

# House of Representatives

# Supplementary Order Paper

Tuesday, 3 December 2019

## Climate Change Response (Emissions Trading Reform) Amendment Bill

### *Proposed amendments*

Hon James Shaw, in Committee, to move the following amendments:

#### *Clause 4*

Replace *clause 4(4) and (5)* (page 17, lines 20 to 29) with:

- (4) Replace section 2A(5) with:
- (5) Subpart 1 of Part 5 of Schedule 3 applies,—
  - (a) except in relation to surrender obligations, on and after 1 January 2011; and
  - (b) in relation to surrender obligations, on and after 1 January 2025 or a later date appointed by the Governor-General by Order in Council.
- (5) Replace section 2A(9) with:
- (9) Subpart 4 of Part 5 of Schedule 3 applies,—
  - (a) except in relation to surrender obligations, on and after 1 January 2024 or a later date appointed by the Governor-General by Order in Council; and
  - (b) in relation to surrender obligations, on and after 1 January 2025 or a later date appointed by the Governor-General by Order in Council.
- (6) After section 2A(14), insert:
- (15) In this section, **surrender obligation** means an obligation to surrender units under this Act.

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*Clauses 5 and 6*

Replace *clauses 5 and 6* (page 17, line 30 to page 18, line 18) with:

**5 Section 2B amended (Orders in Council in relation to Part 5 of Schedule 3)**

- (1) In section 2B(1), (2), (3), and (4), replace “section 2A(8) or (9)” with “section 2A(5), (8), or (9)”.
- (2) In section 2B(1), (2), and (3), replace “subpart 2 or 4” with “subpart 1, 2, or 4”, in each place.
- (3) Repeal section 2B(1)(d).
- (4) In section 2B(3)(c)(ii), replace “greenhouse gas emissions trading scheme established under this Act” with “emissions trading scheme”.

**6 Section 2C amended (Effect of Orders in Council in relation to Part 5 of Schedule 3)**

- (1) Replace section 2C(1) with:

- (1) This section applies—
  - (a) to subparts 1 and 2 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(8)); and
  - (b) to subparts 3 and 4 of Part 5 of Schedule 3 on and after—
    - (i) 1 January 2024; or
    - (ii) if an Order in Council is made in relation to **section 2A(9)(a)**, the date appointed in that order.

- (2) Replace section 2C(4) with:

- (4) If an Order in Council is made under section 2A(8) that has the effect of applying subpart 2 of Part 5 of Schedule 3 to all persons who carry out an activity listed in that subpart from a date appointed in that order, then section 2A(5) and subpart 1 of Part 5 of Schedule 3 expire and are repealed on the date from which all persons carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity.

- (4A) On the date on which, under **section 2A(9)(b)**, subpart 4 of Part 5 of Schedule 3 applies (in relation to surrender obligations) to all persons who carry out an activity listed in that subpart, section 2A(6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed.

- (3) In section 2C(5), replace “subsection (3)(a) or (b) or (4)(a) or (b), this Act no longer applies to a person carrying out an activity in subpart 1 or 3 of Part 5 of Schedule 3, or an activity listed in sub-

part 1 or 3 of Part 5 of Schedule 3 is repealed,” with “subsection (3), (4), or (4A), this Act no longer applies to a person carrying out an activity listed in subpart 1 or 3 of Part 5 of Schedule 3,”.

*New clause 10A*

After *clause 10* (page 25, after line 15), insert:

**10A Section 5J amended (Commission’s functions)**

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 being ready to start complying with reporting and surrender obligations under this Act:

*Clause 69*

In *clause 69(3)* (page 50, line 29), replace “section 65(5)” with “section 65(4) and (5)”.

In *clause 69(3)*, before *new subsection (5)* (page 50, before line 30), insert:

- (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 86BAA**.

*Clause 79*

After *clause 79(5)* (page 56, after line 22), insert:

- (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 the Climate Change Commission about whether the phase-out rates should continue to be suspended.

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- (3) The Minister must not make a recommendation under subsection (2)(a)(ii) before surrender obligations for the relevant participants start.

*New clause 79A*

Before *clause 80* (page 56, before line 23), insert:

**79A 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.

*Clause 80*

In *clause 80* (page 56, before line 25), insert as subclauses (1) to (3):

- (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,”.

*Clause 81*

Replace the heading to clause 81 (page 56, lines 28 and 29) with “New sections 86BAA, 86BA, and 86BB inserted”.

In *clause 81*, before *new section 86BA* (page 56, before line 31), insert:

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

- (1) On receipt of an application under section 86 in respect of an eligible agricultural activity, 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 in respect of the application, the number of units the applicant is entitled to be allocated.
- (2) If the EPA decides under **subsection (1)** that an applicant is entitled to receive an allocation in respect of the application, then the EPA must—
  - (a) notify the applicant of—
    - (i) the number of units the applicant has been allocated in respect of the application; and
    - (ii) the person’s right under section 144 to seek a review of the allocation decision; and
  - (b) comply with **section 86BB**.
- (3) If the EPA decides under **subsection (1)** that an applicant is not eligible to receive an allocation in respect of the application, 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.
- (4) The EPA must, as soon as practicable after deciding an eligible person’s final allocation for an eligible activity in respect of a year,—
  - (a) publish the decision in the *Gazette*; and
  - (b) ensure it is accessible via the Internet site of the EPA.
- (5) However, the EPA is not required to publish the final allocation of an eligible person for an eligible activity in respect of a year, or ensure 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.

In clause 81, heading to new section 86BA (page 56, line 31), after “**allocated units**”, insert “**to industry**”.

In clause 81, after new section 86BA, (page 57, after line 23), insert:

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**86BB 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 86BAA**.
- (2) The EPA must direct the Registrar—
  - (a) to transfer to a surrender account designated by the EPA the number of units required for surrender as a result of the assessment for the year to which the allocation relates; then
  - (b) if there are any remaining units,—
    - (i) to transfer to a surrender account designated by the EPA the number of remaining units (if any) that the applicant was required to, but did not, surrender as a result of an assessment for an earlier year; and
    - (ii) to transfer to a Crown holding account designated by the EPA the number of remaining units (if any) that the applicant was required to, but did not, repay by a deadline that has passed; then
  - (c) to transfer any remaining units to the holding account notified in the person’s application.
- (3) For the purpose of **subsection (2)(b)**, the Registrar—
  - (a) must transfer the units to satisfy obligations in order of the earliest deadline for surrender or repayment; and
  - (b) must not transfer more units in total than the number of remaining units after satisfying the requirement in **subsection (2)(a)**.
- (4) The EPA must notify the applicant of the number of units transferred under each of **paragraphs (a), (b), and (c) of subsection (2)**.

*Clause 82*

In *clause 82* (page 57, before line 25), insert as subclause (1):

- (1) In section 86C(1), after “section 86B”, insert “or **86BAA**”.

*Clause 83*

Replace *clause 83(2)* (page 57, lines 30 to 32) with:

- (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 **86BAA**, the EPA”.

In *clause 83(6)*, new *subsection (4)*, after “86B” (page 58, line 2), insert “or **86BAA**”.

*Clause 122*

In *clause 122(1)*, new subsection (2)(b) (page 76, line 15), delete “industrial”.

In *clause 122(4)* (page 76, line 24), delete “industrial”.

*Clause 123*

In *clause 123(5)* (page 77, line 6), delete “industrial”.

In *clause 123(7)* (page 77, line 11), delete “industrial”.

*Clause 124*

In *clause 124(2)* (page 77, line 32), delete “industrial”.

*Clause 126*

In *clause 126*, new subsection (1)(d) (page 78, line 14), delete “industrial”.

In *clause 126*, new subsection (5) (page 78, line 30), delete “industrial”.

*Clause 129*

In *clause 129*, new section 156(a) (page 79, line 18), delete “industrial”.

In *clause 129*, new section 156(b) (page 79, line 25), delete “industrial”.

*Clause 130*

In *clause 130(2)* (page 79, line 32), delete “industrial”.

*New clause 140A*

After *clause 140* (page 81, after line 19), insert:

**140A Section 161G amended (Regulations in relation to eligible agricultural activities)**

- (1) Replace section 161G(3) with:
- (3) Before recommending the making of a regulation under subsection (1) prescribing the allocative baseline or baselines of an eligible agricultural activity, the Minister must—
  - (a) have regard to the most recent annual inventory report prepared under section 32(1)(b)(i); and
  - (b) consult, or be satisfied that the chief executive has consulted, the persons (or representatives of the persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulation made in accordance with the recommendation.
- (2) In section 161G(4), replace “subsection (3)” with “**subsection (3)(b)**”.
- (3) In section 161G(5), replace “subsections (3)” with “**subsections (3)(b)**”.

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- (4) Replace section 161G(6) with:
- (6) 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.
- (7) In conducting a review under **subsection (6)(b)**, the Minister must comply with **subsections (3)** and (4).

*New clause 186A*

After *clause 186* (page 166, after line 26), insert:

**186A New section 215 inserted (Ministers to report on alternative pricing system for farm-level agriculture emissions)**

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.

*Clause 187*

Replace *clause 187(1)* (page 166, line 28), with:

- (1) Replace section 217(1) with:
- (1) This section applies—
- (a) to a participant who submits an annual emissions return that relates to the first year in which the 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; and
  - (b) in respect of the units that the participant is required to surrender in respect of the activity.

(1A) Repeal section 217(2)(a).

*Clauses 189 and 190*

Replace *clauses 189 and 190* (page 167, lines 10 to 26) with:

**189 Section 219 amended (Transitional provision for mandatory reporting by certain participants)**

- (1) In the heading to section 219, replace “**mandatory reporting by**” with “**surrender obligations of**”.

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- (2) Replace section 219(1) with:
- (1) This section applies to a person who carries out an activity listed in any of the following:
- (a) subpart 1 of Part 5 of Schedule 3 in the period—
    - (i) beginning on 1 January 2012; and
    - (ii) ending on the date that surrender obligations for activities listed in that subpart start:
  - (b) subpart 2 of Part 5 of Schedule 3 in the year following the year commencing on a date appointed by Order in Council made under section 2A(8) (to the extent the order applies to persons carrying out an activity listed in that subpart) on and after which that subpart applies to the person:
  - (c) subpart 3 of Part 5 of Schedule 3 in the period—
    - (i) beginning on 1 January 2012; and
    - (ii) ending on the earlier of a date appointed by the Governor-General by Order in Council and 31 December 2024:
  - (d) subpart 4 of Part 5 of Schedule 3 in the 2024 calendar year.
- (3) Replace section 219(3) to (5) with:
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a date for the purpose of **subsection (1)(c)(ii)**.
- (4) Before recommending the making of an Order in Council, 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) The Minister must not recommend the making of an Order in Council before 1 July 2022.

**190 Sections 220 to 222 replaced**

Replace sections 220 to 222 with:

**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.

*New clause 205A*

After *clause 205* (page 170, after line 12), insert:

**205A New Schedule 5 inserted**

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

*New Schedule 2A*

After *Schedule 2* (page 204, after line 32), insert:

**Schedule 2A  
New Schedule 5 inserted**

**s 205A**

**Schedule 5  
Primary sector climate change commitments**

**s 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 approved 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 approved 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.

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- (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.

**Explanatory note**

This Supplementary Order Paper amends the Climate Change Response (Emissions Trading Reform) Amendment Bill (the **ETR Bill**), which amends the Climate Change Response Act 2002 (the **CCR Act**).

The amendments made by this SOP relate to the agricultural activities listed in sub-parts 1 to 4 of Part 5 of Schedule 3 of the CCR Act. The effect of the amendments will be to impose obligation on activities in a staged fashion.

The SOP also amends the ETR Bill to add provisions to support the formal agreement between the Government and the agriculture sector (known as the Joint Action Plan). Those provisions cover the following:

- a mechanism for the Minister for Climate Change and Minister of Agriculture to report back on the features of the farm-level pricing scheme in 2022 (through the emissions trading scheme or a developed alternative pricing system);
- steps for the independent Climate Change Commission to monitor and report on progress towards agreed milestones and progress towards compliance with farm-level obligations;
- regulation-making power for the Minister for Climate Change to impose surrender obligations on processors if progress towards milestones is considered insufficient.

**Departmental disclosure statement**

The Ministry for the Environment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper because the subject matter is included in the disclosure statement prepared in relation to the ETR Bill.

A copy of that statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=186>

### **Regulatory impact assessment**

The Ministry for the Environment produced a regulatory impact assessment in October 2019 to help inform the policy decisions taken by the Government in relation to the agriculture-related changes to the CCR Act, including those being implemented by this SOP.

A copy of this regulatory impact assessment can be found at—

- <https://www.mfe.govt.nz/ris/reducing-greenhouse-gas-emissions-agriculture>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>