1 or 1A of Schedule 3 of the Act; and
 - (ii) is required by section 65(4)(a) or 118(5) of the Act to surrender units, in relation to the emissions return, by a deadline during the period starting on 12 February 2023 and ending on 20 November 2023.
- (2) The deadline in section 65(4)(a) or 118(5) of the Act to surrender units in relation to the emissions return is extended to 60 working days after the EPA gives the person a notice requiring the surrender.

7 Surrendering or repaying units for standard or permanent forestry

- (1) This clause applies to an affected person who,—
- (a) on or before 16 February 2023, submitted an emissions return in respect of an activity of standard forestry or permanent forestry; and
 - (b) has been given a notice by the EPA requiring the surrender or repayment of units in relation to the emissions return; and
 - (c) is required by section 63(4) of the Act to surrender or repay the units by a deadline during the period starting on 12 February 2023 and ending on 20 November 2023.
- (2) The deadline is extended to 160 working days after the EPA gave the person the notice requiring the surrender or repayment.

8 Surrendering units before registration in standard or permanent forestry

- (1) This clause applies to an affected person who,—
- (a) on or before 16 February 2023, submitted an emissions return under section 182A(2)(a) of the Act; and
 - (b) has been given a notice by the EPA under section 182A(2)(b) of the Act requiring the surrender of units in relation to the emissions return; and

- (c) is required by section 182A(2)(b) of the Act to surrender the units by a deadline during the period starting on 12 February 2023 and ending on 20 November 2023.
- (2) The deadline is extended to 160 working days after the EPA gave the person the notice requiring the surrender.

9 Surrendering or repaying units after amendment or assessment (all forest land)

- (1) This clause applies to an affected person who,—
 - (a) on or before 16 February 2023, was given a notice by the EPA under section 123(1) of the Act of an amendment or assessment; and
 - (b) is required by section 123(3) or (6) of the Act to surrender or repay units, in relation to the amendment or assessment, by a deadline during the period starting on 12 February 2023 and ending on 20 November 2023.
- (2) The deadline is extended to 160 working days after the EPA gave the person the notice.

10 Repaying units because of error (all forest land)

- (1) This clause applies to an affected person who,—
 - (a) on or before 16 February 2023, was given a notice by the EPA under section 125(1) of the Act requiring them to repay units; and
 - (b) is required by section 125(2) of the Act to repay the units by a deadline during the period starting on 12 February 2023 and ending on 20 November 2023.
- (2) The deadline is extended to 60 working days after the EPA gives the person another notice requiring the repayment.

Rachel Hayward,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order is made under section 7 of the Severe Weather Emergency Recovery Legislation Act 2023 (the **SWERL Act**) and its effect is temporary. It is treated as having come into force on 12 February 2023 and is revoked on the close of 31 December 2024.

The order extends deadlines for certain forestry matters under the Climate Change Response Act 2002 (the **CCRA**). But the extensions apply only to affected persons in defined circumstances. An affected person is—

- an individual whose usual residence is in a directly affected area; or
- a body corporate or an unincorporated body whose address for service or for notices is in a directly affected area; or
- any person for whom the relevant forest land is in a directly affected area.

A directly affected area is an area in the districts of certain territorial authorities that were affected by the severe weather events defined in the SWERL Act (the **severe weather events**).

The deadlines that are extended are deadlines for providing documents or for surrendering or repaying units.

Statement of reasons

This statement of the Minister's reasons for recommending the making of this order is published in accordance with section 10 of the SWERL Act.

The Minister of Climate Change (the **relevant Minister**) is satisfied that the order is necessary or desirable for 1 or more purposes of the SWERL Act and is no broader than is reasonably necessary to address the matters that gave rise to the order.

Overview

The SWERL Act creates the ability to issue Orders in Council to assist communities affected by the severe weather events to respond to, and recover from, the impacts of the events. The purpose is to provide for the planning, rebuilding, and recovery of affected communities and to aid economic recovery. It enables other legislation to be relaxed, or to operate more flexibly, to allow for this.

The order makes temporary changes to the CCRA to—

- extend the deadlines by which forestry participants must submit notices and emissions returns:
- extend the deadlines by which forestry participants must meet unit surrender obligations.

The changes relate to the delivery of the SWERL Act's purpose by supporting the operation of other legislation (the CCRA) or enabling it to operate more flexibly, to take account of the severe weather events (*see* section 3(2)(b) of the SWERL Act).

The order does not alter a person's entitlement to New Zealand units, or their surrender obligations, under the CCRA, but it provides more flexibility to meet the requirements for time-bound actions set out in the CCRA.

The relevant Minister is further satisfied that the order does not breach section 11 of the SWERL Act and does not limit the rights and freedoms in the New Zealand Bill of Rights Act 1990.

The consultation process described in section 9 of the SWERL Act has been complied with. Public consultation took place from 2 to 10 May 2023.

The draft order was reviewed by the Severe Weather Events Recovery Review Panel, and a copy was provided to the Regulations Review Committee. The relevant Minister had regard to the recommendations and comments provided by them, and the order and this statement of reasons have been amended to address that feedback.

Context

Recent severe weather, including cyclones Hale and Gabrielle, has caused significant disruption to the affected regions, including to the forestry sector. The SWERL Act was recently passed to mitigate some of the impacts caused and to aid recovery.

The SWERL Act creates the ability to issue Orders in Council to assist communities affected by the severe weather events to respond to, and recover from, the impacts of those events. This is to provide for the planning, rebuilding, and recovery of affected communities and aid economic recovery. It enables other legislation to be relaxed, or operated more flexibly, to allow for this.

The Minister of Climate Change and the Minister of Forestry have identified that 2 temporary changes to the CCRA can assist in achieving the purposes of the SWERL Act, and can be implemented through this process.

Those changes will assist forestry participants in the New Zealand Emissions Trading Scheme (the **ETS**) in managing the impacts of the severe weather events. The changes are—

- extending the deadlines by which forestry participants must submit notices and emissions returns:
- extending the deadlines by which forestry participants must meet unit surrender obligations.

Matters that apply to both recommendations

Affected persons

The order applies to forestry participants based on whether their usual place of residence (if an individual) or address for service or for notices (if a body corporate or an unincorporated body) is in a directly affected area. Alternatively, an affected person is someone whose relevant forest land is in a directly affected area.

Directly affected areas

The order defines a directly affected area as an area in 1 or more districts (as defined in the Local Government Act 2002) of the territorial authorities specified in the definition of local authority in section 4(1) of the SWERL Act. Those districts are based on the extent of the state of national emergency declared on 14 February (in response to Cyclone Gabrielle) and subsequent announcements of business support and relief funding for affected districts.

Revocation date

The order is revoked on the close of 31 December 2024. This allows for the longest possible extension of a surrender deadline under the order (by 19 February 2024 under *clause 6(1)(a)* of the order) and gives flexibility to account for the time taken to process emissions returns and for the EPA to issue surrender notices.

Recommendation 1: Extend the deadlines by which forestry participants must submit notices and emissions returns*Summary of recommendation*

The CCRA sets out fixed deadlines for when ETS participants need to submit notices and emissions returns. The recommendation is to create an automatic extension to those deadlines, being the earlier of the following:

- 100 working days from the due date:
- 20 November 2023 (100 working days after the 30 June 2023 deadline for post-1989 emissions returns covering the period 2018 to 2022).

This applies to affected persons who have an emissions return or notice due on or after 12 February 2023 (the earliest date of Cyclone Gabrielle, the last severe weather event). This includes any retrospective application, for notices and emissions returns due (but not submitted) before the order comes into force. That date was selected to limit the retrospective impact of the order as much as possible while still delivering the intended relief to participants.

For most affected persons, the order has prospective application. That is, it changes the deadline (of 30 June 2023) by which post-1989 forestry participants need to submit an emissions return.

The extension applies to the notices and emissions returns listed in *clauses 5(3) and (4)* of the order. Those are the time-bound notices and emissions returns in the CCRA (that is, those with hard deadlines). Applying the extension only to those documents ensures the order is not broader than is reasonably necessary (*see* section 8(1)(a)(ii) of the SWERL Act).

Reasons for recommendation

Recent severe weather events are likely to impact participants' ability to comply with notice and emissions return deadlines.

Currently, the CCRA does not allow for the extension of notice submission deadlines. If a participant does not submit a notice on time, they may face infringement fees or fines (of between \$1,000 and \$6,000).

In addition, there is limited ability for the extension of emissions return deadlines (under section 119 of the CCRA). Participants can apply for an extension before the emissions return is due, and an extension of up to 20 working days can be given. Although this allows some flexibility to accommodate short-term disruptions while participants prepare emissions returns, the extent of the impacts of the severe weather

means those provisions are unlikely to provide the flexibility necessary to support recovery.

If a participant does not submit an emissions return on time, they may face penalties. The penalties are based on the number of units in the emissions return, a specified carbon price, and an assessment of the participant's culpability. The penalty for failing to submit an emissions return for 5,000 units (about 10 hectares of harvested forest) ranges from \$34,000 to \$339,000, depending on the participant's culpability. This penalty applies in addition to the unit obligation.

There is some ability for the Ministry for Primary Industries (**MPI**) to not apply the penalty if the participant took reasonable care, or to apply a lesser penalty based on the participant's level of culpability. However, this approach is not preferred to accommodate the impacts of the weather events as penalty assessments are done on a case-by-case basis, putting pressure on MPI resources to undertake them quickly to avoid creating uncertainty for participants until the assessments are concluded.

Extending deadlines is appropriate to allow forestry participants impacted by severe weather more time to meet their obligations while still maintaining the integrity of the ETS.

This delivers on the purpose outlined in section 3(2)(b) of the SWERL Act. Specifically, the changes will support the operation of other legislation or enable it to operate more flexibly, to take account of the severe weather events.

Recommendation 2: Extend the deadlines by which forestry participants must meet unit surrender obligations

Summary of recommendation

The CCRA sets out fixed deadlines for when ETS participants must surrender units, following the submission of their emissions return. The recommendation is to create an automatic extension to unit surrender deadlines, as follows:

- 100 working days for post-1989 forestry participants who have submitted emissions returns on or before 16 February 2023, and whose deadline of 60 working days is then affected by the severe weather:
- 60 working days for pre-1990 forestry participants who submit emissions returns under the severe weather event deadline extension (from notification of their liability):
- extensions to other surrender or repayment deadlines if the EPA issued a notice on or before 16 February 2023.

This would apply to any affected person. This includes any retrospective application, for any surrender deadline affected by the severe weather before the order comes into force.

Post-1989 forestry participants whose deadline for submitting a notice or emissions return is after 16 February, and who have not yet submitted one, are covered by recommendation 1.

Reasons for recommendation

Recent severe weather events are likely to impact participants' ability to comply with unit surrender deadlines.

Failure to surrender units on time results in penalties. These differ based on participant size, as follows:

- small forestry participants (those with annual average unit obligations of less than 25,000 units) undergo consideration to determine any penalty. There is scope to reduce penalties by 100% in certain circumstances:
- all other forestry participants are subject to a penalty of 3 times the value of the units they fail to surrender. There is no scope to reduce the penalty.

Extending unit surrender deadlines is appropriate to allow forestry participants impacted by severe weather more time to meet their obligations, while still maintaining the integrity of the ETS.

This delivers on the purpose outlined in section 3(2)(b) of the SWERL Act. Specifically, these changes will support the operation of other legislation or enable it to operate more flexibly, to take account of the severe weather events.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 8 June 2023.

This order is administered by the Ministry for the Environment.